



## PRESS RELEASE No 13/24

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Advocate General's Opinion in Case C-240/22 P | Commission / Intel Corporation

### **Advocate General Medina: the Court should confirm that the Commission erred in applying the AEC test with respect to HP and Lenovo**

*At the Court's request, today's Opinion focuses exclusively upon two of the six grounds of appeal relied upon by the Commission.*

In May 2009, the Commission imposed <sup>1</sup> a fine of €1.06 billion on Intel, a US-based microchip manufacturer, for having abused its dominant position on the market for x86 central processing units (CPUs), in infringement of the EU competition rules. In 2014, the General Court dismissed in its entirety Intel's action against the Commission decision <sup>2</sup>. Following an appeal by Intel, the Court of Justice <sup>3</sup> set aside that judgment and referred the case back to the General Court for re-examination.

The present case concerns the Commission's appeal of the General Court's 2022 judgment <sup>4</sup> following such a re-examination that partially annulled the Commission decision and entirely annulled the €1.06 billion fine.

By two of the grounds of appeal, the Commission alleges that the General Court committed a number of errors of law and infringed the Commission's right of defence in the context of the examination of the as-efficient-competitor (AEC) test with regard to Hewlett-Packard Company (HP) and Lenovo Group Ltd (Lenovo). **Advocate General Laila Medina proposes that the Court dismiss both grounds** of the Commission's appeal against the General Court's judgment relating to Intel's alleged abuse of its dominant position on the x86 central processing units market.

With respect to the ground of appeal concerning HP, AG Medina examines four claims made by the Commission. These are as follows: first, the General Court failed to have due regard to the Commission's margin of discretion in complex economic matters. Second, it failed to take into account Intel's implicit acknowledgment of the reference period during the administrative proceedings. Third, it infringed the Commission's right of defence. Fourth, the General Court erred in relation to the appropriate conclusion to be drawn in respect of the entire period of the practice at issue. In her view, **none of the Commission submissions in support of these claims is capable of calling into question the conclusion of the General Court that the contested decision failed to demonstrate the foreclosure effect of the rebates granted by Intel to HP for the entire period between November 2002 to May 2005.**

By the other ground of appeal under examination, the Commission criticises the assessment made by the General Court regarding the quantification of two non-cash advantages awarded by Intel in exchange of Lenovo's exclusivity obligation – namely the extension of Intel's standard one-year warranty and the improved use of a hub facility situated in Shenzhen (China). **Advocate General Medina finds that the General Court did not commit any error by concluding that the Commission, when assessing the non-cash advantages granted by Intel to Lenovo, had proceeded on the basis of an assumption which was contrary to the foundation of the AEC test set out in the contested decision.** The Advocate General therefore concludes that this ground of appeal is not well founded and ought to be rejected.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.

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<sup>1</sup> Commission Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article [102 TFEU] and Article 54 of the EEA Agreement (Case COMP/C-3/37.990 – Intel).

<sup>2</sup> Judgment of the General Court of 12 June 2014, *Intel v Commission*, [T-286/09](#) (see also [Press Release No 82/14](#)).

<sup>3</sup> Judgment of the Court of Justice of 6 September 2017, *Intel v Commission*, [C-413/14 P](#) (see also [Press Release No 90/17](#)).

<sup>4</sup> Judgment of the General Court of 26 January 2022, *Intel v Commission*, [T-286/09 RENV](#) (see also [Press Release No 16/22](#)).