

## WHY DOES NOVARTIS PREFER TO GIVE AWAY GLIVEC FOR NOTHING IN INDIA?

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The author depicts a pharmaceutical firm as the complex system in which firm actions are affected by various factors across organizational, industry, and institutional level of analysis. This paper tries to understand how nonmarket actors shape the market and nonmarket environment using historical and evolutionary analysis. It supplements existing research in nonmarket strategy in explaining Proactive Strategies, if utilized and effectively implemented, are more likely than Reactive or Defensive strategies leads to sustainable competitive advantage. It further promotes longitudinal research strategies.

**Keywords:** Nonmarket strategies, Nonmarket action, Evergreening, TRIPS & Patents

### INTRODUCTION

According to the research firm IMS Health, India's pharmaceutical industry is considered as the 3rd largest in the world in terms of volume and the 14th in terms of its value. With China, Brazil and Russia, it leads a group of seventeen high-growth pharmaceuticals markets also called "pharmerging countries" which are expected to contribute to nearly 50% of the annual pharmaceutical market growth, sales in these emerging markets and predicted to reach 30% of global pharmaceutical spending in 2016, by 2020, pharmaceutical sales in India are predicted to grow to as much as USD \$74 billion – over six times than what they were in 2010. Furthermore, most of research studies indicate generic pharmaceutical manufacturers dominate the Indian pharmaceutical market, accounting for up to 90% of product sales. Given its capacity to produce large quantities of drugs at cheap, affordable prices, India is known to many as the "Pharmacy of the Developing World" as it has become a leading supplier of generic medicines to many developing countries.

Novartis was created in 1996 through the merger of Ciba-Geigy and Sandoz and has a rich history spanning over 200 years. It is operating in India since 1928. Novartis products portfolio includes drugs which treat and prevent a range of diseases and conditions from hypertension, cancer to cataracts and migraines.

### METHODOLOGICAL FRAMEWORK

If this the status of growth of pharma- sector in India then why does Novartis prefer to give away Glivec free to patients in India. The aim of this paper is to understand this phenomenon. The exploratory study uses secondary data from all sources to understand and answer this question. It uses Baron 4I framework - issues, institution,

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interest and information about non-market actors to understand the non-market environment. Further, it uses a multi-theoretical framework of six major theories – Institutional, Agency, RBV, RDT, Stakeholder & behavioral theory of the firm in informing non-market strategy of the firm.

## RESULTS

The issue focuses on the lawsuit brought by the drug company Novartis against the Indian government over the patent for the anti-cancer drug Glivec. Novartis' attack on Indian patent law caused an international outcry. Various organizations and other actors which oppose of Novartis argued that the company was trying to destroy essential provisions in the Indian law that keep drugs affordable even after the country signed up to the World Trade Organization's agreement on Trade- Related Intellectual Property Rights (TRIPS). The High Court in Chennai, India, dismissed a Novartis' challenge in August 2007 with reference to 'the constitutional obligation of providing good health care to its citizens'. Further April 2013 Supreme Court upheld the Indian patent office's rejection of the patent application.

Any drug molecule, even if patented in other countries, could be reversed-engineered and generically produced in India, because if this practice patent law allowed the Indian pharmaceutical industry to become the world's leading producer of cheap generic medicines.

However, India joined the WTO in 1995, which makes mandatory for the drug industry to follow the agreement on Trade-Related Intellectual Property Rights (TRIPS), although India negotiated for the 10 year transition period, which has expired recently. Since 2005, the Indian Patents (Amendment) Act is fully implemented. Novartis applied for patents for a second version of the drug, beta crystalline form of imatinib mesylate in 1997. In 2003, Novartis was awarded a preliminary five-year period of Exclusive Marketing Rights (EMR) for Glivec, although nine companies were selling same formulation 90% cheaper in the market.

Novartis contention was on two issues, one Novartis argued that Section 3(d) is 'unconstitutional and in breach of India's obligation under TRIPS' second the company was looking for new patents by bringing small variation in existing molecules formulation. The corresponding section of law states that variations of known molecules will be treated as 'the same substance unless they differ significantly in properties with regard to efficacy'. The aim is to prevent evergreening of expiring patents by existing companies.

The key institutions in the regulation of the health sector include those involved in the production and distribution of health-related services and products (for example, health care providers, hospital and pharmacy owners, and professional associations); those financing health services (for example, state and non-state health insurance organizations); the media; and organizations involved in accountability activities, including formal state and quasi-state regulatory agencies,

the legislative and judiciary arms of government, and civil society organizations that seek to protect the interest of the public. The asymmetries in the relationships between these actors and the public, and their inability or unwillingness to disclose information, make health care markets unable to function efficiently on their own.

Novartis' legal challenge to the Indian laws triggered the formation of a broad alliance of international action groups. More than 70 NGOs from around the world were lobbying Novartis to withdraw the case. Various organizations such as Oxfam, Berne Declaration, Me 'decins Sans Frontie 'res (MSF), Cancer Patient Aid Association (CPAA) and other small and medium organizations relentlessly followed this issue. The major interest of these organizations was in getting the drugs cheaper from companies and distributing all across the country by their organization.

Novartis' access-to-medicine aimed at people who could not afford to pay for drugs. In India, Novartis' GIPAP was administered through an international NGO called The Max Foundation (TMF). Through TMF, Novartis was giving Glivec to '99 per cent' of all patients diagnosed with CML or GIST (around 6,700 Indians patient were enrolled in GIPAP).

Novartis developed and launched in 2007 Arogya Parivar, which means a healthy family in Hindi, to expand access to affordable products, improved health infrastructure, and community education. Since 2007, Arogya Parivar has improved access to healthcare in 33,000 villages, home to 42 million people, provided technical training to over 50,000 doctors and pharmacies in rural areas, education for 2.5 million patients and created over 500 indirect jobs.

## DISCUSSIONS

Novartis' Annual Report 2006 (Novartis, 2006), which states that **GIPAP** (International Patient Assistance Program) is part of the company's efforts to extend its share in Public-Private Partnerships (PPPs) with a 'dynamic' pricing structure. In 'shared contribution' models, where Novartis supplies Glivec at a lower price to local players, such as state hospitals, private health insurers or NGOs who can cover the part of costs or otherwise it provide free drugs to patients who cannot afford such expensive drugs in India.

The question arises why the company is so proactive and defensive at the same time. In India, the main reasons to provide drug-free is to build a constituency of vocal citizens in favor of Novartis' Indian patent claims and eliminate competing Indian versions from the market. The drug as expensive as Glivec is not meant for India so never meant to make profits in India. The same drug is available at much lower cost from various local players in the market. So in such a situation the best for the company is to give away free and win battles elsewhere. First, to protect its image of a good citizen in Europe and North America. Second to maintain the high price level in European and North American markets.

## CONCLUSION

Novartis is actively pursuing nonmarket strategies, on one hand, the company is combining proactive strategies with the defensive strategy to engage with a nonmarket environment, on other hand it actively engages with other nonmarket stakeholders with interactive and responsive strategies. Proactive strategies and interactive strategies are used for value maximization and other hand defensive and responsive strategies for value maintenance. Value generation in this process is in the short term in developed countries and in long term in developing countries.

Novartis is actively engaging in nonmarket to build legitimacy both in the social and political arena. It is actively lobbying with the government and other institutions to put pressure on the government of India for change in patent laws, on another hand it engages with the community with corporate social responsibility program at large scale. It is using corporate social responsibility to build its corporate political activity in India.

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