



## Let the Consumer Decide

September 1st, 2016 | and [Michael A. Benoit](#)

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The auto finance industry has had its share of troubles with the Consumer Financial Protection Bureau over the last few years, and anyone who has been paying attention knows that the industry continues to worry about what might be next. Near the top of the list seem to be concerns about ancillary products – “add-on products” in CFPB parlance – and the CFPB’s apparent adoption of consumer advocates’ hostility toward these products. So, what’s the beef?

This column is far too space-constrained to fully develop this topic, so let’s stick to the highlights. I expect that the CFPB’s reasoning would closely mirror that of the consumer advocacy industry (yes, consumer advocacy is an industry, with conferences, meetings, and newsletters just like any other industry), i.e., it would start from the premise that consumers (1) have a fundamental misunderstanding of the total cost and value of ancillary products, and (2) are often duped into buying them for prices far greater than they are “worth.” Often, this industry alleges that because products can be purchased in bundled packages, consumers are denied meaningful choice.

Let’s explore.

In general, the cure for a lack of understanding is education. I don’t think the consumer advocacy industry can argue that point, but I suspect they would argue about the content of that education. We might think that disclosing the cost and benefits of a particular product would be sufficient. But others might think that one should also disclose that the product has little or no value. See this excerpt from the CFPB’s recent request for information relating to ancillary products:

*Among other practices and concerns, the Bureau has found or alleged that some companies offering ancillary products failed to accurately describe those products, [and] offered products that provided little or no benefit to consumers without disclosing this fact ... .*

Putting aside the absurdity that any industry would advertise that its products are worthless, what kind of sustainable business model is that? And who gets to determine what the benefit to consumers is? A consumer advocate? The CFPB? Benefit, value, and worth are subjective concepts, ones most consumers are capable of evaluating for themselves. If the seller makes a significant profit, does that offset or eliminate any benefit? The consumer advocacy industry complains that ancillary products lack value because the retail prices far exceed their cost and rarely provide an economic benefit to consumers. Or put another way, sellers are making too much profit selling worthless products.

I think the consumer advocacy industry conflates wholesale cost with “worth.” If that’s the way

we're going to operate, then it's high time the government came down hard on the hospitality industry. There is plenty of evidence that the unit cost of that large soda you bought for \$2.90 at your local fast food establishment is actually about \$0.10. So, you paid 29 times more than the wholesale cost, or 29 times more than it was "worth." If you treated the difference as a finance charge on a one-day transaction, that would translate to an APR in excess of 1,000,000%.

Are you outraged? Do you feel cheated or scammed? Since less affluent people (i.e., "vulnerable consumers") are more likely to patronize fast food establishments, shouldn't we be protecting them from this unconscionable behavior?

Similarly, passengers sitting next to each other on a commercial airline flight may have paid vastly different fares for the same service. Should the last-minute business traveler be able to successfully sue the airline because she didn't get the 90-day leisure fare?

And, does a room service hot dog really cost \$25?

The point here is that people who live in a capitalist society decide what a product or service is worth to them and pay accordingly. The cost of a soda at a fast food establishment is a bargain when you compare it to the cost of the same drink at an amusement park, where visitors are a captive audience with nowhere else to go. And the kids are having fun, so we happily pay \$5 or more for a soda that still costs about \$0.10. The cost of the plane ticket to the last-minute business traveler had value to her because it was worth the cost to get where she needed to be. And sometimes, you just need that hot dog at 2 a.m. at the Marriott, and \$25 doesn't sound so bad. We make these kinds of choices all the time without assistance from the government. What then is different about buying ancillary products?

I'm all for disclosure and education. I'm also all for letting consumers make decisions based on that education. Will some make decisions we would not? Of course, but that is their prerogative. It is not the province of the government to decide the value of products and services and deem them worthy of sale in a free market society. As long as sufficient information about the retail cost and features of a particular product or service is disclosed, it should be up to consumers to make their own choices.

It's clear that the consumer advocacy industry is interested in having the CFPB regulate ancillary products out of existence. The big question will be whether it can. If the CFPB continues to pander to the consumer advocacy industry, GAP, debt cancellation, and certain other products may find themselves on shaky ground, regardless of the value consumers may place on them. Other ancillary products sold and financed in dealerships may be under attack as well, and being outside the CFPB's jurisdictional reach may not be enough for the CFPB to step back. We'll just have to let the courts decide.

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