Paul, Weiss

Client Memorandum

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FTC Proposes Enforcement Policy Statement on Personalized Pricing

On August 19, 2026, the Federal Trade Commission ("FTC") issued a proposed enforcement policy statement signaling that it will enforce Section 5 of the FTC Act against businesses that use consumer data to set individualized prices without adequate disclosure.

The statement outlines how the FTC's existing authority over unfair or deceptive acts or practices applies to personalized pricing and articulates the disclosure standards that businesses must meet.

The proposed statement is open for public comment for 30 days and, while not yet final, provides critical insight into the FTC's enforcement priorities.

What Is Personalized Pricing?

According to the statement, "personalized pricing" is the practice of using consumer data, such as browsing history, location data, demographic information or purchasing patterns, to set individualized prices based on a consumer's estimated willingness to pay or likelihood of comparison shopping. The FTC is seeking to curtail conduct that secretly tailors prices for goods or services that consumers reasonably expect to be the same for all buyers—without the consumer's knowledge. The statement targets situations where consumers reasonably expect a uniform price for a good or service but are instead charged a different, personalized price based on extensive data analysis.

Importantly, the FTC distinguishes personalized pricing from routine price variation that consumers generally expect:

- Price changes driven by supply and demand fluctuations;
- Regional cost differences;
- Rideshare surge pricing tied to real-time market conditions (commonly known as "dynamic pricing"); or
- Inherently individualized products such as insurance and credit pricing.

The FTC notes that more research on personalized pricing is necessary, including on the extent to which businesses currently use it and its overall effects on consumers. However, the FTC notes that the limited economic research suggests that "the more sophisticated personalized pricing practices become, the less likely consumers are to benefit."

We previously wrote on regulatory developments in personalized pricing (also known as "surveillance pricing") here.

The FTC's Enforcement Framework

The FTC acknowledges that Congress has not granted it authority to ban personalized pricing outright. Instead, the FTC will rely on Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, to police concealed personalized pricing. The statement articulates two primary theories of liability:

- **Deception**: Representing or implying that a price is static or widely offered when it is in fact personalized, or failing to disclose personalization when consumers reasonably expect uniform pricing, is likely deceptive if the omission is material to a consumer's purchasing decision.

- **Unfairness**: A higher personalized price may constitute substantial injury to consumers; consumers may not reasonably avoid the injury if the personalization is concealed; and the benefits of personalized pricing can be realized without concealment—meaning concealment fails the unfairness balancing test.

The FTC also says that collecting or using personal data for personalized pricing purposes without adequate disclosure or consent may independently violate Section 5, aligning with the FTC's broader data privacy enforcement posture.

The FTC articulates specific disclosure obligations for businesses engaging in personalized pricing. Disclosures must be clear and conspicuous and must include:

1. the fact that the price is personalized;

2. the basis for personalization (e.g., willingness-to-pay modeling); and

3. the types of data used to personalize the price.

The statement also notes that personalized pricing practices may implicate other laws and regulations enforced by the FTC, including the Restore Online Shoppers' Confidence Act ("ROSCA") and the Rule Against Unfair or Deceptive Fees (the "Fees Rule").

Illustrative Examples

The FTC provides several examples of practices it would view as problematic:

- A food delivery company charging higher prices based on data suggesting a consumer is unlikely to leave home.

- A grocery chain charging more for milk based on data indicating there are children in the household.

- A hotel charging a higher room rate based on data suggesting a consumer is traveling for a funeral.

- A rideshare company charging more based on data showing no competitor apps are installed on the consumer's device.

- A retailer charging more for security cameras based on court filings indicating the consumer was a crime victim.

Practical Takeaways

- **The statement is proposed, not final**. It is open for public comment for 30 days and, even if and when final, will not have the force of law. However, it clearly signals the FTC's enforcement priorities and provides a roadmap for future actions.

- **Assess pricing practices now**. Businesses using any form of dynamic or personalized pricing should evaluate whether their practices could be characterized as "personalized pricing" under the FTC's framework—even if historically viewed as standard dynamic pricing.

- **Disclosure is the key compliance lever**. Companies engaging in personalized pricing should implement clear and conspicuous disclosures covering the fact of personalization, the basis for it and the data types used. Vague or buried disclosures may not suffice.

- **Audit data practices**. Companies should assess whether their collection, use and sharing of consumer data for pricing purposes is adequately disclosed and consented to under the FTC's framework.

- **Broader policy alignment**. The statement aligns with the current FTC's broader priorities on pricing transparency, including efforts against surprise or hidden charges. Companies should expect regulatory attention in this space.

- **Engage in the comment process**. Companies should monitor the public comment period and consider submitting comments, particularly if industry-specific pricing practices may be mischaracterized under the FTC's broad framework.

- **Watch the broader enforcement landscape**. The statement arrives amid intensifying scrutiny of personalized or surveillance pricing across multiple fronts. States have also begun to more closely scrutinize the use of personalized pricing, with Connecticut, Maryland, and New York all enacting legislation in this area.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Katharine R. Haigh
+1-212-373-3607
khaigh@paulweiss.com

Djordje Petkoski
+1-202-223-7315
dpetkoski@paulweiss.com

Eyitayo "Tee" St. Matthew-Daniel
+1-212-373-3229
tstmatthewdaniel@paulweiss.com

Christopher M. Wilson
+1-202-223-7301
cmwilson@paulweiss.com

Sabin Chung
+1-202-223-7354
sachung@paulweiss.com

Yoosun Koh
+1-628-432-5127
ykoh@paulweiss.com