

Supreme Court Rules That Pay-For-Delay Settlements Subject To Antitrust Challenges

June 24, 2013

Antitrust challenges to so-called “pay-for-delay” settlements in drug patent suits are allowed under the U.S. Supreme Court’s recent decision in *Federal Trade Commission v. Actavis, Inc.* In a “pay-for-delay” settlement, a pharmaceutical company that produces a brand name drug will pay a generic drug manufacturer to delay release of a generic drug that would compete with the brand name drug.

Several circuits had previously held that these Hatch-Waxman Act settlements were generally legal as long as the settlement did not exceed the subject matter or term of the patent. However, in a 5-3 decision, the justices sided with the FTC, noting that such deals have the “potential for genuine adverse effects on competition” and can end up costing consumers millions of dollars in higher drug prices.

The new ruling requires courts to review antitrust challenges to the settlements on a case-by-case basis, measuring the benefits of patent settlements against the potential harm to competition. The burden is on the party challenging the settlement to prove that the harm outweighs the benefit. The court suggested that an excessively large payout may be evidence of a weak patent and an anti-competitive intent.

>> [Click here to read the entire FTC v. Actavis Inc. opinion.](#)