

United States Senate
WASHINGTON, DC 20510

April 14, 2020

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons:

As the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Manufacturing, Trade, and Consumer Protection, we believe the Federal Trade Commission (FTC) has a duty to prevent unscrupulous and harmful commercial practices taken by bad actors against consumers during the current coronavirus pandemic (COVID-19). We write to request that the FTC provide an overview on its full scope of authority to protect consumers against unfair and deceptive acts related to price gouging on critical consumer health products during the pandemic.

The acute demand for medical and health supplies, including personal protective equipment (PPE), spurred by an unprecedented public health crisis presents extraordinary circumstances and requires vigilance for the wellbeing of consumers. Consumers, especially those who are medically at-risk or essential workers must protect themselves with PPE and sanitary items, such as face masks and disinfectants. When these basic health products are inappropriately priced¹, consumers face extreme obstacles to protecting their health – especially as they face new financial pressures and dwindling supply of these types of goods. As the magnitude of the COVID-19 pandemic became apparent, many pro-consumer companies stepped up and devoted considerable resources to the fight. Regrettably, however, some vendors instead sought to take advantage of the crisis through hoarding common, inexpensive products – now in scarce supply – to charge artificially inflated prices.

When Congress created the FTC, it granted the Commission a powerful set of tools to protect consumers. Section 5 (a) of the *Federal Trade Commission (FTC) Act* (15 U.S.C. Sec. 45(a)(1)) prohibits “unfair or deceptive acts or practices in or affecting commerce” and empowers the FTC to seek injunctions and further equitable relief to enforce the law. By statute, an act or practice is unfair where it: 1.) causes or is likely to cause substantial injury to consumers; 2.) cannot be reasonably avoided by

¹ Jessica Guynn and Kelly Tyko, “Gouge much? Purell for \$149, face masks for \$20: Coronavirus price hikes are making everyone mad,” *USA Today*, Mar. 3, 2020. Refer to: <https://www.usatoday.com/story/money/2020/03/03/coronavirus-hand-sanitizer-face-masks-price-gouging-amazon-walmart-ebay/4933920002/>.

consumers; and 3.) is not outweighed by countervailing benefits to consumers or to competition. While the FTC has considered price gouging in the context of competition and antitrust laws, there is less information on the application of “unfair or deceptive acts or practices” and other consumer protection rules to price gouging.²

The FTC should be just as vigilant as ever during the COVID-19 pandemic, and while the *Defense Production Act* and the recent Executive Order signed by the President provide clear authorities to the Department of Justice to pursue criminal enforcement actions against bad actors found to use hoarding as a price gouging tactic related to certain designated critical supplies, we believe that the FTC should provide clarity to the public on what its current enforcement authorities include as it relates to price gouging. As the Chairman and Ranking Member of the Subcommittee with oversight responsibility for the FTC, we request answers to the following questions:

- 1.) Does the Commission have authority to bring enforcement actions against price gouging under the *FTC Act*'s prohibition of “unfair or deceptive acts or practices,” or any other consumer protection or competition rule under its purview?
- 2.) Under what circumstances does the FTC believe price gouging or other artificial price increases during a pandemic would give rise to an FTC enforcement action?
- 3.) Bearing in mind other existing federal and state³ price gouging prohibitions, are there certain categories of consumer goods that the FTC's enforcement authorities should be focused on or limited to?
- 4.) If the Commission believes its authority is inappropriately limited, what clarification, authorities, or resources would be necessary to bring enforcement actions against cases of price gouging?

Thank you for your attention to this important matter.

Sincerely,



JERRY MORAN
Chairman
Subcommittee on Manufacturing,
Trade, and Consumer Protection
United States Senate



RICHARD BLUMENTHAL
Ranking Member
Subcommittee on Manufacturing,
Trade, and Consumer Protection
United States Senate

² "Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases," *Federal Trade Commission*, May 22, 2006.

³ "Kansas AG announces price-gouging law in effect for virus-response supplies," *KSNW*, Mar. 13, 2020, Refer to: <https://www.ksn.com/news/health/coronavirus/coronavirus-in-kansas/kansas-ag-announces-price-gouging-law-in-effect-for-virus-response-supplies/>