

Online pharmacies suffer without regulatory prescriptions in India

The absence of a legal framework governing this fast-growing segment of the pharma retailing business is causing confusion in the industry

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Online

Online pharmacies, e-pharma

pharmacies have been under the scanner in India for some time in the absence of a comprehensive law for this emerging space. On February 8, then Drugs Controller General of India (DCGI) V G Somani, who completed an extension of his term last month, asked online pharmacies to explain why action should not be taken against them for the sale and distribution in contravention of the law. In May and November 2019, the DCGI sent notices for action and compliance to state drug controllers quoting a December 2018 Delhi High Court order that restrained e-pharmacies from selling medicines without licences.

These notices confused the pharmaceutical industry because in January 2019, a division Bench of the Madras High Court had stayed an earlier single-judge order banning online sale of drugs. "Moreover, in the draft Drug, Medical Devices and Cosmetics Bill, 2022, the Centre has made provisions for regulating e-pharmacies. Therefore, there is a possibility that the law may be amended to include selling drugs through the online channel," an industry source said.

Coincidentally, on February 8, the All India Organisation of Chemists and Druggists (AIOCD) met Union Health Minister Mansukh Mandaviya on this issue. This association of offline chemists has been lobbying the government against e-pharmacies for some time now. AIOCD President J S Shinde said “predatory pricing” and “illegal activities” by e-pharmacies had affected the livelihood of 1.2 million retail chemists. He said the interstate supply of drugs direct to patients had made it tough for state food and drug administrations (FDAs) to track.

The online pharmacy space, which has seen interest from corporate majors such as Tata 1mg, Reliance-backed Netmeds, Amazon and Flipkart, has been under the radar primarily for the ambiguity that exists in the absence of a comprehensive legal framework.

As Darren Punnen, leader, pharma and life sciences practice at Nishith Desai Associates, explained, “The Drugs and Cosmetics Act, 1940, does not formally recognise the concept of online pharmacies. However, the health ministry, through a notification in March 2020, did allow for doorstep delivery of medicines based on prescriptions received ‘through email’, along with other conditions.”

He added that given these requirements, “we have seen that the manner in which e-pharmacies currently operate is to dispense the medicine orders from a licensed retail pharmacy and ensure compliance with the doorstep delivery notification, including dispensing within the pharmacy’s revenue district and not dispensing narcotic or psychotropic substances”.

So why are offline retailers up in arms against these online players?

Numbers do the talking. Currently, e-pharmacies have a 3 per cent share of the Rs 1.7-trillion Indian pharma market (IPM), but they are growing faster. Traditional unorganised retail pharmacy stores have an 89 per cent share and organised pharmacy retail chains 8 per cent. Online pharmacies had a compound annual growth rate (CAGR) of 96 per cent in revenues over FY15-21, according to the Systematix Institutional Equities Report of March 2022. In comparison, traditional pharmacies had a CAGR of 8 per cent and organised retail chains 18 per cent.

Assuming an IPM growth rate at the historical average of 8-9 per cent and that the e-pharmacy segment clocks 25 per cent CAGR over FY21-25, the latter stands to double its market share to 6 per cent and touch Rs 13,800 crore in revenues.

But there are uncertainties in the sector that may result in tepid capital flows and softened investor interest. Bhavesh Shah, managing director, consumer and healthcare banking, Equirus, told <Business Standard> that apart from regulatory concerns, investors were also concerned about the fundamental business model of e-pharmacies and its ability to make profits in the visible future.

“E-pharmacies have been able to grow on the back of discounts and free or low-cost delivery, all of which mean incurring heavy expenses that impact their ability to make profits. They will need to significantly reorient the business model and allay regulatory concerns to restart attracting investor interest,” Shah said.

But it all comes down to lack of an operating legal framework. Milind Antani, lead, pharma and life sciences practice, Nishith Desai Associates, pointed out: “The absence of a licence framework for online pharmacies leaves room for interpretation with the enforcement agencies. Given that sale of medicines by most of the established e-pharmacies take place through licensed retail pharmacies, the enforcement actions should ideally be directed towards those entities that are dispensing medications from premises that do not have a retail licence.”

The founder of an omni-channel pharmacy player said on condition of anonymity that since it has offline retail stores, its model has not come under scrutiny so far. “We are servicing patients from our brick-and-mortar stores while the order may be generated online. Most online players do not have a large network of offline stores, and this is where the legal hurdle for them begins,” he added.

A Mumbai-based analyst tracking the sector said that big players were not going to call it quits. “In our discussions with companies, we understand that most of them are certain that the regulations will be in place soon. There seem to be some concerns around data privacy and even Chinese FDI flowing into the sector;

but things are likely to be ironed out sooner than later. Prescription scrutiny in the online sector is definitely going to rise,” the analyst said.

Legal experts feel otherwise. “Data privacy appears to be a concern of the government, especially considering that the draft of the e-pharmacy rules contained specific provisions dealing with localisation of the data held by such entities,” Punnen said.

Antani highlighted the fact that in other jurisdictions such as the US, the primary concern (as with India) is the sale of counterfeit and substandard products via the internet. “Therefore, the measures put in place from a patient safety perspective (and what regulators watch out for from an enforcement perspective) are that medicines are dispensed from a licensed pharmacy; only on the basis of a valid prescription; and under the supervision of a registered pharmacist,” he added.

Indian regulation is likely to move in that direction.

Former IAS Aruna Sharma, who is secretary general of the Forum for Internet Retailers, Sellers and Traders, a not-for-profit initiative for micro, small and medium enterprises, wrote to the DCGI on February 22 highlighting that “many of our members immensely benefitted by the explicit orders during pandemic times which allowed medicines to be sold online through e-commerce”. It added: “This opened a bigger stream of business for offline pharmacists as they could cater to a larger set of audience who had valid prescriptions.”

Sharma added that during the pandemic pharmacists benefitted from advanced technologies of Tata 1mg, Flipkart, Netmeds etc. “In view of this development and transformational behaviour of pharmacists and consumers, there is a critical need and urgency to deploy well-established e-pharmacy guidelines, which could create the right mechanism that benefits both the licensed pharmacists and the consumer fraternity at large.”

THE DISCOUNT GAME

Discounts offered by e-pharmacies (in %)

Total order value	Apollo 24/7	Medplus	Tata1mg	Pharmeasy	Netmeds
₹400	12	10	8	15	10
₹700	12	10	13	15	15
₹1,100	18	20	16	18	15
₹1,300	20	20	21	18	20
₹1,600	20	20	21	22	20
₹2,100	20	20	21	22	20

Source: Nuvama Research, Company

MARKET SHARE

■ Traditional unorganised retail pharmacy stores have 89% share of the Indian pharma market (IPM)

■ Organised pharmacy retail chains have 8% share of IPM

■ e-pharmacies have 3% share of IPM

■ Online pharmacies had CAGR of 96% in revenues over FY15–21

■ Traditional pharmacies had CAGR of 8%; organised retail chains had 18% CAGR

Source: Systematix Institutional Equities Report, March 2022