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December 17, 2018

The Honorable Lamar Alexander
Chairman, Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Chairman-designate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Chairman-designate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Alexander, Chairman-designate Graham, and Chairman-designate Grassley,

I am writing to request that your Committees quickly open an investigation in the new Congress and commit to holding hearings on recent reports of price-fixing activities by generic drug manufacturers that one expert described as “most likely the largest cartel in the history of the United States.”¹ According to these reports, “what started as an antitrust lawsuit brought by states over just two drugs in 2016 has exploded into an investigation of alleged price-fixing involving at least 16 companies and 300 drugs.”²

These allegations, if true, may help explain the numerous and increasingly troubling reports in recent years of rapid and unexplained price increases for generic drugs. While generic drugs have helped dramatically curb healthcare expenditures, and are generally significantly less expensive than their branded counterparts, reported price spikes of 600%, 1000%, or more are profoundly troubling – and cause immense harm to patients in need.

There are numerous examples of these rapid and unexplained price increases. GAO in 2016 reported that over 300 generic drugs sold under the Medicare Part D program had at least

¹ Washington Post, “Investigation of generic ‘cartel’ expands to 300 drugs,” Christopher Rowland, December 9, 2018, https://www.washingtonpost.com/business/economy/investigation-of-generic-cartel-expands-to-300-drugs/2018/12/09/fb900e80-f708-11e8-863c-9e2f864d47e7_story.html.

² Washington Post, “Investigation of generic ‘cartel’ expands to 300 drugs,” Christopher Rowland, December 9, 2018, https://www.washingtonpost.com/business/economy/investigation-of-generic-cartel-expands-to-300-drugs/2018/12/09/fb900e80-f708-11e8-863c-9e2f864d47e7_story.html?utm_term=.4d914eeabebc.

one "extraordinary" price spike of over 100% in the five year period from 2010-2015.³ The price of the heart medication Digoxin increased from pennies per pill to over \$1 per pill - costing patients hundreds of dollars annually.⁴ One company - Lannett Company - in a single year "more than tripled the price of terbutaline, a treatment for asthma and emphysema ...[and] raised the price of fluphenazine, an anti-psychotic drug, to \$870 for 100 10-milligram capsules, from \$43.50."⁵

But evidence also suggests that generic drug markets are plagued by anti-consumer behavior and anti-competitive features that go far beyond high-profile price hikes of individual products. The industry is characterized by substantial consolidation: forty percent of generic drugs are now made by only one company,⁶ and the majority are made by one or two companies.⁷

The allegations against the generic drug industry - reportedly backed by "voluminous documentation" - "shows the industry to be riddled with price-fixing schemes," that "transformed a cutthroat, highly competitive business into one where sudden, coordinated price spikes on identical generic drugs became almost routine," costing patients, health care providers, insurers, and taxpayers billions of dollars.⁸

These allegations have not been resolved, and are the subject of an ongoing price-fixing case in federal court involving dozens of state Attorneys General. But this ongoing court case should not prevent Congress from investigating and addressing the matter.

I therefore ask that, in January 2019, you open a bipartisan Committee investigation into the matter of price fixing by generic drug manufacturers, and commit to holding hearings on the findings of this investigation. If the allegations of price-fixing are true, they affect millions of Americans who purchase prescription drugs. The investigation should include the impact of such behavior on the Medicare and Medicaid programs, the Affordable Care Act, and the private health insurance market, as well as potential shortcomings in antitrust law and antitrust enforcement, and in the laws governing generic and biosimilar drug competition. All of these issues are within your Committees jurisdiction, and Congress has a responsibility to investigate these concerns and legislate if necessary.

³ Government Accountability Office, "Generic Drugs under Medicare Part D: Generic Drug Prices Declined Overall, but Some Had Extraordinary Price Increases," August 2016, <https://www.gao.gov/assets/680/679022.pdf>.

⁴ New York Times, "Rapid Price Increase from Some Generic Drugs Catch Users by Surprise," Elisabeth Rosenthal, July 8, 2014, <https://www.nytimes.com/2014/07/09/health/some-generic-drug-prices-are-soaring.html>.

⁵ New York Times, "Defiant, Generic Drug Maker Continues to Raise Prices," Gretchen Morgenson, April 14, 2017, <https://www.nytimes.com/2017/04/14/business/lannett-drug-price-hike-bedrosian.html>.

⁶ Marketplace, "Why pharma companies are bowing out of generics," Dan Gorenstein, August 02, 2017, <https://www.marketplace.org/2017/08/02/health-care/drug-prices-why-pharma-companies-are-bowing-out-generics>.

⁷ Washington Post, "The generic drug industry has brought huge cost savings. That may be changing." Carolyn Y. Johnson, August 1, 2017, https://www.washingtonpost.com/business/economy/the-generic-drug-industry-has-brought-huge-cost-savings-that-may-be-changing/2017/08/01/ee128d0a-68cf-11e7-8eb5-cbccc2e7bfbf_story.html.

⁸ Washington Post, "Investigation of generic 'cartel' expands to 300 drugs," Christopher Rowland, December 9, 2018, https://www.washingtonpost.com/business/economy/investigation-of-generic-cartel-expands-to-300-drugs/2018/12/09/fb900e80-f708-11e8-863c-9e2f864d47e7_story.html.

I am happy to assist in these investigations or hearings in any way possible, and look forward to working with you in a bipartisan way to reduce prescription drug costs.

Sincerely,



Elizabeth Warren
United States Senator

cc: The Honorable Ron Wyden, Ranking Member, Committee on Finance
The Honorable Patty Murray, Ranking Member, Committee on Health, Education, Labor,
and Pensions
The Honorable Dianne Feinstein, Ranking Member, Committee on the Judiciary