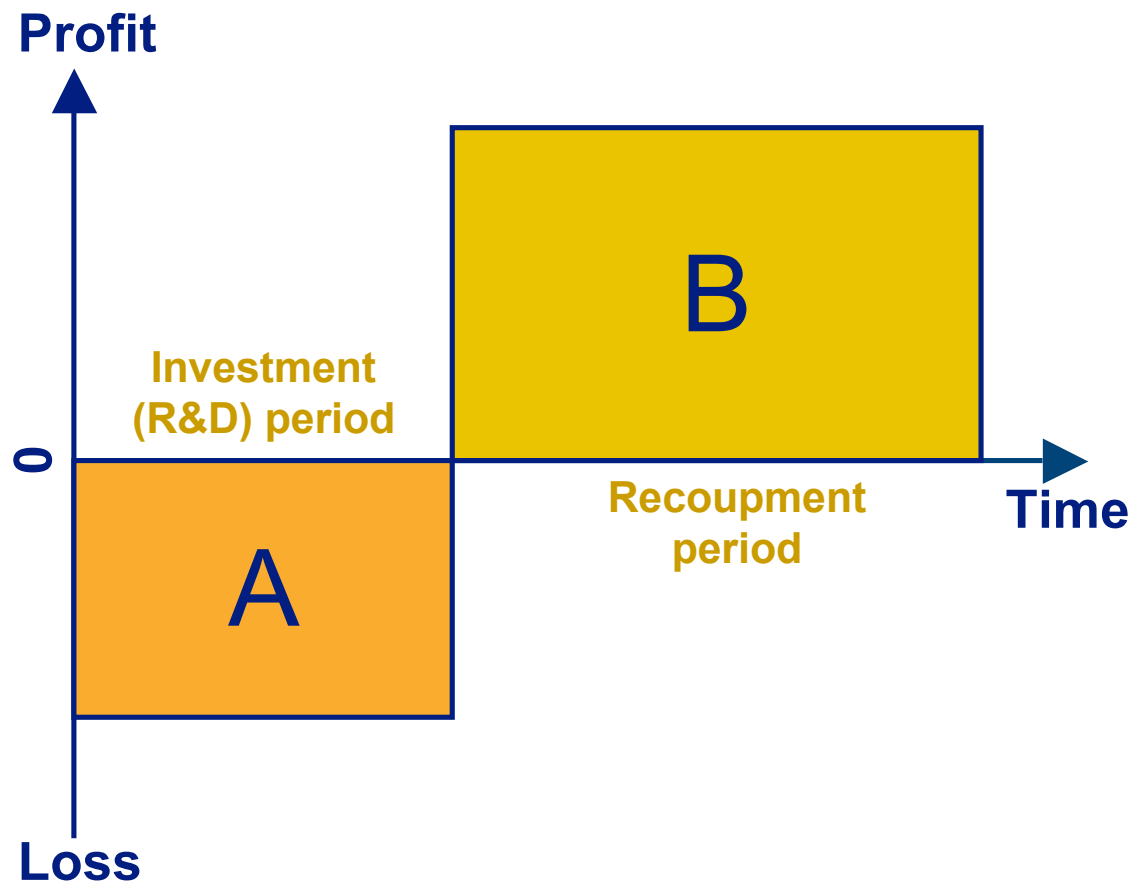


Antitrust and Intellectual Property: An introduction

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Chief Economist
Office of Fair Trading

Caveat: Views expressed are my own and not the OFT's

Why do we have IP rights?



8 For innovation to occur:

$$E(B) > A$$

8 Innovation can be high risk

8 Which implies:

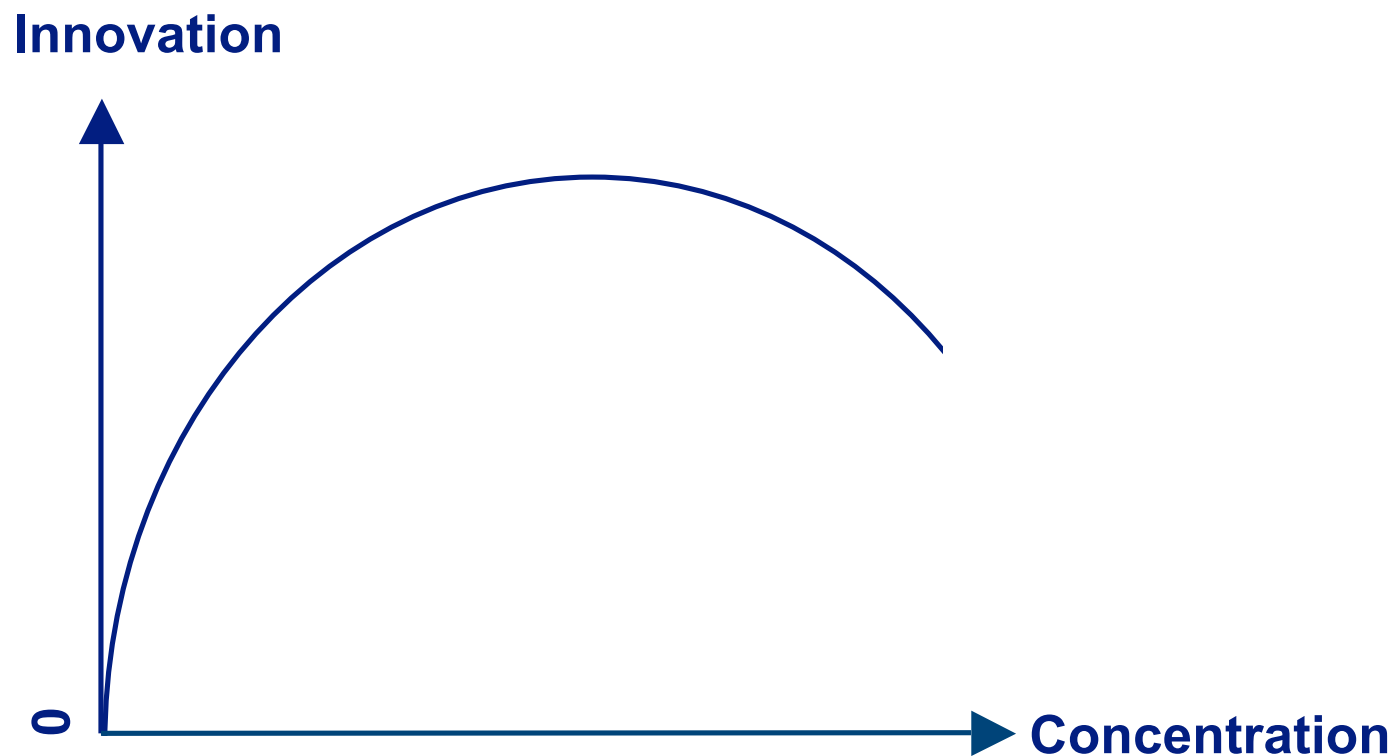
$$B \gg A$$

$$B \gg \gg 0$$

Basics of antitrust and IPRs

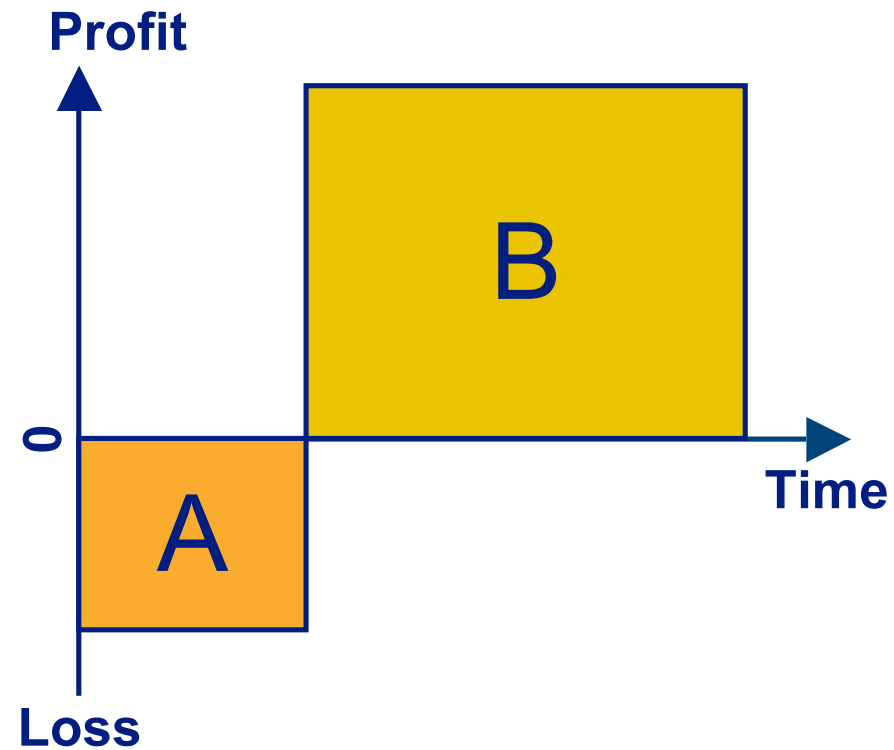
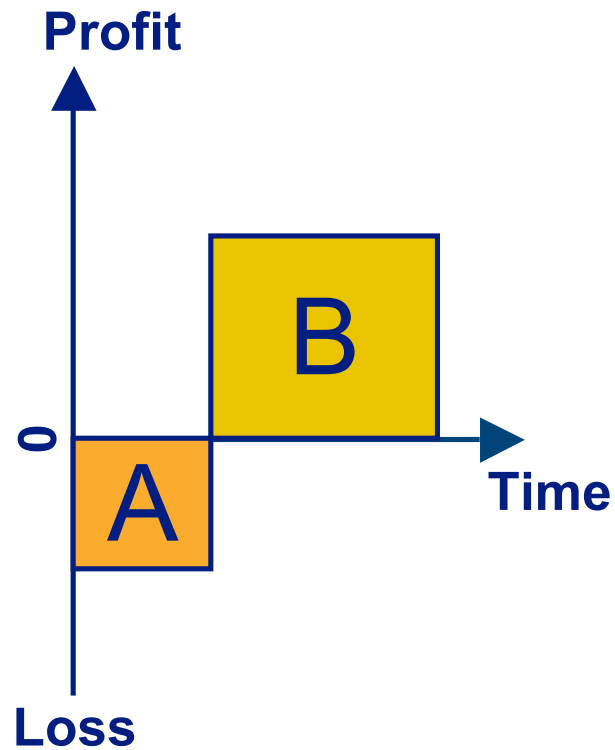
- 8 Existence versus exercise
- 8 Ownership of an IPR does not imply dominance
- 8 Some market power may be good for innovation
- 8 **BUT innovation does not justify monopolisation!**
 - 8 The inverted U of innovation versus concentration

The “Inverted-U” (Aghion et al, 2001)



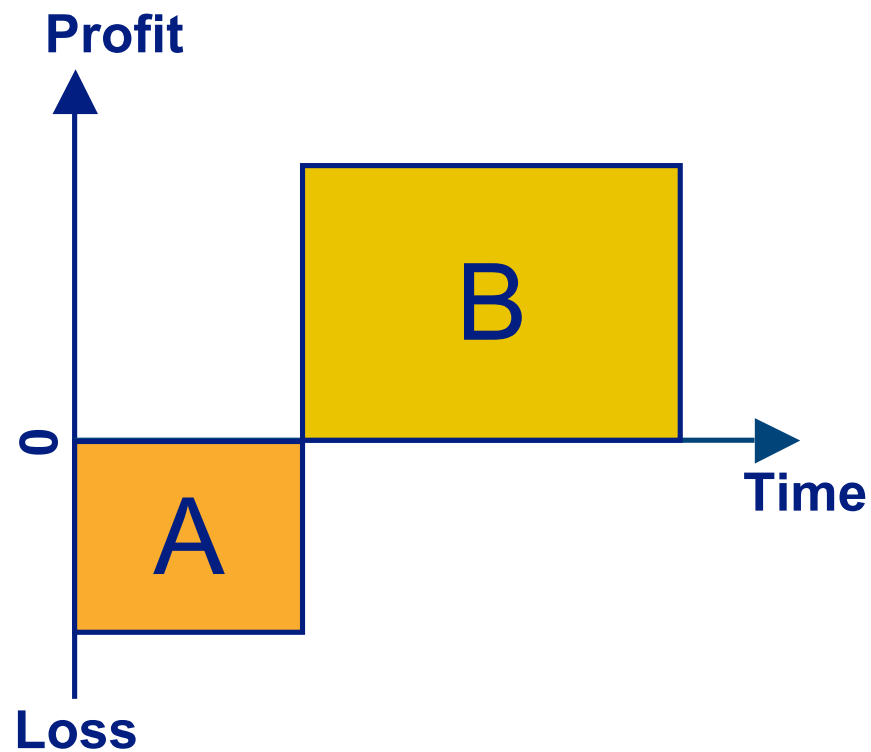
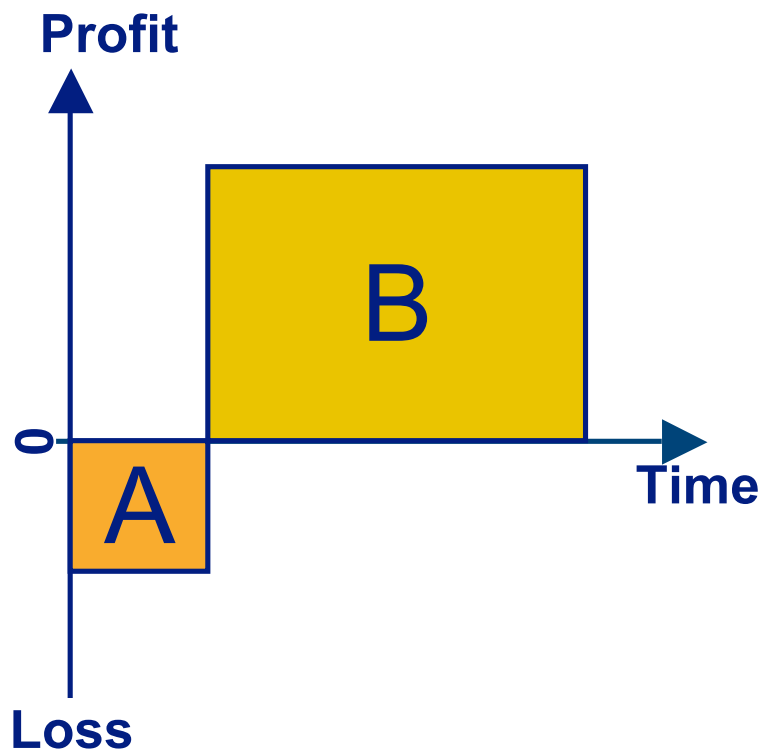
What should IP rights look like?

8 Tailored to risk and size of investment?



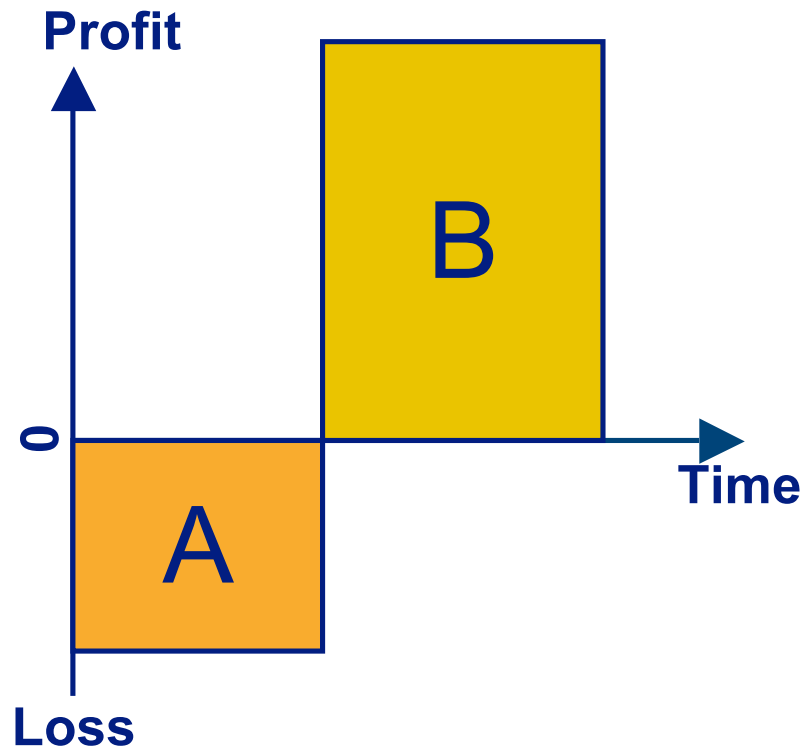
What should IP rights look like?

8 Or one size fits all?

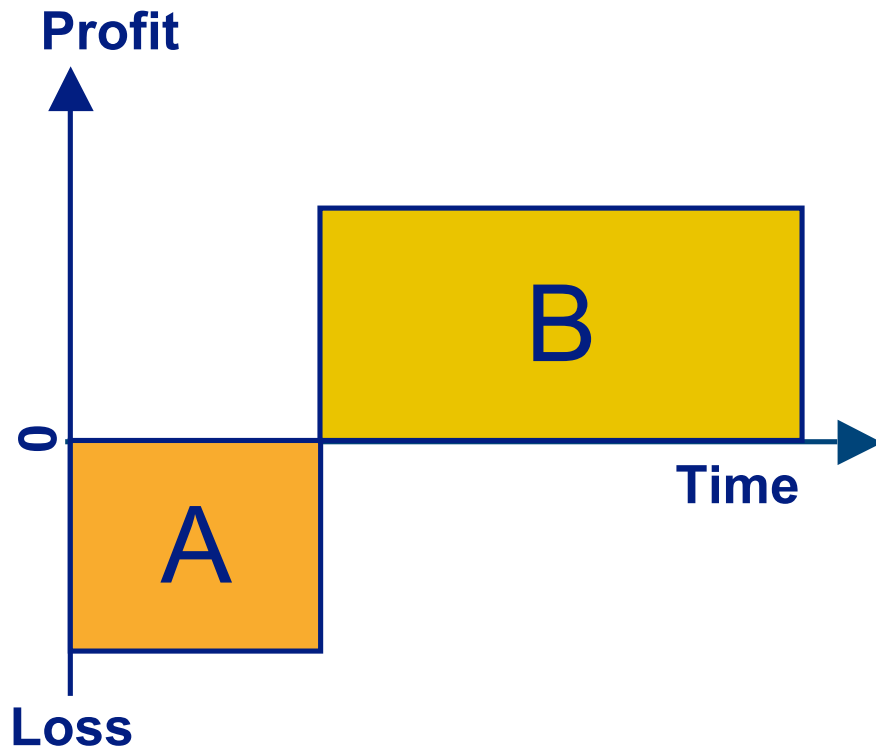


What should IP rights look like?

8 Broad but short?



8 Long but narrow?



What do IP rights actually look like?

- 8 **Some tailoring: patents, copyrights, brands**
- 8 **Little tailoring with each: One size fits all**
 - 8 **Risk of system being designed to solve extreme cases, but reading over to all markets**
- 8 **Little (no?) economic input into optimal design**
- 8 **In particular, little analysis of trade-off against:**
 - 8 **Static competition**
 - 8 **Dynamic competition**

When might antitrust intervene?

How high is the risk to innovation from (threat of) Intervention?

high

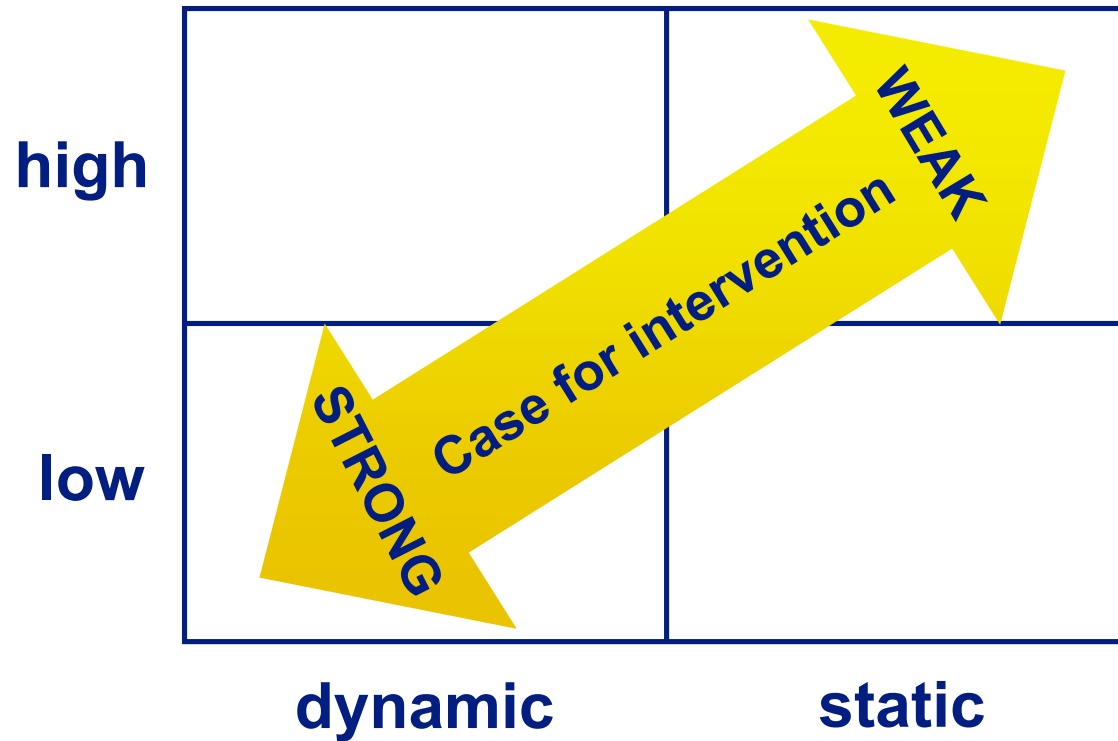
low

	Excessive pricing
Magill	
dynamic	static

What type of competition is the intervention designed to improve?

When might antitrust intervene?

How high is the risk to innovation from (threat of) Intervention?



What type of competition is the intervention designed to improve?

How can IPRs limit dynamic competition?

- 8 Refusal to supply a key input on FRAND terms
- 8 Interoperability restrictions
- 8 Anti-competitive licence restrictions: eg grant-backs, and separate licences for each upgrade
- 8 Bundling
- 8 Phony patent litigation
- 8 'Patent thickets'
- 8 Patent life extension?

Other forms of intervention

8 Change the IP system:

8 Eg Supreme Court on 'non-obviousness' test

8 Change the reward system:

8 Eg OFT recommendations on PPRS

8 Laissez-faire approach to market-based solutions to dynamic problems:

8 Patent pools

8 Cross-licensing

8 Standard-setting

} Recognise the benefit of these
....bearing in mind they can
raise problems of their own

This morning: Focus on two areas

1. Issues around:

- 8 Fair Reasonable and Non-Discriminatory (FRAND)
Licensing of IP rights and
- 8 standard-setting

2. Issues in the pharmaceutical sector