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Research Article

Abuse of Market Dominance, Patent Exploitation and Relevant Market: Learning Lessons from China and the EU under International Competition Law

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ABSTRACT

This study analyses the abuse of market dominance, relevant market determination, and patent-related anti-competitive practices through a comparative examination of the competition law regimes of the European Union (EU) and China, to strengthen competition law enforcement in developing countries. This study discusses three categories of relevant markets: product, technology, and geographic markets. It finds that the EU adopts a constitutional and precedent-based approach, whereas China follows a more policy-oriented and assertive enforcement model. Both quantitative and qualitative methods are employed on a case-by-case basis to define relevant markets in abuse-of-dominance cases. Under the guidelines of WTO and article 31(k) and 40 of Trade-Related Aspects of Intellectual Property Rights (TRIPS), this study further examines two major forms of patent-related abusive conduct: Patent Thickets and Defensive Patenting and Tying and Bundling of Patents. It observes that Article 102 of the TFEU and Article 17 of China's AML prohibit the abuse of dominant position. This study finds administrative and legal weaknesses in developing countries' competition laws. Based on this comparative legal analysis, the paper proposes recommendations for competition law reforms, antitrust enforcement, and policy guidelines in developing countries.

Keywords: Relevant Market, Competition Law, Market Dominance, TRIPS, WTO, Abusive Behaviour

INTRODUCTION

Finding a relevant market first, followed by an assessment of the metrics that might reveal the degree of market authority, such as shareholdings in the market, obstacles to entrance, and potential rivalry, is the widely used method for determining market dominance (Su et al, 2026). It is important to remember that competition doesn't just happen. Any business must contend with rivals in certain sectors of the market (Latin-Kasper, 2025).

"Special responsibility", a legal concept of a dominant organisation, was shaped by the European Court of Justice (ECJ) The Court of Justice of the European Union (CJEU) is responsible for interpreting EU law across the European Union (European Union, n.d.). Article 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibits the abuse of a dominant position, has been formulated using Ordoliberal reasoning. The creation of a "regional market," as stated clearly in TFEU article 3(3), was one of the main objectives of the EU competition law (Psychogiopoulou, 2024). Another way to think of the regional market is as a mechanism that prevents unfair competition. Shae (2024) contends that the Ordoliberal strategy for dealing with competition is reflected in the TFEU. The ECJ subsequently upheld that a dominant corporation has a unique obligation to prevent its actions from impeding true, undistorted competition in a single market. This implies that dominating enterprises must be required to behave as though they were in a market with complete competition (Akerlof et al., 2024).

In addition to state competition rules, the World Trade Organisation (WTO) framework, particularly TRIPS, now examines the problem of abuse of market dominance through patent exploitation. Through the TRIPS Agreement, the WTO set minimal requirements for the protection of IP (Ezike & Agelebe, 2026). However, TRIPS also acknowledges the significance of combating IPR abuse. Article 8(2) of TRIPS permits member states to take the appropriate steps to avoid IPR misuse that impedes commerce or negatively impacts technology transfer. Under certain circumstances, Article 31 allows for the mandatory licensing of patents, particularly in situations involving anti-competitive behaviour or the public interest. Article 40 permits states to regulate anti-competitive licensing activities and expressly acknowledges that intellectual property rights licensing practices or circumstances may limit competition. By acknowledging that patent rights shouldn't impede fair competition, these clauses create a crucial connection between WTO law and international competition law (Shinto, 2026).

The purpose of Intellectual Property (IP) law and competition law is that they both aim to advance consumer advantages and competition. It should be recognised, therefore, that these two sectors do include certain unavoidable consequences. The core idea behind competition law is a healthy competition, which is advantageous to customers and the economy. On the contrary, competition is not always aided by IP laws. IP holders are granted unique rights under IP law for a given period of protection (Sunny & Chaudhary, 2024). This implies that competitors are not allowed to duplicate the IP-protected innovation to outbid the owner of the IP (innovation).

The EU Technology Transfer Guidelines (2014) state that just because IP rules offer a unique right of utilisation does not mean that competition law cannot interfere with IPRs The EU Technology Transfer Guidelines provide the relevant framework for assessing technology transfer agreements under EU competition law (European Commission, 2014). Contracts in which the holder grants a license for an additional enterprise to utilise its IPRs are specifically covered by Article 101 of the TFEU. The Treaty on the Functioning of the European Union provides the legal basis for the relevant EU competition-law provisions (European Union, n.d.). Furthermore, it doesn't suggest that IPRs and competition laws are inherently at odds. In a transparent and market-driven economy, innovation is a vital and dynamic element. IPRs incentivise companies to invest in developing new or improved products and processes, which in turn promotes vibrant competition (Wu, 2025). Therefore, to foster innovation and guarantee competitive abuse, a proper definition of market, IPRs and competitiveness is required.

Regarding the market dominance, these concepts have also been incorporated into the IP Guidelines of more recent competition law countries, such as China. China's antitrust guidelines on intellectual property clarify enforcement positions while preserving flexibility for competition-law enforcement (Winston & Strawn LLP, n.d.). As stated in Article 1 of China's IP Guidelines (2019) for instance, IP protection and anti-monopoly laws serve similar goals, namely, promoting creativity and competitiveness, enhancing economic efficiency, and defending the rights of the customers. According to the principle of complementarity, the goals of IP law and competition law are similar in that they both seek to give customers in the market better goods or services (Zheng & Philipsen, 2025). In this context, the complementarity theory suggests that intellectual property law and competition law, despite their apparent tension, can operate together to promote innovation, market efficiency, and consumer welfare. This means that there are arguably two aspects that stem from the notions of IP and competitiveness, complementing one another. The concept of "creative destruction" in contemporary economics refers to competitiveness through the provision of superior goods and services, which propels economic expansion (Cord, 2024). In this sense, IP holders will only keep investing in creative or new endeavours if they find themselves under pressure from competitors, even while they have the right to limit competition through imitation. According to this theory, rivals with better technology might "destroy" the current market position without warning, yet the holder may still have significant influence due to the underlying IP's exclusivity. (He et al., 2024)

Therefore, the primary research question of this article is: How do the EU and China identify relevant markets while evaluating patent-associated abuses of market dominance and what insights can be drawn by developing countries?

The structure of this article is as follows: Part 2 discusses abuse of market dominance and patent protection with reference to the EU and China. Part 3 of the paper is about the relevant market and its classifications. Part 4 talks about some abusive practices related to patents, by taking insights from the EU and Chinese case laws. Part 5 provides some recommendations for competition-related legal systems of developing countries, and the conclusion comes at the end of Part 6.

ABUSE OF MARKET DOMINANCE AND PATENT PROTECTION

Diverse approaches to safeguarding private data may be used in different jurisdictions. China and the EU are both World Trade Organisation (WTO) members, and as such, they are obligated to abide by the rules of WTO

treaties, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Since this agreement allows its member governments to protect patents, several of its provisions are introduced in this section.

Trips

The requirements for patent protection are outlined in TRIPs Articles 27 and 28. These articles establish the fundamental conditions for patent protection in each of the WTO member nations and define the range of patentable topics. Article 33 deals with the protection term of a patented invention.

A patent is defined as follows in TRIPs Articles 27 and 28 (Kang, 2024):

(i) All technological inventions, whether they are procedures or goods, are eligible for patent protection as long as they are novel, creative, and can be used for widespread use. The rights granted by a patent provide its holders the sole authority to bar others from producing, utilising, or distributing the protected good or service without their permission.

(ii) There will be no unfairness allowed in terms of invention's location, the area of technology, local production or the import of goods when it comes to the availability of patents and the enjoyment of the rights which are associated with them.

Article 33 of TRIPs stipulates that all members shall have a tenure of 20 years for patented products. Article 40 addresses anti-competitive clauses in licensing contracts. It acknowledges that certain licensing requirements or practices that limit competition may have a negative impact on commerce. Additionally, this article allows members to enact domestic legislation to stop or manage such abuses. It offers a non-exhaustive list of major abuses, such as compulsory package licensing, provisions that preclude validity issues, and exclusive reimbursements. Although a minimum level of IP protection is mentioned in TRIPS, the WTO members may choose to protect patents in different ways to satisfy TRIP requirements (Park & Konken, 2025). Nevertheless, TRIPs have a significant impact on patent protection worldwide.

Comparative views from China

To align with international standards, China amended the patent law under TRIPs in 2008. The amendment's main goals were to strengthen administrative enforcement and increase penalties for the counterfeiting of patents. Talking about anti-competitive behaviour, patent abuse is addressed under the Anti-Monopoly Law (AML). When a patent owner abuses their strong market position to stifle competitiveness, the AML will be applicable. Refusal to license or deal, unwanted and unreasonable restrictions on licensees and excessive price fixing come under abusive behaviour. Moreover, when it comes to antitrust crimes involving patents, the AML is implemented by the State Administration for Market Regulation (SAMR) (Zhu & Gu, 2024).

A corporation may be found to be exploiting market dominance by a court under Article 17 if it (a) utilises market domination in the intended market and (2) abuses its dominating power to limit competitiveness (He, Chen & Fang, 2025). Six specific abusive behaviours, which are separated into exploiting and discriminatory conduct, are also mentioned in Article 17. It also states that further abusive conduct may be recognised in addition to the acts that are stated. In the Baidu v. Qihoo 360 (2013) case, the court ruled that market penetration is a rather imprecise and sometimes deceptive metric for assessing dominance. One could argue that these viewpoints are legitimate and in line with Article 18, which lists additional factors to be considered when determining a dominant position in the market.

The Effects-Based Approach and China

The effects-based approach refers to the assessment of whether a company's conduct produces actual or likely anti-competitive effects in the market, such as restricting competitors, raising prices, or reducing consumer welfare, rather than focusing only on whether the conduct formally violates a specific rule. The Court appears to offer a very clear response that abuse of dominant conduct ought to be evaluated depending on its pro- and anti-competitive effects, which runs counter to the vertical restraint position. Vertical restraints refer to contractual restrictions between firms operating at different levels of the supply chain, such as manufacturers, distributors, wholesalers, and retailers. These restrictions may concern pricing, territorial allocation, customer groups, or other conditions governing how the parties conduct business. Article 21 of an administrative order 380 passed by the SAMR; in China, the State Administration for Market Regulation (SAMR) is the relevant administrative authority for market regulation and antitrust enforcement (National Institute of Metrology, China, n.d.). In 2019, the SAMR says that it will evaluate four factors while assessing whether market dominance has been abused: (a) the company dominates the market; (b) the enterprise has engaged in abusive actions; (c) the undertaking lacks valid explanations, and (d) the privileged firm's actions have an impact of limiting competitiveness. Hence, the effects-based method has been finally approved by Chinese competition regulators and courts (Wu, 2024).

In the SAMR vs Alibaba case (2021), Alibaba made its online operators utilise Taobao, its online shopping cart,

as the only way to conduct transactions. The anti-competitive consequences of the behaviour were examined by the Chinese competition authorities from a number of angles. According to the SAMR, the actions could undermine the e-commerce market's financial effectiveness. The behaviour could undermine web operators' rights as well as harm other tiny channels, according to the SAMR. The aforementioned instance demonstrates that while addressing incidents of abuse of dominant position, Chinese administrations consider economic efficiency as well as other possible impacts on the market separately.

Comparative Views from the EU

In 2012, the member states of the EU agreed upon a unitary patent package, which enabled innovators to get a single patent that is recognised in all participating EU nations. The court, named Unified Patent Court (UPC), in which the Agreement on a Unified Patent Court (UPCA) is in force, is a centralised court to manage patent disputes, obviating the necessity for independent litigation in every nation. In the case of myStromer v. Revolt Cycling (2023), concerning the electric bicycle patent market, despite the complainant filing a safeguard letter, the court issued an ex-party provisional judgment. Another notable case is Abbott v. Sibio (2024), which deals with a continuous glucose monitoring device. The UPC applied the EU patent office's "gold standard" transparency test to determine the possibility of additional matter concerns under patent law.

Ordoliberalism is the primary ideology driving the development and application of EU legislation against the abuse of market power. According to Ordoliberalism, the goal of competition legislation is to maintain market competition by safeguarding the process of competition, or the right to compete. Customers can only gain from a competitive market if there is still demand from competitors. Because of this, Ordoliberalism is not solely concerned with financial effectiveness. They are also concerned about whether there are obstacles to the competition procedure itself, such as significant obstacles to entering the pertinent market (Sandulli & Nato, 2025).

Effects-based Approach and the EU

The EU court case law has demonstrated a predisposition for a structured interpretation of Article 102 rather than an evaluation of the real economic effects, which is also known as the "effects-based approach" (Mathis & Meier, 2024). Nonetheless, during the 1990s, the EU competition law was continuously "modernised." The policy-and-economics approach and the Chicago School, both views boosting effectiveness as the competition law's sole objective, had a significant impact on Europe's reformation initiatives (Bezzi, 2023). The efficient effects-based strategy, also referred to as the more economic technique, was first applied to vertical restraints in the EU before being extended to controlling mergers and cartels. However, the effects-based approach's applicability to legislation that forbids the abuse of dominating power is still unclear.

Developing countries need to learn about abuse of market dominance and patent protection from the EU and Chinese antimonopoly laws. As a result, the patent holder cannot maintain adequate market power due to the circumstances. Additionally, the absence of patent protection may compromise the patent holder's present market dominance.

This section of the paper investigates the connection between market dominance and patents, under the competition laws of both China and the EU. The first point is that a patent's uniqueness does not always give its owner a competitive edge. Market power will result from exclusivity when, for new competitors, a patent is ‘essential' while entering the market. Second, the market share of a company is a significant but not conclusive measure of its market dominance. It is also possible to apply the market-share notion to patent disputes that involve abuses of market dominance. However, when required, the competition authority must also look at entry barriers and the effects of innovations.

PATENTS AND RELEVANT MARKET

Product Market and Patents

In the famous competition case of Intel Corp. v. European Commission (2024), the relevant product market is defined by the European Court of Justice (ECJ) as a market that comprises all goods and services that the consumer deems interchangeable or substitutable because of the products' features, prices, and intended purpose. This definition adheres to the traditional definition of "reasonably interchangeable." The maker of a product cannot use additional market power if there are enough perfect replacements because consumers can move to other nearby alternatives if the producer lowers output or imposes monopolistic rates. The evaluation must also follow the substitution test concerning the patent product market.

The Small but Significant Non-transitory Increase in Price (SSNIP test) is a quantitative test which is based on statistical analysis (Galli & Parcu, 2025). It is the most widely applied quantitative technique for evaluating demand

substitution. A relevant market is a collection of goods having strong cross-price elasticity among themselves but substantial cross-price elastic properties with goods beyond the market. It measures the degree to which the demand for item X rises with the price for item Y. If the price increase in item Y leads to a rise in demand for item X, they are in the same relevant market (Bono et al, 2024). Therefore, the extent of "interchangeability" can be inferred from the cross-elasticity of demand-(Cross-price elasticity measures how a change in the price of one product affects the quantity demanded of another product).

One question arises: whether products that violate the law can be sold in the relevant market or not?

It may be argued that the legality of the product's manufacturing falls within IP law, but it has no bearing on the antitrust meaning of the market. The main question is whether or not infringement can significantly affect the competitiveness of the company's products. According to Beneke (2024), the infringing items must be part of the relevant market for antitrust assessment if they can result in adequate competitive restrictions on the product that is under consideration.

The court may consider other factors in circumstances where an array of infringing products is available, in addition to the standard procedures outlined, that can aid in defining a market. The definition of the market may change depending on whether consumers can distinguish between things made legally and those that violate the law (Fletcher et al., 2023). Instead of buying products that might violate someone else's IP rights, a sensible customer would opt for legitimately produced goods. Customers are likely to view legal and illegal products as near alternatives and include them in an identical relevant market when it is tough for them to tell the difference.

Technological Market and Patents

The technology market and patents are both important factors regarding innovation, competition and investment. To incentivise innovations, patents grant exclusive rights to inventors and enterprises for a specified time period (usually 20 years). Due to the ability to recover expenses and make money off of breakthroughs, this exclusivity promotes investment in research and development (R&D) (Taherdoost, 2024). Patents serve as a legal process to safeguard IP, where goods can be replicated easily, especially in the technology market. They assist businesses in protecting their technological innovations and stopping rivals from stealing their ideas (Klinkner et al., 2024).

However, companies adopt cross-licensing agreements (A cross-licensing agreement is an arrangement in which two or more parties grant each other permission to use their intellectual property rights, particularly patents), in which they share each other's patent access. Regarding the technology market, this strategy helps in innovation for new products. The relationship between patents and the technology market is shaped significantly by various case laws, including Inari Medical, Inc. v Imperative Care, Inc. (2025), Qualcomm Inc. v. Apple Inc. (2018) and US Synthetic Corp. v International Trade Commission (2025). These cases highlight how important patents are to the technology sector, impacting everything from licensing policies and the classification of patented subject matter to innovation and competitiveness.

The EU's 'Merger Regulation' and 'the Guidelines on the assessment of horizontal mergers' define a technology market by stating that it looks at market shares and possible entry barriers to determine how mergers and acquisitions can impact competition in technological areas. Innovation and the significance of sustaining competitive pressure in technological industries are emphasised in pertinent guidelines. According to research, the accuracy of the SSNIP test is significantly impacted by the initial basic price chosen for the test (Khan et al., 2024).

Geographic Market and Patents

A geographical region is defined as an area where the circumstances of competition are reasonably uniform. Similar to the SSNIP test for an invention or technology market, competition authorities can also use it to determine a geographic market (Oliveira & Pires-Alves, 2024). The geographic item's status as international, national, or domestic depends on several aspects when it comes to patent-protected objects or technology. The competition commission must consider elements, including the nature of the merchandise and transportation costs, while transacting in patent-protected goods.

In China, regarding the global market, the doctrine of international exhaustion regarding parallel imports has grown remarkably, which reflects its efforts to increase IP protection and promote easy market access and customer welfare. Although China doesn't have a proper legal structure regarding the international exhaustion regime for parallel imports, they have made many reforms in IP-related legislation, which indicate a move towards acceptance and implementation of parallel imports (Yang & Song, 2023).

Restructuring the laws about this idea was made possible by the Anti-Monopoly Law and the Patent Law. These laws provide strict enforcement mechanisms for IPR protection, leading towards a more feasible environment for parallel imports. Adoption of the international exhaustion principle is performing well for China. Allowing parallel

imports in China reduced the prices by providing easy access to a wide range of products (Zhang, 2024). This doctrine fosters competition among local and regional enterprises, enhancing consumer benefits by increasing market dynamics.

Comparative Evaluation

Table 1.

Factor	The EU	China
Definition	Organised and heavily dependent on evidence	Adaptable and practical
IP-Abuse standers	Strong thresholds	Low thresholds
Dominance Evaluations	Limited perspective	Broad perspective
Approach	Constitutional, and precedent-centred	Policy-oriented and aggressive.

PATENT EXPLOITATION

Patent Thickets and Defensive Patenting

Patent thicket is the most widely used term when discussing patent-abusive practices. A complex network of conflicting patent rights owned by different organisations is called a patent thicket. It makes it difficult for others to market new technologies without infringing on already existing patents. It appears that a single innovation has many patents covering marginally distinct features of it. This is typically used in sectors like electronics, pharmaceuticals, and telecommunications, which increases transaction-related expenses since companies must get many licenses before they can access the market (Li et al., 2026). For instance, elements like battery style and LCD screen motions may be covered by hundreds of patents in the field of smartphones. Because of this overlap, newcomers have to negotiate a "thicket".

Furthermore, another term is defensive patenting, which means that when a company seeks patents to shield itself from lawsuits or prevent competitors from patenting similar innovations, rather than to license them separately. When it comes to high-tech industries, this aggressive technique is employed by dominant organisations in the context of a "patent arms race" (Xiong et al., 2026). Overuse of defensive patenting can hinder innovation and erect obstacles to entry, which raises concerns under anti-monopoly and competition laws if it's applied unjustly to gain market dominance.

Discussion on the Chinese Approach

OPPO v InterDigital Inc (2023) is a case which functions under the same structural issue as patent thickets. Since this case concerns the handling of extensive patent portfolios and the licensing authority of courts and lawmakers, it touches on the effects of patent thickets. Some core aspects include: (a) Enormous portfolios of overlapping patents: InterDigital's vast portfolio of SEPs is a component of an international telecommunications patent "thicket." (b) Licensing challenges: Thickets had an immediate impact of forcing OPPO to negotiate across several patents. (c) Possibility of abuse: These portfolios can be used by SEP holders to force developers into accepting more stringent terms or greater royalties. (d) Anti-monopoly Issue: The anti-competitive danger associated with thick patent inventories is lessened by the SPC's readiness to establish global FRAND rates.

This case establishes that the courts have the authority to set global license rates for patents. It clarifies that FRAND conflicts are subject to domestic court jurisdiction, balancing patent-owner's rights and developer objectives. By tackling patent thickets, it reduces anti-competitive concerns from extensive SEP inventories by allowing for legal review of royalty conditions.

The case of Bayer v. Jiangsu Hengrui Medicine (2024) demonstrates how Chinese courts and authorities have been examining overlapped pharmaceutical-related patents, patent enforcement tactics, and their impact on competitiveness and market penetration. The goal of China's latest patent-linkage changes is to stop secondary patents from being abused, which might unduly impede generic rivalry. The Chinese strategy's advantages include balanced innovation and competition protection, analysing Evergreen and Secondary Patents, strong Judicial and administrative Review, and Specialist IP Courts.

The developing nations can learn from these cases by observing that defensive patenting tactics that produce a lot of low-value patents just to put obstacles in the way of rivals must be avoided in developing nations. Strict uniqueness and inventive-step assessments should be used by patent examiners. Furthermore, regulators can discover defensive patenting patterns and evaluate their impact on competition with the aid of public patent databases and disclosure requirements. In the pharmaceutical industry, extensive patent thickets can raise drug

costs and impede generic competition. Innovation and public health goals should be supported by patent systems in developing nations.

Discussion on the EU's Approach

Recognising that EU competition law has influenced Chinese AML in a variety of ways, this research will take certain insights from EU law to improve diversification. Both China and the EU have "singularly close" doctrines on patent thickets, even though there are few disparities between their antitrust laws.

European Commission v Teva Pharmaceuticals Industries Ltd (2024). It is one of the latest cases regarding patent thickets and defensive patenting. In the EU Commission v. Teva (2024) case, the EU Commission penalised Teva €462.6 million for exploiting its dominating position with its multiple sclerosis medicine Copaxone. Teva filed several divisional patents for Copaxone, focusing on production methods and dosing schemes. These divisional patents overlapped slightly with the fundamental invention but covered progressive characteristics. The employment of numerous overlapping patent claims around a single primary item is typical thicket-building.

The Google Android (2022) case by the General Court is an extremely important case that addresses the purposeful construction and misuse of a patent thicket. These decisions establish the dominant recent precedent for how EU competition law addresses patent thickets and defensive patenting as anti-competitive actions. As a result, the empirical technique used to perpetrate this violation was the strategic construction and threat of using a patent thicket. Developing nations can learn from this case by developing laws as per the important observations given by the General Court.

Tying and Bundling of Patents

The concept, ‘tying and bundling', is the practice of a dominating patent holder requiring the approval of an additional patent, frequently an unrelated invention or commodity, in order to sell that patented item. If these actions limit licensee flexibility, prevent competitiveness in secondary markets, or take advantage of dominance regarding one invention to expand authority into a different one, they are considered abusive (Stokvis et al., 2026).

Chinese Approach

As the world's fastest-rising economy, China has dealt with the issue of tying and bundling of patents through its AML. China's strategy offers valuable insights into managing and preventing abusive practices. The SAMR v. Hitachi Metals (2024) case is an important case which deals with the tying and bundling of patents. Three Chinese manufacturers and Ningbo Ketian filed an application against Hitachi Metals, taking the plea that it had misused its authority in key uncommon-earth magnet patents to demand bundled licenses and tie-in clauses. By defining a narrow upstream market for Hitachi's license utilising the EFD, the lower court found that Hitachi's viewpoint was discriminatory. The SPC reversed the preliminary ruling. It construed the relevant market generally as the technology market for the subject matter, covering both patented and non-patented inventions, because the applicants failed to prove Hitachi's monopoly.

The SPC emphasised careful market-definition research and restricted antitrust infringement with IPRs until dominance was evident. This case involves China's highest-level investigations into suspected patent tie-ins, demonstrating that the SPC will thoroughly consider market definition, dominance, and the needed reason for bundling. Developing nations need to apply these observations while defining the market in the tying and bundling of patents.

The EU Approach

As EU competition law has influenced Chinese AML in a variety of ways, this research will take certain implications from EU law to improve diversification. Tesla v InterDigital & Avanci (2025) is a significant and recent case that is more similar in structure to a tying/bundling issue since a license pool provides a packaged, comprehensive license, which can limit bargaining flexibility and perhaps enhance market dominance across various technologies.

Tesla claimed that Avanci and InterDigital's licensing method enforced unreasonable and monopolistic bundled licensing restrictions. Avanci's methodology required customers to agree to one comprehensive license that covered patents from various owners, which is known as patent bundling (Alexandre et al., 2026). The court rejected Tesla's petition, holding that (1) to establish a global pool FRAND rate among numerous licensees doesn't come under the UK court's jurisdiction. 2- Every participant's FRAND agreement must be evaluated independently. 3- Tesla could not speak for different producers jointly.

It was affirmed by the Court of Appeal that the High Court's verdict, stating that the Avanci license does not amount to unfair tying or bundling under the competition law, as participation is optional and furthermore, alternative bilateral bargaining exists. But the court recognised competition-law problems if a pool's structure

directly excludes developers or discriminates against license holders. This decision establishes a European precedent that aligns with SAMR's 2024 warning to Avanci in China, demonstrating worldwide convergence in competition supervision of bundled intellectual licensing. Regarding the tying and bundling, developing nations need to learn from this case.

LEARNING LESSONS FOR DEVELOPING COUNTRIES

Market Dominance and Relevant Market

The qualitative and quantitative criteria for defining a market should be outlined in the ‘competition guidelines' of developing countries: The ‘competition guidelines' ought to outline certain restrictions on the SSNIP test in IP, including patent issues. Under the potential "cellophane fallacy" (The phrase was first used in the 1956 "United States v. E.I. du Pont de Nemours & Co." lawsuit, also known as the Cellophane case. It is an idea from economics and competition law that draws attention to a possible error in the SSNIP), the SSNIP test's results in cases of market dominance need to be explained in the 'competition guidelines'. Under these 'competition guidelines', the price should be the main factor for influencing a consumer's choice while applying the SSNIP test. Moreover, it is challenging to establish a market using the SSNIP test if variables other than pricing significantly affect customer choice.

Additional guidelines about the patent-related technology market should be included in the ‘competition guidelines' of developing countries. The Determination of the baseline price of a particular patent license is challenging when using the SSNIP test. For example, it might be feasible to ascertain the charges in the licensing of a patent-protected customer list. However, when there are cross-licenses, If a technical patent only applies to a tiny portion of a product, it could be difficult to determine the royalties.

Certain elements for identifying the geographic market of patents should be specified in the ‘competition guidelines'. The pertinent geographic market must be identified while considering the geographical extent of IPRs. This is possible when it relates to licensed IP, like patents. Stated differently, an owner can only obtain a patent if it is granted by an IP service provider. However, a patent holder can obtain a patent without a national authority's approval if they meet the standards for a patent.

The connection between a patent's uniqueness and market dominance should be made abundantly evident in the ‘competition guidelines' of developing countries. In specifics, when consumers have the option to switch to near alternatives, a patent's monopoly cannot provide significant market power. However, if the patents become de facto standards and necessary, SEPs could give the patent owner market power (Wu, 2026).

A formal memorandum of understanding (MOU) among major regulators ought to be executed by developing countries. For cooperative enforcement and common complaint procedures, akin to China's SAMR-MIIT coordinating system, the regulators should sign official MOUs with important authorities. This will improve institutional integrity and coordinated enforcement by minimising bottlenecks and regulatory disputes.

Abusive Practices

Developing countries ought to think about permitting antitrust counterclaims in patent thickets and defensive patenting cases. By learning from the Bayer v. Jiangsu Hengrui Medicine (2024) case, it is recommended that the regulating agency issue precise rules regarding the extent and use of antitrust counterclaims. It should, for instance, state that certain Courts with a strong background in both competition and IP law, tribunals and the high courts' special benches for IP-related cases, are qualified to handle cases involving IP infringement and antitrust objections. If the respondent in a particular patent thicket case claims that the case amounts to abuse of dominance as a counterattack against antitrust, the cases need to be referred to and managed by specialised IP courts.

A two-factor test should be incorporated into the ‘competition guidelines' of developing countries to cater to patent thickets and defensive patenting (Two factor Test-Two components make up this test: objective and subjective evaluations. This means to deter "patent trolling" by patent holders while guaranteeing the protection of legitimate IPRs). By learning from the European Commission v Teva Pharmaceuticals Industries Ltd (2024) case, the regulating agencies should clarify that patent thicket disputes are subject to domestic court jurisdiction, balancing patent-owner rights and developer goals. In other words, a rational patent holder who is using patent thickets is unlikely to anticipate winning such a case of infringement; the action can simply serve to intimidate other competitors. By addressing patent thickets, a sharp decrease in anti-competitive concerns associated with large SEP inventories can be observed, as courts have determined in numerous cases across the globe (Gold & Smith, 2024).

Establishing a specialised Competition Bench or Tribunal is necessary for developing countries to achieve

jurisprudential coherence. Following China's SPC IP Tribunal (2019) model; A specialised Competition Court or Bench should be established to address patent-related tying matters. Increasing judicial knowledge in economic and technology analysis will swiftly speed up case settlement The judicial administration structure for intellectual property disputes in China is outlined by WIPO (n.d.).

CONCLUSION

This paper makes the case that defining the relevant market is essential before evaluating a company's market strength. The pertinent product and geographic market for the patented goods must be identified by the antitrust authority. Since the patent is a licensed IP in the technology transactions, the technology market must be defined. The pertinent market may be defined with the use of the conventional statistical test (such as SSNIP) and the qualitative method based on features, cost, and expected usage. This paper contends that both quantitative and qualitative approaches must be used for case-by-case market definition in situations where market dominance is abused due to patents. When addressing incidents of abuse of market dominance, China and the EU both adhere to Article 102 of the TFEU. As evidenced by the Conversant Wireless Licensing S.à.r.l. v. Huawei Technologies Co., Ltd and OPPO v Nokia (2023) cases, China increasingly favours an effects-based analysis of abusive behaviour.

The increasing understanding that fair market competition and IP protection must coexist is reflected in the connection between WTO/TRIPS and competition law. The EU's and China's experiences show how abusing market dominance through patent exploitation can harm market access, creativity, and customer satisfaction. Both jurisdictions demonstrate that competition regulators have the authority to step in when patent rights are used in an anti-competitive manner, especially where high royalties, SEP misuse, licensing refusal, and patent manipulation tactics are involved. Under international law, such interventions are supported by TRIPS provisions, particularly Articles 8, 31, and 40.

Three abusive behaviours that are related to patent exploitation are examined, which are Patent Thickets, Defensive Patenting and Tying and Bundling of Patents. Article 18 of SAMR's 2023 Regulations, which specifies patent-abusive behaviours, can provide guidelines for empowering regulating agencies to pursue straightforward bundling and tying violations, which will enhance legal transparency and consistency. In line with the legal analysis of the EU's competition law and China's Antimonopoly Law, this paper offers comprehensive recommendations for competition guidelines, for enhancing the anti-trust enforcement and adding value to the competition laws of developing countries.

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