



Press and Information

Court of Justice of the European Union
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Judgment in Case C-413/14 P
Intel Corporation Inc. v Commission

The Court of Justice sets aside the judgment of the General Court which had upheld the fine of €1.06 billion imposed on Intel by the Commission for abuse of a dominant position

The case is referred back to the General Court in order for it to examine the arguments put forward by Intel concerning the capacity of the rebates at issue to restrict competition

By decision of 13 May 2009,¹ the Commission imposed a fine of €1.06 billion on Intel, the US-based microchip manufacturer, for having abused its dominant position on the market for x86² 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 done so already.

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

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.

According to the Commission,⁵ the abuse was characterised by several measures adopted by Intel vis-à-vis its own customers (computer manufacturers) and a 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 the latter 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.

On the basis of the 2006 Guidelines, the Commission imposed a fine of €1.06 billion on Intel. 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.⁶

¹ A summary of the decision has been published in the 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 subdivided 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, the abuse in question constituted a 'single and continuous infringement'.

By judgment of 12 June 2014,⁷ the General Court dismissed Intel's action in its entirety.

Intel brought an appeal against the judgment of the General Court before the Court of Justice. According to Intel, the General Court, *inter alia*, erred in law by failing to examine the rebates at issue in the light of all the circumstances of the case.

As regards that complaint, the Court of Justice notes that the General Court confirmed the Commission's line of argument that loyalty rebates granted by an undertaking in a dominant position were, by their very nature, capable of restricting competition such that an analysis of all the circumstances of the case and, in particular, an as efficient competitor test ('AEC test') were not necessary.

The Court observes that, while the Commission emphasised that the rebates at issue were by their very nature capable of restricting competition, it nevertheless carried out an in-depth examination of the circumstances of the case in its decision, which led it to conclude that an as efficient competitor would have had to offer prices which would not have been viable and that, accordingly, the rebate scheme at issue was capable of foreclosing such a competitor. The AEC test therefore played an important role in the Commission's assessment of whether the rebate scheme at issue was capable of having foreclosure effects on as efficient competitors.

The Court therefore holds that the General Court was required to examine all of Intel's arguments concerning that test (such as, *inter alia*, the errors allegedly committed by the Commission as regards that test), which the General Court failed to do. **The Court therefore sets aside the judgment of the General Court as a result of that failure in its analysis of whether the rebates at issue were capable of restricting competition.**

The Court refers the case back to the General Court so that it may examine, in the light of the arguments put forward by Intel, whether the rebates at issue are capable of restricting competition.

Intel's arguments alleging that the Commission lacked territorial jurisdiction to penalise the abuse, and alleging procedural irregularities that affected its rights of defence, were rejected by the Court.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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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 (€ 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 Case [T-286/09 Intel v Commission](#) see also Press Release No [82/14](#).