



Skadden

This article first appeared in the February 2026 issue of Financier Worldwide magazine. Permission to use this reprint has been granted by the publisher. © 2026 Financier Worldwide Limited.

**FINANCIER**  
WORLDWIDE

SPOTLIGHT ARTICLE REPRINT February 2026

# Life sciences antitrust: recent European Commission enforcement and trends

BY MICHAEL FRESE AND GEORGIOS ZACHARODIMOS

From merger reviews targeting pipeline overlaps to novel abuse and cartel cases, the European Commission (EC) appears to be advancing a more expansive antitrust agenda in life sciences – one increasingly focused on innovation, exclusionary conduct and strategic interference with future competition.

Pharmaceutical deals continue to attract the attention of the EC. For example, the EC actively monitors pharmaceutical transactions that fall below the notification thresholds to assess the need

and possibilities to obtain review jurisdiction.

At the same time, the review paradigm has shifted. The EC has traditionally assessed pharmaceutical mergers based on unilateral effects (i.e., the loss of competition between the merging parties), utilising a strict approach. For example, in *Pfizer/Hospira*, the EC was concerned about the loss of pipeline competition (by Pfizer) for Hospira's biosimilar product in circumstances where there was an originator product and another biosimilar on the market, in

addition to one other biosimilar in phase three clinical trials and two early stage biosimilars.

Recent case practice, however, shows that the EC is going beyond unilateral effects and is making a more general assessment of the impact of mergers on innovation. Teresa Ribera, the EC's competition commissioner, has emphasised the importance of innovation effects in merger control, with *J&J/Actelion* a case in point.

The EC raised concerns over the overlapping phase two development programmes for insomnia drugs.

The EC concluded that the merger could reduce innovation competition by increasing the risk of discontinuation or delay of one of the pipelines as there were no competing pipeline products in the European Economic Area based on the same novel mechanisms.

Concerns around the reduction of innovation also drove the EC decision in *Illumina/Grail*. The EC blocked this deal over concerns that the deal would stifle innovation and reduce choice in the emerging market for blood-based early cancer detection tests.

The EC argued that protecting ongoing innovation competition was essential to ensure a variety of future products with different features and price points. It found that: “GRAIL and its rivals were engaged in an innovation race to develop and commercialize early cancer detection tests. While there was still uncertainty about the exact results of this innovation race and the future of the market for early cancer detection tests, protecting the current innovation competition was crucial to ensure that early cancer detection tests with different features and price points will come to the market.”

The EC’s prohibition was later annulled by the European Court of Justice (ECJ) on jurisdictional grounds.

Other examples reflect that the EC is also considering non-horizontal effects in its assessment of pharmaceutical mergers. Mergers that result in a broader product portfolio may raise concerns about

the ability to dominate retail shelf space (for example, by offering a full range of complementary over the counter products).

This was evident in cases such as *GSK/Pfizer Consumer Healthcare Business* and *Teva/Allergan Generics*, where the EC examined whether the combined portfolios would enable the parties to outcompete rivals beyond individual product markets. In *Novo Holdings/Novo Nordisk/Catalent*, the EC examined the vertical relationships between Novo Nordisk, a developer of GLP-1 receptor agonists for diabetes and obesity, with Catalent, a contract development and manufacturing organisation (CDMO) specialising in sterile fill-finish services for injectable pharmaceuticals.

The EC assessed whether the transaction could result in input foreclosure, but the market investigation found that: (i) there was significant alternative capacity available from other CDMOs; (ii) most of Catalent’s relevant capacity was already committed to Novo Nordisk under pre-existing contracts; and (iii) rival pharmaceutical companies had limited reliance on Catalent for their own GLP-1 or anti-obesity products.

The rise of more complex theories of harm could also make remedy negotiations more complex. For example, in *J&J/Actelion*, the EC was concerned about residual structural links. The parties proposed to carve out Actelion’s insomnia pipeline product into a new company, Idorsia, but the EC found that J&J’s ongoing financial

(long-term loan) and intellectual property ties to Idorsia could have allowed it to influence the development of the competing product. J&J also held a minority shareholding in Idorsia and could potentially appoint one or two board members.

To address these concerns, J&J committed to reduce its shareholding in Idorsia below 10 percent (or up to 16 percent provided it was not the largest shareholder) and to refrain from appointing any board members, thereby minimising its ability to affect Idorsia’s strategic decisions or access sensitive information. To address innovation concerns in relation to late-stage and early-stage pipeline products, parties may have to offer transitional support to facilitate the completion of clinical trials.

In cases involving non-horizontal effects, the divestiture package may have to include not only overlapping products but also non-overlapping and pipeline generics, ensuring the buyer will have sufficient scale and scope to compete effectively post-merger.


Recent decisions also reflect continued challenges in obtaining acceptance of behavioural remedies. In *Illumina/Grail*, Illumina’s offer to license patents and provide standardised supply contracts to Grail’s rivals was considered inadequate. The EC was concerned that this would not fully eliminate the risk of foreclosure or address all possible strategies Illumina could use to disadvantage competitors,

such as degrading the technical support to Grail rivals. The EC also found the proposed commitments too complex to monitor effectively.

As the EC sharpens its merger-control approach around innovation, these concerns increasingly resonate beyond transactions. In March 2024, the EC opened a first of its kind investigation into Zoetis for allegedly abusing its dominance in canine osteoarthritis treatments by acquiring and then discontinuing a promising pipeline pain drug.

Zoetis' Librela is the first and only monoclonal antibody medicine approved in Europe for canine osteoarthritis. Zoetis acquired another late-stage pipeline product for the same indication of pain relief, which was going to be commercialised in the EEA by a third party. The EC is investigating whether Zoetis terminated the development of the alternative pipeline product it had acquired, and refused to transfer this pipeline product to the interested third party, which in the EEA had exclusive commercialisation rights. The investigation into anticompetitive innovation foreclosure is ongoing.

The EC has also pursued investigations into disparagement as a form of exclusionary abuse in the pharma sector, following earlier EU national competition authority cases. Notably, the EC's 2024 decisions in the *Vifor* and *Teva* cases involve originator pharmaceutical companies allegedly disseminating misleading information to



## *The EC is using its entire toolbox to regulate competition in the pharmaceutical industry, including through merger control, investigations and settlements.*

---

undermine competing products at the point of market entry. Yet, the EC adopted two different procedural paths – commitments in *Vifor* and a prohibition decision with a fine in *Teva* – reflecting its willingness to calibrate intervention based on the specifics of the matter before it.

In July 2024, the EC accepted binding commitments from *Vifor* (now part of CSL) to end its alleged disparagement of a competing iron deficiency injectable (Pharmacosmos's *Monofer*). The EC had preliminarily found *Vifor* (manufacturer of *Ferinject*) dominant in high-dose IV iron and suspected it disseminated potentially misleading safety claims (for example, suggesting *Monofer*'s formulation was riskier) to hinder its rival.

To settle the investigation without a fine, *Vifor* committed for a period of 10 years to: (i)

conduct a wide-scale corrective communication campaign (emails, letters and medical-journal notices) to undo the effects of past communications; (ii) refrain from any external promotional and medical communications about *Monofer*'s safety profile that is neither based on *Monofer*'s label nor derived from clinical trials specifically designed to compare *Ferinject* and *Monofer* across the entire EEA; and (iii) implement an internal compliance framework.

In its decision to accept the commitments, the EC also took into account a commercial settlement agreement concluded between *Vifor* and *Pharmacosmos* in February 2024 resolving the companies' dispute.

In the *Teva* case, in October 2024, the EC imposed a fine of €462.6m for alleged conduct in connection with its multiple sclerosis drug *Copaxone*. The EC

decision characterises Teva as having disparaged a rival medicine while also engaging in patent-related activity allegedly to hinder the competitor's market entry and uptake. This was the first case in which the EC imposed a fine for an alleged disparagement campaign and alleged misuse of the patent system via divisional filings.

Teva has lodged an appeal against the decision on multiple grounds, arguing that the EC wrongly established dominance and mischaracterised its conduct – failing to assess the legal context of its legitimate divisional patent filings and not demonstrating that its communications were, in concreto, objectively misleading or disparaging.

The EC has since opened a new front in its disparagement enforcement, launching inspections in the vaccines sector. In September 2025, the EC conducted unannounced inspections at the premises of a company active in the vaccines sector, probing whether suspected exclusionary practices amount to abusive disparagement under article 102 of the Treaty on

the Functioning of the European Union. Sanofi later confirmed that the EC had raided its premises in France and Germany in relation to the seasonal flu vaccine space.

The EC's enforcement in the pharmaceutical sector has not focused solely on unilateral conduct, as the EC has also shown a willingness to pursue classic cartel behaviour in upstream pharma inputs. In late 2023, six producers and distributors of N-Butylbromide Scopolamine/Hyoscine – the active pharmaceutical ingredient (API) used to manufacture Buscopan and its generics – settled an article 101 case and accepted fines totalling €13.4m for colluding on minimum prices, sales quotas and the exchange of commercially sensitive information.

One company, Alchem International, refused to settle. The EC therefore continued its investigation under the standard cartel procedure, and in July 2025 adopted an infringement decision imposing a €489,000 fine on Alchem. The EC concluded that Alchem had participated in the single and continuous infringement

for over 12 years (2005-18). This is the first time the EC has issued a cartel decision in the pharma sector and in relation to an API.

Taken together, these developments reflect that the EC is using its entire toolbox to regulate competition in the pharmaceutical industry, including through merger control, investigations and settlements. It also demonstrates the EC's willingness to challenge a variety of practices, including allegedly innovation-suppressing acquisitions both ex-ante (Illumina/Grail) and ex-post (Zoetis), alleged upstream cartel conduct (SNBB/Buscopan) and alleged disparagement campaigns (Vifor, Teva and Sanofi). ■

*Michael Frese is counsel and Georgios Zacharodimos is European counsel at Skadden, Arps, Slate, Meagher & Flom LLP. Mr Frese can be contacted on +32 (2) 639 0315 or by email: michael.frese@skadden.com. Mr Zacharodimos can be contacted on +32 (2) 639 8568 or by email: georgios.zacharodimos@skadden.com.*

## Enjoyed this article?

Join our community for free to access more expert insights.

[Join Now - It's Free](#)