



Market Scan

## War of the ImClone Partners

Lisa LaMotta, 10.01.08, 12:28 AM ET

The German drugmaker Merck is stirring up the pot, maybe in hopes of getting a piece of the ImClone pie.

Chairman Karl-Ludwig Kley said Tuesday that while Merck wasn't prepared to bid for all of ImClone, his company would be willing to toss around the idea of a partnership for purchasing the New York-based biotech, whose Erbitux cancer treatment it markets outside of North America.

ImClone invented Erbitux, but it shares the income with Bristol-Myers Squibb and Merck. Neither company seems anxious to alter the terms of its marketing deal, which would complicate a third-party bid for ImClone. Bristol-Myers holds 61.0% of the North American sales rights to Erbitux. (See "[Bristol Can Live Without ImClone.](#)") Merck owns 90.0% of the drug's international rights.

Kley also said on Tuesday that his company is not the mystery bidder that Chairman [Carl Icahn](#) has said is looking at **ImClone**. That was not much of an admission since Merck does not seem to have the \$6.1 billion, or \$70 a share, that [Icahn](#) said might be on the table; the billionaire investor said the bidder would not need to seek financing.

According to Erik Gordon, a management professor at Stevens Institute of Technology, Merck might be a threat to Bristol-Myers now, giving another third party some extra cash and an insider's view on Erbitux. "Bristol-Myers doesn't need cash from Merck to close the deal, and they don't need Merck's expertise in Erbitux," said Gordon. "Merck would get a better split by teaming with someone else, if they can. Bristol-Myers can't be happy about Merck's statement that it would in effect support a rival bid."

Bristol-Myers had no comment on Kley's statements.

On the other hand, the news from Merck could be exactly what shareholders of Bristol-Myers wanted to hear. After Bristol-Myers had its offers for ImClone rejected twice by [Icahn](#), it could be looking to up the ante. A few extra bucks from Merck would make the offer a bit more appetizing to ImClone and would keep Bristol-Myers from diluting its share price with a higher offer. [Icahn](#) rejected Bristol-Myers first offer of \$60 per share, or \$5.2 billion, at the same time he announced that an unnamed "large pharmaceutical company" was conducting its due diligence and was offering \$70 per share for the biotech, which makes Erbitux, a blockbuster colon cancer treatment. Two weeks later, Bristol-Myers increased its offer to \$62 per share, or \$5.4 billion for the entire company. [Icahn](#) again refused the offer. (See "[Bristol-Myers Raises The Stakes For ImClone.](#)")

That due-diligence period ended last week and there has been no word yet as to if the mystery company was following through on its bid. There was considerable buzz about the identity of the bidder and whether it even existed. (See "[ImClone and The Phantom Bidder.](#)") When [Icahn](#) revealed the offer, he mentioned that the company would not need extra financing to conduct the transaction. Shares of ImClone rose 44 cents, to close at \$62.40, while Bristol-Myers gained 5.0%, or \$1.00, to close at \$20.85. Merck's stock was up in Frankfurt, rising 4.3%, or 1.45 euros (\$2.05), to trade at 35.40 euros (\$49.96).

Merck and ImClone have been fighting about royalties payments for Erbitux that the companies are required to pay for a patent infringement. The fight has gone to arbitration, where a third party will decide if Merck should be responsible for a portion of the royalties. (See "[ImClone's New Erbitux Problem.](#)")