



RESOLVED: shareholders of Merck & Co, Inc. (“Merck”) ask the Board of Directors to report to shareholders, at reasonable expense and omitting confidential and proprietary information, on whether and how the direct and indirect receipt of public financial support for development and manufacture of a therapeutic for COVID-19 is being, or will be, taken into account when making decisions that affect access to such products, such as sharing intellectual property through voluntary licenses or setting prices.

SUPPORTING STATEMENT

Merck’s antiviral medicine, molnupiravir, is approved to treat COVID-19.¹ Molnupiravir was developed at Emory University using up to \$35 million in US government funding,² and the government maintains “march-in” rights under the Bayh-Dole Act to grant patent licenses to other producers.³ Emory licensed molnupiravir to Ridgeback in March 2020, and Ridgeback entered into a collaboration with Merck for clinical development and manufacturing.⁴

Merck promised to make the medicine widely available and states that “global access has been a priority.”⁵ However, Merck has not disclosed how public support factors into decisions that affect access. Setting inaccessible prices could jeopardize the company’s reputation, invite increased regulation and oversight, and ultimately harm investor returns.

This Proposal addresses this risk by asking Merck to explain whether and how public contributions to its products affect how Merck sets prices or the scope of voluntary licenses.

While Merck has signed bilateral licensing agreements and an agreement with the Medicines Patent Pool, those only cover an estimated half of the world’s population and exclude most upper-middle-income developing countries.⁶ Merck applies a tiered pricing strategy for countries excluded from the voluntary license, but has not disclosed those prices or how the company determines prices that reflect a country’s “ability to finance health care.”⁷ Tiered pricing typically results in unaffordable prices, especially for middle-income countries.⁸

Merck’s domestic pricing strategy fails to reflect public support, and the gap between cost and

¹ <https://www.who.int/publications/i/item/WHO-2019-nCoV-therapeutics-2022.4>

² <https://www.wabe.org/emory-researchers-think-they-have-a-drug-to-fight-the-new-coronavirus/>;
<https://www.washingtonpost.com/business/2020/06/11/coronavirus-drug-ridgeback-biotherapeutics/>;
<https://www.keionline.org/36648>

³ <https://www.keionline.org/36648>

⁴ <https://www.businesswire.com/news/home/20200526005229/en/>

⁵ <https://www.merck.com/news/merck-and-ridgeback-statement-on-positive-fda-advisory-committee-vote-for-investigational-oral-antiviral-molnupiravir-for-treatment-of-mild-to-moderate-covid-19-in-high-risk-adults/>

⁶ <https://msfaccess.org/license-between-merck-and-medicines-patent-pool-global-production-promising-new-covid-19-drug>

⁷ <https://www.merck.com/wp-content/uploads/sites/5/2022/08/MRK-ESG-report-21-22.pdf>

⁸ https://www.researchgate.net/publication/51712884_A_win-win_solution_A_critical_analysis_of_tiered_pricing_to_improve_access_to_medicines_in_developing_countries



price exposes it to reputational risk: molnupiravir production costs an estimated \$20 per course,⁹ while the company charges approximately \$710 in the US, over 35 times the cost of production. For the 3.1 million doses the US government purchased,¹⁰ that represents an estimated markup of over \$2.1 billion on a treatment developed with public funding. Meanwhile the government is struggling to fund America's COVID-19 response;¹¹ disparities in access are expected to worsen as a result.¹² Merck does not explain how it addresses the relationship between public investment in a product and its pricing and licensing strategy, even in the context of a pandemic.¹³ If governments cannot trust Merck to ensure access to this publicly funded treatment, governments may set access policies. Policymakers are already scrutinizing how public funding relates to pricing and access strategies, and public funding is already a factor in how the US government will negotiate drug prices.¹⁴

⁹ <https://scholar.harvard.edu/melissabarber/publications/estimated-cost-based-generic-prices-molnupiravir-treatment-covid-19>

¹⁰ <https://www.merck.com/news/merck-and-ridgeback-announce-u-s-government-to-purchase-1-4-million-additional-courses-of-molnupiravir-an-investigational-oral-antiviral-medicine-for-the-treatment-of-mild-to-moderate-covid-19-in-a/>

¹¹ <https://www.npr.org/2022/09/02/1120746237/white-house-ukraine-covid-19-monkeypox-supplemental-funding>

¹² See, e.g.,: <https://www.healthcarediver.com/news/Medicaid-lose-coverage-hhs-aspe-public-health-emergency/630266/>; <https://www.nytimes.com/2022/08/28/health/covid-vaccines-money.html>; <https://fortune.com/2022/08/30/covid-vaccine-treatment-paxlovid-pay-for-cost-free-insurance/>;

¹³ <https://www.nytimes.com/2021/10/27/health/covid-pill-access-molnupiravir.html>

¹⁴ <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DRUG%20PRICING%20REPORT%20WIT%20H%20APPENDIX%20v3.pdf>; <https://aspe.hhs.gov/sites/default/files/private/aspe-files/263451/2020-drug-pricing-report-congress-final.pdf>; <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>