

Decision of administrative penalty, National Development and Reform Commission (NDRC) of
PRC (2015) №1

National Development and Reform Commission (NDRC) of PRC

The Price Supervision and Inspection and Anti-Monopoly Bureau,
General Office

The Decision of Administrative Penalty

(2015) №1

The Party: Qualcomm Incorporated

Address: (Omitted)

Pursuant to the Anti-Monopoly Law (“AML”) of People's Republic of China and other laws and regulations, this agency initiated an investigation in November 2013 on the Party’s abusing dominant market position in the CDMA, WCDMA and LTE wireless communication standard essential patents (“wireless communication SEPs” thereafter) licensing market and its dominant market position in the markets of baseband chips of CDMA, WCDMA and LTE wireless communication (“baseband chips” thereafter). The investigation details and the decision of this agency are as follows:

1. The Party possesses dominant market position in the markets of wireless communication SEPs and baseband chips.

The investigation of the Party by this agency covers the markets of wireless communication SEPs and baseband chips. The Party possesses dominant market position in above mentioned markets.

1.1. The Party possesses dominant market position in the market of wireless communication SEPs.

The wireless communication standard is the standardization of technical solutions, developed by industrial enterprises by means of cooperation in purpose of realization of a joint network where products of various vendors of wireless communication devices can be connected into one and the same wireless cellular network. CDMA (including CDMA IS-95 and CDMA 2000), GSM, WCDMA, TD-SCDMA and LTE are all leading wireless communication standards. The

network provider needs to purchase a network operating license and invest a large amount of capital to build its network in accordance with the particular technical standard of wireless communication; the producers of wireless communication devices and the producers of baseband chips need to make a considerable investment to elaborate their products in accordance with the wireless communication standards. The cost of substituting different wireless communication standards is very high. Furthermore, the levels of network services in virtue of wireless communication standards of one and the same generation are basically similar, so that a technical substitute is not necessary. The wireless communication standards of different generations are at different stages of development, thus when a network provider is upgrading its product to wireless communication standard of the next generation, the producer of wireless communication devices of new generation should follow a common technical request that its product should meet the wireless communication standards of previous generations for the purpose of ensuring that its products are compatible with different generations of wireless communication standards during several years of the upgrading process. Therefore there is no realistic substitution between widely applied various wireless communication standards. That is the case with CDMA, WCDMA, LTE in our investigation, that there is no realistic substituting standard.

The patents which must be applied for performing technical standard are known in industry as standard essential patents. The wireless communication standard, as a highly complex technical resolution, includes numerous SEPs. When a patent license of wireless communication is included in technical standard of CDMA, WCDMA and LTE, and thus has turned to be the standard essential patent of wireless communication standard, it becomes the only patent which excludes other competing patents and thus has no substitute. The producer of wireless communication terminal devices has to purchase the wireless communication SEPs for producing and selling devices according to the corresponding technical standards, because wireless communication SEP is the patent that must be applied for realization of particular wireless communication standard. In respect of demand substitution, for the vendor of terminal devices of wireless communication, it is inevitable to accept each wireless communication SEP as the necessary technical standard for producing any particular terminal devices. The absence of any wireless communication SEPs will cause unconformity in corresponding technical standard of qualified devices of wireless communication which can meet market demand. In respect of supply substitution, each SEP is unique, so there is neither actual nor potential supply substitution after its adoption, release and implementation for relevant technology of wireless communication standard. Each

wireless communication SEP can thus form a separate market of relevant production. In the present case, the market of relevant products is a collection of markets, each of which is formed separately on the basis of one wireless communication SEP the Party possesses, for the Party had issued a portfolio of wireless communication SEPs it possesses.

Each geographic market of wireless communication SEP, forming separately an independent relevant product market, is a particular country or region due to the territoriality that patent licensing, application and protection feature. In the present case the Party has carried out a portfolio license on the basis of wireless communication SEPs it possesses in various countries and regions, the relevant geographic market of wireless communication SEPs is therefore a collection of markets in various countries and regions where the Party possesses those SEPs.

This agency finds out that the Party possesses various amounts of SEPs of wireless communication technology CDMA, WCDMA and LTE. The fact that the Party has the dominant position of the market of wireless communication SEP can be determined with the following arguments:

1.1.1. The Party possesses 100% market share in the relevant market. The Party possesses 100% market share in every market formed separately on the basis of each wireless communication SEPs. At the same time, the Party possesses respectively several essential patent licenses for the wireless communication standard of CDMA, WCDMA and LTE. Combined with each other, essential patent licenses of wireless communication standard have of the Party has formed a patent portfolio, covering the particular technical area of wireless communication standard, and the Party possesses 100% market share in the market of this essential patent portfolio license of wireless communication standard, and thus excludes market competition. In accordance with the AML, the Party's dominant position in the market of can be presumed.

1.1.2. The Party possesses the capability of market control in the market of wireless communication SEPs. Because the Party possesses essential patent portfolio license of wireless communication standard, covering areas of technical standard of CDMA, WCDMA and LTE, vendors of terminal devices of wireless communication have to purchase the relevant essential patent portfolio license of wireless communication standard from the Party for the purpose of producing and selling terminal devices of wireless communication, meeting the technical standard of CDMA, WCDMA and LTE. Otherwise these vendors cannot enter into the market or participate in the competition. They will also face the risk of patent

infringement litigation raised by the Party and the loss of injunctive relief. The only choice remains for the potential licensee is to conclude an agreement with the Party on relevant wireless communication SEPs. This agency finds evidence that the Party has more than 200 licensees of wireless communication SEPs, and, additionally, the licensing conditions in the agreement of patent license, concluded by the licensee and the Party, are unilaterally defined by the Party alone. The licensee is thus deprived of objective grounds and actual capacity to constrain the market power of the Party. Hence the Party possesses to a large extent the capability of control the patent licensing fees, licensing conditions, the capability of preventing, influencing the entry of other operators into the market.

1.1.3. The high degree of dependence of vendors of terminal devices of wireless communication on the wireless communication SEPs of the Party. For producing and selling of terminal devices, meeting the technical standard of CDMA, WCDMA and LTE, vendors need to accept and apply the wireless communication SEPs of the Party. Each wireless communication SEP is indispensable for vendors of terminal devices of wireless communication because each of the Party's SEP is applied only for one part of relevant technical standard, thus the absence of any SEP will lead to an unacceptable consequence: the terminal device cannot be connected with the network, the request of customer cannot be satisfied, the device cannot be permitted to access the network by regulatory authorities. Vendors of terminal devices of wireless communication highly depend on the wireless communication SEPs of the Party. Therefore it processes the dominant power in the market.

1.1.4. It is relatively difficult for other operators to enter into the market. The wireless communication standard is a technical specification for realizing the compatibility, interconnection and interworking of terminal devices of wireless communication. When one patent is accepted as the wireless communication SEP of technical specification of CDMA, WCDMA and LTE, other competing technologies are likely to be excluded from this technical standard. After the implementation of technical standard of CDMA, WCDMA and LTE the change of each technology, included in this standard, will cause an unbearable cost for operators and related vendors, and in practice, other competing technical specifications can hardly be included in this technical standard. It is thus very difficult for other operators to enter into the relevant market on the basis of the wireless communication SEPs possessed by the Party.

During the investigation process of this case the Party did not provide any evidence to prove that it does not possess the dominant position in the market of wireless communication SEPs.

According to Article 18 of the AML and on the basis of above mentioned evidence this agency determines that the Party possesses the dominant position in the market of the wireless communication SEPs.

1.2. The Party possesses the dominant position in the market of baseband chips.

Baseband chips are important parts of terminal devices of wireless communication. According to different wireless communication technical standard, based on different wireless communication SEPs, baseband chips differ in their properties and function. With respect to demand substitution, vendors of terminal devices of wireless communication must use baseband chips that support corresponding technical standard, in the production of devices for particular network of wireless communication. They will not seek and use baseband chips of other technical standard, even if the prices of baseband chips vary. With respect to supply substitution, for R&D and production of baseband chips, high degree of technical support is required, so that there is a strong barrier for other producers of baseband chips to enter into the market. Vendors, based on different technology and platforms, produce baseband chips of different technical standard. They will not immediately react to the change of demand and price of baseband chips in the market and quickly modify their production, thus there is no strong supply substitution of baseband chips of various vendors. Baseband chips, produced in accordance with different technical standards, cannot replace each other. The market of baseband chips, investigated in this case, can be divided into three markets of relevant products: market of CDMA baseband chips, market of WCDMA baseband chips and market of LTE baseband chips.

There are no notable regional barriers for transport, sale, application and import/export of baseband chips. Vendors of baseband chips sell their products worldwide; the competition between vendors of baseband chips is therefore global. Vendors of terminal devices of wireless communication will, correspondingly, purchase baseband chips globally, considering the function, price, quality, brand mark and other factors. The relevant regional markets of CDMA, WCDMA and LTE baseband chips are to be considered as global markets in this case.

This agency finds that the Party possesses dominant position in the markets of CDMA baseband chips, WCDMA baseband chips and LTE baseband chips on the basis of following facts:

1.2.1. The market share of the Party in all relevant markets exceeds 50%. According to the data of Strategy Analytics, the revenue share of the Party in markets of CDMA baseband chips, WCDMA baseband chips and LTE baseband chips are respectively 93.1%, 53.9% and 96%, exceeding 50%. According to Article 19.1.1 of the AML, the dominant market position in relevant markets of above mentioned baseband chips can be inferred.

1.2.2. The Party possesses the power to control the relevant markets of baseband chips. According to the data of Strategy Analytics, the Party is in the long-term leading position in the markets of baseband chips. The Party has ranked first position of worldwide sales of baseband chips from 2007 through 2013 for six consecutive years, and it possesses notably higher market share than its competitors. In the market of CDMA baseband chips, there have been only the Party and VIA TELECOM for a long time. Meanwhile VIA TELECOM possesses less than 7% market share. In the market of LTE baseband chips, SAMSUNG of Korea possesses the second place by market share that consists only 2% of total market share. The Party has thus the strong power in markets of CDMA and LTE baseband chips. In the market of WCDMA baseband chips, the market share of MTK in 2013 was 15.5%, Intel was 11.8%, and Broadcom was 9.3%. Meanwhile the Party possessed 53.9% of the market share. The market share of MTK has increased in recent years, but its competitiveness is mainly in the low-end market, and the release term of its baseband chips of the same specifications as that of the Party falls far behind that of the Party. MTK possesses far weaker control power than that of the Party in the market of WCDMA baseband chips. The Party therefore possesses control power to a certain extent in the market of WCDMA baseband chips.

1.2.3. Vendors of main terminal devices of wireless communication highly depend on the Party. The Party possesses largest market shares in global markets of CDMA baseband chips, WCDMA and LTE baseband chips. Furthermore there are few vendors of baseband chips in the world, so that vendors of terminal devices of wireless communication have limited choice of vendors of baseband chips, thus they highly depend on the Party. Moreover, for the purpose of making more competitive devices, vendors of terminal devices of wireless communication strongly prefer and tend to choose the product of the Party because of the technical, functional and brand advantage of the Party's baseband chips, especially the

competitive advantage of its high-end baseband chips. These vendors thus highly depend on the baseband chips of the Party.

1.2.4. The strong barrier makes it difficult to enter into the market of baseband chips. As a technology intensive industry, for R&D and production of baseband chips, a high degree of technical support is required, so that the potential entrants will face difficulties in areas such as R&D, production, support of terminal operation system, test by operators, network license of national regulatory authorities, control of export of technology, long-term R&D and development of market. These factors form a strong barrier for entry into the market. Therefore it is not easy for other firms to enter into the market and effectively participate in the competition.

In the process of the case investigation, the Party did not provide evidence to prove that it does not possess the dominant market position in markets of CDMA baseband chips, WCDMA baseband chips and LTE baseband chips.

The Party argues that it does not possess the dominant position in the market of WCDMA baseband chips on the basis of the following facts: it possesses less than 50% market share in the market of WCDMA baseband chips, and in the market of WCDMA baseband chips there exists effective market competition. This agency finds that in this case the market power of the Party in this relevant market is more clearly reflected in its market share of sale amount of WCDMA baseband chips than its market share of sale volume. In 2013 the Party's market share of sale amount of WCDMA baseband chips exceeded 50%, meanwhile its market share of sale volume was less than 50%. That means that the average selling price of the Party's WCDMA baseband chips was higher than that of other proprietors; the higher average selling price serve the evidence of the Party's dominant power in the market of WCDMA baseband chips. At the same time, the market share is only one of the factors in analyzing and determining if the Party possesses dominant position in the market of WCDMA baseband chips. The argument that the Party provided thus cannot prove that it does not possess dominant position in the market of WCDMA baseband chips.

In accordance with Article 18 of the AML and on the basis of analysis of the market structure of baseband chips, the conditions of competition in markets, the degree of dependence of purchasers on the Party, the barrier of entry into relevant market and other factors, this agency determines that the Party possesses dominant position in the market of CDMA baseband chips, WCDMA baseband chips and LTE baseband chips.

2. The Party abuses its dominant market position.

Considering that the Party licenses portfolio of wireless communication SEPs in relevant countries and regions, this agency has decided to investigate the Party's sales practices of the wireless communication SEPs and baseband chips related to the production and sale of terminal devices of wireless communication in the territory of PRC, which is closely related to the domestic market competition and consumer interest in the territory of PRC. This agency finds out that the Party abuse its dominant market position and carries out the monopolistic conducts, prohibited by the AML. This agency finds the following facts and arguments.

2.1. The Party abuses its dominant position in the market of wireless communication SEPs and charges unfairly excessive royalties.

2.1.1. The Party charges royalty on expired wireless communication SEPs.

This agency finds out as of January 1st, 2014, some of relevant wireless communication SEPs, including a number of important SEPs, have expired. The business application of CDMA technology began in 1995, so that a number of wireless communication SEPs of CDMA core standard which the Party had applied have expired. Nevertheless, all agreement, concluded by the Party and licensees, on the patent license of CDMA and WCDMA, have included expired SEPs of CDMA core standard. Although the Party continues to add new patents into the patent portfolio, it does not provide any evidence to prove that value of new patents is equal to the value of expired SEPs. The Party does not provide licensees with a list of patents, at the same time it has agreed with licensees about an unchangeable royalty in any long-term or even non-fixed-term licensing agreement, concluded by the Party and licensees. The Party includes expired wireless communication SEPs in its licensed patent portfolio, licensees thus loss the possibility of fair agreement to avoid paying royalty for expired patents.

The above mentioned facts can be determined by “A survey report about the value of Qualcomm’s SEP portfolio on the basis of subsistence of patents”, “Agreement of unit license for licensee”, “Transcript of investigation”, “A reply to NDRC’s questionnaire” etc.

During the investigation of this case, the Party argues that there is no issue of charging royalty on expired patent because there are even more new patents being included in the patent portfolio, although some patents expire every year.

This agency holds that the Party has no reasonable ground to refuse providing the list of patents while releasing the long-term or even non-fixed-term licenses, despite of the changes in its licensed patent portfolio and additional new patents included in the patent portfolio. The amount of patents in a patent portfolio is not a definitive sign of the value of the portfolio, even in case, as the Party argues, that new patents continue to join the portfolio and the total number of patents in the portfolio continues to extend. The Party's claim that new patents can offset the value of expired patents therefore cannot be determined. The Party has not evaluated nor explicitly informed whether new patent is valuable and is necessary for licensees; has not measured nor compared the value change of new patents against expired patents; has not even evaluated nor analyzed this change, but continues to charge the same fee for patent portfolio in whole for many years on the excuse of new patents constantly being added into the portfolio. In virtue of this behavior the Party has blurred the patent licenses which licensees can obtain. Licensees are thus forced to pay royalty to the Party for expired wireless communication SEPs.

This agency holds that the Party should make it possible for licensees to carry out a fair discussion, so that they could avoid paying royalty for expired patents.

2.1.2. Require the licensees to agree with free grant-back

This agency finds out that the Party, when issuing wireless communication SEPs, forces some licensees to license the non-SEPs to the Party, and force some licensees to grant back for free. The Party forces some licensees to agree that they should not claim any rights or initiate infringement litigation against the Party and/or its customers regarding the relevant patents that the licensees own. In negotiations on some non-SEPs, the Party does not substantively measure and evaluate the licensees' patents, and refuses to pay any reasonable royalty to such licensees for grant-back.

The above mentioned facts can be determined by "Agreement of unit license for licensee", "Transcript of investigation", "A reply to NDRC's questionnaire" etc.

During the investigation of this case, the Party puts forward three arguments to advocate its request of free grant-back: a) in obtaining the grant-back, the Party intends to protect its business and to prevent its customers of baseband chips from any troubles of patent infringement; b) the free grant-back is an exchangeable part of total value, agreed with the licensee; c) many Chinese licensees do not possess patent portfolio which have real exchangeable value.

This agency holds that the above arguments of the Party cannot be established, and the request of free reverse patent license is unfair for the licensee. It is not illegal for Party to require the licensee to grant back its patents. Nevertheless the need of grant-back cannot serve as a ground to request grant back for free in any case. When the Party has obtained the licensee's reverse patent license, it should respect the innovation of the licensee and give consideration to the value of the grant-back patents, in particular the Chinese licensees who own high value patents portfolios as well. The Party should not be allowed to negate the value of the patents possessed by Chinese licensees, under the pretext of protection of its business and prevention of its customers of baseband chips from any troubles of patent infringement. It should also not be allowed, using its dominant position in the market of wireless communication SEPs and in the market of baseband chips, to force the licensee to supply the Party itself and its customers with free grant-back patents, to restrict licensees from claiming any rights or initiating legal proceeding against the Party regarding the relevant patent that the licensees themselves own. The Party did not provide any effective arguments which can determine that the Party has paid appropriate consideration to some licensees for purchased reverse patent license. There is no sufficient evidence to support the Party's claim that the free grant-back is an exchangeable part of total value. According to the evidence, obtained by this agency during the investigation, the Party's claim is not supported by facts. The fairness of free grant-back therefore cannot be established.

This agency finds out that the Party, using its dominant position in the market of wireless communication SEPs, forces licensees to supply the Party with free grant-back without compensation by means of payment for grant-back or reducing the patent royalty in consideration of the value of licensees' grant-back patents.

Furthermore this agency finds out during the investigation of this case that the wireless communication SEP has core value for licensees of patent portfolio, meanwhile the non-SEP does not necessarily have value for all terminal devices of wireless communication, so that it is not necessary for vendors of terminal devices of wireless communication to obtain the Party's non-SEPs. The Party's wireless communication SEP is applied mainly in the scope of wireless communication technology, but is not related to the cover, screen, webcam, microphone, speaker, battery, memory, operation system and so on. The Party, while issuing portfolio licenses of SEPs and non-SEPs, calculates the patent royalty on the basis of net wholesale price of complete terminal device of wireless communication.

This agency holds that the Party's patent portfolio for licensing includes both the wireless communication SEP and non-SEPs, the value of the latter cannot yet be determined for licensees. Licensees have to pay unfairly high patent royalty because the Party forces licensees to accept patent portfolio licenses for high royalty. In the meantime, it calculates the patent royalty on the basis of net wholesale price of complete terminal device of wireless communication that is beyond the scope of SEPs, purchased by licensees from the Party.

After analyzing the above mentioned Party's conducts, this agency finds that the Party charges unfairly high patent royalty, directly and/or indirectly. The Party's free grant-back request inhibits the licensees' motivation of technical innovation, prevents the innovation and development of wireless communication technology, excludes or constrains the competition in the market of wireless communication technology. The Party gains unfair competitive advantage against other vendors of baseband chips due to the free grant-back because other vendors of terminal devices of wireless communication should bear higher IPR costs, thus the competitiveness of other vendors of baseband chips is weakened, and the market competition is injured. The unfairly high royalty, charged by the Party, increases costs of terminal products and ultimately injures the interest of end users.

This agency determines that the Party violates Article 17.1.1 of the AML which prohibits a firm in the dominant market position, from selling its products at unfairly high price.

2.2. The Party abuses its dominant position in the market of wireless communication SEPs, by including the non-SEPs in the wireless communication SEPs and carries out a tied sale without good cause.

This agency finds out that vendors of terminal devices of wireless communication have no alternatives to purchasing the patent license from the holder of wireless communication SEPs. The non-SEP is not an enforced patent so that the vendor of terminal devices has the possibility to avoid it with a circumvent design, or choose freely among competed technologies, evaluating the pros and cons of patented technology or other factors. The SEP and the non-SEP are two independent patents of various purposes, their application and value should not be affected when their licenses are issued separately. Nevertheless, the Party does not distinguish the SEPs from the non-SEPs, does not provide licensees with a list of patents, but issues a patent portfolio and charges a single royalty for the whole portfolio. This is a tied sale of non-SEPs.

The above mentioned facts can be determined by “Agreement of unit license for licensee”, “Transcript of investigation”, “A reply to NDRC’s questionnaire” etc.

During the investigation of this case the Party had put forward three arguments to prove the rationality of its tied sale of non-SEPs: a) the Party has suggested a chance to choose the wireless communication SEPs only, yet most licensee prefer autonomously the patent portfolio as a whole; b) there is no clear distinction between the SEPs and the non-SEPs, so that the licensee could face litigation risk if it chooses only the SEPs; c) the tied sale of non-SEPs has no influence on the market competition because licensees have the possibility to choose alternate technology of various competitors.

This agency holds that the Party’s arguments cannot be established, it has no good cause to carry out the tied sale of non-SEPs when selling the wireless communication SEPs. According to the evidence provided by many licensees, it is not a fact as the Party claims that it does always provide the chance for licensees to choose only the wireless communication SEPs. This agency finds out during the investigation that although some licensees may actively choose the patent portfolio, some licensees are forced to accept the non-SEPs because otherwise they may not obtain the SEPs. When a licensee decides whether to enter an agreement on the patent portfolio license with the Party, it should be provided a list of SEPs and non-SEPs by the Party for the licensee to choose from. Yet the Party persistently refuses to provide licensees with the list of patents, and does usually not suggest any licensing offer, consisted of only the wireless communication SEPs. It is a common practice to distinguish SEP from non-SEP, to issue separate licenses for them and to define the scope of SEPs via the clauses in the agreement or contract. It may incur some cost to separate licensing offer of SEPs and non-SEPs, and it may make patent licensing negotiations more complex, yet this cannot serve as good cause for any tied sale of the wireless communication SEPs and non-SEPs.

This agency finds that the Party abuses its dominant position in the market of wireless communication SEPs, by including the non-SEPs in the SEPs and carries out a tied sale without good cause. In regarding to the non-SEPs licensees should have the possibility of active choice of license by any patentees, considering various factors, including the risk of infringement and litigation. A rational licensee will usually not intend to carry out any circumvention design or seek alternative technology for additional cost, when the Party forcibly ties non-SEP, and licensees have to get the non-SEPs from the Party and pay royalty. By this way the Party deprives other competitive and alternate technologies’ opportunities to participate in the competition of non-SEPs, excludes and limits the competition in

market of non-SEPs, prevents and inhibits technical innovation, thus ultimately injuring the interest of customers.

This agency determines that the Party, carrying out a tied sale of non-SEPs when selling wireless communication SEPs without good cause, violates Article 17.1 of the AML which prohibits a firm in the dominant market position, from carrying out a tied sale without good cause.

2.3. The Party abuses its dominant position in the market of baseband chips and applies unreasonable conditions for sales of baseband chips.

This agency finds out that the Party sets conditions for licensees to purchase baseband chips, i.e. to conclude an agreement of patent license and not to challenge it. If a potential licensee does not agree on those unreasonable licensing conditions, the Party will refuse to sign the agreement and refuse to sell baseband chips to the licensee. If a licensee, who has already signed an agreement of patent license with the Party, raises disputes and initiates litigation regarding the agreement of patent license, the Party will stop providing the licensee with baseband chips.

The above mentioned facts can be determined by “Agreement of unit license for licensee”, “Parts supply agreement”, “Transcript of investigation”, “A reply to NDRC’s questionnaire” etc.

During the investigation of this case, the Party does not deny the fact that it sets conditions for licensees to purchase baseband chips, i.e. to conclude an agreement of patent license and not to challenge, yet it argues that its act is reasonable.

This agency finds that the vendor of terminal devices of wireless communication should pay fair and reasonable royalty for applying wireless communication standard, but the following acts of the Party are not reasonable: to charge on expired patent, to require free grant-back of licensees’ patents, to carry out a tied sale of non-SEPs without good cause, to force potential licensees to conclude an agreement of patent license with unreasonable conditions, using its dominant position in the market of baseband chips and threatening calling off selling baseband chips. However it is the licensee’s right to raise disputes and litigation regarding the agreement of patent license, yet the Party, based on its dominant position in the market of baseband chips, applies in the sale agreement of baseband chips an unreasonable condition not to challenge the agreement of patent license, essentially deprives the licensee of above mentioned right. It is therefore

unreasonable to set conditions for licensees to purchase baseband chips, i.e. not to challenge the agreement of patent license.

This agency finds that both actual and potential licensees highly depend on the Party's product due to its dominant position in the market of baseband chips, so that if the Party calls off selling baseband chips, actual and potential licensees might not enter into relevant market or be forced to exit it, and thus cannot participate in effective market competition. The Party, based on its dominant position in the market of baseband chips, requires potential licensees to conclude the agreement of patent license with unreasonable conditions, constrains the licensee's right to raises disputes and litigation regarding the agreement of patent license, crowds out actual and potential licensees, who refuse to accept the Party's unreasonable conditions, from the relevant market, thus eliminating or restricting competition in the market.

This agency determines that the Party, appending unreasonable conditions for selling baseband chips, i.e. requiring licensees to conclude the agreement of patent license with unreasonable conditions, meanwhile not to challenge the agreement of patent license, violates Article 17.1.5 of the AML which prohibits a firm in the dominant market position, from appending unreasonable trade conditions in trade activities.

The above determination is only directed against sales activities of wireless communication SEPs and sales activities of baseband chips, which the Party carries out in close relation with the interest of customers in the territory of PRC and in connection with terminal devices of wireless communication which are made in the territory of PRC and sold in the territory of PRC.

3. Basis and decisions of an administrative penalty.

According to Articles 47 and 49 of the AML this agency makes the following decisions, directed against the Party's behaviors of abusing its dominant position in the market of wireless communication SEPs and in the market of baseband chips:

3.1. To order the Party to cease its illegal conduct of abusing its dominant market position.

This agency orders the Party to cease its illegal conduct of abusing its dominant market position, the details are as follows:

3.1.1. When issuing license of wireless communication SEPs to vendors of terminal devices of wireless communication in the territory of PRC, the Party is required to provide licensees with the list of patents, and not to charge on expired patents.

3.1.2. When issuing license of wireless communication SEPs to vendors of terminal devices of wireless communication in the territory of PRC, the Party should not require any grant-back of non-SEPs possessed by licensees, should not force licensees to issue any grant-back of non-SEPs possessed by licensees without any reasonable consideration.

3.1.3. The Party should not, persisting in higher royalty rate, calculate the patent royalty on the basis of net selling price of wholesale of complete terminal device of wireless communication, when these devices are made, sold and used in the territory of PRC.

3.1.4. When issuing license of wireless communication SEPs to vendors of terminal devices of wireless communication in the territory of PRC, the Party should not carry out the tied sale of non-SEPs without good cause.

3.1.5. When selling baseband chips to vendors of terminal devices of wireless communication in the territory of PRC, the Party should not set precondition for potential licensees to purchase baseband chips, i.e. to pay royalty for expire patents, to issue free grant-back of patent, to accept tied sale of non-SEPs without good cause, etc.; should not set unreasonable conditions for licensees to purchase baseband chips, i.e. not to challenge the agreement of patent license.

The above order, directed to the Party, is applied to subsidiaries of the Party and other enterprises over which the Party has actual control. If the Party transfers its SEPs, it is obligated to require the right transferee to accept the constraint of above mentioned activities.

The above listed decisions are not applied to Party's activities of issuing license of SEPs outside of the territory of PRC, because these activities obviously do not eliminate or restrict competition in domestic market in the territory of PRC.

3.2. The fine of 8% of 2013 annual sales of the Party

It is checked and ratified that the sales amount of the Party in the territory of PRC in 2013 is counted for RMB76,100,200,000.00 (the exchange rate is the 2013 annual average exchange rate of the RMB middle rate, announced by the State

Administration of foreign exchange of the People's Republic of China). This agency finds out that the Party has been severely and widely abusing its dominant market position for a relatively long period, therefore decides to penalize the Party in the form of a fine of 8% of 2013 annual sales, i.e. RMB 6,088,000,000.00.

The Party is obligated to, presenting the decision, pay the fine in amount RMB 6,088,000,000.00 to the State Treasury of PRC within fifteen days starting from the date of receipt of this decision of administrative penalty. The full name of the beneficiary (omitted), account (omitted), bank (omitted).

In case that the Party fails to pay the fine when deadline has passed, the penalty will increase by three percent per day, and this agency may apply to court for enforcement.

In case the Party is dissatisfied with the present decision of administrative penalty, it can apply to the National Development and Reform Commission of People's Republic of China for administrative reconsideration within 60 days starting from the date of receipt of this decision of administrative penalty, or it can bring a lawsuit to the People's Court in accordance with the law within 3 months starting from the date of receipt of this decision of administrative penalty. This decision of administrative penalty will not stop execution during the reconsideration and/or litigation.

The General Office of National Development and Reform Commission

February 9th, 2015