

## CLIENT ALERT

### European Commission Closes Qualcomm Investigation

Nov.24.2009

Today, the European Commission announced that it closed its investigation into Qualcomm's licensing practices of 3G mobile technology patents. In October 2007, the Commission initiated formal proceedings against Qualcomm Inc., a US chipset manufacturer and holder of IP rights in the CDMA and WCDMA standards for mobile telephony, regarding an alleged infringement of Article 82 EC (which forbids abuse of dominant position). The Commission initiated this investigation following complaints by mobile phone and chipset manufacturers Nokia, Ericsson, Broadcom, Texas Instruments, Panasonic and NEC. The WCDMA standard forms part of the 3G (third generation) standard for European mobile phone technology (also referred to as "UMTS"). The complaints alleged that Qualcomm's licensing practices breached Fair, Reasonable and Non-Discriminatory ("FRAND") standards and therefore breached EC competition rules. The complaints also alleged that charging non-FRAND royalties would lead to higher handset prices, a slower development of the 3G standard, and a slower adoption of the 4G standard. Noting that these complainants have "now withdrawn or indicated their intention to withdraw their complaints" the Commission concluded that it should close its investigation and not invest further resources in this case.

It comes as no surprise that the Commission now closed this investigation, since this decision followed reports that the Commission staff opposed pushing this investigation further and resisted issuing a formal Statement of Objections against Qualcomm. In addition, this decision confirms the Commission's cautious position regarding "exploitative" practices, such as the one under investigation. In a recent speech, Commissioner Kroes expressed a cautious approach towards excessive prices cases under Article 82: "In practice, such assessments may be much more complex than this brief description of the issues implies, and any antitrust enforcer has to be careful about overturning commercial agreements without a clear and coherent evidence base."

In an age of global antitrust enforcement, today's decision by the European Commission contrasts with the decisions rendered against Qualcomm by the Japanese and Korean Fair Trade Commissions. On July 23, 2009 the Korean Fair Trade Commission levied against Qualcomm a US\$209 million fine for "abusing its dominant position by charging discriminatory royalties." This is the highest fine ever imposed by the Korean FTC. On September 30, 2009 the Japanese Fair Trade Commission ruled that Qualcomm had breached the Japanese Antimonopoly Act, and issued a cease and desist order forcing Qualcomm to modify its licensing practices. This story may continue to unfold before worldwide competition authorities, as several of the EC complainants (including Ericsson) have stated that they will continue their ongoing dialogue with competition authorities around the world regarding Qualcomm's licensing practices.

[Click for the European Commission's November 24, 2009 press release.](#)

[Click for the European Commission's October 1, 2007 press release.](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Olivier N. Antoine**  
Partner – New York

Phone: +1 212.803.4022

Email: [oantoine@crowell.com](mailto:oantoine@crowell.com)