

Submission to the WHO Committee on Public Health, Innovation and Intellectual Property (Section 2)

Executive Summary

WHA60:30 seeks an ‘enhanced and sustainable basis for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries’. Certain diseases disproportionately affect developing countries in part because these regions are underserved by effective medicines: 79% of the global burden of disease (GBD) occurs in regions that account for under 8% of global pharmaceutical sales¹.

We agree with resolution WHA60.30 that patents are ‘an important incentive for the development of new health-care products’.² But we also believe that the current system of patents alone has proved insufficient to address the health needs of the poor. These health needs are greater insofar as the poor are more exposed to risk factors and often lack secure access to clean water and to adequate nutrition, sanitation, and shelter. Such greater health needs are compounded by three special barriers that prevent the poor from obtaining medical protection against disease: high prices of advanced medicines under patent, deficient health infrastructure, and lack of sufficient R&D investment to combat diseases that are concentrated among the poor. To help overcome these three barriers, we propose to supplement the current patent system with a “track2” that rewards innovators, insofar as they forgo claims to exclusivity on any pharmaceutical innovation or aspect thereof, in proportion to the global health impact of the innovation they place in the public domain. By allowing the open manufacture, distribution and sale of a new medicine, a firm is entitled to treaty-backed track2 rewards for this medicine’s success in reducing the global burden of disease (GBD) in the early years after its introduction.

Establishing track2 would bring important benefits in line with the mandate of WHA60.30:

- Building on the strengths of the existing system, Track2 would add a practical, market-driven complement that better aligns industry interests with global public health needs.
- Under Track2, diseases that currently do great harm among the poor would become lucrative targets for R&D efforts.
- Any innovator on Track2 would have incentives to encourage the competitive manufacture of its product so as magnify its health impact by reducing its price to near marginal cost of production. This would improve access to advanced medicines and avoid the large deadweight losses caused by the mark-ups that firms charge to recover R&D expenses through patent exclusivity.
- In contrast to prize funds and currently popular advance market commitments (AMCs), Track2 provides a more systemic market-oriented solution that leaves it up to potential innovators — better informed and better motivated than planners — to decide how they can make the most cost-effective contributions to global health. In this sense, Track2 provides a ‘comprehensive advanced market commitment’ (CAMC, see Aidan Hollis, WHO IGWG submission, 2007).
- In contrast to most other proposals, Track2 also helps overcome the ‘last mile’ problem of getting medicines all the way to the patients who need them in ways designed for optimal health impact. It does so by incentivizing Track2 innovators to collaborate toward overcoming health infrastructure deficits that diminish their medicines’ impact on the GBD.

With collaborators on three continents and initial grants from the Australian Research Council and the UK-based BUPA Foundation, a research team led by Professor Thomas Pogge at the Centre for Applied Philosophy and Public Ethics (CAPPE) are working on the technical elaboration of Track2 and planning a pilot project to test core elements of the proposal. Incentives for Global Health (IGH), the US-based non-profit organization that supports our work, seeks to engage representatives of industry, investors, academics (law, economics, public health and medicine), NGOs, and public health specialists in building awareness of the Track2 concept.

¹ “2004 Global Sales,” *Parexel’s Pharmaceutical R&D Sourcebook*, p6; WHO Department of Measurement and Health Information, 2004.

² WHA 60.30: http://www.who.int/gb/ebwha/pdf_files/WHA60/A60_R30-en.pdf, p.2