

**Dušan Popović, *Isključiva prava intelektualne svojine i slobodna konkurencija*
[*Exclusive Intellectual Property Rights and Free Competition*],
Faculty of Law of the University of Belgrade 2012, 284 p.**

The monograph entitled *Exclusive Intellectual Property Rights and Free Competition* by Dr. Dušan Popović, Assistant Professor of Intellectual Property Law and Competition Law at the Faculty of Law of the University of Belgrade (Serbia), is one of Serbia's first to examine, in detail, the complex relationship between the protection of intellectual property and the protection of free and undistorted competition. It is not surprising that Dušan Popović has decided to tackle this complex issue. In the course of his career he has demonstrated the courage and the capacity to examine, analyze and competently comment on cross-cutting issues concerning competition law. Over the past years, the issue analyzed in the monograph has become a topical one in comparative law, given the increase in the number of decisions of competition authorities which limit intellectual property rights. Such practice results in an external limitation of subjective IP rights that goes alongside the exemptions inherent to intellectual property law itself. However, the author does not perceive the relationship between competition law and IP rights as a necessarily disharmonious one – quite to the contrary. The monograph first analyses this relationship through examples of successful coexistence (in the first part). It is only after that the author singles out the cases which he finds to be an impressive incursion of competition law into the system of IP rights protection (second part).

Given the lack of relevant Serbian case-law, Dušan Popović focuses on EU law and, to a lesser extent, US law as well as national legal systems of certain European countries. Since Serbia signed the Stabilization and Association Agreement with the European Union, the analysis of the *acquis communautaire* in this area is of the utmost importance to Serbian readers. International scholars will particularly benefit from the detailed and insightful comparative analysis contained in this book.

In the first part is entitled “Intellectual property rights as possible means of competition infringement”. Analyzed here is the possible outcome of the application of competition rules to market participants which own IP rights, relying mostly on the practice of the European Commission and the Courte of Justice of the European Union. The first chapter deals with the prohibition of anti-competitive agreements. The author assesses the treatment of certain clauses contained in license agreements concluded by the owners of IP rights such as: exclusivity clauses, non-compete clauses, exclusive supply clauses, confidentiality clauses etc. It is concluded that

the application of competition rules does not necessarily lead to a limitation of IP rights as it is often possible to exempt the relevant clauses from the prohibition of anti-competitive agreements. The following chapter focuses on the prohibition of the abuse of a dominant position. The author first analyses the way in which the European Commission and other competition authorities define relevant markets in cases involving the use of IP rights. The conclusion is presented here that the competition authorities err in certain cases in defining the relevant product market, especially when the relevant market is defined in respect of copyrighted products. The claim is made here that competition authorities tend to confuse the criteria for market definition with that for copyright protection, leading automatically to the definition of a “single product market” in which the right-holder occupies a dominant position. The author further examines the process of determination of a dominant position as well as certain typical cases of its abuse. Dušan Popović freely and competently formulates his stand points, even when they differ from the established practice of competition authorities, for example, concerning the definition of the relevant product market with regards to copyright.

The second part of the monograph is entitled “Special cases of limitation of IP rights”. Analyzed therein is the relationship between IP and competition protection on the example of compulsory license and parallel trade. The author argues that the limitation of IP rights is significant in these two cases, especially through competition law enforcement which is not always based on clear and well-established grounds. The opening chapter is dedicated to compulsory license, assessed first in the context of patent law and subsequently in light of competition rules. Further to a comparative law approach, the author analyzes Serbian patent law and detects certain conflicts between the rules governing the delivery of compulsory licenses for competition infringement under the 2011 Serbian Patent Act and competition rules laid down in the Serbian Competition Act 2009. The chapter is enriched by the results of an analysis of the number of compulsory licenses delivered worldwide, which remains rather low. Examined further is the EU and US case-law related to “compulsory licenses” delivered in competition cases in the form of behavioral remedies. It is argued that the approach of competition authorities, based on the “special circumstances” criterion, generates legal uncertainty for IP rights owners because the interpretation of this criterion is very much case-specific.

The following chapter is dedicated to parallel trade which may significantly interfere with the exclusive and territorial character of intellectual property rights. Dušan Popović first analyses under which circumstances may the owners of IP rights restrict parallel trade relying on the exclusive protection conferred to them by intellectual property law. Special attention is accorded to cases involving repackaging. Subsequently, the author examines, on the grounds of competition law, whether the owners of IP rights may restrict parallel trade. The standpoint is presented here that such actions may easily be caught by the prohibition of anti-competitive agreements or the abuse of a dominant position.

The monograph concludes with an outlook in which Dušan Popović argues in favor of the adoption of an international convention in the area of competition law

that would allow for the harmonization of national competition rules and, possibly, the creation of a world-wide competition authority. Meanwhile, owners of IP rights participating in the global economy remain exposed to multiple competition law regimes. The outcome of proceedings undertaken by different national or regional competition authorities may differ significantly and further generate legal uncertainty for IP rights owners.

Dušan Popović writes systematically and precisely; his arguments are easy to follow and convincing, and while dealing with complex legal issues, the monograph is easy to read.

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