

Guidelines from the European Commission on the interpretation of its proposed revised Horizontal Block Exemption Regulation provide companies with legal certainty on economically desirable cooperation and protect competition. We commend the European Commission's Directorate-general for Competition (DG COMP) for its efforts with the draft Communication revising the existing "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements" (Horizontal Guidelines) and welcome the opportunity to comment as we believe the draft may have impacts related to our business operation, particularly on the mentioning of Licensing Negotiation Groups (LNGs)¹.

Avanci is an independent aggregated patent licensing platform, offering a license to the standard essential patent (SEP) portfolios for cellular technologies (2G, 3G, 4G and soon 5G) of 48 patent owners for the Internet of Things industry (IoT industry) (www.avanci.com). Avanci's most established programmes in the IoT industry are for licensing connected vehicles. To date, more than 35 automotive brands participate in the Avanci platform as licensees, and more than 55 million connected vehicles are covered by an Avanci license. Avanci is not owned or controlled by licensors or licensees, and its participants remain free to conclude bilateral license agreements outside of the platform.

Avanci's independence allows it to freely negotiate with both patent owners and prospective licensees, discovering license terms that can be widely acceptable and reflect requirements and specificities of a particular industry sector. Avanci's process of gathering views on SEP licensing terms from a diverse group of product companies and patent owners guarantees that the Avanci license offers a solution that is efficient, predictable, and acceptable for a wide range of entities, ensuring uptake and eventual success of the programme.

Because Avanci provides a fair and comprehensive one-stop-shop solution for licensing in the IoT industry (and because other aggregated patent licensing solutions currently operate or can operate effectively in other industries and technologies), we believe LNGs would be of limited or no benefit in practice in the marketplace. Due to the potential inefficiencies and anti-competitive effects that could arise from LNGs, we recommend a thorough and comprehensive legal and economic analysis on feasibility and compliance with EU competition law. Indeed, to Avanci's knowledge no LNGs have successfully been formed and therefore the true impacts of such efforts are unknown. Patent licensing agreements have specificities that are different from a traditional purchase agreement for products and services, so certain issues may arise

¹ Draft Communication from the Commission: "Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements", p. 68, § 312.

in the context of LNGs that do not directly correlate to those addressed in the Horizontal Guidelines for joint purchasing agreements. SEP licensing must, for example, comply with FRAND principles, a framework that does not apply to the purchase of other inputs, and companies are able to implement standardized technologies without first obtaining SEP licenses. Any implications of these differences will need to be considered and, more generally, the content and negotiations to conclude a licensing agreement differ significantly from purchase agreements for products or services, so an LNG is inevitably quite different in character than a buying alliance among supermarkets.

It is uncertain that an LNG would improve the current framework for SEP licensing or provide a viable alternative to an independent aggregated licensing solution such as Avanci. Independent aggregated licensing solutions already provide an effective mechanism for the views of both potential licensors and potential licensees to be vetted appropriately in the market in determining licensing terms. Nor are LNGs needed to counterbalance any perceived bargaining power of aggregated licensing solutions, such as Avanci's, because, in accordance with long-standing competition authority guidance on patent pool licensing arrangements, obtaining a license from a patent pool is purely optional. Licensees always have the option of securing a FRAND license to standardized technology directly from each individual licensor, instead of the patent pool.

The question could be asked whether LNGs could bring desirable benefits to small and medium sized enterprises (SMEs) or companies that are not familiar with licensing negotiations. Further study is needed to determine whether that would be the case where an independent aggregated patent licensing platform is available for a simple, transparent, one-stop-shop license.

To conclude, we recommend further study of LNGs and urge caution before the untested concept is given any perceived official sanction by the European Commission by inclusion in the draft revised Horizontal Guidelines.

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