Insight

Web of Junk Fee Rules Causing More Confusion Than the Fees

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Executive Summary

- As part of the Biden Administration's push to prohibit so-called "junk fees" that it argues harm consumers and result in higher prices, the Federal Trade Commission (FTC) has proposed a rule to prohibit the misrepresentation of the total costs of goods and services by omitting mandatory fees from advertised prices.
- If the FTC acts to prohibit companies' levying of so-called junk fees, its rules would likely conflict with similar rules, perhaps most notably those promulgated by the Federal Communications Commission, which requires specific television providers to include most additional fees into advertised prices.
- In the event of such a conflict in regulatory authority, businesses would experience confusion and uncertainty about what fees are permitted to be included in their prices, adding additional burdens on companies trying to comply with contradicting regulation.

Introduction

Last October, the Biden Administration announced broad actions to tackle so-called "junk fees," which it broadly defines as any fee charged by businesses that is hidden in customer bills, increasing costs and stifling competition by making it harder to comparison shop. As the American Action Forum's Thomas Kingsley has previously written, there is no concrete definition of a junk fee and it may be that, as Kingsley observes, "the primary function of the term junk fee is to provide implied illegality because actual illegality does not exist." Penalizing companies for levying such fees may also impede important market functions. For example, the Consumer Financial Protection Bureau's (CFPB) CFPB's proposal to cap credit card late fees at $8 ignores that late fees deter customers from accumulating debt and ensure lower costs for credit card companies, allowing them to charge lower interest rates or offer additional benefits such as points or miles.

But often overlooked is the potential for overlapping regulation in the effort to limit the issuance of so-called junk fees, producing inconsistent or unclear guidance about which fees federal agencies consider junk and how those fees should be disclosed. Most notably, the Federal Trade Commission's (FTC) total price rule proposal and the Federal Communications Commission's (FCC) all-in pricing rule would both cover fees that cable and satellite television providers charge consumers but specify different fees that must be included and excluded in the disclosed prices. With several agencies now beginning to regulate junk fees, inconsistent oversight could add significant confusion to both businesses and their customers. Congress should carefully oversee the rulemaking process to ensure the agencies don't end up doing more harm than good.

What Are Junk Fees?

The Biden Administration defines junk fees as charges designed to confuse or deceive consumers or take advantage of consumers who are locked into one seller and cannot avoid the additional fees or other forms of situational market power. While this definition is extremely broad, previous American Action Forum insights have identified consistent themes among different agency actions.

First, junk fees are those the administration considers illegal, under the rationale that they are unfair, coercive, or deceptive. Second, the administration also identifies unnecessary or excessive fees – categories that are also difficult to define – as junk fees. Finally, junk fees have some element of surprise or are otherwise hidden from consumers.

Are Junk Fees Bad?

The Biden Administration claims junk fees hurt consumers because they complicate comparison shopping, create barriers to switching providers, and are used to extract monopoly rents when consumers have no other options. But the economics show that eliminating junk fees would have little, if any, impact on consumers.

Research from the Cato Institute, for example, highlights that the administration's claims of household savings from the elimination of junk fees are largely misleading, mainly due to the miniscule junk fee revenue as a portion of total revenue for most industries. For example, credit card late fees account for less than 1 percent of the industry's total revenue. Further, by banning these fees, the costs of service itself would not change, and while this could affect the distribution of money between different types of consumers, the total amount spent by U.S. households would remain unchanged.

Further, clearly establishing specific fees can benefit consumers. For example, having separate charges for different fees better explains to consumers what exactly they are being charged for. A ticket for airfare, for example, will show the purchaser the different security fees, customs fees, and taxes that go into the final price. And if all fees are incorporated into one price, the opaqueness of the process makes it easier for a firm to raise any single fee over time, raising the overall cost of the product.

Confusion Caused by Overlapping Jurisdiction

As the Biden Administration continues its anti-junk-fee push, a new challenge has emerged. Several agencies are targeting junk fees, and often the rules from one agency overlap with and sometimes contradict another's. Conflicting rules can lead to uncertainty for businesses and consumers.

One particularly glaring example is the conflict between the FTC's total price proposed rule and the FCC's all-in pricing rule proposal. The FTC's proposed rule would prohibit businesses from offering, displaying, or advertising amounts consumers must pay without clearly and conspicuously disclosing the total price of that service, including any mandatory ancillary good or service. The FCC, however, has already passed a rule requiring cable and satellite TV providers to specify the "all-in" price clearly and prominently for video programming service.

While these rules may sound identical, in practice there are some important differences. For example, the FCC rule excludes fees such as those for equipment rentals, while the FTC proposal could require inclusion of those charges into the consumer's price. Further, the FCC rule allows providers to include language in ads that say prices start at a specific value, understanding that different markets may have different prices, while the FTC does not include these types of exceptions. Regulators should make clear what exactly companies must do to comply with federal rules.

If the agencies continue to create confusing and overlapping rules to target standard business practices, Congress may need to step in through its oversight authority. While some regulations could be beneficial, Congress can ensure that any junk fee rules only target practices that harm consumers while also ensuring businesses can continue to compete on the merits.

Conclusion

The Biden Administration’s junk fee initiative is likely to have widespread consequences. As several agencies begin to target sector-specific practices they consider “junk fees,” overlapping jurisdiction and conflicting rules could produce significant confusion for both businesses and consumers. Congress should carefully oversee the rulemaking process to ensure the agencies don’t end up doing more harm than good.