



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission consults on commitments offered by Samsung Electronics regarding use of standard essential patents

The European Commission invites comments from interested parties on commitments offered by Samsung Electronics (Samsung) in relation to the enforcement of the standard essential patents (SEPs) it owns in the field of mobile communications. The Commission has concerns that Samsung's seeking of injunctions against Apple in the European Economic Area (EEA) on the basis of its mobile SEPs may have amounted to an abuse of a dominant position prohibited by EU antitrust rules (see [IP/12/1448](#)). To remedy these concerns, Samsung has offered to abstain from seeking injunctions for mobile SEPs for a period of five years against any company that agrees to a particular licensing framework. Interested parties can now submit their comments within one month. If the Commission concludes, in light of the comments received, that the commitments address the competition concerns, it may decide to make them legally binding on Samsung.

Joaquín Almunia, Commission Vice President in charge of competition policy, said: *"I am looking forward to receiving the feedback of other market players on Samsung's proposals. Enforcing patents through injunctions can be perfectly legitimate. However, when patents are standard-essential, abuses must be prevented so that standard-setting works properly and consumers do not have to suffer negative consequences from the so-called patent wars. If we reach a good solution in this case, it will bring clarity to the industry"*.

The Commission's concerns

Seeking injunctions before courts is generally a legitimate remedy for patent holders in case of patent infringements. However, access to patents which are standard-essential is a precondition for any company to sell interoperable products in the market.

The Commission considers that the seeking of an injunction based on SEPs may constitute an abuse of a dominant position if a SEP holder has given a commitment to license its SEPs on Fair Reasonable And Non-Discriminatory (FRAND) terms and where the company against which an injunction is sought is willing to enter into a licence agreement on FRAND terms.

The Commission is concerned that the seeking of injunctions in such circumstances could allow Samsung to impose royalty rates or other licensing terms, such as broad cross-licenses, which a licensee would not agree to, absent the threat of having its products excluded from the market. This may unduly distort licensing negotiations and cause harm to consumers by increasing prices, reducing product choice and stifling differentiating innovation in the markets for smartphones and tablets.

Samsung's proposals

To address these concerns, Samsung has proposed to commit for a period of five years not to seek any injunctions on the basis of any of its SEPs, present and future, that relate to technologies implemented in smartphones and tablets ("Mobile SEPs") against any company that agrees to a particular licensing framework.

The licensing framework consists of: (i) a negotiation period of up to 12 months and (ii) if no agreement is reached, a third party determination of FRAND terms by either a court or an arbitrator, as agreed by the parties. If the parties cannot agree on either submitting to court or arbitration, the parties will have to submit to arbitration.

The proposed commitments would cover the EEA. An independent trustee would advise the Commission in overseeing the proper implementation of the commitments.

See also [MEMO/13/910](#)

Background

The Commission opened its investigation in January 2012 (see [IP/12/89](#)). In December 2012, the Commission informed Samsung of its preliminary view that the seeking of injunctive relief against Apple based on Samsung's 3G UMTS SEPs in several EU Member States may breach Article 102 of the Treaty on the Functioning of the EU (TFEU), which prohibits the abuse of a dominant position (see [IP/12/1448](#) and [MEMO/12/1021](#)).

Standard-essential patents (SEPs) are patents protecting a technology which is essential for the implementation of an industry standard developed by a standard-setting organisation. It is technically not possible to make a standard-compliant product without using the technology protected by the SEP.

Samsung owns SEPs related to mobile telecommunications standards and has committed to license these SEPs on fair, reasonable and non-discriminatory (FRAND) terms. The Commission considers on a preliminary basis that Apple was willing to enter into a licensing agreement on FRAND terms for Samsung's SEPs. However, Samsung started judicial proceedings seeking injunctions against Apple.

Under these specific circumstances, the Commission takes the preliminary view that Samsung's behaviour amounts to an abuse of a dominant market position prohibited by EU antitrust rules (Article 102 of the Treaty on the Functioning of the European Union – TFEU and Article 54 of the EEA Agreement, see also [IP/12/1448](#) and [MEMO/12/1021](#)). Recourse to injunctions under the specific circumstances of this case may unduly distort FRAND licensing negotiations and allow SEP holders to charge royalties or impose licensing terms which a licensee would not agree to absent the threat of having its products excluded from the market.

If following the market test, the commitments proposed by Samsung provide a satisfactory solution to the Commission's competition concerns, the Commission may adopt a decision to make them legally binding on Samsung (under Article 9 of the EU's antitrust Regulation 1/2003). Such an Article 9 decision does not conclude that there is an infringement of EU antitrust rules, but legally binds Samsung to respect the commitments offered. If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company's annual worldwide turnover without having to find an infringement of the EU antitrust rules.

A summary of the commitments will be published in the EU's Official Journal. The full version is available on the Commission's competition website, in the public case register under the case number [39939](#) .

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