

August 24, 2019

The Honorable Joseph Simons  
Chairman  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

The Honorable Noah Joshua Phillips  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

The Honorable Rohit Chopra  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

The Honorable Christine S. Wilson  
Commissioner  
Federal Trade Commission  
600 Pennsylvania Ave NW  
Washington, DC 20580

Dear Chairman Simons and Commissioners Phillips, Chopra, Slaughter, and Wilson:

The undersigned stakeholders write to urge the Federal Trade Commission (FTC) to continue to support innovation and competitiveness by seeking an *en banc* rehearing of the Ninth Circuit panel's August 11, 2020 decision in *FTC v. Qualcomm*, which undermines longstanding U.S. law and policy and wrongly applies competition law. If it becomes precedent, this decision would endanger domestic competitiveness, as well as weaken the ability of the FTC to protect consumers through future enforcement actions.

The FTC attained important guidance via the successful district court trial, affirming the application of U.S. competition law to address competitive abuses, and reinforcing the FTC's core role in protecting American consumers. Unfortunately, the panel opinion misapplies competition law to the facts of the case, was particularly misguided in asserting that Qualcomm's breach of its FRAND commitments did not impair rivals, controverts existing Ninth Circuit precedent, and undermines the critical role standards play in facilitating competition and innovation. If allowed to stand, the panel's decision could destabilize the standards ecosystem by encouraging the abuse of market power acquired through collaborative standard-setting. The panel's opinion could embolden foreign entities to refuse to license their standard essential patents (SEPs) to competitors in the United States.

Because of the key role the FTC plays in protecting American consumers and competition, we urge you to consider how the panel's decision impacts the FTC's ability to carry out its mission, whether as to SEP issues or otherwise. Through its faulty application of competition law, its refusal to consider the district court's extensive factual findings detailing how Qualcomm's licensing practices reinforced its product monopoly, excluded rivals, and harmed the competitive process, and its refusal to consider the effect that abusive terms have on original equipment manufacturers (OEMs) and end users, the panel has weakened the FTC's ability to protect American consumers generally through future enforcement actions in a variety of industries.

Again, for the benefit of standards, innovation, and consumers, we urge the FTC to see this matter through, including by seeking *en banc* rehearing of the Ninth Circuit panel's reversal of the district court's decision and vacating of the district court's remedies.

Sincerely,

**ACT | The App Association**

**Alliance for Automotive Innovation**

**Center for Democracy & Technology**

**Computer & Communications Industry Association (CCIA)**

**Copia Institute**

**Daimler AG**

**DENSO Corporation**

**Engine**

**Ford Motor Company**

**High Tech Inventors Alliance (HTIA)**

**Honda Motor Co., Ltd.**

**HP, Inc.**

**Intel Corporation**

**MediaTek**

**Nordic Semiconductor ASA**

**Open Markets Institute**

**Public Knowledge**

**R Street Institute**

**Software & Information Industry Association (SIIA)**

**Tesla**

**u-blox**