



Office of Commissioner  
Melissa Holyoak

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Concurring Statement of Commissioner Melissa Holyoak**

*Surveillance Pricing Intermediaries*, FTC Matter No. #P246202

July 23, 2024

Today, the Commission authorizes the issuance of orders pursuant to Section 6(b) of the FTC Act<sup>1</sup> seeking information and documents regarding “targeted” or “personalized” pricing—that is, pricing based on individualized data. I support issuing these orders, which seek information and documents that may reveal more about the behind-the-scenes work of data brokers and other data intermediaries. A report on these issues may provide valuable insight about data practices to the public, to the Commission as it pursues enforcement actions, and to Congress as it considers privacy legislation.

I write separately with two concerns. First, public statements that accompany the issuance of these orders describe their focus not on targeted or personalized pricing, but on “surveillance pricing.” This term’s negative connotations may suggest that personalized pricing is necessarily a nefarious practice. In my view, we should be careful to use neutral terminology that does not suggest any prejudgment of difficult issues.<sup>2</sup>

Second, I do not want a new 6(b) study—on any subject—to impede completion of a final study on pharmacy benefit managers (“PBMs”), pursuant to 6(b) orders issued years ago.<sup>3</sup> During a recent Congressional hearing on the Commission’s 2025 budget, each Commissioner promised to support the completion of the PBM study.<sup>4</sup> I support this study because the Commission has a dual, mutually reinforcing, mandate—both promoting competition and protecting consumers. But I do want to emphasize the importance of devoting sufficient resources to the PBM study so that we can finish it in short order, as we promised.

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<sup>1</sup> 15 U.S.C. § 46(b).

<sup>2</sup> I have similar concerns with the term “commercial surveillance,” rather than the neutral terms “privacy” or “data practices.” *See, e.g.,* Commercial Surveillance and Data Security Rulemaking, FTC, Aug. 11, 2022, <https://www.ftc.gov/legal-library/browse/federal-register-notice/commercial-surveillance-data-security-rulemaking>.

<sup>3</sup> I have already expressed my concern with issuing an “interim” report before completing a rigorous final PBM report. *See* Dissenting Statement of Comm’r Melissa Holyoak, *In re: Pharmacy Benefit Managers Report*, FTC Matter No. P221200, July 9, 2024, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Holyoak-Statement-Pharmacy-Benefit-Managers-Report.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Holyoak-Statement-Pharmacy-Benefit-Managers-Report.pdf).

<sup>4</sup> U.S. House of Rep., Comm. on Energy & Commerce, Innovation, Data, and Commerce Subcomm. Hearing: “The Fiscal Year 2025 Federal Trade Commission Budget,” July 9, 2024, <https://energycommerce.house.gov/events/innovation-data-and-commerce-subcommittee-hearing-the-fiscal-year-2025-federal-trade-commission-budget>.