

**Summary of Commission Decision**  
**of 24 January 2018**  
**relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement**

**(Case AT.40220 — Qualcomm (Exclusivity Payments))**

*(notified under document C(2018) 240)*

**(Only the English text is authentic)**

(2018/C 269/16)

*On 24 January 2018, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 <sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.*

### 1. INTRODUCTION

- (1) The Decision establishes that Qualcomm Inc. ('Qualcomm') has infringed Article 102 of the Treaty on the Functioning of the European Union ('TFEU') and Article 54 of the Agreement on the European Economic Area ('EEA Agreement') by granting payments to Apple Inc. ('Apple') on condition that Apple obtain from Qualcomm all of Apple's requirements of baseband chipsets <sup>(2)</sup> compliant with the Long-Term Evolution ('LTE') standard together with the Global System for Mobile Communications ('GSM') and the Universal Mobile Telecommunications System ('UMTS') standards. Such baseband chipsets are referred to in the Decision as 'LTE chipsets'.
- (2) The infringement lasted from 25 February 2011 to 16 September 2016.
- (3) On 19 January 2018 and 23 January 2018, the Advisory Committee on Restrictive Practices and Dominant Positions issued favourable opinions on the Decision pursuant to Article 7 of Regulation (EC) No. 1/2003 and on the fine imposed on Qualcomm.

### 2. QUALCOMM AGREEMENTS WITH APPLE

- (4) On 25 February 2011, Qualcomm entered into an agreement with Apple (the 'Transition Agreement') concerning the delivery of baseband chipsets. The Transition Agreement was amended on 28 February 2013 by means of a subsequent agreement (the 'First Amendment to the Transition Agreement'). The First Amendment to the Transition Agreement took effect retroactively as of 1 January 2013.
- (5) Both the Transition Agreement and the First Amendment to the Transition Agreement provided for payments being granted by Qualcomm to Apple on condition that Apple obtain from Qualcomm all of Apple's requirements of LTE chipsets.
- (6) While the Transition Agreement, as amended by the First Amendment to the Transition Agreement (together, the 'Agreements'), were scheduled to expire on 31 December 2016, they terminated following Apple's launch on 16 September 2016 of iPhone 7 devices incorporating Intel LTE chipsets.

### 3. MARKET DEFINITION

- (7) The Decision concludes that the relevant product market is the merchant market of LTE chipsets.
- (8) The Decision concludes that the market for LTE chipsets is worldwide in scope.

### 4. DOMINANCE

- (9) The Decision concludes that Qualcomm held a dominant position in the worldwide market for LTE chipsets between 1 January 2011 and 31 December 2016.
- (10) First, Qualcomm has enjoyed large shares in the worldwide market for LTE chipsets since 2010.
- (11) Second, the worldwide market for LTE chipsets is characterised by the existence of a number of barriers to entry and expansion.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(2)</sup> Baseband chipsets enable smartphones and tablets to connect to cellular networks and are used both for voice and data transmission.

- (12) Third, the commercial strength of Qualcomm's baseband chipset customers is incapable of affecting Qualcomm's dominant position.

#### 5. ABUSE OF A DOMINANT POSITION

- (13) The Decision concludes that Qualcomm abused its dominant position on the worldwide market for LTE chipsets by granting payments to Apple on condition that Apple obtain from Qualcomm all of Apple's requirements of LTE chipsets.
- (14) First, the payments granted by Qualcomm to Apple on condition that Apple obtain from Qualcomm all of Apple's requirements of LTE chipsets were exclusivity payments.
- (15) Second, notwithstanding Qualcomm's arguments to the contrary, its exclusivity payments had potential anti-competitive effects.
- (16) In the first place, Qualcomm's payments reduced Apple's incentives to switch to competing LTE chipset suppliers as confirmed by Apple's internal documents and explanations.
- (17) In the second place, Qualcomm's exclusivity payments covered a significant share of the worldwide LTE chipset market.
- (18) In the third place, Apple is an attractive customer for LTE chipset suppliers because of its importance for entry or expansion in the worldwide LTE chipset market.
- (19) Third, the critical margin analysis submitted by Qualcomm does not support its claim that its exclusivity payments were incapable of having anti-competitive effects.
- (20) Fourth, Qualcomm has not demonstrated that its exclusivity payments were counterbalanced or outweighed by advantages in terms of efficiency that also benefit the consumer. This is because Qualcomm has not demonstrated that the exclusivity payments were necessary for the achievement of any gains in efficiency.
- (21) Qualcomm's infringement took place between 25 February 2011 and 16 September 2016.

#### 6. JURISDICTION

- (22) The Decision concludes that it has jurisdiction to apply Article 102 TFEU and Article 54 of the EEA Agreement to Qualcomm's infringement, since it was both implemented and capable of having substantial, immediate and foreseeable effects in the EEA.

#### 7. EFFECT ON TRADE

- (23) The Decision concludes that Qualcomm's infringement has an appreciable effect on trade between Member States within the meaning of Article 102 of the Treaty and between the Contracting Parties within the meaning of Article 54 of the EEA Agreement.

#### 8. REMEDIES AND FINES

- (24) At the time of the adoption of the Decision, Qualcomm's infringement has come to an end as the Agreements terminated on 16 September 2016 following Apple's launch of iPhone 7 devices incorporating Intel LTE chipsets.
- (25) The Decision, however, requires Qualcomm to refrain from repeating the conduct described in the Decision and from any act or conduct that would have the same or an equivalent object or effect as the conduct described in the Decision. This includes payments, rebates or any type of consideration, conditional on Apple obtaining from Qualcomm all or most of its requirements of LTE chipsets.
- (26) The fine imposed on Qualcomm for its infringement is calculated on the basis of the principles laid out in the 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003. The Decision concludes that the final amount of the fine to be imposed on Qualcomm should be EUR 997 439 000.
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