

2022 ANTICOMPETITIVE PRACTICES - PFIZER

RESOLVED that shareholders of Pfizer Inc. (“Pfizer”) ask the board of directors to report to shareholders on how it oversees risks related to anticompetitive practices, including whether the full board or board committee has oversight responsibility, whether and how consideration of such risks is incorporated into board deliberations regarding strategy, and the board’s role in Pfizer’s public policy activities related to such risks. The report should be prepared at reasonable expense and should omit confidential or proprietary information, as well as information about existing litigation and claims of which Pfizer has notice.

Supporting Statement: The anticompetitive practices of companies within the pharmaceutical supply chain, including drug developers such as Pfizer, are receiving increasing scrutiny from the public, regulators, and enforcers. The criticism of Pfizer has focused on the company’s establishment of “patent thickets” around its drugs to prevent generic competition, some of which have resulted in massive price hikes for everyday consumers.ⁱ

Regulators and enforcers are increasingly focused on curbing this type of behavior. In May, then-acting Chairwoman of the Federal Trade Commission (FTC) Rebecca Kelly Slaughter stated that “[f]or decades, the FTC has challenged a number of illegal anticompetitive practices in the pharmaceutical industry that can lead to high drug prices. The Commission should consider ways to build on this work by addressing emerging and evolving practices that have the potential to harm consumers.”ⁱⁱ Furthermore, upon confirmation, newly appointed FTC Chair Lina Kahn quickly moved to direct FTC staff to ramp up investigations based on seven enforcement priorities, including healthcare and pharmaceutical companies.ⁱⁱⁱ

Separately, the company recently agreed to pay a \$345 million antitrust litigation settlement surrounding its EpiPen production. There, the plaintiffs, who included insurers, pension funds, and other consumers, claimed that Pfizer had engaged in anticompetitive marketing practices that led to unlawful price hikes.^{iv} In addition, Pfizer is currently involved in litigation with Teva Pharmaceutical, which claims that Pfizer engaged in patent litigation solely to delay the introduction of Teva’s generic epinephrine injectable.^v

The mounting pressure on Pfizer from regulators, enforcers, and market participants against the company’s anticompetitive practices can increase pressure for new regulation, increase risk for investors, and have substantial impacts on the public. Given the widespread concern and rapidly changing environment, we believe that robust board oversight would improve Pfizer’s management of risks related to anticompetitive practices and that shareholders would benefit from more information about the board’s role.

- i Overpatented, Overpriced: How Excessive Pharmaceutical Patenting is Extending Monopolies and Driving up Drug Prices, I-MAK, 2019 (<https://www.i-mak.org/wp-content/uploads/2019/01/i-mak.overpatented.overpriced.report.0801.pdf>).
- ii Statement Of Acting Chairwoman Rebecca Kelly Slaughter in the Matter Regarding the Federal Trade Commission's Report to Congress on Rebate Walls, Fed. Trade Comm'n (May 28, 2021) (<https://www.ftc.gov/public-statements/2021/05/statement-acting-chairwoman-rebecca-kelly-slaughter-regarding-federal>).
- iii Brennan, Zachary, Pharma in the crosshairs: How the FTC is expanding its antitrust powers under its new chair, Endpoints News, July 2, 2021 (<https://endpts.com/pharma-in-the-crosshairs-how-the-ftc-is-expanding-its-antitrust-powers-under-its-new-chair/>).
- iv Kansteiner, Fraiser, Pfizer antes up \$345M to settle long-running EpiPen antitrust claims as Viatrix case moves ahead, Fierce Pharma, 16 July 2021 (<https://www.fiercepharma.com/pharma/pfizer-antes-up-345m-to-settle-long-running-epipen-antitrust-claims>).
- v Id.