



Office of the Chair

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

**Statement of Chair Lina M. Khan  
Regarding Solicitation for Public Comments  
on the Infant Formula Shortage**

**May 24, 2022**

We have been monitoring and will continue to monitor the ongoing infant formula shortage, which is causing enormous anxiety, fear, and financial burden for American families.

While the Federal Trade Commission (FTC) does not regulate the safety or manufacturing of the impacted products, it can take steps to address any anticompetitive, unfair, or deceptive acts or practices that have contributed to or are worsening this problem. The FTC can also examine the infant formula industry to identify the factors that created such a fragile market, where a single disruption at a single plant can jeopardize supply. Learning from this experience can help determine how we can minimize the risk of similar shortages in the markets for other life-sustaining products.

In accordance with the FTC's long history of both combating unlawful business practices and gathering data and information to deepen our understanding of economic conditions and market trends, the FTC will be pursuing the following actions to address the infant formula shortage.

First, FTC staff will investigate and seek to fully enforce the law against anyone who deceives, exploits, or scams American families trying to buy infant formula. This includes those who use online "bots" to automatically purchase and then resell formula at exorbitant prices. While reselling these products is not illegal and may serve a useful function, using "bots" or other automated tools to divert large amounts of supply of life-sustaining products from ordinary retailers and then prey on desperate families may constitute an unfair practice under the FTC Act.<sup>1</sup> The FTC last week issued notices warning consumers about scammers that are tricking parents into paying exorbitant prices for formula that never arrives, and we will continue to police these bad actors.<sup>2</sup>

Second, the FTC will examine whether infant formula manufacturers and distributors are engaging in unlawful forms of economic discrimination that may be limiting the availability of formula at certain retailers. Discriminatory terms and conditions can exacerbate the inability of

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<sup>1</sup> 15 U.S.C. §§ 41-58, as amended.

<sup>2</sup> Colleen Tressler, *Not enough baby formula means plenty of scammers*, FED. TRADE COMM'N (May 18, 2022), <https://consumer.ftc.gov/consumer-alerts/2022/05/not-enough-baby-formula-means-plenty-scammers>.

some grocers, pharmacies, and other stores to source products in short supply, impacting both rural and inner-city communities in particular.

Third, the FTC is launching a public inquiry into the infant formula market to identify the factors that contributed to the shortage or hampered our ability to respond to it. As part of this effort the FTC will work with United States Department of Agriculture (USDA), which administers Special Supplemental Nutrition Program for Women, Infants, and Children (commonly known as WIC Program), to conduct a thorough analysis of the information received through this inquiry. The agencies will use this analysis to help determine what policy changes might be necessary to promote competition and resiliency in the infant formula market to prevent future shortages.

Fourth, the FTC will use the lessons learned from this incident to inform its enforcement and policy work in other industries, especially in markets that are fragile, highly specialized, or highly regulated with substantial barriers to entry. Over the last few years, Americans have repeatedly experienced cycles of supply chain disruptions, shortages, stockpiling of remaining supplies, and reseller profiteering and price gouging. The FTC will do everything within its power to ensure the markets for other life-sustaining and vital products are competitive and resilient, protecting the ability of Americans to access critical goods even amid disruptions.