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Price Gouging Is Real. Doing Nothing Is Not the Answer

di Tim Wu

Many Americans became aware of the problem of price gouging in 2016, when the cost of a two-pack of EpiPens, which in 2007 was about $100, went over $600. This astronomical increase did not reflect product innovation or new production costs; the EpiPen, a portable injector used to treat severe allergic reactions, is fairly cheap to manufacture. Rather, the sky-high price seemed to reflect the fact that the EpiPen is a necessary and often lifesaving piece of equipment — and that in the absence of meaningful alternatives, people will pay pretty much whatever they have to.

Since 2016, price gouging has become an even more pressing issue. Businesses across industries are increasing profits by exploiting what economists call situational market power — the ability to raise prices when there's limited choice or urgent need. (Think of a convenience store that doubles the price of bottled water after a natural disaster.) The fact that companies now have access to and can analyze so much personalized data is improving their extraction capabilities. If a grocery-delivery app can tell that you must have Skippy peanut butter, why not raise the price just for you? Companies increasingly know exactly when they have pricing power and how best to exploit it.

There are two main challenges to combating price gouging. One is that most of our laws (federal, state and municipal) do not provide leaders sufficiently broad authority to counter the problem. Mayor Zohran Mamdani of New York, who has promised to make living in the city more affordable, is fortunate: New York City is among the rare places where the law robustly authorizes the policing of "unconscionable trade practices." That includes price gouging, defined as "a gross disparity between the value received by a consumer and the price paid, to the consumer's detriment."

Until legislators nationwide pass similarly aggressive laws, New York City under Mr. Mamdani has the best chance to offer a model for how to tackle the problem. But before that can happen, he will have to overcome the second major challenge of thwarting price gouging: how to enforce the law without employing the crude price controls that repeatedly have proved economically unwise.

To fight rising prices in the 1970s, the Nixon administration experimented with a price commission that, while popular at first, ultimately failed. Its price controls not only didn't address the underlying causes of high prices; they also disrupted supply chains and caused inflation to spike further after the controls were lifted. The false lesson too many people took from this failure was that there is nothing policymakers can do when companies shamelessly use their market power to boost prices.

But there is a middle path between sweeping price controls and a laissez-faire shrug. The trick is to focus not on prices everywhere but on prices when and where competition is absent and abuse is most predictable. A classic case is when consumers are physically isolated, such as at an airport, sports stadium or solitary gas station in a remote part of the country. All of a sudden people are paying $8 for a bottle of water at Kennedy Airport that costs $3 in a Manhattan bodega. (Another case is when the government has provided a seller with exclusivity, as with hotels and concessions in national parks.)

In these cases, the government does not need to invent a fair price and hold sellers to it. It can rely on a benchmark price, or what the same good or service costs nearby, in a more competitive market. This approach, sometimes called street pricing, treats large deviations from prevailing market prices as presumptively unconscionable when they occur in captive settings.

This idea has been tested. A few airports already have strong anti-price-gouging policies. The best versions are in Salt Lake City and Portland, Ore., where the airports require chain stores and restaurants to charge the same prices inside the terminals that they charge in the city. The result is not subsidized food or arbitrarily capped prices. It's the elimination of a familiar and widely resented form of predation.

To enforce this strategy broadly across a city or state would require considerable technical work, identifying where and when consumers are captive and gathering comparative price data. But just as information technology helps businesses strategically gouge customers, so too it can help government track and stop price gouging, fighting fire with fire. New York City could police pharmacies that inflate drug prices in isolated neighborhoods by digitally comparison shopping elsewhere in the city.

Skeptics may worry that sellers will be able to evade enforcement, perhaps by keeping product prices reasonable but increasing related costs such as shipping or service fees or by rebranding products to avoid comparison with street prices. That risk is real. But evasion is not an argument against law enforcement. The goal of any law is deterrence, and that happens by targeting the most clear-cut cases first.

There is also a concern that price enforcement would disproportionately affect small businesses, since they typically have higher costs. This is why any anti-price-gouging policy must give sellers a chance to demonstrate that they have higher labor, security or delivery costs. The intended target is not the corner bodega that can't match Costco's egg prices (but where customers pay a premium for convenience); it's the business that gratuitously extracts revenue from customers who have no other meaningful choice.

Note, too, that we're not talking about preventing people from buying luxury goods, which are overpriced almost by definition. Selling a designer handbag at $3,000 that costs $200 to produce is about serving (or perhaps creating) expensive tastes. The enforcement priority should be the price of essentials like milk, medicines and water.

Robust anti-gouging laws would primarily help consumers. (The economic policy think tank Groundwork Collaborative recently estimated that corporate profits heavily based on aggressive pricing strategies drove more than half of inflation during the second and third quarters of 2023.) But when effectively enforced, the laws would also encourage companies to focus on improving and creating new products — real innovation — rather than on refining and perfecting the revenue-extraction strategies that economists call exploitative innovation.

Everyone should accept that markets sometimes fail in predictable ways, that sellers will take advantage when customers are captive and that the government can and should correct such failures. Competition is good, and when markets work, they are the best form of it. But when they fail, we shouldn't pretend otherwise.