

HOW DOES THE EXPERIENCE OF U.S. TELECOMMUNICATIONS REGULATION INFORM THE FORCED SHARING OF INTELLECTUAL PROPERTY RIGHTS UNDER GLOBAL COMPETITION LAW?

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ABSTRACT

Competition authorities in foreign jurisdictions have recently adopted or are considering guidelines on applying competition law to intellectual property rights (IPR). A common concern that certain exercises of IPR can restrict competition underlies IPR provisions that would enable competition authorities to compel holders of IPR to license their IP at regulated royalties. The experience of telecommunications regulation in the United States, from the AT&T divestiture in the early 1980s to the implementation of the Telecommunications Act of 1996, illustrates the potential harm to competition and innovation that such forced-sharing policies would cause. The AT&T divestiture was a costly exercise that prevented or delayed the introduction of new services. Forced sharing of incumbents' network elements at regulated rates under the Telecommunications Act reduced investment by both incumbents and entrants. Ironically (yet predictably), the competition for local telephone service that the Act sought but failed to foster was provided by wireless and cable operators, which were deliberately left unregulated and thus had both the incentive and means to upgrade and expand their networks to handle mass volumes of voice and data communications. The failure of forced sharing to promote competition and innovation counsels competition authorities to proceed with caution when using competition law to regulate IPR.

JEL: D23; D45; K11; K21; L10; L40; L51; L96; O34; O38

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