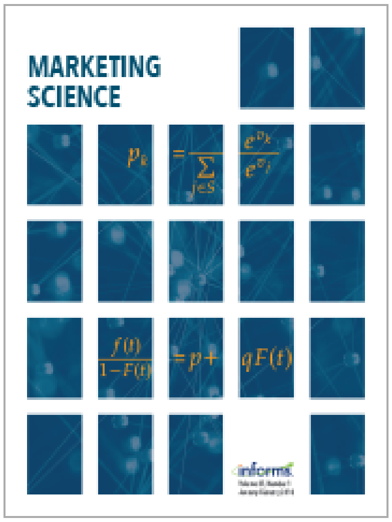

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Introduction to the Special Issue on Consumer Protection

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Abstract. This article introduces the *Marketing Science* Special Issue on Consumer Protection. This special issue and an accompanying conference were conceived as a partnership with the U.S. Federal Trade Commission. We outline the potential areas and opportunities for academic scholarship in marketing to inform regulation on consumer protection. We group the areas of potential research and the papers in the special issue into three broad buckets: (1) what consumers need protection from, especially the need for regulations in new industries; (2) the impact of existing regulations; and (3) the distributional impact of regulations. The article concludes with a call for ongoing policy-relevant research on consumer protection.

1. Introduction

The mandate of the U.S. Federal Trade Commission (FTC) is to promote competition and protect consumers. In fulfilling this mandate, the FTC has benefited from the marketing literature in the agency's long history of case and policy work. When Ginger Jin was director of the Bureau of Economics, she approached *Marketing Science* with the aim of enriching the discussion of consumer protection at the FTC with the perspective of marketing scholars. This led to the first Marketing Science–FTC Economic Conference on Marketing and Consumer Protection, hosted at the FTC in September 2016, and to this special issue. The aim of this special issue is to advance cutting-edge marketing science research that will likely generate helpful insights for the FTC and other consumer-protection agencies around the world.

Marketing scholars have distinctive expertise that is of direct relevance to the enforcement of consumer protection laws. Authorized by the 1914 Federal Trade Commission Act, the FTC defines an act as "deceptive if there is a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment."[1] Furthermore, the FTC clarifies that, for an act to be unfair under the consumer injury criterion, the injury "must be substantial; . . . must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and . . . must be an injury that consumers themselves could not reasonably have avoided."[2] As marketing activities often involve direct communication with consumers, it is not surprising that many deceptive and unfair acts caught by the FTC are related to marketing.

For example, in June 2016, Volkswagen agreed to pay up to $10.03 billion to compensate consumers harmed in the deceptive and unfair advertising and sale of its "clean diesel" vehicles.[3] In a July 2019 $5 billion settlement with Facebook, the FTC alleges that Facebook violated a 2012 order by *again* giving companies access to information that consumers said they did not want to share, and Facebook has made misleading statements about how it used facial recognition, consumers' cell phone numbers, and other personal data.[4] In August 2019, Google and YouTube agreed to pay $170 million to settle allegations by the FTC and the New York Attorney General that the YouTube video-sharing service collected personal information from children without their parents' consent, in violation of the 1998 Children's Online Privacy Protection Act (COPPA).[5] Other recent cases involve misleading packaging (Truly Organic Inc.), telemarketing (Standard Industries LLC), false claims (Nobetes Corp.), and consumer harm from data breaches (Equifax, Inc.).

The call for papers for the special issue listed these and other topics, emphasizing marketing aspects of consumer protection, including advertising claims, online marketing, review and feedback mechanisms, privacy, data security, big data, marketing of risk, behavioral biases, fraud, pricing, and agreements with competitors. We selected 10 papers for presentation at the September 2016 Marketing Science–FTC conference from a total of 44 submissions. For the special issue, we received 36 submissions, and this issue contains 12 papers. One paper is still in the review process and may be published later as a regular paper.

The papers in this special issue share a number of common themes. First, many of the papers explore the question of when consumers need protection. In particular, which activities by firms mislead consumers in a way that causes meaningful harm? Several papers ask this question in the context of new technology. Technological change has led to new calls for regulation, ranging from privacy to addiction. Marketing scholars are contributing to this debate, through the papers in this special issue and elsewhere. These papers leverage marketing's understanding of the consumer and our emphasis on measuring observed behavior in the field.

A second theme involves the need for new regulations in new industries. A third theme addresses the issue of measuring the impact of existing regulations. These papers leverage marketing's understanding of the tools available for firms to react to, and potentially circumvent, regulation.

Finally, many papers focus on the distributional impact of regulation. Consumer segmentation is a core concept in marketing. This gives us an excellent toolkit for measuring how consumer protection regulation will affect different segments of the population.

Of course, these themes are not mutually exclusive. In measuring the impact of existing regulations, papers can also question the need for protection and demonstrate that the regulation has distributional consequences.

2. What Do Consumers Need Protection From?

There are a number of open questions about the need for consumer protection. What constitutes harm and when should a regulator act? Several papers in the special issue address these questions, with an emphasis on understanding the consumer.

Santana et al. (2020) examine drip pricing, the process by which firms advertise only part of a product's final price at the initial presentation to consumers and then reveal additional fees and surcharges toward the end. They show that consumers do tend to choose a more expensive package if they face drip pricing rather than having the total price up front. Thus, the underlying question is under what circumstances drip pricing misleads consumers to their harm. This issue has received attention in the United States and Canada. For example, in 2012, the FTC held a conference on the economics of drip pricing. In 2016, the agency sent warning letters to many hotels about separate resort fees, emphasizing that such drip pricing may misrepresent the total price.[6] The FTC Bureau of Economics also released an economic analysis of hotel resort feeds in January 2017.[7] In Canada, the Commissioner of Competition has filed a case against TicketMaster and its parent, LiveNation, in 2018, alleging they engaged in deceptive marketing practices by promoting the sale of tickets to the public at prices that are not in fact attainable and then supplying tickets at prices above the advertised price.[8] In June 2019, TicketMaster settled the case for $4.5 million.[9]

2.1. New Industries and New Calls for Regulation

Perhaps the most common area of submissions, and by a straight count the most common area for accepted papers, examines whether new technologies should lead to new consumer protection regulation, or new ways to enforce existing regulation.

The privacy aspect of the FTC's consumer protection mandate is now prominent. As noted earlier, it underlay the recent Facebook and Google/YouTube settlements and is a feature of many other cases, particularly those involving information technology, artificial intelligence, and digital platforms. Johnson et al. (2020) ask a question of first-order importance to the overall debate: What is consumer data actually worth to firms? In the context of the AdChoices program for online display advertising, they estimate that the type of targeting they examine generates approximately $8.58 in value per American consumer. In other words, privacy regulation that allowed consumers to opt out of targeted advertising would cost about $8.58 in ad spending per consumer. This reduced revenue is born by both publishers and the ad exchanges (and indirectly by consumers), providing a useful estimate of the cost of privacy regulation to the industry.

Also related to the impact of regulation on media publishers, Calzada and Gil (2020) examine the role of news aggregators in sending traffic to publishers. Regulation of aggregators led to the shutdown of Google News in Spain in 2014. Using this context, as well as a similar event in Germany, the paper shows that publishers overall appear to benefit from the aggregators. While the regulation aimed to reduce the power of aggregators, the paper demonstrates that the aggregators provided a direct benefit to the publishers through market expansion.

Hunold et al. (2020) look at a different type of aggregator: online travel agents. Calls for regulation of aggregator rankings (as in the Google Shopping case in Europe) are common. This paper shows that online travel agents penalize hotels that provide lower prices elsewhere in the form of worse rankings. As documented in a variety of marketing papers, rankings matter because higher-ranked options receive more consumer attention and are more likely to be clicked. This paper shows that online travel agents appear to punish firms that offer better deals through other channels. It raises an open regulatory question as to whether and how aggregator rankings should be regulated.

Another emerging regulatory question relates to worries about addiction to technology. Jo et al. (2020) examine consumer behavior after a regulation on video game playing was passed in South Korea. The regulation restricted people under age 16 from playing online video games between midnight and 6 a.m. They find that it did lower video game playing, but primarily among low-intensity users. This suggests that regulation did not have the intended effect of reducing addiction.

Two other papers examine whether well-established consumer protection issues are increasingly important. First, Sahni and Nair (2019) examine "native ads," in which advertising appears as part of a publisher's regular content. If consumers are deceived into thinking an advertisement is nonsponsored content and get harmed as a result, then consumers might need a regulator to provide protection. Such native ads are particularly common online and have been the subject of much discussion at the FTC and elsewhere. Sahni and Nair find that consumers are relatively sophisticated in identifying native ads, and they are unlikely to have been deceived in the mobile advertising context they study.

Second, Blaseg et al. (2020) examine promises made on Kickstarter, a platform that allows people to receive funding for creative projects. Many Kickstarter projects presell a product that may later be sold in retail stores or online. The paper shows that Kickstarter participants often provide a pricing guarantee that products will not be sold at a lower price in the future. These promises are rarely kept. The open questions are whether these promises constitute deception and harm (to consumers), or whether they are examples of inexperienced entrepreneurs wrongly anticipating future market opportunities.

3. Impact of Existing Regulations

Several papers investigate the impact of existing regulations on consumer and firm behavior. We have already highlighted Jo et al.'s (2020) work on video game restrictions and Calzada and Gil's (2020) work on Google News in the context of changes to Spain's intellectual property law.

In addition, Bonfrer et al. (2019) look at plain packaging regulation of cigarettes in Australia. They find that a new law that forced plain packaging led to a substantial reduction in cigarettes sold, and they provide evidence that this regulation was driven by reduced differentiation and did not lead to higher prices. In other words, the consequences of the regulation were consistent with its aim.

Another paper about existing regulations is by Lu et al. (2019), who examine how firms can circumvent advertising bans using a natural experiment around the Jumpstart our Business Startups (JOBS) Act, which relaxed certain marketing restrictions. They show that when hedge funds are banned from advertising, hedge funds with mutual fund affiliates under the same umbrella brand are able to circumvent the ban by advertising their mutual funds. Importantly, this still helps cash flows into their hedge funds. In a sense, the advertising ban is less effective because there are alternative ways for the marketers to reach their audience. This paper is part of a well-established literature in marketing on the impact of advertising bans, which shows that ad ban effectiveness depends on the alternative marketing communications channels available.

4. Distributional Impact

Many of the above papers emphasize the uneven impact of a regulation across different segments of consumers. Kotschedoff and Pachali (2020), in their study of animal welfare standards in egg farming, show that high-income households are likely to gain most. In particular, high-income households have higher willingness-to-pay for animal welfare in their food and therefore benefit most from the falling price of higher-quality eggs. In this sense, while improving animal welfare, the regulations are regressive in terms of the income distribution of end consumers in a static sense. To the extent that society has an overall long-term interest in animal welfare and sustainability, and consumers—rich and poor—get educated and agree about the value of these features, the decline in prices for products and trends in preferences for such features may be reinforcing—and we may view such regulations as less regressive. We hope this paper inspires further work that accommodates effects of such reinforcing dynamics.

Similarly, inadvertent regressive consequences appear in other papers in the special issue. Johnson et al. (2020) show that opt-out rates appear to be higher for more technologically sophisticated, older, and wealthier people. More directly, Raval (2019) examines which consumers file complaints. The paper documents that complaint rates are much lower in minority areas. This is not driven by fewer consumer protection issues facing minorities. Instead, minorities appear to be less likely to file complaints for ex post documented bad behavior. If regulators are more likely to respond to filed complaints, then regulatory enforcement will favor wealthier, nonminority populations.

Guler et al. (2019) study the distributional impact of a merger (rather than regulation) using the car rental market. They find that mergers led to higher prices for weekday rentals and lower prices for weekend rentals. They explain the finding on the grounds that while mergers can lower costs, leading to lower prices for the more price sensitive (and lower switching cost leisure customers), the effect of market power from the merger manifests in higher prices for the less price sensitive (and higher switching cost) business weekday customers. Overall, these set of papers highlight the importance of accounting for heterogeneity and market segmentation—in making judgments and evaluations around consumer protection.

5. Conclusion

There are a variety of ways marketing scholars can contribute to policy around consumer protection. The papers in this special issue emphasize questions around when consumer protection is needed, the impact of existing regulations, and the distributional impact of regulation. Going forward, we hope that the marketing science community maintains an active engagement with agencies in the United States such as the FTC and the Consumer Financial Protection Bureau (CFPB) and other consumer protection agencies in the world. A second conference is planned for October 2020, and a call for papers will go out shortly. Conferences and special issues should not be the only points of contact between academia and consumer protection agencies and policy makers. As marketing scholars engage in research on consumer protection, their relevance to consumer protection agencies and ability to influence policies will continue to grow.

Endnotes

[1] See https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf (accessed September 25, 2019).

[2] See https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness (accessed September 25, 2019).

[3] Press release: https://www.ftc.gov/news-events/press-releases/2016/06/volkswagen-spend-147-billion-settle-allegations-cheating (accessed September 25, 2019).

[4] Press release: https://www.consumer.ftc.gov/blog/2019/07/what-ftc-facebook-settlement-means-consumers (accessed September 25, 2019).

[5] Press release: https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations (accessed September 25, 2019).

[6] See details at https://www.ftc.gov/system/files/documents/foia_requests/2016-01006_warning_letters_49_pgs.pdf.

[7] See https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf (accessed September 25, 2019).

[8] See details at https://www.ct-tc.gc.ca/CMFiles/CT-2018-005_Notice%20of%20Application_2_66_1-25-2018_5250.pdf.

[9] Press release: https://www.canada.ca/en/competition-bureau/news/2019/06/ticketmaster-to-pay-45-million-to-settle-misleading-pricing-case.html.

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