

A Review and Analysis of Decisions Rendered by the Taiwan Fair Trade Commission in Intellectual Property Licensing Cases

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Abstract

After compiling and analyzing the decisions of the Taiwan Fair Trade Commission concerning intellectual property licensing, the author concludes this paper with the following suggestions: 1. Unless the specific work actually accounts for a certain market share, the copyright owner of this work should not be regarded as having the market power only because the licensee cannot get the license from others apart from the copyright owner. 2. The Taiwan Fair Trade Commission arbitrarily interferes with vertical transactions by means of the concept of a “relatively dominant market position”. Furthermore, due to the addiction to such a concept, the Taiwan Fair Trade Commission has contradictory and faulty arguments as to the market position of a standard essential patent (SEP) owner, such as Royal Dutch Philips Electronics Ltd. 3. In the event that the standard at issue has become the industry standard and therefore there are no alternative technologies, the licensing of the technologies as specified in such a standard will constitute a technology licensing market, and any SEP owner thereof may be considered individually as having a dominant position. Hence, if such an SEP owner is involved in any holding-up conduct, such as refusing to license, requiring excessive royalties, or setting unreasonable terms and conditions, the Taiwan Fair Trade Commission, instead of resorting to compulsory licensing on the basis of the essential facilities doctrine in directly determining the licensing terms and conditions, may conclude an administrative settlement with such an SEP owner that is abusing its dominant position, order such an SEP owner to cease applying for injunctions or proceeding with litigation against potential licensees willing to accept FRAND terms on the basis of such an SEP within a specified period, command such an SEP owner to meet FRAND licensing obligations, or impose FRAND licensing obligations on such an SEP owner.

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