Kelley Drye

Intel Settles FTC Claims that Intel Unfairly Restricted the Ability of Others to Compete with It

August 11, 2010

On August 4, 2010, Intel reached agreement with the FTC to settle charges that the company restricted competition in the markets for certain computer chips. Before it becomes final, the Proposed Consent Order will be subject to a 30 day public comment period.

The FTC's Case Against Intel

In its administrative complaint, dated December 19, 2009, the FTC alleged that Intel had engaged in a broad range of unfair conduct. The FTC brought its claims under section 5 of the FTC Act, which bans unfair methods of competition, rather than under the Sherman Act. The FTC alleged that Intel had monopoly power in the markets for personal computer and server central processing units (CPUs) with 75-85% of those markets. It also alleged that Intel has more than 50% of the market for graphics processing units (GPUs) and sought to create a monopoly in that market.

In particular, the FTC alleged that Intel harmed consumers by providing loyalty discounts and bundled discounts to computer manufacturers for agreeing not to do business with Intel's competitors; punished customers who purchased too many products from Intel (by increasing prices, terminating collaborations, shutting off supply, and/or reducing marketing support); rewarded those who purchased nearly 100% from Intel (e.g., with supplies during periods of shortage and indemnification from IP litigation); designed its own software-development tools so as to impair the performance of competing processors; and falsely advertised Intel's performance relative to competitors.

Intel has been the subject of previous enforcement actions by authorities in Japan and the EU, as well as an ongoing action by the New York Attorney General.

The Proposed Settlement

In its proposed Consent Order settling the charges,[1] Intel agreed not to do the following:

1. provide loyalty discounts or bundled discounts to computer manufacturers for agreeing not to do business with Intel's competitors, or agreeing to reduce such business;
2. retaliate against computer manufacturers for doing business with Intel's competitors;
3. design its products solely to disadvantage competing or complementary products;
4. misrepresent the compatibility of competitors' chips with Intel's software-development tools; and

5. misrepresent the characteristics of its chips versus competitors' chips

While the settlement does not require Intel to pay a fine, Intel agreed to affirmatively modify its business practices in several other ways, including the following:

1. set up a $10 million fund to reimburse customers who incurred costs in reliance on Intel's statements regarding its software-development tools;
2. provide makers of complementary products with access to Intel's CPUs for six years; and
3. modify its intellectual property agreements with AMD, Nvidia Corp., and Via Technologies Inc. to enable these companies to more easily engage in mergers and joint ventures without worrying that Intel would sue for breach of its licensing arrangements.

Takeaways for Clients

The *Intel* settlement is primarily of interest to companies who are prominent in an industry, i.e. who have some degree of market power. Market power is usually indicated by large market shares, generally in excess of 50% (Intel is alleged to have shares of 50-85% in the relevant product markets). Many of the practices in which Intel allegedly engaged are not unusual in industrial and technology markets. They are normally judged under the antitrust laws according to the rule of reason, that is, whether they unreasonably restrain trade in the relevant markets. The FTC alleged that Intel engaged in a variety of practices that had the potential to reduce competition and, given its large market shares, were likely to do so. Noteworthy is the FTC's decision to proceed under the FTC Act rather than the Sherman Act, which may have given the FTC more latitude to attack an alleged pattern of conduct, no single act of which may constitute a violation of the Sherman Act.

If your company has a substantial market share in any industry or product line, then *Intel* highlights the need for a thorough legal review before engaging in practices that might have a material adverse effect on a competitor's ability to compete. Those would include offering inducements or threats to customers not to purchase products from competitors; offering loyalty discounts, offering bundled groups of products for a single price, or designing or engineering products in a way that may be incompatible with complementary products. Often the antitrust risk can be reduced while still achieving the same business goals.

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1 Available at http://www.ftc.gov/os/adjpro/d9341/100804intelagree.pdf; 75 Fed. Reg. 48338 (Aug. 10, 2010).