When Legitimacy over Patent Protection –
State as a Mediator for MNEs

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ABSTRACT

Recently, production of Tamiflu is a controversial issue. Because of Tamiflu is a patent right owning to Roche. The protection of private property right is a most important principle for capitalism. Why some country want to produce Tamiflu before influenza be pandemic in spite of protection of patent? And latter why Roche granted approval of an additional manufacturing site in another country for increasing production capacity? Because of life-saving is first allocation value of legitimacy over profit of patent protection at present.

State has the supreme power to define what is legitimate, when social, economic and political environment change, state will change these value ordering. If MNEs can fit more the values allocation of state, they gain more legitimacy to survive. State is a mediator for MNES to detect changing legitimacy. MNEs could not just conform to other organization, but they must conform to the changing legitimacy to adjust themselves for gaining more resource. This study tries to discuss the reason behind the isomorphism, not just for conformation. If the reason of legitimacy changes, then organization would be change their isomorphic action for adequate response.

Keyword: legitimacy, institution theory, patent protection, political system


**Introduction**

Recently, bird flu is a hot global issue for all countries. Production of Tamiflu is also a controversial issue. Because of Tamiflu is a property right owning to Roche, some countries want to produce Tamiflu before influenza becomes pandemic. For example, Taiwan approached Roche Holding AG for a licensing deal under which local companies could produce its Tamiflu vaccine. And Nobel prize-winner Sir John Sulston called for reform of the drug patent system to allow faster stockpiling and wider access to the life-saving antiviral flu drug Tamiflu around the world.

The protection of private property right is a most important principle for capitalism. The patent of Tamiflu is also a private property right and a core competency for Roche. Why some countries want to produce Tamiflu in spite of protection of patent? And latter why Roche granted approval of an additional manufacturing site in another country for increasing worldwide production capacity? Because of life-saving is legitimacy over profit of patent protection at present. MNEs must face global issues about an infectious disease, environmental protection, Anti-terrorism and so on. These issues are world wide about many countries, MNEs are also involved. Roche is an example that firm has patent as core competency, while state face emergency about life-saving, state can make decision for some action that break patent protection.

Why and when state can make decision to break patent protection that the most important principle for capitalism? Legitimacy is an answer and a criterion for state and MNEs.
Legitimacy justified the organization’s role in the social system and helps attract resources and the continued support of constituents (Parsons 1960). State has heavy impact on MNEs operation in host country. Because of state has supreme authority to regulate all domestic firms. They depend on contingency to decide what content of legitimacy to regulate firm’s behaviors. Then, state became a mediator for MNEs action. So, this implication for MNEs is that legitimacy is not a fixed concept or value, but depends on contingency. MNEs should detect the content of legitimacy and response adequately for gain legitimacy or resources.

**Legitimacy of the state**

**Definition of politics: authoritative allocation of value**

MNEs operate can not operate without state. We firstly discuss what we need state. What we need state in relation to what is politics. In most accepted definition of politics, David Easton defined politics as the "authoritative allocation of value" (Easton 1965). It means that this allocation of value has authority and impact on all society, this include all firms.

In political system, government decision makers make decisions as output to social, economic and political environment and these results as inputs of demand, apathy and support feedback to these decision makers to accomplish a cycle (Roskin et al. 2000).

[Figure 1 about here]

In this figure, government decision makers receive social, economic and political demands or supports as inputs to be next criterion of decision making. These demands or supports are
resources that make government can operate smoothly and legitimately. Because many conflicts in our life, we need state compromises these dispute. This is why state has the only legitimately power or weapon to solve domestic and international conflict.

**State has the power to define what is legitimate**

For solving conflict, expect for power to adjust and it also need the power to determine what is right or wrong. In the above model, the withinputs part which government decision maker receive many information and inputs for make decision. Though, the process of decision making may be a black box, but decisions means that some values are sorting depend on context or importance. Why government can sort values? Because government has the legitimacy to get the power to govern. Then, it has the power of define what is legitimate or not. That is state has the power to allocate what value is the first order or most important. For example, state has the legitimacy to use force to punish firms that break laws. The reason to punish may be for commercial order or its product could cause unpredicted death. This is why some countries want to produce Tamiflu in spite of protection of patent. Because the value of life-saving is more important than patent protection in their countries. This is why some government considers violating patent rights. It raises international concern over constraints on producing the costly drug swiftly and in sufficient quantities. And then, Roche granted approval of an additional manufacturing site in another country for increasing worldwide production capacity. This move can be seen as isomorphism?
Coercive isomorphism and the MNEs

MNEs operate in two or more countries with multiple subunits linked through shared policies or strategy. State and its law or regulations are the first contact aspect before operating in that market.

Coercive Isomorphism

Several scholars defined organizational legitimacy as the acceptance of the organization by its environment and it to be important for organization gaining survival and successful resource (Dowling & Pfeffer 1975; Hannan & Freeman 1977; Meyer & Rowan 1977). According to institutional theory, organizations have to conform to the rules and belief systems prevailing in the environment in order to survive (DiMaggio & Powell 1983; Meyer & Rowan 1977).

In institutional theory, coercive isomorphism means that formal and informal pressures exerted by other organizations on which they depend and by cultural expectations (DiMaggio & Powell 1983). For example, government mandate is a source of pressure for domestic firm and MNEs.

Organizations adopt structures and practices that are in some respects suboptimal in order to gain needed resources. Coercive isomorphism may help MNEs to get resources, but may at the expense of efficiency. Why MNEs have to conform? Is there no any incompatible interest between MNEs and state?
**Isomorphism that conflicts with divergent values**

In political system there are many divergent interests and asymmetric power. Beyond the out of political system that it reflect political struggles of divergent ideas and goals of government decision makers. The formation of institutional arrangements reflect the divergent values which political, social and economic sectors.

For example, these divergent values may include the protection of property right (U.S.A. Special 301), human right (child labor), environmental issue (greenhouse effect) and so on. These values are defined by political process and then, force firms to obey it. However these values are divergent, once be define the most important value to be regulation or law, firms have to be isomorphic with these pressure.

In political systems institutional rules are a belief system supported by public opinion and political/legal systems (Meyer & Rowan 1977; Scott 1987). When the global threat of a potential avian flu pandemic has challenged countries, life-saving became the first value in many countries. Though, the protection of private property right is a most important principle for capitalism, but public health officials and the pharmaceutical industry have to join together in partnership for the purpose of establishing a comprehensive plan to combat bird flu. This strong isomorphic pressure makes Roche reiterates willingness to enter discussions
with governments and other manufacturers on the production of Tamiflu for emergency pandemic use.

The outputs of political system reflect many divergent values, how these diversity impact on MNEs?

**Legitimacy of MNEs and the state**

Organizational legitimacy is a valued but a problematic resource (Ashforth & Gibbs 1990). An organization is said to be legitimate to the extent that its means and ends appear to conform to social norms, values and expectations (Dowling & Pfeffer 1975).

The concept of legitimacy encompasses normative, legal, sociological, and cultural meanings. It recognized as a key concept in political regimes, dealing with the relationship between societal acceptance of regimes and their ability to exercise power and authority effectively (Brinkerhoff 2005).

There are some definitions of organizational legitimacy, and frequently cited definitions of the term include:

“Organizational legitimacy refers to the degree of cultural support for an organization—the extent to which the array of established cultural accounts provide explanations for its existence, functioning, and jurisdiction…” (Meyer and Scott 1983: 201).
“Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (Suchman 1995: 574).

Though, our focus in this paper is not on legitimacy in political realm, but MNEs could not gaining legitimacy in host countries without concern the nature of cross border. The political realm of host country is the first concern for MNEs operation. Subsidiaries of a MNEs under conditions of "institutional duality." According institutional theory, two factors influence the adoption of a practice: the institutional profile of the host country and the relational context within the MNC (Kostova & Roth 2002). The regulatory component of an institutional environment "reflects the existing laws and rules in a particular national environment that promote certain types of behaviors and restrict others" (Kostova, 1999: 314). MNEs have to response the institutional profile of the host country, especially response the allocation of values of the host country.

**MNEs have to detect the contextual Legitimacy**

State has authority over society to force firm to obey some value. A government cultivates the respect and willing obedience of its citizens, the widespread feeling among people that the regime’s rule is right (Roskin et al. 2000). The legitimacy of state comes from all citizens, and citizen’s supports as input to decision maker to make decision about what they have to decide.

The various interests that compete to determine the production of Tamiflu (although they
originate within the economic system) converge on the political system in search of a favorable resolution to the issue. When an authoritative political determination has been made, the production of Tamiflu policy—the political system's output—now reenters the economic system: as all economic input. All of which is only to say that the commerce across system lines is both rich in itself and, moreover, imperative in order for each system to survive. The MNEs—Roche have to respond these countries’ pressure. Even the protection of private property right is the most important principle for capitalism.

We suggest the legitimacy of state defining is not fixed, but depend on context. The legitimacy of MNEs has to correspond it dynamically. MNEs have to detect the legitimacy of state defining, and then adequately conform it. State has the only power to define what is legitimate and what kind of value is the most important, and state have the only force to punish. State is the mediator for MNEs to detect the changing allocation of values.

**Proposition 1:** The more MNEs can detect the allocation of values of host country, the more MNEs could respond adequately.

**Proposition 2:** The more drastic environment change, the more the allocation of values of host country change, the more MNEs have to be sensitive to detect the allocation of values of host country.
Discussion and implication

Legitimacy as a resource for organization is an ambiguity term. The concept of legitimacy encompasses political, social and economic system. The legitimacy from economic system may not equal to political system defined. Legitimacy has complexity for a MNEs existing political, social and economic system simultaneously. Only the political system has the power to punish those who don’t obey law or regulation. MNEs response these pressure from state and detect the variation of changing allocation of value. For manager to make decision about entry mode, this perspective is a frame of reference. What happen to host country/world, how we response these variation adequately? This is an issue about “fit” between political system and economic system. The variation in any place may cause ‘butterfly effect’, bird flu is a case. Then some principles/values will be changed, life-saving is important than patent protection. MNEs have to response these events, and maintain their survival or performance simultaneously.

How detect the variation allocation of values is a further research. MNEs detect political system’s signal may cause bias. Because political signal sometime be tacit or ambiguous. Organizations have to sense making for the right message. Especially, MNEs face the institutional duality. MNEs need carefully response the policy of two or more countries, parent and host countries. If these countries have antagonism among them, MNEs need more sensitive for response.
In this global era, MNEs not just face few states. China is arising, MNEs face two different institutions, and they need to be sensitive about the China political system for survival and performance.

References


Figure 1 A Modified of Political System (Roskin et al. 2000)