

how the relevant market would be defined to determine market dominance of a biopharmaceutical originator in competition with biogenerics.²⁸⁶

5.2. Broader Business Models: Scaling and Convergence

As an alternative to more focus, some players pursue transformations which rather broaden their activities:

5.2.1. Horizontal Scalability

Predominantly US-based originator companies, such as *Pfizer*, have continued to strengthen their fully integrated business models through large acquisitions of comparable firms (see chapter 3.1.2). Strengthening customer relationships, reinforcing product brands and continuing to set sights on blockbuster drugs targeting the primary-care segment can be regarded as a ‘volume player’ model: An attempt to continue the traditional approach with a larger scale and improved capabilities rather than a business model shift.²⁸⁷

In the competing generic segment, similarities can be observed: Recent tenders by hospitals and rebate negotiations of big health insurance companies have made generics’ profit margins shrink further: In Germany for example, sometimes up to approximately 50 generic companies compete for the same molecule in one tender bid.²⁸⁸ As a consequence, major generic players, such as Israel’s *Teva Pharmaceuticals*, have begun to aggressively grow their business via acquisitions to benefit from the advantages of critical mass, such as increased bargaining power vis-à-vis large customer groups as well as cost degression in manufacturing and logistics. This has led to a substantial consolidation of the segment: While the global market

286 The AstraZeneca approach in defining the relevant market relied on the ATC structure, which is obviously not possible for large biological molecules.

287 Compare supra note 281 at p. 3 with supra note 10 at p.35. The sector inquiry regards those acquisitions as a move towards biotechnology, whereas the acquired targets have mainly been similar traditional originator companies with some focus on biopharmaceutical R&D pipelines, as can be seen based on the announced efficiency gains through synergies.

288 See supra note 78 at p. 5.

share of the four leading generic companies was approximately 35% in 1997, it increased to over 60% ten years later.²⁸⁹

The strong growth of individual generic players may – in extreme cases – lead to a reverse scenario in terms of scale and market dominance: While a fragmented number of small research-focused entities develop innovation, large multinational generic powerhouses commercially exploit established products. Under such a situation, an originator's market dominance according to Art. 102 TFEU may be more difficult to satisfy, which would allow greater freedom to maneuver in the marketplace. In contrast, some of the discussed generic defense practices may fire back at originators in such a scenario: As building, clearing and litigating patent portfolios cost substantial money and resources, large generic players may in the future be in the powerful position to use similar weapons against smaller research-driven firms.

5.2.2. *Business Model Convergence*

An originator growing in scale may maintain its traditional business model as discussed above, but may also modify it by participating in the generic segment itself. Companies such as e.g. *Sanofi-Aventis*, have substantially invested into building own global generic divisions to participate in the attractive future growth rates of that business, while accepting a dilution of their ROIC. Moreover, access to and penetration of attractive emerging markets may be facilitated by lower-priced generic products.²⁹⁰ Already in 2007, originator *Novartis*' own generic division *Sandoz* was the second largest global seller of generic pharmaceuticals with over 7 billion US\$ in revenues.²⁹¹ Future acquisitions of generics by originators may therefore become a tough challenge for EU competition law's merger control.²⁹²

Also originator companies without own dedicated generic divisions often rely more on the profit contribution of established products than in the past.

289 See supra note 105.

290 See supra note 10 at p.34 as well as Hanspeter Spek, Executive Vice President Pharmaceutical Operations, Sanofi-Aventis, Presentation at the Pharmaceuticals Emerging Markets Conference (May 6, 2009).

291 See Andreas Rummelt, Chief Executive Officer, Sandoz, Presentation at the Merrill Lynch Generics Conference: Expanding the Boundaries of Generics (Dec. 1, 2008).

292 See supra note 182.