

# U.S. and European authorities actively pursue COVID-19 price gouging violations

20 April 2020

The COVID-19 crisis has led to increased scrutiny of pricing decisions by competition and consumer protection authorities around the world. Already, we have seen a rise in state, federal, and international enforcement efforts in response to rapidly increasing complaints of price gouging activity related to products that are in high demand or designated as essential by statute or executive action as a result of the crisis. In light of this, companies should be aware of several aspects of price gouging laws and recent enforcement activity:

- First, normal supply and demand rules may not apply during a crisis – that is, sellers who normally respond to increased demand by increasing prices may violate state price gouging laws which prohibit price increases over a certain amount during emergencies.
- Second, online marketplaces (i.e., platforms) are also facing scrutiny from state and federal regulators for allowing sellers to price gouge on their sites. Whether online marketplaces can be held liable for the pricing practices of their users will likely vary based on state law, the potential application of certain defenses, and the characteristics of the specific platform.
- Third, price gouging laws and enforcement priorities vary state-by-state and country-by-country. A single pricing decision may be lawful in one jurisdiction but unlawful in another.
- Fourth, responses to price gouging during this pandemic are still evolving. Some jurisdictions have taken executive and legislative actions to bolster their existing price gouging laws to allow for a more targeted response to the COVID-19 crisis, and more are sure to follow.

## **What's price gouging?**

Price gouging generally refers to price increases above a specified benchmark price, i.e., the price 30 days (or other time period) prior to a declared state of emergency, natural disaster, and/or economic disruption. What is considered an excessive price increase varies, but generally under U.S. state laws it is 10-25 percent above a product's typical price. The types of products covered by price gouging statutes vary by state, and can include food, water, emergency and medical supplies, prescription drugs, gasoline, housing, transportation, and/or heating oil. There are exceptions to some price gouging laws, however, which allow sellers to raise prices to account for increased supply, labor, input, or distribution costs.

## **U.S. enforcement of price gouging related to COVID-19**

### **State laws prohibit price gouging in emergency and disaster situations**

The majority of U.S. states have anti-price gouging laws, and state attorneys general are actively pursuing cases during the COVID-19 crisis. The majority of these state statutes impose civil penalties for price gouging activity during a state of emergency, natural disaster, and/or abnormal economic distribution. These laws vary by state and in general provide frameworks for comparing a product's prevailing prices for a set time period before the emergency with a higher price charged during the emergency period.

Some state statutes provide a specific price increase or range that will qualify as price gouging under the law (e.g., 10-25 percent above the benchmark price)<sup>1</sup>, while others do not explicitly define what price increase will trigger enforcement under the statute, instead prohibiting "unconscionable," "unreasonable," and/or "excessive" price increases more generally.<sup>2</sup> The statutory frameworks also designate time periods and geographic regions within which price gouging is assessed. Finally, while some state statutes identify the specific products or services covered by the price gouging law (e.g., food, fuel, medical supplies, etc.), others do not. Violations of state price gouging statutes may result in civil penalties ranging from US\$1,000 to up to US\$250,000,<sup>3</sup> injunctions, and/or criminal penalties.<sup>4</sup>

Some states have taken action to bolster their existing price gouging laws to specifically target increases during the COVID-19 crisis. For example, in March:

- Michigan Governor Gretchen Whitmer signed an executive order<sup>5</sup> to target price increases on certain supplies and consumer food items through mid-April, while the legislature introduced a bill to strengthen the state's anti-price gouging laws by providing enhanced investigative tools and criminal penalties to aid enforcement. On 17 April 2020 Governor Whitmer extended the original executive order through 15 May 2020.
- In New York, legislators proposed a new bill<sup>6</sup> providing clarity about what constitutes an "unconscionably excessive price" for purposes of the state's anti-price gouging law. Under the bill, a presumptive price increase of 10 percent or greater will be considered price gouging during a public health emergency.<sup>7</sup>
- In Massachusetts, the attorney general filed an emergency regulation<sup>8</sup> to amend the state's law to prohibit price gouging of essential products and services during the COVID-19 emergency.
- In Maryland – a state that previously did not have a price gouging law – the legislature enacted the COVID-19 Public Health Emergency Protection Act of 2020 which, among other things, prohibits price gouging of essential goods in high demand during the COVID-19 health crisis.<sup>9</sup>

### **Attorneys general mobilize to respond to sharp increase in consumer price gouging complaints**

States have reported a surge in consumer complaints related to COVID-19 price gouging activity. Responding to this influx of complaints, state attorneys general have mobilized to investigate the alleged violations. For example, Missouri Attorney General Eric Schmitt has issued subpoenas to eight Amazon retailers related to the suspected price gouging of face masks, respirator masks, and hand sanitizer.<sup>10</sup> Oregon Attorney General Ellen Rosenblum has sent out more than 20 cease-and-desist letters to retailers ordering them to reduce prices for COVID-19-related goods. In Florida, the attorney general's office has issued 65 subpoenas pursuant to Florida's price gouging statute in an effort to investigate the reported conduct.<sup>11</sup> In Ohio, Attorney General Dave Yost has filed a lawsuit pursuant to the state's price gouging statute against operators of an eBay

store, alleging that they sold N95 respirator masks for nearly 18 times the retail price.<sup>12</sup> In addition, thirty-three state attorneys general have signed letters<sup>13</sup> addressed to retailers including Amazon, Facebook, eBay, Craigslist, and Walmart urging them to implement measures to prevent price gouging by third-party sellers on their online platforms.<sup>14</sup>

Even in states that do not have established price gouging laws, enforcement officials can pursue such activity under the authority of broader state consumer welfare statutes. Washington state Attorney General Bob Ferguson has sent cease-and-desist letters to five retailers in the state who raised prices on COVID-19-related items since the onset of the crisis, warning that lawsuits brought by the attorney general's office under the state's Consumer Protection Act could result in US\$2,000 penalties per violation. Ferguson's office received information from Amazon alerting them to the notable price increases for N95 masks, hand sanitizer, disinfecting wipes, and other high-demand products.<sup>15</sup> In Alaska, the attorney general is prosecuting COVID-19-related price gouging activity under the Alaska Consumer Protection Act, which makes it unlawful to engage in "unfair or deceptive acts or practices in the conduct of trade or commerce"<sup>16</sup> and gives the attorney general the authority to enforce it through court action. And in Colorado, which has no price gouging statute, Attorney General Phil Weiser announced its Consumer Protection Section is committed to addressing price gouging during the COVID-19 crisis.

#### **Federal authorities announce intention to combat COVID-19 price gouging**

There is currently no federal statute that specifically prohibits price gouging. Under the antitrust laws in the United States, in contrast with many competition laws outside of the United States and unfair trade laws in U.S. states, sellers can charge any price they choose.

In the context of this global crisis, however, the U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), and Congress have signaled an intention to identify and stop price gougers and scammers, including using existing statutory authority and new legislation. Federal attention to this issue complements existing state legislation targeting the practice.

Under the Defense Production Act (DPA), DOJ has the authority to prosecute criminally price gouging activity related to the COVID-19 crisis.<sup>17</sup> On 23 March 2020, President Trump issued an executive order<sup>18</sup> pursuant to the DPA authorizing the secretary of Health and Human Services to designate scarce health care and medical items as protected under the statute. The DPA makes it a crime for any person to accumulate a designated item (1) in excess of his or her reasonable needs or (2) for the purpose of selling it at a price in excess of prevailing market prices.

As forecast by our colleagues in a March 2020 alert<sup>19</sup>, DOJ has mobilized to address price gouging and manipulation of the market for materials needed to fight the COVID-19 outbreak. DOJ launched the COVID-19 Hoarding and Price Gouging Task Force to "address COVID-19-related market manipulation, hoarding, and price gouging."<sup>20</sup> In announcing the Task Force, Attorney General William Barr stated that, pursuant to the authority provided by the DPA, DOJ, along with Federal Emergency Management Agency and United States Department of Health and Human Services, "will investigate and prosecute those who acquire vital medical supplies in excess of what they would reasonably use or for the purpose of charging exorbitant prices to the healthcare workers and hospitals who need them."<sup>21</sup>

In an effort to focus federal attention on price gouging, in March 2020 a group of seventeen U.S. senators sent a letter to the FTC urging it to address price gouging activity using Section 5 of the Federal Trade Commission Act to challenge "unfair or deceptive acts or practices."<sup>22</sup> In response, Chairman Simons emphasized that the FTC "will not tolerate businesses seeking to take advantage of consumers' concerns and fears regarding coronavirus disease, exigent circumstances, or financial distress."<sup>23</sup> Although not mentioning price gouging specifically,

Simons noted the FTC is "working closely with federal and state law enforcers, and with other stakeholders... and are devoting significant resources to tackling scammers and unfair and deceptive business practices."<sup>24</sup> While price gouging has not been a focus of FTC enforcement, the agency could condemn such practices as unfair under Section 5 if the Commission determined that the agency's intervention was needed to supplement state activity.<sup>25</sup>

Congressional interest in price gouging may also give new authority to federal enforcement agencies to combat the issue. Three bills have been introduced in Congress that would allow federal enforcement of price gouging activity related to the COVID-19 crisis.

In March 2020 a group of U.S. Senators introduced the Disaster and Emergency Pricing Abuse Prevention Act, which would "prohibit the selling, or offering for sale, essential goods and services at excessive prices during, or in anticipation of a natural disaster, pandemic, or state of emergency."<sup>26</sup> The proposed law – which would not preempt state price gouging laws – would presume price increases of more than 20 percent during times of crisis to be presumptively unconscionable, and provide for injunctions and civil penalties up to US\$10,000 per violation.<sup>27</sup>

In April 2020 four U.S. representatives introduced the COVID-19 Price Gouging Prevention Act that would prohibit the sale of consumer goods and services at "grossly excessive" prices during the COVID-19 public health emergency.<sup>28</sup>

And on April 10 Senator Elizabeth Warren and Senator Kamala Harris introduced the Senate companion bill to the Price Gouging Prevention Act previously introduced in the House.<sup>29</sup> The Price Gouging Prevention Act would prohibit price gouging of consumer goods through the COVID-19 pandemic and future emergencies by directing the FTC to enforce a ban on price increases above 10 percent.<sup>30</sup>

In short, these efforts signal federal engagement and focus on an enforcement issue that has traditionally been left to the states.

### **European efforts targeting price gouging**

European competition authorities have also taken action to prevent price gouging and price increases resulting from unlawful conduct during the COVID-19 crisis, warning companies that price gouging of products such as hand-sanitizer gel and face masks will not be tolerated. In a joint statement by the European Competition Network (ECN), comprised of the European Commission, the EFTA Surveillance Authority and the national competition authorities of the EU/EEA Member States, the European authorities further confirmed that they will "not hesitate to take action against companies taking advantage of the current situation by cartelizing or abusing their dominant position" with actions that would result in higher prices.<sup>31</sup> Competition enforcement is bolstered by the action of consumer protection authorities around Europe which are also monitoring unjustified price increases and misleading claims.

### **Excessive pricing**

Under European competition law and the equivalent provisions at the national level, dominant firms can be sanctioned for excessive prices as exploitative conduct. In particular, Article 102 TFEU provides that an abuse may consist of "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions," for example, through excessively high prices. These would be prices that have no reasonable relation to the economic value of the pertinent product. While it is true that this prohibition only applies to dominant firms, European competition authorities are closely monitoring market developments and increasing their scrutiny in this area.

### Developments at the national level

Authorities throughout Europe have announced various measures highlighting their commitment to prevent unlawful pricing during the global coronavirus outbreak. We outline some of these below:

- The Italian Competition Authority (AGCM) launched an investigation against two online retail platforms for misleading statements and price gouging in relation to the marketing of hand sanitizing/disinfectant products, respiratory tract protection masks, and other health and hygiene products.<sup>32</sup>
- The Polish Competition Authority (UOKiK) initiated proceedings against wholesalers that allegedly terminated contracts to supply personal protective equipment to hospitals in order to increase the price of medical equipment.<sup>33</sup> UOKiK has also launched a hotline for hospital directors to inform the authority of such behavior.
- The French government introduced legislation to temporarily regulate the prices of alcohol-based hand gels to prevent abuses as consumers stock up to protect against the coronavirus.<sup>34</sup>
- The Spanish Competition Authority (CNMC) is analyzing potential anticompetitive behavior related to price increases for hydro-alcoholic gels and the raw materials used in their manufacture.<sup>35</sup>
- The UK Competition & Markets Authority (CMA) has established a COVID-19 taskforce<sup>36</sup> and has created an online tool<sup>37</sup> to encourage consumers and businesses to report excessive pricing and unfair commercial practices. The taskforce will "scrutinise market developments to identify harmful sales and pricing practices as they emerge," but also advise the government on any potentially necessary legislative action. The CMA is also reaching out to online marketplaces to ask what action they are taking over sellers charging unjustifiably high prices for essential items to consumers.

### Key takeaways

The scope of potential price gouging actions stemming from the COVID-19 crisis is unprecedented. Past crises that spurred price gouging actions were limited to particular geographic regions and involved fairly narrow products or services, such as gas, electricity, and food. In contrast, COVID-19's global impact is affecting a wide range of consumer goods and health care products. Indeed, some jurisdictions' laws likely allow them to apply price gouging protections to all consumer products. Accordingly, it will be important for companies to keep the following takeaways in mind:

- Again, normal supply and demand rules may not apply during a crisis – any increase in prices, even if justified by demand, may violate price gouging laws and regulation in the United States and in Europe.
- Price gouging regulation implicates every level of the supply chain. Companies can be held liable for price gouging even though they do not sell directly to end consumers. Further, a number of state attorneys general have pressured online marketplaces to police users who price gouge on their platforms.
- The scope of this crisis means a single pricing decision could implicate the price gouging laws of many jurisdictions, and no jurisdictions' laws are exactly the same. While general trends are informative, important nuances – what triggers a statute's applicability, covered products, benchmark prices, who can be liable, and defenses or exceptions – vary state-by-state and country-by-country.

- Governments are busily working to develop laws and regulations that provide or expand their toolset to address price gouging. Staying informed of changes in the law will be crucial.

## Contacts



**Edith Ramirez**  
Partner, Washington, D.C., Los Angeles  
T +1 202 637 5509 (Washington, D.C.)  
T +1 310 785 4600 (Los Angeles)  
[edith.ramirez@hoganlovells.com](mailto:edith.ramirez@hoganlovells.com)



**Chuck Loughlin**  
Partner, Washington, D.C.  
T +1 202 637 5661  
[chuck.loughlin@hoganlovells.com](mailto:chuck.loughlin@hoganlovells.com)



**Meghan Rissmiller**  
Partner, Washington, D.C.  
T +1 202 637 4658  
[meghan.rissmiller@hoganlovells.com](mailto:meghan.rissmiller@hoganlovells.com)



**Dr. Salomé Cisnal De Ugarte**  
Office Managing Partner, Brussels  
T +32 2 505 0908  
[salome.cisnaldeugarte@hoganlovells.com](mailto:salome.cisnaldeugarte@hoganlovells.com)

**John Hamilton**  
Associate, Washington, D.C.  
T +1 202 804 7898  
[john.hamilton@hoganlovells.com](mailto:john.hamilton@hoganlovells.com)

[www.hoganlovells.com](http://www.hoganlovells.com)

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com). Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.  
© Hogan Lovells 2020. All rights reserved.

- 
- 1 Alabama, AL ST §81-31-4 (equal or more than 25 percent of the average price during last 30 days prior to declared state of emergency); Arkansas, Ark. Stat. Ann. §4-88-301 et seq. (more than 10 percent over cost of items immediately preceding declared state of emergency); California, PEN §396 (more than 10 percent over the cost of items immediately preceding declared state of emergency); Delaware (no standing price gouging statute, but 12 March 2020 Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threats prohibits price increases of more than 10 percent for goods and services under § 2513 of Title 6 of the Delaware Code); District of Columbia, D.C. Code Ann. §28-4101-4103 (more than 10 percent over price or products during 90-days preceding declared state of emergency); Kansas, Kan. Stat. Ann. §50-6-106 (25 percent or more over pre-disaster price); New Jersey, N.J. Rev. Stat. 56 § 8-107 et seq. (at least 10 percent over price immediately preceding declared emergency); Oklahoma, Okla. Stat. tit. 15, 777.1 et seq. (more than 10 percent above price charged before the declaration of an emergency); Oregon, Or. Rev. Stat. § 401.960 et seq. (more than 15 percent above rate charged before the declaration of an emergency); Pennsylvania, Pa. Stat. tit. 73 § 232.1, et seq. (at least 20 percent higher than normal price range immediately prior to declared emergency); Utah, Utah Code Ann. § 13-41-201, et seq. (10 percent higher than normal prices before declared emergency); West Virginia, W. Va. Code §46A-6J-1, et seq. (more than 10 percent of average cost prior to declared state of emergency); and Wisconsin, Wis. Stat. § 100.305 (15 percent higher than average price immediately prior to emergency declaration).
  - 2 Connecticut, Conn. Gen. Stat. § 42-230, et seq.; Florida, Fla. Stat. § 501.160; Georgia, Ga. Code § 10-1-393.4, et seq., §10-1-; Hawaii, Hawaii Rev. Stat. § 127A-30, §480-2; Idaho, Idaho Code §48-603; Illinois, 815 ILCS 505; Indiana, Ind. Code §4-6-9.1-1; Iowa, Iowa Admin. Code §61-31.1; Kentucky, Ky. Rev. Stat. § 367.372, et seq.; Louisiana, La. Rev. Stat. Ann. §29:732, et seq.; Maine, Me. Rev. Stat. Ann. tit. 10, §1105; Massachusetts, Code of Mass. Reg. tit. 940, § 3.18; Michigan, Mich. Comp. Laws § 445.903; Minnesota (no standing price gouging statute, but Executive Order 20-10 (effective 21 March 2020) prohibits price gouging during peacetime emergency); Mississippi, §75-24-25; Missouri, § 407.020, 15 CSR 60-8.030; New Mexico (no standing price gouging statute, but the attorney general issued a consumer advisory warning about possible price gouging in the wake of COVID-19 on 12 March 2020; New York, GBS § 396-r; North Carolina, § 75-38; Rhode Island, § 6-13-21; South Carolina, § 39-5-145; Tennessee, § 47-18-5101, et seq.; Texas, § 17.46(b)(27); Vermont, §2461d; and Virginia, §59.1-525.
  - 3 Alabama, Ala. Code §8-31-1 et seq.; Arkansas, Ark. Stat. Ann. §4-88-301 et seq.; California, Cal. Penal Code §396; Connecticut, Conn. Gen. Stat. §42-230 et seq.; District of Columbia, D.C. Code Ann. §28-4101 et seq. 2020 Act 247; Florida, Fla. Stat. §501.160; Georgia, Ga. Code §10-1-393.4 Ga. Code §10-1-438; Hawaii, Hawaii Rev. Stat. §127A-30 Hawaii Rev. Stat. §480-2; Idaho, Idaho Code §48-603; Illinois, 815 ILCS 505/2; Indiana, Ind. Code §4-6-9.1-1 et seq.; Iowa, Iowa Admin. Code §61-31.1; Kansas, Kan. Stat. Ann. §50-6,106; Kentucky, Ky. Rev. Stat. §367.372 et seq.; Louisiana, La. Rev. Stat. Ann. §29:732; Maine, Me. Rev. Stat. Ann. tit. 10, §1105; Maryland, 2020 Chapters 13 and 14; Michigan, Mich. Comp. Laws §445.903; Mississippi, Miss. Code Ann. §75-24-25; Missouri, § 407.020; 15 CSR 60-8.030; New Jersey, N.J. Rev. Stat. §56:8-107 et seq.; New York, N.Y. General Business Law §396-r; Oklahoma, Okla. Stat. tit. 15, §777.1 et seq., Okla. Stat. tit. 62, §2203.1 et seq.; Oregon, Or. Rev. Stat. §401.960 et seq.; Pennsylvania, Pa. Stat. tit. 73, §232.1 et seq.; Rhode Island, R.I. Gen. Laws §6-13-21; South Carolina, S.C. Code Ann. §16-7-10, S.C. Code Ann. §39-5-145; Tennessee, Tenn. Code Ann. §47-18-5101 et seq.; Texas, Tex. Business & Commerce Code Ann. §17.46, Tex. Business & Commerce Code Ann. §17.4625; Utah, Utah Code Ann. §13-41-101 et seq.; Vermont, Vt. Stat. Ann. tit. 9, §2461d; Virginia, Va. Code §59.1-525 et seq., Va. Code §59.1-200; West Virginia, W. Va. Code §46A-6J-1 et seq. 2020 SB 208 effective June 1, 2020; and Wisconsin (Wis. Stat. §100.305).
  - 4 Arkansas, § 4-88-30 (Class A misdemeanor, up to US\$2,500 fine and up to one year in jail per violation); California PEN § 396 (misdemeanor charge, up to one year in jail and/or up to a US\$10,000 fine); Connecticut §42-230 (US\$99-\$1000 fine and/or up to one year in jail); Florida § 501.160 (second degree misdemeanor, up to \$1,000 fine and/or up to 60 days in jail for a first offense); Louisiana Tit. 29 §732 et seq. (up to 10 years hard labor); Maine Title 10, §1105; § 207 (US\$1,000 fine and/or up to three years in prison); Mississippi §75-24-25 (misdemeanor charge, up to US\$1,000 penalty and six months in jail, or felony charge with one to five years in prison and/or a fine of up to US\$5,000); Missouri §407.020 (class D felony with up to US\$10,000 fine and one to seven years in prison); Oklahoma 15 OK St. §§ 777.1 (misdemeanor charge, up to US\$1000 fine and/or one year in jail) South Carolina § 39-5-145 (misdemeanor charge, fine up to US\$1,000 and/or 30 days in jail); and West Virginia § 46A-6J-1 (misdemeanor charge, up to US\$1,000 fine and/or up to one year in jail).
  - 5 State of Michigan, Office of the Governor, Executive Order No. 2020-8, Enhanced restrictions on price gouging (15 March 2020) available at

[https://content.govdelivery.com/attachments/MIEOG/2020/03/15/file\\_attachments/1401335/EO%202020\\_8%20Emergency%20Order%20.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/03/15/file_attachments/1401335/EO%202020_8%20Emergency%20Order%20.pdf)

6 New York State Senate Bill S7932, Prohibits price gouging with respect to medical supplies during a public health emergency, available at <https://www.nysenate.gov/legislation/bills/2019/s7932>

7 *Id.*

8 Office of Massachusetts Attorney General Maura Healey, Amendment to 940 CMR 3.18, available at <https://www.mass.gov/doc/amendment-to-940-cmr-318>

9 Office of Governor Larry Hogan, press release, Governor Hogan enacts emergency legislation to enhance ongoing response to COVID-19 (19 March 2020), available at <https://governor.maryland.gov/2020/03/19/governor-hogan-enacts-emergency-legislation-to-enhance-ongoing-response-to-covid-19/>

10 *Id.*

11 Florida Office of the Attorney General, news release, Attorney General Moody’s rapid response team acts quickly to deter price gouging (7 April 2020), available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/A32615BF3942B33E8525854300514289?Open&>.

12 Office of Ohio Attorney General Dave Yost, news release, Yost files suit against PPE price gougers who sold N95 masks for nearly 18 times the retail price (14 April 2020), available at <https://www.ohioattorneygeneral.gov/Media/News-Releases/April-2020/Yost-Files-Suit-Against-PPE-Price-Gougers-Who-Sold>.

13 A copy of the signed letters dated 25 March 2020 is available [here](#).

14 It is an open question as to whether online marketplaces can be held liable for the pricing practices of third party sellers using their platform, and specifically whether Section 230 of the Communications and Decency Act—which protects internet speech by providing websites that host third-party content immunity from tort liability—can be used as a defense in such cases. The Third Circuit recently held that Amazon was a “seller” under Pennsylvania state products liability law, even with respect to third party sales, and thus not able to avail itself of Section 230’s protections. *See Oberdorf v. Amazon.com, Inc.*, No. 18-1041 (3d. Cir. July 3, 2019). However, the Sixth Circuit has held that Amazon cannot be considered a seller based on the fact that Amazon does not exercise sufficient control over the sale of products on its platform by third party merchants since it does not choose to sell the products, does not set prices and does not make representations in the marketplace about the product’s safety. *See Fox v. Amazon.com, Inc.*, No. 18-5661 (6th Cir. July 5, 2019).

15 Washington State Office of the Attorney General, news release, AG Ferguson sends cease and desist letters to price-gouging Washington-based online businesses (31 March 2020), available at <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sends-cess-and-desist-letters-price-gouging-washington-based-online>.

16 Alaska Consumer Protection Act, AS 45.50.471 – AS 45.50.561.

17 *See* 50 U.S.C. §§ 4512, 4513.

18 Executive order on prioritizing and allocating health and medical resources to respond to the spread of COVID-19 (18 March 2020), available at <https://www.whitehouse.gov/presidential-actions/executive-order-prioritizing-allocating-health-medical-resources-respond-spread-covid-19/>.

19 *See* Hogan Lovells, Executive order prohibits hoarding of certain scarce supplies (25 March 2020) available at [https://www.hoganlovells.com/~/\\_media/hogan-lovells/pdf/2020-pdfs/2020\\_03\\_25\\_hoarding\\_medical\\_resources.pdf?la=en](https://www.hoganlovells.com/~/_media/hogan-lovells/pdf/2020-pdfs/2020_03_25_hoarding_medical_resources.pdf?la=en).

20 Department of Justice, Memorandum for all heads of department components and law enforcement re: Department of Justice COVID-19 Hoarding and Price Gouging Task Force (24 March 2020) available at <https://www.justice.gov/file/1262776/download>.

21 On April 2, 2020 the DOJ announced that it would distribute the approximately 500,000 pieces of personal protective equipment (PPE) that it had confiscated on March 30 as part of a Hoarding and Price Gouging Task Force investigation to those “on the frontline of the [COVID-19] response in New York and New Jersey.” *See* Department of Justice, press release, Department of Justice and Department of Health and Human Services partner to distribute more than half a million medical supplies confiscated from price gougers (2 April 2020), available at <https://www.justice.gov/opa/pr/department-justice-and-department-health-and-human-services-partner-distribute-more-half>.

22 Letter from US Senators Klobuchar, A., Jones, D., Brown, S., Van Hollen, C., Blumenthal, R., Hirono, M., Cortez Masto, C., Cardin, B., Feinstein, D., Booker, C., Harris, K., Smith, T., Duckworth, T., Sanders, B., Warren, E., Rosen, J., Udall, T. to FTC Chairman Joseph J. Simons (27 March 2020), available at [https://www.klobuchar.senate.gov/public/\\_cache/files/1/1/114a671c-446c-4d89-89d2-a6a138e52fdc/DoCBBF2D657990AB0AA905FF3D11525A.2020.03.27-letter-to-ftc-re-pricegouging.pdf](https://www.klobuchar.senate.gov/public/_cache/files/1/1/114a671c-446c-4d89-89d2-a6a138e52fdc/DoCBBF2D657990AB0AA905FF3D11525A.2020.03.27-letter-to-ftc-re-pricegouging.pdf).

- 
- <sup>23</sup> Federal Trade Commission, Statement from FTC Chairman Joe Simons regarding consumer protection (26 March 2020), available at [https://www.ftc.gov/system/files/documents/public\\_statements/1569773/final\\_chairman\\_covid\\_statement\\_3262020.pdf](https://www.ftc.gov/system/files/documents/public_statements/1569773/final_chairman_covid_statement_3262020.pdf)
- <sup>24</sup> *See id.*
- <sup>25</sup> An act or practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. Sec. 45(n).
- <sup>26</sup> Office of United States Senator Amy Klobuchar, news release, Klobuchar, Blumenthal, Hirono, Cortez Masto introduce bill to prohibit price gouging during crises (25 March 2020), available at <https://www.klobuchar.senate.gov/public/index.cfm/2020/3/klobuchar-blumenthal-hirono-cortez-masto-introduce-bill-to-prohibit-price-gouging-during-crisis>.
- <sup>27</sup> *Id.*
- <sup>28</sup> Office of Congressman David Cicilline, press release, Cicilline, Nadler, Pallone and Schakowsky introduce bill to protect Americans from price gouging during COVID-19 health crisis (8 April 2020), available at <https://cicilline.house.gov/press-release/cicilline-nadler-pallone-schakowsky-introduce-bill-protect-americans-price-gouging>.
- <sup>29</sup> Office of US Congressman Joe Neguse, press release, Congressmen Neguse and Lieu introduce legislation to end price gouging in the wake of the COVID-19 pandemic (3 April 2020), available at <https://neguse.house.gov/media/press-releases/congressmen-neguse-and-lieu-introduce-legislation-to-end-price-gouging-in-the-wake-of-the-covid-19-pandemic>.
- <sup>30</sup> Office of Senator Elizabeth Warren, press release, Warren unveils Senate companion bill to stop Price Gouging During the COVID-19 Pandemic (10 April 2020), available at <https://www.warren.senate.gov/newsroom/press-releases/warren-unveils-senate-companion-bill-to-stop-price-gouging-during-the-covid-19-pandemic>.
- <sup>31</sup> European Competition Network, Antitrust: Joint statement by the European Competition Network (ECN) on application of competition law during the Corona crisis (23 March 2020), available at [https://ec.europa.eu/competition/ecn/202003\\_joint-statement\\_ecn\\_corona-crisis.pdf](https://ec.europa.eu/competition/ecn/202003_joint-statement_ecn_corona-crisis.pdf).
- <sup>32</sup> Autorità Garante della Concorrenza e del Mercato, press release, ICA: Coronavirus, the Authority intervenes in the sale of sanitizing products and masks (27 February 2020), available at <https://en.agcm.it/en/media/press-releases/2020/3/ICA-Coronavirus-the-Authority-intervenes-in-the-sale-of-sanitizing-products-and-masks>.
- <sup>33</sup> UOKiK, UOKiK’s proceedings on wholesalers’ unfair conduct towards hospitals (4 March 2020), available at [https://www.uokik.gov.pl/news.php?news\\_id=16277](https://www.uokik.gov.pl/news.php?news_id=16277).
- <sup>34</sup> République Française, Decree No. 2020-2093 of 23 March 2020 prescribing the general measures necessary to deal with the COVID-19 epidemic in the context of the state of health emergency, available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=cid>.
- <sup>35</sup> Comisión Nacional de los Mercados y la Competencia, press release, COVID-19 complaints and queries related to the Application of competition rules (7 April 2020), available at <https://www.cnmec.es/buzon-covid-7-abril-20200407>.
- <sup>36</sup> Competition and Markets Authority, Guidance, CMA COVID-19 taskforce (20 March 2020), available at <https://www.gov.uk/government/publications/covid-19-cma-taskforce/cma-covid-19-taskforce>.
- <sup>37</sup> Competition and Markets Authority, Report a business behaving unfairly during the coronavirus (COVID-19) outbreak, available at <https://www.coronavirus-business-complaint.service.gov.uk/>.