



Competition Law and Standard Essential Patents. A Transatlantic Perspective (International Competition Law)

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Despite the substantial benefits of standards in today's economy, the recent advent of standard essential patents (SEPs) - which protect proprietary technologies essential for industry standards - has tended to create a setting for anticompetitive practices that, at least potentially, harms competition and consumer welfare. An opportunistic SEP owner can intentionally conceal the existence of its patents during the standardization process, or later hold up manufacturers and impose on them exploitative licensing conditions. This book, through an intensive focus on case law in the United States and the European Union, clarifies the scope of competition law in addressing SEP owners' opportunistic conduct, and offers the first comprehensive analysis of the antitrust liability an SEP owner might face in each jurisdiction. The presentation thoroughly explains all of the following relevant topics and issues: processes through which standards are adopted and implemented by market participants; principal antitrust concerns that might arise in the standardization context; elements that competition authorities and courts should take into account in evaluating SEP owners' market power; the role of "fair, reasonable and non-discriminatory" (FRAND) commitments; applicability of competition law to a SEP owner's deceptive practices during the standardization process; applicability of competition law to strategic licensing by SEP owners; gaps competition law faces when addressing a SEP owner's opportunistic practices; available antitrust remedies that could be imposed on a SEP owner whose conduct violates competition laws; and what role competition law should play in stimulating the development of preventive mechanisms or remedies available outside the competition law domain. An extensive bibliography includes a broad range of sources from statutes and cases to speeches and blogs. Practicing lawyers and companies that need to identify the limits that competition law imposes on SEP owners' conduct will benefit immeasurably from the wealth of both information and insight provided here. The book will also be of great value for competition policymakers and academics in the field; the latter will also appreciate the substantial comparative law value of the book's parallel study of US and EU competition law.

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