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Department Of Justice Launches Criminal Probe Of BMS, Sanofi-Aventis Over Market Entry Of Blood Thinner Plavix

[Bristol-Myers Squibb](#) on Thursday said it is the subject of a [Department of Justice](#) criminal antitrust probe regarding a pending deal with [Sanofi-Aventis](#) and [Apotex](#) over market entry of a generic version of blood thinner Plavix, the [AP/Philadelphia Inquirer](#) reports (Agovino/Witkowski, AP/Philadelphia Inquirer, 7/28). BMS sells the drug in the U.S., and Sanofi, which is also a focus of the criminal probe, sells the drug in the rest of the world. [FDA](#) in January approved Apotex's generic version of Plavix, which the company indicated that it plans to market. BMS and Sanofi initially sued Apotex to block market entry on the grounds that the Plavix patent does not expire until 2012. BMS and Sanofi in March reached an agreement with Apotex to pay at least \$40 million in exchange for the delay of the generic version until September 2011. The companies last month moved the date of market entry up to June 2011 after questions were raised by the [Federal Trade Commission](#) and state attorneys general, which must approve the new deal in order for it to take effect. The agreement has yet to be approved (Saul, [New York Times](#), 7/28). If the deal is approved, it could protect at least \$30 billion in revenue for BMS and Sanofi over the next five years. [Federal Bureau of Investigation](#) agents on Wednesday raided offices at BMS' New York City headquarters, including the office of CEO Peter Dolan, as part of a criminal probe that arose from a referral to DOJ by FTC, the Wall Street Journal reports. According to the Journal, BMS and Sanofi "could face prosecution if they misled the government in any way when the FTC and the states reviewed the deal." In addition, any sharing of confidential pricing or other information "could be seen as criminal collusion between rivals," and the investigation might center on a provision in the agreement that BMS will not issue an authorized generic version until December 2011, the Journal reports (Carreyrou et al., Wall Street Journal, 7/28).

Reaction

Dolan in a conference call to discuss second-quarter earnings with investment analysts said that there was nothing illegal about the Plavix agreement and that the company was cooperating with the investigation. Sanofi in a statement announced the investigation but declined to comment further (New York Times, 7/28). In the event that the agreement for Apotex to introduce generic Plavix in June 2011 is not approved by FTC and the state attorneys general, BMS and Sanofi said they intend to resume litigation against Apotex. The state

attorneys general on Friday are expected to notify BMS about their decision (Wall Street Journal, 7/28). David Balto, an attorney and former policy director for FTC, said, "The agreement raised very serious competitive concerns. Generic drugs are priced 30%, at least, below branded drugs and the potential savings to consumers would be something like \$1 billion a year" (New York Times, 7/28).

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