



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

Statement of Commissioner Noah Joshua Phillips

Vyera Pharmaceuticals, LLC

File No. 161-0001

December 7, 2021

Today, the Federal Trade Commission (“FTC” or “Commission”) authorized its staff to file in federal district court a proposed settlement of our antitrust suit against Vyera Pharmaceuticals, Phoenixus AG, and individual defendant Kevin Mulleady. While the settlement does not resolve our suit against Martin Shkreli, the founder of Vyera and Phoenixus, it is a victory for the FTC and American consumers. The Commission’s case challenged an elaborate anticompetitive scheme to maintain a monopoly for the life-saving drug Daraprim, in violation of Section 2 of the Sherman Act and Section 5 of the FTC Act. The complaint alleges that this scheme permitted Vyera and Phoenixus to drive up prices for Daraprim by more than 4,000%, costing patients tens of millions of dollars in needless healthcare costs and threatening lives.¹

The complaint, filed jointly with the New York State Office of the Attorney General, was voted out by a unanimous Commission under Chairman Simons in January 2020, nearly two years ago.² Six more states later joined: California, Illinois, North Carolina, Ohio, Pennsylvania, and Virginia.³ I write to thank our terrific staff and our state partners for their diligent work over the subsequent 22 months, which has culminated in a robust settlement that includes money for victims and strong protections against future anticompetitive conduct by Vyera, Phoenixus, and Mr. Mulleady. Victories like these are always hard fought; and this one will deliver immediate benefits to competition and consumers, without the risk, cost, and delay of further litigation against these three defendants. Among other things, the settlement will ban Mr. Mulleady from

¹ Press Release, FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More Than 4,000 Percent for Life-Saving Drug Daraprim (Jan. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/01/ftc-ny-attorney-general-charge-vyera-pharmaceuticals-martin>; Complaint, Fed. Trade Comm’n v. Vyera Pharms. et al., No. 20-00706 (S.D.N.Y. Jan. 27, 2020) (public version available at https://www.ftc.gov/system/files/documents/cases/161_001_vyera_pharm_-_redacted_complaint.pdf).

² Press Release, FTC and NY Attorney General Charge Vyera Pharmaceuticals, *supra* note 1.

³ Press Release, Six More States Join FTC and NY Attorney General’s Case Against Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants (Apr. 14, 2020), <https://www.ftc.gov/news-events/press-releases/2020/04/six-more-states-join-ftc-ny-attorney-generals-case-against-vyera>.

the pharmaceutical industry for seven years. Because such bans can sometimes hurt competition rather than protect it, I do not believe the Commission should require them as a matter of course. But they are appropriate where, as here, there is compelling evidence that the defendant oversaw and directly participated in a diabolical anticompetitive plan that hurt consumers and the ban poses virtually no risk to competition. Again, my congratulations and gratitude to FTC staff and the states for all they have done to bring about this resolution.