Proskauer

Price Gouging Weekly Round Up

February 22, 2021

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 for our clients and friends.

Businessman Challenges Charges Brought Against Him Under the Defense Production Act

A businessman charged with violating the Defense Production Act last year is challenging the charges brought against him, arguing that there was no way for him to know whether the prices he charged for respirator masks broke the law. According to the man's attorneys, state governments and private buyers were left "to compete for critical medical equipment and supplies in the market" and "offered no guidance on 'prevailing market prices' during the coronavirus pandemic." His attorneys further argued that "[s]ellers are left to guess whether the prevailing market price is the one that existed before the COVID-19 crisis, or whether it reflects the increased demand and disrupted supply chains created by the pandemic." While the defense requested that the charges be dismissed, prosecutors seek additional time respond, pointing out that this is the first time an issue like this has come up in the Seventh Circuit. For more information on the Defense Production Act, read our blog post.

Winter Storms Lead to Hotel Room Rates Skyrocketing

Following the winter storms that swept the nation last week, many Texas residents were left without power. As many sought refuge in hotels, “some searching for rooms noticed rates exponentially higher than normal.” Reports of hotel prices ranging between $400-$900 per room, per night, were reported. According to Bruce Rosenberg, HotelPlanner’s President, rate increases are not unusual during crisis. Rosenberg stated that “[i]t happens every storm” and that “[p]rices are going to go up. It’s a question of reasonableness of the price increases.” However, according to the Texas Attorney’s General Office, “if a disaster has been declared by the Governor of Texas and businesses raise the price of their products to exorbitant or excessive rates to take advantage of the disaster declaration, then it is quite likely that price gouging is taking place, and a complaint should be filed with our office concerning the incident.” Texas’ price gouging law, which covers lodging among other goods including fuel and food, is already activated under the state’s COVID-19 emergency declaration.

Minnesota Senator Seeks Answers Regarding Spike in Natural Gas Spot Prices

Following the deep freeze last week that resulted in natural gas spot prices rising as much as 100 times typical levels, Minnesota Senator Tina Smith (D-Minn.) is seeking answers. In a February 20, 2021 letter sent to the Energy Department, Federal Energy Regulatory Commission, and the Commodities Futures Trading Commission, Senator Smith stated that not only will price spikes harm consumers, they could “threaten the financial stability of some utilities that do not have sufficient cash reserves to cover their short-term costs in this extraordinary event." The Minnesota Public Utilities Commission has also called for a special meeting to determine the cause of the dramatic spike in price for natural gas. According to a spokesman for the American Gas Association, “spot prices climbed in some regions due to spikes in demand, families and businesses that use natural gas were protected from higher prices by the careful planning of their utilities.” Nonetheless, Senator Smith urges federal regulators to investigate the natural gas price spikes and determine whether natural gas producers and suppliers engaged in price gouging.

Oregon Governor Issues Executive Order Declaring an Abnormal Market Disruption

On Tuesday, February 16, 2021, Oregon Governor Kate Brown issued Executive Order 21-03, declaring an abnormal market disruption as a result of the severe winter weather emergency in nine Oregon counties. The order comes as an addition to the executive orders declaring an abnormal market disruption due to the COVID-19 pandemic. Governor Brown's office stated that "it is absolutely unacceptable to price gouge those who are seeking a warm, safe place to stay until power is back on in their homes. This [executive order] empowers the attorney general and the Oregon Department of Justice to investigate these instances." Oregon Attorney General Ellen Rosenblum also stated that "[w]e appreciate Oregon's lodging businesses that have provided warmth and shelter to families without power due to the President's Day weekend storm that hit much of the state. However, price gouging is illegal. Please consider this a clear message to businesses that you may not raise the price of lodging, or any other goods or services, due to increased demand from this storm."

Delaware Attorney General Targets Price Gouging

Delaware Attorney General Kathy Jennings recently announced her list of legislative priorities for 2021, with outlawing unfair business practices, including price gouging, coming in at #8. Attorney General Jennings stated that "[i]t's never been more important that we outlaw unfair business practices. We saw during the pandemic, price gouging that companies and businesses were engaged in. Most companies and businesses were very understanding of people's needs, and very, very responsive to people in Delaware, so I'd say it is really the exception. But you may think it's already illegal to engage in unfair business practices; Well, in Delaware, it's not. We're only one of only six states that has not explicitly outlawed unfair business practices like coercive sales tactics, or charging for services that a consumer never requested, or price gouging. So, it's time we do it." Delaware is among the minority of states without a price gouging law. However, price gouging is currently prohibited via the Twenty-Seventh Modification to the State of Emergency Declaration related to COVID-19.

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