

Congress of the United States
Washington, DC 20510

November 3, 2016

The Honorable Loretta E. Lynch
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Attorney General Lynch and Chairwoman Ramirez:

We write to ask the Department of Justice and the Federal Trade Commission to investigate whether pharmaceutical companies manufacturing insulin products have colluded or engaged in anticompetitive behavior in setting their drug prices.

The original insulin patent expired 75 years ago. Instead of falling prices, as one might expect after decades of competition, three drugmakers who make different versions of insulin have continuously raised prices on this life-saving medication. In numerous instances price increases have reportedly mirrored one another precisely.¹

This is an issue of tremendous national significance. Diabetes, a group of diseases that involve problems with the pancreas' production of the hormone insulin, can lead to severe health problems, including heart disease and stroke, kidney failure, amputations, and vision loss. These health consequences are devastating for individuals and their families and costly to treat. Nearly 30 million Americans have diabetes. In 2012, diabetes and prediabetes cost the U.S. \$322 billion in medical costs and reduced productivity.²

¹ Carolyn Johnson, "Why treating diabetes keeps getting more expensive," *Washington Post* (Oct. 31, 2016) (online at <https://www.washingtonpost.com/news/wonk/wp/2016/10/31/why-insulin-prices-have-kept-rising-for-95-years/>); see also (Robert Langreth, "Hot Drugs Show Sharp Price Hikes in Shadow Market," *Bloomberg* (May 6, 2015) (online at <http://www.bloomberg.com/news/articles/2015-05-06/diabetes-drugs-compete-with-prices-that-rise-in-lockstep>).

² Timothy Dall et al., "The Economic Burden of Elevated Blood Glucose Levels in 2012: Diagnosed and Undiagnosed Diabetes, Gestational Diabetes Mellitus, and Prediabetes," *Diabetes Care* (Dec. 2014) (online at <http://care.diabetesjournals.org/content/37/12/3172>); Centers for Disease Control and Prevention, "Diabetes: Working to Reverse the US Epidemic At a Glance 2016" (online at <http://www.cdc.gov/chronicdisease/resources/publications/aag/diabetes.htm>); see also American Diabetes Association "The Staggering Costs of Diabetes in America," (online at <http://www.diabetes.org/diabetes-basics/statistics/infographics/adv-staggering-cost-of-diabetes.html>).

The prices of these medications have skyrocketed in recent years. The price of insulin more than tripled between 2002 and 2013—from \$231 to \$736 per year per patient.³ From 2010 to 2014, Lantus, made by Sanofi, increased in price by 168 percent; Humalog, made by Eli Lilly, increased by 103 percent; and Januvia and Janumet, made by Merck & Co., both increased by 75 percent.⁴ The top 10 diabetes drugs brought in more than \$28 billion in sales in 2013.⁵

These high and still rising prices have a significant impact on federal spending. The American Diabetes Association estimates that the government pays for nearly two-thirds of diabetes care in the U.S. through various insurance programs.⁶ In 2015, Medicare spent more per beneficiary on diabetes medications than on any other class of drugs, primarily due to rising prices.⁷ The market entry price of “follow-on” insulin products, which largely duplicate existing drugs, are partially informed by the high prices of available therapies. Patients and taxpayers may not realize the savings that could be gained if existing insulin products were less expensive.

We have also heard from our constituents that the life-saving insulin they need is increasingly unaffordable. About six million Americans use insulin, and for many patients, switching between insulin brands can be difficult because the medicines are not completely interchangeable.⁸

Not only have these pharmaceutical companies raised insulin prices significantly—sometimes by double digits overnight—in many instances the prices have apparently increased in tandem. According to *Bloomberg*:

On May 30 last year, the price for a vial of the blockbuster diabetes medication Lantus went up by 16.1 percent. On the next day, Lantus’s direct competitor, Levemir, also registered a price increase—of 16.1 percent.

The pattern repeated itself six months later when Lantus, from French drugmaker Sanofi, was marked up 11.9 percent, and Levemir, made by Novo Nordisk A/S, matched again exactly.

³ Ed Silverman, “Insulin prices have skyrocketed, putting drug makers on the defensive,” (Apr. 5, 2016) (online at <https://www.statnews.com/pharmalot/2016/04/05/insulin-prices-skyrocketed-putting-drug-makers-defensive>).

⁴ Chris Canipe and Joseph Walker, “How Drug Company Revenue Is Driven by Price Increases,” *Wall Street Journal* (Oct. 5, 2015) (online at <http://graphics.wsj.com/price-hike-2015>); see also Joseph Walker, “For Prescription Drug Makers, Price Increases Drive Revenue,” *Wall Street Journal* (Oct. 5, 2015) (online at <http://www.wsj.com/articles/for-prescription-drug-makers-price-increases-drive-revenue-1444096750>).

⁵ Eric Palmer, “The top 10 best-selling diabetes drugs of 2013,” (June 17, 2014) (online at <http://www.fiercepharma.com/pharma/top-10-best-selling-diabetes-drugs-of-2013>).

⁶ American Diabetes Association, “The Cost of Diabetes,” (last updated June 22, 2015), (online at <http://www.diabetes.org/advocacy/news-events/cost-of-diabetes.html>).

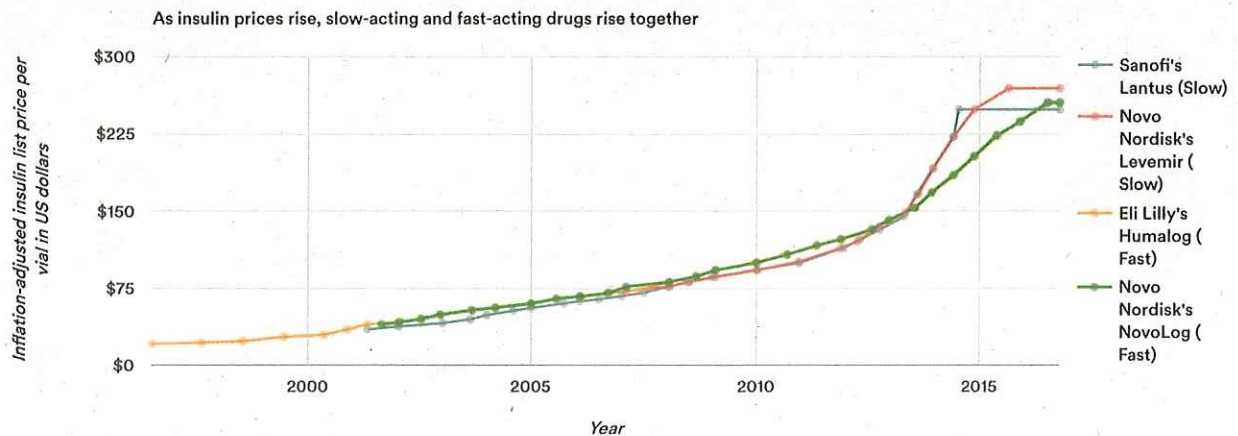
⁷ Express Scripts, “Express Scripts 2015 Drug Trend Report Medicare,” (Mar. 2016) (online at <https://lab.express-scripts.com/lab/drug-trend-report>).

⁸ Rebecca Robbins, “The insulin market is heading for a shakeup. But patients may not benefit,” *STAT* (Oct. 14, 2016) (online at <https://www.statnews.com/2016/10/14/insulin-prices-generics>).

In 13 instances since 2009, prices of Lantus and Levemir—which dominate the global market for long-acting injectable insulin with \$11 billion in combined sales—**have gone up in tandem in the U.S.**, according to SSR Health, a market researcher in Montclair, New Jersey.⁹

From 2014 to 2015, the price of both Sanofi's Lantus and Novo Nordisk's Levemir reportedly went up by 29.9 percent, and each drug had a wholesale price of precisely \$29.82 per milliliter. Eli Lilly, the manufacturer of Humalog, and Novo Nordisk, which makes Novolog, have also on several occasions increased prices in lockstep.¹⁰

The chart below from *STAT* shows how four different widely-prescribed insulin products have risen in price together:¹¹



JEFFERY DELVISCIO/STAT

Source: Truven Health Analytics

In fact, Eli Lilly and other companies have been fined in Mexico for colluding on insulin pricing. Mexico's antitrust commission fined Eli Lilly Mexico and three other companies in 2010 for taking turns placing winning bids for government contracts to buy insulin—artificially inflating prices by agreeing not to compete.¹²

⁹ Robert Langreth, "Hot Drugs Show Sharp Price Hikes in Shadow Market," *Bloomberg* (May 6, 2015) (online at <http://www.bloomberg.com/news/articles/2015-05-06/diabetes-drugs-compete-with-prices-that-rise-in-lockstep>) (emphasis added); (<http://www.bloomberg.com/news/articles/2015-05-06/diabetes-drugs-compete-with-prices-that-rise-in-lockstep#media-2>).

¹⁰ *Id.*

¹¹ Rebecca Robbins, "The insulin market is heading for a shakeup. But patients may not benefit," *STAT* (Oct. 14, 2016) (online at <https://www.statnews.com/2016/10/14/insulin-prices-generics>).

¹² Noel Randewich, "Mexico fines Eli Lilly, others for collusion," *Reuters* (Feb. 23, 2010) (online at <http://www.reuters.com/article/mexico-pharmaceutical-idUSN2310744920100223>).

The Honorable Loretta E. Lynch
The Honorable Edith Ramirez
Page 4

We are concerned that the potential coordination by these drugmakers may not simply be a case of "shadow pricing," but may indicate possible collusion, and we believe this egregious behavior warrants a thorough investigation.

We urge the Justice Department and the Federal Trade Commission to investigate any anticompetitive conduct by insulin manufacturers and take any necessary action to protect consumers and taxpayers.

Thank you for your attention to this matter.

Sincerely,



Bernard Sanders
Ranking Member
Subcommittee on Primary Health
and Retirement Security
Committee on Health, Education,
Labor and Pensions
United States Senate



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform
United States House of Representatives