



PRESS RELEASE No 142/24

Luxembourg, 18 September 2024

Judgment of the General Court in Case T-671/19 | Qualcomm v Commission

Abuse of a dominant position: the General Court largely upholds the fine imposed on Qualcomm

The General Court sets the amount of the fine at approximately € 238.7 million as opposed to the € 242 million imposed by the Commission

Qualcomm is a US company established in 1985 operating in the field of cellular and wireless technologies. Qualcomm's chipsets are sold (and its system software is licensed) to companies which use them in mobile phones, tablets, laptops, data modules and other consumer electronics.

On 30 June 2009, the British company Icera lodged a complaint with the European Commission against Qualcomm, revised and updated version on 8 April 2010, on the basis of which the Commission initiated its investigation. In 2012, the intervener, the US company Nvidia, which had acquired Icera in May 2011, supplied further information, supplementing the complaint and making allegations of predatory pricing against Qualcomm.

Between June 2010 and July 2015, the Commission sent a number of requests for information to Qualcomm, Icera, Nvidia and other players in the baseband chipset sector. In the years following, the Commission finalised its investigation, making additional requests for information ¹, sending statements of objections and organising hearings.

On 18 July 2019, the Commission adopted the contested decision, imposing a fine amounting to € 242 042 000 on Qualcomm.

The Commission defined the relevant market as slim and integrated baseband chipsets compliant with the Universal Mobile Telecommunications System (UMTS) standard. The Commission found that Qualcomm held a dominant position on that market at a worldwide level, at least from 1 January 2009 to 31 December 2011.

The Commission concluded that Qualcomm had abused its dominant position by supplying, during the relevant period, certain quantities of some of its UMTS chipsets to two of its key customers, namely Huawei and ZTE, below cost prices, with the intention of eliminating Icera, its main competitor at the time.

Qualcomm requested the Court to annul, or in the alternative, to reduce substantially the amount of the fine imposed and to that end raised fifteen pleas in law based in particular on procedural irregularities, including the excessive duration of the investigation, the alleged overly brief nature of certain notes taken during interviews not recorded by the Commission with third parties, manifest errors of assessment, of fact and of law, as well as a failure by the Commission to state reasons regarding a number of aspects of the decision in question.

In its judgment, the Court makes a detailed examination of all the pleas put forward by Qualcomm, rejecting them all in their entirety, with the exception of a plea concerning the calculation of the amount of the fine, which it finds to be well founded in part.

In particular, the Court rejects, amongst others, Qualcomm's complaint that the Commission ought to have applied the 'small but significant and non-transitory increase in price' test in order to define the relevant market for the purposes of applying Article 102 TFEU, in so far as that test is not the only method which the Commission may use in order to define the relevant market.

The Court also rejects Qualcomm's criticisms regarding the cost benchmarks used by the Commission in its price-cost test, in so far as the cost benchmarks chosen were more favourable to Qualcomm and because the Commission chose to ascertain whether Qualcomm intended to eliminate a competitor.

As regards the Commission's finding regarding the elimination of Icera from the market, the Court points out that, contrary to Qualcomm's allegations, the Commission is not required, when examining whether an undertaking in a dominant position charged predatory prices, to examine whether the share of the market covered by the contested practice is of sufficient magnitude for that practice to have anticompetitive effects.

As regards the arguments that the 'as-efficient competitor' test was not applied on the relevant market, the Court observes that, in essence, in the context of an investigation into potential predatory prices, the analysis by which the Commission compares, as in the present case, the prices charged by an undertaking in a dominant position with some of its costs for the purposes of assessing whether that undertaking priced below average total costs (ATC) but above average variable costs (AVC) already includes an 'as efficient' competitor analysis.

As regards the finding in the contested decision regarding Qualcomm's intention to eliminate Icera from the market in question, the Court states that the Commission substantiated that finding by providing both direct and indirect evidence.

Finally, as regards the calculation of the amount of the fine, the Court finds that, in the contested decision, **the Commission departed, without justification, from the methodology laid down in its 2006 guidelines.**

Therefore, in the exercise of its unlimited jurisdiction, the Court sets the amount of the fine imposed on Qualcomm at € 238 732 659.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text, and as the case may be the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ On 13 June 2017, Qualcomm lodged an action for annulment before the General Court against the Commission's decision of 31 March 2017 concerning a request for information. It also lodged an application under Articles 278 and 279 TFEU seeking, primarily, the suspension of that

decision or, in the alternative, the adoption of interim measures in that regard. By order of 12 July 2017, Qualcomm and Qualcomm Europe v Commission ([T-371/17 R](#)), the President of the General Court dismissed the application for suspension and, by judgment of 9 April 2019, Qualcomm and Qualcomm Europe v Commission ([T-371/17](#)), the General Court dismissed the application for annulment of that decision. Qualcomm's appeal seeking the annulment of that judgment was dismissed in its entirety by the Court of Justice in its judgment of 28 January 2021, Qualcomm and Qualcomm Europe v Commission ([C-466/19 P](#)).