AT.39711 Qualcomm (predation)

ACE Conference, Copenhagen

Liliane KARLINGER
DG COMP, Chief Economist Team

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Timeline of Events

April 2010:	Icera's Complaint (final version)
May 2011:	Icera acquired by Nvidia
July 2012:	Nvidia's submission (predation)
May 2015:	Nvidia winds down chipset business
July 2015:	Initiation of proceedings
December 2015:	SO Adoption
November 2016:	First Oral Hearing
March 2017:	Targeted RFIs (incl. Art. 18(3) Decision, appeal: case T-371-17, dismissed by GC Judgment April 2019, Qualcomm appealed)
July 2018:	SSO Adoption
January 2019:	Second Oral Hearing
February 2019:	Letter of Facts
July 2019:	Decision (fine: €242 million)
October 2019:	Qualcomm's appeal

Some Context

- **Predation: "White Tigers" vs. "Unicorns"**
  - First EC decision on predation since **2003 Wanadoo case** (ADSL-based Internet access services in France)
- **Second EC infringement decision addressed to Qualcomm**
  - "Exclusivity Payments" in January 2018 (fine: €997m)
- **FTC case against Qualcomm: US District Court Judgment in May 2019**
  - Licensing Policy and Exclusive Dealing
  - Qualcomm won Reprieve in August 2019
- **Settlement with Apple in April 2019 (patent dispute)**
  - six-year global patent licensing agreement
  - Intel pulled out of 5G modem market for phones

Parties and relevant market

Qualcomm (the addressee)

- Headquartered in San Diego, California, USA
- Leading developer of wireless technology
- Leading supplier of chips and chipsets used in mobile handsets and other devices (MBB)
- Holder of essential intellectual property rights (IPRs) in mobile standards

Icera (the complainant)

- Founded in 2002 with headquarters in Bristol, UK
- Developer of chipsets for devices providing mobile communications based on the UMTS standards
- Acquired by Nvidia Inc. in 2011
- In 2015, Nvidia announced that it would wind down its modem operations (i.e. Icera's baseband chipset business)

Worldwide market for slim and integrated baseband chipsets that are compliant with different iterations of the UMTS/3G standard

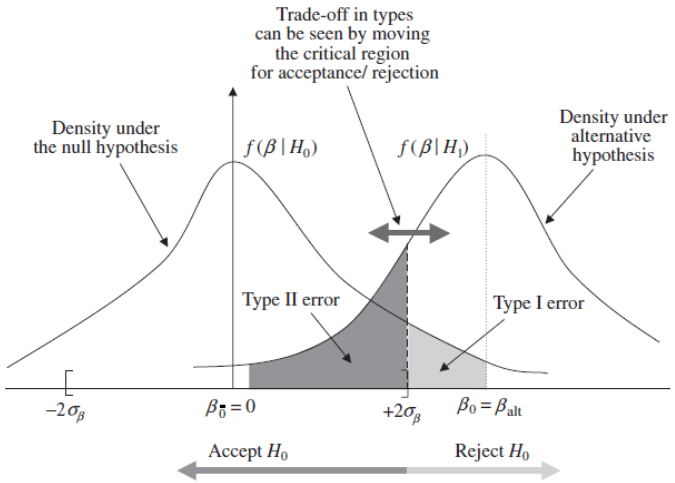
→ The "UMTS baseband chipset market"

Main Findings

- **Dominance**
  - Qualcomm held a dominant position in the worldwide market for UMTS chipsets from 2009 to 2011 (about 60% market share)
- **Abuse**
  - From 1 July 2009 to 30 June 2011, Qualcomm abused its dominant position on the market for UMTS compliant baseband chipsets ("UMTS chipset market") by selling certain quantities of **three of its UMTS baseband** chipsets to two of its **key customers, Huawei and ZTE**, below cost, with the **intention of eliminating Icera**, its **main competitor** at the time in the market segment offering advanced data rate performance ("**leading edge segment**")

Evidence

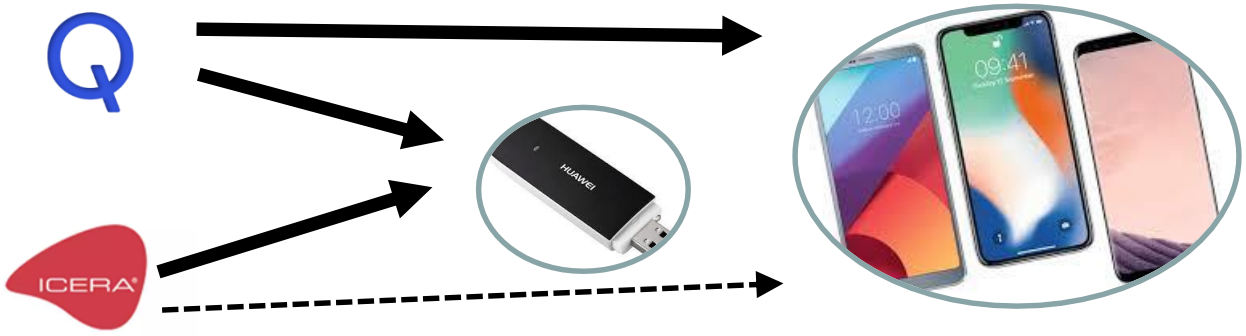
- **Historical conundrum: How to infer predation from observed prices?**
  - "Low" prices can arise both under predation and under pro-competitive reaction to entry
  - Type I error: fail to catch a predator
  - Type II error: find predation when in fact there was none (→ chilling competition, phoney litigation)



- **EU Legal framework for price-cost tests:**
  - AKZO I:
    - price below AVC (minimize Type II error)
  - AKZO II:
    - Price above AVC but below ATC (reduce Type I error)
    - AND: evidence of intent (*"existence of a plan to eliminate competition"* or *"…a competitor"*) – keep Type II error under control

Rationale for the Conduct:

- Dongle segment for Icera a **stepping stone** towards the smartphone segment (fast growth as feature phones became obsolete)
- Icera **gaining traction** as BB supplier for dongles in 2006-2009
- Qualcomm prevented Icera from growing into the smartphone segment by **targeting** 2 main buyers (Huawei, ZTE) of chipsets for MBB devices
- → Icera could not gain **reputation and scale** as supplier for data cards, failed to enter smartphone segment
- Innovation stifled, competition and consumer choice reduced



Price-cost test (I)

- According to settled case law (**AKZO II case**), **ATC** is relevant **cost benchmark**
- Qualcomm is a **multiproduct undertaking** which benefits from economies of scope
  - there are **common costs** across multiple products which are not specific to individual products (e.g. commercialisation costs)
  - ATC is **not well-defined** for multi-product undertakings
- The Commission considers **LRAIC** to be the most appropriate cost benchmark
  - Lower bound on a price that does not threaten the existence (or at least the presence) of any equally efficient or more efficient supplier (see e.g. Baumol, JLE 1996)
- **LRAIC** only comprises the **production costs specific to the products under investigation**.

Price-cost test (II)

- **Costs**: LRAIC = average variable costs + incremental costs
  - Reconstruction of the variable cost measure
  - Incremental development costs (revenue based allocation)
  - Costs are Qualcomm's costs ("As-efficient-competitor" test)

- **Prices**: the Commission carried out a reconstruction of the prices effectively paid to Qualcomm by Huawei and ZTE
  - taking into account full revenue, even if recognised only after sales took place
  - Based on all incentives as they materialised *ex post* (conservative compared to an *ex ante* approach)