

Qualcomm Cellular Communications SEP Licensing Framework and Antitrust Law: Comparing Qualcomm Cases in China, the EU, Korea, the U.S. and Taiwan

Yang, Chih-Chieh*

Abstract

Qualcomm is a SEP holder in cellular communications standard technology such as 2G, 3G, and 4G. Qualcomm has adopted a strange licensing framework to license its SEPs. Therefore, since 2015, many countries' competitive authorities have sanctioned Qualcomm one after the other. First, China sanctioned Qualcomm in 2015, and fined it US\$975 million. In July 2015, the EU commission opened two formal antitrust investigations into possible abusive behaviors by Qualcomm (and recently concluded that Qualcomm's exclusivity payments to Apple illegally breached the EU antitrust rule in January 2018). In December 2016, the Korea Fair Trade Commission imposed sanctions on Qualcomm, and fined it US\$865 million. Soon after, the U.S. FTC sued Qualcomm in the Northern District Court of California in January 2017. In April of that year, Qualcomm moved to dismiss the complaint, but Judge Lucy H. Koh rendered her opinion for the FTC, saying that if the fact is true, the FTC's allegation will win. Following the KFTC's and the U.S. FTC's actions, on October 11, 2017, the Taiwan Fair Trade Commission put out a press release that they had found that Qualcomm had abused its market dominance by unfair means to directly or indirectly prevent modem chipset makers from competing, and fined Qualcomm US\$773 million.

In November, the TFTC released their final official decision with detailed reasoning, and three commissioners delivered their dissenting opinions. The TFTC held that Qualcomm's three conducts when combined together formed Qualcomm's anti-competitive business model, and finally harmed the competition in the chipset market. The reasoning is very similar to that in the US FTC's complaint and the KFTC's sanction. On the other hand, among the remedies imposed by the TFTC was one where the TFTC required Qualcomm to engage in good-faith negotiations with modem chipset makers, which meant that Qualcomm was obliged to license its SEP to its chipset competitors. This

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* Professor, Institute of Technology Law, National Yunlin University of Science & Technology, Taiwan; Ph.D in Law (2006), National Taiwan University, Taiwan.

good-faith negotiation requirement was gleaned from the KFTC's sanction, but actually came from the 2015 EU court's Huawei v. ZTE case opinion. Those five competitive authorities focus on different types of illegal behavior and have found different forms of competitive harm, which will be compared. Finally, some points that deserve further study will be suggested.

Keywords: Qualcomm, Standard Essential Patent, FRAND License Commitment, No License No Chip, Antitrust Laws.