Drug Companies and Patents: The Games they Play

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The ability for people to have access to cheap drugs is crucial to the maintenance of their health. That is why it is so important for the law, and society to both allow their innovation but also ensure that their necessity is not exploited. Pay-for-delay is an anti competitive practice that is anti competitive, and directly harmful to customers. I believe it was right for the supreme court to uphold the regulation, and I think that the practice should continue to be banned.

These situations ultimately arise because of how innovation in this country is incentive. Patents are given out by the government to people that come up with a new invention, drug, or unique idea. They allow the patentee to have exclusive rights to sell, or use the concept for a period of time. This temporary monopoly allows companies to recoup their R&D costs, as well as earn additional profit on top of that. In the long run this practice is hugely beneficial to society, as ultimately once the drug is able to be mimicked, generic drug companies give more people access to it.

Once the patent runs out -a period of twenty years for pharmaceutical drugsother manufacturers have the ability to sell bio equivalent drugs. These new firms introducing generic brands to the market mean that prices for the drug drop considerably. Customers that need it now don't have to worry as much about the steep price of brand-name drugs, and the savings is significant for them. The patent holder, though, will see their profits drop considerably as they no longer have the market power to affect the prices. Companies will attempt to combat this by coming up with differentiated products, but ultimately they will see that drop.

One practice that allows a patent holder to maintain their long-term high profits is for them to engage in what is called pay-for-delay. This is when the patent company will sue a generic company for patent infringement, then do what is called a "reverse payment" settlement where the firm bringing the suit pays money to the person being sued. They will make deals where the generic company will delay putting their product on the market which ensures that the owner of the patent can maintain their control of the prices, and ensure their long term profit (artificially extending the patent protections). This is a win-win for the firms, but the customer loses out sharply. The monopolist can now continue to restrict quantity to the market guaranteeing they are selling to the people with the highest willingness to pay at that price they are willing to pay basically price gouging them.

Pay-for-delay should not be a practice that is allowed. It is anti competitive because it creates an artificial barrier to entry for new firms, and allows the monopolist to maintain their price-gouging. It also restricts access that poor people have to potentially life saving drugs. There is also a social surplus impact, as the monopolistic practice creates a dead weight loss, meaning the market is not as efficient as it otherwise would be if there were more perfect competition.

References

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