

Congress of the United States
Washington, DC 20515

March 30, 2022

Chair Lina Khan
Commissioner Rebecca Slaughter
Commissioner Noah Phillips
Commissioner Christine Wilson

Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Chair Khan and Commissioners Slaughter, Phillips, and Wilson:

We write to request that the Federal Trade Commission investigate and address economic discrimination against some competitor businesses. The anticompetitive effects of discriminatory pricing and product supply directed to certain businesses (sometimes but not always small and medium-sized businesses) ripple through the entire supply chain—harming consumers as well as independent producers. We urge the FTC to use its authority to investigate and bring enforcement actions against discriminatory conduct that violates the antitrust laws, including the FTC Act and the Robinson-Patman Act.

Small and medium-sized businesses provide critical competition on price, quality, service and convenience. They are also a bedrock of communities from rural America to the inner city. For example, they are often the only sources of groceries, consumers goods, or pharmaceuticals in many small towns and urban centers. These businesses are also an essential source of jobs in these communities, as well as entrepreneurship and a means to building wealth through business ownership. The same is true of independent producers such as farmers and ranchers.

As a result of concentration throughout the supply chain, however, small and medium-sized businesses are increasingly subject to discriminatory terms and conditions, including less favorable pricing and price terms, less favorable supply, less favorable retail packaging, and sometimes an inability to access products in short supply that are available to their competitors. Farmers and ranchers also suffer from high levels of concentration. Today, just a handful of firms compete to buy and sell agriculture products. This results in unreasonable producer demands and it drives down the prices paid to farmers and ranchers to anticompetitive lows. Because large suppliers capture those profits and price discrimination among retailers reduces price competition in the retail market, consumers do not always experience lower retail prices as a result of lower producer prices.

The COVID-19 pandemic has highlighted the effects of economic discrimination. Some businesses have been able to get more consistent supplies of consumer products. Sometimes this has been based on the size of those businesses while at other times it has been based on pernicious distinctions among retail channels of trade. Throughout the crisis, dominant companies and certain sectors have received preferential treatment in supply shortage scenarios,

meaning they get access to critical goods and services while other firms do not. These product shortages occur in part because concentration makes the supply chain less resilient and more vulnerable to disruption. When one firm experiences a shock, it ripples throughout the chain. Supply disruptions are not equally distributed—lower income and rural consumers face the worst impacts.

The antitrust laws were designed to protect against anticompetitive economic discrimination and excessive concentration. Congress recognized the benefits of independent business and the threats posed by economic discrimination when it enacted laws like the Robinson-Patman Act, the Sherman Act, The Clayton Act, and Federal Trade Commission Act.

For example, the Robinson-Patman Act reflects Congress's determination that discriminatory treatment among competitors is pernicious and should be prohibited. But current enforcement efforts have failed to address these anticompetitive harms, and judges have inappropriately limited the scope of the law despite clear statutory language. Despite Congress's broad goals in 1936, the FTC has not brought a case under the Robinson-Patman Act in more than 20 years. Nor has the FTC brought an enforcement action against economic discrimination using the other antitrust laws.

America is facing many economic challenges and the FTC has many competing priorities. We urge the Commission to make enforcement against economic discrimination targeting small and medium-sized businesses a top priority.

Sincerely,



Hakeem Jeffries
Member of Congress



Louie Gohmert
Member of Congress



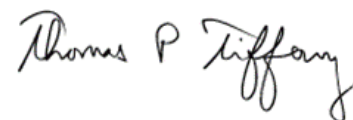
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Paul A. Gosar, D.D.S
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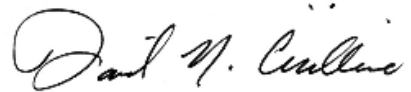
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