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Comments of

TechFreedom

Bilal Sayyed[1]

In the Matter of

Proposed Enforcement Policy Statement

Regarding Personalized Pricing

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[1] Bilal Sayyed is Senior Competition Counsel of TechFreedom, a nonprofit, nonpartisan technology policy think tank. He was previously Director of the Office of Policy Planning at the United States Federal Trade Commission (May 2018–January 2021). He is also the host of the RETHINKING ANTITRUST podcast. He can be reached at bsayyed@techfreedom.org.

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INTRODUCTION

TechFreedom welcomes the opportunity to comment on the Federal Trade Commission's *Proposed Enforcement Policy Statement Regarding Personalized Pricing* (the "Proposed Statement").[2] We recognize the Commission's legitimate interest in the use of consumer data to set individualized prices, and we agree with the Proposed Statement on an important point: Section 5 applies when a seller makes a false or misleading representation about whether a price is personalized, the reason for the price, or the information used to set it, provided the representation is material. Section 5 also reaches a personalized-pricing practice that satisfies each element of the statutory unfairness test. Nothing about the use of an algorithm, or the novelty of the data used by that algorithm, displaces those well-settled rules.[3]

A policy statement could properly address a transaction in which the overall presentation of a displayed price, including any established market convention, conveys that the price is generally available, while the seller silently uses consumer-specific data to change it. In those circumstances, nondisclosure may alter the net impression or prevent a consumer from avoiding a higher personalized price. Any required disclosure should be limited to what is necessary to correct that impression or permit meaningful avoidance.

The Proposed Statement does not identify those predicates or boundaries, but proposes a broader formulation. It presumes, across all markets, that consumers generally and reasonably expect the price they see to be the price shown to every other consumer in the same place and at the same time. From that inference, the Statement concludes that failure to disclose the fact of personalization, its basis, and the types of data used is likely deceptive or unfair, and that the Commission will deploy its enforcement resources on that premise. The Statement identifies neither the markets in which the asserted expectation exists nor the empirical consumer-perception evidence supporting it. It also provides no evidence that each element of its proposed disclosure package affects consumer choice. At the same time, the Statement recognizes that personalized pricing is customary in some markets, that its prevalence elsewhere "is not well understood," and that its consumer effects "are unclear."[4]

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[2] Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing* (Aug. 19, 2026) [hereinafter "Proposed Statement"].

[3] TechFreedom is a nonprofit, nonpartisan technology-policy organization. This comment presents TechFreedom's independent views and is not submitted on behalf of any third parties. Bilal Sayyed, the author of this comment, was previously the Director of the Office of Policy Planning, Federal Trade Commission, May 2018–January 2021.

[4] Proposed Statement at 1, 3.

Those concessions call for market-specific investigation before the Commission announces an enforcement position that reaches diverse forms of commerce.

The Proposed Statement also gives an incomplete account of the economics. The cited literature identifies some settings in which personalized pricing reduces aggregate consumer surplus, transfers surplus to firms, or places consumers who receive higher prices at a disadvantage. Those findings deserve consideration. But the same literature finds that many consumers may pay less under personalized pricing, that total economic surplus may increase even when consumer surplus declines, that personalization can intensify competition, and that the effect of data access depends on market coverage, entry costs, and whether one or all firms can personalize pricing. Some of these qualifications appear in the articles the Commission cites. Others appear in foundational and recent work the Statement does not discuss. The literature does not support a general prediction that more sophisticated personalization is less likely to benefit consumers.

The Commission should withdraw the Proposed Statement, complete its ongoing Section 6(b) study, and direct the Bureau of Economics to undertake a more comprehensive research program on personalized pricing. Existing law permits immediate action against materially false claims, misleading half-truths, and practices proved unfair under 15 U.S.C. § 45(n). Withdrawal would remove uncertainty about the status of the Proposed Statement while the Commission develops the evidence needed to determine whether market-specific guidance is warranted. If the Commission proceeds with guidance based on the present record, it should (i) eliminate any general inference that a displayed price means the same price is offered to other consumers in otherwise comparable transactions at the same time and place; (ii) require evidence of the meaning and materiality of an alleged implied claim when that meaning is not reasonably clear on the face of the claim; (iii) apply the unfairness test to an identified injury and counterfactual, including the actual costs and benefits of the proposed remedy; and (iv) distinguish among disclosure of the fact of personalization, its "basis," and the "types of data" used; test each disclosure; define its required content; and provide an administrable safe harbor. Section VIII identifies corresponding revisions.

I. The Statement Must Define the Conduct It Addresses and Account for the Commission's Prior Analysis

A. Personalized Pricing Requires a Defined Use of Consumer Data to Set Prices

The Statement's legal and economic conclusions depend on what the reference to personalized pricing means, yet the Statement supplies examples rather than an operative definition. That omission is significant. A price may differ because market demand changed, because a consumer belongs to a disclosed membership or loyalty program, because a seller

offered a targeted discount, because the consumer negotiated, because a platform ranked different products, or because a firm used observed or inferred information to estimate that consumer's willingness to pay. These practices do not communicate the same thing, present the same risk, or produce the same competitive effects. FTC staff's January 2025 *Issue Spotlight* likewise explains that surveillance pricing lacks a formal definition, is broader than personalized pricing, and may encompass dynamic pricing, steering, product selection, advertising, and data collection.[5]

The United States' 2018 submission to the OECD used a workable definition: personalized pricing occurs when firms tailor prices using observed or inferred information about individuals and may operate on an individual or group basis, whereas dynamic pricing changes with market conditions affecting supply and demand.[6] The final Statement should make the same distinction. The Commission should also distinguish a personalized base price from a targeted promotion or discount. A system that offers a lower price to a consumer predicted not to buy at the ordinary price can expand access and output; a system that raises a price above the ordinary price for a consumer facing an emergency presents a different injury and avoidability question. Treating these distinct practices as equivalent obscures the counterfactual comparison required by Section 5(n).

Steering and ranking require separate treatment as well. A platform may show consumers different products or order the same products differently without changing the price of any particular product. The European Commission's 2018 study illustrates the distinction. Its mystery-shopping exercise found personalized ranking on 61 percent of 160 websites, but observed price differences between personalized and non-personalized scenarios in only 6 percent of comparisons involving identical products; the median observed difference was below 1.6 percent and was not systematically higher or lower.[7] The study's four sectors, eight countries, specified personalization signals, and 2016–2017 study period limit extrapolation to the present U.S. market. Within those constraints, the results show why evidence of data-driven ranking or offer selection does not prove that pricing has been individualized, much less that any consumer paid a higher price because of individualization.

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[5] FTC Staff, *Issue Spotlight: The Rise of Surveillance Pricing* 1–2 (Jan. 17, 2025).

[6] United States, *Personalised Pricing in the Digital Era* ¶¶ 1, 5–7, OECD Doc. DAF/COMP/WD(2018)140 (Nov. 21, 2018), https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/personalized_pricing_note_by_the_united_states.pdf [hereinafter U.S. OECD Submission].

[7] Ipsos, London Economics & Deloitte, *Consumer Market Study on Online Market Segmentation Through Personalised Pricing/Offers in the European Union: Executive Summary* 1–2 (European Commission, June 2018) [hereinafter EU Market Study].

The Commission should therefore define the practice covered by the Statement as a seller's use of information observed, volunteered, inferred, or collected about a consumer's conduct or characteristics to set the price offered to that consumer or a group containing that consumer. The Statement should exclude dynamic pricing, ranking, and product recommendations from that definition unless such practices are used to change the price of the same product for consumers presented with otherwise comparable transactions. That boundary would make the liability analysis intelligible without deciding liability and, in unfairness cases, would align the analysis with Section 5(n).

B. The Proposed Statement Materially Changes the Commission's Account of When Silence About Personalized Pricing Becomes Actionable

The Commission should address the materially different position reflected in the United States' 2018 submission to the OECD. The submission recognized possible deception when a firm broke a material promise about personalization, possible privacy violations when data were collected or used contrary to a material promise, and possible application of antidiscrimination and credit-reporting laws. Its central consumer-protection conclusion treated different prices, standing alone, as insufficient to justify intervention. In the submission's account, enforcement ordinarily required accompanying unfair or deceptive conduct because personalized pricing by itself did not impair the accuracy of marketplace information or present the fraud and deception concerns to which consumer-protection law is directed.[8]

The 2018 submission also offered a more complete account of the economics than the Proposed Statement. It explained that the welfare effects of price discrimination are difficult to generalize, that actual personalization is unlikely to approximate perfect first-degree price discrimination, that output expansion can increase total welfare, and that personalization can intensify competition by enabling rivals to target discounts to one another's customers. It therefore concluded that personalized pricing could increase both consumer and total welfare under some conditions.[9] It also reported little evidence then of widespread individualized pricing, while recognizing that the technology existed and that consumer discomfort or strategic response might constrain adoption.[10]

The relevant change in the Proposed Statement is that it treats nondisclosure of personalization as the unfair or deceptive conduct, based on an asserted consumer expectation that a displayed price is static or widely offered. The 2018 submission ordinarily

[8] U.S. OECD Submission ¶¶ 2–4, 16–20.

[9] *Id.* ¶¶ 10–15.

[10] *Id.* ¶¶ 7–8.

looked for an accompanying misrepresentation, broken privacy promise, unlawful data practice, discrimination prohibited by another statute, or independently unfair conduct. The Commission may change its analysis as evidence and markets change. The Proposed Statement, however, identifies no intervening evidence, market development, or consumer-perception research that supports its broad cross-market inference. A reasoned explanation should acknowledge the materially different position reflected in the 2018 submission, identify what the Commission learned, and explain why that evidence supports the changed account of when silence becomes actionable.

The 2018 submission also supplies a useful limiting principle. Enforcement may rest on a false promise, misleading half-truth, unlawful data practice, discriminatory use prohibited by another statute, or a practice satisfying every element of Section 5(n). That approach preserves the Commission's authority to challenge proved violations while requiring a legal and evidentiary basis beyond the existence of different prices. The Statement needs such a limiting principle.

II. The Commission Should Preserve Enforcement Against Proved Deception and Unfairness

Existing law preserves the Commission's full authority to challenge deception. A seller that states that every buyer receives the same price, describes a higher personalized price as a loyalty discount, or makes another representation that becomes misleading without disclosure of personalization may violate Section 5 when the representation is material. The Commission's pricing cases and Guides address identified comparisons or claims: fictitious former prices, represented market prices, introductory offers, purported discounts, and claims of special selection. They do not establish that a truthful offer price, standing alone, represents the price offered to every other buyer.[11]

The same is true of unfairness. If a firm uses sensitive data to identify a consumer with an urgent need, charges more because of that need, and leaves the consumer without a practical alternative, a proved overcharge may constitute substantial monetary injury. Establishing liability would still require proof that the injury was not reasonably avoidable and was not outweighed by countervailing benefits. The Proposed Statement's hypotheticals may identify matters worth investigating, but they do not establish the price otherwise charged or the remaining statutory elements.[12]

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[11] *See* Fed. Trade Comm'n v. Colgate-Palmolive Co., 380 U.S. 374, 387 (1965); Fed. Trade Comm'n v. Standard Education Society, 302 U.S. 112, 114–15 (1937); Guides Against Deceptive Pricing, 16 C.F.R. §§ 233.1–233.5.

[12] 15 U.S.C. § 45(n); FTC Policy Statement on Unfairness, appended to *In re International Harvester Co.*, 104 F.T.C. 949, 1070–76 (1984) [hereinafter Unfairness Statement].

The Commission may challenge an express misrepresentation when substantiation is absent, an implied claim when evidence establishes it, an omission when disclosure is needed to prevent an identified representation, practice, or reasonable expectation from misleading consumers, and an unfair practice when the record satisfies Section 5(n). It may also challenge the collection, use, or disclosure of personal data contrary to a material privacy representation. Liability in each instance rests on the representation or practice and evidence supporting the governing elements. A general presumption that the displayed price is also offered to other consumers in otherwise comparable transactions at the same time and place adds nothing to that analysis.

III. The Proposed Statement Does Not Establish a General Deception Theory

A. A Displayed Price Does Not Invariably Represent That Every Contemporaneous Buyer Receives the Same Price

The Commission's Policy Statement on Deception (the "Deception Statement") requires a representation, omission, or practice likely to mislead a consumer acting reasonably in the circumstances, and the representation, omission, or practice must be material.[13] An implied claim may sometimes be determined from the representation itself. *Kraft* accordingly permits the Commission to rely on its own examination when the alleged implication is reasonably clear from the face of an advertisement. But neither *Kraft* nor the Deception Statement permits the Commission to presume that implication across every retail shelf and product page. When the meaning is not facially clear, consumer testimony, copy tests, surveys, or other extrinsic evidence may be necessary to establish meaning.[14]

A displayed price can communicate the character of the offer. A conventional shelf tag or standardized product listing may, in context, convey that the merchant is making a generally available offer. The amount can be accurate for the recipient while the overall presentation creates a misleading impression about how the seller is offering the product. That theory fits the Deception Statement when the language, format, or market convention supplies the contextual predicate. Those predicates vary across markets and transaction formats.

The Proposed Statement identifies no express representation common to the transactions it covers. Instead, it presumes that a price shown to one consumer implies that the same price is shown to any other consumer in the same place and at the same time. That presumption may be reasonable in a particular market, particularly when a shelf label or advertisement

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[13] FTC Policy Statement on Deception, appended to *In re Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174–84 (1984) [hereinafter Deception Statement].

[14] Kraft, Inc. v. Fed. Trade Comm'n, 970 F.2d 311, 318–21 (7th Cir. 1992); ECM BioFilms, Inc. v. Fed. Trade Comm'n, 851 F.3d 599, 610–11 (6th Cir. 2017) (consumer surveys are a valid form of extrinsic evidence).

uses language suggesting a public or uniform price. It is not self-evident across online retail, negotiated services, subscriptions, travel, platform markets, personalized promotions, loyalty programs, and other settings in which identity, purchase history, location, time, membership, or channel may affect the offer. The Statement's own recognition that personalized pricing is "a long-established norm in some markets" confirms that reasonable meaning depends on market context.[15]

The authorities cited by the Commission do not bridge this gap. *Colgate-Palmolive* involved a false demonstration.[16] *Standard Education Society* involved false statements that buyers had been specially selected to receive free books and were receiving a reduced price.[17] *Lorillard* involved affirmative advertising claims that became misleading because material qualifying facts were withheld.[18] *FTC v. Cyberspace.com LLC* held that truthful fine print did not cure a solicitation whose format and presentation created a misleading net impression.[19] Each case involved affirmative words, presentation, or conduct that supplied the misleading message. Their holdings supply no general rule that a price alone represents price parity.

The Deception Statement is careful on this point. An omission is deceptive when qualifying information is necessary to prevent an identified representation, practice, or reasonable expectation from misleading consumers. It also states that not every omission is deceptive merely because the omitted information would benefit consumers.[20] The Proposed Statement elides that limiting principle when it treats silence about personalization as likely unlawful without first identifying the message conveyed in the circumstances. A final statement should recognize that a displayed price may support an implied parity claim on the right facts, but does not invariably do so.

B. The Commission's Omission Precedents Require a Representation or Circumstances That Give Silence a Misleading Meaning

The distinction between a misleading omission and silence is part of the Commission's own doctrine. In *International Harvester*, the Commission explained that silence may be deceptive when circumstances make it an implied representation or when omitted information is necessary to correct a misleading express statement. It separately described a "pure omission" as silence about a subject in circumstances that give the silence no particular meaning. The Commission reversed the initial decision's deception holding because the

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[15] Proposed Statement at 1–3.

[16] *Colgate-Palmolive*, 380 U.S. at 386–91.

[17] *Standard Education Society*, 302 U.S. at 114–16.

[18] P. Lorillard Co. v. Fed. Trade Comm'n, 186 F.2d 52, 58 (4th Cir. 1950).

[19] Fed. Trade Comm'n v. Cyberspace.com LLC, 453 F.3d 1196, 1200–01 (9th Cir. 2006).

[20] Deception Statement at 175–78 & n.4.

undisclosed safety risk did not make the tractors unfit for their intended use, then affirmed liability under unfairness after examining injury, avoidability, and countervailing benefits.[21]

The Commission's reason for assigning pure omissions to unfairness bears directly on the Proposed Statement. *International Harvester* described deception as a streamlined inquiry justified by the conclusion that deception offers no countervailing benefit. Pure silence carries no comparable premise. Consumers can hold erroneous beliefs about an unlimited number of facts, and requiring sellers to correct all of them would be costly, could overwhelm advertising, and could reduce the information sellers provide voluntarily. The Commission therefore required the fuller unfairness analysis "to ensure that such an analysis is made."[22] That analysis weighs the benefit of disclosure against its costs rather than assuming that more disclosure necessarily produces a net gain.

A posted price may carry an established market meaning, so silence about personalization is not always pure. A shelf price accompanied by "same low price for everyone," an account page labeled "your loyalty discount," a privacy promise, or a proved market convention may supply the necessary meaning. The Commission must identify the words, conduct, or convention on which the inference depends. The Proposed Statement instead assumes a uniformity expectation across broad categories of commerce without identifying where the convention exists or supplying empirical evidence that consumers draw the asserted inference.

Tomasella v. Nestlé USA, Inc. provides a supporting analogy under Massachusetts law informed by Commission doctrine. The First Circuit rejected a deception theory based on a manufacturer's failure to disclose labor practices in its supply chain because offering the product for sale conveyed no representation about those practices.[23] The decision illustrates the need to identify a communication, practice, or circumstance capable of conveying the proposition said to be false. Any further implication about the prices offered to comparable consumers requires a distinct basis in the transaction or market.

The Eleventh Circuit's decision in *FTC v. Corpay, Inc.* is the Commission's strongest recent authority concerning concealed price terms and disclosure remedies. The court affirmed liability where a fuel-card company promised savings, control, and transparency, claimed

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[21] *In re International Harvester Co.*, 104 F.T.C. 949, 1056–64, 1085–86 (1984). The Commission defined a pure omission as a subject on which the seller said nothing in circumstances that gave the silence no particular meaning. *Id.* at 1059.

[22] *Id.* at 1057, 1059–64, 1066–67 & n.58, 1085–86. The Commission also observed that requiring disclosure of one fact may discourage voluntary disclosure of others and produce a net reduction in information. *Id.* at 1067 n.58.

[23] Tomasella v. Nestlé USA, Inc., 962 F.3d 60, 72–75 (1st Cir. 2020).

per-gallon discounts and no transaction fees, and then imposed fees through automatic enrollment, hard-to-find terms, and billing practices that obscured the charges.[24] The record included advertisements, internal documents, complaints, eight company surveys, and an FTC telephone survey finding that only 7.02 percent of affected customers had been informed of all challenged fees before being charged. The court described the evidence against the company as overwhelming.[25]

Corpay confirms that Section 5 reaches concealed price terms and that a developed record may justify unavoidable disclosures and separate assent. Its factual predicate was defined and substantial: the nondisclosures contradicted affirmative promises; the company added charges to customer accounts; customers were automatically enrolled; internal evidence showed intentional concealment; and complaints and surveys showed confusion and surprise. The court also held that all three statutory unfairness factors were mandatory and sustained the injunction in light of that record.[26] A personalized-pricing analogue could support enforcement when comparable proof establishes deception or unfairness. *Corpay* supplies no basis for treating *every* undisclosed use of personal data to set a price as a false parity claim.

Corpay also upheld provisions requiring unavoidable disclosures and separate assent as prospective relief tailored to proved violations. The court rejected the argument that the FTC had failed to show the provisions would cause more consumers to read the disclosures. It reasoned that consumers who wanted to understand the fees should be able to do so and that Corpay should not be allowed to deceive them.[27] The court upheld tailored remedial disclosures without proof that every affected consumer would read them. It did so after liability had been established on a developed record. The questions here concern whether the law requires disclosure, what the notice must say, and the likely effects and costs of a prospective three-part policy across markets.

C. The Proposed Statement Supplies No Empirical Consumer-Perception Evidence for the Asserted Parity Implication

No consumer survey is a legal prerequisite to every implied-claim case. *Kraft* permits the Commission to infer a claim from the face and context of a communication when the implication is reasonably clear. The asserted cross-market parity implication, however, is empirical and disputed. The Commission offers intuition and examples, but no survey, copy

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[24] Fed. Trade Comm'n v. Corpay, Inc., 164 F.4th 807, 813–28 (11th Cir. 2026).

[25] *Id.* at 813–28. The court noted the company's methodological objections to the FTC survey but held that the other evidence independently established the challenged nondisclosures.

[26] *Id.* at 838–42.

[27] *Corpay*, No. 23-12539, slip op. at 65–76 (11th Cir. Jan. 6, 2026).

test, consumer testimony, complaint data, field experiment, or market study measuring what consumers infer from a price display. Evidence that consumers dislike paying more than another buyer, regard some forms of personalization as unfair, or do not understand commercial data collection does not answer the relevant question. Awareness, fairness, surprise, and the meaning conveyed by a particular price are different propositions.

Existing work shows that the relevant propositions can be measured empirically. The European Commission's study combined a survey of 23,050 consumers, mystery shopping at 160 websites, and a behavioral experiment. Forty-four percent of surveyed consumers reported at least some understanding of personalized pricing, but fewer than 20 percent of experimental participants correctly identified price personalization when they received a lower price based on past search history. More transparent communication produced little change in participants' ability to identify personalized pricing, even though it improved recognition of personalized ranking.[28] The study found concerns and limited understanding; it did not ask whether an unadorned price communicated contemporaneous parity. Recognition after participants were exposed to a personalized-pricing scenario is distinct from an ex ante expectation that an unqualified price conveys parity. Its value here is methodological. The Commission could test the precise inference on which its Statement rests, and should not substitute an assertion for that evidence.

Audit studies likewise address prevalence or operation, not the meaning consumers take from a price. Hannak and coauthors used controlled accounts and technical measurements to identify price discrimination and steering on selected e-commerce sites.[29] Such work can establish that offers differed with user characteristics under defined test conditions. It cannot establish that ordinary consumers saw the challenged interface as a promise that offers would be identical. Evidence of an undisclosed practice and evidence of deception are related only after the Commission identifies what the practice communicated.

The pricing literature does not supply the missing evidence. DellaVigna and Gentzkow find that large U.S. food, drugstore, and mass-merchandise chains generally maintain uniform prices across stores, notwithstanding substantial geographic differences in demand.[30] That study is relevant evidence of firm practice in those sectors. It does not measure consumer expectations, and it does not show that uniformity prevails throughout the markets covered by the Proposed Statement. Its welfare results also complicate the inference the Commission

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[28] EU Market Study at 1–4.

[29] Aniko Hannak, Gary Soeller, David Lazer, Alan Mislove & Christo Wilson, *Measuring Price Discrimination and Steering on E-Commerce Web Sites*, in *Proceedings of the 2014 Internet Measurement Conference* 305, 305–18 (2014).

[30] Stefano DellaVigna & Matthew Gentzkow, *Uniform Pricing in U.S. Retail Chains*, 134 Q.J. Econ. 2011, 2011–15, 2038–45 (2019).

draws from uniform pricing: the authors estimate that uniform pricing causes chains to sacrifice profits and can raise prices in poorer locations relative to richer ones. Observed uniformity is therefore neither a consumer-perception study nor evidence that departures from uniformity generally harm consumers. FTC staff later observed that posted prices historically were generally the same for most potential buyers. That observation may justify investigation into consumer expectations. It does not measure consumer perception or establish what a price display communicates across the many markets covered by the Proposed Statement.[31]

The Commission's own market inquiry counsels against this presumption. In January 2025, Commission staff described the released surveillance-pricing materials as "initial findings," stated that "much more work remains to be done," did not assess whether identified practices were unlawful, and noted limitations in the information collected. Commissioner Ferguson, joined by Commissioner Holyoak, called for a final, fact-based report, including more definitive work on price effects.[32] The Proposed Statement now concedes that the extent of personalized pricing is still not well understood. The Commission should not announce a general conclusion about consumer meaning before completing the inquiry it began.

A presumption covering broad and diverse markets requires a commensurate basis. Market practice, complaint evidence, copy tests, surveys, field evidence, and adjudicative records are possible forms of support. The final statement should direct staff to assess the language, format, market convention, purchasing context, and relevant consumer evidence in each matter.

D. Materiality Must Be Established Separately for the Fact, Basis, and Data-Input Disclosures

The fact that a price is personalized may be material in many settings. Knowledge that a seller is estimating an individual consumer's willingness to pay can affect search, channel choice, willingness to provide or correct data, use of privacy tools, timing, and the decision to transact. The Deception Statement asks whether information is likely to affect the conduct or decision of reasonable consumers; it does not require proof that every consumer would act differently.[33] This principle gives the Commission a credible basis to investigate a

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[31] FTC Staff, *Issue Spotlight: The Rise of Surveillance Pricing* 1–2 (Jan. 17, 2025).

[32] FTC Staff, *FTC Surveillance Pricing 6(b) Study: Research Summaries; A Staff Perspective* 1–3, 9–10 (Jan. 2025); Dissenting Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, *Surveillance Pricing 6(b) Staff Research Summaries*, Matter No. P246202, at 1–2 (Jan. 17, 2025).

[33] Deception Statement at 182–83 & n.48.

threshold omission when the transaction conveys a misleading impression about the character of the offer.

The three disclosures remain distinct. A notice that the quoted price has been personalized may affect whether a consumer compares prices or proceeds with the transaction. A statement of the "basis" may be material if it identifies an error the consumer can correct or a behavior the consumer can change. A list of "types of data" may affect privacy choices, but may do little to explain whether the displayed price is higher, lower, or unchanged, particularly when a model uses many interacting variables. The Proposed Statement presents no evidence that consumers would act differently in response to each disclosure, and it does not define the level of detail that "basis" or "types of data" requires.

A purported loyalty discount that is actually a higher price based on estimated disposable income or purchases from other firms may involve a material half-truth because the seller has supplied an affirmative explanation that is false. That example does not establish that every seller must provide an explanation when it supplies no explanation at all. A final statement should distinguish false descriptions and misleading partial disclosures from silence, and it should analyze the materiality of each additional disclosure on its own record.

E. The Deception Statement Requires Attention to Market Context and Information Incentives

The Deception Statement recognizes that when a product is inexpensive, frequently purchased, and readily evaluated, market incentives may constrain deception; it therefore directs the Commission to examine such matters closely before bringing a case.[34] Personalized pricing spans products that differ on every relevant dimension. Consumers may readily compare repeated online purchases in a competitive market, yet find a one-time, urgent purchase difficult to evaluate. A platform may show competing offers on one screen, while a seller in another market may possess information and market power that make comparison ineffective.

The Proposed Statement largely treats these circumstances as variations on a single nondisclosure. They produce materially different consumer interpretations and choices. The ability to compare, the cost of search, the frequency of purchase, the availability of substitutes, the consumer's urgency, and the prevalence of personalization bear directly on reasonable interpretation, materiality, and injury. The final statement should apply those variables in place of a general expectation.

[34] *Id.* at 181–82.

IV. The Proposed Statement Does Not Satisfy the Statutory Unfairness Test

The Statement correctly recites Section 5(n) and identifies three plausible mechanisms: a concealed higher price may injure a consumer, concealment may impede avoidance, and disclosure may preserve benefits from personalization. As prospective guidance, the Statement need not adjudicate any particular violation. Its announced enforcement conclusion nevertheless outruns its analysis because the Statement gives no basis for expecting all three statutory elements to be satisfied across the markets it covers. *Corpay* emphasized that each factor is mandatory and applied the statute to a developed record of charged fees, intentional concealment, customer surprise, and no identified offsetting benefit.[35]

A. Substantial Injury Requires an Identified Benchmark and a Causal Showing

Section 5(n) permits an unfairness finding only when an act or practice causes or is likely to cause substantial consumer injury, the injury is not reasonably avoidable, and countervailing benefits to consumers or competition do not outweigh it.[36] The Commission's Unfairness Statement ordinarily requires monetary or health-and-safety injury, excludes trivial or speculative harms, and treats emotional distress and subjective offense as insufficient in ordinary cases.[37] Price-unfairness perceptions may bear on consumer response or materiality. They are not themselves the substantial injury required by the statute.

A consumer who pays more because a seller inferred their unusually high willingness to pay can suffer a direct monetary loss. The relevant comparison, however, must be identified and proved. A personalized price may be compared with the firm's historical price, a contemporaneous price to another consumer, an optimized uniform price, a price under a different data regime, or the price in a market in which the firm declines to serve some consumers. Those counterfactuals need not produce the same result. A difference between two contemporaneous prices does not, standing alone, establish that the higher-price consumer would have received the lower price in a world without personalization.

The Statement's examples also move among different alleged injuries. A higher price is monetary injury. Collection or use of sensitive data may present a privacy injury. An inaccurate inference may cause a pricing error. The exploitation of an emergency may constrain choice in a way that affects avoidability and the gravity of harm. Those theories may overlap in a case, but they are not interchangeable. A data practice may violate a privacy

[35] *Corpay*, 164 F.4th at 838–42.

[36] 15 U.S.C. § 45(n).

[37] Unfairness Statement at 1073–76.

promise even if it lowers the consumer's price. A higher price may result from accurate information collected consistently with a privacy promise. The Commission should identify the act or practice challenged and the injury it causes rather than use concern about one practice to complete the elements of another.

The leading empirical studies make the benchmark problem concrete. Dubé and Misra find lower aggregate consumer surplus under personalized pricing than under an optimized uniform price in the market they study, but also find that more than sixty percent of customers receive a lower price under personalization.[38] Buchholz and coauthors estimate a reduction in consumer surplus but an increase in total surplus in auctioned cab rides, with gains to drivers and the platform.[39] Those results leave individual overcharge claims available and demonstrate why the Commission must identify the conduct, consumer, benchmark, and causal mechanism before declaring injury.

B. Reasonable Avoidability Is Practical and Market-Specific

Opaque or inaccessible data used to identify urgency, lock-in, high search costs, weak alternatives, mobility constraints, or a predicted unwillingness to compare present a serious avoidability concern. Concealment in those circumstances may prevent a consumer from knowing that comparison is especially important, changing an input, using another channel, or reaching another seller. The Statement's examples involving medical urgency, inability to leave home, and the absence of competing applications can support investigation and, on proof, enforcement.

Reasonable avoidability remains practical and market-specific. It depends on whether consumers had practical notice, meaningful alternatives, and an opportunity to choose before injury. Price comparison, repeat purchasing, multiple suppliers, standardized offers, and effective opt-outs may matter in one market; urgency, switching costs, common adoption, or unique data advantages may defeat avoidance in another. Virtual private networks, private-browsing modes, and the absence of a disclosure are facts whose significance depends on the transaction. The Proposed Statement supplies no basis for treating examples involving the most severe constraints as the ordinary case. The final statement should require transaction-specific evidence.

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[38] Jean-Pierre Dubé & Sanjog Misra, *Personalized Pricing and Consumer Welfare*, 131 J. POL. ECON. 131, 131–38, 167–72, 178–79 (2023).

[39] Nicholas Buchholz, Laura Doval, Jakub Kastl, Filip Matějka & Tobias Salz, *Personalized Pricing and the Value of Time: Evidence from Auctioned Cab Rides*, 93 ECONOMETRICA 929, 929–32, 951–54 (2025).

C. Assessing Countervailing Benefits Requires Comparing the Practice and Any Proposed Remedy

The Unfairness Statement directs the Commission to weigh consumer and competitive benefits against injury. That inquiry includes benefits produced by the challenged practice and the costs of the remedy, including added paperwork, burdens on the flow of information, and reduced innovation or capital formation.[40] Disclosure may be less restrictive than prohibiting personalization, and a tailored notice may preserve valuable uses. The Commission therefore needs evidence permitting those effects to be assessed before announcing a general enforcement position. The Proposed Statement asserts that "[a]ny benefits to consumers or competition from personalized pricing may also be realized without concealing the fact and nature" of the practice,[41] but cites no evidence that disclosure would preserve those benefits.

Personalized pricing can lower prices for consumers with lower willingness to pay, expand output, intensify rivalry, and improve allocation in some markets. It can also transfer surplus to firms, raise prices for particular consumers, or impede entry when data access is asymmetric. The Commission should assess which effects may be present and how the proposed remedy would alter them before announcing a general position. The magnitude and incidence of those costs remain unresolved empirical questions; Section VI addresses the evidence bearing on disclosure design.

The economic literature confirms the need for that analysis. Rhodes and Zhou show that the welfare effect of personalized pricing changes with market coverage and the distribution of pricing capability across firms.[42] The available Esteves and Carballo-Cruz analyses show that personalized pricing may intensify competition when entry costs are low, while exclusive data may deter entry when entry costs are intermediate; their published work further shows that mandatory information sharing can promote entry under some conditions and cause an incumbent to reduce data acquisition and deter entry under others.[43] Cong and Matsushima likewise show, in a different two-market model, that data-erasure rights may intensify competition in data collection while producing higher uniform prices and lower consumer

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[40] Unfairness Statement at 1073–76.

[41] Proposed Statement at 5.

[42] Andrew Rhodes & Jidong Zhou, *Personalized Pricing and Competition*, 114 Am. Econ. Rev. 2141, 2141–43, 2160–62 (2024).

[43] Rosa-Branca Esteves & Francisco Carballo-Cruz, *Access to Data for Personalized Pricing: Can It Raise Entry Barriers and Abuse of Dominance Concerns?*, NIPE Working Paper No. 5/2021, at 1–2 (Mar. 2021); Rosa-Branca Esteves & Francisco Carballo-Cruz, *Can Data Openness Unlock Competition When an Incumbent Has Exclusive Data Access for Personalized Pricing?*, 64 Info. Econ. & Pol'y 101046, at 1–3 (2023).

surplus in an application market.[44] These models establish that information remedies can alter equilibrium behavior and that the direction of the effect depends on market conditions.

D. Sector-Specific and State Statutes Require Defined Coverage and Tailored Remedies

The Proposed Statement invokes credit and insurance laws as evidence supporting its approach. Those regimes demonstrate that legislatures and regulators can require tailored explanations when individualized information affects specified high-stakes transactions. They do not establish a general public policy requiring every seller to disclose the basis and data inputs for every personalized price, and Section 5(n) provides that public policy may not serve as the primary basis for an unfairness determination.[45]

The Proposed Statement's text mischaracterizes the Fair Credit Reporting Act, claiming it requires notice of "the specific basis" for an adverse action.[46] In fact, Section 1681m(a) requires notice of the adverse action, the identity of the consumer reporting agency, a statement that the agency did not make the decision and cannot provide the specific reasons for it, and notice of the consumer's rights to a free report and to dispute its accuracy. The Statement's footnote correctly describes the report and dispute rights, but does not support the sentence in the text. A creditor's duty to give specific reasons for an adverse credit decision generally arises under the Equal Credit Opportunity Act and Regulation B. Regulation V separately governs risk-based pricing notices.[47] This error matters because the Statement presents the FCRA as support for its proposed disclosure of the "basis" of a personalized price.

State insurance provisions are similarly specific. Virginia has separate provisions governing adverse insurance actions based on credit information in property and tenant insurance and in motor-vehicle insurance. Those provisions define the covered decision and require disclosure of primary factors or a means of requesting them.[48] They support disclosure where the legislature has identified the data, adverse comparison, regulated transaction, and corrective use. They do not establish that the same notice is useful for an online retailer's high-dimensional demand model. The Proposed Statement cites Virginia Code § 38.2-602

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[44] Jiajia Cong & Noriaki Matsushima, *The Effects of Personal Data Management on Competition and Welfare*, Management Science, advance online publication, doi:10.1287/mnsc.2024.08024 (2026).

[45] 15 U.S.C. § 45(n); *Unfairness Statement* at 1075–76.

[46] Proposed Statement at 5.

[47] Fair Credit Reporting Act § 615(a), 15 U.S.C. § 1681m(a), especially § 1681m(a)(3)(B); Equal Credit Opportunity Act § 701(d), 15 U.S.C. § 1691(d); 12 C.F.R. § 1002.9 (Regulation B); 12 C.F.R. § 1022.73 (Regulation V).

[48] Va. Code Ann. §§ 38.2-2126, 38.2-2234.

twice, but the operative provisions are §§ 38.2-2126 and 38.2-2234. The final Statement should correct the citation and should not treat these bounded statutes as evidence of a general marketplace norm.

The sectoral regimes also expose an administrability problem in the Statement's proposed "basis" disclosure. Credit and insurance notices commonly use principal factors or reason codes tied to a defined adverse action. The Proposed Statement does not say whether "basis" means the decisive variables, the highest-weight variables, a causal explanation, a description of the model's objective, or a narrative comparison with the price another consumer received. Those answers can differ. Before the Commission treats omission of the basis as likely unlawful, it should define what an accurate and useful explanation requires.

Maryland and Connecticut give the Commission meaningful support for the proposition that *some* uses of personal data in pricing warrant a point-of-sale disclosure or prohibition. Their statutes also show how much specification is needed before that conclusion becomes administrable.

Maryland separates a food-sector prohibition from a general disclosure rule. Section 13-321 prohibits covered food retailers and third-party food-delivery services from using defined dynamic pricing or surveillance personal data to set a higher price for tax-exempt food, subject to specified exclusions. Section 13-322 separately requires other merchants that communicate a price for consumer goods or services set through dynamic pricing or personal data to provide the sentence: "THIS PRICE WAS SET BY AN ALGORITHM OR BY USING YOUR PERSONAL DATA." It contains separate exceptions for insurance conduct, actors governed by § 13-321, certain financial institutions, and lower employee prices.[49]

Connecticut likewise separates a retail prohibition from a more general online disclosure. Retail sellers and third-party delivery services generally may not engage in surveillance pricing, subject to defined categories for discounts, justifiable cost, location, or time differences, broadly available group or loyalty prices, and error correction. Other persons doing business in the state must disclose an online surveillance price that is not a discount or bona fide market price with the statement: "THIS PRICE WAS INCREASED USING YOUR PERSONAL DATA."[50]

These statutes do not resolve the proper interpretation of Section 5, and they do not establish what consumers infer from a price in markets outside their terms. Their choices are nevertheless instructive. Both legislatures distinguished higher prices from discounts

[49] 2026 Md. Laws ch. 154, §§ 1–2, codified at Md. Code Ann., Com. Law §§ 13-321(a)–(b), 13-322(b)–(c) (effective Oct. 1, 2026).

[50] 2026 Conn. Pub. Acts No. 26-130, § 11 (effective July 1, 2027).

and routine commercial variation, defined the covered actors and practices, and chose short fact-of-personalization notices. Neither statute makes every seller provide an account of the "basis" of a price and all "types of data" used. The Commission should not derive a broader federal disclosure regime from narrower legislative judgments.

V. The Economic Research Shows Conditional and Nonmonotonic Effects

The economic literature gives the Commission substantial grounds for investigation. Dubé and Misra find a reduction in aggregate consumer surplus in the market they study. Rhodes and Zhou identify conditions under which asymmetric access to personalization can harm consumers. Bó, Chen, and Hakimov show that consumers may struggle to respond strategically when a pricing model uses information that appears unrelated to the product. The Proposed Statement is justified in taking those findings seriously. Its synthesis is incomplete, however. The cited literature produces conditional and sometimes nonmonotonic results rather than a general rule that greater sophistication makes consumer benefit less likely. Several of the omitted qualifications appear in the same papers the Statement cites for its directional claim. The Commission itself recognizes that the extent of personalized pricing is not well understood, its effects are unclear, and real-world firms face competition and imperfect information.[51]

A. The Principal Empirical Papers Identify Consumer Harm and Consumer Benefit

Dubé and Misra provide unusually important field evidence. In their business-software setting, the firm had substantial unexercised pricing power; optimization of the uniform price increased profits, and personalized pricing produced a further profit increase. Aggregate consumer surplus fell relative to the optimized uniform-price benchmark. Those results support concern about surplus extraction. More than sixty percent of customers nevertheless paid less under personalized pricing. Across 62 feature subsets, consumer surplus remained below uniform pricing and did not vary monotonically with the number of features; some restrictions reduced it further. The fitted relationship between welfare and feature count in Figure 12 slopes downward under linearly aggregated, inequality-neutral consumer surplus and upward under the inequality-averse measures.[52] The first measure supports the Commission's concern. The full analysis supplies no general rule that more granular data necessarily causes greater consumer harm.

Buchholz and coauthors separate platform market power from the use of individual data. Relative to the competitive-auction baseline, centralized uniform pricing reduced consumer

[51] Proposed Statement at 3 & nn.8–13.

[52] Dubé & Misra, *Personalized Pricing and Consumer Welfare*, at 131–38, 167–72, 178–79.

surplus by 36 percent. Relative to that uniform-pricing counterfactual, personalization reduced consumer surplus by 2.5 percent, while 62.5 percent of consumers benefited, average prices fell slightly, and the market expanded by up to 7.6 percent. Overall surplus increased by 5.2 percent in the principal specification.[53] Most of the loss from the competitive baseline arose when the platform centralized pricing; personalization produced a smaller additional aggregate loss with heterogeneous effects. The consumer-surplus loss matters under Section 5. The provider gains, market expansion, and total-surplus gain matter to the countervailing-benefits inquiry.

Shiller shows that browsing data can materially increase a seller's ability to estimate reservation prices, and therefore supports the Commission's concern that extensive tracking can transfer surplus to a seller. In the paper's simulations, personalizing markups with demographics alone increased profits by 0.25 percent, while using the full data set, including web-browsing behavior, increased profits by 12.99 percent. Personalized markups reduced aggregate consumer surplus by 0.50 percent even though most consumers received lower prices and were slightly better off. Forty-two percent of the profit gain came from the 0.5 percent of consumers predicted to have the highest valuations.[54] The concentration supports the Commission's distributional concern. The small aggregate loss, majority gain, and model-based 2006 Netflix setting limit broader inference.

These studies require precision about the asserted harm. The Commission should identify whether its concern is aggregate consumer surplus, injury to higher-price consumers, distribution, sensitive-data use, market power, or some combination of these mechanisms. It should then connect the identified concern to evidence and to the elements of Section 5.

B. Competition, Market Coverage, Data Distribution, and Entry Can Change the Welfare Effect

Rhodes and Zhou model competing firms and make market coverage central. When coverage is high, personalized pricing can intensify competition and benefit consumers while harming firms; when coverage is low, the effects can reverse. The authors also find that consumers may be worse off when only some firms can personalize than when all or none can do so.[55] The Proposed Statement cites the asymmetric-adoption result but does not give equal attention to the high-coverage result. Market conditions and the distribution of information determine the result in the article's model.

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[53] Buchholz et al., *Personalized Pricing and the Value of Time*, at 929–33, 951–54.

[54] Benjamin Reed Shiller, *Approximating Purchase Propensities and Reservation Prices from Broad Consumer Tracking*, 61 INT'L ECON. REV. 847, 847–50, 863–66 (2020).

[55] Rhodes & Zhou, *Personalized Pricing and Competition*, at 2141–43, 2160–62.

Kehoe, Larsen, and Pastorino provide an especially direct illustration because the Proposed Statement cites their paper for the feasibility of sophisticated personalization. The paper uses data on Apple and Samsung purchases to estimate a uniform-pricing environment, then simulates first-degree discrimination by competing firms. In that counterfactual, average consumer surplus rises by about $108 per consumer per year, firm profits fall by the same amount, and total welfare changes little. Consumers with a strong match to only one brand can lose, while consumers over whom the firms compete gain.[56] The exercise is a model-based simulation, not evidence that firms in the data actually personalized prices. It nevertheless shows why feasibility cannot be separated from competition and why the same source cannot support an unqualified directional claim.

Esteves and Carballo-Cruz likewise make entry conditions decisive. Their 2021 working paper finds that when entry costs are sufficiently low, an incumbent's ability to personalize does not exclude entry, intensifies competition, and raises consumer surplus relative to nondiscrimination; with intermediate entry costs, exclusive data may become an entry barrier and reduce consumer welfare.[57] The 2023 published analysis adds an important policy qualification: mandatory sharing can foster entry in some markets, but if an incumbent anticipates the obligation it may strategically reduce data acquisition and service to deter entry, harming consumers and total welfare.[58] The Commission cites a May 2025 working-paper version. Whatever revisions that version contains, the authors' published analysis makes entry costs, data asymmetry, and strategic response central to the welfare result.

The foundational analysis by Thisse and Vives is more direct. In their spatial-competition model, the ability to price discriminate intensifies rivalry, makes every interior consumer better off than under uniform pricing, and reduces firms' profits.[59] The model's assumptions limit its descriptive reach, and the paper itself cautions against broad policy conclusions. The paper nevertheless supplies a counterexample to a universal inference because personalized pricing benefits consumers by intensifying competition under the model's conditions.

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[56] Patrick J. Kehoe, Bradley J. Larsen & Elena Pastorino, *Dynamic Competition in the Era of Big Data* 34, 54 tbl. 2 (Nov. 3, 2020) (unpublished manuscript presented at the FTC Microeconomics Conference). The paper estimates behavior under observed uniform prices and simulates the personalized-pricing counterfactual; it also finds losses for consumers whose tastes make them comparatively captive.

[57] Esteves & Carballo-Cruz, *Access to Data for Personalized Pricing*, at 1–2.

[58] Esteves & Carballo-Cruz, *Can Data Openness Unlock Competition*, at 1–3. The Proposed Statement cites a May 2025 NIPE working paper. The publicly identified March 2021 paper and 2023 published companion contain the results discussed here; the Commission should place the cited version in the docket if it differs materially.

[59] Jacques-François Thisse & Xavier Vives, *On the Strategic Choice of Spatial Price Policy*, 78 AM. ECON. REV. 122, 132–34 (1988).

Broader price-discrimination theory supplies the same warning from different directions. Bergemann, Brooks, and Morris show that the information used to segment a monopoly market can generate a wide range of allocations of consumer and producer surplus subject to participation, profit, and efficiency constraints.[60] Cowan identifies demand conditions under which third-degree price discrimination raises output, total welfare, and consumer surplus.[61] Stole concludes that robust theoretical predictions are rare and that profit and welfare results typically depend on consumer heterogeneity, the goods sold, and the available instruments of discrimination. He also cautions against applying monopoly predictions to imperfectly competitive markets.[62] Corts likewise models conditions in which discrimination intensifies competition and lowers prices for all consumers, leading firms to prefer commitments such as everyday-low-price or no-haggle policies, which may soften competition and raise profits.[63] The Corts result is theoretical and depends on the model's oligopoly conditions, and Corts acknowledges that such policies also have ordinary efficiency justifications, including smoother production, fewer stockouts, and consumer dislike of bargaining. These sources provide no direct evidence about current online retail, but they make market coverage, demand curvature, information structure, strategic commitment, entry, and rivalry central to the predicted effect.

Jin, Wagman, and Zhong catalog possible harms from surveillance pricing, including surplus extraction, privacy loss, and exploitation of vulnerable consumers. The Proposed Statement cites their discussion of fine-grained information and market power for the claim that greater sophistication makes consumer benefit less likely. The article also states that welfare depends on market structure and data symmetry, that broad intervention can strengthen incumbents, and that effective policy may require "surgical precision."[64] Cong and Matsushima's model of data management finds nonmonotonic welfare effects from data rights across linked markets.[65] The Proposed Statement's general claim about increasing sophistication goes beyond this evidence, which supports intervention tied to a proved mechanism.

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[60] Dirk Bergemann, Benjamin Brooks & Stephen Morris, *The Limits of Price Discrimination*, 105 AM. ECON. REV. 921, 921–57 (2015).

[61] Simon Cowan, *Welfare-Increasing Third-Degree Price Discrimination*, 47 RAND J. ECON. 326, 326–40 (2016).

[62] Lars A. Stole, *Price Discrimination and Competition*, in 3 HANDBOOK OF INDUSTRIAL ORGANIZATION 2221, 2292–93 (Mark Armstrong & Robert Porter eds., 2007).

[63] Kenneth S. Corts, *Third-Degree Price Discrimination in Oligopoly: All-Out Competition and Strategic Commitment*, 29 RAND J. ECON. 306, 306–08, 319–23 (1998).

[64] Ginger Zhe Jin, Liad Wagman & Mengyi Zhong, *Surveillance Pricing: A Cautionary Summary of Potential Harms and Solutions*, 1 CPI ANTITRUST CHRON. 17, 17–25 (July 2025).

[65] Cong & Matsushima, *The Effects of Personal Data Management on Competition and Welfare*.

C. The Consumer Response Literature Supports Investigation Without Establishing a Parity Implication

The Commission cites research on perceived fairness and consumer response. Priester, Robbert, and Roth report lower mean fairness ratings for individual than segment prices, but the individual-versus-segment effect was marginal in both studies ($p = .084$ and $p = .085$). A stronger result concerned data type: location-based pricing was rated less fair than purchase-history-based pricing ($p = .004$).[66] That distinction supports separate materiality and disclosure-design analysis for the fact of personalization, its basis, and the data used. Grewal and coauthors find that buyer identification and purchase timing can affect trust, fairness perceptions, and repurchase intentions, with explanations moderating some responses.[67] Hufnagel and coauthors find more negative reactions among disadvantaged consumers and, in some scenarios, concerns even among favored consumers.[68] Xia, Monroe, and Cox provide a conceptual framework in which unfavorable comparisons can produce perceptions of price unfairness and behavioral responses.[69]

These materials strengthen the case for investigating personalized pricing, particularly when consumers learn that they paid more. They do not test what a consumer infers from an unadorned shelf label or product page, whether a fact-of-personalization notice changes purchase behavior, or whether consumers can use a description of model inputs. Most expose participants to a comparison or disclose the pricing practice. The Proposed Statement treats evidence about reaction after disclosure as evidence that nondisclosure conveyed a parity claim before disclosure. That inference has not been established.

D. Information and Disclosure Rules Can Change Pricing Behavior and Competitive Outcomes

The Proposed Statement's treatment of disclosure omits economic work in which information rules change the pricing equilibrium. Ali, Lewis, and Vasserman study regimes in which consumers control what information they disclose to sellers. Their model shows that consumer control can improve consumer welfare relative both to uniform pricing and to perfect personalization: consumers may disclose information to intensify competition or

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[66] Anna Priester, Thomas Robbert & Stefan Roth, *A Special Price Just for You: Effects of Personalized Dynamic Pricing on Consumer Fairness Perceptions*, 19 J. REVENUE & PRICING MGMT. 99, 106–07 (2020).

[67] Dhruv Grewal, David M. Hardesty & Gopalkrishnan R. Iyer, *The Effects of Buyer Identification and Purchase Timing on Consumers' Perceptions of Trust, Price Fairness, and Repurchase Intentions*, 18 J. INTERACTIVE MKTG. 87, 87–100 (2004).

[68] Gerrit Hufnagel, Manfred Schwaiger & Louisa Weritz, *Seeking the Perfect Price: Consumer Responses to Personalized Price Discrimination in E-Commerce*, 143 J. Bus. Res. 346, 346–65 (2022).

[69] Lan Xia, Kent B. Monroe & Jennifer L. Cox, *The Price Is Unfair! A Conceptual Framework of Price Fairness Perceptions*, 68 J. MKTG. 1, 1–15 (2004).

induce a monopolist to lower price. The result depends on the disclosure technology and market competitiveness, and consumers facing a monopolist require the ability to make partial disclosures to obtain gains.[70] Disclosure architecture therefore affects what sellers infer and what prices they offer.

Tan's 2026 analysis is even closer to the Proposed Statement's premise. It considers a seller that uses observables buyers can manipulate at a cost. When discriminatory prices are covert, equilibrium segmentation is coarse and price discrimination is limited. When prices must be transparently posted, every buyer pays a personalized price in equilibrium, though buyer and social welfare do not always fall.[71] As a theoretical model, it establishes that transparency can change the pricing practice while leaving the magnitude and market applicability of that response open.

The experiment by Bó, Chen, and Hakimov supplies behavioral evidence for the same mechanism. Participants respond strategically when told that their answers influence price, but their ability to manipulate the model and protect privacy weakens when the information used appears less closely connected to the product.[72] The authors view these results as supporting greater transparency, which gives the Commission meaningful support for its concern. The experiment also shows that disclosure changes the data consumers generate, their privacy choices, and the quality of price prediction. Those responses should inform the design and evaluation of any disclosure requirement.

The economic record supports market-specific investigation and guidance. A seller with market power and informative consumer data may use personalization to extract surplus. Some consumers can pay more than under an optimized uniform price. Data asymmetry can disadvantage rivals or deter entry. Consumers may regard granular individualized prices as unfair, and strategic concealment can make unfavorable personalization hard to avoid.

The Statement's claim that increasing sophistication makes consumer benefit progressively less likely exceeds this record. More data may improve extraction, and it may also permit lower targeted prices, expand output, intensify competition, or change entry. The distribution of data across firms can matter more than the volume held by one firm. A policy that changes transparency, access, or control can change adoption and competitive behavior. The Commission should state that effects depend on market power, market coverage, consumer heterogeneity, entry conditions, information distribution, and consumer

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[70] S. Nageeb Ali, Greg Lewis & Shoshana Vasserman, *Voluntary Disclosure and Personalized Pricing*, 90 REV. ECON. STUD. 538, 538–71 (2023).

[71] Teck Yong Tan, *Price Discrimination with Manipulable Observables*, 57 RAND J. ECON. 705, 705–23 (2026).

[72] Inácio Bó, Li Chen & Rustamdjan Hakimov, *Strategic Responses to Personalized Pricing and Demand for Privacy: An Experiment*, 148 GAMES & ECON. BEHAV. 487, 487–516 (2024).

response. The cited research itself produces results pointing in both directions, and those countervailing results bear directly on the general inference the Statement draws.

VI. The Commission Should Establish the Need, Content, and Performance of Any Disclosure

A. Disclosure Design Follows a Supported Legal Duty to Disclose

The Commission has extensive experience determining whether digital disclosures are clear and conspicuous. The antecedent question here concerns the legal duty to disclose. The *.com Disclosures* guidance addresses how to present qualifying information once disclosure is legally necessary to prevent deception or unfairness or to comply with a Commission rule; it does not itself establish the predicate representation, materiality, or duty to disclose.[73] The Proposed Statement must first show why a price communicates parity in the relevant circumstances or why nondisclosure satisfies Section 5(n). Placement, prominence, and wording follow that determination.

Liability must rest on the representation or practice and the governing evidence. A prominent notice may be good practice and may reduce surprise, while the existence of that notice says nothing about whether its absence previously misled consumers. A consumer's interest in information likewise leaves materiality to be established. The Deception Statement and *International Harvester* require the Commission to identify the representation or circumstances that give silence meaning; Section 5(n) separately requires injury, nonavoidability, and net harm.

International Harvester also identified a narrower model for mandatory disclosure. Truth in Lending law required specified credit information after a seller made a triggering claim, even though the information could be material more generally.[74] The same principle fits personalized pricing. A claim that a price is uniform, a loyalty discount, or based on stated criteria can trigger a duty to qualify the claim. The triggering-claim model does not make every price display an explanation of how the price was set.

B. Personalized-Pricing Disclosure Experiments Show Limited Attention and Limited Behavioral Response

The best direct evidence about the proposed remedy counsels caution. In a 2021 laboratory experiment conducted in Ireland and Chile, the Organisation for Economic Co-operation and Development tested online disclosures concerning personalized pricing. The disclosures had limited effects on recognition and comprehension and no statistically significant effect on

[73] FTC Staff, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* i–ii, 4–7 (Mar. 2013).

[74] *International Harvester*, 104 F.T.C. at 1062 & n.49.

purchasing behavior. Depending on wording and measurement, majorities ranging from 62 to 94 percent in Ireland and 85 to 96 percent in Chile failed to recall the disclosure; participants' awareness of personalized pricing also remained low.[75]

The experiment leaves open whether another disclosure design would work. Its authors identify limitations involving timing, salience, position, and experimental setting. Those limitations support copy testing and field testing while preserving the relevance of the reported results. The Proposed Statement identifies no disclosure experiment, tested model language, or evidence that a notice describing the "basis" and "types of data" will improve a real consumer decision.

The European Commission's behavioral experiment also found limited effects. Salient communication improved recognition of personalized ranking from 29 percent under low transparency to about 40 percent under higher transparency, but produced little difference in participants' recognition of personalized pricing or targeted advertising. Across treatments, transparency generally did not produce a significant difference in the overall probability of purchase.[76] Again, the setting and population limit any inference about U.S. commerce. The result is directly relevant to whether the Commission may assume that a generalized notice will be noticed, understood, and used.

The broader disclosure literature identifies recurring limits and costs. Ben-Shahar and Schneider document failures of mandated disclosure when consumers lack time, attention, comprehension, or a usable choice.[77] Loewenstein, Sunstein, and Golman explain how limited attention, motivated attention, and biased probability judgments can diminish or reverse intended effects.[78] McDonald and Cranor estimate substantial aggregate costs if consumers were to read privacy policies in the manner disclosure regimes conventionally assume.[79] These sources leave room for an effective disclosure in a defined context and support testing effectiveness before adopting a general prescription.

The Commission's own digital-disclosure guidance makes performance the test. It asks how consumers actually perceive and understand a disclosure in the context of the entire communication; warns that consumers do not read every word on a screen; and directs firms

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[75] OECD, *The Effects of Online Disclosure About Personalised Pricing on Consumers: Results from a Lab Experiment in Ireland and Chile*, OECD DIGITAL ECONOMY PAPERS No. 303, at 5–6, 34–42 (2021).

[76] EU Market Study at 3–5.

[77] Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 665–79, 704–29 (2011).

[78] George Loewenstein, Cass R. Sunstein & Russell Golman, *Disclosure: Psychology Changes Everything*, 6 ANN. REV. ECON. 391, 394–410 (2014).

[79] Aleecia M. McDonald & Lorrie Faith Cranor, *The Cost of Reading Privacy Policies*, 4 I/S: J.L. & POL'Y FOR INFO. SOC'Y 543, 560–65 (2008).

to consider placement, proximity, prominence, unavoidability, distraction, repetition, duration, and comprehensibility. If evidence shows that a significant proportion of reasonable consumers do not notice or understand a necessary disclosure, the guidance says it must be improved.[80] The Proposed Statement does not apply that standard to its own three-part prescription. It provides no model language and no evidence about performance on a shelf label, mobile product page, account screen, voice interface, or third-party marketplace.

This use of performance evidence is consistent with *Corpay*. The court upheld unavoidable disclosures after a developed record established deception and unfairness and supported relief tailored to Corpay's practices. The Proposed Statement prescribes disclosure prospectively across many markets. Evidence concerning attention, comprehension, action, displacement of other information, and implementation cost bears on the material content and design of that policy and on the countervailing-benefits inquiry. The argument does not depend on proof that every consumer will read a valid remedial disclosure.

C. The Three Disclosures Present Different Information and Implementation Questions

A binary notice that a price was individualized may be short. The other elements are not. "Basis" may refer to the seller's purpose, the principal variables, the causal reason that this consumer's price differs from a reference price, or the model's prediction of willingness to pay. "Types of data" could mean broad categories such as purchase history and location, more specific fields, the sources from which the fields were obtained, or inferred attributes produced by the model. Without definitions, firms cannot determine what the Statement expects, and consumers cannot know what a compliant notice conveys.

Whether a particular model can reliably produce a reason code, sensitivity measure, or counterfactual explanation is itself a technical and evidentiary question. Any required explanation must be accurate for the legal issue, stable enough to operationalize, and useful at the point of purchase. Variables can interact; the model and data may update frequently; a factor important to prediction across a population may not explain the price offered to one consumer; and a concise list may omit a factor that changes the net impression. Undefined obligations may encourage long, defensive lists that consume attention and obscure what matters.

Varian frames the central problem directly: what counts as an explanation for a prediction produced by a machine-learning model, and how should an explanation obligation account

[80] FTC Staff, *.com Disclosures*, at 6–8.

for a model that can be manipulated if revealed?[81] Those questions make a definition of "basis" essential before its omission is declared likely unlawful.

European law separates the same questions. The Consumer Rights Directive requires notice that a price was personalized through automated decision-making, without requiring the seller to state the criteria or their weights.[82] Where the GDPR's automated-decision provisions apply, Article 15(1)(h) can require a concise, intelligible explanation of the procedure and principles actually applied to the data subject's personal data to obtain the specific result, although it does not require disclosure of the algorithm or every computational step.[83] A European Parliament study also warns that information supplied when data are collected, usually through a privacy notice, may go unnoticed or be forgotten by the time a price is shown.[84] The European experience separates disclosure of the fact, criteria, and individualized calculation into distinct regulatory choices with different content and timing; U.S. law must address each choice on its own terms.

A disclosure occupies limited consumer attention. Price, quantity, product attributes, delivery time, return terms, recurring charges, privacy information, and safety warnings compete for limited space and attention. Requiring another notice may be justified, but not every disclosure receives a separate allocation of attention. A low-value or poorly designed personalization explanation can create notice fatigue, divert attention from a more consequential term, or become one more warning that consumers routinely disregard. The broader disclosure literature documents these mechanisms, and the personalized-pricing experiments show them in the relevant setting.

Depending on the content ultimately required, compliance may involve mapping data pipelines, identifying which model and version produced an offer, generating an explanation at the prescribed level, coordinating sellers and intermediaries, retaining records, testing interfaces across devices, training support personnel, and revising notices when models change. Fixed costs may weigh more heavily on small firms and entrants. The present record contains no estimate of the magnitude or incidence of these costs. The Commission should define the obligation and obtain evidence before concluding that the benefits of personalization can be preserved through disclosure.

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[81] Hal R. Varian, *Artificial Intelligence, Economics, and Industrial Organization* 20, NBER Working Paper No. 24839 (2018), published in *The Economics of Artificial Intelligence: An Agenda* 399 (Ajay Agrawal, Joshua Gans & Avi Goldfarb eds., 2019).

[82] Directive 2011/83/EU, art. 6(1)(ea), as amended by Directive (EU) 2019/2161, art. 4(4)(a)(ii).

[83] Case C-203/22, Dun & Bradstreet Austria, Judgment ¶¶ 57–61, 66 (Feb. 27, 2025).

[84] Peter Rott, Joanna Strycharz & Frank Alleweldt, *Personalised Pricing*, European Parliament, PE 734.008, at 27–29, 41–42 (Nov. 2022).

D. Disclosure Can Affect the Pricing Practice and the Competitive Conditions the Commission Must Weigh

Whether firms can preserve the benefits of personalization while disclosing its fact and nature depends on the market and the disclosure. A notice may change consumers' search, disclosure, privacy, and strategic behavior; it may change which firms adopt personalization, what data they collect, and how they structure offers; and, if adoption becomes asymmetric, it may change competitive outcomes. Ali, Lewis, and Vasserman show that control over disclosure can change competitive and monopoly pricing. Tan shows that price transparency can move a model from coarse segmentation to pervasive personalization. Those papers leave the ultimate policy question open and require the Commission to test whether the proposed disclosures would preserve the benefits it identifies.

Experimental evidence shows that consumers can respond strategically when they know a statistical model uses their answers to set prices, but that their manipulation becomes less successful, and their privacy choices less effective, when the data appear less closely related to the product.[85] That finding supports the Commission's concern that a bare disclosure may be inadequate. It also demonstrates why an effective explanation may induce behavioral responses that change the model and the market. The Commission should study those responses as part of the remedy and determine how they change the practice and its effects.

Liability uncertainty may deter some beneficial uses. Dubé and Misra, Rhodes and Zhou, Buchholz and coauthors, Thisse and Vives, and Esteves and Carballo-Cruz identify conditions under which at least some consumers benefit, competition intensifies, or total welfare increases. A general statement that nondisclosure is "likely" unlawful may deter personalization that lowers prices for price-sensitive consumers or intensifies rivalry, particularly while "basis" and "types of data" remain undefined. No available study estimates the Proposed Statement's effect on adoption or consumer welfare. The risk is plausible, its cost may be material, and the Commission should assess it before adopting a general enforcement position.

E. Any Retained Guidance Should Distinguish the Disclosures, Test Them, and Provide a Safe Harbor

If the Commission proceeds, it should begin with the least contestable question: whether tested language stating that a displayed price has been individualized improves decisions in a defined market. It should separately evaluate whether consumers benefit from an explanation of the basis and from categories of data inputs. For each, the Commission should

[85] Bó, Chen & Hakimov, *Strategic Responses to Personalized Pricing and Demand for Privacy*, at 487–516.

specify the required level of abstraction, when an explanation must be updated, how a firm may describe probabilistic or interacting factors, and when an accurate standardized notice will provide a safe harbor.

Testing should address more than recall. The Commission should measure whether consumers understand whether the offer may be higher or lower, whether they can identify the action available to them, whether the notice changes comparison or purchase behavior, whether it displaces attention from other material terms, and whether effects differ for consumers whom the Statement identifies as vulnerable. Field testing should follow copy testing where feasible. A disclosure that is recalled but does not improve a relevant decision may not justify its cost; a disclosure that is rarely recalled may still be useful if it gives a smaller group an effective means to detect error. The Commission should identify the objective before declaring the remedy adequate.

An optional safe harbor would reduce chilling of benign or beneficial pricing practices without insulating deception. The Commission could specify model language for the fact of personalization, define data categories and reason codes at a workable level, require proximity to the price, and deny the safe harbor if other statements contradict or obscure the notice. Firms would remain free to use another format if they can show equivalent or better performance. If the Commission concludes that context varies too much to state compliant language, that conclusion weighs against declaring omission of an undefined explanation likely unlawful across markets.

The Proposed Statement's footnote 20 reserves judgment as to whether some fully disclosed personalized-pricing practices may be unfair. That reservation is understandable when another aspect of the practice independently satisfies Section 5(n), but it leaves unclear what the proposed disclosure is meant to accomplish. A final statement should clarify that an accurate, compliant disclosure resolves the nondisclosure theory announced here, while preserving case-specific enforcement against separately proved unfair conduct.[86]

Any retained guidance should also exclude accurately described discounts, loyalty and membership programs, disclosed group prices, retention offers, and price differences attributable to objective costs, geography, supply, or demand. Those practices often confer the consumer benefit that the Statement seeks to preserve. Maryland and Connecticut drew comparable lines in their statutes. If the Commission believes a higher personalized price presents a different risk from a lower offer, its guidance should say so.

The following language, or similar language, should be considered for inclusion:

[86] Proposed Statement at 6 n.20.

> A displayed price does not, without more, invariably represent that every consumer is offered the same price. Whether a failure to disclose personalization is deceptive depends on the representation or practice, the reasonable meaning conveyed in the market and transaction, and the materiality of the omitted information. Whether a personalized-pricing practice is unfair depends on proof of each element of 15 U.S.C. § 45(n), including the costs and benefits of any proposed disclosure or other remedy. Apart from evidence concerning the relevant representation and market context, this Statement creates no presumption that personalization, or its nondisclosure, violates Section 5.

That revision would preserve enforcement where the evidence supports it, give firms and consumers useful guidance, and conform the Statement to the doctrine it invokes.

VII. The Commission Should Withdraw the Proposed Statement and Complete the Empirical Work

TechFreedom respectfully requests that the Commission withdraw the Proposed Statement. Leaving the proposal pending would perpetuate uncertainty about the Commission's enforcement expectations and could affect business conduct despite the proposal's formally nonbinding status. Firms could abandon or limit beneficial forms of personalization while the Commission has neither defined the covered practices nor established the cross-market consumer expectation on which the proposal rests. Existing law remains available for case-specific enforcement against proved deception and unfairness.

The Commission may investigate Section 5 violations and issue appropriate nonbinding guidance before completing an economy-wide study. Existing law applies now. Withdrawal is warranted because this proposal depends on empirical propositions the present record and the Commission's unfinished study have not resolved: a cross-market expectation of contemporaneous parity, a directional claim about increasingly sophisticated personalization, the assumption that benefits survive the prescribed disclosures, and the performance of the three-part disclosure package.

The nonbinding disclaimer does not remove that uncertainty. *International Harvester* rejected reliance on enforcement discretion as an answer to an overbroad disclosure theory because it left a seller unable to know what future Commissions would require and forced compliance against every eventuality.[87] The Proposed Statement tells firms that three disclosures "should" be made and that failure is "likely" unlawful. Withdrawal would remove the resulting enforcement signal while the Commission develops a supportable position.

[87] *International Harvester*, 104 F.T.C. at 1060 n.40.

Withdrawal would permit the Commission to complete its Section 6(b) study, publish the evidence and methodology, and invite comment before proposing any further guidance. The Proposed Statement's distinctive propositions concern prevalence, consumer understanding, price effects, avoidability, and the operation of disclosure. Commission staff has reported that more work remains on those subjects. A developed record would materially improve the foundation for any market-specific enforcement position.

The January 2025 staff summaries expressly describe themselves as initial findings analogous to a prepublication, state that they are not exhaustive, acknowledge that they may become outdated as information is gathered, and disavow any assessment that a person engaged in unlawful conduct. The reviewed tools ranged from store-level pricing and ranking to promotions and individualized outputs. The discussion of economic effects reported vendors' descriptions of revenue, margin, sales, and cost benefits, then concluded that work on more definitive effects on prices and market participants remained underway.[88] Those materials establish that intermediaries possess capabilities and that firms market data-driven tools. Questions about adoption, the direction of price effects, and the inferences consumers draw from displayed prices remain open.

The separate January 2025 *Issue Spotlight* relies on public sources, disclaims any use of nonpublic Section 6(b) material, and states that it is outside the study. It concludes with a call for additional research on price effects, coupons and discounts, consumer effects, and competition.[89]

The Commission's statements when it began the study support that sequence. Then-Commissioner Ferguson described personalized pricing as longstanding in some markets and said the study's results would aid Congress and state legislatures as they considered possible changes in law. Then-Commissioner Holyoak supported the inquiry while cautioning against terminology that prejudged difficult issues.[90] While those statements do not bind the Commission today, they correctly identified the study as the means of learning whether, where, and how intervention is warranted.

Chairman Ferguson, joined by then-Commissioner Holyoak, stated at the time that the Commission should complete a comprehensive, fact-based report and emphasized that the

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[88] FTC Staff, *Surveillance Pricing 6(b) Study: Research Summaries; A Staff Perspective* 1–3, 9–10 (Jan. 2025).

[89] FTC Staff, *Issue Spotlight: The Rise of Surveillance Pricing* 1, 15–16 (Jan. 17, 2025).

[90] Concurring Statement of Commissioner Andrew N. Ferguson, *Surveillance Pricing Intermediaries*, Matter No. P246202, at 1–2 (July 23, 2024); Concurring Statement of Commissioner Melissa Holyoak, *Surveillance Pricing Intermediaries*, Matter No. P246202, at 1 (July 23, 2024).

unfinished question was the effect on prices and market participants.[91] The Commission's current surveillance-pricing page still describes the research summaries as a preview of a study underway, and no final report appears among the Commission's published study materials as of the date of this comment.[92] The Proposed Statement nevertheless relies on the same unresolved subjects to support a general enforcement posture.

The Commission should also direct the Bureau of Economics to undertake a more comprehensive research program. That work should examine (i) the prevalence and forms of personalized pricing, with pricing distinguished from promotions, ranking, and technical capability; (ii) the inferences consumers draw from displayed prices in different markets and transaction formats; (iii) the effects of competition, market coverage, data asymmetry, entry conditions, and access to data; (iv) the distribution of gains and losses among consumers, firms, and complementary providers; (v) the separate effects of disclosures concerning the fact, basis, and data inputs of personalization on recognition, comprehension, choice, and avoidance; (vi) the implementation and maintenance costs of those disclosures; and (vii) firm responses, including abandonment of personalization, changes in data collection, entry, and investment.

If that research supports further guidance, the Commission can propose a revised statement for public comment. That sequence would preserve current enforcement authority, remove the uncertainty created by a pending proposal, and allow any future guidance to rest on evidence commensurate with its scope.

VIII. If the Commission Proceeds It Should Limit Any Statement to Propositions the Record Supports

If the Commission proceeds on the present record, a final statement should:

1. Define personalized pricing; distinguish it from dynamic pricing, personalized ranking, recommendations, negotiated prices, and targeted promotions; and exclude accurately described discounts, loyalty and membership programs, disclosed group prices, retention offers, and ordinary cost-, geography-, supply-, and demand-based variation;
2. State that false descriptions of price uniformity, discounts, the reason for a price, or the data used may be deceptive when material;

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[91] Dissenting Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, *Surveillance Pricing 6(b) Staff Research Summaries*, Matter No. P246202, at 1–2 (Jan. 17, 2025).

[92] Federal Trade Commission, *Surveillance Pricing* (describing the January 2025 summaries as a "preview" of the study underway) (last visited Sept. 25, 2026).

3. Confine any parity implication to identified language, presentation, or a proved market convention that communicates general availability; distinguish a misleading half-truth from silence; identify the representation, practice, or reasonable expectation that gives an omission meaning; and require evidence commensurate with the asserted inference;
4. Analyze materiality separately for the fact of personalization, its basis, and the types of data used; limit any required disclosure to information needed to cure the identified impression or permit meaningful avoidance; define and test its content; provide an optional safe harbor; and clarify that accurate compliance resolves the Statement's nondisclosure theory while preserving authority over independently unfair conduct;[93]
5. Require an identified injury and counterfactual, a practical avoidability inquiry, and a record-based assessment of countervailing benefits and remedy costs;
6. Correct the FCRA and Virginia citations and limit the discussion of sector-specific and state statutes to the bounded notice regimes they establish;
7. Revise the economic discussion to reflect consumer gains, total-surplus effects, competition, market coverage, entry costs, data asymmetry, consumer control, and nonmonotonic effects of information; and
8. Explain the evidence and reasoning for departing from the United States' 2018 analysis; acknowledge the questions left unresolved by the Section 6(b) study; avoid conclusions that depend on answers the current record does not supply; and preserve the Proposed Statement's acknowledgment that it is nonbinding and does not relieve the Commission of proving a statutory or regulatory violation in an enforcement action.

IX. Conclusion

The present record supports enforcement against proved falsehoods, misleading half-truths, and personalized-pricing practices satisfying every element of Section 5(n). It supplies no empirical consumer-perception evidence for the proposed cross-market parity inference and leaves unresolved the effects and costs of the prescribed disclosures. The Commission should withdraw the Proposed Statement, complete the Section 6(b) study and the Bureau of Economics research described above, and propose revised guidance for public comment only if that work supports it.

[93] Proposed Statement at 6 n.20, 8.

Respectfully submitted,

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Bilal Sayyed
Senior Competition Counsel
TechFreedom
bsayyed@techfreedom.org
1500 K Street NW
Floor 2
Washington, DC 20005