

**Damien Geradin, “Patent Assertion Entities and EU Competition Law”, George Mason Law & Economics, Research Paper No. 16-08, February 2016**

Patent Assertion Entities (“PAEs”) are playing a growing role in the United States, but also in Europe. Their activities are controversial in that while they may be a source of efficiencies, they may also create anticompetitive harm. Given the growing trend of operating companies transferring patents to PAEs in order to increase their licensing revenues, the risks of anticompetitive harm created by PAE activities must be taken seriously. When analysing the impact of PAE activities on competition, a distinction must be drawn between “pure” PAEs, which acquire patents from a variety of sources and generate revenues by asserting them, and “hybrid” PAEs, which acquire patents from operating companies and maintain a relationship with these companies post-acquisition. While pure PAEs create risks of exploitation, hybrid PAEs create exclusionary concerns as such PAEs may be used by operating companies to harm their rivals on downstream product markets. These exclusionary concerns are particularly serious when the operating company retains a significant degree of control over the activities of the PAE following the transfer of the patents. As there is currently no EU competition case-law on the activities of PAEs, this paper attempts to show through hypotheticals that depending on the circumstances of each case, privateering may lead to exclusion.