

## **Antitrust Scrutiny of Intel Around the World 2004 - 2007**

### **2004:**

Apr. 8: Competition authorities in Japan raid the offices of Intel's Japanese subsidiary, Intel K.K., as well as those of major Japanese OEMs.

Spring: The European Commission sends requests for information – known as Article 18 letters - to Intel's customers.

### **2005:**

Mar. 8: The Japanese Fair Trade Commission (JFTC) issues a Recommendation which finds Intel has abused its monopoly power to exclude fair and open competition, thereby violating Section 3 of Japan's Antimonopoly Act.

Mar. 31: Intel "accepts" the JFTC Recommendation, but denies any wrongdoing.

Jun. 27: AMD files a 48-page antitrust complaint in U.S. federal district court, explaining in detail how Intel Corporation has unlawfully maintained its monopoly in the x86-microprocessor market through worldwide coercion of customers to refrain from dealing with AMD.

Jun. 30: Based on the JFTC Recommendation, AMD Japan files lawsuits against Intel K.K. in Tokyo High Court and the Tokyo District Court for damages arising from violations of Japan's Antimonopoly Act.

Jul. 12: The European Commission and national competition authorities raid Intel offices across Europe, as well as those of several computer manufacturers.

### **2006:**

Feb. 9: South Korean Fair Trade Commission (KFTC) officials conduct raids on Intel's local offices, as part of an investigation into Intel's anticompetitive business practices.

Apr. 20: In the U.S., lawyers for both parties meet in court for an initial status conference. The judge sets a deadline of May 22, 2006 for both parties to agree upon and submit the protective order and a document production cut-off of December 31, 2006. The trial is expected to begin in 2008.

Jul. 17: AMD files a complaint against Intel with the German Federal Cartel Office, called the Bundeskartellamt. The complaint focuses on an exclusivity agreement between Intel and the Media-Saturn-Holding GmbH (MediaMarkt and Saturn) which excludes AMD-based systems from all of their hundreds of retail stores across Europe.

Sep. 11: AMD's complaint related to the Media Market/Saturn exclusivity agreement is transferred from Germany's Federal Cartel Office (the Bundeskartellamt) to the EC as part of their ongoing investigation into Intel's business practices.

Sep. 26: The U.S. court grants Intel's motion to dismiss claims arising from

AMD's sale of German-made microprocessors to foreign customers, based upon lack of subject matter jurisdiction and standing over conduct that occurred purely outside of the U.S. An immovable trial date is set for April 27, 2009.

Sep. 28: The U.S. court enters a protective order.

Dec. 15: Special Master Vincent Poppiti recommends to presiding Judge Joseph Farnan that "as the undisputed geographic market is global, and approximately 68% of the total worldwide production of computers powered by x86 microprocessors are sold to non-U.S. customers, evidence of foreign exclusionary conduct is essential for AMD to demonstrate" that Intel has violated U.S. antitrust laws. Judge Farnan appointed Special Master Poppiti to preside over all discovery disputed in the case.

Dec. 27: U.S. Federal Court in Delaware orders Intel and third parties subpoenaed in the ongoing U.S. antitrust lawsuit to produce documents and other evidence bearing upon Intel's exclusionary conduct outside U.S. borders.

## **2007:**

Mar. 5: Intel is found to have made a series of significant errors during the course of discovery, all of which have contributed to the loss of potentially massive amounts of critical evidence. Email correspondence generated and received by top Intel executives - including Intel Chairman Craig Barrett, CEO Paul Otellini and Chief Sales and Marketing Officer Sean Maloney - and other employees since the filing of the lawsuit and many other relevant electronic documents may be irretrievably lost. Among its mistakes, Intel relied on a highly risky preservation "honor system" which allowed an automated email purge system to continue throughout litigation and gave incomplete or unclear instructions to its custodians on how to preserve files.

Mar. 7: At a conference with the Special Master presiding over discovery in the case, it was agreed that Intel would provide the Court and parties on or before April 10, 2007 a full accounting on a custodian-by-custodian basis of its preservation issues, including an inventory of back-ups of the custodians' correspondence that may be available for restoration. Intel is also required on that date to propose a plan of remediation by which it will attempt to restore any data lost because of deficiencies in its preservation system. A final hearing before the Special Master on this issue is likely to occur in mid-May.

Apr. 23: Legal counsel for Intel submit a report and proposed remediation plan detailing Intel's assertions regarding what caused lapses in evidence preservation, and their proposal for attempting to recover lost evidence, including e-mails from many executives, including the chief executive officer.

Apr. 27: Special Master Vincent Poppiti and legal counsel for AMD and Intel agree to the appointment of Eric Friedberg, a forensic data recovery expert tasked with assisting the Special Master in the Court's investigation into Intel's evidence preservation lapses. Friedberg reports directly to Special Master Poppiti.

May 20: In the U.S., *60 Minutes* - a highly respected investigative reporting show broadcast on CBS television network - reports that Intel is allegedly engaging in predatory business practices to thwart the efforts of the non-profit One Laptop Per Child (OLPC) program. OLPC founder Nicholas Negroponte claims that Intel is

engaged in dumping practices designed to kill OLPC and enable Intel to monopolize this emerging market.

May 22: Legal counsel for AMD serve subpoenas on legal counsel for Intel after Intel's legal counsel repeatedly refuse to preserve their own documents and e-mails regarding Intel's document preservation approach. Legal counsel for Intel ultimately agrees to preserve documents detailing their own involvement in the creation and maintenance of Intel's document preservation apparatus.

July 13: *The New York Times* reports that, "The Intel Corporation reversed ground Friday and joined the board of the One Laptop Per Child Foundation... The about-face by the world's largest chip maker is significant because the leader of the effort, Nicholas Negroponte, the former M.I.T. Media Laboratory director, sparred frequently with Intel's chairman, Craig R. Barrett, over technology and educational issues." ("Intel, in Shift, Joins Project on Education", John Markoff, *The New York Times*, July 14, 2007) (Also see May 20, 2007 entry on OLPC)

Jul 27: The competition enforcement arm of the European Commission charges Intel Corporation with antitrust violations.

To sum, the EC has focused their charges around three types of abuse of their dominant market position:

- 1 – Intel has provided substantial rebates to various OEMs conditional on them obtaining all or the great majority of their CPU requirements from Intel.
- 2 – In a number of instances, Intel made payments in order to induce and OEM to either delay or cancel the launch of a product line incorporating an AMD based CPU.
- 3 – 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.

These three types of conduct are aimed at excluding AMD, Intel's rival, from the market. Each of them is provisionally considered to constitute an abuse of a dominant position in its own right. However, the Commission also considers at this stage of its analysis that the three types of conduct reinforce each other and are part of a single overall anti-competitive strategy. Intel has 10 weeks to reply to the SO, and will then have the right to be heard in an Oral Hearing. If the preliminary views expressed in the SO are confirmed, the Commission may require Intel to cease the abuse and may impose a fine.