

Dissertation thesis

Competition law limitations of intellectual property rights

Abstract

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The topic of this dissertation thesis is Competition law limitations of intellectual property. The thesis therefore deals with the relation between two dynamic fields of law that have gained significant importance in the last decades.

Intellectual property law and competition law seem to be in a deep-rooted opposition. The IP law attempts to provide a certain degree of protection and exclusivity to the right holder. Contrary to that, competition law endeavours to provide a level playing field for the competitors to allow the market forces to take full effect.

The legal assessment of the mutual relation between the two fields of law has not been provided for by the jurisprudence until quite recently. Czech jurisprudence does not have a complex study on the issue at all.

In this situation of uncertainty, case law regarding the interaction of IP rights and competition regulation develops, mostly on the EU level and in the US. The importance of a theoretical approach to the topic therefore increases.

The topic of this thesis has been prefaced by a short introduction to the main concepts of competition law as these concepts tend to reappear throughout the thesis. Competition law concepts such as the relevant market, cartel or abuse of dominance have been presented in a concise manner sufficient for the analysis presented further in the thesis.

The main part of the thesis follows a traditional system of intellectual property law, beginning with copyright and related rights with industrial property rights following.

The chapter, devoted to copyright also deals with underlying principles and concepts of copyright such as the author, work or license. These concepts were then evaluated through the viewpoint of competition law and their possible effects on the market were studied. The foundations, laid in this chapter, were frequently used in the following chapters on more specific forms of copyright and related rights. Attention has been given also to related rights and their competition assessment. It seems that the traditional concepts of competition law, such as the undertaking do not cope well with the reality of copyright. Especially the concept of related rights is difficult to grasp within competition law categories. An approach relying on

a market-based understanding of the relationship between the two fields of law seems to have led to a complex understanding of the issue.

The collective management of copyright and related rights has been introduced as an IP law concept and analysed for possible competition law interactions. It seems that the strong influence of public regulation of the field prevents from the application of competition law. However, in the rare situations, where competition is feasible, even collective management needs to comply with competition law regulation.

Great detail has been given to public licenses as a highly innovative part of IP law. Public licenses seem to pose a challenge when applying competition law methods as they contain provisions strongly determining future market behaviour in its key aspects, including pricing policies. A workable form of coexistence has been found, noticing the effect of public licenses on the relevant markets in question.

The field of public sector information has been also an object of interest in this thesis. This field is influenced by many interests and a wide public regulation, some of which were analysed. On a theoretical analysis and a case-study, a working solution with appropriate theoretical backing has been described.

The specific field of database rights has also been analysed, focusing on a theoretical approach and recent case law. The possibility of viewing an existing database as an essential facility under competition law has been studied.

The findings of the previous chapters have been summed up in a short interim resume. The importance of a proper understanding of a relevant market and contents of the agreement among possible market players has been stressed out.

The next large part of the thesis has been devoted to industrial rights. This part has also dealt with underlying principles and concepts of industrial rights, such as the first sale doctrine, owner of an industrial right and originator.

A significant chapter of this thesis deals with patent law. The ideas underneath patent law have been briefly introduced to provide for a better understanding of the functioning of patent protection. The increase in market power provided by a patent has been analysed for a simple patent and a special types of patents, such as standard essential patents and essential

patents. Attention has been given also to the possibility of a functioning competition among such patents. A case study of competition development in a market with two strong competing standards has been provided. The need for a proper understanding of the market where the patents exist has been stressed out.

Competition analysis of industrial designs has also been provided. On the introduction to the functioning and purpose of industrial design, a competition analysis reveals very little risk of negative effects of an industrial design on competition in a market.

Next chapter dealt with the relation of trademarks and competition law. The competition limitations of trademark use have been analysed for a simple trademark licensing agreement as well as for a more complex situation, such as franchising.

Last two chapters dealt with the remaining IP rights, such as geographical indications, topographies of semiconductor products or plant variety rights.

The main findings, achieved in this thesis are following. Competition law poses limitations on the exploitation of intellectual property, IP rights can, in certain situations, greatly increase the market power of the rights holder and help obtain dominance on a market. In such a situation, the rights holder becomes subject to a list of rules imposed by competition law regulation. Such a situation is, however, quite rare. In many situations, right holders face competition from different products covered by IP rights that prevent them from obtaining market dominance.

The contractual relationships, formed to provide access to intellectual property is misused to provide a basis for anticompetitive conduct. Such a situation, however, does not have its basis in the IP law itself and the IP law and its applications do not provide a defence from competition law claims.