General Court of the European Union
PRESS RELEASE No 82/14
Luxembourg, 12 June 2014

Press and Information

Judgment in Case T-286/09
Intel Corp. v Commission

The General Court upholds the fine of €1.06 billion imposed on Intel for having abused its dominant position on the market for x86 central processing units between 2002 and 2007

Intel's action against the Commission's decision is dismissed in its entirety

By decision of 13 May 2009[1] the Commission imposed a fine of €1.06 billion on Intel, the American microchip manufacturer, for having abused its dominant position on the market for x86 [2] central processing units (CPUs),[3] in infringement of the competition rules of the EU and the European Economic Area (EEA). Moreover, the Commission ordered Intel immediately to bring an end to that infringement in so far as it had not already done so.

According to the Commission, Intel abused its dominant position on the worldwide market for x86 CPUs from October 2002 to October 2007, by implementing a strategy aimed at foreclosing from the market its only serious competitor, Advanced Micro Devices, Inc. (AMD).[4]

The Commission considered that Intel was in a dominant position on the ground that it held a market share of roughly 70%, or more, and that it was extremely difficult for competitors to enter the market and to expand as a result of the unrecoverable nature of investments to be made in research and development, intellectual property and production facilities. Given its strong dominant position, Intel was an unavoidable supplier of x86 CPUs since customers had no choice other than to obtain part of their requirements from Intel.

According to the Commission,[5] the abuse was characterised by several measures adopted by Intel vis-à-vis its own customers (computer manufacturers) and the European retailer of microelectronic devices, Media-Saturn-Holding.

Accordingly, Intel granted rebates to four major computer manufacturers (Dell, Lenovo, HP and NEC) on the condition that they purchased from Intel all or almost all of their x86 CPUs. Similarly, Intel awarded payments to Media-Saturn, which were conditioned on its selling exclusively computers containing Intel's x86 CPUs. According to the Commission, those rebates and payments induced the loyalty of the four manufacturers listed above and of Media-Saturn and thus significantly diminished the ability of Intel's competitors to compete on the merits of their x86 CPUs. Intel's anti-competitive conduct thereby resulted in a reduction of consumer choice and in lower incentives to innovate.

---

[1] A summary of the decision has been published in *Official Journal* C 227 of 22 September 2009, p. 13. See also Commission press release IP/09/745 of 13 May 2009 and MEMO/09/400 of 21 September 2009.
[2] CPUs used in computers can be sub-divided into two categories, namely x86 CPUs and CPUs based on another architecture. x86 architecture is a standard designed by Intel for its CPUs. It can run both the Windows and Linux operating systems. Windows is primarily linked to the x86 instruction set.
[3] The CPU is a key component of any computer, both in terms of overall performance and cost of the system. It is often referred to as a computer's 'brain'. The manufacturing process of microprocessors requires expensive high-tech facilities.
[4] Prior to 2000 there were several manufacturers of x86 CPUs. However, most of those manufacturers have since exited the market.
[5] In the Commission's view, there was a single and continuous infringement.

Moreover, Intel awarded three computer manufacturers (HP, Acer and Lenovo) payments which were conditional upon their postponing or cancelling the launch of AMD CPU-based products and/or putting restrictions on the distribution of those products.

On the basis of the 2006 Guidelines, the Commission imposed a fine on Intel of €1.06 billion,[6] which is the highest fine ever imposed by the Commission on a single company for an infringement of the competition rules.

Intel brought an action against the Commission's decision before the General Court, seeking the annulment of that decision or, at least, a substantial reduction of the fine.[7]

In today's judgment, the General Court dismisses the action and thus upholds the Commission's decision.

The General Court finds, inter alia, that **the rebates granted to Dell, HP, NEC and Lenovo** are **exclusivity rebates**. Such rebates are, when applied by an undertaking in a dominant position, incompatible with the objective of undistorted competition within the common market. They are not based – save in exceptional circumstances – on an economic transaction which justifies such a financial advantage, but are designed to remove or restrict the purchaser's freedom to choose his sources of supply and to deny other producers access to the market. That type of rebate constitutes an abuse of a dominant position if there is no objective justification for granting it. **Exclusivity rebates granted by an undertaking in a dominant position are, by their very nature, capable of restricting competition and foreclosing competitors from the market.** It is thus not necessary to show that they are capable of restricting competition on a case by case basis in the light of the facts of the individual case.

In that regard, the General Court states that, in order to submit an attractive offer, it is not sufficient for a competitor to offer Intel's customer attractive conditions for the units that that competitor can itself supply to the customer; it must also offer that customer compensation for the potential loss of the exclusivity rebate for having switched supplier. In order to submit an attractive offer, the competitor must therefore apportion solely to the share which it is able to offer the customer the rebate granted by Intel in respect of all or almost all of the customer's requirements (including the requirements which Intel alone – as an unavoidable supplier – is able to satisfy).

Given that exclusivity rebates granted by an undertaking in a dominant position are, by their very nature, capable of restricting competition, **the Commission was not required**, contrary to what Intel claims, **to make an assessment of the circumstances of the case in order to show that the rebates actually or potentially had the effect of foreclosing competitors from the market.**

The General Court finds, in that context, that it is not necessary to examine, by means of the '**as efficient competitor test**', whether the Commission correctly assessed the ability of the rebates to foreclose a competitor as efficient as Intel. More precisely, such a test establishes at what price a competitor as efficient as the undertaking in a dominant position would have had to offer its products in order to compensate a customer for the loss of the rebate granted by the undertaking in a dominant position. Since the exclusivity rebates granted by an undertaking in a dominant position are, by their very nature, capable of restricting competition, the Commission was not required to show, in its analysis of the circumstances of the case, that the rebates granted by Intel were capable of foreclosing AMD from the market. Moreover, even if the competitor were still able to cover its costs in spite of the rebates granted, that would not mean that the foreclosure effect did not exist. The mechanism of the exclusivity rebates is such as to make access to the market more difficult for competitors of the undertaking in a dominant position, even if that access is not economically impossible.

---

[6] That amount was determined on the basis of the value of sales of x86 CPUs invoiced by Intel to undertakings established in the EEA market during the last year of the infringement (EUR 3 876 827 021 in 2007). The Commission then determined a proportion of that value on the basis of the degree of gravity of the infringement (5% of a possible 30%), multiplied by the number of years of infringement (five years and three months, resulting in a multiplier of 5.5).

[7] In the present case, the Association for Competitive Technology intervened in support of Intel, whereas the *Union fédérale des consommateurs – Que choisir* intervened in support of the Commission.

In so far as concerns **the payments granted to Media-Saturn**, the General Court finds that the same anti-competitive mechanism was in place as with the practices adopted vis-à-vis the computer manufacturers, but at a stage further down the supply chain. **The Commission was** thus **not required to examine, in the light of the facts of the case, whether those payments were such as to restrict competition. It was required only to demonstrate that Intel had granted a financial incentive which was subject to an exclusivity condition.**

Even supposing that the Commission was required to show, on a case by case basis, that the exclusivity rebates and payments granted to Dell, HP, NEC, Lenovo and Media-Saturn were capable of restricting competition, the General Court considers that the Commission demonstrated that capability to the requisite legal standard in its analysis of the facts of the case.

As regards the **payments made to HP, Acer and Lenovo** for them to postpone, cancel or restrict the marketing of certain products equipped with AMD CPUs, the General Court finds that those payments were capable of making access to the market more difficult for AMD. It also finds that Intel pursued an anti-competitive object, since the only interest that an undertaking in a dominant position may have in preventing in a targeted manner the marketing of products equipped with a product of a specific competitor is to harm that competitor. Such practices clearly fall outside the scope of competition on the merits. Those practices, which the Commission terms 'naked restrictions', amount to an abuse of a dominant position.

In so far as concerns the question whether **the Commission** had **jurisdiction** under international law to punish Intel for its anti-competitive conduct, the General Court observes that such jurisdiction can be established on the basis of both the implementation and the effects of the anti-competitive conduct in the European Union. In that regard, the General Court finds that the conduct of Intel to which the Commission refers in the contested decision was capable of having a substantial, immediate and foreseeable effect within the EEA. Accordingly, the Commission had jurisdiction to punish that conduct.

Moreover, the General Court finds that **the Commission showed to the requisite legal standard the existence of the exclusivity rebates and the naked restrictions at issue in its decision.** It rejects Intel's arguments seeking to call into question the findings made in that regard by the Commission.

Furthermore, in the view of the General Court, **the Commission demonstrated to the requisite legal standard that Intel attempted to conceal the anti-competitive nature of its practices and implemented a long term comprehensive strategy to foreclose AMD from the strategically most important sales channels.**

Finally, the General Court considers that **none of the arguments raised by Intel supports the conclusion that the fine imposed is disproportionate. On the contrary**, it must be considered that that fine is appropriate in the light of the facts of the case. The General Court states, inter alia, that the Commission set the proportion of the value of sales, determined on the basis of the gravity of the infringement, at 5%, which is at the lower end of the scale which can go up to 30%[8]. Moreover, the fine is equivalent to 4.15% of Intel's annual turnover, which is well below the 10% ceiling provided for.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

---

[8] See the calculation in footnote 6.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355