

Intellectual Property Protection for Non-Innovative Markets: The Case of IMS Health

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Abstract

This article attempts to answer the question: "When may an undertaking holding a dominant position through intellectual property right protection have abused its position?" My argument is that not all markets involving intellectual property rights are innovative markets. As shown in IMS Health, when the product involved is pharmaceutical data, consumer demand for innovation in data format becomes insignificant. It is not that such a demand does not exist, but that consumers could not migrate to a more innovative product because they have spent a large amount of time and money to collect data and store them in the data structure of the old product (the IMS format). This is when the market becomes non-innovative.

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