

# Competition law aspects of technical standardization, use and protection of intellectual property rights

## Abstract

The thesis deals with mutual relationship between intellectual property law and competition law in the context of technical standardization – i.e. process which gives rise to a significant number of potential conflicts between the two legal areas. It is analysed, in the context of technical standardization, in what way are subjective rights of intellectual property right owners limited by competition law regulation. It falls within the ambit of this thesis to evaluate whether respective legal framework fulfils necessary requirements on legal certainty and whether it is applied in the same manner to each undertaking, or if there are any discrepancies as to the application of the legal framework dependent on the kind of the undertaking. This thesis particularly concerns with competition law aspects of standardization in information and communication technology sector and selected issues related to use or protection of intellectual property rights in connection to article 101 and 102 TFEU.

First chapter explains what the term technical standard entails, introduces *de facto* and *de jure* standards, describes the process of their creation and analyses potential effects of this process on the competition, with respect to article 101 TFEU. In connection to potential risks that technical standardization represents it is further analysed what conditions must be fulfilled for the standardization agreement to fall within the so-called safe harbour.

Second chapter deals with other risks that can arise from using or protecting intellectual property rights, especially with respect to article 102 TFEU, i.e. in what circumstances can for example refusal to grant a license, enforcement of excessive licensing fees or exercising right to judicial protection be regarded as abuse of dominance. In that context, special attention is given to the concept of FRAND commitments – a legal tool construed to ensure that the free access to a standard is provided but in part also to protect intellectual property owners.

Third chapter deals with risks arising from use of intellectual property rights in the context of technical standardization and the article 101 TFEU. The focus is especially given to competition law aspects of licensing agreements or assignment agreements following implementation of technical standard. Detailed analysis is given with respect to the system of block exemptions for some technology transfer agreements, research and development

agreements and specialization agreements. The issue of collective licensing within so called patent pools is also closely described.

The conclusion summarizes all relevant findings from all abovementioned chapters and final evaluation of the legal framework for competition law regulation of intellectual property rights is offered to the reader, especially with due regard to question of legal certainty. Finally, it is also summed up what discrepancies the concerned regulation maintains towards some of the undertakings, especially with respect to non-practicing entities.