

12 February 2007

Daniel Vasella, MD
Chief Executive Officer
Novartis International AG
Lichtstrasse 35
CH-4056, Basel
Switzerland

Dear Dr Vasella,

Oxfam International is concerned about the tactics apparently being employed by Novartis in the lead-up to the next hearing of your company's legal challenge against India, in Mumbai on 15 February 2007. Oxfam believes that Novartis is misinforming the public as it defends its decision to pursue legal action against India.

This week the Head of Oxfam's Make Trade Fair campaign was sent many hundreds of emails from cancer patients and carers, most of whom are living in developing countries. These people are beneficiaries of Novartis' Glivec International Patient Assistance Program (GIPAP), an initiative whereby Novartis provides its cancer drug Glivec free to eligible patients. They have been actively solicited to support GIPAP in an email campaign run by The Max Foundation which is a not-for-profit group that administers GIPAP on Novartis' behalf. Novartis links to the Foundation's email campaign directly from its own website.

We realize that you may not be aware of this campaign, and hope that you too will question the Foundation's tactics of misrepresenting civil society concerns and criticism of the Novartis case against the Indian government, as an attack on the GIPAP program. Oxfam believes that Novartis should distance itself from this campaign. It currently appears that Novartis has made a public relations decision to try to keep all attention focused on Glivec and its drug donation program, rather than on the real issues underlying the legal action in India, hence its apparent support for such a stunt.

The issue for Oxfam is not about one medicine, Glivec, for which Novartis is appealing for an Indian patent. Nor is it about the GIPAP program. Oxfam supports Novartis engaging in philanthropic initiatives, and we acknowledge that Novartis is doing a great service to recipients of free Glivec.

However the fact remains that Novartis cannot reasonably be expected to provide free Glivec to all poor cancer patients in all countries for the rest of their lives. Generic competition is the only proven way of reducing drug prices in a sustainable way, and generic competition is precisely what Novartis is seeking to eliminate by attacking India in its lawsuit.

Novartis' actions in India threaten to undermine a genuine attempt by the Indian government to balance intellectual property rights with the obligation to uphold the right to health. The precedence of placing public health over the commercial interests of patent holders was confirmed in the Doha Declaration on TRIPS and Public Health.

Under Section 3(d) of its patent law, India can refuse to grant patents for medicines which existed in the public domain prior to 1995, or which are modifications of existing medicines. This is intended to stop the practice of 'ever-greening' whereby a company can alter an existing medicine and then receive another patent, extending its monopoly and keeping affordable, generic versions of the medicine off the market. India denied Novartis a patent on Glivec on the basis of applying section 3d. However, instead of appealing only that decision on Glivec, Novartis has gone much further and challenged the very constitutionality of the Indian law.

Dr Vasella, India is trying to ensure that only those medicines that truly deserve a patent receive one, and in fact has already granted patent protection for medicines that comply with the country's patent law. For example, Roche, also a Swiss pharmaceutical company, was granted a product patent in 2006 for Peginterferon alfa-2a (Pegasys), a medicine used to treat Hepatitis C. India's law is by all accounts compatible with the public health-related flexibilities allowed under the World Trade Organization's Trade-Related Intellectual Property Rights (TRIPS) Agreement; no WTO member has challenged its law. The Doha Declaration in 2001 recognized the right of all WTO members to use TRIPS flexibilities independently, without fear of challenge. Moreover, the World Health Organization has said that 'ever-greening' is a threat to generic competition and has cited India's law as an example of how a country could properly use the TRIPS flexibilities. Yet Novartis is directly challenging this international agreement. If Novartis wins the case against 3(d) and forces India to amend or eliminate this provision in its law, poor patients in India and elsewhere in the developing world will suffer.

The capacity of India to produce and export generic medicines has been vital to public health, particularly in developing countries but also for consumers in rich countries such as the US. Generic competition slashes the price of medicines: first-line anti-retrovirals went from \$10,000 per patient per year down to less than \$140 as a result of generic competition, benefiting millions of poor HIV/AIDS patients in the developing world. Affordable, high-quality generics from India are critical to UN and bilateral treatment programs. For example: half the essential medicines distributed by UNICEF in developing countries come from India; 70% of treatment for HIV/AIDS patients in 87 countries provided by UNICEF; the International Dispensary Association and the Global Fund comes from India; and US President Bush's HIV/AIDS initiative sources 70% of its anti-retroviral drugs from India.

Low-cost manufacturing techniques and generic competition in India have also drastically reduced the prices of thousands of other medicines. Medicines that can prevent cardiovascular disease, treat diabetes and alleviate mental illness are available at prices that are 90%-95% the cost of a brand name version. As you know, over 80 per cent of deaths from non-communicable diseases occur in developing countries today, and most estimates indicate this burden will worsen in the coming years. Without sustainable access to low-cost, generic versions of these medicines, poor people in developing countries will continue to suffer needlessly.

The February 15 hearing goes to the heart of the debate around universal access to medicine. Already, India's role as the pharmacy of the developing world was diminished when, in 2005, the country had to amend its laws to comply with the TRIPS Agreement and its firms could no longer freely produce low-cost versions of brand name medicines. Fortunately, the government included TRIPS public health safeguards and flexibilities in the amended patent law, to ensure that some supply would continue. If Novartis wins its case, one of those flexibilities will be struck from the law, more medicines will be protected by patents in India, and India will no longer be able to supply generic versions of those medicines to millions of people worldwide.

We strongly urge Novartis to drop its legal challenge against Section 3(d) of India's patent law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Hobbs', with a horizontal line underneath it.

Jeremy Hobbs
Executive Director
Oxfam International