



Office of Commissioner  
Rebecca Kelly Slaughter

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

May 26, 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 Slaughter'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,

Rebecca Kelly Slaughter  
Commissioner  
Federal Trade Commission

**Responses of Federal Trade Commissioner Rebecca Kelly Slaughter 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?**

All Americans deserve privacy protections. I have called for the passage of comprehensive federal privacy legislation that would protect Americans in every state. A national standard would make Americans aware of their rights and make clear the 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 strong national standard governing the use of consumer data would benefit all businesses by making their obligations clear. A national privacy law could also improve the competitive landscape for small- and medium-sized businesses by limiting the ability of large incumbents to leverage the data they already collect from their existing customer bases.

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

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 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.

**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?**

States have a long history of enacting legislation to protect their citizens; states have famously been our "laboratories of democracy." There are lessons other states as well as the federal

government can learn from state-level legislation in these sectors, including from the challenges different statutory provisions pose to organizations and individuals.

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

Federal privacy legislation should learn from the experiences of states in enacting privacy legislation. Setting a national floor for all Americans' privacy protections should ease compliance for businesses and better inform individuals of their rights.

**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?**

The Federal Trade Commission works closely with the Department of Commerce on issues of mutual concern, including on privacy.

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

National privacy rules would facilitate cross-border data flows by making companies' legal obligations clear.

**The Honorable Gus M. Bilirakis**

I need more information from FTC staff to provide accurate responses to these detailed questions. The FTC staff are working hard at collecting this information, and I will follow up with answers when I have them.

- 1. Who at the FTC has authority to initiate an investigation of a business? Do commissioners have to vote to initiate an investigation of a business?**
- 2. Do you know how many investigations of a business are currently underway?**
- 3. Do you know how many investigations of a business have been initiated since the beginning of the year?**
- 4. Is there a periodic list prepared to inform each commissioner of the specific investigations under way? If not, why not?**
- 5. How would a commissioner discover which businesses are under investigation?**
- 6. Is there information controlled by a bureau that a commissioner may not review?**
- 7. What types of information are not shared with commissioners?**
- 8. Who at the FTC has authority to seek a court order against a business?**
- 9. Do commissioners have to vote to seek a court order against a business?**
- 10. Do you know how many court orders the FTC has sought against businesses in the past year?**
- 11. Do you know how many court orders against businesses have been sought since the beginning of the year?**
- 12. Is there a periodic list prepared to inform each commissioner of the specific court orders sought against businesses? If not, why not?**
- 13. 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?**
- 14. How would a commissioner discover which court orders the FTC has sought and the outcome of those requests?**
- 15. Does the FTC ever seek to appoint a receiver for the assets of a business?**
- 16. How does the FTC decide whom to appoint as a receiver?**
- 17. Must commissioners approve the appointment of a receiver?**
- 18. Is there an approved list of potential receivers at the FTC?**
- 19. Please provide the Committee with a list of all receivers the FTC has appointed since January 2021.**

- 20. Please provide the Committee with a list of all receivers the FTC has approved since January 2021.**
- 21. Please provide the Committee with every contract used to retain a receiver since January 2021.**
- 22. Please provide the Committee with the compensation received by each receiver as a result of its FTC approved receiver status since January 2021.**
- 23. Please provide all FTC documents explaining how the FTC has statutory authority to seek in federal court disgorgements from businesses.**
- 24. 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.**
- 25. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 19.**
- 26. Please provide all FTC documents explaining how the FTC has statutory authority to seek disgorgements from businesses under Section 13.**
- 27. 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.**
- 28. 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.**
- 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 without representation of that business in court.**
- 30. 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.**
- 31. 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.**
- 32. 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.**
- 33. 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.**
- 34. 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.**

## **The Honorable Jeff Duncan**

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

I am aware that, in instances in which companies such as Facebook or Amazon have petitioned for the Chair's recusal, she has indicated that she consulted with the DAEO and took 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?**

We did not redact Commissioner Wilson's dissent. Commissioner Wilson chose to include material in her dissent that was required to be redacted under Commission rules. Discussions among participating Commissioners in adjudicating the petition to recuse Chair Khan in the Meta/Within matter are protected by the deliberative-process privilege.

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

The premises of the question are incorrect. Commissioner Wilson was not silenced, she chose to include material in her dissent that was required to be redacted pursuant to Commission rules. 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.

### **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 at the FTC in which a chair, commissioner, or staff member chose to take actions inconsistent with the legal requirements on which a DAEO provided them guidance.

### **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?**

The federal ethics rules provide some circumstances in which the guidance of the DAEO is binding; these generally involve potential financial conflicts of interest. In circumstances where DAEO approval is not required, the guidance of the DAEO is and should be treated in the same manner as any other material prepared by staff to aid in Commission deliberation, and protected by deliberative process privilege consistent with Commission rules.

### **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?**

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. I enjoyed working with Commissioner Wilson over our nearly five years at the agency together, and I was very disappointed that she chose to leave, especially before another Republican could be appointed to fill her spot.

**7. On February 13, 2023, President Biden renominated you to another term. Leading up to that announcement, were there any conversations about your renomination and your decision to support Chair Khan's decision to not recuse herself or your decision to redact Commissioner Wilson? If so, what was the nature of those conversations?**

No.

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

Due process and procedural fairness are among the many important considerations in engaging with our trading partners.



## **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?**

As you may know, before I was a Commissioner I helped work on the BOTS Act as a staffer in the U.S. Senate, and I strongly favor its robust enforcement. I am proud of the first BOTS Act enforcement cases that the FTC brought two years ago, which resulted in strong settlements that established that violations of the BOTS Act will prove costly to violators. The foremost 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?**

The Robinson-Patman Act prohibits economic discrimination, such as charging different customers different prices for the same product (subject to certain defenses). Such practices can raise the prices of goods for independent businesses and, more broadly, consumers. The Robinson-Patman Act also prohibits commercial bribery. As the Commission noted in its Policy Statement on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products, paying or accepting rebates or fees in exchange for excluding lower-cost drugs may violate Section 2(c) of the Robinson-Patman Act, which prohibits payments to agents, representatives, and intermediaries who represent another party's interests in connection with the purchase or sale of goods. I support deploying all the FTC's statutory authorities, including the Robinson-Patman Act, to faithfully carry out the FTC's statutory mandate to protect consumers and promote competition. I think that it is imperative for Congress periodically to consider whether the laws we enforce are having the intended effect.

**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"?**

The Sherman Act generally prohibits anticompetitive restraints on trade, and monopolization, and they were originally enacted for enforcement by the Department of Justice. When Congress created the FTC, its statutory mandate under Section 5 of the FTC Act was expressly broader: It directed the FTC to enforce against “unfair methods of competition.” Since then, courts have interpreted this to reach conduct that would violate the Sherman and Clayton Acts as well as unfair conduct that tends to negatively affect competitive conditions. The FTC’s policy statement uses statutory text and case law to explain that, to be a violation of Section 5, conduct must be a method of competition that goes beyond competition on the merits.

There are two key criteria to evaluate whether conduct goes beyond competition on the merits. First, the conduct may be coercive, exploitative, collusive, abusive, deceptive, or predatory or involve the use of economic power of a similar nature. It may also be otherwise restrictive or exclusionary, depending on the circumstances. Second, the conduct must tend to negatively affect competitive conditions. This may include, for example, conduct that tends to foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers. The policy statement focuses on conduct because Section 5 does not require a separate showing of market power or market definition when the evidence indicates that such conduct tends to negatively affect competitive conditions.

**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 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.

**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.

**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.

**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, which is called “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 am unable to speak to the details of any non-public coordination and deliberations. Generally speaking, though, the FTC does 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. This coordination is consistent with Congress’s express direction to the CFPB and FTC to cooperate with each other. *See, e.g.*, 12 U.S.C. § 5495 (“The Bureau shall coordinate with the [Securities and Exchange] Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services”); 12 U.S.C. § 5514(c)(3)(A) (directing the CFPB and FTC to “negotiate an agreement for coordinating with respect to enforcement actions by each agency”); 12 U.S.C. § 5581(b)(5)(D) (directing the CFPB and FTC to “negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period”).

**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?**

Clear and honest labeling of consumer products allows Americans to make informed decisions when they purchase goods. In the context of cleaning products, uniform labeling would allow consumers to better understand the risks and benefits associated with the chemicals that make these products work. Our experience enforcing the Made in USA rule shows how important those labels can be in facilitating informed consumer choice.

## **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?**

A provision of the 2010 Dodd-Frank Act, known as the "Durbin Amendment," and the Federal Reserve Bank's implementing rule, Regulation II, require banks to enable at least two unaffiliated payment networks to ensure that merchants have a choice of which network to use for their debit-card transactions. They also bar a network from inhibiting merchants from using competing networks. According to the complaint filed by the FTC, Mastercard's ewallet token policy deprives merchants of network choice for certain debit card transactions. When an ecommerce transaction is made online or through mobile device applications, a digital "token" replaces the primary account number ("PAN"). This protects the security of the PAN during the debit transaction.

As the complaint explains, when a Mastercard-branded e-commerce debit transaction is routed through the Mastercard payment card network, Mastercard performs a "detokenization" process to reassociate the token with the PAN in its "token vault." However, competing payment card networks cannot call out to Mastercard's token vault and obtain the PAN associated with an ewallet token. As a result, merchants have no choice between competing networks and must route all of these ecommerce transactions over the Mastercard network. The FTC's proposed order requires Mastercard to provide PANs so that merchants may route tokenized transactions using Mastercard-branded debit cards to the available network of their choosing. Mastercard must also refrain from any other actions that inhibit merchant routing choice I look forward to the Commission issuing the final order in the not-too-distant future.

**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 non-public law enforcement investigations, but I take seriously the FTC's obligation to enforce the antitrust laws and the Durbin Amendment. I support investigating any potentially unlawful conduct in the payment processing industry and taking action to enforce the law 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?**

As we have alleged in prior enforcement matters, material retroactive changes to privacy practices can be an unfair and deceptive trade practice. 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. We are investigating and pursuing these cases throughout data driven industries; for example, our recent enforcement actions in Drizly, GoodRx, and Chegg required those companies to minimize the data they collect from consumers and imposed a data-retention schedule that requires those companies to explain what data they collect from consumers and the purposes of that collection. While these are not IoT cases, the principles they represent apply across markets.