



EUROPEAN COMMISSION

PRESS RELEASE

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## **Antitrust: Commission finds that Motorola Mobility infringed EU competition rules by misusing standard essential patents**

The European Commission today adopted a decision which finds that Motorola Mobility's (Motorola) seeking and enforcement of an injunction against Apple before a German court on the basis of a smartphone standard essential patent (SEP) constitutes an abuse of a dominant position prohibited by EU antitrust rules in view of the particular circumstances in which the injunction was used (see also [MEMO/14/322](#)). The Commission has ordered Motorola to eliminate the negative effects resulting from it. The Commission has also taken a commitment decision in a separate investigation concerning Samsung (see [IP/14/490](#)).

Commission Vice President in charge of competition policy Joaquín Almunia said: *"The so-called smartphone patent wars should not occur at the expense of consumers. This is why all industry players must comply with the competition rules. Our decision on Motorola, together with today's decision to accept Samsung's commitments, provides legal clarity on the circumstances in which injunctions to enforce standard essential patents can be anti-competitive. This will also contribute to ensuring the proper functioning of standard-setting in Europe. While patent holders should be fairly remunerated for the use of their intellectual property, implementers of such standards should also get access to standardised technology on fair, reasonable and non-discriminatory terms. It is by preserving this balance that consumers will continue to have access to a wide choice of interoperable products"*.

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. This may give companies owning SEPs significant market power. As a result, standards bodies generally require their members to commit to license SEPs on fair, reasonable and non-discriminatory (so-called "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 a wide choice of interoperable products for consumers 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.

The Motorola Mobility SEPs in question relate to the European Telecommunications Standardisation Institute's (ETSI) GPRS standard, part of the GSM standard, which is a key industry standard for mobile and wireless communications. When this standard was adopted in Europe, Motorola Mobility declared some of its patents as being essential and gave a commitment that it would license the patents which it had declared essential to the standard on FRAND terms.

In today's decision, the Commission found that it was abusive for Motorola to both seek and enforce an injunction against Apple in Germany on the basis of an SEP which it had committed to license on FRAND terms and where Apple had agreed to take a licence and be bound by a determination of the FRAND royalties by the relevant German court.

The Commission also found it anticompetitive that Motorola insisted, under the threat of the enforcement of an injunction, that Apple give up its rights to challenge the validity or infringement by Apple's mobile devices of Motorola SEPs. Implementers of standards and ultimately consumers should not have to pay for invalid or non-infringed patents. Implementers should therefore be able to ascertain the validity of patents and contest alleged infringements.

The Commission decided not to impose a fine on Motorola in view of the fact that there is no case-law by the European Union Courts dealing with the legality under Article 102 TFEU of SEP-based injunctions and that national courts have so far reached diverging conclusions on this question.

More information can be found at [MEMO/14/322](#).

## Background

Article 102 TFEU prohibits the abuse of a dominant position which may affect trade and prevent or restrict competition. The implementation of this provision is defined in the Antitrust Regulation (Council Regulation (EC) No 1/2003) which can be applied by the Commission and by national competition authorities of EU Member States.

The Commission opened the investigation in April 2012 after having received a complaint by Apple. The Commission's decision follows a Statement of Objections sent in May 2013 (see [IP/13/406](#) and [MEMO/13/403](#)).

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