

## AAI Adopts Tough Stance Regarding Intel

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*Thursday, Aug 30, 2007* --- Stepping into the Intel-AMD fray, the American Antitrust Institute has sent a strongly-worded letter to the chairman of the Federal Trade Commission, urging the agency to take action against Intel for what it believes is “an abuse of dominance” in the microprocessor market.

On Thursday, AAI president Albert Foer revealed that the think tank had shipped off a letter to FTC chairman Deborah Majoras, asking the agency to put a stop to the anti-competitive behavior that “has so long gone unchecked.”

“Intel is clearly a monopolist in the microprocessor manufacturing industry, which for practical purposes is a global duopoly whose control over an essential ingredient for high technology makes it a critical focal point for competition policy,” the AAI letter stated.

The missive comes on the heels of the European Commission issuing a statement of objections over Intel's alleged monopoly last month and in the midst of AMD's ongoing antitrust battle with the chip giant, which is currently unfolding in a Delaware court.

For the last two decades, Intel and AMD have wrestled for the top position in the microprocessor market, with suits and countersuits and broken agreements permeating their long history.

Though number one and two respectively, a huge gap exists between them, with Intel controlling an estimated 90% of the market.

AMD blames the number-one chip maker for its anemic 10% market share, and has accused Intel of threatening customers worldwide with ruinous price increases and economic retaliation if the manufacturers purchased more AMD devices.

In its letter, the AAI prodded the FTC to “reclaim its traditional role as the leading antitrust enforcer,” and to crack down on Intel's alleged anti-competitive activities.

“There seems to be substantial reason to worry about Intel's rebate policies, in particular, which appear to be fashioned for the purpose of keeping original equipment manufacturers from switching orders to a chip that, on the merits, they may prefer to purchase from AMD,” the AAI asserted.

The letter echoes the charges hurled by the European Commission last month, with the EC accusing Intel of trying to muscle AMD out of the market for certain computer processing units.

Regulators sent a formal statement of objections to Intel, alleging that the company had violated Commission rules on abuse of dominant position. The Commission said that Intel, which controls 80% of the global market for CPU microchips, engaged in three types of market abuse.

“First, Intel has provided substantial rebates to various original equipment manufacturers conditional on them obtaining all or the great majority of their CPU requirements from Intel,” the Commission said. “Secondly, in a number of instances, Intel made payments in order to induce an OEM to either delay or cancel the launch of a product line incorporating an AMD-based CPU. Thirdly, in the context of bids against AMD-based products for strategic customers in the server segment of the market, Intel has offered CPUs on average below cost.”

Despite the mounting global campaign, Intel has thus far vehemently denied allegations that it engaged in unlawful, anti-competitive behavior in order to secure a monopoly in the U.S. microprocessor market.

“We are confident that the microprocessor market segment is functioning normally and that Intel's conduct has been lawful, pro-competitive, and beneficial to consumers,” Intel spokesman Bruce Sewell said following the EC's action.

Earlier this month, Intel also filed its answer to the first amended consolidated complaint brought by U.S. consumers in the U.S. District Court for the District of Delaware, denying the antitrust charges and proffering 20 additional defenses against the class' allegations.

Intel's “success in its microprocessor business is attributable to competition on the merits and reflects Intel's technological leadership in microprocessor design and manufacturing, its willingness to incur risks to sustain that leadership and its reputation as a reliable supplier,” the tech giant said.

“Intel specifically denies plaintiffs' illogical claim that consumers pay higher prices because Intel competes by charging lower prices,” the company added.

Judge Joseph Farnan had left the complaint, which was first filed in its amended form in May 2006, largely intact last month after considering Intel's motion to dismiss. The plaintiffs, who were indirect purchasers of microprocessors claiming monetary harm due to non-competitive prices, sufficiently pled antitrust injury, Farnan ruled at the time.

Among Intel's 20 separate and additional defenses were arguments the plaintiffs failed to state a proper claim for relief; that their filing violates the statute of limitations; and that they lack standing.

“Intel alleges that its actions were undertaken in good faith to advance legitimate business interests and had the effect of promoting, encouraging and increasing competition,” Intel said in the answer.

But Farnan disagreed, ruling that the consumers had sufficiently demonstrated an antitrust injury insofar as the alleged anti-competitive conduct had “allowed Intel to garner a higher market share, which allowed Intel to charge higher prices to consumers.”

The judge also ruled that the plaintiffs had sufficiently alleged deceptive or unconscionable trade practices, and other violations of state consumer protection laws.

Farnan dismissed claims of monopolization, unjust enrichment, antitrust breaches under New York state law and consumer protection claims under the states of Alaska, Georgia, Louisiana and Montana.

Intel had moved to dismiss the complaint on the grounds its accusers lacked standing and had failed to state a sufficient claim under either federal or state antitrust laws. They cited the U.S. Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, which raised the pleading standard for federal allegations of conspiracy, in a supplemental brief.

The plaintiffs had nominated seven causes of action against Intel, including violations of the Clayton Act and 22 states' unfair competition laws.

The consumers had filed multiple class actions against Intel after arch rival AMD sued for alleged monopoly abuses in 2005.

AMD's antitrust suit recently ground to a halt after Intel admitted that its preservation system had failed and that it had lost countless e-mails generated since the complaint was filed by AMD in June 2005.

Advising the Delaware federal court of “document retention lapses,” Intel said it regretted the foul-up but was taking extensive steps to address the problem.

Describing the admission as troubling, AMD blasted Intel for “systemic evidence preservation breaches” and called on the court to launch an investigation into Intel's culpability and to assess the impact on the case.

“Through what appears to be a combination of gross communication failures, an ill-conceived plan of document retention and lackluster oversight by outside counsel, Intel has apparently allowed evidence to be destroyed,” AMD said.

AMD said the irretrievable loss of potentially massive amounts of e-mail correspondence could damage its case against the microprocessor giant.

The complaint, which was followed by numerous shareholders suits, accuses Intel of engaging in shady tactics to maintain its monopoly on the sale of microprocessors, which are used in most personal computers.

According to court papers, Intel's system of automatically purging every 35 days all e-mails sent or received continued after the lawsuit was lodged, in what AMD described as typical behavior by a company that "shuns creating a record of what goes on within its walls" under the best of circumstances.

AMD said Intel instead relied on a "half-hearted" honor system, which required employees to voluntarily save documents. And it failed to give even these basic instructions to over one-third of the relevant employees until two weeks ago, it added.

Representatives for both AMD and Intel could not be reached immediately for comment on Thursday.

--Additional reporting by Christine Caulfield, Bailey Somers and Marc Tracy