



Stanford – Vienna Transatlantic Technology Law Forum

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Transatlantic Antitrust and IPR Developments

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U.S. DEVELOPMENTS

U.S. Supreme Court denies certiorari in FTC v. Rambus

On 23 February 2009 the U.S. Supreme Court [denied](#) the FTC's petition for writ of certiorari which sought review of the D.C. Circuit's Rambus v. FTC decision.

In April 2008 [the D.C. Circuit set aside and remanded](#) the FTC's [decision](#) on that Rambus engaged in monopolization by not properly disclosing its patents while participating in the development of an industry standard. The D.C. Circuit considered that the FTC had not established monopolization under the Section 2 Sherman Act standards and also expressed doubts on whether the FTC could on remand alternatively establish a stand-alone violation of Section 5 FTC Act.

Following the refusal of the U.S. Supreme Court to review the D.C. Circuit decision, on 25 February 2009 the FTC [withdrew the matter from adjudication](#) for the purpose of considering the proper resolution of the matter in light of the D.C. Circuit's mandate.

Antitrust class actions against Qualcomm dismissed in the U.S.

On 3 March 2009 the S.D. Cal. District Court granted Qualcomm's motions to dismiss federal antitrust claims in three class action suits brought by purchasers of cell phones and services against Qualcomm.

The Court found the plaintiffs lacked antitrust standing due to the remoteness of the consumers' alleged injuries and Qualcomm's allegedly anti-competitive patent licensing and standards-development practices.

The Court also dismissed related California state law causes of action, including antitrust and unfair competition law claims.

Case information (not available online):

Meyer v. Qualcomm, 3 March 2009, Case No. 08cv655 WQH

Lorenzo v. Qualcomm, 3 March 2009, Case No. 08cv2124 WQH

Valikhani v. Qualcomm, 3 March 2009, Case No. 08cv786 WQH

FTC sues drug companies for delaying generic entry

On 2 February 2009 [the FTC announced that it has filed a complaint](#), with the Attorney General of California, in the C.D. California District Court against Solvay and three generic drug makers for conspiring to delay the

introduction of generic version of AndroGel, a testosterone replacement drug.

According to the complaint, the generic drug makers agreed, in exchange for payments by Solvay, to refrain from challenging Solvay's patent and from bringing a generic version of AndroGel to the market until 2015. Before the settlement agreements, the generic drug makers challenged the validity and enforceability of Solvay's patent and denied their infringement of it in regulatory filings and in litigation.

Reverse payment settlement bill introduced in U.S. House of Representatives

On March 25 2009 a bill ([H.R. 1706](#)) proposing a Protecting Consumer Access to Generic Drugs Act of 2009 was introduced in the U.S. House of Representatives.

The bill would prohibit reverse payment agreements and settlements of patent infringement disputes between branded and generic drug makers. Violations of the proposed act would be enforced by the FTC under Section 5 of the FTC Act.

U.S. Senate hearing on Ticketmaster / Live Nation merger

On 24 February 2009 the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the Senate Judiciary Committee held a hearing on the planned merger of Ticketmaster and Live Nation.

The testimonies and statements, [available online](#), examined the implications of the planned merger between the ticketing company and the concern promoter on competition in the music concert business and on consumers.

The companies recently [announced](#) that they have received so-called second requests from the DOJ, which is reviewing the proposed merger.

EU DEVELOPMENTS

ECJ dismisses appeal in SELEX, C-113/07 P

On 26 March 2009 [the ECJ dismissed the appeal by SELEX](#) against a judgement of the CFI. The CFI earlier dismissed the firm's action against the European Commission rejection of its complaint.

In the complaint rejected by the European Commission, SELEX alleged that European Organisation for the Safety of Air Navigation ('Eurocontrol') engaged in an abuse of a dominant position in its activities related to the development of air traffic management standards. Among other things, SELEX objected to the intellectual property rights regime governing the development and acquisition of technologies.

The ECJ considered that the challenged activities of Eurocontrol, an international organization entrusted with those tasks, were not at all economic activities subject to Article 82 EC Treaty.

European Commission adapts the nature of monitoring Microsoft compliance

On 4 March 2009 [the European Commission announced](#) that it has adapted the way how Microsoft's compliance with its obligation to supply interoperability information is monitored. According to the Commission, full time monitoring is no longer necessary.

Microsoft's obligation to provide interoperability information arose as part of the remedies imposed by the Commission for Microsoft's unlawful refusal to provide such information related to work group server operating systems. In 2007 the CFI upheld the Commission decision that found of such an abuse, but annulled aspects of the decision concerning the appointment of a monitoring trustee.