

CO-OPETITION IN 5G MARKETS: Innovation, Standards and IPRs

17 December 2019, 11:00 – 16:30
CEPS, 1 Place du Congres, 1000 Brussels

5G networks and services are what will craft the building blocks of the future gigabit society: a momentous transformation of the digital and telecoms world. Today, ICT and ‘vertical’ companies are introducing new business models and investment strategies in order to respond to that transformation. Meanwhile, policymakers and regulators are seeking a new way to govern the complexity of the 5G ecosystem without negatively affecting its incremental value to existing products and services.

In this perspective, in order to maximise social welfare and maintain strong incentives towards innovations, in ‘5G markets’ public bodies and companies are asked to encourage development of standards, interoperability, harmonisation and maintaining an efficient ‘institutional and contractual’ design in the production and enforcement of IP licenses.

The **first session** of the workshop will deal with policy and market strategies introducing new cooperation tools and coordination mechanisms in all segments of its horizontally and vertically extended value chain. This process is aimed to make ‘5G markets’ move towards a balanced framework (still to be defined) between cooperation and competition and thus enabling so-called **co-opetition in 5G markets**.

In this respect the mechanisms introduced by the new EU framework, regulatory practice and market dynamics (e.g., spectrum and infrastructure sharing, cost-reducing co-investments, dedicated slices interconnection, services interoperability, coordination for innovation and standardisation) are all considered to be crucial elements for the 5G and IoT world.

However, in the policy debate, it is still controversial how to use and especially how to combine them in order not to jeopardise (infrastructure-based) competition, the upward progression in the ladder of investment, network and technological neutrality, and other early principles of the EU competition policy and electronic communications regulatory framework.

The **second session** of the workshop will focus on **Standard Developing Organisations (SDOs)** and **Standard Essential Patents (SEPs)** which are essential in the 5G and IoT ecosystem. SDOs and SEPs are supposed to play a key role in ensuring a smooth interplay between patents and standards. Indeed, innovation needs both a sustainable and efficient standardisation process and a balanced licensing environment, not least in order to address the risk of hold-up and hold-out opportunistic behaviours throughout the value chain.

Fair Reasonable And Non-Discriminatory (FRAND) conditions has often been considered a key to such a balance, and are increasingly used in other EU contexts (e.g., Data Economy and FinTech). Nevertheless, the hurdles underlying the economic and legal assessment of 'what FRAND is' has entailed massive litigation that has not tackled legal uncertainty due to an inconsistent body of case-law worldwide.

Besides focusing on the pros and cons of different antitrust and contractual enforcement approaches, the discussion will try to shed some light on whether *ex ante* regulation could be an alternative solution to better tackle market and coordination failures within SDOs and SEPs.

A **key-note speech** will bridge the two sessions and add a general perspective on competition and cooperation interaction in the ICT markets. The workshop will be introduced by the presentation of the **DEEP-IN policy paper on Co-opetition in the 5G markets: innovation, standardisation and IPRs**.

AGENDA

10.30 – 11.00 *Registration and Welcome coffee*

11.00 Welcome

Stefano da Empoli
President, I-COM

Lorenzo Pupillo
Associate Senior Research Fellow, CEPS

Presentation Deep-In Policy paper: Co-opetition in 5G Markets: Innovation, Standards and IPRs

Antonio Manganelli
Director, DEEP-IN Research Network

11.25 First Session: **Co-opetition, innovation, standardization: 5G and IPRs**

Chair: **Sandro Mendonça** – Board member, ANACOM /Professor of Economics

Emilio Davila Gonzalez
Head of Sector ICT Standardisation, European Commission

Rosario Baratta
Head of Competition Law, GSMA

Wassim Chourbaji

Senior Vice President, Government Affairs, Qualcomm

Michael Meyer

Research Manager, Ericsson Eurolab, Ericsson

Maarit Palovirta

Director of Regulatory Affairs, ETNO

Questions & Answers

13.15 – 14.00 Lunch

14.00 Bridging session:

Competition and cooperation in the “new” ICT markets

Rita Wezenbeek

Head of Unit Antitrust Telecoms – DG Competition, EU Commission

Jennifer Dixton

Special Counsel for Policy & Intellectual Property
Antitrust Division, U.S. Department of Justice

14.40 Second Session:

Beyond Patent Hold-Up and Hold-out: antitrust, regulation or contracts?

Chair: **Antonio Nicita** – Commissioner, AGCOM / Professor of Economic Policy

Amaryllis Verhoeven

Chair of the EU Commission Expert Group on Licensing and Valuation of SEPs
Head of Unit, Industrial Property and the Fight against Counterfeiting

Damien Geradin

Professor of Competition Law & Economics, Tilburg University

George Padilla

Head of Compass Lexecon Europe

Eric Brousseau

Scientific Director, Chair Gouvernance and Regulation, University Paris-Dauphine

Questions & Answers

16.10 Closing remarks

Antonio Nicita

Commissioner, AGCOM / Professor of Economic Policy

Andrea Renda

Head of Global Governance, Regulation, Innovation and the Digital Economy, CEPS

16.30 – 17.00 Coffee and Greetings