

Korea Fair Trade Commission

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Anti-Monopoly Bureau

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KFTC imposes sanctions against Qualcomm's abuse of SEPs of mobile communications

- imposes 1.03 trillion won, the highest penalty surcharge ever handed to an individual company by the KFTC and remedies on unfair business model –

The Korea Fair Trade Commission (headed by Chairman Jeong Jae-chan, hereinafter referred to as the KFTC) has decided in the plenary session held on Wednesday, Dec.21.2016 to impose remedies along with a penalty surcharge amounts to 1.03 trillion won against the abuse of market dominance of Qualcomm Incorporated, QI* and its two affiliated companies** (hereinafter Qualcomm), which is a multinational chip maker and patent-licensing operator.

*A US-based Qualcomm Incorporated (QI) is doing patent-licensing business.

**Qualcomm Technologies Inc. (QTI) and Qualcomm CDMA Technologies Asia-Pacific PTE LTD (QCTAP) are doing modem chipset business for mobile communications.

Qualcomm is a SEP holder that declared FRAND commitments* to SSOs such as ITU and ETSI regarding mobile communications standard technology such as CDMA, WCDMA and LTE. Qualcomm is also vertically integrated monopolistic company that manufactures and sells modem chipsets. It carried out the following conducts breaching FRAND commitments.

*FRAND commitment refers to a promise that SEP holders will license to the patent users in a fair, reasonable and non-discriminatory manner.

- ① Qualcomm refused or restricted the licensing of mobile communication SEPs (Standard Essential Patents) that are essential in manufacturing and selling the chipsets despite the request by rival modem chip makers.

- ② Qualcomm coerced mobile phone makers to sign unfair license agreements by linking the chipset supply with patent license contracts, using its market position as a leveraging tool in its negotiations and circumventing FRAND commitments.
- ③ Qualcomm only offered portfolio license to mobile phone makers and forced unilaterally-decided licensing terms without a fair compensation calculating process. Also, it coerced mobile phone makers to accept unfair agreements such as making them provide patents for free.

The KFTC concluded the above conducts by Qualcomm fell under the abuse of market dominance, and to impose remedies as follows;

- Upon the request by the modem chipset manufacturers, Qualcomm shall sincerely be engaged in negotiations when signing the license contracts of mobile communications SEP.
- Prohibit the coercion of undue license contracts taking the supply of chipsets as hostage by linking chipset sales with patent license contracts.
- Upon the request by mobile phone companies, renegotiation shall be guaranteed on the undue license contracts that have been signed beforehand, and orders restraining further violations are to be imposed against coercion of general license and free cross-grants in the future.

The scope of companies subject to remedies is as follows;

	Enterprisers subject to remedies
mobile phone makers	(1) mobile phone companies headquartered in Korea, (2) mobile phone companies selling phones in Korea, (3) companies supplying mobile phones to companies which sell in Korea
chipset makers	(A) chipset manufacturers headquartered in Korea, (B) enterprisers supplying chipsets to companies falling under the above (1) or (3)

* Considering international comity, in case when foreign competition authorities or courts decide in contrast with these remedies so that Qualcomm cannot comply with both at the same time, it may request for an additional review.

After completing the investigation on the illegal conduct described above, the KFTC sent an examination report to Qualcomm on Nov.13 last year, and held a total of seven hearings including the two regarding the consent decree and conducted a thorough scrutiny since this July.

Moreover, the KFTC has examined the case in a multi-dimensional way by inviting not only Korean companies such as Samsung and LG but also other foreign ICT companies including Apple (US), Intel (US), Nvidia (US), MediaTek (Taiwan), Huawei (China) and Ericsson (Sweden).

It is meaningful in that the KFTC imposes measures on Qualcomm's unfair business model that has been coercing unilateral licensing terms to mobile phone manufacturers, while refusing to license to competitors in order to strengthen its monopoly power in the patent license and chipset market.

In particular, the measure is to turn 'a closed ecosystem that allows Qualcomm to be an exclusive beneficiary' into 'an open ecosystem where anyone can enjoy the incentives of innovation that one has achieved'. It is expected that this imposing of measures will be an opportunity to win back the fair competition in the mobile communications industry.

※ *This is a summary of the Korean version of the press release, and the final version will be uploaded any time soon.*