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Antitrust clearance for licensing of patents for third generation mobile services

Today the European Commission has granted antitrust clearance to a set of agreements that is aimed at giving third generation ("3G") mobile equipment manufacturers better access to patents. Improved access to patents is essential for a rapid introduction of 3G mobile services in Europe. As in the case of 3G network sharing, the Commission welcomes industry initiatives that accelerate the introduction of 3G mobile services for European customers, provided that such initiatives do not distort competition with respect to different 3G mobile technologies. In the present case, it appears unlikely that the proposed agreements will restrict competition between different 3G mobile technologies. However, given the novelty of the different 3G technologies involved, any significant change in the factual or legal situation would require re-assessment of the arrangements under the competition rules.

Background

The new 3G mobile technologies are expected to bring about a plethora of multimedia and high-speed voice and data services to mobile phone users.

Manufacturers who want to produce 3G equipment need to comply with technical specifications that are set forth in the so-called IMT-2000 3G standard. The IMT-2000 standard comprises five different technologies, each of which can be used to produce 3G equipment.

In order to produce 3G equipment manufacturers need to have access to those patents that are indispensable for using a particular technology. Those patents are usually referred to as "essential patents".

However, a patent that is essential for using a particular technology may still compete with a patent that is essential for using another technology if the two technologies compete. Therefore, in assessing licensing agreements for 3G equipment the Commission must ensure that competition between those essential patents that compete is maintained.

The notified agreements

On 14 July 2000 the notifying parties¹, who refer to themselves as the 3G Patent Platform Partnership ("3G3P") submitted a set of agreements dealing with the above-mentioned 3G essential patents. In particular, the agreements set up procedures to identify whether a patent is essential, to streamline the licensing of those who are deemed essential and to reduce the overall licence fees to be paid for the entire portfolio of essential patents.

Maintaining competition

In order to safeguard competition between potentially competing essential 3G patents for 3G different technologies, the parties have agreed to modify the initial structure of the agreements and establish five separate sets of arrangements, one for each technology, instead of combining all essential patents in one single platform.

In addition, clearance under antitrust rules requires that each licensing agreement is limited to essential patents only, that the agreements do not foreclose competition in related or downstream markets, licensing should be carried out under non-discriminatory terms and competitively sensitive information is not exchanged. Furthermore, 3G manufacturers should not be forced to pay for patents rights other than those that they really need. Finally, the licensing arrangements should not discourage further R&D and innovation in the mobile communications sector.

The system of five separate 3G patent licensing arrangements for each of the five 3G technologies meets the above criteria and is therefore unlikely to restrict competition and innovation.

Finally, the Commission has also taken into account that a number of major 3G essential patent holders (among those Ericsson, Nokia, Motorola, and Qualcomm) are not party to the notified arrangements. Given the significant number of essential patents that will remain outside of the arrangement, the Commission has concluded that it appears unlikely that the notified agreements will be capable of restricting the competitive offer of 3G mobile technologies and 3G services to consumers.

The Commission has therefore issued a negative clearance administrative letter ("comfort letter"). However, the scope of this letter is limited to the notified agreements and does not extend to any other industry initiatives or decisions of 3G standard setting bodies and industry working groups.

¹ Alcatel, Cegetel, Electronics and Telecommunications Research Institute Korea ("ETRI"), France Telecom, Fujitsu, Royal KPN N.V., LG Information and Communications, Matsushita, Mitsubishi Electric, NEC, NTT DoCoMo, Robert Bosch GmbH, Samsung Electronics, Siemens AG, SK Telecom, Sonera Corporation, Sony and Telecom Italia Mobile.