



KFTC's Qualcomm order could lead to 'chaotic' enforcement scenarios, US judge says

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IN BRIEF

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In December, Korea's Fair Trade Commission imposed monetary fines of 1.03 trillion won (\$865 million) over allegations of unfair patent-licensing practices. The agency also required Qualcomm to license its worldwide patents to any component makers or device manufacturers that sell in Korea. Qualcomm previously only licensed patents at the device level.

For its part, the KFTC has argued that its remedies are meaningful and justified because they would help Qualcomm's industry peers compete on merit, based on technology, price and quality. Further, mobile carriers would be guaranteed opportunities to negotiate fair, reasonable and non-discriminatory, or Frand, licensing conditions on a level playing field with Qualcomm without worrying about chipset distribution.

"If this becomes a common phenomenon, it's going to be really chaotic," US Circuit Judge Doug Ginsburg of the US Court of Appeals for the DC Circuit said at an event* Monday. "The KFTC has imposed worldwide restraints on Qualcomm's enforcement of its patent portfolio, all of which conflicts with any basic notions of comity. ...Both the European Commission, DG Comp, and NDRC in China have very clearly limited their remedies to patents registered in their jurisdiction and only with respect to licensing to parties in their jurisdiction, which it seems to me is exactly as it should be."

Qualcomm is appealing the KFTC's order to the Seoul High Court.

Ginsburg, an antitrust expert who authored the DC Circuit's opinion in the Microsoft case, spoke at an event sponsored by Ericsson, Nokia and Qualcomm, among others.

Speaking on the same panel, Alan Devlin, the acting deputy director in the Bureau of Competition at the US Federal Trade Commission, didn't comment directly on the KFTC case, but said agencies should take care in crafting remedies to ensure they don't have extraterritorial impacts.

"We should be awful careful about extraterritorial reach," said Devlin, who said he was speaking in a personal capacity and not on behalf of the FTC. "We don't want a situation where the first mover gets to set global law."

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