Briefing

September 09, 2026
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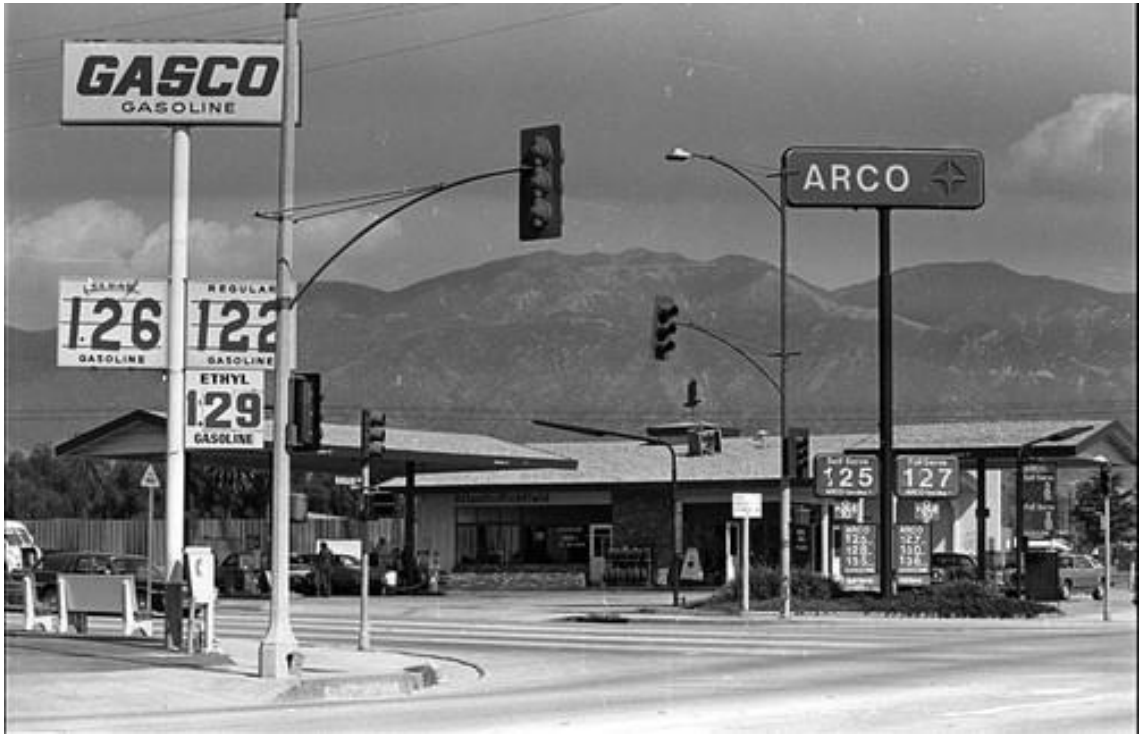
Agenda

1. Context setting
2. Surveillance / Dynamic Pricing
3. Legal frameworks
4. Challenges in regulating surveillance pricing
5. Discussion + Q&A

Context

What is a real price?



Source: The Degradation of Prices: Platform Power, the Erosion of Price Comparison, and Rebuilding Comparison Shopping in the Digital Economy https://scholarship.shu.edu/cgi/viewcontent.cgi?article=3940&context=shlr

What are price harms?

- Price bloat
- Manipulation, Obstruction
- Data / Privacy Abuses
- Competition Harms

Source: The Degradation of Prices: Platform Power, the Erosion of Price Comparison, and Rebuilding Comparison Shopping in the Digital Economy https://scholarship.shu.edu/cgi/viewcontent.cgi?article=3940&context=shlr

A lot of pricing harms

Price bloat

- Junk fees
- Drip pricing
- Price gouging
- Bait-and switch

Manipulation, obstruction

- Dark pattern pricing
- Decoy pricing
- Price anchoring
- Urgency cues
- Scarcity
- Fake discounts
- Dynamic pricing e.g. electronic shelf labels
- Bait-and-switch
- Subscription traps

Data abuses

- Surveillance pricing
- Surveillance discounts, coupons
- Personalized price discrimination
- Algorithmic pricing
- Dynamic pricing
- Surge pricing
- Spike pricing
- Behavioral price targeting
- Predicted willingness-to-pay

Competition Harms

- Price collusion
- Tacit collusion
- Algorithmic price collusion
- Price signaling
- No ability to compare prices
- Not competing on price

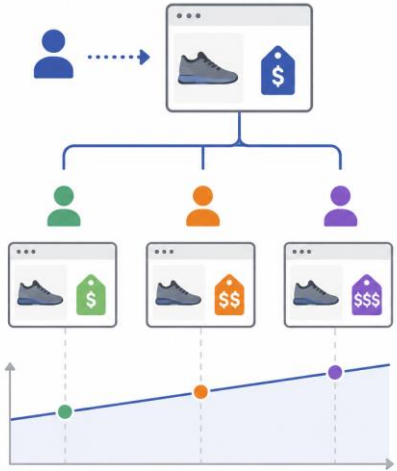
There are a lot of pricing laws, what has changed?

- Junk fees
- Fake free delivery
- Fake discounts
- Bait-and-switch
- Blocking cancellation
- Privacy laws
- Price discrimination
- Self-preferencing
- Conflicts of interest
- Etc.

- Advances in tracking (crude segmentation → individualized tracking)
- Scale of data collection
- Cross platform tracking
- Mass collection by default
- Modifying ads and prices in real-time
- Algorithmic price setting
- Dynamic pricing – shift by the second
- Not just hidden (e.g. junk fees) → deliberately engineered for each person

Source: The Price of Surveillance: The Parallel Evolution of Targeted Ads to Targeted Prices, by Stephanie T. Nguyen
https://www.yalejreg.com/nc/the-price-of-surveillance-the-parallel-evolution-of-targeted-ads-to-targeted-prices-by-stephanie-t-nguyen/

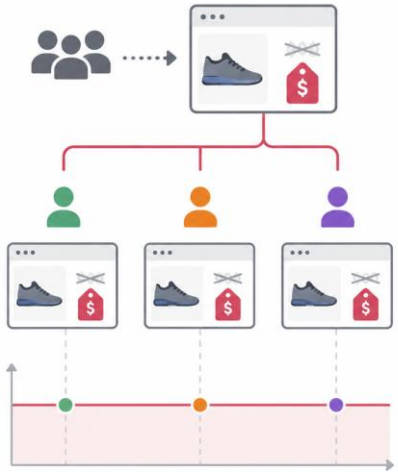
Surveillance Discounts = Surveillance Pricing



Use data to set targeted prices or discounts, promotions, or offers.

Synonymous – surveillance discount impacts the total price someone pays

Fake Discounts



False reference pricing

False sense of savings by claiming an original price that has no basis in reality

A fake discount is deceptive even if they aren't set based on personal data or inferences

A fake discount is fake even if everyone sees the same fake discount

Source: The Price of Surveillance: The Parallel Evolution of Targeted Ads to Targeted Prices, by Stephanie T. Nguyen
https://divfn.substack.com/p/dissecting-the-discount

Case study #1

Case study #2

Case study #3

Terms

Algorithmic Pricing Practices — Basic Definitions

- **Algorithmic Pricing** — an umbrella term for any process that uses automated software to set and adjust prices. AKA “data-driven pricing.” Includes surveillance and dynamic pricing.
- **Surveillance Pricing** — setting different prices for the same good or service based on an individual’s personal data. Also called “personalized pricing.”
- **Dynamic Pricing** — adjusting prices quickly based on market or internal business factors such as changes in supply and demand.

Algorithmic Pricing Practices — Basic Definitions

- **Surge Pricing** — a particularly aggressive form of dynamic pricing.
- **Price Gouging** — raising the prices of necessary goods above and beyond the need to cover increased costs, or sharply raising prices where consumers have few options. Usually illegal, and not necessarily algorithmic.
- **Price Discrimination**: Any practice in which a business charges different amounts to different people for the same product based on willingness to pay.

What is surveillance pricing?

- Analyzing a person's personal data to inform what price they pay.
- This inherently means that people pay different amounts for the same thing.
- Can be applied to individuals or groups of people who share characteristics in common.
- Crucially important: can happen under the guise of "personalized discounts" or "loyalty rewards"—more on this later.

How widespread is surveillance pricing?

- Likely extremely widespread.
- FTC 2024 study: seven surveillance pricing companies reported 250 clients in aggregate.
  - Grocery, clothing, hardware, health, convenience, and general merchandise stores all implicated, among others.
- A lot of people shop online, where surveillance pricing is easiest to do (>85%).
- BCG: $70B in growth available to companies that move from traditional loyalty programs to ones that set individual prices.

How widespread is surveillance pricing?

- Industries with verified and often repeated instances of surveillance pricing:
  - Grocery
  - Rideshare
  - Airlines
  - Hardware
  - General retail
  - Test prep

How can surveillance pricing impact consumers?

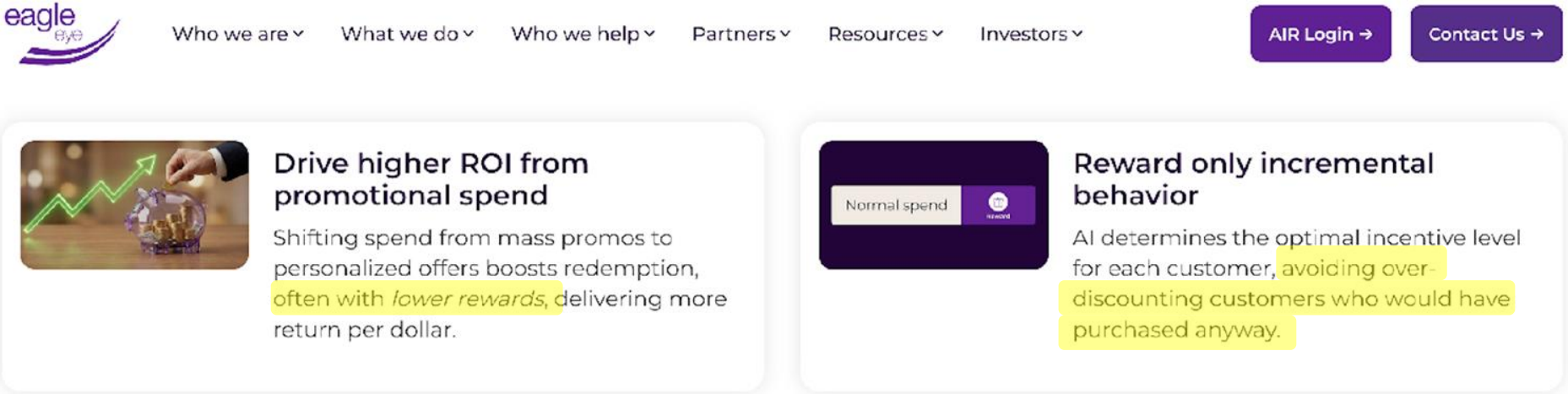
Over the past 3 years, we've seen an increase in the public sphere of reporting consumers' being aware this practice is happening, to the point that 80% of them want a ban. The ground is shifting beneath our feet. There are now lawsuits, and we're at a tipping point.

How can surveillance pricing impact consumers?

- Common sense: Surveillance pricing isn't cheap. Companies need to invest hundreds of thousands to millions of dollars to build the technological infrastructure themselves or hire vendors like McKinsey, Accenture, etc. to do it for them.
- Unlikely that it makes sense for them to make these investments to put *more* money back in customers' pockets.
- To the extent they are using it to lower prices for competitive reasons, question is how that looks as the practice spreads and each company is calculating a shopper's willingness to pay.

How can surveillance pricing impact consumers?

- BCG: pursuing surveillance pricing to reduce discounts is a “$70b prize” for the retail industry. In other words, customers are getting “over-discounted” by $70b/year in retail industry.



How can surveillance pricing impact consumers?

Consumer sentiment:

- A recent Data for Progress survey showed that:
  - 75% of consumers thought surveillance pricing was unfair
  - 80% of consumers would prefer a smaller, uniform discount rather than a potentially larger, surveillance-based discount

How can surveillance pricing impact consumers?

Non-pricing effects:

- Privacy issues
  - Unfair use of personal data
  - Another revenue stream for the data broker industry.
- Biased outcomes
- Competitive harms
  - Collusion
  - Penalties for businesses that do not do it

What is dynamic pricing?

- “Dynamic pricing” involves prices that change in real-time or near-real-time based on data other than personal data, without necessarily being different for different individuals or groups of people who are shopping at the same time.
- “Surge pricing” is a label given to dynamic pricing that raises prices aggressively.
- At times, this may rise to the level of price gouging.

How widespread is dynamic pricing?

- Dynamic pricing is extremely widespread given the industries and companies known to engage in it, including:
  - Rideshare
  - Airlines
  - Hotel chains
  - E-commerce (e.g., Amazon)
  - Electricity

Legal Frameworks & Policy Responses

Appendix A: Unlawful Loyalty Program Practices States Can Challenge

Stopping unlawful hooks

1. **Deceptive Benefits Claims:** Enticing consumers to join loyalty programs by promising discounts or perks but failing to deliver those benefits.
2. **Hidden Restrictions:** Making big promises while concealing fine print restrictions.
3. **Fake Discount Claims:** Marketing loyalty programs by touting discounts that are illusory — either because few consumers pay the "full" price or because the company does not advertise a full price.
4. **Deceptive Cancellation and Data Security Claims:** Making false claims about easy cancellation, free trials, or strong data security.

Stopping unlawful hacks

5. **Excessive Collection:** Collecting more personal data than reasonably necessary or disclosed.
6. **Excessive Selling or Sharing:** Selling or sharing consumer data beyond what is reasonably necessary for the stated purposes of a loyalty program, especially to unrelated third parties.
7. **Lack of Meaningful Consent:** Collecting consumer data without clear, informed, freely given, and unambiguous consent.
8. **Excluding Consumers Who Exercise Privacy Rights:** Broadly denying loyalty program benefits to consumers who opt out of data sales or targeted ads.

Source: The Loyalty Trap https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/10/17195957/The-Loyalty-Trap.pdf

Stopping unlawful hikes

9. **Confusing Redemption Terms:** Designing rewards programs with unclear or misleading redemption rules that obscure true costs.
10. **Unilateral Changes.** Making unilateral changes to loyalty programs that expand surveillance or reduce benefits without fair consumer exit options.
11. **Raising Prices:** Promising discounts through a rewards program only to deliver higher prices.
12. **Preventing Exit:** Trapping consumers in loyalty programs by making cancellation difficult.

Competition-Related Harms

13. **Price Discrimination:** Tying rebates, discounts, or special pricing to purchase size or offering unequal promotional allowances or services.
14. **Monopolization via Customer Lock-in:** Creating high switching costs that make it harder for rivals to win business and easier for dominant firms to entrench their power.
15. **Collusion:** Sharing detailed purchase and pricing data through loyalty programs that facilitate tacit collusion or allow algorithms to coordinate prices.
16. **Barriers to Entry:** Leveraging loyalty programs to amass consumer data and locked-in customers, making it harder for new entrants to compete and sustain market concentration.
17. **Exclusionary Pricing:** Designing bundled discounts or conditional rebates that make it prohibitively costly for customers to buy from competitors.

Source: The Loyalty Trap https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2025/10/17195957/The-Loyalty-Trap.pdf

Surveillance pricing policy landscape

	In legislature	Awaiting governor's signature	Vetoed	Enacted
Maryland				√
Connecticut				√
New York (Transparency)				√
New Jersey				√
Colorado			√	
New York (Ban)		√		
California (and many more)	√			

Challenges in regulating surveillance pricing

Challenges in regulating surveillance pricing

1. Loyalty
2. Discounts
3. Subscriptions
4. Consumer segmentation
5. Narrow personal data

Loyalty

Discounts

Subscriptions

Consumer segmentation

Narrow personal data