Interestingly, as *Mr. Drexl* points out in his article, deception under Article 102 TFEU may also arise in a standardization environment, in particular, where undertakings involved in the standardization process hold back relevant information about their patens or licensing policies.[126] Consequently, case law such the *AstraZeneca* case may also be relevant in a standardization context where dominant undertakings holding standard-essential patents pursue legal proceedings against its competitors.

The *AstraZeneca* case is also of particular interest to the technology industry in general as it contains observations by the European Commission about some of the factors which it may take into account when assessing whether a technology company is deemed to be in a dominant position. These factors, in particular, include: the strength of the company's patent portfolio and an examination of its enforcement policy and practice. After the decision in the *AstraZeneca* case, it is likely that the Commission, in particular, will put emphasis on assessing whether an undertaking holding standard-essential patents can be said to be in a "*striking position*" vis-à-vis its rivals.[127]

3.5 Conclusion on the Applicability of Article 102 TFEU on FRAND Commitments

In conclusion, when applying Article 102 TFEU and its established case law to technology licensing, competition authorities and courts are faced with significant theoretical and practical difficulties. In addition, it is generally considered a valid argument that competition authorities and courts should not engage in price control expect under extremely exceptional circumstances. One reason for the controversial nature of this area of law stems from the fact if these authorities were to have an obligation to control rates it is likely to turn competition authorities into quasi-permanent regulators even though they lack the resources to truly fulfil this task.[128] This may potentially lead to mistakes which in turn could have quite drastic consequences for the innovative industries.

126 Supra note Josef Drexl p. 137.

127 See Pierre-Anre Dupois, *"Technology sector- standardization, FRAND terms and patent misuse-recent developments,"* the European Commission's Antitrust Review, Kirkland & Ellis International LLP, 2007.

128 See speech delivered by Philip Lowe speech at the Fordham Antitrust Conference in Washington D.C., 23 October 2003, available at http://ec.europa.eu/comm/competition/index_en.html.

An interesting future question is whether the enforcing EU authorities will modify their interpretation of Article 102 TFEU in order to apply it to FRAND commitments. If not, competition authorities in Member States and national courts will have to determine whether a certain royalty price is excessive on the basis of the legal doctrine developed so far by the Court of Justice of the European Union in its case law, namely in the *United Brands* case.

Another important question is whether the concept of deceptive conduct by a dominant patent holder, as analyzed in the *AstraZeneca* case, is also applicable when assessing FRAND commitments under EC competition law. Equally, it will be interesting to see whether the European Commission is prepared to use this case law to key patents holders, who are initiating patent infringement proceedings by seeking injunctive relief and in this way effectively blocking the use of the standard by its competitors.

However, as the above analysis demonstrates, case law and relevant literature within this area of law are far from settled and many questions have not been answered.