The Contact Lens Rule and the Evolving Contact Lens Marketplace

Panel III: Competition the Contact Lens Marketplace

TARA KOSLOV: All right. Good morning everyone. My name is Tara Koslov. I'm the Acting Director of the FTC's Office of Policy Planning. With me is my colleague Chris Grengs. He's an attorney in the Bureau of Competition and we're delighted to welcome you to the competition panel. We're going to do the very briefest of introductions of our panelists in just a moment. But we refer you to the materials and the bio to save some time.

So just to frame this panel a little bit, obviously, competition in the sale contact lenses has long been an issue of great interest to the FTC. It was a natural outgrowth of some similar work the FTC had done in eyeglasses. And so this general industry is something that the FTC has paid attention to for quite a while. It's also worth noting that the states have played a significant role. We did hear in one of the earlier panels that even before the Fairness to Contact Lens Consumers Act and the Contact Lens Rule, many states already had some prescription release requirements on the books. We also know that in the 1990s, there was a sweeping MDL action brought by the states that led to significant pro-competitive reforms in the sale of contact lenses. And so, we wanted to acknowledge the progression of work in competition.

A primary purpose of the FCLCA and the Contact Lens Rule was to spur additional competition among sellers of contact lenses. The idea was to generate both price and non-price benefits for consumers. What we're planning to explore today is, ultimately, has the Contact Lens Rule worked as intended to promote competition? To what extent does it adequately account for the complex relationships among all of the different stakeholders and participants in this marketplace? Including consumers, of course. And then really, we want to drill down on what are the competitive dynamics in today's marketplace and how well are the law and the regulations currently working to accommodate the dynamics in today's marketplace and to continue to foster competition as the marketplace evolves.

So just to briefly go down the line, we have James Cooper, who is an associate professor at George Mason University Antonin Scalia Law School. We have John Graham, who is the CEO of 1-800-Contacts, Gary Swearingen, who is corporate counsel from Costco, David Sonnenreich, who joins us as the Deputy Utah Attorney General from the Attorney General's office in Utah, and Mitch Wessels, who is Senior Director of Contact Lenses from Luxottica.

We realize that if we had a longer table and unlimited time, there are any number of stakeholders and participants that we could have who could contribute meaningfully to a discussion about competition in this space. So, and of course, we recognize that there will be many written comments coming in. We expect there will be a lively discussion on the Twitter feed during the panel. So I just did want to acknowledge that we've done our best to put together a representative panel to tease out as many of the issues as we can. Chris is going to start. I'll turn it over to him.

CHRIS GRENGS: Great. One of the purposes of this panel is to understand where competition currently is in the marketplace and where it might be going. In order to get a little bit of perspective on that, we thought we'd step back and look at where competition has been in the recent past. In addition to implementing and enforcing the Contact Lens Rule, the Commission and its staff have also done multiple research activities in recent years. We've done a staff report, a Commission report, and James Cooper sitting next to me has also done a Bureau of Economics working paper on contact lenses for those folks following the Twitter feed or posting links to those items up on our Twitter feed. And we're going to ask James to do a bit of a summary of the Commission and staff's previous work in this area. James is currently at George Mason University Law School. But he has been here in the past as an FTC staffer. James?

JAMES COOPER: Yeah. Thanks. As we deal with the high tech here. Let's see. Is my PowerPoint-- will it come up? There we go. All right, so, Chris and Tara asked me to get into the Way back Machine and go back to 2005. This is one of the-- it's really-- let me just say, it's also great to be back here at the FTC. I always love coming back. And I never would have thought that one of my first assignments as a young attorney in the Office of Policy Planning to work on the report that Congress ordered, out of the Contact Lens Report, 13 years later, it would be-- I'd be invited back to talk about it still. That's how good it is. So, I recommend-- it's a riveting read. And I'm also glad to hear that there's Twitter links to my SSRN page. So that's going to be good too. I'll get a lot of hits there.

All right, so, just by way of background, you know, the Contact Lens Report didn't really come out of-- it didn't come out of nowhere, land on the FTC's lap out of nowhere as most of you know. And I think it was a natural fit, as Tara alluded to in the intro. The FTC has had a long, long history of, not just in the optometrist market, but also just in professional services in general, looking at aspects of competition, there, especially state barriers to regulation, in the '70s and '80s, in particular. The FTC, both on the competition side and the Bureau of Economics-- I think John Kwoka did great work in this area as well looking at the impact of commercial practice restrictions, looking at the impact of advertising restrictions. Not only did the FTC administer the Eyeglasses Rule, which did prescription release for eyeglasses. There was also the less successful attempt in Eyeglasses II to eliminate commercial practice restrictions. But again, we have a long history in this area.

And, at the same time, let's fast forward to from the historical perspective up to 2001. Chairman Muris had come in and put together a task force to look at-- anti-competitive-- to look at state barriers-- anti-competitive barriers to on e-commerce. And one of the industries that we were looking at, and again, I just, I was brand new to the Office of Policy Planning, was the contact lens market. Because there were state restrictions being put in place that were designed to keep out these online upstarts who were selling contact lenses.

And so we had looked at that and issued a report in, it was either early 2004 or late 2003, I can't remember. On that, the same undercurrents, the same jockeying, the competitive jockeying between incumbents and rivals was going on in the state houses. It was also-- it led to the Fairness to Contact Lens Consumers Act in Congress, right? So we had battles between the incumbents and the online rivals leading to state restrictions. But then we had, at the federal level, we had the Fairness to Contact Lens Consumers Act, which was supposed to be, which did prescription release. That was the primary part of it, in order to help ameliorate some of these competitive problems. There were still a couple of outstanding issues that were not addressed in the Fairness to Contact Lens Consumers Act. And as Congress so often does when there's something they can't resolve, well, let's do a study, right?

And so, the FTC then was tasked to undertake a study to examine the strength of competition in the sale of prescription contact lenses. And again, my history there is just a way of saying the FTC was a natural fit for this study. Now, what do we look at? There are a couple of things we were going to look at. First, just what is the online, offline? What does the marketplace look like? So we went out and gather data. We looked at offline sellers of contact lenses. We had a team of RAs who posed as, call up and say, hey I'm interested in buying a six month supply of this lens or that lens and get an offline quote from various merchants in the northern Virginia area.

And then, we surveyed the online prices as well. And we got submissions from people during the study with-- but we thought it was good for us to go out and gather our own data to see what the marketplace really looked like. And the table here, it's-- I apologize for the small print, but I could not find the ancient document where this came from. So this is a screenshot from the PDF of the 2005 really awesome report.

So but what I would highlight there is the-- those two numbers right there are just the delta, the difference between online and offline on average for the 10 most popular lenses that we surveyed. And what we found is that, on average, it's $16.20. As you'll see, though, one thing that's kind of interesting is that the online-- we found with the online prices were cheaper on average. But the cheapest channel was the warehouse clubs, OK? So that was the cheapest channel. The independent eye care practitioners were the most expensive channel that we found. And when you broke down online, there were the hybrids. This was the online presence of brick and mortar stores. And they were substantially higher than the pure online players. And actually, this is a consistent finding. There's a recent paper in the American Economic Review that looks at millions and millions of data points and finds, actually, that to be kind of a truism across channels. That there isn't a lot of gap when you have an online and offline presence, you typically tend to keep prices fairly similar between those two channels.

So, anyway, just for completeness, we also realized, we did some regression analysis-- it's in the appendix-- the control for the different mix of lenses. And we found basically the same thing. That on average, there's a $15.48 difference. And we found the same intra channel differences. Warehouse clubs, the least expensive out of everybody. And independent eye care practitioners, the most expensive. All right?

So here is the more contentious issue we were asked to look at, the one that was not addressed in the Fairness to Contact Lens Consumers Act, that many had lobbied to be-- that should've been part of the Act, as I understand the history of that. And it had to do with private label and limited distribution lenses. So, the private label at the time, it was Biomedics 55. And sometimes, it was labeled-- the Walmart, I think, had their own proprietary label. Some independent eye care practitioners may have had their own proprietary label. But it was the generic Biomedics 55 lens.

So the idea there was that. There was also, at the time, CooperVision's Pro-Clear Compatible. CooperVision-- and we'll get into this more-- wasn't part of the MDL settlement. So they didn't have to, as part of the settlement, sell lenses to everybody, to all channels. So there was some concern that the CooperVision’s offerings-- no relation, by the way, unfortunately. The CooperVision lens and the limited distribution lenses would allow eye care prescribers to lock their consumers in. In the sense that, here's a lens. Yes, there's a prescription release requirement, you can take this prescription, but you can't go anywhere else. You've got to buy it from me because I'm the only one that sells either the private label, or you're not going to find the Pro-Clear compatible online. You're going to have to buy it from me.

And that was the idea. So there's certainly a theory of competitive harm, potential competitive harm from the lock in. But at the same time, as economists have known forever, that vertical restraints on trade, there's a lot of pro-competitive efficiencies that can come from different-- from limiting vertical distribution. And so, in some ways, it became-- you had theory that didn't point to a specific answer, so let's go out and look at the data.

And what we found from going out is we found no price difference between the private label and their brand name equivalent. So, in fact, the brand name, Biomedics 55, is actually slightly more expensive. Those numbers are not statistically significant. So for all intents and purposes, it's exactly equal. Looking at the Pro-Clear compatible, the Pro-Clear lens, we didn't find any evidence that actually-- I mean, we didn't have a perfect benchmark. But we looked at some of the advanced lenses with some of the same DK and water content values, the breathability parameters that Pro-Clear had, which was actually, I think, a fairly advanced lens at the time.

And we actually, there was no-- when we controlled for those kind of things, we didn't find any difference. So our conclusion was that there is a potentially anti-competitive theory here. But at least our review of the data doesn't push our prior that this isn't the kind of thing that we need to restrict and say, you know, you can't have limited distribution lenses, or you can't have private labels.

So, and then, finally, just to kind of wrap up, is we did a, when I was in the Office of Policy Planning, we thought it would be interesting to go back. Because one of the things that the FTC does in a lot of areas, which I commend it for, is retrospectives to go back and they do that a lot on merger policy. Let's go back and see if what we've done has actually been effective. So, we wanted to go back and see if the prescription release requirement actually had any impact in the marketplace, at least as far as we could measure with respect to prices. As Chris alluded to, this turned into a BE working paper. And it's, again, on my SSRN page, if anyone wants to click on it and take a look.

But, these are regression results. And I know this isn't an academic seminar. But the point from here is what we were looking for is negative coefficients. And we really didn't find any. So what we looked at is the, did the price gap between online and offline change in any meaningful way between fall of 2003, when we took our first price measurements, and fall of 2007 when we took these price measurements. And the punch line is that we didn't find really any change in, any statistically significant change in, the gap. There still maintained roughly about the same gap as there was in 2003. And also looking at measures of price dispersion, which is the variance in price, did the price-- did the range of prices compress? We didn't really find any evidence of that either. And that's also another kind of indicia of price competition.

So the takeaway from the 2007 follow up study is the market hadn't really changed in any meaningful way that we could see, at least from our sample in 2007. So that's where I'll leave you, leave you off. So we're up to at least 2007 now. And I'll turn it over to the rest of the panel to bring us up to date.

CHRIS GRENGS: Great. Thank you for that background, James. And we'll fast forward to today, and try to understand a little bit more about where consumers are buying their contact lenses. So we're going ask our three retail panelists to each give a snapshot of their various businesses and business models so we can understand where consumers are getting their contact lenses. So if we could start off with Mitch Wessels of Luxottica. Luxottica has a number of brands underneath its umbrella. And then move on to Gary Swearingen of Costco. And finish up with John Graham of 1-800-Contacts.

MITCH WESSELS: Thanks Chris. I suspect I'm going first because it is the most complex model. We've got about 2,500 locations in the United States that sell contact lenses. As Wally pointed out earlier, the split of doctor type, there's only about 5% of those locations that actually employ a doctor. 95% of the locations have an independent eye care provider associated with the business next door. That breaks down as LensCrafters, with about 950 locations. And within LensCrafters, half of those locations have a sublease doctor who owns the contact lens business. So they work next door. They collect the revenue for all of the professional services they provide and they also sell contact lenses. The retail side of the business does not sell contact lenses.

In the other 450 locations, the retail side of the business sells the contact lenses. We either have an employed doctor or we have a sublease doctor who does not sell contact lenses. You move over to Pearle Vision, which has 500 locations in the US, 440 of those locations are franchise businesses. In a franchise world, the franchisee owns the entire business. They own the professional services, the contact lens business, as well as the eyeglass business. Within the 60 or so stores that are corporately owned, it's a mix of sublease and sublease who don't sell.

Target Optical now has just over 500 locations. All Target Optical doctors are independent sublease doctors who do not sell contact lenses. We sell the lenses on the Target side. Target also operates TargetOptical.com where we sell contact lenses online.

Sears Optical has just over 500 locations. And it's the same exact set up as I just described for Target. Only Sears Optical does not have an online presence.

And then, we also operate Contacts Direct, which is a direct to consumer e-commerce site. And I failed to mention LensCrafters also sells online. So we've got four brick and mortars. Two of those brick and mortars have an online component to them. And we have a standalone online component as well.

Throughout an average year, Luxottica-affiliated doctors perform about 2 million contact lens exams a year.

GARY SWEARINGEN: Again I'm Gary Swearingen from Costco. Costco is a fairly simple model. We are the fourth largest retailer of eyewear in the country. We have our own eyeglass lens manufacturing plant. Eyeglasses are about 75% of the business. Contact lenses, around 25% of the business. We've been selling contacts since about 1990. We sell all brands. Our warehouse-- our model is, we lease space to independent doctors of optometry, in all the warehouses that we're allowed by law. So they are independent. They run their own practices. It tends to be a pretty good gig for them. And pretty good for us, too.

We sell internationally in all the countries we're in. And we're 18 months into our online sales of contact lenses.

JOHN GRAHAM: I'm John Graham, the CEO of 1-800-Contacts. We have a fairly simple business model as well. I always explain to people in our industry that we're basically a pharmacy for contacts. Most pharmacies sell a lot of different goods. We sell 80,000. But they're all contacts. We have about 80,000 SKUs and they're all contact lenses. There are a couple of unique things about our business. So we're singularly focused on contacts. We focus on making the wearing of contacts simple, affordable, convenient, healthy.

There are two unique things about us as a pharmacy. The first is, as was explained on the previous panel, because there is no generic equivalents, when someone comes to our website or calls us on the phone, we can simply ask one question. How many boxes would you like? And so we don't have much of a browse experience. We just sell what has been prescribed.

The second is that, because of the nature of this industry, we send our customers back to our competitors annually for permission to buy from us, which is unique for a pharmacy.

TARA KOSLOV: So, I like to start our discussion when we talk about competition issues, ultimately, looking at things from the consumer perspective, right, when we're looking at competition issues. So, I'd be interested in exploring the factors that influence which lenses consumers ultimately end up with, which ones they purchase. And to what extent they're able to comparison shop based on price, how effectively they're able to do that kind of comparison shopping. And in particular, whether that ability differs for a new prescription when there's an initial supply versus looking at refills. And John, I believe you're going to kick that off for us.

JOHN GRAHAM: So I think that there's a few things to unpack there. First, with your first question about how do they choose what to buy? I think that's simple. The optometrist tells them what to buy. Generally speaking, they set the brand. And then that becomes the basis of what the consumer buys from there. As far as shopping, I think the data that we saw earlier today shows that, for the most part, people are able to find price, convenience, value, however they define that, in whatever channel. And so there's a lot of channel movement today.

I think there's a couple of things that you see that are unique in this industry in the way that the consumer interacts. James mentioned private label. Usually, that is mostly about trying to avoid that switching between places, more so than driving price difference. Usually, when you think of price difference-- private label, you think of something that's more affordable. In our industry, a private label is rarely more affordable. It's either the same or more expensive. An example, I was working on a lens this week that's a national retailer is selling that's the same brand, same material, same base curve, and 1.1 millimeter difference on diameter. So we can't sell it. Probably not a clinical reason for that, but there may be.

The other is that, the other thing is that, in this industry, prices generally go up, not down. Most technologies that I consume, the price goes down over time in technology. But in our industry, generally technology goes up over time. I was going through our prices going back about 10 years, our wholesale prices, and couldn't find products where prices have actually declined over time. And so to James's study that shows the price over time, it's really tricky to get prices lower and lower for consumers over time because wholesale goes up over time.

TARA KOSLOV: Mitch, I believe you were going to have some discussion.

MITCH WESSELS: Yeah, so my experience is similar to what John mentioned, which is, the biggest influence in what the patient is wearing is what the doctor prescribes. One of the things that we recognize, though, is that in many situations, the doctor's only prescribing or offering one lens. So it's not a, try these five lenses. There's one lens that they have decided will work for you. And that's the one that's offered. So, many times, they end up in a lens without trying other lenses.

When the consumer is given the choice of lenses, so they have several to choose from, it's almost always driven by comfort, then followed by visual acuity is the reason why they're choosing that lens. So, the cost or the value of the lens doesn't typically come into play immediately. It's more prevalent on someone who has worn lenses for more than a year. So they're going in and being refit. Or they're going online and checking for a refill. But the initial dispense cost is not typically one of the driving factors of why they're choosing that lens.

We mentioned private label earlier. We take a different approach to private label in our locations. So we have two private labels. We have a LensCrafters branded private label, and a Pearle Vision branded private label. Historically, and we had done private labels in the past using a more generic type of name, it probably was around keeping somebody in your location. Because they believe they can't get that lens somewhere else. Our new approach to private label, or branded label is-- as a proprietary branded label, as we call it-- is more around the experience. So we've chosen to go into lenses that are of a very high quality. They are all daily disposable in the situation for LensCrafters. They actually have the LensCrafters name on it and the Pearle brand has the Pearle name on it too. They're good, very high quality lenses. And what we're looking for is we want an experience for that patient and that customer. When they're opening up their lenses in the morning, we want them to remember LensCrafters. We want them to associate it with a positive experience. We want them to come back to us. We want them to come back and see the doctor and associate that with the doctor and with the retail location. It's not a matter of trying to say, OK, you can't get this lens anywhere else. You can get these lenses anywhere else. They are manufactured by, in one case, CooperVision. It's the My Day lens. And any time they go online, they're going to be informed of that.

CHRIS GRENGS: Great. Next, we're going to turn to David Sonnenreich in the Utah Attorney General's office to give us some perspective on Utah's experience in recent years. Utah has a particular state level statute that relates to the sale of contact lenses and David's office has been active in this area in recent years.

DAVID SONNENREICH: Well thank you, Chris and thank you for the opportunity to be here. And of course, I have to mention that the views expressed here today are my own, and do not necessarily represent those of the Office the Attorney General, State of Utah, or, for that matter, by any means, the other attorney generals of the United States.

That said, what I really want to emphasize is the long, strong partnership between state enforcers and the FTC in favor of competition in the contact lens industry. And at the risk of going over a few things that have been mentioned earlier, I'd like to point out that this really begins in the mid-1990s. By 1994, a series of lawsuits, which were eventually consolidated into In Re--Disposable Contact Lens litigation, had been brought forth by the state attorneys general.

Eventually, there were 32 plaintiff states, including Utah engaged in that antitrust litigation, which resulted in a settlement and a five-year injunction that required both the American Optometric Association and contact lens manufacturers to not take steps that would prevent commercially reasonable and nondiscriminatory sale of contact lenses. While that injunction--while that case was going forward, of course, it was actually decided in 2001. The settlement was entered in 2001. While that was going forward, in 1997, 17 state attorney generals petitioned the FTC to extend the spectacled prescription release rule to include contact lenses. As the term of the injunction from the antitrust case came towards an end, in the middle of that process, Congress passed the FCLCA. And the FTC passed the Contact Lens Rule in 2005.

Likewise, at that time, as the case injunction was coming to an end, states started to pass their own contact lens rules to fill in potentially gaps, and to bolster some of the terms that were going to be lost with the end of the injunction. In Utah's case, that was the 2006 Utah Contact Lens Consumer Protection Act, which required nondiscriminatory distribution and certification by manufacturers, they were engaged in nondiscriminatory distribution.

That was a state of law for a while. But the following year, the United States Supreme Court issued a decision in a case called Leegin Creative Leather Products, which had nothing do with contact lenses, but had everything to do with antitrust law. What that case was about was resale price maintenance. That is, the ability of a manufacturer to require resellers to maintain a certain price. Traditionally, that practice had been considered to be a per se violation of antitrust law, meaning that all that an enforcer had to prove was that the practice was going on to prove a violation of antitrust law.

The United States Supreme Court decided in Leegin that it instead would view these resale price maintenance agreements as a rule of reason, potential antitrust violation. What that meant is that in addition to showing the existence of the agreement, now a party challenging on antitrust grounds, those agreements would have to show that the anti-competitive impact of the agreement exceeded its pro-competitive benefits. This made for a much different analysis. And that opened the door for many industries, for resale price maintenance agreements. And by about 2013, the contact lens industry followed other industries and had engaged in what are called unilateral resale pricing policies, or UPPs. Which were simply a version of resale price maintenance.

The problem with the UPPs from the perspective of Utah and other states was that they effectively could harm the FTC's Contact Lens Rule by removing a primary method of competition between different chains of distribution, i.e., price. As a result, in 2015, the Utah legislature passed amendments to the Utah Contact Lens Consumer Protection Act that prohibited UPPs and other acts by manufacturers to control retail pricing or advertising, and prohibited manufacturer discrimination based upon whether the retailer-- A, operates or advertises contact lenses for a particular price; B, operates in a particular channel of trade; C, is a person authorized by law to prescribe contact lenses; or D, is associated with a person authorized by law to prescribe contact lenses.

Prior to the effective date of the law, three of the four main contact lens manufacturers filed a lawsuit against the state of Utah. They sought a preliminary injunction to stop enforcement of the law. The trial court denied their preliminary injunction, and found that they were unlikely to succeed on the merits of their case. And the Tenth Circuit in 2016, in Johnson & Johnson Vision Care versus Reyes-- obviously Attorney General Reyes-- upheld the trial court's denial of the preliminary injunction, allowing the law to go into full effect.

And that basically is where we are today on the state side on the contact lens law.

TARA KOSLOV: Thank you David. So, as David's remarks remind us, it is critically important when we're looking at competition in this area to consider the relationships between manufacturers and other market participants. So, I would welcome thoughts from the other panelists about the factors that have, in the past, influenced or that currently influence the competitive dynamics among manufacturers, and their interactions with other market participants. So, I don't know who would like to chime in first on that.

JOHN GRAHAM: No one rose to it. Want me to go? Well I think that-- so, there are two sides of this industry. There's the prescribing and the selling side of it. And in the experience I've had within the industry, the primary thing that the manufacturers are trying to do is influence the fit, because that's what really drives behavior downstream. And part of that is talking about the clinical efficacy or comfort or clarity or whatever the product, and try to convince doctors that they should fit the product because of how good it is. And then secondarily, there's always a financial part of it too. This is a lens where you'll get higher margins, better prices, less price competition and things like that.

So there's the mix of those two things to try to create a fitting environment that works for the manufacturer. What we see in our data is that generally speaking, most doctors, as I interact with doctors, I think this is the case and probably no surprise, most doctors predominantly fit a single manufacturer. So they'll say, I'm a J&J fitter. I'm an Alcon fitter. There may be some mixing. Usually it's across modalities. So maybe I'm a J&J fitter but I like Alcon for dailies, or things like that. But people tend to fit into-- they have very specific fitting behavior is what we see. So even just in the same zip code, you'll see two doctors where one's 90% one, one's 90% the other. And so that's-- if you can get the fit right, then everything flows downhill from there. And so I think that that's the way that they try to work is to influence that. Which is, if you think about the pharmacy doctor metaphor, that's how, generally speaking, you want to spend your marketing dollars and your sales dollars.

GARY SWEARINGEN: And I think so. I would agree with that, the competition among manufacturers is really for the doctors. There is very little competition among manufacturers for the retailers. We have to buy their lenses if we want to serve our customer. And that's the fundamental point. John mentioned they said they have 80,000 SKUs. If you want to serve all the population, that's what you have to stock. Costco obviously doesn't stock that much. So we do a lot of direct order. But, we have to buy the lens if we want to serve the customer.

MITCH WESSELS: We see a similar thing as John and Gary mentioned as well. You've got a competition of manufacturers to namely get a fit set into a location where the doctors can prescribe. So there's this very early push to try to get fit sets into locations. In the world where the doctor owns the contact lens business, that's done more or less one on one, with the sales reps going in and having a conversation. It's really based upon sort of their personal relationship. In a lot of situations, there's a lot of education going on about the features and benefits of the lenses.

On the more corporate side, where we sell the contact lenses, and we're putting a fit set into a doctor location, it's a little bit broader in that manufacturers are competing, not only with that prescribing doc-- or for that prescribing doctor's prescription-- they're also working with the retailer to try to determine, OK, what's going to be the best way for me to get you to focus on my lenses? So there's a lot of conversation, not only with my team and the manufacturer, but also with the individual doctor and the manufacturers to their reps.

One of the things that we're starting to see sort of change is the-- I call them sales reps. But a lot of the companies now, it's more of a business consultant relationship. So you have what would traditionally have been someone who is going in and competing with the other manufacturers around features and benefits of their lenses, you have manufacturers who are trying to build a deeper relationship with that practitioner by helping them with non-product related services. So different business consulting services. How can I help you get set up onto a ship-to-home model? Or a different model that is better for your patients and customers? So you're seeing them compete in different ways beyond just the competition based upon features and benefits of the product.

CHRIS GRENGS: And to pick up on this theme of competitive dynamics, I think John Graham alluded to this. The dual role of prescribers who also sell lenses. We just wanted to ask our retail panelists to give us their views on this role and to ask for some follow up comments from an economic perspective from James Cooper. This characteristic of some prescribers also selling, has variously been described as a dual role in some cases, a tension in the sale and prescription of contact lenses. And we just thought we'd ask our panelists if they have any thoughts as this relates to their various business models or if there any ways that we should think about this issue. And we'll start off with Mitch Wessels.

MITCH WESSELS: So as I mentioned earlier, we have about 20% of our locations, they happen to all be LensCrafters locations, where the doctor is the prescriber as well as the seller of the contact lenses. In that model, the doctor, or the lease holding OD, they're responsible for all aspects of the contact lens business. So as a retailer, I'm not doing anything to talk to them about promotion or pricing. They make all of those decisions on their own. But any time you're in a model where the seller has a financial incentive for selling a specific product, there is the possibility that that becomes one of the things that is the determining factor.

You move over into a model where the prescriber does not sell the contact lenses, they don't have a financial incentive to choose one lens over another. Their main priority is how can I help this patient and how can I retain this patient? So how can I make it as easy as possible for this patient? As opposed to as financially possible for this patient. We have-- we see situations where there are doctors who tend to make a decision on what they're going to prescribe based upon their perceived ability of that patient to pay for that product. So we're going to talk a little bit later on about daily disposables and how daily disposables are penetrated in the US versus how they're penetrated in the rest of the world. But that's one of the examples where you can have a situation that they're making a decision, sometimes based upon their own financial decision. But also sometimes based upon their perceived ability of their patient to afford the product that they want to prescribe.

GARY SWEARINGEN: So we see the same thing. Our independent doctors have no incentive to sell a particular brand, but we still see choices made by brand. Not to backtrack, but it takes a really savvy consumer to actually price shop between brands because it has to be done before the eye exam. But optometrists, and to some extent, ophthalmologists, control all the information that's going to that patient at the time. It's a trusted relationship. Most, as with any medical profession, there's a high degree of integrity. But they are in a unique position to influence the purchase of a product. And it puts product they sell, you can't help but say, I really like this brand. This is the brand I carry. And that's what the patient is going to want.

JOHN GRAHAM: Yeah, I think, again, there's prescribing and there's selling. And I think the numbers earlier that about a third of prescribers don't sell. And there's obviously a lot of places that sell that don't prescribe. But there are a lot in the middle, and that's the gray area. And I think the CLR, what it did is created a demarcation between the two. And so it was successful in pulling those two things apart and trying to create a clarity between the two so that you could prescribe and then it could be sold elsewhere, especially as it's become-- it's a product in a box with a bar code. Right? It's not a custom product.

Before the FCLCa, you had a lot of retailers that were selling product without prescriptions. And they were calling pet stores. And they were doing all kinds of things, right? And then you had on the prescriber side, we had states where we were deleting orders and we were selling, than we were shipping because we just couldn't get prescriptions and couldn't get verification requests. And so the CLR really freed that market up to actually work. It was working to some extent. It was just very state by state before the CLR. And so with the FCLCA and the CLR, it created a uniformity across the country where it pulled those two things apart and made them more distinct.

And so, to the degree that that works, I think it's working really well. The trick is just making sure that that point of demarcation works. And you know, we do a lot of price shopping, a lot of secret shopping. And for the most part, we find that most of our online competitors tend to verify the way that is laid out in the CLR and the FCLCA. Cause we shop doctors. We consistently find about 50% don't give a prescription. And so that's problematic when only 50% are releasing. And so we're very in favor of what the FTC has proposed with the prescription verification release form, to make sure that happens. Because I think where it happens, it works. It works well. And where it doesn't work, it doesn't work as well. There needs to be a mechanism for enforcement. And I think if enforcement increased, we actually see more freedom in the market still.

And when that doesn't happen, you see the sorts of things, like there's a scenario where what we find sometimes-- and first of all, I don't think there are bad people. There are good people with conflict, right? And we see the scenario sometimes where we'll go into an office, and there's no release until asked for. And then the simple act of asking for release then prompts the doctor to say, were you going to buy somewhere else. I'll price match it, right? So there's the ability to do that price discrimination at the point of sale. If someone doesn't ask for the prescription, then I can have a certain price. If they're going to ask for the prescription, then I can price match. And so I can variablize the way that I price, potentially.

CHRIS GRENGS: And just to follow up on that, do any of the other panelists have any particular views on whether the Contact Lens Rule successfully accounts for this issue?

JOHN GRAHAM: For the separation?

CHRIS GRENGS: Does anybody else in the panel have any views on whether the Contact Lens Rule is successfully dealing with this issue?

MITCH WESSELS: I agree with what John said. I do think it is successfully dealing with the issue. I am challenged with enforcement. So I know that the suggestion out there right now is to collect a signature. And it sounds pretty easy you know, to get somebody to sign a piece of paper. It sounds like it will only take one minute to do that. In a large organization that's looking to become more electronic as opposed to paper based, it actually does cause some burdens. If there is a way to enforce that doctors actually gave out the prescription without the consumer having to ask for it, and without putting a burden on the retailer, or the doctor's office, we would find that to be even more beneficial.

GARY SWEARINGEN: So we certainly think that the Rule has been very helpful for competition within the selling market. It's leveled the playing field a lot. We don't have too much trouble getting prescriptions at the locations. We require physical prescriptions. We still have trouble on occasion. But it's certainly nothing like it was in the past.

TARA KOSLOV: So James, we'd be interested in your economic perspective on this concept of the dual role.

JAMES COOPER: Rarely do I hear that. I'd be interested in your economic perspective.

TARA KOSLOV: But you're limited. And I'll cut you off if you go over your time.

JAMES COOPER: Yes. Yes. Please. So I don't get the rest of the hour.

TARA KOSLOV: James and I have been friends a long time, so I can get away with that.

JAMES COOPER: Yes. So yeah. You know, what I can talk about is, of course, I've had the experience back in the day in this. But in general, just from an economic perspective, I think about the relationship-- what makes the contact lens industry different than maybe other industries. Or at least if this is what we call a credence good. I mean, so you go in to get your-- there's asymmetric information between the consumer and the eye doctor. And you need the eye doctor is the one who, ultimately, is the gatekeeper. He has to write the prescription. As we all heard and we all know, the demand is actually created by the person who writes the prescription.

The problem is if there's a big asymmetric-- there's a large asymmetry in information between the consumer and the eye doctor. Why? Because the doctor has gone to school and gone to specialized training to learn how to fit contact lenses and see what you need. So you go in, and the eye doctor says you need this CooperVision-- and I'm going to plug CooperVision, again, my name. You need this CooperVision lens, or you need this Bausch & Lomb lens. And because you don't have that specialized expertise, you typically will just say, OK, I get it. That's what I'll do. And then I'll fill that. And then, not only does the eye doctor sell the diagnosis, which is what lens you need, but they sell the cure, which is the lens itself. So they're often in credence good markets, we see the bundling of the diagnosis and the cure.

So, that's what makes this industry unique. I mean, not unique. It makes it different than a normal commodity industry. Because a gatekeeper is someone who has an information advantage over the consumer. But what I would say that asymmetric information is endogenous, OK? So, in the sense, there is asymmetry. A consumer is not going to go out and get a-- go out and get an optometrist degree so they can evaluate or double check what their eye doctor is doing. But if we're talking here about price, well, if there are incentives to figure out the price difference and shop.

Now, things like-- we have credence good and asymmetric markets all the time and all over the place. And they work. And reputation is a disciplining mechanism. And as John had said, you know-- I think it was John-- you said, only savvy consumers really know the price. But again, this is my endogeneity point is that you can become savvy for a price. So, I get prescribed a lens. I like, well gosh. This is like, a private label and I've got to spend a fortune on this. Well, that prescription's going to last me a year. During that year time, especially now with information everywhere, you can become informed.

Now, this is-- we don't-- so I think we would have to be, what I would say if their reputation can discipline markets, even when there's this sort of credence good aspect to it, and we see it-- I don't, in the same way that, you know, I wouldn't want to force, say, eye doctors cannot sell prescription lenses anymore, in the same way that, we don't-- we don't say that mechanics can't sell the repair that they do, right? That's a credence good market. And the cost-- when I got my car last repaired, the cost of what my repair was is a lot more than the delta between oh, I had to pay $16 more for my year's supply of contact lenses because I bought it from my eye doctor as opposed to bought it online.

So I think we have to think carefully before there would be any-- and I don't hear anyone on this panel, and I've only heard it occasionally that to say that the solution to this is let's get-- there's a conflict of interest, so eye doctors shouldn't sell lenses. I think we should be careful when we think about that. Because again, I think that asymmetric information, if there's one point, is asymmetric information is endogenous. It isn't just plopped down on consumers. Consumers can determine whether they want to be informed. And if the cost is too large in relation to the benefit, then they're not going to do it.

And maybe that is what we may see in this market. And, but then again, we may see-- and I don't know how much channel switching we see. I imagine we see a lot more of it now than we did 10 years ago. Because it's so much easier to comparison shop and there's so much more information out there and there are Yelp reviews, and there's all this sort of information that consumers get. So I would imagine if an eye doctor tried to rip off a consumer, it would be much harder for them to get away with it now than they would have, say, 10 years ago. Anyway, those are just, I think, some of the economics that you need to think about when you think about analyzing how this market works.

GARY SWEARINGEN: But again, we are looking at the market for one particular brand of lens. And so, yes, I'm paying $16 more at my eye doctor than I would online for that one particular brand of lens. The cost between a different brand of lens may be much more significant than that. And then the person is faced with, OK, well, I'm in this lens for a year. And if it's daily, that's a lot of money. Or, I see the price difference, and I have to go back to my eye doctor and pay for another exam, and another prescription for this other brand of lens.

JAMES COOPER: Well again, the idea the reputation is, you would-- you're right. I mean, there is a cost. I mean, the benefit from coming informed is avoiding a bad decision. And what just happened would be a bad decision. So, OK. That's happened. Now I realize my doctor's ripped me off. And I don't go back to that doctor. I go somewhere else and I have more information as I go into the marketplace. I guess the question would be-- and it's an empirical question-- whether that cost is large enough to force to have consumers get informed. And I imagine that under some circumstances, it very well can.

I'd also imagine it would depend on whether you're a new fit or a return customer. Because it's true that you go in to get that prescription and you're in some ways at the mercy of the doctor. But I have worn contacts since I've been 13. My brand has changed, I mean, because technology's changed. It was only changed three times. I've worn the same brand for the last five years. So I go back in. I know what I'm wearing. I know what the price-- I mean, maybe I'm in a special circumstance, because I do regressions on contact lens prices. Like most patients don't have that. But, you get-- but I'm just saying that--

TARA KOSLOV: James, let me pick up on that point. So if we are looking at a situation where the competition is mostly happening at this level after a prescription has been given and you're shopping within a brand. What would it take to enhance competition at that earlier stage in the current regulatory environment? Could we somehow incentivize or provide information to consumers to encourage them to do more of that comparison shopping up front, so that when they go in for an exam, they have some of that information? Is that anything that any of you are seeing in the retail space? Or is there more that-- does more consumer education? What might we be doing there?

JAMES COOPER: Well again, I mean, if you're-- I think, again, that it isn't that there's a right-- there's cost to using the price system. And one of the costs is becoming informed. And if it's too expensive to become informed, I don't think it's necessarily and here's the-- necessarily, that we need, OK, well now we should spend taxpayer money to make sure consumers know what all their choices are. I mean, I'm all for competition, as you know. I mean, I've spent my entire life devoted as a private sector antitrust lawyer at the FTC. And then in academia.

But I also think that there's consumer sovereignty. If information gathering is expensive in a market, it's expensive in lots of markets. So I don't know what makes the contact lens market special in that respect. Should we start telling consumers to start shopping around for plumbers? Or for mechanics, right? I mean, there are all these asymmetric information problems that exist all over. And so that would-- I don't know-- and so the point is that I don't know if consumers are necessarily making mistakes. But you have to take into account the cost of gathering information. That is a cost.

JOHN GRAHAM: And it is a low interest category. You know, I think there are some categories are much higher interest. And the reality is that most consumers just don't think much about their contacts. They don't want to think too much about their contacts. And we're successful when they don't have to.

CHRIS GRENGS: We've touched on the issue of the internet as it relates to contact lenses a few times today. And I just wanted to come back to that and throw this topic open to our panelists. The internet had been giving-- has given rise to new online ways to buy and sell contacts even before the Contact Lens Rule was implemented in 2004. So we just thought we'd ask our panelists specifically if they have thoughts about this development, and whether there are any particular implications or impacts for consumers, for retailers, for manufacturers, for other actors in the marketplace. If John Graham wants to start us off.

JOHN GRAHAM: Yeah, we do some things on the internet. I'll start. So to put this kind of into a historical context, you know, before the CLR the FCLCA, 1-800-Contacts was founded really before there was much of an internet, which is why we're named after a phone number. Probably at this point, a little unfortunate. But we are named-- we sell on the phone and on the web. And if you look back at when 1-800-Contacts was founded, we were-- contacts were still sold in vials, for the most part. They tended to be like $200 for a pair of contacts. We were selling them at the time for $39 to $49. So it was a significant price gap that the consumer could take advantage of. Once we moved into boxes, at that time, I think it tended to be about $120 for a customer. And we were selling them for $79. So there was a gap.

But all that happened before the FCLCA, before the CLR. And so I think the advent of the FCLCA and CLR didn't invent the internet, didn't create that opportunity. But it facilitated it. Because while those prices were available, it was really hard for consumers to navigate that, especially in certain states where people would try to get those prices, but they couldn't because they couldn't get a copy of their prescription and we couldn't get a copy of their prescription. And you know, when you're deleting half of your orders, just something has to change. And so, the CLR, I think, facilitated that. And so there was entry into the market at that point. And I think probably the most significant thing you'll see at this point is just that everyone's on the internet now.

So the health and safety, I thought that was kind of an interesting discussion, because it was more interesting 10 years ago. At this point, everyone sells on the internet. So to talk about internet versus not internet is a very hard conversation to have, right? Manufacturers, prescribers, vision plans, everyone's on the internet. J&J that was on the panel, right? They just bought Sight Box. They're selling on the internet. They're enabling prescribers to sell on the internet. So, I think that there has been a proliferation of business models that you've seen where taking care of-- I hope that what it does is, says taking care of customers is what matters most. And taking care of patients. And if we can get fresh lenses on their eyes more frequently, they'll be healthier. And I think that that's what you've seen.

GARY SWEARINGEN: So Costco's been online for only about 18 months. It's been pretty good success, about 12% of our contact lens sales are online. Generally, they are new customers, new contact lens-- you have to be a member. But they are new customers for the contact lens business. We don't have the ability to take insurance online. So that's an impediment. But what we find is, most people-- most of our members are shopping online out of convenience. We offer the same price online as we do in the stores, with free shipping. And this may shock some of you. But not everybody wants to come into a Costco to both order their lenses and pick them up. And so this is an ability for one-stop shopping. It's been good for-- certainly good for our members.

DAVID SONNENREICH: I would speculate that the proposed FTC amendment requiring the logging of the handing over the prescription will have, combined with the internet, an effect on the competition between brands for the reasons that Professor Cooper suggested. Namely that, a consumer now can say, I know exactly which contact lens I have. Otherwise, it's sort of generic. I know I wear Bausch & Lomb, but I don't know which one. I know exactly which one I have. I can go to websites. I can say, well, this is really equivalent to another one. And that other one is much less expensive. Now, I can ask my eye care professional, why did you prescribe A versus B, and have that meaningful conversation. And it's a conversation that the eye care professional knows may occur. Which means they have an incentive to be sensitive to those price differentials too.

GARY SWEARINGEN: I would agree with that. But I think-- not jump in. But, why can't we have that conversation at the point of purchase? Once we get the health data that we talked about earlier, once-- if that health data shows that the distinction between brands, particularly for daily disposables, is really not meaningful, it seems to me, we should be able to have that conversation at the point of purchase. And move those consumers, if they choose, into a different brand right there. And that's the type of competition that could seriously bring competition in among the manufacturers. And drive down prices, not only for the retailers, but drive down prices for the independents as well.

MITCH WESSELS: So I think if you listened to everybody today on the panel, you would think that the only competition within contact lenses or the only way that we compete with each other is on price. And everybody in this room knows that's not true. You compete, not just on the price of the product, but you know, you compete on how convenient can you provide that product. You know, when are your doctors available? Nights and weekends. Do you accept insurance? Price is rarely the number one deciding factor for the patient or the consumer on where they buy their contact lenses. It's almost always convenience or even in front of that, it's do they take my managed vision care? So about 50% of our transactions are managed vision care, anywhere from 30% to 50%, depending upon the brand. And that's usually the first deciding factor. That may be equated to price, because they want to be able to have a lower out of pocket.

But the other deciding factors typically are less on price and more on the convenience. The portability of a prescription is critical for that model. It's not just about the price. You're giving the consumer the ability to choose where they want to buy that lens based upon a variety of factors, whether it is, they're laying in bed at 9 o'clock at night and need their contact lenses in two days so they can go online and buy them and have it shipped directly to their home. Or whether it's, I like my doctor, and I want to make sure that I go back to my doctor because I have a personal relationship with that doctor. Either way, portability of that contact lens prescription is critical for that.

DAVID SONNENREICH: I would definitely agree with that point. Absolutely.

TARA KOSLOV: So I do want to pick up on a couple of the health and safety points that have been raised. So we did hear this idea that there might be some potential for interchangeability or substitutability. We are going to consider that in greater detail in a later panel, which I will also be moderating. But we did hear from the prior health and safety panel that currently the science does not support that sort of interchangeability. But what we did also hear in the health and safety panel, I think, consistently, was the idea that, because so many of the risk factors are behavioral, the idea of daily disposable lenses is solving a lot of those problems. And that might be one of the best ways to reduce overwearing and to mitigate some of the other safety risks. And so I would like the panel to explicitly consider, to what extent is price competition today contributing to making daily lenses an affordable and more accessible choice for consumers, perhaps in a way that would improve overall health and safety for contact lens wearers?

GARY SWEARINGEN: I would say that there is a little bit of price competition. But the lenses are simply-- they simply cost too much money. They're not an affordable alternative as of yet. And so while well-to-do people might be able to afford the benefits from dailies, other people are not. The information we heard this morning from Wally, vision care plans might pay $115 to $150 a year. And we also saw prices of dailies, $500, $600, $700 a year for dailies. Even our own private labels, $472 a year. That's a lot of money.

JOHN GRAHAM: Yeah, I think that's right. We-- certainly our perspective is that it's the most healthy lens that we've seen. And I think it goes way back. Jonathan, the founder of the company, he was a little OCD when it came to eye health. That's why we've always stayed out of the cosmetic lens business for the most part, certainly like the ones for Halloween and things like that. Because that is such a risk. And dailies are much less so.

In fact, if you go back even before I joined the company-- I've been with the company since 2009-- and before I joined the company, we actually owned a manufacturing plant and facility and brand. And ostensibly, the reason that 1-800-Contacts got into that early on was that they really had a belief that if you could get dailies down to around $1 a day that it might be an affordable option for people. And so we-- there was a contact that we tried to develop at that point. But it was really hard to get that going, because we are just a pharmacy. And if you can't get someone to fit what it is you sell, you don't sell it. And so, we were in a situation where we couldn't get the lens fit, even if we could get it developed. And so we ended up selling that business for a loss.

But I think right now, there's really not a strong incentive for dailies to become affordable because it is dictated at the fit. And neither prescribers or manufacturers really have a reason to drive affordability of dailies at that point. It's mostly a way to drive revenue and profit. And you don't have to read very many practice management articles to see that that's what the point is. You should be driving dailies, because it drives the profitability of your practice. And so the trick is just, how do you do that in that environment? Is there a way to let consumers have more choice? Because I think consumers want it. And I think that the reception that you've seen from consumers to Hubble entering the market is a good indication that consumers would like to see an affordable daily lens. It's not without its challenge, right? You're selling over 700 lenses where before you were selling 24, 48 lenses. So it's a lot of lenses you've got to manufacture to get the price down there. But I think that should be our ambition.

MITCH WESSELS: I agree. I think John hit on it. There is a legitimate reason why daily disposables cost more than a two-week or a monthly lens. For my manufacturing friends in the audience, that doesn't mean I'm going to stop asking for price concessions on daily disposable lenses. But I do realize that it is 700 lenses versus 24 lenses. So there is a reason. We operate-- we operate optical shops around the world. And there are many places in the world where daily disposables are significantly higher penetrated than they are in the United States. So depending upon where you look at it in the US, you're 30% to 40% penetration. If you look in Italy or China or Hong Kong, where we happen to have operations as well, they're just above 70% penetration on daily disposable lenses.

When I look at the price differential in those countries, though, the price differential between dailies and monthlies is fairly similar to what the price differential is in the United States. When I look at what my cost is in those countries, it's fairly similar. When I look at what my margin is in those countries, it's fairly similar. So we're not doing anything in those countries to drive a higher penetration by accepting a lower margin and trying to compete on price. The difference in those three countries is the consumer makes the choice of the modality and the brand. So, they get a refraction, tells them what their power is. Their doctor doesn't write the prescription with the brand on it. That consumer then goes to the retail side of the location and they're typically working with a fitter, an optician level fitter, who is helping them decide, all right. What brand and modality is right for you?

So the consumer is making the choice. They're paying about the same differential as they would in the United States. And you're seeing a 70% penetration in daily disposables.

TARA KOSLOV: Did anyone have any reactions to any of the other panelists on that point? OK.

So I do want to tie this back to the overall theme of the workshop, which is tethered to the Contact Lens Rule and looking at that Rule. So I would like us to focus specifically on the changes that we've seen since the Rule was implemented, going back to where James started, looking at where the market was before the Rule was implemented. And I know we've touched on this a little bit in a couple of the answers but I'd love to have an interactive discussion among all of you about the bottom line question. Has the Contact Lens Rule been successful in promoting competition in this space? And both on price and non-price dimensions of competition. And to the extent that we've seen differences in the competitive effects in the different distribution channels, how that has played out.

JOHN GRAHAM: To start, so first of all, I think that unquestioningly, the CLR has reduced the friction between channels, right? The data before was very compelling, that shows how much of the market has shifted from where the product was prescribed into other channels, whether it's in Walmarts or Costcos, or onto the internet or wherever. There's so much more across between channels. But as you say, and as David said, a lot of the competition also hasn't just been about price.

So while customers, consumers can certainly find better prices and have a lot of ability to find lower prices, they can also find just better service models, different service models, more convenient service models. You know, I think in, we, in our app, it's two taps on your app and you've got contacts on the way. So it's just very simple to reorder contacts. Or it's just so easy to get them delivered to your door. And I think that's why you see every player of consequence at this point has a ship-to-own program, has a website, is doing the same things, right? Spawned competition in those areas as well. So I think that that creates a good opportunity for consumers as well.

And I think that spreads out into other areas. You know, more people buying glasses online. More is happening just overall. And this proliferation at this point of different business models and different ways to service the customer and the patient is just accelerating. So I think that the FTC can consider this a successful rule.

GARY SWEARINGEN: Yeah I certainly agree with that. I think the other impact it has is it tends to empower the consumer. They understand they have choices. I have this prescription. And now I can make a choice of where to shop. And then maybe next time, they will look at it and say, well, maybe I should talk to my doctor about the brand as well.

DAVID SONNENREICH: I'd say the CLR has provided a solid base for competition in the industry. I think the proposed amendments improve that base. And I think that the other part of the base are these other things that the states do and that antitrust enforcers, public and private, do. It's all a package. But the base of the package is the CLR.

MITCH WESSELS: I agree with what the three panelists have already said. There's really nothing else for me to add.

TARA KOSLOV: So, one of you alluded to this a little bit. But let's more explicitly consider looking at whether any changes to existing laws or regulations or policies or business practices, for that matter, would improve competition. And that does not necessarily need to be limited to the changes that have been proposed that are on the table. I sort of open this up to a blue sky, what could we do to improve competition? I do also want to just remind everyone that if you do want to submit a comment or a question on one of the question cards, we have some people going around. And I tried to leave a little bit of time so we might be able to address some of those. And we're also monitoring the Twitter feed, so if questions come up there, we can get those as well.

DAVID SONNENREICH: Well I think I'd start by just saying that there's strong support among the states attorneys general for the proposed amendment of the Contact Lens Rule. Over 20 have come out publicly in favor of the proposed amendments. None, as far as I'm aware of, publicly opposed the amendments. I think that going forward, states will continue to be active partners with the FTC in ensuring meaningful competition and consumer choice in the contact lens market. I think you'll see this in two ways. One is that while states tend to favor as much federal uniformity as possible in those areas, states will continue to examine the possibility of specific laws to fill in and to prevent problems and abuses like Utah's anti UPP statute that we passed in 2015.

And I also think states remain ready to litigate, to avoid abuses, potentially under either antitrust laws or consumer protection laws, UDAP, Unfair Deceptive Act Practices laws, to ensure that the laws that are on the books are actually effective.

JOHN GRAHAM: So I guess within statute, there's obviously things outside of statute as you look across the globe. I think within statute, there's at least three things I think-- I think the FTC is already working on all three of these. The prescription release, I think that recommendation we're obviously very in favor of because of the fact that it splits the two. Do I wish that we didn't have to paperwork? Absolutely I do. Just 14 years of 50% not releasing has made us feel like something has to happen to change that-- to affect that logjam.

TARA KOSLOV: I should note, we did have one question that came up that disputed the 50% figure that you're raising. And we are going to address that more explicitly in one of the afternoon panels. But since you mentioned it again, we did receive one question that said that one particular state is showing close to 100% release and that the national data is different. So, maybe you could provide more details on where that data is coming from.

JOHN GRAHAM: Yeah, so, I've seen third-party data. And I just know my own shopping, because we do a lot of shopping, that it tends to be at 50%. So we-- I think the third-party research I saw was from SSI, if I remember right. We certainly did our own. Whatever data is out there, I haven't seen-- I have never experienced anything remotely close to 100%. So, that would be interesting to look at that data and see where that's from.

The second is, we certainly admire the support. The FTC has recently come out in support of telemedicine. I think that's an opportunity. I think that the doctor-- the patient doctor relationship is important. But I also think that that can be done in lots of different ways with different prescribers and different methodologies. And I think anything that expands access is a good thing if it's done in a smart way. And so I think that giving prescribers discretion on how they see patients, I think, is a great thing.

And then I think the third thing that I would say is, I admire what the FTC didn't do. And specifically, in the latest comments, basically came out and talked about how the health and safety risks are, that they've been unsubstantiated again. And you know, I think David talked about how in the earlier litigation things, those things were set aside. And I think there was a 10 year hiatus. And now after the 10 year hiatus, now they're going back up again. But, it seems like health and safety, we're talking about a box with a bar code, right? It's like a doctor coming up and saying, you should really buy your Tylenol at Walmart, not Walgreens, because the channel where you buy a box with a bar code just seems like a strange thing. So that those are three things. But thanks for having us on the panel. I appreciate being here.

GARY SWEARINGEN: I guess my thoughts are more blue sky. I would like to see more competition amongst manufacturers. I think we need to drive down prices. We're able to sell premium daily silicone hydrogel for $472, and that's double the price it should be. If retailers had the ability to say, I will buy 10 million of your contacts at this price, and I will be able to sell them, I think that has the ability to drastically modify competition. But we can't do that if we're constrained by the brand name on the prescription. And I think that can only be solved at the federal level. I don't think it can be solved at the state level.

DAVID SONNENREICH: I would agree with that last point.

MITCH WESSELS: And in general, we at Luxottica agree with the CLR the way it is right now. I mentioned earlier, my issue is more with the enforcement of it. I have seen data on both sides that is saying that doctors are not releasing the prescription as frequently as they should. Not sure that taking a signature and holding onto something for three years is going to change that unless there is some type of enforcement mechanism behind it. So if you get a complaint, is somebody really going to go and follow up on that? If that's the intention of it and it requires a signature to do that, then I understand it. I'm concerned that that last part won't happen and taking the signature won't dramatically change the release of the prescription.

So, that worries me a little bit. But in general, we like the Rule the way it is. If you start getting outside of the Rule and agreement on that and sort of more into the blue sky areas, if you start talking about things like removing the brand from the prescription. It's not impossible to do, but it's a huge change within the industry. And it would change the relationship between the doctor and the patient. You would need to have a mechanism on the retail side of the floor to work with that consumer so you would probably need something like an optician level fitter, somebody who is qualified to fit people in contact lenses and to look at it back and forth. So that one's a big, big, big change.

If you start talking about other things like a warehouse-- a data warehouse of prescriptions where everybody's prescription goes into the warehouse, and every seller has to ping that warehouse in order to get the prescription. That one has a lot of other unintended consequences down the line as well. So I think when we, as we debate this or continue to talk about this going forward, we just need to make sure that when everything that we vet out and look at is both protective of the consumer, not just from a, does it allow them to competitively price shop, but also protective of the patient from a safety and health standpoint.

TARA KOSLOV: James?

JAMES COOPER: Yeah, I mean I don't have the detailed industry knowledge that the rest of the panelists do. I just maybe from a 30,000 foot level, I mean, I'd echo-- I think I heard what John said with respect to the FTC's long and illustrious history of going after state restraints on competition. So if they're novel business models in this area, and I've heard some of them that you know, the FTC should continue to, along with it fits in very well with your telehealth initiatives, to allow to look at state restraints on competition, that may provide innovative models in this area. I mean, it's kind of history repeating itself. You know, now, if we can have prescriptions done online in a safe way, and I guess that's a question. But you know, if that can be done, the FTC should use both its advocacy and its-- after North Carolina Dental, to the extent possible, you know -- it's antitrust powers to look at some of these. I mean that would be one thing.

And there's another again from more of a theoretical or 30,000 foot level, is I would just be careful in general. We think about regulation or in this industry going forward, is the difference between vertical and horizontal restraints. You know, because I think that in this some-- and as David mentioned, you know, he talked about Leegin, and I talked about it too. And vertical-- the economics profession has long known that vertical restraints on distribution are typically efficiency enhancing, that they are at least-- they can be anti-competitive in some cases but they should probably be handled under a cost benefit analysis, which is the rule of reason.

Which is why 99% of economists signed on to various amicus briefs before the Supreme Court to say, Leegin-- to overturn the per se prohibition on resale price maintenance. I would just be careful to say that there's something special about the contact lens industry. And we need to let in the contact lens industry make vertical price restraints or vertical distribution per se illegal. Because that's what it is. A regulation that prevents that is just basically says, well, all the other industries, rule of reason is OK, efficiencies and distribution work there. But they don't work. So I'd be careful thinking about that.

That said, there's a horizontal collusion, if it's eye doctors getting together to force manufacturers to do something. That's horizontal. That can be-- and that's per se illegal, and it should be. So, I think we should be careful if we see vertical practices that are the product of horizontal collusion at one level or another. That rightly should be condemned as per se. But just unilateral vertical restraints, I think we should be careful before we would outlaw them on a per se basis. Because we don't treat any other industry like that.

DAVID SONNENREICH: I would just say that one way of interpreting our statute was, in fact, a rule of reason analysis by legislature in a very narrow industry. And that it is industry specific. And I think it was a result of specific findings and concern after analysis in that industry.

TARA KOSLOV: So in closing, just a little lightning round for all of you. Since we have so much expertise up here on this panel. So, give me a prediction on something that's going to happen in the future that will impact competition like, five years from now, what are we going to look back and say was a game changer that really affected competition in this market? Anybody want to throw anything out?

MITCH WESSELS: I think telemedicine is probably the one that's out there, the ability to do remote refraction, ability for someone to get their refractive error determined on their phone or at home as opposed to having to go to a doctor. That's probably the biggest one. That if that takes off, it changes the industry pretty dramatically.

TARA KOSLOV: Any others?

GARY SWEARINGEN: I think the progression of the safety and the benefits of daily lenses are going to have dramatic change.

JOHN GRAHAM: I shouldn't have gone last. I certainly think telemedicine will, right? Extending physicians outward so that you can keep physicians more busy. And seeing more patients, I think, is a huge one. And I do think that a lot of these regulations were put in place with much older technology than we have right now. And if anything, things are just becoming more and more and more customer centric, right? As the lenses get better for consumers, the challenges get more consumer centric. The consumer wins in the end. And I think that they are going to.

TARA KOSLOV: Great. Well please join me in thanking our panelists for a really enlightened discussion. So we'll return the five minutes that you lost from your last break to give you five extra minutes for lunch. So we're going to break now for lunch. We're going to reconvene at 1:45. And there is a large cafeteria on the corner on this floor where you can get some lunch. Thank you everybody.