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TECHNOLOGY

## Did Intel Cross Thin Legal Line? Experts Weigh Issues

By JAMES DETAR, INVESTOR'S BUSINESS DAILY

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Intel CEO Paul Otellini, here at a company event, has said: "We continue to believe our discounts are law ful." [AP View](#) [Enlarged Image](#)

### A \$1.45 Billion Question

It's very hard to know where the legal line is drawn between offering incentives like rebates and bribing or coercing customers, says Melissa Maxman, an attorney with the Baker Hostetler law firm in Washington, D.C.

"That's the \$1.45 billion question for Intel," Maxman said, referring to the record fine imposed by the European Commission on Intel in May. Intel is appealing that fine, though it recently spent nearly as much settling a similar matter.

On Nov. 12, Intel agreed to pay AMD \$1.25 billion and to abide by a set of business practices, which neither company would disclose, to settle an antitrust suit AMD had filed against Intel.

These suits are pending vs. Intel:

- The FTC on Dec. 16 charged "that the company has illegally used its dominant market position for a decade to stifle competition and strengthen its monopoly." The case involves the market for microprocessors, the key chip that powers PCs. Intel has roughly 80% of that market, and AMD almost all of the rest. But the FTC case extends the charges to also cover graphics chips, where Intel rivals include AMD and Nvidia (NVDA). The FTC has fast-tracked the suit, which is tentatively slated for trial on Sept. 15, 2010.
- On Nov. 4, New York Attorney General Andrew Cuomo sued Intel, claiming antitrust. Cuomo says his staff has e-mails that prove Intel schemed "to maintain its monopoly power and prices" by bribing and coercing its customers to not use AMD chips. Cuomo says Intel "violated state and federal anti-monopoly laws" and "also threatened and did in fact punish computer makers" who were working with AMD. Intel is slated to answer the charges in early January.

### Domination

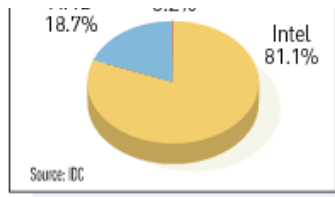
Intel has long had a huge lead in the market for microprocessors, the key chips in PCs

Share, worldwide, Q3

AMD	Others
	79%

- On May 13, the EC levied its record fine against Intel. It said Intel "made illegal payments to (computer) manufacturers and retailers to gain preferential treatment for computers using its chips." The EC says Intel bribed and coerced computer makers such as IBM (IBM), Hewlett-Packard (HPQ) and Dell (DELL) to not buy AMD chips. Intel has appealed, and expects the EC to reply to the appeal in mid-February.

The first in this series of antitrust suits against Intel was the AMD case, filed in June 2005. But a



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held to a higher standard."

### Intel Denies Charges

Intel says it uses standard business practices. "We continue to believe our discounts are lawful," Intel Chief Executive Paul Otellini said in a Nov. 12 conference call to discuss the AMD settlement.

Maxman says discounts are always a tricky area.

"The facts are often subject to interpretation," she said. "It's often a highly gray area."

One thing that got the EC's attention, she says, is that Intel was actually paying its PC customers. Computer makers haven't been faulted for their part in these deals. They have cooperated with the EC, state of New York and the FTC.

"Intel calls it a rebate. But normally if you manufacture something, you sell it and your customer pays you," Maxman said. "It's when money goes both ways, that's when regulators look at it."

The suits against Intel may have broad implications, says Brett Gordon, a marketing professor at Columbia University's business school who specializes in competitive pricing.

"If I'm in another industry, I would look to those (suits) as setting precedents," Gordon said.

Intel did not admit to any of AMD's charges, yet it did settle that case.

"I've tried these cases as a lawyer and a judge, and they wouldn't be paying that much money unless AMD had some pretty good evidence," said Stephen Orlofsky, an attorney and partner in the Blank Rome LLP law firm. "You can read between the lines."

But he says the issue of rebates is a difficult area of law.

"How can you tell who's telling the truth in these cases? It's not an easy question," Orlofsky said.

The practice of volume rebates also takes place in such fields as pharmaceuticals and medical devices, Gordon says. He says device makers say to customers something like: "As long as you spend 90% of your dollar volume with us, we'll give you a discount."

"Is that legal? I don't know, but it does commonly occur," he said.

Gordon says the Intel case is similar to one that pitted 3M (MMM) against much smaller LePage's, a unit of Germany's Henkel AG. LePage's started to get a toehold in the transparent tape market that 3M dominated. 3M fought back, giving volume discounts to big retailers such as Wal-Mart, Kmart and Office Depot.

LePage's sued, saying 3M used a "bundled rebate" that offered higher rebates when customers bought more products. Lower courts said such volume discounts are legal. In 2004, the U.S. Supreme Court declined to hear an appeal by Le-Page's, ending the case.