

Anti-competitive strategic patenting by pharmaceutical companies

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Drug prices have considerably increased in recent years, affecting healthcare budgets and posing a serious risk to the affordability and accessibility of medicines for society [1]. Various reasons for high drug prices are put forward by pharmaceutical companies, including the complexity of drug discovery and development, as well as the expensive and lengthy regulatory procedures involved [2]. While these reasons may play an important role in this regard, some practices by pharmaceutical companies substantially contribute to this problem.

Such practices include strategic patenting, by which pharmaceutical companies procure numerous secondary patents that create multi-layer protection around their successful products to avoid competition on their merits alone. Dr

Olga Gurgula outlines the current approach to strategic patenting and provides arguments for the intervention of competition law [3].



The denser the web of secondary patents, the more difficult it is for companies making generics to develop their generics equivalents, even if they know that only a few patents from a large portfolio would, in fact, be valid and infringed by their products [4]. Such practices, therefore, provide an appreciable competitive advantage for originators by creating significant legal and commercial uncertainty for generics in relation to the possibility of their market entry [5]. As a result, they effectively block generics competition, allowing originators to maintain artificially high drug prices and preventing patients from accessing cheaper generics.

Due to their harmful effects, strategic patenting practices require a long-overdue intervention by competition authorities. They have a considerable negative effect on consumer welfare in the form of high drug prices. In addition, strategic patenting affects dynamic competition by stifling innovation of both originator and generic drug companies. On the one hand, it may impair innovation by reducing originators' incentives to innovate as they enjoy their

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monopoly position by merely procuring numerous secondary patents that shield their current product from generics' competition. On the other hand, such practices also affect generics' ability to develop alternative generic drug products because of the uncertainty about the patent protection and a fear of infringing on one of the numerous patents [6]. Strategic patenting may, thus, enable originators to avoid competitive pressures by preventing generics competition without a need to engage in genuine innovation.

Therefore, Dr Gurgula concludes that the current approach that views these practices lawful should be reconsidered in favour of investigating them under the competition law rules. This, in turn, will open the possibility for competition authorities to prevent their harmful effect on drug prices and pharmaceutical innovation, for the benefit of consumer welfare.

Conflict of interest

The author of the research paper [3] did not provide any conflict of interest statement.

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