Pricing Transparency

From dynamic and surveillance pricing to hidden fees and price gouging laws, businesses face rapidly evolving pricing transparency requirements and regulatory scrutiny across consumer protection, privacy, antitrust, and technology law.

About

A Multidisciplinary Approach

Pricing transparency sits at the intersection of multiple legal disciplines, and effective counseling in this space demands an integrated approach. Consumer protection laws govern how prices are advertised and disclosed, antitrust laws address potential competitive concerns, privacy laws regulate the use of consumer data in pricing and targeted discounts, and retail and e-commerce laws shape how pricing is implemented across channels.

Kelley Drye brings together attorneys from its advertising and marketing, antitrust, privacy, retail, and regulatory practices to provide integrated guidance on the full range of pricing-related issues. Our coordinated approach helps clients address overlapping legal risks while supporting business objectives.

Why Kelley Drye

Our nationally recognized lawyers have extensive experience advising companies on pricing and related discount practices across regulated industries. Our advertising and privacy law team is at the forefront of FTC and state attorney general enforcement matters involving pricing practices, guiding clients through investigations, rulemakings, and litigation. Drawing on the collective experience of our privacy, data security, consumer protection, and antitrust practitioners, Kelley Drye delivers practical, business-oriented counsel that helps clients navigate modern pricing challenges, manage regulatory risk, and support innovation with confidence.

Surveillance Pricing

Surveillance pricing generally refers to the use of consumer data, often with the assistance of algorithms and artificial intelligence, to inform personalized prices and related discounts for goods or services based on a consumer's or a group of consumers’ behavior and characteristics. Relevant data may include browsing activity, purchase history, location, device type, other shopping or personal attributes, rewards or loyalty program membership, and inferred willingness to pay or to take advantage of certain discount opportunities. The practice is also commonly referred to as personalized, individualized, behavioral, or data-driven pricing.

Surveillance pricing presents a range of complex legal and compliance challenges as regulators and lawmakers continue to evaluate its impact on consumers. Regulators are examining whether these practices may constitute unfair or deceptive conduct, whether consumers receive adequate notice when personal data influences pricing and discount decisions, and whether certain pricing and discount models could create discriminatory outcomes. At the state level, legislators have enacted laws and continue to introduce a growing number of proposals that would require disclosures when individualized pricing or discounts are used, while some measures seek to restrict or prohibit the practice in specific contexts.

It is increasingly important for companies to understand the technologies and data inputs that influence pricing and discount decisions and to assess whether their practices align with applicable legal requirements and compliance obligations. Kelley Drye advises clients on business practices relevant to pricing and advertising programs to mitigate enforcement risk while maintaining competitive flexibility.

Price Gouging

Price gouging laws are designed to prevent excessive price increases during emergencies such as natural disasters and public health crises. While most states maintain price gouging statutes, the laws vary significantly in their triggers, scope, and pricing thresholds, creating compliance challenges for businesses operating across multiple jurisdictions.

Enforcement activity has intensified, with state attorneys general increasingly examining how automated and algorithmic pricing systems respond to sudden changes in supply and demand. As pricing technologies continue to evolve, businesses face growing questions about how emergency pricing restrictions apply to data-driven pricing models and what safeguards are needed to prevent unlawful price increases.

It is important for businesses to understand the requirements that apply in the jurisdictions where they operate and evaluate how those laws interact with existing pricing policies and technologies. Our multidisciplinary team helps clients navigate state price gouging laws, assess pricing practices during emergencies and supply chain disruptions, and develop compliance strategies that reduce enforcement risk.

Dynamic Pricing

Dynamic pricing is the practice of adjusting prices based on market conditions or other variable factors such as supply, demand, inventory, or timing. Sometimes referred to as surge pricing or real-time pricing, the practice has become increasingly common across industries. As adoption expands, regulators are paying closer attention to whether consumers understand when prices may change and how those changes are communicated.

The FTC and state attorneys general have signaled growing interest in whether dynamic pricing practices may constitute unfair or deceptive acts or practices under Section 5 of the FTC Act or state UDAP statutes. Separate antitrust questions arise when competitors use similar pricing algorithms or shared data inputs that could facilitate price coordination in areas including the housing rental market.

It is essential that businesses understand how their dynamic pricing models operate, what disclosures may be required, and whether appropriate safeguards are in place to address evolving legal and compliance risks. Kelley Drye helps clients assess, design, and implement dynamic pricing strategies that support business objectives while aligning with emerging regulatory requirements.

Drip Pricing and Hidden Fees

Drip pricing, also referred to as junk fees, hidden fees, or undisclosed surcharges, is the practice of advertising a base price and then incrementally adding mandatory fees, such as resort fees, service charges, or convenience fees, during the purchasing process. A growing number of states have enacted or proposed all-in pricing requirements, and the FTC and state attorneys general have targeted enforcement actions against deceptive pricing practices across industries including housing, hospitality, live entertainment, food delivery, auto dealerships, and telecommunications.

Kelley Drye's advertising law team helps clients assess pricing disclosures, navigate evolving fee regulations, and develop practical compliance strategies that support transparency while preserving competitive positioning.

Subscriptions and Auto-Renewals

Subscription and auto-renewal programs, which include negative option offers, continuous service plans, or free-to-paid trial conversions, automatically charge consumers on a recurring basis unless they take affirmative steps to cancel. The FTC and state attorneys general have brought numerous enforcement actions under their broad unfair and deceptive acts and practices authority, as well as a growing patchwork of federal and state laws, including the FTC's updated Negative Option Rule and a wide range of state auto-renewal statutes. Regulators are focused on whether companies clearly disclose material terms, obtain affirmative consent, and provide easy cancellation mechanisms, and they are evaluating the entire user experience from sign-up through cancellation.

Kelley Drye defends clients in state and federal investigations, and helps clients design and assess subscription programs, navigate overlapping federal and state requirements, and develop compliance strategies that reduce enforcement exposure while supporting flexible, consumer-friendly business models.

Algorithmic Pricing

Algorithmic pricing refers to the use of automated software tools, algorithms, or artificial intelligence to set or adjust prices, often incorporating competitor data, market signals, or demand forecasts. The DOJ, FTC, and state enforcers are examining whether common pricing software, shared market data, or algorithmic decision-making tools could facilitate unlawful coordination among competitors, even in the absence of direct communication. As businesses increasingly incorporate AI and other technologies into pricing strategies, regulators are evaluating how traditional antitrust principles apply to automated decision-making. Enforcement actions and ongoing investigations suggest that the use of third-party pricing tools and competitor data will remain a significant area of focus.

Companies using algorithmic pricing tools should understand how those systems operate, what data they rely on, and whether appropriate controls are in place to preserve independent pricing decisions. Kelley Drye's competition team advises clients on the antitrust implications of pricing technologies, helping companies assess pricing programs, mitigate potential risks, and respond to government inquiries.

Related Services

Advertising and Marketing
Advertising Technology (AdTech)

Antitrust
Privacy and Information Security
State Attorneys General
Artificial Intelligence

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