



THE TEVA VS. MYLAN DRUG WAR

In the battle of the giants it is Israel's Teva that is the heavyweight, and the American company, the lightweight

TELENOVELAS ARE fast-paced TV serial dramas, popular in Latin America, Asia and the Arab world, that usually tell one self-contained story, within the span of a year.

I have a great telenovela script. It involves a big company trying to swallow a smaller one, which in turn is aiming to swallow an even smaller firm. There is a poison pill – the financial kind, not cyanide – and conflict between two fierce protagonists, one Lebanese-American, another Israeli. For ordinary Israelis, understandably somewhat fuzzy about what is going on, the stakes are quite high.

The best part? It's all true. No need to invent anything. In this case, truth is definitely far more gripping than fiction.

Here are the basics. According to experts, there is an "arms race" in the global pharmaceutical business. Facing growing resistance to the soaring cost of drugs and health care, Big Pharma is racing to merge and acquire, find synergies and slash costs. In the first three months of 2015 alone, there were \$125 billion of acquisitions globally.

For example, on April 8, Mylan offered to acquire Perrigo, eventually raising its bid to \$33 billion. Mylan is a generic and specialty pharmaceutical company, founded in 1961, in West Virginia, and now registered in the Netherlands with more than \$7 billion in annual revenues. It employs about 22,000 worldwide.

Perrigo is an American company registered in Ireland, specializing in over-the-counter drugs. Its annual revenues are nearly \$4 billion, and it employs about

7,500 people. Perrigo's board of directors quickly rejected Mylan's bid, saying it was simply not enough.

Perrigo has a strong connection to Israel. In March 2005, Perrigo bought Agis, an Israeli drug company founded by Mori Arkin in 1983 and built on his father's drug-importing business, for \$850 million. Arkin, a genius, built Agis into a multinational generic pharmaceutical company. He got nine percent of Perrigo's stock and joined its board.

WHO WILL WIN THE 'MONKEY IN THE MIDDLE' GAME WITH MYLAN BETWEEN TEVA AND PERRIGO?

Many observers feel that Agis and its Israeli team injected new energy and creativity into Perrigo. Its stock has soared from \$58 in August 2010, to \$198 in May, before receding to about \$188 on June 17. I was fortunate to work with Perrigo, when I served as academic director of the Technion Institute of Management, just after the acquisition of Agis. I know for a fact that Agis brought great innovative drive to Perrigo.

There is an important subplot. Why are two American companies, Mylan and Perrigo, with strong roots in Pittsburgh and Michigan, respectively, headquartered in Netherlands and Ireland?

The answer is "inversion." This is a euphemism for tax avoidance. (Avoidance is legal; evasion is illegal.) Last December, the American fast-food chain Burger King bought the Canadian coffee chain Tim Hortons and moved its headquarters to Canada. This saved Burger King an alleged \$1.2 billion in taxes because foreign firms get huge tax breaks.

By locating your headquarters in Canada or Europe, you pay tax at low European or Canadian rates instead of high US corporate tax rates. This creates a huge incentive for US firms to relocate abroad, or "invert." True, they have to pay US taxes when they bring their profits home. But, of course, they rarely, or never, do. Why would they?

Why does the US allow this? A recent report shows that Walmart has \$76 billion in profits held abroad, where they do no good for America. Apple has a whole lot more – \$158 billion in offshore cash. If you think this is a dumb policy, I agree. The US, essentially, is encouraging its companies to keep their profits abroad, rather than invest them in their own country. Does this remind you of the Wise Men of Chelm?

Why does Mylan want to buy Perrigo? Some analysts think it is a countermove, to forestall a potential takeover by global generics giant Teva.

Teva grew from \$1 billion in revenue to \$10 billion, with Israel Makov at its helm. Makov grew Teva by acquiring many

Teva's global logistics center at Shoham along Highway 6





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smaller companies and then integrating them cleverly and rapidly into Teva's operations. He left Teva in 2007 after a dispute with chairman Eli Hurvitz, who died in 2011. A period of turmoil followed, when Shlomo Yanai became CEO, followed by a South African, Jeremy Levin, in May 2012.

TEVA'S DIRECTION and energy were restored when Erez Vigodman became CEO in February 2014 (see *The Jerusalem Report, March 10, 2014*). Vigodman, a certified public accountant, was CEO of the Strauss Group, leading it to global stature, then did a turnaround with chemicals company Maktshim Agan, before it was acquired by ChemChina.

He has restored Teva's aggressive policy of growth by acquisitions. Teva's annual revenues are about \$20 billion and it employs some 50,000 worldwide. Teva has plants in many countries and continues to produce drugs in Israel, at large facilities in Kfar Saba and Har Hotzvim in Jerusalem.

The protagonists in our telenovela are two larger-than-life business leaders: Robert Coury, an American, Chairman of Mylan, and Vigodman, CEO of Teva. Coury's family, of Lebanese ancestry, was probably called "Khoury." He built a successful consulting firm, advising Mylan, then took over Mylan in 2002 and through \$15 billion in acquisitions transformed it into a global powerhouse.

Among Coury's purchases was the \$5.3 billion acquisition of the generics and non-US business of Abbott, a global pharma giant. This gave Mylan a Netherlands base, and a very large tax saving. Abbott holds 14 percent of Mylan stock, as part of the deal.

Fast forward to the month of April. Did Coury, and Mylan, sense that Teva was aiming to take it over? Did Mylan bid for Perrigo to keep Teva from bidding for it? Mylan and Perrigo are a poor fit. Mylan is not keen on Perrigo's ace card – over-the-counter drugs.

On the other hand, analysts agree that Mylan is a perfect fit for Teva. An acquisition of Mylan could increase Teva's profits 15 percent next year, and Teva could save \$2 billion in annual synergies.

Teva has now offered to purchase Mylan for \$40 billion. The market capitalization of Mylan's shares is, at present, \$34 billion,

making Teva's offer rather cheap. But, in the game of acquisition, companies often start low and gradually sweeten their offer. Teva could go as high as \$120 per share for Mylan, whose stock is currently around \$72. Analysts think Mylan shareholders might even agree to an offer of \$100 a share, giving them a tidy profit.

ALL OF US HAVE A KEEN INTEREST IN TEVA'S WELL-BEING, AND WE SHOULD ALL BE PULLING FOR TEVA

But a fierce battle is underway. If Teva does acquire Mylan, and if Mylan fails to acquire Perrigo, Coury and Mylan's dynamic CEO Heather Bresch will likely lose their jobs. No reason to mourn – they will both be extremely wealthy through their Mylan shares. Teva has a history of leaving the leadership of acquired companies in place, but Coury and Bresch have fought fiercely against Teva's takeover. So, if Teva wins, they lose.

In the 1972 film "The Godfather," Michael Corleone, with a long trail of dead bodies on his conscience, says to Sonny, "It's not personal. It's just business." Normally takeovers are just business. But this battle between Teva and Mylan has become unusually personal. It is not just business.

Eli Hurvitz's son, Chaim, a major Teva shareholder and former director, told the business daily *Globes*: "Mylan was always a bitter competitor of Teva, and there was bad blood between the companies going back to my father's period, among other things because of chairman Coury.

"The competition was in business, but there was also a very emotional and personal, possibly even nationalistic aspect [because of Coury's Lebanese origin]. This is Coury by the book – a very vitriolic person with a lot to lose. He would lose the private planes, cars, and everything else. We all expected this part. The Mylan board of directors is composed half of management, which is in effect subordinate to him. The shareholders have no real

representation. The real war will be for the shareholders."

An unusually fierce exchange of letters has occurred. Vigodman and Teva Chairman Yitzhak Peterburg wrote in a letter to Coury on June 1, "Mylan has made grossly incorrect statements to mislead your stockholders and other stakeholders about us."

Coury fired back the same day. "Dear Erez, your public statements continue to leave Mylan and its shareholders with great uncertainty about Teva's intentions." He demanded that Teva make an offer with a "hell or high water" provision, in which Teva agrees, no matter what, to whatever provisions the US Federal Trade Commission requires. Earlier, Coury wrote that Teva "has engaged in a pattern of making noncommittal, unclear, inaccurate and non-specific statements to shareholders... regarding its intentions with respect to Mylan."

Coury has erected several major roadblocks to a Teva takeover. One is a "poison pill" – Wall Street slang for a defensive tactic used by corporate boards against a takeover, which gives shareholders the right to buy shares at a big discount if one shareholder (i.e. Teva) buys, say, 20 percent or more of a company's stock. This dilutes the stock and greatly increases the cost of the takeover.

SOME EXPERTS think that Mylan's "poison pill" is in violation of NASDAQ stock exchange rules. But remember that "inversion"? Mylan is a Dutch company. The poison pill, apparently, is perfectly fine under Dutch law. That tax inversion, it turns out, is unexpectedly helping Mylan avoid being swallowed by Teva. However, Mylan stock is traded on NASDAQ. So whose rules prevail?

A second tactic Coury is using is US antitrust legislation. Teva and Mylan have several competing market-leading products and a merger could be in violation of US antitrust laws. Coury and Mylan are invoking this, warning that a potential Teva takeover could be stuck in the courts for years. Teva, of course, has sought US antitrust approval before it makes an official, binding offer for Mylan shares.

A third strategy is inviting the neighborhood enforcer to beat up the bad guy. Mylan did its "inversion" in order to save

tax bucks. But it turns out the deal gave Abbott 14 percent of Mylan shares and a major say in board decisions (one vote in every seven).

Abbott is not fond of Teva, to say the least. As a generic drug producer, Teva for years has slashed Big Pharma profits by rushing to sell generic versions of their patented drugs the moment the patent expires after 20 years. For Big Pharma, Teva is the Big Bad Wolf. So Abbott, one of the world's largest pharma firms, would like nothing better than to do harm to Teva. Abbott has weighed in, opposing the Teva offer.

Meanwhile, Teva is fighting back. It is buying Mylan stock on the open market, boosting its holdings to more than four percent of Mylan's shares and giving it the right to bring issues to board meetings. This can enable Teva to gain a board hearing for its offer when, otherwise, the board could even block discussion of Teva's bid. As of now, Teva owns over 4.6 percent of Mylan stock and can now bring suit in the Amsterdam Court of Appeal to challenge the Mylan board's effort to block Teva's takeover.

Meanwhile, Mylan's Vice President for Finance John Sheehan flew to Israel on June 24 to meet with the CEO of the Tel Aviv Stock Exchange (TASE) Yossi Beinart. His goal: Set the stage for listing Mylan's shares on the TASE, if Mylan does acquire Perrigo. Sheehan also met with institutional investors who hold Perrigo stock, hoping to persuade them to back Mylan's offer.

Why does this whole mess matter to us Israelis? Teva's shares are listed both on NASDAQ and the Tel Aviv Stock Exchange. Teva shares are the most traded on the TASE, by far, and their rise and fall have a powerful influence on the stock exchange's main index. Also, many pension funds hold Teva shares.

So all of us have a keen interest in Teva's well-being, and we should all be pulling for Teva, in this telenovela, to succeed in taking over Mylan. Teva shares rose to \$66 on NASDAQ in April, but have fallen to around \$60 as the Mylan takeover ran into difficulties.

Amazingly, while all this turmoil is going on, Teva also is bidding to take over Receptos, a US company that has drugs in development for multiple sclerosis



Robert Coury, Chairman and Chief Executive Officer of Mylan:
Fighting fiercely against a takeover by Teva

(Teva's strong point with its Copaxone drug) and Crohn's disease. It has offered \$280 a share, or \$8.7 billion, and is competing with two other whales, AstraZeneca and Gilead Sciences, who also want to swallow the minnow.

Who will win the "monkey in the middle" game, with Mylan between Teva and Perrigo? The fierce opposition of Coury and Mylan, with some powerful friends? Or the deep pockets and stubborn persistence of

Teva? Will Coury defeat Vigodman? Or will Vigodman triumph?

Strangely, in this telenovela, it is Israel's Teva that is the heavyweight, and the American company, the lightweight.

Place your bets. Stay tuned. The next episode is going to be really interesting. ■

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