

Summary of the intervention by Cecilio Madero Villarejo

Abusing the right to exclude

- European antitrust law responses to IPR related competition problems –

Intellectual property and antitrust law are natural allies, but not always. They are allies in their effort to spur innovation and they may follow different tracks in their desire to define the scope of exclusive rights granted to authors and innovators for that very purpose. To the extent the two legal regimes appear to clash and both sets of rules are applicable, antitrust law will thus have the upper hand in very specific and exceptional circumstances. In the first part of my intervention I will analyse the EU courts' and the European Commission's approach to refusal to license cases taking the IT sector as a reference area. I will then turn to standardisation and thus the second main area where intellectual property rights often pose challenges to antitrust law. In this context, I will highlight the importance of open standards and interoperability for the competitive process and try to define "open standards" for competition law purposes. Last, I will review my conclusions against the broader background of European competition policy. It will become clear that the Commission's practice is very much geared towards stimulating innovation and thus limits antitrust intervention to (fortunately few) cases in which the unfettered exercise of intellectual property rights risks defeating the very purpose of these rights.

I am convinced that the Commission's antitrust enforcement in the context of IPRs is oriented towards ensuring competition on the merits and an effective competitive process. A detailed review of the *Microsoft* judgment, the enforcement priorities and the policy towards standardisation show that it is not the protection of competitors that European antitrust enforcement is concerned with. Rather, effective competition on the merits and consumer protection is our main "raison d'être". Yet, it is, of course, difficult to imagine how such a process could take place without competitors, capable of effectively competing with dominant players. Useless to say that these are my personal opinions and that, as such, they do not necessarily represent the position of the Institution I have the honour to work for since 1987.