United States Senate

WASHINGTON, DC 20510

June 25, 2014

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20850

The Honorable William J. Baer
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Chairwoman Ramirez and Assistant Attorney General Baer:

We are concerned about a growing trend in the pharmaceutical industry whereby companies make acquisitions, eliminate drug pipelines, slash R&D budgets, and arbitrage location headquarters in order to lower effective tax rates. While these actions might generate short term stock price increases, they may endanger valuable drug research and thereby undermine an innovative pharmaceutical marketplace and the delivery of effective treatments to patients.

One such example is the proposed merger of Valeant Pharmaceuticals and Allergan, Inc. We ask that you carefully examine this merger and its potential negative impact on patients and an innovative pharmaceutical marketplace. Specifically, we believe the FTC should examine whether:

1. this merger will dramatically reduce research and development currently ongoing at Allergan;

2. other pharmaceutical companies will be able to compete against the combined entity in the market segments in which Allergan and Valeant currently compete; and,

3. the potential impact on patient drug prices if the merger is consummated.

Allergan currently allocates over $1 billion, 17% of its budget, to researching and developing new treatments for patients. This is well above the market average. At the same time, from what we have seen, Valeant's business model is predicated on acquisitions of other pharmaceutical companies, subsequent steps to sell off products, jettison the acquired company's pipeline, and significantly reduce or eliminate R&D spending.

As you know, under the *Horizontal Merger Guidelines*, an important consideration is whether a merger is "likely to diminish innovation competition by encouraging the merged firm to curtail its innovative efforts below the level that would prevail in the absence of the merger. That curtailment of innovation could take the form of . . . reduced incentive to initiate development of new products." It is not our place to judge the different business models, but we are concerned a merger of the two companies under such terms as have been made public would likely lead to a dramatic reduction in the combined entity's aggregate R&D expenditure as compared to the separate companies' current R&D expenditures.

We are also concerned about market concentration if the proposed deal is consummated. Valeant has publicly stated that it would sell off product lines that compete with existing Allergan products. The reality is that a combined entity would wield a significant marketing and sales advantage over the rest of the market. Allergan and Valeant currently make up a large portion of the market share in several market segments. Therefore, we are concerned it will be exceedingly difficult for other pharmaceutical companies to compete against the combined entity, and we are worried that this could lead to market monopolization.

Another significant concern is with regard to potential price increases on patients if the merger occurs. Valeant has a track record of above-average price increases for the products it currently markets. One pharmaceutical industry analyst noted that, "Valeant Pharmaceuticals has far and away had the most aggressive pricing strategy of any small to mid-size pharmaceutical company. Since the beginning of 2011, Valeant has boosted [prices] in excess of 20% on 1122 separate occasions."

Finally, we note that a principal basis for the merger is the opportunity for windfall tax savings. According to reports, if the deal goes through, Allergan will assume responsibility for the debt used to finance the transaction, thereby lowering its effective tax rate through interest deductions. Allergan's existing intellectual property will be moved to Valeant's Canadian headquarters, which Valeant established after inverting to Canada for tax purposes. There has been a recent spate of mergers in the pharmaceutical industry primarily for the purpose of incorporating abroad in order to lower effective tax rates. We ask that you consider broadly the effects on innovation in the U.S. pharmaceutical market from this proposed merger and others like it.

Taken together, we believe that the concerns listed above merit your careful consideration of this potential merger. We thank you for your time, and look forward to your response.

Sincerely,

Dianne Feinstein — Chris Coons

Senator Dianne Feinstein

Senator Christopher Coons

Senator Bob Casey

Senator Mazie Hirono

Senator Robert Menendez

Senator Brian Schatz

Senator Sheldon Whitehouse

DF:to