
FTC to Host Public Forum on Competition Issues in Standard-Setting

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On May 9, 2011, the FTC announced that it will host a public workshop on June 21, 2011 in Washington, DC to examine the legal and policy issues surrounding the competition problem of "hold-up" when patented technologies are included in industry standards. A copy of the FTC notice may be found at www.ftc.gov/opa/2011/05/standardsetting.shtm.

The FTC is concerned that when industry-wide standards incorporate technologies that are protected by intellectual property rights, they can raise the potential for "hold-up" by a patent owner. Hold-up occurs when a patent owner demands higher royalties or other more-costly or burdensome licensing terms after a standard is implemented than the patent owner could have obtained before its technology was incorporated in the standard. The FTC workshop will therefore examine ways to try to prevent hold-up, including: 1) patent disclosure rules of standard-setting organizations; 2) patent holder commitments to license users of the standard on reasonable and non-discriminatory (RAND) terms; and 3) patent holders' disclosure of licensing terms before the standard is adopted.

The FTC is inviting participation by consumers and the legal, academic, and business communities, either through live testimony at the workshop or

written comments, which may be filed until July 8, 2011. WilmerHale has been deeply involved with these issues for many years. We would be pleased to work with any client that may be interested in participating in the workshop or in submitting comments, either individually or as part of a group of companies sharing similar views. If you are interested in participating in the workshop or filing written comments, please contact [William Kolasky](#) or [Hartmut Schneider](#).

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