



PRESS RELEASE No 99/22

Luxembourg, 15 June 2022

Judgment of the General Court in Case T-235/18 | Qualcomm v Commission (Qualcomm - Exclusivity Payments)

Abuse of dominance on the LTE chipsets market: the General Court annuls the Commission decision imposing on Qualcomm a fine of approximately €1 billion

The General Court observes that a number of procedural irregularities affected Qualcomm's rights of defence and invalidate the Commission's analysis of the conduct alleged against Qualcomm

Qualcomm is a US company which develops and supplies baseband chipsets intended for use in smartphones and tablets to enable them to connect to cellular networks¹ and are used both for voice services and data transmission. Chipsets are therefore sold to original equipment manufacturers, including Apple, who incorporate them into their devices.

By decision of 24 January 2018², the Commission imposed on Qualcomm a fine of close to €1 billion for abuse of dominance on the worldwide market for chipsets compatible with the Long Term Evolution (LTE) standard. The infringement lasted from February 2011 to September 2016.

According to the Commission, that abuse was characterised by the existence of agreements providing for incentive payments, under which Apple had to obtain its requirements for LTE chipsets exclusively from Qualcomm. In those circumstances, the Commission took the view that those payments, which it characterised as exclusivity payments, were capable of having anticompetitive effects, in that they had reduced Apple's incentives to switch to competing LTE chipset providers.

By today's judgment, the General Court annuls, in its entirety, the Commission decision. The General Court bases its conclusions on, first, the finding of a number of procedural irregularities which affected Qualcomm's rights of defence, and, second, an analysis of the anticompetitive effects of the incentive payments.

As regards the failure to have due regard for Qualcomm's rights of defence, the General Court finds that the Commission committed a number of irregularities when it was putting together the case-file. The General Court points out that it is for the Commission to record, in the form of its choosing, the precise content of all interviews conducted for the purposes of collecting information relating to the subject matter of an investigation. In the present case, the Commission failed to respect that obligation fully so far as concerns, in particular, the holding of meetings and conference calls with third parties.

¹ Chipsets are made up of a number of components. Their compatibility with one or more cellular communication standards, such as the GSM, UMTS or LTE standards, is one of their essential characteristics.

² Commission Decision C(2018) 240 final of 24 January 2018 relating to proceedings under Article 102 [TFEU] and Article 54 of the [EEA Agreement] (Case AT.40220 – Qualcomm (Exclusivity payments)).

In addition, the General Court observes that the contested decision limits itself to finding abuse of dominant position on the market for LTE chipsets alone, whereas the statement of objections concerned abuse both on that market and on the market for UMTS (Universal Mobile Telecommunications System) chipsets. The General Court considers that, in so far as such modification of the objections affected the relevance of the data which formed the basis of Qualcomm's economic analysis seeking to challenge the capability of its conduct to have foreclosure effects, the Commission ought to have given Qualcomm the opportunity to be heard, and, where necessary, to adapt its analysis. Accordingly, by failing to have heard the undertaking in relation to that point, the General Court finds that the Commission infringed Qualcomm's rights of defence.

As regards the analysis of whether the payments were capable of having anticompetitive effects, first, the General Court finds that, in concluding that the payments at issue were capable of restricting competition for all of Apple's LTE chipset demand for both iPhones and iPads, the Commission failed to take account of all of the relevant factual circumstances. Indeed, the General Court observes that while the Commission concluded that the incentive payments had reduced Apple's incentives to switch to competing suppliers to source LTE chipsets, it is apparent from the Commission decision that Apple had had no technical alternative to Qualcomm's LTE chipsets for the majority of its requirements during the period concerned, namely that part corresponding, in essence, to iPhones. The General Court concludes that the Commission's analysis was not carried out in the light of all the relevant factual circumstances and that it is, therefore, unlawful.

Second, the General Court finds that the conclusion that the payments at issue had actually reduced Apple's incentives to switch to Qualcomm's competitors to obtain supplies of LTE chipsets in respect of its requirements for certain iPad models to be launched in 2014 and 2015 is not sufficient to determine that they were anticompetitive for all of Apple's requirements. Indeed, a specific analysis of that nature cannot remedy the failure to take account of all the relevant factual circumstances in the Commission's general demonstration of the capability of the payments at issue to have anticompetitive effects during the period concerned in relation to all of Apple's LTE chipset requirements for iPhones and iPads. In addition, the General Court finds that, in any event, the Commission did not provide an analysis which makes it possible to support the findings that the payments concerned had actually reduced Apple's incentives to switch to Qualcomm's competitors in order to obtain supplies of LTE chipsets for certain iPad models to be launched in 2014 and 2015.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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