Press Release

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WLF Urges FTC to Withdraw Anti-Personalized-Pricing Policy Statement

(*In re Proposed Enforcement Policy Statement Regarding Personalized Pricing*)

"Individualized pricing helps markets clear efficiently and increases consumer bargaining power. It shouldn't be discouraged through unfounded regulation-by-litigation."

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the Federal Trade Commission (FTC) to withdraw a proposed policy statement announcing stepped-up enforcement efforts against algorithmically set personalized pricing.

Under the proposed policy, the FTC warns that if a company uses consumer data to set a personalized price for an individual consumer, it may run afoul of Section 5 of the FTC Act, which bars unfair and deceptive business practices. The proposed statement suggests that companies can avoid liability by posting a conspicuous, yet undefined-by-the-agency, disclaimer about how the company engineers its personalized offers.

WLF's comment explains why the proposal should be withdrawn. Personalized pricing has countless benefits, from increasing consumer bargaining power to reducing the risk of illegal price-fixing by colluding firms. While the FTC provides a list of ways tailored offers could be harmful, the Commission ignores that competitive market forces will likely stave off any serious, substantive, predatory efforts to game consumers. The comment also notes that the Commission's compelled-speech solution poses First Amendment problems and the agency's effort to refine the law through upcoming litigation, rather than seeking notice-and-comment rulemaking, raises serious due process concerns.

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