

September 25, 2026

Comments of the Competitive Enterprise Institute

RE: Federal Trade Commission's Proposed Policy Statement Regarding Personalized Pricing

Docket No.: FTC-2026-1057-0001

The Competitive Enterprise Institute (CEI) appreciates the opportunity to comment on the Federal Trade Commission's (FTC) Proposed Enforcement Policy Statement Regarding Personalized Pricing.¹ CEI is a nonprofit research and advocacy organization that focuses on regulatory policy from a free-market perspective.

In the 1979 film *Monty Python's Life of Brian*,² the main protagonist, Brian Cohen, finds himself attempting to evade Roman capture in a crowded Jerusalem bazaar and tries to purchase a false beard as a disguise.³ "How much? Quick," Brian inquires. Harry the Haggler offers the price of 20 shekels, which Brian accepts. Harry is taken aback by Brian's unwillingness to haggle. "This bloke won't haggle," Harry exclaims to a neighboring merchant. After about 90 seconds of needless banter, they finally agree on a price of 14 shekels.

Brian's purchase of a false beard raises several questions relevant to the FTC's Proposed Policy Statement on Personalized Pricing. Did Brian have a reasonable expectation of haggling? Would he have incurred an actionable injury if he had paid the full 20 shekels? Could the disclosure have killed the deal entirely?

With questions looming about the effects of personalized pricing, what consumers may or may not reasonably expect when presented with a price in different markets, and the practical consequences of incentivizing an unworkable disclosure and labeling regime, the FTC should proceed with caution.

The proposed policy statement exceeds the FTC's authority under Section 5

The FTC is right to acknowledge twice in the proposed policy statement that Congress has not granted it the authority to impose a blanket ban on personalized pricing. Instead, the Commission asserts that Section 5 of the FTC Act requires companies using personalized pricing to "clearly

¹ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing* (August 19, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.

² *Monty Python's Life of Brian*, directed by Terry Jones, featuring Graham Chapman and Michael Palin (Cinema International Corporation, 1979).

³ Gil Klempert, "Monty Python Negotiation Haggle," YouTube video, February 24, 2014, <https://www.youtube.com/watch?v=-2iZjxSGca8>.

and conspicuously disclose not just that the price is personalized, but also the basis for that personalization and the types of data on which the personalization is based,” whenever consumers reasonably expect that a company is not engaging in personalized pricing.⁴

In doing so, the proposed policy statement stretches the Commission’s Section 5 authority to police unfair or deceptive acts and practices in order to justify mandatory disclosure of personalized pricing practices. As former FTC General Counsel Alden Abbott puts it, the proposed policy statement is essentially “A Disclosure Mandate in Search of a Statute.”⁵

The Commission’s reliance on disclosures required by the Fair Credit Reporting Act and state laws regulating insurance companies is misplaced. As Abbott points out, these types of disclosure regimes do “not establish a broader disclosure duty under Section 5 of the Federal Trade Commission Act.”⁶ Further, the credit and insurance industries fail to offer an apt analogy to the type of one-off transactions addressed by the proposed policy statement. Adverse actions in those industries almost always involve an existing contractual relationship with ongoing performance or a formal application to enter into a long-term agreement. The prices at issue in the proposed policy statement involve everyday retail and service transactions. When Congress has wanted sellers to disclose the basis for an individualized price, as it did in the Fair Credit Reporting Act, it has done so by statute. Congress has enacted no comparable requirement for everyday retail transactions, and the Commission should not create one through guidance.

The entirety of the FTC’s Section 5 theory rests on consumers’ reasonable expectations as to whether or not a company is engaging in personalized pricing. According to the proposed policy statement, there are markets where personalized pricing is a long-established norm and then there are markets where it’s not. If it’s not, then companies have to provide disclosures. If they don’t, the Commission warns, “[t]he failure to make these disclosures is likely to constitute an unfair or deceptive act or practice in violation of Section 5.”⁷

This guidance provides more questions than answers. As Daniel Gilman, senior scholar at the International Center for Law & Economics and former attorney advisor in the FTC’s Office of Policy Planning, observes,

That raises small—but perhaps critical—questions. How many consumers must hold that expectation? How consistently? Must a clear majority share it? Suppose the FTC means the modal or

⁴ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, p. 1.

⁵ Alden Abbott, “Your Price May Vary: The FTC’s Personalized-Pricing Puzzle,” Truth on the Market (blog), September 2, 2026, <https://truthonthemarket.com/2026/09/02/your-price-may-vary-the-ftcs-personalized-pricing-puzzle/>.

⁶ Abbott, “Your Price May Vary.”

⁷ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, p. 1.

median consumer—or in plain if less precise English, a typical consumer. What follows from that expectation?⁸

It's not clear if Brian Cohen had a reasonable expectation that the price for the false beard was uniform or if he was just simply in a hurry, but the exchange shows how hyper-subjective disclosure mandates can discourage voluntary transactions. When personalized pricing results in a discount, as it often does, the disclosure may discourage price-conscious consumers from taking advantage of it.⁹

Furthermore, how long should these disclosures persist? Will the disclosures themselves sufficiently inform consumers to the extent that norms shift, and they are no longer necessary? Rather than pursuing a guidance-created disclosure regime, the Commission should remember that consumers remain free to compare prices. The agency should consider the recommendation of Dr. George S. Ford, chief economist of the Phoenix Center: “[t]he Commission’s guidance may be better directed to consumers than retailers, and that guidance is plain: shop prices.”¹⁰

Can a price, if honored as presented and subject to competition, be unfair or deceptive?

The factors that go into setting an offered price are numerous, complex, and often opaque. They include production cost, localized demand, competitor pricing, and target profit margins, among many others. In its proposed policy statement, the FTC focuses on one distinct and newly politically controversial factor: the use of personal consumer data to offer personalized pricing.

Like the other factors, an individual consumer may or may not have some amount of information about the role personal data plays in setting the price offered to them. It is odd, and unexplained, to target one price setting input among many for labeling. It's easy to believe that there is a mix of consumer awareness of the many factors that affect price setting for sellers. How much any given buyer knows about a seller's cross-subsidization, profit margins, or supply chain disruptions is unknown in the hundreds of millions of retail transactions occurring daily.

Happily, the presence of input information on the setting of the price offered, or lack thereof, is likely not the critical information a consumer uses to decide between accepting or rejecting the offer to buy. The price itself is more likely the critical information a consumer uses in determining the value proposition of any given offer. To better inform that judgment a potential buyer may decide to compare prices elsewhere. Consumers can search to compare prices no matter what they know (or don't know) about how the initial seller arrived at the offered price.

⁸ Daniel J. Gilman, “Fine Print for Every Price: The FTC’s One-Size-Fits-All Guidance,” Truth on the Market (blog), August 28, 2026, <https://truthonthemarket.com/2026/08/28/fine-print-for-every-price-the-ftcs-one-size-fits-all-guidance/>.

⁹ Trevor Wagener, “The FTC’s Personalized Pricing Disclosures Would Cost Consumers Their Discounts,” Computer & Communications Industry Association, September 18, 2026, <https://ccianet.org/articles/the-ftcs-personalized-pricing-disclosures-would-cost-consumers-their-discounts/>.

¹⁰ George S. Ford, “Personalized Pricing and the Limits of Section 5,” Phoenix Center Perspectives, No. 26-05 (September 16, 2026), p. 7, <https://phoenix-center.org/perspectives/Perspective26-05Final.pdf>.

As long as the price offered and the terms of the sale are honored as presented, no deceptive or unfair practice has occurred under Section 5. When Brian agreed to the initial offer of 20 shekels on the spot, Harry could have accepted and it would not have been a deceptive practice. As other commenters point out, the FTC has previously explained that a “pure omission” is not unlawfully deceptive under Section 5.¹¹ As long as a seller hasn’t made claims of uniform pricing, they have no duty to disclaim personalized pricing. An offer price is not an implied warranty that every other customer pays the same price.

If Harry hadn’t insisted on the haggling ritual that was commonplace during first-century Judea, Brian would have paid an extra 6 shekels. Would this be an unfair practice under Section 5(n)? No. Section 5(n) prohibits only those acts or practices that cause substantial injury that consumers cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or to competition.¹² Brian could have walked to the next stall. Personalized pricing generally works the same way: consumers can avoid a higher offer by shopping elsewhere, and the targeted discounts that personalization makes possible are exactly the kind of countervailing benefits Section 5(n) requires the Commission to weigh. Instead, a voluntary exchange occurs that both parties believe is mutually beneficial. Or, if the consumer refuses, no exchange takes place, and perhaps an alternate exchange is made with a competitor. Personalized pricing does not “prevent consumers from effectively making their own decisions.”¹³ The value of the exchange can be evaluated by the consumer based on their interests,¹⁴ with or without the presence of all price offer input information being known.

The proposed policy statement is premature and economically misguided

The proposed policy statement concedes that “[t]he extent to which businesses currently use personalized pricing is not well understood, and the effects of personalized pricing on consumers are unclear.”¹⁵ While study of price discrimination spans the last century,¹⁶ the Commission should not move forward with burdensome guidance while the situation remains unclear to them.

¹¹ Comments of Alden Abbott to the Federal Trade Commission’s Proposed Enforcement Policy Statement Regarding Personalized Pricing, Docket No. FTC-2026-1057-0001, September 2, 2026, p. 3, <https://www.regulations.gov/comment/FTC-2026-1057-0946> (quoting *In re International Harvester Co.*, 104 F.T.C. 949, 1058–59 (1984)).

¹² 15 U.S.C. § 45(n).

¹³ Federal Trade Commission, “FTC Policy Statement on Unfairness” (December 17, 1980), appended to *International Harvester Co.*, 104 F.T.C. 949 (1984), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

¹⁴ Carl Menger, *Principles of Economics*, trans. James Dingwall and Bert F. Hoselitz (Auburn, AL: Ludwig von Mises Institute, 2007), 175–80, https://www.google.com/books/edition/Principles_of_Economics/pFva23_vWzkC?hl=en&gbpv=1&printsec=frontcover.

¹⁵ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, p. 3.

¹⁶ “Economists have studied price discrimination—also called ‘price differentiation’ or ‘differential pricing’—at least since the landmark work of A.C. Pigou and Frank Ramsey in the 1920s. More recent contributors include Jean Tirole, Richard Schmalensee, Hal Varian, and Varian and Alessandro Acquisti, among others.” Gilman, “Fine Print for Every Price.”

The FTC's stated lack of clarity on the effects of personalized pricing does not recommend guidance that presumes harm.

Many of the policy statement's more nefarious hypotheticals of personalized pricing are mitigated by competitive forces. The fictional hotel charging more to grieving patrons or the home-security company doing the same to victims of crimes are all subject to competitors incentivized to offer lower prices. The fictional example of a "rideshare company charging a user more on the basis of data revealing that the user has not installed any of the company's competitors' apps on the user's phone" is also subject to competitive pressure if the consumer is willing to take two to five minutes signing up for a competing app.¹⁷ If, as the Commission suggests elsewhere in the proposed policy statement, informed consumers can avoid higher personalized prices by "using a virtual private network or private browsing functionality," surely they can just as readily install a competing rideshare app.¹⁸

Empirical scholarship on personalized pricing illuminates its multifaceted and variable effects. While a uniform price may reflexively seem more "fair," the situation is far more complex. As Alden Abbott points out:

A uniform price may exclude consumers willing to pay more than the cost of serving them but less than the single price that maximizes the seller's profit. If the seller can identify these price-sensitive consumers, it may profitably offer them discounts, sell more, and reduce deadweight loss – the value lost when mutually beneficial sales never happen.¹⁹

In other words, scaring consumers away from personalized price offers or deterring sellers from making them risks harming both parties. Not only will the seller earn higher profits and clear more inventory, but more consumers will find the product or service at a lower price.

Empirical research confirms that personalized pricing can predominantly operate as targeted discounts, rather than surcharges.²⁰ Dubé and Misra's study of personalized pricing using machine learning found that:

. . . unexercised market power increases profit by 55%.
Personalization improves expected profits by an additional 19%,
and by 86%, relative to the non-optimized price. While total
consumer surplus declines under personalized pricing, over 60% of

¹⁷ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, p. 8.

¹⁸ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, p. 5.

¹⁹ Abbott, "Your Price May Vary."

²⁰ Jean-Pierre Dubé and Sanjog Misra, "Personalized Pricing and Consumer Welfare," *Journal of Political Economy*, Vol. 131, No. 1 (2023), <https://www.journals.uchicago.edu/doi/abs/10.1086/720793>; Nicholas Buchholz et al., "Personalized Pricing and the Value of Time: Evidence from Auctioned Cab Rides," *Econometrica*, Vol. 93, No. 3 (May 2025), <https://onlinelibrary.wiley.com/doi/full/10.3982/ECTA18838>.

consumers benefit from personalization. Under some inequity-averse welfare functions, consumer welfare may even increase.²¹

To move ahead without a thorough understanding of real and current consumer expectations, practical pricing effects, and the unintended consequences of such enforcement risks prompting already concerned states, which look to the FTC for guidance, to act prematurely as well.²²

In *Monty Python's Life of Brian*, Harry the Haggler's insistence on the haggling ritual nearly scuttled the transaction. The fear of violating Section 5 may prompt sellers to avoid personalized pricing altogether. Harry may decide, based on a number of considerations, that he will sell false beards at the uniform price of 18 shekels, which would deprive more price-sensitive consumers of the discounted price of 14 shekels.²³ If the Commission decides to adopt Section 5 guidance on personalized pricing, it should make clear the extent to which individualized discount prices do not violate Section 5 of the FTC Act.

Conclusion

Past FTC Commissioners have expressed concern regarding the modern collection and use of personal data and have even urged Congress to pass a comprehensive privacy law.²⁴ During the 119th Congress, lawmakers have considered such legislation.²⁵ The FTC's Proposed Enforcement Policy Statement Regarding Personalized Pricing certainly demonstrates far more regulatory humility than the advanced notice of proposed rulemaking on Commercial Surveillance and Data Security released in 2022.²⁶ However, the proposed policy statement reaches beyond the powers granted to the Commission by Congress in Section 5 of the FTC Act, and it does not provide helpful guidance to businesses.

Instead, it outlines a funnel of duty. On the front end, the Commission's entire enforcement theory hinges on consumers' reasonable expectations as to whether or not a company is engaging

²¹ Dubé and Misra, "Personalized Pricing and Consumer Welfare," p. 131.

²² Lindsey Tonsager, Jayne Ponder, and Natalie Maas, "State Lawmakers Introduce New Wave of Personalized Algorithmic Pricing Bills," Inside Privacy, March 26, 2026, <https://www.insideprivacy.com/artificial-intelligence/state-lawmakers-introduce-new-wave-of-personalized-algorithmic-pricing-bills/>.

²³ See Abbott, "Your Price May Vary."

²⁴ Dissenting Statement of Commissioner Christine S. Wilson regarding the Trade Regulation Rule on Commercial Surveillance and Data Security, Federal Trade Commission, August 11, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Wilson%20Dissent%20ANPRM%20FINAL%2008112022.pdf; Dissenting Statement of Commissioner Noah Joshua Phillips regarding the Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking, Federal Trade Commission, August 11, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/Commissioner%20Phillips%20Dissent%20to%20Commercial%20Surveillance%20ANPR%2008112022.pdf.

²⁵ House Committee on Energy and Commerce, "Committees on Energy and Commerce and Financial Services Introduce Pair of Privacy Bills to Establish Comprehensive Data Protections for All Americans," press release, April 22, 2026, <https://energycommerce.house.gov/posts/committees-on-energy-and-commerce-and-financial-services-introduce-pair-of-privacy-bills-to-establish-comprehensive-data-protections-for-all-americans>.

²⁶ Federal Trade Commission, "Trade Regulation Rule on Commercial Surveillance and Data Security," *Federal Register*, Vol. 87, No. 161 (August 22, 2022), <https://www.federalregister.gov/documents/2022/08/22/2022-17752/trade-regulation-rule-on-commercial-surveillance-and-data-security>; Gilman, "Fine Print for Every Price."

in personalized pricing. This would capture innocuous differential pricing based on personal data, like targeted discounts. On the back end, the FTC compiles a “non-exhaustive” list of seven “scenarios in which personalized pricing without adequate disclosure would raise Section 5 concerns.”²⁷ The list includes the most extreme, worst-case hypotheticals with more specificity than the front end gives to the vast majority of beneficial personalized pricing that is currently taking place in the American economy.

The Commission should decline to adopt the proposed policy statement in its current form.

Respectfully submitted,

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²⁷ Federal Trade Commission, *Proposed Enforcement Policy Statement Regarding Personalized Pricing*, pp. 7-8.