Plaintiff's Opening Statement

Federal Trade Commission

v.

Qualcomm Inc.

January 4, 2019

Why Are We Here?

- Qualcomm’s longstanding corporate policies harm competition and consumers by impairing the opportunities of rivals without furthering competition on the merits.

- The FTC Act declares unlawful “unfair methods of competition,” which include practices that violate the Sherman Act.

Qualcomm's Anticompetitive Practices

- No-License/No-Chips
- Incentive payments
- Refusal to license rivals
- Exclusive deals

Higher royalties for Qualcomm on handsets with rival chips

Weakened rivals

No-License/No-Chips

Qualcomm

"**To buy a Qualcomm chip**, an OEM **must have a license** to make and sell devices that implement at least one of the technologies enabled by the chip"

Pretrial Brief, Dec. 28, 2018, at 6

Qualcomm

"Q. Does Qualcomm have a policy of selling baseband processors only to companies that have a license to Qualcomm's patent portfolio?
A. **Typically yes.**"

Steven Mollenkopf (CEO) Deposition, Mar. 21, 2018, 37:02–05

No-License/No-Chips: Embodied in Component Supply Agreements ("CSAs")

Qualcomm

"Qualcomm **does not sell Baseband Processor Chipsets to unlicensed cellular device manufacturers**. Qualcomm generally has the right to terminate its Baseband Processor Chipset supply agreements in the event the buyer is in default under its license agreement . . . ."

Response to Apple's Interrogatory No. 13, Sept. 29, 2017

Qualcomm

"Under our agreements, **we do not ship [modem chips] to non-licensees** or to licensees who are not performing their obligations."

Irwin Jacobs, Co-Founder and Former Chairman,
Email, Aug. 24, 2001, CX6729

Qualcomm Recognized the Antitrust Ramifications of Its Conduct

QUALCOMM

StrategicPlan Review July 9, 2012

Sales to Unlicensed Entities or Customers Claiming Exhaustion

Issue: Sales of chipsets to unlicensed entities, licensed entities not paying royalties under their agreements (e.g., Chinese licensees re TD-SCDMA), or those claiming exhaustion despite the terms of our supply and license agreements present significant risks to the licensing program

- Such sales present the risk of a finding of patent exhaustion in the event of a dispute over royalties
- If we cease supply of chips to current customers they may assert antitrust claims seeking damages/fines and continued supply

Strategy

- Develop a plan of communication/action that maximizes our ability to defend against the above claims while ceasing supply when necessary
- TD-SCDMA: require a pre-payment of royalty when an unlicensed customer or a Chinese licensee refusing to pay royalties on TD-SCDMA product sales buys TD-SCDMA-only chips
- Sony Mobile

CX6974

Qualcomm Threatened Chip Supply During Negotiations

Nanfen Yu – Senior Legal Counsel, Huawei

HUAWEI

"As far as I can remember, they said if we do not extend CDMA license agreement, they would stop supplying the chipset to us, and it would be a disruption of Huawei's business."

Nanfen Yu Deposition, Mar. 14, 2018, 54:18–24

Qualcomm Threatened Chip Supply During Negotiations

Ira Blumberg – VP of Intellectual Property, Lenovo

lenovo

A. **[W]hen we objected to some of the other terms in this license and suggested we were contemplating terminating it, the response we got from Qualcomm was, "Feel free, but then we won't sell you any more chips."**

Q. So Qualcomm told you if you terminated the license, it wouldn't sell Lenovo any more chips?

A. **That's correct.**

Ira Blumberg Deposition, Apr. 20. 2018, 45:05–16

“Carrots” and “Sticks”

Lenovo 4G Strategy

March 14, 2013

FOIA CONFIDENTIAL TREATMENT REQUESTED BY QUALCOMM
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

QUALCOMM | TECHNOLOGY LICENSING

Carrots and Sticks

Carrots	Sticks
Waive 4G upfront license fee	Open Audit findings
Offer Strategic Fund	$1.4M late fees as of 2/20/13
Offer MDF	Product hold on Chip shipments. QMC has 378.5K MSMs on backlog scheduled to ship by 4/9/13.
Offer Chip rebate	Send breach letter for failure to provide records for audit.
Use Qualcomm marketing relationships to assist Lenovo internationally particularly for Windows Mobile 8.0.	QCT incentives owed $11.2M
Select Lenovo as the lead customer on the MSM8226 (QMC decision).	

CX5210

Splitting the Chip and Licensing Businesses Would Deprive Qualcomm of Licensing Leverage

QUALCOMM Attorney Client Privileged
Prepared at the Direction of Counsel

Berlin July 2007

Spin: Arguments For & Against

- Can hurt QTL's leverage to negotiate 3G renewals and 4G (OFDMA) licensing deals (ie. LG)

CX7279

QUALCOMM Proprietary & Confidential 2

Qualcomm

Qualcomm's Chip Business Allows It To Collect Higher Royalties from Handset Manufacturers

Qualcomm

To: Rosenberg, Don[djr@qualcomm.com]; Jacobs, Paul[pjacobs@qualcomm.com]
From: Altman, Steve
Sent: Wed 2/27/2008 9:00:04 PM
Importance: Normal
Subject: Berlin discussion
Received: Wed 2/27/2008 9:00:00 PM

"If you consider the fact that the only companies that have attacked us today are companies that essentially purchase little or no ASICs from us, you can understand how the combination of QCT with QTL greatly enhances QTL's success. As CDMA2000 grows and OEMs desire to participate in it to grow their market share, OEMs will remain reliant on us for continued supply and will need to maintain positive relationships with us. . . . If we were two companies, they would rely entirely on QCT, but would have no incentive NOT to attack QTL."

CX7035

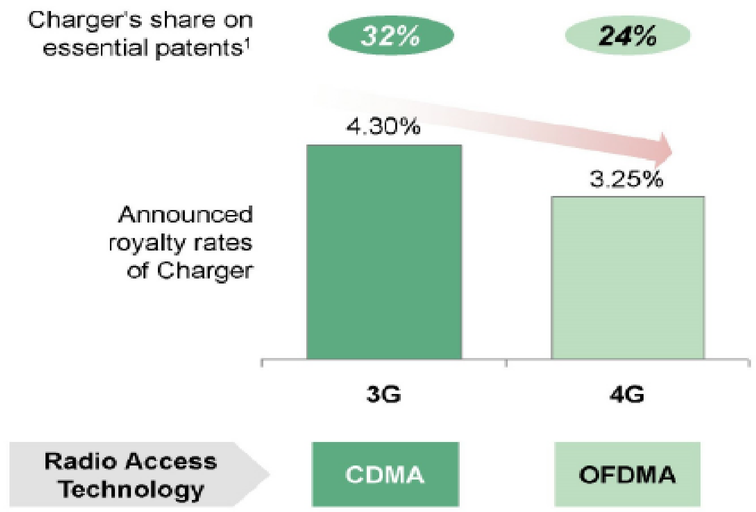
Qualcomm Recognized that Separation from QCT Would Reduce QTL Royalties

2 Standard setting

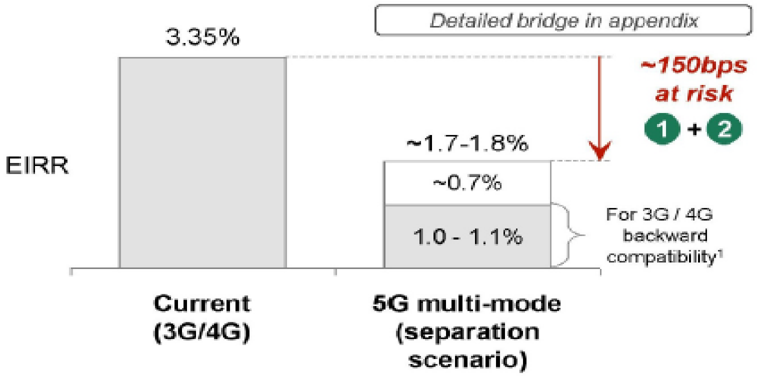
ATTORNEY CLIENT PRIVILEGED – STRICTLY CONFIDENTIAL

Separation likely to risk Tulane 5G royalty rates

Charger's announced royalty rates have declined with each generation evolution



Exposure to risk of greater royalty rate decline in 5G in case of separation



1. **Losing leverage of CalTech (modem) in SSOs**
   - Less attractive early R&D partner to other players given lack of operation
2. **No CalTech (modem) contribution to Tulane's IP**
   - CalTech contribution to Tulane's patents ~43%[2]

Could materially impede future licensing revenue and represents downside of up to $20B+ on NPV basis[3]

1. The NDRC ruling provides a precedent where pre-generation patents are valued at 30% of the total royalty stack; 2. Tulane's strategically important filing to US during FY14-FY15
3. Derived by fixing Terminal EIRR to 1.8%; Sources: Financial statements of major SEP holders; 2015 NDRC ruling against CalTech; Tulane press release; Bloomberg; EEtimes; IEEE; Thomson Innovation; Netmanias; BCG analysis

Project Phoenix BCG Pre-Read 05Nov15.pptx

THE BOSTON CONSULTING GROUP

Draft—for discussion only

CX5429

FOIA CONFIDENTIAL TREATMENT REQUESTED BY QUALCOMM
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Q2014FTC02801505
Q2017MDL1_02634537

CX5429-028

Qualcomm's Monopoly Power in CDMA and Premium LTE Chips

- CDMA-Compliant Chips
  - No acceptable alternative
  - High market share
- Premium LTE Chips
  - No acceptable alternative
  - High market share

OEMs Agreed to Qualcomm's Licenses Because They Needed Modem Chips

Injung Lee – Senior Vice President, Samsung

SAMSUNG

"Qualcomm [was] our sole supplier as to chipsets and, further, without a license from them, there is no supply as to chipsets. That meant that Qualcomm enjoyed a much stronger position, a much stronger leverage over Samsung in negotiating."

Injung Lee Deposition, Mar. 15, 2018, 235:21-236:1

Qualcomm’s FRAND Commitments

TIA®

ADVANCING GLOBAL COMMUNICATIONS

atis

Competitors Asked for Licenses; Qualcomm Said No

Derek Aberle – President, Qualcomm Incorporated

Qualcomm

Q. Have ASIC manufacturers requested exhaustive licenses from Qualcomm?

A. Yes.

Q. Which ones?

A. I think at one point, Intel did. Broadcom. MediaTek. Samsung. That's all I can recall at this point.

Derek Aberle Deposition, Mar. 27, 2018, 105:20–106:01

intel BROADCOM MEDIATEK SAMSUNG

Exclusive Agreements to Shut Out Competitors

```
>
> -----Original Message-----
>From: Mollenkopf, Steven
>Sent: Sunday, August 29, 2010 05:02 PM Pacific Standard Time
>To: Jacobs, Paul; Altman, Steve; Aberle, Derek
>Cc: Rosenberg, Don; Mollenkopf, Steven
>Subject: Re: Response to our proposal
>
>
>Attached is the deck sizing it from QCT s
>based on my conversation with Jeff on Fr
>but this is pretty good. It includes can
>
>It is not an aggressive view and you can
>2). They become a Samsung sized customer
>
>In addition, there are significant strat
>there will be enough standalone modem vo
>without that slot.
>
>Also, I understand the Ericsson may be p
>full indemnity on Qualcomm patents.
>
>steve
```

Qualcomm

"In addition, there are significant strategic benefits as it is unlikely that there will be enough standalone modem volume to sustain a viable competitor without that slot."

Steve Mollenkopf, CEO

CX5348

2011 and 2013 Agreements: Exclusivity Plus Penalties

- Qualcomm provided Apple large payments conditioned on exclusivity
  - 2011 and 2013 Transition Agreements—Billions in payments at risk if Apple used a non-Qualcomm modem in any new product (2011–2016)
- Agreements allowed Qualcomm to “claw back” past payments if Apple used a non-Qualcomm modem chip

DAY ONE

Qualcomm

Eric Reifschneider

- Vice President and General Manager of QTL, 2012–2016

DAY ONE

Qualcomm

Dr. Paul Jacobs

- CEO, 2005–2014
- Chairman of the Board, 2009–2018

DAY ONE

Ira Blumberg

- Vice President of Intellectual Property

lenovo

Nancy Yu

- Senior Legal Counsel

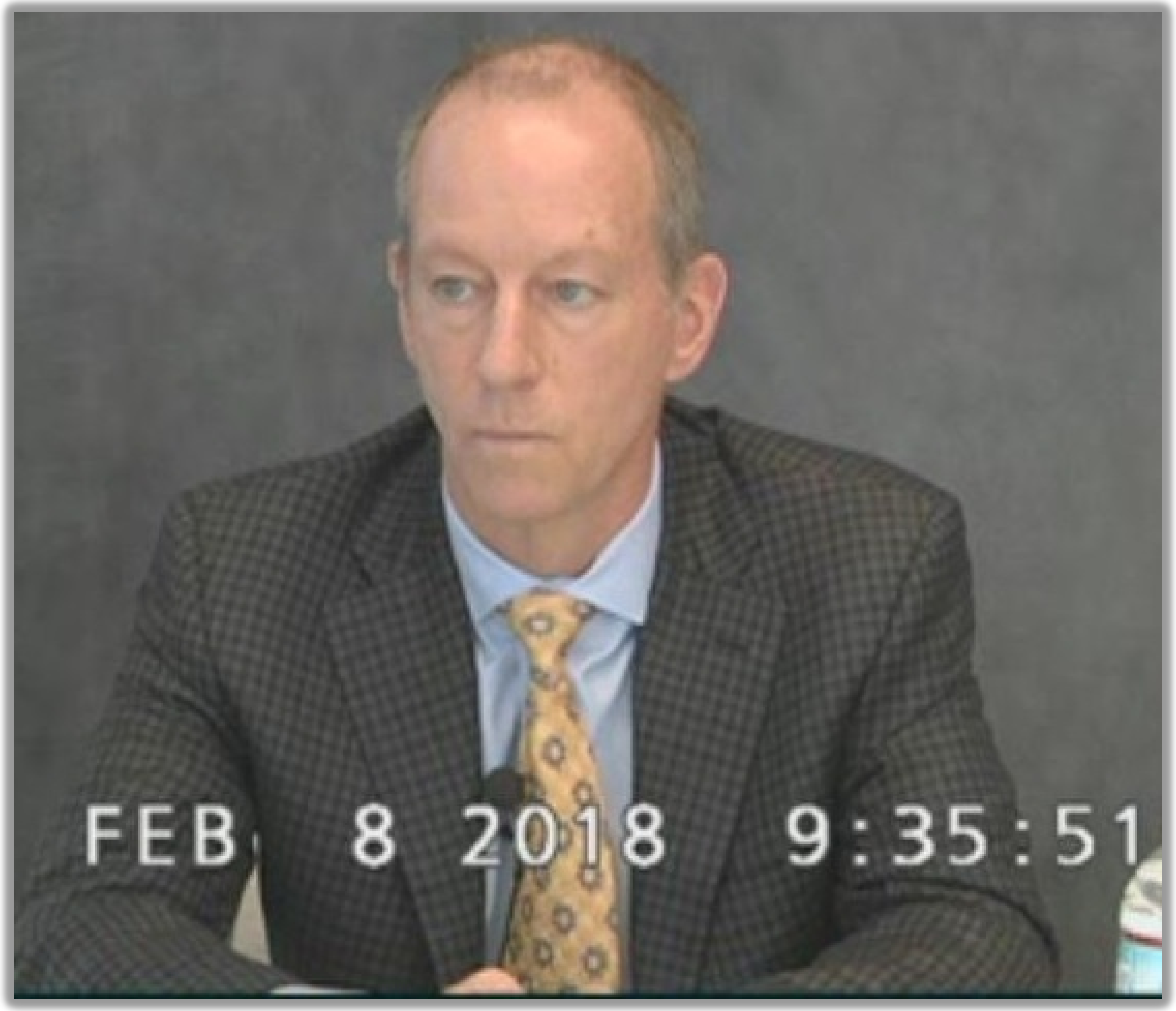
HUAWEI

DAY ONE

Qualcomm

David Wise

- Senior Vice President of Finance and Treasurer



DAY TWO

Steve Altman

- "Architect"
- Vice Chairman, 2011–2013
- President, 2005–2011

Qualcomm

Derek Aberle

- President, 2014–2017
- President of Licensing, 2011–2014

Qualcomm

Finbarr Moynihan

- General Manager, Corporate Sales (International)

MEDIATEK

OEMs and Modem-Chip Suppliers

OEMs

HUAWEI

MOTOROLA

SAMSUNG

LG

BlackBerry

Modem-Chip Suppliers

intel

VIA

BROADCOM

Richard Donaldson: Skewed License Negotiations

Richard Donaldson

- 30+ years of experience as a patent licensing attorney in the semiconductor industry
- Negotiated hundreds of licenses, including those covering SEPs

- Qualcomm's "no license-no chips" policy gave Qualcomm **significant leverage** in licensing negotiations.
- Qualcomm **used its leverage** to obtain favorable license terms.
- OEMs **agreed to licensing terms that they otherwise would not have accepted**.

Michael Lasinski: Non-FRAND Royalties

Michael Lasinski

- Expert in financial aspects of IP, including methodologies for calculating fair royalties

Qualcomm's historical royalty rates are

- far too high to be reasonable;
- disproportionate to the effective rates charged by other licensors of cellular SEPs, given indicators of portfolio strength; and
- inconsistent with Qualcomm's FRAND commitments.

Carl Shapiro: Harm to Competition and Consumers

Professor Carl Shapiro

- Member, President's Council of Economic Advisors
- 2x Deputy AAG for Economics, U.S. DOJ Antitrust Division

- Qualcomm's market power in properly defined antitrust markets for CDMA and Premium LTE Modem Chips
- Supra-FRAND royalty acts as **surcharge**, or tax, on transactions taking place between an OEM and a Qualcomm rival
- Supra-FRAND royalty **does not act as a surcharge on Qualcomm sales**, since the royalties are received by Qualcomm
- Surcharge harms competition and consumers, because it **(a) weakens Qualcomm's rivals,** and **(b) raises the "all-in" price of modem chips**.

Qualcomm Has No Procompetitive Justifications

Qualcomm "justifications" for no license-no chips:

- "To avoid legal risks . . . such as claims of exhaustion or implied licenses."
- "To avoid helping companies who do not respect Intellectual Property Rights"
- "To ensure that Qualcomm can recover a return on its investments"

Qualcomm Proposed Findings of Fact and Conclusions of Law, Dec. 6, 2018, at 33-34.

Translation:

- Without no license-no chips, OEMs would bring legal claims that could lead to lower royalties.
- Adjudicating SEP royalties in court does not show Qualcomm sufficient "respect"
- Qualcomm is entitled to a return on its investments in excess of the fair and reasonable royalties that Qualcomm could obtain from the judicial system

All of Qualcomm's justifications amount to assertions that Qualcomm is entitled to greater royalties than would be ordered by a court— but avoidance of the patent regime is not procompetitive

An Injunction Is Warranted

- Qualcomm’s conduct has spanned **more than a decade**
- Conduct reflects an **entrenched corporate policy**; not aberrant acts
- There has been **no disavowal** of the conduct by Qualcomm
- Internal documents suggest **intent to continue same policy for the same effect in 5G**