

Price Gouging Weekly Round Up

May 26, 2020

Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round up highlights some of the most relevant news and information to our clients and friends.

[Cattle Industry Price Gouging Complaints, an Oklahoma Congressman, and the Secretary of Agriculture—Battling it out on the Western Front](#)

Congressman Markwayne Mullin of Oklahoma's Second District, who is both a rancher and a restaurant owner, is publicly calling for the resignation of Secretary of Agriculture Sonny Perdue over alleged price gouging in the cattle industry. In a public video statement the Congressman said that he is seeing complaints come in from around the country about high (\$17/lb.) beef prices being paid by restaurants like his and others, while ranchers are unable to cover their costs and struggle to survive. Aiming straight at the meatpackers, and calling them out for price gouging, the Congressman both called on the Secretary of Agriculture to step in and take a more active role, and said that the Secretary should step down for failing to do so. This high profile tussle comes in the midst of attorneys general from across the Midwest calling on the Justice Department to investigate potential collusion among meatpackers and is another stark example of price gouging and antitrust allegations overlapping in the race to unearth the cause and culprit of price spikes. Price gouging complaints turning into full blown antitrust investigations with higher costs and risks—another reason compliance is so important and why getting advice on how to stay out of the crosshairs is the best course. For more information, read our blog post on [pricing in an emergency where price gouging meets antitrust](#).

[Health Care Costs and COVID-19: A Letter from Employer/Purchaser Organizations](#)

On May 19, 2020, a group of employer/purchaser organizations wrote a letter to Congress offering recommendations on a number of COVID-10 policies, one of which was price gouging. While applauding front-line health care providers, the group suggests that “policymakers should mandate that any required COVID-19-related services that must be provided without patient cost sharing should be paid at the Medicare fee schedule when provided out-of-network.” The letter also asks that policymakers “explicitly ban price gouging on any health care items or services.” Lastly, the organizations request that Congress prioritize banning surprise medical billing—something that Congress has been debating for more than a year. With thousands of people seeking out-of-network care due to COVID-19, the group argues that legislation should “hold down health care costs by using a local, market-based payment rate for surprise medical bills.”

Price Gouging Complaints to Texas Attorney General Top 10,000

Since we last reported on price gouging in Texas, the number of complaints has nearly doubled. In a recent interview, Texas Attorney General Ken Paxton stated that investigating the number of complaints that have poured in could take months. “We look at every one. Some of them are dismissed quickly. Some of you know, it’s not clear that there’s a violation of the law,” said Paxton. “We try to look at all of them legitimately.” Paxton further stated that “[w]e don’t want [sellers] to charge less than they should. We also don’t want them to take advantage of [] things that are really essential to people’s lives right now.” As previously reported, violations of Texas’ price gouging laws can result in a \$10,000 fine per violation, as well as an additional penalty of up to \$250,000 if the elderly are affected.

Healthvana Sues Telebrands Corp. Over Price Gouging

On May 12, 2020, digital health care startup Healthvana sued Telebrands Corp., the creator of the ‘As Seen On TV’ logo. According to lawsuit filed in the Central District of California, Telebrands used Healthvana’s name on \$15 bottles of hand sanitizer. Healthvana claims that “[a]ngry consumers took to social media to accuse Healthvana of ‘profit over people’ and ‘taking advantage of people during a crisis by jacking up prices on things that were hoarded.’” Among the claims brought are trademark infringement, false advertising, and violations of California’s Business and Profession Code Section 17200. Healthvana is the latest company to use trademark law to fight price gouging related to the COVID-19 pandemic.

Price Gouging in the Navajo Nation

Allegations of price gouging have swept the nation and the Navajo Nation is no exception. On May 15, 2020, the Navajo Nation Council addressed a series of presidential vetoes by overriding legislation at a special session. One such veto was aimed at protecting the Navajo people from price gouging. The legislation provides that “[u]pon declaration of a state of emergency ... it is unlawful for any person to intentionally, knowingly or recklessly sell or rent any commodity ... to any person at a price greater than ten percent (10%) above the average price of the same commodity or rental facility for the thirty days immediately preceding the declaration of the state of emergency.” Council Delegate Thomas Walker, Jr. stated, “[w]hen a business takes advantage of the emergency situation to increase its prices by two or three times overnight, the Navajo people lose their ability to make choices. That is the heart of our sovereignty, the ability to make decisions for ourselves.” Navajo businesses that price gouge could see a fine not less than \$500, as well as jail time and a fine of \$2,500 to \$5,000 if continuous or knowing and intentional.

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