

**Communication from the Commission published pursuant to Article 27(4) of Council Regulation
(EC) No 1/2003 in Case AT.40608 – Broadcom**

(2020/C 142/03)

1. Introduction

- (1) According to Article 9(1) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽¹⁾, the Commission may decide – in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment – to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.

- (2) According to Article 27(4) of the same Regulation, where the Commission intends to adopt a decision pursuant to Article 9, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. Summary of the Case

- (3) On 26 June 2019, the Commission initiated proceedings within the meaning of Article 2(1) of Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ⁽²⁾, covering alleged anticompetitive practices by Broadcom Inc. ('Broadcom') concerning Systems-on-a-Chip ('SoCs'), Front End Chips and Wi-Fi Chips for inclusion in set-top boxes ('STBs') and residential gateways ('RGs'). On the same day, the Commission addressed a Statement of Objections to Broadcom outlining the Commission's preliminary assessment relating to specific aspects of Broadcom's behaviour that was subject to the Commission's investigation and its intention to impose interim measures in that regard pursuant to Article 8 of Regulation (EC) No 1/2003.

- (4) On 16 October 2019, the Commission adopted a decision pursuant to Article 8 of Regulation (EC) No 1/2003 imposing interim measures on Broadcom in order to prevent serious and irreparable damage to competition, based on the Commission's *prima facie* finding that Broadcom was infringing Article 102 TFEU (the 'Decision').

- (5) The Decision found that, *prima facie*, Broadcom holds a dominant position in the worldwide markets for SoCs for STBs, SoCs for xDSL RGs and SoCs for fibre RGs (together, the 'Relevant Products').

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the Treaty on the Functioning of the European Union ('TFEU').

⁽²⁾ OJ L 123, 27.4.2004, p. 18.

- (6) The Decision also found that Broadcom had entered into six agreements ('Agreements') with original equipment manufacturers ('OEMs') concerning SoCs for STBs and/or RGs. The Decision held that certain exclusivity-inducing provisions in the Agreements constituted *prima facie* abuses of Broadcom's dominant position:
- (a) exclusivity and quasi-exclusivity arrangements: obligations or promises to obtain the Relevant Products, exclusively or almost exclusively from Broadcom; ⁽³⁾ or provisions that make the granting of certain price and non-price advantages conditional on the customer obtaining the Relevant Products, exclusively or almost exclusively from Broadcom; and
 - (b) leveraging restrictions: provisions that leverage Broadcom's *prima facie* market power from a Relevant Product to another Relevant Product and/or to cable RG SoCs.
- (7) The Decision concluded that if Broadcom's *prima facie* abusive conduct were allowed to continue, it would be capable of leading to serious and irreparable damage to competition in the markets for STB SoCs and RG SoCs in the time frame that it would take for the Commission to come to a final decision on the substance of the case. In particular, the Decision concluded that it was likely that Broadcom's competitors would become increasingly marginalised or exit the market within that time frame if the conduct continued.
- (8) In order to ensure the effectiveness of any final decision in this case, the Decision ordered Broadcom to unilaterally cease to apply with immediate effect the exclusivity-inducing provisions contained in the Agreements with the six OEMs concerned and to refrain from agreeing the same exclusivity-inducing provisions or provisions having an equivalent object or effect to those provisions in any future contracts with these OEMs. The interim measures apply for a period of three years or until the date that the Commission either adopts a final decision on the substance or closes its investigation (whichever is the earlier).

3. The Main Content of the Offered Commitments

- (9) Broadcom does not agree with the Commission's assessment as set out in the Statement of Objections and in the Decision ⁽⁴⁾. Broadcom has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns.
- (10) The commitments are briefly summarised below and published in full in English on the website of the Directorate-General for Competition at:
- http://ec.europa.eu/competition/index_en.html
- (11) Within one month following the date on which Broadcom receives formal notification of the Commission decision according to Article 9 of Regulation (EC) No 1/2003:
- (i) At worldwide level (excluding China), Broadcom commits to:
 - (a) suspend any existing agreements and not to enter into new agreements that require an OEM to obtain more than 50 % of its requirements for the Relevant Products from Broadcom, or condition non-price advantages or retroactive price advantages ⁽⁵⁾ related to the Relevant Products on the OEM obtaining more than 50 % of its requirements for these products from Broadcom;
 - (b) suspend any existing agreements and not to enter into new agreements that condition the supply of, or the granting of advantages for, a Relevant Product on an OEM obtaining from Broadcom more than 50 % of its requirements for any other Relevant Product, or for SoCs for cable RGs, Front End Chips for STBs and RGs and/or Wi-Fi Chips for STBs and RGs (these latter together, 'Other Products');

⁽³⁾ Including obligations to bid only Broadcom-based devices in tenders launched by service providers.

⁽⁴⁾ By action lodged on 23 December 2019, Broadcom applied to the General Court for the annulment of the Decision (Case T-876/19).

⁽⁵⁾ Both terms as defined in the commitments.

(ii) At EEA level, Broadcom commits to:

- (a) suspend any existing agreements and not to enter into new agreements that require an OEM to obtain more than 50 % of its EEA requirements for the Relevant Products from Broadcom, or condition non-price advantages or retroactive price advantages related to the Relevant Products on the OEM obtaining more than 50 % of its EEA requirements for these products from Broadcom;
- (b) suspend any existing agreements and not to enter into new agreements that condition (i) the supply of a Relevant Product on an OEM obtaining from Broadcom another Relevant Product or any Other Product; or (ii) the granting of advantages for a Relevant Product on an OEM also obtaining or bidding another Relevant Product or any Other Product from Broadcom;
- (c) suspend any existing agreements and not to enter into new agreements that require an OEM to bid only devices based on Broadcom Relevant Products or condition advantages in relation to Relevant Products on an OEM bidding only devices based on Broadcom Relevant Products.

Subject to the fulfilment of specific conditions, Broadcom can grant advantages concerning individual EEA tenders on a tender-by-tender basis;

- (d) suspend any existing agreements and not to enter into new agreements by which an EEA service provider ⁽⁶⁾ (i) is required or incentivised through non-price advantages or retroactive price advantages to satisfy more than 50 % of its requirements for STBs, fibre RGs or xDSL RGs with devices based on Broadcom Relevant Products; (ii) is required or incentivised to request OEMs to bid only devices based on Broadcom Relevant Products; or (iii) is required or incentivised to concurrently source together with a Broadcom Relevant Product another Broadcom Relevant Product and/or a Broadcom Other Product.

(12) These Commitments will remain in force for a period of five years from the date on which Broadcom receives formal notification of the Commission's decision pursuant to Article 9 of Regulation (EC) No 1/2003.

(13) Broadcom shall not circumvent or attempt to circumvent these Commitments in any way.

(14) With respect to the monitoring of the implementation of these Commitments, Broadcom commits to submit to the Commission a confidential report on their implementation within two weeks from the date of their implementation, and on an annual basis thereafter for the duration of the commitments.

4. Invitation to make Comments

(15) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the commitments summarised above and published on the internet, on the website of the Directorate-General for Competition.

(16) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than six weeks following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.

(17) Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.

(18) Observations can be sent to the Commission under reference number AT.40608 – Broadcom by email to COMP-GREFFE-ANTITRUST@ec.europa.eu and COMP-C1-MAIL@ec.europa.eu

⁽⁶⁾ Telecommunication operators and cable service providers that provide STBs and/or fibre RG and/or xDSL RG to end-users.