

Globe Talk: Qualcomm fights claims

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Qualcomm's decision earlier this week to fight back against its rivals on allegations of manipulating international cellular phone markets is turning uglier by the day, but whether the legal spat will actually benefit consumers remains in question.

In the meantime, it's clear that industry observers are seeing "a lot of dirty laundry on display" from both sides, said Bruce Sunstein, an attorney who heads the patent practice group at Boston-based Bromberg & Sunstein. "I'm bemused by it."

Qualcomm has been the industry leader in developing CDMA, the code division multiple access technology, which is the driving force in developing third-generation mobile phones. While it had been a brand manufacturer itself in the technology, it currently gains financially from licensing its CDMA and other wireless patents to other manufacturers.

Over the past few years, the CDMA technology has gained considerable ground against its rival network, the global system for mobile, or GSM, technology in providing mobile communication networks. Qualcomm is involved with both technologies even though it remains the leader in CDMA.

Currently, about two-thirds of mobile phones worldwide operate on GSM, but many analysts expect CDMA to gain further ground in coming years, which would mean that Qualcomm's revenue would grow accordingly.

The amount it actually pockets from licensing fees may not be as high as Qualcomm anticipates, however, if other companies in the industry get in their way. Two weeks ago some of its biggest rivals banded together in crying foul by filing a suit with the European Commission, alleging that the San Diego, Calif.-based company is not licensing CDMA patents on reasonable terms and offering lower fees to those manufacturers who used Qualcomm semiconductors.

Ericsson, NEC, Nokia, Broadcom, Panasonic Mobile Communications and Texas Instruments each filed complaints with the European Commission to stop Qualcomm from what they say is a violation of European Union competition law. In a statement, the companies said that "Qualcomm's anti-competitive behaviour has harmful effects for the mobile telecommunications sector in Europe, as well as elsewhere, because carriers and consumers are facing higher prices and fewer choices."

In fact, this was not the first time Qualcomm has faced such charges from rivals. Earlier this year Broadcom filed a suit with the International Trade Commission for alleged unfair trade practices.

Sunstein acknowledged that while such spats about patent rights and commissions is common enough in the industry, he pointed out that such discussions are usually held away from the public limelight. But as Qualcomm's rivals have taken it to the courts and made a point of airing their grievances publicly, Qualcomm too has decided not to take the collective punch silently.

The company has brought out its public relations machine in full force, declaring that the accusations were without merit, and argued that it was jealousy coupled with fear that was driving its rivals to press charges.

"It is not surprising that the reported allegations come largely from

entrenched (second generation) suppliers who have the most to lose from the enhanced and expanded competition in (third-generation mobile phone networks) created by Qualcomm's widespread licensing and supply of enabling 3G technology, chipsets, and software," said the company's Chief Executive Officer Paul Jacobs.

But that's not all. It has gone on the offensive too. Earlier this week Qualcomm retaliated in part by filing a complaint against Nokia, accusing it of patent infringement for some 12 essential patents on its GSM communication network phones. The company had also filed a suit against Broadcom in July.

"We have been discussing a number of issues with Nokia for some time, including the fact that we have essential GSM patents for which Nokia is not licensed, and we are disappointed that this has resulted in litigation," said Louis Lupin, Qualcomm's general counsel. "Until recently, we had been led to believe that these issues might be resolved cooperatively and amicably. However, it now appears that a cooperative resolution of these issues is quite unlikely and we must move forward with the litigation in order to protect our rights and to get these issues resolved," he added.

In short, Qualcomm is calling for the Finnish mobile-phone group to stop selling certain models in the United States. In addition, the company is demanding financial compensation from Nokia to make up for the lost market share. The company has filed its case with the U.S. District Court in San Diego. Moreover, it has hinted that it might file a similar case against other companies including Ericsson.

For its part, Nokia stated that it was "disappointed Qualcomm has taken this step given they have yet to engage in any licensing negotiations concerning these matters," adding that "Qualcomm has a duty to license those patents has a duty to license those patents on fair, reasonable, and non-discriminatory terms."

Whether or not Qualcomm proves itself innocent in the charges that were filed with the European Union, or whether it wins or not against Nokia, analysts broadly agree that the ongoing legal spat will not lead to lower cell-phone prices or benefit consumers in a noticeable way any time soon.

Attorney Sunstein acknowledged that there may well be a need for Qualcomm to "readjust the royalties and what it charges people for innovation." But he pointed out that all parties involved needed each other; Qualcomm as the innovator, and Nokia and others as manufacturers of the products that uses Qualcomm's technologies. All the companies "need each other, and market forces require them to adjust prices ... that make it realistic in the marketplace," Sunstein said, adding that "this is just a very public negotiation that usually takes place behind closed doors. That's all."

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