EDITORIAL

THE BALANCING ACT

Regulatory changes in the United States signal good times ahead for the producers of generic drugs. Meanwhile, more facts are needed to ensure that the incentives for innovation remain.

These are heady days for generic drug manufacturers. With the next few years offering a bonanza of patent expirations for many high-rolling products — from Novartis' hypercalcemia drug pamidronate disodium (Aredia) to Merck's simvastatin (Zocor), both of which will come off-patent in 2005 — generic companies will be able to select from a lexicon of candidates to pursue. Meanwhile, governments and health-care providers worldwide are pushing for generic substitution of prescription drugs wherever possible, leading to a rapid expansion of the market for generic drugs. A further sign of the good times ahead is the nearly 35% increase in funding for the FDA's generic drug division announced in the US Administration's budget for 2004. And the icing on the cake is the benefit to generic manufacturers that will ensue from the passing of amendments to the Hatch–Waxman Act by the US Senate earlier this summer.

The Hatch–Waxman Act, correctly known as the Drug Price Competition and Patent Term Restoration Act, was passed in 1984 to try to balance the dual aims of promoting generics and maintaining the financial incentive for pharmaceutical companies to develop innovative medicines. It allowed companies to obtain marketing approval from the FDA for generic compounds upon proving bioequivalence with the brand drug, via an Abbreviated New Drug Application (ANDA). To encourage the development of generic competition, the Act provided for a 180-day period of exclusivity for the first company to file an ANDA and gain approval of their generic drug. However, under Hatch–Waxman, the owner of the brand drug can claim a 30-month stay on the generic competitor if they file a newly issued patent with the FDA after an ANDA has been filed. Companies discovered that they could protect the patent status of their brand drugs by filing multiple patents and therefore claiming multiple 30-month stays, and it is this loophole that the new "Greater access to affordable pharmaceuticals act", also known as the Gregg–Schumer bill, will close for good.

The loopholes haven't actually been used that frequently, FDA records showing that only 3.8% of active ANDAs have been subject to multiple 30-month stays. However, some of these have been for big-ticket items, such as Pfizer's gabapentin (Neurontin) and GlaxoSmithKline's paroxetine hydrochloride (Paxil). From now on, the limit is set at one 30-month stay of generic competition. The bill also limits the types of patent that companies will be allowed to file to obtain a 30-month stay, following criticism of cases where companies had used tenuously related patents to fend off impending competition. Bristol-Myers Squibb, for instance, was able to keep the generic producer Mylan at bay for almost 6 months by filing a patent for a metabolite of its anti-anxiety drug buspirone (BuSpar). Under the new rules, stays for patents referring to drug metabolites, intermediate forms of a drug or drug packaging are ruled out.

These moves to make generic alternatives more rapidly available are estimated to save consumers in the United States US $35 billion over the next ten years, and will be especially welcome news for the 65 million Americans thought to be without insurance for prescription drugs, let alone the billions in need of cheaper drugs worldwide. Some will argue that the measures will have a downside, leading to a concomitant decrease in the incentive for pharmaceutical companies to create innovative new drugs. Although an old argument that the industry has long used in defence of patent protection, familiarity shouldn't necessarily breed contempt. With marketing considerations increasingly driving drug development decisions, improving the picture for generics may, in some borderline cases, tip the balance further against the relatively risky business of exploring new territory. To ensure that the balance between the need for low-cost medicines and new therapies is maintained across the whole spectrum of diseases, it is essential to identify which these borderline cases are and take appropriate action to encourage drug discovery. And in order to do that, we need more data on just what goes into making a drug in each therapeutic class. This sort of data is exemplified in Janice Reichert's thorough survey of the drug development times for different therapeutic areas on p 695 of this issue. Collecting many more such measurements will be an essential corollary to promoting increased competition into the drug industry.

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