

April 10, 2024

Honorable Jay L. Himes  
Administrative Law Judge, Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Via Email: [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov), with a copy to [OALJ@ftc.gov](mailto:OALJ@ftc.gov)

**Re: Notice of Proposed Rulemaking on Unfair or Deceptive Fees (16 CFR Part 464), Informal Hearing Supplementary Submission**

Dear Judge Himes:

A coalition of 52 national and state consumer advocacy groups submitted comprehensive comments on the Federal Trade Commission's (FTC or Commission) Notice of Proposed Rulemaking (NPRM) addressing unfair and deceptive practices relating to fees on February 8, 2024. We do not believe that there are any disputed issues of material fact to be resolved in this rulemaking, but we appreciate the opportunity to participate in the informal hearing on April 24, 2024.

This supplementary submission summarizes the comments for ease of reference.

**1. The FTC Should Adopt an Unfair and Deceptive Fees Trade Practices Rule**

It is overwhelmingly clear that Americans are tired of having money drained from their pockets through deceptive practices that allow businesses to hide and deceive consumers about fees, inflate costs, and force vulnerable consumers into a cycle of debt by penalizing them with disproportionately high fees. Small businesses who provide competition for America's mega corporations have also been outspoken proponents of efforts to require fee transparency. We commend the FTC for fulfilling its mission to protect consumers and competition by pursuing an industry-neutral rulemaking to prohibit hidden and misleading fees. As the FTC has set forth in the NPRM and as many of the groups on this letter have previously articulated<sup>1</sup>, the *AMG Capital* decision renders this rule appropriate and necessary. It is painfully clear that many of the practices which the FTC captures through its proposed rule constitute unfair, deceptive and abusive practices as defined by the Commission and consumer protection laws across the country. However, without an effective enforcement mechanism, the FTC is unable to protect the public from these widespread illegal practices.

A strong rule will save consumers time and money, arguably two of their most valuable commodities. The all-in pricing disclosures in proposed § 464.2 will help to ensure that consumers are not wasting time responding to inaccurate offers and deceptively low prices that exclude mandatory fees. These disclosures will also stimulate competition by forcing each

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<sup>1</sup> See Comments of Consumer Groups in response to Unfair and Deceptive Fees ANPR, available at <https://www.regulations.gov/comment/FTC-2022-0069-6112>.

marketplace participant to accurately display their total price, with the realistic possibility of lowering prices overall.

## 2. **The FTC Should Acknowledge Its Willingness to Issue Future Guidance**

The Commission should explicitly state in the statement and basis of purpose in the final rule that it will answer questions with formal advisory opinions or staff opinion letters. These comments focus on application of the rule generally and particular practices that will affect overall marketplace behavior, but we acknowledge that future interpretation by the Commission may be necessary and helpful to ensure compliance without granting broad exemptions from the rule.

## 3. **The Proposed Rule Should Be Strengthened, Interpreted, and Enforced to Prevent Harm to Consumers.**

- The FTC should require the disclosure of all amounts not included in the Total Price *before the consumer provides their billing or payment information*, rather than “before the consumer consents to pay.” This will provide information about optional fees, government taxes and shipping costs earlier in the process and before the consumer has provided sensitive financial information.
- The FTC should ensure that the rule and its enforcement of the rule address the problem of businesses imposing mandatory and/or optional fees for worthless products and services that do not provide any value to a consumer. Compliance with the proposal’s requirement to disclose the “nature and purpose of an amount a consumer may pay” should disincentivize imposing worthless fees, the FTC should ensure that its own interpretations and application of the rule account for this concept.
- The FTC should be especially mindful of excessive fees. The FTC should consider future policy or interpretive statements that identify and explain the harms of excessively high fees, factors to consider in enforcement actions that target excessive fees, and future rulemakings to prohibit specific practices or industries where excessively high fees persist.
- The FTC should preclude businesses from watering down the disclosure of the total price into an itemization of mandatory fees by making clear that the “prohibited misrepresentations” provision in § 464.3(a) applies to mandatory **and** optional fees – not just the “nature and purpose” disclosures in § 464.3(b).
- The FTC should amend the rule to prohibit optional fees/purchases from being deceptively advertised or included to induce consumers to purchase more than they otherwise would have. This includes practices like add-on goods or services that are automatically selected for purchase, and deceptively advertising goods at a lower price because they exclude some “add-on” that is reasonably expected as part of the good or services itself. Our comment makes several suggested amendments in this regard.

- Restaurants and food delivery companies have become prime examples of junk fee offenders through “service fees, delivery fees, expanded range fees, etc.” This conduct frustrates consumers, undermines the financial health of delivery workers, and puts honest delivery companies at a disadvantage. The FTC should consider publishing future guidance to address this particular issue in a manner that protects informed consumer choice and does not harm workers who rely on gratuities as income.
- Junk fee practices disproportionately harm consumers in vulnerable populations, including those with limited English proficiency (LEP). The FTC should amend its definition of “clearly and conspicuously” to explicitly reference LEP consumers and ensure that the required disclosures are easily understandable for this portion of the population.
- The FTC should require businesses to ensure that when these disclosures are made electronically, they shall be provided in a form that is capable of being printed and saved, should the consumer wish to do so.
- The FTC should emphasize that each part of the required disclosures be simple, understandable and accurate. A facet of “easily understandable” is the concept of conciseness – businesses should not be permitted or incentivized to bury consumers in complex descriptions of hundreds of optional fees at one time. The FTC should ensure that any final rule is interpreted and enforced in a manner that ensures that the method of disclosure in § 464.3 facilitates the ability of consumers to choose which goods and services they want.

#### **4. The FTC Should Not Grant Broad Exemptions from the Rule.**

We strongly urge the FTC to maintain its intent that this be an “industry neutral rule,” with which all businesses are required to comply. This approach is necessary to achieve market-wide goals such as comparison shopping, competitive prices, informed consumer choice, and reduced consumer frustration and confusion.

Thank you for your consideration.

Consumer Federation of America, *on behalf of the 52 groups listed in the comprehensive comment, available at <https://www.regulations.gov/comment/FTC-2023-0064-3160>.*