Preface

In June 2005 the European Commission announced that it had fined AstraZeneca €60 million for misusing the patent system to delay entry of competitors thereby abusing its dominant position in contravention of Art. 82 EC.¹ In October 2005 a complaint by six phone manufacturers was reported against Qualcomm, a chip manufacturer that owns patents over technology used in 3G handsets, alleging that Qualcomm refused to license essential patents on fair terms, and charged excessive royalties for its essential patents thereby acting anti-competitively.² In December 2005 the Commission published a Discussion Paper on the Application of Art. 82 to Exclusionary Abuses.³ In February 2007 the Commission opened an investigation into Boehringer’s best selling drug last year, Spiriva, in relation to possible misuses of the patent system to exclude competition from the market.⁴

These initiatives have as their backdrop two central questions, inter alia: first, the relationship between competition law and intellectual property rights; and secondly, the duty of dominant undertakings to deal/license/supply other undertakings.

Against this background and in view of the increased significance these questions are likely to assume in the future, this book deals broadly with the relationship between competition law and intellectual property rights, and more specifically, with the interface between patent law and competition abuses – by virtue of refusal to deal – in the biopharmaceutical industry. It focuses on a paramount element for competition: ‘access’. It addresses the following question: how do we strike the balance between initial and follow-on innovation so as to ensure that access to ‘essential’ research tools (or other fundamental elements for follow-on innovation) is not impeded?

¹ Commission press release IP/05/737. AstraZeneca abused its dominance by making misrepresentations to national patent offices with a view to obtaining supplementary protection certificates, as well as by misusing rules and procedures of medicines agencies to block entry of generic products or parallel traders.
⁴ Case COMP/B2/39246.