



January 8, 2024

Via <https://www.regulations.gov>

April J. Tabor, Secretary
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Mail Stop H-144 (Annex J)
Washington, DC 20580

Re: Request for Comments on Unfair or Deceptive Fees NPRM, R207011
Document ID: FTC-2023-0064-0001

Dear Secretary Tabor:

The E-Merchants Trade Council, Inc. (EMTC) appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) on Unfair or Deceptive Fees published in the Federal Register at 88 Fed. Reg. 77420 (November 9, 2023).

EMTC was formed in July 2021 to represent the interests of the e-commerce industry by creating a global community of micro, small and medium size enterprise (MSMEs) e-sellers, marketplace platforms, and service providers to resolve trade, tax and transportation challenges. EMTC's advocacy mission is to support national and international policies that simplify cross-border transactions of physical and digital goods. EMTC facilitates dialogue among the E-Merchant worldwide community and global regulators.

Based on EMTC's mission and membership, we are commenting on the following items as listed in the NPRM: 1) bait and switch tactics; 2) misrepresenting the nature and purpose of fees; and 3) transportation fees.

1. General Comments

E-commerce is a dynamic industry that provides consumers with the widest array of product choices at various price points. E-commerce tends to be price sensitive – for both the consumer and the e-seller. E-sellers who offer their products for sale on third-party marketplace platforms must be very conscience about the various fees associated with their online store and sales (including but not limited to marketing, logistics, and warehousing, etc.) to ensure that they make a profit. E-commerce service providers (e.g., marketplace platforms, logistics companies, etc.) also provide a wide range of services to meet the needs of e-sellers, particularly micro and small businesses who generate low sales volumes but are able to sell goods globally.

EMTC believes that all fees associated with offering a product for sale on a third-party marketplace platform should be transparent and disclosed in the terms and conditions (or terms of service) for using

such marketplace. Additionally, we support service providers advising e-sellers when such fees apply to a specific transaction.

A. Bait and Switch Tactics

Since e-sellers generally make a small profit margin on their sales, they need to know upfront, or in advance in any change, all fees that apply to their products in order to ensure that they offer goods for a sales price that includes all the costs associated with the item.

B. Misrepresenting the Nature and Purpose of Fees

EMTC supports any FTC regulation that requires companies to specifically describe any fees applicable to goods or services provided to an e-seller at an aggregate level so that an e-seller can determine the total costs associated with the sale of a product. However, EMTC believes that the FTC should provide a safe harbor for e-sellers who in good faith include all fees (e.g., marketing fees, foreign exchange fees, transportation fees, etc.) associated with online sales in the final price offered to customers without requiring e-sellers to itemize such fees.

C. Transportation Fees

EMTC cautions the FTC about intruding too much into transportation fees as it relates to logistics for delivery of goods. First, EMTC notes that transportation charges and services are already heavily regulated by other federal agencies. Second, the ultimate transportation costs a shipper pays is ultimately determined by the service provided and the volume of freight transported which may garner the shipper (including a third-party marketplace platform) a discounted rate (or rebate) at the end of the year or contract period. Shippers (i.e., fulfillment centers) should not be required to publicly or contractually disclose to customers the discounted rate or rebate they receive from carriers, which are a standard industry practice permitted by law.

2. Conclusion

EMTC believes that the FTC should proceed with caution in applying this proposed rule to the e-commerce ecosystem in a way that reduces its dynamism and flexibility.

EMTC appreciates the opportunity to comment on the Proposed Rulemaking on Unfair or Deceptive Fees, and we are happy to discuss the ideas expressed above in more detail.

Sincerely,



Marianne Rowden
Chief Executive Officer