University of Texas Advanced Technology Law Conference



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First, from the GC

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- This presentation and talk are not legal advice on any matter.
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2013-2014 Hot Issues

- The Underdog Syndrome
- Consolidation of rights and resources
- Dividing markets: for example, paying competitors to stay out of the market
 - Patents and IP rights do not override antitrust laws
- Standards, standards, and more standards

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The Underdog Syndrome

Examples

- E-Books antitrust suit creating new market competition against dominant player. Enabling contracts found to cross the line of antitrust violations.
- Class-action by engineers prevention of loss of trade secrets, avoiding talent drain, but agreements crossed the line.
- Merger that consolidated competitors harming competition even in a small market (E.g. In Core Logic, purchase of DataQuick for \$661 million, consolidating 2 of 3 competitors in electronic access to certain real estate records, FTC March 24, 2014, resolved by consent).

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FR The Underdog Syndrome

But we didn't mean to...

- · Young companies think in terms of survival against bigger rivals or selling new technology against established technology.
- Young companies often overlook rules that established companies are very sensitive to because they do not think about antitrust issues.
- For example:
 - Companies are sensitive to movement of R&D resources among themselves due to trade secrets and disruption of cooperative technical projects.
 - Companies do not view themselves as controlling the market rather they want to protect their own businesses and business relationships.
 - Executives "grew up" as under-dogs and may not see themselves "uber-dogs".
 - Are they thinking about manipulating or hurting market for sellers of R&D?

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