

**CONCENTRATIONS IN THE EU  
PHARMACEUTICAL SECTOR  
- AN ANALYSIS OF COUNCIL REGULATION NO  
139/2004\***

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*\*Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (OJ L 24,  
29.1.2004, p. 1)*

## WHY IMPORTANT?

- Effective competition

- *"Effective competition brings benefits to consumers, such as low prices, high quality products, a wide selection of goods and services, and innovation. Through its control of mergers, the Commission prevents mergers that would be likely to deprive customers of these benefits by significantly increasing the market power of firms. By 'increased market power' is meant the ability of one or more firms to profitably increase prices, reduce output, choice or quality of goods and services, diminish innovation, or otherwise influence parameters of competition." (The Horizontal Merger Guidelines, paragraph 8)*

- Sector-specific regulation

# ANTI-COMPETITIVE STRATEGIES IN THE PHARMACEUTICAL SECTOR

European Commission Sector Inquiry (2009)

Antitrust: AstraZeneca, (Lundbeck)

Aspen Pharma\*

Italian Competition authority: "After purchasing the antitumor drug package from GlaxoSmithKline - whose patent expired decades ago - Aspen started negotiations with the Italian Medicines Agency [...] with the sole aim to obtain a high increase in prices, even in the absence of any necessary economic justifications. The negotiation strategy adopted by Aspen was so aggressive as to reach the credible threat of interrupting the direct supply of the drugs to the Italian market. [...]"

Through this negotiation strategy, Aspen obtained an extremely high increase in prices, ranging between 300% and 1500% of the initial prices."

\*European Commission - Press release, *Antitrust: Commission opens formal investigation into Aspen Pharma's pricing practices for cancer medicines*, 15 May 2017, available at: [http://europa.eu/rapid/press-release\\_IP-17-1323\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1323_en.htm)

# ANTI-COMPETITIVE STRATEGIES IN THE PHARMACEUTICAL SECTOR

## American antitrust: *FTC v. Lundbeck*\*

Lundbeck acquired two drugs for a heart deficiency in premature babies (PDA) raised prices by 1300%

- Definition of the relevant market for pharmaceutical products

*FTC v. Lundbeck, Inc.*, 650 F.3d 1236 (8th Cir. 2011)

# RESEARCH AREA

EU Merger Control

Legal dogmatic method

Economics (industrial organisation)

# THE DISSERTATION

## 1 Introduction

### 2. "Overview of the main points" (Basic industry conditions, the design of merger rules, and the market power concept)

- The basic industry conditions in the EU pharmaceutical sector
- The design of merger control rules
- Market power

### 3. Defining the relevant market for pharmaceutical products

- The Anatomical Therapeutic Chemical Classification (ATC), the molecule as an alternative starting point
- Price-based (quantitative) assessments  
(- Products sold "Over-the-Counter")

## 4. Substantive assessment of mergers in the pharmaceutical sector

- **Structural analysis:** Market shares and concentration levels
- **Product and brand analysis:** Whether the merging firms are close competitors
- **Customer analysis:** The possibility for customers to switch supplier and exert buyer power
- **Competitor analysis:** Likelihood of remaining competitors to increase supply if prices increase
- **Behaviourial analysis:** The ability and incentive for the new entity to foreclose competitors
- **Analysis of the merger partner** (target)
- **Entry analysis** and the strength of potential competition
- **Efficiencies.** Analysis of the new entity's ability and incentive to provide consumer benefits

## 5. Remedies

## 6. Final discussion

# THE DISSERTATION

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# THE DISSERTATION

5. Remedies

6. Conclusion

PRELIMINARY DATE FOR THE DEFENCE:  
1 JUNE 2018, UPPSALA

WELCOME!

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