Kluwer Competition Law Blog

Brussels on the phone: the iPhone and competition policy

Jorge Padilla (Compass Lexecon Europe) · Tuesday, December 14th, 2010

At the end of September, the press reported briefly on the understanding reached between Apple and the European Commission. According to these reports, Apple has agreed to ending two alleged anticompetitive practices in relation to one of its flagship products, the iPhone: Apple will enable the owners of an iPhone purchased in one EU Member State to submit it for repair in any other Member State. In addition, Apple will allow companies that develop applications for the iPhone to use tools that enable these applications to be used in competitors' products.

The purpose of the first of these commitments is to ensure that Apple is not able to segment the common market by charging substantially different prices for the iPhone in different countries of the European Union. The second commitment has a more ambitious goal: to promote competition among different mobile phone platforms. This is aimed at preventing Apple from consolidating its leadership in the high-end mobile phones segment (known as *smartphones*) by forcing independent software companies that have developed applications for the iPhone from witholding these from its competitors' products.

If Apple could force the developers of iPhone applications' to not support competitors' products, the iPhone would enjoy a clear competitive advantage that would not be the result of its own merits but rather the result of Apples exercising its market power by imposing conditions the only aim of which is to prevent the entry and consolidation of alternative mobile platforms to the iPhone.

This commitment clearly benefits consumers by ensuring competition between the iPhone platform and competing platforms such as Google, Microsoft, Nokia, and others, by giving third party application developers the freedom to support competitors' products. As pointed out by Commissioner Almunia when the agreement was announced, it shows how EU competition law can effectively and quickly benefit consumers without having to enter into costly administrative processes.

Should it therefore be concluded that any move aimed to "level" competition between technology platforms is justified from an economic perspective? The answer is absolutely not.

It would be wrong, for example, to compel Apple to reveal its "technological secrets" to its customers because it would facilitate competitors' imitation**.** Although such an intervention would increase price competition between different platforms by eliminating technological differences between them, the most noticeable effect, and ultimately the most important, would be the elimination of the incentives for both Apple and its competitors to innovate. Apple would stop innovating due to the fact that the imitation of its progress would prevent it from making the most

of its investment in R&D. Competitors would not invest either and would prefer waiting to freeride on those naïve enough to invest in new development.

It is therefore crucial to distinguish between regulatory interventions aimed at preventing the market leader from creating or raising artificial barriers to entry for new competitors and interventions seeking to promote competition by eliminating the competitive advantages that the leading company has achieved based on its innovation. The former are pro-competitive and beneficial to consumers, the latter are harmful to consumers and seek to put paid to the incentives to innovate.

The agreement between Apple and the European Commission is the first type of intervention, since it does not impose a duty on Apple to reveal the differentiating elements of its platform. These are the characteristics that have led the iPhone to be one of the most successful technological products ever. Millions of consumers have purchased an iPhone and many software companies have developed applications for the Apple platform. The best way to protect the interest of consumers is by ensuring that Apple continues to have incentives to improve its products, both through its own investment and by making its platform attractive for independent developers of new applications.

In both the Apple commitments and the Microsoft Undertaking aimed at enabling interoperability between Windows and third party products, the European Commission has sought, and continues to seek that effective competition between techonology platforms is focused on their own innovative efforts. That is why its actions have been limited to facilitating the exchange of information between platforms and to prevent the market leader from appropriating the efforts of third parties, whose interest is to develop products for all platforms on the market, which would place them at an undeserved competitive disadvantage.

This is the right policy and a desirable one to be implemented in future. It is important to avoid falling into temptation of giving in to the requests of competitors of the leading fims, whose aim is to gain access to the fruits of the innovative efforts of the leading firms on the grounds that without such access there is no real competition. This, however, is not an easy task because requests, whose real intention is nothing but imitation, are usually disguised as a desperate attempt, perhaps the last available avenue, to market innovative products to consumers in competition with the market leader. The challenge here is that the humane, and generally desirable trend, is to protect the weak party.

However, the future success of competition policy in technology markets has to be based on maintaining the analytical rigor exhibited so far, which has allowed the preservation and promotion of equal opportunities in competition between platforms, and has avoided falling into temptation of matching the results of the competitive process with the expropriation of the winner.

A Spanish version of this article was published in the December issue of Actualidad Economica.

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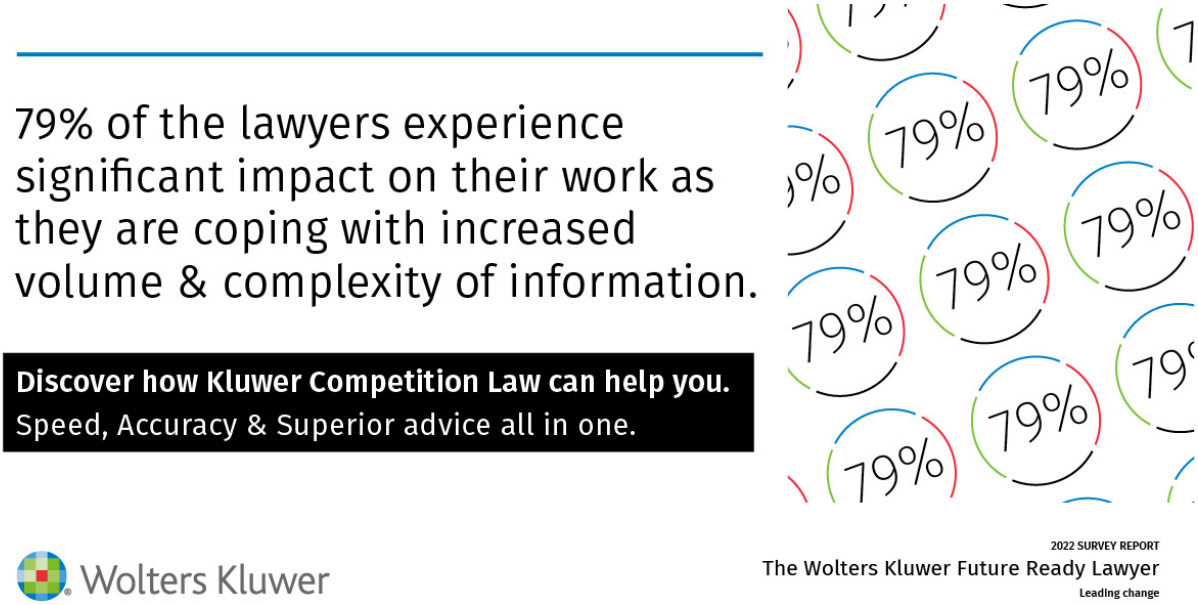

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