

San Jose Mercury News

SERVING NORTHERN CALIFORNIA SINCE 1851

WWW.MERCURYNEWS.COM

JUNE 29, 2005 | WEDNESDAY

THE NEWSPAPER OF SILICON VALLEY

AMD vs. Intel suit could air PC industry's dirty laundry

TOP EXECS WOULD HAVE TO TESTIFY

By Dean Takahashi and Therese Poletti,
Mercury News

After a decade of courtroom detente, Advanced Micro Devices has launched a legal assault against Intel that could expose the dirty laundry of not just Silicon Valley's two leading chip companies, but the entire personal computer industry.

The 48-page antitrust lawsuit filed in U.S. District Court in Delaware late Monday shows that AMD has carefully been taking notes on Intel's alleged abuse of its power for at least five years, citing numerous examples in which the Santa Clara chip giant repeatedly pressured customers like Hewlett-Packard, Dell and Gateway to use Intel's chips instead of AMD's.

AMD had to weigh whether it would anger those customers by filing the suit. The decision to finally pull the trigger was a matter of building up enough ammo for a

case, said AMD Chief Executive Hector Ruiz in a conference call and a follow-up interview Tuesday.

The Sunnyvale company has to prove Intel is a monopoly, that it used its market power illegally and that its actions harmed consumers. In 2004, Intel had about 82.5 percent of the microprocessor market, while AMD had a 15.8 percent share, the suit says.

"AMD chose the nuclear option," said Nathan Brookwood, an analyst at Insight64 in Saratoga. "By necessity, it's going to bring in top executives from all over the computer industry to testify."

Intel denied any anti-competitive behavior. "We strongly disagree with AMD's complaints about the business practices of Intel and Intel's customers," said Intel spokesman Tom Beermann. "AMD has chosen once again to complain to a court about Intel's success, with a legal case full of excuses and speculation."

Beermann said the Santa Clara company spends a significant amount of money training its sales force about antitrust issues.

Intel has deflected most antitrust charges in the past, most notably in 1999 when it settled a case brought by the Federal Trade Commission, with Intel agreeing to make minor changes in its behavior.

Ruiz said AMD decided to take on Intel directly. After years of losses in the 1990s, AMD had rebuilt its finances and launched innovative chips, Ruiz explained, but it wasn't gaining as much market share as expected.

Japan's regulators provided an opening in March when they ruled against Intel in an antitrust case there. Ruiz said he consulted with customers and found they wanted AMD to go forward.

"In the end, it was the right thing to do," he said. "The vast majority of people are thrilled we have put this on the table."

The scope of the case is huge. The suit cites 38 alleged victims of Intel across three continents and argues that Intel crossed the line in seven different kinds of sales and marketing practices.

For example, AMD alleges that Intel repeatedly pressured HP and Compaq Computer, which later merged, to stop using AMD chips. At one point, Michael Capellas, then-CEO of Compaq, told AMD that he had "a gun to his head" because Intel had withheld delivery of critical server chips, the suit says.

In another incident, former Intel CEO Craig Barrett allegedly threatened former Acer Chairman Stan Shih with "severe consequences" for supporting the AMD

WHY IT MATTERS

If AMD wins its suit against Intel, consumers could see more competition and cheaper prices for PCs. And even if it loses, the legal battle could expose unsavory business dealings in the computer industry.



PHOTO: PATRICK TEHAN — MERCURY NEWS

Hector Ruiz, chief executive of AMD, said the decision to sue Intel for using its market power illegally was "the right thing to do."

Athlon 64 launch in September 2003. The incident supposedly coincided with an unexplained delay in \$15 million to \$20 million in market development funds Intel owed Acer. Taiwan-based Acer withdrew from the launch.

The companies cited in these incidents declined to comment. It's not clear whether those executives will be called to testify if the case goes to trial.

The suit includes publicly disclosed evidence from Japan's antitrust regulators, but it does not yet include any evidence collected by European regulators, said AMD Chief Administrative Officer Tom McCoy in an interview.

If AMD proves its case, it could seek triple damages against Intel. In addition, AMD could seek remedies such as requiring Intel to be transparent and fair about its pricing and the marketing funds it pays customers.

AMD argues that consumers would also see more aggressive competition in PC pricing.

McCoy hopes the case will go to trial by the end of 2006, but antitrust attorneys said the case could drag on for years.

Intel and AMD fought an eight-year legal war over patents and antitrust issues from 1987 to 1995. They settled the matter with a 10-year licensing agreement, which they renewed for an additional 10 years in 2001.

The terms of the 2001 licensing renewal were kept confidential, but they did not prohibit AMD from filing an antitrust suit against Intel based on new evidence, McCoy said.

DID INTEL PUT THE SQUEEZE ON HP?

Advanced Micro Devices claims Intel used unfair tactics to win business from PC makers. One instance in which Intel allegedly leaned on Hewlett-Packard:

In 2002, the newly combined HP-Compaq was poised to adopt AMD's chips for commercial desktops.

HP asked AMD for \$25 million a quarter to compensate it for marketing funds that Intel was expected to withdraw in retaliation. AMD agreed instead to provide the first 1 million chips free to HP.

Learning of this, Intel allegedly pressured HP into scaling back its use of AMD chips and asked HP to fire the executive who recommended AMD. Ultimately, HP only used about 160,000 of the free AMD chips.

Observers in the legal and analyst community wondered why AMD would take the risk of alienating its customers by dragging them into the litigation.

"If you are in business, you hate to get your customers involved in a wrangle with your competitor," said Gary Reback, the Silicon Valley antitrust attorney who took on Microsoft.

AMD's legal strategy seems two-pronged. On the one hand, it gathered as much evidence as possible of what analyst Brookwood calls "Tony Soprano-like" behavior.

At the same time, AMD argued that Intel's well known and publicly touted "Intel Inside" and "Centrino" marketing programs are on their face anti-competitive. The suit also alleges that Intel retaliates against some retailers if they sell more than 20 percent of machines with AMD chips.

According to the suit, Fry's Electronics was Fujitsu's only retailer in

the United States when Intel learned Fry's was successfully marketing an AMD-based Fujitsu laptop. Intel allegedly offered Fry's a large payment to remove the laptop from its shelves. The suit did not describe what Fry's did, and Fry's could not be reached for comment Tuesday.

"Recent antitrust decisions show that the conduct of monopolists should receive special scrutiny," said David Balto, an antitrust attorney in Washington, D.C., and former director of policy at the FTC when it sued Intel in 1998.

At the very least, Balto said, AMD's case would force Intel to step back from being overly aggressive in its sales and marketing. That could give AMD and its customers more breathing room to do business, he said.

Contact Dean Takahashi at dtakahashi@mercurynews.com or (408) 920-5739.

