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Quick - Somebody call Amnesty International! Intel Says  
EU Antitrust Fine Violated Human Rights

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“Intel Says EU Antitrust Fine Violated Human Rights” was the title of the Wall Street Journal’s July 23 story on Intel’s appeal of the European Commission’s \$1.45 billion fine for violating its competition laws. Apparently Intel believes this fine is so large it effectively is a criminal fine that violates the corporation’s “human (sic) rights”.

It was indeed the largest fine ever imposed at one time on a single corporation for a competition law or antitrust offense, in any EU or U.S. case in history. Was it so large it violated Intel’s “human rights”? Even if it did not, was it excessive or in any way unfair?

Actually, the fine was much too low.

Intel’s total corporate sales during the violation period were approximately \$184 billion, and its sales of the relevant products, X86 chips, were somewhat less than \$131 billion. (\$131 billion is Intel’s Microprocessor revenue, so this includes more than just X86 chip revenue.)

If the fine is figured as a percentage of Intel’s total sales, it is slightly less than 1%; figured as a percentage of total X86 chip sales, it is slightly greater than 1%. Viewed either way, this fine is not nearly enough to convince Intel to change its illegal conduct. In fact, the opposite will happen. The message of a 1% fine is that dealing with the European Commission is just another routine cost of doing business.

An alternative way to view the fine is as a percentage of Intel's overall profit during the violation period. Intel earned \$45 billion profit during this period, almost all from X86 chips. This means that the fine was less than 4% of Intel’s profits.

Ideally we would compare the fine to the profit attributable to Intel’s illegal conduct in Europe. However, since the Commission did not compute this figure we cannot perform the calculation. One highly imperfect but nevertheless suggestive benchmark is, however, provided by a study of average cartel markups. Over a substantial period, illegal cartels have averaged mean markups of 31-49%, and median markups of 22-25%. See John Conner & Robert Lande, “How High Do Cartels Raise Prices? Implications for Optimal Cartel Fines,” available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=787907](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=787907). I know of no similar figures for monopolies or dominant firms. Nevertheless, even the lowest of these cartel benchmarks suggests that if monopolies raise prices on average as much as cartels, Intel might have been able to raise prices by 22% (of slightly less than \$131 billion), or roughly \$25-28 billion due to its illegal conduct. This suggests a fine at least this large would have been appropriate. Alternatively, 22% of Intel’s European sales of roughly \$39 billion during the violation period suggest they should have been fined more than \$8 billion.

Not only should the fine have been much larger: it could have been much larger. The Commission's fining guidelines state: "[t]he ceiling of fines that can be imposed on companies is fixed by Article 23(2) of Council Regulation No 1/2003 (10% of the undertaking's total turnover in the preceding business year)." Intel's sales last year were \$38 billion, so the fine could have been \$3.8 billion. The guidelines also state: "fines may be based on up to 30% of the company's annual sales to which the infringement relates, multiplied by the number of years of participation in the infringement". 30% of Intel's \$39 billion in European sales during the violation period would have produced an \$11-12 billion fine. Although the guidelines do provide that fines calculated this way are subject to the 10% cap, these figures also help reinforce the conclusion that a fine much larger than \$1.45 billion could and should have been imposed.

Intel's worldwide share of the chip market has fluctuated between 70% and 90%, and new entry into this market is virtually impossible. In the United States this level of market dominance long has been considered that of a monopolist. Is it so surprising that a firm with a secure monopoly market share would price like a -- monopolist? How many well protected monopolies in history have used their power to set prices at the competitive level? For all these reasons the Commission's \$1.45 billion fine was far too low, and it surely left Intel with a staggering reward from its illegal conduct.

Intel's "human rights" claims are hardly a serious issue, but it is possible they could still prevail on the competition law issues involved. Nevertheless, we need to remember that tens of millions of computer users, from your parents to tomorrow's college students in the developing world, will be affected by the outcome of this case. Their futures - including their rights, especially their rights as citizens to purchase goods whose prices, quality, and variety are set by competition, not illegal activity - should be our primary concern.

The EU's \$1.45 billion fine was the equivalent of a parking ticket that was not large enough to seriously affect Intel's behavior. However, the Commission also ordered Intel to cease its illegal practices and said it will "actively monitor Intel's compliance with this decision." Let's hope the European Commission learns from the U.S. Department of Justice's bungling of its Microsoft decree, and that it sticks with the issues until consumers are victorious in World War 4.0.