



Liege  
Competition  
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Regulating Patent Hold-Up

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# IEEE revised patent policy under EU law?

## Restriction by object?

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- ▶ Recent EU competition case-law has promoted a very hard line in the area of coordinated conduct
  - ▶ “*Cheap-talk*” pre-pricing communication (Dole Food Company), episodic collusion (T-Mobile) and horizontal agreements with limited market coverage (Expedia)
- ▶ Rationale: deterring any coordinated interference with the free market price system. In the EU courts' view, joint interference by competitors with the price system seems to be a sin in itself

## Relevant case-law

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- ▶ *Dole Food Company, Inc. v Commission* (price setting factors)
- ▶ *FCK and SCK* (reasonable rates)
- ▶ *Raw Tobacco Italy* (no justification to ROs)
- ▶ *FEDETAB* (non binding industry recommendation)
- ▶ *T-Mobile Netherlands* (buyer level ROs)

## My point is not

- ▶ that EU antitrust agencies would – let alone should – take action against SSOs patent policies for infringement of Article 101 TFEU
- ▶ that EU antitrust agencies would not use their margin of discretion to dismiss complaints against SSOs, settle such cases or extend the benefit of an exemption under Article 101(3) TFEU

## My point is

- ▶ that regardless of antitrust agencies policy preferences, changes of the kind introduced by IEE-SA should be subject to rigorous *ex ante* antitrust assessment
- ▶ Courts dealing with patent infringement cases or involved in rate setting proceedings faced with a new form of competition defense, raised by SEPs holders who do not comply with an SSO's patent policy to avoid consummation of an unlawful restriction of competition
- ▶ SEP holder requests royalties that reflect the added value of the end product
- ▶ Commission Guidelines on horizontal cooperation agreements only have self binding authority on Commission
  - ▶ National agencies and courts can deviate from them



Thank you!

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