

FTC to Study “Surveillance Pricing”

Alexander I. Schneider

July 25, 2024

On July 23, 2024, the Federal Trade Commission (FTC) announced that it had voted unanimously to initiate a new study focused on how companies may be leveraging consumer purchasing behaviors to personalize pricing for consumers. Using its authority under 6(b) of the FTC Act, which empowers the FTC to study specific industries or business practices, the Commission [issued](#) orders to eight companies that it believes offer products that use technology and personal information to enable businesses to set personalized prices for a product or service. The FTC’s [press release](#) refers to this conduct as “surveillance pricing,” and says the study will “shed light on the shadowy ecosystem of pricing middlemen.” Commissioners [Holyoak](#) and [Ferguson](#), in their concurring statements, suggested that they would have preferred the Commission use a more neutral term to describe the practices being studied, but support the 6(b) effort.

Personalized pricing is not a new concept to consumers. Consumers know that the price they pay for a mortgage or car loan will depend on factors such as their credit score and income. In certain settings —such as car dealerships or flea markets— consumers expect to be able to negotiate the price they pay. What they might not expect is that the price of a pair of shoes could vary from consumer to consumer based on factors such as how often the consumer buys shoes, where they have purchased shoes from in the past, and the price they have paid for a similar pair of shoes.

The FTC’s 6(b) aims to explore these products to better understand their inputs, uses, and how they impact consumers’ bottom line. The orders are directed, not to retailers, but to companies that develop and sell personalized pricing products, and request information including:

- The sources of information used to create personalized pricing products, including whether consumers received any notice or provided consent for their personal information to be used in the personalized pricing products;
- Marketing materials for personalized pricing products;
- Customer and prospective customer lists, including details on the top ten business customers who purchased or licensed the greatest amount of user segmentation or targeted pricing solutions; and
- All reports, studies, surveys, and analyses that analyze or evaluate the effects of personalized pricing products on consumers, pricing, sales volume, or revenue must be included.

The FTC uses its 6(b) authority to explore new and emerging industries, technologies, and business practices. At the completion of a 6(b) study, the FTC often produces a report summarizing its findings and providing recommendations to businesses and policymakers (see, for example, the [Data Broker Report](#)). This latest study joins several other ongoing 6(b)s including the PBM study (2022), AI

investments and partnerships study (2024), and social media and video streaming services study (2020). While some of these studies have been ongoing for years, given the FTC's continued focus on the consumer data ecosystem, and its implications for consumer privacy, security, and competition, it seems likely the FTC will prioritize this effort to understand a practice that it believes could have real effects on consumers' pocketbooks.

Summer Associate Brianna Robinson contributed to this post.