TRIPS@25 - Webinar: TRIPS and Competition

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Ms Nadezhda Sporysheva

Economic Affairs Officer
Intellectual Property, Government Procurement and Competition Division, WTO
What we looked at and why?

• Jurisdictions
  • US, Canada, EU, Australia
  • Japan, Korea
  • Brazil, China, India, Russia, South Africa

• Instruments
  • Competition agency guidelines
  • Policy statements
  • Related advocacy activities
  • Enforcement activities

• Set of issues
  • Treatment of licensing practices, including refusals to license;
  • Anti-competitive patent settlements;
  • Issues concerning standard-essential patents (SEPs);
  • Conduct of patent assertion entities (PAEs).
Convergence of initially differing approaches?

Rule of reason

US
Initial per se prohibition

Canada

Japan & Korea
Initial focus on Industrial policy

EU
Initial focus on the single market

BRICS ?
Issues of potential concern from competition policy

- PAEs
- Anti-competitive patent settlements
- SEPs
- Refusal to license
- Licensing practices
Key take-aways

- Interest in maintaining an appropriate balance between IP and competition law and policy is no longer a preoccupation of only a few (mainly developed) jurisdictions. Rather, interest in this issue has migrated across emerging economies.

- A comparison of relevant guidelines and policy statements shows a significant degree of cross-jurisdictional learning and convergence on key policy issues.

- Regional cooperation and integration plays an important role in this process.

- The proliferation of guidelines and policy initiatives nonetheless also carries the potential for inter-jurisdictional conflicts and coordination failures.

- A greater degree of coordination (whether voluntary or otherwise) concerning the policy issues, applications and initiatives is needed?