

## The Role of Standard Development Organizations in Preventing Competition Law Infringements

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### Abstract

The Communication published by the European Commission on standard-essential patents (SEPs) in November 2017 called for Standard Development Organizations (SDOs) to have a more active role in preventing disputes between SEP holders and technology users.

In general, technology users often accuse SEP holders of charging excessive licensing fees based on weak patent portfolios and of using litigation threats in breach of their commitment to license under fair, reasonable and non-discriminatory terms (“FRAND”). SEP holders, in turn, claim that technology users free ride on their innovations and consciously infringe intellectual property rights (IPR) without engaging in good faith licensing negotiations.

This discussion is particularly relevant since divergent views and litigation over the concept of FRAND licensing may delay the uptake of new technologies, standardization processes and the roll-out of Internet of Things (“IoT”) in Europe, thus resulting in a potential harm for the expected economic growth triggered by the IoT.

In the recent past, the European Commission and several national courts came to the conclusion that an SEP holder may be considered to be in a dominant position under EU competition law. Subsequently, the Court of Justice of the European Union, in its *Huawei vs. ZTE* judgment, provided guidance to both SEP holders and implementers on how to conduct the negotiation process in compliance with competition law.

In order to further address this conflict, the Communication published by the EU Commission on SEPs in November 2017 suggested that SDOs should have a more active role in enabling fairer licensing negotiations. In particular, every SDO should improve the quality and accessibility of information recorded in their databases. Secondly, the SEP declaration should be sufficiently detailed to clarify the exact scope of application of the patent vis-à-vis the standard. Finally, SEPs should be subject to reliable scrutiny of their essentiality for a standard.

The purpose of this presentation is to discuss whether, based on the actions proposed by the European Commission, SDOs may play a role in facilitating negotiations and preventing competition law infringements by SEP owners.