

Antitrust Law Daily Wrap Up, CONSUMER PROTECTION NEWS: Federal, state enforcers moving to stop COVID-19 fraud, price gouging, (Mar. 23, 2020)

Antitrust Law Daily Wrap Up

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By Peter Reap, J.D., LL.M.

The Justice Department filed its first complaint against alleged fraudsters seeking to take advantage of concerns over the pandemic. Meanwhile, FTC being prodded to look into price gouging.

The U.S. Department of Justice and state attorney generals are taking action to protect consumers from fraud and price gouging related to the coronavirus (COVID-19) pandemic. On March 21, the Justice Department filed its first enforcement action, alleging such fraud. In response, the federal district court in Austin has issued a temporary restraining order (TRO) against operators of an allegedly fraudulent website, entitled "coronavirusmedialkit.com." That move comes after some earlier state efforts to convince online marketplaces to prevent price gouging. In addition, lawmakers have urged action on price gouging from the FTC, which has issued warning letters against some marketers.

Justice Department action against website that claimed access to vaccine kits. As [detailed](#) in the Justice Department's civil complaint and accompanying court papers filed on March 21 against the operators of the website "coronavirusmedialkit.com," the defendants allegedly engaged in a wire fraud scheme seeking to profit from the confusion and widespread fear surrounding COVID-19. Information published on the website claimed to offer consumers access to World Health Organization (WHO) vaccine kits in exchange for a shipping charge of \$4.95, which consumers would pay by entering their credit card information on the website. In fact, there are currently no legitimate COVID-19 vaccines and the WHO is not distributing any such vaccine. In response to the department's request, the court issued a TRO, requiring that the registrar of the allegedly fraudulent website immediately take action to block public access to it. The announcement of the enforcement action followed a March 20 statement from Attorney General William P. Barr [urging](#) the public to report suspected fraud schemes related to COVID-19.

Massachusetts price gouging regulation. Massachusetts Attorney General Maura Healey [announced](#) on March 20 that her office has filed an emergency regulation to prohibit price gouging of essential products and services during the COVID-19 public health emergency. The [amendment to regulation 940 CMR 3:18](#), effective immediately, prohibits price gouging of goods and services necessary for public health and safety during a declared statewide or national emergency. Previously under the state's consumer protection law, the only existing regulation related to price gouging addressed the sale of gasoline and other petroleum products.

Other state calls to online marketplaces to deter price gouging. On March 20, California Attorney General Xavier Becerra [announced](#) that his office has sent several letters calling on large online marketplaces to intensify their efforts to combat price gouging related to COVID-19 on their platforms. Many platforms are currently, or were until recently, flooded with potentially illegal postings by third-party sellers for products listed at highly inflated prices. Among other things, the state AG encouraged online marketplaces to consider banning sales by new third-party sellers (as opposed to long-time sellers) of certain items that are particularly ripe for price gouging abuse, such as surgical masks, cleaning supplies, hand sanitizer, certain household goods, and paper products.

Similarly, Connecticut Attorney General William Tong has [announced](#) a letter to Amazon seeking information from the online retailer regarding efforts to detect and combat price gouging during the COVID-19 pandemic.

The letter follows up a complaint from a Connecticut consumer who recently attempted to purchase two types of 3M face masks through Amazon. The consumer was charged nearly \$400 in shipment fees for two small boxes of face masks with a retail value of under \$100. The letter seeks information regarding the specific reported transaction, as well as procedures and practices being deployed by Amazon to prevent price gouging and protect consumers.

New York Attorney General Letitia James [sent a letter](#) to Craigslist.com, asking the company to immediately remove posts that attempt to unlawfully and fraudulently profit off consumers' fears around COVID-19. Multiple posts in recent days have attempted to sell fake items that purportedly claim to provide "immunity" to the coronavirus or allow individuals to test for the disease, while others have sought to exorbitantly charge consumers for items like hand sanitizer, James said.

Lawmakers' call on FTC. Price gouging has usually been the type of conduct left to state consumer protection agencies. However, the FTC is being asked to step in by House Democrats.

House Judiciary Committee Chairman Jerrold Nadler (D-NY), Energy and Commerce Committee Chairman Frank Pallone, Jr. (D-NJ), Subcommittee on Antitrust, Commercial and Administrative Law Chairman David N. Cicilline (D-RI) and Subcommittee on Consumer Protection and Commerce Chair Jan Schakowsky (D-IL) [announced](#) on March 17 that they have sent a letter to the FTC, urging the agency to take steps to protect American consumers from price gouging during the COVID-19 pandemic. In their [letter](#), they expressed serious concerns with reports of price gouging in the wake of the COVID-19 public health emergency.

ECN joint statement on supply and distribution of scarce products. On the other side of the Atlantic, the European Competition Network (ECN) today issued a [joint statement](#) on the application of competition law during the Corona crisis. Among other things, the statement said that the ECN will not hesitate "to take action against companies taking advantage of the current situation by cartelising or abusing their dominant position." The ECN points out that existing rules allow manufacturers to set maximum prices for their products, which could limit price gouging. The ECN noted, however, that it will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply.

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