

What Constitutes a “Trade” or “Market” Area Under State Price Gouging Statutes?

Minding Your Business Blog on August 27, 2020

Price gouging enforcement is at an all-time high, but many ambiguities about the application of these state laws remain. Among the many questions left unanswered: what does a statute mean when it says “trade area” or “market area”? Many laws refer to the price at which the same or similar good or service is available in the “trade area” or “market area,” but do not provide a definition. Does it mean goods or services sold within a city or county? Or the entire state? What about sellers who offer goods or services in an area that borders another state, especially one without a price gouging law? With no direction provided, antitrust law principles may provide some guidance.

Florida’s price gouging law, for example, provides that a price is unconscionable if “[t]he amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the **trade area** during the 30 days immediately prior to a declaration of a state of emergency” [Fla. Stat. § 501.160\(1\)\(b\)](#). Under Kansas’ price gouging law, the trigger is “[w]hether the amount charged by the supplier during the time of disaster grossly exceeded the price at which the same or similar property or services were readily obtainable by other consumers in the **trade area**” [Kan. Stat. Ann. §50-6, 106\(b\)\(1\)](#). In New York a price is unconscionably excessive if, among other things, “[t]he amount charged grossly exceeded the price at which the same or similar goods or services were readily obtainable in the **trade area**.” [N.Y. Gen. Bus. Law § 396-r\(2\)](#).

Other states refer to “market area.” Louisiana, for example, includes the prohibition, “prices charged or value received for goods and services sold within the designated emergency area may not exceed the prices ordinarily charged for comparable goods and services in the **same market area** at or immediately before the time of the state of emergency” [La. Rev. Stat. Ann. §29:732](#). Mississippi’s price gouging law similarly refers to the “same market area.” [Miss. Code. Ann. § 75-24-25](#).

Some states provide more clarity with respect to geographical scope. For example, Oregon’s price gouging statute provides that a price is unconscionably excessive if “[t]he amount charged for the essential consumer goods or services exceeds by 15 percent or more the *price at which the same or similar consumer goods or services were readily obtainable by other consumers in or near the geographical area covered by the declaration* of an abnormal disruption of the market.” [Or. Rev. Stat. §401.965\(3\)](#). Oregon’s state of emergency is statewide, which arguably means that a seller may be liable for price gouging anywhere in the state.

In defining what constitutes a relevant trade area, courts have held that “trade area” is not necessarily “equivalent to a relevant geographic market.” [Little Rock Cardiology Clinic PA v. Baptist Health](#). “[T]rade area considers the extent to which customers will travel in order to do business [with a seller] . . . [r]elevant market considers the extent to which customers will travel in order to avoid doing business [with a seller]” [Bathke v. Casey’s Gen. Stores, Inc.](#) (internal quotations omitted). However, “trade area” can be defined as “the market area in which [a] seller operates,” which is more akin to a relevant geographic market under antitrust law. *Little Rock Cardiology Clinic PA*, Id. at 598. The application of price gouging statutes that refer to a “trade area” may therefore be informed by antitrust law when determining what a seller’s “trade area” is.

As explained in our blog post, [Pricing in An Emergency: Where Price Gouging Meets Antitrust](#), antitrust and price gouging enforcement are connected by a shared purpose—consumer protection. They are also statutorily related, often employing similar statutory terms. Price gouging enforcement actions and lawsuits accordingly may be expected to turn to antitrust principles for guidance. As more lawsuits continue to be filed, businesses should be familiar with applicable state laws in determining the geographical scope of pricing restrictions.

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