

Statement by Commissioner Vestager on Commission decision to impose interim measures on Broadcom in TV and modem chipset markets

* Check against delivery*

Today, the Commission has adopted a decision imposing interim measures on Broadcom. Broadcom is the world's largest designer, developer and provider of chips for fixed video and broadband devices.

Interim measures aim at preventing irreparable harm to competition. They need to strike a balance between protecting the rights of defence on the one hand and speed and effectiveness in antitrust enforcement on the other. They allow the Commission to order a company to stop conduct that we consider at first sight to be illegal. At the same time, the companies involved have the right to be heard before the measures are taken and can appeal them before the European Courts.

At this stage, we consider that Broadcom is restricting competition by engaging in exclusive or quasi-exclusive dealings with key customers. Broadcom's behaviour would cause serious and irreparable harm to competition. So today we have ordered Broadcom to stop its conduct, while our in-depth investigation on the merits of the case continues.

What is today's decision about?

Most of us probably have a TV set-top box and an internet modem at home. The "brain" inside a set-top box or modem is the so-called "systems-on-a-chip". That chip ensures that we can access the Internet or watch the news or the movies we like on TV.

Broadcom is the world leader in the supply of such chipsets. It accounts for roughly half of the sales of the entire industry.

In the second half of 2018, we received market information suggesting that Broadcom may be imposing exclusivity and quasi-exclusivity restrictions on its customers in relation to some of its chipsets.

Our preliminary investigation since then has shown that Broadcom seems to be dominant in three different markets: the markets of systems-on-a-chip for (i) TV set-top boxes, (ii) fibre modems and (iii) xDSL modems.

Market dominance is in itself not a problem. We value companies for becoming successful due to their skill and innovation. But dominant companies they do have a special responsibility not to impair competition in the internal

market. As an example, they cannot require or induce customers to purchase exclusively or almost exclusively from them. This is not competition on the merits. And it ultimately leads to a reduction of choice and innovation to the detriment of consumers.

(i) Prima facie infringement of EU competition rules

The first condition to order interim measures is that the Commission finds an infringement of the competition rules, at first sight.

During our investigation, we analysed several agreements between Broadcom and its customers. We found that six of these agreements feature provisions to buy only or predominantly from Broadcom. We consider it likely that these agreements would negatively impact competition in two ways:

(i) first, they strengthen Broadcom's position in the "dominated" markets. As an example, this is done through exclusive purchasing obligations and exclusivity rebates. These effectively prevent competitors from challenging Broadcom's position in these markets; and

(ii) second, they allow Broadcom to leverage its dominance into the market for cable modem chipsets in which Broadcom may not yet be dominant. This is done by granting commercial advantages to those customers in the dominated markets, which also buy exclusively cable modem chipsets. Broadcom's conduct makes it very difficult for the only other supplier of these products to compete.

We have carried out an analysis of the likely effects of Broadcom's conduct. We conclude that these agreements are likely to shut out competitors from the market. Our analysis was based on a number of elements, including 1) the size and importance of the customers, 2) the conditions and duration of the agreements and 3) a substantial amount of internal documents submitted by Broadcom's customers and competitors.

On this basis, we have reached the conclusion that, at first sight – or, in legal lingo, "*prima facie*"– Broadcom is currently infringing competition rules by abusing its dominant positions in the system-on-a-chip markets for TV set-top boxes, fibre modems and xDSL modems.

(ii) Urgency

The second condition for the Commission to order interim measures is the need for an urgent intervention due to the risk of serious and irreparable harm to competition if the infringement continues.

We consider this condition to be met. The evidence we have gathered shows that Broadcom's behaviour is likely to have severe negative effects on its competitors before we could reach a final decision.

We know that telecom and cable providers will launch a large number of tenders in the coming years. We believe that if Broadcom's contractual arrangements stay in place, Broadcom's competitors would not be able to compete on equal terms in these tenders. This could fatally affect their

viability. Their revenues will fall, and so will their ability and incentive to invest in innovation. Their products will therefore gradually lose attractiveness in the eyes of customers. They will progressively be marginalised and may ultimately be forced to leave the market.

If that happens, European consumers would face the consequences of higher prices, reduced choice and less innovation.

Conclusion

In today's decision, we have therefore ordered Broadcom to cease to apply the exclusivity and leveraging provisions contained in its six agreements with manufacturers of TV set-top boxes and modems. Broadcom must also refrain from including the same provisions in any future agreements with these manufacturers. And refrain from implementing other practices that would have an equivalent effect.

Broadcom must comply with these measures within 30 days.

These measures will remain in place for up to three years. They are appropriate and proportionate to address our concerns regarding the proper functioning of competition on the relevant chipset markets. They do not prevent Broadcom from continuing to supply its chipsets to its customers, but they will ensure that Broadcom's competitors are able to compete on the merits while we complete our investigation.

Our investigation started in October 2018. So it has taken us one year to adopt today's decision. During that time, we have carried out a thorough investigation by sending Broadcom and third parties several requests for information. In June this year, we issued a Statement of Objections, to which Broadcom replied extensively in writing. Broadcom also had the opportunity to be heard at an oral hearing. Moreover, Broadcom has the right to challenge today's decision before the European Courts, where it can also ask for a suspension of the interim measures. And of course, in parallel, Broadcom has the right to fully defend itself on the merits of the case as the Commission's in-depth investigation unfolds.

Proving our cases to the necessary legal standard cannot be compromised. And respect for rights of defence is absolute.

So interim measures are one way to tackle the challenge of enforcing our competition rules in a fast and effective manner. And this is why they are so important. Especially in fast-moving markets. Whenever necessary, I am therefore committed to making the best possible use of this important tool.