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FTC Focus: A Push On Pricing Differences Signals Scrutiny

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*This article is part of a **monthly column** that considers the significance of recent Federal Trade Commission announcements about antitrust issues. This installment examines the potential future direction of pricing disclosures.*

On Nov. 9, President Donald Trump nominated Christopher Mufarrige, the current director of the Federal Trade Commission's Bureau of Consumer Protection, to **fill** a vacant FTC commissioner seat.

Under Mufarrige, the bureau has made deceptive pricing and billing practices a priority, and he has emphasized price transparency, telling the Association of National Advertisers on May 12 that "the line between transparency and deception is usually quite clear." If confirmed, Mufarrige would likely bring that same consumer-protection focus on pricing to the commission.

The FTC has been unusually busy on pricing in recent months.

On Oct 28, the commission **launched** an inquiry under Section 6(b) of the FTC Act into how companies use personal data to set prices and pay.

On Oct. 8, it **resolved** the Robinson-Patman Act case involving Gildan Activewear SRL's supply agreement with distributor S&S Holdings LLC. And on Oct. 2, it **closed** an investigation in another RPA matter, Southern Glazer's Wine and Spirits, after the parties changed their contract.

These actions **followed** its Aug. 19 proposed enforcement policy statement on personalized pricing.

These matters span different industries and legal tools, but they share a common question: When a seller charges different customers different prices for the same product, what must it tell them and when does the difference harm competition or consumers?

The developments below offer a window into where FTC pricing scrutiny is headed.

Personalized pricing is usually framed as a consumer protection issue, while violations of the RPA are considered an antitrust issue, but both concern the same practice: charging different customers different prices for the same product.

Personalized pricing does so at the level of the individual consumer, using personal data; the RPA addresses price differences among competing business buyers. In both areas, the commission's recent statements focus less on price differences themselves than on whether buyers can see them and whether consumers are ultimately harmed.

Consumer Expectations

Personalized pricing is the newer of the two fronts. In roughly two months, the FTC has taken two separate steps aimed at sellers that use personal data to estimate how much a particular customer is willing to pay.

The agency's Aug. 19 statement on its proposed enforcement policy calls for sellers to clearly disclose that pricing is personalized, the kinds of data used for personalization and the bases for personalization.[1]

Notably, the proposal is a disclosure measure, not a ban. It relies on the FTC Act's prohibition of unfair or deceptive acts or practices and creates no new antitrust violation. It also separates personalization from ordinary price swings driven by supply and demand.

The FTC noted that as a "theoretical matter, perfect personalized pricing without business competition would allow a monopolist to capture the entire consumer surplus by charging each consumer the highest amount he is willing to pay for a product or service." The statement also said that personalized pricing without adequate disclosures "likely violates Section 5."

The issue of personalized pricing picked up new momentum on Oct. 28, when the FTC announced a Section 6(b) inquiry into personalized pricing and compensation. The FTC's

orders asked a number of companies directly about the data and processes they use to set prices and, for some, workers' pay.

A 6(b) inquiry is a research tool, and getting an order doesn't mean a company has done anything wrong.[2]

The FTC appears to be interested in transparency, with FTC Chairman Andrew Ferguson stating, "Consumers deserve to know whether companies use their web surfing habits or other personal data to estimate the highest price they can charge each consumer. Workers also deserve to know if their compensation is affected by how companies use their personal data."[3]

Taken together, the August proposal and the 6(b) inquiry show the FTC addressing personalized pricing first through disclosure and fact-gathering rather than enforcement actions. The goal is to make sure consumers know when, and on what basis, a price has been tailored to them, so they can decide whether to accept it or shop elsewhere.

Competitive Discounts and Consumers

The RPA addresses the same practice one level up the distribution chain, among competing business buyers. For nearly a quarter century, FTC enforcement of the RPA was largely dormant. The recent settlement in Southern Glazer's could initially have been viewed as an isolated development: a new administration resolving litigation inherited from its predecessor.[4]

Ferguson had voted against bringing the case.[5] Commissioner Mark Meador's settlement statement said he would not have supported bringing it either, criticizing the choice of alcohol distribution as the setting for restarting enforcement.[6]

But the FTC's recent Gildan investigation suggests that, despite these reservations, the current commission is willing to pursue RPA enforcement on its own initiative. Together, these developments point to a selective enforcement approach, with the agency looking for pricing practices it believes impair competition and ultimately harm consumers. Selective, however, does not mean dormant.

The Gildan matter turned on a specific contract term. The FTC closed an investigation into Gildan, a manufacturer of T-shirts, and S&S, a wholesale distributor, after the companies removed a restrictive pricing clause from their contract.

According to Gildan's public letter, its agreement with S&S included a provision, added at S&S' request, which barred Gildan from offering certain prices and discounts to other North American wholesale distributors. Gildan denied any wrongdoing.[7]

The FTC's theory reached both sides of the deal: Possible seller liability under Section 2(a) for Gildan, and buyer liability under Section 2(f) for S&S.

The agency's focus on the clause hinged on its perceived impact on other, smaller businesses negotiating prices, and ultimately on consumers. Closing the investigation doesn't establish that the provision was unlawful.[8]

Where Gildan concerned who could get a discount, Southern Glazer's concerns how discounts are handed out.

The Southern Glazer's settlement resolves allegations of price discrimination based on what the FTC considered to be gaps in pricing, often through discounts and rebates, between bigger chains and nearby independent retailers. It calls for monitoring and for future payments to affected independents when certain conditions are met. Those negotiated thresholds are terms of that settlement, not general RPA safe harbors.[9]

Still, the agency's leadership has signaled that consumer harm, not just harm to smaller rivals, will guide RPA enforcement, and that not every discount favoring a big buyer hurts consumers.

In his Southern Glazer's statement, Ferguson draws a clear line between harm to retailers and harm to consumers, and worries that enforcement could end up raising prices at the favored chains.

He acknowledges that courts generally have not required proof of consumer injury under the RPA, but says consumer welfare is something he weighs in deciding which cases to

bring. That difference between what the statute requires and how the agency uses its discretion is worth keeping front and center.[10]

Takeaways and Conclusion

Viewed together, these developments suggest the FTC is asking similar questions regardless of whether price discrimination is driven by consumer data or by negotiated discounts. In neither area has the agency treated price differences as unlawful in themselves.

The personalized pricing proposal targets undisclosed personalization rather than personalization as such, and the Ferguson has described consumer welfare as a factor in choosing which RPA cases to bring.

At the same time, the FTC is using a range of tools, from policy statements and 6(b) orders to investigations and consent decrees, and the Gildan matter shows that its interest can change contract terms without litigation.

Companies that charge different customers different prices may want to consider how those differences are disclosed, how they are documented and how they affect end consumers.

David Munkittrick is a partner, and Kim Ly and Kelly Landers Hawthorne are associates, at Proskauer Rose LLP.

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[1] Fed. Trade Comm'n, Proposed Enforcement Policy Statement Regarding Personalized Pricing at 1–3 (Aug. 19, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/p034101-ftc-enforcement-policy-statement-re-personalized-pricing-proposed-for-public-comment.pdf.

[2] Press Release, Fed. Trade Comm'n, FTC Launches Personalized Pricing and Compensation Inquiry (Oct. 28, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-launches-personalized-pricing-compensation-inquiry.

[3] Id.

[4] Stipulated Consent Decree & Order, FTC v. Southern Glazer's Wine & Spirits, LLC, No. 8:24-cv-02684-FWS-ADS (C.D. Cal. Oct. 2, 2026), ECF No. 236.

[5] Dissenting Statement of Comm'r Andrew N. Ferguson, In re Southern Glazer's Wine & Spirits, LLC , Matter No. 211-0155, at 24 (Fed. Trade Comm'n Dec. 12, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-southernglazers-statement.pdf; Statement of Chairman Andrew N. Ferguson, In re Southern Glazer's Wine & Spirits, LLC, at 5 (Fed. Trade Comm'n Oct. 2, 2026) ("Ferguson Settlement Statement"), https://www.ftc.gov/system/files/ftc_gov/pdf/chairman-ferguson-southern-glazers-statement-re-settlement.pdf.

[6] Statement of Comm'r Mark R. Meador, In re Southern Glazer's Wine & Spirits, LLC (Fed. Trade Comm'n Oct. 2, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-southern-glazers-statement.pdf.

[7] Letter from Gildan Activewear Inc. to Andrew N. Ferguson, Chairman, Fed. Trade Comm'n (Oct. 7, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/Gildan-Letter-FTC.pdf.

[8] Press Release, Fed. Trade Comm'n, FTC Secures Fair Pricing Protections by Taking Action Against Major Wholesale T-Shirt Distributors (Oct. 8, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-secures-fair-pricing-protections-taking-action-against-major-wholesale-t-shirt-distributors; see 15 U.S.C. § 13(a), (f).

[9] Press Release, Fed. Trade Comm'n, FTC Secures Settlement that Protects Small Businesses from Illegal Price Discrimination (Oct. 2, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/10/ftc-secures-settlement-protects-small-businesses-illegal-price-discrimination.

[10] Ferguson Settlement Statement, supra, at 2-3.

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Related Professionals

- **David A. Munkittrick**
  Partner
- **Kelly Landers Hawthorne**
  Associate
- **Kim Ly**
  Associate