

Dissenting Statement of Commissioner Christine S. Wilson

October 20, 2022

Today the Commission votes to issue an Advance Notice of Proposed Rulemaking to address how prices are conveyed to consumers. Before discussing the substance of the ANPR, two procedural issues merit attention. First, the ANPR is based on the submission of a petition for rulemaking submitted by the Institute for Policy Integrity. I encourage consumer and industry groups to monitor the FTC's rulemaking docket and take seriously the public petitions that get published there — yesterday's petition may very well become today's ANPR.

Second, I was given less than three weeks to consider a rulemaking effort that, if adopted, could impact billions or even trillions of dollars in commerce, as well as millions of consumers and companies. I posed dozens of questions, many of which went unanswered. Today's proposal could launch rules that regulate the way prices are conveyed to consumers across nearly every sector of the economy. I understand that President Biden referenced so-called "junk fees" in remarks to the White House Competition Council on September 26, just three weeks ago.¹ Chair Khan sits on that Council. And I recognize that some of these fees may be inadequately disclosed. But manufactured deadlines based on our monthly open commission meeting schedule to demonstrate that the Commission is in lockstep with the Biden Administration should not override our obligation to exercise our significant authority in sober and thoughtful ways. If FTC leadership truly believes that this proposal will result in a rule, then it is irresponsible to shortchange the Commission on the time required to perform our due diligence.

There are kernels of utility in the ANPR that I had hoped to explore with my fellow Commissioners and staff. I agree with ensuring that consumers (1) have access to sufficient information to make informed decisions and (2) are not charged for products or services they did not agree to purchase. I would have looked more favorably on a rulemaking effort narrowly focused on those issues, particularly where we have an enforcement track record. But the version of the ANPR we discuss today is sweeping in its breadth; may duplicate, or contradict, existing laws and rules; is untethered from a solid foundation of FTC enforcement; relies on flawed assumptions and vague definitions; ignores impacts on competition; and diverts scarce agency resources from important law enforcement efforts. For these reasons, I cannot support the issuance of this Notice.

Given my concerns, I would like to highlight issues on which stakeholder input would be constructive.

¹ Remarks by President Biden at the Third Meeting of the White House Competition Council (referencing many industries that do not fall within the FTC's jurisdiction) (Sept. 26, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/26/remarks-by-president-biden-at-the-third-meeting-of-the-white-house-competition-council/>.

Breadth

- The ANPR explicitly mentions pricing practices in a wide array of industries, including auto financing, phone cards, fuel cards, payday lending, telecommunications, live entertainment, travel (including airlines, hotels, room-sharing, car rentals,-S carrrr dt

- How does this ANPR relate to the proposed Motor Vehicle Dealers Trade Regulation Rule, approved by the Commission on June 23, 2022, which focuses on pricing practices and fee disclosures in the automobile industry?
- The Truth in Lending Act (“TILA”) and Regulation Z outline complex credit disclosure
