

FTC and DOJ Host First Public Meeting of Pricing “Strike Force”

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On July 31, 2024, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) jointly hosted the first public meeting of the “Strike Force on Unfair and Illegal Pricing.” This initiative was launched by President Biden in March 2024 where he emphasized the readiness of the DOJ and FTC to enforce the law in response to “illegal pricing practices that are fraudulent or unfair or deceptive or anticompetitive.”

This message was echoed in the meeting’s opening remarks by FTC Chair Lina Khan before she highlighted the FTC’s own goals and efforts taken to date to challenge pricing practices and then turned the meeting over for similar reports by representatives from the DOJ and its Antitrust and Civil Divisions, the U.S. Department of Agriculture, the U.S. Department of Health and Human Services (HHS), the Department of Transportation (DOT), the U.S. Securities and Exchanges Commission (SEC), the U.S. Federal Communications Commission (FCC), and the Consumer Financial Protection Bureau (CFPB).

The broad range of speakers featured in the public meeting, along with the concerns expressed and concrete updates on efforts taken to date, demonstrated that the federal government’s efforts to monitor, investigate, and challenge pricing practices have not been and will not be confined to any one industry—with specific references having been made to the pharmaceutical, healthcare and insurance, agricultural, financial services, higher education, technology, air transportation, and food retail industries. Speakers’ remarks additionally made clear that these efforts concern a broad range of business practices that have the potential, in their view, to result in improperly high prices charged to consumers, including mergers, price-fixing amongst competitors, potentially cumbersome or misleading procedures associated with utilizing paid subscription services, junk fees, and others. Several representatives referenced aspirations to promote competition in pursuit of resulting lower prices charged to consumers.

While the interests of consumers were at the forefront, Jonathan Kanter, Assistant Attorney General for the Antitrust Division of the DOJ, was vocal about his desire to see “honest businesses” succeed and have abundant opportunity. Underlying this aim was his belief that this success is made possible by the opportunity to have open, vibrant market access and an ability to compete free from practices that are predatory and block innovation and competition.

This Strike Force meeting is not the only recent development signaling the federal agencies’ attention to pricing practices. The meeting took place roughly a week after the FTC issued orders to eight companies seeking

information in support of its study of the way in which companies develop and deploy surveillance pricing products and services for consumers.

Companies across industries—particularly those companies with high profit margins—should be mindful of the heightened vigilance regarding pricing and the broad scope of policies and practices the federal agencies consider to influence pricing. Companies should conduct careful risk assessments in connection with their pricing and antitrust compliance policies and upgrade as needed in an effort to avoid drawing direct scrutiny that may lead to a costly investigation or lawsuit. Moreover, as the Strike Force acknowledged the growing use of artificial intelligence in pricing systems, companies should carefully assess any technological models being utilized in connection with pricing and should assume that from an antitrust enforcement perspective, technology-assisted pricing practices will be viewed the same as they would be if carried out by human actors.

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