

## **Antitrust: Commission imposes fine of €1.06 bn on Intel for abuse of dominant position; orders Intel to cease illegal practices**

*The European Commission has imposed a fine of €1 060 000 000 on Intel Corporation for violating EC Treaty antitrust rules on the abuse of a dominant market position (Article 82) by engaging in illegal anticompetitive practices to exclude competitors from the market for computer chips called x86 central processing units (CPUs). The Commission has also ordered Intel to cease the illegal practices immediately to the extent that they are still ongoing. Throughout the period October 2002-December 2007, Intel had a dominant position in the worldwide x86 CPU market (at least 70% market share). The Commission found that Intel engaged in two specific forms of illegal practice. First, Intel gave wholly or partially hidden rebates to computer manufacturers on condition that they bought all, or almost all, their x86 CPUs from Intel. Intel also made direct payments to a major retailer on condition it stock only computers with Intel x86 CPUs. Such rebates and payments effectively prevented customers - and ultimately consumers - from choosing alternative products. Second, Intel made direct payments to computer manufacturers to halt or delay the launch of specific products containing competitors' x86 CPUs and to limit the sales channels available to these products. The Commission found that these practices constituted abuses of Intel's dominant position on the x86 CPU market that harmed consumers throughout the EEA. By undermining its competitors' ability to compete on the merits of their products, Intel's actions undermined competition and innovation. The Commission will actively monitor Intel's compliance with this decision. The world market for x86 CPUs is currently worth approximately €22 billion (US\$ 30 billion) per year, with Europe accounting for approximately 30% of that.*

Competition Commissioner Neelie Kroes said: "Intel has harmed millions of European consumers by deliberately acting to keep competitors out of the market for computer chips for many years. Such a serious and sustained violation of the EU's antitrust rules cannot be tolerated".

The computer manufacturers concerned by Intel's conduct in the Commission's decision are: Acer, Dell, HP, Lenovo and NEC. The retailer concerned is Media Saturn Holding, owner of the MediaMarkt chain

## **Conditional rebates and payments**

Intel awarded major computer manufacturers rebates on condition that they purchased all or almost all of their supplies, at least in certain defined segments, from Intel:

- Intel gave rebates to computer manufacturer A from December 2002 to December 2005 conditional on this manufacturer purchasing exclusively Intel CPUs
- Intel gave rebates to computer manufacturer B from November 2002 to May 2005 conditional on this manufacturer purchasing no less than 95% of its CPU needs for its business desktop computers from Intel (the remaining 5% that computer manufacturer B could purchase from rival chip maker AMD was then subject to further restrictive conditions set out below)
- Intel gave rebates to computer manufacturer C from October 2002 to November 2005 conditional on this manufacturer purchasing no less than 80% of its CPU needs for its desktop and notebook computers from Intel
- Intel gave rebates to computer manufacturer D in 2007 conditional on this manufacturer purchasing its CPU needs for its notebook computers exclusively from Intel.

Furthermore, Intel made payments to major retailer Media Saturn Holding from October 2002 to December 2007 on condition that it exclusively sold Intel-based PCs in all countries in which Media Saturn Holding is active.

Certain rebates can lead to lower prices for consumers. However, where a company is in a dominant position on a market, rebates that are conditional on buying less of a rival's products, or not buying them at all, are abusive according to settled case-law of the Community Courts unless the dominant company can put forward specific reasons to justify their application in the individual case.

In its decision, the Commission does not object to rebates in themselves but to the conditions Intel attached to those rebates. Because computer manufacturers are dependent on Intel for a majority of their x86 CPU supplies, only a limited part of a computer manufacturer's x86 CPU requirements is open to competition at any given time.

Intel structured its pricing policy to ensure that a computer manufacturer which opted to buy AMD CPUs for that part of its needs that was open to competition would consequently lose the rebate (or a large part of it) that Intel provided for the much greater part of its needs for which the computer manufacturer had no choice but to buy from Intel. The computer manufacturer would therefore have to pay Intel a higher price for each of the units supplied for which the computer manufacturer had no alternative but to buy from Intel. In other words, should a computer manufacturer fail to purchase virtually all its x86 CPU requirements from Intel, it would forego the possibility of obtaining a significant rebate on any of its very high volumes of Intel purchases.

Moreover, in order to be able to compete with the Intel rebates, for the part of the computer manufacturers' supplies that was up for grabs, a competitor that was just as efficient as Intel would have had to offer a price for its CPUs lower than its costs of producing those CPUs, even if the average price of its CPUs was lower than that of Intel.

For example, rival chip manufacturer AMD offered one million free CPUs to one particular computer manufacturer. If the computer manufacturer had accepted all of these, it would have lost Intel's rebate on its many millions of remaining CPU purchases, and would have been worse off overall simply for having accepted this highly competitive offer. In the end, the computer manufacturer took only 160,000 CPUs for free.

As a result of Intel's rebates, the ability of rival manufacturers to compete and innovate was impaired, and this led to reduced choice for consumers.

Rebates such as those applied by Intel are recognised in many jurisdictions around the world as anti-competitive and unlawful because the effect in practice is to deny consumers a choice of products.

### **Payments to prevent sales of specific rival products**

Intel also interfered directly in the relations between computer manufacturers and AMD. Intel awarded computer manufacturers payments - unrelated to any particular purchases from Intel - on condition that these computer manufacturers postponed or cancelled the launch of specific AMD-based products and/or put restrictions on the distribution of specific AMD-based products. The Commission found that these payments had the potential effect of preventing products for which there was a consumer demand from coming to the market. The Commission found the following specific cases:

- For the 5% of computer manufacturer B's business that was not subject to the conditional rebate outlined above, Intel made further payments to computer manufacturer B provided that this manufacturer :
  - sold AMD-based business desktops only to small and medium enterprises
  - sold AMD-based business desktops only via direct distribution channels (as opposed to through distributors) and
  - postponed the launch of its first AMD-based business desktop in Europe by 6 months.
- Intel made payments to computer manufacturer E provided that this manufacturer postponed the launch of an AMD-based notebook from September 2003 to January 2004.
- Before the conditional rebate to computer manufacturer D outlined above, Intel made payments to this manufacturer provided that it postponed the launch of AMD-based notebooks from September 2006 to the end of 2006.

The Commission obtained proof of the existence of many of the conditions found to be illegal in the antitrust decision even though they were not made explicit in Intel's contracts. Such proof is based on a broad range of contemporaneous evidence such as e-mails obtained *inter alia* from unannounced on-site inspections, in responses to formal requests for information and in a number of formal statements made to the Commission by the other companies concerned. In addition, there is evidence that Intel had sought to conceal the conditions associated with its payments.

x86 CPUs are the main hardware component of a computer. The decision contains a broad range of contemporaneous evidence that shows that AMD, essentially Intel's only competitor in the market, was generally perceived, by computer manufacturers and by Intel itself, to have improved its product range, to be a viable competitor, and to be a growing competitive threat. The decision finds that Intel's practices did not constitute competition on the merits of the respective Intel and AMD products, but rather were part of a strategy designed to exploit Intel's existing entrenched position in the market.

Intel's worldwide turnover in 2007 was €27 972 million (US\$ 38 834 million). The fine in this case takes account of the duration and gravity of the infringement. In accordance with the Commission's 2006 Guidelines on Fines (see [IP/06/857](#) and [MEMO/06/256](#)) the fine has been calculated on the basis of the value of Intel's x86 CPU sales in the European Economic Area (EEA). The duration of the infringement established in the decision is five years and three months.

The Commission's investigation followed complaints from AMD in 2000, 2003 and 2006 (the last having been sent to the German competition authority and subsequently examined by the European Commission). The Commission's decision follows a Statement of Objections sent in July 2007 (see [MEMO/07/314](#)), a Supplementary Statement of Objections sent in July 2008 (see [MEMO/08/517](#)) and a letter sent to Intel in December 2008 setting out additional factual elements relevant to the final decision. Intel's rights of defence have been fully respected in this case.

See also [MEMO/09/235](#).