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

Office of Commissioner
Rebecca Kelly Slaughter

CONCURRING STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER

In the Matter of Vyera Pharmaceuticals, LLC, Phoenixus AG,
Martin Shkreli, and Kevin Mulleady
Commission File No. 161-0001
January 27, 2020

Today, the Commission voted unanimously to file a complaint against Vyera Pharmaceuticals, LLC, Phoenixus AG, Martin Shkreli, and Kevin Mulleady. Let me begin by commending our staff for a thorough and important investigation. The complaint filed today is only a small snapshot of the effort and contributions from the Bureaus of Competition and Economics as well as staff across the entire agency put into investigating this matter.

I strongly support bringing an enforcement action in this case; the alleged conduct is egregious and clearly violates Section 1 and Section 2 of the Sherman Act. By naming the individuals who directed the conduct and by seeking monetary relief, the Commission sends a strong message to the market that the FTC is monitoring these issues closely and will not hesitate to challenge anticompetitive conduct around drug pricing.

I write separately to explain why I would have supported including a count in the complaint alleging a violation of the FTC Act's prohibition on unfair acts or practices. This case is about a company and its leadership raising the price of an off-patent drug that had no therapeutic alternatives, where the price hike—by more than 4000%—was not attributable to increases in production or manufacturing costs, nor was it due to a change in supply or demand.[1] And here, as the complaint alleges, the company and its leadership engaged in a pattern of conduct to protect that price hike by prohibiting competitive entry. That conduct—dramatically increasing the price while also taking actions to prevent competition—undoubtedly satisfies the elements of our long-standing law that prohibits unfair acts or practices in my view.

First, the conduct as alleged in our complaint causes substantial injury to consumers, in the form of higher drug prices and delay in obtaining life-saving medication. Second, the injury is not reasonably avoidable because Daraprim is the gold standard treatment for toxoplasmosis; patients cannot choose to go without this life-saving treatment and our complaint alleges that they do not have any good therapeutic alternative to which to turn. Finally, I believe that the injury is not outweighed by countervailing benefits to consumers or competition; while price

[1] Statement of Commissioners Rohit Chopra & Rebecca Kelly Slaughter, FTC Report on the Use of Section 5 to Address Off-Patent Pharmaceutical Price Spikes (July 24, 2019), https://www.ftc.gov/system/files/documents/public_statements/1531606/p180101_section_5_report_dissenting_statement_by_chopra_and_slaughter_6-27-19.pdf.

increases normally induce competitive entry, the defendants ensure that such entry is incredibly difficult and substantially delayed—