Insight

President's Competition Council Focuses on Resort Fees, TV Cancellation Fees, and Other Existential Crises

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Executive Summary

- The President's Competition Council met for the fourth time on February 1, 2023, to assess its progress and announce new measures on credit card late fees, excessive ticket fees, and mobile application competition.
- The Consumer Financial Protection Bureau has announced a new proposed rule to decrease "excessive" credit card fees and other "junk" fees. This action continues to ignore that these fees are legal revenue streams approved by banking regulators; moreover, the rule's estimated impact would be less than half a percent of total household spending.
- President Biden called upon Congress to pass a "Junk Fee Prevention Act" that would crack down on ticketing fees, resort and destination fees, and certain airline fees, and would eliminate "exorbitant" early cancellation fees; such an action could result in reduced transparency and increased costs.
- The National Telecommunications and Information Administration released a report on the state of competition in the mobile app market that argues two dominant stores harm competition by acting as gatekeepers; this report largely downplays or simply ignores the benefits that come with exclusive app stores and the security risks that opening access to devices can present.

Context

Five months after President Biden took office, the White House took the unusual step of announcing a whole-of-government review of how the federal government could promote competition in the U.S. economy. In February 2023, the President's Competition Council, which was created to oversee the effort, met for the fourth time, with a fact sheet highlighting both what it views as its progress to date and laying out future actions. The fact sheet emphasizes two specific measures: first, a Consumer Financial Protection Bureau (CFPB) rule to "slash excessive credit card late fees"; and second, a National Telecommunications and Information Administration (NTIA) report assessing the barriers to competition in the mobile app store ecosystem. In addition, the council calls upon Congress to crack down on "excessive" sporting, entertainment, and other event ticketing fees; ban airline fees charged to family members pre-selecting seats next to small children, eliminate "exorbitant" early TV, phone, or internet contract cancellation fees, and finally "surprise resort fees."

Credit Card and Junk Fees

The CFPB has proposed a new rule to "rein in excessive credit card fees," with the agency suggesting the rule could reduce late fees by "as much as" $9 billion from the $12 billion the proposed rule notes that Americans pay annually. The proposed rule would eliminate fee adjustments that result from inflation (lowering the current late fee cap from $41 down to $8) and cap fees at 25 percent of the required minimum payment.

“Junk fees” have proven to be something of a fixation for the CFPB since 2012. In October last year, CFPB Chair Rohit Chopra joined President Biden on the White House lawn for the highly publicized announcement of a “deep dive” into junk fees.

There are many potential problems that the White House and CFPB are attempting to sidestep, but by far the most important is that there is nothing inappropriate about banks and other financial services firms charging fees for the services they provide. A “junk fee,” political monikers aside, is a perfectly legal and appropriate revenue stream, approved by the bank’s own regulators. That the White House and CFPB are on shaky logical (and linguistic) grounds is underscored by the need to attach yet another emotive and non-technical term – in this case, “excessive.” Until an “excessive” fee is defined by the CFPB and shown to be illegal per existing pricing law, these measures remain an excessive fuss about nothing.

And how nothing? Reducing credit card late fees by $9 billion would wipe less than half a percent off total U.S. household spending. In any sensible world, the rule’s proposed savings would be considered against the additional regulatory costs to implement it, costs that inevitably are passed down to consumers. Against the background of the economic stresses caused by the coronavirus pandemic and in particular the impact of inflation on household budgets, the CFPB’s efforts are little more than a distraction. The CFPB’s proposal raises even more fundamental questions. If penalties for late payments on credit cards are lowered, do they still function as penalties? How is the government better suited than industry in determining effective pricing structures, and can increased regulatory requirements and a decreased profit margin spur the competition the council is designed to inspire – or will it serve as a yet another barrier to new financial services entrants?

Other “Excessive” Fees

President Biden also called upon Congress to pass a “Junk Fee Prevention Act” that would crack down on ticketing fees, resort and destination fees, and certain airline fees, and would eliminate “exorbitant” early cancellation fees.

The council alleged that some of these fees are the result of existing industry concentration and, in some cases, vertical integration. Furthermore, the council claimed that these fees lack transparency, often only revealed at “check-out” or “at the end of a lengthy online reservation process,” leaving the consumer with a higher final cost than the originally quoted price.

Adopting an “all-in pricing” mechanism where fees are included in the price of a concert ticket will make the seller’s markup less transparent, not more. A 2018 Government Accountability Office report stated that all-in pricing “could give fans the incorrect impression that the artist was charging the full ticket price and receiving its revenues, because the portion of the price going towards ticketing fees would not be transparent.”

The president similarly called upon Congress to ban “surprise ‘resort fees’ or destination fees’” that travelers only discover “when they check out or at the end of a lengthy online reservation process,” asserting that excluding all fees from the advertised price limits consumers’ “ability to comparison shop.”

In both instances, separating the fees and the price of the actual ticket or hotel room at a resort provides the customer with a transparent, itemized list of all the accommodations and inclusions prior to payment. Eliminating lists that tell the consumer what’s included and not included, as the council’s recommendations would do, would reduce consumers' ability to comparison shop.

Early cancellation fees are also in the council's crosshairs. When a customer signs up for television, phone, or internet service with a contractual term and cancels early, the provider charges a fee to recover the lost revenue it had expected. Banning such fees would necessarily increase the base equilibrium monthly price of the service to compensate the provider for a greater level of uncertainty.

Finally, it is common practice among several airlines to charge additional fees to select seats in advance. The council seeks to ban such fees assessed to family members to sit with children aged 13 or younger. The White House fact sheet cited a Department of Transportation (DOT) notice encouraging U.S. airlines to "have policies that enable children to be seated adjacent to an accompanying adult to the maximum extent practicable and at no additional cost" and asked Congress to "fast-track the ban on family seating fees so that the DOT can crack down on these practices more quickly than through a rulemaking." Yet background information included in the DOT notice from the Office of Aviation Consumer Protection (OACP) "found that the airlines generally had policies that facilitated each young child to be seated next to an accompanying adult but did not guarantee that they would be seated together." The OACP also acknowledged that "Some airlines handled family seating as a matter of customer service, while others had specific mechanisms in place to seat children next to at least one adult." Passing legislation or engaging in rulemaking may conflict with statutory limits on "impos[ing] a significant change in the overall seating or boarding policy of an air carrier providing scheduled passenger interstate or intrastate air transportation that has an open or flexible seating policy in place that generally allows adjacent family seating…." Competition among airlines to provide better customer service is already addressing the issue and will cause less disruption than legislation or a rule from DOT.

Mobile Application Competition Report

For the final major action, the National Telecommunications and Information Administration released a report on the state of competition in the current mobile app store marketplace. Mobile application (app) stores provide consumers with a centralized point to search for and install software apps from both the app store owner as well as third-party app store creators. Google and Apple operate the two major app stores for mobile devices. While Google's android devices allow users to install third-party app stores and apps, a process known as sideloading, Apple generally does not. The White House argues that restrictions on installing third-party apps and app stores is anticompetitive because the app store owner can favor its own apps at the expense of competitors, as well as charge higher fees for purchases made in rival apps. Undoubtedly, proponents of major antitrust legislation such as the Open App Markets Act and American Innovation and Choice Online Act will use the report to push reforms regarding how antitrust laws interact with the mobile app marketplace. The Biden Administration, however, undervalues the benefits of the marketplace as is for both consumers and third-party app developers, as well as the potential costs of forcing services to allow third party developers access to their systems.

As the NTIA report highlights, there are many benefits to limiting access to devices and operating systems, among them the fact that app store operators can curate the applications to ensure that those available to consumers meet specified guidelines. As a result, consumers are able to browse their device's app store secure in the knowledge that their devices will not be compromised.

Forcing platforms to allow sideloading, or forbidding them from preferencing specific apps, could also open devices up to additional security threats and concerns. Without the vetting of third-party apps provided by an app store, consumers may unwittingly download malware or other malicious software onto their device, jeopardizing their personal information. What's more, the practice of prohibiting or restricting sideloading allows brands to advertise their security as a key, distinguishing feature from other mobile operating systems and gives certainty to consumers that another user, such as a child, won’t jeopardize the device.

The NTIA report does highlight the benefits of exclusivity and the concerns with mandating access or banning self-preferencing, but ultimately embraces policies that could significantly harm consumers. As Congress debates the merits of sideloading and approaches to promote competition in app markets, it will be critical to fully flesh out the countervailing costs and benefits. Most important, the Biden Administration should refrain from bypassing lawmakers’ authority by using agencies to impose restrictions on sideloading without a clear, congressional directive.