

## Case AT.40608 – BROADCOM

### Commitments under Article 9 of Regulation 1/2003

#### A. Overview

1. In accordance with Article 9 of Council Regulation (EC) 1/2003, Broadcom Inc. (“**Broadcom**” or the “**Company**”) offers the following commitments (the “**Commitments**”) to the European Commission (“**Commission**”) in response to the Commission’s investigation in Case AT.40608 – *Broadcom*.
2. On 26 June 2019, the Commission opened formal proceedings against Broadcom and its subsidiaries concerning alleged exclusionary practices (Case AT.40608 – *Broadcom*, the “**Investigation**”), and issued a Statement of Objections seeking to impose interim measures (“**IM SO**”) ordering Broadcom to cease to apply certain contractual provisions relating to purchases of components for TV set-top boxes (“**STBs**”) and residential gateways. Under the targeted supply agreements, Broadcom sells components to OEMs which assemble the purchased Broadcom components together with other components to manufacture STBs and residential gateways. OEMs bid STBs and residential gateways designs in response to requests for proposals issued by service providers (telecoms operators and cable service providers) which provide STBs and residential gateways to their subscribers.
3. The IM SO preliminary concluded that the targeted agreements between Broadcom and OEMs contain provisions that may result in those customers purchasing systems-on-a-chip (“**SoCs**”), front-end chips and Wi-Fi chips for STB and residential gateways exclusively or almost exclusively from Broadcom through alleged (quasi-) exclusivity arrangements or leveraging restrictions.
4. On 16 October 2019, the Commission adopted a Decision (the “**IM Decision**”) imposing interim measures ordering Broadcom to cease to apply certain contractual provisions relating to purchases of SoCs for residential gateways and STBs in its supply agreements with [six OEMs] (the “**IM OEMs**”). The IM Decision concluded that Broadcom’s supply agreements with the IM OEMs contained provisions which *prima facie* have the object or effect of requiring or inducing customers to obtain all or almost all of their requirements for SoCs for STBs and/or residential gateways from Broadcom by means of (quasi-) exclusivity arrangements or leveraging restrictions, collectively referred to by the Commission as “exclusivity inducing provisions”.
5. Notwithstanding the fact that Broadcom disagrees with the IM SO, and the IM Decision, Broadcom offers the Commitments to meet the Commission’s concerns on the understanding that the Commission will adopt a decision pursuant to Article 9 of Council Regulation (EC) 1/2003 making the Commitments binding, concluding that there are no grounds for further action against Broadcom and its subsidiaries, and closing the Investigation (the “**Commitment Decision**”).
6. The Commitments should not be construed as an admission by Broadcom that any of the conduct subject to the Investigation infringed Articles 101 or 102 of the Treaty on the

Functioning of the European Union or Articles 53 or 54 of the EEA Agreement.

## **B. Definitions**

**Agreements:** agreements (consisting of a concurrence of wills between Broadcom and an OEM or Service Provider), relating to Relevant Products to be incorporated in STBs, xDSL residential gateways, and/or fibre residential gateways, whether binding or non-binding, formal or informal.

**Bid or Bidding:** instances where an OEM bids, or makes or submits offers for, responds to, or proposes in response to RFPs. For the sake of clarity, references to “Bid(s) (only)” and “Bidding (only)” certain products in Section C. below are to be understood as “Bid(s)/Bidding (only) Service Provider Equipment incorporating those products”.

**China:** People's Republic of China.

**EEA Requirements for a Relevant Product:** an OEM’s demand as measured in unit volumes over the reference period as defined in relevant Agreement(s) for each of the Relevant Products for incorporation into Service Provider Equipment to be provided to End-users in the EEA.

**EEA RFPs:** RFPs issued by an EEA Service Provider for Service Provider Equipment incorporating Relevant Products for its End-users in the EEA (but not necessarily limited to End-users in the EEA), or by an OEM for Relevant Products to serve demand by an EEA Service Provider for its End-users in the EEA (but not necessarily limited to End-users in the EEA).

**EEA Service Providers:** telecommunication operators and cable service providers that provide STBs and/or fibre residential gateways, and/or xDSL residential gateways to End-users in the EEA.

**EEA Service Provider’s Total Requirements:** EEA Service Provider’s demand, over the reference period as defined in relevant Agreement(s), as measured in unit volumes for each of the Relevant Markets.

**EEA:** those countries participating in the European Economic Area as of the Effective Date and at any time thereafter during the Relevant Period, and the United Kingdom.

**Effective Date:** the date upon which Broadcom receives formal notification of a decision pursuant to Article 9 of Council Regulation (EC) 1/2003 by which the Commission makes the Commitments binding on Broadcom.

**End-users:** customers subscribing to services provided by Service Provider(s) and using Service Provider Equipment to receive such services.

**IM OEMs:** [six OEMs whose agreements with Broadcom were contested in the IM Decision].

**Implementation Date:** 30 days following the Effective Date.

**Non-Price Advantages:** advantages not directly linked to price (e.g., engineering support, early access to Broadcom's technology, reduced lead-times, and increased inventory); provided, however, that this does not include advantages for which there is no variability across OEMs, such as advantages that are intrinsic to product properties, product quality or general product availability.

**OEMs ("Original Equipment Manufacturers"):** entities that design and/or manufacture STBs, xDSL residential gateways, and/or fibre residential gateways, including, but not limited to the IM OEMs, and Service Providers when and only when they design and/or manufacture their own STBs, xDSL residential gateways, and/or fibre residential gateways without the assistance of a third-party OEM.

**Opt Out:** the notification in writing to Broadcom by an OEM, which has engaged Broadcom on one or more Relevant Products or Other Products in relation to an individual EEA-RFP, of its decision not to Bid exclusively or at all one or more Broadcom Relevant Products or Other Products in response to that EEA-RFP, where such notification is effective without any acceptance or confirmation by Broadcom being required.

**Other Products:** front-end chips for STBs, xDSL residential gateways, fibre residential gateways, or cable residential gateways, Wi-Fi chips for STBs, xDSL residential gateways, fibre residential gateways, or cable residential gateways, and SoCs for cable residential gateways for integration into Service Provider Equipment.

**Price Advantages:** payments, discounts, or rebates.

**Relevant Markets:** the respective overall markets for each of SoCs for STB, SoCs for xDSL residential gateways, and SoCs for fibre residential gateways.

**Relevant Period:** seven (7) years from the Effective Date.

**Relevant Products:** SoCs for STBs, SoCs for xDSL residential gateways, and SoCs for fibre residential gateways for integration into Service Provider Equipment.

**Retroactive Price Advantage:** a Price Advantage that is paid on all purchases over the reference period as defined in Agreement(s) of a Relevant Product only if a specified threshold is exceeded (paid on a "per unit" basis, or as a flat fee or lump sum). By way of example, a discount of X% on all units if sales exceed Y units (including on the units sold up to and including Y) is considered a Retroactive Price Advantage, while a discount of X% on all units sold that are in excess of Y (but not on those units sold up to and including Y) is not considered a Retroactive Price Advantage.

**RFPs:** requests for proposals issued by OEMs or Service Providers for the supply of one or more Relevant Products or the design and/or manufacture of STBs and/or fibre residential

gateways and/or xDSL residential gateways.

**Service Provider Equipment:** STBs and/or fibre residential gateways and/or xDSL residential gateways and/or cable residential gateways for provision to Service Provider's End-users.

**Service Providers:** telecommunication operators and cable service providers that provide STBs and/or fibre residential gateways, and/or xDSL residential gateways to End-users.

**STB:** TV set-top box.

**Total Requirements for Relevant Product:** an OEM's demand over the reference period as defined in relevant Agreement(s) as measured in unit volumes for each of the Relevant Markets, with the exception of the OEM's demand for Relevant Products integrated into STBs, xDSL residential gateways, and fibre residential gateways that Service Providers provide to End-users in China.

**Total Requirements for Other Product:** an OEM's demand over the reference period as defined in relevant Agreement(s) as measured in unit volumes for each of the Other Products with the exception of the OEM's demand for Other Products integrated into STBs, xDSL residential gateways, fibre residential gateways and cable residential gateways that Service Providers provide to End-users in China.

## C. Commitments

### OEMs – Worldwide

1. Broadcom will suspend existing Agreements, and not enter into new Agreements that (1) require an OEM to purchase (or Bid only) Broadcom Relevant Products for a specified minimum percentage exceeding 50% of that OEM's Total Requirements for that Relevant Product, and/or (2) condition a Non-Price Advantage or a Retroactive Price Advantage for a Relevant Product on an OEM purchasing (or Bidding only) Broadcom Relevant Products for a specified minimum percentage exceeding 50% of that OEM's Total Requirements for that Relevant Product, provided that, in each case (1) and (2), the Relevant Products are supplied to OEMs for incorporation into Service Provider Equipment provided to End-users outside China. Broadcom shall not use the flexibility provided in the commitment in this Section C1 to require an OEM to purchase Broadcom Relevant Products for any specified minimum percentage of that OEM's EEA Requirements for a Relevant Product, or to condition a Non-Price Advantage or a Retroactive Price Advantage on the OEM purchasing Broadcom Relevant Products for any specified minimum percentage of that OEM's EEA Requirements for a Relevant Product.
2. Broadcom will suspend existing Agreements and not enter into new Agreements that condition the supply of a Relevant Product, or any Price Advantage or Non-Price Advantage for a Relevant Product, on an OEM purchasing (or Bidding only) another Broadcom Relevant Product or a Broadcom Other Product for a specified minimum percentage

exceeding 50% of that OEM's Total Requirements for that other Relevant Product and/or exceeding 50% of that OEM's Total Requirements for that Other Product, provided that the Relevant Products and/or Other Products are supplied to OEMs for incorporation into Service Provider Equipment provided to End-users outside China.

#### **OEMs – EEA and EEA RFPs**

3. In relation to Service Provider Equipment to be provided to End-users in the EEA, Broadcom will suspend existing Agreements, and not enter into new Agreements, that condition (1) the supply of a Relevant Product on an OEM purchasing (or Bidding only) another Broadcom Relevant Product and/or a Broadcom Other Product and/or (2) any Price Advantage or Non-Price Advantage for a Relevant Product on an OEM also purchasing or Bidding another Broadcom Relevant Product or a Broadcom Other Product.
4. In relation to EEA RFPs, Broadcom will suspend any existing Agreements, and not enter into new Agreements that require an OEM to Bid only Broadcom Relevant Products or that condition any Price Advantage or Non-Price Advantage for a Relevant Product on an OEM Bidding only Broadcom Relevant Products. Notwithstanding this commitment, Broadcom is entitled to condition Price Advantages and/or Non-Price Advantages for an individual EEA-RFP on the OEM Bidding only Broadcom Relevant Products for that EEA-RFP unless (1) the EEA Service Provider has requested that the OEM Bids both Broadcom and non-Broadcom Relevant Product(s), or (2) the OEM chooses to Opt Out for one or more Relevant Product(s). If the conditions under (1) or (2) are satisfied, the OEM shall not lose Price Advantages and/or Non-Price Advantages on other Broadcom Relevant Product(s) which the OEM Bids.

#### **EEA Service Providers**

5. Broadcom will suspend existing Agreements and not enter into new Agreements with EEA Service Providers whereby an EEA Service Provider (1) is required or incentivised through Retroactive Price Advantages or Non-Price advantages to purchase or specify use of Service Provider Equipment incorporating Broadcom Relevant Products for any specified minimum percentage of that EEA Service Provider's Total Requirements for that Relevant Product, or (2) is required or incentivised through Price Advantages or Non-Price advantages to request OEMs to Bid only Broadcom Relevant Products, or refrain from Bidding any non-Broadcom Relevant Products, or (3) is required or incentivised through Price Advantages or Non-Price advantages to concurrently source together with a Broadcom Relevant Product another Relevant Product and/or a Broadcom Other Product, provided that the Service Provider Equipment incorporating those Relevant Products is to be supplied to End-users in the EEA.

#### **D. Duration and Review Clause**

1. The Commitments shall be applicable for a duration of seven (7) years from the Effective Date.

2. Broadcom will implement the Commitments within one month from the Effective Date.
3. Without prejudice to the general provision of Article 9(2) of Council Regulation (EC) 1/2003, Broadcom may request the Commission to review and modify the Commitments where there has been a material change in any of the relevant facts on which the Commission's Decision pursuant to Article 9(1) of Council Regulation (EC) 1/2003 was based, including significant changes to Broadcom's market position in one or more Relevant Products. Without prejudice to the generality of this clause, following the Effective Date, if Broadcom is no longer a dominant market player in a Relevant Product Market this constitutes a material change with regard to the Relevant Product concerned.
4. In addition, and without prejudice to the provisions of Article 9(2) of Council Regulation (EC) 1/2003, the Commission may, on its own initiative, review these Commitments if there has been a material change in any of the facts on which the Commission's Decision pursuant to Article 9(1) of Council Regulation (EC) 1/2003 was based.

**E. Non-circumvention**

1. Broadcom shall not circumvent or attempt to circumvent these Commitments in any way. For the avoidance of doubt, the mere fact that an OEM or Service Provider decides to purchase Broadcom Relevant Products or Other Products shall not constitute circumvention of the Commitments.
2. Broadcom shall not change standard-based interfaces used in Relevant Products in such a manner that would degrade interoperability between Broadcom Relevant Products and Other Products not made by Broadcom. This is without prejudice to Broadcom's discretion to implement new standards in its Relevant Products and/or Other Products and develop proprietary interfaces that supplement but do not eliminate standard-based interfaces in Relevant Products.

**F. Reporting**

1. Without prejudice to the Commission's investigative powers set out in Chapter V of Council Regulation (EC) 1/2003, Broadcom shall submit to the Commission a confidential report on the implementation of the Commitments within two (2) weeks from the Implementation Date (the "First Report"), and thereafter within two weeks after 6, 12, 18, 24, 36, 48, 60, 72, and 84 months from the Effective Date (the "Other Reports").
2. The First Report shall focus on Broadcom's implementation of the Commitments and cover the steps that were taken to: (i) comply with the Commitments, (ii) suspend the Agreements referred to in Sections C1 to C5, (iii) inform OEMs and EEA Service Providers about the suspension of the Agreements referred to in Sections C1 to C5, and (iv) train Broadcom's relevant employees in the application of the Commitments.
3. The Other Reports shall include for each reporting period:

- A list of new Agreements or amendments to existing Agreements entered into with OEMs and EEA Service Providers relating to the Relevant Products, with specific mention of the (i) obligations on OEMs to Bid only Broadcom Relevant Products in response to EEA RFPs, and (ii) conditions that, on the basis of these Agreements, OEMs and/or EEA Service Providers need to fulfil to qualify for Price Advantages or Non-Price Advantages on Relevant Products;
- Copies of new written Agreements or amendments to existing Agreements relating to the Relevant Products entered into with Broadcom's 10 biggest OEM customers by turnover and any IM OEM that is not in the top 10 list; with other written Agreements relating to the Relevant Products being provided to the Commission upon request;
- Any requests that Broadcom received from OEMs about exercising the Opt Out during EEA RFPs for Relevant Products as contemplated in Section C.4;
- Any written complaints Broadcom received from the internal or external legal counsel of OEMs, EEA Service Providers, or competing undertakings in relation to the implementation of or compliance with the Commitments;
- The steps that were taken to train Broadcom's relevant employees in the application of the Commitments and to monitor compliance of Broadcom's relevant employees with the Commitments; and
- Whether any problems were detected in the implementation of or compliance with the Commitments and what steps were taken in order to solve them.