Samsung – Enforcement of ETSI standards essential patents (SEPs)

Questions and Answers

What is an injunction?
An injunction is a court order aiming at preventing the continuation of a patent infringement. Generally, it includes the prohibition to sell the product infringing the patent. Such injunctions can be preliminary – as a precautionary measure typically for the time of the assessment of the case on the merits by the court. Injunctions can also be permanent as a result of the decision on the merits by a court.

What are the Commission's concerns in this case?
In industries such as the IT sector, industry standards are key and bring benefits to consumers and businesses alike in terms of interoperability and innovation. However, once a technology has been chosen and the standard has been set, it is important that the standard is accessible to all interested parties. In order to ensure such access and to prevent patent hold-up, standard-setting organisations generally require that members commit ex ante to license their standard essential patents (SEPs) on Fair Reasonable and Non-Discriminatory (FRAND) terms. Against this backdrop, the Commission is concerned that the use of injunctions can be anti-competitive.

How does Samsung's announcement of 18 December 2012 that it is withdrawing injunctions in Europe affect the case?
The Commission takes note of Samsung's announcement. This does not alter the Commission's preliminary conclusions about the anti-competitive nature of Samsung's conduct thus far.

Is the Commission generally questioning the use of injunctions by patent-holders?
No. Recourse to injunctive relief is generally a legitimate remedy for patent-holders in case of patent infringements. The case is therefore not about eliminating the use of injunctions by patent-holders. Rather, the Commission takes the preliminary view that the seeking of an injunction for SEPs can constitute an abuse of a dominant position in the exceptional circumstances of this case - where the holder of a SEP has given a commitment to license these patents on FRAND terms and where the company against which an injunction is sought is willing to negotiate a FRAND licence.
Is the Commission not intervening in a simple patent dispute between private parties?
No. The Commission takes no position on the validity or infringement of the patents in question which is to be determined by national courts. The Commission's intervention aims to protect the public interest that commitments given during a standard-setting process are respected so that consumers and businesses can enjoy the benefits of standardisation.

Does the Commission take a position on what a reasonable royalty rate is?
No. National courts or arbitrators are generally well equipped to do this. The Commission's preliminary view is that in the specific circumstances of the case, the seeking of injunctions may unjustifiably distort FRAND licensing negotiations where a commitment to license the SEPs in question on FRAND terms has been given.

What are the general implications of the case for patent protection?
Intellectual property rights are one of the cornerstones of the single market and therefore have a key role in promoting innovation. This case is about the potential misuse of certain SEPs in the specific standardisation context. The Commission will continue to attach high importance to effective patent protection and an efficient patent system.

What about the right of a company to access a tribunal?
The right of access to a tribunal does not constitute an unfettered prerogative. According to the EU Charter of Fundamental Rights, it may be restricted, provided that the restriction (i) corresponds to objectives of general interest, (ii) is proportionate, and (iii) does not infringe upon the very substance of the right. The Commission's preliminary view is that these conditions are fulfilled in the case at hand.
Samsung's right to seek damages and other corrective or alternative measures for an infringement of its SEPs remains untouched.

Does the Commission's Statement of Objections affect lawsuits pending before national jurisdictions?
National courts remain free to decide lawsuits pending before them as long as EU law is respected. Regulation 1/2003 sets out the basic principles that should be followed to ensure the uniform application of EU competition law in the event that the Commission opens proceedings to investigate a certain conduct. In particular, Article 16 provides that national courts "must avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings."
**How did this case begin?**
The Commission initiated the case on its own initiative.

**What is the relevance of the fact that Apple first sought injunctions against Samsung?**
Apple launched injunctions against Samsung on the basis of non-SEPs, i.e. patents for which no commitment to license on FRAND terms had been given in a standardisation context. The Commission's case derives from the specific standardisation context and the associated commitment to license SEPs on FRAND terms.

**What about other cases relating to SEPs?**
The Commission is investigating a number of other cases relating to SEPs but cannot divulge details at this stage. In April 2012 the Commission opened proceedings against Motorola (see IP/12/345).

**Is the Commission liaising on these issues with the antitrust authorities in the United States?**
The Commission is in close contact with both the US Department of Justice and the US Federal Trade Commission on issues relating to SEPs.

**What are the next steps?**
A Statement of Objections is a formal step in Commission investigations. The Commission informs the parties concerned in writing of the objections raised against them and the parties can reply in writing and request an oral hearing to present comments. The Commission takes a final decision only after the parties have exercised their rights of defence. The sending of a statement of objections does not prejudge the final outcome of the investigation.