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Antitrust News *in Five Minutes*

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In This Issue

Google settlement approved

On November 19, a federal court granted preliminary approval to a settlement among Google, publishers, and authors that allows Google's scanned-books project to go into operation.

Under the settlement, Google undertakes to funnel 63 percent of all its revenues into a pool, to be distributed to copyright holders under a formula. Copyright holders can opt out of the settlement, but otherwise waive their right to sue Google for copyright infringement.

One of the key changes in the last revision of the settlement was to add a trustee who will be responsible for handling "orphan works," or works for which no copyright holder can be found. Responding to complaints from the German and French governments, the Google project will now be limited to works that were published in the United States, Britain, Australia or Canada.

The settlement would end three years of disputes in the United States if and when it becomes final. There could still be additional hurdles abroad.

Intel hit with shareholder derivative action

In our last issue, we reported on Intel's $1.25 billion settlement with AMD shortly before that case would have gone to trial.

The day after the settlement was announced, a shareholder filed a derivative action. It complains that Intel has now paid about $2.7 billion in settlements or fines, and is subject to more possible liability, from NY AG Cuomo's lawsuit and the FTC's investigation.

The complaint charges that executives of the companies were either involved in the antitrust violations or failed to act independently to protect the shareholders' interests. It demands that the directors reimburse the company for any damages the company ends up having to pay and also demands that the directors implement the Intel audit and corporate governance procedures that it claims were ignored.

EU: Qualcomm investigation ends

In 2007, the EU competition authority began an investigation of Qualcomm's licensing practices. Qualcomm holds patents relevant to the CDMA 3G technology that became Europe's cell phone standard.

The EU investigation was triggered by charges brought by Ericsson, Nokia, Texas Instruments, Broadcom, NEC and Panasonic. They claimed that Qualcomm refused to license CDMA technology "on fair, reasonable and non-discriminatory terms", as it had promised, in exchange for the adoption of CDMA technology as the standard.

The EU investigation concentrated on whether Qualcomm was "dominant" and more generally on "important issues about the pricing of technology after its adoption as part of an industry standard."

Over the last year, Qualcomm has settled with several of the complainants and the remaining ones have announced they intend to withdraw their complaints.

On November 24, the EU announced it would end its investigation. Its press release said that "[a]ll complainants have now withdrawn or indicated their intention to withdraw their complaints, and the Commission has therefore to decide where best to focus its resources and priorities. In view of this, the Commission does not consider it appropriate to invest further resources in this case."

India: Debates about supremacy of competition commission over specialized industries

The Indian government is considering a plan to limit the jurisdiction of the country's competition commission. Its announced goal is to prevent clashes with other regulators who have jurisdiction over other areas of the economy.

India's *Economic Times* reported that the government's concern focused on possible conflicts between the competition commission and the telecom and the banking authorities.

The proposal has pitted supporters of the competition commission against specialized regulators. Some opponents of the proposed split have cited issues surrounding the US, including the split of antitrust authority between the FTC and the DoJ. In the US, of course, in the area of banking, Congress and the Administration are currently reviewing the specialized regulatory regime. In communications, the FCC holds some overlapping jurisdiction on competition issues with the antitrust agencies.

Spain: Insurers fined €120M for price fixing

Spain's competition authority fined six insurers and reinsurers €120M for fixing prices on required construction insurance. Builders were required to obtain coverage to provide a 10-year guarantee on their work.

This is the largest fine imposed so far by the Spanish commission.

The commission concluded that primary insurers fixed prices on the insurance and the reinsurers supported the arrangement by refusing to deal with any insurance companies that did not adhere to the pricing agreements.

France: Apples and Oranges: iPhone exclusivity formally ends

In a move that should interest Americans who covet the iPhone but not AT&T coverage, Apple and its designated French cell phone provider formally ended their three-year iPhone exclusivity in France.

Orange, the cell phone unit of France Telecom, was the leading competitor in France's cell phone market. Apple made a three-year exclusive deal with Orange. But Bouygues Télécom, France's third-largest mobile carrier, made a complaint to the French authorities, claiming the agreement was anti-competitive.

In December 2008, the French competition agency concluded that the Apple-Orange arrangement was illegal because it was "a new rigidity factor in a sector that already suffers from lack of competition." The French agency issued emergency rulings ending the exclusivity. The French court of appeals subsequently affirmed the agency's conclusion. Orange responded that the decision was not based on a thorough analysis and would harm the market:

This decision, which will have a major impact on the market, was taken without any in-depth examination of the situation, and will have serious consequences on manufacturers, as well as their subcontractors and software suppliers.

Apple has since made iPhone distribution agreements with other carriers for the French market.

On November 4, 2009, Apple and Orange announced the end of their agreement.

When Apple later introduced the iPhone in Australia, India and Italy, it made non-exclusive agreements. Meanwhile, in the UK, Vodaphone and Orange have entered the iPhone market when British distributor O2's exclusivity expired this month.

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