



GCLC Lunch Talk
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Qualcomm ***(exclusivity rebates)***

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*(speaking in a personal capacity - the views expressed are not
necessarily those of the European Commission)*

Baseband chipsets

- process all cellular communications functions in smartphones and tablets
- Both voice and data transmission
- incorporate different technologies, e.g. 4G (**LTE**), 3G (**UMTS**), 2G (**GSM**)



Qualcomm's dominance

- Qualcomm held a dominant position in the market for LTE baseband chipsets at least in the time period 2011-2016 based on particular on:
 - very high worldwide market shares, amounting to more than 90% for the majority of the period under investigation
 - barriers to entry and expansion, including:
 - ❑ R&D expenditure required before a supplier can launch an LTE chipset
 - ❑ Qualcomm's network of pass-through rights to third parties' intellectual property
 - ❑ Qualcomm's brand and established business relationships
 - ❑ The fact that it is important for baseband chipsets to support a variety of cellular communication standards

The conduct

- In 2011, Qualcomm and Apple signed an agreement according to which Qualcomm committed to grant significant payments to Apple
- Payments were conditional on Apple exclusively sourcing LTE baseband chipsets for its "iPhone" and "iPad" devices from Qualcomm
- In 2013, the agreement was amended and extended to the end of 2016, under same exclusivity conditions

Abuse

- Qualcomm's payment are exclusivity payments
- Presumption of anti-competitive effects
- During the administrative proceedings, Qualcomm submitted, on the basis of supporting evidence, that its conduct was not capable of restricting competition and, in particular, of producing the alleged foreclosure effects
- Decision:
 - Analyses potential anti-competitive effects
 - Rebuts Qualcomm's arguments (both on price-cost AEC test and alleged efficiencies)

Potential effects

- Extent of Qualcomm's dominant position
- Share of market covered
- Amounts and duration
- Conditions and arrangements of the rebates

Potential effects

- Qualcomm's payments reduced Apple's incentives to switch to rivals:
 - broad range of contemporaneous evidence
 - Apple gave serious consideration to switch in part to Intel
 - Payments were a material part of Apple's decision
- Apple is a key customer for baseband chipset suppliers:
 - accounts for a significant share of LTE chipset demand
 - leading smartphone manufacturer which can influence other customers' and manufacturers' procurement and design choices. By foreclosing Apple's demand, Qualcomm's conduct had an effect on the LTE baseband chipset market as a whole

Intel ruling

- ECJ maintains presumption that exclusivity rebates are unlawful
- Dominant companies can bring evidence in administrative proceedings to rebut presumption
- General dynamics of exclusivity rebates cases unlikely to change:
 - Rebuttable presumption framework implies that undertakings will almost always bring arguments to show lack of potential effects
 - The Commission has over the years always analysed potential effects, including in Intel decision

Elements to assess potential effects

- ✓ AEC price-cost test can be one, but not necessary in all cases
- ✓ List of §139 of *Intel*. Weighting necessary. Not exhaustive.
- ✓ Other possible elements (qualitative or quantitative) :
 - Evidence of customer's assessment of the competitive product
 - Evidence of the material impact of the exclusivity rebates on the customer's choice
 - Evidence of the key importance of customers concerned for the competitive process
- ✓ All elements part of a consistent theory of harm