

The relationship between intellectual property rights and competition law in the European Union

With regards to both Article 101 and Article 102 of the EC Treaty and their application to IPRs, we can see unifying trend. There has been a move toward a more economic approach. The authorities have accepted the fact that IPRs and competition law aim at the same goal - protecting the consumer. The balance to be struck between the two to achieve this goal has been attempted in several ways. The former formalistic approach was replaced by the economic approach, which concentrates more on the economic analysis of the markets and the effects of behaviour of the competing undertakings on the competition. Both of the approaches have its pros and cons. The former, by applying the rules rather mechanically does not adequately reflect the realities of the market, and fails to fully recognise the competitive aspects of IPRs. It does, however provide certain degree of legal certainty for the market players by setting rules to be followed in a lot clearer manner, as has been demonstrated in the previous block exemptions, or earlier case law concerning application of Article 102. The latter, on the other hand, offers flexibility in assessing the competitive aspects of IPRs, and represents a more individual approach in cases involving IPRs. This economic assessment, however, comes at a dear price. Legal certainty is one of the important elements of a well-functioning legal system. It is indispensable for the market actors to predict the legal consequences of their actions in order to modify them accordingly. It would perhaps be naive to presume that the players on the market will behave in accordance with rules of fair competition on their own accord. It is therefore the role of the legal authorities to present the undertakings with such set of rules that are not only clear and unambiguous, but also, and more importantly, systematically and consistently enforced by the relevant governmental bodies. In conclusion, this paper appreciates the fact that the European Commission and the European Courts have succeeded in acknowledging the common goal of the IPRs and competition law and have successfully started reflecting this trend in their decision making process. However, needless to say, there is room for improvement mainly in relation to clarity and consistency of these processes.