

I. Videocassette Recorders (VCR)

Although the number of multiparty licensing cases has been quite limited, it is clear that the European Commission has been quite cautious about the potentially anti-competitive aspects of certain restrictions in multiparty licensing for a very long time. In 1987, an agreement involving cross-licensing of patents was found to negatively affect competition within the European Community.³⁹⁸ Specifically, Philips and Sony had entered into an agreement with other videocassette recorders (VCR) producers on a uniform application of technical standards for the system at issue. The cross-license covered royalty-free patents to ensure the compatibility of cassettes with recorders from different vendors.

However, the agreement provided that only the Philips complete system would be allowed, so that, consequently, any modification to the Philips system required the consent of all parties. Despite the improved interoperability of the cassettes with video machines of different producers, the Commission refused to grant exemption arguing that: “compliance with VCR standards led to the exclusion of other, perhaps better, systems. Such an exclusion was particularly serious given the market position enjoyed by Philips [...] Restrictions were imposed upon the parties which were not indispensable to the attainment of these improvements. The compatibility of VCR video cassettes with the VCR video machines made by other manufacturers would have been ensured even if the latter had to accept no more than an obligation to observe the VCR standards when manufacturing VCR equipment”.³⁹⁹

II. Advanced Photographic System (APS)

Taking a new approach, from the early 1990s on the Commission has unequivocally demonstrated that it also recognises and prizes the potentially pro-competitive effects brought about by technology sharing, such as the establishment of standards setting. As in most of the cases, no formal decisions were made on the notified agreement reported below, for instance, but the Commission sent the parties a so called “comfort letter”, i.e. an administrative letter, thoroughly expressing its opinion.

Specifically, in July 1993 Canon, Kodak, Minolta, Fuji and Nikon notified the European Commission about their accord for the still under way development and further exploitation, under the terms of a cross-license, of the Advanced Photographic System (APS), a new industry standard, which involved the production of new types of cameras, films and photo-finish equipment.⁴⁰⁰ The Commission has twice formally invited third parties to submit their observations on the proposed coopera-

398 Philips VCR, OJ No L 47, 18.1.1978, p.42 *et seq.*

399 Philips VCR, OJ No L47, 18.1.1978.

400 Notice in OJ C 68/3 of 5 March 1994.

tion. The parties to the agreement were all large players in the European and world market in cameras, lenses, colour roll films, colour photographic paper and single use cameras and as such were keen to ensure wide acceptance of APS as a new standard, as demonstrated by their commitment to granting licences to competitors. Here, the undertakings involved were primarily manufacturers, and their final aim was to generate revenues, essentially from their production, rather than from the licensing of their IP. The APS was commercially launched in April 1996, involving features that were improved to such extent that the parties expected it to effectively replace, at least to a substantial extent, the existing industry standard within the photographic industry in the long run.

Eventually, the Commission reviewed some aspects of the third party licensing in 1997, mainly as far as it related to the technical assistance given to licensees.⁴⁰¹ During the proceedings the parties complied with the Commission's requirements to ensure full competition, in particular by securing a fair and transparent licensing system, together with technical assistance to the benefit of prospective licensees. Besides, the co-operating parties agreed to change their initially notified agreements by granting licenses to third parties already two years before the date of the introduction of the APS into commerce, in order to ensure that the upcoming licensors would also be able to market licensed products in time to effectively compete with the named notifying parties. Following the outlined compromises, the Commission expressed its confidence that the conditions were "securing a transparent and fair licensing system".⁴⁰²

III. Digital Versatile Disc (DVD)

Similarly, in May 1999 an agreement involving the joint licensing of the newly developed Digital Versatile Disc (DVD) technology was submitted to the Commission's Competition Directorate General by Hitachi Ltd., Matsushita Electric Industrial Co. Ltd., Mitsubishi Electric Co., Time Warner Inc. and Toshiba Co. Practically, by way of compression, a DVD disc can generally store seven times as many video and audio signals as a compact disc, thus having evident advantages for users. The arrangement at issue covered the establishment of a patent pool embracing diverse applications of DVD technology, whereby patents are to be diffusely granted by way of a non-exclusive, fair and non-discriminatory license program to be unitarily administered by Toshiba.

The investigations lead by the Commission's competition services⁴⁰³ indeed found that the patent pool under examination would likely promote economic and technical progress by allowing an efficient introduction and distribution of DVD

401 Notice in OJ 330/10 of 1 November 1997.

402 Press release IP/98/353 of 15 April 1998.

403 Press release IP/00/1135 of 9 October 2000.