

Kroger and Walmart Deny 'Surge Pricing' After Adopting Digital Price Tags

Some members of Congress have expressed concerns that stores will monitor customers and raise prices. Business experts say the technology has not raised customers' grocery bills.

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Kroger has said that electronic shelf labels are more environmentally friendly, and that they have saved time. Nic Antaya for The New York Times

Members of Congress are raising the alarm about new technology at supermarkets: They say Kroger and other major grocery stores are implementing digital price tags that could allow for dynamic pricing, meaning the sticker price on items like eggs and milk could change regularly.

They also claim data from facial recognition technology at Kroger could be considered in pricing decisions.

Kroger denied the claims, saying it has no plans to implement dynamic

pricing or use facial recognition software. Walmart also said it had no plans for dynamic pricing, and that facial recognition was not being used to affect pricing, but the company did not specify whether the tool was being used for other purposes.

Both Walmart, which has [4,606 U.S. stores](#), and Kroger, which has nearly [2,800 U.S. stores](#), also suggested that the effects of digital price tags are being exaggerated, and economic experts say that most grocery bills won't be higher as a result of the tags. Still, data privacy experts have concerns about new technology being implemented at grocery stores broadly.

Here's what to know.

What exactly are digital price tags?

Electronic shelf labels, or E.S.L.s, show the price and unit for a product on a digital screen rather than on paper or a sticker. They are already in place at Kroger stores as part of a pilot program, though the company would not specify at how many stores. Walmart [announced in June](#) that it would deploy its own E.S.L.s to 2,300 stores by 2026.

Kroger has said the new labels are more environmentally friendly, and that using them has saved time for employees.

Letters sent by Democratic lawmakers have asked Kroger whether it would use these tags to raise prices when it sees fit in order to maximize profit. For example, during a busy time of day or ahead of inclement weather.

Kroger said in a statement that the new price tags were "designed to lower prices for more customers where it matters most." A Kroger spokesperson said that the only routine price changes the company makes usually happen on Wednesdays to offer discounts, or when the stores place items on sale if food is reaching its expiration date. Walmart said in an email that it does not use dynamic pricing and does not have plans to do so.

Naveed Chehrazi, an assistant professor at the Olin Business School of Washington University in St. Louis who focuses on supply chains and technology, said that it was unlikely for the E.S.L.s to be used for surge pricing. He said the stores were just as likely to implement dynamic pricing without the shelf tags.

Other instances of the technology being used, even in conjunction with dynamic pricing, have not resulted in skyrocketing prices.

Robert Sanders, an assistant professor of marketing and analytics at University of California, San Diego, and Yannis Stamatopoulos, an associate professor at the University of Texas at Austin, have studied the use of E.S.L.s and dynamic pricing in grocery stores for years in places where the tools are widely used, including in Europe.

Dr. Stamatopoulos said he found that when E.S.L.s were used in stores, "the average price per unit sold went down," and the average quantity of items sold increased.

Prices could be lowered as expiration dates near. The two have found that both companies and consumers benefit from dynamic pricing.

They say this is different from surge pricing, when prices temporarily increase based on high demand for certain products. They also say most stores would not have enough data to determine when specific items will be at higher demand.

"If you have a really competitive market, dynamic pricing is almost for sure going to be a net good," Dr. Sanders said.

Is my face being scanned in the supermarket aisles?

Some Whole Foods and Amazon-owned stores use A.I.-powered recognition tools (like body scans) and [customers' palm scans](#) to attach them to their

Amazon accounts and charge them for items purchased.

Data privacy experts have raised concerns about facial recognition software collecting demographic data or reading people's facial reactions.

Lawmakers, including Representative [Rashida Tlaib](#), have echoed those concerns.

But a spokesperson for Kroger said that it did not use facial or other A.I.-powered recognition software and had no plans to do so. The company said that it had shut down a [pilot program with Microsoft](#) using the tool in 2019 because wires were overheating shelves and affecting products.

Experts in data privacy said it was almost impossible to know how many commercial businesses were currently using facial recognition technology, because there is little federal regulation in place that forces stores to disclose it.

Neil Richards, co-director of the Cordell Institute for Policy in Medicine & Law, which focuses on ethical and legal questions raised by technological advances, said that very few states required businesses to ask for customers' consent or warn them.

Mr. Richards said that using software tools "to make everyone in public identifiable by their real name would represent the end of anonymity in public," which he called a basic right of a free society. "I think we would miss it if it went away," he added.

Woodrow Hartzog, a professor at Boston University School of Law, said shoppers could be targeted in marketing efforts.

"When companies track you and they know who you are, that gives them power over you in order to try to more effectively market to you or manipulate your choices," Dr. Hartzog said.

Lawmakers fear 'surge pricing.'

In letters written in recent months, [Senators Elizabeth Warren of Massachusetts and Bob Casey](#) of Pennsylvania and Representative [Tlaib](#) expressed concerns that Kroger could use digital price tags to raise prices with the click of a button.

The politicians also worried that facial recognition would be used to collect the demographic data of shoppers and raise prices based on “protected classes, such as race, gender, or age.”

Senator Warren’s office said that Kroger did not respond to questions outlined in the letters. Kroger has said that it would not implement surge pricing, and that the claims in the letters were not accurate.

The letters come as Kroger faces a [federal antitrust lawsuit](#) over its planned merger with the supermarket chain Albertsons, which the Federal Trade Commission said could eliminate competition and lead to higher prices.

[Some economists](#) are skeptical of claims that price gouging is taking place across the board at grocery stores.

Some Schnucks and Whole Foods have digital price tags.

Digital price tags are already used at hundreds of stores across the country, including Whole Foods, Amazon Fresh, and [Schnucks](#), a Midwestern supermarket chain.

At a [Wegmans](#) in Brooklyn recently, a sign warned customers that the company was piloting a facial recognition program with a “small group of employees” who had opted in and promised to delete information on all others.

The company said that it was running the pilot for 60 days, starting in early October, to see if the technology could help “enhance the physical safety of our people and our customers.”

