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The Intel and Microsoft Settlements

Robert H. Lande¹

In 2001 the U. S. Department of Justice settled the most highly publicized lawsuit of the high-tech era, its antitrust case against Microsoft. Brought during the Clinton years, the Bush Administration negotiated a settlement that amounted to a mere slap-on-the-wrist. Even though Microsoft had been found in court to have illegally maintained its monopoly in PC operating systems, the company was permitted to retain its monopoly not only in this market, but also in the browser it used in a large part of its illegal scheme. Almost a decade has passed, but Microsoft still retains its monopoly in both PC operating systems and Internet browsers.

Now comes an equally historic settlement involving the equally important other half of the so-called “Wintel monopolies” - the chips that form the brains of PCs and a huge number of other devices. More than \$30 billion worth of x86 chips are sold each year, with Intel long having roughly 80%, a monopoly share, of this market. A related market, graphic chips, is also large and important, and by some measures growing even more rapidly.

The FTC just announced a tough settlement with Intel that will, over time, be contrasted extremely favorably with the Microsoft settlement by pundits and historians. It will not just benefit competition and consumers in the United States. Efforts to connect poor children in the developing world to the Internet via the “one laptop per child” program” have just been aided tremendously.

Although the European Union, Japan, Korea and private parties examined Intel’s conduct and long ago decided it was anticompetitive, the FTC dithered. But when it finally acted, it filed a Complaint that was much broader than the others. Although to some extent the FTC was able to piggyback on these earlier efforts, the remedy achieved by the FTC goes significantly further than any of the others.

This settlement covers the markets for graphic chips and integrated chipsets as well as the market for CPUs, and prevents Intel from leveraging its CPU monopoly into these other markets. It for the first time clearly prohibits “market share discounts” and “first dollar discounts” by a dominant firm because of their significant anticompetitive effects. It prevents Intel from retaliating against OEMs or retailers that use or carry chips made by Intel’s rivals. It prohibits Intel from selling its products below cost.

Intel is required to allow graphic chips made by its rivals to seamlessly interface with their x86 chips for 6 years. Intel also is prohibited from engaging in predatory innovation: i.e., making design changes that have the sole effect of harming rivals, with the burden, importantly, on Intel to prove the design’s consumer benefits. But the settlement carefully is

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designed to encourage Intel to compete by making superior products and offering lower prices.

Overall, these terms are calculated to achieve two crucial objectives, accomplishments whose effects will be felt, worldwide, for decades. First, they will encourage competition in the X86 CPU chip market, and thus will result in lower prices, more innovation, and a wider array of choices for every product that utilizes these chips. Second, they will preserve competition in the graphic chip market, achieving a similar array of benefits for the worldwide economy. Even though Microsoft might well continue to monopolize PC operating systems for the foreseeable future, at least the chips that underlay PCs - and notebooks and notepads and a diverse array of devices too numerous to mention - are much more likely to be competitive. From a consumer perspective, half a victory against the Wintel monopolies is much better than none.

The Microsoft case (actually, a series of related cases) literally dragged on for more than a decade. By contrast, the Intel case, the most important antitrust enforcement victory achieved so far during the Obama Administration, is now almost over. And the new FTC has in effect told monopolists in every sector of our economy: we are watching you, and we are tough.

To be sure, the FTC will have to monitor Intel's compliance for the next decade. Although there is an ongoing action involving essentially the same charges by New York State, and Intel has appealed decisions in the EU and Korea, this settlement will do more than produce tremendous benefits for competition and consumers. It also will permit Intel to focus its energies on what it does best: making chips.