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Public Interest Comment[1] on

The Federal Trade Commission's Enforcement Policy Statement

Proposed Enforcement Policy Statement Regarding Personalized Pricing

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REGULATORY STUDIES CENTER

The George Washington University Regulatory Studies Center works to improve regulatory policy through research, education, and outreach. As part of its mission, the Center conducts careful and independent analyses to assess rulemaking proposals from the perspective of the public interest. This comment on the Federal Trade Commission's proposed enforcement statement regarding personalized pricing does not represent the views of any particular affected party or special interest, but is designed to evaluate the effect of the FTC's proposed enforcement policy on personalized pricing.

Introduction

Personalized pricing is a method of pricing in which firms use personal information about individuals to set different prices to different consumers instead of charging a single price to all consumers.[3] The Federal Trade Commission's (FTC's) Proposed Enforcement Policy Statement Regarding Personalized Pricing claims that personalized pricing is likely to violate Section 5 of the FTC Act unless the seller discloses that the price is personalized as well as the basis for that personalization and the types of data on which the personalization is based.

1 This comment reflects the views of the author, and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at https://researchintegrity.gwu.edu/.

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3 In this comment, personalized pricing and surveillance pricing are used interchangeably.

This proposed enforcement policy is premature. We do not have a sufficient understanding of personalized pricing to warrant such a policy. While consumers often view personalized pricing negatively and policy makers portray the practice as exploitative and predatory, these views are based on preconceptions rather than on knowledge of personalized pricing. Studies have shown that personalized pricing, while resulting in higher prices to some consumers, can lower prices to others. The overall welfare effects of personalized pricing are as yet unknown.

Moreover, there has been no testing of the required disclosures, so it is uncertain how consumers would react to them. The disclosures could result in a de facto ban on the practice, which would cause consumers to forgo any benefits they would receive from the practice.

Due to our lack of understanding of personalized pricing and of the disclosure required by the FTC's proposed enforcement policy, it is impossible to know whether the policy would benefit or harm consumers.

I recommend abandoning this proposed enforcement policy and conducting more research on how personalized pricing affects consumer welfare before making any further policy decisions.

We do not have a good understanding of personalized pricing

Before making policy decisions that may alter or deter a business practice, it is essential to have a good understanding of the practice. How prevalent is it? Who benefits and who loses, and by how much?

At this time, personalized pricing is not well understood, a fact that is noted in the proposed enforcement standard: "The extent to which businesses currently use personalized pricing is not well understood, and the effects of personalized pricing on consumers are unclear."[4]

Nor do we have a good understanding of its prevalence. Jin et al. (2025) ask whether surveillance pricing actually exists, citing several examples described in media reports that the companies involved typically deny.[5] According to Ennis and Lam (2020), studies have found little evidence of personalized pricing on the internet.

The FTC's preliminary report of its 6(b) study of surveillance pricing, Research Summaries: A Staff Perspective, does not provide any information on the prevalence of the practice or its effect on consumer welfare. The FTC has not yet released a final report for the 6(b) study.

Because there is so little information about the use of personalized pricing, policy makers tend to use hypothetical examples to describe its potential harm. Lina Khan, the former chair of the FTC, presented an example in which airlines could charge higher air fares to passengers traveling to the funeral of a family member, a scenario that the airlines deny. Hypothetical examples are also used in the FTC's Research Summaries: A Staff Perspective, such as how identifying a consumer as a parent could result in a firm offering a higher price for baby thermometers. The press release

4 Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing, p.3.

5 Ginger Zhe Jin et al., Surveillance Pricing: A Cautionary Summary of Potential Harms and Solutions, CPI Antitrust Chronicle at 4 (July 14, 2025), pp. 3-4.

for the One Fair Price Act, a bill proposed in the US Senate, states: "When you go to the grocery store, you expect to pay the exact same price for milk as the person in line behind you. But imagine if they charged you more for milk because they know you have growing kids at home and that you need it more than the person behind you." A summary of the Stop Price Fixing and Wage Gouging Act, introduced in the House of Representatives, claims that a ride-sharing app (Uber) charges a customer more when his or her phone battery is low, but this is not true. The proposed enforcement statement itself uses hypotheticals when describing personalized pricing scenarios that could violate Section 5.

These hypotheticals are designed to make personalized pricing look harmful to consumers. Rarely do policy makers mention its potential benefits to consumers.[6] But theory and evidence show that the practice can benefit consumers.

How does personalized pricing affect consumer welfare?

Personalized pricing is a form of price discrimination, a practice that has been extensively studied in the economics literature. Pigou (1932) developed the model of first-degree or perfect price discrimination in which a monopolist charges each consumer his or her willingness to pay, thereby extracting all the consumer surplus. Consumers are worse off because all of the gains from trade go to the seller.

In reality, even a monopolist would not be able to extract all consumer surplus, due to the presence of competition and the inability of the monopolist to know with certainty consumers' willingness to pay, as noted in the proposed enforcement policy statement.[7]

Theoretical models developed since Pigou's seminal theory find that when there is competition, personalized pricing can make consumers better off than they would be with a uniform price. Thisse and Vives (1988) show that when there is imperfect competition between two firms, personalized pricing increases consumer welfare. This outcome occurs because, when the firms are not constrained to charge a uniform price, they offer discounts to consumers who prefer their rival's product, forcing the rival firm to lower prices. Rhodes and Zhou (2024) build on Thisse and Vives' model and show that under certain market conditions, not all consumers are better off with personalized pricing. They also show that if some firms charge personalized prices but others do not, consumers may be worse off.

Thus, while some theoretical models show that personalized pricing can reduce consumer welfare, other models show that some or all consumers may be better off in markets where there is competition.

To date, there is only one in-depth empirical study that has examined the welfare effects of personalized pricing. Dubé and Misra (2023) conducted a personalized pricing field experiment with a large, online recruiting firm, Ziprecruiter.com. In their experiment, personalized pricing

6 One exception is that the FTC Research Summaries of its 6(b) study mentions that personalized pricing can take the form of discounts to consumers.

7 Federal Trade Commission's Proposed Enforcement Policy Statement Regarding Personalized Pricing, p. 4.

reduced consumer welfare overall by 23%, but 60% of consumers were better off than they were with a uniform price. Those who were worse off were larger customers that had already been using the service and still found it worthwhile at the higher, personalized prices. Those who were better off were smaller customers that had not previously used the service because it was too expensive at the uniform price.

The results are of particular interest since the firm faced little competition,[8] indicating that it was behaving more as a monopolist than an oligopolist or a competitive firm. More empirical studies are needed to understand the welfare effects of personalized pricing under other market conditions.

The Dubé and Misra study raises several questions. How should policy makers weigh the gains of those consumers who are better off with personalized pricing with the losses of those who are worse off? If lower-income people tended to be the ones who were better off, should that matter?[9] Would the benefits to consumers be even greater in markets with more competition? How should policy makers weigh the efficiency gains in the market that result from the output-expanding effect of personalized pricing?

Without a better understanding of the welfare effects of personalized pricing, it would be premature to impose an enforcement standard.

How would consumers react to the required disclosure?

Mandatory disclosures are used to provide information to consumers when policy makers believe consumers are not sufficiently well-informed to make decisions in their own best interest. However, mandatory disclosures do not always function as planned. Consumer testing of proposed disclosures is necessary to ensure that they have the intended effect and do not confuse rather than inform consumers. Lacko and Pappalardo (2004) tested a proposed mortgage disclosure that was intended to help consumer mortgage shopping and found that it instead confused many consumers, causing them to identify more expensive loans as less expensive. In a later study, Lacko and Pappalardo (2010) found that the mandated mortgage disclosures in effect at the time failed to inform many consumers about the key terms of their loans and that many of the disclosures were confusing and sometimes misleading.

The proposed enforcement standard for personalized pricing requires that the seller disclose that the price is personalized as well as the basis for that personalization and the types of data on which the personalization is based.

The question is, how would consumers react to such a disclosure? One possibility is that the disclosure would have little or no effect. Most purchases that consumers make are in markets where they have purchased before. These consumers may be sufficiently well-informed to know whether a personalized price is a good deal or a bad one. If personalized prices were relatively

8 Ziprecruiter.com's management said that it did not expect a competitive response from other platforms.

9 Ennis and Lam (2020) say that one possible advantage of personalized pricing is that low-income consumers may obtain better pricing options.

low, consumers would know this and buy the good. Consumers who were offered higher prices would buy the product if they knew that neither a lower price nor a close substitute was available, assuming that the firm did not overestimate their willingness to pay, in which case they would not buy it.

However, the disclosure may be interpreted by consumers as a warning that the price is too high. Even for consumers who are well-informed, the disclosure could be confusing and induce them to search for a lower price, even when a lower price is not available. The outcome could be the same as above, except that consumers would have incurred unnecessary search costs, which would reduce consumer welfare.

The disclosure could also make consumers assume that the offer is a bad deal. Consumers may avoid purchasing products to which the disclosure is attached, and perhaps avoid all products from that seller. In this case, the disclosure would serve as a de facto ban, as sellers would stop using personalized pricing to avoid having to make the disclosure, and all the possible benefits of personalized pricing would be lost.[10]

Because the required disclosure has not been tested with consumers, it is impossible to know what its effect on consumer welfare would be.

Although I do not recommend that the FTC adopt the proposed enforcement standard, if it does intend to proceed, it should first conduct tests to determine how consumers would react to the required disclosure.

Conclusion

Personalized pricing is feared in large part because of misconceptions about the practice. These misconceptions put pressure on policy makers to ban or suppress its use.

What we know about personalized pricing is that some consumers would be offered higher prices and others would be offered lower prices. Some consumers would likely be harmed, while others would benefit. It is likely that many of the consumers who would benefit have lower incomes than those who would be harmed. Yet we know little about the magnitude of these harms and benefits and the overall welfare consequences of the practice. Without knowing more, it would be imprudent to adopt the FTC's proposed enforcement policy.

In my opinion, our current state of knowledge does not provide grounds for rushing forward with a proposed policy that could serve as a de facto ban on personalized pricing.

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[10] Ennis and Lam (2020) point out that personalized pricing disclosure requirements could make low-income people particularly worse off.

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