

United States Senate

WASHINGTON, DC 20510

June 14, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chair Khan,

We write to express our alarm about reports of major national retail chains significantly increasing prices on specialized infant formula in the midst of an ongoing nationwide shortage. We were glad to see the Federal Trade Commission (FTC) announce plans to investigate “anyone who deceives, exploits, or scams” families attempting to buy formula and potential “unlawful forms of economic discrimination” by manufacturers and distributors.¹ We request that, as part of that investigation, you direct FTC staff to investigate whether major national retail chains have potentially engaged in unfair trade practices by raising specialized infant formula prices in the midst of the ongoing shortage. It is utterly unconscionable that anyone would try to take advantage of this shortage to extort scared parents with hungry infants so they can make a quick buck.

On February 17, 2022, the Food and Drug Administration announced a recall of infant formula products produced by Abbott Nutrition at their Sturgis, Michigan plant.² This facility is reported to have produced one-fifth of all infant formula in the U.S.,³ and most of the country’s supply of specialty formulas.⁴ Loss of output from this plant following its temporary closure—which was necessary to ensure the safety of formula produced at the facility—left the industry without the capacity to meet demand and has resulted in nation-wide shortages.

In the months since the Abbott recall, parents and guardians have faced significant infant formula shortages. At the end of May, one data provider estimated that 74 percent of the nation’s formula inventory was out of stock, and in some places, including the state of Washington, out-of-stock rates approached or exceeded 90 percent.⁵

The ongoing national shortage has been especially difficult for parents and guardians of children with particular dietary needs, such as children with allergies or infants born prematurely. Many

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https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Chair%20Lina%20M.%20Khan%20re%20Solicitation%20for%20Public%20Comments%20on%20Infant%20Formula%20Shortage__final.pdf

² <https://www.fda.gov/food/outbreaks-foodborne-illness/fda-investigation-cronobacter-infections-powdered-infant-formula-february-2022>

³ <https://www.npr.org/2022/05/19/1099748064/baby-infant-formula-shortages>

⁴ <https://www.washingtonpost.com/business/2022/06/04/abbott-baby-formula-factory-reopens/>

⁵ <https://www.bloomberg.com/news/articles/2022-06-02/us-baby-formula-shortages-hit-74-despite-biden-action>

preterm infants require specialized formula to help them develop, as do other children with allergies to milk-based products or other medical conditions.⁶ Parents of these children are struggling to find specialized formula and are making difficult—and sometimes dangerous—decisions every day about resorting to traditional formula options that might trigger their children’s allergies or illness, or traveling for hours in search of elusive specialized formula. No parent should have to deal with that stress.

In the midst of this shortage, we have received concerning reports that some major retail chains and online secondary marketplaces have significantly increased their prices for these specialized formula products in a short period of time.⁷ These instances of price gouging appear to take on different forms. One major retailer appears to have increased its price for at least one specialized formula by more than 33 percent between October 2020 and May 2022. An online retailer appears to have significantly increased prices in May 2022 for a specialized formula, according to third-party data on prices. And a number of parents and guardians report seeing prices for specialized formula on online secondary marketplaces that are sometimes more than double the cost in stores. At a time when families are already contending with inflation, these practices harm children and their families when they are most vulnerable. They must be investigated and curtailed.

We request your staff investigate how major retail chains, online retailers, and online secondary marketplaces may have engaged in patterns of increasing prices on specialized formula products which may amount to “unfair methods of competition [or] unfair or deceptive acts or practices in or affecting commerce.”⁸ We urge you to investigate whether any of those chains, retailers, or secondary marketplaces have implemented policies that allow for price gouging by secondary sellers within their marketplaces. Further, the FTC should work in tandem with state Attorneys General to ensure any companies that engage in price gouging relating to specialty formula products is held accountable for their immoral business practices. Finally, we request a briefing with our staffs to discuss FTC’s ongoing efforts relating to the infant formula shortage and the shortage of specialty formula products in particular.

Sincerely,



Patty Murray
U.S. Senator



Maria Cantwell
U.S. Senator



Robert P. Casey, Jr.
U.S. Senator

⁶ <https://www.healthychildren.org/English/ages-stages/baby/formula-feeding/Pages/choosing-an-infant-formula.aspx>

⁷ <https://www.goodmorningamerica.com/family/story/parents-baby-formula-shortage-hurting-families-85212333>

⁸ The Federal Trade Commission Act (15 U.S.C. §§ 41-58)