

# ADHERING TO BASIC PRINCIPLES

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# Basic Principles

- History & Context
- Antitrust Principles
- Application to IP

# History & Context

- History of U.S. antitrust
- Economic development & conditions

# Antitrust Principles

- Market power
- Abuse of market power

# Application to IP

- IP
  - *A form of property*
  - *No presumption of market power*
  - *Fundamental right unilaterally to exclude*
- Proposed Update of U.S. DOJ/FTC Antitrust Guidelines for Licensing of Intellectual Property, August 12, 2016
- “Patent Assertion Entity Activity: an FTC Study,” October 6, 2016
- Standards incorporating IP

# Updates to U.S. IP Guidelines

- Update after >20 years
- Retain current approach to IP licensing
- No expansion of Guidelines to other areas
- Reaffirm basic principles
  - *Same antitrust analysis applies to conduct involving IP as to conduct involving other forms of property, taking into account the specific characteristics of a particular property right*
  - *No presumption that IP creates market power*
  - *IP licensing allows firms to combine complementary factors of production & is generally procompetitive*
- “the antitrust laws generally do not impose liability upon a firm for a unilateral refusal to assist its competitors, in part because doing so may undermine incentives for investment and innovation.”

# FTC PAE Study

- Study before taking/recommending any action
- Recommendations relate only to procedures for patent litigation
- Implicit that competition concerns unclear but other concerns exist & therefore non-competition remedies appropriate

# Standards

- Existence of power to control prices or exclude competition
- Availability of patent or contract law remedies
- Sham litigation



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