



State of California
Office of the Attorney General

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February 7, 2024

Submitted via Federal eRulemaking Portal

The Honorable April Tabor
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

RE: Unfair or Deceptive Fees NPRM, R207011

Dear Secretary Tabor:

I write to thank the Federal Trade Commission (FTC) for engaging in rulemaking to address the deceptive practice of unfair or deceptive fees. This rulemaking will complement California's recently passed law addressing deceptive price advertising in our state. The FTC's rule will help to curb this practice nationwide and across industries and, by making clear that the rule does not preempt more consumer-protective state law, the FTC has created a federal minimum standard that will allow states to provide additional protections to their residents and businesses that advertise prices truthfully.

I commend the FTC for addressing the problem of unfair or deceptive fees. In its Notice of Proposed Rulemaking (NPRM), the FTC addresses two forms of this practice: (1) misrepresenting the price of goods or services by advertising a price that does not include all mandatory fees; and (2) misrepresenting the nature and purpose of added fees. As the FTC explains, these practices are seen in advertising for goods and services across the economy, including hotels and short-term lodging, live events, restaurants, and food and grocery delivery. Consumer and policy groups provided the FTC evidence that these deceptive practices are widespread, almost universally disliked by consumers, and on the rise. These practices make it difficult for consumers to compare prices, and put honest competitors – those that advertise their prices truthfully – at a disadvantage, which hurts competition and results in higher prices for consumers. It is for these reasons that President Biden has identified deceptive price advertising

as a matter of national concern, and has made it a focus of his agenda to promote competition in the economy.¹

California has taken action to protect consumers from hidden fees. This type of deceptive price advertising violates existing California false advertising and unfair competition laws, yet there was widespread noncompliance with these laws and purported confusion about the legality of the practice. In response, the California Low-Income Consumer Coalition and my office co-sponsored SB 478, which makes clear that the advertised price must include all mandatory fees other than tax and shipping. This law will go into effect on July 1, 2024, and, with limited exceptions, will govern all companies doing business in California.

I appreciate that the FTC’s rule respects the states’ role in protecting consumers from deceptive price advertising, and the rule’s clear intent to create a federal floor, rather than a ceiling, for consumer protection. Consumer protection in general, and false advertising in particular, are areas of state concern and fall within the states’ historic police powers. It is appropriate, then, that the rule does not preempt a state law unless the rule and the state law conflict and then only to the extent of the inconsistency, and further provides that the two do not conflict if the state’s law provides greater protection to consumers. The rule’s savings clause, then, acknowledges and preserves the complementary role that state and federal agencies play in ensuring a fair marketplace for consumers and honest businesses.

¹ The White House, *Executive Order on Promoting Competition in the American Economy* (Jul. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/> (estimating that higher prices and lower wages caused by a lack of competition cost the median household \$5,000 per year); The White House, *Fact Sheet: Executive Order on Promoting Competition in the American Economy* (Jul. 9, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (including several provisions targeting junk fees and establishing a White House Competition Council “to monitor progress on finalizing the initiatives in the [executive order]”); The White House, *Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery* (Feb. 7, 2023), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/> (addressing the problem of junk fees and calling on Congress to act); The White House, *Fact Sheet: President Biden Highlights New Progress on His Competition Agenda* (Feb. 1, 2023), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/01/fact-sheet-president-biden-highlights-new-progress-on-his-competition-agenda/> (proposing the Junk Fee Protection Act, which would reduce fees for live entertainment; airline fees; early termination fees for television, phone and internet providers; and hotel “resort” and “destination” fees.)

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For these reasons, I support the FTC's proposed rule.

Sincerely,



ROB BONTA
Attorney General