Sustainability of Innovation and Competition
An IP Perspective

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Competition and Sustainability

- Competition and sustainability has only recently started to be discussed among competition agencies at the international level.

- The discussion affects several aspects of a competitive assessment in relation to sustainability:
  - Dealing with cooperation among competitors
  - Assessing a merger that results in the development of long term green technologies
  - Dealing with dominant companies’ decisions to e.g. introduce green solutions that are more expensive for consumers
Industry Cooperation and Sustainability

- Prudent interpretation of competition law may induce timid initiatives with little environmental impact
- Green finance: industry standards to qualify investments as sustainable (also to avoid greenwashing)
- How much information sharing are companies allowed to share (e.g. consumer data) in order to agree on green certification
- Mandatory vs non-mandatory standardization
Competition and Sustainability Implications for IP

- Implications for cooperative endeavors
  - Management of IP input by companies participating in joint projects (so called background IP)
  - Ownership of the IP generated by collaborations (so called foreground IP)
  - Exclusive/open licensing
  - The IP dimension in private/public partnerships
Objectives of WIPO’s work on IP, sustainability and competition

- Identifying the IP-related conducts under potential antitrust scrutiny, particularly when competitors work together on sustainability projects
- Assessing the different operational options concerning the joint endeavor (e.g. a third party research lab to which participating companies confer their IP)
- Assessing the options concerning the management of IP resulting from joint research activities on sustainability vis-à-vis antitrust assessment
- Identifying good practices that may help companies and competition agencies find balanced solutions to the IP/competition interplay
The issues from an IP perspective

- WIPO’s focus is mainly on collaboration among competitors
- What happens to their IP once they decide to join forces?
- How do the different operational solutions affect the sharing of IP and the competitive assessment?
- How does the competitive assessment change if participating companies decide to use third-party labs instead of one of their own labs? And how does the chosen option affect the way in which companies share their (background) IP?
Guidance for licensing contracts (for foreground IP)

- Is the “sustainability element” going to affect the competitive assessment of IP licensing?
- A few examples:
  - Exclusive vs Non-exclusive Licenses
  - Pricing: Free / Fixed / “FRAND”
  - Commercial vs Non-commercial Scope
  - Sector Restricted: Yes / No
  - Perpetual vs Fixed Term Duration
  - Territorial restrictions?