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# WOULD THE *PER SE* ILLEGAL TREATMENT OF REVERSE PAYMENT SETTLEMENTS INHIBIT GENERIC DRUG INVESTMENT?

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# Abstract

“Reverse payment” patent settlements between brand and generic pharmaceutical manufacturers have received substantial scrutiny in recent years. While much has been written about the appropriate antitrust policy towards these settlements, the literature has paid little attention to the effect that changes in that policy might have on the incentives of generic manufacturers to develop generic drugs and challenge branded patents. We present a basic economic model of generic manufacturers' investment decisions and argue that these incentives should be taken into account in evaluating policy issues. We conclude that a *per se* rule against “reverse payment” patent settlements could chill the incentives for generic investment by increasing the cost and uncertainty of patent litigation, and could deprive consumers of benefits from lower cost generic drugs.

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