

FTC Announces Inquiry into the Infant Formula Shortage

Article By:

Christopher E Odeck

John R Ingrassia

Kelly Landers Hawthorne

On May 24, 2022, the FTC announced a widespread inquiry into the ongoing infant formula shortage. The agency had been tasked by the White House with investigating any price gouging or unfair market practices in the industry. The agency is seeking public comments on “various factors that may have contributed to the infant formula shortage...as well as its impact on families and retailers.”

In its [press release](#), the agency identified issues of particular concern, including:

- Fraud, deception, or scams consumers may have experienced when trying to buy infant formula,
- Retailers’ experiences since the formula recall began in February,
- How mergers and acquisitions, and FDA regulations, have affected the number of suppliers of infant formula, capital investment in the market, and the overall manufacturing capacity of suppliers, and
- Whether regulatory barriers have blocked non-US companies from entrance to the market.

The FTC has also requested comment relating to barriers families have faced in purchasing infant formula through the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) and barriers that have prevented formula suppliers from entering the WIC program.

In addition to listing these specific topics, the FTC welcomed additional public comments on any concerns commenters deem to be relevant or appropriate for the agency’s consideration.

FTC Chair Lina Kahn released a [supplementary statement](#) regarding the inquiry, detailing numerous actions the FTC is taking to address the infant formula shortage. The FTC announced that it will investigate any potential unlawful business practices committed by infant formula manufacturers and distributors that may be contributing to the limited supply of formula. According to Chair Kahn, the

FTC will examine whether discriminatory terms or conditions were used to prevent some grocers, pharmacies, and other stores from accessing infant formula during the shortage, particularly those retailers located in rural or inner-city areas. The FTC will seek to hold accountable “anyone who deceives, exploits, or scams American families trying to buy infant formula,” including through the use of online “bots” to purchase and resell formula at unfair prices.

Any business that manufactures, distributes, or retails infant formula can expect to hear from the FTC soon, if they have not already. This is the time then to redouble compliance training and efforts, and to bring compliance materials up to date to reflect both current market and industry conditions as well as current enforcement priorities.

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