

## Department of Justice (DOJ) and Federal Trade Commission (FTC) to Hold Conditional Pricing Practices Public Workshop

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The **U.S. Department of Justice (DOJ)** and **Federal Trade Commission (FTC)** announced on Tuesday, May 6, 2014 that the agencies will jointly hold a public workshop on June 23, 2014, to consider the economic effects and antitrust law treatment of conditional pricing arrangements.

Conditional pricing arrangements, such as loyalty discounts or bundled product discounts, are programs through which a seller may discount prices based upon a buyer purchasing specific volumes of or combinations of products. Loyalty discounts are practices by which a seller charges a buyer a lower price for purchasing a certain volume of a product or products. In bundling, another common pricing arrangement, a seller may offer several products for sale as one combined product, often charging less for the combined product than the sum of the prices of the component products.

Courts have been concerned that loyalty discounts and bundled discounting could be anticompetitive if utilized to exclude competitors from a market or to facilitate a predatory pricing scheme.

Despite these concerns, loyalty discounts and product bundling can also be procompetitive. Both programs can produce efficiencies. For example, by selling a greater volume of products or certain products together, a firm may reduce shipping or marketing costs. Further, these practices decrease prices through discounts, and courts have long recognized that “cutting prices to increase business often is the very essence of competition.”

No clear legal standard has been established for determining which conditional pricing arrangements are anticompetitive. For loyalty discounts, courts have attempted to articulate a standard by evaluating the economic theory that loyalty programs can facilitate exclusive dealing or predatory pricing schemes. For bundled discount practices, courts are split among three different legal standards, and a fourth was recommended by the Antitrust Modernization Commission in 2007.

The agencies have welcomed the public to [submit comments](#) on conditional pricing practices on its website. Comments are being accepted through August 22, 2014.

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