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Kirkland Alert

FTC and States Signal Price Transparency Is a Top Priority

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In recent months, the Federal Trade Commission (FTC or the Commission) and a number of state attorneys general (AGs) have increasingly focused on price transparency. In rapid succession, the FTC proposed an enforcement policy statement on personalized pricing (also known as "surveillance pricing" or "algorithmic pricing"), announced a study on that topic, sent warning letters to 24 of the largest U.S. hospital systems about their obligation to provide patients with accurate pricing information, published price transparency FAQs for the automobile industry, and announced enforcement actions against a number of companies for alleged unfair or deceptive pricing practices. At the state level, several states have recently enacted statutes and/or regulations requiring that prices for consumer goods and services reflect the "all-in" price — i.e., the total price inclusive of all mandatory fees — as well as statutes prohibiting and/or limiting surveillance pricing.

This *Kirkland Alert* summarizes these developments and offers practical considerations for companies regarding their practices for presenting pricing information to prospective purchasers.

Regulators Are Pushing for "All-In" Pricing

"All-in" pricing refers to advertising prices that include all mandatory fees in the initial advertised price, in contrast to so-called "drip pricing" where companies advertise only a per-unit price and include mandatory fees only at the point of sale.

At the federal level, the FTC promulgated the Fees Rule, 16 C.F.R. Part 464, which took effect in May 2025, prohibiting businesses in the live-event ticketing and short-term lodging industries from misleading consumers by omitting required fees from

advertised prices. The FTC has already announced several settlements in this space, bringing in not only consumer restitution, but also per-violation civil penalties.

Although the FTC's Fees Rule is limited to those two industries, the FTC's enforcement actions and enforcement guidance to other industries suggests that the agency believes that price advertisements that exclude some or all mandatory fees can violate Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices.

- *Automobiles*. Last month, the FTC staff published Automobile Industry Pricing Transparency FAQs, following warning letters sent in March of this year to nearly 100 auto dealership groups regarding their pricing practices. Although the FAQs reflect Staff views and are not binding on the Commission, they offer the most detailed articulation to date of how the Commission views "actual price" advertising under Section 5. Among other things, the FAQs state that:
  - The advertised price must be the **actual price any consumer can walk in and pay**, excluding only charges a government agency requires the consumer to pay directly; dealer-required fees that governments authorize but do not mandate and government-imposed fees passed on to consumers must be included.
  - The requirement applies **across all media**, including websites, social media, print, roadside signs, and phone calls and text messages with dealer staff.
  - The actual price must be **the most prominent amount** on any webpage stating a price. Prominence is not limited to font size.
  - Advertised prices **cannot be built around conditional discounts or rebates available only to some buyers** or around negotiated prices that other consumers would not receive.
  - **Everyone with control over advertising** — including dealers, third-party advertisers and manufacturers — is responsible for ensuring the actual price is the most prominent amount.

    Shortly thereafter, the FTC announced a settlement with Greenway Auto Group reflecting this approach, with the complaint alleging the company deceptively added mandatory fees to consumers' purchases beyond the price they were advertised, including administrative fees, dealer fees, delivery fees and processing fees.

- *Hospitals and health-related products and services*. Earlier this month, the Commission sent letters to 24 of the nation's largest healthcare services companies warning against deceptive pricing practices and noting that Section 5 requires them to provide patients with timely, accurate and complete pricing for healthcare services, particularly non-emergency services scheduled in advance. The letters

encourage recipients to conduct a comprehensive review of their pricing practices and to take swift corrective action where needed.

Around the same time, the FTC announced a joint enforcement action with the Utah and Nevada AGs against leading contact lens retailer Lens.com for allegedly advertising artificially low prices in sponsored Google search ads and on its website that excluded mandatory fees later charged at checkout.

- *Digital Advertising*. In August, the FTC and 22 state AGs sued Amazon for allegedly concealing surcharges in its online search advertising auctions. The case is particularly notable because it applies price transparency principles in the B2B context, indicating that the Commission's focus is not limited to consumer-facing transactions.
- *Enterprise Subscription Services*. On October 30, 2026, the FTC, seven state AGs and two California local prosecutors sued Toast, Inc. for alleged misrepresentations regarding subscription services Toast offers to retailers and restaurants. As with the Amazon matter, this is another example of the Commission's enforcement in a B2B context.

Many states have also taken actions relating to the presentation of pricing and fee information. Beginning in 2023, when California enacted the first all-in-pricing statute for consumer goods, Minnesota, Oregon, Connecticut, Virginia, Massachusetts and Colorado have enacted some variation of an all-in pricing law. Most of the laws are similar and require inclusion of mandatory fees in up-front prices. But, as with any state-law survey, some states are more proscriptive or have unique coverage provisions. For example, whereas California's law requires disclosure of the total price, the regulations promulgated in Massachusetts also require disclosures of the nature and purpose of every fee charged.

Surveillance Pricing Faces Increasing Scrutiny

In addition to "all-in" pricing, regulators have increasingly focused on so-called "surveillance" or "personalized" pricing, whereby companies use personal data about consumers to decide how much to charge that individual consumer, as opposed to setting one price that all consumers would see.

In August 2026, the FTC published for public comment a Proposed Enforcement Policy Statement Regarding Personalized Pricing, which notes that where consumers reasonably expect prices not to vary based on their personal data, businesses that personalize prices "should clearly and conspicuously disclose not just that the price is

personalized, but also the basis for that personalization and the types of data on which the personalization is based," and that failing to do so "is likely to constitute an unfair or deceptive act or practice in violation of Section 5." Perhaps most notably, the Commission expressly declined to take a position in the statement as to "whether some personalized pricing practices are unfair ***even when fully disclosed to consumers***" (Statement at n.20) (emphasis added). This may be a signal that the agency is skeptical that personalized pricing can ever comply with Section 5 of the FTC Act.

On October 28, 2026, the FTC went a step further and initiated a study of personalized pricing. Section 6(b) of the FTC Act allows the Commission to conduct studies and to obtain information for those studies through the use of compulsory process, including subpoenas. Here, the FTC sent subpoenas to "nine major airlines, ride-sharing companies and food delivery firms." The subpoenas, which the FTC published on its website, ask these companies to provide information regarding how it sets prices or assigns jobs for gig-economy workers. According to the FTC, this information "will allow the agency to assess whether the pricing for a ticket, ride share, food delivery or other product or service varies from one person to the next based on factors such as participation in loyalty programs or analysis of personal data by superintelligence algorithms." These sorts of studies are significant endeavors for the Commission, and it will take the Commission some time to collect the information, analyze it and draft a report.

Several states have taken steps to ban or significantly limit the use of surveillance pricing by B2C companies. Maryland and New Jersey, for example, have enacted laws prohibiting surveillance pricing in grocery stores and/or delivery services, with some exceptions. Others, like New York and Connecticut, have passed laws requiring disclosures when personalized pricing is being used. Many other state and local legislatures are considering similar legislation.

Key Takeaways

- *The presentation of pricing information in ads and at early stages of the purchase flow is a source of compliance risk.* The presentation of pricing information that excludes mandatory fees and charges may raise legal risk, and particular attention should be given to whether and how the Fees Rule applies.
- *Personalized and algorithmic pricing warrants review*. Companies that use personal data to set or adjust prices should evaluate those practices, and consider whether consumers would reasonably expect static pricing, and assess disclosures and data

consents against the proposed policy statement, as well as emerging state laws in this area.
- *State AGs are active partners*. In addition to states enacting their own price transparency laws, each of the Lens.com and Amazon actions was brought jointly with states, which may bring additional statutory claims and remedies.
- *Business customers are protected too*. The Amazon complaint signals that pricing in B2B relationships can also draw enforcement scrutiny.

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