

Executive Summary

The Stockholm Network's input to this consultation is focused on standardisation agreements. Fundamentally, we want to emphasise that any discussion on standard-setting agreements should seek to balance the promotion of competition and innovation. We believe both should be equally important goals of standardisation, and importantly, we believe standardisation efforts play an important role in encouraging both competition and innovation. Furthermore, the two should not be viewed as mutually exclusive outcomes – indeed, in many cases, the increase of one can encourage the other.

Specifically, the Stockholm Network wants to underscore that standardisation, especially efforts involving intellectual property rights (IPRs), does not necessarily lead to anti-competitive behaviour. We recognise that anti-competitive activities may transpire in the context of standardisation agreements. Nonetheless, we recommend that the role of standards – both proprietary and non-proprietary-based standards – in improving competition continue to be recognised and promoted, especially for the ICT and network fields.

Furthermore, we want to emphasise that IPRs by definition are not the source of anti-competitive activities; the source of the problem is rather the actors who utilise IPRs. Therefore, we recommend that the consultation make a distinction between IPRs and anti-competitive behaviour that may occur in the context of IPR-related activities.

Finally, the Stockholm Network wants to highlight the potential difficulties that may arise in efforts to formalise so-called best practices for the use of IPRs in standardisation agreements (see the conditions for “safe harbour” from Article 101(1)), such as the FRAND commitment and *ex ante* patent disclosure. In particular, we raise several situations in which implementing and enforcing such practices may prove to be both unfeasible and undesirable. We recommend greater collaboration between standard setting organisations (SSOs) and IP-related bodies, such as patent offices, with the goal of creating a more appropriate framework for all of the actors involved in standardisation agreements.