

United States Senate

WASHINGTON, DC 20510

June 20, 2006

Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Majoras,

I am writing today regarding the potentially anti-competitive behavior of Merck, a pharmaceutical company that appears to be colluding with health insurance plans to manipulate pricing in an effort to keep new generic drug competitors for its blockbuster drug *Zocor* off the market. *Zocor* cost American consumers \$4.4 billion in 2005, and the availability this week of a new and more affordable alternative to the drug will bring relief to millions of Americans, but only if the market is allowed to work freely. I urge you to launch an immediate investigation into the activities of Merck and the health insurance plans with which it is working.

Zocor is a cholesterol-cutting drug which is proven to reduce coronary heart disease events, such as heart attack and angina, and deaths due to heart attack. The Food and Drug Administration approved the generic alternative and therapeutic equivalent to *Zocor* earlier this year, and it is set to hit the shelves this Friday, June 23rd. Generic drugs are proven to dramatically decrease the cost of prescription drugs over time, with the first generic competitor typically being offered at 70% of the cost of the brand drug, and each new competitor lowering the market price still further.

In order to protect its market share of *Zocor* and prevent the loss of billions of dollars of revenue, Merck is working with insurance companies to raise the consumer's share of the cost of the new generic competitor. Specifically, Merck is offering to provide rebates to insurance companies in exchange for inverting co-pays to favor the dispensing of the brand over the generic. The deals would most likely last for only 180 days and would be intentionally designed to interfere with the 180-day exclusivity period that the first generic drug on the market relies on to recoup the costs of ensuring timely patent challenges and market entry. Once the 180 day period is over, it is likely that the arrangement will change. By then, however, the harm to the generic from losing its 180-day exclusivity period would already be done. I have learned that at least one major health insurance plan, United Health Group, has already accepted the terms of such an arrangement.

I find this practice highly disturbing and anti-competitive. The availability of generic drugs have made life-saving pharmaceuticals more affordable and accessible to all Americans, and manipulation of the consumer price of these drugs to preserve the market share of the more expensive product is unconscionable. Time is of the essence given the imminence of the generic drug's entrance into the market, and I urge you to begin an investigation of these anti-competitive behaviors expeditiously. Thank you for your consideration, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Chuck Schumer". The signature is written in a cursive, flowing style.

Charles E. Schumer
United States Senator