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Consumer Analysis Techniques For Partitioned Pricing Cases

By **Ashish Pradhan and Alex Yavorsky** (December 14, 2022, 4:46 PM EST)


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In recent months, various groups — including the Federal Trade Commission and other high-level government regulators — have raised questions about the appropriateness of add-on charges paid by consumers who are buying products and services, often called "partitioned pricing."

For example, on Oct. 26, the White House released a blog post called "The President's Initiative on Junk Fees and Related Pricing Practices."[1]

Similarly, the Consumer Financial Protection Bureau launched an initiative in January related to such fees and, in its announcement, referred to fees charged by financial institutions, hotels and event venues as examples of junk fees.[2] Such fees have also been the subject of multiple lawsuits over the last several years.

Although the issue has recently been gaining attention among popular audiences, economists and marketers have studied the issue of partitioned pricing, sometimes referred to as drip pricing or shrouded pricing, for decades.[3]

Partitioned pricing is common in many industries, such as airlines, hotels, event tickets and others. Partitioned prices are prices that typically consist of multiple elements, such as a base price and one or more additional mandatory charges.

Despite the decades-long existence of partitioned pricing, groups have recently raised concerns that it may potentially mislead consumers. Because charges in partitioned or drip pricing models are sometimes revealed in the later stages of a multistage purchase process, consumers sometimes complain that the fees were hidden upfront.

This article analyzes some recent regulatory and litigation activity, summarizes the relevant academic research on partitioned pricing, and explores how to test the impact, if any, of this common practice. While the use of partitioned and drip pricing is sometimes characterized as systematically harmful to consumers, the practice may in fact carry benefits.

Furthermore, it is not always clear that alternative presentations of prices would lead consumers to make different choices. Accordingly, determining the impact of partitioned or drip pricing on consumer decisions in any particular situation is highly context dependent and requires careful analysis.

Litigation Trends

The practice of partition pricing and marketing has become a topic of interest for the FTC and the CFPB. For example, the FTC recently streamlined procedures to "tackle cutting-edge issues, like … unfair and deceptive practices in event ticket sales, among others," according to Commissioner Rebecca Kelly Slaughter.[4]

Additional efforts across states are being made to encourage the FTC to ban the use of drip pricing.

For example, the Institute for Policy Integrity at New York University School of Law has petitioned the FTC to ban drip pricing practices. The petition argues that sellers should be required to disclose the "full" price of a product or service up front as a single total price, including all unavoidable fees and charges.[5]

The FTC has begun accepting public comments on this petition to ban drip pricing. Under the new streamlined rulemaking procedures, it is possible that changes to these practices may begin to be implemented in the near future.

In fact, in July, New York Gov. Kathy Hochul signed into law a bill targeting ticketing practices for live entertainment events and said that the bill would increase transparency by banning hidden fees.[6]

As a result of this law, service charges will now be absorbed into the price of Broadway tickets, which for major ticket sources means before choosing seats and prior to check out.[7]

Since 2018, there have been numerous private causes of action, such as consumer class actions, that have dealt with issues related to partitioned pricing.

As noted by the FTC, some recent cases have focused on the pricing of event ticket sales, such as Lee v. Ticketmaster LLC in the U.S. District Court for the Northern District of California, which was dismissed in 2019, and Wang v. StubHub in the California Superior Court, County of San Francisco, which is still pending.

In addition, more recently, there has been litigation involving daily rates for hotel rooms. In these suits, plaintiffs sometimes allege that advertised hotel rates do not disclose fees such as resort fees.[8]

As the regulations around these pricing issues evolve, more litigation may emerge. The following section describes how analytical techniques can be used to assess marketing, consumer behavior and economics issues in cases involving partitioned pricing.

Academic Literature

While partitioned and drip pricing practices have generated increased focus from the FTC and CFPB recently, such pricing models have been the subject of deep academic study for decades.[9] Perhaps unsurprisingly, researchers have found that the impact of such models on purchase behavior and consumer satisfaction can vary based on a number of specific situational factors.

For example, some research has shown that norms regarding the situations in which consumers expect to be charged for components — as opposed to being provided an all-in price — can affect consumers' views of such charges. That is, it may be that consumers expect to pay for some charges such as shipping costs and therefore the presence of such a fee has no impact on consumers.

Furthermore, consumers may in fact be satisfied with surcharges, depending on whether they perceive to be receiving a real, as opposed to illusory, benefit from the charge.

The nature of the sellers, and the products and services at issue, can also affect consumers' reactions to partitioned and drip pricing models. For example, research has found that consumers do not tend to view surcharges negatively when purchases are made from sellers that have high reputations as compared to when they buy from low-reputation sellers.

Other research has demonstrated that whether a product is perceived to be hedonic — one that offers experiential benefits — or utilitarian — one that offers functional benefits — can affect the impact of partitioned pricing on consumers' views.[10]

In short, a number of contextual factors must be considered before one can reliably conclude whether a partitioned or drip pricing model affected consumer decisions and satisfaction levels.

The following section describes how analytical techniques can be used to assess marketing, consumer behavior, and economics issues in cases involving partitioned pricing.

Analytical and Empirical Tools to Address Complex Issues

Against the backdrop of the recent regulatory and litigation activity and the academic literature on partitioned pricing, the question arises: How can one empirically assess the impact on consumers, if any, of a challenged partitioned pricing design?

Economics and marketing provide some guidance on potential approaches that may be appropriate, subject to the specific facts and circumstances of the case.

Market data can be helpful in determining whether a partitioned pricing design had any impact on consumers. For example, it may be possible to conduct a "natural experiment" to assess whether a certain pricing design led to changes in purchases or prices paid.

Natural experiments are well accepted in economics and are well suited for instances in which data are available both before and after a relevant event. For example, data on the number of new customers who signed up for a product or service, both before and after a challenged pricing framework was instituted, could be used to assess whether the pricing framework itself led to changes in customer adoption.

Of course, as with any such analysis, other factors that may have changed customer adoption would need to be adequately assessed to ensure only the impact of the pricing design is measured.

In many instances, however, market data may not be available. In such cases, other empirical methods can be considered.

For example, a survey or simulation using an "A/B design" could be considered. In such a design, the sample population is divided into two groups, the A group and the B group.

The simulation would lead the A group through the actual, challenged purchase process in which surcharges are shown to consumers separately from initial fees. The B group would see a fictitious simulation in which all fees were displayed in a different, nonchallenged manner.

Both groups would then be asked an outcome question, such as likelihood to purchase. If it can be demonstrated that both groups are equally likely to purchase the product, then one may be able to conclude that the challenged pricing design did not affect consumer choice.

Additionally, survey research can also be used to explore consumer satisfaction and understanding of surcharges, including perceptions of the type of product that contains challenged fees, as well as perceived benefits of any challenged fees.

Finally, a "purchase reasons" survey can be helpful in assessing the impact of pricing, including at the class certification stage of putative class actions.

For example, it may be that for many consumers the price of the at-issue product or service was not an important driver in their purchase decision. Or it could be that different consumers had many reasons other than the price for their purchase decision.

Therefore, such a survey could be valuable in assessing whether the partitioned pricing design likely influenced a significant share of consumers.

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[1] Brian Deese et al., "The President's Initiative on Junk Fees and Related Pricing Practices," White House Briefing Room Blog, October 26, 2022, https://www.whitehouse.gov/briefing-room/blog/2022/10/26/the-presidents-initiative-on-junk-fees-and-related-pricing-practices/.

[2] "Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees," Consumer Financial Protection Bureau, January 26, 2022, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/.

[3] Technically, drip pricing differs from partitioned pricing. The former refers to situations in which a base price is revealed initially, with additional charges being revealed later in the buying process. The latter refers to the division of a product's price into several components, provided that the components cannot be bought separately. In popular usage, however, these concepts are frequently conflated.

[4] FTC Transcript from Open Commission Meeting, July 2, 2021, https://www.ftc.gov/system/files/documents/public_events/1591478/transcript_open_commission_meeting_7-1-21.pdf.

[5] Petition for Rulemaking Concerning Drip Pricing, July 7, 2021.

[6] Lee Gilbert, "Broadway Ticket Sellers Can No Longer Hide the Service Charge," New York Show

Tickets, October 14, 2022, https://www.nytix.com/news/broadway-ticket-sellers-include-service-charges.

[7] Ibid.

[8] See, for example, Travelers United v. MGM Resorts, No. 2021-CA-000477-B (D.C. Super. Ct.).

[9] For a discussion of some issues related to partitioned pricing, see, for example, Ajay T. Abraham and Rebecca W. Hamilton, "When Does Partitioned Pricing Lead To More Favorable Consumer Preferences? Meta-Analytic Evidence," Journal of Marketing Research 55, no. 5 (2018), pp. 686–703. For an overview of the academic research on partitioned pricing, see, Eric A. Greenleaf, Eric J. Johnson, Vicki G. Morwitz, and Edith Shalev, "The Price Does Not Include Additional Taxes, Fees, And Surcharges: A Review Of Research On Partitioned Pricing," Journal of Consumer Psychology 26, no. 1 (2016), pp. 105–124.

[10] Generally, a hedonic product is one for which consumers focus on experiential benefits while a utilitarian product is one for which consumers focus on functional benefits.