

## ABSTRACT

### **“Merger Control in the Pharmaceutical Sector and the Innovation Market Assessment. European Analysis in Practice and Differences with the American Approach”**

During the last years, a wave of mergers in the pharmaceutical sector has taken place, not only at the European but also at the global level. Within the pharmaceutical sector (a *high-tech* sector, with considerable impact on consumer welfare), the concentration operations have some features not encountered in traditional sectors and the main dilemma is the uncertainty about the post-merger results, in terms of R&D output. To avoid this anti-competitive lessening in innovation, and consequently, the deterioration of consumer welfare, a tailored Merger Control in the pharmaceutical field is necessary in order to respond to the specific needs of the sector. This demand is addressed by the ‘*Innovation Market*’ analysis, which studies the merging overlapping pipelines aiming to maintain a level of competition in the R&D market. This is the path to foster the competition in the future product market.

The objective of this paper is to present the pertinent application of the “*Innovation Market*” in the framework of pharmaceutical mergers. Moreover, this thesis will discuss how the American Federal Trade Commission and the European Commission apply the ‘*Innovation Market*’ analysis, through three different Merger Cases between pharmaceutical undertakings.

The study is organized as follows: Section 1 discusses the Merger Control in *high-tech* markets dilemma; Section 2 provides an overview for a better understanding of the ‘*Innovation Market*’ analysis; Section 3 touches on the legal basis for the application of the ‘*Innovation Market*’ in Europe; Section 4 deals with the pharmaceutical industry, and examines its suitability for the application of ‘*Innovation Market*’ assessment; Section 5 assesses the European practice in the control of concentration between pharmaceutical firms and how the European authorities have used the ‘*Innovation Market*’ appraisal in three concrete Merger Cases (this practice will be compared and

contrasted with the American point of view in the same Merger Cases) and, finally, Section 6 points out the main conclusions.

Competition policy is about the protection of consumers, and because of this, the competition authorities must be concerned with the special features of the pharmaceutical companies, in order to pursue an appropriate Merger control.

The implementation and correct application of '*Innovation Market*' assessment is not in vain, because an erroneous appraisal of this criterion would lead to a reduction in the R&D output, a reduction in innovation, and in the pharmaceutical case, which would deprive the consumers of more effective and safer medicaments to combat important diseases. Thus, the role of '*Innovation Market*' in the consumer welfare is more than obvious.