The Wild World of Surveillance Pricing with Lee Hepner

Matt: Hey, so today we're gonna talk about pricing. And I say we, I mean me because Dave is still on vacation. Eurovision is over, so I don't know what he's doing. Uh, but I have a, an awesome guest for you today. It's, it's actually a colleague of mine. He's a lawyer, an antitrust lawyer. At the American Economic Liberties Project, which is also where I work, uh, but he's doing some of the most innovative, uh, legal thinking and policymaking around what's called surveillance pricing, which is setting a price of the good or service based on.

The personal characteristics of the person doing the buying. So, you know, someone is like, say, say a Google or some data broker has a bunch of information about you because of your browsing history, because of your geographic location, whatever it is. And then they use that information to set a [00:01:00] price for you that is different than the price that they set for someone else.

And there is, this is, there's a whole bunch of stuff happening in the economy now that is. Surge pricing, personalized pricing, new forms of price fixing. It's happening with rent, it's happening with meat. It's happening with office supplies, and Lee is right in the middle of it. He's working on legislation.

He's working with state legislative. A lot of the, a lot of the policy work here is happening at a state legislative level. Then, uh, there are antitrust cases. So we're gonna talk to him about all of that. It's a really interesting episode. Here we go, organize money.

David: I'm David Day, I run the American Prospect Magazine. And I'm Matt Stoller. I write

Matt: about monopolies in a newsletter called Big, and I'm the research director for a think tank. Called the American Economic Liberties Project

David: on organized money. We're gonna go beyond supply and demand curves and OS to [00:02:00] visionary entrepreneurs and tell you how the business world really works.

Matt: We'll talk to business leaders, journalists, policy makers, people on the front lines who are dealing with monopoly power, competing with it, winning, losing, but ultimately.

David: Fighting back. It's a podcast about all the money and power in the world,

theme: and we know now that government, by organized money is just as dangerous as government by organized.

Matt: So thank you for coming on the show. Hey, my pleasure. Thanks for having me. You are working in this really interesting area of kind of the new pricing games that a bunch of companies are playing in the economy, good and bad. Um, but you're working in the policy space, [00:03:00] so trying to figure out how to apply traditional anti-monopoly frameworks to those new practices.

Why don't we start with something that I think a lot of people have heard of, which is. This company called RealPage 'cause I wanna, I wanna introduce the concept of surveillance pricing with something that I think is understandable. So what is the situation with RealPage and. What have been some of the experiences and then the, that people have had with RealPage, and then what, we'll, we'll get into sort of some of the policy pushback to it.

Lee: Sure. So, you know, RealPage is, um, uh, a company that is essentially a price consultant. They allow, uh, specifically landlords to use. Their platform, their software to, uh, predict and set prices, uh, in rental housing markets across the country. And, uh, RealPage really kind of came on the [00:04:00] scene and, and started attracting a lot more attention because of a ProPublica report a few years ago Now.

Describing how RealPage the software was allegedly being used to hike prices across rental housing markets. Uh, primarily, you know, these markets function locally in geographic regions. Um, and you RealPage was out there bragging about how its software was allowing. Landlords to increase their prices, increase rents by double digits.

News: An investigative journalism group called ProPublica documented how landlords are using software sold by RealPage. A company based in Richardson. It analyzes data and recommends an amount to charge for rent.

Lee: And of course, this attracted outrage, right? Like we're in the middle of a housing crisis. There's all these, you know, policy conversations taking place about how to increase supply, how to bring rents down, and here's a company out there advertising openly, Hey, we can make sure that your rents go up.

Um, and, and so they attracted a lot of blow back, [00:05:00] and it turns out that this was part of an alleged price fixing scheme, a conspiracy among otherwise independent competitors in a market. To fix prices, uh, at a super competitive rate, a higher rate than what ordinary market conditions would, uh, allow for.

Uh, and to, um, yeah, really kind of put a lot of pressure on tenants who were already feeling it.

Matt: So this was millions of apartment units in certain cities, cities, dozens of corporate landlords, but they were effectively all colluding through this. Software consulting firm. Is that right?

Lee: Right. So I mean, there's a dispute, a fact dispute about, you know, their market allegedly penetration.

Yeah. But, um, but generally that's right. That, that these price fixing schemes, any price fixing conspiracy allows independent competitors to act as one. Uh, mm-hmm. And to remove from the market the healthy competition, uh, that would otherwise, uh, you know, create downward pressure on prices because you wanna get heads in beds.

And if you've got a bunch of vacancies in your building, uh, the natural thing [00:06:00] to do is bring rents down, uh, so that people will, uh, you know, uh, occupy them.

Matt: What, what, when they say pushing up prices, presumably they were saying to landlords, you know, Hey, keep the price high, even if no one's coming in to.

To, to buy it because you'll make more money. I mean, that's how all cartels and could price fixing conspiracies work, right?

Lee: Yeah, exactly. I mean, the effect of a price fixing conspiracy is, uh, both on price and on output. Uh, those things are of course related when you have more output or supply, price tends to come down.

Um, what is really interesting, uh, is this chart in, in the class action case based out of, uh, Tennessee right now, um, that shows that. About the time that these price fixing tools, um, uh, started taking hold in the market. Um, pre 2015 or so, as vacancies increase prices come down and that's what you would expect.

You have, uh, a glut of supply. Uh, you [00:07:00] expect prices to come down. Post the implementation of these price fixing conspiracies, alleged conspiracies. Alleged conspiracies is that you start seeing vacancies increase and the trend line on prices is also increasing. That is counterintuitive to a healthy market, right?

If supply increase price comes down, here you have, uh, vacancies or supply increasing and prices continuing to go up. Um, that is a very disturbing trend. Uh, and it, it indicates, uh, that what might be going on is exactly what you said, uh, that, you know, these price fixing conspiracies are allowing, uh, uh, businesses to hold supply off the market because they can make their revenue targets with a limited supply because they're hiking the rents on, you know, those, uh, units that they are leasing out.

And what you, uh, uh, ultimately are seeing is just speculation. So if you have a market downturn, you're not gonna see prices come down. You're gonna see, oh, we're gonna raise the rents on the units that we do have occupied [00:08:00] until, you know, the market rent continues to go up. Uh, and we feel comfortable leasing out new units, uh, at, uh, at a higher rate.

So it, it's just depriving, uh, you know, users or rather renters of the benefits of increased supply at a time when it seems like the political imperative is to increase housing supply.

Matt: Right, so it's sort of inducing an artificial housing shortage or accelerating an a housing shortage. Like I lived in a, one of these apartment buildings, which actually turned out was using RealPage software.

There's just all sorts of weird things that was going on there. What my favorite thing is that what they were doing is they were encouraging some of these landlords to use, like oddly timed leases like 11 months or 13 months or 15 months and give you a slightly better deal because they knew that they didn't wanna put too many renters on the market at the same time, or they wanted to put people on the, on the market at the same time as there wasn't gonna be that much supply.

So it was just like there was all this clear market manipulation allegedly going on. But here, here's a kind of a question 'cause we wanna get into broad [00:09:00] pricing dynamics, uh, happening across the board is the kind of real page style alleged. Newfangled, smokey back, zooms pricing, is that happening in other industries or is it just.

Rentals.

Lee: Uh, yeah, I mean, it it, it's something that, um, we're observing in many industries and, and a lot of this is playing out, uh, in litigation. Uh, you see, um, uh, cases against, uh, meat packing industry, a company called

Agri Stats, uh, allegedly facilitating a price fixing scheme among, uh, meat packers. Um, you see in, um, you know, another case against hotels and casinos on the Las Vegas strip facilitating.

Price fixing in, in that market. Um, there's a, one of them is a case, uh, involving a platform called Potato Track, uh, that allegedly fixed the price of frozen potatoes. Uh, you know, and that has, you know, that sounds like some kind of silly, but it, you know, it has [00:10:00] real implications for, you know, downstream small business restaurants who are, you know, trying to buy potatoes, uh, to serve to their consumers.

And suddenly there's this weird market distortion where the price of. Frozen potatoes is going up. So you, you see it across markets in, in popup, uh, repeatedly in interesting ways. And that's, you know, price fixing always has done that. It's, I think what we're observing now is the use of these pricing algorithms to facilitate it at a broader scale.

Matt: Also, it's important to note RealPage wasn't just doing this like funky algorithm thing. They were also just having meetings. Right? Like they were doing the standard things you'd do with if you were price fixing or that with the complaints alleged. Like they were getting the landlords together to like, you know.

Talk to each other about how to set prizes right. So it's, it's not like, it's not just, it's not all fancy new newfangled algorithmic stuff, but yeah. There's been legislation to address RealPage, right? That you've worked on. I mean, there's antitrust cases, but like, can you talk a little bit about the legislation you've helped sort of create and [00:11:00] what's happening around, uh, in among policymakers to address this kind of rent fixing, I guess.

Lee: Sure. Yeah. I mean, you know, we wrote a report on algorithmic price fixing, uh, you know, a, a year and a half, two years ago. Um, I think there are now 18 states that have introduced legislation, specifically targeting, uh, algorithmic price fixing. You see a bunch of cities, uh, getting into the game as well. I mean, it's really exploded.

You, you've, you know, there are something like. 12 federal, uh, uh, cases, uh, against, uh, price fixing in the rental housing market. Specifically

News: tonight, the Justice Department expanding a lawsuit against RealPage, accusing the software company of coordinating with landlords to pool non-public tenant data and coordinate to keep rents artificially high.

Lee: You see state ags bringing cases in Arizona and Washington, DC under, you know, state or, uh, municipal law. Um, so it, it, it's an issue that has kind of [00:12:00] exploded and, um, and it's really interesting to see a lot of those, um, pieces of legislation will specifically address, uh, the rental housing market, uh, and companies like RealPage and Yardi and their alleged bad behavior.

Some of them are even broader. Uh, there's a lot of interesting little pieces of these, uh, conversations. Uh, one of them is that, uh, for instance, uh, you know, price fixing schemes often involve the exchange of non-public competitor data. Uh, and the reason that they focus on the exchange of that sensitive information is because, uh, as an independent business, I have no, uh.

You know, economic self-interest in sharing my proprietary data with my competitor unless I am engaged in a funky conspiracy to fix the market. So, so there's been a lot of focus on the exchange of this non-public competitor data, but you also see that the problem is bigger than that. Um, and that you can actually facilitate a price fixing scheme without any sharing of non-public competitor data.

There can be, um, uh, all sorts of [00:13:00] ways for that conspiracy to manifest. It's not, I think. Taken kind of mainstream hold, but that if you are offering a pricing algorithm that uses the same data and that performs the same function, uh, and you are, and you are sending that to many competitors in a market or just to competitors in a market, um, with the intent that they use it to set prices or to recommend prices or adopt recommended prices, that itself is.

A form of collusion. It is. It might be a soft form of collusion, it might be a soft form of market manipulation, but the common use of a common algorithm to deprive markets of independent centers of decision making is a conspiracy.

Matt: Okay, so let's talk about sort of broader, like, you know, I think a lot of us heard about Wendy's, um, a couple of months ago or a year ago saying, you know what, maybe we'll do this like surge pricing for our restaurant. 'cause now [00:14:00] we can change the, the prices. Like on the fly. And then you see, you know, a lot of supermarkets that are starting to say, you know what, we're not gonna have like paper price tags anymore.

We're gonna have electronic price tags and we can kind of change them and on hot days we'll charge more for ice cream. Or whatever it is. Like what are the things that the public is sort of seeing that some that sort of indicates to that some. Weird is going on with pricing.

Lee: Yeah. I, I mean, what you're talking about is, I think under the broad category of price innovation, that corporations are conducting all of these little experiments, uh, that's a, that's a

Matt: euphemistic way to Who are you working for, man?

Lee:Well, that's what they'll call it, right? Price innovation or, or price optimization.

Matt:Price Novation. A fun innovation. Yeah.

Lee: But, but you know, the subjects of that innovation are, of course, consumers, consumers are experiencing this. Um, you know, one kind of thing that's been noted, you know, if you go on, uh, you know, popular e-commerce platforms, uh, of which there is, you know, one, uh, called [00:15:00] Amazon, you know, you know, you might be charged a kind of weird, mysterious price, like $7 and 62 cents for a package of band-aids or something.

And, and, and you might scratch your head and like, wait, where did. That price come from? Why is, you know, what is, what is going on here? And, and I think that there's a lot of, um, experimentation that is being conducted in these markets that is at the expense of consumer awareness, um, and is really trying to dull price sensitivity.

Uh, so that consumers will pay whatever price, uh, a corporation predicts they will pay for that.

Matt: Why does it matter to have like the same price, for the same item for, for everyone?

Lee: I think for a lot of reasons. I mean, one of them is just, you know, the Sue Orman financial planning, uh, ethos, you know, it's, uh, you should be able to plan for your expenses.

It's, uh, that's how you decide whether to take a job because it's paying you enough money or not. Uh, you know how much money you have in your [00:16:00] bank account, how you, uh, you know, put family or put foot food on the table.

Matt: Okay.If you and I go onto Amazon or, or Uber or whatever, and we get charged a different price for the same thing, right?

Mm-hmm. Like you get charged $7 for the bandaids, and I get charged $7 and 20 cents for the bandaids. Sure. Like, and we, we talk to each other and we're like, wait, you're getting different prices. I think we both be like, that's, that's not cool. Right. But it's 20 cents. It doesn't matter. But both of us would be like, this is weird and not cool.

Like there's something there like morally where we're like, it's not good if we're just treated differently in this, in this sort of arbitrary way. So what do you think is hap, like how do we think about price really as like on like a core level? Intrinsically. Why does it make us mad if that we're getting different prices?

Lee: I mean, I, I agree. I mean, it's patently offensive, uh, why should I be paying more for the same exact good or [00:17:00] service than the person who lives next door to me? Um, and, and, and, and I think the offensiveness is also tied to. How this whole scheme functions. Like, why am I being charged a different price than the person who lives next door to me?

Um, what do they know about me that is causing them to charge me a different price? Uh, I, I think it's, it, it's predatory and it, it is, um, you know, it's exploitative of personal information about you, uh, that, uh, you know, is being, you know, plugged into a computer algorithm. To dictate and predict, you know, how much you specifically are willing to pay for something.

I mean, that's, there's, there's a violation and it's almost like a privacy violation, but it's something else. It is a fairness thing.

Matt: So you've thought about different ways, like what's actually a morally offensive about different prices for different people for the same thing.

Lee: Yeah, well, well think about it this way.

I, you know, your dollar is worth a different amount than the dollar of the person next to you. Um, and, and a corporation is dictating the [00:18:00] value of the currency that you have in your pocket. So when you set a different price for the same price or good, or for the same good or service, um, that is a corporation's way of dictating how much your dollar is worth.

Um, and I think that that is kind of a shocking idea to, to, to folks.

Matt: Yeah, it is. It's kind of like attacking us as a society because like prices in some sense are social. Knowing a price, all of us kind of knowing a price gives us information about our society. It kind of helps create a public in some sense, and, and charging different prices is like an attack on.

Us as a public or as a society. I don't wanna get too abstract there, I got too abstract on, but like, I do think there's something like, it's really caused me doing this work has really caused me to like, think deeply about like prices as kind of a moral question. I mean, there used to be all sorts of discussions of moral prices and whatnot, which we Yeah, we like got rid of, but it, it does feel moral.

Lee: Well, as, as you know, I'm an optimist, so I think that, you know, this new problem is a vector to restart some of those [00:19:00] conversations. But if we could take a big step back and maybe talk about like how prices are set or how people think prices are set, I think it might be helpful to lay some of that groundwork.

So a lot of people still kind of conventionally think of price, meaning the cost to produce a good or service. Plus a little profit on top, and that's what's being charged to you. I mean, this is the concept of like marginal cost pricing. Um, I, I think if you go study economics in college, they throw that concept outta the window within the first 15 minutes of the first class.

Matt: People basically think the value of something is based on how difficult it was to make it. Like the labor, like if he takes a lot of time and effort to make something, it's more valuable. And then, you know, you wanna add a little profit so that for the cost of capital or whatever, but value is, comes from the labor it took to make something.

And that's, that's sort of the essence of what you're saying. Is that fair?

Lee: Yeah. Cost, uh, of producing [00:20:00] something, the labor that went into it, the, you know, I, those are kind of the fundamental, uh, kind of underpinnings of, you know, uh, the exchange of value for things in our society. I mean, that's, it's very basic.

Um, I, I would say that, you know, this, this notion of surveillance pricing is. Obliterates that nexus between cost and value on the one side and price like there is, there is no nexus between these things. Price is. Constructed in a completely different way that is profoundly new. Um, that has, you know, it has its evolution, uh, its evolutionary foundation.

I mean, going back, you know, a couple of decades now and a lot of technology, you know, and surveillance, uh, capitalism and targeted advertising, things that were kind of, you know, normalized in our society. And we kind of understand, kind of inform where we, how we got here. So it's not altogether new, but it is certainly new.

Uh. In the price sense.

Matt: What are you seeing, like you're, you've been working [00:21:00] with in the California legislature to try to help them get a hold of some of the new techniques where companies are setting prices. So what are you trying, what are you seeing and what are you trying to address?

Lee: I think the problem that we're trying to address is that there's no.

Framework under existing law for curbing this, that, that really covers all the bases. Curb curbing what? Curbing what? Curbing surveillance, pricing. This, this notion of individualized price discrimination, a different price being charged to different consumers based on, you know, their willingness to pay for something and that willingness to pay concept, kind of being core to what is dictating the price.

Um, and, and you see that it's like privacy law doesn't. Quite cover it. Um, you know, notice in consent frameworks like where you opt in to something, uh, quote unquote opt in through an adhesion contract. In the terms of service where this is buried, 120 pages in that doesn't quite cover this, right? You don't quite get at it with equal protection law, unless there is, you know, discrimination between a protected class like race, [00:22:00] uh, you know, gender sexual or orientation religious affiliation.

That doesn't quite get at it because, you know, your web browser history isn't a protected class. So, you know, we're trying to, um, keep pace, I think with what I euphemistically referred to as price, innovation, price, happy, fun time, pri price, happy, fun time, uh, with some regulatory, happy, fun time. Um, and I think that there's a real meaningful.

Um, role for regulation to play, uh, to kind of, you know, box in some of these bad behaviors and guide innovation in a productive direction. That's my optimistic Pollyanna take on what we're trying to do with new bills to, you know, essentially ban surveillance price, uh, price setting.

Matt: So. There are certain areas, like if I'm a great driver and my friend is a bad driver, it makes sense for us to have different prices for our car insurance.

And there's there, like in insurance, there is personalized pricing. That's why actuaries exist and no one is like, [00:23:00] that's bad, right? So there's certain areas where. It is fine to price things based on the individual attribute. So what are, what's the sort of space where that's not okay?

Lee: Yeah, I mean, first of all, you know, a lot of these bills will just categorically exempt a lot of, uh, insurance, uh, policy stuff because there's a whole I.

Uh, regulatory framework for, you know, ensuring the accuracy of information to inform that sort of thing, right? So these are heavily regulated price regimes, um, uh, that are, are kind of a separate bucket. I agree. Um, uh, but what we're talking about in these bills is a price being set, um, based on a broader category, not just of.

Personal information, uh, but also your, you know, behaviors, you know, whether you are being charged, uh, a different price for something because of your past purchase habits. Um, and there are, you know, a ton of examples about this that, that I think illustrate the problem, um, very well. Um, you know, like for example.

Say you're a [00:24:00] consumer who's being profiled as a new parent. Um, you know, maybe you were, uh, you had a online registry for a baby shower recently, so, uh, the consumer or the corporation knows that you're a new parent. And now a consumer may intentionally be shown a higher price, uh, for a baby thermometer on the first page of a search result, uh, based on their residential zip code, on their time of purchase, um, uh, on the fact that they are a new parent.

Um, if you have previously used. Like a fast delivery shipping method. The retailer may predict that you are less price sensitive. Um, if you recently filed divorce papers, what if you're a single parent and you know, are now, uh, you know, more vulnerable to paying a higher price for diapers? You, you get the kind of how these examples kind of.

They're, they're all over the place and they're not, you know, tied to a protected class. They're often protected about or predicted by, you know, specific information about you. Um, say on the wage side, which we've not really talked about so much, but [00:25:00] say, you know, I just took out a loan, uh, or I just applied for a new line of credit, uh, or my credit score is in the dumps.

Uh, or I am super deep in debt, uh, I might be. More willing to work for a lower wage because of my financial precarity, uh, because I need money more than the person next to me. And a, you know, a, a gig platform, a rideshare platform might know that about me and offer me a lower wage to perform the same exact job that I am equally equipped to do, uh, as the worker next to me.

So, so these kinds of things are. In the cross hairs of new regulation, uh, that we're trying to just stop this behavior outright, uh, before it, you know, gains an even deeper hold. I mean, it's

Matt: interesting you bring a price and, and wage, 'cause wage is a form of price, but what are the proposals you're sort of suggesting to address this kind of personalized pricing?

Lee: Right. That, that's one of my favorite things to say is [00:26:00] that, that wages are the price of labor. Um, wages are a price. Um, so legislation that has been introduced in Colorado, California, Illinois, Georgia, I think there are a couple of other states out there by now, um, are all, um, you know, essentially saying you can't do surveillance pricing.

You can't. Individually discriminate between consumers on price. Um, there are exceptions to this, and I, you know, those exceptions are, are, um, you know, where a lot of the meat is. Like, we're not prohibiting matinee movie pricing. We're not prohibiting senior discounts or veteran discounts,

Matt: but it seems clear that those are clearly delineated classes.

So it's, it's not, no one is saying, well, we don't like senior discount or veteran discount at the movies, because you can see that they li they list it and then they say, this is a class and everybody understands it. Right? They're, they're, they're,

Lee: they're publicly posted. Uh, everybody's aware that they exist the terms.

Are applied consistently across the people who qualify for those discounts. [00:27:00] You know, so there's a lot of kind of like benign behavior that we're not trying to get into. And, and, and it's important to think about it that way because, you know, again, it, it narrows the problem, it narrows the solution to the problem.

Which is this discrimination on price between individuals, uh, based on more insidious classifications, uh, and, and data sets when it's not just students or seniors, uh, but when the bands of data are being used to. Create groupings, uh, based on, you know, what if it's, uh, you know, people who buy skirts and, uh, and expensive cat food, like then if a per if, if you're being charged a different price based on that kind of granular information about you, it's no longer these acceptable categories.

It's these really kind of like gross, um, exploitations of information.[00:28:00]

Matt: What are the like arguments that you feel are good enough that you have to rebut or that do actually present some sort of intellectual challenge to this framework?

Lee: Well, you know, I, I think the good faith, um, pushback is, is actually, um, things that we've already been discussing. This notion that we don't wanna prohibit senior discounts.

We don't wanna, you know. Prohibit, you know, uh, you know, holiday specials or, you know, um, so, you know, and, and those things are easy to account for. They're, you know. Widely advertised, consistently applied, uh, understandable. Things that people know and aware of. I think, you know, um, where the pushback becomes, I think more insidious and bad faith is this notion that, um, optimizing prices on an individual level or discriminating between price at an individual personalized level is going to distribute or is going to, um, lead to a kind of long-term welfare effects that actually.

You're gonna end up paying a lower price over time [00:29:00] because you are being offered a discount and don't we want that, you know, to be the case. Um, and, and I think it's, you know. I think the fundamental problem with that is that this notion of a discount suggests the presence of a, a normal set or quote unquote right price, um, that is connected to cost and value when, when really what you're being offered as a discount might be, uh, an arbitrary targeted price discounted from some.

Arbitrary, uh, higher price. You know, you see a slashed $90 for something and you're getting charged $66. Well, is it a discount if the price is just kind of made up, uh, or is it a targeted advertisement based on your personal characteristics and your personal vulnerabilities?

Matt: Yeah, so there is, there is, there's a lot of, you know, like.

Research on, on the psychology of pricing showing, yeah. People love to ha feel like they're getting a deal even so you just raise the price and then say, oh, you're getting a discount. Um, and that, that's definitely one way to do it. Okay. [00:30:00] So there's another problem that you're dealing with too, which is the problem of algorithms.

So companies that are maybe. There's, there's kind of the coordination we've talked about with RealPage, which is, you know, the alleged allegedly conspiracy, and that's pretty direct. They're sharing competitively sensitive information across rivals, and you see it in a number of different areas, and I think we understand what that is doing, and it probably is covered by existing price fixing laws.

But what about some of the looser stuff? Like what kind of. Things are happening in the economy. Let's start with what's happening in the economy that feels off but isn't, you know, sort of standard price fix.

Lee: Some of this is kind of in the early stages of, um, investigation, but we're, but we're looking at how platforms offer, uh, tools that can be used to inform the setting of a price, right?

Mm-hmm. So say you have Amazon, uh, offers [00:31:00] a, you know, a smart pricing tool, uh, to, you know, tens of thousands of retailers who use its e-commerce platform. These are independent businesses who are trying to sell stuff on, you know, Amazon's. You know, broader store, uh, and they're being told, Hey, if you use our smart pricing algorithm, you might have a better shot of getting into the featured buy box on Amazon's platform.

And, and, and, you know. Uh, there are a lot of facts. Those facts have, are, are starting to play out in, in Interesting. Um,

Matt: is that an actual situation or is that an alleged, are we in, you know, this might be happening, but we're not sure

Lee: the, that is a practice that is being kind of, uh, played out and investigated and, and teased out in Yeah, I think the Federal Trade Commission's litigation against Amazon. Also, you know, California has a case that predates the FTCs case against Amazon, where some of these pricing, uh, behaviors are being, um, uh, vetted and understood. I think it's a pretty benign observation that some form of this is going on, that if you use [00:32:00] Amazon's smart pricing algorithm, you're gonna have a better shot of getting into the buy box.

Um. You know, there are other, you know, what we call minimum price restraints, minimum resale price restraints, uh, most favored nation clauses that say, you know, if you're selling something on Amazon, Amazon might restrict you from selling it at a cheaper price at Walmart because they don't want to be undercut on price at one of their competitors' stores, uh, or alleged competitors.

I know there's a dispute about whether Amazon and Walmart actually compete against each other, but let's stick with this example about, you know. Use my smart pricing tool and you'll have a better chance of appearing in the buy box. Or say you are a short-term rental platform and are offering a similar smart pricing tool and on the condition, uh, and it's being offered to you as a way to appear higher in search results on a short-term rental platform.

So those might not look like, you know. Uh, price fixing schemes between competitors, between two different, uh, you know, short term rental [00:33:00] operators or two different retailers who are trying to sell, uh, staplers on, uh, Amazon. Um, but, but there's a coercive vertical effect there that that is a, essentially depriving those independent businesses of their authority, of their autonomy to set a price in the market.

So. There's an old case called Interstate Circuit, um, from the 1930s, I wanna say a famous price fixing case, uh, that describes this as a fundamental need to preserve independent centers of decision making. I love that phrase, independent centers of decision making, and that when you have independent centers of decision making.

Competition can occur between them. But when you start pulling, uh, some sort of competition out of the, that, that dynamic when you, when you pull their independence away from them, even if it's not a total, uh, you know, uh, a total restraint, but even like a partial. You know, deletion of some competition from a [00:34:00] market, um, you start to lose the competitive drive that delivers consumer benefits, that delivers lower prices.

So on these platforms, if you're, you know, two, uh, independent, otherwise independent retailers being, you know, coerced into using a. Smart pricing tool, you are being deprived of your independent decision making. Your decision making is being constrained by this imperative to get into that featured buy box or to appear higher in a search result.

So I think, you know, we're starting to observe these ways that platforms specifically are restricting competition, uh, at the same time as they're making these retailers, uh, dependent on them for their own viability, uh, as a business.

Matt: I wanna get back to like a bigger question here and let's get to your foolish optimism. Okay. So are you finding, when you're dealing with, uh, politicians who are not really used to this, like, to these arguments, like it's new, it's relatively new for most people 'cause it's new.

It is new for everyone, like. Pricing, you know, having to redefine pricing laws. Are you seeing, like, what are you seeing in that debate? Are you seeing kind of light bulbs go on for people being like, oh this is, there are interesting political questions here? Or are you just like getting a sense of like, it's just to people being like, fix this technical issue, let's, then we'll move on to yelling about, you know, some social issue We really care about.

Lee: Yeah. You know, it's a lot of light bulbs going on, and I think it speaks to the need to educate people over and over and over again. I mean, I don't think people know how prices are set today in today's market, but people are fundamentally shocked at the unfairness that they might be charged more for a plane ride home because an [00:39:00] airline knows that they need to get to a funeral on a certain date like that There, there's a gut.

Feeling of unfairness, uh, that people understand immediately when you explain to them, Hey, this is, this is what we're seeing. This is what, uh, is going on in the market today. Um, so that is actually a really cool thing to be a part of, is educating people on how this is happening and hearing people say, oh yeah, I had that.

I kind of had something like that happen to me. That's weird. So it's a lot of light bulbs, uh, which is really exciting. Uh, but I think we do also need to get back to this kind of moral conversation around pricing. Um, you know, I, I, I, I'm kind of, despite my optimism, I think that we're on a collision course for.

A very dystopic future. I mean, I, I think that we are, um, you know, barreling toward some form of disastrous economic structure. And, and people kind of look at me, uh, uh, with, you know, like I'm wearing a tinfoil hat when I start there. You know, like I have, you have to kind of [00:40:00] do the explanation of how we're experiencing things happening in order to get to, yeah, and this is why it's really, really, really dangerous because I think we're headed toward an economy that is gonna be structured by large corporations.

Platforms who are constantly testing the limits of our financial precarity, who are completely controlling, uh economic sentiment, consumer sentiment across the markets. Um, and, and I think that that's really, really troubling. And, and not just troubling, you know, um, because we all recognize it's happening, but even more troubling because they're depriving us on an individual level of the shared experience of this.

They are depriving. Individuals of the awareness that this is going on. So it sucks out of the room, the collective response to, uh, abusive pricing practices. I, I just think it's, it's, it's really, really, really troubling to assign that function completely to corporations. [00:41:00]

Matt: So I guess last thing is, um, you know, when you talk to a lot of people about pricing, right?

Usually people, usually there's sort of like an instinct. I think an instinct on the right is, oh, you gotta let you know, let the market decide. Let e everyone set, you know, whatever constraints or or pricing they want. And on the other hand, when you, when you see on the left, and I think, you know, we're both sort of more on the left.

The idea is we need to do something about prices. Let's like have the government control the price. Let's lower the price. We'll we'll just have price setting from an administrative agency or something. But you're not saying that you're saying. What we need, whatever the price is, if the price goes up or down, it should be the same price for everyone, but it shouldn't be like, it should, it shouldn't be like a controlled price by the state or some sort of entity.

Or is that like, do you see a, um, uh, like is that right in, if so, like how do, are you moving people from We need the state to set prices [00:42:00] to. Actually, it's really about ensuring that there's kind of like a, a, a, a consistency to prices across society.

Lee: Yeah, I, I think in this specific context on the surveillance pricing side, it is about kind of.

A desire for uni uniformity, for some predictability in, um, in how prices are set. Um, you know, when you don't have that information as an individual consumer, um, you are deprived of, uh, I think something that we can all relate to this ability to comparison shop, um, and to understand that you can go get a cheaper price somewhere else.

And that's particularly relevant when prices are being coordinated at the same time across multiple, multiple competitors. Um, so, you know, I think that. Um, uh, yeah, there's a very, there's a very dangerous part of not allowing consumers to know what the price should be. You know, we joke about the price is right as this kind of like, you know, 60-year-old, 70-year-old show.

Uh, you know, that the fundamental basis of which was like, hey, you can predict a price, you can be good at it or bad at it, but you [00:43:00] kind of know what, there's a right price. We're losing sight of that, this, this, the, that the price can be right.

Matt: And I guess, I guess we'll leave it there. I appreciate your, appreciate your time.

Thanks for. Thanks for spending a, a an hour with us explaining like your experiences with pricing and really on the cutting edge. So thanks. Right on. Thank you.

Well, I thought that was really interesting and I don't want to spend too much time kind of pontificating myself. You know, one of the things that is sort of happening in our societies is it feels like things are more and more turning into finance that shouldn't be right. When you go into the store and you wanna buy something or when you wanna order something online, a toy or, or a, a food or, or shoe or whatever it is like.

Should you really have to engage in some sort of financial strategy to get the best price or to avoid, you know, a sort of collusion or, or pricing games? Does everything really have to be about [00:44:00] making sure there's a liquid financial market for whatever that product is? I, I, I think what, what I saw a way a couple years ago when I used to follow, you know, I used to have these discussions with people who were super into crypto.

There was this vision, or they have this vision, which I think they still have that you know, what we really need is, is for. Liquidity in every financial market. And so they would, they would do things and they would say like, just like a stock, if there are, you know, 10 jugs of milk at the store, we're gonna have all of these different like pricing arrangements to make sure that it's just the most efficient way of selling the milk and.

You'll get to bid in these ways and you'll get to program an agent to get your bidding. And it and it, and I remember thinking like, this is just nuts. Like this is, this is a, this is just turning everything into like a hassle and a scam and a financial game. And I kind of like, occurs to me that if businesses are really investing in what I, what I, I think Lee.

Called price innovation or price, happy, fun time. Then [00:45:00] they're not actually innovating. They're spending their time like not actually making better products or stuff that people want, they're spending their time messing around with, with just like pricing games and causing everything to become a hassle and like finance.

And I don't think that's a society that we wanna, we wanna live in. So thanks for listening and we'll be back with another episode of Organized Money.

David: Organized Money is a production of Rock Creek Sound Executive producers Ellen Weiss and Ari Saperstein. Our senior producer is Benjamin Frisch, who also does our sound design, all the mixing and our artwork. Todd Mensch does our video. If you love this topic as much as we

Matt: do and wanna learn more, you can follow my Substack newsletter big@thebignewsletter.com and follow me on Twitter at Matthew sto,

David: and you could definitely check out my magazine, the American Prospect, that's at prospect.org.

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