

Lina Khan:

been a documented disaster for repair because the manufacturer is the only entity that can make the pairing happen. So disc drives, although they're very inexpensive in the marketplace, maybe a \$20 item, can't be replaced in a Microsoft Xbox without also buying the corresponding motherboard, raising the entire cost of the repair to roughly \$220, which is almost exactly the cost of buying a whole new unit off the used market.

As a result, there's thousands and thousands of Xbox consoles that have been sent to the trash heap and the few parts that are useful in repair only can be salvaged out of a very few of those that have been discarded, so there's a lot of waste there. And we're very concerned that because Microsoft has such a lock on the market for Xbox and game consoles, that they're so dominant as a player and Activision is equally dominant as a player in the delivery of games, that the merger of these two large dominant players will never be good for consumers. We fear that there will be just less opportunity for repair and that those that have invested in games that might operate on other platforms may wind up having to only operate them on a repair monopolized platform, such as the Xbox. That is our concern.

Every three years, we try to get the Copyright Office to make changes to their policies so that repair is more available and they did that just recently saying it's legal to repair your Xbox optical drive, but you still can't do it. Functionally, you can't do it because the exemption didn't include permission to develop and distribute the exact same software tools that you would need to do the repair so there's no relief there from the Copyright Office. That's our major fear, and we hope that the FTC will work on that. Thank you.

Peter Kaplan:

Thank you. Thank you, Gay. Appreciate it. And thank you to all of today's speakers. Now I'll turn it back over to Chair Khan.

Lina Khan:

Thanks so much, Peter, and thanks everybody who took the time to come and share your views. We're really mindful of your feedback and really look to it closely to inform some of our future priorities and actions. The first topic on today's agenda is the Telemarketing Sales Rule in connection with the Commission's routine review of this rule, the Bureau of Consumer Protection has recommended that we amend the rule to ensure that it's fully accomplishing its goal in light of certain changes in market conditions and the legal landscape. And specifically, staff has recommended that we approve for publication in the Federal Register two separate proposed rulemaking documents. I will now turn it over to Ben Davidson from the Bureau's Division of Marketing Practices to present an overview of the proposed amendments. Thanks, Ben. Kicking it over to you.

Ben Davidson:

Thank you, Chair Khan and Commissioners Phillips, Slaughter, and Wilson for considering our recommendation to initiate a rule making that would make changes to the telemarketing sales rule. The proposal has two pieces, the Notice of Proposed Rule Making, the NPRM, and an Advanced Notice of Proposed Rule Making, the ANPR,

on either a part-time or full-time basis, and the COVID pandemic has accelerated these changes, potentially on a permanent basis for some.

Additionally, the rise of the gig economy and the economic impact of the pandemic have resulted in more people using alternative work arrangements to earn income. It is not uncommon for some people to use a single phone for their personal and business purposes. One of the TSR central purposes is to protect consumers privacy from unwanted calls. The number of consumers working from home who are using a single phone for personal and business calls raises the question of whether the B2B exemption compromises the TSRs abilities to stop unwanted calls to

A lot of the most annoying calls that we get are from criminals who are violating multiple laws in multiple ways and don't really care about the consequences of violating the TSR. That's just one of the ways they're violating the law. I have always thought, I continue to think, that it is in

Lina Khan:

And I vote yes. The motion passes unanimously. Thanks so much again, Ben, for the terrific presentation. And as my colleagues shared, we're really looking forward to hearing from the public on this important rulemaking proceeding.

We will now turn to the second item on the agenda, which is an update on the Agency's ability to return money to Americans who are harmed by unlawful business practices. Last April's Supreme Court decision in *AMG Financial Services v. FTC* significantly impacted our ability to provide refunds to consumers harmed by deceptive, unfair, or anti-competitive conduct. And Audrey Austin from Bureau of Consumer Protection will shortly share a snapshot of these effects. I'll just say a few things upfront.

As we all know, before a

So while our Agency continues to harness our full set of tools and authorities to fight fraud to protect Americans from unfair, deceptive, and anti-competitive practices, there is now a major gap in our ability to make consumers whole and ensure that lawbreakers are not profiting from unlawful business practices. It's critical that Congress take prompt action to ensure that the Agency can obtain equitable monetary relief under Section 13(b) for violations of any law enforced by the Commission. Last summer, I was heartened to see the House of Representatives pass a bill that would do exactly that, and I would call on the Senate to take up the same bill and pass it as soon as possible.

Now I would like to welcome Acting Deputy Director in the Bureau of Consumer Protection, Audrey Austin, who will deliver a presentation describing AMG's impact on the Agency's enforcement work. Thanks, Audrey.

Julie Merrill:

Thank you, Chair Khan, for the introduction. Just over a year ago, the Supreme Court decided AMG Capital Management v. FTC, which stripped the Federal Trade Commission of certain powers, limiting our ability to get money back to consumers. While staff and the Agency continue to work tirelessly to protect consumers, the loss of our 13(b) authority has severely hindered our work.

The underlying case in AMG involved an online payday lending scheme operated by Scott Tucker, who is currently serving a prison sentence for this activity. The scheme involved completing an online application, which disclosed that consumers would have to pay back the loaned amount, plus a financing charge. For example, if a consumer borrowed \$300, the website informed them that they would have to pay \$300 plus a \$90 finance charge, for a total of \$390. But buried in confusing fine print was a different reality. There was more than one finance charge. Additional finance charges accrued for each pay period that passed when the loan was not repaid.

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leaving injured consumers, some retirees with tens of thousands of dollars in losses with very little tangible help.

Cutting off our 13B authorities also hamstrung our ability to protect consumers, trying to access

have expressed concern about the application of Section 13B and consumer protection cases that involve not fraud, but legitimate companies selling legitimate products, albeit with deceptive claims. Congress could set forth the framework under Section 13B, pursue it to which courts must evaluate the value that consumers may have retained from the product or service, despite the deception.