

As resolved by the FTC in the 1353rd commissioners' meeting of 11 October 2017, Qualcomm Incorporated (*Qualcomm*), in spite of its monopoly in the baseband chip markets of cellular standards such as CDMA, WCDMA and LTE etc., had refused to license chip competitors, demanded the restrictive provisions be imposed and that no chip would be provided without a license agreement executed, and entered into clauses with specific enterprises providing for rebates in exchange for exclusive dealing etc. Impairing competition in the baseband chip markets, the acts involved in Qualcomm's modus operandi were tantamount to directly or indirectly preventing other enterprises by unfair means from competition. Qualcomm was thus fined TWD 23,400,000,000 for violating Subparagraph 1, Article 9 of the Fair Trade Act. In addition to being fined, Qualcomm was further required to cease to, inter alia: (1) apply the contract clauses which had been entered into with chip competitors requiring that sensitive distribution information be provided, including chip prices, trading parties, sales amount, and model number etc.; (2) apply the clauses of the component supply agreement which had been entered into with mobile phone manufacturers requiring that no chip be supplied without license; and (3) apply the contract clauses which had been entered into with the enterprises concerned providing for rebates in exchange for exclusive dealing. Qualcomm was also required to notify chip competitors and mobile phone manufacturers in writing within 30 days from the second day after its receipt of the decision. Within 60 days from the second day after its receipt of the notice, the chip component competitors and the mobile phone manufacturers may request Qualcomm to amend, or execute a new, patent and technology license agreement and other relevant agreements. Qualcomm shall conduct negotiations in good faith under FRAND obligation upon receipt of the request, covering, but not limited to, contract clauses which the other parties to the negotiations deem unfair based on the decision, without restricting such other parties from settling the dispute through court or by arbitration through an independent third party. Furthermore, Qualcomm shall report to the FTC both its negotiations with such other parties every six months from the second day after the receipt of the decision, and the completion of the aforementioned amendment or execution of new agreements within 30 days of such completion.

According to the FTC, investigations of the present case were initiated in mid-February, 2015. Taiwan is a major country in the production and marketing of mobile phones, with a complete supply chain involving multiple facets from the manufacture of chips, mobile phone OEM, and production and marketing of mobile phone brands. As such, the investigations at least covered a total of 20-plus enterprises, consisting of domestic and foreign manufacturers of mobile phones (including OBMs and OEMs), chip suppliers, and communication equipment enterprises. Not only were the competent authorities and research institutes concerning the industries involved consulted, but experience and insights were also exchanged with the competent competition law authorities of other countries.

As indicated by the FTC, cellular is a kind of wireless communications. To achieve its purposes of communication and data transmission, the end device (mobile phone) must conform to the communication standard governing such communication and data transmission and be equipped with built-in key parts and components available for communication and data transmission. Baseband chip is one such key part and component of cellular. The standards that were prevalent when Taiwan launched 3G cellular service in 2005 included CDMA and WCDMA, and became LTE when 4G communications service was introduced in 2014. Different generations of communications standards, though not substitutable, feature downward compatibility. Patent licenses of different technology standards are still required for the production of baseband chip products of various cellular standards. In the present case, the production and marketing of the baseband chips for cellular are closely linked to standard essential patents (*SEP*) of cellular standards such as CDMA, WCDMA and LTE etc.

Qualcomm owns substantive amount of SEPs related to cellular such as CDMA, WCDMA and LTE and at the same time it is also a monopolistic enterprise in the baseband chip markets of each cellular standard of CDMA, WCDMA and LTE. Qualcomm, in terms of its dominant market position related to vertical

integration and its advantage in the cellular standards, had refused to license cellular SEPs to the competitors, prevented the patents from being exhausted at the baseband chip level because of licensed competitors, and increased the transaction costs of the mobile phone manufacturers and competitors for the purpose of realization of payment of license royalty at the end device. In addition, Qualcomm had requested the mobile phone manufacturers that no baseband chip would be provided without a license agreement executed, which led to these enterprises' acceptance of license terms and conditions favorable to Qualcomm in consideration of their need for the chips. Qualcomm had further provided major trading parties with favorable royalties as incentives in exchange for exclusive dealing to prevent competitors from obtaining license, thus led to competitors' lose or decrease in trading opportunities or disadvantage of the price competition. Competitors of Qualcomm were forced to enter into an agreement with Qualcomm where they were required to provide sensitive information such as chip prices, trading parties, sale amount to Qualcomm for verification because competitors were not able to either avoid the Qualcomm's SEPs or obtain the license. Thus, Qualcomm's acts of refusal to license competitors and demand the restrictive provisions, refusal to supply the baseband chips without a license agreement executed and provision of favorable royalties in exchange of exclusive dealing with specific enterprises are interactive and interlocking, which all led to the trading party's decrease in need for competitors' baseband chips, exclusion of competitors from competition and securing Qualcomm's business transaction. It is supported by clear evidence that Qualcomm's conduct involved in its overall business model had damaged the competition in the baseband chip markets in order to secure, maintain and reinforce Qualcomm's dominant position in the baseband chip markets. Qualcomm's unlawful conduct had seriously caused an impact on the competition order in Taiwan.

The FTC also indicated that the duration of Qualcomm's unlawful conduct has lasted for at least 7 years, the amount of the royalty Qualcomm has received from the domestic enterprises approximately amounts to TWD 400 billion during the period of violation, and the amount of baseband chips that domestic enterprises have procured from Qualcomm approximately amount to US\$ 30 billion. Considering the turnover related to products or services during the period of violation is in excess of TWD 100 million, the FTC has determined that this case is a serious violation. After taking into consideration the motivation and purpose of Qualcomm's unlawful conduct, expected improper benefit of the conduct, the degree of the conduct's harm to market order of the baseband chip markets of cellular standards of CDMA, WCDMA and LTE, the duration of unlawful conduct's harm to market order, benefits derived on account of the unlawful conduct, scale, operating condition, turnover and market position of the enterprise, past violations, and remorse shown for the unlawful conduct and attitude of cooperation in the investigation, the degree of culpability and financial standing, etc, the TFTC has determined to impose fines in accordance with "*Regulations for Calculation of Administrative Fines for Serious Violations of Articles 9 and 15 of the Fair Trade Act*". The fine of this case is the highest amount imposed on the violator since the establishment of the FTC. The FTC hopes that this case could eliminate environment of unfair competition in the markets and facilitate the realization of good competition in the cellular industry.