



March 13, 2024

The Honorable Matt Klein
Chair
Senate Committee on Commerce and Consumer Protection
2105 Minnesota Senate Bldg.
St. Paul, MN 55155

RE: Oppose SF 3537

Dear Senator Klein and members of the committee:

On behalf of Chamber of Progress, a tech industry coalition promoting technology's progressive future, we write to **oppose SF 3537 as currently drafted**. While we support efforts to eliminate deceptive fees and manipulative pricing in certain industries, SF 3537 could unfortunately have the effect of eliminating many consumer-friendly pricing options in other industries.

We agree that deceptive fees in other industries like hotels, primary ticket sales, and airlines should be addressed. Inconsistent prices and a lack of transparency make it more difficult for consumers to do "apples to apples" comparisons between competing services and hinder fair competition.

Unfortunately, the bill as drafted doesn't reflect the complexity of some three-sided online marketplaces, like many app-based services, that have a fundamentally different structure.

SF 3537 could limit consumers' ability to make price comparisons. In three-sided online marketplaces - including many sharing, e-commerce, and delivery services - independent sellers offer and set the prices for their goods and services. The market operator connects the independent sellers with customers, and may offer additional services like delivery, product authentication, or order processing. In these marketplaces, the total cost a customer pays reflects separate inputs: the

prices set by the independent sellers and the prices set by the market operators for their services.

By requiring all sellers to display the total price for each item, inclusive of any fees other than taxes, this bill could require three-sided online marketplaces to combine pricing of separate services into a single price. As a result, consumers would have less pricing information.

For example, a customer looking to compare the price of a particular product offered on multiple marketplaces might look at the prices for the product itself, the price and timing of any delivery services, and the cost of any processing fees. Presenting only the total price for each product would hinder that customer's ability to choose between platforms.

The bill could also end up inadvertently raising prices for consumers. Some sellers offer discounts on bundles of goods, like “buy one get one free” offers or discounts on bulk orders. In these cases, the total price of each good could vary depending on the other items in a customer's cart. In order to reduce confusion while complying with this rule, sellers may abandon these discounts - which would harm consumers.

Similarly, the bill risks eliminating dynamic pricing and forcing service providers to switch to flat fees. Many online platforms use dynamic pricing for delivery services, in which prices fluctuate based on the type or amount of goods being delivered and the availability of delivery drivers. With dynamic pricing, the price of delivery services could change throughout the day, thereby changing the total price for each item.

For example, the price of a late-night delivery of heavy items might be higher than a delivery of a small order during peak hours. Online platforms would likely face difficulty in predicting and accurately incorporating these variable costs into the total prices of individual items. Instead, they may abandon dynamic pricing and adopt a flat fee structure, which would increase the price of deliveries for smaller orders or orders during peak hours. In the above example, the customer placing a small order would likely pay more for their delivery under a flat fee structure than they would with dynamic pricing.

Additionally, the bill risks punishing platforms for sellers' lack of transparency. For example, in the transient accommodation industry, many hotels and resorts

advertise available rooms on online lodging rental or home sharing platforms. Hotels and resorts, like homeowners renting out their homes, are responsible for the list price and any applicable fees. Including hotel and resort rooms on the same platforms as short term home rentals enables consumers to compare all of their options and reduces search time.

However, under SF 3537, the platforms could be held liable if the hotel or resort failed to incorporate all resort fees into the price they post on the platform. This concern could be addressed by including a safe-harbor provision for three-sided marketplaces and platforms that do not independently set prices for the goods they offer.

We support efforts to crack down on industries that deceive customers and use manipulative pricing tactics. However, applying one rule to industries with different market structures could end up harming consumers. For three-sided marketplaces, including food delivery services and lodging platforms, the rule could undermine consumer-friendly features. Unless these differences can be addressed during the drafting stage, we urge you to **oppose SF 3537**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ruth Whittaker', with a stylized, cursive script.

Ruth Whittaker
Director of Civic Innovation Policy