



Office of Commissioner
Alvaro M. Bedoya

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

June 6, 2023

Jessica Herron
Legislative Clerk
Subcommittee on Innovation, Data, and Commerce
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: FTC Commissioner Bedoya's Responses to Additional Questions for the Record

Dear Ms. Herron:

Thanks to you, the other staff, and especially the Members of the Subcommittee on Innovation, Data, and Commerce for inviting me to testify before it on April 18, 2023, for its hearing, "Fiscal Year 2024 Federal Trade Commission Budget."

In accordance with the Rules of the Committee on Energy and Commerce, I am attaching here my responses to the Members' additional questions for the record. As I note in response to Chairman Bilirakis's detailed questions, I am working with FTC staff to acquire the information necessary to ensure accurate responses, and I will supplement these responses as soon as I can, but I did not want to delay sharing the rest of my responses with the Subcommittee.

Thanks again for the opportunity to testify. Please let me know if you have any questions.

Sincerely,

Alvaro M. Bedoya
Commissioner
Federal Trade Commission

**Responses of Federal Trade Commissioner Alvaro M. Bedoya to
Additional Questions for the Record from the Members of the
Subcommittee on Innovation, Data, and Commerce
of the U.S. House of Representatives Committee on Energy and Commerce
following its April 18, 2023, hearing, “Fiscal Year 2024 Federal Trade Commission
Budget”**

The Honorable Cathy McMorris Rodgers

- 1. Seven states (CA, CO, CT, IA, VA, UT, and IN) have already enacted broad consumer data privacy laws. Laws in two of those states (CA and VA) have already taken effect, and laws in three more states (CO, CT, and UT) are set to take effect later this year. How does this expanding legal patchwork impact small and medium-sized businesses and individual consumers?**

Everyone deserves privacy protections. I, along with many past and all present FTC Commissioners, have urged Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted APA rulemaking authority, and jurisdiction over non-profits and common carriers. A national privacy law would make Americans aware of their rights and make clear the baseline obligations of small, medium, and large businesses to consumers.

- a) What benefits would a broad federal consumer data privacy law have for legitimate businesses, especially small and medium-sized businesses, who will need to comply with multiple differing regimes, and individual consumers?**

A national law would offer clear benefits to consumers and businesses alike. Members of the public are much more likely to understand and enforce their privacy rights if they have a baseline standard to draw upon; the greater predictability would surely also benefit businesses of all sizes.

- b) To what extent are you concerned with dormant commerce clause vacating state laws as they impact interstate commerce?**

In *National Pork Producers Council v. Ross*, 598 U.S. ---, 2023 WL 3356528 (May 11, 2023), the Supreme Court recently clarified that states are broadly empowered to protect their citizens through legislation even when that legislation may have other consequences beyond the state's borders, so long as the legislation does not advantage in-state firms or disadvantage out-of-state rivals.

- c) Relative to the state of California, if there were one state enforcement authority with which to confer on its state privacy law, who would that be?**

The Federal Trade Commission works with the Department of Justice and appropriate state partners throughout the country on consumer protection and privacy enforcement matters. In California, the primary responsibility for enforcing California's state privacy laws falls to the California Privacy Protection Agency. The California Privacy Protection Agency would be the right state enforcement authority to confer with regarding the California Consumer Privacy Act, as amended.

- 2. In addition to the broad consumer data privacy laws, states have been considering (while some have passed laws including Washington and Illinois) and enacting sectoral legislation that ranges from quite narrow to quite broad and covers a variety of data, including health-related data, biometric data, and data pertaining to children's and teens' online activities.**

a) What challenges does this state-level sectoral privacy patchwork pose to organizations and individuals?

A state-level patchwork can be confusing for both consumers and businesses alike. That said, state legislation also offers the opportunity to test new ideas, and to democratically empower people to enact greater protections where they see fit. The Biometric Information Privacy Act in Illinois, for example, was far ahead of its time in recognizing the sensitivity of biometric data and establishing protections to guard it.

b) How would enacting broad federal consumer data privacy legislation help address these challenges?

A federal consumer privacy law that provides baseline protections for all Americans would help consumers understand their privacy rights and enforce them. It would also help small and medium-sized businesses implement meaningful compliance programs at a fraction of the expense as it would take to comply with multiple different state laws.

c) Given the global nature of the internet and the digital economy, enabling safe, secure, efficient, and privacy protective cross-border data flows is crucial.

To what extent are you consulting with Secretary of Commerce Raimondo on the ramifications of balkanization of state laws and what it means for our international standing?

I have not personally consulted with Secretary Raimondo on this issue, but I know that the Commission works closely with the Commerce Department on privacy issues.

d) How would federal consumer data privacy legislation help facilitate safe, secure, efficient, and privacy protective cross-border data flows?

Federal consumer data privacy legislation would help cross-border data flows by making companies' obligations clear for all involved—companies, law enforcement, and consumers. A federal consumer data privacy law could go far to demonstrate to our foreign counterparts that privacy is adequately protected under U.S. law and that data transfers to the U.S. are permissible.

The Honorable Gus M. Bilirakis

1. Who at the FTC has authority to initiate an investigation of a business?

For Questions 1-35 from Representative Bilirakis:

Please know that I am awaiting data from FTC staff in order to provide accurate responses to these questions. Staff are working hard on this information, and I will follow up with answers when I have it.

2. Do commissioners have to vote to initiate an investigation of a business?

3. Do you know how many investigations of a business are currently underway?

4. Do you know how many investigations of a business have been initiated since the beginning of the year?

5. Is there a periodic list prepared to inform each commissioner of the specific investigations under way?

i. If not, why not?

6. How would a commissioner discover which businesses are under investigation?

7. Is there information controlled by a bureau that a commissioner may not review?

8. What types of information are not shared with commissioners?

9. Who at the FTC has authority to seek a court order against a business?

10. Do commissioners have to vote to seek a court order against a business?

11. Do you know how many court orders the FTC has sought against businesses in the past year?

12. Do you know how many court orders against businesses have been sought since the beginning of the year?

13. Is there a periodic list prepared to inform each commissioner of the specific court orders sought against businesses?

a) If not, why not?

14. In each instance when the FTC seeks a court order against a business, is there a public record of the court order, or are they sometimes granted under seal?

- 15. How would a commissioner discover which court orders the FTC has sought and the outcome of those requests?**
- 16. Does the FTC ever seek to appoint a receiver for the assets of a business?**
- 17. How does the FTC decide whom to appoint as a receiver?**
- 18. Must commissioners approve the appointment of a receiver?**
- 19. Is there an approved list of potential receivers at the FTC?**
- 20. Please provide the Committee with a list of all receivers the FTC has appointed since January 2021.**
- 21. Please provide the Committee with a list of all receivers the FTC has approved since January 2021.**
- 22. Please provide the Committee with every contract used to retain a receiver since January 2021.**
- 23. Please provide the Committee with the compensation received by each receiver as a result of its FTC approved receiver status since January 2021.**
- 24. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from businesses.**
- 25. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from a specific business without representation of that business in court.**
- 26. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 19.**
- 27. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 13.**
- 28. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court the appointment of a receiver for a business.**
- 29. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business.**
- 30. Please provide all FTC documents explaining how the FTC has statutory authority under Section 19 to seek in federal court the appointment of a receiver for a business without representation of that business in court.**

- 31. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the appointment of a receiver for a business.**
- 32. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the appointment of a receiver for a business without reference to Section 19.**
- 33. Please provide a list since January 2021 of each instance in which the FTC has employed Section 19 in federal court to seek the disgorgement of assets from a business.**
- 34. Please provide a list since January 2021 of each instance in which the FTC has in federal court sought the disgorgement of assets from a business without reference to Section 19.**
- 35. Please provide a list of each case in which Section 19 by the FTC was referenced in court cases from 2015-2020. Please indicate in which of those cases Section 19 was cited as the only basis for (a) appointment of a receiver for a business; and (b) for disgorgement of assets from a business.**
- 36. Commissioner Bedoya, if conduct helps consumers by lowering prices but harms competitors, who prevails – consumers or competitors, and what specific factors do you use to balance these interests?**

This question assumes that consumer and competitor interests are in conflict, but this is not necessarily the case. Competitors in a market are necessary for the benefits of competition to flow to consumers. What has been cast as “protecting competitors” should more accurately be described as “protecting competition,” which is certainly to the benefit of consumers.

It is difficult, however, to answer this question in the abstract. For example, the law recognizes a violation of section 2 of the Sherman Act when a company engages in predatory pricing – setting prices below cost and in a way that makes future recoupment unlikely. The effect of predatory pricing may be beneficial to consumers in the short-term, but the long-term harm to competition is substantial. When I am analyzing Sherman Act claims, Robinson-Patman Act discriminatory pricing claims, or any other alleged antitrust violation, statutory text, congressional intent and caselaw will guide my analysis.

The Honorable Jeff Duncan

1. Are you aware of any DAEO recommendation to Chair Khan in the Meta-Within matter?

I am aware that Chair Khan has testified that, in instances where companies like Facebook or Amazon have petitioned for her recusal, she has consulted with the DAEO and has taken actions that are consistent with the legal statements the DAEO has made.

2. Were you aware that Commissioner Wilson made clear she should resign if you went forward and redacted her dissent? If so, approximately, when did Commissioner Wilson make you aware?

The Commission did not censor Commissioner Wilson's dissent. Rather, Commissioner Wilson chose to include in her dissent materials that were subject to deliberative process privilege. Public release of materials subject to deliberative process privilege requires a waiver by the Commission. Consistent with legal precedent and long-standing Commission policy, the Commission did not waive deliberative process privilege on materials relating to pre-decisional analysis by staff prepared to facilitate Commission deliberations.

3. How do you justify silencing Commissioner Wilson to help Chair Khan avoid any embarrassment and scrutiny over her decision to not recuse herself?

Commissioner Wilson was not silenced. Commissioner Wilson elected to include materials prepared for and used by the Commission in its deliberations. Consistent with legal precedent and long-standing Commission policy, the Commission did not waive deliberative process privilege on those materials. The decision to deny Meta's petition for the Chair's recusal was solely based on the application of law to the facts.

4. Are you aware of any instance in the history of the FTC where a chair, commissioner, or FTC staff member chose to go against the recommendation of the DAEO?

I am not aware of any instance where a chair, commissioner or FTC staff member failed to comply with the legal requirements articulated by the DAEO.

5. Do you believe the Congress and the general public should know when a recommendation to recuse oneself is issued by the DAEO and then not followed? If not, why?

In instances where the DAEO provides a decision that constitutes final agency action, I believe it is appropriate for that decision to be released publicly. In cases where a DAEO's decision is not binding and therefore would not constitute a final agency decision, the DAEO's analysis and guidance, just like any of other material prepared by staff to aid the Commission's deliberations, is appropriately protected by deliberative process privilege.

6. Given that all of this has become public, do you regret your decision to deeply undermine the bipartisan nature of the agency, engage in cover up to prevent Chair Khan from having to justify her own decisions, and push out Commissioner Wilson, a presidential appointed, Senate confirmed senior government official?

Respectfully, the premises of the question are incorrect. In adjudicating the petition to recuse Chair Khan in the Meta/Within matter, I strictly applied the law, rules, and FTC policy and guidance governing due process and federal ethics to the factual allegations raised in that petition.

Since my first day as a nominee, and then every week as a Commissioner, I sought out Commissioner Wilson to work on privacy issues together. We had something of an informal partnership on kids' privacy and mental health. I also saw how Commissioner Wilson voted with the majority on prominent privacy cases; I have seen personally how matters like these benefitted from her input. Her passion and expertise for privacy are real. I enjoyed working with Commissioner Wilson and was disappointed that she chose to leave the agency, especially before another Republican could be appointed to fill her spot.

7. Do you support due process and procedure fairness obligations in trade agreements?

Due process and procedural fairness are important values for any competition agency to adhere to, and the FTC, with DOJ, has been a leader for many years promoting those values to our counterparts around the world, including through the International Competition Network and OECD. We also have supported efforts to include commitments relating to procedural fairness in certain trade agreements. With respect to those commitments, we seek to ensure that any commitments do not limit FTC enforcement authority, and that those commitments cannot be used as tools by large companies to interfere with legitimate competition enforcement actions by our foreign counterparts. We also want to ensure that any commitments in trade agreements going forward do not create limits on or conflicts with legislative efforts in Congress to reform U.S. competition laws or otherwise address concerns with technology companies through new laws.

The Honorable Kelly Armstrong

- 1. The Commission has brought a minimal number of enforcement actions under the authority granted in the Better Online Ticket Sales (BOTS) Act. What circumstances have limited the Commission's enforcement actions related to the BOTS Act? Are there pending enforcement actions related to the BOTS Act? What additional enforcement authority would assist the Commission's enforcement of the BOTS Act?**

I strongly favor the robust enforcement of the BOTS Act. The first BOTS Act enforcement cases that the FTC brought two years ago predated my arrival at the Commission, but in reviewing them, I agree with my fellow Commissioners that they resulted in strong settlements and established that violations of the BOTS Act will prove costly to violators. The primary constraint on enforcement by the FTC is resources in terms of time, money, and human capital. Additional resources would enhance our enforcement of the BOTS Act and other rules and statutes the FTC enforces.

- 2. News reports indicate that the Commission may bring first enforcement actions in decades under the Robinson Patman Act. Courts and the Commission have held the position that the Act should be interpreted and applied in a manner consistent with other antitrust laws when possible. What are the Commission's views on the Robinson Patman Act? What are the Commission's views how the Robinson Patman Act fits with other antitrust laws? Are there legislative changes to the Robinson Patman Act that would address inconsistencies with other antitrust laws?**

Congress passed the Robinson Patman Act to provide all retailers a level playing field on which to compete, including by banning secret discriminatory discounts and kickbacks. As a bipartisan group of congressmen recently reminded the Commission, the law is critical to ensuring that rural and urban Americans benefit from robust retail competition. Contrary to some critiques of the law, the congressional debates surrounding its passage in 1936 are quite *typical* of the debates that occurred in 1890, 1914, and 1950, when Congress passed other major antitrust legislation. In each of those instances, Congress showed a deep concern for ensuring a level playing field for all competitors, particularly independent and small businesses in rural America.

At the moment, I am unaware of any active proposals to amend the law, although I would be glad to review any such proposals and provide technical assistance.

- 3. The Commission's policy statement on Section 5 states that determining whether alleged conduct is an unfair method of competition "does not require a separate showing of market power or market definition," and that "the inquiry will not focus on the 'rule of reason' inquiries" to distinguish between procompetitive and anticompetitive conduct. How will the Commission decide what constitutes an unfair method of competition if it can avoid defining markets and showing actual market power, and if it is not guided by rule of reason analysis? How does the policy statement**

provide guidance to the business community when the standard does not require a separate showing of market power or market definition”?

When it enacted Section 5 of the FTC Act, Congress’s intent was to create a new prohibition broader than, and different from, the Sherman and Clayton Acts. Guided by the legislative history and legal precedent, the Commission’s Section 5 policy statement clearly articulates principles for determining whether conduct constitutes an unfair method of competition that would violate Section 5.

Conduct must satisfy two requirements to constitute an unfair method of competition. It must be (1) a method of competition and (2) unfair. A method of competition is conduct undertaken by an actor in the marketplace—as opposed to merely a condition of the marketplace. For a method of competition to be unfair it must be conduct that goes beyond competition on the merits. The Section 5 policy statement sets forth two key criteria to consider when evaluating whether conduct goes beyond competition on the merits. The conduct may be coercive, exploitative, collusive, abusive, deceptive, predatory, or involve the use of economic power of a similar nature. It may also be otherwise restrictive or exclusionary. Second, the conduct must tend to negatively affect competitive conditions. As the statement explains, that may include conduct that tends to foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers.

4. What sources or documentation is the Commission relying on for claims that consumers will spend three fewer hour shopping for a vehicle if the Motor Vehicle Dealers Trade Regulation Rule is promulgated? Why did the Commission fail to identify any such sources or documentation in the Notice of Proposed Rulemaking (NPRM)?

The Commission is carefully reviewing the record submitted in connection with the Motor Vehicle Dealers Trade Regulation Rule Notice of Proposed Rulemaking (NPRM), including public comments, as it considers next steps. I am committed to reviewing the record on the merits and do not want to prejudge any element of it.

The NPRM sets forth the basis for the FTC’s estimates, cites to data where available, and where data is not available, lays out the FTC’s assumptions and asks the public to comment. The public did so, and the Commission is carefully reviewing comments as it considers next steps.

5. Regarding the Motor Vehicle Dealers Trade Regulation Rule, the Commission states that there were 62.1 million vehicle transactions in 2019. It is true that this figure includes fleet sales (i.e., business-to-business sales) as well as private sales, both of which do not typically involve a motor vehicle dealer? If so, does that alter the Commission’s estimates that the rule would save consumers \$31 billion annually?

The Commission is carefully reviewing the record submitted in connection with the Motor Vehicle Dealers Trade Regulation Rule NPRM, including public comments, as it considers next steps. I am committed to reviewing the record on the merits and do not want to prejudge any element of it.

My understanding is that the FTC relied on the table “New and Used Passenger Car and Light Truck Sales and Leases,” published by the Bureau of Transportation Statistics in its report National Transportation Statistics (Table 1-17), to determine the number of vehicle transactions. The NPRM cited the table in the Preliminary Regulatory Analysis.

The Commission is carefully reviewing comments received about the proposed rule, including comments regarding its Preliminary Regulatory Analysis, as it considers next steps.

6. Does the Commission’s cost-savings analysis on the Motor Vehicle Dealers Trade Regulation Rule account for time and resources necessary to comply with the several disclosures required for “add on” products? Please provide an estimate of the additional time would be required for consumers to review and consider each disclosure.

The Commission is carefully reviewing the record submitted in connection with the Motor Vehicle Dealers Trade Regulation Rule NPRM, including public comments, as it considers next steps. I am committed to reviewing the record on the merits and do not want to prejudge any element of it.

The NPRM addressed both costs and benefits associated with provisions relating to Add-ons in the Preliminary Regulatory Analysis. The benefits associated with these provisions were addressed in Section XII(B) and the costs in Section XII(C). These analyses accounted for the time and resources necessary to comply with Add-on disclosure requirements in the NPRM.

7. Section 1.10 of the Commission’s procedural rules states: “Prior to the commencement of any trade regulation rule proceeding, the Commission must publish in the Federal Register an advance notice of such proposed proceeding.” Since the Motor Vehicle Dealers Trade Regulation Rule is a “trade regulation rule”, why did the Commission fail to issue an Announced Notice of Proposed Rulemaking (ANPRM)? Please explain how the issuance of a Notice of Proposed Rulemaking (NRPM) is consistent with Section 1.10?

Section 1.10 is located within subpart B of part 1 of our Rules of Practice. Subpart B is called “Rules and Rulemaking under Section 18(a)(1)(B) of the FTC Act.” This subpart does not apply to rules promulgated under other authorities, which are instead governed by subpart C, titled “Rules Promulgated Under Authority Other Than Section 18(a)(1)(B) of the FTC Act.” The Motor Vehicle Dealers Trade Regulation Rule was promulgated using procedures of the Administrative Procedure Act as authorized by 12 U.S.C. § 5519(d), which is an authority other than section 18(a)(1)(B) (codified at 15 U.S.C. § 57a(a)(1)(B)). Accordingly, section 1.10 is inapplicable to the proceeding.

8. Did any employee, Commissioner, or consultant engage or communicate with the Consumer Financial Protection Bureau on the Motor Vehicle Dealers Trade Regulation Rule prior to it being proposed on July 13, 2022? If so, please provide the dates.

I have not spoken with anyone at the CFPB on the topic of the Motor Vehicle Dealers Trade Regulation Rule and am unable to speak to the details of any other non-public coordination and

deliberations. Generally speaking, though, we do consult with our partner agencies such as the Federal Reserve and the Consumer Financial Protection Bureau about areas of shared jurisdiction and responsibility, including regarding motor vehicle sales financing.

- 9. In March 2022, Sen. Warren sent a letter urging the Commission to “immediately begin a review of the laws regulating automobile sales and begin the rulemaking process to improve consumer protections and pricing practices in this industry.” Please provide a copy of the Commission’s response to Sen. Warren’s March letter and/or provide details regarding any briefing provided Sen. Warren’s office for the record.**

As you may know, the Commission does not as a body respond to the letters that we receive from Congress. Instead, such responses come from the Commission’s Chair. Accordingly, I will defer to my colleague Chair Khan to answer this question.

The Honorable Rick W. Allen

1. **Cleaning products are essential to public health and quality of life and consumers have a right to know, understand, and trust the ingredients in the products they bring into their homes. However, the lack of a federal labeling standard for cleaning products makes it challenging for consumers to access ingredient information important to their families. How would a uniform labeling standard on cleaning product's ingredient communication benefit consumers in terms of the ability to access clear, reliable information regardless of where they live or how they purchase cleaning products?**

Labeling can help consumers make informed decisions about the products they purchase. The Commission has some experience in this area, including through its enforcement of the Made in the USA rule. We understand the Environmental Protection Agency (EPA) may have more specific experience regarding labeling of cleaning products. (*See, e.g.,* [https://www.epa.gov/saferchoice/frequently-asked-questions-safer-choice.](https://www.epa.gov/saferchoice/frequently-asked-questions-safer-choice))

The Honorable Diana Harshbarger

- 1. The financial survival of independent grocers and pharmacies is often tied to the health of rural communities, which often rely on family-owned grocers and pharmacies for basic necessities like food and medicine. What has the FTC studied, and concluded, in terms of allegations of conflicts of interest, anti-competitive conduct, and marketplace distortions, which disproportionately impact our constituents and these essential businesses in our rural communities?**

I wholeheartedly agree with the sentiment that the independent grocers and pharmacies are vital to the health of rural communities. As I stated in my testimony before this subcommittee, I'm profoundly worried about what's happening to grocery, pharmacy, and agriculture in small-town America and I'm trying to do everything I can to understand and to help. Specifically, the FTC is currently devoting significant time and resources to examining the impact of vertically integrated pharmacy benefit managers on the access and affordability of prescription drugs through the Commission's 6(b) authority. In addition to the compulsory orders initially issued to CVS Caremark; Express Scripts, Inc.; OptumRx, Inc.; Humana Inc.; Prime Therapeutics LLC; and MedImpact Healthcare Systems, Inc., the Commission recently issued two additional compulsory orders to two PBM-affiliated group purchasing organizations. Beyond that, while I cannot disclose the existence of non-public investigations, I reiterate my firm support for using agency resources to investigate allegations of anticompetitive conduct affecting these crucial industries.

The Honorable Yvette Clarke

- 1. Commissioners, the FTC announced a draft agreement with Mastercard on its refusal to deal fairly with competitors on debit card transactions. With the comment period now closed, can you provide us some perspective on what the FTC found regarding Mastercard's actions and when a final decree might be published in that matter?**

The Durbin Amendment, a provision of the 2010 Dodd-Frank Act, requires banks to enable at least two unaffiliated networks on every debit card, thereby giving merchants a choice of which network to use for a given debit transaction. In conjunction with its implementing rule, Regulation II, payment card networks are barred from inhibiting merchants from using other networks. This matter involved allegations that Mastercard's policy with respect to payment tokens saved in ewallets illegally inhibited merchants from being able to route electronic debit transactions to competing payment card networks.

- 2. There are similar concerns regarding Visa's actions to block debit card competition. It has been publicly reported that the Department of Justice was investigating Visa on antitrust grounds for those activities. Has the FTC looked into those claims or do you have plans to do so?**

As you know, the FTC jointly enforces the antitrust laws with the Department of Justice. I cannot disclose the existence of any non-public investigations. However, I can say that I take seriously the FTC's obligation to investigate allegations of unlawful conduct and take enforcement actions when warranted.

- 3. Commissioners, smart assistants, like Alexa and Google Home, are now common in our homes and can be integrated with third-party smart devices such as thermostats, light and audio, and home security systems. For example, a consumer may want to use Alexa to control their smart thermostat. However, consumers are often unaware of what information or even how much information may be shared by their third-party smart device with their voice assistant/smart home hub. Would you agree that changing what data is required to be shared for integration without consumer consent unreasonably jeopardizes consumers' privacy and has the potential to be deemed an unfair or deceptive practice?**

Depending on the facts, a company's failure to obtain consumers' consent has the potential to be an unfair or deceptive practice under Section 5. The Commission is committed to protecting consumers' privacy and data security from deceptive or unfair trade practices perpetuated by companies who sell connected devices, including smart home devices. The Commission has emphasized the importance of obtaining clear and affirmative consent from consumers in a range of recent enforcement actions across industries. For example, in three recent enforcement actions, *GoodRx*, *PreMom*, and *BetterHelp*, the Commission required the companies to obtain affirmative express consent for third-party data sharing (and, in *PreMom*, the FTC barred the company entirely from any further sharing of personal health data with third parties for advertising purposes). In those cases, the Commission also required the companies to implement mandatory privacy programs to better safeguard consumer data and imposed data minimization

The Honorable Alvaro M. Bedoya

requirements, such as data deletion requirements and limits on future retention of data. While these are not IoT cases, the principles they represent apply across markets.