

Prepared Statement of Senator David Vitter of Louisiana
Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Hearing on the Pay-for-Delay Deals: Limiting Competition and Costing Consumers
Tuesday, July 23, 2013

Vitter Statement at Pay-for-Delay Hearing

Thank you Madame Chair for holding this important hearing on anti-competitive pay-for-delay deals.

Over the last several years, we have seen a huge increase in anti-competitive pay-for-delay deals. Brand-name drugmakers are paying off, or “settling,” with a first-to-file generic drugmaker, often restricting generic market entry for years in the future. Simply put, this is delaying significant health care savings to consumers. As prescription drug prices have exploded and put real pressure and a real burden on many Americans’ budgets, particularly senior citizens, these deals are counterproductive in making medications more affordable and are clearly hurting consumers by delaying cheaper generic drugs to market. This business practice is unfortunately increasingly becoming a prevailing model that is a win-win for brand-name and generic manufacturers at the expense of patients and taxpayers. Additionally, pay-for-delay patent settlements are delaying timely public access to generic drugs, which costs consumers and taxpayers billions of dollars annually.

The Federal Trade Commission (FTC) compiled data revealing “the continued trends of record numbers of brands and generics resolving patent litigation prior to a final court decision” and “significant numbers of such settlements potentially involving pay-for-delay.” In 2004, the FTC identified zero potential pay-for-delay deals. In 2006, they identified 14 potential deals, and in 2011 they identified 28 -- doubling in just five years. That is “28 final settlements (that) contain both compensation to the generic manufacturer and a restriction on the generic manufacturer’s ability to market its product.” The FTC noted that of these 28 potential pay-for-delay settlements, 25 of them involve branded pharmaceuticals with combined annual U.S. sales of \$9 billion.

The pay-for-delay issue is a problem that must be solved due to its significant impact on the rising cost of health care. Congress must focus on reforming the underlying regulatory problems that stifle competition and unnecessarily raise the costs of health care for consumers. The time is right for Congress to act to root out other anticompetitive practices and enact legislation to solve the pay-for-delay problem once and for all. I would like to thank Senators Grassley and Franken for joining me this year by cosponsoring my amendment to the budget to address this problem. I look forward to continuing to work with my colleagues to finding solutions to lower prescription drug prices for Americans.