

기술이전, 특허라이선스 계약에서 공정거래법, Anti-trust & Fair Competition Law 관련

실무적 개요



당연 위법 사항 - per se illegal

- ▶ price fixing, ▶ output restraint, ▶ market division, ▶ group boycott, ▶ resale

price maintenance

경쟁제한성과 합리성 판단 사항 - Rule of Reason 적용대상

Safeguards against the anticompetitive concerns

- ▶ horizontal restraints
- ▶ tying arrangements (package licensing)
- ▶ exclusive dealing (territory, field of use, components, alternatives, etc.)
- ▶ cross-licensing and pooling arrangements
- . fair, reasonable and non-discriminatory terms and conditions

- . limiting to technically essential patents, not including alternatives
- . free to be licensed individually or in a package
- . worldwide non-exclusive
- . royalties on actual use of the patents
- . free to develop and use alternatives
- . grant back under non-exclusive, non-discriminatory licenses
- . no joint defense
- ▶ grant-back
- ▶ acquisition (exclusive licensing) of IPR

판단요소

1. Whether the restraint is likely to have anticompetitive effects?
2. Whether, under the relevant market context, the restraint is reasonably necessary to achieve pro-competitive efficiencies that outweigh anticompetitive effects?

Qualcomm 퀄컴 특허라이선스 계약의 불공정사항 수정 명령 - 미국법원 FTC v.

Qualcomm 사건 2019. 5. 21. 선고 1심 판결 내용

(1) Qualcomm must not condition the supply of modem chips on a customer's patent license status and Qualcomm must negotiate or renegotiate license terms with customers in good faith under conditions free from the threat of lack of access to or discriminatory provision of modem chip supply or associated technical support or access to software.

(2) Qualcomm must make exhaustive SEP licenses available to modem-chip suppliers on fair, reasonable, and non-discriminatory ("FRAND") terms and to submit, as necessary, to arbitral or judicial dispute resolution to determine such terms.

(3) Qualcomm may not enter express or de facto exclusive dealing agreements for the supply of modem chips.

(4) Qualcomm may not interfere with the ability of any customer to communicate with a government agency about a potential law enforcement or regulatory matter.

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