

Royalty Rebates and Competition: The *Qualcomm* Ruling by the Taiwan Fair Trade Commission and the *Intel* Decision by the Court of Justice of European Union Compared

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Abstract

In October 24, 2017, the Taiwan Fair Trade Commission (TFTC) ruled in part that the royalty rebate schemes implemented by Qualcomm had violated Article 9(1) of the Taiwan Fair Trade Act (TFTA), which prohibits monopolistic enterprises from *directly or indirectly preventing any other enterprises from competing by unfair means*. Under the schemes, Qualcomm offered rebates to selective licensees of its standard essential patents (SEPs) for manufacturing mobile devices. The TFTC maintained that such a licensing practice had the effect of inducing potential SEPs licensees to prefer Qualcomm's chip to its competitors' and would unfairly foreclose the competitors' licensing opportunities. More than a month earlier, the Court of Justice of the European Union (CJEU) handed down the long-awaited *Intel* ruling that involved similar competitive concern. We conduct a comparative study of these two decisions in this paper. Part I and II introduce the facts and reasoning pertaining to the rebate issue in these two cases. Part III illustrates the major differences between the two decisions. While both cases dealt with the similar type of legal dispute, *Intel* was reviewed under an effect-based analytical framework. Alternatively, the TFTC appeared to be guided by a conduct-centered approach in *Qualcomm*. Not only was the "unfairness" element in Article 9 inferred primarily from the mere existence of the rebate schemes, the TFTC did not offer much explanation on why the schemes were capable of "preventing" competition. We then proceed to analyze how the *Intel* decision, in particular the "as efficient competitor" criterion, could assist the TFTC in making more objective decision in future exclusionary cases in Part IV. Part V concludes this paper.