

FTC Unveils Sweeping Rule to Tackle 'Junk Fees' and Redefine Consumer Pricing Transparency

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In response to the Biden administration's [resounding call](#) for more transparency in consumer pricing, the Federal Trade Commission (FTC) has unveiled a proposed rule on "junk fees," setting the stage to significantly impact the consumer marketplace. The FTC is currently soliciting public comments on this proposed rule, designed to regulate what the FTC sees as pervasive unfair and deceptive practices associated with fees that consumers pay for goods and services. The potential impact of this regulation is expected to touch virtually all industries. Comments are due by January 8, 2024.

This announcement comes just a few months after several major corporations, including some of the largest ticket sellers and resellers, joined President Biden earlier this year to express their [commitment to "all-in pricing,"](#) which allows consumers to see the full price for goods or services upfront, including fees. This pledge signaled progress in the battle against so-called "junk fees," otherwise known as hidden or misleading fees that plague ticket purchases, hotel bookings, utility bills and more.

Last year, the FTC received over 12,000 comments in response to a request for public input on whether a rule would help to eliminate these unfair and deceptive charges. These comments raised concerns that sellers do not advertise the total amount consumers will have to pay and only disclose fees after consumers are well into purchasing transactions, hampering consumers' ability to engage in informed price comparisons. The comments further underscored that sellers frequently misrepresent or obfuscate the nature and purpose of these fees, leaving consumers uncertain about what they are paying for and fostering the belief that such charges are arbitrary.

To address these concerns, the proposed rule would ban the following practices:

- **Hidden Fees:** Businesses would be prohibited from advertising prices that conceal or omit mandatory fees, including fees related to goods or services provided by a different entity. For example, if an online travel agent advertises a price for a hotel room provided by a hotel chain, the online travel agent would be required to display a total price inclusive of any mandatory fees charged by the hotel chain. Additionally, the all-in price must be displayed more prominently than any other pricing information.
- **Misleading Fees:** Businesses would be required to disclose the nature and purpose of fees, including the refundability of such fees and the identity of any good or service for which fees are charged, before the consumer consents to pay. Additionally, the rule would prohibit businesses from misrepresenting the nature and purpose of fees charged to consumers.

By way of example, the FTC explains that the proposed rule would eliminate "service fees" or "hospitality fees" that restaurants often add to customer bills, including automatic gratuity fees imposed on larger parties. The rule would make it mandatory for restaurants to include such fees in their menu prices. Similarly, the FTC states that hotels and home-sharing companies must prominently display the total booking price as the default upfront cost. Companies that only offer the option for customers to switch from a default price that excludes fees to one that includes them might still not be in compliance with the rule.

While unfair or deceptive fees are already unlawful under Section 5 of the FTC Act, a recent decision from the US Supreme Court in *AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n*, 141 S. Ct. 1341 (2021), significantly limited the FTC's authority to return money to injured consumers. If enacted, the proposed rule would allow the FTC to obtain monetary redress more readily for harmed consumers in addition to seeking civil penalties against violators.

Given the Biden administration's scrutiny of "junk fees," businesses should carefully assess their fee structures and related disclosures to avoid unnecessary regulatory risk. We further encourage interested businesses to participate in the FTC's public comment process to ensure their perspective is well-represented. Interested parties may file a comment online at <https://www.regulations.gov> or by mail by sending your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580.

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