

Congress of the United States
Washington, DC 20515

June 13, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Makan Delrahim
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General and Mr. Delrahim:

We write to urge the Department of Justice to prioritize criminal enforcement of federal antitrust laws against generic drug manufacturers. We are concerned about the lack of enforcement, particularly given serious allegations of anticompetitive behavior by generic manufacturers. Approximately 90 percent of all prescriptions filled in the United States are for generic drugs. Vigorous antitrust enforcement is vital to ensuring that millions of Americans can afford the medications they need.

It has been more than two years since your office brought charges against two executives of Heritage Pharmaceuticals Inc. for their role in conspiracies to fix prices, rig bids, and manipulate the generic drug market. At that time, the Department of Justice announced that the charges were part of “an ongoing federal antitrust investigation,” and Deputy Assistant Attorney General Brent Snyder described the charges as an “important step” towards holding these companies accountable.¹

Since then, however, the Department of Justice has not announced any charges against additional generic manufacturers or executives. The Department of Justice’s only announced action was allowing Heritage to resolve its corporate criminal liability by paying a \$225,000 penalty, an amount that is wholly insufficient to deter future criminal conduct by Heritage or

¹ Department of Justice, *Former Top Generic Pharmaceutical Executives Charged in Price-Fixing, Bid-Rigging and Customer Allocation Conspiracies* (Dec. 14, 2016) (online at www.justice.gov/opa/pr/former-top-generic-pharmaceutical-executives-charged-price-fixing-bid-rigging-and-customer).

other generic manufacturers.²

Last month, a coalition of 44 state attorneys general sued 20 generic drug manufacturers and more than a dozen executives for engaging in a multi-year, multi-billion-dollar price-fixing conspiracy. Executives at Teva Pharmaceuticals allegedly orchestrated a sophisticated scheme to collude surreptitiously with competitors, artificially inflate the prices of over a hundred generic drugs, and destroy evidence of criminal conduct.³

If these allegations are true, civil enforcement will not be sufficient to protect consumers or businesses that compete fairly, maintain the integrity of our economic system, or deter anticompetitive conduct in the future.⁴ We urge the Department of Justice to investigate whether generic drug companies and executives violated criminal antitrust laws and ask that the Department of Justice pursue enforcement if warranted.

In addition, the state attorneys general uncovered evidence that Teva and other companies coordinated with each other to mislead our offices' investigation in 2014 into suspicious price increases of generic drugs.⁵ In response to our document and information requests, these companies gave excuses for raising prices—such as the costs of regulatory compliance, drug shortages, and user fees—that were at best, grossly misleading, and at worst, false statements to Congress. For these reasons, we request that the Department of Justice open an investigation into whether Teva and its co-conspirators violated 18 U.S.C. § 1505 and 18 U.S.C. § 1001 by obstructing our investigation into their business practices.

We also request that your office give us a briefing by June 21, 2019, about the actions it is taking to protect patients and taxpayers from anti-competitive conduct by the generic drug industry.

² Department of Justice, *Pharmaceutical Company Admits to Price Fixing in Violation of Antitrust Law, Resolves Related False Claims Act Violations* (May 31, 2019) (online at www.justice.gov/opa/pr/pharmaceutical-company-admits-price-fixing-violation-antitrust-law-resolves-related-false).

³ *States Bring Price Fixing Suit Against Generic Drug Makers*, Associated Press (May 11, 2019) (online at www.washingtonpost.com/business/states-bring-price-fixing-suit-against-generic-drug-makers/2019/05/11/414b1524-7421-11e9-9331-30bc5836f48e_story.html?utm_term=.229129b61eba).


⁴ See *U.S. Attorney Manual*, Principles of Federal Prosecution of Business Organizations, Sec. 9-28.010.


⁵ *States Allege Generic Drug Executives Deleted Texts, Obstructed Justice In Price Cartel Probe*, Washington Post (May 10, 2019) (online at www.washingtonpost.com/business/economy/states-allege-generic-drug-executives-deleted-texts-obstructed-justice-in-price-cartel-probe/2019/05/10/450c6b30-7355-11e9-9eb4-0828f5389013_story.html?utm_term=.67942e96838a); see also Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Senator Bernard Sanders, Chairman, Subcommittee on Primary Health and Aging, Senate Committee on Health, Education, Labor, and Pensions, to Erez Vigodman, President and Chief Executive Officer, Teva Pharmaceuticals Industries Ltd. (Oct. 2, 2014) (online at www.sanders.senate.gov/download/letter-to-mr-vigodman-president-and-ceo-teva-pharmaceutical-industries-ltd?inline=file).

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The Honorable Makan Delrahim
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Thank you for your attention to this matter. We look forward to your response.

Sincerely,


Elijah E. Cummings
Chairman
Committee on Oversight and Reform
United States House of Representatives


Bernard Sanders
Ranking Member
Committee on the Budget
United States Senate

cc: The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

The Honorable Mike Enzi, Chairman
Senate Budget Committee