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World War 4.0: The Intel Antitrust Wars

Robert H. Lande

It's time we admitted it: We're beginning to fight World War 4.0. World War 3.0 was what many called the highly publicized antitrust actions of the 1990s and early 2000s against Microsoft, by the U.S. and the Europeans involving PC operating systems and related markets. Now the world is beginning a series of antitrust lawsuits against Intel that is just as important -- one that should result in headlines and capture the public attention the same way the Microsoft cases did a decade ago.

Almost exactly a year ago, on July 26, 2007, the European Competition Commission issued a Statement of Objections alleging that Intel abused its dominant position in the market for X86 microprocessor chips. Japan and Korea each investigated and found similar violations of their laws, and the U.S. Federal Trade Commission, and the State of New York, opened analogous investigations. Most recently, on June 17, the Europeans issued a supplemental Statement of Objections, adding even more charges against Intel.

In short, Intel is in big trouble.

Although nothing is final in the U.S. or Europe, the charges against Intel are remarkably similar to those proven against Microsoft. Both involved a legally established monopolist trying to preserve its position through the use of illegal tactics. In neither case was the monopolist even accused of attempting to do this through excessive innovation, competition on the merits, or new product introduction. Rather, in both cases the disputed tactics focus on impediments against competitors -- leveraging a monopoly product against would-be rivals through anticompetitive tactics, disguising predatory pricing, and taking steps to suppress their rivals' position in the market.

Together, Microsoft and Intel monopolize the two key products that comprise PCs, and commonly are referred to as "the Wintel monopoly." Microsoft's share of the PC operating system market long has exceeded 80 percent, while Intel has at least this share of the market for the X86 chips used to power PCs worldwide. Only Intel and AMD have any chance of being a major player in the global \$30 billion X86 chip market for the foreseeable future.

During World War 3.0 Microsoft was found guilty of illegally maintaining its OS monopoly by a variety of anticompetitive tactics. For example, Microsoft took steps to prevent its browser rivals from distributing their products. Microsoft could establish no business justification for this or for the other tactics they deployed to destroy their main browser rival, Netscape.

Similarly, in the "preliminary view" of the European Commission, Intel has engaged in a variety of abusive practices to preserve its chip monopoly. For example, Intel allegedly provided substantial rebates to a leading PC retailer conditional on them only selling Intel-based PCs, and also provided substantial sham rebates to a computer manufacturer

“conditional on it obtaining all of its laptop CPU requirements from Intel.” In other words, Intel allegedly raised chip prices and then gave significant “discounts” or “rebates” only to those customers who purchased all or almost all their chips from Intel. These quantity-based discounts or rebates were so large that customers apparently often paid no additional amount in total even though they received many more chips. To illustrate, if a customer purchased 80 percent of its chips from Intel, each chip might cost \$10. But if it purchased 100 percent from Intel, each chip might cost only \$8. Since $\$10 \times 80\% = \$8 \times 100\%$, this had the intended effect of making it impossible for Intel’s only significant rival, AMD, to sell chips to these customers at any price. The sham discounts or rebates had no purpose other than to exclude Intel’s main competitor.

And there’s more: The recent Statement of Objections said, “Intel made payments in order to induce” a leading computer manufacturer “to delay the planned launch of a product line incorporating an AMD-based CPU.” If true, it’s difficult even to conceive of a legitimate business justification for this practice. To use an Olympic year analogy, Intel is not being accused of taking steroids to run faster. Rather, it allegedly tripped its only rival. This is the opposite of traditional competition on the merits.

The Bush Administration’s Department of Justice famously caved during their Microsoft case’s remedy stage. Years later, Microsoft still has a monopoly in the PC operating systems market. Assuming the truth of the current allegations, PC users everywhere should insist that the enforcers pursue the Intel cases vigorously, and this time impose a remedy tough enough to bring competition to this crucial market.

We need to remember that this really is a World War – tens of millions of computer users from your grandmother to tomorrow’s college students in the developing world are affected by its outcome. The litigators pursuing this case must do more than speak loudly with just a small stick in their hands. They must swing an axe, fight and win the battle, and achieve a victory for consumers everywhere.

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