September 18, 2026

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Comments of Juan Londoño and Christopher Gardner in Response to Federal Trade Commission Request for Public Comment on Its Proposed Enforcement Policy Statement Regarding Personalized Pricing

Docket ID: FTC-2026-1057

We appreciate the opportunity to provide information related to the Federal Trade Commission (FTC)'s Request for "Public Comment on Enforcement Policy Statement Regarding Personalized Pricing." This comment does not represent the views of any particular party or special interest group but is intended to assist regulators in understanding the role of personalized pricing in the economy, as well as the potential ramifications that new interpretations of Section 5 authority could have on the economy. Our comments focus mainly on these key takeaways:

- Applying the "reasonable expectation" standard to personalized pricing is a novel interpretation of Section 5's authority and would grant the Commission a significant expansion of its regulatory power.
- This novel interpretation would create a lock-in effect for businesses and risk greater regulation of pricing models, ultimately limiting the choices of businesses even when such pricing could benefit consumers.
- By classifying undisclosed data-driven inputs as deceptive, the Commission is drawing an arbitrary line over what a firm must reveal about its pricing. Prices routinely aggregate inputs that consumers never know about, such as supply disruptions, shipping costs, tariffs, demand spikes, or a firm's own margin strategy, without being considered a deceptive practice.
- The Commission cannot claim that undisclosed personalized pricing is an unfair practice that causes a substantial, unavoidable injury, while also claiming that the "effects of personalized pricing on consumers are unclear."

- If there is a legitimate case for a disclosure mandate for the use of personalized pricing to resolve information asymmetries between consumers and businesses, the authority to enact such a mandate rests with Congress, not the FTC.

The Economics of Personalized Pricing

Personalized pricing is the use of consumer data to set prices. This practice is everywhere in our modern life. Whether it's airplanes, personal coupons at a grocery store, or used cars, different people pay different prices. However, some are raising concerns with this practice. These concerns stem from a fear that firms will use a customer's personal data to charge them the highest possible price at any given moment. As an example, in the statement, the Commission fears that if a hotel learns, from an individual's messaging or browsing history, that they are traveling for a funeral, wedding, or other "can't miss" event, it might charge a higher price for lodging. In industries like airfare, however, these claims tend to be more myth than reality.[i] Others have also raised questions about the implementation of electronic shelf labels in retail stores, fearing that they will create upward price pressure on essential goods by leveraging individuals' data to adjust prices in real time, charging each individual as much as they are willing to pay.[ii]

Traditionally, companies have relied on crude proxies to set prices. A grocery store in the Hamptons will charge higher prices for the same goods than a bodega in Brooklyn, based on the assumption that a higher-income area typically translates into a customer base with a greater willingness to pay. But these crude proxies for personalized pricing also directly benefit veterans, students, and seniors through discounts on flights, movie tickets, and a variety of other goods.

Technology has refined and automated this process as businesses have moved beyond generic proxies, such as geographic proximity, to using consumer data to tailor prices to individuals or specific retailers. Rather than relying on generalizations, stores can evaluate a customer's purchasing habits to infer their willingness to pay. Imagine a brand, say, Pepsi, learns through a grocer's loyalty program that a consumer is particularly price-sensitive and likely to buy diet soda again soon. Through that same loyalty program, it can send this customer a manufacturer's rebate to sway them away from buying a Diet Coke and toward buying a Diet Pepsi instead. Or an online retailer realizes, from their website visits, that an individual has had a product tab open in their browser for weeks but has not completed the sale. They can infer that there is interest, but also hesitancy. They can send a coupon or a one-time discount on the product to persuade them to complete the purchase. While these individuals receive one-off price reductions, everyone else is still charged the usual price. This way, businesses can still attract hesitant customers rather than have a product go to waste.

This level of personalized pricing and real-time discounting is essentially an individualized dynamic pricing (IDP) strategy. While technology has streamlined the implementation of IDP, customized pricing has existed since the dawn of commerce, when merchants and customers haggled over product prices. Consumers have long been offered different prices. Those willing to haggle would often be offered a discounted price. As many industries shifted towards standardization at various levels of the production process, businesses shifted toward uniform prices. While uniform prices are not always the most beneficial or efficient, their low implementation costs made them an attractive model for businesses trying to market their products on a large scale.

As technology advanced, automated tools made re-enabling IDP at scale cheap and fast enough to once again outperform uniform pricing. However, the benefits of the return of IDP are not enjoyed exclusively by businesses, as consumers can also reap the benefits of optimized prices. While fears of abuse do exist, the best protection for consumers is not to ban such practices, but to see how they function in a competitive market. In competitive markets with no supply constraints, IDP has proven to largely benefit consumers.[iii] If a firm uses IDP to raise prices for a given consumer, that allows a competing firm to undercut those prices using the same technology and potentially take that consumer away. The implementation of new technologies, such as electronic shelf labels, bears out the nature of these structural protections. Despite previously mentioned concerns about the ability of electronic shelf labels to rapidly raise prices on consumers, there is virtually no evidence that they are intended or used to facilitate surprise price increases.[iv] Instead, they are profitable to companies because of their ability to drastically reduce "sticker costs." Today's grocery stores change prices tens of thousands of times each year. The cost of the labor and inventory tracking alone in this process is high. Electronic shelf labels are a way to reduce this cost, not cheat consumers.

Other potential issues, including the use of health conditions or other forms of sensitive data to set prices, are broader conversations around the sensitivity of this data. We regularly allow the use of some data in contexts where consumers benefit, while raising concerns when the same data is used differently. For example, discounts on car insurance for teens with good grades or discounts for getting a flu shot are generally accepted practices without much scrutiny. The broader debate about when such data raises greater sensitivity concerns goes beyond the context of IDP. Current data privacy rules comprise a mix of federal and state regulations and legislation. Truly addressing these concerns requires a federal data privacy approach that provides a single, clear resource clarifying the baseline rules for data use across all industries and jurisdictions.

Personalized pricing is neither deceptive nor unfair

The Commission argues that, because consumers are allegedly unaware of what data is considered in the pricing process—or whether data is involved at all—the firm would engage in a deceptive or unfair practice when offering a personalized price.

The Commission asserts that, because consumers expect prices to be uniform, presenting a price without disclosing that it could have been tailored to that consumer using their data is deceptive. Consumers with a higher willingness to pay paid higher prices than other customers because they did not know that companies relied on data-driven assumptions when setting their prices. If they knew a firm was using personalized pricing, the Commission claims, they might have taken steps to avoid the higher price. The firm has deceived the consumers into paying a higher price.

This argument, however, ignores the multiple variables that go into a pricing decision and ends up drawing an arbitrary line over what information a firm should disclose about its pricing decisions. In fact, one of the main roles of prices, as Hayek laid out, is to aggregate dispersed data that is ultimately unknown to the final customer.[v] Consumers rarely know why a product is priced at a certain amount. Companies are not deemed to be deceiving consumers when they do not disclose that prices rose due to a supply disruption, if shipping costs or tariff duties increased, or if a viral social media video drove up demand in a way they could not keep up with. Similarly, a firm may act for subjective reasons, such as believing it could increase profits by sacrificing sales volume to raise margins on each sale, and still not be deemed deceitful. They could take this bet with or without access to consumer data. Thus, the Commission is singling out the non-disclosure of data-driven inputs as deceptive without explaining why other inputs are to be left unaddressed, other than by appealing to its novel theory of industry customs.

The statement also deems undisclosed personalized pricing unfair, claiming that consumers suffer an unavoidable, substantial injury when they pay higher prices. The benefits to consumers or competition, according to the Commission, do not compensate for this injury.

This framing also overlooks a key aspect of the economics of personalized pricing, focusing only on one customer segment: those with a higher willingness to pay. But it ignores those consumers with a lower willingness to pay: the consumer who is on the fence about buying that product, the one who has visited a price comparison site, or those without any brand loyalty. Those are the customers whom personalized pricing usually targets through limited-time discounts, coupons, and one-time offers. Consumers who value the good most are subsidizing those on the margin, who are offered a better bargain than they would have obtained at uniform prices.[vi] The Commission describes this as an injury, but the effect is largely distributional, and the studies it cites do not resolve whether the effect on consumer welfare is negative.[vii] It could reduce overall consumer welfare, primarily because high-willingness consumers do not get as good a bargain as they do under uniform pricing. But at the same time, there is an increase in the welfare of low-willingness consumers, who now benefit from greater access to low-priced products. The Commission cannot have it both ways. It cannot claim that undisclosed personalized pricing is an unfair practice under Section 5 that causes a substantial, unavoidable injury, while also claiming that the "effects of personalized pricing on consumers are unclear." There is a legitimate tradeoff in balancing the interests of high-willingness and low-willingness consumers. But answering this tradeoff is a public policy question that Congress should tackle, not the FTC.

There is a practice the FTC alludes to in the statement that could be found deceptive: fake discounts. This, however, should not be confused with personalized pricing more generally or used to malign an otherwise benign or beneficial practice. As its name suggests, it is a practice in which a firm tries to attract a consumer by showing a fake, never-offered baseline price, only to present its price as a "discount." As the baseline price that the firm is supposedly departing from never existed in the first place, the firm is tricking the consumer into thinking they are getting a better deal than they actually are. Unlike the other practices cited in the statement, fake discounts more accurately fall under the existing definition of deceptive pricing. Regulating how businesses display their prices and whether the displayed "discount" accurately reflects a past existing price fits the traditional definition and scope of deception. As explained above, the statement largely focused on how businesses priced their products, even when the displayed prices did not misrepresent the products or the prices customers would be charged. However, in this case, there is a misrepresentation of reality intended to trick consumers. This issue, however, could be better addressed by a narrowly tailored, standalone rule or policy statement.

Section 5's reasonable expectation standard does not, and should not, apply to pricing methodologies

In its background section, the Commission sets out its argument by noting that industries such as retail shopping lack a history of personalized pricing, unlike industries such as insurance or lending. Thus, when consumers have a "reasonable expectation" that an industry has uniform prices, moving towards personalized pricing without disclosing it to consumers would suddenly mean that a business would be engaging in a deceptive or unfair practice.

This is a novel interpretation of the Commission's Section 5 authority. In the pricing context, the Commission has invoked Section 5 when a firm misrepresents a price or fails to fulfill a prior commitment.[viii] However, under this statement's logic, the FTC claims authority over how a business prices its goods to consumers—even when the firm accurately discloses the price the consumer will be charged and has not broken any prior commitment.

By expanding this authority and thus granting itself greater regulatory power, the Commission might inadvertently create a lock-in effect for businesses, in which they must stick to uniform pricing forever, or risk heightened regulatory scrutiny. For those industries in which uniform prices have become a "reasonable expectation" for consumers, switching to a personalized pricing model would now invite significant regulatory risk. While this policy statement focuses exclusively on personalized pricing disclosures, the authority the agency has now asserted could be invoked again by a more regulation-friendly Commission for heavier-handed measures. Essentially, this policy statement will compel businesses to maintain their current pricing strategies, as any updates to their business models will be subject to greater regulatory scrutiny. This heightened scrutiny creates a strong disincentive to tinkering and experimentation, hurting innovation and making markets more rigid and less competitive.

Enacting a disclosure rule is the purview of Congress, not the FTC

The concerns about consumers being unaware of how businesses collect and process their personal data, and how it can affect a transaction, are legitimate ones. While we argue that the use of consumer data in retail—and other aspects of the digital economy—is often benign, the reality is that there can be an asymmetry of information where consumers are not aware of their rights or obligations under this exchange; they might not even know this transaction is taking place.[ix] If it is deemed necessary to provide such information better, this policy intervention is the responsibility of Congress, not the FTC.

Required disclosures or transparency mandates are not foolproof. In the context of personalized pricing, enforcement challenges could cause these mandates to expand beyond their initial scope. For example, on digital platforms, two users could be shown different prices as part of an "A/B" test, in which brands or retailers test market demand to see how price changes affect sales. While this is evident to the companies involved in the test, it is hard for a third party—in this case, the enforcer—to distinguish between an A/B test and personalized pricing. In fact, some media coverage has already conflated the two.[x] It is reasonable to expect that enforcers might make similar mistakes and accuse companies of failing to disclose a personalized pricing scheme. Companies would have to incur legal and reputational costs to fend off these accusations anyway. These nuances are further reasons to leave the decision to enact these mandates to Congress, where they can be properly debated.

Reinterpreting Section 5, even under a reasonable pretext, to artificially grant the FTC a power that Congress has not explicitly delegated is risky. It will open the economy to larger regulatory risks and could pave the way for future regulatory burdens under regulation-friendly administrations.

The Commission cites different instances in which it regulates disclosures in industries with personalized pricing, such as banking or insurance. But as it recognizes, it does so only after Congress previously passed legislation enacting a disclosure requirement. The FTC has the authority to regulate how these disclosures occur and what makes them truthful and compliant, but only because Congress has delegated that narrow authority. The Commission does not, and should not, have the power to enact a disclosure requirement on its own.

Additionally, some of the FTC's concerns, such as which data is susceptible to use in business transactions or how companies can access a user's data without their knowledge, are not solved by disclosure mandates but by privacy regulation. Given the current changes in administrative law following the elimination of the Chevron doctrine in *Loper Bright Enterprises v. Raimondo* and the revival of the major questions doctrine in *West Virginia v. EPA*, the FTC's efforts to expand its regulatory power without congressional delegation are unlikely to withstand legal scrutiny.[xi]

Conclusion

Invoking Section 5 to label undisclosed personalized pricing as a deceptive or unfair practice would introduce a novel interpretation of the statute that could have broader ramifications for the economy. While the FTC already regulates disclosure of the use of consumer data for personalized pricing in certain industries, it does so only because Congress has explicitly delegated that authority. Enacting a disclosure mandate through the use of Section 5 authority is just a way to circumvent Congress. In doing so, it would grant the Commission significant power over the digital economy, opening the door for abuse and overregulation in the future.

---

[i] Kyle Potter, "Forget What You've Heard: Stop Searching Incognito for Cheap Flights," *Thrifty Traveler*, August 28, 2026.
[ii] Michael Sainato, "Electronic Shelf Labels Likely to Cost Jobs and Drive Up Grocery Prices, US Report Warns," *The Guardian*, September 9, 2026.
[iii] Cody Taylor, "The Case for Algorithmic Pricing: Consumer Welfare, Market Efficiency, and Policy Missteps," policy brief, Mercatus Center at George Mason University, May 14, 2025.
[iv] Ioannis Stamatopoulos, Robert Evan Sanders, and Robert Bray, "Electronic Shelf Labels Have Not Led to Surge Pricing in US Grocery Retail, Despite Regulator Concerns," working paper, May 27, 2025.
[v] F. A. Hayek, "The Use of Knowledge in Society," *American Economic Review* 35, no. 4 (1945): 519–30, Library of Economics and Liberty.
[vi] Brian C. Albrecht, "Price Competition and the Use of Consumer Data," working paper, June 12, 2026.
[vii] Jean-Pierre Dubé and Sanjog Misra, "Personalized Pricing and Consumer Welfare," *Journal of Political Economy* 131, no. 1 (2023): 131–89.

[viii] Guides Against Deceptive Pricing, 16 C.F.R. pt. 233 (2026); Trade Regulation Rule on Unfair or Deceptive Fees, 90 Fed. Reg. 2066 (Jan. 10, 2025) (codified at 16 C.F.R. pt. 464).
[ix] Christopher Gardner and Juan Londoño, "Personalized Pricing Isn't All Bad for Consumers," *Cato at Liberty*, Cato Institute, May 28, 2026.
[x] Brian Albrecht, "Instacart Didn't Read Your Mind. It Ran an A/B Test," *Truth on the Market*, December 10, 2025.
[xi] Amy Howe, "Supreme Court Strikes Down Chevron, Curtailing Power of Federal Agencies," *SCOTUSblog*, June 28, 2024.