

Dear Tony,

I hope you are well. I've been participating as a competition law practitioner (and as Law Society Council Member for EU Matters) in the UK Government's Balance of Competences Review. As well as commenting on submissions I attended the BIS session on competition and State aid last year.

Whilst I am very much pro-Europe and pro-competition law, I wanted to reinforce a point that the Law Society made in its submission and which I think justifies this separate email.

We are increasingly seeing unjustified and unlawful EC intervention in innovation industries to the detriment of innovators; innovators being one of various entrepreneurial groups that the UK encourages, and innovation being something that the UK excels at. This intervention is the European Commission's practice of bringing infringement proceedings against companies seeking injunctive relief against patent violations. Such EC intervention is inconsistent with fundamental legal rights, including access to justice/the courts.

More specifically, as seen in a number of high-profile antitrust cases and EC speeches, the EC now takes the view that if the holder of a Standards Essential Patent merely seeks an injunction then he is abusing a dominant position (contrary to Article 102 TFEU). As Sir Robin Jacob puts it in his recent (and attached) article, this position "breaches the right of a party's access to the courts contained in Art 6 ECHR (and well recognized in cases such as *Golder v UK*)....(and)....the principle of sincere co-operation in Article 4(3) TFEU." Last year at a high-profile Global Competition Review conference Sir Robin also noted that the EC's attempts to prohibit owners of standard-essential patents from enforcing injunctions against rivals amounted to "standing outside a court door with a gun, threatening people who want to go inside".

Whilst competition law is critical to ensuring and fostering UK/European competitiveness, the UK (and other Member States) cannot allow the EC to unlawfully encroach on fundamental legal rights, and supersede national courts in areas firmly within national competence. In addition to Sir Robin Jacob, former General Court President Bo Vesterdorf and Dutch Judge Rian Kalden have publicly spoken out against the EC's action, and reinforced the fact that access to the courts is one of the most fundamental rights set down by the European Convention of Human Rights.

If you have time and would like to discuss this important point tomorrow or Friday I'd be happy to give you a call.

Many thanks,  
All the best,  
Davina

Partner  
Bingham McCutchen