

Pricing 101: The Top 10 Issues Companies Should Be Watching Now

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Pricing has moved to the forefront of regulatory scrutiny. Against a backdrop of consumer concern about the rising cost of goods and services, legislators and enforcers are increasingly focused on how businesses set, present, and adjust prices. In [Part 1](#) of our “Pricing 101” webinar series, we discuss ten priority issues that companies should be evaluating.

1. Surveillance Pricing

Few concepts are receiving more attention than “surveillance pricing,” a term without a single definition but that is generally used to describe the use of personal data to set individualized prices for consumers.

At the outset, it is important to distinguish “surveillance pricing” from more familiar and widely accepted practices, such as loyalty programs and targeted promotions. Companies have long relied on personal data to deliver discounts, coupons, and tailored offers that may result in lower prices for certain consumers. These approaches typically operate by layering personalized incentives on top of a generally applicable base price, rather than altering the base price itself for a specific individual. While loyalty discounts and surveillance pricing are arguably distinct concepts, some legislators and enforcers are lumping them together.

For example, roughly half of U.S. states have introduced legislation addressing surveillance pricing, varying significantly in scope and highlighting an ongoing lack of consensus about what conduct is actually at issue. New York, for instance, has enacted a law requiring affirmative disclosures when a company engages in what it characterizes as “algorithmic” or “dynamic” pricing. That requirement is notably broad and, depending on how it is interpreted, could extend beyond individualized base pricing to capture practices such as loyalty programs. By contrast, Maryland’s recently enacted law takes a narrower approach, expressly excluding loyalty programs from its definition of surveillance pricing.

Notwithstanding this legislative momentum, much of the concern appears to remain largely hypothetical. That point is underscored by the FTC’s recent Section 6(b) study. While the study sought concrete information from intermediaries about their data-driven pricing practices, the resulting 2025 report nonetheless focused on theoretical scenarios and potential risks rather than documented instances of widespread “surveillance pricing.”

Our next installment of our Pricing 101 webinar series on June 24 will focus specifically on surveillance pricing. You can register [here](#). In the interim, for more on surveillance pricing, see our blog [here](#).

2. Pricing Accuracy

Pricing accuracy remains an enforcement priority. At its core is a straightforward question: does the price a consumer sees match the price they ultimately pay at checkout? While this issue has traditionally arisen in brick-and-mortar retail settings, it continues to be highly relevant as retailers adopt new technologies such as electronic shelf labels (ESLs).

ESLs can improve pricing accuracy by syncing shelf prices directly with point-of-sale systems, thereby avoiding the need for employees to manually update price tags. Manual processes are prone to error, and mistakes in changing tags are a common source of mismatches that can trigger regulatory scrutiny. By enabling real-time updates, ESLs offer a solution to that compliance challenge.

At the same time, the rollout of ESL technology has generated new questions from regulators and lawmakers. Some have raised concerns that ESL could be used to manipulate pricing in ways that resemble “surveillance pricing.” For example, policymakers have speculated about scenarios in which prices could change dynamically within a store environment, or even vary between consumers. Although there is no evidence that such practices are occurring in the marketplace, the possibility has attracted attention.

As a result, some states considering surveillance pricing legislation have proposed restrictions on, or even moratoria of, ESL use. These proposals highlight a growing tension in the policy debate: efforts to guard against perceived future risks may inadvertently undermine technologies that enhance pricing accuracy.

3. Subscriptions and Auto-Renewals

Subscription models continue to generate enforcement activity, with the FTC alone having brought nearly a dozen subscription-related enforcement actions (see, e.g., [here](#)) over the past year. Regulators are focused on whether companies clearly disclose material terms such as [cancellation fees](#), obtain affirmative consent, and provide easy cancellation mechanisms. The rise of subscription-based offerings has been accompanied by increased consumer complaints, particularly where consumers forget to cancel or encounter friction in doing so. Federal and state laws, including ROSCA and numerous state auto-renewal statutes, impose detailed requirements, and regulators often evaluate the entire user experience, from sign-up through cancellation.

4. Price Gouging

Price gouging laws come sharply into focus during emergencies, such as natural disasters or public health crises. These laws vary widely across states in terms of [what triggers them](#), which goods or services are covered, and how terms such as “excessive” pricing are defined. Importantly, many are activated automatically upon a declared emergency and can remain in effect for extended periods. This means that companies that rely on dynamic or automated pricing systems could accidentally run afoul of these laws if they do not have controls to ensure that prices do not spike during these periods.

5. Line-Item Fees

The use of line-item fees continues to attract both regulatory scrutiny and private litigation. While separating charges such as shipping or service fees from base prices is not inherently problematic,

issues arise when fees are inadequately disclosed, misleadingly described, or only revealed late in the purchasing process. Recent enforcement trends highlight concerns about fees labeled as “recovery” or “surcharge” fees, particularly where their rationale or calculation is unclear.

6. Pricing Disclosures

Closely related to line-item fees is the broader issue of pricing disclosures. Any statements about price, including the purpose of fees or how costs are allocated, must be accurate and not misleading. For example, regulators have scrutinized representations about “tips” for delivery services and whether consumers understand for what purposes those amounts are actually used. Clear and conspicuous disclosures of pricing terms, particularly those presented early in the consumer journey, remain a material focus.

7. Junk Fees

The concept of “junk fees” has become a major policy focus, with regulators emphasizing the importance of all-in pricing. Whether through rulemaking or legislation, the goal is to ensure that consumers understand the total price they will pay without being surprised by mandatory add-ons. Companies should evaluate when and how fees are disclosed in light of a growing body of state fee disclosure laws and UDAP enforcement, and consider whether their pricing presentation allows consumers to make meaningful comparisons at the outset of a transaction.

8. Free Trials

Free trials, and similar introductory offers, present recurring compliance challenges. While these promotions remain popular, they are subject to heightened scrutiny when they convert into paid subscriptions. Regulators expect clear disclosures about the duration of the trial, the charges that will follow, the steps required to cancel, and sometimes notice before the end of the trial. The use of the term “free” itself can trigger additional requirements, including specific disclosure obligations in certain jurisdictions.

9. Material Changes

Changes to pricing or other key terms during the lifecycle of a consumer relationship can create significant risk if not handled properly. Many state laws require advance notice (and, in some cases, renewed consent) before material changes take effect. Beyond pricing, regulators are also examining related practices such as “shrinkflation,” where product size or composition changes without clear disclosure.

10. Promotional Pricing and Savings Claims

Promotional pricing, including [rebate](#) programs, [buy-one-get-one offers](#), and savings claims, remains a staple of enforcement actions. Regulators are focused on whether these promotions accurately reflect the value being offered. Misleading promotions can take many forms, from unclear rebate terms to inflated base prices used to support discount claims.

Looking Ahead

Taken together, these ten issues reflect a broader trend: pricing is not just a business decision, it is a regulatory and reputational risk area that intersects with privacy, advertising, and competition law.

As enforcement activity continues to expand and legislative proposals evolve, companies should take a fresh look at their pricing practices, disclosures, and data use. Proactive review and alignment with core consumer protection principles will be essential to navigating this increasingly complex landscape.