



## London 2019, Panel Session

### Pharma 1: Wait! Pay for delay

This Panel Session will consider the issue of so-called “Pay for Delay” agreements in the pharmaceutical patent context.

It has become common in various jurisdictions, for innovative and generic drug companies involved in disputes where the validity of the patent is challenged, to consider as a possible basis for settlement, an agreement whereby, amongst other terms, the innovator makes to the generic a monetary payment in return for the generic agreeing to drop its challenge of the patent and to delay its entry of a generic product into the market for a certain period of time.

These types of agreements have raised concerns amongst various national competition authorities, including the United States Federal Trade Commission (FTC) and the European Competition Commission that such agreements in delaying the entry of a generic product that would otherwise compete with the brand name product, as being contrary to anti-trust or anti-competition laws. For example, a recent decision of the European Union General Court, in the *Servier* matter, while reducing the fines levied against the innovative and generic firms for a “pay for delay” type agreement, nevertheless upheld the decision that fines were warranted.

The panel will discuss the tension between the need for parties to be able to settle patent disputes under reasonable terms, and the potential anti-competitive effects of an innovative drug company paying a generic to delay its entry into the market. In so doing, the panel will review the viability of such agreements in various jurisdictions, and issues that parties should be aware of in crafting settlements with a “pay to delay” term.