



Ms Neelie Kroes
Member of the European Commission
200 rue de la Loi
1049 Bruxelles

3 February 2009

Dear Commissioner,

BUSINESSEUROPE has taken note with great interest of the publication by DG Competition of its preliminary report on the pharmaceutical sector inquiry on 28 November 2008.

Whereas BUSINESSEUROPE does not want to comment on the specific issues of the sector inquiry, it would like to voice some general remarks on the role of intellectual property and the patent system in particular for innovation in Europe.

European business has always been a strong supporter of effective public enforcement of antitrust rules and believes that, when adequately demonstrated, any individual infringement must be pursued by the competent authorities.

At the same time, it considers that a strong and effective patent system is a necessary element to boost Europe's innovation. It is particularly important to encourage innovative industries in Europe in the current economic climate and they need to be confident that they will be able to protect their investments in R&D.

The use of patents, their effective enforcement through patent litigation, patent settlements and marketing of next-generation technologies are standard practices for most high-technology industries, essential to them and intrinsic to the nature of intellectual property rights, whose value would otherwise be severely undermined.

Patent portfolios are a necessary part of competition among innovative companies. Modern technologies, in the fields of consumer electronics, semiconductors, computers and pharmaceuticals among others, rely upon extremely complex patented inventions. These patent portfolios will grow over time with ongoing R&D.



Patent litigation is essential to ensure effective patent enforcement and avoid a torrent of “low-quality” patents. Courts and the European Patent Office need to be the only places that decide on the validity of intellectual property rights. Bearing in mind the current patchwork of patent litigation in Europe, what becomes more evident is the urgent need for a rapid political agreement among EU Member States on setting up a common European Patent Court that will provide fast and reliable decisions and also on a Community Patent that fully meets the needs and requirements of users. This is of key importance for European business and BUSINESSEUROPE has consistently supported all efforts of the European Commission to achieve this.

Patents spur innovation rather than being a declining factor in the innovation process. We need in Europe tangible progress in the ongoing efforts to provide us with an effective patent system ensuring the necessary quality and legal certainty at reasonable costs that will benefit all industry sectors and society as a whole.

We thank you in advance for taking our views into consideration in your further deliberations.

Yours sincerely,

Mendelije gwest,

Philippe de Buck