

## IP and competition

Competition authorities have to address abuse of IP systems that work to the detriment of promoting innovation. It is important to stress the following points regarding the IP and competition relationship:

IP rewards inventors by guaranteeing exclusive monopoly rights over their inventions. This is the essential incentive mechanism that well-functioning IP systems provide. However, IP systems do not operate well in monopolistic contexts, since competition critically impacts firms' innovation activities (see [State of competition](#) [1]). Market concentration poses challenges for competition that, while independent from IP per se, need to be addressed. If they are not, businesses may encounter fewer opportunities to seek inventions and, therefore, may refrain from using IP at all.

IP can create a challenge for innovation activities if used by incumbents to block competitors or, alternatively, to enter collusive licensing agreements to create greater rents on the basis of their IP. Some types of practices, such as cross-licensing, threaten competition and have been used for collusion, creating barriers to entry. In particular, abusive behaviour by powerful incumbents needs to be addressed by competition authorities to avoid weaker market participants being driven out by anti-competitive uses of IP. The role of competition authorities in the case of IP is not to deny monopoly rights, nor the returns that markets provide for them (as this forms part of the very rationale for IP-provided incentives), but to ensure that IP is not used as a tool to exclude competitors. With the proliferation of patents, the use of patent thickets to exclude competitors is a relevant topic in place (see [Proliferation of patents](#) [2]).

Antitrust concerns have also been raised, notably with respect to patent pools, or “one-stop shop” licensing mechanisms that facilitate access to complex technologies (see [Patent pools and antitrust](#) [3]).

Moreover, challenges to competitive markets can be particularly important in sectors where network effects are strong, because emerging standards can fundamentally affect the value of some IP, namely that which acts as a gatekeeper for firms operating in certain markets (Foray, 2004) (see [Standards and IP](#) [4]).

It is worth noting that while IP might raise challenges for competition when it comes to standards and patent pools, these can serve important roles in the economy. The important role for competition authorities is to find an approach whereby abuse is avoided without inhibiting the creation of industry standards or patent pools. Finding this balance will also require case-by-case decisions. In the case of avoiding potentially harmful patent races, the solution – stronger co-operation between competitors – also needs to be weighed against the potentially anti-competitive threat of such co-operation, which might lead to collusive behaviour (link to node [Patent races](#) [5]).

### References

- OECD (forthcoming), National Intellectual Property Systems, Innovation and Economic Development with perspectives on Colombia and Indonesia, OECD, Paris.



## Links

- [1] <https://www.innovationpolicyplatform.org/content/state-competition?topic-filters=12026>
- [2] <https://www.innovationpolicyplatform.org/content/proliferation-patents?topic-filters=12295>
- [3] <https://www.innovationpolicyplatform.org/content/patent-pools-and-antitrust?topic-filters=12129>
- [4] <https://www.innovationpolicyplatform.org/content/standards-and-ip?topic-filters=12292>
- [5] <https://www.innovationpolicyplatform.org/content/patent-races?topic-filters=12299>