Opinion of the Advisory Committee on mergers given at its meeting of 8 January 2018 regarding a draft decision relating to Case M.8306 — Qualcomm/NXP Semiconductors

Rapporteur: Slovakia

(2018/C 113/08)

Concentration

1. The Advisory Committee agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]).

2. The Advisory Committee agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.

4. In particular, the Advisory Committee agrees that the following product markets should be distinguished:

   (a) The market for LTE baseband chipsets, meaning multi-mode baseband chipsets that are compliant with LTE, UMTS and GSM cellular standards, excluding wireless connectivity standards, single-mode BCs (that is, compliant only with one cellular standard) and captive production of baseband chipsets.

   (b) The market for NFC chips.

   (c) The market for SE chips.

   (d) The market for combined NFC/SE solutions.

   (e) The market for transit service technologies.

   (f) The market for Standard Essential Patents ('SEPs').

   (g) The market for non-Standard Essential Patents (non-SEPs).

Competitive assessment

5. The Advisory Committee agrees with the Commission's assessment that the merged entity's strategy of increasing royalties for MIFARE or ceasing the licensing of MIFARE altogether to competitors, in addition to a mixed bundling conduct applied to LTE baseband chipsets, NFC chips and MIFARE-enable chips, would have the effect of foreclosing competitors of baseband chipsets and NFC and SE chips, and therefore the Transaction gives rise to a significant impediment to effective competition in the markets for LTE baseband chipsets and NFC and SE chips.

6. The Advisory Committee agrees with the Commission's assessment that the merged entity's strategy of degradation of interoperability would compound the foreclosure effects generated by the increase of MIFARE royalties or ceasing the licensing of MIFARE altogether to competitors, in addition to a mixed bundling conduct applied to LTE baseband chipsets, NFC chips and MIFARE-enable chips.

7. The Advisory Committee agrees with the Commission's assessment that the merged entity will likely leverage the combined NFC IP portfolio in order to impose disproportionately higher royalty rates for the merged entity's NFC patents compared to total royalties which the Parties could have extracted for the relevant patents in the absence of the Transaction and therefore the Transaction will give rise a significant impediment to effective competition in the relevant technology markets.

Remedy

8. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 12 December 2017 remove the significant impediment to effective competition in relation to the markets for LTE baseband chipsets and NFC and SE chips.

([1]) OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation').

9. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 12 December 2017 remove the significant impediment to effective competition in relation to the markets for NFC patents.

10. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market in accordance with Articles 2(2) and 8(2) of the Merger Regulation.