

## Interim Report on the Pharmaceuticals Sector Inquiry: A Response

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## crowell General remarks

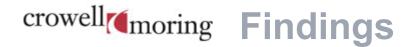
- An impressive job
- 'Competition in this industry does not work as well as it should'

Commissioner Kroes, 28 Nov 2008

- Significant issues identified both behavioral and structural
- Follow-up action called for



- 20% av price drop on generic entry
- Originators successful in only 2% of litigation re non-patent authority interventions
- Generics win 75% of EPO patent oppositions – but 80% take 2+ years
- Patents obtained for the 'sole purpose' of limiting competitor freedom



- Strategies to block generic entry
  - 'patent clusters'
  - patent litigation
  - follow-on products
  - interventions in non-patent procedures
  - settlement agreements
- Strategies to block innovation
  - 'sole purpose' blocking patents
- Regulatory change
  - Community patent and unified patent judiciary

## crowell moring Issues going forward

- Is the current approach to market definition too broad?
- Are patent clusters an abuse absent dishonesty?
- How much patent litigation is abusive?
- Follow-on products: is misleading marketing enough?
- What will be the approach to settlement agreements (FTC, DoJ or US Courts)?
- How much impact can DG Comp have on the EPO, the Community patent process and other regulatory matters?

## crowell Questions

Priorities for action?

 How widespread are 'knowingly bad' patents or patent cases?

When can we expect the final report?