

Senate Spars with FTC BCP Director Sam Levine over FTC Enforcement, Surprisingly from Both Sides

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Yesterday, the Senate Commerce Committee's Subcommittee on Consumer Protection, Product Safety and Data Security held its second [hearing](#) in less than a year on COVID-19 fraud, price gouging, and related enforcement efforts. Groundhog Day Eve was a fitting date for the hearing, as the Federal Trade Commission – this time through Bureau of Consumer Protection Director Samuel Levine – again called on Congress to pass legislation to clarify the agency's Section 13(b) authority in the wake of the Supreme Court's *AMG* decision.

This time, however, it was a Republican Senator who initially zeroed in on the agency's request. But rather than calling for sweeping restoration of the authorities the agency *thought* it had pre-*AMG*, Senator Mike Lee (R-UT) pressed Director Levine on the importance of statutory guardrails should Congress move forward with conferring the FTC new authority to obtain equitable monetary redress. Senator Lee emphasized the need for due process to protect legitimate businesses, noting the FTC's "immense" and "overwhelming" power vis-à-vis the entities that it takes or threatens to take to court. Senator Lee has introduced legislation to address these concerns in the form of [S. 3410](#), the *Consumer Protection and Due Process Act*, which would provide the FTC with new, but limited authority to obtain equitable monetary relief if the FTC meets certain requirements to establish a violation of the FTC Act and show consumer harm.

Director Levine didn't bite, responding, "the biggest reform we need is the ability to return money to consumers." Levine also dismissed other avenues for consumer redress raised by Senator Lee (e.g., Section 5 and Section 19), suggesting that the procedural requirements of those sections result in lengthy court battles and reduce the likelihood of getting money back to consumers in a timely fashion. Interestingly, when asked about procedural safeguards for previous enforcement under Section 13(b) and potential future enforcement, Director Levine repeated that the FTC would "have to persuade a federal judge" to obtain either injunctive or monetary relief. But that's not exactly true, given historically most FTC enforcement matters settle when a potential defendant balances the costs and risks of litigating against the agency. The exchange may portend a continued legislative stand-still, per our previous [blog post](#) on the outlook for a 13(b) fix.

Meanwhile, just as the FTC came under fire from Senator Lee regarding its desire for more far-reaching authorities under Section 13(b), the agency was accused by the panel's Chairman Richard

Blumenthal (D-CT) for *not doing enough* with the powers it has today. Specifically, Chairman Blumenthal grilled Director Levine on the agency's lack of enforcement on alleged fraud and deception related to COVID-19, particularly in light of expanded authorities provided by the *Covid-19 Consumer Protection Act* enacted in late 2020. While Director Levine noted the agency's focus on warning letters to ensure claims get taken down quickly to prevent further harm to consumers, Senator Blumenthal argued that warning letters have little deterrent effect and urged the agency to take stronger action to bring additional cases "without the warnings." Levine stated that the agency would begin to bring more cases to "make sure that these scammers are paying a heavy penalty for preying on people."

In addition to pressing the FTC to take stronger action under its COVID-related authorities, Chairman Blumenthal noted the need to provide both the FTC and the Department of Justice with additional legal tools – including "steep financial penalties" – to address pandemic-related price gouging. Chairman Blumenthal directed his ire toward online marketplaces and social media platforms in particular, and urged Director Levine and the agency to request additional authority to go after online marketers. A similar hearing held today in the House Committee on Energy and Commerce further amplified calls for legislation to address pandemic-related price gouging – whether lawmakers can reach a bipartisan consensus, however, remains to be seen.