

The intel infringement case (comp c-3 37990) of may 2009

[Business](#), [Company](#)



Introduction

Within the context of this given case, we aim to examine the background of the Intel infringement case reference Comp/c-3/37990 Intel of 13 May 2009, Intel are held responsible for infringing Article 83 of the EC Treaty where it has been found guilty of abusing its dominant market position on the x86 central processing unit (CPU) market by awarding rebates. We shall consider the basis on which the Decision Commission has made this decision to fine Intel and what evidence contributes towards this investigation. In addition to this, we will also be examining whether the decision taken was justified and if it had any kind of positive outcome on the consumers. If we consider the guidance on the Commission enforcement priorities in implementing Article 82 on the EC Treaty to abusive exclusionary conduct by dominant undertaking.

According to the Article 82 of Treaty that clearly outlines the EC Article 82 forbids any kind of abuse of a dominant position in the market. This goes hand in hand with the case-law where it is considered illegal for an undertaking to be in a dominant position and that such a dominant position is entitled to compete purely on basis of their hard work and merits. However, it should be noted that the undertaking concerned as a special responsibility for bidding its behaviour to diminish authentic deformed competition on the common market. It should be noted that Article 82 is considered as the legal fundamental for a critical element of competition policy and its effective enforcement that helps market operate more efficiently and effectively for the advantage of businesses and its consumers.

It (Article 82) outlines the enforcement priorities that will guide the Commission's action in implementing Article 82 to exclusionary conduct by dominant undertakings. In addition to that, it attempts to offer a greater deal of accuracy and speculation in relation to the general framework of evaluation that the Commission recruits in determining whether it should pursue cases that relate to the various kinds of exclusionary conduct and to help undertakings better assess whether specific behaviour is likely to result in intervention by the Commission under Article 82.

According to the application of Article 82 to exclusionary conduct by dominant undertakings, the Commission will emphasise on the kinds of behaviour that are most hazardous to consumers. It can be noted that even though it is the customer who is most likely to take advantage from the stiff competition, as it results in lower prices, good quality and a diverse choice of new enhanced services and goods.

It is the duty of the Commission to instruct the enforcement to make sure the market operates in the precise manner, also making sure consumers take advantage from the efficiency and productivity that results from effective competition between under-takings. If consumers are excessively charged a high price or influencing their behaviour that under-estimates the efforts to accomplish a combined internal market that is considered to be liable of infringing Article 82. In regards to implementing the general enforcement fundamentals and rules set out in the Commission, it will take into account the specific facts and circumstances for every individual case.

[Ref 1]

Let us consider the background of the Intel case, Intel has a reputation for specialising in manufacturing microprocessors (CPUs) and chipsets for user personal computers. This is registered proprietor of well known brand names, such as: Pentium and Celeron. The Intel case is a perfect example of how cruelly and sensibly a corporation can take an advantage of it's leading dominant position in the market.

This case clearly outlines the inherent differences between the monopoly compared by intellectual property rights and the Treaty competition rules that forbids any form of abuse of dominant position. Intel has cleverly registered numerous thousands patents to safeguard its creative inventions and it is impossible in a pragmatic sense for it's rivals to know in advance whether or not their products may read on Intel's patents. Interestingly, Intel was found guilty of infringing it's dominant position in relation to VIA, which is considered as one of Intel's direct rivals in both the chipsets and CPU markets. As VIA was in need of the various components due to the interoperability, also due to the critical requirement for compatibility with Microsoft operations software.

In order to make this operate, VIA required a licence from Intel that would allow them to use it's patents in the design and manufacture of it's chipsets which would let them communicate with Intel's microprocessors. In addition to this, VIA also was in need of a licence in relation to it's supply of CPU's so that they are completely Windows compaitable. It should be noted from the year 1998 to the year 2000, both the parties had a reciprocal chipset

licencing agreement. By December 2000, Intel launched it's latest Pentium 4 processor in the market, simultaneously that VIA would require a licence.

A new licence was therefore by Intel on non-reciprocal conditions.

Furthermore, such a proposed agreement envisaged an ' asymmetrical' licenced that would entitle Intel to unlimited use of all the VIA patents and technology but VIA would only be able to acquire a licence to use Intel's technology to manufacture and sell only specific chipsets. In addition to this, it even proposed a ' market division' which would limit the VIA licence to the manufacture of chipsets for use with Pentium 4 processors, however it could not be used in conjunction with any enhanced versions of that same processor.

According to VIA, Intel was infringing (September 2001) Article 82 of the EC Treaty and Chapter II of the Competition Act 1998 and it is not entitled to relief in circumstances where this would compel VIA to enter into a licence agreement consisting of illegal terms and conditions.

In regards to the CPU Action, VIA outlined the two key competition law defences, these consist of Intel's refusal to licence it's Pentium 4 technology which is considered as a violation and abuse of it's dominant position in the CPU market. Secondly, Intel's refusal to licence it's prospective rights was abusive primarily because these rights related to technology that was the industry standard and which was significant in order for it's rivals to have access to the CPU market. The refusal would eliminate competition from VIA

and protect VIA from marketing valuable new products (the essential facilities defence).

It cannot be denied that the case is indeed very complex in it's structure and nature , it consisted of a thorough and comprehensive investigation that was taken by the Commission. Whether Intel was accountable for abusing it's dominance in the market by imposing a licencing policy for exploiting and enforcing it's large portfolio of patent rights is evident from the various names that were included in this long list of names who complained of Intel's abuse of power.

It can be observed that within the Intel case, there are obvious signs of conditional rebates where they were bestowed to consumers, rewarding them for a specific kind of purchasing behaviour. Furthermore, such rebates within a dominant undertaking can have an actual or prospective pledge effects that are similar to exclusive purchasing contract.

Intel was adamant to refuse granting of a licence on any kind of reasonable conditions, this clearly demonstrates its abuse of it's dominantnposition in the CPU and chipset markets. Due to the patents being the industry standard it was impossible for chipset manufacturers to enter the market unless they were able to make use of Intel's gateway technology. Interestingly when multi-product rebates take place, it is purely considered as anti-competitive, this is what exactly Intel did, it tried to do so on a tying market if it is a huge market that equally efficiently provides some of the key components however they cannot compete against the discounted bundle.

Why is the CPU so much of an importance in the Intel case This is primarily because the CPU is considered as an essential component of a computer, in regards to the actual performance and cost of the system. Furthermore, the manufacturing process of the CPU requires high technology and expensive facilities. The CPU is segmented into two sub-categories: CPUs of the x86 architecture and CPUs of a non-x86 architecture. The x86 architecture is a standard designed by Intel for it's CPU. It can operate on both operating systems (Windows and Linux).

According to the Commission's comprehensive investigation in the x86 CPUs, the relevant product market was not under the market of x86 CPUs. It can be noted that the 10 year period that has been considered and included by the Decision Commission (1997-2007), Intel was seen to be continuously in a leading position, in terms of it's market shares which were excessive by 70%.

In addition to this, there were important obstacles to entry and development present in the x86 CPU market. Intel is a powerful and reputable brand, it saw a rise in it's brand reputation due to product differentiation that contributed as an obstacle or hindrance to entry. The recognised high level of obstacles to entry and development are constant with the observed market structure, where all the leading rivals to Intel, apart from AMD left the market or they lacked some kind of importance.

Furthermore, it can be observed that from October 2002 to December 2007, according to the Decision, Intel's market shares and obstacles to entry and

development, Intel held a dominant position in the market. In terms of the condition rebates offered by Intel, it awarded major OEM's rebates that were conditioned on these OEM purchasing all or most of their supply requirements; this entails numerous brand who were offered these rebates. Dell was offered rebates for three years (December 2002- December 2005) that conditioned Dell's purchasing exclusively Intel CPUs.

With regards to the payments and rebates Intel offered a major OEM's and MSH which are seen with context of the growing fierce competition threat that AMD portrayed. With this regard, the Decisions demonstrated that OEM's, IT managers and Intel considered that AMD products had numerous positive innovative factors and they were considered a viable option to those of Intel.

In essence, it can be agreed that the conditions of the case-law for detecting prospective abuse were evidently found, the Decision also conducted an economic analysis of the capability of the rebates to foreclose a rival that would be efficient as Intel, albeit not dominant. According to the found evidence collated by the Commission, it led to the conclusion that Intel's conditional rebates and payment-induced sincerity of key OEMs and of a major retailer, the effects of which were complementary in that they most importantly diminished rivals ability to compete on the merits of their x86 CPUs. Furthermore it can be added that Intel's anti-competition conduct thereby resulted in a decrease of consumer choice and in lower incentives to innovate.

Intel believed it did not wrong, it clearly defended the rebates and it stated in the two different kinds of arguments, that it wanted to introduce a rebate that would allow them to respond to price competition from it's rivals and therefore it met stiff competition. Secondly, by using the rebate, it adopted a vis-a-vis every individual OEM was considered as significant, in order to accomplish significant efficiencies that were pertinent to the CPU industry. Intel carried on debating there were four different kinds of efficiencies that were accomplished by any exclusivity requirements of it's rebates and production efficiencies and risk sharing and marketing efficiencies.

According to the findings by the Commission, Intel's debates relating to goal justification are flawed as they relate more generally to behaviour to which the Commission did not report (i. e. discounting of rebates) and not to conduct to which the Commission did object (conditions relating to rebates) and non of the efficiency defences offered an appropriate justification/ valid explanation for the behaviour questioned.

It can be concluded that as a whole that the conditional rebats granted by Intel to Dell, HP, MSH and NEC collectively point at the abuse of a dominant position under Article 82 of the Treaty and Article 54 of the agreement. In addition to this, the individual abuses are also considered as part of a single strategy focused at foreclosing AMD. Therefore the individual abuses form a part of a single infringement of Article 82 of the EC Treaty.

In addition the Decision states that Intel practices were implemented collectively at two tiers of the distribution chain or cycle that can be viewed

in the context of the rapidly growing competitive threat that are portrayed by AMD. Intel wanted to destroy the ability of AMD to compete at the same scale which would then result in making AMD weaker and be unable to match the same merits and standards as that of Intel, therefore, deliberately preventing them from selecting non-Intel based computers on the merits. (i. e. quality and price of CPUs).

The Decision determines that Intel has certainly infringed Article 82 of the Treaty and Article 54 of the EEA Agreement by getting involved in a single and consistent infringement of Article 82 of the Treaty and Article 54 of the EEA Agreement from October 2002- December 2002 by imposing a strategy targeted at foreclosing its rivals from the x86 CPU market. Intel was issued with a legal notice refraining it from any act or engaging in any activity that has the same or similar effect of this kind. It can be concluded that the decision taken by the Decision Commission is certainly justified and even though consumers may have benefited from the decision, it was much more important for Intel to realise it's mistake in abusing it's dominant position in the market.

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