



# **Feeding America in a Time of Crisis**



# Table of Contents

Executive Summary .....	1
Background.....	3
Study Design.....	3
The Grocery Supply Chain .....	3
Grocery Retailers .....	3
Grocery Wholesalers.....	5
Grocery Producers .....	7
I.    Major Supply Chain Disruptions .....	9
Labor Supply Disruptions .....	10
Transportation/Trucking Disruptions.....	11
Disruptions to Availability of Inputs and Raw Materials .....	11
Shifts in Consumer Demand.....	12
II.   Competitive Impacts of Disruptions .....	13
Retailer Revenues Exceeded Cost Increases and Profits Remain Elevated .....	13
Some Larger Purchasers Use “On Time In Full” Policies That Provide a Competitive Advantage in Accessing Products in Shortage .....	14
Producer Allocation Policies .....	15
Wholesaler Allocation Policies.....	15

# Executive Summary

distort product allocations during a shortage suggest that crises may create an opportunity for some firms to entrench their market power.

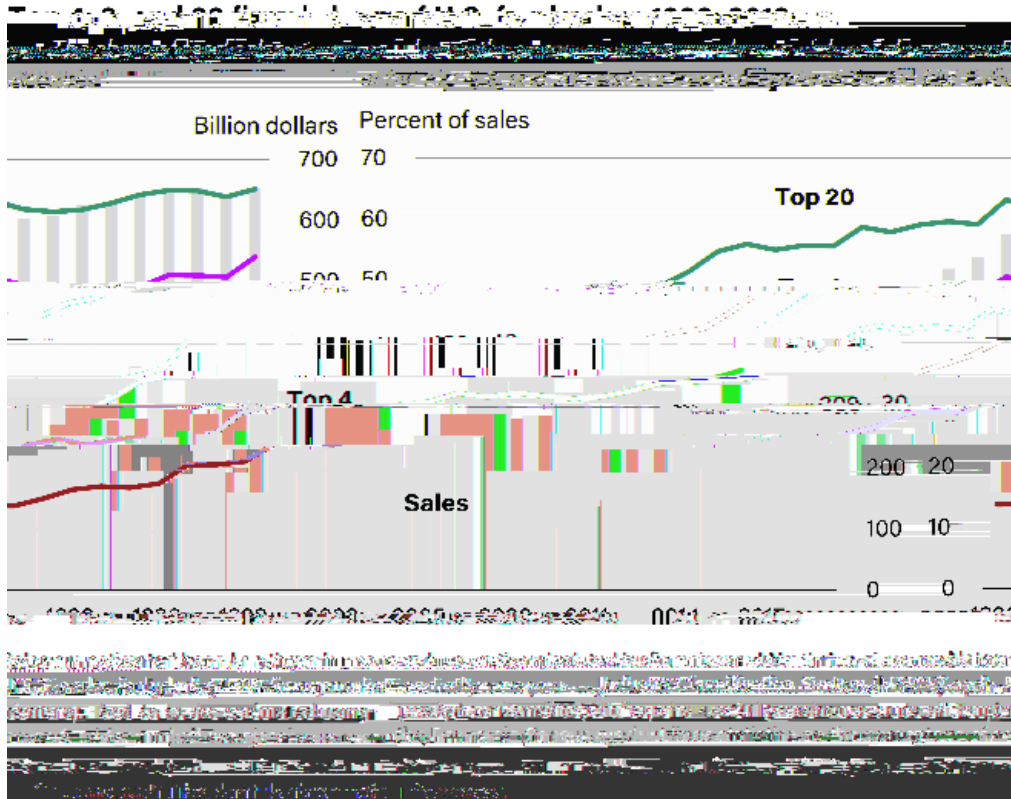
- x Companies came to recognize that excessively consolidated supply chains were a liability. The pandemic revealed that concentration can undermine market resiliency and create market fragility. The stark impact



supermarkets carry an enormous variety of products. According to industry estimates, the average number of individual stock-keeping units (“SKUs”) in a supermarket exceeds 31,000.<sup>6</sup>

The retail grocery sector has undergone significant consolidation over time, with the top four firms accounting for over 30 percent of the sales in 2019, as compared to around 15 percent in 1990.<sup>7</sup> Much of the consolidation is attributable to larger, national firms acquiring smaller regional chains. Walmart has also grown into one of the nation’s largest grocery retailers.<sup>8</sup> These national numbers illustrate broad trends, but likely underestimate the level of concentration in carefully defined antitrust markets, because different retailers may be significantly differentiated by location and store format.<sup>9</sup>

Table 1<sup>10</sup>



<sup>6</sup> FOOD INDUS. ASS’N, Food Industry Facts <https://www.fmi.org/our-research/supermarket-facts> (last visited Mar. 11, 2024).

<sup>7</sup> ELIANA ZEBALLOS ET AL., ECON. RES. SERV, U.S. DEP’T OF AGRIC., A DISAGGREGATED VIEW OF MARKET CONCENTRATION IN THE FOOD RETAIL INDUSTRY, ERS-314, at 1 (Jan. 2023), <https://www.ers.usda.gov/publications/pub-details/?pubid=105557>.

<sup>8</sup> Frank T. Rothaermel & David R. King, Walmart, MCGRAW HILL ED., at 5 (2017), <https://www.casrilanka.com/casl/images/stories/PDBF/walmart%202019.pdf>.

<sup>9</sup> ZEBALLOS ET AL., *supra*note 7, at 2.

<sup>10</sup> Econ. Res. Serv., U.S. DEP’T OF AGRIC., Retail Trends (data as of May 2021) (last updated Nov. 14, 2023), <https://www.ers.usda.gov/topics/food-markets-prices/retailing-wholesaling/retail-trends/> (last visited Mar. 11, 2024).

To capture a targeted snapshot of different distinct ty

minimize excess inventory. In contrast, the companies that make or package grocery products generally produce and ship large quantities of an individual item at once. Wholesalers (or retailer-owned distribution centers) step in between the manufacturer and the retail supermarket to solve this mismatch in scale. Wholesalers and distribution centers receive and then break up large loads from producers into smaller sizes more appropriate for each individual grocery store, and then deliver to individual grocery stores via truck appropriate amounts of many different products from many different producers.<sup>20</sup>

Some large grocery retailers operate their own distribution centers that receive products directly from grocery producers.<sup>21</sup> But not all retailers operate their own distribution centers, and even those that do often supplement their internal supply operations with purchases from grocery wholesalers.<sup>22</sup>

Wholesalers sold \$758 billion of grocery and related products in 2021 to both retailers and food service establishments.<sup>23</sup> The grocery wholesaling industry consists of more than 4,500 businesses that vary in size and geographic scope and employ about 167,000 people.<sup>24</sup>

There has been some consolidation in grocery wholesaling as market participants sought to increase the scope of their offerings or broaden their geographic base.<sup>25</sup> For example:

- x 2013 – SpartanNash was created by the merger of Spartan Stores, the ninth largest grocery wholesaler at the time, and Nash Finch, the largest food wholesaler serving military commissaries and exchanges;
- x 2014 – C&S Wholesale Grocers acquired the warehouse and distribution operations of the eighth largest wholesaler, Grocers Supply, and the ninth largest grocery wholesaler, Associated Wholesalers Inc.;<sup>26</sup>
- x 2017 – SuperValu Inc. acquired Unified Grocers;
- x 2018 – United Natural Foods Inc. acquired SuperValu for about \$2.9 billion.<sup>27</sup>

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<sup>20</sup> Wholesalers and large retailers typically own and operate their own trucking fleets, but also can utilize third party shippers for this function.

<sup>21</sup> Brigette Thomas, Grocery Wholesaling in the US (Indus. Rep., 42441), IBISWorld, at 11-12, 19 (May 2022).base.





grocery products, as the recent ~~business~~ activity of the respondents illustrates. Procter & Gamble has a long history of acquisitions, including a \$5 billion purchase of Gillette in 2005.<sup>32</sup> Kraft Heinz is itself the product of a May 2015 merger of two large conglomerates – H.J. Heinz Company and Kraft Foods Group – to form “the 3 largest food and beverage company in North America and the largest . . . in the world,” with \$28 billion in revenues.<sup>33</sup> Tyson Foods Inc. is one of the largest meat and poultry producers and itself has recently expanded through multibillion dollar acquisitions.<sup>34</sup> Concentration in meatpacking is very high – USDA reports that in 2019, the top four packers controlled 85 percent of the market for beef processing, 53 percent for chicken processing, and 67 percent for pork processing – and has grown rapidly in recent decades.

As part of this study, the FTC issued 6(b) Orders and ~~reviewed~~ documents and responses from three of the largest producers of food and household products generally (but not solely) sold in grocery stores or online:

- x Procter & Gamble Procter & Gamble is the largest producer of non-food CPG products in the country and the third largest CPG producer overall, with global 2022 sales of \$80 billion, half in North America.<sup>35</sup> It produces a wide variety of products, which it groups into five broad business segments: Fabric and Home Care (35 percent of sales, including laundry, household and dish cleaners); Baby, Feminine and Family Care (25 percent of sales, including diapers, toilet paper, and tissues); Beauty (18 percent of sales, including shampoo, deodorants, and skin care); Health Care (14 percent of sales, including oral care, vitamins, pain and illness relief); and Grooming (6 percent of sales, including shaving razors, creams and shampoos).<sup>37</sup> More than 106,000 employees manufactured and distributed these products for Procter &

<https://www.kraftheinzcompany.com/static-files/2303265e-a98f-4082-bfc1-fc90f462742f>.

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<sup>34</sup> Press Release, Tyson Foods, Tyson Foods to Acquire Advance Pierre Foods for 40.25 Per Share in Cash (Apr. 25, 2017), <https://www.tysonfoods.com/news/news-releases/2017/4/tyson-foods-acquire-advance-pierre-foods-4025-share-cash> (announcing \$4.2 billion acquisition of “a leading national producer of ready-to-eat lunch and dinner sandwiches, sandwich components and snacks”).

<sup>35</sup> See James M. MacDonald et al., CONGRESS, U.S. DEPT. AGRIC, EIB-256 Concentration and Competition in U.S. Agribusiness Concentration (Table 6) (June 2023), <https://www.ers.usda.gov/webdocs/publications/10675/eib-256.pdf?v=7330.5> (Corresponding 1980



- x Kraft Heinz. Kraft Heinz is the 20 largest CPG company with \$26.5 billion in 2022 global sales and approximately 37,000 employees. Kraft Heinz produces thousands of unique items in a wide variety of food categories. Kraft Heinz is active in producing products for sale under private-label brands.
- x Tyson Foods. Tyson Foods is one of the largest processors of meat and poultry products, and the 7 largest CPG company in the world. In 2022, Tyson Foods had total sales of \$53.3 billion, produced by 142,000 employees, 124,000 of whom were located in the U.S. Tyson is a leading producer in each meat sector, with sales divided among four major divisions: Beef \$19.9 billion, Pork \$6.4 billion, Chicken \$17.0 billion, and Prepared Foods \$9.7 billion. These sales went through four major distribution channels: 43.7 percent to retail establishments such as grocery and warehouse stores and internet outlets; 29.4 percent to foodservice establishments such as restaurants, hotels, schools, and the military; 15.2 percent to international sales; and 11.7 percent to industrial or others, such as other food processing companies for use in their products. Tyson has long been active in producing meat and poultry products for sale under private labels.

## I. Major Supply Chain Disruptions

The producers, wholesalers, and retailers who received orders reported major disruptions throughout the entire grocery supply chain shortly after the outbreak of the COVID-19 pandemic. On the supply side, disruptions



to labor supply, transportation networks, and the flow of inputs and raw materials needed for manufacturing reduced output. Meanwhile, on the demand side, consumers rapidly shifted away from restaurants and towards meals eaten at home, significantly shifting production



food. For example, we learned that some firms in this sector struggled to obtain building supplies to build additional warehouses or could not buy enough trucks to manage their internal distribution systems.

Heavy reliance on overseas container shipping across the United States economy also caused disruptions. When international shipping snarled as port operations slowed,<sup>53</sup> even wholly domestic producers of food products discovered they were reliant on fore

In the early weeks of the pandemic, these changes in consumer demand were quite large, with consumers purchasing up to 56 percent more food for at-home consumption than the prior year, stabilizing at a roughly 7 percent year-over-year increase in weekly purchases from July 2020 to March 2021.<sup>55</sup> There is little question that, in aggregate, the changes in demand due to these various factors had a significant impact on the magnitude of the supply chain crisis in this sector of the economy.

## II. Competitive Impacts of Disruptions

As firms across the grocery supply chain scrambled to address the pandemic disruptions, the existing competitive pressures among the firms in this sector changed. Previously unusual issues emerged, such as simply having sufficient stock. Firms leaned into their existing advantages to help them navigate this new environment, and some large firms were better able to protect their market share and profits than others.

### Retailer Revenues Exceeded Cost Increases and Profits Remain Elevated

As a result of the COVID-19 pandemic and supply chain disruptions, market participants across the grocery supply chain faced cost increases, with the cost of needed inputs such as raw materials, labor, and transportation all rising. These cost increases were then generally passed along through the supply chain. According to a United States General Accounting Office estimate, retail food prices in the United States spiked 11 percent between 2021 and 2022.<sup>56</sup> For comparison, over the previous decade, annual retail price increases for food averaged about 2 percent.<sup>57</sup>

Our study of the supply chain did not test whether the specific companies that received 6(b) Orders increased their prices by more or less than their cost increases. Rather, we look to publicly available data to understand general retailer patterns. As shown in Table 2, Census data indicates that one measure of annual profits for food and beverage retailers—the amount of money companies make over and above their total costs—rose substantially during the pandemic and remain quite elevated. Specifically, food and beverage retailer revenues increased to more than 6 percent over total costs in 2021, substantially higher than their recent peak of 5.6 percent in 2015. In the first three-quarters of 2023, retailer profits rose even more, with revenue reaching 7 percent over total costs. This measure of profits considers total costs, including fixed costs and labor costs, to account for changes in labor costs driven by the pandemic. This profit trend casts doubt on assertions that rising prices at the grocery store are simply moving in lockstep with retailers' own rising costs. Examining the cause or nature of rising industry profits is

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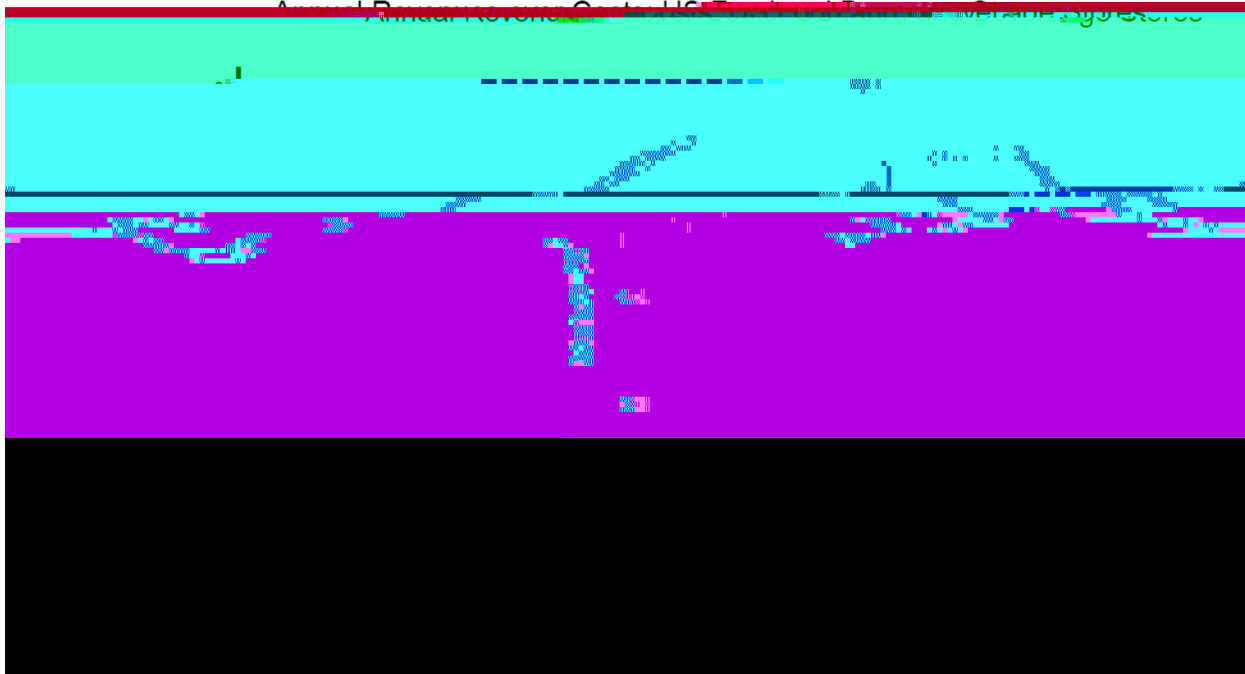
<sup>55</sup> McLaughlin et al., *supranote 1*, at 28-29, <https://www.ers.usda.gov/webdocs/publications/105367/ap-108.pdf?v=9499.6>

<sup>56</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-23-105846, FOOD PRICES: INFORMATION ON TRENDS, FACTORS AND FEDERAL ROLES 1 (2023), <https://www.gao.gov/assets/gao-23-105846.pdf>; see also David Mead et al., U.S. Bur. Labor & Statistics, *The impact of the COVID-19 pandemic on food price indexes and data collection*, LABOR REV. (Aug. 2020), <https://www.bls.gov/opub/mlr/2020/article/the-impact-of-the-covid-19-pandemic-on-food-price-indexes-and-data-collection.htm> (discussing price increases for food in the earlier months of the COVID-19 pandemic).

<sup>57</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-23-105846, *supranote 56*, at 1. (Note that overall food prices can be impacted by a variety of additional issues such as weather, agricultural pests, etc. in addition to the COVID-19 supply chain issues we discuss in this report. The USDA warned that it is very difficult to separate out the various components driving overall food prices accurately, and so the comparison between 2021-2022 and prior years should be viewed as a rough proxy for the overall price increases caused by the pandemic supply chain disruptions rather than an absolute indicator of their magnitude).

beyond the scope of this limited study into pandemic-related supply chain disruptions. However, the question warrants further inquiry by the Commission and policymakers.

Table 2<sup>58</sup>



## Some Larger Purchasers Use “On Time In Full” Policies That Provide a Competitive Advantage in Accessing Products in Shortage

In industry parlance, items in limited supply are put “on allocation.” Before the pandemic, it was not uncommon to occasionally have a product go on allocation. However, the number of products put on allocation during the pandemic, particularly at the outset, was extraordinary. With more orders than they could fill, producers and wholesalers both had to allocate their available product among their customers. In some cases, large customers improved their own ability to access scarce products through applying pressure on these allocation decisions. In particular, some large customers used on time and in full (“OTIF”) delivery policies to pressure their suppliers to favor them over rivals. When products are in short supply, OTIF policies incentivize producers or wholesalers to divert products towards customers that impose OTIF penalties and away from customers that do not. During the

<sup>58</sup> Table 2 uses data from the U.S. Census Quarterly Financial Report. U.S. Census, [Quarterly Financial Report, Food and Beverage Stores, Time Series/Trend Charts](https://www.census.gov/econ/qfr/index.html) (<https://www.census.gov/econ/qfr/index.html>) (last visited Feb. 26, 2024) (all retail food and beverage stores). The illustrative profit measure reported here reflects the ratio of “Not Seasonally Adjusted Net Sales, Receipts, and Operating Revenues” to “Not Seasonally Adjusted All Other Operating Costs and Expenses.” This cost metric includes both variable and fixed costs, including labor costs. “Food and Beverage Stores” includes convenience stores, specialty food stores, and beer, wine, and liquor stores in addition to grocery stores. Although this profit calculation is illustrative, other profit calculations may be more appropriate measures of profits in an antitrust case seeking to assess the impact of a specific merger or specific conduct.



pandemic, some large retailers and wholesalers leveraged OTIF penalties to pressure their suppliers to give them preferential allocations of scarce products.

## **Producer Allocation Policies**

Prior to the pandemic, producer allocation policies for goods in short supply were often set unilaterally and communicated to their customers, but not set out in written contracts. During the pandemic, some of these firms unilaterally altered allocation policies.

Our review showed that producers generally used their customers' prior order history to allocate products in short supply. But our review also showed that suppliers feared the financial penalties imposed by large customers for failing to meet OTIF requirements. As the pandemic dragged on, some large customers were able to marshal that fear to cause some producers to shift their allocations to favor them over customers without such penalties, as discussed below. As a result, those customers who did not have such contractual commitments or protections received less than their purchasing history would have allotted them, meaning they bore more than their share of the impact from shortages.

## **Wholesaler Allocation Policies**

Just as with producers, existing wholesaler contracts with retailers often did not establish allocation rules or

percent of the cost of goods.<sup>60</sup> Walmart was not alone: a November 2022 McKinsey survey found that “[m]any large retailers are even increasing the demands they place upon their suppliers,” with more than half of consumer-packaged goods companies reporting that retailers had tightened their OTIF requirements, and 63 percent of those

When the COVID-19 pandemic hit the United States, this intense focus on efficiency meant that these systems were particularly ill-suited to weather sustained and widespread supply or demand shocks. Our review of documents and responses from companies that received 6(b) orders showed that executives at the companies quickly recognized this shortcoming.

In particular, retailers especially focused on ways to make their supplier base more resilient when it came to the supply of private-label products. Private-label offerings are a significant part of the grocery business in the United States and a key area of competition among grocery retailers. Roughly 15-20 percent of the groceries sold in the United States are sold as private-label or store-branded products.<sup>63</sup> All three producer respondents identify private label competition as significant in their public filings.<sup>64</sup> Moreover, for a grocery retailer, private-label products can have several important advantages over nationally branded alternatives. These products typically generate higher margins for the retailer than the nationally branded equivalent.<sup>65</sup> Having high-quality private-label goods available is viewed as important to fostering customer loyalty, particularly among the large cohort of grocery shoppers that are highly price sensitive.<sup>66</sup> As a result, retailers are understandably very sensitive to both the quality and availability of their private-label offerings.<sup>67</sup>

During the pandemic, retailers struggled to maintain adequate stock levels of popular, private-label goods. These struggles sensitized retailers to the overall fragility of their private-label supply chains. In particular, retailers identified concerns that some of the private-label products they needed could only be purchased from one or two potential suppliers. Concerned that they were excessively dependent on concentrated markets, some retailers began to examine alternatives, including directly manufacturing these products themselves rather than buying them from outside suppliers.

Not all customers are equally able to develop self-supply. Moreover, if one customer resolves its own supply chain fragility by buying one of the market's few existing producers, that may exacerbate the concentration problem for the merged firm's competitors, because those competitors may have one fewer producer available in a market that was already overly concentrated.

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<sup>63</sup> What percentage of food sales are private label store brands? FOOD INDUSTRY (Feb. 2023), <https://www.foodindustry.com/articles/what-percentage-of-food-sales-are-private-label-store-brands/>; Mark Hamstra, Consumers can't get enough of private label, SUPERMARKET NEWS (Dec. 20, 2022), <https://www.supermarketnews.com/bakery/consumers-can-t-get-enough-private-label>.

<sup>64</sup> Kraft Heinz 2022 Annual Report, at 2. (stating that Kraft Heinz "compete[s] with both branded and private label products"); Tyson 2022 Annual Report, at 14 (observing that the company's ability to "compete against private-label products, especially during economic downturn, may adversely affect our profitability"); Procter & Gamble 2022 Annual Report, at 10 (observing that "the ability to compete against private-label products, especially during economic downturn, may adversely affect our profitability"); Procter & Gamble 2022 Annual Report, at 10 (observing that "the ability to compete against private-label products, especially during economic downturn, may adversely affect our profitability").



## Supply Disruptions Reduced Trade Promotions, Affecting Retailers Differently Based on Their Pricing Strategies

Producers in the grocery industry often provide funds to wholesalers and retailers to promote their goods in varying ways. Producers pay retailers to get their goods on the retailers' shelves, to obtain prominent placement, or to fund discounts, among other strategies. In the grocery industry, these payments from producers represent significant amounts of money. During the pandemic, this flow of money from producers into the downstream supply chain to drive incremental sales was curtailed. When a producer cannot satisfy all of the outstanding orders it has, there is little need for it to spend money to further increase demand for its products.

We saw that the reduction in trade promotion funds had differential impacts across the industry, with some retailers less impacted than others. Retailers that depended on periodic sales promotions to drive sales and traffic saw a decrease in the number of producer-funded promotions and an increase in their relative costs. In contrast, retailers that focused on everyday low pricing ("EDLP") instead of periodic promotions ("high-low pricing") were less affected by the decrease in producer-funded promotions.

### Background on Trade Promotion of Groceries

Retail trade promotions come in many varieties but have two primary mechanisms to drive sales: increasing visibility of a product or decreasing the price.

First, perhaps the most important component of in-store promotion is the relative placement of products, because shoppers can be materially influenced by how goods are presented to them. For example, a product at eye level is more likely to be purchased by shoppers than an item placed on the bottom shelf or high up. Similarly, products on the "end caps" of each aisle receive extra exposure and attention. Producers often influence retail store layouts by paying for prominent placement of their products or by serving as a "category captain" or "category manager," which is a large producer that provides retailers with guidance on how to arrange one type of product for display (among other things).<sup>68</sup> Online, paying for desirable promotion operates similarly, with producers paying for advertisements to appear next to algorithmic search results on an internet retailer's website.

Second, producers engage in trade promotion by funding discounts. For example, producers may induce shoppers to try new products or to buy in bulk, by temporarily boosting sales with discounted prices. To fund these short-term sales, producers often rebate or otherwise reduce their wholesale prices and provide funds for advertising the promotion.<sup>69</sup>

In reviewing documents and responses from companies receiving 6(b) Orders, we found that marketing funds from these producer-funded promotions were generating large flows of money from producers to both wholesalers and retailers. The information provided by the respondents showed that grocery retailers across the industry depend on promotional money provided to them as a large and important source of their revenue. This phenomenon is

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<sup>68</sup> The term category captain typically refers to services provided by one of the major product suppliers for the relevant category of goods. We note that category captain arrangements can be controversial because they can essentially empower a major or even dominant supplier of a given product category to determine where its rivals will be placed on the shelves. The term category manager is more often used when similar services are provided by a third party that is not a product supplier, although in some instances product suppliers maintain relationships with these category managers in ways that can raise similar controversy.

<sup>69</sup> Sometimes manufacturers require that the entire rebate be used to lower the retail price to consumers. Other

not limited to physical retail stores; online retailers can also generate significant revenue and profit from producer-funded discounts and placement of online advertis

Both traditional promotional strategies and EDLP strategies are likely to remain common, with strong proponents of each within the industry. However, during the pandemic, losing promotional funds placed those retailers who deploy the traditional model at a competitive disadvantage in relation to their EDLP peers, at least temporarily. Grocery wholesalers were similarly harmed by this temporary drought in promotional spending brought on by the pandemic, because promotional expenditures by grocery producers are also a critical source of revenue for them. We did not attempt to empirically evaluate the impact of the loss of promotional expenditures on either wholesalers or their customers. Not every product was on allocation for significant periods of time during the pandemic, and wholesalers serve both EDLP retailers and traditional high-low retailers. But there is little doubt that, during the pandemic, these losses were significant for both wholesalers and the retailers they served.

## Conclusions

The COVID-19 pandemic placed tremendous pressure on the supply chains that produce and move the nation's food from farm to table. When unexpectedly put under sustained stress, there were not enough extra hands ready to pick up the work of sick colleagues, not enough spare trucks and truck drivers ready to haul more loads, and no easy way to suddenly ramp up production to meet surging demand. Bottlenecks were suddenly exposed as firms up and down the supply chain struggled to maintain their output and feed our nation. Some firms seem to have used rising costs as an opportunity to further hike prices to increase their profits, and profits remain elevated even as supply chain pressures have eased.

Larger retailers and wholesalers with considerable leverage over their suppliers were able to take more aggressive

Appendix A  
Model Order to Retailers

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair  
Noah Joshua Phillips  
Rebecca Kelly Slaughter  
Christine S. Wilson

FTC Matter No. P162318

ORDER TO FILE A SPECIAL REPORT

3 X U V X R D Q U H W B O X W K L H ) H G H U D L O V L P D O H & B P W K H & R P P L V V I  
dated November 24, 2021, entitled "Supply Chain Disruptions in Consumer Goods Retail Markets"  
W K H & R P S H W L W L Y H , P S D F W R I 6 X S S \* O R & K V D L a C o p y o f W K H & R P S W L R Q V  
enclosed, > F R P S D Q \ W K P H 3 @ H i s t o r y o f S e r v i c e t o W e' with the Commission, no later  
than 45 days after date of service, a Special Report containing the information and Documents  
specified herein.

The Commission is seeking information concerning the source supply chain  
disruptions and the impact of such disruptions on competition in consumer goods retail  
markets. The Special Report will assist the Commission in conducting a study of these supply  
chain issues.

The Special Report is required to be subscribed and sworn by an official of the Recipient  
who has prepared or supervised the preparation of the report from books, records,  
correspondence, and other data and material in your possession. Your written report  
restate each item of this Order with which the corresponding answers identified. If any question  
cannot be answered fully, give the information that is available and explain in what respects and  
why the answer is incomplete. The Special Report and all accompanying documentary responses  
must be Bates-stamped. You should provide information relating to separately incorporated subsidiary  
Recipient already has possession, custody, or control of information. No later than 14 days  
from the date of service, the Recipient should contact Commission staff and indicate whether all  
of the information required to respond to this Order is W K H 5 H F L S L H Q W ¶ V

possession, custody, or  
control. If certain information is not in W K H 5 H F L S L H Q W ¶ V possession, custody, or control, no later  
than 14 days from the date of service, the Recipient also must (1) Identify, both orally and in  
writing, each question or sub-question that the Recipient is not able to fully answer because  
information is not in W K H 5 H F L S L H Q W ¶ V possession, custody, or control, and (2) for each, provide the  
full names and addresses of all entities and individuals who have possession, custody, control  
of such missing information.



Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act. Individual submissions responsive to this Order ~~Da~~ H P D U N H G <sup>3</sup> F R Q I L G H Q W L be disclosed without first giving the recipient

2. Produce all documents prepared by or submitted to

- a. the identity of your logistics service provider;
  - b. a description of the services provided to you; and
  - c. how your use of such services has been affected by supply chain disruptions.
10. Produce all reports, analyses, and studies provided to you by any third party logistics provider.
  11. Describe your supply chain procurement, and distribution strategy prior to the COVID 19 pandemic, including with respect to the elements of the supply chain identified in Specification 1(b). Explain why you chose that strategy and the efficiencies and risks associated with the decision.
  12. Describe how you have altered or plan over the next five years to alter your supply chain, procurement, and distribution strategy including with respect to the elements of the supply chain identified in Specification 1(b). Explain why you made plan to make those changes and the efficiencies and risks associated with those decisions

### Definitions



this Order to confer regarding our response Upon request, an extension of no more than

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End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.

Email BCC

- iii. Submit email attachments other than those described in subpart (a)(i) in TIFF (Group IV) format. For all email attachments, provide extracted text and the following metadata and information as applicable:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Batesnumber of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of person from whom the file was obtained.
Date Created	Date the file was created [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved. [MM/DD/YYYY]
Page count	Number of pages in record.
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example:\NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.

Metadata/Document



Metadata/Document Information	Description
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative path to submitted native or near native files. Example:\NATIVES\001\FTC0003090.xls
Text Link	Relative path to submitted text file. Example:\TEXT\001\FTC-0003090.txt
Time Created	Time file was created [HH:MM:SS AM/PM]
Time Modified	Time file was saved [HH:MM:SS AM/PM]

- i. For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows compatible, uncompressed data in USB 2.0 or 3.0 external enclosure.
      - ii. For productions under 10 gigabytes, ~~CD~~ CD-ROM (CD-R, CD-RW) optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows compatible personal computers, and USB 2.0 Flash Drives are acceptable storage formats.
      - iii. All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of your compliance with this Order.
      - iv. Encryption of productions using NIST FIPS compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
    - d. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.
6. Before using software or technology including search terms, predictive coding, de duplication, email threading or similar technologies to identify or eliminate documents, data, or information potentially responsive to this Order you must submit a written description of such software or technology and any related processes and workflows in addition:
- a. if you use Technology Assisted Review to identify documents and information responsive to this Order or to exclude documents and information from further review describe your collection and review methodology, including: (a) how any software is used to identify responsive documents or exclude nonresponsive documents; (b) the process to identify and validate any seed set documents, if applicable; (c) the process to determine and validate accuracy of the automatic determinations of responsiveness and nonresponsiveness; and (d) the collection and review process for foreign language documents, whether reviewed manually or by some technology assisted method
  - b. if you use search terms to identify documents and information responsive to this Order or to exclude documents and information from further review for each custodian, search location, or document population provide (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the number of documents containing each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company acronyms and terminology



- b. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
- c. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
- d. The date the material was created;
- e. The date the material was sent to each recipient (if different from the date the



Appendix B  
Model Order to Wholesalers

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair  
Noah Joshua Phillips  
Rebecca Kelly Slaughter  
Christine S. Wilson

FTC Matter No. P162318

ORDER TO FILE A SPECIAL REPORT

3 X U V X R D Q U H W B O X W K L H ) H G H U D L O V L P D O H & B P W K H & R P P L V I  
dated November 24, 2021, entitled W K H 3 5 H F L S L H Q W is ordered to file with the Commission, no  
than 45 days after date of service, a Special Report containing the information and  
specified herein.

The Commission is seeking information concerning the source supply chain  
disruptions and the impact such disruptions on competition in consumer goods retail  
markets. The Special Report will assist the Commission in conducting a study of these supply  
chain issues.

The Special Report is required to be subscribed and sworn by an official of  
who has prepared or supervised the preparation of the report from books, records,  
correspondence, and other data and material in your possession. Your written report  
restate each item of this Order with which the corresponding answer is identified. If any  
cannot be answered fully, give the information that is available and explain in what  
why the answer is incomplete. The Special Report and all accompanying documents  
must be Bates-stamped.

The Recipients required to respond to this Order using information in the R

S  
possession, custody, or control, including information maintained in a central data repository to  
which the Recipient has access. The Recipient should seek any responsive information and  
data from separately incorporated subsidiaries or affiliates or from individuals (other than in  
their capacity as the Recipient) (see 16 CFR 1.101 (a)(1) (seek any responsive information)). However,  
Recipient

already has possession, custody, or control of such information. No later than 14 days  
from the date of service, the Recipient should contact Commission staff and indicate whether all  
of the information required to respond to this Order is in the Recipient's possession, custody, or  
control. If certain information is not in the Recipient's possession, custody, or control, no later  
than 14 days from the date of service, the Recipient also must (1) Identify, both orally and in  
writing, each question or sub-question that the Recipient is not able to fully answer because  
information is not in the Recipient's possession, custody, or control, and (2) for each, provide the  
full names and addresses of all entities and individuals who have possession, custody, or control  
of such missing information.

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act. Individual submissions responsive to this ~~Order~~ WKDW DUH PDUNHG <sup>3</sup>FRQIL be disclosed without first giving the recipient WHQ GD\V¶ QRWLFH RI WKH & R intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act.

## Specifications

1. Describe the supply chain disruptions you have experienced and how those disruptions have varied by geography. Include in your description
  - a. the primary factors causing disruptions in your acquisition of products, inputs, or transportation and the geographic regions in which those issues are most prevalent;
  - b. the primary factors causing disruptions in your sale/distribution of products by region, including issues regarding:
    - i. air freight;
    - ii. shipping container availability;
    - iii. container shipping;
    - iv. ports, terminals, and terminal operators, including fees and rules;
    - v. warehouses;
    - vi. trucking and chassis availability; and
    - vii. rail;





service providers (e.g., freight brokerage, contract carriage). For each such third party provider include

- a. the identity of your logistics service provider;
  - b. a description of the services provided to you; and
  - c. how your use of such services has been affected by supply chain disruptions.
10. Produce all reports, analyses, and studies provided to you by any third party logistics provider.
11. Describe your supply chain, procurement and distribution strategy prior to the COVID 19 pandemic, including with respect to the elements of the supply chain identified in

D8. 7KH WHUP ³DQDJHPHQW´ UHIHUV WR WKH CEO, CFO, CRO, CIO, CMO, COO, Executive Officer, Chief Financial Officer, Chief Operating Officer, or equivalent positions as well as the most senior individuals with direct responsibility for each of the following: pricing strategy, supply chain strategy, marketing strategy, promotions, and customer relationships.

D9. 7KH WHUP ³VWRUH´ UHIHUV WR WHOLESALE DISTRIBUTION, DISTRIBUTION CENTER, STORE, OR WAREHOUSE THAT SHIPS DIRECTLY TO CONSUMERS.

D10. 7KH WHUP ³VXSSOLHU´ UHIHUV WR DQ\ FRPSDUW, DWKDW, OR WITHOUT FURTHER PROCESSING

D11. 7KH WHUP ³VXSSO\ FKDLQ GLVUXSWLRQ´ UHIHUV WR DQ\ ASSOCIATED WITH THE DELIVERY OF PRODUCTS YOU MANUFACTURE, ORDERED FROM A SUPPLIER

## Instructions

For the purposes of this Order, the following Instructions apply:

1. All requests seek information and documents covering the period from January 1, 2010 to the date of this Order.
2. Unless otherwise specified, this Order requires the production of all responsive documents, data, and other information in your possession, custody, or control on the date that this Order was issued.
3. Pursuant to 16 C.F.R. § 2.7(k), the Recipient shall schedule a teleconference within 14 days after receiving this Order, with the Commission representative identified in Instruction 1. Reference source not found of this Order to confer regarding your response. Upon request, an extension of no more than 30 days for the teleconference may be granted in writing by a Commission official.
4. If a document responsive to a particular Specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

more of the following:

date of birth

GULYHU, V OLFHQVH QXPEHU RU RWKHU VWDWH L

- i. Submit Microsoft Excel, Access, and PowerPoint files in native form with extracted text and metadata.
- ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received. [MM/DD/YYYY]
Email Date Sent	Date the email was sent. [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received. [HH:MM:SS AM/PM]
Email To	recipients(s) of the email.
Email Time Sent	Time email was sent. [HH:MM:SS AM/PM]



Metadata/Document Information	Description
File size	Size of document in KB.
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with extension.
Hash	Identifying value used for deduplication, typically SHA1 or MD5.
Native Link	Relative file path to submitted native or native files. Example:\NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.

Text Link

Metadata/Document





- a. if you use Technology Assisted Review to identify documents and information responsive to this Order or to exclude documents and information from further review describe your collection and review methodology, including: (a) how any software is used to identify responsive documents or exclude nonresponsive documents; (b) the process to identify and validate any seed set documents, if applicable; (c) the process to determine and validate accuracy of the automatic determinations of responsiveness and nonresponsiveness; and (d) the collection and review process for foreign language documents, whether reviewed manually or by some technology-assisted method
  - b. if you use search terms to identify documents and information responsive to this Order or to exclude documents and information from further review for each custodian, search location, or document population provide (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the number of documents containing each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and company acronyms and terminology
  - c. provide prevalence, recall, precision, validation, and confidence level statistics;
  - d. provide access to randomized, statistically-significant samples of non-privileged documents excluded from review or production by use of keyword search terms, Technology Assisted Review software, or any other means;
  - e. identify the person(s) able to testify on your behalf about information known or reasonably available to the organization relating to your use of software or technology in responding to this Order
7. All documents responsive to this Order
- a. shall be produced in complete form, redacted unless privileged, and in the order in which they appear in your files;
  - b. shall be marked on each page with corporate identification and consecutive document control numbers when produced in TIFF format (e.g., ABC0001);
  - c. if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
  - d. shall be produced in color;
  - e. shall be accompanied by an index that identifies: (i) the name of each Person from whom responsive documents are submitted; and (ii) the corresponding consecutive



affiliations of all authors, recipients, and persons copied on the material provided in a legend appended to the log. However, provide in the log the information required by Instruction 6(f). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest, in writing, to the log.

A document, including all attachments, may be withheld or redacted only to the extent necessary to preserve any claim of protected status. Unless otherwise provided in the instructions accompanying the Order, and except for information and material subject to a valid claim of protected status, all responsive information and material shall be produced without redaction.

9. Any questions that you have relating to the scope or meaning of anything in this Order or suggestions for possible modifications to it should be directed to Kenneth Merber at [kmerber@ftc.gov](mailto:kmerber@ftc.gov) or (202) 326-3551. Please notify Mr. Merber by email in advance of each production. Any password(s) necessary to access response to the Order shall be emailed to Mr. Merber.

You are advised that penalties may be imposed under applicable provisions of federal law for failure to file special reports or for filing false reports.

By direction of the Commission.

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Lina M. Khan, Chair

Appendix C  
Model Order to Producers

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair  
Noah Joshua Phillips  
Rebecca Kelly Slaughter  
Christine S. Wilson

FTC Matter No. P162318

Confidential or privileged commercial or financial information will be reported by the Commission on an aggregate or anonymous basis, consistent with Sections 6(f) and 21(d) of the FTC Act. Individual submissions responsive to this Order WKDW DUH PDUNHG 3FRQIL be disclosed without first giving the recipient WHQ GD\ V\ QRWLFH RI WKH & R intention to do so, except as provided in Sections 6(f) and 21 of the FTC Act.

### Specifications

1. Describe the supply chain disruptions you have experienced and how those disruptions have varied by geography, and in which regions the disruptions have been most prevalent. Include in your description:
  - a. the primary factors causing disruptions in your acquisition of products, inputs, or transportation and the geographic regions in which those issues are most prevalent;
  - b. the primary factors causing disruptions in your sale of products by region, including issues regarding:
    - i. product manufacturing;
    - ii. air freight;
    - iii. shipping container availability;
    - iv. container shipping;
    - v. ports, terminals, and terminal operators, including fees and rules;
    - vi. warehouses;
    - vii. trucking and chassis availability; and
    - viii. rail;
  - c. the product.

disruptions and the impact of such disruptions on your supply chain strategy, pricing strategy, marketing and promotions strategy, costs, margins, sales volumes, selection of products to offer to customers, and market share.

- a. supply chain strategy;
  - b. prices or pricing strategy;
  - c. marketing and promotions strategy;
  - d. costs;
  - e. margins;
  - f. sales volumes;
  - g. selection of products to offer to customers;
  - h. market share.
3. Describe your production and inventory strategy, inventory costs, and how you price and allocate product among your customers when there is a shortage or a product is out of stock, including how the following impact that allocation:
- a. product category;
  - b. customer type (e.g., retail, wholesale);
  - c. local demand conditions;
  - d. contract terms with the customer (e.g., minimum purchase amounts);
  - e. geographic location of the customer;
  - f. size of customer (whether measured by total dollars of purchases from you by WKDW FXVWRPHUV SR;WHQWLDO SXUFKDVH YROXPH);
  - g. duration of your relationship with the customer; and
  - h. proximity to other customers who have received product.
4. Produce all documents prepared by or submitted to senior management regarding your pricing and allocation among your customers of products in short supply.
5. Describe your use of trade promotion practices to obtain placement of your product with retailers, including how your use varies by product category, identifying which retailers receive trade promotions, and any changes that have occurred in response to supply chain disruptions.
6. Identify the ten largest and 4<sup>th</sup> to 50<sup>th</sup> largest recipients of trade promotions from you (measured by the total value of trade promotions you provided) for each
- a. state the total annual amount of such payments; and
  - b. (tr)-3(a)4(de pr)-2(omo)3(ti)-3(o)5(ns f)-2(rom)-3( you )] TJ ET Q q 0red by the to792 re



10. Produce all documents prepared by or submitted to senior management discussing the profitability of your relationship with individual customers or groups of customers
11. Describe your logistics strategy, including which functions you perform internally (e.g. private fleet and warehousing) and which functions you outsource to third party logistics

(TT0 12 Tf 503.98 69458.9d 54481j ET gedistif]TJ ETJ E-)]

D6. 7KH WHUP 3 UHWDLO FXVWRPHU' UHIHUV WR D FXVWRPHU to individual consumers.

D7. 7KH Wholesale D QDJHPHQW' UHIHUV WR WKH & RPSDQ\ ¶ V % R Executive Officer, Chief Financial Officer, Chief Operating Officer, or equivalent positions as well as the most senior individuals with direct responsibility for each of the following: pricing strategy, supply chain strategy, marketing strategy, promotions, and customer relationships.

D8. 7KH WHUP 3 VWRUH' UHIHUV WR D Office, Distribution Center, or warehouse that ships directly to consumers.

D9. 7KH WHUP 3 VXSSOLHU' UHIHUV WR DQ\ FRPSDQ\ WKDW or without further processing or any input you use to manufacture or produce consumer goods for retail

D10. 7KH WHUP 3 VXSSO\ FKDLQ GLVUXSWLRQ' UHIHUV WR DQ associated with the delivery of products you have manufactured, ordered from a supplier or shipped to a customer.

D11. 7KH Trade Promotion' UHIHUV WR DQ\ SD\PHQW RU SURYLVLRLC a product supplier makes to a retailer/wholesaler in exchange for the retailer/wholesaler FDUU\LQJ WKH VXSSOLHU ¶ V SURGXFW RU SURYLYLRLC J LWV S including slotting fees, staying fees, display fees, free promotional spend, rebates, and discounts. In the context of a wholesaler that provides category management services to retailers, D VXSSOLHU ¶ V SD\PHQWV WR WKH Retailer's Office or Marketing Office in the HFHLY retail stores managed by that wholesaler constitute trade promotions. In the context of online VDOHV D SD\PHQW WR LQIOXHQFH WKH SURPLQHQFH RI D V website or location in the HWDLOHU ¶ V VHDFWLRQ Trade Promotion V FRQVWLWXWHV

D12. 7KH WHUP 3 ZKROHVDOH FXVWRPHU' UHIHUV WR D FXVWRPHU products to another business for resale, including group purchasing organizations comprised of retail customers.

D13. 7KH WHUP 3 \RXW' FURSHUW LWR DQ\ FRPSDQ\ WKDW VHOOV some or all of the products you sell to wholesalers or retailers.

D14. 7KH WHUP V 3 DQG ' DQG 3 RU' KDYH ERWK FRQMXQFWLYH

D15.



- i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata
- ii. Submit emails in TIFF (Group IV) format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the email.
Bates End	Bates number of the last page of the email.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the person from whom the email was obtained.
Email BCC	Names of person(s) blind copied on the email.
Email CC	Names of person(s) copied on the email.
Email Date Received	Date the email was received [MM/DD/YYYY]
Email Date Sent	Date the email was sent [MM/DD/YYYY]
Email From	Names of the person who authored the email.
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems.
Email Subject	Subject line of the email.
Email Time Received	Time email was received [HH:MM:SS AM/PM]
Email To	recipients(s) of the email.
Email Time Sent	Time email was sent [HH:MM:SS AM/PM]
Page count	Number of pages in record.



Metadata/Document Information	Description
File Extension	File extension type (e.g., docx, xlsx).
Filename with extension	Name of the original native file with file extension.
Hash	Identifying value used for deduplication typically SHA1 or MD5.
Native Link	Relative file path to submitted native or near native files. Example:\NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email.
Text Link	Relative path to submitted text file. Example:\TEXT\001\FTC0003090.txt
Time Created	Time file was created [HH:MM:SS AM/PM]
Time Modified	Time file was saved [HH:MM:SS AM/PM]

- iv. Submit all other electronic documents, other than those described in subpart (a)(i), in TIFF (Group IV) format accompanied by extracted text and the following metadata and information:

Metadata/Document Information	Description
Alternative Custodian	List of custodians where the document has been removed as a duplicate.
Bates Begin	Beginning Bates number of the document.
Bates End	Last Bates number of the document.
Beg Attach	First Bates number of attachment range.
End Attach	Ending Bates number of attachment range.
Custodian	Name of the original custodian of the file.

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Metadata/Document  
Information

Description

- vi. Submit redacted documents in TIFF (Group IV) format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if a redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege class detailed in Instruction 5.
- b. Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data redacted. W\* n BT /F1 12





would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request; and

- f. shall be accompanied by an affidavit of recipient's officer stating that the copies are true, correct, and complete copies of the original documents.
8. If any material called for by this Order is withheld based on a claim of protected status, 16 C.F.R. § 2.7(a)(4), the claim must be asserted no later than the return date of this Order. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for document, including attachments, without disclosing the protected information. Unless modified by the Commission representative identified on the last page of this Order, submit the log in a searchable and sortable electronic format, and, for each document, including attachments, provide:
- a. Document control number(s);
  - b. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
  - c. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
  - d. The date the material was created;
  - e. The date the material was sent to each recipient (if different from the date the material was created);
  - f. The email addresses, if any, or other electronic contact information to the extent used in the document from which and to which each document was sent;
  - g. The name/s, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
  - h. The name/s, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
  - i. The name/s, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
  - j. The factual basis supporting the claim that the material is protected; and
  - k. Any other pertinent information necessary to support the assertion of protected status by operation of law.

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant

