



EUROPEAN COMMISSION

LEGAL SERVICE
Director General

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JUL 27 2009

VJP

Brussels, 14 July 2009
JUR(2009) 20902

Delivered by post

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**Subject: Case COMP/C-3/37.990 – Intel
Your letter of 30 March 2009 DM26**

Dear Mr. Poppiti,

With your letter of 30 March 2009 to Mr Hellström (of DG Competition), you informed the services of the European Commission of AMD's request for international judicial assistance with a view to requesting the appropriate judicial authorities in France and Italy to produce documents submitted by NEC Computer SAS and Acer Italy Srl to the European Commission in the framework of the above-mentioned case. Given that this request is based on the unredacted version of the European Commission's Statement of Objections ("SO") of 26 July 2007, which Intel claims to have produced inadvertently to AMD, you asked the European Commission to inform the Court of its position on the discoverability of certain documents in litigation pending in the United States ("US").

Please note that the current position of the services of the European Commission with regard to disclosure of documents in the context of private litigation in third jurisdictions is stated in a recent European Commission Staff Working Paper.¹

¹ See Chapter 7.1 of the European Commission Staff Working Paper, SEC(2009)574 final, 29.4.2009 ("European Commission Staff Working Paper"), available at http://ec.europa.eu/competition/antitrust/legislation/report_regulation_1_2003_working_paper.pdf, accompanying the Communication from the European Commission to the European Parliament and Council, Report on the functioning of Regulation 1/2003, COM(2009) 206 final, 29.4.2009, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0206:EN:NOT>.

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* Commission document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

The first and second of your questions refer to: (i) pre-existing documents submitted by third parties in response to a European Commission request for information,² and (ii) statements and submissions specifically prepared by third parties for the European Commission outside the context of the Leniency Programme and covered by a protective order. In this regard, the following situations may be distinguished:

As far as documents under (i) are concerned, the services of the European Commission do not see the need for generally protecting such documents from discovery unless their own investigation is ongoing and insofar as such discovery could reveal the European Commission's investigative strategy.³ The latter is not the case concerning the documents of the case covered under item (i) above.

As regards documents under (ii), let me underline that it follows from the European Commission Leniency Programme and Settlement Procedures that statements and submissions of the European Commission Leniency Programme or Settlement Procedures should in principle not be discoverable in proceedings before courts not applying Articles 81 and 82 of the EC Treaty, even after the European Commission's investigation has been terminated.⁴ There might be grounds to exclude in specific cases from disclosure other voluntary statements and submissions provided by an undertaking outside the scope of the Leniency Programme or Settlement Procedure.⁵ However, in the present case, given the nature of the documents in question and as far as we are aware, there is no need to protect the information contained in the documents falling under item (ii) above (provided that disclosure would not be against the interest of the company concerned).⁶

The remaining of your questions make reference to the unredacted version of the European Commission's Statement of Objections with regard to which you enquire whether Community law prohibits: (i) the production of this document in litigation pending in the US, (ii) Intel from using or publishing this document outside the context of the European Commission proceeding, and (iii) AMD from making use of this document produced by Intel in the US litigation. In this regard, I note the reported fact that there has already been inadvertent disclosure by Intel of the unredacted version of the European Commission's Statement of Objections in the context of US proceedings. Given that the European Commission's Statement of Objections is a document prepared specifically for its antitrust proceedings and contains information received through

² We understand that the terms "pre-existing documents" refer to documents that were in the possession of the respective third party before and independently of any submission they have made to the European Commission.

³ European Commission Staff Working Paper, paragraph 300.

⁴ See also European Commission Notice on Immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17, points 6-7 and 32-35; and European Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases ("Settlement Procedure Notice"), OJ C 167, 2.7.2009, p. 1, points 7 and 35-39.

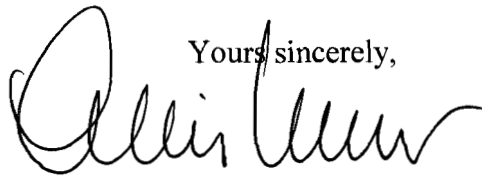
⁵ See the above reference to the European Commission Report and the Staff Working Paper.

⁶ I wish to point out that some of the third parties to the European Commission proceedings in Case COMP/C-3/37.990 have granted a waiver to the European Commission with regard to the transmission of certain documents from the European Commission's case file to the US Federal Trade Commission.

investigative measures, it is the European Commission's general policy that the Statement of Objections and the information contained therein should be used only for the purpose of proceedings concerning the application of Articles 81 and 82 EC.⁷

Please note that the present letter does not constitute an official representation by the European Commission. It is only intended to provide you with information by its Services that, I hope, may prove useful in the matter of your inquiries.

Yours sincerely,



Luis Romero Requena
Director General

Cc.: Mr. Ph. Lowe, Mr. A. Whelan

⁷ European Commission Staff Working Paper, paragraph 296.