

Regulators Take Aim at Pharma Price Fixing

Amid stalled federal legislation to lower drug prices, policymakers and regulators take the fight against pharmaceutical collusion to the courts.



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The pandemic — and the ensuing attempts by pharma to use the global crisis as a reputational reset — haven't stopped a quieter but growing movement by state policymakers and federal regulators to quash alleged price collusion by drug companies to keep prices artificially high.

Amid a heated election season, economic downturn, spreading COVID-19 infections and stalled federal legislation to lower drug prices, the escalating crackdown in the courts on pharma's price fixing schemes has largely gone unnoticed. However, in the past year, there has been a growing effort by states and the feds to tackle anti-competitive practices in the pharmaceutical industry that have created unsustainably high drug prices. While the litigation may help spur momentum toward stronger and broader reforms, legal action alone cannot solve the problem — and substantive policy changes are necessary to address the market failures underpinning high drug prices.

Here's what we know:

What is Price Fixing?

Broadly defined, [price fixing](#) is a form of price collusion and considered to be illegal under federal antitrust law. Price fixing occurs when competitors agree to raise, fix, or maintain a price, thwarting competition.

This is especially troubling in the prescription drug market, where some of the world's most high-profile drug manufacturers have been accused of conspiring with each other to inflate prices.

In the past year, there has been heightened scrutiny of anticompetitive practices in the generic drugs market.

Generic drugs are lower-cost medicines that account for most of the prescription drugs dispensed in the United States. Generics do not use rebates and are typically low cost to patients. As more generics come to market, they tend to apply downward pressure on prices, helping to offset spikes in brand-name drug prices, but this price pressure can be undercut by other factors and distortions in the market (such as price fixing by generic manufacturers).

The antitrust scrutiny around brand name prescription drugs, on the other hand, has primarily centered around insulin drug makers. These companies are facing questions about whether the price increases for brand name insulins are a matter of shadow pricing or if the drug makers are colluding.

How Are Regulators Responding?

The generic market has seen a substantial amount of antitrust scrutiny and legal action in 2020 alone. In March, generic drug maker [Sandoz](#), agreed to pay a \$195 million penalty to settle charges that it rigged bids and fixed prices for generic drugs, and in May, a leading generic manufacturer [Apotex](#), settled with the U.S. Department of Justice on allegations of price fixing on a popular cholesterol drug, agreeing to pay a \$24.1 million fine.

As part of the settlement agreements, both companies agreed to cooperate with a broader investigation into generic drug prices and price fixing.

In June, all 50 states filed a 606-page lawsuit accusing more than two dozen drug makers — including Pfizer, Mylan, Teva Pharmaceuticals, and Sandoz — of conspiring to fix prices for generic medicines. The companies allegedly agreed to divide up the market between themselves rather than competing on price, acting as [“the largest domestic corporate cartel in our nation’s history,”](#) according to Connecticut Attorney General William Tong.

Many of those companies have also been indicted as part of a long-running federal investigation into generic drug price-fixing.

The latest federal target is Teva Pharmaceuticals, one of the world's largest manufacturer of generic drugs, which was charged in August for coordinating with several other companies to set prices for medicines treating a wide range of conditions, from high cholesterol to arthritis to brain cancer. The announcement of an investigation came after Teva [donated six million doses of hydroxychloroquine](#) to fight

Covid-19 earlier this year, reportedly hoping to [curry favor](#) with the Justice Department.

The action comes on the heels of a [lawsuit](#), still winding its way through the courts, against three major insulin makers (Novo Nordisk, Eli Lilly & Co. and Sanofi) accused of conspiring to hike the prices of their products. A separate [suit](#), filed in Harris County, accused the same defendants — as well as four of the nation’s largest pharmaceutical benefit managers — of price fixing and violating Texas’s antitrust laws by artificially raising prices and engaging in a quid pro quo with PBMs to gain formulary placement and in return, make “[secret payments](#)” to PBMs using rebates, fees and discounts.

Finally, in 2019, the U.S. House Oversight and Government Reform Committee [launched](#) a sweeping investigation of prescription drug prices that included 25 drugs and several drug makers. In recent weeks, the Committee has unveiled the [first of its findings](#) from these investigations with the release of a set of reports and two hearings with pharma executives.

The initial reports did not identify collusion, but did note several other anticompetitive practices — such as the [manipulation of the U.S. patent system](#) — underway at the some of the same companies accused of price fixing, and the committee’s investigation continues into Humalog, Novolog, Victoza, and Lantus with reports and findings still to come.

Why We’re Paying Attention

Without government intervention, drug prices are likely to only get more expensive in the coming years. A [study](#) published earlier this year in the journal Health Affairs projected that drug prices will rise faster than other major health care goods and services over the next decade — as much as 62 percent.

America’s drug spending as a whole grew by 29 percent from 2011 to 2017, in part because brand-name drugs keep getting more expensive, increasing 8.5 percent every year from 2010 to 2015. One in four Americans report that they or a family member did not fill a prescription in the past year because of the cost.

However, despite bipartisan agreement, federal legislation to meaningfully lower drug prices has been stymied by election year politics, a global health crisis and the subsequent economic fallout. With several bills stalled in Congress, states and federal regulators are pressing forward with legal action aimed at restoring competition to the pharmaceutical market.

What’s Next

The cost of health care has emerged as one of the biggest political issues in the election, with both parties promising to bring down prices.

The pharmaceutical industry has managed to stave off legislation that would cut into its supersized profits, but these legal challenges thrust pharma’s anticompetitive behavior into the spotlight and make the case for stronger action in 2021.

While the litigation is noteworthy and helps advance progress toward addressing

behaviors that elevate drug prices, the U.S. needs comprehensive reform to rein in drug prices across the industry — and that sort of policy change would require Congressional action.

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