

STANDARDIZATION UNDER EU COMPETITION RULES and US ANTITRUST LAWS

*The Rise and Limits of
Self-Regulation*

BJÖRN LUNDQVIST

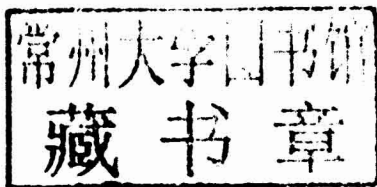
NEW HORIZONS IN COMPETITION LAW AND ECONOMICS

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The Rise and Limits of Self-Regulation

Björn Lundqvist

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Denmark*



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NEW HORIZONS IN COMPETITION LAW AND ECONOMICS

Series Editors: Steven D. Anderman, *Department of Law, University of Essex, UK* and Rudolph J.R. Peritz, *New York Law School, USA*

This series has been created to provide research based analysis and discussion of the appropriate role for economic thinking in the formulation of competition law and policy. The books in the series will move beyond studies of the traditional role of economics – that of helping to define markets and assess market power – to explore the extent to which economic thinking can play a role in the formulation of legal norms, such as abuse of a dominant position, restriction of competition and substantial impediments to or lessening of competition. This in many ways is the *new horizon* of competition law policy.

US antitrust policy, influenced in its formative years by the Chicago School, has already experienced an expansion of the role of economic thinking in its competition rules. Now the EU is committed to a greater role for economic thinking in its Block Exemption Regulations and Modernisation package as well as possibly in its reform of Article 102. Yet these developments still raise the issue of the *extent* to which economics should be adopted in defining the public interest in competition policy and what role economists should play in legal argument. The series will provide a forum for research perspectives that are critical of an unduly-expanded role for economics as well as those that support its greater use.

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1. R&D collaborations, technology standardization agreements and patent pools: antitrust problems or efficient solutions to antitrust problems?

When interviewed, a representative for the world's leading equipment supplier and network service operator of mobile and fixed phone and telecommunications stated that the two most important outputs of research are patents and technology standards.¹ The representative for the telecommunications firm went on to say that technology standardization is never an end in itself because consumers' requirements and competitors' positions need to be taken into consideration and balanced against each other.² The firms that combine forces in the standardization committees change over time but collaboration remains essential since the processes in the technical committees are usually consensual.³ In fact, the negotiation of compromises in the technical committees of standard-setting organizations permits a feedback loop into research activities. Technical committees create platforms where competitors can communicate, negotiate and collaborate about the development and the standardization of the technology.⁴

In relation to intellectual property rights, the members of these technical committees are these days conscious of the patent or IP 'ecosystem' that is linked to suggested standards. They often file patent applications before the

¹ Rudi Bekkers et al., 'Case studies on the interface between research and standardisation, and case studies on patent pools as a coordination mechanism' (INTEREST consortium Priority 8 No. Contract 503 594, EU 6th Specific Targeted Research Project, 2006), 53. [The document is on file with the author.]

² Ibid. 55.

³ Ibid.

⁴ Ibid.