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VIA ELECTRONIC FILING
AND HAND DELIVERY

The Honorable Vincent J. Poppiti
Blank Rome LLP
Chase Manhattan Centre
1201 Market Street, Suite 800
Wilmington, DE 19801

Re: ***Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al.*, C.A. No. 05-441-JJF; *In re Intel Corporation*, C.A. No. 05-MD-1717-JJF***
Opposition to Request for Issuance of Letters Rogatory (DM 26)

Dear Judge Poppiti:

This letter is filed in opposition to AMD's February 9, 2009 request that the Special Master recommend that the District Court issue letters rogatory directed to judicial authorities in France and Italy. AMD's request seeks [redacted] Basic principles of international comity dictate that this request should be denied, particularly when, as is the case here, the European Commission has unequivocally expressed its position that [redacted] should not be discoverable in U.S. civil antitmst cases. AMD's request, insofar as it seeks discovery of any materials other than pre-existing documents, should be denied. Further, AMD's entire request is based on its inadvertent receipt of a confidential document. Under Delaware's Rules of Professional Responsibility, AMD should have notified Intel promptly of its receipt of the document, so that Intel could take protective measures, but AMD failed to do so. AMD's request should be denied on this additional basis as well.

AMD's submission skirts entirely the important international comity issues that are implicated by its attempt to enlist the Court's assistance in gaining [redacted] *AMD Request* at 2. [redacted] (Ex. A, *European Commission, Submission to the Antitrust Modemisation Commission,* April 4,2006, at 9). The Commission has made its views known with equal force in U.S. proceedings in which [redacted] have been sought by antitrust plaintiffs. *See, e.g., In re: Rubber Chemicals Antitrust Litigation,* 486 F. Supp. 2d 1078 (N.D. Cal. 2007) ("the Commission argues that production of the EC documents would undermine its ability to initiate and prosecute

future investigations by creating disincentives to cooperate with the Commission and would prejudice future investigations"). These international comity considerations are entitled to significant weight in assessing AMD's request. As the Supreme Court has made clear, "American courts should … take care to demonstrate due respect … for any sovereign interest expressed by a foreign state." *Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa*, 482 U.S. 522, 546 (1987).[1]

Many of the documents sought by AMD from Acer and NEC Computers SAS implicate the core concerns expressed by the European Commission. AMD's requests for production to NEC Computers SAS and to Acer Italy Computers ask, not only [redacted]

Notably, AMD's request does not cite a single case in which the letters rogatory procedure has been used as a means [redacted] Nor does AMD's request cite any valid reason – apart from conclusory assertions that the information is otherwise unavailable – that the Court should issue a letter rogatory that would directly conflict with [redacted] AMD has not, for example, shown that it has made any attempt to elicit the production of documents from NEC Computers SAS or Acer Italy in Europe.

Two other aspects of AMD's request also warrant special attention. First, AMD's request is expressly based on its review of the complete Statement of Objections issued by the European Commission to Intel in July 2007. That document – which under European law is merely a preliminary charging document that does not establish the existence of any violation of European competition laws[2] – was provided to Intel by the European Commission in confidence and under the condition that it not be disclosed outside of proceedings before the Commission. Intel's production of the Statement of Objections in this litigation was inadvertent. (Ex. B). As a Complainant before the Commission, AMD was entitled to, and received a ***non-confidential*** version of the Statement of Objections, and was not entitled to the confidential version. (Ex. C, Commission Regulation (EC) No. 77312004, Art. 6(1)). AMD has actual knowledge of the confidentiality restrictions adhering to the Statement of Objections through its receipt of the non-

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1 As courts have observed, the European Commission's role as the "executive and administrative organ of the European communit[y]" with respect to competition matters entitles the Commission to the respect owed a foreign sovereign in a comity analysis. ***See In re: Rubber*** *Chemicals Antitrust Litig.*, 486 F. Supp. 2d at 1081.

2 As noted in the press release submitted as Exhibit A to AMD's request, a Statement of Objections expresses a "preliminary view" of the Commission that "does not prejudge the final outcome of the procedure."

confidential version and accordingly would have known immediately that the production of the confidential version was unintentional. It is inexplicable – and questionable – that AMD responded to Intel's inadvertent production of the document not by notifying Intel of the inadvertent production, as is required by Delaware Rules of Professional Conduct? but by seizing upon it as an opportunity to propound new and invasive discovery requests to foreign non-parties based on the confidential information included therein. *Cf. Rico* v. *Mitsubishi Motors Corp.*, 42 Cal. 4th 807, 171 P.3d 1092 (2008) (disqualifying counsel for affirmatively using work product inadvertently produced in litigation).

Second, AMD's request for issuance of letters rogatory calling for [redacted] is inconsistent with the spirit of discovery stipulations agreed to between Intel and AMD early in this case. In June 2007, Intel and AMD entered a stipulation with the Court that "Intel and AMD agree that for the present time neither side will pursue discovery concerning communications with or submissions to governmental agencies, although both parties reserve their right to revisit this issue at a later date." (Ex. D). Six months later, the issue of seeking governmental submissions was raised again by an Intel subpoena to three governmental consultants retained by AMD. This matter was again resolved by a mutual agreement not to pursue submissions to governmental agencies, without inclusion of any language to revisit the issue at a future time. (Ex. E). Based on these exchanges, Intel's good-faith understanding was that an agreement was in place not to pursue submissions made to governmental agencies in the course of discovery in this litigation.

AMD is attempting to exploit the inadvertent production of a confidential European Commission complaint effectively to obtain the [redacted] This is being sought at the end of the discovery period, at a time when it will be unable to be fairly vetted in the deposition process. AMD's request implicates serious issues of international comity, particularly in its attempts to obtain [redacted] The requests should be denied.

Respectfully,

/s/ W. Harding Drane, Jr.

W. Harding Drane, Jr.

WHD:cet
Enclosure
cc: Clerk of Court (via Hand Delivery)
Counsel of Record (via CM/ECF & Electronic Mail)

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[3] Rule 4.4(b) of the Rules require that: "**A** lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." The Comment to the Rule further clarifies that "Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that a such a document was sent inadveltently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures." AMD took no such action to notify Intel upon discovering the inadvertent production of the Statement of Objections.

EXHIBIT A

EUROPEAN COMMISSION
Competition DG

Director General

06.04.06 D 002021

Brussels,
COMP A/4 D(2006) S3

Mr Andrew Heimert
Executive Director
Antitrust Modernization
Commission
1120 G Street NW (Suite 810)
Washington DC 20005

Submission by the Directorate General for Competition of the European Commission

Dear Mr. Heimert,

Please find attached a submission of the Directorate General for Competition of the European Commission on the impact of discovery rules in anti-trust civil damages actions in the United States on the European Commission's antitrust enforcement practice and in particular on its Leniency Programme.

With this submission, we wish to draw the Antitrust Modernisation Commission's attention to our concerns and to respectfully ask the Commission to consider, to the extent possible under the current exercise, what measures can be undertaken to limit the impact of US discovery rules on the European Commission's ability to detect and punish cartel behaviour.

As explained in the submission, we believe that there is today an uncertainty as to how US courts will apply their wide discretion in ordering discovery of (non pre-existing) statements and submissions specifically prepared by undertakings for the European Commission's antitrust procedures. The uncertainty notably relates to the extent to which comity considerations will be taken into account by the US courts. The very fact that the US courts address these issues on a case-by-case basis means that leniency applicants before the European Commission or other foreign agencies are exposed to an inherent risk that US courts might in their case choose not to rely on such considerations or might not be convinced that they are sufficiently strong to prevent them from ordering discovery. The resulting uncertainty might in itself be sufficient to have a chilling effect on the EC Leniency programme. Undermining the leniency programme in such a way would put the European Commission's important interests at risk by seriously hampering its ability to fight cartels. Taking into account the increased interdependence of cross-

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jurisdictional enforcement activities, this situation also risks to negatively affecting the US Department of Justice's and other foreign enforcers' efforts to successfully prosecute international cartels.

We of course remain at your disposal for any questions or clarifications you may have with regard lo the attached submission.

Yours sincerely

Philip Lowe

EUROPEAN COMMISSION

Competition DG

Brussels, 4.04.2006

SUBMISSION TO THE ANTITRUST MODERNISATION COMMISSION

1. INTRODUCTION

The European Commission is the executive and administrative organ of the European Union. The European Commission's responsibilities within the European Union extend to a wide range of subject areas, including the enforcement of the competition (anlitrust) rules laid down in the EC Treaty.[1] These tasks are carried out through the Directorate-General Tor Competition (hercinafter DG Competition).

The purpose of this submission is to bring to the attention of your Commission the impact of discovery rules in anti-trust civil damages actions in the United States on the European Commission's antitrust enforcement practice and in particular on its Leniency Programme. The Leniency Programme is a vital instrument in the detection and prosecution of hardcore cartels. US legislation, (Rule 26 of the Federal Rules of Civil Procedure), and its application by US Courts today allows discovery that is exceptionally broad and relatively uncertain as lo its outcome in individual instances. Although the Rules of Civil Procedure allow for a range of exemptions, information prepared for the benefit of foreign enforcement agencies arc not covered by those exemptions. However desirable and reasonable the broad scope For discovery may be from the point of US civil litigation, it cscaies significant and adverse effects on the anti-cartel enforcement activities o i foreign agencies, including DG Competition. By creating disincentives for firms to self report illegal cartel behaviour, this situation is liable to act as a deterrent Tor participants in international cartels Io self report, which affects the enforcement capability of the EU but also that of other jurisdictions including the USA.

In the course of this submission DG Competition will explain how tlie threat of discovery of documents provided to DO Competition affects its investigative processes in relation to hardcore cartels. DG Competition strongly believes that certain type of information that has been produced solely for the purpose of its own investigation, by either the

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[1] The Treaty establishing the European Community. Relevant articles in the filed of antitrust are notably Article 81 (agreements in restraint of trade) and Article 82 (abuse of dominance). Apart from the powers provided directly in the EC Treaty, the competition enforcement powers are regulated in Council Regulation 1/2003 (previously in Council Regulation No, 17/62) arid European Commission Regulation No. 773/2004.

parties, or indeed by the prosecuting agency itself, should be protected from discover)!. The European Commission has already expressed itself on tlie application of the Federal Rules of Civil Psocedurc and their application and it has appeared before various US courts as *amicus curiae* in order to stress the importance of this issue and to prevent discovery of such information.[2] DG Competition would like to take this opportunity to also address the issue in the context of the Antitrust Modernisation Commission's ongoing exercise.

The Commission is therefore respectfully asked to consider tlie concerns expressed below: and to reflect upon which appropriate measures can be undertaken in the US legal system to solve the current situation.

2. THE FRAMEWORK WITHIN WHICH THE EUROPEAN COMMISSION CARRIES OUT ITS ANTITRUST INVESTIGATIONS

2.1. The nature of the responsibilities of DG Competition and the European Commission in competition law enforcement

In the area of competition law, tlie European Commission – through DG Competition – functions as an executive body. DG Competition investigates possible violations of European competition law and makes proposals lo the European Commission, which is empowered under tlie EC Treaty lo take decisions, including decisions imposing Fines for competition law infringements. Neither DG Competition nor the European Commission as a whole engages in adjudicating rights as between private parties. The European Commission acts solely Lo protect the public interest and enforces the European competition laws.[3]

2.2. Information gathering and processing; including the EC Leniency Programme

DG Competition disposes of several means of retrieval of information and evidence. They may bc seen as comparable Lo those of US enforcement agencies, with the important diffcreiice that ihc European Commission functions within an administrative law system, not a judicial onc. More particular differences concern the absence of jury vials and the possibility of calling witnesses by *subpoena*. Another important element is that nearly all Commission cases lead to a formal, fully reasoned decision.

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2 Amicus Curiae briers have so far been filed before US district courts in two cases (United States District Court for the District of Columbia, in Re: Vitamins Antitrust Litigation. Misc. No. 99-19 and United States District court of Northern District of California, in re: Methionine Antitrust Litigation. cant No. C-99-3491 CRB MDL so. 1311) as well as before the Supreme Court (Intel Corp. v. Advanced Micro Devices, Inc., 342 U.S., 124 S. Ct. 2455 (2004). DG Competition has also recently explained its views on this issue in a letter ihai was sent via the defendant to ihc US District Court ior *the district of New Jersey. The District Court had in this* case *ordered the defendant* in *a class action* procedure to seek to obtain statements on the European Commission's position as to whether materials submitted is its proceedings are confidential.

'She European Commission has intervened as amicus curiae to clarify its unique role and status within the EC institutional framework (Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S., 124 S.Ct. 2466 (2004).

In the EU, the facts of the case can be established by carrying out on-tlie-spot inspections, by using (formal) requests for information, or from voluntary statements (including statements under the Leniency Programme). The by Tar most important investigative tool in the fight against cartels is the EC Leniency Programme.[4]

In order to fully explain our concerns and position on tlie confidentiality of certain materials, we will shortly explain the context within which such material is obtained and which purpose it serves in our investigations. Tlie information-gathering and the investigative proceeding typically involve different types of submissions and statements obtained by compulsion or voluntary.

Inspections, conducted by Commission officials on the business premises of companies and private homes of executives are a compulsory means of retrieval of information related to an investigation. During such investigations, officials can seize documents and all relevant information, as well as require on the spot explanations by executives or employees.

Requests for information are part of a system of retrieval of information from parties based on compulsion. The European Commission can ultimately impose sanctions (fines) in case of refusal to supply the information within the required time-limit or in case of incorrect, incomplete or misleading information.[5] Tho European Cornmission, however, has a duty under European law to respect the right not lo self-incriminate, even for corporations.

Under the EC Leniency Programme undertakings may obtain immunity or a reduction of fines if they allow tlie defection of a cartel or help establish an infringement of tho competition rules in the field of cartels. Cooperation requires the disclosure of evidence concerning an existing cartel and its illegal actions and practices. Such evidence is indeed crucial for the European Commission's ability to find out about violations of the relevant antitrust provisions contained in the EC Treaty. Companies who come forward and inform DG Competition of the existence of cartels are required to submit all evidence and information in their possession or available lo them. Leniency applications normally include a corporate statement as part of their application. A corporate statement is an evaluative document setting out a company's own description of the cartel's actions and practices, deriving from its own participation in the cartel. It is produced solely Tor tlie purpose of the application to the Commission. In the system of tile European Commission, such corporate statements are not only used as 'road-maps' to get a better understanding of the cartel activities, hut can be used as actual evidence of the infringement.

2.3. The final Commission Decision imposing fines.

Before adopting a final decision in a cartel investigation, tlie European Commission serves the investigated undertakings with a formal "Statement of Objections" that outlines the European Commission's preliminary views and informs the undertakings of

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[4] The European Commission adopted its first Leniency program in 1096. An altered version was adopted in 2002. At the time of writing, the European Commission is consulting the public on sonic amendments to the Leniency Noricc. aimed at notably addressing the handling of corporate statements.

[5] Articles 18 and 23 of Council Regulation 1/2003.

the intention to lake a decision adverse to them. The document is prepared and adopted by the European Comniission Tor the purpose of allowing the investigated parties lo exercise their rights of defence in tlie particular proceeding. The document contains confidential dala that has either been submitted by the investigated parties on a voluntary basis. notably in the framework of tlie EC Leniency programme, or under compulsion. Statement of Objections in cartel cases may refer and quote information given in corporate statements and replies to requests for information. The Statement of Objections is not made public.

The addressees of a Statement of Objections arc given a rime period within which they can submit their views in writing The panics' replies to a Statement of Objections make references to and incorporate the content of the Statement of Objections. These replies aro kept confidential and arc not made available to either tlie other parties or to the general public. Subject to the replies to the Statement of Objections, the European Commission adopts a final Decision with fines. In that Decision (parts of) corporate statements are referred to. A final Commission Decision can be appealed to the European Court of First Instance and on points of law to the European Court of Justice.

2.4. Rights of defence and access to documents. Limits and obligations related to access and/or disclosure of voluntary submissions made in the framework of EC Leniency Policy

As staled above, tlie European Commission may use all the information obtained under its investigation in evidence in order to prove the existence of the violation of European competition a This also applies to corporate statements and other information submitted on a voluntary basis, which very often include evidence which forms part of the basis Tor the European Commission's decision.

The information gathered in a given investigation, including confidential data arid voluntary submissions, constitutes the European Commission's administrative file. All documents contained in the file arc covered by a general rule of professional secrecy which obliges the Europcan Commission to use sucli information only for the purpose Tor which it was acquired. The European Comniission (including its staff) is under an obligation not to disclose information covered by professional secrecy.[6]

Disclosure lo the parties of tlie proceeding of any information submitted lo the European Commission only takes place within the specific framework of respecting tlie rights of dcfcncc of other accused parties in the proceedings before the European Commission.

In tlie context of their rights of defence, parties to the European Commission's proceedings are entitled to have access lo the European Commission's file if and when they have been served a Statement of Objections, outlining the European Commission's preliminary allegations. During the access lo the file, the parties have a right to consult (non-confidential versions) of all accessible documents and to extract a copy of such documents lor use in their defence.

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[6] Article 8 7 of the EC Treaty and Article 28 of Council Regulation 1/2003, plus Art. 17 of Staff Regulations.

Legal obligations exist to ensure that documents obtained *during* the access lo file exercise **can** only be used for the enforcement of the European antitrust rules.[7] The importance of a strict adherence to these rules is underlined. in the newly adopted access to file rules, where the possibility of disciplinary action can be pursued by ihe European Commission against external counsel of undertakings for infringing such rules.[8] The parties are not given acccss to other parties' replies to the Statement of Objections.

During the access to file procodurc, DG Competition affords a special protection to corporate statements and other information specifically prepared in the context of the EC Leniency Programme. The Leniency Notice expressly clarifies that any disclosure of documents received in the context of the Notice would undermine the leniency policy and run counter investigative and inspections prerogatives. With specific reference to corporate statements, paragraph 33 of the 2002 Leniency Noticc states that "*Any written statement forms part of the file...and may not he disclosed* or *used for any other purpose than enforcement of Article 81*"[9].

To conclude, documents obtained from the European Commission by means of access to file, may nor be used for any other purpose, may riot be disclosed and are lo be preserved from disclosure and/or discovery procedures.

2.5. US **discovery rules and their impact on European Commission *investigations***

Although tlic European Commission affords high protection to its administrative file, and especially to voluntary statements and submissions made in the framework of the Leniency Policy, in recent years discovery requests (and subsequent orders issued by US courts) have targeted the information provided to the European Commission and other enforcement agencies, by immunity or leniency applicants; interfering with ongoing investigations, or affecting companies' willingness to cooperate in the framework of the Leniency Policy.

In order to state clearly its position against the discoverability of corporate leniency statements, the Commission has intervened on past occasions, notably through *amicus curiae* briefs in the *Vitamins* case[10], before the Supreme Court in the *Intel v. AMD case*[11]

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[7] This is regulated in Article 15 of the European Commission Regulation 77312004 as well as paragraph 33 of the Leniency Notice. As a standard practice. DG Competition draws the parties attention to ibis obligation when it grants them access to the file.

[8] Commission Notice on the rules for acccss to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53,54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004, published in the Official Journal C 325 on 22/12/2005, p. 7.

[9] Article 82 of the EC Treaty, related to the abuse of dominant position is not relevant to the Leniency Notice, applicable only lo cartels.

[10] United States District Court for the District of Columbia, in Re: Vitamins Antitrust Litigation - Misc. No. 99-197.

[11] Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S., 124 S. Ct. 2466 (2004).

and similar intervention in tlie *Methionine* litigation[12]. In such cases, the Commission has underlined the confidentiality of corporate statements and other voluntary submissions in the context of the Commission's Leniency programme, and the need to prevent discoverability of such documents.

So far no US Court has ruled explicitly on the limits of discovery relating lo documents on file with the European Commission, aside from the *Vitamins* and *Methionine* cases. There appears to be high uncertainty under US law on what categories of documents can be discoverable. on the extent of discovery rules and respect of international comity with regard to documents produced to or received from foreign antitrust enforcement agencies, notably the European Commission. Although some Courts appear to have accepted, notably based on principles of Comity, tlial information prepared for the European Commission is not-discoverable, an uncertainty prevails as lo the outcome of discovery procedures.

2.6. US discovery rules are seriously hampering the European Commission's ability to fight cartels.

DG Competition will in the following section explain why it believes that disclosure of information submitted on a voluntary basis during our investigations can seriously undermine tlie effectiveness of the European Commission's and other authorities' antitrust enforcement actions.

Before doing so, we would like to underline that our plea does not extend lo a protection from disclosure and discovery for all documents that form part of our administrative file. Indeed, there is a balance to he struck between the public enforcement interests and the interests of private litigants. It is clear that the leniency programs and other forms of voluntary coopcration should not act as a shield for companies seeking to conceal information that would otherwise have hem 'discovcrahle'. As a result, protection should he afforded only lo those submissions that a company has prepared and produced exclusively for the European Commission's investigation. Consequently, DG Competition wants to underline that it has no interest lo generally protect pre-existing documents (that the applicant is required to submit under the EC Leniency program) from discovery in US Courts[13].

While DG Competition strongly supports effective civil proceedings for damages against cartel participants, undertakings which voluntarily coopcrate with DG Competition in revealing cartels cannot he put in a worse position in respect of civil claims than other cartel members which refuse any cooperation. The ordered production –or at least the uncertainty in this regard- in civil damage proceedings of corporate statements and oilier submissions made to DG Competition risks, however, lo produce exactly this result. If so, it could seriously undermine the effectiveness of tlie EC Leniency program and jeopardize the success of the European Commission's light against cartels. Since in investigations of world-wide cartels, it is essential to implement the widest international

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[12] United States District Court of Northern District of California, In re: Methionine Antitrust Litigation, case No.C-99-3491 CRB MDL no.1311.

[13] With the exception of limited instances where an investigation is ongoing and disclosure of documents could seriously interfere with the Commission's investigation by revealing to other parties under investigation the information that is, or is likely to be, in the possession of the Commission.

cooperation anion:: antitrust agencies, any chilling effect related to EC Leniency applications is liable ro have repercussions on US enforcement.

2.7. international comity should outweigh *US* discovery cohsiderations

Principles of international comity compel national courts to give due regard lo tlie interest of foreign sovereigns when enforcing the rights of its own citizens that will affect interests of foreign sovereigns. The interrelationship between domestic judicial decisions and international policy considerations is an element tliat has to be given serious consideration in a global economy.[14] The importance and relevance of comity considerations in the held of competition law enforcement is demonstrated through the separate agreement entered into by the Government of the United States and the European Communities on this issue.[15]

As explained above, European rules protect the confidentiality and prevent disclosure of submissions that have been specifically produced within the context of a leniency application. DG Competition strongly believes that the fact that US courts might regard such submissions as discoverable harms the effective enforcement of EC competition law.

Comity considerations arc subject to a balancing test where the US courts have a wide discretion Io apply the considerations lo tlie facts at hand. Although certain US District courts have been willing to take comity concerns into consideration, others appear lo be niorc reluctant lo do so. In addition, the very fact that US courts address these issues on a case-by-case basis means that lenieney applicants before DG Competition or other foreign agencies are oxposcd to an inherent risk tliat US courts might in their case choose not to rely on such considerations or might not be convinced tliat ihey are sufficiently strong to prevent them from ordering discovery. The resulting uncertainty might he sufficient to have a chilling effect on tlie EC Leniency program.

Undermining the leniency program in such a way would put the EC's important interests at risk by seriously hampering tlie European Commission's ability to tight cartels.

2.8. The application of *US* discovery rules may hamper enforcement actions of other agencies, including the *US* Department of Justice

The efficacy of tlie EU leniency policy is intertwined with the interests of the United States' justice system for effective global enforcement of antitrust laws. This means that not only the European Commission's interests are at stake. The U.S. Department of Justice (DoJ) has publicly acknowledged that the adoption of effective leniency programs by foreign antitrust enforcers and notably tliat of the European Commission's revised programme in 2002 has a direct positive impact on the Department's efforts to prosecute international cartels. This is due to tlie fact that a cartelist that is exposed to sanctions in

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[14] See in this respect the 1995 Revised Recommendation of the OECD Council - Concerning Co-operation Between Member Countries on Anticompetitive Practices Affecting International Trade.

[15] Agreement between the Government of the United States and the European Communities on the application of positive comity principles in the enforcement of their competition laws., which *inter alia* states that *"each party will seek, at all stages in its enforcement activities, to take into account the important interests of the other Party"*.

several jurisdictions may decide not to come fotward under the US amnesty program unless it is ensured that it is protected in other jurisdictions where it faces significant exposure.[16] Experience has shown that any international cartel of significance is likely to affect the United States as well as Europe. The U.S. Department of Justice has. following tlie 2002 changes in tlie EC leniency policy. observed an increased amount of simultaneous amnesty applications before both agencies."[17] Indeed, the cases where the Europcan Cotiimission has (directly or indirectly) addressed US Courts on discovery issues have concerned cases which have bcen pursued in a multi-jurisdictional enforcement context. The U.S. Department of Justice has also acknowledged that effective prosecution of an international cartel requires coordination of investigative strategies with foreign enforcement agencies.[18] The Department of Justice also states that this increased cooperation "*will lead to more effective antitrust enforcement in the future and the detection, prosecution, and elimination of more cartels.*"[19]

The high level of interdependence between foreign and US antitrust enforcement agencies is demonstrated through the antitrust cooperation agreements which the United States has entered into with *inter alia* the European Commission.[20] Also as a result of the simultaneous reporting of cartel violations. tlie DoJ and the European Commission have closely collaborated for setting up coordinated enforcement actions. In addition, international organisations such as the OECD or the International Competition Network (ICN), in which both tlie US' antitrust agencies and DG Competition play active roles, have been seized with the task of achieving greater convergence and cooperation between antitrust enforcement agencies. The purpose of this work is to ensure that effective tools arc developed to attack conspiracies and cartels that cover niore than one jurisdiction. At the end of the day. the cooperative relationships however depend on mutual recognition of interests. The European Commission has in its amicus curiae briers lo US district courts made clear that discovery of notably corporate statements might hamper the very purpose of the cooperation between the US and EC in fighting global cartels.

2.9. Other considerations

The above considerations as to tlic effects on the Commission's investigative processes apply ail the niore if discovery is considered in cases where the European Commission's investigation is still ongoing since the public disclosure of key elements in the European Commission's file will indisputably change the contours of the on-going investigation in

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[16] See address by Mr Scott Hammond, Director of Criminal enforcement, Antitrust Division Department of Justice to the "*2002 Antitrust Conference on Antitrust Issues in Today's Economy*," new York, March 7, 2002.

[17] Speech by Scott Hammond before the American Bar Association Midwinter Leadership Meeting, Kona, Hawaii, January 10, 2005. "*An overview of Recent Developments In The Antitrust Division's Criminal Enforcement Program*".

[18] See *inter alia* Brief for the United States Department of Justice and tlie Federal Trade European Commission, as amici curiae in support of the defendants-appellees, in response to Court order of November 22. 2001 before US Court of Appeals, District of Columbia Circuit, Empagran, S.A. et al., Plaintiffs-Appellants v. Hoffmann-Laroche, Ltd., et al.

[19] See footnote 16

[20] EC-US Cooperation Agreement of 10 April 1995

a negative way. in such situations, DC Competition would also argue that pre-existing documents sliould bc shielded from *discovery* as *long* as the *investigation* is on-going.

Lastly, DC Competition does not believe that the. non-discoverability of submissions produced specifically *for the European* Commission's investigation would anything but marginally affect the success of US civil litigations. As staled above, pre-existing documents that havc not been specifically drafted Tor the purpose of tlie Leniency application *are* discoverable. The same applies to documents that have been submitted in response to a formal request for information. Such information, together with witness testimonies and other disclosure mechanisms available under US procedural law, should give plaintiffs before US courts ample opportunity to obtain the same or substantially equivalent information as might be obtained through discovery of submissions produced to the European Commission.

3. SOLUTIONS AT EU LEVEI

In order to safeguard the integrity of our investigations, DC Competition has been forced to introduce procedures that are aimed at minimizing the risk of discovciy.

DG Competition now accepts statements in oral fashion as part of tlie EC Leniency programme. Such statements must bc usable as evidence in the European Commission's proceedings, serving either as a basis Tor deciding on inspections (search warrants) or Tor use as evidence of thc actual infringement later in the procedurc. It is therefore crucial for the Commission to 'lock in' such evidence at the stage of tlie application. They do not, therefore, merely serve as 'road-maps' lo understand and further investigate the infringements. When the Commission after sending its Statement of Objections ('indictment') grants access to its file to the accused undertakings, leniency applications remain protected in ilic sense that no mechanical copy may be taken. The European Commission has also publicly announced that it is prepared to seek a higher fine for lenieney applicants and disciplinary actions Tor external counsels that do not respect its non-disclosure rules.

4. CONCLUSIONS

Statements and submissions other than pre-existing documents specifically prepared by undertakings within the European Commission's antitrust proceedings should not be deemed discoverable lo third parties, including lo *plaintiffs* in a US civil claim proceeding. This applies especially to corporate statements made under the European Commission's leniency program.

US discovery rules grant the US courts a wide discretion in determining on a case-by-case basis whether discovery should be ordered in the specific case. DC Competition has taken the measures within its powers to minimize *such disclosure risks*, by *inter alia* intervening in US courts, adapting its legislation and its administrative procedures. As long as there is uncertainty about discovery and about the extent to which tlie interests of the European Commission (and that of other jurisdictions) will bc *taken into* account by US courts (notably on grounds of comity), US discovery rules will undoubtedly compromise and undermine tlie effectiveness of the EC. Leniency programme and the European Commission's fight against cartels. Indirectly that situation risks io *negatively*

affecting tlie US Department of Justice's efforts to prosecute international cartels as well as tlie possibilities for cross-jurisdictional co-operation.

DG Competition therefore respectfully requests the Antitrust Modmiisation Commission to rake note of the above outlined concems and to consider, to the extent possible under the current exercise, what measures can be proposed to limit the impact of US discovery rules on the European Commission's ability (as that of other foreign enforcement agencies) to detect and punish cartel behaviour.

EXHIBIT B

HOWREY LLP

1299 Pennsylvania Avenue, NW
Washington, DC 20004-2402
T 202.783.0800
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February 11, 2009

VIA EMAIL AND FEDEX
Neama Rahmani, Esq.
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071

Re: Privilege **Issues**

Dear Mr. Rahmani:

We have identified the following additional document that was inadvertently produced in TIFF format, but which is privileged and/or attorney work product.

69808DOC0024584 – 69808DOC0024820

As agreed, we will produce a privilege log and redacted TIFFs within **30** days. Pursuant to Paragraph **35** of the Second Amended Stipulation Regarding Electronic Discovery and Format Production, our prior inadvertent production of this document does not constitute a waiver of any privilege.

As agreed in the Stipulation, AMD should conduct no further review of ***this*** document. If you have any questions or wish to discuss this matter further, do not hesitate to contact me.

Very truly yours,

Thomas J. Dillickrath

EXHIBIT C

32004R0773

Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance)

Official Journal L *123 , 27/04/2004* P. *0018 - 0024*

Commission Regulation (EC) No 77312004

of 7 April 2004

relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Commun'ty,

Having regard to the Agreement on the Eumpean Economic Area,

Having regard to Council Reguiation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty(1), and in particular Article 33 thereof,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation (EC) No 1/2003 empowers the Commission to regulate certain aspects of proceedings for the application of Articles 81 and 82 of the Treaty. It is necessary to lay down rules concerning the initiation of proceedings by the Commission as well as the handling of complaints and the hearing of the parties concerned.

(2) According to Regufation (EC) No 1/2003, national courts are under an obligation to avoid taking decisions which could run counter to decisions envisaged by the Commission in the same case. ıg t › Artic‹ 11(6) of that Regulation, national competition tl iti r ·l eved from their competence once the Commission has initiated proceedings for the i ı of a decision under Chapter III of Requlation (EC) No 1/2003. In this context, it is important that courts and competition authorities of the Member States are aware of the initiation of proceedings by the Commission. The Commission should therefore be able to make public its decisions to initiate proceedings.

(3) Before taking oral statements from natural or legal persons who consent to be interviewed, the Commission should inform those persons of the legal basis of the interview and its voluntary nature. The persons interviewed should also be informed of the purpose of the interview and of any record which may be made. In order to enhance the accuracy of the statements, the persons interviewed should also be given an opportunity to correct the statements recorded. Where information gathered from oral statements is exchanged pursuant to Article 12 of Regulation (EC) No 1/2003, that information should cn b ı ı s ed ir evidence to ıp·ıse sanctions on natural persons where th conditions set out in that Article are fulfilled.

(4) Pursuant to Article 23(1)(d) of Regulation (EC) No 1/2003 fines may be imposed on undertakings and associations of undertakings where they fail to rectify within the time limit fixed by the Commission an incorrect, incomplete or misleading answer given by a member of their staff to questions in the course of inspections. It is therefore necessary to provide the undertaking mncerned with a record of any explanations given and to establish a procedure

enabling it to add any rectification, amendment or supplement to the explanations given by the member of staff who is not or was not authorised to provide explanations on behalf of the undertaking. The explanations given by a member of staff should remain in the Commission file as recorded during the inspection.

(5) Complaints are an essential source of information for detecting infringements of competition rules. It is important to define clear and efficient procedures for handling complaints lodged with the Commission.

(6) In order to be admissible for the purposes of Article 7 of Regulation (EC) No 1/2003, a complaint must contain certain specified information.

(7) In order to assist complainants in submitting the necessary facts to the Commission, a form should be drawn up. The submission of the information listed in that form should oe a condition for a complaint to be treated as a complaint as referred to in Article 7 of Regulation (EC) No 1/2003.

(8) Natural or legal persons having chosen to lodge a complaint should be given the possibility to be associated closely with the proceedings initiated by the Commission with a view to finding an infringement. However, they should not have access to business secrets or other confidential information belonging to other patties invoived in the proceedings.

(9) Complainants should be granted the opportunity of expressing their views if the Commission considers that there are insufficient grounds for acting on the complaint. Where the Commission rejects a complaint on grounds that a competition authority of a Member State is dealing with it or has already done so, it should inform the complainant of the identity of that authority.

(10) In order to respect the right. of defence of undertakings, the Commission should give the parties concerned the right to be heard before it takes a decision.

(11) Provision should also be made for the hearing of persons who have not submitted a complaint as referred to in Article 7 of Regulation (EC) No 1/2003 and who are not parties to whom a statement of objections has been addressed but who can nevertheless show a sufficient interest. Consumer associations that apply to be heard shouid generally be regarded as having a sufficient interest, where the pmceedings concern products or services used by the end-consumer or products or services that constitute a direct input into such products or services. Where it considers this to be useful for the pmceedings, the Commission should also be able to invite other persons to express their views in writing and to attend the oral hearing of the parties to whom a statement of objections has been addressed. Where appropriate, it should also be able to invite such persons to express their views at that oral hearing.

(12) To improve the effectiveness of oral hearings, the Hearing Officer shouid have the power to allow the parties concerned, complainants, other persons invited to the hearing, the Commission services and the authorities of the Member States to ask questions during the hearing.

(13) When granting access to the file, the Comrnission should ensure the protection of business secrets and other confidential information. The category of "other confidential information" includes information other than business secrets, which may be considered as confidential, insofar as its disclosure would significantly harm an undertaking or person. The Commission should be able to request undertakings or associations of undertakings that submit or have submitted documents or statements to identify confidential information.

(14) Where business secrets or other mnfidential information are necessary to prove an infringement, the Commission should assess for each individual document whether the need to dlsdose is greater than the harm which might result from disclosure.

(15) In the interest of legal certainty, a minimum time-limit for the various submissions provided for in this Regulation should be laid down.

(16) This Regulation replaces Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty(2), which should therefore be repealed.

(17) This Regulation aligns the procedural rules in the transport sector with the general rules of procedure in ail sectors. Commission Regulation (EC) No 2843/98 of 22 December 1998 on the form, content and other details of applications and notifications provided for in Council Regulations (EEC) No 1017168, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on

competition to the transport sector(3) should therefore be repealed.

(18) Regulation (EC) No 1/2003 abolishes the notification and authorisation system. Comrnission Regulation (EC) No 3385/94 of 21 December 1994 on the form, content and other details of applications and notifications provided for in Council Regulation No 17(4) should therefore be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I SCOPE

Article 1

Subject-matter and scope

This regulation applies to proceedings conducted by the Commission for the application of Articles 81 and 82 of the Treaty.

CHAPTER II INITIATION OF PROCEEDINGS

Article 2

Initiation of proceedings

1. The Commission may dedde to initiate proceedings with a view to adopting a decision pursuant to Chapter III of Regulation (EC) No 1/2003 at any point in time, but no hter than the date on which it issues a preliminary assessment as referred to in Article 9(1) of that Regulation or a statement of objections or the date on which a notice pursuant to Artide 27(4) of that Regulation is published, whichever is the earlier.

2. The Commission may make public the initiation of proceedings, in any appropriate way. Before doing so, it shall inform the parties concerned.

3. The Commission may exercise its powers of investigation pursuant to Chapter V of Regulation (EC) No 1/2003 before initiating proceedings.

4. The Commission may reject a complaint pursuant to Article 7 of Regulation (EC) No 1/2003 without initiating proceedings.

CHAPTER III INVESTIGATIONS BY M E COMMISSION

Artide 3

Power to take statements

1. here the Commission interviews a p son with his consent in accordance with Artide 19 of Regulation (EC) No 1/2003, it sh , it the beginning of the interview, state the legal bans and the purpose of the interview, and recall its voluntary nature. It shall also inform the person interviewed of its intention to make a record of the interview.

2. The interview may be conducted by any means including by telephone or electronic means.

3. The Commission may record the statements made by the persons interviewed in any form. A copy of any recording shali be made available to the person interviewed for approval. Where necessary, the Comrnission shali set a time-limit within which the person interviewed may communicate to it any correction to be made to the statement

Article 4

Omi questions during inspections

1. When, pursuant to Artide 20(2)(e) of Regulation (EC) No 1/2003, officials or other accompanying persons authorised by the Commission ask representatives or members of staff of an undertaking or of an association of undertakings for expianations, the explanations given may be recorded in any form.

2. A copy of any recording made pursuant to paragraph 1 shali be made available to the undertaking or association of undertakings concerned after the inspection.

3. In cases where a member of staff of an undertaking or of an assodation of undertakings who is not or was not authorised by the undertaking or by the association of undertakings to provide explanations on behalf of the undertakins or association of undertakings has been asked for explanations, the Commission shall set a-time-limit within which the undertaking or the association of undertakings may communicate to the commission any rectification, amendment or

suppiement to the explanations given by such member of staff. The rectification, amendment or supplement shall be added to the explanations as recorded pursuant to paragraph 1.

CHAPTER IV HANDLING OF COMPLAINTS

Artide 5

Admissibility of complaints

1. Natural and legal persons shali show a legitimate interest in order to be entitled to lodge a complaint for the purposes of Articie 7 of Regulation (EC) No 1/2003.

Such complaints shali contain the information required by Form C, as set out in the Annex. The Commission may dispense with this obligation as regards part of the information, induding documents, required by Form C.

2. Three paper copies as welf as, if possible, an electronic copy of the complaint shall be submitted to the Commission. The complainant shall also submit a non-confidential version of the complaint, if confidentiality is claimed for any part of the complaint.

3. Complaints shail be submitted in one of the official languages of the Community.

Article 6

Participation of complainants in proceedings

1. Where me Commission issues a statement of objections relating to a matter in respect of which it has received a complaint, it shall provide the compiainant with a copy of the non-confidential version of the statement of objections and set a time-iimit within which the complainant may make known its views in writing.

2. The Commission may, where appropriate, afford complainants the opportunity of expressing their views at the oral hearing of the parties to which a statement of objections has been Issued, if complainants so request in their written comments.

Artide 7

Rejection of complaints

1. Where the Commission considers that on the basis of the information in its possession there are insufficient grounds for acting on a complaint, it shall inform the complainant of its reasons and set a timelimit within which the complainant may make known its views in writing. The Commission shall not be obliged to take into account any further written submission received after the expiry of that time-limit.

2. If the complainant makes known its views within the time-limit set by the Commission and the written submissions made by the compiainant do not lead to a different assessment of the complaint, the Commission shall reject the complaint by decision.

3. If the compiainant fails to make known its views within the time-limit set by the Commission, the complaint shall be deemed to have been withdrawn.

Article 8

Access to information

1. Where the Commission has informed the complainant of its intention to reject a complaint pursuant to Article 7(1) the compiainant may request access to the documents on which the Commission bases its provisional assessment. For this purpose, the complainant may however not have access to business secrets and other confidentiai information belonging to other parties Involved in the proceedings.

2. The documents to which the complainant has had access in the context of proceedings conducted by the commission under Articles 81 and 82 of the Treaty may only be used by the complainant for the purposes of judicial or administrative proceedings for the application of those Treaty provisions.

Article 9

Rejections of complaints pursuant to Artide 13 of Regulation (EC) No 1/2003

Where the Commission rejects a complaint pursuant to Article 13 of Regulation (EC) No 1/2003, it shall inf the complainant without delay of the national competition authority uid dealing or has already dealt with the case.

CHAPTER V EXERCISE OF THE RIGHT TO BE HEARD

Article 10

Statement of objections and reply

1. The Commission shall inform the parties concerned in writing of the objections raised against them. The statement of objections shali be notified to each of them.

2. The Commission shall, when notifying the statement of objections to the parties concerned, set a time-limit within which these parties mav inform it in writing of their views. The Commission shall not be obliged to take into account written submissions received after the expiry of that time-iimlt.

3. The patties may, in their written submissions, set out all facts known to them which are relevant to their defence against the objections raised by the Commission. They shall attach any relevant documents as proof of the facts set out. They shall provide a paper original as well as an electronic copy or, where they do not provide an electronic copy, 28 paper copies of their submission and of the documents attached to it. They may propose that the Commission hear persons who may corroborate the facts set out in their submission.

Artide 11

Right to be heard

1. The Commission shali give the parties to whom it has addressed a statement of objections the opportunity to be heard before consulting the Advisory Committee referred to in Artide 14(1) of Regulation (EC) No 112003.

2 The Commission shall, in its decisions, deal only with objections in respect of which the parties referred to in paragraph 1 have been able to comment.

Artide 12

Right to an oral hearing

The Commission shall give the parties to whom it has addressed a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written submissions.

Articie 13

Hearing of other persons

1. If natural or legal persons other than those referred to in Articles 5 and 11 apply to be heard and show a sufficient interest, the Commission shall inform them in writing of the nature and subject matter of the procedure and shali set a time-limit within which they may make known their views in writing.

2 The Commission may, where appropriate, invite persons referred to in paragraph 1 to develop their arguments at the oral hearing of the parties to whom a statement of objections has been addressed, if the persons referred to in paragraph 1 so request in their written comments.

3. The Commission may invite any other person to express its views in writing and to attend the oral hearing of the parties to whom a statement of objections has been addressed. The Commission may also invite such persons to express their views at that oral hearing.

Article 14

Conduct of oral hearings

1. Hearings shall be conducted by a Hearing Officer in full independence.

2 The Commission shall invite the persons to be heard to attend the oral hearing on such date as it shall determine.

3. The Commission shali invite the competition authorities of the Member States to take part in . . the oral hearing. It may likewise inv˙te officials and civil servants of other authorities of the Member States.

4. Persons invited to attend shali either appear in person or be represented by legal representatives or by representatives authorised by their constitution as appropriate. Undertakings and associations of undertakings may also be represented by a duly authorised

agent appointed from among their permanent staff.

5. Persons heard by the Commission may be assisted by their lawyers or other qualified persons admitted by the Hearing Officer.

6. Oral hearings shall not be public. Each person may be heard separately or in the presence of other persons invited to attend, having regard to the legitimate interest of the undertakings in the protection of their business secrets and other confidential information.

7. The Hearing Officer may allow the parties to whom a statement of objections has been addressed, the complainants, other persons invited to the hearing, the Commission services and the authorities of the Member States to ask questions during the hearing.

8. The statements made by each person heard shall be recorded. Upon request, the recording of the hearing shall be made available to the persons who attended the hearing. Regard shall be had to the legitimate interest of the parties in the protection of their business secrets and other confidential information.

CHAPTER VI ACCESS TO THE FILE AND TREATMENT OF CONFIDENTIAL INFORMATION

Artide 15

Access to the file and use of documents

1. I f so requested, the Commiaion shall grant access to the fiie to the parties to whom it has addressed a statement of objections. Access shall be granted after the notification of the statement of objections.

2. The right of access to the file shall not extend to business secrets, other confidential information and internal documents of the Commission or of the competition authorities of the Member States. The right of access to the file shall also not extend to correspondence between the Commission and the competition authorities of the Member States or between the latter where such correspondence is contained in the file of the Commission.

3. Nothing in this Regulation prevents the commission from disclosing and using information necessary to prove an Infringement of Articles 81 or 82 of the Treaty.

4. Documents obtained through access to the file pursuant to this Artide shall only be used for the purposes of judicial or administrative proceedings for the appiication of Articles 81 and 82 of the Treaty.

Artide 16

Identification and protection of confidential information

1. Information, including documents, shall not be communicated or made accessible by the Commission in so far as it contains business secrets or other confidential information of any person.

2. Any person which makes known its views pursuant to Article 6(1), Artide 7(1), Article 10(2) and Artide 13(1) and (3) or subsequently submits further information to the Commission in the course of the same procedure, shall clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Commission for making its views known.

3. Without prejudice to paragraph 2 of this Artide, the commission may require undertakings and associations of undertakings which produce documents or statements pursuant to Regulation (EC) No 1/2003 to identify the docurnents or parts of documents which they consider to contain business secrets or other confidential information belonging to them and to identify the undertakings with regard to which such documents are to be mnsidered confidential. The Commiaion may likewise require undertakings or associations of undertakings to identify any part of a statement of objections, a case summary dmwn up pursuant to Article 27(4) of Regulation (EC) No 1/2003 or a decision adopted by the Commission which in their view contains budness.. secrets.

The Commission may set a time-limit within which the undertakings and associations of undertakings are to:

(a) substantiate their claim for mnfidentiality with regard to each individual document or part of document, statement or part of statement;

(b) provide the Commission with a non-confidential version of the documents or statements, in which the confidential passages are deleted;

(c) provide a concise description of each piece of deleted information.

4. If undertakings or associations of undertakings fail to comply with paragraphs 2 and 3 the commission may assume that the documents or statements concerned do not contain confidential information.

CHAPTER VII GENERAL AND FINAL PROVISIONS

Article 17

Time-limits

1. In setting the time-limits'provided for in Article 3(3), Article 4(3), Artide 6(1), Article 7(1), Article 10(2) and Article 16(3), the Comrnission shall have regard both to the time required for preparation of the submission and to the urgency of the case.

2. The time-limits referred to in Artide 6(1), Article 7(1) and Article 10(2) shall be at least four weeks. However, for proceedings initiated with a view to adopting interim measures pursuant to Article 8 of Regulation (EC) No 1/2003, the time-limit may be shortened to one week.

3. The time-limits referred to in Article 3(3), Artide 4(3) and Article 16(3) shall be at least two weeks.

4. Where appmpriate and upon reasoned request made before the expiry of the original time-limit, time-limits may be extended.

Article 18

Repeals

Regulations (EC) No 2842/98, (EC) No 2843/98 and (EC) No 3385/94 *are* repealed.

References to the repealed regulations shall be construed as references to this regulation.

Artide 19

Transitional provisions

Procedural steps taken under Regulations (EC) No 2842/98 and (EC) No 2843/98 shall continue to have effect for the purpose of applying this Regulation.

Article 20

Entry into force

This Regulation shall enter into force on 1 May 2004.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 April 2004.

For the Commission

Mario Monti

Member of the Comrnission

(1) OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

(2) OJ L 354, 30.12.1998, p. 18.

(3) OJ L 354, 30.12.1998, p. 22.

(4) OJ L 377, 31.12.1994, p. 28.

ANNEX

FORM C

COMPLAINT PURSUANTTO ARTICLE 7 OF REGULATION (K)No 1/2003

I. Information regarding the complainant and the undertaking(s) or association of undertakings giving rise to the complaint

1. Give full details on the identity of the legal or natural person submitting the complaint. Where the complainant is an undertaking, identify the corporate group to which it belongs and provide a

concise overview of the nature and scope of its business activities. Provide a contact person (with telephone number, postal and e-mail-address) from which supplementary explanations can be obtained.

2. Identify the undertaking(s) or assodation of undertakings whose conduct the complaint relates to, indudina, where applicable, all available information on the corporate aroup to which the undertaking(s) complained of belong and the nature and scope of the business activities pursued by them. Indicate the position of the mmplainant vis-à-vis the undertaking(s) or association of undertakings mmplained of (e.g. customer, competitor).

II. Detaiis of the alleged infringement and evidence

3. Set out in detail the *facts* from which, in your opinion, it appears that there exists an infringement of Article 81 or 82 of the Treaty and/or Article 53 or 54 of the EEA agreement Indicate in particular the nature of the products (goods or services) affected by the alleged infringements and explain, where necessary, the commercial relationships concerning these products. Provide all available details on the agreements or practices of the undertakings or associations of undertakings to which this complaint relates. Indicate, to the extent possible, the relative market positions of the undertakings concerned by the complaint.

4. Submit all documentation in your possession relating to or directly connected with the facts set out in the complaint (for example, texts of agreements, minutes of negotiations or meetings, terms of transactions, business documents, circulars, correspondence, notes of telephone conversations...). State the names and address of the persons able to testify to the facts set out in the complaint, and in particular of persons affected by the alleged infringement. Submit statistics or other data in your possession which relate to the facts set out, in particular where they show developments in the marketplace (for example information relating to prices and price bends, barriers to entry to the market for new suppliers etc.).

5. Set out your view about the geographical scope of the alleged infringement and explain, where that is not obvious, to what extent trade between Member States or between the Community and one or more EFTA States that are contracting parties of the EEA Agreement may be affected by the conduct complained of,

III. Finding sought from the Commission and legitimate interest

6. Explain what finding or action you are seeking as a result of proceedings brought by the Commission.

7. Set out the grounds on which you daim a legitimate interest as mmplainant pursuant to Article 7 of Regulation (EC) No 1/2003. State in particular how the conduct complained of affects you and explain how, in your view, intervention by the Commission would be liable to remedy the alleged grievance.

IV. *Proceedings* before national competition authorities or national courts

8. Provide full information about whether you have approached, concerning the same or closely related subject-matters, any other competition authority and/or whether a lawsuit has been brought before a national court. If so, provide full details about the administrative or judicial authority contacted and your submissions to such authority.

Declaration that the information given in this form and in the Annexes thereto is given entirely in good faith.

Date and signature.

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., a Delaware corporation, and AMD INTERNATIONAL SALES & SERVICES, LTD., a Delaware corporation, Plaintiffs, v. INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation, Defendants.	C.A. No. 05-441 JJF
IN RE: INTEL CORPORATION	C.A. No. 05-MD-1717-JJF

STIPULATION AND ORDER RESOLVING DM NO. 6

WHEREAS, defendants Intel Corporation and Intel Kabushiki Kaisha (collectively, "Intel") propounded a First Set of Interrogatories to plaintiffs Advanced Micro Devices, Inc., and AMD International Sales &Service, Ltd. (collectively, "AMD"); and

WHEREAS, AMD objected to Intel's First Set of Interrogatories on numerous grounds, including, among others, that the Interrogatories were premature, were improperly timed contention interrogatories, and sought information protected by various privileges and protections; and

WHEREAS, AMD **filed** a Motion for a Protective Order relating to Intel's First Set of Interrogatories ("DM No. 6"); and

WHEREAS, AMD and Intel then met and conferred further regarding their dispute over Intel's First Set of Interrogatories and AMD's Motion for a Protective Order, and now have reached a resolution of their disputes;

NOW, THEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN COUNSEL FOR AMD AND INTEL, SUBJECT TO THE APPROVAL OF THE COURT, AS FOLLOWS:

1. Intel will withdraw Interrogatory No. 5 without prejudice. Intel and AMD agree that for the present time neither side will pursue discovery concerning communications with or submissions to governmental agencies, although both parties reserve their right to revisit this issue at a later date. This agreement does not apply to discovery that the parties have already agreed to supply.

2. Intel agrees to limit Interrogatory Nos. 1-4, 6 to request the identification of customers only. As so limited, AMD agrees to provide verified answers within 30 days. AMD has agreed to respond to these interrogatories after additional discovery has been completed. If discovery is not completed or substantially completed at the time Intel requests that AMD respond, AMD reserves its rights to object to providing further responses at that time on the ground that the interrogatories are premature, and Intel reserves its rights lo contend that responses at that time are appropriate.

3. AMD agrees to withdraw its request for a protective order without prejudice.

OF COUNSEL

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Dated: June 26,2007

POTTER ANDERSON & CORROON LLP

By: */s/ Richard* L. ***Honvitz***
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Dated: June 26,2007
803820/29282

RICHARDS, LAYTON & FINGER

By: */s/* ***Frederick*** L. *Cottrell, III*
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Attorneys for Plaintiffs
Advanced Micro Devices, Inc. and
AMD International Sales &Service, Ltd.

IT IS SO ORDERED this 27 day of June, 2007.

Honorable Vincent J. Poppiti
Special Master

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION	MDL No. 1717-JJF
ADVANCED MICRO DEVICES, INC., a Delaware corporation, and AMD INTERNATIONAL SALES & SERVICES, LTD., a Delaware corporation, Plaintiffs, v. INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation, Defendants.	C.A. No. 05-441-JJF
PHIL PAUL, on behalf of himself and all others similarly situated, Plaintiffs, v. INTEL CORPORATION, Defendants.	C.A. No. 05-485-JJF CONSOLIDATED ACTION

STIPULATION WITHDRAWING SUBPOENAS DUCES TECUM TO POTOMAC COUNSEL, LLC, DC NAVIGATORS, LLC AND PUBLIC STRATEGIES, LLC AND RESTRICTING FUTURE DISCOVERY FROM CONSULTANTS RETAINED TO INFLUENCE GOVERNMENT ACTION

WHEREAS, on or about September 27, 2007, Intel Corp. and Intel Kabushiki Kaisiha (collectively "Intel") served subpoenas duces tecum on three consulting firms engaged to render

services on behalf of AMD; namely Potomac Counsel, LLC; DC Navigators, LLC, and Public Strategies, Inc.; and

WHEREAS, the subpoenas request the production of documents relating to (1) actual or potential litigation against Intel proposed or contemplated by AMD; (2) any possible or actual investigation of Intel by the United States or a foreign governmental entity; and (3) efforts by AMD to influence a government agency, including, but not limited to, any contracting or procurement officers of such an agency, to adopt certain specifications in Requests for Proposal ("RFP") or Requests for Quotation ("RFQ"); and

WHEREAS, AMD represents that its relationship with Public Strategies, Inc. ended on or about October 30, 2004, prior to the date it contends it first reasonably anticipated thai it would file a lawsuit against Intel, and that did not retain Potomac Counsel, LLC, until after it had commenced litigation against Intel; and

WHEREAS, AMD further represents that its lawsuit does not allege as a claim or part of the factual allegations supporting a claim Intel's conduct to influence any public contracting or procurement agency to adopt technical spec cations in Requests for Proposal ("RFP") or Requests for Quotation ("RFQ") favoring Intel over AMD and will not introduce evidence of such conduct in the case; and

WHEREAS, both parties agree not to serve or enforce subpoenas on any similar consulting firm retained by or on behalf of the other calling for the production of documents or testimony related to activities designed to influence government or agency action;

NOW, THEREFORE, the parties through their respective counsel of record, hereby stipulate that the subpoenas are withdrawn save and except that portion of the subpoena served

on DC Navigators, LLC (Requests 1 and 2), requiring production of documents tending to show that AMD reasonably anticipated filing its lawsuit against Intel prior to March 31,2005.

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