

Commission clears 3G patent pooling platform

The European Commission has [granted](#) antitrust clearance for a set of agreements concerning third generation (3G) mobile technologies. The [3G Patent Platform Partnership](#) (3G3P) concluded the agreements, which cover the [IMT-2000 3G standard](#). The standard is mandatory for all manufacturers that want to produce 3G mobile equipment.

The agreements set up procedures to evaluate whether patents are essential for a particular technology, and if so, arrange for the block licensing of such patents. This facilitates access to 3G mobile technologies, reduces transaction costs and prevents delays arising from negotiations with individual licensors.

The 3G platform includes five alternative technologies, each of which can be used independently to implement the standard. It is generally feared that pooling such technologies and licensing them collectively might reduce competition between them, form a conduit for collusion or result in tying. For this reason, antitrust authorities in Europe and the United States have traditionally only allowed pools to be cleared when they were limited to complementary essential patents.

However, in the case of the 3G3P, the commission has accepted a broader pool, on the condition that the parties change the structure of the agreements. The parties were asked to establish five separate sets of patent licensing arrangements, one for each technology, instead of combining all essential patents in a single platform. Each alternative patent portfolio must be limited only to essential patents, licensing should be carried out under non-discriminatory terms and the parties must refrain from exchanging competitively sensitive information.

Both the Japanese Fair Trade Commission and the US Department of Justice's Antitrust Division have cleared the 3G3P agreements under similar conditions.

Interestingly, the fact that major 3G patent holders, including [Ericsson](#), [Nokia](#), [Motorola](#) and [Qualcomm](#), were not party to the 3G3P was not considered, in itself, sufficient to guarantee effective competition in 3G technology.

Maurits Dolmans, Daniel Ilan and Olivier Oosterbaan, Cleary Gottlieb Steen & Hamilton, Brussels