

## Intel, AMD War Narrows To One Term--"Rebates"

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*Friday, Sep 21, 2007* --- The antitrust battle being waged between the two biggest players in the microprocessor world is not just a spat over lost e-mails, it's a war of semantics too.

When the U.S. case pitting Intel Corp. against its smaller rival, Advanced Micro Devices, finally exits the discovery phase and goes to trial on the merits, it just might turn on a word.

On the one hand there's Intel, which claims its pricing structure is founded on rebates to loyal customers. On the other hand there's AMD, which argues these rebates are really penalties for disloyal customers.

AMD's Executive Vice President of Legal Affairs Tom McCoy, who filed the lawsuit in the U.S. District Court for the District of Delaware in mid-2005, said the microprocessor giant, which is facing scrutiny not just in the U.S. but in the EU, Japan and Korea as well, had yet to persuade anyone with its so-called rebate defense.

"Why is Intel losing their argument? The answer is that the practice in question is not a pricing discount, it's not a subsidy or a rebate. It is a disguised, coercive practice long recognized by antitrust regulators as only being available to a dominant company," McCoy said. "What they call a rebate is conditional on boycotting a rival."

The heart of AMD's claims is the allegation that Intel discounts its chips to computer manufacturers if, and only if, these companies agree to keep the use of competitors' chips at a low 10%. Because AMD sells its rival product at a cheaper rate, Intel's aggressive tactics keep prices artificially steep, which in turn hurts consumers, according to AMD.

"We are the price leader. We're trying to get market access so we can compete head to head," said McCoy, who was snatched from O'Melveny & Myers LLP 13 years ago to serve as AMD's in-house counsel.

"Intel says there's no consumer harm. We say there is a reason why they are losing their argument with conservative antitrust regulators. Consumer harm is obvious, demonstrable, quantifiable...it's huge."

Intel spokesman Chuck Mulloy says claims of consumer harm are not demonstrable but laughable, and will be fiercely argued at trial. Computer prices, he says, have consistently dropped over the years, in relative and

absolute terms. AMD is spouting its imaginary tale of consumer harm to trigger baseless investigations by competition regulators across the globe, he added.

One such investigation, by Japan's Fair Trade Commission, concluded in March 2005 with an injunction against Intel. Korea's antitrust watchdog recently concluded its two-year probe with a statement of objections, as did the European Commission.

"There are no consumers claiming they have been harmed; there is one competitor who continues to assert that our conduct is unlawful," Mulloy said. "The consumer's complaint is a mirror of AMD's complaint. That lawsuit would not exist if it weren't for AMD."

AMD's claim that Intel has been illegally discounting its products flies in the face of assertions that this very conduct injures consumers, Mulloy argues.

"When you have discounting, consumers under U.S. law are deemed to have benefited," he said.

Not so, argues McCoy, who said Intel drove AMD's market share in Japan down from 26% to 11% from 2000 to 2006 with its rebates. Sales of its microprocessors to Sony, for instance, went from 40% of AMD's overall Japanese sales in 2002 to zero in 2004.

"Consumers really got hurt by what they did in Japan," McCoy said, adding that cost savings pocketed by original equipment manufacturers that favored AMD over Intel were directly beneficial to consumers, who were awarded with increased DRAM memory, more software options and other innovations.

"You'd have to be deaf and blind not to see that consumers are being hurt, and the consumers ARE being hurt," said McCoy. "I can prove consumers are not benefiting."

To make its point, AMD recently released the results of an economic study on the impact of Intel's pricing tactics on end users. Authored by economist Dr. Mike Williams, who has served as a consultant for the U.S. Federal Trade Commission, the study claims \$60 billion of Intel's worldwide profits from 1996 to 2006 were attributable to anti-competitive conduct.

The study also projected that if Intel's alleged anti-competitive conduct were to cease, savings to OEMs and consumers would be in excess of \$80 billion in the next 10 years.

Defending his study against claims by Intel that it was "wildly speculative," Williams said he based his calculations on conservative assumptions and used mathematical models well-recognized by the business community. One assumption, he said, was that Intel had engaged in anti-competitive behavior.

"The study is quite simple, and I believe quite conservative," said Williams.

“Intel's total microprocessor profits over the past ten years total more than \$140 billion. In a competitive industry the profits would have been \$87.7 billion. This is not a particularly controversial calculation.”

Wildly speculative was not the only disparaging label Intel gave to the Williams' study. It was also a PR ploy, said Molloy, who noted AMD had bought full-page ads in the Wall Street Journal and the New York Times in anticipation of the report's release.

“The economic study ...essentially proves that if you pay someone enough money they'll say almost anything. Based on what I've seen here, there's no basis for the conclusions that were reached,” he said.

Moreover, said Mulloy, the two sides were still stuck in the discovery phase of the U.S. lawsuit, and were in no position to start taking expert witness testimony.

The companies have been exchanging documents as part of discovery for more than a year, and the process is far from over, with Intel's now famous e-mail retention “lapses” pushing back the trial date to April 2009.

Intel's senior vice president Bruce Sewell said the company would be more than ready by then to defend itself against AMD's spurious claims.

Sewell, who described as “rubbish” the characterization of Intel's rebate as a boycott, said AMD had manipulated the statistics to prove its unprovable point.

Where AMD has a relatively strong share of a particular market, Intel offers discounts to keep its products attractive, he said. In other markets, AMD is the one aggressively discounting. The rebate has nothing to do with a boycott.

“If that were true then AMD would not be selling to Hewlett Packard to Dell,” Sewell said. “If Intel were forcing exclusivity then by definition that strategy has failed miserably,” he said.

The upshot of the price war, he said, was to lower the overall average price of computers today. The problem with AMD, he added, was that it does not want to compete in a competitive market.

On the contrary, says McCoy: AMD is not trying to manipulate or retard natural market forces that favor the strong company over the weak, Intel is.

Rather than merely enjoying the fruits of its success, Intel was abusing its monopoly power. The market, he said, is indifferent to who produces the microprocessors, so long as they work.

“Intel is erecting these artificial barriers to prevent the market from functioning,” said McCoy. “The purpose of the antitrust laws is to make sure

that the law of the jungle applies.”