



Competition Law Constraints on the Standards Process

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The basic exception for Standards Bodies in the Competition Law

- ◆ In general the behavior of competitors should not encompass any activities among themselves.
- ◆ There are some narrow exceptions
 - ◆ Political Activity
 - ◆ Pre-competitive Activity



Pre-competitive Activities

- ◆ **This is the exception Standards fall into.**
- ◆ **From this status flows the rules of behavior that we all take as givens in Standards Development Organizations (SDO or SSO)**



Rules of Behavior

◆ Membership:

1. An SDO must be open to all interested parties;
2. Members should include industry, academia, and consumers;
3. Cost of membership should not be so high as to effectively preclude membership to Small and Medium Enterprises, or consumers.

◆ Procedures:

1. Open meetings;
2. With published agendas;
3. Adequate notice to all interested parties;
4. **There must be no collusion as to price or markets.**



Rules of Behavior

- ◆ **The essence of these rules is that they must be:**
 - 1. Fair; and**
 - 2. Inclusive.**



Rules of Behavior

◆ Most importantly:

1. **Intellectual Property Rules;**
2. **Standards are Technology systems;**
3. **In order to be Open Standards they must provide for the licensing of Intellectual Property Rights (IPR) included within them.**

◆ Therefore, we must have IPR rules which conform to the Competition Laws. i.e. Fair and Inclusive



Intellectual Property Rules

- ◆ These can be summarized in an acronym;
- ◆ FRAND the ETSI (European Telecommunications Standards Institute) formulation
- ◆ RAND the ANSI (American National Standards Institute) formulation
- ◆ And minor valuations used by other SSO s.



Intellectual Property Rules

- ◆ **Fair**
- ◆ **Reasonable**
- ◆ **And**
- ◆ **Non**
- ◆ **Discriminatory**



Intellectual Property Rules

- ◆ **Whether you use the ETSI formulation or the ANSI the objective is to provide **IPR licenses to anyone who wishes to provide product to the market in accordance with the Standard in question.****



Intellectual Property Rules

- ◆ Remember the Competition Rules
- ◆ There must be no collusion as to price or markets.
- ◆ That includes the rates and other terms of IPR licenses.



Intellectual Property Rules

- ◆ **Controversy reigns when potential licensees do not know what a Reasonable fee is.**
- ◆ **There have been many efforts to resolve the question without running into competition problems.**



Intellectual Property Rules

- ◆ **Several SSO s and others have attempted to put some clarity in the process without running into problems, there have been indications that the competition authorities will approve of unilateral declarations of IPR and its cost.**



Intellectual Property Rules

- ◆ **Transparency will allow for the free play of competition in the choice of technologies and in the price paid for it.**
- ◆ **However, The Competition Laws have the ultimate judgment.**



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