Factors to Consider When Defining Markets

- Products have same application
- Consumer switching
- Pricing evidence
- Non-price competition
- Effects of entry

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:	
Accused Drug and other NSAIDs would have different uses.	✓
Physicians would not switch other NSAIDs for Accused Drug.	✓
Accused Drug price would move independently of other NSAIDs.	✓
No non-price competition between Accused Drug and other NSAIDs.	✓
Output of active molecule would increase upon generic entry.	✓

R012a

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:	ACTUAL EFFECT OF GENERIC ACTIVE MOLECULE ENTRY:
Accused Drug and other NSAIDs would have different uses. ✗	*Products are used for the same general applications — treatment for pain, including arthritis.*
Physicians would not switch other NSAIDs for Accused Drug. ✓	
Accused Drug price would move independently of other NSAIDs. ✓	
No non-price competition between Accused Drug and other NSAIDs. ✓	
Output of active molecule would increase upon generic entry. ✓	

R012b

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:	ACTUAL EFFECT OF GENERIC ACTIVE MOLECULE ENTRY:
Accused Drug and other NSAIDs would have different uses. ☒	*Products are used for the same general applications — treatment for pain, including arthritis.*
Physicians would not switch other NSAIDs for Accused Drug. ☒	*Physicians frequently switch among the NSAIDs and view them as similar and interchangeable. When the Cox-2 Inhibitors entered the market, they took significant prescription volume from Accused Drug.*
Accused Drug price would move independently of other NSAIDs. ☑	
No non-price competition between Accused Drug and other NSAIDs. ☑	
Output of active molecule would increase upon generic entry. ☑	

R012c

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:	ACTUAL EFFECT OF GENERIC ACTIVE MOLECULE ENTRY:
☒ Accused Drug and other NSAIDs would have different uses.	*Products are used for the same general applications — treatment for pain, including arthritis.*
☒ Physicians would not switch other NSAIDs for Accused Drug.	*Physicians frequently switch among the NSAIDs and view them as similar and interchangeable. When the Cox-2 Inhibitors entered the market, they took significant prescription volume from Accused Drug.*
☒ Accused Drug price would move independently of other NSAIDs.	*Big Pharma Co. consistently priced Accused Drug in close relationship to the other NSAIDs.*
☑ No non-price competition between Accused Drug and other NSAIDs.	
☑ Output of active molecule would increase upon generic entry.	

R012d

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:	ACTUAL EFFECT OF GENERIC ACTIVE MOLECULE ENTRY:
Accused Drug and other NSAIDs would have different uses. ☒	*Products are used for the same general applications — treatment for pain, including arthritis.*
Physicians would not switch other NSAIDs for Accused Drug. ☒	*Physicians frequently switch among the NSAIDs and view them as similar and interchangeable. When the Cox-2 Inhibitors entered the market, they took significant prescription volume from Accused Drug.*
Accused Drug price would move independently of other NSAIDs. ☒	*Big Pharma Co. consistently priced Accused Drug in close relationship to the other NSAIDs.*
No non-price competition between Accused Drug and other NSAIDs. ☒	*Big Pharma Co. engaged in vigorous non-price competition to take prescriptions from other NSAIDs, including detailing and sampling. Accused Drug prescriptions were highly sensitive to promotional efforts.*
Output of active molecule would increase upon generic entry. ☑	

R012e

Expected Observations If Active Molecule Was a Relevant Antitrust Market

EXPECTED OBSERVATIONS:		ACTUAL EFFECT OF GENERIC ACTIVE MOLECULE ENTRY:
Accused Drug and other NSAIDs would have different uses.	X	*Products are used for the same general applications — treatment for pain, including arthritis.*
Physicians would not switch other NSAIDs for Accused Drug.	X	*Physicians frequently switch among the NSAIDs and view them as similar and interchangeable. When the Cox-2 Inhibitors entered the market, they took significant prescription volume from Accused Drug.*
Accused Drug price would move independently of other NSAIDs.	X	*Big Pharma Co. consistently priced Accused Drug in close relationship to the other NSAIDs.*
No non-price competition between Accused Drug and other NSAIDs.	X	*Big Pharma Co. engaged in vigorous non-price competition to take prescriptions from other NSAIDs, including detailing and sampling. Accused Drug prescriptions were highly sensitive to promotional efforts.*
Output of active molecule would increase upon generic entry.	X	*Output of active molecule continued to fall upon generic entry.*

The Market Is All NSAIDs

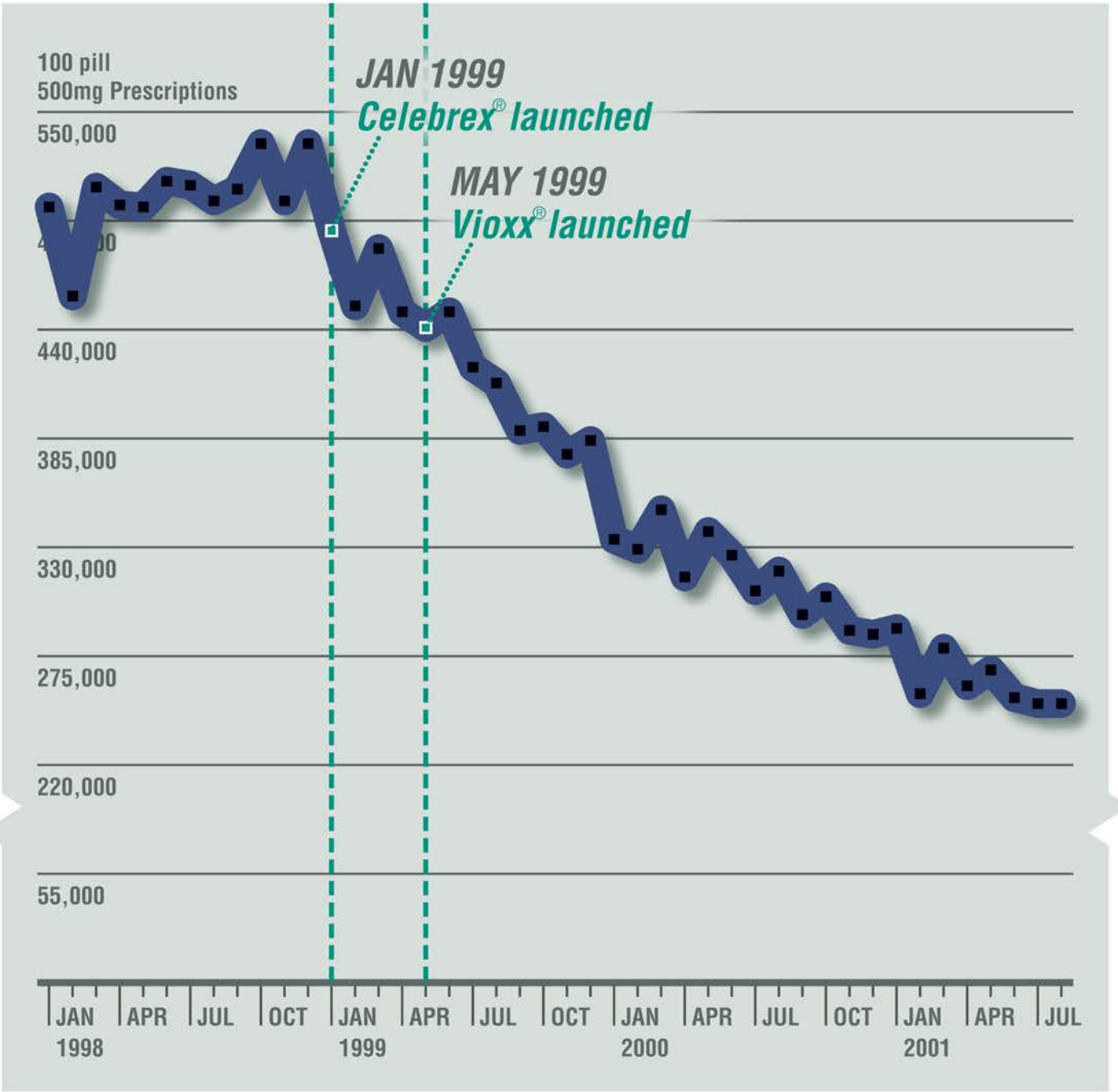
FACTOR:	ALL NSAIDs:	
Products have same application	Yes	Used for treatment of acute and chronic pain, including arthritis.
Consumer switching	Yes	Physicians switch patients among alternative NSAIDs.
Pricing evidence	Yes	Big Pharma Co. priced Accused Drug in close relationship with other branded NSAIDs.
Non-price competition	Yes	Big Pharma Co. promotional activity sought to take sales away from competing NSAIDs with an aggressive detailing and sampling campaign.
Effects of entry	Yes	The Cox-2 entry significantly eroded Accused Drug sales. Total number of active molecule prescriptions decreased after the Cox-2 entry. Active molecule prescriptions did not increase after generic entry.

The Entry of Cox-2 and Generic Active Molecule Had the Same Effect on Accused Drug, Therefore Both Are Included in the Relevant Market

	Effect of Cox-2 Entry	Effect of Generic Active Molecule Entry
Accused Drug Sales:	• *LOST* approximately 250,000 prescriptions/month	• *LOST* approximately 250,000 prescriptions/month
Accused Drug Promotional Efforts:	• *DECREASED* by millions of dollars	• *DECREASED* by millions of dollars
Accused Drug Prices:	• *DID NOT* fall	• *DID NOT* fall

R011

The Entry of Cox-2 Inhibitors Caused Accused Drug Prescriptions to Decline Dramatically

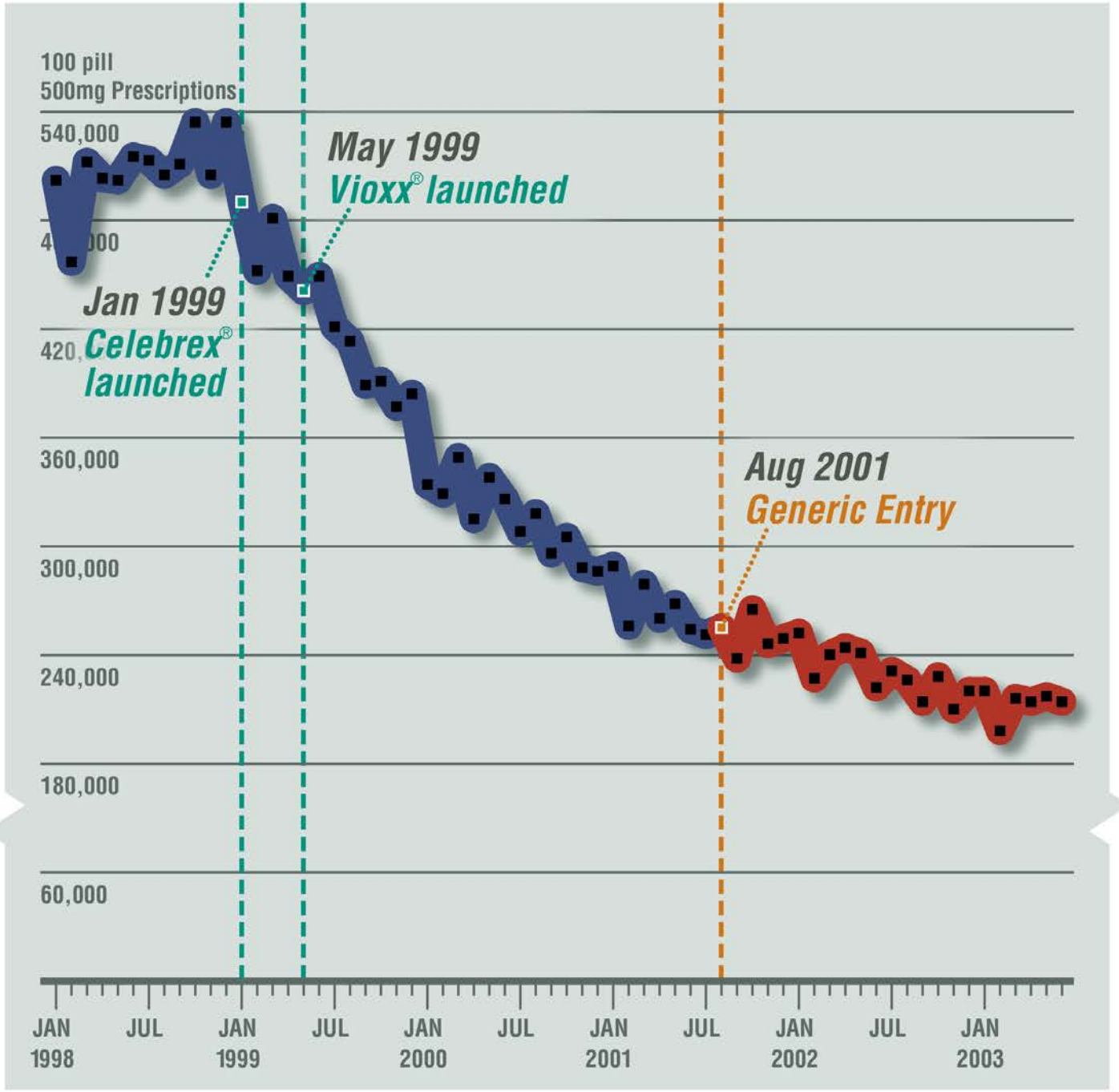


Active Molecule Prescriptions Continued to Decline After Generic Entry in August 2001

Source: IMS

JAN 1998 – JUN 2003

Accused Drug and Active Molecule Prescriptions Steadily Declined After the Entry of Cox-2 Inhibitors



Source: IMS

Key:

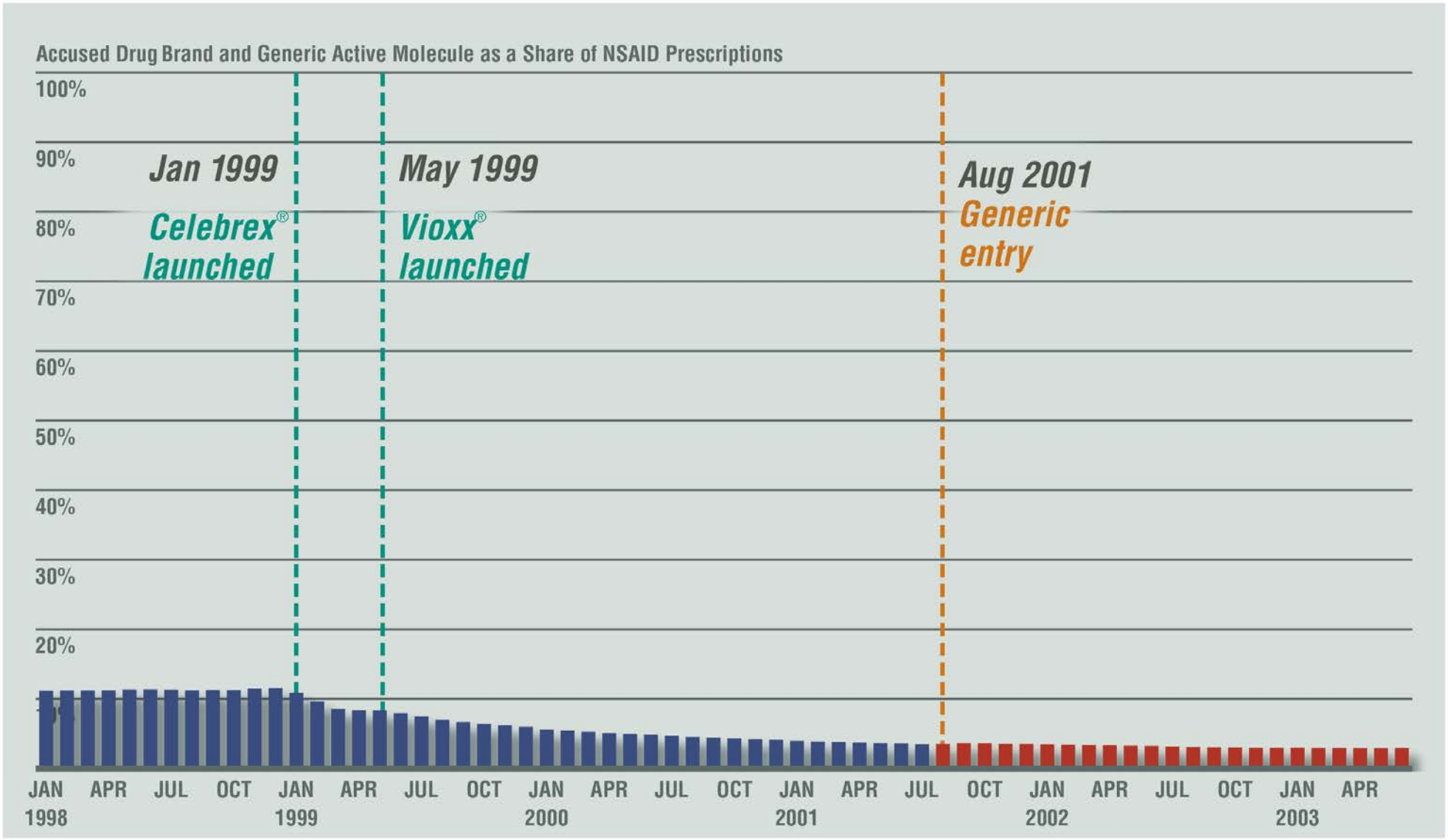
Accused Drug brand

Accused Drug and generics

R019

Accused Drug's Market Share of NSAID Prescriptions

NEVER EXCEEDED 12%

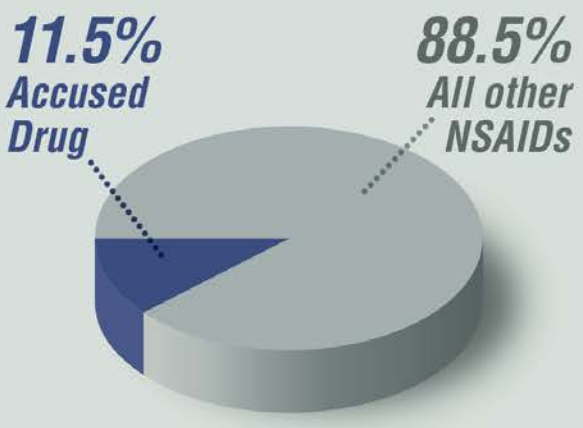


Source: IMS

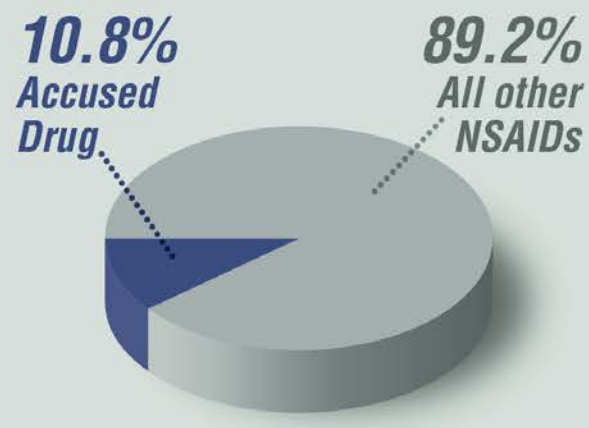
R020

Accused Drug Always Had a Small Share of the NSAID Market and *NO* Market Power

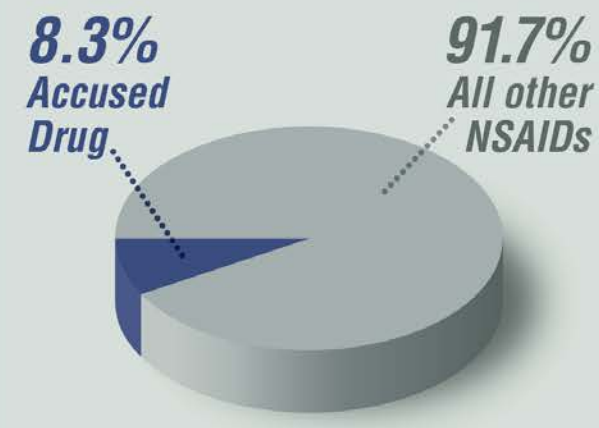
DEC 1998



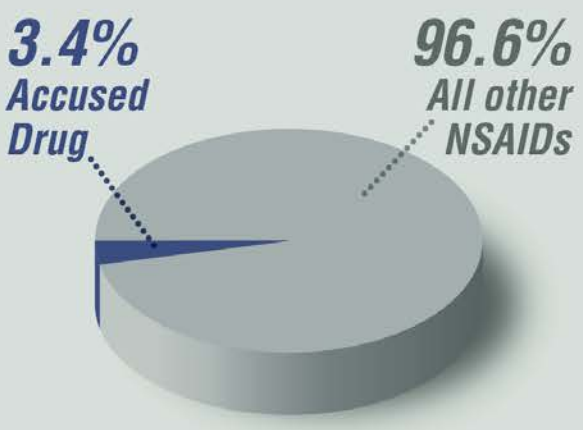
JAN 1999 – *Celebrex® Launched*



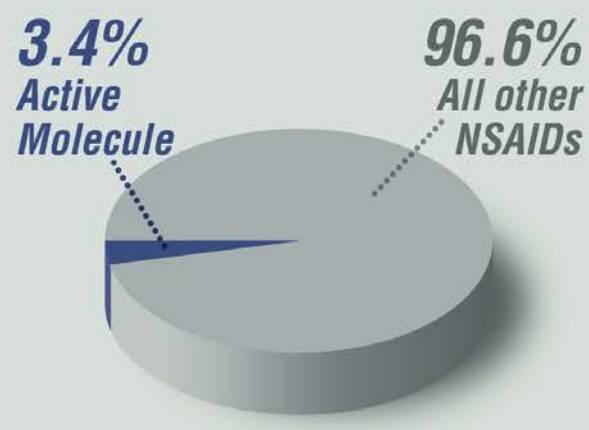
MAY 1999 – *Vioxx® Launched*



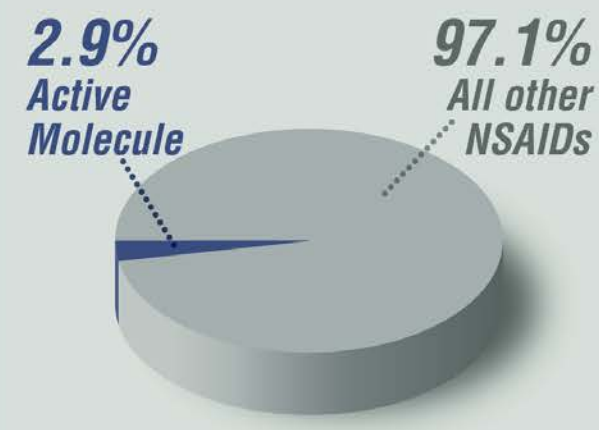
JULY 2001



AUG 2001 – *Generic Entry*



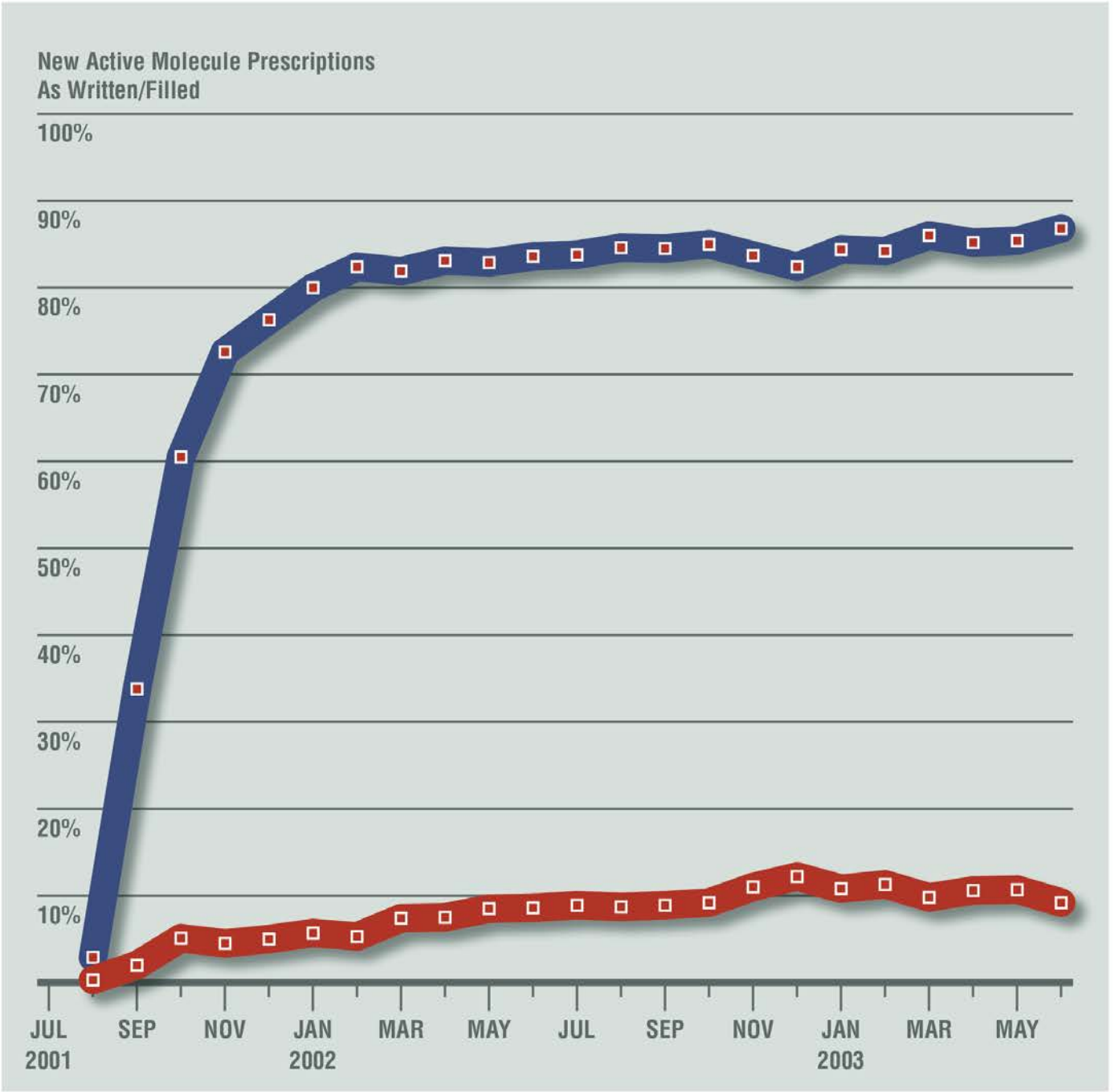
JUN 2003



Source: IMS

R021

Accused Drug Share Erosion Is a Function of Generic Substitution Laws

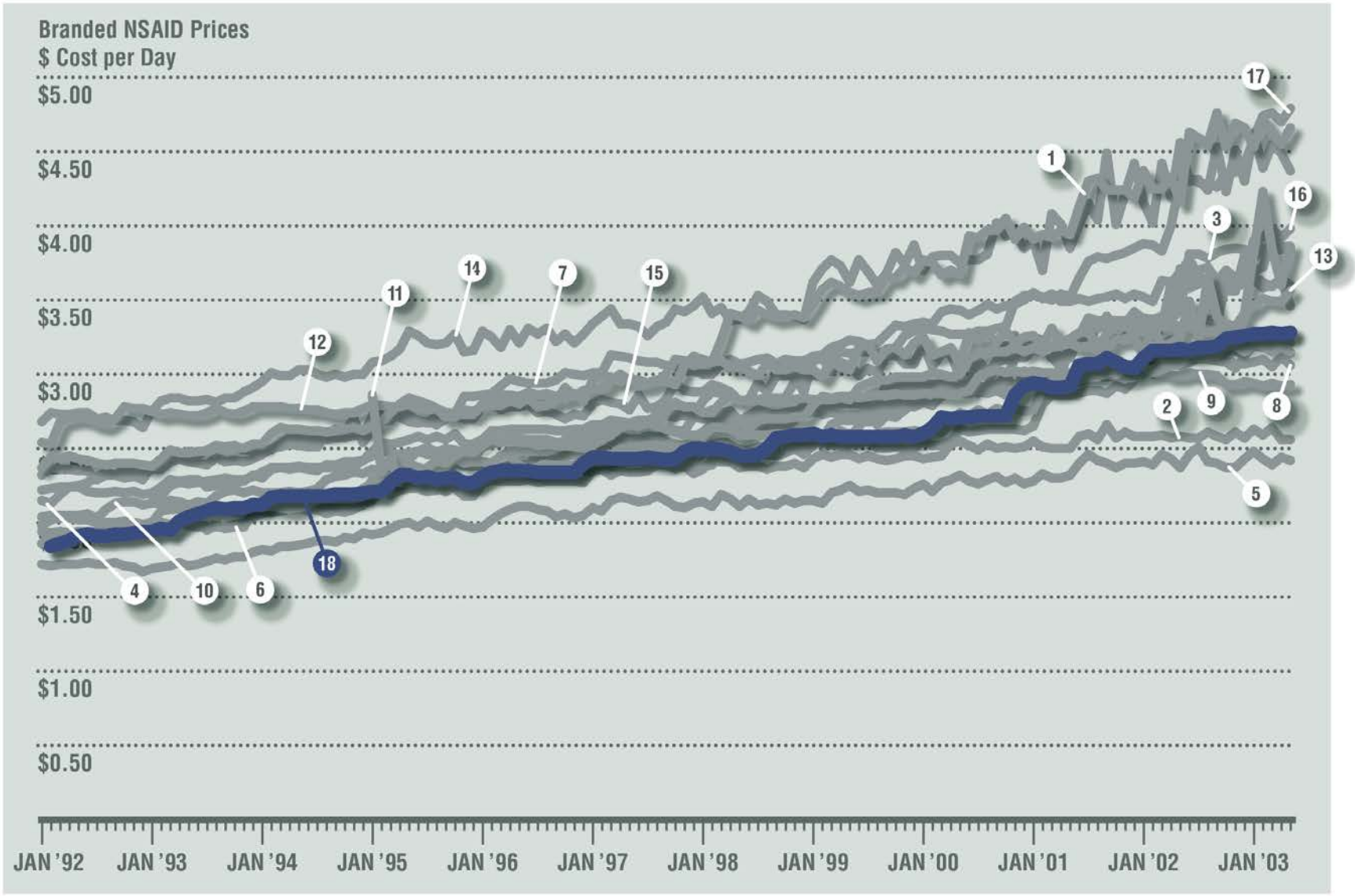


Source: IMS

Key:

- Written Accused Drug/ Filled Generic
- Written Generic/ Filled Generic

Accused Drug Was Priced to Be Competitive in the NSAID Market



KEY:

1. Ansaid
2. Clinoril
3. Daypro
4. Feldene
5. Indocin
6. Indocin SR
7. Lodine
8. Lodine XL
9. Naprelan
10. Naprosyn
11. Naprosyn EC
12. Orudis
13. Oruvail
14. Tolectin 600
15. Tolectin DS
16. Voltaren
17. Voltaren XR
18. **Accused Drug**

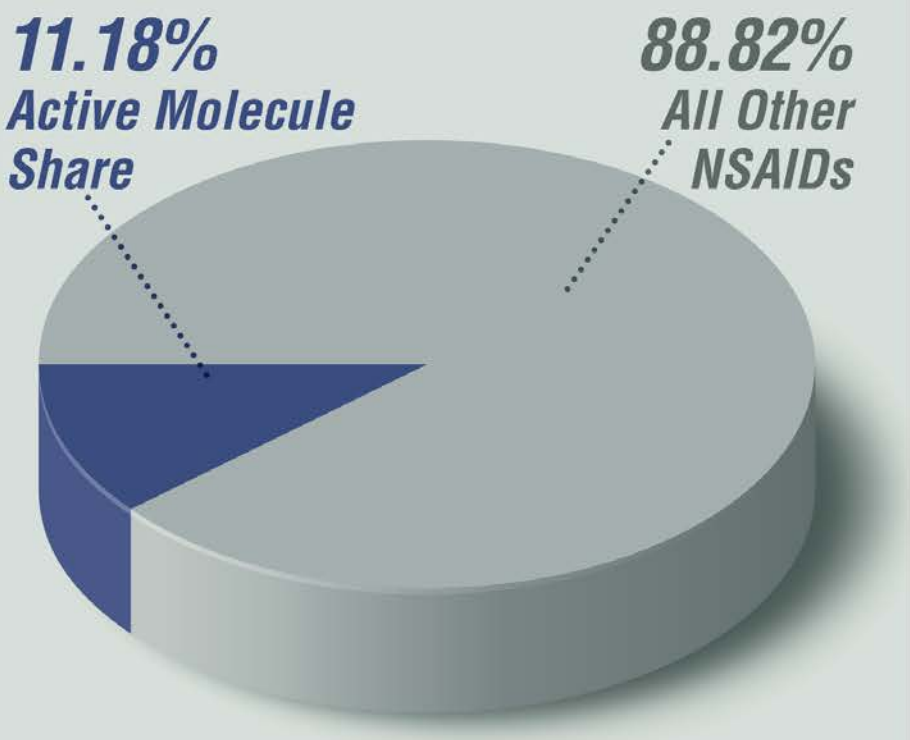
Source: IMS

R025

The Entry of Cox-2 Inhibitors Significantly Eroded Active Molecule's Share of the NSAID Market

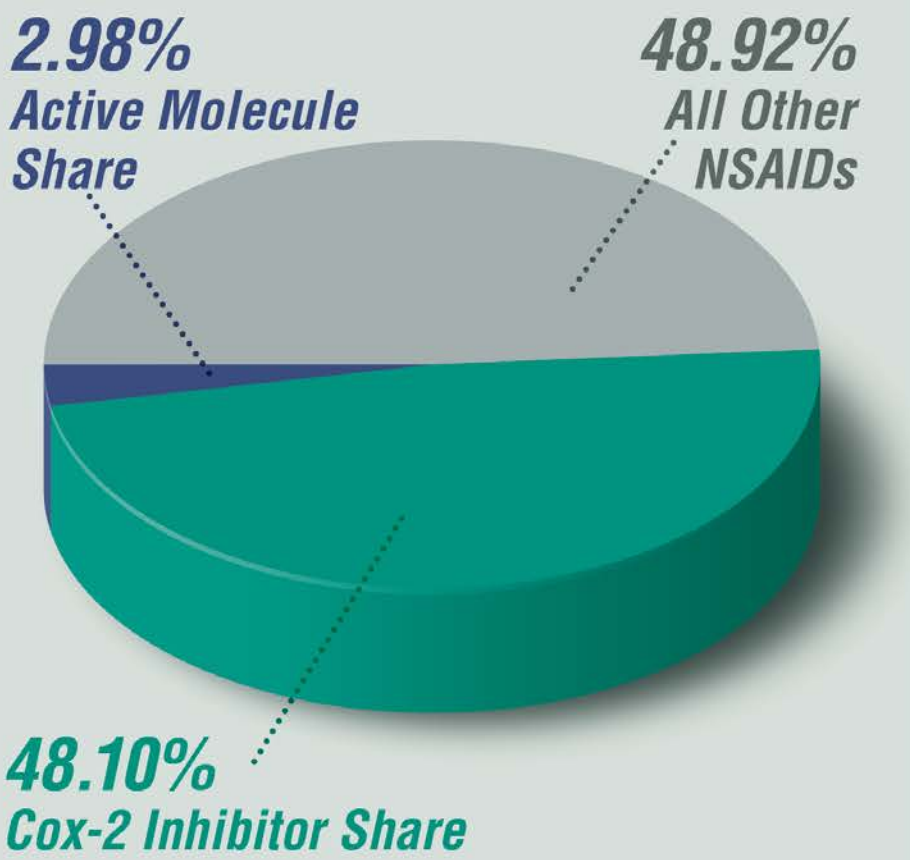
JANUARY 1998

NSAID Prescriptions



JANUARY 2003

NSAID Prescriptions



Source: IMS

R027

There Is a Difference Between Changes in Price and Changes in *AVERAGE* Price

PERIOD 1:

CUSTOMER 1:

Buys:	19 units
Price:	$1.00 per unit
Total:	**$19.00**

CUSTOMER 2:

Buys:	1 unit
Price:	$0.80 per unit
Total:	**$0.80**

AVERAGE PRICE:

$$\left(\frac{\$19.80}{20 \text{ units}}\right) \mathbf{\$0.99}$$

R015a

There Is a Difference Between Changes in Price and Changes in *AVERAGE* Price

PERIOD 1:	PERIOD 2:
CUSTOMER 1:	***CUSTOMER 1:***
Buys: 19 units	Buys: 1 unit
Price: $1.00 per unit	Price: $1.00 per unit
Total: $19.00	**Total: $1.00**
CUSTOMER 2:	***CUSTOMER 2:***
Buys: 1 unit	Buys: 1 unit
Price: $0.80 per unit	Price: $0.80 per unit
Total: $0.80	**Total: $0.80**
AVERAGE PRICE:	***AVERAGE PRICE:***
$\left(\frac{\$19.80}{20 \text{ units}}\right)$ **$0.99**	$\left(\frac{\$1.80}{2 \text{ units}}\right)$ **$0.90**

R015b

There Is a Difference Between Changes in Price and Changes in *AVERAGE* Price

PERIOD 1:	PERIOD 2:	
CUSTOMER 1:	***CUSTOMER 1:***	***Prices DO NOT change***
Buys: 19 units	Buys: 1 unit	
Price: $1.00 per unit	**Price: $1.00 per unit**	
Total: $19.00	Total: $1.00	
CUSTOMER 2:	***CUSTOMER 2:***	
Buys: 1 unit	Buys: 1 unit	
Price: $0.80 per unit	**Price: $0.80 per unit**	
Total: $0.80	Total: $0.80	
AVERAGE PRICE:	***AVERAGE PRICE:***	
$\left(\frac{\$19.80}{20 \text{ units}}\right)$ **$0.99**	$\left(\frac{\$1.80}{2 \text{ units}}\right)$ **$0.90**	

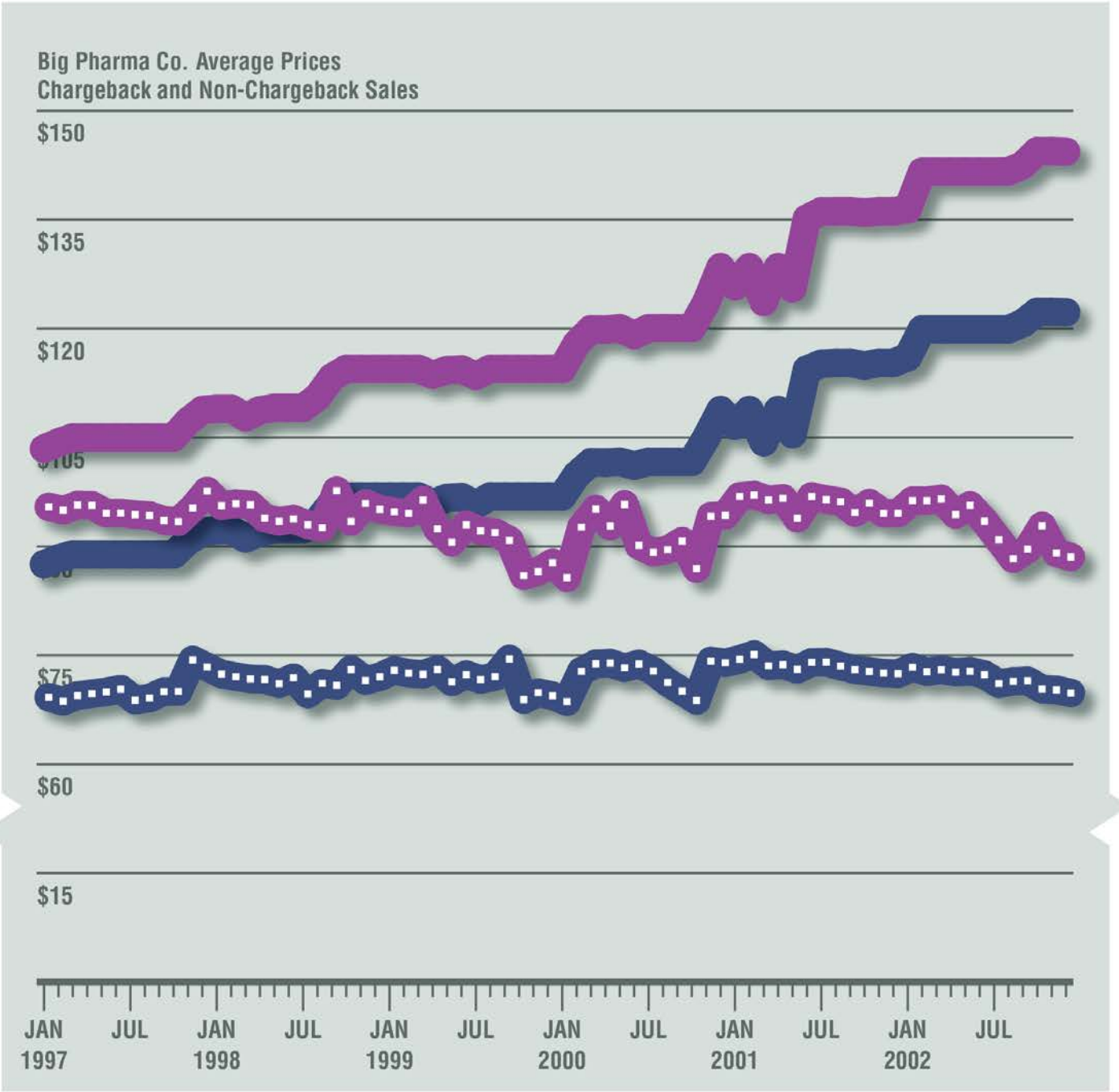
R015c

There Is a Difference Between Changes in Price and Changes in *AVERAGE* Price

PERIOD 1:	PERIOD 2:	
CUSTOMER 1:	***CUSTOMER 1:***	***Prices DO NOT change***
Buys: **19 units**	Buys: **1 unit**	
Price: $1.00 per unit	**Price: $1.00 per unit**	***AVERAGE price changes due to changes in customer mix***
Total: $19.00	Total: $1.00	
CUSTOMER 2:	***CUSTOMER 2:***	
Buys: 1 unit	Buys: 1 unit	
Price: $0.80 per unit	**Price: $0.80 per unit**	
Total: $0.80	Total: $0.80	
AVERAGE PRICE:	***AVERAGE PRICE:***	
$\left(\frac{\$19.80}{20 \text{ units}}\right)$ **$0.99**	$\left(\frac{\$1.80}{2 \text{ units}}\right)$ **$0.90**	

R015d

BPC's Average Prices Changed Due to Changes in the Customer Mix and *NOT* Because of Changes in Prices to Consumers



Key:

- 750 mg chargeback price
- 750 mg non-chargeback price
- 500 mg chargeback price
- 500 mg non-chargeback price