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Abstract

The purpose of this thesis is to explore and compare the legal frameworks of EC law and U.S. law for assessment of antitrust characteristics of standard setting agreements. The general approach adopted in the thesis is, therefore, comparative. The legal framework of the Community legal order is based upon the substantive provisions of the Treaty, namely Article 81(1) and guidelines on horizontal cooperation agreements issued by the Commission to provide guidance as to the interpretation of the said Treaty provision. Furthermore, also the guidelines on the application of Article 81(3) are discussed. The legal framework of U.S. legal order is based upon substantive antitrust laws such as Sherman Act and Clayton Act as well as on antitrust guidelines for collaboration among competitors, which guidelines have been issued by the U.S. antitrust agencies.

Most modern standards operate on the markets of new economy. The function of such standards is to provide compatibility among and between various equipment and services. Consequently, the second chapter of the thesis concludes that some standards establish networks where network efficiencies prevail. Furthermore, also types of standards and the standardization system implemented in Europe and in the United States is described. The approach in the first chapters of the thesis relates to law and economics. Approach in the subsequent chapters is normative and comparative.

Antitrust concerns of standards relate to foreclosure of markets to new entrants, restriction of dynamic efficiencies and limitation of consumer choice. On the level of implementation of competition policy or the goals thereof there are no substantial differences between the EC competition law and the U.S. antitrust law.

The most notable differences between the EC law and the U.S. law as regards standards in general relate to the fact that there are no formal standard setting bodies in the United States and that in certain cases parties to standard setting in the United States may be granted immunity against certain liabilities possibly associated with standard setting. As for antitrust scrutiny of standard setting in particular the most notable difference relates to the fact that unlike with the application of Articles 81(1) and 81(3) in the EC law, in the U.S. system an arrangement found firstly to infringe antitrust laws may not be found enforceable by consecutive operation of another provision. However, in practice the analytical framework utilized in the assessment of agreements is to large extent similar on account of the rule of reason approach employed in the U.S. antitrust law.

Key words	standard, standard setting, competition law, antitrust, horizontal cooperation
Further information	