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Developments on SEP/FRAND Issues in the U.S. and abroad

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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QUALCOMM INCORPORATED,

Defendant.

Case No. 17-CV-00220-LHK

ORDER GRANTING FTC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Re: Dkt. No. 792

Plaintiff Federal Trade Commission ("FTC") sues Defendant Qualcomm, Incorporated ("Qualcomm") for violation of § 5 of the Federal Trade Commission Act ("FTCA"), 15 U.S.C. § 45. Before the Court is the FTC's motion for partial summary judgment on the issue of whether two industry agreements obligate Qualcomm to license its essential patents to competing modem chip suppliers. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court GRANTS the FTC's motion for partial summary judgment.

I. BACKGROUND

A. Factual Background

This case presents the complicated interaction between cellular communications standards, standard essential patents ("SEPs"), and the market for baseband processors, or "modem chips."

In the Complaint, the FTC alleges that Qualcomm is a "dominant supplier" of modem chips and the holder of SEPs essential to "widely adopted cellular standards." ECF No. 1 ("Compl.") ¶ 2. The FTC alleges that Qualcomm has harmed competition and violated § 5 of the FTCA via several interrelated policies and practices. First, Qualcomm does not sell its modem chips unless a customer accepts a license to Qualcomm's SEPs, which the FTC alleges Qualcomm offers for "elevated royalties." *Id.* ¶ 3a. Second, Qualcomm refuses to license its SEPs to competitors in the modem chip supplier market, in violation of industry agreements. *Id.* ¶ 3c. Third, the FTC alleges that Qualcomm has entered "exclusive dealing arrangements" with Apple, an important cell phone manufacturer. *Id.* ¶ 3d.

The parties refer interchangeably to the companies that manufacture and sell modem chips as "modem chip suppliers," "modem chip manufacturers," and "modem chip sellers." For simplicity and consistency, the Court uses the term "modem chip suppliers" in this Order.

The FTC alleges that because of those practices, customers for Qualcomm's modem chips must pay elevated royalties while Qualcomm's refusal to license its SEPs to competing modem chip suppliers ensures that Qualcomm's customers must depend on Qualcomm for their modem chip supply. *Id.* ¶¶ 4, 6. The FTC further alleges that Qualcomm's exclusive arrangements with Apple preclude other modem chip suppliers from working with "a particularly important cell phone manufacturer," which harms competition. *Id.* ¶ 8.[1]

Here, the FTC's motion for partial summary judgment concerns a discrete legal question: whether two industry agreements require Qualcomm to license its SEPs to other modem chip suppliers. Below, the Court first discusses cellular communications standards and SEPs. Then, the Court turns to the two specific industry agreements that the FTC contends require Qualcomm to license its SEPs to modem chip suppliers, including suppliers competing with Qualcomm.

1. Cellular Standard Setting Organizations

[1] For a more fulsome discussion of the FTC's allegations that Qualcomm's conduct harms competition, the Court refers the reader to the Court's prior Order denying Qualcomm's motion to dismiss the FTC's Complaint. ECF No. 133; *Fed. Trade Comm'n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2017 WL 2774406, at *1–7 (N.D. Cal. June 26, 2017).

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