



Observers question FTC claims in Qualcomm lawsuit

Alex Wilts 24 February 2017

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Qualcomm

Observers yesterday said the Federal Trade Commission's recent complaint against Qualcomm is unclear, and questioned the legal theory the agency used to bring the case over the chipmaker's allegedly anticompetitive patent licensing practices.

Three days before President Donald Trump was set to take office in January, the FTC voted to [sue](#) Qualcomm despite opposition from sole remaining Republican commissioner Maureen Ohlhausen. Now the acting head of the agency, Ohlhausen has said that the enforcement action is based on a flawed legal theory that lacks economic and evidentiary support.

Speaking on a panel yesterday at George Mason University's annual antitrust symposium, Koren Wong-Ervin, director of the school's Global Antitrust Institute, said the agency's complaint primarily boils down to excessive pricing allegations, which are not actionable under US antitrust law.

"I'm confused by the complaint," Wong-Ervin said. "It's not clear to me what it is."

Wong-Ervin pointed out, along with other panelists, that the agency's allegations appear to include a tying claim even though tying is not specifically mentioned in the complaint.

In the [suit](#), the FTC said "Qualcomm's 'no license-no chips' policy dramatically increases customers' costs of challenging Qualcomm's preferred license terms before a court or other neutral arbiter".

Calling the FTC complaint "a puzzle", Microsoft assistant general counsel Greg Sivinski said that "there are things it doesn't say that you would expect it to say."

Hiram Andrews at Freshfields Bruckhaus Deringer, questioned why the agency did not bring a monopolisation case under section 2 of the Sherman Act.

A follow-on lawsuit in the US District Court for the Northern District of California [accuses](#) Qualcomm of violating sections 1 and 2 of the Sherman Act for maintaining a monopoly over modem chipsets, and of abusing the intellectual property rights underlying this technology.

Sivinski, Andrews and Wong-Ervin spoke on a panel about the intersection of intellectual property and competition law. James Harlan, the director of standards and competition policy at InterDigital, also spoke on the panel, which was moderated by Anne Layne-Farrar, a vice president at Charles River Associates.

USA News