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Case Studies Related to the Enforcement of FRAND Commitments under Article 102 TFEU (pp. 47-64) In Europe, the relationship between the actual pricing level and the level compliant with FRAND commitments under Article 102

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TFEU lies at the heart of the tension
between intellectual property rights and
competition policy.

Enforcement of FRAND Commitments under Article 102 TFEU ...

The analysis presented shows that the
FRAND debate is very controversial and

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that many questions related to the
enforcement of FRAND commitments
under EC competition law remain
unsolved. In...

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4. Case Studies Related to the
Enforcement of FRAND Commitments
under Article 102 TFEU In Europe, the

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relationship between the actual pricing level and the level compliant with FRAND commitments under Article 102 TFEU lies at the heart of the tension between intellectual property rights and competition policy. At present

4. Case Studies Related to the Enforcement of FRAND ...

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Antitrust Courts Are Competent to

Enforce FRAND Commitments . Some
have argued that FRAND should be
enforceable only under contract or tort
law ; FRAND violations can be antitrust
violations because of their effects on
competition and consumers

Misleading And Deceptive Conduct

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Reasonable and non-discriminatory terms, also known as fair, reasonable, and non-discriminatory terms, denote a voluntary licensing commitment that standards organizations often request from the owner of an intellectual property right that is, or may become, essential to practice a technical

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standard. Put differently, a F/RAND
commitment is a voluntary agreement
between the standard-setting
organization and the holder of standard-
essential patents. U.S. courts, as well as
courts in other jurisdic

**Reasonable and non-discriminatory
licensing - Wikipedia**

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54 See Brooks, Roger G. and Geradin,
Damien, ' Interpreting and Enforcing the
Voluntary FRAND Commitment ', 9. 1
International Journal of IT Standards and
Standardization Research (2011), 1 - 23;
Geradin, Damien, ' The Meaning of "Fair
and Reasonable" in the Context of Third-
Party Determination of FRAND Terms ',
21. 4 Georgy Mason ...

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Diversified FRAND Enforcement and TRIPS Integrity | World ...

For example, in some jurisdictions, contracts are not enforceable unless each term, including the price, is definite. However, price is open to negotiation under a FRAND obligation. Because a FRAND obligation is

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contractual, it's arguable that
enforcement should take place
according to state law and in state
courts.

Frاند Licensing: Everything You Need to Know

The dominant theory that several U.S.
courts and commentators have adopted

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to justify the enforcement of FRAND commitments is common law contract. The argument goes like this: the patent holder makes a promise to a standards-development organization (SDO) that it will license its essential patents to others on FRAND terms.

Why FRAND Commitments are Not

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2. It is generally accepted that this commitment, although given to ETSI, is enforceable by third parties. It is governed by French law which allows enforcement by a third party of a contract by which one of the parties agrees to confer a benefit on third parties. Actually most other laws do.

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FRAND: A LEGAL ANALYSIS - European Commission

As noted above, the DOJ and FTC are usually in agreement on issues of antitrust policy and enforcement. However, the antitrust treatment of standard-essential patents and FRAND commitments is controversial - it has

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been the subject of voluminous legal
and economic literature and a large
body of case law.

FTC and DOJ Face Off Over Antitrust And FRAND Licensing In ...

The US Federal Trade Commission (FTC)
has taken the position that violating a
FRAND commitment might violate the

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antitrust laws (where other elements of an antitrust claim are established), and DOJ previously has left open the possibility of competition enforcement if a patent holder sought injunctive relief on a FRAND-encumbered SEP.

DOJ Issues Joint Statement With PTO and NIST on FRAND ...

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Frاند Commitment violation, companies such as Apple, Microsoft, Cisco or Motorola Mobility (Google) have made unilateral commitments on the rate, base, scope and transfer of their SEPs. Another IPR coordination mechanism is to pool patents and license them under a single contract.

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**Trends In The Interplay Of IPR And
Standards, FRAND ...**

Under Huawei v. ZTE and prior German case law, if the parties cannot agree on FRAND terms, the implementer needs to pay past and ongoing royalties into an escrow account to show that it is a willing licensee. Although the issue does

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not appear to have been litigated yet, there is a risk that if the amount the implementer sets aside in escrow is considered too low, a court may find it did not actually behave as a willing licensee.

German FRAND Decision May Shape Global SEP Landscape ...

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To be clear, a FRAND commitment may create a duty under contract law to fulfill that obligation, and courts may be tasked with determining the relevant FRAND rate where parties disagree over this contract term. Section 2, however, is agnostic to the price that a patent-holder seeks to charge after committing to such a term.

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Assistant Attorney General Makan Delrahim Delivers Remarks ...

Recent public statements from Makan Delrahim, Assistant United States Attorney General for the Antitrust Division at the DOJ, and Joseph Simons, FTC Chairman, indicate that the two United States antitrust enforcement

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agencies may be shifting their attention from whether SEP owners have breached a commitment to license essential technology on FRAND terms to whether the SSOs are stifling innovation by imposing FRAND requirements on the patent holders.

DOJ and FTC Signal Shifts in

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The European Court of Justice (ECJ) rendered its highly anticipated ruling in Huawei v. ZTE on the enforcement of standard essential patents (SEPs) which are subject to a FRAND commitment.

The European Court of Justice on Enforcement of FRAND ...

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Under the leadership of Makan Delrahim, the DOJ has taken the position that “an antitrust cause of action premised on a failure to abide by FRAND commitments would be inconsistent with Section 2 ...

Ninth Circuit rules in favor of Qualcomm, distancing ...

For the past twenty years, antitrust

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enforcement related to standard setting has focused largely on the interpretation and implementation of the commitments made by patent holders as part of the standard-setting process to license their Standard-Essential Patents (SEPs) on Fair, Reasonable and Non-Discriminatory (FRAND) terms.

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