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Brazil to Break Merck AIDS Drug Patent to Lower Price (Update2)

By Katia Cortes - May 4, 2007 10:53 EDT

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May 4 (Bloomberg) -- Brazilian President Luiz Inacio Lula da Silva is scheduled to break the patent on Merck & Co's AIDS drug Efavirenz today after the company's offer to cut prices failed to satisfy demands from the country's health ministry.

Lula, in a presidential palace ceremony at 11 a.m. New York time, is scheduled to sign a law allowing the government to buy a generic version of Efavirenz from laboratories certified by the World Health Organization, the president's office said. 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 in a telephone interview from Rio de Janeiro.

Merck, the third-largest U.S. pharmaceutical maker, offered to cut the price of the drug to the government by 30 percent to \$1.10 a pill from \$1.59. The government said the company must cut the price to 65 U.S. cents a pill, the same as that paid by Thailand, which has also considered breaking patents on some heart and HIV/AIDS drugs.

Efavirenz is the principal component in a 17-drug cocktail to treat AIDS and is used by 38 percent 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 percent 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 0.2 percent to \$51.66 today in New York Stock Exchange composite trading at 9:35 a.m. New York time.

In Thailand, health officials will meet with four drug companies, including Abbott Laboratories and Sanofi-Aventis SA, on May 14 in Bangkok to negotiate lower prices, said Siriwat Thiptharadol, secretary-general of the country's food and drug agency.

Thai Discounts

The Thai government will consider any discounts offered as an alternative to so-called compulsory licensing, Siriwat said this week, referring to a regulation usually reserved for extreme situations like wars and pandemics.

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 designation 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 the WHO. All three of the labs are in India.

"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 favors Brazil paying royalties to the company, estimating Merck's profits won't be hurt as Latin American countries represent only 2.5 percent of the world's market for medicine.

Expropriate Assets'

The government agreed April 25 to pay Merck 1.5 percent 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 promoting 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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