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Advanced Micro Devices, Inc.

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On January 10, 2008, the state of New York took action in the United States on behalf of American consumers in light of Intel’s anticompetitive behavior that has inflated prices and slowed innovation throughout the microprocessor sector.

New York Attorney General Andrew Cuomo served Intel with a “wide-ranging” subpoena seeking documents and information to investigate allegations that Intel is violating state and federal antitrust laws by coercing retailers to exclude computers and electronics running on the Advanced Micro Devices (AMD) series of x86 microprocessor chips. In short, Intel is paying and pressuring computer manufacturers to boycott AMD.

Cuomo’s move comes as no surprise to close observers of the worldwide scrutiny of Intel’s anticompetitive actions. Intel’s behavior is not confined to New York; from Japan to South Korea to Europe, antitrust investigations into Intel’s practices are discovering sophisticated patterns of anti-consumer and anticompetitive behavior.

In February, the European Commission executed official raids of Intel’s offices in Germany, as well as several European retailers (DG in the United Kingdom, PPR in France, and MediaMarkt in Germany) who allegedly collude with Intel in its practices to

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limit AMD sales to these stores. These raids may provide valuable new evidence and complaints from consumers hurt by Intel's anticompetitive behavior for the Commission's hearings on the matter that will take place on March 11 and 12, 2008 and will build on the Statement of Objections (SO) that the European Commission filed in July of 2007.¹

In its SO, the European Commission formally charged Intel with breaking the law by abusing its monopoly power over the global market for microprocessors. The Commission spent several years investigating and building its case before concluding that "the actions of Intel are bad news for competition and consumer."²

The Commission charged that Intel maintained an illegal monopoly in three ways:

- first, Intel gave substantial loyalty rebates to PC manufacturers on the condition that they do little or no business with AMD;
- second, Intel paid manufacturers to delay or cancel the launch of AMD-based products;
- third, and finally, Intel provided below-cost microprocessors for servers to prevent strategic customers from selecting a competing AMD solution.

The case follows action taken by the Japan Fair Trade Commission (JFTC) in March 2005, which found that Intel violated Section 3 of Japan's Antimonopoly Act and abused its monopoly power. The JFTC determined that Intel used coercive tactics to

¹ See Press Release, European Commission, Commission confirms sending of Statement of Objections to Intel (Jul. 27, 2007), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/314>.

² Jennifer L. Schenker, *Europe's Tough Case Against Intel*, BUSINESSWEEK, Jul. 27, 2007, available at http://www.businessweek.com/globalbiz/content/jul2007/gb20070727_737558.htm.

reverse AMD's market share gains by imposing conditions on Japanese manufacturers NEC Corp., Toshiba Corp., Hitachi Ltd., Sony Corp., and Fujitsu Ltd.

South Korean officials have also probed Intel's quantity-forcing rebate and marketing deals with Korean computer manufacturers. In September of 2007, the Korean Fair Trade Commission (KFTC) issued a Statement of Objections. Their findings, released following a two-year investigation that included official raids on Intel's local offices, echo those of their Japanese and European counterparts. Formal hearings will take place later this year.

In today's "flat" world, enforcement authorities have a duty and a right to act when multinational companies engage in misconduct that affects competition and consumers in their backyards. These antitrust watchdogs serve their public by keeping up with the fast-moving changes of globalization and the impact it has on consumers' right to free and fair markets.

Last month's action by New York AG Cuomo is not about giving one company a leg up or determining who wins or loses in the market. It is simply an important step forward by a powerful enforcement authority to ensure that U.S. consumers' right to choice, access to innovation, and fair prices come well ahead of companies' needs to maximize their bottom line through anticompetitive monopolistic practices.

Antitrust laws were not written to ensure that one company succeeds over another. They have been put in place to tear down artificial barriers to competition for the benefit of consumers. The latest move by AG Cuomo should provide hope to computer users and retailers around the globe by bringing the facts of Intel's misconduct closer to

home, and ultimately restoring a free marketplace where Intel, AMD, and others can compete on a level playing field in the ever-expanding market for microprocessor chips.

One thing is clear: Intel's business practices should raise red flags from Buffalo to Bangalore. The pattern of its behavior has done just that with a growing number of regulators worldwide.