

U.S. Senator Maria Cantwell

Opening Statement at Senate Commerce Hearing titled "Oversight of the Federal Trade Commission"

Witnesses: The Honorable Joe Simons, Chairman, Federal Trade Commission

The Honorable Noah Phillips, Commissioner, Federal Trade Commission

The Honorable Rohit Chopra, Commissioner, Federal Trade Commission

The Honorable Rebecca Slaughter, Commissioner, Federal Trade Commission

The Honorable Christine Wilson, Commissioner, Federal Trade Commission

August 5, 2020

CANTWELL: Thank you Mr. Chairman, and thank you for holding this important hearing today as we invite the commissioners to come before Congress to talk about the impacts of this pandemic on our constituents, the amazing impact that it's having on our economy and on our health care system. My view of the FTC is simple: you should be doing everything in your power to help Americans during this time of crisis. The mission is of extreme importance, and our nation continues to reel from one of the worst health emergencies, and one of the biggest economic crises we've ever faced. And so, we have seen that the COVID-19 pandemic has attracted bad actors, and scam artists, including those who take advantage of people's fear and dire circumstances.

I'm sure every member of this committee has heard from their constituents on these issues about buying ineffective face masks or being subject to COVID-19 phishing attacks or seeing advertisements for miracle coronavirus cures. Thousands of people have reported sky high prices for goods and services from their family. And just like the spread of COVID-19, these scams are happening in every part of the state. There was a recent story in the Seattle Times about sanitizer for \$150 for \$7 sanitizer. So, price gouging and the issues related to price gouging continue to pile up.

So just like the spread of COVID-19, these virus scams are happening everywhere. They're impacting rural communities, urban communities, and hurting Americans, young and old. Certainly that's the case in my state of Washington where according to the FTC, people have been scammed out of over two and a half million dollars since the pandemic began, and more than 3,500 reports of fraud. And while many of the attorneys general have gone after these profiteers, I believe the FTC is holding back. You could be doing more. We must move beyond warnings and threats in response to these unconscionable scams, we must see the FTC exercising real enforcement with real consequences to protect consumers and families when they are most vulnerable.

That is why I believe the FTC needs clear price gouging legislation to go after these scammers. We must not allow unscrupulous merchants to exchange exorbitant prices sometimes for life saving supplies like personal protective equipment or medical equipment simply because their families are desperate. And trust me, on the frontlines of the epidemic in Kirkland, Washington was Evergreen Hospital. And I can tell you it's not a good thing to get calls from emergency room doctors who were saying they are getting price gouged on essential equipment, when they were at the front lines of this pandemic.

So we need to make it clear that it is illegal to peddle defective mass or fake COVID cures and we need to empower our state's attorneys general to go after these bad actors to buttress the argument-- and the FTC enforcement. So this is especially true, given our crisis today. So with many sales happening online, Internet sale platforms should also be working with the federal and local law enforcement to identify price gouging. So, Mr. Chairman, I plan to introduce in the coming days federal legislation to do

two things: to move both on price gouging definition to make sure the law is clear that consumers can be protected in this area, and to enforce civil penalties for deceptive COVID scams.

It is time for us to act on these important pieces of legislation. It is time for us to protect our consumers from these very important issues during the time of crisis. People need help and support. They don't need deception and schemes, and we need an FTC that will be more aggressive. Thank you, Mr. Chairman.

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CANTWELL: Thank you, Mr. Chairman and again thanks for holding this important hearing and for all the feedback from the commissioners. It's been quite interesting obviously on a breadth and depth. But I'd like to go back to price gouging. In April in the state of Washington, the Attorney General launched a "See it, snap it, send it" campaign to fight price gouging. The initiative followed 400 price gouging related complaints, a round of cease and desist letters to Washington based online sellers accused of price gouging, and upwards of 150 site visits to businesses that were subjects of these complaints.

So, this is a very important and timely issue as it relates to the crisis, and we want to make sure that Americans are getting all the help that they deserve. Currently the federal agencies have very limited authority to prevent price gouging. The FTC, as the Chair was just mentioning, go after unfair and deceptive practices which really hasn't been used in cases of price gouging. So that is why I believe that we need a new definition, particularly during the time of an emergency. During the time of an emergency, you should not allow for these unconscionably excessive prices, and I think that we should do something about that. So I wanted to ask you, Chairman Simons, do you support Congress doing something specifically on price gouging authority?

MR. SIMONS: Senator, we agree that price gouging is a very serious problem, especially for PPE and the like. We currently work with the DOJ and the states to refer cases to them, because as you said, Section 5 really is not a good fit for price gouging authority. But we would vigorously support and enforce legislation if Congress passed a law on price gouging. We think that legislation should include a triggering event and a time limit, it should be national in scope, it should define the products that are covered, describe what constitutes an excessive price increase, and provide carve outs for offsetting cost increases. Thank you.

CANTWELL: Well, thank you for that list, and I agree. I think particularly when you define a crisis, we've certainly been involved in what we think have been manipulations of oil markets and certainly people who took advantage of oil prices during a hurricane, and certainly been involved in electricity rates, and what we thought were manipulated electricity markets. So anyway, I look forward to working with you

on that. Commissioner Slaughter and Chopra--well, first let me just thank you, Commissioner Slaughter, for mentioning, well first of all enlightening our day with Hattie. Thank you. That's very nice of you. But also for mentioning broadband, and I know that Chairman agrees that we have an important opportunity in front of us with the next COVID package as we are seeing schools make decisions about what they're going to do on the education system for the fall. We really have to address this gap, and we need to make sure that the dollars are there, and the specific programs are there for broadband. So we look forward to working with everybody to make sure that gets in a package. But on this issue of price gouging, Commissioner Slaughter you also mentioned, and Commissioner Chopra, what is your perspective about the core provisions of a price gouging law? We heard from the Chairman, but what do you believe needs to be in the legislation?

MS. SLAUGHTER: Thank you Senator, for the question, and you're right about broadband. As you can see with all of us struggling with our feeds occasionally, in the best circumstances, we can see how important it is. In terms of price gouging, I agree with a lot of what the Chairman said in terms of what the parameters of price gouging legislation should look like. I would want to make sure that it wasn't too limited and didn't put--excuse me--didn't put too high a burden on the agencies to establish that the circumstances have been met, because when that's the case then we can't really bring the cases effectively that we want to protect the public.

And the last point I'd make is, I agree also that Section 5 is very much an imperfect tool for addressing these kinds of problems. But I want to see us in all cases, including in the case of price gouging, or maybe especially, thinking about whether particular circumstances might give rise to a creative use of Section 5 authority in this--on this topic. And this is something Commissioner Chopra and I both talked about in terms of drug price spikes recently. So I think that it would--we would really benefit from clear legislation from Congress, but very much share your view that this is a high priority and something that we can see the real life effects of for American people every day.

CANTWELL: Thank you. Commissioner Chopra, did you want to say anything?

MR. CHOPRA: Thank you, yes, I agree. Just two quick points. I do not want to see any federal law. Delete the state laws, but preemption of state laws, I don't think it's appropriate when it comes to this issue. And I also hope, given some of the framework in the Defense Production Act as well, that you also consider criminal penalties in certain circumstances.

CANTWELL: Yeah, I certainly believe so. We've done effective work on this as it relates, as I said, to energy markets, and having criminal penalties has been given the FTC really, I mean the Federal Energy Regulatory Commission, the tool that they needed to police energy markets. So we certainly don't need any higher energy costs than we should be paying. And just, Mr. Chairman, I know my time has expired, but I just wanted to mention on Commissioner Wilson's point about content curation.

This is really a very severe problem that is undermining the newspaper industry. The fact that these content curators are basically becoming the entry and point of delivery is limiting the options for our broadcast and content deliverers and then the newspaper business. So I look forward to seeing what the commission comes out with on this, but I think this is also a very important issue that needs to be addressed. Thank you.

