Competition Issues for Follow-on Biologics: Naming Conventions and State Substitution Laws

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AMCP's Webinar on Biosimilars
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Disclaimer

- The views I express are mine alone, and do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner

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Personal History at FTC

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Overview

- FTC: Purpose, Authority, and Perspective
- 2009 FTC Report on Likely Competitive Effects of Follow-on Biologics (FOBs)
- 2010-2013: BPCIA and Status of FOBs in US and Ex-US
- 2014 Workshop: Likely Competitive Effects of Naming Choices and Proposed State Laws

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FTC Purpose, Authority and Perspective: Protect Competition, Which Benefits Consumers

- At the time Hatch-Waxman was passed, some expressed concern that generic drugs would deplete innovator firms' revenues and thus deter the development of new innovator drugs
- 1976-1979 FTC Report on Generic Drugs
- Four economists predicted potential adverse effect while the third predicted the effects would be "non-negligible"

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Competition Benefits Consumers

- FTC's 2014 workshop
- Prof. Aaron Kesselheim (Harvard/Brigham and Women's Hospital in Boston)-
- FDA's approvals of originator small-molecule drugs did not diminish after HWA, but even increased to reach a peak in the mid-1990's, after which approval rates went back to the historical mean.

- "the evidence suggests that "[the] end of market exclusivity drives innovator companies to develop new, genuinely improved products that will contribute to the next generation of therapies and medical progress."

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Benefits of Competition in Pharma Markets

- Spurs Innovation
- Increases Consumer Access by Lowering Prices
- Generic drug competition results: $1 trillion in savings over 10 years
- Projected CBO projects $35 billion from FOB competition over 10 years
- 30% increase in access in EU in filgrastim markets over last few years

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FTC: Authority and Examples

- Evaluate merger filings under Hart-Scott-Rodino Act
  - FTC has reviewed pharmaceutical and biotech mergers/ acquisitions since 1974
- Litigate:
  - Mergers
  - Pay-for-Delay Patent Settlement Agreements
- Reports;
  - 1979 Generic Drug Report
  - Generic Drug Entry Prior to Patent Expiration (July 2002): led to legislation that requires filing certain patent settlement agreements for review by the FTC and Justice Department

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FTC Perspective: Patient Access Is About Patient Health

- FDA: Prevent patient harm by conservative approach to approval of biosimilars and interchangeables
- The risk to patient health does not run in just one direction, however:
  - Patients will be harmed if they cannot afford to pay for treatment
  - Recent study: patients' compliance with their treatment regimen falls off as patient cost-sharing for that treatment rises

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Biologics: US spending > $ on Biologics

- Biologics: Per patient/Per year $10,000 to $250,000
- Biologics account for ~25% of the $320 Bn in US spent on pharmaceuticals annually
- Annual growth 15-20%
- New, more expensive biologics and drugs (Specialty) are putting unprecedented pressure on health care spending;
- Impact on federal private, and state spending.

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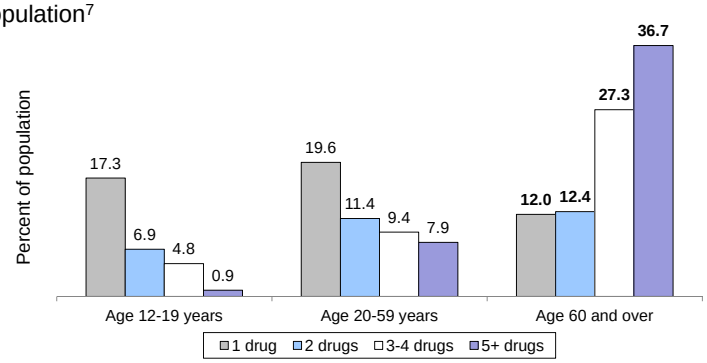
Total Aetna Drug Spend 2013

= 10% of TOTAL Aetna Health Care Spend

Older adults are more likely to use biologics

- Older adults use more prescription drugs than any other segment of the population[7]



- Biologics are often used to treat conditions that are more commonly found in older adults (e.g., multiple sclerosis, cancer, rheumatoid arthritis)

Medicare beneficiaries are not healthy or wealthy

- **Many beneficiaries live on modest incomes.** The median income among Medicare beneficiaries is roughly $22,500[8]
- **Many beneficiaries have limited financial resources.** More than one in four Medicare beneficiaries have less than $10,000 in savings[9]
- **Many beneficiaries are have multiple chronic conditions.** 68 percent of Medicare beneficiaries are being treated for at least two concurrent chronic illnesses[10]

Medicare Part B can lead to high cost-sharing

- Eight of the ten highest-expenditure Medicare Part B drugs in 2010 were biologics[11]

Drug Name	Indication	Spending
Epogen, Procrit	Anemia (ESRD)	$2.0B
Rituxan	Cancer, rheumatoid arthritis	$1.3B
Lucentis	Wet AMD	$1.2B
Avastin	Cancer, wet AMD	$1.1B
Remicade	Autoimmune disorders	$0.9B
Neulasta	Infection prevention	$0.9B
Aranesp	Anemia	$0.5B
Epogen/Procrit	Anemia (non-ESRD)	$0.4B

- Part B beneficiaries are responsible for 20% of their prescription drug costs
  - Part B does not cap out-of-pocket spending

FTC Perspective

- Competition Will Give Consumers Access to Safe, Effective and Affordable Medicines
- Two Ways to Provide Access:
  - Other countries: Price Regulation, Government Negotiation of Prices
  - U.S.: Competition
- In U.S., Many Factors Impede the Development of Competition from FOBs

FTC Chairwoman Edith Ramirez, Opening Remarks at Feb 4, 2014 workshop

"[T]he ultimate goal, of course, is to develop policies that protect patient health and safety, but to do so without unnecessarily chilling competition and deterring investment in follow-on biologics."

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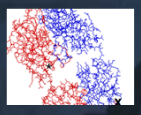
FTC 2008 Workshop on FOBs

- Purpose: Understand likely dynamics of future competition from FOBs
- Understand:Biologics different from small-molecule drugs
  - Folded, 3-dimensional proteins
  - More complex and costly to manufacture
  - Identical biologics not possible – even from one batch to another for same manufacturer in same facility



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2009 FTC Report: Differences between FOBs and Small-Molecule Drugs

- FOBs Have Higher Entry and Higher Fixed Costs than Generic Drugs
  - Generics Drugs:3-5 years, $1 and $5 million
  - Clinical trials $100-200M (Skip Ph 2, slightly smaller cohorts),
  - Still will take 5-8 years for biosimilar Commercial scale biologics manufacturing and sterile fill capacity $250 M

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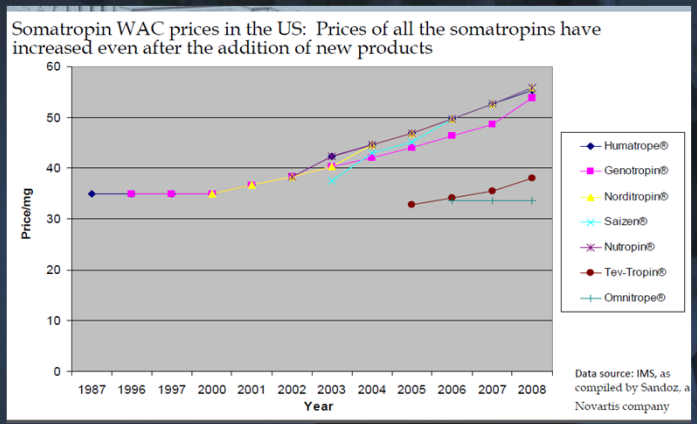
FOB Competition Will Likely to Resemble Brand-to-Brand Competition rather than the Brand-Generic Competition Example, Somatropin



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2009 FTC Report Predicted FOB Market Dynamics:

- FOB entry likely in markets with > $250M annual sales
- 2-3 entrants per reference biologic product; 10-30% price discounts likely
- If products don't have same name, FOB have less market penetration
- Reference product likely to retain 70-90% market share, match discounts

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Congress Passed Biologics Price Competition and Innovation Act (BPCIA)

- Passed in 2010
- Sought similar balance as H-W Act
- BPCIA established:
  - 12.5 years data exclusivity for biologic
    - FTC opposed as unnecessary to recoup R&D costs
  - abbreviated pathway for FDA approval:
    - biosimilars
    - interchangeable biologics
      - Automatic substitution OK unless DAW
    - Patent resolution mechanism
      - query whether it speeds up, or even leads to, resolution of patent issues

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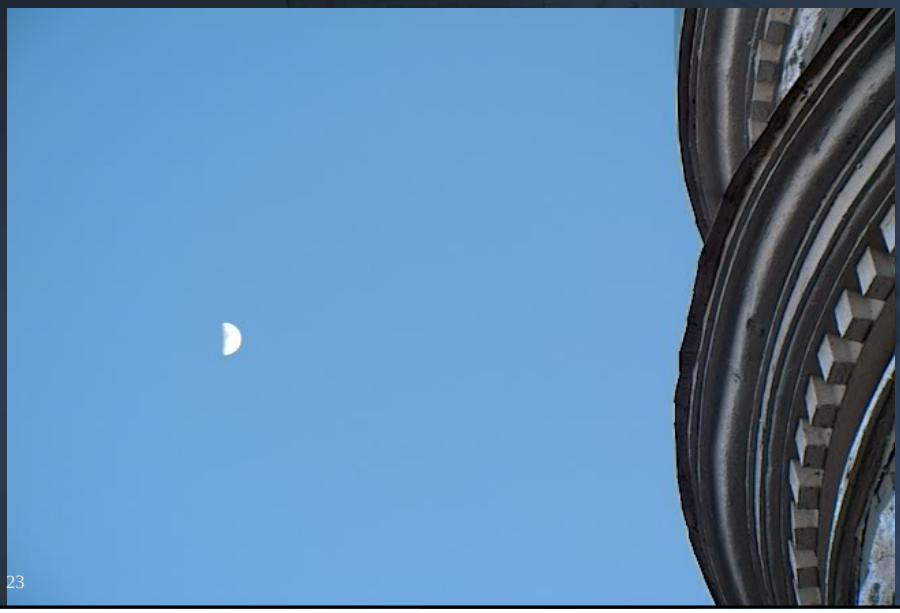
4 Years Later…….



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Follow-On Biologic Competition

- Science Has Advanced:
  - Kesselheim and Shacter: Analytics now permit deeper analysis, and better identification, of biosimilars

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Follow-On Biologic Competition

European Union:

- 18 biosimilars in 4 classes;
- savings from 2-73% off reference biologic pricing
- NO reports of patient harm from substitution of biosimilar for reference biologic

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Questions Have Been Asked

U.S.:

No biosimilar approved using the new abbreviated pathway

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Recent Media Accounts

- http://www.pbs.org/newshour/bb/whatkeeping-generic-version-biologic-drugs-u-s-market/?utm_source=govdelivery.

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- Even if FDA-Approved, Many Barriers to Biosimilar Entry

  Senior analyst from market research firm Sanford Bernstein requested regulators: "[P]lease don't add any barriers to what we already have, to what biosimilar developers have to contend with."

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Purpose of 2014 FTC Workshop: Examine Potential Regulatory Barriers

- How new proposals for state laws may help or hinder competition from biosimilars
- How new proposals for naming conventions may help or hinder competition from biosimilars
- Proper answers require balancing appropriate concerns about patient safety with expanded patient access and reduced spending that can be achieved with competition

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The Role of State Laws

- Under H-W Act, a generic drug approved by FDA as AB-rated is “bioequivalent” to branded drug and can be safely substituted
- States have laws that allow pharmacists automatically to substitute an A-rated generic for a branded drug, unless a doctor has indicated otherwise, DAW.
- These laws typically would not permit substitution of even an interchangeable biologic, because they don’t apply to biologics.

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Brands Have Advocated for New State Substitution Laws

- **Reasons:** Pharmacovigilance
  - Restrictions typically involve physician, patient notice and certain recordkeeping
- **Premature ?**
  - No biosimilar or interchangeable approved yet
- **Necessary?**
  - Cannot obtain biosimilar without a prescription; no FDA guidance for interchangeables yet; pharmacies track by patient by NDC code

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Brands Have Proposed New Naming Conventions for FOBs

- Convention for Generics:
  - Non-proprietary Name (USAN/INN) for generic is the SAME as for branded drug
- Brand Proposed Convention for FOBs:
  - Non-proprietary Name (USAN/INN) for FOB is DIFFERENT than for reference biologic
- Rationale:
  - Better protects patient safety by improving pharmacovigilance for FOBs

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Naming: Opposition

- Majority of participants opposed the use of distinct non-proprietary names for biosimilars:
  - AARP, CVS, Express Scripts, Aetna, America's Health Insurance Plans, the AMA, American Pharmacists' Association, Academy of Managed Care Pharmacy, National Association of Chain Drug Stores, Hospira, Novartis (Sandoz), and Professor Kesselheim (Harvard Medical School/Brigham and Women's Hospital)

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Basic Economics: Likely Competitive Effects

- The more similar goods are to each other, the greater the price competition
- Less intense price competition occurs when goods are more differentiated in terms of quality, reputation
- Ex: generic drugs tend to compete based solely on price, whereas branded pharmaceuticals usually charge higher prices based on the perception that the branded drug is different (e.g., more effective or higher-quality) than generic drugs

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Competitive Effects: Conference Presentations

- Conference presentations from actual market experiences in the many countries that have biosimilars approved suggest that different non-proprietary names can reduce biosimilars' market penetration and consumer access
- These are not without controversy; correlation does not equal causation
- But they are consistent with economic theory

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Competitive Effects: EPO Markets

Europe

Market penetration of epoetin biosimilars with a different INN than the brand (e.g., Hospira's Retracrit epoetin-zeta) trails the penetration of biosimilars with the same INN as the brand (e.g., Sandoz's Binocrit epoetin-alpha) because of legal challenges and other impediments associated with the different INN

Australia

Teva and Hospira biosimilar filgrastam products with the same INN as Amgen's originator product now account for 24% of the filgrastam dispensed.

By contrast, epoetin products all have different (local) non-proprietary names, and biosimilar epoetin accounts for only 2% of the epoetin dispensed

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Naming: Necessary for Pharmacovigilance?

FTC Asked about Adverse Events

- No one provided anyd ata or any anecdotal reports of any adverse event involving immunogenic response due to the substitution of a biosimilar for a reference biologic in any well-regulated country

Better Pharmacovigilance Is Available

- NDC Codes Used by Many Pharmacies for Each Patient
- Even Hospitals Track Pharmaceutical Inventory by NDC Code
- Surescripts Is Available to Any Pharmacy or Physician

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New Names Could Undermine Safety Systems

- Pharmacists and Pharmaceutical manufacturers have warned that the use of distinct non-proprietary names could undermine the collection of product safety data
- They emphasize that the use of a common non-proprietary name provides the only commonality among pharmaceutical names

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The Medical Community

AMA

"Any change in current nomenclature rules or standards should be informed by a better, and more complete, understanding of how such changes, including a unique identifier for biologic INNs, would impact prescriber attitudes and patient access, and affect postmarketing surveillance. Actions that solely enhance product identification during surveillance activities but act as barriers to clinical uptake are counterproductive."

Pharmacists

- Warned of confusion and the potential for medication errors. Some expressed concern that patient safety could be compromised if FDA followed through with reported plans to use prefixes for biosimilars. E.g., ado-trastuzumab and trastuzumab.

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AARP perspective on naming

- Different INNs could lead to prescriber and patient confusion and possibly impact patient safety
  - Prescribers would be forced to memorize the names of multiple versions of drugs with comparable clinical effects
- Would create false impression that biosimilars have a different clinical effect from the original biologic drug
- Effectively separates biosimilar from existing safety information from the brand name biologic
- Different INNs would reduce substitution and subsequent competition, increasing health care costs

AARP | 40

What if the biosimilar market never develops?

- The costs associated with biologics are not sustainable for patients or payers
- Many patients will be unable to afford biologics if competition does not provide some level of price relief
- Medical advances are meaningless if no one can afford to use them

Thank You

- FTC.gov webpage

http://www.ftc.gov/news-events/events-calendar/2014/02/follow-biologics-workshop-impact-recent-legislative-regulatory

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AMCP Perspectives on Legislative and Regulatory Issues Impacting Biosimilars

July 16, 2014

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AMCP Biosimilars Position

- **Pathway** – expedited FDA approval process
- **Naming** - same government-approved name/INN as reference product
- **Interchangeability** – FDA should implement a 2-step process that determines:
  (1) biosimilarity
  (2)interchangeability
- **Clinical Trials** – FDA case-by-case determination

AMCP Advocacy

Federal:

- Coalescing with other stakeholders with aligned interests to convince key federal agencies and Congress about importance of common naming
- Providing direct input to FTC, FDA, Congress, and HHS

www.amcp.org

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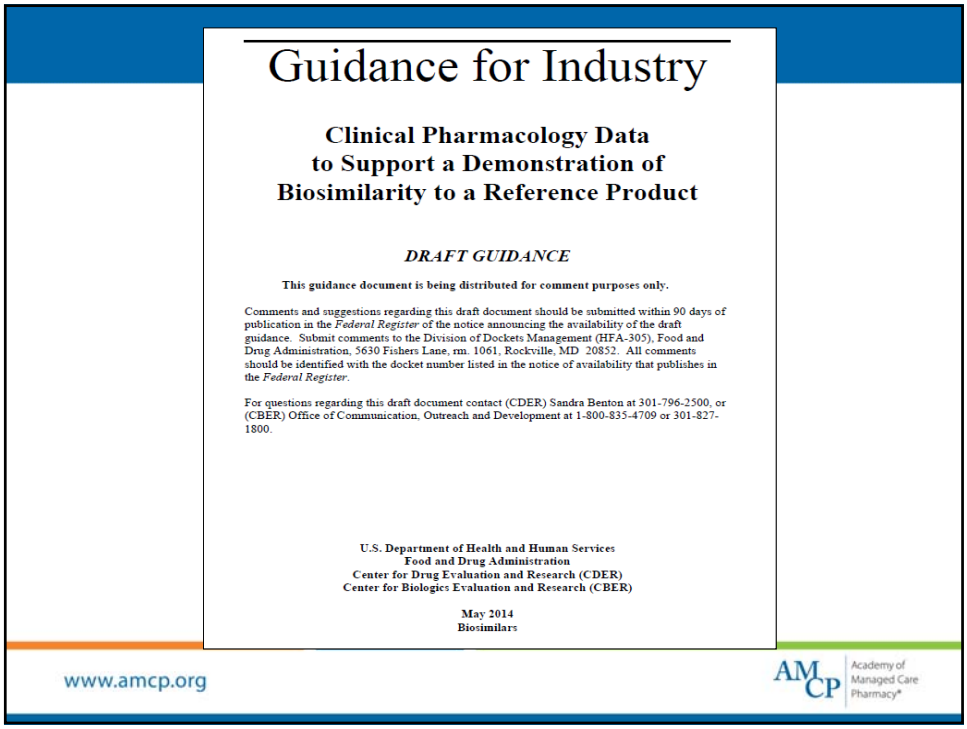

Guidance for Industry

Clinical Pharmacology Data to Support a Demonstration of Biosimilarity to a Reference Product

DRAFT GUIDANCE

This guidance document is being distributed for comment purposes only.

Comments and suggestions regarding this draft document should be submitted within 90 days of publication in the *Federal Register* of the notice announcing the availability of the draft guidance. Submit comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number listed in the notice of availability that publishes in the *Federal Register*.

For questions regarding this draft document contact (CDER) Sandra Benton at 301-796-2500, or (CBER) Office of Communication, Outreach and Development at 1-800-835-4709 or 301-827-1800.

U.S. Department of Health and Human Services
Food and Drug Administration
Center for Drug Evaluation and Research (CDER)
Center for Biologics Evaluation and Research (CBER)

May 2014
Biosimilars

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AMCP Advocacy

State:

- Ongoing legislative efforts to regulate substitution differently from any other drug category
- Prescriber/patient notification by pharmacist of substitution additional recordkeeping and labeling requirements for pharmacists

AMCP Response to State Action on Biosimilars

State Legislation

Bills pending in 4 states (IL, MI, NJ, PA) and PR

2013-2014: Laws enacted in 8 states (DE, FL, IN, MA, ND, OR, UT, VA)

State Regulation

ID introduced proposed regulation on biosimilar definition

Policy Issue Groups

Sign up for late-breaking info. and the opportunity to be in the conversation: www.amcp.org/list

- Specialty/Biosimilars
- Health Care Reform Implementation
- Medicare Part D
- HIT
- Quality initiatives

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