

The Development of Reverse Payments in the US after Actavis

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Abstract

The purpose of this article is to sort out the judicial and legislative developments regarding the “reverse payment” agreement after Actavis in the United States. It is hoped that this research can provide guidance and further strengthen the discussion, development and supervision for Taiwan, which has just introduced the patent linkage system, with regard to how competition law deals with issues related to accessing drugs.

The first part of this article seeks to clarify the definition of a “reverse payment,” establishes the issues involved, and explains the current status in the United States. The second part focuses on the development of the courts’ opinions concerning reverse payments, and outlines the developments in federal and state court opinions, as well as the unresolved issues both before and after Actavis in 2013. The third part focuses on legislative developments in relation to reverse payments, including the draft bill of the federal law waiting to be passed by the U.S. Congress and the bill already passed by the California Congress. In addition to introducing the content of the bills, and the issues they resolve, this part also compares the differences between the drafted federal bill and the already-passed state bill. The fourth part introduces Taiwan’s regulation regarding reverse payments, compares the differences between the regulations in Taiwan and the United States, and discusses issues that remain unresolved, while also highlighting the lack of practical cases under the current situation. The fifth part consists of a discussion and analysis based on the previously introduced U.S. judicial and legislative developments related to reverse payments, and provides suggestions as to how Taiwan’s FTC and the courts could regulate and handle the reverse payments, including the definition of a reverse payment, the relevant market designation, legal standards to determine whether such agreements are lawful, the role of patent issues in such a determination, and also how

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drug companies in Taiwan could avoid potential legal risks given the current circumstances.

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