



Press and Information

General Court of the European Union
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Judgment in Case T-286/09 RENV
Intel Corporation v Commission

The General Court annuls in part the Commission decision imposing a fine of € 1.06 billion on Intel

The Commission's analysis is incomplete and does not make it possible to establish to the requisite legal standard that the rebates at issue were capable of having, or likely to have, anticompetitive effects

By decision of 13 May 2009,¹ the European Commission imposed on the microprocessor manufacturer Intel a fine of € 1.06 billion for having abused its dominant position on the worldwide market for x86² processors³ between October 2002 and December 2007, by implementing a strategy intended to exclude competitors from the market.

According to the Commission, that abuse was characterised by two types of commercial conduct engaged in by Intel vis-a-vis its trading partners, namely naked restrictions and conditional rebates. As regards conditional rebates more specifically, Intel was found to have granted to four strategic original equipment manufacturers ('OEMs') (Dell, Lenovo, Hewlett-Packard (HP) and NEC), rebates which were conditional on those OEMs purchasing all or almost all of their x86 central processing units (CPUs) from Intel. Similarly, Intel was found to have awarded payments to a European retailer of microelectronic devices (Media-Saturn-Holding; 'MSH') which were conditional on MSH selling exclusively computers containing Intel's x86 CPUs. Those rebates and payments ('the rebates at issue') ensured the loyalty of the four OEMs and MSH and thereby significantly diminished the ability of competitors to compete on the merits of their own x86 processors. According to the Commission, Intel's anticompetitive conduct thereby resulted in a reduction of consumer choice and in lower incentives to innovate.

The action brought by Intel against that decision was dismissed in its entirety by the General Court by judgment of 12 June 2014.⁴ By judgment of 6 September 2017, on the appeal brought by Intel, the Court of Justice set aside that judgment and referred the case back to the General Court.⁵

In support of its claim for annulment of the initial judgment, Intel criticised the General Court in particular for having erred in law on account of the failure to examine the rebates at issue in the light of all the relevant circumstances. In that regard, the Court of Justice noted that the General Court, like the Commission, had relied on the assumption that the fidelity rebates granted by an undertaking in a dominant position were by their very nature capable of restricting competition, with the result that it was not necessary to analyse all the circumstances of the case or to carry out an as-efficient-competitor ('AEC') test.⁶ Nevertheless, the Commission did carry out, in its decision,

¹ Commission Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article [102 TFEU] and Article 54 of the EEA Agreement (Case COMP/C-3/37.990 – Intel).

² Microprocessors used in computers can be subdivided into two categories, namely x86 processors and processors based on another architecture. The x86 architecture is a standard designed by Intel which can run both Windows and Linux operating systems.

³ The processor is a key component of any computer, both in terms of overall performance and cost of the system.

⁴ Judgment of the General Court of 12 June 2014, *Intel v Commission*, T-286/09 (see also [Press Release No 82/14](#)).

⁵ Judgment of the Court of Justice of 6 September 2017, *Intel v Commission*, C-413/14 P (see also [Press Release No 90/17](#)) ('the judgment on the appeal').

⁶ The economic analysis carried out in this test concerns, in the present case, the capability of the rebates to foreclose a competitor which is as efficient as Intel, albeit not dominant. More precisely, the analysis seeks to establish at what price a competitor as efficient as Intel and facing the same costs as Intel would have had to offer processors in order to

an in-depth examination of those circumstances, which led it to conclude that an as-efficient competitor would have had to offer prices which would not have been viable and that, accordingly, the rebate scheme at issue was capable of having foreclosure effects on such a competitor. The Court of Justice concluded that the AEC test had played an important role in the Commission's assessment of whether the scheme at issue was capable of having foreclosure effects on competitors, with the result that the General Court was required to examine all of Intel's arguments concerning that test and how the Commission had applied it. Since the General Court had failed to conduct such an examination, the Court of Justice set aside the initial judgment and referred the case back to the General Court in order for it to examine, in the light of the arguments put forward by Intel, the capability of the rebates at issue to restrict competition.

By its judgment of 26 January 2022, the General Court, giving a ruling on the referral back, sets aside in part the contested decision in so far as it characterises the rebates at issue as abusive within the meaning of Article 102 TFEU and imposes a fine on Intel in respect of all of its actions characterised as abusive.

Findings of the General Court

As a preliminary point, the General Court provides clarification regarding the scope of the dispute following the referral back. In that regard, it observes that the setting aside of the initial judgment was justified only by one single error resulting from the failure to take into consideration, in the initial judgment, Intel's line of argument seeking to challenge the Commission's AEC analysis. Accordingly, the General Court takes the view that it can accept, for the purposes of its examination, all the findings not vitiated by the error thus found by the Court of Justice, in the present case being the findings in the initial judgment concerning the naked restrictions and their unlawfulness under Article 102 TFEU. According to the General Court, the Court of Justice did not invalidate, even in principle, the distinctions established in the contested decision between practices constituting such restrictions and Intel's other actions which alone are the subject of the AEC analysis in question. Second, the General Court accepted the findings in the initial judgment according to which the Commission had established the existence of the rebates at issue in the contested decision.

Having provided that clarification, the General Court then commences, in the first place, the examination of the forms of order seeking the annulment of the contested decision by setting out the method defined by the Court of Justice for assessing whether a system of rebates has the capacity to restrict competition. In that respect, it recalls that, although a system of rebates set up by an undertaking in a dominant position on the market may be characterised as a restriction of competition, since, given its nature, it may be assumed to have restrictive effects on competition, what is involved, in the present case, is a mere presumption, which cannot relieve the Commission, in any event, of the obligation to conduct an analysis of anticompetitive effects. Accordingly, where an undertaking in a dominant position submits, during the administrative procedure, on the basis of supporting evidence, that its conduct was not capable of restricting competition and, in particular, was not capable of producing the foreclosure effects alleged against it, the Commission must analyse the foreclosure capacity of the scheme of rebates. In the context of that analysis, it is for the Commission not only to analyse, first, the extent of the undertaking's dominant position on the relevant market, and, second, the share of the market covered by the contested practice, together with the conditions and arrangements for granting the rebates in question, their duration and their amount, but also to assess the possible existence of a strategy intended to exclude at least as-efficient competitors. In addition, where the Commission has carried out an AEC test, that test is one of the factors which must be taken into account by the Commission in order to assess whether the rebate scheme is capable of restricting competition.

In the second place, the General Court reviews, first of all, whether the Commission's assessment of the capability of the rebates at issue to restrict competition relies on the method thereby defined. In that regard, it finds at the outset that the Commission erred in law in the contested decision in

compensate an OEM or retailer of microelectronic devices for the loss of the rebates at issue, in order to determine whether, in such a situation, that competitor can still cover its costs.

concluding that the AEC test, which it nevertheless carried out, was not necessary to enable it to establish that Intel's rebates at issue were abusive. That being the case, the General Court takes the view that it cannot agree with that finding. Since the judgment on the appeal states that the AEC test played an important role in the Commission's assessment as to whether the rebate scheme at issue was capable of having foreclosure effects, the General Court was required to examine Intel's arguments concerning that test.

In the third place, given that the analysis of the capacity of the rebates at issue to restrict competition forms part of demonstrating the existence of an infringement of competition law, in the present case an abuse of a dominant position, the General Court sets out the rules concerning the apportionment of the burden of proof and the standard of proof required. Accordingly, the principle of the presumption of innocence, which also applies in that field, requires the Commission to establish the existence of such an infringement, where necessary by means of a precise and consistent body of evidence, so as to leave no residual doubt in that regard. Where the Commission maintains that the established facts can be explained only by anticompetitive behaviour, it must be found that the infringement at issue has not been sufficiently demonstrated if the undertakings concerned put forward a separate plausible explanation of the facts. However, where the Commission relies on evidence which is, in principle, capable of demonstrating the existence of an infringement, it is for the undertakings concerned to demonstrate that the probative value of that evidence is insufficient.

In the fourth place, it is in the light of those rules that the General Court examines the arguments regarding the errors allegedly made by the Commission in its AEC analysis. In that regard, the General Court finds that the Commission has not established to the requisite legal standard the capacity of each of the rebates at issue to have a foreclosure effect, in the light of the arguments put forward by Intel regarding the Commission's assessment of the relevant analysis criteria.

Indeed, first, as regards the application of the AEC test to Dell, the General Court takes the view that, in the circumstances of the present case, the Commission could, admittedly, reasonably rely, for the purposes of assessing the 'contestable share',⁷ on data known to economic operators other than the dominant undertakings. However, having examined the evidence put forward by Intel in that regard, the General Court concluded that that evidence is capable of giving rise to doubt in the mind of the Court as to the result of that assessment, finding, therefore, the evidence relied on by the Commission to conclude that the rebates granted to Dell were capable of having a foreclosure effect throughout the whole of the relevant period to be insufficient. Second, the same applies, according to the General Court, to the analysis of the rebate granted to HP, since the foreclosure effect found was not, in particular, demonstrated for the entire infringement period. Third, as regards the rebates granted on different terms to companies within the NEC group, the General Court finds two errors which vitiate the Commission's analysis: one affecting the value of the conditional rebates and the other relating to an extrapolation of the results for one single quarter-year period to the entire infringement period, which was not sufficiently substantiated. Fourth, the General Court also concludes that there was insufficient evidence regarding the capacity of the rebates granted to Lenovo to have a foreclosure effect, on account of errors made by the Commission in the quantified assessment of the non-cash advantages at issue. Fifth, the General Court makes the same finding regarding the AEC analysis for MSH, considering, in particular, that the Commission provided no explanation at all of the reasons which led it, in the analysis of the payments made to that retailer, to extrapolate the results obtained, for the purposes of analysing the rebates granted to NEC, for a one-quarter-year period to the entire infringement period.

In the fifth place, the General Court reviews whether the contested decision took proper account of all the criteria making it possible to determine the capacity of the pricing practices to have a foreclosure effect, in accordance with the case-law of the Court of Justice. In that regard, it finds

⁷ This term refers, in the present case, to the share of demand which Intel's customers were willing and able to switch to another supplier, which is necessarily limited given, in particular, the nature of the product and Intel's brand image and profile.

that the Commission did not consider properly the criterion relating to the share of the market covered by the contested practice and also did not analyse correctly the duration of the rebates.

It follows, therefore, from all of the foregoing considerations that the **analysis carried out by the Commission is incomplete and, in any event, does not make it possible to establish to the requisite legal standard that the rebates at issue were capable of having, or were likely to have, anticompetitive effects, which is why the General Court annuls the decision**, in so far as it finds that those practices constitute an abuse within the meaning of Article 102 TFEU.

Finally, as regards the effect of such setting aside in part of the contested decision on the amount of the fine imposed by the Commission on Intel, the General Court consider that it is not in a position to identify the amount of the fine which relates solely to the naked restrictions. Accordingly, **it annuls in its entirety the article of the contested decision which imposes on Intel a fine of €1.06 billion in respect of the infringement found.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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