

# Competition and IP

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# Two agendas

- Competition advocacy in IP policy
- Doing good antitrust when IP matters

# Competition advocacy in IP policy

- More IP not always better
- IP can be costly way to get innovation
- Use judiciously
- Evaluate the process as a whole

# More IP isn't necessarily better

- not even better for innovation
- especially where imagination is key?

# IP can be a costly way to encourage innovation

- “monopoly” (?) markups
  - depending on alternatives
- veto power over subsequent innovation
- compared to what?

# Use judiciously

- less where few alternatives (exclusivity is strong monopoly)?
- less where obvious lines of development remain?
- less where network effects are important?

# Evaluate process as a whole

- PTO policy not the final answer
- Minimize infringement of “good” IP *and* enforcement of “bad” IP
  - not a lobbying message
- Incentives and opportunity to adduce information
  - Timing and costs of application, publication, search, opposition
  - Patent challenge and licensing strategies

# Two agendas

- Competition advocacy in IP policy
- Doing good antitrust when IP matters

# Doing antitrust when IP matters

- Must one assess the IP?
- Treat IP like other P?
- Complements and substitutes in IP
- Scale and innovation

# Must one assess the IP?

- Agencies rightly reluctant
- Market signals, e.g. indemnification
- Is settlement a good thing?
  - Degree of joint market power

# Treat IP like other P?

- MS “baseball bat”
- IP *does* have “special” properties; when does that matter?
  - Ex post and ex ante
- Can even weak claims hamper entry?

# Complements and substitutes in IP

- How do you tell?
- Short run and long run:
  - can complements “become” substitutes?

# Scale and innovation

- Scale makes innovation cheaper as means to offer surplus,
- but market power reduces incentive to offer surplus
- Why not *achieve* scale through a better offer?
- Licensing unlinks firm size and scale of IP exploitation