

Legal and Economic Analysis of Bundling: Taking Qualcomm's Case as an Example

Lu, Yi (Thomas)*

Abstract

This paper discusses the effect of the bundled rebate in the Qualcomm case on the consumers by asking the following question: If the court rules that a bundled rebate is unlawful under the antitrust law in accordance with Section Two of the Sherman Act, what are the effects on consumers? On the other hand, if it is lawful, then how are the consumers affected? With these questions in mind, we investigate the previous economic literature and legal cases. In the economic literature, most studies have focused on the bundling between products; however, they have not analyzed the situation in which the patent licensing and product are bundled together. Thus, these studies are unable to help us analyze the situation that Qualcomm faces. On the other hand, the precedents from different federal circuit courts also have split the reasoning on analyzing such bundling. Similarly, these precedents cannot help us to investigate the scenario that Qualcomm faces either, for the same reasons as those above. Therefore, we adopt an alternative approach to analyze the scenario that Qualcomm faces and to answer the above questions. By comparing different scenarios in our models, we find that patent bundling together with competition will generate the largest consumer's surplus since it may eliminate the problems associated with double marginalization and incentives. Finally, this paper recommends that the courts and the government agencies analyze the risks of double marginalization in a given bundling case.

Keywords: Bundled Rebate, Qualcomm Case, Antitrust Law, Double Marginalization, Long-term Incentives.

Date submitted: July 22, 2019

Date accepted: December 24, 2019

* Assistant Professor, Graduate Institute of Intellectual Property and Communication Technology Law, Shih Hsin University. The author thanks two anonymous reviewers for substantive comments on this paper.