Discourses between market innovation and market stagnation: The role of narratives in performing market practices

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Competitive Paper

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> *"It is very important that pharmaceutical markets function properly. Europe's citizens, including all of us here today, need access to safe, innovative and affordable medicines."* Neelie Kroes, European Commissioner for Competition Policy, at the presentation of the preliminary findings of the Pharmaceutical Sector Inquiry in Brussels, 28 November 2008
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> *"A series of unannounced inspections started immediately after the Commission decision, at 3pm, at the premises of a number of both innovative and generic pharmaceutical companies operating in Europe. The raids were co-ordinated with the competition authorities of those member states where the inspections took place".* http://www.euractiv.com/en/competition/big-pharma-groups-raided-eu-antitrust-probe/article-169598, January 16 2008

Previous research in market practices has powerfully demonstrated that markets are not stable back-cloths of actors' doings, but that these doings can shape markets themselves and can shape, in turn, the way markets allow, encourage or hinder actors' doings (e.g. Slater 2002; Callon and Muniesa 2005; Kjellberg and Helgesson 2006; Çalişkan and Callon 2009, 2010). In this paper, we investigate the role of the regulator, via the mechanism of pharmaceutical patent regulation, in market shaping or innovation, defined here as disrupting the current way of actors' doings. We specifically ask two questions: how easy or difficult is it for regulators to disrupt market routines, or market actors' established ways of doing, and how do actors react in the face of regulators' attempts to disrupt?

We seek answers to these questions by tracing how regulators and other market actors 'narrate' the market, that is how, through the means of public narratives, actors attempt to defend, draw attention to, distract from, condemn or implicate others in certain market practices. The purpose of such narratives, of course, is to shape these narrated practices, and the market to which they relate, in a manner most advantageous to the narrating actor. Narratives, supporting narratives and counter-narratives act in claiming stakes in a market, with a view to either justify and thus solidify existing practices or to propose alternatives. Our paper thus sees market narratives as powerful tools in innovating markets, or indeed in attempts at insulating markets and their practices against innovative forces. A critical feature of narratives is that they describe future states, invoking these descriptions in current disputes to support some practices and discredit others, and to engage in the interpreting and stabilizing of descriptions of what has happened, of identifying past happenings as events and interpreting these as being favourable or unfavourable.

As our opening vignettes indicate, the narrated market in question is the pharmaceutical market, a market eternally caught between the discourse of social welfare, of access to affordable and innovative medicines, and that of competition and innovation, of the intellectual property rights of the medicine's inventor. Our analysis is based on the long document trail from the European Commission's recent attempts to innovate the doings of so-called originator pharmaceutical companies, that is companies which are R&D intensive, in relation to what is known as 'lifecycle management' or 'evergreening' of their drugs. The EU Commission did so by way of a so-called EU Sector Inquiry into anti-competitive practices in the pharmaceutical industry, which exceptionally started with the unannounced inspections

mentioned in the introductory vignette.[1] The aim of the Sector Inquiry was to ascertain whether any evidence of a systematic practice of delaying market entry of generic pharmaceuticals through agreements between competitors could be found. The European Commission suspected that if such agreements existed, they would not only act as a deterrent for innovative practices in the pharmaceutical industry, but they could also cause substantial additional costs to tax payers by extending the breadth and duration of the patent protection awarded to pharmaceutical companies for medical innovation.

The remainder of this paper will shed a spotlight onto the role of narratives in shaping or agencing markets and market practices by analysing the body of documents available about this Sector Inquiry. In this analysis, we take discourse to concern "talk and texts as parts of social practice" (Potter 1996, p. 105).[2] While often used interchangeably, there is a certain hierarchical relationship between texts, narratives and discourses. Texts are, in our view, carefully constructed material representations that can individually or with reference to other texts build narratives, or relatively coherent choices of who, where, when, what, why and how. Narratives provide a temporal sequence and unfold in a plot. Texts and narratives in turn build up discourses, or ways of understanding and explaining the world, including 'ruling in' and 'ruling out' certain ways of talking about a topic or object and of conducting oneself in relation to the topic or object (Grant and Hardy 2003). Discourse is often closely associated with institutionalization (Philips, Lawrence and Hardy 2004) and coalition building (Jones and McBeth 2010).

Narrating the market

Narratives play a central role in our understanding of how humans apprehend and attempt to shape the socio-material world. Scholars working in fields as diverse as sociology, anthropology, management, literary studies and economic history have in the past highlighted the role of discourse, narration and story-telling in making what we know as "the economic" (e.g. Beckert 2013; Khaire and Wadhwani 2010; Maurer 2006; Czarniawska 1998; 2004; McCloskey 1998). This body of research indicates that in economic and organizational life, stories are ubiquitous. Stories are also translocational, that is they have the capacity to travel, be it in written or oral form (though they not always do). Moreover, stories are networks of their own, referring to other texts through what literary theorists call intertextuality (e.g. Keenoy and Oswick 2004). Stories and texts are not entities that stand apart from social life. Narrative devices – to include collections of texts, plots and their inter-textual connections – participate in the daily production of social practices or activities. Cooren (2004) for instance examines what mundane texts in organizations 'do' and concludes that "texts are not

[1] It was the first time that a Sector Inquiry opened with such raids, and for many commentators they represented an application that was unprecedented in its force and signalling value of the EU's antitrust regulations. To justify this approach, the FAQ Section of the DG Comp website reads: "The kind of information the Commission will be examining in this inquiry, notably concerning the use of intellectual property rights, litigation and settlement agreements covering the EU, is by its nature information that companies tend to consider highly confidential. Such information may also be easily withheld, concealed or destroyed. The Commission is keen to have immediate access to all such company information and has therefore ordered unannounced inspections."

[2] A caveat is necessary at this point. In 'Representing Reality', Jonathan Potter (1996) rightly points out that any attempt at analysing or deconstructing discourse within a conventional textual narrative such as a scientific text must by necessity be a self-referential exercise. (Social) scientific texts use the same procedures he describes people using "to separate descriptions from their own interests and produce them as neutral and external; that is, to give them a quality of out-there-ness" (p. 15) are used. As a narrative in itself, the scientific text is always partial and incomplete.

foundational; however, they participate, like other agents, in the daily production of organizational life" (p. 374). In line with Callon's (e.g. 1998) and others' claim that economic models and frameworks are performative, it is thus likely that stories also have a performative role to play in markets.[3] Narrative devices can be put to use and also studied just like any other socio-material device with regard to their role in weaving market networks and supporting or disrupting market practices.

In the past, the performative role of narratives has been studied in two directions, namely with regard to performativity toward the future tense – that is how stories, discourses or narratives told now shape markets into the future, and toward the past tense – how narrative devices are used to justify past market behaviours or actions. As to stories' promissory role, Beckert (2013) has highlighted how stories told in the present about the future are a powerful source of creativity in paving the way for this future to become possible. For Beckert, economic actors often cope with uncertainty through fictionality – or "present imaginaries of future situations that provide orientation in decision-making despite the uncertainty inherent in the situation. By not being bound to rational calculation, fictions do not have to be true but must be convincing. They are therefore open to the influence of collective beliefs and manipulations by powerful actors." (2013, no page). Future-cast stories can thus become somewhat of a self-fulfillling prophecy. In a similar vein, Doganova and Equiem-Reynault (2009) saw business plans as an important tool in narrating a future yet to be achieved by budding enterprises and by doing so helping to achieve this future. Likewise, Simakova and Neyland (2008) observed the creation and narration of 'tellable stories' – "a story which narrates boundaries, relations, agency and identities for entities" (p. 96) - about a new product in order to develop a world into which to launch that product. Golant and Sillince (2007) equally emphasise the ability of stories to build constitutions and organizational legitimacy in their analysis of HIV organizations' institutionalization. The stories refer to some point of ending, of settling, or of actors being able to both halt the narrative, and also step away from the narrative, as an envisaged setting in the future, and this evokes ideas of plot.

Stories can help enact futures, as in the cases just mentioned, but when being directed toward solidifying past or present practices they can also be used to contest change, innovation or disruption. Suddaby and Greenwood (2005) observed the rhetorical struggle between proponents and opponents of a new organizational form (multidisciplinary partnerships between law and accounting firms). In their case, stories are used as much to envision a new future as they are to defend the status quo. Stories thus have both a justificationary and a legitimizing capacity. Both emerge most often in locations where collective sensemaking of past or present market practices occurs;[4] the former most visibly in accounts of tribunals or inquests (e.g. Brown 2004), the latter often becomes visible in media controversies (e.g. Patriotta, Gond and Schultz 2011). Kjellberg (2010) for instance recounts the struggles over market representations of airline markets with and without frequent flyer points between the Swedish airline SAS and the Swedish Competition Authority over a ten-year period. Beyond justification, he sees these representational struggles as part of a normalizing process that not only works by justifying extant practices, but that also shapes future exchange practices

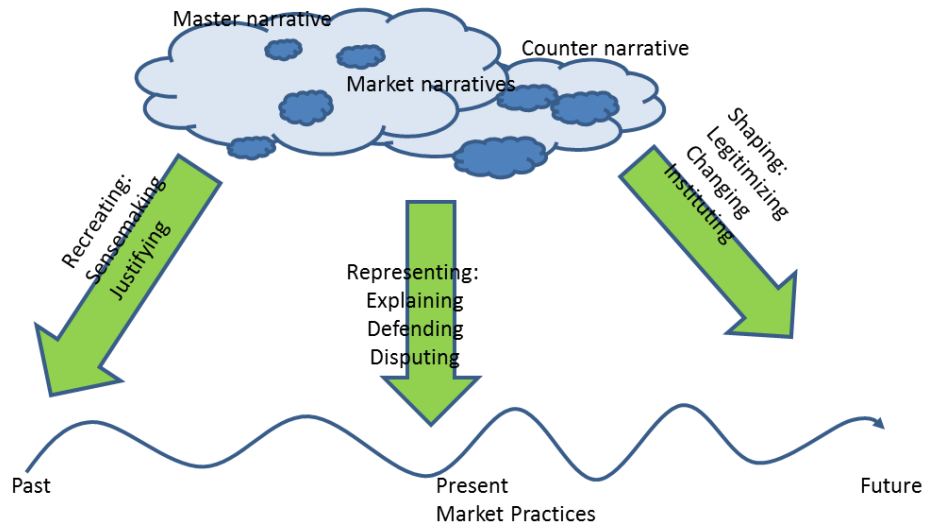
[3] Callon (2002) reflects on the fact that the term performativity first referred to language, or more precisely to Austin's treatise on 'How to Do Things with Words' (1962) before it entered the vocabulary of Actor-Network Theory.

[4] Patriotta et al. (2011) take up Boltanski and Thévenot's (2006) notion of orders of worth in their analysis of media discourses in the wake of a nuclear accident and trace the discursive resources actors mobilized during that time. Boltanski and Thévenot's orders of worth framework is closely related to the interest of the current paper as they see these orders unfolding in the public domain predominantly through discourse; orders of worth in this sense are publicly available 'political grammars' (ibd.).

(Kjellberg and Helgesson 2006). Stories about markets thus form part of what Callon (2007) calls 'performation struggles', and they do so in two specific ways: one, through organising the passage from one state of affairs to another - what Czarniawska (2004) calls 'emplotment' - they build temporality and causality into these performation struggles. And two, as Callon (2002) elaborates upon, they mediate between individual and collective action.

If discursive practices are involved in performation struggles, they also position their authors in relation to power and authority. Brown (2004) notes, with reference to Michel Foucault's body of work, that particularly master or what he calls authoritative narratives can be used to silence alternative narratives. The emphasis in the struggle is enrolment among texts, a particular pattern of inter-textuality. This is not to deny epistemic challenges, which can undermine the authority of a particular text or cluster of texts, but we expect these too to be mediated inter-textually. The role of the law and of national or international regulators or enforcers of this law in creating authoritative narratives about markets is particularly interesting, though somewhat neglected as a subject of study in the context of agencing markets (Christophers 2013). This gap in our knowledge of markets is the point of departure of our current study: we aim to explore the production of an authoritative narrative of a specific market – the EU Commission's Report on the Pharmaceutical Sector Inquiry – by tracing the EU's actions in creating a master narrative from its initial narrative in the preliminary report through the various supporting or counternarratives during the consultation period, to its final *dénouement*. As illustrated in Figure 1, we specifically focus on how these narratives aim to 1. Recreate or justify extant market practices; 2. Represent, dispute or explain current ones, and 3. innovate future market practices. Future becomes a vital reference point, again referring to plot and some idea of how that future can be a settled one with knowable characteristics, and allowing others to tie those descriptions of futures to present understandings of past activities. For example, drawing on neoclassical economics, equilibrium may be one such future, although its power rests as much if not more in the benefits of welfare in society attributed to equilibrium, rather than there being an interest in defining equilibrium per se.

Figure 1: Narratives affect market practices past, present and future



Analysing market narratives

The analysed body of talk and texts emanates from the EU Pharmaceutical Industry Sector Inquiry, which was launched by the Directorate General Competition (DG Comp) through the before-mentioned afternoon raids and accompanying press release on January 16 2008 (the chronology of events is graphically presented in Figure 2 below). On November 28th that same year, after some ten months of investigations, DG Comp published a Preliminary Report and thus opened up the Inquiry to a two-month window of Public Consultation, during which interested parties and the general public had an opportunity to respond to the Preliminary Report. By the time this Public Consultation period closed on January 31 2009, 74 contributions had been received by five broadly distinguishable groups of organisations or individuals (as laid out in Table 1 below). The Final Report was published by DG Comp on July 8th 2009. The Preliminary and the Final Reports, all comments to the Preliminary Report, DG Comp press releases, fact sheets, the speeches during the launch of the Preliminary Report as well as a number of follow-up monitoring reports are publicly available at http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html (last accessed on August 28 2013).

Figure 2: Chronology of Events

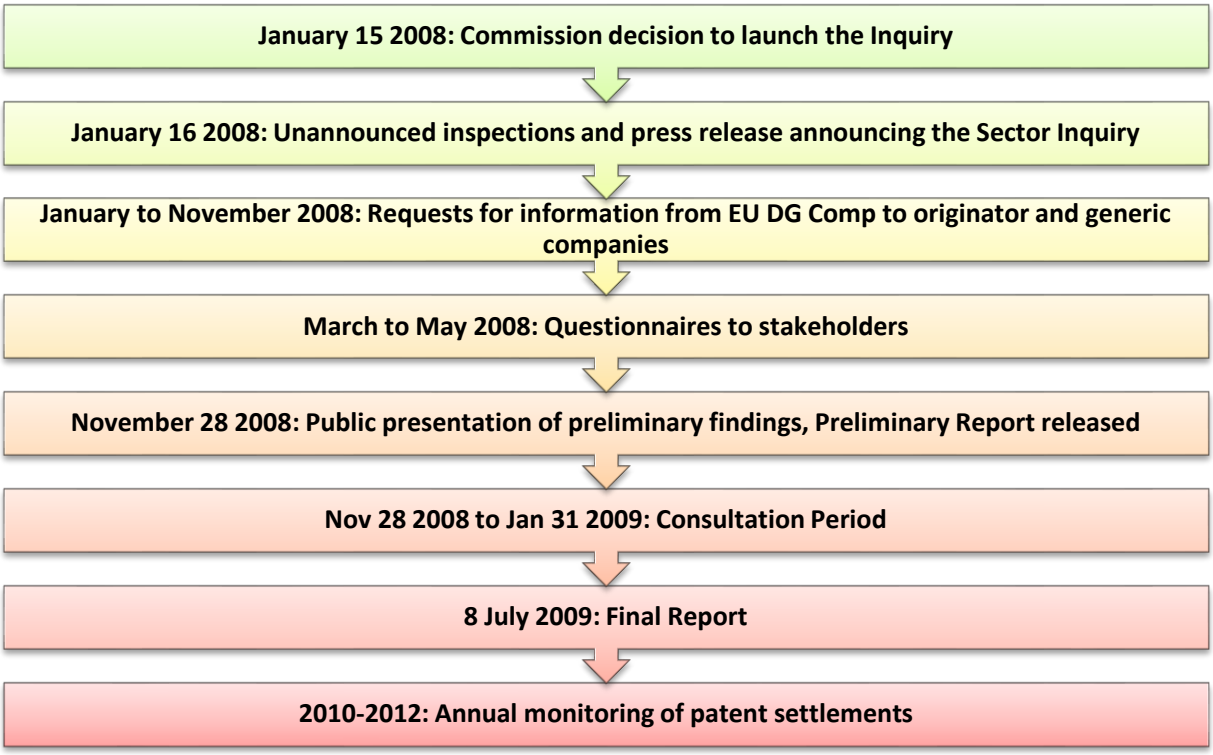


Table 1: Submissions received during the Consultation Period (classified as per EU DG Comp website)

Submissions received by	Number of Individual Submissions
Associations of sickness funds, consumers and related organisations	8
Generic companies and associations of generic companies	9
Government bodies	3
Individual citizens and academics	5
Law firms, economic consultants, patent attorneys and their associations	12
Originator companies and associations of originator companies	26
Other business associations	11

We closely read this body of texts several times before drawing out individual narratives and how the market in question is portrayed in each, following Czarniawska's (2004) notion of 'inspired reading'. We viewed individual submissions as narratives of market practices as they include "choices… of where to start and where to finish, what to include and what to leave out, what to put next to what, and so on" (Potter 1996, p. 172), and we compared and contrasted these choices across submissions. Leaning on Potter's (1996) insights into fact making in texts, we paid particular attention to the attributions made of market practices to particular market players, the invoking of other players, stake management, and what Potter calls category entitlement (or how a text builds the credibility of its producer). We also took account of Potter's distinction between texts' epistemological orientation (those elements in a text that work to establish things as factual) and their action orientation (elements that are oriented to some action or range of actions) and the way these orientations interact. Finally, we traced intertextuality; all submissions of course responded to the Preliminary Report by DG Comp, but they also spun a much wider 'textscape' (Keenoy and Oswick 2004) across regulatory, legal and scientific realms. This intertextuality, in particular, allowed us to draw connections between individual texts, the narratives they emplot, to use Czarniawska's (2004) phrase, and the broader realm of discourse emerging from the web of texts examined.

Analysis

Sector Inquiries are investigations that the European Commission carries out into sectors of the economy and into types of agreements across various sectors, pursuant of Article 17 of Council Regulation 1/2003. The Commission may decide to start a Sector Inquiry when a market does not seem to be working as well as it should. As a regulatory means, they are of great interest to researchers of market practices because rather than identifying wrongdoings of individual companies, their focus is very much on analysing and questioning established market practices common across a number of market actors. Hence, the EU establishes a text in order to both guide the use of Sector Inquiry, and to bestow a particular, though as we shall see below, qualified form of authority to the inquiry process and reports. The EU Sector

Inquiry into anti-competitive practices in the pharmaceutical industry was not the first of its kind; it followed previous Inquiries in the energy, financial services and telecommunications industries. The aim of the pharmaceutical Sector Inquiry was to ascertain whether any evidence of a systematic practice of delaying market entry of generic pharmaceuticals through agreements between competitors could be found. The European Commission suspected that if such agreements existed, they would not only act as a deterrent for innovation in the pharmaceutical industry, but they could also cause substantial additional costs to tax payers by prolonging the period of protection awarded to pharmaceutical companies through patents for medical innovation.

The Narrative of the Preliminary Report

Following its investigations, which included the analysis of more than 20,000 pages of texts obtained during the January 2008 inspections, interviews with a range of stakeholders, surveys of pharmaceutical companies and other stakeholders and requests for information, DG Comp published its preliminary report (PR) into anticompetitive practices in the pharmaceutical industry in Europe in November 2008. The main findings of the report pointed to market practices where so-called originator companies, which developed and sold new medicines, delayed market entry of cheaper generics and blocked other originator companies' innovations and thus potentially the discovery of new drugs through a "patent management tool kit" (PR). The report suggested that originator companies used "a variety of methods" with the objective of delaying or blocking market entry of generic companies in order to ensure continued revenue streams for their medicines. The main practices of "life cycle management strategies" identified included:

- Launching multiple patent applications for the same medicine, with filing for up to 1,300 patents EU-wide in relation to a single medicine (so-called patent clusters).[5]
- Increasing patent applications for blockbuster medicines throughout the life cycle of a product, and particularly toward the end of the protection period conferred by the first patent
- Filing "divisional patent" applications. Divisional patent applications are instruments allowing the applicant to split an initial (parent) application
- Initiating disputes and litigation with generic manufacturers (over 700 cases observed in relation to the 219 medicines investigated between 2000 and 2007)
- Concluding patent settlements which constrain the market entry of generic companies, often with accompanying 'value transfer', extending to direct payments, from the originator to the generic company
- Intervening before national authorities when generic companies ask for regulatory approval: "Originator companies claimed in their interventions that generic products were less safe, less effective and/or of inferior quality." (PR p. 12)
- Engaging in extensive sales and marketing campaigns aimed at health care professionals, often with a view to putting in question the safety and efficacy of potential generic competitors
- Launching second-generation medicines late in the patent period[6]

[5] "Patent clusters can lead to uncertainty for generic competitors as to whether and when they can start to develop a generic medicine without infringing one of the many (new) patents, even though patent holders admit internally that some of these patents might not be strong." (Preliminary Report p. 10)

- Influencing the distribution and supply chain channels.

In many instances, the PR finds that originator companies engage in several or even all of these practices simultaneously.[7] On average, these practices saw generics enter the market about 7 months after the expiry of a compound's main patent, though with considerable variations across Member States and across medicines. If generic entry had taken place without these delays, savings across the EU could have been about € 3 billion over the seven year period studied, reducing expenditure for these medicines by more than 5%. While acknowledging the difficulties and bottlenecks that the EU patent regime and national regulator and payer practices present to pharmaceutical companies, the narrative of the inquiry strongly suggests that the originator companies' market practices under investigation "contribute to this" (PR).

The report also observed a decline in innovation (as measured by the decline of new chemical entities reaching the market) and alleged that companies that created new medicines applied defensive patenting strategies primarily aimed at blocking competitors in the development of new medicines. Originator companies were also found to have concluded agreements through litigations, in particular concerning the marketing and commercialisation of drugs.

Taken in the round, the narrative of the PR was one of a group of market actors – originator companies – using a host of practices allowing them to evade competition for their lucrative branded drugs. They are also cast as a group of companies that are purportedly more concerned with protecting ongoing revenue streams than with pharmaceutical innovation or any other notion of public good. In the PR, this is a master narrative, which fundamentally is a claim of anticompetitive behaviour, its adverse consequences for welfare in society, frustrating market entry and with little trade-off of the monopolists undertaking additional socially-beneficial innovation. The narrative develops in great detail over 430 pages, through the use of graphs, statistics, case vignettes (often acting as mini-narratives within the narrative), direct quotes from originator companies' internal briefings, emails and strategy documents as well as interview sources in originator and generic companies. The PR is careful though not to single out any individual originator company; even the vignettes do not feature identifiers. This is part of the conditions of use established by the EU for sector inquires. Market practices described are those of a group of companies, not of individual firms. Likewise, generic companies, described in the report as often smaller and regional players, were summarily cast as the victims of these market practices[8]. The main victims however are the consumers, who are said to be missing out on or having delayed access to innovative and affordable drugs, and of course the national payers of pharmaceuticals, who have to contend with a loss of an estimated €3 billion because of generic entry delays. Overall, the narrative is carefully constructed, factually underlined, but clear and direct in its implications.

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[6] "Originator companies undertake intensive marketing efforts with the aim of switching a substantial number of the patients to the new medicine prior to market entry of a generic version of the first generation product. If they succeed, the probability that generic companies will be able to gain a significant share of the market decreases significantly. … Whilst it is generally accepted that innovation is often achieved in incremental steps, patents relating to second generation products are sometimes criticised as weak by other stakeholders who argue that they show only a marginal (if any) improvement or additional benefit to the patients." (ibd. p. 13)

[7] One may note that the Rt. Hon. Sir Robin Jacob, Court of Appeal of England and Wales, found none of these market practices to be either remarkable or novel in his speech at the Commission Presentation of the PR.

[8] It needs to be mentioned that some originator companies are also manufacturers of generic medicines and that many generic firms are large global entities, so this separation is not quite as clear-cut as made out here.

Counter- and Supporting Narratives

In keeping with Commission protocol, a consultation period of two months followed this preliminary report, during which over 70 interested parties - including consumer associations, national regulators, originator companies, generic companies, insurance associations and others - voiced their perspectives on the issues raised, as laid out in Table 1 above. And in some of these contributions, a very different narrative of pharmaceutical market practices in general, and of the question of whose activities are blocking innovation in the pharmaceutical market in particular, emerged. What is more, potential consequences of interfering with existing practices are also drawn up in many of these counter-narratives. As an example, one major European pharmaceutical company asserted:

> "The Preliminary Report does not in our view address the issues of real concern within the pharmaceutical sector. ... Any empirical study of the pharmaceutical sector should take into consideration market distortion caused by national regulatory regimes, which dictate competitive conditions on both the supply and demand side. The research and development of new drugs is getting more difficult and costly, with increasing regulatory hurdles such as larger and more complex trials. We are particularly concerned that the Commission, in its preliminary report, has singled out the filing, prosecution and enforcements of patents as a focus for criticism. Any action by the Commission that weakens the patent system or causes uncertainty in the industry as to the feasibility of patenting inventions will have a chilling effect on research and innovation within the European Union to the ultimate detriment of patients." http://ec.europa.eu/competition/consultations/2009_pharma/bayer.pdf
> (our emphases)

Here, the very players that stand accused of activities that worked against innovation to keep the market in a *status quo* turn the table on the Commission to state that it is in fact the regulators who are working as market actors against patient interests by making pharmaceutical innovation difficult and costly, rather than any 'reprehensible practice' (ibd.) on the originator companies' part. It is thus the Commission that perpetuates the very status quo that seems unsatisfactory to consumers, regulator and drug companies alike! Many of the originator companies' submissions also draw attention to generics companies as perpetrators rather than passive victims. To quote an industry representative at the PR Presentation, "*The Commission has not addressed the main problem [of cost to the tax payer]"*, which is in the eyes of the originator companies not their own behaviour, but of course that of the generics companies. Submissions state for instance that these companies launch generic medicines 'at risk', that is before the end of a medicine's patent period, or engage in price collusion to keep prices artificially high post-entry.[9] Rather than accepting the position of villain in the PR's story, the originator companies point out to their own share of injustice suffered: "*although the PR is clearly influenced by generic claims as to the alleged potential harm that may be suffered if an interim injunction is granted, it makes nothing but passing reference to the harm that is suffered by an innovator if no injunction is granted."*

At the same time as attributing wrongdoings to players and practices elsewhere in the market system, originator companies simultaneously and emphatically reject the villainy casting they received in the PR. This is done mainly by discrediting the PR narrative's credibility on substantial and methodological grounds:

> *"Whatever the precise words used in the report were, the media took away the impression that company behaviour was a very significant – indeed perhaps the sole -*

[9] Though the Report specifically excludes generics price competition from its purview.

cause of the extra cost to payers …This is wholly misleading as at no point does the PR identify what, if any, delay in generic entry was in fact caused by innovator company behaviour. Indeed, it contains no evidence, as opposed to conjecture, that company behaviours caused delay, far less that they did so wrongfully". http://ec.europa.eu/competition/consultations/2009_pharma/gsk.pdf

Besides discrediting the PR's narrative, the counter-narratives also redefine those market practices that they cannot refute. For instance, where the Commission interprets certain practices as anticompetitive and potentially libellous, originator companies see them as "sound commercial practice" and assert that *"no conclusions whatsoever can be drawn from any theory of harm"*
http://ec.europa.eu/competition/consultations/2009_pharma/gsk.pdf

Overall, three issues are noteworthy across the originator companies' submissions: One, individual submissions, though varying in tone and length, are very much in unison in their criticism against the PR and in their predictions of what any disturbance of existing practices would mean for the European health consumer's future. Indeed, the phrasing encountered in the quote above, of changes potentially having a 'chilling effect on pharmaceutical R&D in Europe', is repeated across several submissions. They thus knit a heavy intertextual web weighing down on any purported attempt to disrupt these practices. All individual submissions also either directly flag their support or take their cue from their industry association's EFPIA lengthy response to the PR (EFPIA is the European Federation of Pharmaceutical Industries and Associations), thus making sure that their own narrative is a concerted one, with the potential of becoming authoritative in itself. Two, the originators' counter-narrative is strongly supported by submissions from lawyers, law associations and patent attorneys, whose submissions mostly point to the fact that - while perhaps a tad Machiavellian - none of the alleged practices the PR accused the originator companies of are strictly speaking illegal. The involvement of law and legal professionals adds in a further master-narrative and inter-textuality, of what counts as a fair legal process and outcome, of an end to a legal process. And lastly, though originator companies assert that they share the DG Comp's overarching objective of safeguarding consumer welfare and industry innovativeness, attributions are diametrically different from those of the PR. They do so mainly by ascribing the final decision power to parties who, in the PR, were mainly cast as passive, namely the patients and their doctors who in the last instance will decide over issues of innovativeness or otherwise of the products used. The narrative concludes quite simply that until such time as the system appears broken in these market actors' eyes, "c*hanges to improve the functioning of the pharmaceuticals market need to avoid unbalancing the framework constructed and refined over many years."* (http://ec.europa.eu/competition/consultations/2009_pharma/pfizer.pdf) - in other words: Dear EU, please buzz off and stop interfering in our cosy constellation of patent management practices!

What of the other narratives, those of consumer associations, the European Patent Office, and importantly the generics companies and their associations? Unsurprisingly, the generic companies strongly welcomed the Sector Inquiry and the PR's findings and urgently called for the Commission to follow these findings up with legal and regulatory actions. They also called upon a number of additional cast members' behaviours to come under DG Comp's scrutiny, chiefly amongst them the large national payers who often agree long-term contracts with originator companies that seem impenetrable to competitors. Consumer associations, though their submissions were small in numbers, also voiced their support for DG Comp's perspective of the market, and equally called on the Commission to follow words with action, both with regard to its own failings (particularly what some identify as a 'soft' approach to

granting patent rights) as to those of originator companies. And finally national health buyers, payers and reimbursers of medicines, who often act on behalf of patients, used their voice to counter the many points of criticism that originator companies made of their own practices – for instance of delays caused by therapeutic reference pricing, health technology assessments or payback mechanisms. Despite their various disagreements, all actors were unanimous on one point though: that a unitary European patent system would accelerate the time it takes for pharmaceutical companies to gain a patent, decrease the associated administrative and financial burdens and bring greater unity into a fragmented and thus likely suboptimal system. The unitary patent thus acted as a desirable end point or utopian object through which all narratives overlapped.

Reconciling the narratives

Six months later, one commentator remarked that "DG Competition's release of its long-awaited Final Report on its Pharmaceutical Sector Inquiry on 8 July 2009 was somewhat of a damp squib compared to the fireworks surrounding the publication of its Interim Report some eight months earlier." (Hull 2009, p. 14). The Final Report's key narrative veered away somewhat from the PR's original focus on pharmaceutical companies' business practices and replaced that emphasis with one on regulatory shortcomings and particularly the need for patent reform and the development of a single patent court system. To summarise briefly, it stated that:

- A Community patent and a unified specialised patent litigation system in Europe would reduce administrative burdens and uncertainty for companies.
- Recent initiatives of the European Patent Office (EPO) to ensure a high quality standard of patents granted and to accelerate procedures were welcomed. This included measures taken in March 2009 to limit the possibilities and time periods during which voluntary divisional patent applications could be filed (so-called "raising the bar exercise").

While attributing future action imperatives mainly to its own institutions, the Commission also urged member states to streamline pricing and reimbursement policies and to significantly accelerate approval procedures for generic medicines.

In many stakeholders' (especially the originators') view, the 2009 final report was arguably more 'balanced' than the preliminary report; toning down the 'emotive rhetoric' (Hull 2009) some had perceived, and found offence at, in the PR. The use of the terms 'defensive', 'secondary' or 'weak' patent for instance, which in the PR were strategically placed to signal the market practices associated with these market objects, were in the FR aligned with European patent law, which only knows of 'patents' in the technical sense.[10] Unsurprisingly, the Commission's shift in tone, particularly noticeable after the clearly damning narrative of the November 2008 report, was welcomed by EFPIA, the trade group representing large pharmaceutical companies. The group found its counter-narrative and associated objectives of streamlining the EU patent system adequately reflected in the FR. EFPIA also noted that the final report "*failed to substantiate*" earlier allegations that patenting strategies of some pharma companies dampened innovation and illegitimately delayed the entry of generics.

So at the end of the day, narratives were reconciled and the *status quo ante bellum* re-established? Not quite. We can expect a narrative to include an elaboration of some end

[10] At the same time, the European patent offices were encouraged to 'raise the bar' (FR) in terms of the quality of patents granted.

point, be it legal, or economic (in neoclasslcail or Schumpetrian versions), but an impetus towards reconciling opens up the question of further mainstaking inter-textuality. In launching the Final Report, Commissioner Nelly Kroes asserted that the report reiterated that company practices were a significant factor behind "competition problems" in the pharma sector. And this message was also to be translated into action: On the day, Commissioner Kroes announced a fresh antitrust investigation against a French pharmaceutical firm for suspected breaches of rules on restrictive businesses practices and on abuse of a dominant market position and a two to three year monitoring exercise to probe further into ongoing patent settlements between originator and generics companies. She also projected further legal cases arising partly from the material collected by the Sector Inquiry. Thus, while the final narrative proved restrained in its criticism and perhaps face saving for pharmaceutical companies, the ensuing regulatory actions spoke a somewhat more forceful language.

Discussion and Conclusions

While the limited space of this paper does not allow a more in-depth examination of the argument, it gives a taste for the intricacies of market innovation in this particular sector, and particularly for the role narratives play in innovating market practices. In the pharmaceutical market, regulatory concern, patient interests, government costs, global 'Big Pharma' and local 'small Pharma' agendas coalesce and compete with patent law, technological innovation, drug lifecycles, and many more to create a market that is shaped by a multitude of forces, actors, devices, values and interests. Through our example, we show just how fraught with difficulty and challenge attempts at market innovation as the disruption of established ways of doing in such a market can be. Questions to consider are, for instance, of what does it take to overcome the inertia created by a confluence of actors, materials and interests? What role does regulation have in innovating market practices? And in whose interest is market innovation (or not, as the case may be)? If we adopt the perspective that markets are performed, that is that many different kinds of economic actors are involved in making, sustaining and undoing markets (e.g. Kjellberg and Helgesson 2006; Callon 2009), then market innovation becomes a collective task of institutional innovation and the issue to be resolved is one of equipping market actors to shape the markets that they desire.

Narratives are one such way of equipping, and a very powerful one, but due to their public nature they are also easily contested through counter-narratives. We demonstrated one case where narratives and counter-narratives were accommodated into a carefully framed hybrid master narrative, to which all relevant actors could subscribe. As with any attempt at framing, though, the spillovers of narratives left out, discarded and supressed, are still visible and lurking behind that master narrative (cf Callon 1998; 2002). As devices, narratives bring their own processes, and temporality is critical. A narrative becomes a way of reconstructing the past, as through inferences of causality, and of envisaging a future end-point to a process, which is often abstract, as in the equilibrium of neoclassical economics, or the conditions that allow to reach an end point, for instance of a legal process. But these inform and shape visions of a market, so provide a basis for sorting out current practices into helpful and unhelpful, fair and unfair, and similarly help recreate interpretations of processes that have already occurred. Finally, we should note that the narratives contest a special quality in the pharmaceuticals industry, of welfare and of public good. We have no easy way of resolving, for instance, whether society is better off having producers earning monopoly profits so as to facilitate significant research and development, or whether current products produced at lower cost and sold at lower prices are preferable. And both possibilities are beset by uncertainty: will the companies actually invest in novel research and development projects?

Will lower cost products produced in more competitive markets be of comparable quality to those produced presently? Narratives provide a means by which such uncertainties can be emplotted and thus related to past and present market practices, actors and frames.

In the pharmaceutical industry, the Sector Inquiry's Final Report and the three monitoring reports commissioned and published subsequent to the Inquiry in 2010, 2011 and 2012 at least showed that if nothing else, publicly and discursively highlighting certain practices *can* have an effect: patent settlements considered potentially problematic from the perspective of competition law (so-called pay-for-delay transactions or those which limit market entry for generic companies and include value transfers from originator to generic company) fell from representing 22% of all originator-generic patent settlements in the period from 2000 to 2007 to 10% in 2009 and as low as 3% in 2010, having, according to the last of the monitoring reports, "stabilized at a low level". As of July 2012, the Commission has taken out or announced proceedings against at least five sets of companies for possible violations of EU competition rules, including practices involving generic companies. Finally, the Commission itself has taken a big step forward in innovating its own practices: "In 2012 Member States and the European Parliament agreed on the 'patent package' – a legislative initiative consisting of two Regulations and an international Agreement, laying grounds for the creation of unitary patent protection in the EU" (http://ec.europa.eu/internal_market/indprop/patent/).

The utopian state envisaged in the shared master narrative of the FR will thus (at least partly) be reached with the institution of this narrative end point on January 1st 2014.

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