

NDRC Ordered Rectification and Fined Qualcomm RMB6 Billion for Monopolistic Conducts

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The National Development and Reform Commission (“**NDRC**”) recently sanctioned Qualcomm Incorporated (“**Qualcomm**”) according to laws for its abuse of dominant market position to eliminate or restrict competition, ordered Qualcomm to cease the relevant illegal activities and imposed on it a fine equalling to 8% of its sales in China in 2013, i.e. RMB6.088 billion.

In November 2013, NDRC initiated the anti-monopoly investigation on Qualcomm based on complaints received. In the process of the investigation, NDRC conducted in-depth investigation into dozens of domestic and international cell phone manufacturing enterprises and baseband chip manufacturers, acquired evidence on Qualcomm’s price monopoly and other monopolistic conducts, fully solicited Qualcomm’s statements and defences, and analysed and assessed on whether the relevant activities of Qualcomm constitute the abuse of market dominance under the Anti-Monopoly Law of China (the “**AML**”).

Based on the investigation and the evidence obtained and through analysis and assessment as described above, it is found that Qualcomm has a dominant position in the markets of standard-essential patents (“**SEPs**”) licensing in respect of CDMA, WCDMA and LTE wireless communication and the market of baseband chips, and that Qualcomm has engaged in the following conducts in abuse of its dominant market position:

- 1. Charged unfairly high patent licensing fees.** Qualcomm refused to provide Chinese enterprises with its patent lists when granting license to them and charged licensing fees for expired patents which are always included in its patent portfolio. In the meantime, Qualcomm requested a free cross-license of the Chinese licensees’ own relevant patents, while refused to deduct the value of such cross-licensed patents from its licensing fees or offer another consideration. In addition, for Chinese licensees who have been forced to accept Qualcomm’s packaged licensing of non-SEPs, Qualcomm charged royalties on the basis of the net wholesale price of the device while imposing a relatively high royalty rate. A combination of these factors resulted in the excessively high royalties.
- 2. Bundled sales of non-SEPs in relation to the wireless communication without justifications.** Qualcomm did not distinguish or offered separate licenses in respect of its SEPs and non-SEPs in relation to the wireless communication, which are of a different nature; instead, it took advantage of its dominant position in the market of licensing of SEPs in relation to the wireless communication to bundle the licensing of non-SEPs in relation to the wireless communication. Some of Chinese licensees have been forced to obtain the license of non-SEPs in relation to the wireless communication from Qualcomm.

TRANSLATION BY LINKLATERS GREATER CHINA TRANSLATION TEAM

Working translation for information purposes only; only the Chinese original text is authentic.

While every effort has been made to ensure the accuracy of our translations, it is not possible to guarantee an exact English translation of Chinese legal and regulatory provisions since each language has its own grammatical structures, embodies different legal and cultural concepts and is open to different interpretations.

- 3. Imposed unreasonable restrictions on the sales of baseband chips.** Qualcomm conditioned its supply of baseband chips to Chinese customers on the signing without challenging a patent-license agreement by such customers. If a potential licensee did not sign the patent-license agreement including the above unreasonable terms, or the licensee disputed such patent-license agreement and brought actions, Qualcomm would refuse to supply baseband chips to it. Since Qualcomm has a dominant position in the market of baseband chips and the Chinese licensees highly relied on its baseband chip products, Qualcomm imposed unreasonable conditions on the sales of baseband chips and forced Chinese licensees to accept unfair or unreasonable patent licensing terms.

Qualcomm's above conducts have eliminated or restricted the market competition, impeded and restrained the technology innovation and development, harmed the interest of consumers, and violated the provisions under the AML in relation to the prohibition on the business operators with a dominant market position from charging unfairly high prices in the sales of products, bundling sales of products without justifications and imposing unreasonable trading conditions.

In the process of the anti-monopoly investigation, Qualcomm was cooperative and voluntarily proposed a package of rectification commitments in respect of Qualcomm's certain SEPs in relation to the wireless communication, which include: (1) to charge royalties at the rate of 65% of the net wholesale price of the cell phones sold for being used within China; (2) to provide patent lists when granting license to Chinese licensees and not to charge licensing fees for expired patents; (3) not to request a free cross-license from Chinese licensees; (4) not to bundle the non-SEPs when licensing the SEPs in relation to the wireless communication without justifications; and (5) not to request Chinese licensees to enter into a patent-license agreement including unreasonable conditions when selling baseband chips, and not to condition the supply of baseband chips to Chinese licensees on no challenging such patent-license agreement. The rectification commitments proposed by Qualcomm meet the requirements of NDRC. Qualcomm also indicated that it will continue to increase the investment and pursue a better development in China. NDRC welcomes Qualcomm's continued investment in China and supports Qualcomm in charging reasonable royalties for the use of its patented technologies.

Since Qualcomm's monopolistic conducts in the abuse of market dominance were severe in nature, implemented in a deep degree and persisted for a long time, NDRC, while ordering Qualcomm to cease its illegal activities, also imposed a fine on Qualcomm equalling to 8% of its sales in China in 2013. This instance of anti-monopoly law enforcement deters Qualcomm's monopolistic conducts, maintains the fair competition of the market and protects the interest of consumers.