

# Commission's Pharma Competition Report: Litigation instead of Innovation

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Today's preliminary report from DG Competition highlighted a number of disturbing trends in the pharmaceutical sector that are linked to the delay of market access for more affordable generic medicines within the European Union. The report estimates that these actions inflated expenditure for EU health systems by approximately 3 billion euros between 2000 and 2007.

Originator companies are prolific litigators when it comes to patent protection. Yet, it appears that the outcome matters less than the process. Despite the majority of final decisions going against originator companies, the delay produces the added bonus of extending patents for the duration of the litigation process. So, it's not the winning, but the taking part that seems to count.

Temporary injunctions granted to originator companies during the legal process are another strategy from what the DG Competition calls the 'toolbox' of practices that contribute to delayed generic entry into the market. Perhaps most troubling is the cumulative use of every instrument in the 'toolbox' when a best-selling originator medicine is under threat of losing patent exclusivity. No wonder fewer affordable medicines reach European patients and consumers.

The investigation highlighted several practices detrimental to access to medicines that meet real health needs, including 'patent clustering', where companies file up to 1300 patents on a single product and interventions in national marketing authorisation with misleading claims that undermine the quality, efficacy and safety of generics.

Yet, repeatedly in this discussion, the end-users of medicines: the real people, real patients that are the inevitable victims of monopoly tactics were almost overlooked. The public health perspective was virtually invisible for most of the proceedings. Competition in the pharmaceutical sector was treated as a goal in itself rather than as a means of achieving better access to the medicines that people need.

"Seemingly, in settings such as these it is a *faux pas* to talk about pharmaceutical policy in relation to consumer rights, patients or public health" said a representative from Health Action International.

Health Action International (HAI) Europe has consistently advocated for universal access to affordable, essential medicines and we welcome DG Competition's efforts to expose the anti-competitive practices that threaten public health in Europe.

PRESS RELEASE

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