Drug makers pay to keep generics off the market

by the St. Louis Post-Dispatch

Competition makes some companies trim costs, others cut prices. Then there's the strategy allegedly adopted by Solvay Pharmaceuticals: Pay off your competitors.

Solvay makes a prescription drug called AndroGel, a synthetic form of testosterone. It's used by men with cancer, HIV or low hormone levels because of aging. Solvay got a patent on its version in 2003. AndroGel brings in about $400 million a year, which makes it the company's second-highest grossing drug.

Three other companies recently won FDA approval to market generic versions of the drug. So Solvay's lawyers approached them and offered a deal. Solvay paid them a cut of its profit, for which they agreed not to market their versions until 2015.

It's a good deal for Solvay and a good deal for the generic drug manufacturers. But it's a lousy deal for consumers, who wind up paying much higher prices. Generic drugs generally cost 50 percent to 80 percent less than brand-name medications but contain the same active ingredient.

In the drug business, they call this ploy "pay for delay," or more formally, an "exclusion payment settlement." Solvay didn't invent the trick â€” it's a version of a shell game drug companies have been playing for decades, despite congressional efforts to stop it.

The Federal Trade Commission last week filed suit against Solvay and the three generic drug makers â€” Watson Pharmaceuticals, Par Pharmaceuticals and Paddock Laboratories. It claims the payments violate federal antitrust laws, as well as provisions of a 1984 law designed to speed generics to the market.

But it's hardly an open-and-shut case. In recent years, the FTC twice has appealed similar cases all the way to the U.S. Supreme Court. Both times, the court refused to hear the cases.

In 2006, a federal appeals court allowed drug maker Schering-Plough to pay $90 million to two generic drug manufacturers. In return, they agreed not to market generic versions of Schering drugs.

Since then, FTC officials estimate that nearly half of all legal agreements between brand-name and generic drug makers have involved payments to the manufacturer of generics in return for an agreement to stay out of the market.

One day after the Solvay case was filed, a group of U.S. senators introduced legislation that would specifically outlaw payments to keep generic drugs off the market. Among the sponsors is Sen. Dick Durbin, D-Ill.

Similar bills have been introduced before, but they failed to make headway. That's not surprising, given the pharmaceutical industry's extraordinary generosity to politicians seeking office. Since the 2000 election cycle, Big Pharma has given $121.5 million to candidates for federal office, $18.3 million in 2008 alone.

It's time for Congress to stand up to drug makers trying unfairly to extend their patients. It quickly should approve the bill co-sponsored by. Durbin and end the pay-to-delay game once and for all.

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