



Office of Commissioner  
Melissa Holyoak

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Statement of Commissioner Melissa Holyoak**

*Trade Regulation Rule on Unfair or Deceptive Fees*, FTC Matter No. R207011

December 17, 2024

Last year, the Commission issued its *Notice of Proposed Rulemaking; Request for Comments: Trade Regulation Rule on Unfair or Deceptive Fees* (“Proposed Rule”).<sup>1</sup> The Commission received more than 60,800 comments from different stakeholders, industries, and viewpoints in response.<sup>2</sup> And for good reason: the Commission proposed a far-reaching, economy-wide rule to police how a wide range of fees are disclosed or described to consumers.<sup>3</sup> Commenters raised a number of concerns about the Proposed Rule; for example, some questioned whether the Commission could satisfy the requirements for Section 18 rulemaking, including “prevalence” and “specificity,” given the Proposed Rule’s economy-wide scope;<sup>4</sup> other commenters questioned whether addressing fees and pricing across all industries may be of vast political and economic significance, implicating the Major Questions Doctrine;<sup>5</sup> and some raised practical industry-specific compliance concerns due to overlapping and duplicative regulatory regimes.<sup>6</sup> Had the Commission ignored the serious legal questions presented by an economy-wide Proposed Rule, I would have voted against it. Fortunately, the Commission heeded commenters’ concerns and substantially narrowed the Final Rule, focusing only on specific and prevalent unfair or deceptive practices in live-event ticketing and short-term lodging.<sup>7</sup>

While I do not agree with every drafting choice in the Final Rule text, and the Final Rule does not align exactly with my preferences, I support the issuance of the Final Rule for two reasons.

*First*, I believe the Final Rule comports with the strict requirements of the Commission’s Section 18 rulemaking authority.<sup>8</sup> The Final Rule defines with specificity *two* practices present in

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<sup>1</sup> Fed. Trade Comm’n, Notice of Proposed Rulemaking; Request for Public Comment: Trade Regulation Rule on Unfair or Deceptive Fees (“NPRM”), 88 FR 77420 (Nov. 9, 2023).

<sup>2</sup> Statement of Basis and Purpose (“SBP”) at 12.

<sup>3</sup> NPRM, 88 FR 77483.

<sup>4</sup> *See, e.g.*, FTC-2023-0064-3127 (U.S. Chamber of Commerce); FTC-2023-0064-3233 (NCTA – The Internet & Television Association); FTC-2023-0064-3028 (Competitive Enterprise Institute).

<sup>5</sup> *See, e.g.*, FTC-2023-0064-3238 (Gibson, Dunn & Crutcher LLP); FTC-2023-0064-3127 (U.S. Chamber of Commerce).

<sup>6</sup> *See, e.g.*, FTC-2023-0064-3168 (American Financial Services Association); FTC-2023-0064-3182 (Massachusetts Bankers Association); FTC-2023-0064-3233 (NCTA – The Internet & Television Association).

<sup>7</sup> Rule on Unfair or Deceptive Fees (to be codified at 16 C.F.R. pt. 464).

<sup>8</sup> *See* 15 U.S.C. § 57a(a)(1)(B); *but cf.* Dissenting Statement of Comm’r Melissa Holyoak, *Negative Option Rule*, FTC Matter No. P064202, at 2 (Oct. 16, 2024) (concluding that the Negative Option Rule did not follow Section 18 rulemaking requirements because, *inter alia*, “the Rule fails to define with specificity acts or practices that are unfair or deceptive, improperly generalizing from narrow industry-specific complaints and evidence to the entire American

live-event ticketing and short-term lodging that are deceptive or unfair—namely, omitting mandatory fees or charges from the advertised price of live-event tickets or short-term lodging;<sup>9</sup> and misrepresenting the nature, purpose, amount, or refundability of fees or charges for live-event tickets or short-term lodging.<sup>10</sup> By narrowing the Final Rule to focus only on live-event ticketing and short-term lodging, the Commission marshals empirical evidence sufficient to demonstrate the prevalence of these unfair and deceptive practices. Indeed, the Statement of Basis and Purpose accompanying the Final Rule identifies Commission workshops and economic analyses on “drip pricing” and hidden fees in the short-term lodging and live-event ticket industries specifically,<sup>11</sup> as well as economic research documenting consumer harm from these practices.<sup>12</sup>

*Second*, the Final Rule helps protect consumers and competition, while also preserving flexibility for businesses to engage in lawful advertising and pricing practices.<sup>13</sup> The Final Rule promotes greater price transparency, ensuring consumers understand the total price of live-event tickets or short-term lodging and can easily compare different offerings.<sup>14</sup> Price is an important factor in consumers’ purchasing decisions.<sup>15</sup> Even more so now, given that inflation is harming consumers. The Final Rule also promotes greater competition in the live-event ticketing and short-term lodging industries. Honest businesses that lawfully advertise actual prices are harmed when other businesses use hidden or deceptive fees; indeed, this practice undermines the ability of honest businesses to compete on price.<sup>16</sup> As commenters from these two industries have noted, the requirements enshrined in the Final Rule will help level the playing field for all participants.<sup>17</sup>

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economy” and “the Rule fails to demonstrate that the unfair or deceptive acts or practices related to negative option billing are ‘prevalent’”).

<sup>9</sup> 16 C.F.R. § 464.2 (Hidden Fees Prohibited).

<sup>10</sup> *Id.* § 464.3 (Misleading Fees Prohibited).

<sup>11</sup> SBP, *supra* note 2, at 28-31 (discussing the Commission’s conference on “The Economics of Drip Pricing” in 2012 and subsequent warning letters to hotel reservation sites about the exclusion of mandatory resort fees from advertised prices; the 2017 report from the Bureau of Economics on drip and partitioned pricing strategies, which identified the use of hidden resort fees; and the Commission’s workshop and staff report on live-event ticketing fees and pricing in 2019).

<sup>12</sup> *Id.* at 7, 26, 51-52; *see also* FTC-2023-0064-2891 (Mary Sullivan, George Washington University, Regulatory Studies Center) at 2-3, 9 (discussing considerable empirical research on hotel resort fees and live-event ticketing and recommending that the Proposed Rule be limited to short-term lodging and live-event ticketing).

<sup>13</sup> SBP, *supra* note 2, at 9 (“The rule does not prohibit any one type of fee, nor does it prohibit specific pricing practices such as itemization of fees or dynamic pricing. The rule does not require that all fees be included when offering a price—just mandatory ones. The rule gives businesses discretion to list optional fees selected by the consumer and government and shipping charges separately. The discretion to set prices remains squarely with businesses; the rule simply requires that they tell consumers the truth about prices for live-event tickets and short-term lodging.”).

<sup>14</sup> *See id.* at 28-31, 48-52 (discussing the different harms to consumers from hidden or deceptive fees or charges, including findings from the Commission’s empirical research on short-term lodging and live-event tickets); *see also id.* at 24 (“The Commission notes that the harms . . . are particularly pronounced in industries such as these, in which most transactions occur online. Consumers trying to comparison shop across multiple websites, or even on the same website, when deciding what tickets to purchase or where to travel are unable to do so effectively because some businesses hide the true total price and instead force consumers to go to different sites and click through multiple webpages for each offer to learn the true total price.”).

<sup>15</sup> *Id.* at 55 (“[T]he Commission and courts have previously recognized that price is a material term and that it is a violation of section 5 of the FTC Act to misrepresent the price of a good or service.” (internal citations omitted)).

<sup>16</sup> *See id.* at 52-54, 56, 83-86.

<sup>17</sup> *Id.* at 83-86 (discussing comments from the U.S. Chamber of Commerce, TickPick, LLC, StubHub, Inc., Vivid Seats, Live Nation Entertainment/Ticketmaster, National Association of Ticket Brokers, American Society of Travel Advisors, and American Hotel and Lodging Association).

Finally, with respect to the Statement of Basis and Purpose, my vote in favor of the Final Rule should not be read as a full-throated endorsement of the entire 300-plus page document. Indeed, parts of the Statement of Basis and Purpose address issues and make findings well beyond the scope of the Final Rule. For example, I disagree with the Commission’s repeated conclusion that there is substantial evidence that bait-and-switch pricing, hidden fees, and misrepresentations about fees or charges are prevalent “throughout the economy.”<sup>18</sup> And I disagree that the “evidence” cited throughout in the Statement of Basis and Purpose is sufficient to show “prevalence” under Section 18 for unfair or deceptive practices in other industries.<sup>19</sup> While I believe that an economy-wide rule mandating pricing disclosures requires Congressional action, the Commission should not shy away from using its Section 5 enforcement authority to protect consumers harmed by hidden or deceptive fees or charges in the interim.

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<sup>18</sup> *See, e.g., id.* at 86 (“The Commission recognizes that substantial evidence exists to support a finding of the prevalence of bait-and-switch pricing and misleading fees throughout the economy.”); *see also id.* at 23-24.

<sup>19</sup> *See, e.g., id.* at 24-28, 31-35.