Chapter 16
The Role of Litigation in First-Mover Performance in M-Business

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ABSTRACT
In recent years, technological advances and regulatory change have profoundly modified many Internet-related supply and user services. In some cases, although entry barriers for new competitors have been lowered, established companies have been able to reap certain sources of first-mover advantages (FMAs) as a result of their early entry into the market. Here, non-market strategies can be used by rivals and other industry participants to neutralize FMAs. This paper has two main objectives: on the one hand, to reflect on FMAs in an Internet-enabled market environment, specifically, mobile service providers; on the other hand, to study the impact of litigation on first-mover performance in the Spanish mobile services industry between November 2000 and July 2006. The results obtained show that litigation processes initiated against first mover Movistar, do not, on average, have a negative impact on market performance. Similarly, we observed that when legal proceedings do have an impact on a company’s stock market valuation, the negative impact, on average, outweighs the positive. Last, we also observed that the impact of some legal disputes on the first mover’s share price varies depending on who initiates legal actions and on the nature of the lawsuit filed.

INTRODUCTION
Recent advances in communication and information technologies and growing Internet used are profoundly changing the face of some traditional industries, blurring the boundaries between the various industries (Internet, hardware, software, mobile telephony, fixed telecommunications and content). Another source of uncertainty that companies have been forced to face is strong intervention by the regulatory authorities. All of this has transformed the rules of competition for established businesses in unprecedented ways (Amit & Zott, 2001).
Technological progress specifically in the mobile industry has been continuous in terms of call quality and data transfer capabilities, allowing new Internet-related business models such as M-banking or M-commerce to develop. In less than a decade, we have witnessed the jump from second (GSM) to third (UMTS) generation communications and we shall shortly see a fourth (4G) generation emerge. As for regulatory changes, in many European countries such as France, Germany or Spain, the mobile industry initially operated as a monopoly. However, the ensuing market liberalisation that took place throughout the European Union encouraged competition, thereby ensuring that all age groups and socio-economic segments of the population might have access to mobile services. This contrasted with the previous situation in which mobile services were accessible only to a minority of users. By the end of 2008, it is estimated that 424 million Europeans, or 83% of its population, used mobile services, and that many had more than one subscription (GSMA, 2008).

However, although technological advances and regulatory changes have allowed new companies to enter the industries of the so-called “new economy”, the empirical evidence shows advantages accruing to first movers in the telecommunications industry (Bonardi, 1999), particularly m-business (Fernández & Usero, 2007). In order to prevent first movers from using their advantage to hinder competition, it is likely that various agents in the mobile industry will choose to take legal action against them. In addition to the government and the various regulatory bodies, new entrants, suppliers and customers will help ensure that competition is maintained and that the established laws, rules and regulations are respected and, to that end, they will use whatever legal measures are available to them within their scope of action and competence. Furthermore, some participants in the mobile industry may wish to use legal means to attain the goals they are unable to achieve under market conditions, thereby undermining the performance of the first mover.

However, strategic use of legal actions against industry leaders is a practice that is becoming increasingly extended in Internet-related industries. We often read in the press about companies such as Apple, Microsoft or Google, three of the most important Internet companies, continuously file lawsuits against each other or have suits filed against them by other companies in the industry, by regulatory bodies or by consumers. For instance, NTP, the patent-holding company best known for developing wireless email, recently filed suit against Apple, Google, HTC, LG, Microsoft and Motorola, for infringement of eight of its patents related to the delivery of electronic mail over wireless communications systems (Sachoff, 2010). Similarly, Emblaze, a young Israeli technology group, initiated legal proceedings against Apple and its rival Microsoft, alleging that both companies had infringed its patents on streaming media (Marshall, 2010). Continuous litigation against first movers can damage their reputation and increase their economic costs significantly, thus diminishing their first-mover performance.

The main aim of this paper is twofold: on the one hand, to reflect on first-mover advantages in an Internet-enabled market environment, specifically, mobile service providers: on the other hand, to study the impact of litigation on first-mover performance in the Spanish mobile services industry over the period 2000-2006. The structure of the paper is as follows. First, we set out the advantages of the first mover in the mobile industry. This is followed by a statement of the research questions of the study. Second, we describe the methodology used to obtain the sample and we define what is meant by a litigation process. Then, we present the results obtained. Last, we set out our principal conclusions and put forward some further thoughts on the issue under consideration.