Plaintiff’s Opening Statement

Federal Trade Commission

v.

Qualcomm Inc.

January 4, 2019
Qualcomm’s longstanding corporate policies harm competition and consumers by impairing the opportunities of rivals without furthering competition on the merits.

The FTC Act declares unlawful “unfair methods of competition,” which include practices that violate the Sherman Act.
Qualcomm’s Anticompetitive Practices

- No-License/No-Chips
- Incentive payments
- Refusal to license rivals
- Exclusive deals

Higher royalties for Qualcomm on handsets with rival chips

Weakened rivals
“To buy a Qualcomm chip, an OEM must have a license to make and sell devices that implement at least one of the technologies enabled by the chip”

Pretrial Brief, Dec. 28, 2018, at 6

“Q. Does Qualcomm have a policy of selling baseband processors only to companies that have a license to Qualcomm’s patent portfolio?
A. Typically yes.”

Steven Mollenkopf (CEO) Deposition, Mar. 21, 2018, 37:02–05
“Qualcomm does not sell Baseband Processor Chipsets to unlicensed cellular device manufacturers. Qualcomm generally has the right to terminate its Baseband Processor Chipset supply agreements in the event the buyer is in default under its license agreement . . . .”

Response to Apple’s Interrogatory No. 13, Sept. 29, 2017

“Under our agreements, we do not ship [modem chips] to non-licensees or to licensees who are not performing their obligations.”

Irwin Jacobs, Co-Founder and Former Chairman, Email, Aug. 24, 2001, CX6729
Sales to Unlicensed Entities or Customers Claiming Exhaustion

Issue: Sales of chipsets to unlicensed entities, licensed entities not paying royalties under their agreements (e.g., Chinese licensees re TD-SCDMA), or those claiming exhaustion despite the terms of our supply and license agreements present significant risks to the licensing program

- Such sales present the risk of a finding of patent exhaustion in the event of a dispute over royalties
- If we cease supply of chips to current customers they may assert antitrust claims seeking damages/fines and continued supply

Strategy

- Develop a plan of communication/action that maximizes our ability to defend against the above claims while ceasing supply when necessary
- TD-SCDMA: require a pre-payment of royalty when an unlicensed customer or a Chinese licensee refusing to pay royalties on TD-SCDMA product sales buys TD-SCDMA-only chips
- Sony Mobile
“As far as I can remember, they said if we do not extend CDMA license agreement, they would stop supplying the chipset to us, and it would be a disruption of Huawei's business.”

Nanfen Yu Deposition, Mar. 14, 2018, 54:18–24
A. [W]hen we objected to some of the other terms in this license and suggested we were contemplating terminating it, the response we got from Qualcomm was, “Feel free, but then we won't sell you any more chips.”

Q. So Qualcomm told you if you terminated the license, it wouldn't sell Lenovo any more chips?

A. That’s correct.
**Carrots** and **Sticks**

<table>
<thead>
<tr>
<th>Carrots</th>
<th>Sticks</th>
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<tbody>
<tr>
<td>Waive 4G upfront license fee</td>
<td>Open Audit findings</td>
</tr>
<tr>
<td>Offer Strategic Fund</td>
<td>$1.4M late fees as of 2/20/13</td>
</tr>
<tr>
<td>Offer MDF</td>
<td>Product hold on Chip shipments. QMC has 378.5K MSMs on backlog</td>
</tr>
<tr>
<td>Offer Chip rebate</td>
<td>scheduled to ship by 4/9/13</td>
</tr>
<tr>
<td>Use Qualcomm marketing relationships to assist Lenovo internationally</td>
<td>QCT incentives owed $11.2M</td>
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<tr>
<td>particularly for Windows Mobile 8.0.</td>
<td></td>
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<tr>
<td>Select Lenovo as the lead customer on the MSM8226 (QMC decision)</td>
<td></td>
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Splitting the Chip and Licensing Businesses Would Deprive Qualcomm of Licensing Leverage

Spin: Arguments For & Against

- Can hurt QTL’s leverage to negotiate 3G renewals and 4G (OFDMA) licensing deals (ie. LG)
“If you consider the fact that the only companies that have attacked us today are companies that essentially purchase little or no ASICs from us, you can understand how the combination of QCT with QTL greatly enhances QTL’s success. As CDMA2000 grows and OEMs desire to participate in it to grow their market share, OEMs will remain reliant on us for continued supply and will need to maintain positive relationships with us. . . . If we were two companies, they would rely entirely on QCT, but would have no incentive NOT to attack QTL.”
Qualcomm Recognized that Separation from QCT Would Reduce QTL Royalties

Separation likely to risk Tulane 5G royalty rates

Charger’s announced royalty rates have declined with each generation evolution

- Charger’s share on essential patents
  - 32% for 3G
  - 24% for 4G

Exposure to risk of greater royalty rate decline in 5G in case of separation

- 3.35%
- 1.0 - 1.1%
- ~1.7 - 1.8%
- ~0.7%
- ~150 bps at risk

1 Losing leverage of CalTech (modem) in SSOs
   - Less attractive early R&D partner to other players given lack of operation

2 No CalTech (modem) contribution to Tulane’s IP
   - CalTech contribution to Tulane’s patents ~43%

Could materially impede future licensing revenue and represents downside of up to $20B+ on NPV basis

1. The NDRCP ruling provides a precedent where pre-generation patents are valued at 30% of the total royalty stake. 2. Tulane’s strategically important filing in US during FY14-FY15. 3. Detailed by Kent-Termlon EIRs in R, P. 4. Source: Financial statements of major SEP holders; 2018 NDRCP ruling against CalTech; Tulane press release; Sison; Koon; EIRs; IEEE; Thomson Reuters-IQ, NetBase, ESG analysis.
Qualcomm’s Monopoly Power in CDMA and Premium LTE Chips

- CDMA-Compliant Chips
  - No acceptable alternative
  - High market share
- Premium LTE Chips
  - No acceptable alternative
  - High market share
“Qualcomm [was] our sole supplier as to chipsets and, further, without a license from them, there is no supply as to chipsets. That meant that Qualcomm enjoyed a much stronger position, a much stronger leverage over Samsung in negotiating.”

In Jung Lee Deposition, Mar. 15, 2018, 235:21-236:1
Qualcomm’s FRAND Commitments
Q. Have ASIC manufacturers requested exhaustive licenses from Qualcomm?
A. Yes.
Q. Which ones?
A. I think at one point, Intel did. Broadcom. MediaTek. Samsung. That’s all I can recall at this point.

Derek Aberle Deposition, Mar. 27, 2018, 105:20–106:01
Exclusive Agreements to Shut Out Competitors

“In addition, there are significant strategic benefits as it is unlikely that there will be enough standalone modem volume to sustain a viable competitor without that slot.”

Steve Mollenkopf, CEO
Qualcomm provided Apple large payments conditioned on exclusivity

- 2011 and 2013 Transition Agreements—Billions in payments at risk if Apple used a non-Qualcomm modem in any new product (2011–2016)

- Agreements allowed Qualcomm to “claw back” past payments if Apple used a non-Qualcomm modem chip
Vice President and General Manager of QTL, 2012–2016
DAY ONE

Dr. Paul Jacobs

- CEO, 2005–2014
- Chairman of the Board, 2009–2018
Ira Blumberg
- Vice President of Intellectual Property

Nancy Yu
- Senior Legal Counsel
David Wise

- Senior Vice President of Finance and Treasurer
DAY TWO

Steve Altman
- “Architect”
- Vice Chairman, 2011–2013
- President, 2005–2011

Derek Aberle
- President, 2014–2017
- President of Licensing, 2011–2014

Finbarr Moynihan
- General Manager, Corporate Sales (International)
OEMs and Modem-Chip Suppliers

OEMs
- Huawei
- Motorola
- Apple
- Samsung
- LG
- BlackBerry

Modem-Chip Suppliers
- Intel
- VIA
- Broadcom
30+ years of experience as a patent licensing attorney in the semiconductor industry
Negotiated hundreds of licenses, including those covering SEPs

Qualcomm’s “no license-no chips” policy gave Qualcomm significant leverage in licensing negotiations.
Qualcomm used its leverage to obtain favorable license terms.
OEMs agreed to licensing terms that they otherwise would not have accepted.
Michael Lasinski: Non-FRAND Royalties

- Expert in financial aspects of IP, including methodologies for calculating fair royalties

Qualcomm’s historical royalty rates are
- far too high to be reasonable;
- disproportionate to the effective rates charged by other licensors of cellular SEPs, given indicators of portfolio strength; and
- inconsistent with Qualcomm’s FRAND commitments.
Qualcomm’s market power in properly defined antitrust markets for CDMA and Premium LTE Modem Chips

Supra-FRAND royalty acts as surcharge, or tax, on transactions taking place between an OEM and a Qualcomm rival

Supra-FRAND royalty does not act as a surcharge on Qualcomm sales, since the royalties are received by Qualcomm

Surcharge harms competition and consumers, because it (a) weakens Qualcomm’s rivals, and (b) raises the “all-in” price of modem chips.

Member, President’s Council of Economic Advisors
2x Deputy AAG for Economics, U.S. DOJ Antitrust Division
Qualcomm Has No Procompetitive Justifications

Qualcomm “justifications” for no license-no chips:

- “To avoid legal risks . . . such as claims of exhaustion or implied licenses.”
- “To avoid helping companies who do not respect Intellectual Property Rights”
- “To ensure that Qualcomm can recover a return on its investments”

Translation:

- Without no license-no chips, OEMs would bring legal claims that could lead to lower royalties.
- Adjudicating SEP royalties in court does not show Qualcomm sufficient “respect”
- Qualcomm is entitled to a return on its investments in excess of the fair and reasonable royalties that Qualcomm could obtain from the judicial system.

All of Qualcomm’s justifications amount to assertions that Qualcomm is entitled to greater royalties than would be ordered by a court—but avoidance of the patent regime is not procompetitive
An Injunction Is Warranted

- Qualcomm’s conduct has spanned **more than a decade**
- Conduct reflects an **entrenched corporate policy**; not aberrant acts
- There has been **no disavowal** of the conduct by Qualcomm
- Internal documents suggest **intent to continue same policy for the same effect in 5G**