

Legal Alerts

FTC Advanced Notice of Proposed Rulemaking Regarding Junk Fees and Drip Pricing; January 9, 2023 Comment Deadline

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The Federal Trade Commission (FTC) recently issued an Advance Notice of Proposed Rulemaking (ANPR) regarding its intent to promulgate rules on so-called "drip pricing" and "junk fees." The anticipated rulemaking may not be industry-specific, but is a culmination of years of consumer complaints primarily focused on fees levied when purchasing airline travel, hotel accommodations, and live entertainment tickets. According to the ANPR, the FTC has found that existing regulatory and enforcement tools are insufficient to rein in perceived deceptive or unfair business practices in these and a wide variety of other industries as a result of hidden fees that are not commensurate with the value received or are inadequately disclosed in the purchasing process. For the hotel industry, the FTC's announcement is long-awaited, coming 10 years after its formal warning letter regarding the potential unlawfulness of charging mandatory "resort fees" to guests - fees that are either inadequately disclosed in the reservation process or purportedly cover services that a guest reasonably believes should be included in the base price of a hotel stay.

No proposed rule has been announced by the FTC, and its scope is not yet clear. The ANPR is intended to allow parties - including individuals and industry participants - to provide information and data in response to 21 specific questions for the FTC's use in crafting a proposed rule for formal comment. Responses to the ANPR may be submitted online and through the mail from now until January 9, 2023 regarding everything from the existence of the perceived problem (the failure to clearly and conspicuously disclose fees in different circumstances), to the costs and benefits of imposing specific or general federal rules from the perspective of both the consumer and industry participants, to potential alternatives to rulemaking.

Since the FTC's warning letter to the hotel industry was issued in 2012, federal enforcement and regulatory action has been stagnant, although civil consumer class actions and state consumer protection enforcement have sporadically targeted larger industry participants with respect to their resort fee disclosures. The lack of federal or uniform state-wide enforcement has left considerable uncertainty regarding hotel operators' ability to charge resort fees, even with clear disclosures. The ANPR may be seen as an opportunity to gain clarity on the topic, as well as to influence the scope and contents of any federal rule that is ultimately proposed. We encourage our hotel operator clients to consider submitting a comment to the FTC in response to the ANPR. More information about the questions to be addressed may be found on page 24 of the PDF found [here](#), and to make a formal comment by January 9, 2023, please

click [here](#).

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