The FTC is letting Qualcomm off the hook with a tortured statement

Four years after accusing Qualcomm of abusing monopoly power to charge phone makers additional licensing fees for its modems — and seven months after seemingly losing that battle in a federal circuit court — the Federal Trade Commission has decided to throw in the towel. It's no longer planning to appeal to the Supreme Court, which means the case is done.

If that were all, I probably wouldn't be writing it up for *The Verge* since things are exactly where we left off in August. But then I saw the FTC's explanation for *why* it's dropping the case, and… well, just read it:

> *Given the significant headwinds facing the Commission in this matter, the FTC will not petition the Supreme Court to review the decision of the Court of Appeals for the Ninth Circuit in FTC v. Qualcomm. The FTC's staff did an exceptional job presenting the case, and I continue to believe that the district court's conclusion that Qualcomm violated the antitrust laws was entirely correct and that the court of appeals erred in concluding otherwise. Now more than ever, the FTC and other law enforcement agencies need to boldly enforce the antitrust laws to guard against abusive behavior by dominant firms, including in high-technology markets and those that involve intellectual property. I am particularly concerned about the potential for anticompetitive or unfair behavior in the context of standard setting and the FTC will closely monitor conduct in this arena.*

Let me get this straight: the FTC believes it was right about this case, believes it was important, believes that "now more than ever" it needs to "boldly enforce the antitrust laws" and is "particularly concerned" about cases like this… and yet, it's not even taking the step of seeing whether the Supreme Court will agree to hear the case because of "significant headwinds"?

Perhaps the FTC has bigger fish to fry right now, or perhaps it's afraid it will simply lose again. It's not cheap to petition the Supreme Court, after all; in 2013, a lawyer who's done it repeatedly told *Marketplace* that a petition can easily cost a quarter of a million dollars. Or perhaps the FTC's acting chair simply doesn't think a vote to petition the Supreme Court would pass, given the current staffing split between two Republican and two Democratic FTC commissioners.

The weak FTC might be getting stronger, though
But the FTC's tortured public statement doesn't say those things. It feels a little more like a cry for help from America's antitrust enforcer, an enforcer with a budget that's admittedly less than $350 million a year and an enforcer that's repeatedly let big tech companies go with a slap on the wrist — such as fining Google roughly 37 hours worth of profit for violating the Children's Online Privacy Protection Act (COPPA) with YouTube or issuing a record-breaking $5 billion fine to Facebook that was so weak, Facebook's stock price actually went up.

There are signs the FTC might possibly change in meaningful ways, and my colleague Makena Kelly has written about them at length, including Congress potentially modifying the law to make it easier to bring lawsuits against Big Tech, and the strong possibility that influential antitrust scholar Lina Khan may soon help run the FTC with President Biden's nomination. In the meanwhile, the agency that believes Qualcomm has a monopoly — the agency we expect to bust such a monopoly if so — is just going to let this one go.

https://www.theverge.com/tldr/2021/3/30/22357579/ftc-qualcomm-supreme-court-appeal-antitrust