

INTERNATIONAL COMPETITION LAW SERIES

Competition Law and Intellectual Property

A European Perspective

Edited by
Giandonato Caggiano
Gabriella Muscolo
Marina Tavassi



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Law & Business

Competition Law and Intellectual Property

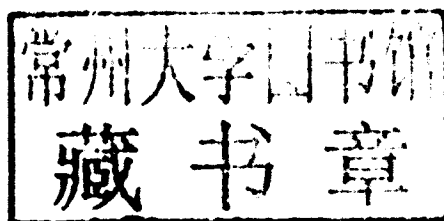
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Competition Law and Intellectual Property

International Competition Law Series

VOLUME 50

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Preface

In an age of global competition within a knowledge economy, the revenue potential of Intellectual Property Rights (IPRs) is just as important as access to commodities in the traditional economy. High-tech companies' revenues depend increasingly on their intangible assets, namely their ability to innovate. Device producers have adopted a software-centric approach and some top companies have practically converted their core business to software. Some recent bids have been made to acquire failing or failed undertakings for their IPR portfolios, only so as to initiate thousands of legal claims for patents of dubious importance. Instead of competing through new products, companies use litigation to delay competitors' access to the market. In such conditions, antitrust law is the right tool to address competition concerns.

This book focuses on competition law, regulation of IPRs and their convergent roles for a Single Market in an essential field for EU growth and development. The term 'intellectual property' is used with reference to a large category of rights and a variety of legal regimes. The Authors' contributions focus only on those characteristics of IPRs that are useful to explain their interaction with competition law in the relevant markets. The rapidly evolving technical environment and the related 'Community acquis' make a systemic and coherent interpretation of the two topics very complex, especially considering the de-centralization process of competition (modernization) and the lack of a single, effective European jurisdiction for IPRs, mainly due to the long tradition of the territoriality principle in copyright and patents.

Part I aims at providing a comprehensive overview of the strategic relationship between IPRs and competition. Part II is devoted to the standard-setting process, which is the key for the access to effective interoperability of high-tech systems. Part III addresses some sector-specific issues (e.g., the pharmaceutical sector). Part IV regards general competition issue, also relevant for IPRs, as actions for

Preface

damages in the private-enforcement context. Finally, Parts V and VI contain insights into issues related to IPRs or competition law from a comparative-law perspective and that of several national legal systems.

The idea of this book originated within the debate at the VIII Annual Conference Association of European Competition Law Judges (Rome, 2009), where judges, academics and lawyers discussed different aspects of the interplay between IPRs and competition law. It took some time to prepare the original contributions by a group of highly qualified scholars, to collect and revise them by a patient and talented staff. The editors hope that this 'collective creation', hereby submitted to interested readers, thanks to the professional support of the publisher, is a useful work and input for further reflections.

Giandonato Caggiano
Gabriella Muscolo
Marina Tavassi

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