

European Commission Fines Qualcomm €242M for Predatory Pricing

18 July 2019

On 18 July 2019, the European Commission (“EC”) fined Qualcomm for abusing its market dominance by selling 3G baseband chipsets below cost, to force its competitor Icera out of the market.

The EC found that Qualcomm sold three of its UMTS (a 3G standard) chipsets at predatory levels between mid-2009 and mid-2011, being dominant in the global market for UMTS chipsets in the relevant period. Qualcomm sold these chipsets, which are used in smartphones and tablets to deliver wireless connectivity, to Huawei and ZTE, two “strategically important” customers. Qualcomm targeted these customers as part of a deliberate strategy to exclude Icera, “its main rival at the time in the market segment offering advanced data rate performance”. Icera was a UK start-up and Qualcomm’s behavior took place when Icera was establishing itself as a viable alternative in this leading-edge segment. Icera was acquired by NVIDIA in May 2011, which subsequently wound down part of the business in September 2012, before exiting the market completely in 2015.

In reaching its conclusions, the EC relied on “a broad range of qualitative evidence” demonstrating Qualcomm’s anti-competitive intent. This showed that Qualcomm’s pricing campaign was “intended to prevent Icera from expanding and building market presence”. The EC also established that prices were at illegal levels based on a price-cost test for each of the three chipsets concerned. Remarking on the “targeted nature” of Qualcomm’s price concessions, the EC observed that this enabled Qualcomm to “maximise the negative impact on Icera’s business”, while minimizing the impact on its own revenues. The EC found no evidence of any efficiencies to justify Qualcomm’s practices. To the contrary, Qualcomm’s conduct “had a significant detrimental impact on competition”, in stifling innovation and reducing choice for consumers.

Predatory pricing cases are rare, as price competition is one of the ways in which firms compete on the merits. This is a landmark case not only because it represents the first EC predatory pricing decision in over 15 years, but also because of the theory of harm of strategic, targeted predation focusing on select contracts with key customers, carefully timed to cause maximum damage to competition at minimum cost. This decision is likely to be closely studied, including for its treatment of how costs should be apportioned across multiple products in R&D-intensive industries, and for its allocation of financial incentives to establish the effective price at which the various products were sold.

The EC’s decision follows a €97 million fine imposed in January 2018 for Qualcomm’s exclusivity payments to Apple. The EC stated that the two decisions pursued the “same objective” of preserving Qualcomm’s dominance in baseband chipsets. The fine reflects the sales value of the Qualcomm chipsets involved and the conduct’s duration. The EC emphasized that its decision is binding in national damages litigation. Cleary Gottlieb represented the complainant.

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The full text of the Commission’s press release can be accessed via this [link](#). A public version of the decision will be released in due course.

