Strafford conference
Palo Alto, 11 October 2007

Anti-trust issues in standardisation bodies

Nicholas Banasevic
DG Competition, European Commission
(Speaking in a personal capacity - the views expressed are not necessarily those of the European Commission)

Overview

- Importance of standards
- The economic and legal framework
- Standards and pricing - *ex ante* royalty setting
- Patent ambush
- Conclusion

IMPORTANCE OF STANDARDS

Growing importance of standards

- Globalising, knowledge-based economy
- More and more products have to work together
- Of particular importance in IT/communications
- Standards-related issues have increased in prominence
- What are the anti-trust issues?

THE ECONOMIC AND LEGAL FRAMEWORK

Cost-benefit analysis (Carl Shapiro)

- Costs
  - Potential limitations in product variety
  - Potential market power of company controlling a standard
- Benefits
  - Open standards provide certainty
  - Network effects
  - Protection from stranding

Commission's approach

- Context is specific
- But recognises the benefits of standardisation
  - Commission Communication
  - Horizontal Anti-Trust Guidelines
- Subject to conditions
  - Transparency of process
  - No restrictions that are not indispensable
  - Available to all who wish to enter

Do standards confer market power?

- Possibly
  - Depends on importance of standard in market
  - Depends on lock-in (sunk costs, network effects)
- What are the implications for the price?
- Does RAND have a constraining effect?
  - Important to also consider whether there would be market power without the standard

Do standards confer 'incremental' market power?

- Possibly
  - Depends on *ex ante* alternatives
- What would have happened *ex ante* is a good benchmark
- Unique, innovative technologies will be appropriately valued

STANDARDS AND PRICING - *EX ANTE* ROYALTY SETTING

Complaints of high royalties

- Many different complementary technologies in one standard
  - All with essential patents
- 'Patent stacking'
- High royalty

Ex ante régime (I)

- Potentially economically more efficient
- Prices announced/set before standard is agreed
- Allows competition on both price and technology

Ex ante régime (II)

- US Business Review Letters
- EU Technology Transfer Guidelines
- Role of anti-trust agencies should not be prescriptive as regards choice of scheme

PATENT AMBUSH

Patent ambush

- Prevention better than cure
  - Encourage standards bodies to have clear rules
  - ETSI
- How might specific patent ambush cases be dealt with?

CONCLUSION

Conclusion

- Benefits of standardisation recognised
  - but the context is important
- Ideally, competition authority does not want to intervene in individual cases
- Important for standards bodies to design the most efficient rules

Strafford conference
Palo Alto, 11 October 2007

Anti-trust issues in standardisation bodies

Nicholas Banasevic
DG Competition, European Commission
(Speaking in a personal capacity - the views expressed are not necessarily those of the European Commission)