



The Competition Initiative And Hidden Fees

National Economic Council
December 2016



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I. Introduction

Fair and competitive markets are the cornerstone of the American economy, and the process of competition benefits consumers, workers, entrepreneurs, and small businesses alike.¹ Vigorous competition can keep prices low for consumers and also ignite innovation that yields product improvements and new inventions. Competition can also ensure that workers receive competitive wages and fair treatment.² In contrast, in stagnant markets with weak competition, firms with market power can raise prices without improving their products; suppress wages, hurting workers; or exclude new competitors, squeezing out entrepreneurs and small businesses.

Unfortunately, there are numerous indicators of declining competition within the U.S. economy — including increasing levels of industry concentration, increasing returns to capital accruing to a few firms, lower levels of firm entry, and decreased labor market mobility. As identified by the Council of Economic Advisers (CEA), the majority of industries have seen increases in concentration from 1997 to 2012, as measured by the revenue share enjoyed by the 50 largest firms.³ *The Economist* found that in 42 percent of the approximately 900 industries examined, the top four firms controlled more than a third of the market in 2012, up from 28 percent of industries in 1997.⁴

Additionally, a range of broader macroeconomic trends are consistent with both increased concentration and decreased competition. Returns on invested capital across businesses have become more concentrated, with the top 10 percent of publicly-traded U.S. non-financial firms seeing returns that are more than five times the median.⁵ That ratio was around twice the median just 25 years ago. The economy has also seen a slowdown in the creation of new businesses since the 1980s, potentially fueled in part by increased barriers to entry for entrepreneurs. Young firms (those five years old or less) accounted for half of all firms in 1982, but today account for only one-third of all firms.⁶ Labor markets have also become less fluid – with workers less likely to move between jobs, industries, occupations, and locations – than they were in recent decades.⁷

To promote productive competition, the Obama Administration has taken actions falling in two categories: (1) robust enforcement of the antitrust laws, and (2) pro-competitive regulatory action. This report includes two main parts. First, recognizing independent agencies' strong record of enforcement, it highlights additional and separate work that the Administration has done to promote competition outside of traditional antitrust enforcement. Second, it identifies one particular space where additional work is needed: combatting the growing prevalence of hidden fees.

¹ https://www.whitehouse.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf

² https://www.whitehouse.gov/sites/default/files/page/files/20161025_monopsony_labor_mrkt_cea.pdf

³ https://www.whitehouse.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf

⁴ <http://www.economist.com/news/briefing/21695385-profits-are-too-high-america-needs-giant-dose-competition-too-much-good-thing>

⁵ https://www.whitehouse.gov/sites/default/files/page/files/20160916_searle_conference_competition_furman_cea.pdf

⁶ https://www.whitehouse.gov/sites/default/files/page/files/20160916_searle_conference_competition_furman_cea.pdf

⁷ https://www.whitehouse.gov/sites/default/files/page/files/20160916_searle_conference_competition_furman_cea.pdf

II. Competition Initiative Efforts to Date

As stated above, over the past eight years, the Obama Administration has taken action to promote competition in two ways: through robust enforcement of the antitrust laws, and by using regulatory or deregulatory alternatives to antitrust enforcement. The focus of this report is on the second category: the employment of pro-competitive regulatory actions.

To give a few examples of the latter over the course of the last eight years:

- The Federal Communications Commission (FCC) has pursued strong net neutrality rules designed to maintain low barriers to entry in online markets.⁸
- The Department of Defense (DOD), concerned about declining competition in procurement, has issued new internal guidelines, and also worked with the Federal Trade Commission (FTC) and the Department of Justice (DOJ), to issue guidelines to promote competition in acquisition.⁹
- The Department of Labor (DOL) cracked down on conflicts of interest in retirement advice through its fiduciary rulemaking, requiring financial advisers to provide retirement advice in their clients' best interest.¹⁰
- The FCC established a market-based spectrum reserve to combat excessive concentration in holdings of low-band spectrum.¹¹
- The President signed legislation restoring consumers' ability to "unlock" mobile phones and tablets they own for use with the carrier of their choice.¹²
- The Food and Drug Administration (FDA) announced new procedural rules designed to speed the approval of generic competitors to off-patent drugs sold by a "sole source." Such drugs have, in recent years, become prone to extreme price hikes due to lack of competition and the duration of the approval process.¹³
- To combat the usage of shelving practices designed by the largest beer, alcohol and liquor companies to disadvantage their rivals, the Treasury Department's Alcohol and Tobacco and Tax Bureau issued guidance designed to bar a new generation of shelving practices designed to systematically limit new entrants.¹⁴

In 2016, President Obama took another step by issuing an [Executive Order](#) ("Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy"). The Order directed Federal departments and agencies to use their existing authorities to identify and address impediments to competition. To do so, the President called on Federal agencies to use every appropriate tool to promote a fair, efficient, and competitive marketplace for American workers, businesses, entrepreneurs, and consumers. Agencies across the Administration responded to the initial 60-day deadline with a broad set of concrete

⁸ <https://www.fcc.gov/document/fcc-releases-open-internet-order>

⁹ <http://bbp.dau.mil/docs/USA004313-14.pdf>

¹⁰ <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28806>

¹¹ https://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0401/FCC-14-31A1.pdf

¹² <https://www.whitehouse.gov/blog/2014/07/25/call-answered-unlocking-americas-cell-phones>

¹³

<http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ManualofPoliciesProcedures/UCM407849.pdf>

¹⁴ <https://www.ttb.gov/rulings/2016-1.pdf>

suggestions, and many have since taken meaningful action through a variety of different mechanisms, including:

Reducing Barriers to Entry: In some markets, because of long-standing private or regulatory barriers to entry, consumers suffer from weak competition and limited options. When a producer, or small group of producers does not fear new competitors entering the market, there are diminished incentives to lower prices or improve products. The Administration has therefore sought to remove or lower such long-standing barriers to entry using a variety of legal authorities:

- **The hearing aid market** has been hindered by a paucity of competitors and barriers to entry created by a complex evaluation and purchasing process. While nearly 30 million Americans currently suffer from hearing loss (often age-related), only a fraction of those who might benefit see the product. Cost is a major factor, as hearing aids sell for an average of \$2,300 apiece (or \$4,600 for a pair). To facilitate market entry and better access to affordable hearing aids, [the FDA announced in December](#) that it does not intend to enforce the requirement that American adults get a medical evaluation before obtaining most hearing aids. The FDA also launched a process to facilitate the availability of over-the-counter hearing aids. These actions, designed to open the market to a broader range of entrants, have the potential to positively impact millions of Americans.
- In [November](#), the FTC announced proposed rules to make it easier for **contact lenses users** to shop for more convenient or cheaper options. The proposed new rules are designed to increase compliance with the rule requiring contact lens prescribers to give their customers a written prescription, and to clarify that sellers may substitute cheaper, physically-identical lenses for the ones listed on a prescription.
- In the **cable and broadband industry**, consumers have little choice but to rent “set-top boxes” to watch TV or access broadband — devices that can run several hundred dollars per year (and rising), due to a long-standing, de facto tie between the set-top box and cable service. In April 2016, the Administration [filed in support of the FCC’s initiative to open up the set-top cable box to competition](#). Given its independent authority, it is now up to the FCC to act. Opening up this market to competition will require overcoming a range of special interests aligned against reform and seeking to preserve a status quo that costs the average American hundreds of extra dollars per year,

Protecting Informed Consumer Choice: Effective competition is hindered when consumers cannot get the information necessary to make informed choices, because options are presented in a deceptive or biased way. The Administration has pursued a series of regulatory measures designed to protect consumer choice, as follows:

- DOT announced in October 2016 [a series of new steps to promote informed consumer choices in the airline industry](#) with measures barring airlines from cherry-picking the data they report on on-time arrivals; requiring online ticket agents to disclose any biasing of their results; and requiring airlines to report on mishandling of wheelchairs to protect disabled travelers. DOT is also conducting a rulemaking to explore how to protect

consumers from surprise fees, for example by requiring airlines to share baggage fee, seat assignment fees, and change and cancellation fees with ticket agents, so that customers can get an all-in-one price when they shop online. At the same time, DOT started a rulemaking to require refunds for delayed baggage.

- Consumer reviews, especially those easily accessible online, provide information that is essential to the competitive process. In December, the [President signed the Consumer Review Fairness Act](#), a law which fights the efforts of firms to target and destroy bad reviews. The law limits the ability of firms to issue legal threats to consumers who leave bad reviews, or seek to have the reviews taken down as a matter of copyright law.
- In December, the [President signed the BOTS Act](#), a bill designed to better police the process by which sports and event tickets are sold to the public. The bill gives the FTC new powers to fight ticket-buying robots who have, in recent years, buy up disproportionate numbers of tickets within moments of release, and resell those tickets at higher prices on secondary markets.

Protecting Competition in Labor Markets: Labor markets can be prone to the same problems as the markets for goods and services. There also exists a long-recognized, built-in imbalance of economic power between employers and employees; yet collective bargaining, the traditional mechanism of counterbalance, has come to play a smaller role in an era of declining union membership. In recent years, the CEA has found evidence that suggests that firms may have gained increased wage-setting, or [monopsony](#), power in labor markets. CEA and Treasury Department have examined the economic effects and policy implications of employers imposing unreasonable limits on the ability of workers to seek employment with another employer, so-called “non-compete agreements.” The Administration has championed efforts to combat these practices and ensure that workers share more fully in the gains they help create.

- **Employer wage collusion**, when firms collude to set wages, workers may collectively be denied the competitive wage for their work. In recent years, cases have been brought against companies for agreeing not to recruit each other’s most in-demand tech workers in Silicon Valley and against hospitals for colluding on nurses’ wages. DOJ and the FTC are charged with enforcing the law to stop anticompetitive conduct in labor markets as well as product markets. Earlier this year, they released [joint guidance for human resource professionals](#) on how to prevent, spot, and report collusion and other conduct by employers that may violate antitrust laws. In the guidance, DOJ announced that going forward it will criminally investigate allegations that competing employers have agreed amongst themselves on employee compensation or not to solicit or hire one another’s employees.
- **Non-compete agreements** limit the employment options for nearly one in five workers in the United States.¹⁵ As the [White House](#) and [Treasury](#) reported earlier this year, there is substantial evidence of overuse and misuse of these clauses. When workers who do not have firm specific knowledge are forced to sign non-competes, it limits their ability to

¹⁵ <https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf>

search for higher wages or better jobs. To help address overuse of non-compete agreements, the Administration put out [a call to action](#) and set of best practices for state policymakers to enact reforms. In addition, the White House announced private-sector commitments to undertake the largest data collection of its kind to better measure non-compete usage by firms and individuals, alike.

- **Small farms** will benefit from [the United States Department of Agriculture \(USDA\)'s December release of three rules](#) designed to empower small farmers to stand up for fair treatment in the face of the significant market power of the processing industry. These rules will help farmers – particularly poultry farmers – get compensated when they are treated unfairly and provide safeguards so the poultry tournament system through which many contract farmers are compensated is conducted fairly.

While this Administration has made meaningful progress promoting competition across a range of industries, there is more work to be done. Among the broad competition challenges that remain are the rise of fees that obscure pricing, as the next section details.

III. Hidden Fees, Muddy Prices

The competitive process depends fundamentally on advertised prices that are accurate. In many industries, businesses use so-called “hidden fees” – the addition of a mandatory or quasi-mandatory fee to the advertised price of a good or service, added at some point in the transaction, to effectively raise the final price – in order to drive down the perceived price and lure consumers to make purchasing decisions based on misinformation. At their worst, such fees can be fraudulent or deceptive; at a minimum, they make prices unclear, hinder effective consumer decision making, and dull the competitive process.

These fees can be found in a diversity of industries and are growing in magnitude:

- Mandatory “resort fees” that are now added to many hotel bills effectively form part of the base price of the hotel room and account for a growing amount of revenue. According to one consumer watchdog, last year resort fees accounted for \$2.04 billion – or 16.6 percent – of revenue for the hotel industry, and they are growing at a far faster rate than inflation;¹⁶
- “Service” fees, according to industry figures, added to ticket prices for concerts and sporting events amounted to more than \$1.6 billion last year;¹⁷

¹⁶ <https://travelersunited.org/hotels/resort-fees/mandatory-resort-fees-reach-2-04-billion-in-2015-grew-35/>

¹⁷ Based on the 2015 revenue of Ticketmaster, one of the largest player in the online event ticketing market: http://s1.q4cdn.com/788591527/files/doc_financials/2015/Annual-Report.pdf

- Airline fee revenue, including *de facto* mandatory baggage and change fees, climbed to an estimated \$22.5 billion in 2015.¹⁸

A pattern of steady fee increases in the airline, hotel, and other industries are well documented.¹⁹ That has led other entities, including the FTC, the Consumer Financial Protection Bureau (CFPB), the FCC, and some states to express concern about the so-called “fee economy.”²⁰

Building on the work of the aforementioned agencies to date within their respective jurisdictions, here we examine a broader trend across a range of American industries. We also consider the role that the states have played, and can play, in the oversight of hidden fees. It is clear that more can be done, whether by other Federal agencies with the power to compel pricing transparency, or by the states or other entities, like platform intermediaries, with power over how pricing appears to consumers.

[A Matter of Broader Economic Concern and a Definition](#)

Economists in recent years have taken interest in how hidden fees affect consumer behavior. To make clear of what we are speaking, we need to clarify the difference between *optional* and *mandatory* fees. There are, on the one hand, a growing number of options offered to consumers when they buy goods or services, such as the option of adding a GPS device to a car rental, or an extended warranty to a microwave. The focus of this report, however, is not the rise of optional services and associated fees, but the addition of fees that are mandatory, or *de facto* mandatory, and therefore part of the true price.

Both empirical studies and theoretical models suggest that mandatory hidden fees cause, or even trick, people into buying things they would not otherwise.²¹ In other words, people are more likely to buy something that appears to cost \$80 with \$20 added later, than something that is priced at \$100 up front. The most straightforward explanation is that some or many consumers do not focus on the full price, but rather buy on the basis of the lower price, and are therefore deceived. Such “drip” or “partitioned” prices can be understood as the exploitation of cognitive biases in consumers when it comes to making purchasing decisions.

Consider that a consumer might think themselves only willing to pay \$70 for a concert ticket, and would therefore refuse to buy a ticket priced at \$80. However, if the same ticket is priced at \$69, and if \$11 in fees are added later in the process, the same consumer may buy the ticket because the initial price did not trigger the consumer’s mental price limit. In addition, the consumer may feel, after having made an initial decision to buy, that he is now too committed to back out and will therefore just pay the \$11.

¹⁸ <http://www.ideaworkscompany.com/wp-content/uploads/2015/11/Press-Release-103-Global-Estimate.pdf>

¹⁹ See <http://www.ideaworkscompany.com/wp-content/uploads/2015/11/Press-Release-103-Global-Estimate.pdf> and <https://travelersunited.org/hotels/resort-fees/mandatory-resort-fees-reach-2-04-billion-in-2015-grew-35/>

²⁰ FTC paper: https://www.ftc.gov/sites/default/files/documents/reports/economics-ftc-drug-and-pbm-mergers-and-drip-pricing/shelanskietal_rio2012.pdf

²¹ https://www.ftc.gov/sites/default/files/documents/reports/economics-ftc-drug-and-pbm-mergers-and-drip-pricing/shelanskietal_rio2012.pdf ; <http://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf>.

While the potential of deception makes the fees important as a matter of consumer protection, the general rise of hidden fees as a pricing strategy also represents a matter of broader economic concern for several reasons. First, when consumers are induced into paying more than they otherwise would for goods and services, the result can be a systematic transfer of wealth away from consumers to the firms who successfully hide their true prices.²² Empirical studies suggest that such pricing strategies may systematically make consumers pay more for goods and services, and put less effort into searching for lower prices.²³

Second, prices provide information that serve to move resources to their highest and best uses.²⁴ It follows that when the information conveyed by prices is muddled or confused, it can undermine economic efficiency for entire categories of consumers.

Third, deceptive pricing may also inhibit the competitive process. Specifically, it may hurt the ability of a price-cutting competitor to take business away from a more expensive rival. The creation of consumer confusion and wariness around actual prices may make consumers disbelieve advertised prices, making it harder for the genuine price-cutter to attract consumers. Moreover, the higher-priced rival may use hidden fees to effectively shroud its comparatively higher prices. This may reduce real price competition.

Fourth, unusual pricing practices may facilitate “follow-the-leader” pricing among competitors. The setting of “standard” add-on fees, which are in theory not part of the negotiated price, provides an ideal anchor for tacit coordination because they are typically set at the national level and fluctuate less frequently than the base prices themselves. As a result, for example, such fees make it easier for the airline industry to implement and sustain prices without an explicit agreement. In this example, the major airlines would likely find it easier to implement and sustain a “standard” change fee of \$250 as it may be easier to coordinate on that price than the prices for travel itself.

[Some Major Examples of Hidden Fees in the U.S. Economy](#)

What follows does not purport to be a comprehensive survey of hidden fees in the American economy, but rather an effort to highlight some significant areas where fees constitute a substantial amount of spending. Speaking broadly, it is important to observe that hidden fees vary along several dimensions:

- Whether they are charged by the seller (e.g. resort fees, service fees) or some other entity but collected by the seller (e.g. via taxes, tolls, facility or airport charges paid to third parties).
- Whether they are mandatory, or *de facto* mandatory. The focus of this report is mandatory fees that are effectively part of the price. There are also, however, *de facto*

²² https://www.ftc.gov/sites/default/files/documents/public_events/economics-drip-pricing/dlaibson.pdf

²³ <http://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf>;

https://dash.harvard.edu/bitstream/handle/1/9748525/Chetty_SaliienceTaxation.pdf

²⁴ <http://www.econlib.org/library/Essays/hykKnw1.html>

mandatory fees, representing a fee charged for something that has traditionally, or practically been an important part of the good or service and is hard to do without – like towels at a hotel. Related are fees that influence the “option value” of a service – like the fees charged for changing or cancelling a hotel or flight reservation.

- The degree of disclosure, which can vary from disclosure during the buying process, merely discoverable, all the way to truly hidden fees which are simply added to a bill without notice.
- The degree to which advertised prices form the principal basis of competition in the industry.
- The size of the fee relative to the advertised price, which can vary from some small percentage to fees that actually exceed the advertising price (as is the case with some resort fees).

As this list suggests, not all hidden fees have the same effect on competition and fairness. The most questionable are those added to a bill, without real notice, unconnected to any additional service, in an industry where advertised pricing is essential. Others, presented at different stages and with different levels of transparency and connectivity to services delivered, exist along a continuum, as can be seen in what follows.

Resort Fees

A prime example of a hidden fee – and one that has received much attention – is the “resort fee”. The resort fee is a mandatory fee added to the price of the hotel room, that is effectively part of the price, but typically not displayed in the advertised price. Resort fees can sometimes represent a significant part of the total price and may, in some instances, actually *exceed* the advertised price. Such fees are usually unavoidable, and their disclosure, or lack thereof, has been a matter taken seriously by the FTC.

Media reports have identified a growing number of hotels that charge resort fees, usually ranging between \$10 and \$30, while some charge fees that exceed \$100 per night.²⁵ Broader studies of the industry reveal that hundreds of hotels and resorts now add the fees to their bills. A study by Travelers United, a consumer group, also suggests that the fees are increasing. Total fees charged reached \$2.04 billion in 2015, rising from \$1.51 billion in 2014.²⁶ The fees have also been steadily increasing at a rate greater than inflation: as the Washington Post reported, resort fees jumped 8 percent in the first six months of 2016.²⁷

While the fees are mandatory, hotels have made some effort to connect these fees to services provided, suggesting that they pay for, for example, water in the room, coffee in the lobby, access to the gym, or other amenities. Typically, however, a consumer does not have the option

²⁵ Lauren Young, “Hotel travelers gripe as fees rise,” Reuters, January 12, 2016.

²⁶ <https://travelersunited.org/hotels/resort-fees/mandatory-resort-fees-reach-2-04-billion-in-2015-grew-35/>

²⁷ https://www.washingtonpost.com/lifestyle/travel/there-may-be-an-end-in-sight-for-controversial--and-often-invisible--resort-fees/2016/06/16/101f6074-317e-11e6-8758-d58e76e11b12_story.html?utm_term=.d452cda58ed9

of *not* paying the fee, differentiating resort fees from truly optional charges, such as room service or transportation to the airport. The fees are also charged at a later stage of the buying process.

Given their potentially deceptive nature, resort fees have been the subject of FTC and Congressional scrutiny. In 2012, the FTC sent letters to 22 hotel operators advising that their failure to fully disclose fees may constitute an “unfair and deceptive” practice under Section 5 of the FTC Act.²⁸ The FTC and some members of Congress have called for legislation to require “all-in pricing,” thereby ending separate resort fees altogether.²⁹

Event Ticketing Fees

The fees charged for event ticketing – for concerts or sports events – constitute among the larger unavoidable fees, as a percentage of price, in the consumer marketplace. According to industry figures, the ticketing industry, combined, charged consumers over \$1.6 billion in service fees in 2015.³⁰

Online ticket vendors add both “service fees,” “processing fees” and sometimes “delivery fees” (or “instant download” fees) to ticket prices at different stages of the buying process. The fees are mandatory, and in most cases are not connected to any additional goods and services beyond that of receiving the purchased ticket.

In recent years, the magnitude of ticketing fees has attracted some attention from state law enforcement officials. In a report released in 2016, the New York Attorney General surveyed the fees added to New York tickets and found that major vendors added fees that regularly reached over 21 percent of the price of the ticket and in some cases were higher than the price of the ticket.³¹ The report found the fees, such as “convenience,” “processing” or “service” fees, unconnected to the provisioning of any additional services. For that reason the Attorney General suggested that such fees may represent a violation of New York ticketing laws, which bar the addition of fees when unconnected provision of any additional or special services.

New Car Fees

Buyers of new cars face a series of fees that are added after purchase, the amount of which are not fully disclosed in the advertised price or during negotiations, but are, rather, added at the end of a purchase in a manner presented as non-negotiable. As such, the full price of a new car is something the consumer may only learn at the very end of the buying process, and may result in a price several thousand dollars above the listed price.

Some of the fees are, in fact, the collection of taxes or other fees to be paid over to some authority, like the state, such as registration fees, or tire disposal fees. However, these are mixed

²⁸ <https://www.ftc.gov/news-events/press-releases/2012/11/ftc-warns-hotel-operators-price-quotes-exclude-resort-fees-other>

²⁹ <https://www.congress.gov/bill/114th-congress/senate-bill/2599>

³⁰ Based on the 2015 revenue of Ticketmaster, one of the largest player in the online event ticketing market: http://s1.q4cdn.com/788591527/files/doc_financials/2015/Annual-Report.pdf

³¹ http://www.ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

in with fees that are best understood as additions to the price of the car, for they cover “services” that might also be considered the overhead of the dealer. These fees can amount to thousands of dollars, yielding a higher final price for the car. Among the fees in the latter category that may be charged by car dealers are:

- **Documentation Fees:** Fees charged to cover the cost of preparing and filing the sales contract and other paperwork. These fees range on average from \$75 to \$670, depending on state regulation or lack thereof.³²
- **Floor Plan Fee:** A fee charged to cover the cost of keeping the vehicle in the dealer’s inventory.
- **Dealer Preparation Fee:** A fee charged to “prepare the car” for the buyer.
- **Advertising Fee:** A fee charged by the dealer to cover its costs of advertising. Sometimes dealers will add two sets of advertising fees, reflecting their own advertising as well as advertising by the manufacturer.
- **Destination, Delivery, or Processing Fee:** A fee charged to cover the cost of shipping the vehicle from the manufacturer to the dealer.

The magnitude of some of these fees has, in some states, attracted regulation. For example, documentation fees are currently regulated in ten states. The regulation, unsurprisingly, affects the magnitude of the fees. In unregulated states like Florida, documentation fees average \$675 and can be as much as \$999.³³ In contrast, in the ten regulated states where the documentation fee has been capped (and is usually charged at that price), documentation fees are significantly lower, such as in New York, where it is set at \$75, or in Maryland, where it is set at \$300.³⁴

Airline Fees

Airline fees merit independent consideration, based both on their volume and in their regulation. The fees are subject to a series of rules at the Federal level by the Department of Transportation (DOT).

Like many businesses, many airlines charge fees that are both mandatory and optional, and some that are in a gray zone between the two. Unlike in other industries, the disclosure of mandatory fees in advertised airline prices is required by law. Under the DOT’s “Full Fare” advertising law, 14 CFR § 399.84, carriers and travel agents must advertise “the entire price to be paid by the customer to the carrier.” This means that paying the prices listed on search engines or the airline’s website will get the passenger to the destination, and will include any and all taxes, gasoline surcharges, facility charges, and so on. In practice, fees and taxes can add up to as much as half of the ticket price, which explains in part the importance of their disclosure.

³² <https://www.edmunds.com/car-buying/what-fees-should-you-pay.html#chart>

³³ <https://www.edmunds.com/car-buying/what-are-car-dealership-documentation-fees.html>

³⁴ <https://www.edmunds.com/car-buying/what-fees-should-you-pay.html#chart>

The question of what counts as “the entire price” has, for regulators, proved to be an evolving question. Two of the main fees charged by airlines – change fees and baggage fees – operate in a gray zone between being truly mandatory fees and truly optional. Accounting for an estimated \$22.5 billion in revenue in 2015, change fees and baggage fees may be optional in a theoretical sense, yet in practice unavoidable for many passengers.³⁵ For this reason the DOT is currently examining whether change and baggage fees should be included or disclosed by airlines in their advertised prices.³⁶

Student Fees

Over the last decade, colleges and universities have often increased student fees as an alternative to increasing tuition. The fees are generally mandatory and are not always specifically related to any additional good or service, though they may be designated as such.

Student fees often account for a substantial percentage of the cost of college. They are estimated to add over 20 percent to the price of tuition at average four-year public universities.³⁷ Among the major fees that colleges charge:

- **Entry Fees:** New students are charged various fees to begin their studies. These may include simple entry fees, freshman counseling fees, and others.
- **Service Fees:** Like hotel resort fees, colleges often charge fees for services that might be considered incident to the educational process, such as technology use fees, advising fees, and student center/stadium facility fees.
- **Special Fees:** Universities have also added mandatory fees such as globalization fees (used to finance study abroad programs), development fees (used to fund programs such as wellness centers and shuttle buses), enhancement fees (used to fund campus improvement projects such as fitness centers and student lounge spaces) and other additions, usually directed to specific projects.

Telecommunications Fees

Mobile and fixed-line telephone companies, as well as cable companies that offer voice calling services, have added their own fees or allowed commercial third-parties to add fees to the accounts of their customers, increasing the monthly amount due in excess of the advertised prices. Hence, the subscriber to a \$39.99 monthly plan might pay a real price of \$46.99 thanks to the addition of an industry-imposed \$4 “regulatory cost recovery fee” and a \$3 “administrative fee,” which are all paid to the telephone company, and therefore represent the real price of the service.

³⁵ <http://www.ideaworkscountry.com/wp-content/uploads/2015/11/Press-Release-103-Global-Estimate.pdf>

³⁶ <https://www.transportation.gov/briefing-room/us-department-transportation-announces-enhanced-protections-air-travelers-actions>

³⁷ https://www.washingtonpost.com/news/grade-point/wp/2016/06/22/tuition-at-public-colleges-has-soared-in-the-last-decade-but-student-fees-have-risen-faster/?utm_term=.126d1e187225

The complexity of commercial fees charged to consumers in the telecommunications markets is itself an independent source of concern. Distinct from modest, Federally-mandated universal service fees that help ensure all Americans have access to vital telecommunications services regardless of geography or income, the commercial fees carriers charge can be roughly divided into two categories.

The first category includes fees charged by the carrier itself as mandatory additions to the advertised price that result in a higher total price. For example, carriers charge additional fees to consumers under names like a “Regulatory Programs Fee,” or a “Mobility Administrative Fee.” Despite the titles of the services, which suggest that the money is charged for an official purpose, these fees are kept by the carrier and can be considered additions to the price of telephone service or a means of raising prices without changing advertised rates.

Second, carriers sometimes permit third parties to add charges to a subscriber’s phone bill with minimal levels of notice or consent, also yielding higher total bills. As the FCC has detailed, such fees (known as “cramming”) are typically labeled as a “service fee,” “service charge,” “other fees,” “voicemail,” “mail server,” “calling plan,” or “membership.” They may also appear as added services placed on a consumer’s account without notice or authorization, like ringtones, cell phone wallpaper, or “premium” text messages. They may also be labeled a “monthly fee” or “minimum monthly usage fee” to avoid detection. Typically, the fee collected is then split between the third party and the carrier.

Unlike some of the other hidden fees discussed in this report, the fees on telephone bills are sometimes added without notice to the consumer. While carriers may argue that the fees are optional in the sense that they can be removed, given that customers do not affirmatively opt-in to paying these fees, they are effectively hidden.

As both the FCC and the FTC have made clear, the carriers benefit from both the addition of their own fees and the addition of third party fees to phone bills. For these reasons, in recent years the FCC, the FTC, the CFPB, and a coalition of attorneys general have assessed \$353 million in penalties and restitution against the main wireless carriers for their practices.³⁸ In addition, the FCC maintains “truth in billing” guidelines that require such fees to be disclosed. A 2011 Senate Commerce Committee Investigation found that third-party cramming on landline telephone bills amounted to over \$2 billion in charges each year.³⁹ As a result, telephone companies received \$1 billion in revenue as the result of placing these third party charges on their customers’ phone bills over the decade preceding 2011.⁴⁰

Banking Fees

Consumer fees, broadly speaking, have become an important source of revenue for the banking industry: especially account maintenance, overdraft, and ATM fees. The CFPB estimated, for instance, that overdraft and non-sufficient fund fees collected by large banks totaled \$11.16

³⁸ <https://www.fcc.gov/consumers/guides/cramming-unauthorized-charges-your-phone-bill>

³⁹ <https://ecfsapi.fcc.gov/file/7021859847.pdf>

⁴⁰ <https://ecfsapi.fcc.gov/file/7021859847.pdf>

billion in 2015.⁴¹ Monthly account maintenance fees have been estimated at nearly \$1 billion in annual revenue.⁴²

An example of hidden banking fees include fees charged when banks advertise a financial product, like a checking account, as a “free” account, when in fact, consumers will end up paying sizable fees to use the financial product on an ongoing basis. In one case investigated by the CFPB, a bank advertised a “free checking account” with “no strings attached.” Yet consumers, after signing up for the account, found themselves automatically converted to a fee-bearing account of between \$5 and \$14 per month.⁴³ Hence the fees and the real price of the account were effectively hidden.

What Government, Private Sector, and Academia Can Do

Market forces alone may not, and have not, been effective in discouraging companies from relying on hidden fees. Because using fees makes prices look lower to consumers, companies have an incentive to employ fee pricing models. The competitive process, therefore, is unlikely to eliminate fees on its own. There are, however, a number of actions that can be taken in the short-term and in the long-term in order to eliminate or mitigate hidden fees across various markets.

Consumers and consumer groups play a crucial role in moderating fees. For example, in event ticketing, even absent regulation, consumer outrage at fees has been acknowledged by some vendors who, in turn, have made some effort to clarify why they charge the fees they do. This suggests that remedies that promote transparency can improve the ability of consumers to put pressure on industries, such as the three provided below.

Fee regulation or caps: A traditional solution to fees perceived as excessive are legislatively mandated caps on fees, or regulatory mandates that fees be reasonable. While the approach deals with fees very directly, it also creates risks. Fee caps, in particular, run the risk of being insensitive to changing conditions; as circumstances change, what was once a cap may end up preserving a fee that might otherwise have disappeared due to technological or competitive changes. Furthermore, fee caps may serve as an anchor for tacit coordination, setting a *de facto* price for the fee that competing firms may converge to. Alternatively, the mandate that fees be “reasonable” preserves more flexibility but also requires an ongoing governmental process to determine what constitutes a reasonable fee.

Mandatory “all-in” pricing: Legislatures, as well as Federal and state agencies can enact rules that require any mandatory, or *de facto* mandatory fee be included in any advertised price – no matter who is advertising it. One model, described above, is the DOT’s rule governing the advertising of air travel, which requires a full statement of the price including all necessary fees in any advertised price.

⁴¹ <http://www.consumerfinance.gov/about-us/blog/new-insights-on-bank-overdraft-fees-and-4-ways-to-avoid-them/>

⁴² <http://www.latimes.com/business/la-fi-lazarus-20150908-column.html>

⁴³ <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-mt-bank-for-deceptively-advertising-free-checking/>

Importantly, an “all-in” pricing rule does *not* simply require disclosure of fees at some point, like at checkout, but requires that advertised prices include the full amount due. Mere disclosure rules continue to allow the exploitation of the various cognitive biases described above. An all-in pricing rule does not permit firms to advertise a service as costing “\$69.00 plus fees” or even “\$69.00 + \$15.00 fees” but requires the full disclosure of what the price will be *after* the addition of fees (\$84.)

From a consumer protection and competition standpoint such all-in pricing rules seem preferable. Among other things, they can be effective in promoting prices that can be more easily compared across vendors. As it stands, for example, it is easier to compare prices between airlines as compared with hotels or event tickets, where uncertainty surrounding fees makes the final price much less obvious to consumers. The main challenge is that the mandating “all-in” pricing may prompt the industry in question to try and further “unbundle” their product, and add fees to what were formerly considered parts of the service (like fees for carry-on luggage). The approach may therefore necessitate an ongoing effort to distinguish between mandatory and optional fees.

Deceptive Trade Practices: As an alternative to rulemaking or legislation, the FTC and states with similar consumer protection laws may use their ban on “deceptive practices” to create a transparency regime, or at least require fuller disclosure of fees. The case-by-case nature of such enforcement actions may make it harder to achieve parity across a given industry.

Further economic research is needed to determine the broader, systemic impact of fees-driven pricing on consumers and the competitive process, as the effect of the rise of fees on the economy is far from fully understood. In particular, the extent to which fees tend to dampen competition or promote tacit coordination is unclear. Researchers should further seek to quantify the extent and impact of hidden fee pricing schemes, and develop recommended policy solutions where called for.

IV. Conclusion

Over the past eight years, the Obama Administration has taken a number of actions that promote competition and can benefit consumers, workers, entrepreneurs, small businesses, and the overall economy. The President’s Executive Order spurred Federal agencies to take meaningful actions that increase competition. But more work remains to be done, and this report identifies a space where action is needed.

Transparent and accurate pricing is the foundation of an effective and efficient American economy, allowing consumers to make smart choices and to reward the providers of better goods and services. But when pricing is unclear, it threatens the competitive process by which consumers make decisions. The growing use of hidden fees and related tactics, as outlined in this report, threatens the incentives to create better goods and services. All actors – policymakers at all levels of Federal and state government, the private sector, and researchers – need to build on the actions of Administration and seek to mitigate or eliminate the growing use “hidden fees” across a number of industries.