



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission accepts legally binding commitments by Samsung Electronics on standard essential patent injunctions

The European Commission has today rendered commitments offered by Samsung Electronics (Samsung) legally binding under EU antitrust rules. According to these commitments, Samsung will not seek injunctions in Europe on the basis of its standard essential patents (SEPs) for smartphones and tablets against licensees who sign up to a specified licensing framework. Under this framework, any dispute over what are fair, reasonable and non-discriminatory (so-called "FRAND") terms for the SEPs in question will be determined by a court, or if both parties agree, by an arbitrator. The commitments therefore provide a "safe harbour" for all potential licensees of the relevant Samsung SEPs. Indeed, potential licensees that sign up to the licensing framework will be protected against SEP-based injunctions by Samsung (see also [MEMO/14/322](#)). The Commission has also taken a prohibition decision in a separate investigation concerning Motorola (see [IP/14/489](#)).

Commission Vice President in charge of competition policy Joaquín Almunia said: *"The protection of intellectual property and competition are both key drivers of innovation and growth. This is why it is essential that intellectual property is not misused to the detriment of healthy competition and, ultimately, of consumers. In this context, I welcome Samsung's commitment to resolve disputes on standard essential patents without having recourse to injunctions in a way that could harm competition. Together with today's decision in the Motorola case, the Commission's decision to accept Samsung's commitments provides clarity to the industry on what constitutes an appropriate framework to settle disputes over "FRAND" terms in line with EU antitrust rules. I would also encourage other industry players to consider establishing similar dispute resolution mechanisms."*

The Commission's competition concerns

SEPs are patents essential to implement a specific industry standard. It is not possible to manufacture products that comply with a certain standard without accessing these patents by obtaining a licence. This may give companies owning SEPs significant market power. As a result, standards bodies generally require their members to commit to license SEPs on FRAND terms. This commitment is designed to ensure effective access to a standard for all market players and to prevent "hold-up" by a single SEP holder. Such access on FRAND terms allows consumers to have a wider choice of interoperable products while ensuring that SEP holders are adequately remunerated for their intellectual property.

Seeking injunctions before courts is generally a legitimate remedy for patent holders in case of patent infringements. However, the seeking of an injunction based on SEPs may constitute an abuse of a dominant position if a SEP holder has given a voluntary commitment to license its SEPs on FRAND terms and where the company against which an injunction is sought is willing to enter into a licence agreement on such FRAND terms. Since injunctions generally involve a prohibition of the product infringing the patent being sold, seeking SEP-based injunctions against a willing licensee could risk excluding products from the market. Such a threat can therefore distort licensing negotiations and lead to anticompetitive licensing terms that the licensee of the SEP would not have accepted absent the seeking of the injunction. Such an anticompetitive outcome would be detrimental to innovation and could harm consumers.

Samsung owns SEPs related to various mobile telecommunications standards and has committed to license these SEPs on FRAND terms. In April 2011, Samsung started to seek injunctions against Apple on the basis of its SEPs. The Samsung SEPs in question related to the European Telecommunications Standardisation Institute's (ETSI) 3G UMTS standard, a key industry standard for mobile and wireless communications. In December 2012, the Commission informed Samsung of its preliminary view that it considered Apple a willing licensee on FRAND terms for Samsung's SEPs and that against this background, the seeking of injunctions against Apple based on Samsung's SEPs in several EU Member States may constitute an abuse of a dominant position in breach of Article 102 of the Treaty on the Functioning of the EU (TFEU) (see [IP/12/1448](#) and [MEMO/12/1021](#)).

Samsung's commitments

To address the Commission's concerns, Samsung has for a period of five years committed not to seek any injunctions in the European Economic Area (EEA) on the basis of any of its SEPs, present and future, that relate to technologies implemented in smartphones and tablets against any company that agrees to a particular framework for licensing the relevant SEPs.

The licensing framework provides for:

- (i) a negotiation period of up to 12 months; and
- (ii) if no agreement is reached, a third party determination of FRAND terms by a court if either party chooses, or by an arbitrator if both parties agree on this.

An independent monitoring trustee will advise the Commission in overseeing the proper implementation of the commitments.

Background

Article 9 of the EU's Antitrust Regulation (Regulation 1/2003) allows the Commission to conclude antitrust proceedings by making commitments offered by a company legally binding. Such a decision does not reach a conclusion on whether EU antitrust rules have been infringed but legally binds the company to respect the commitments. If the company breaches these commitments, the Commission can impose a fine of up to 10% of its annual worldwide turnover, without having to find an infringement of Articles 101 or 102 TFEU. A policy brief on commitment decisions under Article 9 is available [here](#).

The Commission opened its investigation in January 2012 (see [IP/12/89](#)). In December 2012, the Commission issued a Statement of Objections setting out its preliminary competition concerns (see [IP/12/1448](#)). In September 2013, Samsung offered commitments in order to address the Commission's concerns. In October 2013, the Commission consulted interested parties on Samsung's commitments (see [IP/13/971](#)). On 3 February 2014, Samsung submitted the final version of the commitments which addressed the Commission's competition concerns.

The Commission recognises that other dispute resolution mechanisms than the specific ones to which Samsung commits may also be relied upon to settle FRAND disputes.

More information on this investigation is available on the Commission's [competition website](#) in the public [case register](#) under the case number [39939](#).

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