

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.<sup>401</sup> 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".<sup>402</sup>

### 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 services<sup>403</sup> 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.

technology. Most importantly, it was ascertained that the agreement did not contain unnecessary or excessive restrictions on competition. Finally, the Commission approved the pool, considering its overall beneficial effects on the consumers, thus granting a “comfort letter” under Art. 81(3) of the EC Treaty and thereby clearing the underlying agreement.<sup>404</sup>

#### **IV. Moving Picture Experts Group (MPEG)**

Other relatively recent notifications include the previously mentioned MPEG-2 pool, eventually cleared in 1998,<sup>405</sup> and the subsequent MPEG LA +5 pool, cleared in 2001.<sup>406</sup> As previously mentioned,<sup>407</sup> the MPEG-2 (Moving Pictures Experts Group) is an open standard for transmitting and storing video signals, providing a technique for eliminating redundant information and, consequently, saving transmission resources and space in storage media, such as optical discs. Both above-mentioned pooling agreements offered a single non-exclusive licence program and were unitarily administered by an independent entity, MPEG LA, based in the US city of Denver, Colorado. Furthermore, patent holders could offer licences for their patents outside the pool.

By clearing these agreements, the European Commission maintained that the pool had overall beneficial effects for the consumers and did not impose excessive or unnecessary restrictions on competition, therefore ultimately complying with the exemption criteria of Art. 81(3) of the EC Treaty.

#### **V. Third Generation Patent Platform Partnership (3G3P)**

Relatively recently, in November 2002, the European Commission’s competition services, following the same balanced approach, eventually cleared the agreement among the so called Third Generation (3G) mobile equipment manufacturers (who refer to themselves as the “3G Patent Platform Partnership” or “3G3P”), involving a world-wide mechanism for evaluating, certifying and licensing essential patents for 3G mobile communications systems.<sup>408</sup> A positive administrative “comfort letter” was then issued in favour of the newly established 3G3P consortium, covering the creation of five 3G technology-specific platforms, fundamentally intended to determine and attest the essentiality of 3G patents, streamline licensing administration

404 Further details of the notification of the DVD Licensing Program were published in the Official Journal of the European Communities, 27 August 1999, vol. 242, p. 5 *et seq.*

405 Press release IP/98/1155 of 18 December 1998; Notice in OJ No 98/C 229/6 of 22 July 1998.

406 Notice in OJ 174/6 of 19 June 2001.

407 See Part I / B / 2 of this contribution, dedicated to The “MPEG LA” Case.

408 Press release IP/02/1651 of 12 November 2002.