



Office of Commissioner
Rohit Chopra

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

CONCURRING STATEMENT OF COMMISSIONER ROHIT CHOPRA

*Federal Trade Commission; and State of NY v. Vyera Pharmaceuticals, LLC; Phoenixus AG;
Martin Shkreli; and Kevin Mulleady
Commission File No. 1610001
January 27, 2020*

I fully support the Commission's complaint against Vyera Pharmaceuticals, LLC, Phoenixus AG, Martin Shkreli, and Kevin Mulleady. However, I believe some of the conduct alleged in the complaint also constitutes a violation of the FTC Act's prohibition of unfair acts or practices. In particular, I believe increasing the price of an off-patent drug while at the same time choking off potential entrants meets the FTC's statutory test to condemn the practice as unfair.¹ I believe that the FTC and many of the State Attorneys General should pursue this legal claim in cases with similar facts.

I continue to be concerned that the FTC does not use its authority to the fullest extent possible to combat marketplace abuses. This is another missed opportunity for the Commission.

¹ See Statement of Commissioners Rohit Chopra and Rebecca Kelly Slaughter, Federal Trade Commission Report on the Use of Section 5 to Address Off-Patent Pharmaceutical Price Spikes (June 24, 2019), <https://www.ftc.gov/public-statements/2019/06/statement-commissioners-chopra-slaughter-regarding-federal-trade>.