Conclusion

Defining the true meaning of the acronym FRAND reminds me of the parable of two political parties arguing before the elections: who is right and who is wrong, although they both know that no one truth exists and that most matters depend on the perspective from which you view them. In the same way, undertakings who have participated in the standard setting process and subsequently are accused of violating SSO rules and competition law due to alleged over-pricing, seem to argue that the current FRAND licensing regime performs well and that this type of accusations only are made in an attempt to unduly lower the level of royalties. On the contrary, undertakings who believe that they as a result of SSO standardization are forced to pay royalties which are not FRAND (*i.e. "Fair, Reasonable, And Non-Discriminatory"*) appear to believe that the very purpose of standardization and the public interest in establishing an interoperable multi vendor system are under threat and should be put on hold until truly effective and binding arrangements have been put in place.

Given the very substantial legal and business concerns involved, as outlined in this paper, conflicts seem to be unavoidable. As long as the standardization community is not able to reach consensus within the SSO regime and agree to clarify relevant SSO IPR policies, the competition authorities and courts of law will have to tackle these conflicts and act as referees on this battlefield. The analysis presented in this paper show that the FRAND debate is very controversial and that many questions related to the enforcement of FRAND commitments under Article 102 TFEU remain unsolved. In essence, this paper argues, that even though the interface between IPRs and competition law within the standardized technology market is particularly complex and calls for extreme caution, this does not mean that EC competition law has no role at all to play in averting anti-competitive behaviour with regards to FRAND commitments within this area of business.

In summary, it is demonstrated in this paper that FRAND commitments can be used as a powerful defence in order to prevent dominant patent holders from abusively exploiting their standard-essential patents. However, when determining the impact of FRAND commitments under Article 102 TFEU, it should be kept in mind that the test that complainants need to meet, is not merely a test based on the rational of FRAND commitments under the relevant SSOs rules. In

other words, in the absence of dominance, even if a patentee in fact does not fulfil his FRAND commitments and asks for exorbitant royalty rates, this does not automatically provide complainants with an antirust remedy under the EC competition.