



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Jennifer Milici
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August 16, 2017

Honorable Nathanael M. Cousins
U.S. District Court
Northern District of California
Courtroom 7 – 4th Floor
280 South 1st Street
San Jose, CA 95113

Re: *Federal Trade Commission v. Qualcomm Incorporated*
Case No. 5:17-cv-00220

Dear Judge Cousins:

We submit this letter and exhibits pursuant to the Court's August 9, 2017 Order, ECF No. 155, regarding the parties' Joint Discovery Letter Brief, ECF No. 152.

Exhibit 1 is a privilege log identifying documents over which the Federal Trade Commission ("FTC") is asserting the informant's privilege. Over the past week, the FTC has subjected each document that it had provisionally identified as privileged to multiple rounds of additional review, and has undertaken to remove from the log duplicates and documents that can be produced without disclosing the identity of an informant. The FTC will produce non-privileged documents to Qualcomm. As explained during the August 9, 2017 hearing, the FTC is still reviewing documents for production and may identify additional documents protected by the informant's privilege.

Exhibit 2 is a supplemental letter from the European Commission Director-General for Competition opposing the production to Qualcomm of certain third-party responses to requests for information issued in ongoing antitrust proceedings against Qualcomm in Europe.

We understand that the Korea Fair Trade Commission does not wish to make an additional submission to the Court.

Sincerely,

/s/ Jennifer Milici

Jennifer Milici
Counsel for Plaintiff Federal Trade Commission

Exhibit 1

ID	Author/From	To/Recipient	CC/BCC	DATE	Description
1	[redacted]	FTC		12/22/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
2	[redacted]	FTC		12/14/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
3	[redacted]	FTC		12/21/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
4	[redacted]	FTC		12/12/2016	Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
5	[redacted]	FTC		12/22/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
6	[redacted]	FTC		12/22/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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7	[redacted]	FTC		12/12/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
8	[redacted]	FTC		12/12/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
9	[redacted]	FTC		12/12/2016	Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
10	[redacted]	FTC		2/19/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
11	[redacted]	FTC		12/14/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
12	[redacted]	FTC		1/15/2017	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.

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13	[redacted]	FTC		10/24/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
14	[redacted]	FTC		10/25/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, providing background material in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
15	[redacted]	FTC		10/25/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, providing background material in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
16	[redacted]	FTC		10/25/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, providing background material in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
17	[redacted]	FTC		10/25/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, providing background material in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
18	[redacted]	FTC		2/24/2015	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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19	[redacted]	FTC		1/15/2017	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
20	[redacted]	FTC		12/21/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
21	[redacted]	FTC		7/17/2015	Copy of draft agreement between Qualcomm and a third party, attached to voluntary written submission prepared by outside counsel for the third party, the production of which cannot be accomplished without identifying the third party as an entity that voluntarily expressed its view that Qualcomm's licensing and sales practices violate the antitrust law, thereby warranting enforcement action by <u>the Federal Trade Commission</u> .
22	[redacted]	FTC		7/17/2015	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
23	[redacted]	Feinstein, Deborah		7/24/2014	Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
24	[redacted]	FTC		9/27/2016	Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.

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25	[redacted]	FTC		9/27/2016	Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
26	[redacted]	FTC		12/12/2016	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
27	[redacted]	FTC		2/25/2015	Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
28	[redacted]	Cox, Kent E. <KCOX@ftc.gov>	Abrahamsen, Dana <DABRAHAMSEN@ftc.gov>; Sherwood, Kyle <ksherwood@ftc.gov>; [redacted]; [redacted]	5/27/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission supporting its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
29	attachment to 28				Voluntary written submission, prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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30	Blank, Barbara <bblank@ftc.gov>	Ansald, Alexander <jansaldo@ftc.gov> ; Green, Geoffrey <GGREEN@ftc.gov> ; Woodward, Mark <mwoodward@ftc.gov>; Hannan, Neal C. <nhannan@ftc.gov> ; Carlson, Julie A. <jdecourycarlson@ftc.gov>; Ikeda, Mika <mikeda@ftc.gov>		7/24/2014	Internal FTC email forwarding voluntary written submission, prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
31	attachment to 30				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
32	attachment to 30				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
33	[redacted]	Ansald, Alexander <jansaldo@ftc.gov>		8/11/2014	Email from outside counsel, the contents of which disclose the identity of the third party, attaching voluntary written submission in support of its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
34	[redacted]	Ansald, Alexander <jansaldo@ftc.gov>		8/13/2014	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing publically available background material in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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35	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>; Woodward, Mark <mwoodward@ftc.gov>	Baker, Joseph <jbaker1@ftc.gov>; Ansaldo, Alexander <jansaldo@ftc.gov>	1/15/2017	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
36	attachment to 35				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
37	Cox, Kent E. <KCOX@ftc.gov>	Sherwood, Kyle <ksherwood@ftc.gov>; Langley, Stephanie <SLANGLEY@ftc.gov>; Ansaldo, Alexander <jansaldo@ftc.gov>		3/9/2016	Internal FTC email forwarding email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission and providing supporting background materials for its views.
38	attachment to 37				Copy of agreement between Qualcomm and a third party, the contents of which identify the third party, voluntarily submitted by the third party in support of its view that Qualcomm's sales and licensing practices violate the antitrust laws, warranting enforcement action by the Federal Trade Commission.
39	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>; Clopper, Keitha <kclopper@ftc.gov>	[redacted]	8/2/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
40	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>		10/29/2014	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing publically available background material in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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43	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>		6/3/2014	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing publically available background material in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting <u>enforcement action by the Federal Trade Commission.</u>
44	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>		6/2/2014	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
45	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>		5/20/2014	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
46	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>; Woodward, Mark <mwoodward@ftc.gov>	Baker, Joseph <jbaker1@ftc.gov>; Ansaldo, Alexander <jansaldo@ftc.gov>	1/15/2017	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.

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48	Baker, Joseph </O=FTCEXCHANGE/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JBAKER1>	[redacted]			Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
49	[redacted]	Clopper, Keitha <kclopper@ftc.gov>		4/4/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
50	[redacted]	Ansald, Alexander <jansaldo@ftc.gov> ; Clopper, Keitha <kclopper@ftc.gov>		11/18/2015	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing publically available background material in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
51	[redacted]	Clopper, Keitha <kclopper@ftc.gov>	Ansald, Alexander <jansaldo@ftc.gov>	4/7/2015	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing legal materials in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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52	[redacted]	Woodward, Mark <mwoodward@ftc.gov>; Clopper, Keitha <kclopper@ftc.gov>		9/14/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
53	[redacted]	[redacted]; Clopper, Keitha <kclopper@ftc.gov>	Woodward, Mark <mwoodward@ftc.gov>; Ansaldo, Alexander <jansaldo@ftc.gov>	9/12/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
54	[redacted]	Woodward, Mark <mwoodward@ftc.gov>; Ansaldo, Alexander <jansaldo@ftc.gov>; Clopper, Keitha <kclopper@ftc.gov>		9/26/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
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59	Clopper, Keitha </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KLOPPER>	[redacted]; [redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>	3/24/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
60	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>		1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
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62	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	[redacted]	1/15/2017	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.

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63	attachment to 62				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
64	[redacted]	Green, Geoffrey <GGREEN@ftc.gov >	[redacted]	1/16/2017	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
65	attachment to 64				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
66	Green, Geoffrey <GGREEN@ftc.gov >	[redacted]		12/16/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
67	Green, Geoffrey <GGREEN@ftc.gov >	[redacted]		12/23/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
68	Green, Geoffrey <GGREEN@ftc.gov >	[redacted]	Woodward, Mark <mwoodward@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.

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70	[redacted]	James, Rajesh <rjames@ftc.gov>		12/13/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
71	[redacted]	James, Rajesh <rjames@ftc.gov>	[redacted]	6/12/2015	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, voluntarily providing legal materials in support of the view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
72	[redacted]	Ansald, Alexander <jansaldo@ftc.gov>	Kehl, Philip <pkehl@ftc.gov>	2/23/2015	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
73	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]	Ansald, Alexander <jansaldo@ftc.gov>; Clopper, Keitha <kclopper@ftc.gov>; [redacted]	8/24/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.

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75	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]	Ansaldo, Alexander <jansaldo@ftc.gov>; Clopper, Keitha <kclopper@ftc.gov>	9/20/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
76	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		12/7/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
77	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		12/8/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.

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79	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		12/9/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
80	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		11/19/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
81	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	12/20/2016	Email confirming receipt of written materials prepared by counsel and consulting economist for a third party, the contents of which disclose the identity of the third party, voluntarily submitted in advance of a meeting and expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

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82	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
83	Woodward, Mark </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MWOODWARD>	[redacted]		1/12/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
84	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	Woodward, Mark <mwoodward@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
85	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	Woodward, Mark <mwoodward@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
86	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	Woodward, Mark <mwoodward@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.

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87	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>	Woodward, Mark <mwoodward@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
88	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		11/19/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
89	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		11/21/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
90	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/7/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
91	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/7/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
92	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/8/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

ID	Author/From	To/Recipient	CC/BCC	DATE	Description
93	attachment to 92				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
94	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/8/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
95	attachment to 94				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
96	attachment to 94				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices have likely anticompetitive effects.
97	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/9/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
98	attachment to 97				Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.

ID	Author/From	To/Recipient	CC/BCC	DATE	Description
99	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/9/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission and requesting confirmation of receipt of voluntary submissions expressing the <u>views of the third party.</u>
100	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		12/9/2016	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission.
101	[redacted]	Green, Geoffrey <GGREEN@ftc.gov>; Woodward, Mark <mwoodward@ftc.gov>		12/20/2016	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its view that Qualcomm's sales and licensing practices violate the antitrust laws, thereby warranting enforcement action by the Federal Trade Commission and attaching <u>voluntary written submissions expressing its views.</u>
102	attachment to 101				Voluntary written submission prepared by counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
103	attachment to 101				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales <u>practices have likely anticompetitive effects.</u>
104	attachment to 101				Voluntary written submission prepared by consulting economist for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales <u>practices have likely anticompetitive effects.</u>

ID	Author/From	To/Recipient	CC/BCC	DATE	Description
105	attachment to 101				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its view that Qualcomm's licensing and sales practices are exclusionary, harm competition, and violate antitrust law, thereby warranting enforcement action by the Federal Trade Commission.
106	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices
107	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		1/12/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices
108	[redacted]	Woodward, Mark <mwoodward@ftc.gov>		1/17/2017	Email from outside counsel for a third party, the contents of which disclose the identity of the third party, attaching voluntary written submission expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
109	attachment to 108				Voluntary written submission prepared by outside counsel for a third party, the contents of which disclose the identity of the third party, expressing its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices.
110	[redacted]	Woodward, Mark <mwoodward@ftc.gov>	Green, Geoffrey <GGREEN@ftc.gov>	1/13/2017	Email exchange with outside counsel for a third party, the contents of which disclose the identity of the third party, regarding logistics for a meeting to voluntarily express its views regarding appropriate measures to remediate the competitive harm caused by Qualcomm's unlawful sales and licensing practices

Exhibit 2



EUROPEAN COMMISSION
DG Competition

The Director-General

Brussels, 16/08/2017
COMP/C3/NB/tfd/(2017) 077202

To:

Honourable Nathanael Cousins
Magistrate Judge
United States District Court for the
Northern District of California

Via Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
United States of America
antitrust@ftc.gov

Subject: Request for discovery of certain documents in the FTC's file before the United States District Court for the Northern District of California in the case *In re Federal Trade Commission vs Qualcomm Incorporated*

Dear Judge Cousins,

I refer to Mr. Guillaume Lorient's letter of 26 June 2017 to the Federal Trade Commission (FTC) which I understand was produced to you by the FTC concerning the ongoing discovery process in relation to the complaint lodged by the FTC ("the FTC complaint") against Qualcomm Incorporated ("Qualcomm") before your Court.

I understand that you have asked for additional information on DG COMP's position in relation to the potential disclosure to Qualcomm via discovery of confidential versions of certain third party responses to requests for information issued by DG COMP in the framework of two ongoing antitrust proceedings (AT.40220 – Qualcomm (Exclusivity payments) and AT.39711 – Qualcomm (Predation)). These documents are hereinafter referred to as the "RFI Responses" and have been obtained by the FTC.

I understand that a Production Request before the Court seeks to obtain via discovery the disclosure to Qualcomm of confidential versions of the RFI Responses. These are documents that have been created by third parties specifically for the purposes of the two

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ongoing DG COMP antitrust investigations referred to above. This letter outlines in more detail why DG COMP opposes the provision of confidential versions of the RFI responses to Qualcomm via discovery.

First, in the specific context of DG COMP's ongoing Qualcomm investigations referred to above, the disclosure of such information could harm the third parties that have provided the RFI Responses in our two above-mentioned ongoing antitrust proceedings. These third parties have submitted the RFI Responses believing that Qualcomm would be granted access only to non-confidential, and not the confidential, versions of documents included in the case file¹ and therefore, that their legitimate confidentiality claims would be safeguarded. Obliging the provision of the confidential versions in another jurisdiction would undermine and circumvent their specific confidentiality interests that have been accepted by the European Commission, and which have been subject to an extensive procedure in this regard. On this point, I should stress that this determination was made following a careful analysis of all confidentiality claims first by DG COMP, and subsequently confirmed by the competition Hearing Officer of the European Commission, who is not part of DG COMP and acts as an independent arbiter when a dispute about the effective exercise of procedural rights between parties and DG COMP arises in antitrust and merger proceedings. More details on the role of the Hearing Officer can be found at:

http://ec.europa.eu/competition/hearing_officers/index_en.html

As Mr. Lorient indicated in his letter to the FTC of 26 June 2017, information which has been accepted to be confidential is protected against disclosure under the laws of the European Union and we are therefore under a duty to act accordingly.² I should add that the fact that the third parties in question have provided the confidential versions of the RFI responses to the FTC, a government body, does not remove our interest in protecting disclosure of the information in question to Qualcomm, which the respective third parties have maintained is confidential vis-à-vis Qualcomm and where, as outlined above, the European Commission has determined that this is indeed the case.

Second, more generally, the disclosure of such information is likely to harm DG COMP's law enforcement capabilities. In this regard, information provided by third parties is often of significant value in DG COMP's antitrust investigations. If third parties, both inside

¹ Only exceptionally, access to confidential information may be granted to a limited number of external advisors by means of so-called "non-disclosure agreements" or "data room procedures".

² See Article 339 of the Treaty on Functioning of the European Union ("*The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components*") and Article 28 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ("*Without prejudice to the exchange and to the use of information foreseen in Articles 11, 12, 14, 15 and 27, the Commission and the competition authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. This obligation also applies to all representatives and experts of Member States attending meetings of the Advisory Committee pursuant to Article 14*").

and outside the European Union, know *ex ante* that there is a possibility that information that has been accepted to be confidential can be disclosed in another jurisdiction, in effect making their valid confidentiality claim moot, there is a very real prospect that the willingness of third parties to provide meaningful information in DG COMP's investigations would be reduced. This in turn would reduce DG COMP's ability to investigate possible breaches of European Union antitrust law.

As outlined in Mr. Lorient's letter to the FTC of 26 June 2017, our concerns are not alleviated by the fact that any disclosure to Qualcomm might be subject to a protective order. As Mr. Lorient mentioned, and as has already been recognised by US Courts,³ a protective order would not sufficiently defend DG COMP's interests in the protection of confidentiality given that DG COMP would be unable to control: (1) the individuals that would receive access to the documents; (2) the conditions under which access would be granted; (3) the measures to sanction potential breaches of these conditions and (4) the grant of any derogations to the protective order, allowing the wider disclosure of the documents. In the same vein, any such disclosure would go beyond the nature and scope of disclosure to which the third parties in question had agreed.

In conclusion, on the basis of the above, DG COMP opposes the disclosure of the confidential versions of any relevant RFI responses to Qualcomm. As stated in Mr. Lorient's letter of 26 June 2017, this letter should not be construed as being in support of any particular party in relation to the complaint before the Court.

Please do not hesitate to contact me should you require any additional information.

Yours sincerely,


Johannes LAITENBERGER
Director-General

³ See Memorandum and Order in the case *In re Payment Card interchange fee and merchant discount antitrust litigation*, 05-MD-1720 (JG) (JO) (2010).