

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

FTC v. Actavis, Inc., 570 U.S. 136 (2013) (read 1–9, 14–20 of the slip opinion)

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

Pfizer Inc. v. Johnson & Johnson, 333 F. Supp. 3d 494 (E.D. Pa. 2018) (read II and III.B)

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](#)

Fed. Trade Comm'n v. Shire ViroPharma, Inc., 917 F.3d 147 (3d Cir. 2019) (read Part I on the use of repeated citizen's petitions to delay generic entry)

[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 CREATES 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

Abbott Lab'ys v. Teva Pharms. USA, Inc., 432 F. Supp. 2d 408, 420 (D. Del. 2006)

Carrier, Michael A, & Shadowen, Steve D. (2016). Product hopping: A new framework. *The Notre Dame Law Review*, 92(1), 167.

[AbbVie Wins First Round in Humira Antitrust Lawsuit, \(Jan. 6, 2021\)](#)