BOOK REVIEW


The book, Research Handbook on Competition and Intellectual Property Law, has contributions from various parts of the globe to explore interface between the competition and intellectual property law. Issues covered in the handbook range from fundamental to specific. Topics covered include, among others, technology licensing, doctrine of exhaustion, network industries, innovation, patents, and copyright. The latest developments in European and American antitrust law, such as the ‘more economic approach’ and the question of anti-competitive abuses of intellectual property rights are extensively covered in the handbook. Each chapter has extensive comments by all other contributors.

The Handbook which has 18 chapters by lawyers and economists from different countries is a result of the research project organized and financed by the Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich, Germany. The book is actually a source of inspiration on a high academic level and enhances further discussion and research.

The Handbook is divided into six parts. The first part deals with overall policies and economic theory. The first three chapters focus on the European situation, but, in searching for new approaches to competition policy addressing IP-related cases, there is a broader approach. Competition law and IP law are complementary to each other but not fully. Competition law has to take into consideration dynamic aspects of IPR, because competition promotes innovation and it is on the basis of dynamic efficiency as a common objective that a concept of dynamic competition must be developed.


The third part of the book dealing with Unilateral Restraints based on IPR has three chapters, Unilateral Refusal to License Indispensable Intellectual Property Rights – US and EU Approaches by Beatriz Conde Gallego; Patent Power and Market Power: Rethinking the Relationship between Intellectual Property Rights and Market Power in Antitrust Analysis by Clifford A Jones deals in detail with the recent US Supreme Court decision in the case Illinois Tool Works Inc v Independent Ink Inc. In Making Antitrust and Intellectual Property Policy in the United States: Requirements Tie-ins and Loyalty Discounts, the author, Warren S Grimes examines how antitrust policy that bears on IP is established and enforced in US. He further criticizes the Antitrust Division of the Department of Justice in particular, which in several cases has successfully convinced the courts to relax antitrust rules on IPR.

The part four on Merger Control has sole chapter on New Technologies and Mergers by Josef Bejcek. In this chapter, the author reviews how effects on innovation can be best taken into account in an analytical way so as to promote dynamic efficiency when IPR plays a role in merger control cases. He thereby prefers a long-term evaluation of the beneficial effects to an analysis that focuses on short-term gains in consumer welfare.

The fifth part on The Effect of IP Laws as such on Competition has three chapters covering mainly the theory that competition policy plays a major role in designing proper functioning of IP laws but IP laws as such do not always promote innovation. In the subsequent chapter the interplay of copyright law and patent law with regard to the protection of computer programs is analysed. The authors outrightly reject the belief that in contrast to copyright law, patent law will hinder dynamic development of software industry. If properly tailored, patent law could bring several benefits to the software industry and could prove to be a far more efficient tool than copyright law. Development of the Economics of Copyright by
Christian Handke, Paul Stepan and Ruth Towse deals with the development of economic analysis of copyright and its implications for competition law.

Finally, the sixth part on National IP Rights and Cross-Border Competition has three chapters. Stefan Enchelmaier in the chapter on Intellectual Property, the Internal Market and Competition Law discusses about how all the three terms are intertwined in several ways. Both competition law and the law governing internal market face some similar problems when reconciling their respective, interrelated aims with the requirement of the protection of IPR, but the solution to these problems are based on the same principles.

The Exhaustion/Competition Interface in EC Law – Is There Room for a Holistic Approach? by Ole-Andreas Rognstad covers relationship between the exhaustion principle and competition rules in the Community law in legal aspects which has been a subject of debate for several years. The author opines that more harmonization of the two sets of rules is possible and should be implemented accordingly in the case laws.

In Competition Policy and Intellectual Property in the WTO: More Guidance Needed? the author, Robert D Anderson explores the possibilities of developing more precise international rules on the application of competition law to IP-related cases in the framework of the TRIPS Agreement, taking into account the pros and cons of such a development for developing countries in particular.

Each chapter in the Research Handbook on Competition and Intellectual Property Law is written so lucidly that it will be of great interest to law professors and post graduate students of intellectual property and competition law, as well as those interested in innovation and competition theory, and legal practices in intellectual property and competition law.

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