

# Where do FRAND and open disclosure lead us?\*

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*\*View are personal and do not represent those of the CNC*

# Approach

- Safe harbours?
- Per se Illegality?

**Rule of reason!**

# Competition issues

- One way: Hold-up, pricing issues, discrimination
- Reverse direction: Monopsony power (purchasing agreement?)

# Rule of reason

- 1) Low switching costs > low risk of hold-up > No justification for ex-ante joint negotiation
- 2) Risk of hold-up > ex-ante joint negotiation could be a counterbalance > Risk of monopsony
- 3) Ability to exercise monopsony power?
- 4) Alternatives: ex-ante bilateral negotiation and nondiscrimination

**Full disclosure is essential in all scenarios**

# Implementation

1. What is it full disclosure?
2. What if price negotiations and standard adoption are simultaneous decisions? The decision whether or not to adopt a standard might depend on the price
3. Incentives of “pure players” and integrated players differ
4. What is it non-discrimination? Object and criteria have to be better defined
5. Structure of bilateral negotiation: bargaining power (determinants?), incomplete information/contracts, MFC?
6. Role of antitrust agencies