



Mediation, arbitration and standard essential patents

Torsten Frey,
European Commission, DG ENTR

Structure of presentation

- SEP disputes in need of resolution
 - Patent-based standardization
 - Disputes over standard essential patents
- Mediation/arbitration to solve SEP disputes
- Getting more (out of) SEP mediation/arbitration



Patent-based standardization (1)

- Standardization; European standards; internal market; innovation
- Technologically neutral standards vs. patent-based standardization
- Prevalence in ICT and CE industries; growing trend in other industries

Patent-based standardization (2)

- Specific legal framework for patent-based standardization:
 - Declaration obligations
 - Licensing obligations (FRAND)
- Defining "fair, reasonable and non-discriminatory" (FRAND) licensing terms

Disputes over SEPs (1)

- High number of SEP disputes in some areas
- Drivers behind disputes
- Consequences of disputes; societal costs

Disputes over SEPs (2)

Types of disputed issues:

- Patent validity
- Infringement and essentiality
- Royalty rate and royalty base
- Level of licensing in value chain
- Cross-licensing; netting of portfolios
- Non-practicing entities

Mediation and arbitration of SEP disputes (1)

- Mediation and arbitration as the "natural" way of solving SEP disputes
- Advantages of mediation and arbitration over other forms of dispute resolution
- Limited but increasing role: ongoing discussions at SSOs; antitrust remedies

Mediation and arbitration of SEP disputes (2)

Issues to be addressed:

- Dispute resolution method
- Scope of dispute resolution
- Choice of mediator/arbitrators
- Applicable methods, notably on FRAND terms
- Procedures, including appeals
- Confidentiality of outcome



Getting more (out of) SEP mediation and arbitration (1) - directly

- Better integrating arbitration and mediation into the standard setting context
- Issues to address: Procedures, incentives
- Recent ETSI/WIPO initiative on FRAND mediation and arbitration

Getting more (out of) SEP mediation and arbitration (2) - indirectly

- Improving framework to decrease the number of disputes and to facilitate dispute resolution
- Improving transparency; improving reliability of SEP declarations
- Defining "FRAND"; narrowing expectations



Thank you for your attention

http://ec.europa.eu/enterprise/policies/industrial-competitiveness/industrial-policy/intellectual-property-rights/patents-standards/index_en.htm