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Panel 2

# Generics Exclusion: What Conduct Crosses the Lines?

## How Should Policymakers Address Price Transparency and Generic Substitution in the New Decade?

*Webinar, 1 July 2020*

*Interview with Prof. Martin Gaynor (Carnegie Mellon)  
by Dr. Christine Siegwarth Meyer (NERA)\**



*Prof. Martin Gaynor (Professor of Economics and Health Policy, Heinz College, Carnegie Mellon University), has been interviewed by Dr. Christine Siegwarth Meyer (Managing Director, NERA Economic Consulting) in anticipation of the **Antitrust in Life Sciences** webinar, to be held on 1 July 2020. This webinar was originally a conference that would take place on 23 March 2020. However, due to the COVID-19 outbreak, it has been transformed into a webinar.*

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***Dr. Christine Siegwarth Meyer:*** You have published studies speaking to the usefulness of transparency in health care spending and health insurance. In the past few years, many policymakers have been floating ideas regarding transparency of pharmaceutical pricing, such as including drug list prices in television advertisements. What do you see as the economic pros and cons of such policy proposals?

***Prof. Martin Gaynor:*** List prices aren't very informative, and can even be misleading. I don't think providing list prices is a good idea. If we want consumers to be informed, they have to know how much they will pay. That's going to depend on the specific details of their insurance policy. As a consequence, that information really can't be provided via television advertising. Most insurers do have price transparency tools where enrollees can log into a secure website and obtain information that's specific to themselves. However, most people don't use these tools, either because they don't know about them, they're too cumbersome to use, the information they provide isn't very helpful, or they don't have a strong incentive to care about prices. This doesn't mean that transparency can't work, but at this point we don't seem to have figured out how to make it effective.

**As economists, we tend to think of innovation as a positive force, driving economic growth and prosperity. However, some have suggested that pharmaceutical firms use the illusion of innovation, particularly through the patent system, to reduce rather than enhance consumer welfare. In particular, some have focused on instances in which new versions of drugs are allegedly not any more effective or safe than the previous version but only serve to extend exclusivity and market power. Should we be asking whether a product change is “innovative enough” and, if so, what economic framework should be used to answer that question?**

On the one hand, we don't want to have antitrust enforcers deciding what's an innovation. That's best left to the market. However, some pharmaceutical firms have tried to take advantage of the limits of automatic generic substitution to extend exclusivity and market power via changes to their products that invalidate automatic generic substitution, but don't amount to true innovation. This is a problem for markets and competition, and antitrust enforcers have to be prepared to evaluate these situations and step in where necessary.

Avoiding all intervention on the grounds that any change is an innovation unfortunately opens the door to incumbent companies making all kinds of non-substantive changes to their products to prevent automatic generic substitution. Alternatively, lawmakers can change the laws regarding automatic generic substitution to close this loophole that pharmaceutical manufacturers have been exploiting.

**As you look to the future, in 2020 and throughout the next decade, what do you see as the most pressing issues regarding the availability and affordability of pharmaceuticals in the U.S. and how is that tied in with healthcare reform?**

There is a big push to “control” pharmaceutical prices. Applying a “one size fits all” policy to pharmaceutical pricing is likely to cause problems. What’s needed is for policymakers to craft policies that are narrowly targeted towards problems, and realize that there are a variety of issues, and hence there are multiple policy approaches that are needed. The other key point of course, is that impacts on innovation need to be considered in formulating policy (where relevant).

*\* The views and opinions expressed in this document do not necessarily represent those of the speakers’ institution or clients.*