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Food Delivery Fees ANPRM (Project No. P267101)
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Consumer Reports¹ appreciates the opportunity to provide feedback on the Federal Trade Commission’s Advanced Notice of Proposed Rulemaking on Unfair and Deceptive Fee Practices in Online Food and Grocery Delivery Services. We thank the Commission for initiating this important proceeding, and for its efforts to promote fair and truthful pricing and a competitive marketplace for retail goods and services.

I. Pricing Tactics and Consumer Harms

A. Junk Fees and Drip Pricing

Consumer Reports has long been concerned about the proliferation of hidden and excessive fees that are tacked on unexpectedly and deceptively to the cost of goods and services. In 2019, Consumer Reports published “Protect Yourself from Hidden Fees,” which examined hidden fees for a variety of services in major sectors of the US economy, including financial services, airlines, hotels, live event tickets and telecom and utilities.² For a typical American family, these fees can pose a financial strain, adding up to thousands of dollars a year in extra costs. We joined

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers’ interests, including their interest in securing effective privacy protections. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

² Penelope Wang, *Protect Yourself from Hidden Fees*, Consumer Reports, (May 29, 2019), <https://www.consumerreports.org/fees-billing/protect-yourself-from-hidden-fees-a1096754265/>

with other national organizations in calling for the FTC to adopt a strong national rule to eliminate junk fees by requiring the clear and conspicuous disclosure of the total price for goods and services, including all mandatory fees, when the price for an item is first presented to consumers. Over 41,000 CR members signed a petition to the Federal Trade Commission to accompany our 2023 letter urging approval of a comprehensive junk fee rule. The FTC approved a final junk fee rule in 2024 that more narrowly applies only to live event tickets, hotels and short-term rentals, but stated that the rule might be expanded to cover additional sectors in the future.³

There is a strong case that food and grocery delivery apps should be subject to strong requirements for upfront fee disclosure that includes all mandatory fees. Across the food delivery ecosystem, food and grocery delivery services charge multiple, stacked fees for use of their services. These services frequently engage in deceptive “drip pricing” with the fees being presented at various times in the shopping process, and often revealed only right before checkout. Consumers face a pervasive and increasingly complex system of hidden charges, inflated online prices, and misleading subscription programs. These practices distort competition, undermine price transparency, and impose disproportionate burdens on low-income households, rural communities, older adults, and people with disabilities who rely on delivery services for essential goods.

From the stories collected by Consumer Reports and complaint services such as the Better Business Bureau, it is clear that the consumers are often confused, befuddled, and disappointed by the experience of using the delivery apps and services. Users experience buyer’s remorse when they feel they have overpaid for delivery service beyond what they initially understood and were expecting.

Case Study: Third-Party Restaurant Food Apps

In August 2020, Consumer Reports published “Collecting #Receipts: Food Delivery Apps and Fee Transparency,” a report which examined the fee and pricing practices of restaurant food delivery apps such as DoorDash, GrubHub, Postmates and Uber Eats in the context of the COVID-19 pandemic, where use of food delivery apps more than doubled.⁴ We examined fee disclosures in the city of Chicago which had recently passed a law to require that apps itemize all fees charged and disclose commissions paid to restaurants for their participation in the service.

³ FTC’s Rule on Unfair or Deceptive Fees, 16 C.F.R. Part 464, prohibits bait-and-switch pricing and other tactics used to obscure and misrepresent total prices and fees for live-event tickets and short-term lodging. The rule was adopted 1/10/25 and went into effect 5/12/25. Available at: <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-D/part-464> and <https://www.federalregister.gov/documents/2025/01/10/2024-30293/trade-regulation-rule-on-unfair-or-deceptive-fee>

⁴ *Collecting #Receipts: Food Delivery Apps and Fee Transparency*, Consumer Reports, (Sept. 29, 2020), https://innovation.consumerreports.org/Food-delivery_-Report.pdf.

The report found apps used a variety of strategies to hide and obscure the fees that were charged, which could include “service” and “delivery” fees, perk-based subscription fees, expedite fees and fees to pass on the cost of local legislation, among others. Some fees were bundled together, and many gave vague descriptions that did not clearly explain why the fee was being imposed and what it was for. We found that the four delivery apps charged 48-52% to use the delivery platform service on top of the base cost of food and taxes.

To follow up on the report, in April 2021, we published a summary of 400 individual stories we collected from consumers about their food delivery app experiences.⁵ The three top issues cited were: 1) Too Many Fees 2) What to Tip and 3) Lack of Transparency.

1. Too many fees

The largest number of respondents, at least 127/400, indicated fees as the most notable pain point in their experiences with food delivery services. Many report that the cost of the order is significantly greater via second- and third-party websites. A simple delivery order may accrue charges such as service and delivery fees, small order fees, tips, and taxes in addition to the cost of the food. Some expressed feeling taken advantage of by this practice because it is unclear if fair compensation is provided to the restaurants or delivery drivers. The story below, shared by a gentleman from Eagleville, Pennsylvania, outlines the exorbitant nature of these fees:

As a customer that uses multiple food delivery apps: Grubhub, DoorDash, Uber Eats, I find that prices for each menu item are higher through the apps than if I ordered directly through the restaurant. Some apps also then charge a “Service Fee” and/or “Delivery Fee”. I have no idea how much of those added charges go to the restaurant, driver, or app company. It is not clearly outlined at all. Plus I need to tip on top of all those extra charges to make it work the driver’s time and effort. So, it quickly becomes ridiculously expensive to order through the apps.

Respondents also reported that even individuals who pay monthly or yearly subscriptions for delivery services often still pay reduced fees, so it is not clear exactly how subscription programs work. Many waive the “delivery fee” but still impose “service fees.” If delivery is the “service,” why is there an additional “service fee”? It appears that the apps may charge this fee for credit card processing and payment, but from a consumer lens, it isn’t clear why the customer should have to absorb this fee.

⁵ Debasmitta Das, *CR Members Share Their Experiences with Food Delivery Apps*, Consumer Reports, (Apr. 15, 2021), <https://innovation.consumerreports.org/an-investigation-into-the-practices-of-food-delivery-services-consumer-reports-members-share-their-experiences/>.

2. What to tip?

The second largest number of complaints from the CR members who shared their stories, at least 86/400, relate to the tip. Many report feeling reluctant to tip well given the multitude of fees. According to the shared stories, this reluctance to tip well then affects the willingness of drivers to accept deliveries. For example, another gentleman from PA stated:

As a delivery driver, it is really only worth doing if the customer tips really well. Without tips, a 5 mile trip that takes 20-30 minutes will only pay about \$3. Meaning we'd only make \$6-10/hour if no one tipped — assuming we are constantly getting orders, which we aren't. And when you factor in that we are using our own vehicle, paying for gas, insurance, maintenance and quick depreciation, \$6-10/hour is not nearly enough. So we rely on tips very much. Many drivers will not accept a delivery request if there is no tip or the tip is not high enough.

Additionally, some respondents feel tricked into over-tipping when the preset tip percentage is 20 or 30 percent of the total, including the service and delivery fees, and they do not realize this before placing the order. In some cases, they even report that a portion of driver tips are taken by the app services. There is clear confusion by app users as to who is actually receiving the tips.

3. Lack of transparency

Another item of contention discussed by the respondents relates to differences in pricing between food delivery apps and the actual restaurants or grocery stores. They report significant markups in the app services during COVID-19 and as the demand for delivery service rises.

Many of the CR members who responded also believe the delivery app companies use dark design patterns in order to obfuscate the fees. This includes unexplained fees, fees that aren't itemized, unannounced price mark-ups, and false advertising.

For example, a gentleman from Visalia, CA told us:

I've frequently used DoorDash, GrubHub, and Uber Eats. All of them have different prices for the same restaurant. All of them have multiple "fees" added to the cost of the food, and none of them are clear on where the money goes. If the delivery fee goes to the restaurant, why is it different for each service for the same restaurant? Why should there even be a delivery fee for the restaurant — they don't charge one if I pick up my food there — if I'm paying someone else to pick it up, why does that impact the restaurant at all? Does any of the fee that the service

charges go to the driver, or is the tip I pay all they get? So many questions, and so few answers.

Transparency is also lacking regarding the commission taken by food delivery apps from restaurants and the potential damage this does to restaurants and drivers. Consumers may not understand that restaurants are raising the prices of menu items to finance the commissions that are paid to the food delivery apps.

These stories highlight common problems faced by consumers in making informed decisions about whether to use food delivery apps and compare competitive options.

- Consumers want to know if they are paying higher prices online due to price markups for menu and grocery items.
- Consumers want to know the all-in, total cost of delivery upfront when they are shopping, including any mandatory fees.
- Consumers would like to compare their options for delivery or in-person pickup, and also be able to compare the cost of competing delivery services on an apples to apples basis.

B. Consumers Are Being Harmed by Unfair, Deceptive and Abusive Practices in Food Delivery Services

Based on the foregoing, it is clear that consumers using online food delivery apps and services encounter many unexpected risks and harms.

1. The Food and Grocery Delivery Market Is Defined by Layered, Opaque, and Unavoidable Fees

Consumers routinely encounter **multiple mandatory fees** that are not disclosed upfront and that bear no clear relationship to the cost of providing delivery. These include:

- Delivery fees
- Extra distance fees
- Service fees
- Small-order fees
- Heavy-item fees
- “Regulatory” or “compliance” fees
- Fuel surcharges
- Bag fees
- Markups on individual items

- Tipping prompts that function as obligatory and de facto mandatory charges, which is often only referenced immediately prior to checkout

The cumulative effect is that the listed costs of grocery and restaurant items selected by consumers bears little resemblance to the final price paid. In many cases, the total fee load exceeds 20–30% of the order value, even before tipping.

These practices are not limited to third-party platforms. Many supermarket chains operating their own delivery systems — including Kroger, Albertsons, Stop & Shop, Giant Eagle, Hy-Vee, and others — layer service fees, window-based surcharges, and minimum-order penalties on top of delivery charges.

2. *Drip Pricing and Late-Stage Fee Disclosure Are Widespread and Harmful*

As discussed above, a consistent pattern across chains and third-party apps is **drip pricing**, in which mandatory fees are revealed only at the end of the checkout process. Consumers invest significant time selecting items before learning the true cost of delivery. This practice harms consumers because it:

- Reduces comparison shopping
- Exploits consumer lock-in
- Obscures the true price of essential goods
- Undermines competition among retailers and delivery services

The Commission has long recognized drip and partitioned pricing as a potentially deceptive practice.⁶ Food delivery is now one of the most widespread and consequential contexts in which it occurs.

3. *Online vs. In-Store Price Discrimination Is Common and Poorly Disclosed*

Many delivery services charge **higher prices online than in stores or restaurants**, often without clear or conspicuous disclosure. This practice is especially prevalent among retailers that rely on Instacart or Shipt, where item markups are routine and can exceed 10–25% on common goods.

⁶ The FTC held a conference on “The Economics Of Drip Pricing” in May 2012, and shortly thereafter in November 2012 sent letters to 22 hotel operators expressing concern that presentation of prices that omitted mandatory resort fees were potentially deceptive. See FTC, *A Conference on the Economics of Drip Pricing*, May 2012, available at: <https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing> and *FTC Warns Hotel Operators that Price Quotes that Exclude 'Resort Fees' and Other Mandatory Surcharges May Be Deceptive*, November 28, 2012, <https://www.ftc.gov/news-events/news/press-releases/2012/11/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other-mandatory-surcharges-may-be>

Consumers are frequently led to believe they are paying “store prices plus delivery,” when in fact they are paying **inflated online prices plus multiple fees**. This is a material omission that misleads consumers about the true cost of delivery.

4. *Subscription Programs Often Misrepresent the Value of “Free Delivery”*

Major retailers market subscription programs — such as Walmart+, Kroger Boost, Albertsons FreshPass, Hy-Vee Plus, and Amazon Prime — as offering “free delivery” or substantial savings. In practice:

- Many subscriptions still impose per-order fees
- Minimum order thresholds remain
- Certain delivery windows or regions are excluded
- Third-party-fulfilled orders may not be covered
- Consumers cannot easily determine when a subscription applies

These programs can create a false impression of savings and can lock consumers into recurring charges that do not eliminate the underlying junk fees.

Subscription traps are also a major source of consumer harm in the grocery delivery sector. They occur when:

- Consumers are enrolled in subscriptions without clear consent
- Cancellation is difficult or hidden
- Benefits are overstated or misleading
- “Free delivery” claims mask residual fees
- Consumers are steered into recurring charges through dark patterns

5. *Dual-System Delivery Models Create Confusion and Enable Price Manipulation*

Many chains operate **two parallel delivery systems** — their own first-party service and a third-party platform (e.g., Instacart or Shipt). These systems have different prices, fees, tipping rules, substitution policies, promotions and minimum order thresholds. Consumers may not be able to tell which system is fulfilling their order until late in the process, if at all. This lack of clarity prevents informed choice and enables retailers to shift consumers into higher-fee channels without meaningful disclosure.

6. *Minimum Order Thresholds and Fixed Fees Have Regressive Impacts*

High minimum order requirements (\$30–\$50) and fixed delivery fees (\$6.95–\$12.95) disproportionately burden low-income households, small households, rural communities, older adults and people with disabilities. These groups often rely on delivery for essential access. The current fee structures may function as regressive access barriers to basic necessities. While there may be economic factors that make low-cost delivery of small orders difficult or challenging, the impacts on vulnerable consumer segments arising from high minimum order requirements may be very significant, and should be considered by the Commission.

II. **Personalized Pricing and Differential Pricing**

As more consumers shop for food and groceries online, and in-store shopping experiences are augmented by mobile applications and smart shopping carts,⁷ vendors increasingly have the tech infrastructure and consumer data to implement personalized pricing and differential pricing. These tactics raise new concerns for consumers around deception, unfairness, and competition. We appreciate that the Commission is looking into those harms.

A. *Deception*

Consumers are on the short end of a vast information asymmetry when it comes to how their groceries and food deliveries are priced. Generally they don't know whether they are subject to differential or personalized pricing; they don't know what information about them the company possesses; and they don't know how that information is used (if at all) to set prices, or whether it raises or decreases prices. As a result, they can't reasonably avoid the practice.

A monthslong investigation by Consumer Reports, and its partners Groundwork Collaborative and More Perfect Union, found that U.S. shoppers who order grocery deliveries through Instacart were unknowingly part of widespread, AI-enabled experiments that price identical products differently from one customer to the next — sometimes by as much as 23 percent.⁸ Hundreds of volunteers shopped simultaneously at specific stores on Instacart's platform during controlled experiments, taking screenshots of the prices they saw. About three quarters of the products we checked were offered at different prices to different consumers. Some products were offered at as many as five different prices. Seemingly small price variations could add up to big differences in the overall cost of groceries: The price of the same basket of food at a Seattle-area Safeway on

⁷ See, for example, smart shopping carts that can target personalized offers to shoppers, offered by Instacart. <https://www.caper.ai/>

⁸ Derek Kravitz, *Instacart's AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill*, CR and Groundwork Collaborative Investigation Finds, Consumer Reports, (Dec. 9, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490>. Unless otherwise noted, information about Instacart's pricing policies are derived from this article.

the Instacart platform, for example, ranged from \$114.34 to \$123.93 — roughly a \$10 difference. Based on how much Instacart says the typical household of four spends on groceries, the average price variations observed could translate into a cost swing for a household of four of about \$1,200 per year.

Consumers shopping on Instacart reasonably would have assumed they were getting the same price as other shoppers. Indeed, Instacart admitted in its corporate marketing and investor materials that consumers were “not aware” of the differential pricing. Consumer Reports journalists spoke with Instacart users about this issue: One consumer and Instacart user from Ohio said that “I just didn’t think that I, or a neighbor, would pay less for the same grocery product based on an algorithm. I’m not as trusting of a company that practices that.” Another Instacart user from California told Consumer Reports “We’re already paying 10% to 20% more for the convenience of delivery We just assumed that the listed price was the price for everyone. It’s eye-opening All prices should be the same for everybody, whether you’re rich or poor.” Given consumer expectations, failure to disclose differential pricing practices that could have been material to many shoppers could constitute a deceptive practice.

In a recent experiment for Business Insider, six journalists ordered Big Mac meals from McDonald’s via UberEats; they placed the same order, from the same location, at the same time and found that they received variable service fees.⁹ They couldn’t determine why the fee varied, and when they contacted Uber for an explanation the company said it was not based on their “personal characteristics,” but did not clarify what caused the variation. Once again, consumers were paying different prices for the same item, at the same location and the same time while being totally in the dark as to why.

Consumers also largely do not know what information food companies purchase, collect, and retain about them. Many states have passed consumer data privacy laws¹⁰ that allow consumers to formally request the data a company possesses about them, but the process can take weeks and be cumbersome.¹¹ That’s if a company responds at all; in practice companies often ignore data requests.¹² It is not realistic that consumers will request their data from every company they’re considering buying a product from.

⁹ Peter Kafka, Emily Stewart, *Our Big Mac pricing experiment*, Business Insider (March 15, 2026) <https://www.businessinsider.com/big-mac-mcdonalds-uber-eats-price-experiment-delivery-fee-charges-2026-3>.

¹⁰ Max Rieper, *All of the Comprehensive Privacy Laws That Take Effect in 2026*, Multistate (Feb 4, 2026) “<https://www.multistate.us/insider/2026/2/4/all-of-the-comprehensive-privacy-laws-that-take-effect-in-2026>.”

¹¹ The vast majority of consumer data privacy laws passed at the state level, for example, permit businesses to take up to 45 days to respond to a data request from a consumer, and businesses may grant themselves a 45 day extension, meaning a consumer may not receive their data for 90 days. See, for example, state data privacy laws in Connecticut (Conn. Gen. Stat. §§ 42-515 et seq.), California (Cal. Civ. Code §§ 1798.100–1798.199), and Oregon (ORS §§ 646A.570 to 646A.589)

¹² Derek B. Johnson, *Hundreds of registered data brokers ignore user requests around personal data*, (July 28, 2025) <https://cyberscoop.com/data-brokers-california-ccpa-non-compliance-privacy/>.

In a 2025 investigation of Kroger’s loyalty program data practices, Consumer Reports journalists guided consumers to request the data the grocer had collected about them.¹³ One consumer received a 62-page long profile, which included inferences about the size of his family, his education level, an estimate of his income, and other disparate information other companies might use to segment their shoppers for price targeting, including how likely the consumer was to go on a cruise, have a pet, or travel internationally.¹⁴ “It’s creepy how much they assume to know about me, and it’s basically all wrong,” that shopper said in an interview with Consumer Reports. “And it makes me less likely to want to go there, frankly.” Kroger said it does not personalize prices, only discounts. The chief factor in how discounts are personalized are “customer’s prior purchases at Kroger stores and their interactions with Kroger” a spokesperson told CR, but they may also use “demographic or online behavioral data.”¹⁵

New York state attempted to address the fact that consumers are in the dark by requiring companies to offer a generic disclosure when they use personal data to set a price.¹⁶ Instead of providing useful insights into where and how personalized pricing is happening, this law has illustrated the shortcomings of a disclosure-only approach. The required disclosure reads, “THIS PRICE WAS SET BY AN ALGORITHM USING YOUR PERSONAL DATA,” which leaves the consumer wondering whether they’re seeing a higher or lower than average price, and what data about them influenced the price.

Some companies providing the disclosure in New York have chosen to add a preamble about what data they use. Uber Eats, for example, says “Your location is used to help us calculate fees and savings.”¹⁷ DoorDash says the new law “requires that we make the following disclosure because we use information such as your delivery address to calculate distance and fees, and your past orders and favorite stores to provide personalized promotions and/or discounts.”¹⁸ This additional content may mitigate the alarm a consumer might feel when reading the disclosure, but it may also be incomplete; it may not describe all of the ways a company uses a consumer’s personal information, or how exactly a consumer’s location is used to set fees. (For example, a consumer may not object to a higher fee for all New York addresses based on a city-imposed tax, but may object to being charged a higher fee because their address is in a wealthy neighborhood, and the company infers that they have a higher willingness to pay). In practice, consumers

¹³ Derek Kravitz, *Inside Kroger's Secret Shopper Profiles: Why You May Be Paying More Than Your Neighbors*, Consumer Reports, (May 21, 2025), <https://www.consumerreports.org/money/questionable-business-practices/kroger-secret-grocery-shopper-loyalty-profiles-unfair-a1011215563/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ N.Y. Gen. Bus. L. § 349-A (2025)

¹⁷ Alex Bitter, *Uber and DoorDash now disclose when algorithms set prices. There's still one big question*, Business Insider, (Nov. 12, 2025), <https://www.businessinsider.com/uber-doordash-notify-if-apps-use-customer-data-set-prices-2025-11>.

¹⁸ *Id.*

presented with this disclosure likely do not have sufficient information to assess the tradeoffs and potentially take their business elsewhere.

Another way consumers can be deceived by these pricing tactics is through fake discounts, or when the “original” price displayed isn’t the real price. In CR’s investigation of Instacart, researchers found the company repeatedly showed different customers different “original” prices for the same discounted item, making the purported savings appear larger or smaller, depending on which group they’d been sorted into. For example, most volunteers shopping on Instacart at a Safeway in Seattle were shown original prices for Premium brand saltine crackers of \$5.93, \$5.99, or \$6.69, while the final sale price was the same for everyone — \$3.99.¹⁹ While it is technically possible that each of the ostensibly original prices for Saltines above were offered for a “reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith,” as the FTC guidance on pricing requires,²⁰ the disparate array of “original” prices shown to different shoppers contemporaneously is indicative that those prices may not have been bona fide prices.

Similarly, in an investigation for *The Washington Post*, the tech columnist Geoffrey Fowler tracked almost 50 products he’d bought on Amazon throughout the year, and compared the prices he paid to the products’ Prime Day prices.²¹ A pack of coronavirus tests was advertised as 39% off on Prime Day, but the post-discount price was the same as the “full” price he’d paid less than a month before. Same with an Oral-B toothbrush, right down to the supposed 39% off. Some products actually jumped in price, like a TV console that was \$275 before Prime day and \$379 during the sale event. Amazon told Fowler that the prices he saw “are not indicative of the broader trends for this event.”

Fake discounts are straightforwardly deceptive.²² Consumers believe themselves to be getting a bargain when they are in fact paying the market price. They also hamper competition; a consumer may stop their comparison shopping short when presented with a fake discount, believing themselves to be getting an incredible bargain.

B. Unfairness and Competition

Personalized and differential pricing also present potential unfairness concerns. Certainly, some consumers will be materially harmed by this practice. Based on our investigation into Instacart,

¹⁹ Derek Kravitz, *Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill*, CR and Groundwork Collaborative Investigation Finds, Consumer Reports, (Dec. 9, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>.

²⁰ 16 C.F.R. § 233.1

²¹ Geoffrey Fowler, *I tracked Amazon’s Prime Day prices. We’ve been played*, (Oct. 9, 2025), Washington Post <https://www.washingtonpost.com/technology/2025/10/09/amazon-prime-day-prices/>.

²² 16 C.F.R. § 233.1

the price of a basket of goods on Instacart varied by an average of about 7% from customer to customer.²³ If this pricing is applied consistently from consumer to consumer, some would end up paying \$1,200 more for groceries for a household of four over the course of a year — for the same exact products. Consumers in general may be worse off because of this practice as well, if Instacart’s algorithms are increasingly able to capture proportionately more of the consumer surplus from each transaction. Further, because prices are secret, consumers have no way of knowing if they’re getting worse deals or not, and cannot reasonably avoid paying a secret premium for the same items as someone else.

Despite the information asymmetry that makes personalized pricing exceedingly difficult to investigate, there are other examples of companies potentially secretly using data to capture a greater share of a transaction surplus. An investigative journalist writing for SFGate looked at the prices offered for a hotel room in Manhattan for a specific date, and varied his operating system, browser, cookies, and location (his computer’s IP address).²⁴ He found that when he changed his IP address from a Bay Area location to locations in Phoenix and Kansas City, the prices dropped by more than \$200 per night in one instance, and more than \$511 in another instance. The Wall Street Journal reported that Orbitz, the travel aggregation company, determined that Mac users spent more per night on hotels than Windows users, and began steering Mac users towards pricier hotels.²⁵

Personalized pricing and differential pricing can impair market transparency as it becomes more difficult for the public to consistently compare prices between different vendors. Word of mouth recommendations, or online roundups of the best deals available online are two ways that consumers shop around for the best value. If everyone is seeing different prices, those price discovery tactics will fail to work. Consumers’ comparison shopping is one of the key engines of competition in the market. If comparison shopping becomes more time consuming and challenging, companies may feel less pressure to compete aggressively to offer the lowest price.

²³ Derek Kravitz, *Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill*, CR and Groundwork Collaborative Investigation Finds, Consumer Reports, (Dec. 9, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>.

²⁴ Keith A. Spencer, *Hotel booking sites show higher prices to travelers from Bay Area*, SFGate, (Feb. 3, 2025), <https://www.sfgate.com/travel/article/hotel-booking-sites-overcharge-bay-area-travelers-20025145.php>.

²⁵ Dana Mattioli, *On Orbitz, Mac Users Steered to Pricier Hotels*, Wall Street Journal, (Aug. 23, 2012), <https://www.wsj.com/articles/SB10001424052702304458604577488822667325882>.

III. Potential Responses from the Federal Trade Commission

A. *Hidden Fees and Drip Pricing*

Based on the patterns observed across the industry, the Commission should consider rules requiring:

1. **Standardized presentation of advanced estimates for delivery service costs** before consumers begin shopping. Consumers want to know the bottom line expected cost provided by the service, so having an approximate idea of how much an order of a given size will cost including all mandatory fees is vital for understanding the value proposition, prior to shopping and incurring the mandatory fees.

For food delivery apps, mandatory fees may vary as the customer builds the shopping dynamically. But apps and services can explain more clearly the total expected cost of delivery including all mandatory fees for orders of different sizes in advance. Consumers should also receive advanced warning of any mandatory fixed or variable fees at the outset of the transaction.

By giving standardized price estimates for small, medium, and large sized orders, consumers can see the approximate cost of delivery before placing an order, and see how the price for delivery is constructed by the seller.

2. **Disclosure of the total all-in cost of the order including all mandatory fees presented as a running total, and in summary prior to checkout.** To curtail drip pricing, the full cost of items including all mandatory fees should be presented when the customer chooses the item. This would give the customer the ability to better predict the total cost of the order as they are selecting items, rather than seeing all mandatory fees when they reach the shopping cart.

3. **Clear identification of all mandatory fees**, including who receives them and why they vary; and **standardized terminology** for fees to prevent deceptive labeling.

4. **Disclosure of online vs. in-store price differences** at the item level.

5. **Disclosure of available fulfillment channels** (first-party vs. third-party) at the start of the shopping process.

B. Fair and Transparent Subscription Practices

1. **Prohibit misleading marketing of subscriptions and end subscription traps,** by requiring:

- Simple, immediate cancellation through the same channel used to sign up
- Clear disclosure of all residual fees that remain even with a subscription
- Prohibition on misleading “free delivery” claims
- Annual or monthly reminders before renewal
- Ban on pre-checked boxes or coercive design

These protections have been considered by the FTC in its proposed Click to Cancel rule, and are already standard in many state automatic-renewal laws and should be extended nationally.

Taken together, these measures would restore transparency, promote competition, and protect consumers from unfair and deceptive practices.

C. False Discounts

The Commission should also consider formalizing its guidance on fictitious discounts into a rule.²⁶ The guidance reads in part:

If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller's regular price.

False discounts unfortunately continue to be a problem in the market. While some states have specific statutes on fake discounts,²⁷ and fake discounts may be illegal under broad state prohibitions on unfair and deceptive acts and practices, the Commission could create more

²⁶ 16 C.F.R. § 233.1

²⁷ *E.g.*, N.J. Admin. Code § 13:45A-9.6, Cal. Bus. & Prof. Code §§ 17500–17509 (2010)

clarity for businesses and consumers by issuing rules. This would give businesses a better sense of their liability, and could be referenced by state legislators attempting to create clearer laws.

D. *Personalized Pricing*

First, CR also cautions the commission against pursuing a disclosure-only regime in response to personalized pricing. Evidence from other policy areas, notably privacy, suggest that merely requiring companies to disclose information to consumers is not an effective way to mitigate harm. With disclosures, the theory of change is typically that companies will 1) disclose meaningful and sufficiently clear information for consumers to understand the potential risks or downsides of engaging with a business, 2) consumers will read and understand that information, and 3) they have the opportunity to make an informed choice between meaningful alternatives. Each part of this theory breaks down in practice.

As discussed *supra*, Section II.A, generic disclosures like those provided in New York's Algorithmic Pricing Disclosure Act often do not provide sufficient information to consumers. Moreover, if many competitors in the same market all provide the same generic disclosure, consumers do not have a choice between meaningful alternatives. When companies are required to produce more detailed information, they have an incentive to be overly inclusive and vague in how they describe their data use, so as to protect themselves from liability. This leads to disclosures that are exceedingly difficult to understand.²⁸ Consumers, for their part, do not want to and cannot feasibly pay the time tax of reading these disclosures.²⁹ Taken together, this suggests that a policy approach that relies only on disclosure to consumers will be ineffective. We urge the Commission not to take a disclosure-only approach to addressing the harms of personalized pricing.

Instead, the Commission should pass a rule prohibiting the use of personal data to customize a price, with reasonable and well-scoped exemptions. For example, price differences that are attributable to differences in the cost of providing a good to one person versus another, and commonly understood discounts that are transparently offered — meaning the discount itself and the terms and conditions for obtaining it are posted in an accessible spot on the company's website and are easy to understand.³⁰ This approach permits a wide range of discounting

²⁸ Kevin Litman-Navarro, *We Read 150 Privacy Policies. They Were an Incomprehensible Disaster*, New York Times, (Jun. 12, 2019),

<https://www.nytimes.com/interactive/2019/06/12/opinion/facebook-google-privacy-policies.html>.

²⁹ Aleecia M. McDonald and Lorrie Faith Cranor, *The Cost of Reading Privacy Policies*, I/S, (2008)

<https://kb.osu.edu/server/api/core/bitstreams/a9510be5-b51e-526d-aea3-8e9636bc00cd/content>.

³⁰ As a starting point, the Commission should look at state legislation including AB 2564 in California (https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB2564), SB 2255 in Illinois (Senate Amendment 001,

<https://www.ilga.gov/Legislation/BillStatus/FullText?LegDocId=209289&DocName=10400SB2255sam001&DocNum=2255&DocTypeID=SB&LegID=162026&GAID=18&SessionID=114&SpecSess=&Session=1>), and HB 26-1210 in Colorado (https://leg.colorado.gov/bill_files/115897/download)

practices, but discourages the type of invasive profiling that the public may find unwanted or offensive, as well as discounts to niche consumer segments that exclude groups who may have a higher willingness to pay (*e.g.*, a parent discount offered to most parents, but not those who shop online in the middle of the night, order rush delivery, and don't live near competitor stores — all signals that they might have a higher willingness to pay).

Thank you very much for initiating this proceeding and for considering our comments. Please do not hesitate to reach out to justin.brookman@consumer.org if you have additional questions or there is any way we can support the Commission's inquiry.

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