Advanced Micro Devices (AMD) vs. Intel Corporation
Executive Summary of AMD Complaint

NOTE: This is a summary of the complaint filing. This summary constitutes no part of the complaint but has been prepared solely for the convenience of the reader.

OVERVIEW

On June 27, 2005, AMD filed an antitrust lawsuit against Intel in the United States District Court in Wilmington, Delaware. The complaint details how Intel has unlawfully maintained its monopoly power in the market for x86 microprocessors by, among other things,:

- forcing major customers such as Dell, Sony, Toshiba, Gateway, and Hitachi into Intel-exclusive deals in return for outright cash payments, discriminatory pricing or marketing subsidies conditioned on the exclusion of AMD;

- forcing other major customers such as NEC, Acer, and Fujitsu into partial exclusivity agreements by conditioning rebates, allowances and market development funds (MDF) on customers' agreement to severely limit or forego entirely purchases from AMD;

- establishing a system of discriminatory, retroactive, first-dollar rebates triggered by purchases at such high levels as to have the intended effect of denying customers the freedom to purchase any significant volume of processors from AMD;

- threatening retaliation against customers for introducing AMD computer platforms, particularly in strategic market segments such as commercial desktop;

- establishing and enforcing quotas among key retailers such as Best Buy and Circuit City, effectively requiring them to stock overwhelmingly or exclusively, Intel computers, artificially limiting consumer choice;

- forcing PC makers and tech partners to boycott AMD product launches or promotions;

- and abusing its market power by forcing on the industry technical standards and products which have as their main purpose the handicapping of AMD in the marketplace.

Intel's economic coercion is pervasive and extends to customers at all levels of the x86 ecosystem – from large computer or original equipment manufacturers ("OEMs") like Hewlett-Packard, to small system-builders, to wholesale distributors, to retailers such as Circuit City. All face the same choice: accept conditions that exclude AMD or suffer discriminatory pricing and competitively crippling treatment. The Japanese Government recognized these competitive harms on March 8, 2005, when its Federal Trade Commission (JFTC) recommended that Intel be sanctioned for its exclusionary misconduct directed at AMD. Intel chose not to contest the charges.

Through its exclusionary conduct, Intel has avoided competition on the merits and deprived AMD of the opportunity to stake its prices and quality against Intel's for potential microprocessor sales. The absence of competition in this important industrycomes at a high cost: artificial constraints on innovation, higher prices and the loss of the consumer's right to choose the products that best suit his or her needs. As such, Intel's conduct violates the anti-monopolization provisions of Section 2 of the federal Sherman Antitrust Act, as well as California's state law prohibitions against secret rebates and tortious interference with prospective economic advantage. Accordingly, AMD seeks: 1) an injunction to stop Intel's anticompetitive conduct; 2) treble damages as provided for under the Sherman Act; and 3) punitive damages as provided for under California law.

In 2003, AMD began to pull away from Intel technologically and now AMD's microprocessors are widely hailed as superior to Intel's. AMD's breakthrough came when it introduced Opteron; the industry's first x86 backward compatible 64-bit chip. The computing industry hailed AMD's introduction of backwards compatible 64-bit computing as an engineering triumph. In April 2005, AMD was named "Processor Company of 2005" at an Intel-sponsored industry awards show. Bested in a technology duel over which it long claimed leadership, Intel increased exploitation of its market power to pressure customers to refrain from migrating to AMD's superior, lower-cost microprocessors.

SUMMARY OF INTEL MISCONDUCT

The following describes only a sampling of Intel misconduct.

a. Exclusive and Near-Exclusive Deals with OEMs

Dell. Dell has never purchased an AMD microprocessor despite acknowledging Intel's shortcomings and its own customers' clamor for AMD solutions. According to industry reports, Intel has bought Dell's exclusivity with outright payments and favorable discriminatory pricing and service. Dell executives have conceded that they must financially account for Intel retribution if they decide to launch even one AMD product.

Japan. In 1999, AMD began to make notable inroads into Intel's sales to major Japanese OEMs, which export PCs internationally including into the U.S. In 2002, Intel paid Sony, Toshiba and Hitachi multimillion dollar sums, disguised as discounts and promotional support, in exchange for worldwide exclusivity. Intel also paid multimillion dollar sums to NEC and Fujitsu to cap AMD's share of their business.

b. Product-Line, Channel or Geographic Restrictions

Intel has also bought more limited exclusivity from OEMs as a means of excluding AMD from the most profitable lines or from channels of distribution best tailored to take advantage of AMD's price/performance advantage over Intel. For example, Intel has sabotaged AMD's attempts to create a successful commercial desktop product at both HP and IBM.

c. Exclusionary Rebates, Predatory Pricing

Intel has also imposed on OEMs a system of first-dollar rebates that create exclusivity or near-exclusivity and artificially foreclose AMD from competing meaningfully. While in many industries, a seller might offer "volume discounts," Intel's rebate schemes are quite different and substantially more odious to competition. Intel's "penetration" or "loyalty" rebates are not based on efficiencies or cost savings, but instead are designed to avoid head-to-head price competition with AMD and leverage Intel's market position. Intel intentionally sets a customer rebate at a level of purchases it knows to constitute a dominant percentage of a customer's needs. Intel's retroactive discounts then operate to price additional microprocessors at or below cost so that AMD cannot compete for this business.

d. Threats of Retaliation

Intel has also resorted to old-fashioned threats, intimidation and "knee-capping" to deter OEMs from dealing with AMD. For instance, in late 2000, Compaq's CEO, Michael Capellas, disclosed that because of the volume of business he had given to AMD, Intel withheld delivery of server chips that Compaq desperately needed. Reporting that "he had a gun to his head," Capellas informed an AMD executive that he had to stop buying AMD processors. NEC's European subsidiary, NEC-CI, which operates NEC's European and non-Japanese Asian divisions, reported that Intel executives said they would "destroy" NEC-CI for engaging with AMD in the commercial desktop segment. Intel told NEC-CI's retailers that the company's AMD dealings could impair NEC-CI's ability to supply products to its customers. When NEC-CI resisted the pressure, Intel imposed a discriminatory price increase.

e. Interference with AMD Product Launches

A successful and impressive product launch is essential to generating confidence among computer professionals, who will be the potential audience for a new microprocessor, and is key to gaining market acceptance. Aware of the importance of product launches, Intel has done its utmost to undermine AMD's. For instance, in 2003, Intel's CEO Craig Barrett went so far as to travel to Taiwan to personally threaten Acer's Chairman, President and CEO with "severe consequences" for publicly supporting AMD's product rollout of Athlon64. The Barrett visit coincided with an unexplained delay by Intel in providing $15-20 million in market development funds owed to Acer. As a result, Acer withdrew from the launch in the U.S. and Taiwan, pulled its promotional materials, banned AMD's use of a video Acer had prepared, and delayed the announcement of its Athlon64-powered computers.

f. Exclusionary Practices Directed At Retailers

In Germany, AMD has been entirely shut out from Media Markt, which operates retail stores throughout Europe and accounts for 35% of Germany's retail sales. Intel provides Media Markt between $15-20 million of MDF annually, and since 1997 Media Markt has carried Intel computers exclusively. Similarly, in the U.S., Intel provides full MDF payments to retailers, such as Best Buy and Circuit City, only if they agree to limit to 20%, not just the shelf space devoted to AMD-based products, but also the share of revenues they generate from selling AMD platforms. If AMD's share exceeds 20%, the offending retailer's marketing support from Intel is cut by 33% *across all products*.

EFFECTS OF INTEL'S MISCONDUCT

Despite its technological leadership, AMD's market share remains artificially stunted by Intel's exclusionary actions. Since 1999, AMD's worldwide volume share has hovered at 15%, while Intel has captured at least 80% of x86 microprocessor unit sales in seven of the last eight years. By capping AMD's market share, Intel has prevented AMD from expanding to reach the size necessary to become a predominant supplier to major customers. As a result, those in the microprocessor industry continue to be beholden to Intel, which requires them to pay monopoly prices, to be exposed to Intel's coercive tactics, and to submit to artificial limits on purchases from AMD. Consumers ultimately foot the bill for Intel's conduct, in the form of inflated PC prices and the loss of choice in computer products. Finally, society as a whole is worse off for the lack of innovation that only a truly competitive market can drive.