

Maximisation of Consumer Welfare in the Enforcement of Intellectual Property Rights in Competition Guidelines: The Malaysian Experience

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Abstract : The objective of competition law is to maximise consumer welfare through the regulation of anti-competitive behaviour that results in the distortion of the market. Intellectual property law also seeks to enhance consumer welfare in the long run by encouraging the development of useful devices and processes. Nevertheless, in some circumstances, the IP owners behave in such a way that makes it difficult for rival companies to sell substitute products and technology in the market. Intellectual property owners may also reach a dominant position in the market such that they are able to dictate unfair terms and conditions on other market players. Among the two major categories of anti-competitive behavior is the use of horizontal and vertical agreement to constrain effective competition and abuse of dominant position. As a result, many countries have regulated the conduct of the IP owners that are considered as anti-competitive including the US, Canada, and Singapore. This paper visits the proposed IP Guidelines recently drafted by the Malaysian Competition Commission and investigates to what extent it resolves most of the anti-competitive behavior of the IP owners. The paper concludes by suggesting some of the rules that could be prescribed by the Competition Commission in order to maintain the relevancy of competition law as the main check against the abuse of rights by the intellectual property owners.

Keywords : abuse of dominant position, consumer welfare, intellectual property rights, vertical and horizontal agreements

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