Pharmaceuticals

Pharmaceutical companies are recurrent antitrust offenders. A lack of competition in the pharmaceutical industry has led to higher prices and has stifled innovation that otherwise would benefit consumers. Some of the antitrust issues are typical of the ones you’ve seen so far. But pharmaceutical companies are subject to significant regulation—though usually not price regulation—and are distinctively reliant on intellectual property. This combination has created antitrust issues of its own, as you will learn when reading about the “pay for delay” cases in this module.

**Reading**

**Required reading**


*New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 653 (2d Cir. 2015)


Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. Political Economy, 649–702 (2021) (read the Introduction, Table 2, and Figure 5)

*DOJ Antitrust Division Spring Update 2021, Generic Drugs Investigation Targets Anticompetitive Schemes*


*FTC Amicus Brief, Mylan v. Celgene, June 17, 2014*, (on the restriction of generic entry through the use of Risk Evaluation and Mitigation Strategies (REMs))

**Recommended reading**

Congressional Research Service, The CREATEES Act of 2019 and Lowering Drug Prices: Legal Background & Overview

Aaron S. Edlin, C. Scott Hemphill, Herbert Hovenkamp, and Carl Shapiro, Activating Actavis, Antitrust Mag. 16 (2013)

**Background reading**


*AbbVie Wins First Round in Humira Antitrust Lawsuit, (Jan. 6, 2021)*