

Qualcomm, DOJ \$1.8M settlement

April 14 2006

Qualcomm Inc. and Flarion Technologies Inc. agreed to pay a \$1.8 million settlement in civil penalties in a suit filed by the Department of Justice, the companies announced Thursday.

Filing the civil antitrust complaint and proposed settlement in the U.S. District Court for the District of Columbia was the Antitrust Division of the Justice Department, claiming the companies violated pre-merger waiting-period requirements.

The Antitrust Division asserted that wireless technology company Qualcomm obtained "operational control" in its acquisition in violation of government waiting periods required of merging companies.

The government said that the "gun-jumping" violation of the Hart-Scott-Rodino Act occurred when Flarion had to obtain Qualcomm's consent to enter into certain types of intellectual-property licenses and customer proposals as well as in undertaking routine activities such as hiring consultants and employees.

Under the HSR Act, companies undergoing acquisitions or mergers are held to specific requirements including a mandatory 30-day waiting period in which antitrust agencies can investigate the transaction and decide whether they violate the law.

Moreover, under the Act, parties must file pre-merger notification documents with the Justice Department and the Federal Trade Commission, and a maximum civil penalty of \$11,000 per day is given

to those in violation of the Act.

According to the Department, the penalty was reduced after both Qualcomm and Flarion voluntarily reported the existence of such activities and changed their contract and conducts, consummating the most current merger Jan. 19 with the consent of the DOJ.

"Merging parties must continue to operate independently until the end of the pre-merger waiting period," said Thomas O. Barnett, assistant attorney general in charge of the DOJ's Antitrust Division. "The Antitrust Division will vigorously enforce this requirement against any company that assumes operational control of a business that it is acquiring."

However, the companies said in a news release they "disagree with the DOJ's position" and that the judgment contains "no finding or admission of wrongdoing by Qualcomm or Flarion."

The settlement is subject to a federal judge's approval.

"With the successful integration of Flarion well under way, we decided to put this matter behind us to avoid diverting or distracting the Qualcomm-Flarion team from the important tasks of integrating the best of both companies' technologies and refining our joint roadmap," said Louis Lupin, Qualcomm's senior vice president and general counsel.

San Diego-based Qualcomm is the innovator of Code Division Multiple Access and made news recently with its announcement of the generation 3G Chip.

The new chip is expected to triple wireless bandwidth for Verizon and Sprint wireless customers using Evolution-Data Optimized (EVDO) Revision B technology, which it hopes to launch by the end of next year.

Qualcomm announced the acquisition July last year of Bedminster, N.J.-based Flarion, whose technology includes a mobile high-speed broadband system that enables "LAN-like" communications over mobile phones called FLASH-OFDM as well as other high-speed wireless technology.

The \$600 million purchase was a move by Qualcomm to further expand its wireless-technology offerings.

Qualcomm had announced that it "expected the acquisition to contribute about \$0.02 dilution to pro forma earnings per share -- primarily R&D expense -- and an addition \$0.01 dilution to total Qualcomm earnings per share -- primarily stock option expense and a one-time in-process R&D charge -- in its fiscal year ending September 2006."

Despite the settlement announcement, stocks were up by \$0.51 closing Thursday at \$51.48.

On Forbes' Global 2000 list for 2006, Qualcomm ranked 392 with sales of \$6.02 billion, profits of \$2.25 billion and a market value of \$77.81 billion, Forbes reported.

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