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Antitrust: Commission publishes decision concerning Intel's abuse of dominant position

The European Commission has today published a non-confidential version of its Intel Decision, adopted on 13 May 2009 ([IP/09/745](#) and [MEMO/09/235](#)), together with a summary of the key elements of the Decision. That Decision found that Intel broke EC Treaty antitrust rules (Article 82) by engaging in two types of illegal practice to exclude competitors from the market for computer chips called x86 central processing units (CPUs). These practices harmed consumers throughout the EEA. By undermining its competitors' ability to compete on the merits of their products, Intel's actions undermined competition, reduced consumer choice and hindered innovation. On the basis of a significant amount of contemporaneous evidence and company statements, the Decision demonstrates how Intel broke the law.

Intel abused its dominant position in the x86 CPU market by implementing a series of conditional rebates to computer manufacturers and to a European retailer and by taking other measures aimed at preventing or delaying the launch of computers based on competing products (so-called 'naked restrictions'). The Commission's Decision outlines specific cases of these conditional rebates and naked restrictions, as well as how Intel sought to conceal its practices and how computer manufacturers and Intel itself recognised the growing threat represented by the products of Intel's main competitor, AMD.

Conditional rebates

The conditional rebates were as follows:

- Intel rebates to **Dell** from December 2002 to December 2005 were conditioned on Dell purchasing exclusively Intel CPUs. For example, in an internal Dell presentation of February 2003, Dell noted that should Dell switch any part of its CPU supplies from Intel to its competitor AMD, Intel retaliation "*could be severe and prolonged with impact to all LOBs [Lines of Business].*" In a February 2004 e-mail on the consequences of the possible purchase by Dell of AMD CPUs, a Dell executive wrote: "*Boss, here's an outline of the framework we discussed with Intel. (...) Intel is ready to send [Intel Senior executive]/[Intel executive]/[Intel executive] to meet with [Dell Senior Executive]/[Dell Senior Executive]/[Dell Executive] . (...) Background: [Intel Senior executive]/[Intel Senior executive] are prepared for [all-out war]¹ if Dell joins the AMD exodus. We get ZERO MCP [name of Intel rebate to Dell] for at least one quarter while Intel 'investigates the details' (...) We'll also have to bite and scratch to even hold 50%, including a commitment to NOT ship in Corporate. If we go in Opti [Dell product series for corporate customers], they cut it to <20% and use the added MCP to compete against us.*"

¹ paraphrase of original text

- Intel rebates to **HP** from November 2002 to May 2005 were conditioned in particular on HP purchasing no less than 95% of its CPU needs for business desktops from Intel (the remaining 5% that HP could purchase from AMD was then subject to further restrictive conditions set out below). In this regard, in a submission to the Commission, HP stated that *"Intel granted the credits subject to the following unwritten requirements: a) that HP should purchase at least 95% of its business desktop system from Intel ..."*. By way of example, in an e-mail written in July 2002 during the negotiation of the rebate agreement between HP and Intel, an HP executive wrote: *"PLEASE DO NOT... communicate to the regions, your team members or AMD that we are constrained to 5% AMD by pursuing the Intel agreement"*.
- Intel rebates to **NEC** during the period ranging from October 2002 to November 2005 were conditioned on NEC purchasing no less than 80% of its CPU needs for its desktop and notebook segments from Intel. For example, in a May 2002 e-mail (when the arrangement was concluded), an NEC executive specified that *"NEC will (...) increase [worldwide] Intel market share from [...] % to 80%. Intel will give NEC [support] and aggressive [...] price."*
- Intel rebates to **Lenovo** during year 2007 were conditioned on Lenovo purchasing its CPU needs for its notebook segment exclusively from Intel. For example, in a December 2006 e-mail, a Lenovo executive stated: *"Late last week Lenovo cut a lucrative deal with Intel. As a result of this, we will not be introducing AMD based products in 2007 for our Notebook products"*.
- Intel payments to **Media Saturn Holding** (MSH), Europe's largest PC retailer, were conditioned on MSH selling exclusively Intel-based PCs from October 2002 to December 2007. For example, in a submission to the Commission, MSH stated: *"It was clear to MSH in this regard that the sale of AMD-equipped computers would result at least in a reduction of the amount of Intel's contribution payments per Intel CPU under the contribution agreements (and thus in a reduction of the total payments received from Intel, even if the total volume of Intel-CPUs sold by MSH would have remained the same as in previous periods), although MSH never actually tested the issue with Intel."*

Naked restrictions

The naked restrictions uncovered by the Commission were as follows:

- Between November 2002 and May 2005, Intel payments to **HP** were conditioned on HP selling AMD-based business desktops only to small and medium enterprises, only via direct distribution channels (rather than distributors), and on HP postponing the launch of its first AMD-based business desktop in Europe by 6 months. For example, in an internal September 2004 HP e-mail, an HP executive stated: *"You can NOT use the commercial AMD line in the channel in any country, it must be done direct. If you do and we get caught (and we will) the Intel moneys (each month) is gone (they would terminate the deal). The risk is too high"*.
- Intel payments to **Acer** were conditioned on Acer postponing the launch of an AMD-based notebook from September 2003 to January 2004. For example, in a September 2003 email, an Intel executive reported: *"good news just came from [Acer Senior Executive] that Acer decides to drop AMD K8 [notebook product] throughout 2003 around the world. We've been talking with them all the way up to [Intel senior executive]'s [...] level recently including [Intel executive], [Intel senior executive] ...and [Intel executive].... They keep pushing back until today, after the call with [Intel executive] this morning, [Acer Senior Executive] just confirmed that they decide to drop AMD K8 throughout 2003 around the world. [Acer Senior Executive] has got this direction from [Acer Senior Executive] as well and will follow through in EMEA [Europe Middle East and Africa region]"*.

- Intel payments to **Lenovo** were linked to or conditioned on Lenovo postponing the launch of AMD-based notebooks from June 2006 to the end of 2006. For example, in a June 2006 e-mail, a Lenovo executive reported that: "[two Lenovo executives] *had a dinner with [an Intel executive] tonight (...). [...] When we asked Intel what level of support we will get on NB [notebook] in next quarter, [he] told us (...) the deal is base[d] [sic] on our assumption to not launch AMD NB [notebook] platform. (...) Intel deal will not allow us to launch AMD*".

Concealment

The Commission found that Intel generally sought to conceal the conditions in its arrangements with PC manufacturers and MSH. For example:

- The rebate arrangement with **Dell** was not subject to a written agreement but was concluded orally at various meetings. In this regard for example, in a submission to the Commission, Dell stated that "*there is no written agreement between Intel and Dell concerning the MCP [rebate] discount, rather, the discount is the subject of constant oral negotiations and agreement*".
- There was a written agreement with **HP** but the relevant conditions remained unwritten. In this regard for example, in a submission to the Commission, HP stated that the "*unwritten conditions (...) were stated to be part of the HPA1 agreement by [Intel executive], [Intel executive] and [Intel senior executive] in meetings with HP during the negotiations*;
- The written agreement with **MSH** contained a provision that the deal was non-exclusive. However, the evidence demonstrates that at Intel's request, the arrangement was in fact exclusive. In this regard for example, in a submission to the Commission, MSH stated that "*It was clear to MSH that despite the non-exclusivity clause the exclusive nature of the relationship remained, for Intel, an essential element of the relationship between Intel and MSH. In fact, [MSH executive] recalls that Intel representatives made it clear to him that the changes in the wording of the agreement had been requested by Intel's legal department, but that in reality the relationship was to continue as before, including the requirement that MSH sell essentially only Intel-based computers.*"

Other statements from computer manufacturers and MSH outline how the various Intel conditions were an important factor in their decisions not to partially switch to or buy more x86 CPUs from AMD, Intel's main competitor in the x86 CPU market. For instance, in a submission to the Commission, HP stated that it "*can confirm that Intel's inducements (in particular the block rebates) were a material factor in determining HP's agreement to the unwritten conditions. As a result (...) HP [Business desktop PC division] stayed at least 95% aligned to Intel.*"

AMD's growing threat

The evidence in the Decision indicates the growing threat that AMD's products represented to Intel, and that Intel's customers were actively considering switching part of their x86 CPU supplies to AMD. For example, in an October 2004 e-mail from Dell to Intel, a Dell executive stated that "*AMD is a great threat to our business. Intel is increasingly uncompetitive to AMD which results in Dell being uncompetitive to [Dell competitors]. We have slower, hotter products that cost more across the board in the enterprise with no hope of closing the performance gap for 1-2 years.*" In a submission to the Commission, Dell also stated that as regards Opteron, "*in Dell's perception this CPU generally performed approximately [...] better than the comparable Intel Xeon CPU at the time.*" As regards AMD's Athlon PC CPU, an internal HP presentation from 2002 stated that it "*had a unique architecture*", was "*more efficient on many tasks*", and had been "*CPU of [the] year [for] 3 consecutive years*".

The fact that AMD had improved its products is also recognised by Intel itself. For example, in a 2005 submission to the Commission, Intel stated that "*AMD improved its product offerings dramatically with the introduction of its successful Opteron processor*". This is also confirmed by contemporaneous documents from Intel. For example, in a 2004 internal Intel e-mail, it is stated that "*Opteron is real threat today... Opteron-based single WS [Workstation] benchmarks beat [Intel's] Xeon in all cases.*"

Procedure

Before the Commission adopted its final Decision, it carried out a comprehensive investigation of the facts. During the proceedings Intel was able to comment fully on all the Commission's evidence outlined in the Decision. Indeed, the Commission went beyond its legal obligations in safeguarding Intel's rights of defence. For example, despite the fact that Intel chose not to reply to the Commission's supplementary Statement of Objections (see [MEMO/08/517](#)) by the extended deadline of 17 October 2008 but instead sought to suspend the Commission's case, the Commission took full account of Intel's belated written submissions relating to the supplementary Statement of Objections.

The full text of the decision, together with a summary, is now available on the Europa website:

<http://ec.europa.eu/competition/sectors/ict/intel.html>