IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MYLAN PHARMACEUTICALS INC. ET AL, Plaintiffs, v. SANOFI-AVENTIS U.S. LLC ET AL, Defendants.	2:23-cv-00836-MRH Chief Judge Mark R. Hornak

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs Mylan Pharmaceuticals Inc., Mylan Specialty L.P., and Mylan Inc. (collectively "Mylan") respectfully submit this notice of Supplemental Authority to apprise the Court of *Regeneron Pharmaceuticals Inc. v. Amgen Inc.*, No 1:22-cv-00697 (D. Del. Apr. 10, 2025) ("*Regeneron*"). The opinion denying Amgen's motion for summary judgment supports Mylan's allegations that Sanofi bundled Lantus and Toujeo rebates such that it constituted an exclusive dealing arrangement and foreclosed Mylan's Semglee from the injectable insulin glargine market. *See* Ex. 1 at 1; *See* D.I. 59 at 15-19. In *Regeneron* the jury found that, *inter alia*, Regeneron proved by a preponderance of the evidence that Amgen monopolized and attempted to monopolize a relevant market in violation of Section 2 of the Sherman Act. The court subsequently entered a jury verdict for $406.8 million against Amgen. *See* Ex. 2 at 1.

In denying Amgen's motion for summary judgment, the court found that "Regeneron [had] presented evidence from which a jury could find that Amgen offered bundled discounts that restricted Regeneron's access to portions of the market because it did not have an equally diverse drug portfolio." *LePage's Inc. v. 3M*, 324 F.3d 141, 155 (3d Cir. 2003). The court also concluded that a jury could find that through such bundling "Amgen entered into de facto exclusive dealing arrangements that substantially foreclosed Regeneron from the market." Ex. 1 at 1. *Regeneron* supports Mylan's position that this Court should deny Sanofi's Motion to Dismiss and permit discovery in this case. *See* D.I. 59 at 15-19.

Dated: July 14, 2025

Respectfully submitted,

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REGENERON PHARMACEUTICALS, INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 22-697-JLH
AMGEN INC.,	)	
Defendant.	)	

ORDER

Pending before me is Amgen Inc.'s Motion for Summary Judgment (D.I. 307). Amgen first argues that Regeneron lacks sufficient evidence for a jury to find that Amgen engaged in anticompetitive or exclusionary conduct.

In support of its argument, Amgen contends that Regeneron cannot prove substantial foreclosure under a rule of reason analysis, cannot satisfy the price-cost test, and cannot prove market power over the products it allegedly bundled. The record before me reflects material factual disputes that prevent summary judgment. Regeneron has presented evidence from which a jury could find that Amgen offered bundled discounts that restricted Regeneron's access to portions of the market because it did not have an equally diverse drug portfolio, *LePage's Inc. v. 3M*, 324 F.3d 141, 155 (3d Cir. 2003) (*e.g.*, D.I. 327, Ex. 24 ¶¶ 66–71; *id.*, Ex. 42 ¶¶ 43–48), or that Amgen entered into de facto exclusive dealing arrangements that substantially foreclosed Regeneron from the market, *see ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 271–72 (3d Cir. 2012) (*e.g.*, D.I. 327, Ex. 24 ¶¶ 9–11; *id.* Ex. 42 ¶¶ 194–95). Regeneron has also proffered evidence from which a jury could find below-cost pricing in certain portions of the market, under the test in *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 909 (9th Cir. 2008) (*e.g.*, D.I. 327,

Ex. 24 ¶¶ 111, 132), and that Amgen can recoup (*e.g.*, D.I. 327, Ex. 24 ¶¶ 211, 217–18; *id.,* Ex. 51). Regeneron has also proffered evidence from which a jury could find that Enbrel and Otezla have market power in their respective markets (*e.g.*, D.I. 327, Ex. 24 ¶¶ 39–48).

Amgen next contends that it is entitled to summary judgment because Regeneron cannot show anticompetitive effects. To the extent that Amgen contends that Regeneron needs to separately show consumer harm, at least one court has recently rejected that argument. *FTC v. Meta Platforms, Inc.*, No. 20-3590, 2024 WL 4772423, at *24 (D.D.C. Nov. 13, 2024) (acknowledging that "the law is far from pellucid on this issue"). Regeneron has also proffered evidence from which a jury could find potential anticompetitive effects, including reduced investment in innovation, increased prices relative to a competitive market, and reduced consumer choice (*e.g.*, D.I. 327, Ex. 24 ¶¶ 214, 219, 223–24).

Amgen finally argues that it is entitled to partial summary judgment because Regeneron's alleged damages incurred during the pendency of its Zinc/CVS Commercial and CVS Part D contracts do not qualify as "antitrust injury." To the extent that Amgen argues that Regeneron must be foreclosed from the market before it has incurred an actionable antitrust injury, the cited case law does not appear to support that proposition. Amgen cites *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977) in support of its argument that damages from matching a competitor's lower prices cannot qualify as antitrust injury, but in that case, unlike here, "[Plaintiff] made no attempt to prove that they had lost any income as a result of [price] predation." *Id.* at 490. Of course, to qualify as antitrust injury, the alleged damages must be "attributable to an anti-competitive aspect of the practice under scrutiny." *Atl. Richfield Co. v. USA Petrol. Co.*, 495 U.S. 328, 334 (1990). Regeneron alleges that Amgen's unlawful act was attempting to reduce competition by offering bundled discount rebate contracts that amounted to a below-cost price on

its competing product. Regeneron proffers evidence that the terms it needed to offer to win those contracts were financially unviable, and that it suffered lost profits as a result. (*See* D.I. 327, Ex. 71 at 237:16–21; *id.,* Ex. 103, *id.,* D.I. 24 ¶¶ 92, 132.) I am unpersuaded that the case law cited by Amgen precludes a finding of antitrust injury under those circumstances.

Accordingly, IT IS HEREBY ORDERED that Amgen's Motion for Summary Judgment (D.I. 307) is DENIED.

Dated: April 10, 2025

The Honorable Jennifer L. Hall
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

REGENERON PHARMACEUTICALS, INC., Plaintiff, v. AMGEN INC., Defendant.	C. A. No.: 1:22-cv-00697-JLH

JUDGMENT FOLLOWING JURY VERDICT

This case was tried to a jury. The jury deliberated on the claims asserted at trial and reached a verdict (D.I. 478 & 479), finding that: (1) Regeneron proved by a preponderance of the evidence that Amgen monopolized a relevant market in violation of Section 2 of the Sherman Act (Counts 1 and 3); (2) Regeneron proved by a preponderance of the evidence that Amgen attempted to monopolize a relevant market in violation of Section 2 of the Sherman Act (Counts 2 and 4); (3) Regeneron proved by a preponderance of the evidence that Amgen unreasonably restrained trade in violation of Section 1 of the Sherman Act (Count 5); (4) Regeneron proved by a preponderance of the evidence that Amgen violated Section 3 of the Clayton Act (Count 6); (5) Regeneron did not prove by a preponderance of the evidence that Amgen violated California's Unfair Practices Act (Count 8); (6) Regeneron proved by a preponderance of the evidence that Amgen violated California's Cartwright Act (Count 9); (7) Regeneron proved by a preponderance of the evidence that Amgen violated New York's Donnelly Act (Count 10); (8) Regeneron proved by a preponderance of the evidence that Amgen tortiously interfered with Regeneron's prospective business relationships

(Count 11); (9) Regeneron proved that it was entitled to a total of $135.6 million in compensatory damages; (10) $135.6 million in compensatory damages resulted from conduct that violated the Sherman Act, the Clayton Act, the Donnelly Act, the Cartwright Act, and/or the California Unfair Practices Act (Counts 1–10); (11) $135.6 million in compensatory damages resulted from conduct that amounted to tortious interference with prospective business relationships (Count 11); and (12) Regeneron proved that punitive damages were appropriate for Count 11, and $271.2 million in punitive damages should be awarded.

The jury also answered special interrogatories and found as follows: (13) Regeneron proved by a preponderance of the evidence that Repatha has market power in a relevant product market; (14) Regeneron proved by a preponderance of the evidence that Enbrel possesses market power in a relevant product market; and (15) Regeneron proved by a preponderance of the evidence that Amgen's anticompetitive conduct substantially foreclosed Regeneron from the relevant market.

IT IS ORDERED that:

1. Judgment is entered in the total amount of $ 406.8 million for Regeneron and against Amgen on Counts 1–6 and 9–11 of the amended complaint.

2. Judgment is entered for Amgen and against Regeneron on Count 8.

3. Amgen's Counterclaim included in its answer to the amended complaint under California's Unfair Practices Act is dismissed with prejudice.

4. Regeneron's requests for judgment and relief on Count 7 of the amended complaint under California's Unfair Competition Law, injunctive relief, disgorgement, constructive trust, damages adjusted to present value, pre-judgment interest, chargeable costs, post-judgment interest, attorneys' fees, and other monetary and equitable relief will be addressed in the forthcoming post-trial briefing. Amgen's requests for partial or complete judgment as a matter of law and/or new trial,

as well as any other relief sought, will be addressed in the forthcoming post-trial briefing. Judgment will be amended to reflect the Court's judgment and any relief on Count 7 of the amended complaint and its resolution of any other issues presented in post-trial briefing.

5. Post-judgment interest pursuant to 28 U.S.C. § 1961 shall accrue from the date below until the judgment is satisfied consistent with applicable law and any modification of this judgment.

6. The deadline to move for costs and attorneys' fees is extended to within fourteen (14) days after the time for appeal has expired or within fourteen (14) days after issuance of the mandate from the appellate court, and no party shall file any such motion before that time.

7. This Judgment Following Jury Verdict does not finally resolve all claims in this litigation and is accordingly not a final Judgment subject to appeal or execution.

8. This Judgment Following Jury Verdict is subject to modification following the Court's considerations of the parties' post-trial motions and any appeal.

SO ORDERED this 2nd day of June, 2025.

The Honorable Jennifer L. Hall
United States District Judge