



Brazil set to break Merck's AIDS drug patent

The decision respects a ruling by the World Trade Organization that countries with emergency health issues could break patent protection because of public health concerns

By Katia Cortes, Bloomberg

Brasilia: Brazilian President Luiz Inacio Lula da Silva is scheduled to break the patent on Merck's AIDS drug Efavirenz today after the company's offer to cut prices failed to satisfy demands.

Lula, in a presidential palace ceremony, is scheduled to sign a law allowing the government to buy a generic version of Efavirenz from laboratories certified by WHO. The government will still consider any new proposal from Merck, Health Minister Jose Gomes Temporao told reporters yesterday.

The presidential decree would mark the first time Brazil by-passed a patent since the country began recognizing drug patents in 1996, said Michel Lotrowska, Brazil's representative of the access campaign for essential medicines at Doctors Without Borders. The government is pushing for lower drug prices to limit costs of the free treatment offered all 200,000 people in the country infected with AIDS and the HIV virus that causes the disease, he said.

"This is progress as it's the only way to cut drug prices since patents don't allow a natural competition in the market," Lotrowska said.

Merck, the third-largest US pharmaceutical maker, offered to cut the price of the drug to the government by 30% to \$1.10 a pill from \$1.59. The government said the company must cut the price to 65 US cents a pill, the same as that paid by Thailand. Efavirenz is the principal component in a 17-drug cocktail to treat AIDS and is used by 38% of AIDS patients.

Respect for rules

The government said the decision respects a ruling by the World Trade Organization, which agreed in 2001 that countries with emergency health issues could, within limits, break patent protection because of public health concerns.

Merck is "disappointed" by the decision and believes its offer of a 30% cut was "fair," spokeswoman Amy Rose said in an e-mailed statement. The company remains open to further negotiations, she said.

Merck's shares rose by 0.6% to \$51.55 yesterday in New York Stock Exchange composite trading.

Brazil would save \$30 million this year from buying the generic, compared with \$42.9 million it would pay to Merck otherwise, and would cut \$237 million from its AIDS drug bill through 2012, when the patent right would expire, the health ministry said.

Last week, Lula declared the medication "of public interest." The declaration gives the president power to issue a compulsory license for three years and allows the government to purchase the generic version from laboratories certified by WHO. All three of the labs are in India.

'Expropriate Assets'

"Brazil never benefited from recognizing patents as multinationals never invested in research for illnesses that only affect developing countries, such as tuberculosis," Lotrowska said. He said he favours Brazil paying royalties to the company, estimating Merck's profits won't be hurt as Latin American countries represent only 2.5% of the world's market for medicine.

The government agreed on 25 April to pay Merck 1.5% of the price of the generic drug as a royalty for three years.

Lawrence Kogan, head of the Institute for Trade, Standards and Sustainable Development, a Washington-based non-governmental organization defending intellectual property rights, said Brazil should reorganize its public spending and curb corruption before violating patents of drug companies,.

"I don't see that as a genuine, earnest, honest attempt to help the people of Brazil as the government won't use this money to make significant investments in the country," Kogan said in a phone interview. "It's an attempt to expropriate assets belonging to companies from other countries."

A decision to ignore patents may lead companies to cut investment in Brazil on concern adequate legislation to protect their products is lacking, Kogan said.

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