EUROPEAN COMMISSION

Competition DG

3rd Report on the Monitoring of Patent Settlements (period: January-December 2011)

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1. Introduction

(1) As announced in the Commission's Communication[1] concluding the pharmaceutical sector inquiry on 8 July 2009, it is considered important to continue monitoring the patent settlements between originator and generic companies. This third round of monitoring is a follow-up to the first two monitoring exercises concluded in 2010 and 2011[2]. The main objectives of the monitoring exercise are to better understand the use of this type of agreement in the EEA and to identify those settlements that delay generic market entry to the detriment of the European consumer possibly in violation of European competition law.[3]

(2) Patent settlement agreements, as examined in this context, are commercial agreements to settle patent-related disputes, e.g. questions of patent infringements or patent validity. They are concluded in the context of patent disputes, opposition procedures or litigation where no final adjudication has been handed down. Although the content of individual settlements will vary according to the circumstances of the case, the common aim of a settlement is to end the disagreement.

(3) As in any other area of commercial disagreement, the parties concerned have a legitimate interest in finding a mutually acceptable compromise. In particular the parties may prefer to discontinue the dispute or litigation because it is too costly, time-consuming and/or risky as regards its outcome. Settlements are thus a generally accepted, legitimate way of ending private disagreements. They

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1 The full texts of the Commission Communication on the final report (hereinafter: Commission Communication) as well as the final report as technical annex to the communication are available at the website of DG Competition: http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html . See also Press Release IP/09/1098 and MEMO/09/321.

2 Both first two reports on the monitoring of patent settlements are available at http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/patent_settlements_report1.pdf and http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/patent_settlements_report2.pdf .

3 Commission Communication, p. 20.

can also save courts and/or competent administrative bodies such as patent offices time and effort and can therefore have some positive impact in the interest of society.

(4) However, as pointed out in the Final Report of the sector inquiry ("Final Report"), some patent settlements in the pharmaceutical sector may prove to be problematic from a competition law perspective. Of particular interest are settlements that may lead to a delay of generic entry in return for a value transfer (e.g. a payment) by the originator company to the generic company. Other examples of possibly problematic agreements relate to settlements that contain restrictions beyond the exclusionary zone of the patent, meaning that they would reach beyond its geographic scope, its period of protection or its exclusionary scope. Such agreements would not appear to be directly related to the IP rights granted by the patents concerned. Furthermore, problematic agreements include settlement agreements on a patent which the patent holder knows does not meet the patentability criteria. An example of this is a situation where the patent was granted following the provision of incorrect, misleading or incomplete information. Ultimately, it may be the consumer who pays the price for a delay in market entry resulting from such agreements and therefore any benefits to society are more than outweighed by the negative effects of the agreement between potential competitors. In this context, obviously, an assessment of each individual case would be necessary.

(5) The Competition DG launched the third monitoring exercise into patent settlements in January 2012 covering the time period from 1 January 2011 to 31 December 2011[4]. Formal requests for information were sent to originator companies and generic companies, which had cooperated with the Commission in the course of the sector inquiry and/or were reported in the specialised press as having concluded a patent settlement in the period in question.

(6) This report sets out the results of the third monitoring exercise. The first section recalls the main classifications of patent settlements as set out in detail in the Final Report. It then provides the overview of the replies submitted by companies, including an analysis of the main characteristics of the settlements falling within particular categories. The final section contains some brief conclusions.

2. Classification of the agreements

(7) In the Final Report the Commission proposed a categorisation of patent settlement agreements which will also be used for the purpose of this report. In this context it has to be underlined that this report is written from a competition law perspective which does not put into question the patent system or its procedure or criteria for granting exclusive rights. In a nutshell it is based on two main criteria, firstly, whether the agreement foresees a limitation on the

[4] Press Release IP/11/40.

generic company's ability to market its own medicine and secondly, whether it foresees a value transfer from the originator to the generic company.[5]

(8) For the purpose of this analysis, a generic company's ability to enter the market can be limited in several ways. The most straightforward limitation occurs when the settlement agreement contains a clause explicitly stating that the generic company will refrain from challenging the validity of the originator company's patent(s) ("non-challenge clause") and/or refrains from entering the market until the patent(s) have expired ("non-compete clause"). A licence granted by the originator company allowing market presence of the generic company is also categorised as limiting generic entry, because the generic company cannot enter the market with its own product or it cannot set the conditions for the commercialisation of its product freely.[6] Accordingly, the generic company's entry is at least partly controlled by the originator company through the terms of the licence agreement. Note though, that an exception applies in case of royalty free licenses that allow generic companies to immediately launch their own product without any further constraints, i.e. concerning quantities, composition, pricing or other marketing conditions of their product. The same logic applies to patent settlement agreements in which the parties agree that the generic company will be a distributor of the originator product concerned or if the generic company will source its supplies of the active pharmaceutical ingredient (API) from the originator company. It should be noted that the list of potential limitations is not exhaustive.

(9) Also, the value transfer from the originator company to the generic company can take different forms. The most clear-cut form of value transfer is a direct monetary transfer (e.g. payment of a lump sum) from the originator company to the generic company. According to the settlement terms, such a monetary transfer can, for example, have the purpose of purchasing an asset (e.g. the generic company's stock of own products), but it can also have the purpose – explicitly or implicitly - of paying the generic company for agreeing to delay the product launch and/or for discontinuing the patent challenge. It is considered that originator companies are able to afford such payments as the settlement allows the company to continue reaping the benefits of its well-selling medicine. Other types of value transfer include distribution agreements or a "side-deal" in which the originator company grants a commercial benefit to the generic company, for example by allowing it to enter the market before patent expiry in another geographical area or by allowing market entry with another product marketed by the originator company. A value transfer could furthermore consist in granting a licence to the generic company enabling it to enter the market. Again the list of possible value transfers is not exhaustive.

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[5] For the purpose of this report it was deemed impossible to assess whether any settlement relates to patents, where the patent holder knows that his patent does not meet the patentability criteria, or whether it contains restrictions exceeding the exclusionary zone of the patent invoked.

[6] This categorisation is done for competition law purposes only. It does not prejudice the right of patent owners to assign, or transfer by succession, the patent and to conclude licensing contracts as declared in Art. 28 (2) TRIPS.

(10) For any of the value transfers observed in this monitoring exercise, the Commission only investigated whether such a transfer was agreed upon without verifying the (net) amount of the transfer or any possible justifications for it.

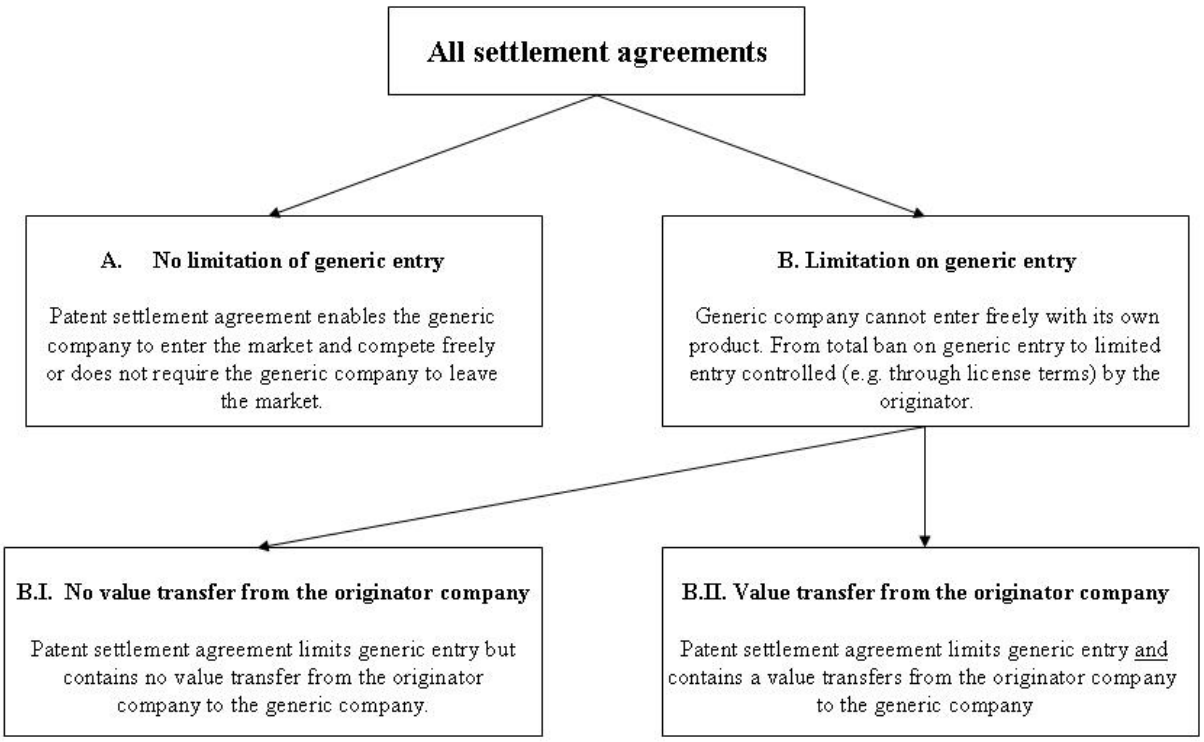
(11) In line with the above, agreements that do not restrict the generic company's ability to market its own product are categorised as A-type, while those limiting generic entry are categorised as B-type. Agreements limiting generic entry are further categorised in two groups: (i) B.I settlements, which comprise those settlements where no value transfer from the originator to the generic company took place; and (ii) B.II settlements which foresee a value transfer from the originator to the generic company.

(12) Typically, category A settlements should be unproblematic from a competition law perspective, as they allow immediate market entry by the generic company with its own product (unilateral conduct of the originator company that might have caused generic delay would remain subject to competition law scrutiny).

(13) The same applies to category B.I settlements. Nonetheless, some settlement agreements in this category may attract competition law scrutiny. This may be the case for settlements concluded outside the exclusionary zone of the patent and/or settlement agreements on a patent for which the patent holder knows that it does not meet the patentability criteria, e.g. where the patent was granted following the provision of incorrect, misleading or incomplete information.

(14) By contrast category B.II settlements are likely to attract the highest degree of antitrust scrutiny. Nonetheless, this is not to suggest that agreements falling into this category would always be incompatible with EU competition law. This needs to be assessed on the basis of the circumstances of each individual case.

(15) The chart below provides an overview of the main categories as used by the Commission in the sector inquiry and for the purpose of the monitoring exercise.



Source: Final Report concluding the Pharmaceutical Sector Inquiry of 8 July 2009

3. The Monitoring Exercise 2011

(16) The monitoring exercise was launched in January 2012 and covered the period from 1 January 2011 to 31 December 2011. In total 56 originator and 73 generic companies were asked to submit to the Commission a copy of all patent settlement agreements relevant for the EU/EEA markets. These companies were selected from the originator companies and generic companies that had cooperated with the Commission in the course of the sector inquiry[7] including the subsequent monitoring exercises and/or were reported in the specialised press as having concluded a patent settlement in the period in question. In order to minimise the administrative burden on the companies, they were asked to submit a copy of the agreements together with copies of all annexes, related agreements and amendments concluded between originator and generic companies and only limited additional background information. Supplementary clarifying questions were asked in a few instances. The Commission ensured that it received replies from all relevant operators.

(17) The statistics provided below, which are based on the companies' replies, concern only patent settlements in the narrow sense (i.e. settling a patent dispute, opposition procedure or litigation). Where other agreements were submitted within the monitoring exercise, they were also analysed with respect

[7] During the sector inquiry 43 originator companies and 27 generic companies had been selected for in-depth analysis.

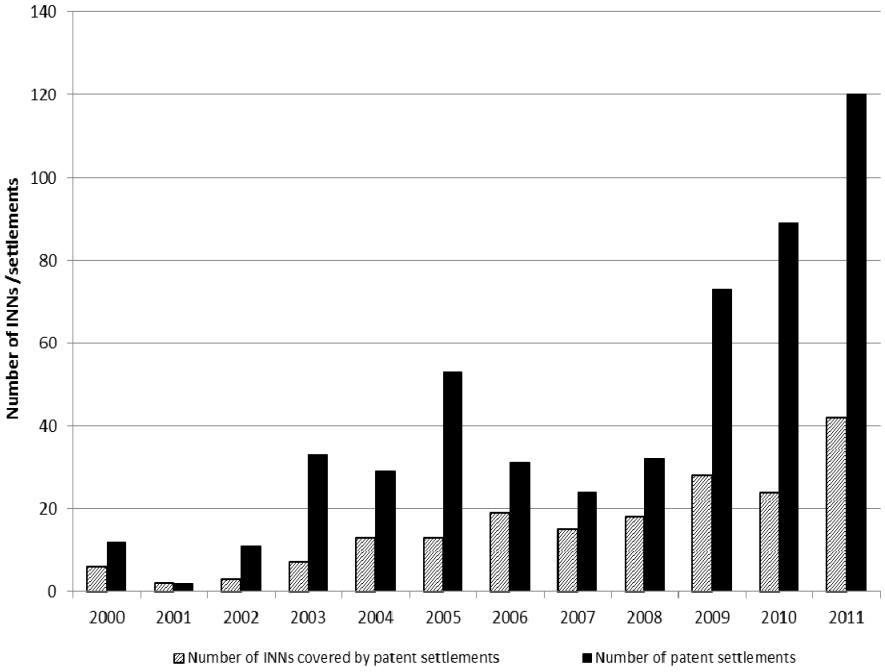
to the question whether they amount to a side deal/related agreement but were otherwise disregarded.

3.1. Some general statistics of the patent settlements submitted to the Commission

(18) The development of patent settlements from the beginning of 2000 until the end of 2011 can be described by consolidating the data obtained in the course of the sector inquiry and in the course of the first two monitoring exercises with the information newly acquired during this monitoring exercise.

(19) Figure 1 shows the annual numbers of patent settlements concluded during 2000 – 2011 as well as the numbers of INNs[8] covered by the patent settlements in each year.

Figure 1: Number of patent settlements and INNs 2000-2011



Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

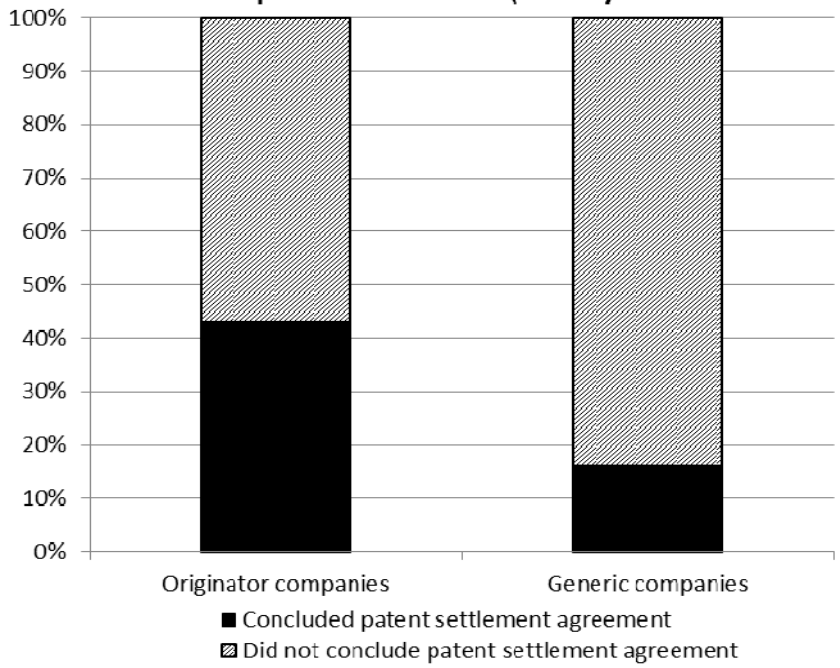
(20) As already pointed out in the Final Report, the number of patent settlement agreements at the beginning of this period (2000-2002) were comparatively low, whereas thereafter a significant increase can be observed (with four peaks: 53 settlements in 2005, 73 in 2009, 89 in 2010 and 120 in 2011). The sharp increase in patent settlements concluded in the last three years may be due to a variety of reasons, such as the medicines losing patent protection, a general

[8] An INN is the international non-proprietary name for a pharmaceutical substance.

increase in litigation and disputes leading to a higher number of settlements, or the greater readiness of both parties to settle.[9]

(21) Figure 2 shows the percentages of originator and generic companies addressed by this monitoring exercise that had concluded patent settlements.

Figure 2: Percentage of originator companies and generic companies that entered into patent settlements (January 2011 - December 2011)



Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

(22) Out of the 56 originator companies selected for the reporting period of 1 January 2011 to 31 December 2011, 24 companies (43%) concluded patent settlements. However, only 16% of the generic companies in the sample concluded a patent settlement (12 out of 73). This compares to 22% of originator and 23% of generic companies involved in patent settlements in 2010, 40% of originator companies and 47% of generic companies in the period 1 July 2008 to 31 December 2009 and 53% of originator companies and 44% of generic companies in the period 2000 to 30 June 2008. The general decrease in companies involved in settlements between the period examined in the sector inquiry and 2009/2010, i.e. the first and second patent monitoring exercise, could be explained by the fact that more companies had been added to the monitoring during in that period. However, the newly added companies had hardly any effect on the number of settlements (they amounted in fact to less than 3% of the companies that had concluded a settlement in the period of the second monitoring exercise).

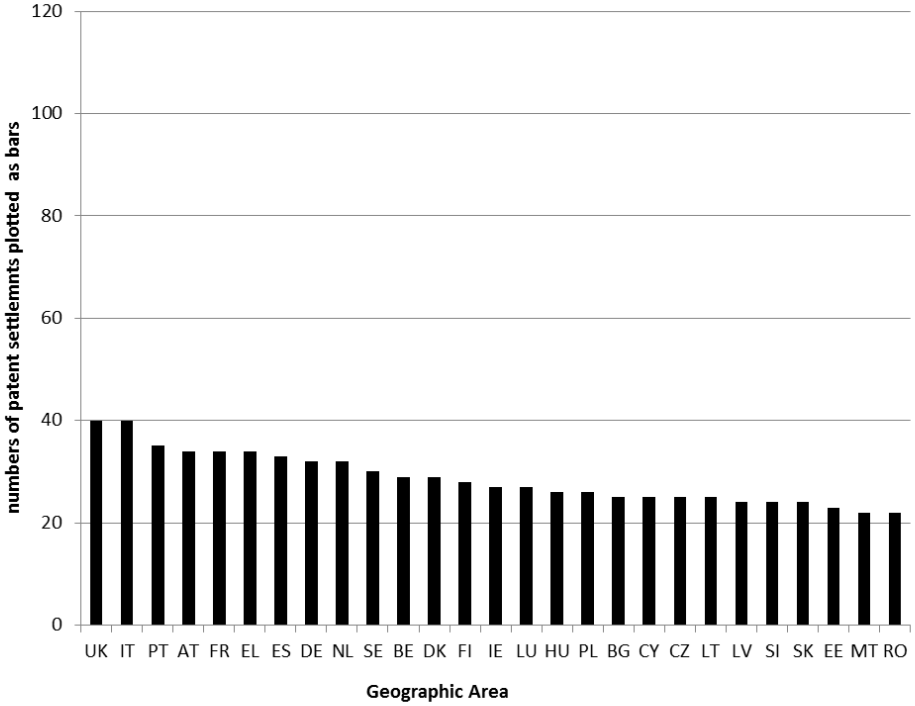
(23) Furthermore, one possible explanation for the increase in numbers of originator companies from 2010 to 2011 may be the increase in patent expiries whereas

[9] The increase however cannot be explained by the number of companies added in the second monitoring exercise vis-à-vis the sector inquiry, as the added companies had hardly any effect on the number of settlements (they amounted in fact to less than 3% of the companies that had concluded a settlement in the period of the second monitoring exercise).

the decrease in numbers of generic companies involved in patent settlements from 2010 to 2011 might be explained by the increased merger activity within the generic sector resulting in fewer big generic companies involved in patent disputes.

(24) Figure 3 breaks down the number of patent settlements by geographic area covered by the agreements. Every agreement covered at least one EU Member State. Some of the settlements covered more than one Member State. For the purpose of this figure settlements relating to more than one Member State are counted as a separate patent settlement for each Member State (which explains why the sum of the settlements per Member States exceeds the total number of settlements reported).

Figure 3: Number of settlements per Member State (EU 27)
(January 2011- December 2011)



Note: Settlements relating to more than one Member State are counted as a separate patent settlement for each Member State
Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

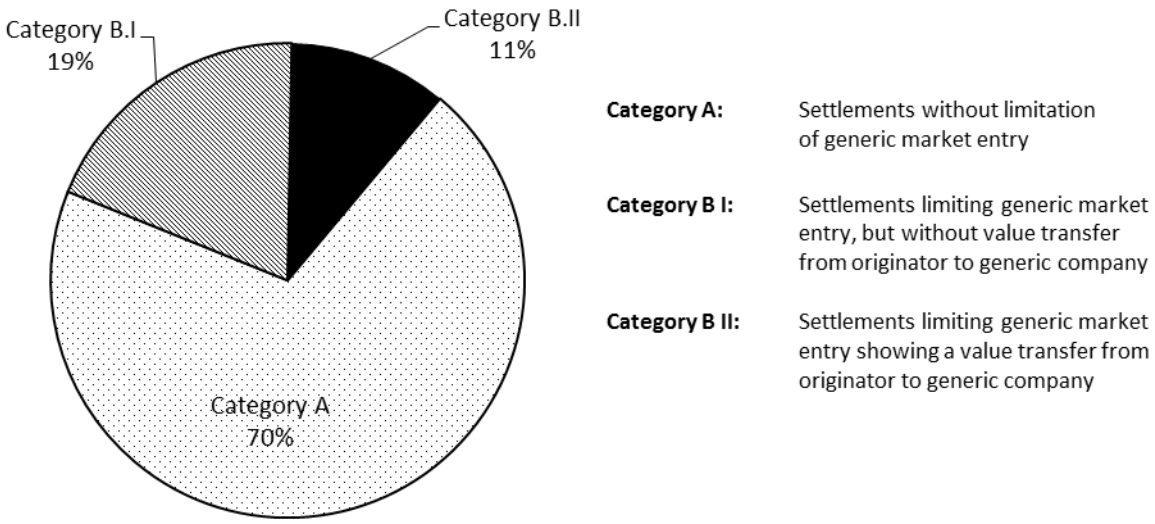
(25) Thirteen settlements covered the whole EU 27 in 2011. In addition, several agreements also covered countries outside the EU, and nine were global (not indicated in Figure 3). Like in the sector inquiry, Figure 3 shows the wide geographic coverage of settlements in the EU with certain Member States such as the UK and Italy attracting a higher number of settlements, meaning that 40 of the 120 settlements affected these states, whereas Malta and Romania showed the lowest numbers, i.e. 22 settlements. In previous monitoring exercises and the sector inquiry, Member States with the highest number of settlements were Portugal and Germany (2010), Germany and Denmark (2nd half 2008-2009) and Germany and UK (2000 - 1st half 2008), whereas Member States with the lowest numbers of settlements were Poland and Slovakia (2010), Malta and Estonia (2nd half 2008-2009) and Bulgaria and Malta (2000 - 1st half 2008). The relatively high constant numbers for Germany may be explained by its substantial market size within the EU pharmaceutical sector.

3.2. Categories of patent settlements

(26) The subsequent section describes in more detail the different types of patent settlement agreements concluded between generic and originator companies in the period from 1 January 2011 until 31 December 2011.

(27) The percentage of settlements according to the categories outlined above in section 2 is shown below in Figure 4.

Figure 4: Patent settlements per category (January 2011 - December 2011)



Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

(28) Thus 70% of settlements did not limit generic market entry at all (category A), whereas 19% limited generic market entry but did not show a value transfer from originator to generic company (category B.I) and only 11% limited generic market entry showing a value transfer from the originator to the generic company. This compares as follows to numbers of settlements according to categories in previous years:

	2000 –2008 (1st half)	**2008 (2nd half) - 2009**	**2010**	**2011**
Category A	52%	57%	61%	**70%**
Category B I	26%	33%	36%	**19%**
Category B II	22%	10%	3%	**11%**

Source: European Commission, Pharmaceutical Sector Inquiry and first three Patent Settlement Monitoring Exercises.

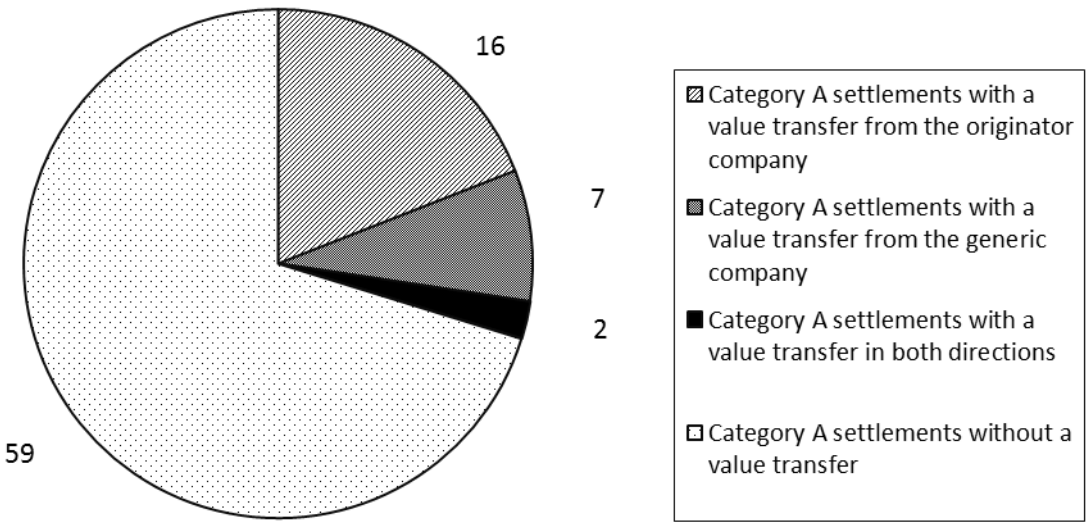
Category A Settlements: Settlements that do not limit generic entry

(29) As presented in Figure 4 above, 84 of the total of 120 patent settlements (= 70%) did not limit the generic company's entry into the market (category A). The generic company was thus free to market its own generic product in the geographic market concerned, under the conditions chosen by the generic company itself.

(30) Litigating parties may enter into category A settlement agreements for a variety of reasons. The terms of the settlement agreements took various forms, depending amongst others on whether or not the generic company had entered the market (at risk) or whether the settlement was concluded close to the time when the originator company lost exclusivity anyhow.

(31) Figure 5 below distinguishes between different category A settlements according to the value transfer connected to them, if any.

Figure 5: Category A settlements with or without value transfer (January 2011 - December 2011)



Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

(32) From this figure it becomes clear that the vast majority, namely 59 of the category A settlement agreements (= 71%) did not include any payment or value transfer, but were concluded on a so-called "walk-away" basis, i.e. settlements where both parties agreed to simply discontinue their litigation without any further commitment/obligation on any of them. Such an agreement would appear to be the most likely outcome if both parties believe that continuing the litigation would be a waste of time and/or resources.

(33) A value transfer from the originator company to the generic company took place in 16 of the category A settlements (18%). In most cases these were payments covering litigation costs and/or damages. The latter happened, for example, when an originator company had originally obtained an interim

injunction against a generic company's product, but later feared to lose the main case. Under such circumstances, the generic company could claim damages for the lost sales it incurred whilst it was prevented from marketing its product.

In seven cases (9%) a value transfer from the generic company to the originator company took place. An example of such a settlement could be that the generic company had entered the market at risk. However, during the course of litigation the patents concerned expired, which would leave the generic company free to enter the market. Nonetheless, in these cases the litigation could have continued e.g. if the originator wanted to assert the infringement committed by the generic company up until the time the patent expired in order to recover damages from the generic for such an infringement. Faced with a high probability that the courts would find such an infringement if the case were to proceed, the generic company decided to settle by paying compensation to the originator company, covering legal fees and possibly an additional amount in damages in order to avoid further litigation.

(34) Finally, in two cases value transfers were made in both directions, i.e. mutual compensation or mutual royalty-free licenses were agreed upon.

(35) For the sake of completeness it is worth pointing out that in some of these cases an originator had granted a royalty free license to the generic to enter with its own product. This was not counted as a restriction, as the generic company was free to enter the market without any restrictions e.g. as to the composition, quantities, pricing or other marketing conditions of the product.

(36) The table below offers a comparison to the numbers of previous monitoring exercises and the sector inquiry:

	2000 – 2008 (1st half)	**2008 (2nd half) - 2009**	**2010**	**2011**
Category A with value transfer from originator company	14%	25%	13%	**18%**
Category A with value transfer from generic company	17%	7%	11%	**9%**
Category A without value transfer	69%	68%	76%	**71%**
Category A with value transfer in both directions	-	-	-	**2%**

Source: European Commission, Pharmaceutical Sector Inquiry and first three Patent Settlement Monitoring Exercises.

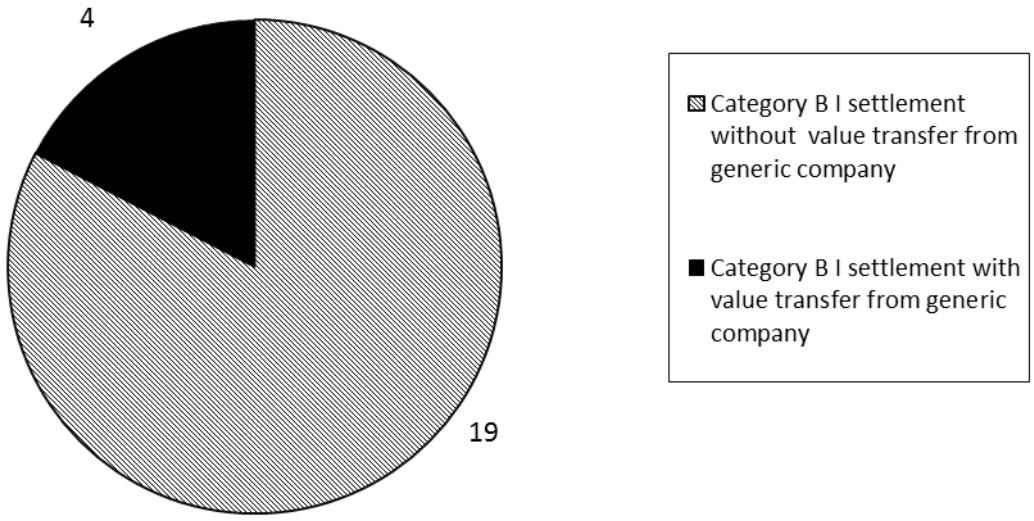
Category B Settlements: Settlements that limit generic entry

(37) As already explained in section 2, settlements that limit generic entry can be divided into two subcategories, namely those that do not include a value transfer from the originator to the generic company (category B.I) and those that do (category B.II). Both of them will be looked at in turn.

Category B I Settlements: Settlements limiting generic entry without value transfer from originator to generic company

(38) The common features of the B.I settlements as analysed in this section are that they restricted generic entry but did not contain a value transfer from the originator to the generic company. Yet, some of those settlements showed a value transfer from the generic to the originator company. Thus, Figure 6 breaks down the number of B.I settlements into those that contained a value transfer from the generic to the originator company and those that did not.

Figure 6: Category BI settlements with and without value transfers from the generic company (January 2012 - December 2012)



Source: European Commmission, 3rd Patent Settlement Monitoring Exercise

(39) In the period investigated 23 of the 36 agreements containing a limitation on the generic company's ability to market its own product (= 64%) included an explicit limitation of the market entry for the generic company, but no value transfer to the generic company (category B.I.). In these agreements the generic company agreed to enter only after the patent(s) at issue had expired. The main characteristic of this category seems to be that in the assessment of the parties the originator company had a strong case. In four of these instances, the generic company also agreed to pay damages to the originator company for having infringed the originator company's patents through its early entry (see Figure 6 below). In a number of the agreements the generic company also undertook to accept the court ruling(s) as final, rather than appealing and agreed not to challenge the validity of the patent in the future. The other 19 cases showed no value transfer from the generic company.

(40) Again the table below offers a comparison to the numbers of previous monitoring exercises[10]:

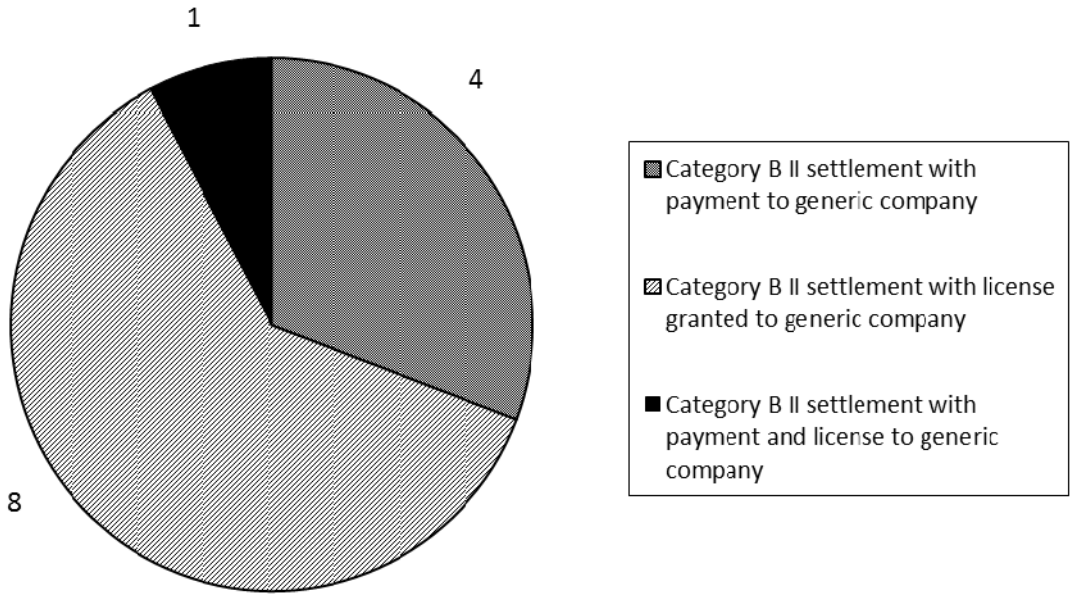
	2008 (2nd half) - 2009	**2010**	**2011**
Category B I with value transfer from generic to originator company	29%	16%	**17%**
Category B I without value transfer from generic company	71%	84%	**83%**

Source: European Commission, First three Patent Settlement Monitoring Exercises.

Category B II Settlements: Settlements limiting generic entry with value transfer from originator to generic company

(41) As presented in Figure 7, 13 patent settlement agreements limited the generic company's ability to market its own product and included a value transfer from the originator company to the generic company (category B.II). Figure 7 divides them according to the type of value transfer.

Figure 7: Number of B II patent settlements per type of value transfer (January 2011 - December 2011)



Source: European Commmission, 3rd Patent settlement Monitoring Exercise

[10] Note that this evaluation was not carried out during the sector inquiry.

(42) The value transfer flowing to generic companies in the settlement agreements took only two forms. Four agreements included a direct payment only, whereas eight agreements included a licensing agreement with the generic company. Finally one agreement included a license offered to the generic company as well as a payment.

(43) All four payment cases relate to the same instance where generics had entered the market due to an erroneously assumed expiry of exclusivity rights. The latter had been caused by an administrative error by public authorities. The generic companies acknowledged the validity of the rights but demanded compensation claiming negligence of the originator company contributing to the administrative error, which had caused legitimate business expectations and thus subsequent damages. The payment constituted a settlement of these claims. This particular set of circumstances, although technically putting the settlements into the B.II category (restriction of generic entry, payment to the generic company), does not represent a typical B.II settlement that *prima facie* raise a pay-for-delay suspicion and thus potential competition law concerns. This also emphasises once again that B.II settlements should not be automatically viewed as anticompetitive but have to be assessed on the basis of each individual case.

(44) The following table offers a comparison to the numbers of previous monitoring exercises and the sector inquiry:

	2000 – 2008 (1st half)	**2008 (2nd half) - 2009**	**2010**	**2011**
Category B II offering payment	18%	22%	33%	**31%**
Category B II offering (only) a license	44%	-	67%	**62%**
Category B II offering payment and license	-	11%	-	**7%**
Category B II offering other value transfer[11]	38%	67%	-	**-**

Source: European Commission, Pharmaceutical Sector Inquiry and first three Patent Settlement Monitoring Exercises.

(45) While this may suggest an increase in number of payments connected to B.II settlements one needs to keep in mind that the percentage of B.II settlements with regards to all settlements has significantly decreased since the sector inquiry.

[11] This would include different combinations, e.g. supply/distribution agreements, supply/distribution and licensing agreements but also side deals.

(46) It should be noted that this report merely summarises the results of the monitoring exercise and no decision has been taken or implied on further investigation of any of the settlement agreements reported under this or any other category. As mentioned above, if examined, an assessment of the particular facts of each individual case would have to be undertaken, e.g. whether a license granted to the generic company may in fact have pro-competitive effects, depending on the restrictions and conditions within that license[12].

4. Conclusion

(47) The third monitoring exercise undertaken by the Commission covered the period of 1 January 2011 until 31 December 2011, i.e. 12 months. It unearthed 120 patent settlement agreements concluded in the EEA. In line with the upward trend described in the first two monitoring reports covering the period 1 July 2008 to 31 December 2009 and 1 January 2010 to 31 December 2010, the present exercise has confirmed the increasing use of patent settlements in the European pharmaceutical sector measured by the number of patent settlements concluded. The annual average of 24 patent settlements concluded in the period covered by the sector inquiry (from 1 January 2000 to 30 June 2008 - in total 207 settlements in eight and a half years) steadily increased to 120 settlements in the year 2011.[13] Also, the number of INNs which were the subject of settlements increased significantly from less than 10 INNs in the first three years of the millennium to more than 40 in 2011. As with the former two exercises, the results of the third monitoring exercise show that the Commission's announcement that it would continue scrutinizing B.II category settlements in the future has not hindered companies from concluding settlements in general.

(48) The number of B.II settlements, i.e. settlements which restrict generic entry and show a value transfer from the originator to the generic company and which might attract competition law scrutiny, have stabilized at a low level. In the period covered by the sector inquiry (1 January 2000 to 30 June 2008), B.II settlements represented 22% of all settlements reported, or five settlements per year on average. This percentage has decreased steadily over the years to reach 11% in the period of this exercise or 13 in absolute terms in 2011. However during the first two monitoring exercises category the number of B.II settlements had been even lower than in 2011, i.e. 10% (or six settlements) on average per year in the period between 1 August 2008 and 31 December 2009 and 3% (or three settlements in absolute numbers) in 2010. The slight increase in 2011 can be partly explained by a particular case, which on its individual circumstances is not a "typical" B. II settlement that would trigger potential competition law scrutiny.

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[12] Hence, such investigations will also consider arguments raised by parties pointing to any potential pro-competitive effects of the settlements.

[13] With an average of 62 settlements per year in the period of the first monitoring exercise (mid 2008-end 2009) and 89 settlements in the period of the second monitoring exercise (covering the year 2010).

(49) The trend concerning B.I settlements shows first a steady increase from 26% or six settlements on average per year (from 1 January 2000 to 30 June 2008) to 33% or 21 settlements per year (from 1 July 2008 to 31 December 2009) and 36% or 32 settlements in 2010. However, such settlements showed a decrease in 2011 to 19% or 23 settlements in absolute terms.

(50) The statements of certain stakeholders during the sector inquiry that the Commission would be forcing companies to litigate each patent dispute until the end has proved to be unfounded, given the substantial increase in settlements overall (120 in 2011 compared to 24 per year in the period of 1 January 2000 to 30 June 2008). In addition, 89% of the settlements fall into categories that *prima facie* raise no need for competition law scrutiny. Companies, in most cases, are able to solve their disputes in a manner that is typically considered unproblematic from a competition law perspective. However, the increase of B.II settlements shows that there is a clear need for the Commission to continue paying particular attention to this area and to examine such patent settlements.

(51) In the future the Commission may decide to continue the monitoring exercise in order to examine further the development of the foregoing trends.