



Interim Report on the Pharmaceuticals Sector Inquiry: A Response

Sean-Paul Brankin
Crowell & Moring
December 5, 2008

- **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**

Striking facts

- **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

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?

- Priorities for action?
- How widespread are ‘knowingly bad’ patents or patent cases?
- When can we expect the final report?