

evidence.

We believe that, under the law, the EC decision should be considered as part of the evidentiary record in this case. The decision is “[r]elevant, material, and reliable.” Rule 3.43(b). It also falls squarely within Rule 803(8)(C) of the Federal Rules of Evidence. The federal courts have consistently admitted the EC’s Statement of Objection (“SO”) into evidence under Rule 803(8)(C). If a SO, which is the preliminary finding before the Final Decision of the EC, is admissible under the Federal Rules of Evidence, surely the *final* EC Decision should be admissible in a hearing governed by the Part 3 Rule and Administrative Procedures Act.

Federal Rule of Evidence 803(8)(C) allows the admission of “reports . . . of public offices or agencies, setting forth . . . factual findings resulting from an investigation made pursuant to authority granted by law” such as the EC decision. The U.S. Supreme Court, in *Beech Aircraft Corp. v. Rainey*, held that decisions of administrative law judges and other executive fact-finders are “admissible along with other portions of the report[s].” 488 U.S. 153, 170 (1988). The Court explained that Rule 803(8)(C) allows the admissibility of “factual findings” as well as “conclusions” and “opinions that flow from the factual investigation.” *Id.* at 164. The admissibility of evidence covered under Rule 803(8)(C) “is generally favored.” *Gentile v. County of Suffolk*, 926 F.2d 142, 148 (2d Cir. 1991).

The federal courts have admitted the EC’s Statement of Objections (“SO”) pursuant to 803(8)(C). In *Information Resources, Inc. v. The Dun & Bradstreet Corp.*, 1998 WL 851607 (S.D.N.Y. 1998), the Court admitted the EC’s SO under Rule 803(8)(C), because “[t]he circumstances do not indicate any lack of trustworthiness, and to the extent that the [SO] represents conclusions, it is ‘subject to the ultimate safeguard—the opponent’s right to present evidence tending to contradict or diminish the weight of those conclusions.’” *Id.* at *1. And, in a decision published in December 2009, Judge Underhill admitted a SO into evidence despite the fact that the EC had

subsequently *closed* the matter without issuing a final decision. *Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation*, 2009 WL 5218057, 2009-2 Trade Cases P 76,855, at *9-11 (D. Conn. 2009). Courts also have admitted the decisions of other foreign tribunals. For example, the Third Circuit admitted the “recommended decision” of the Japanese FTC as evidence under Rule 803(8)(c). *In re Japanese Elec. Products*, 723 F.2d 238 (3d Cir. 1983), *rev’d sub nom. on other grounds, Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The court found that the decision was “unquestionably . . . sufficiently trustworthy for admission under Rule 803(8)(C).” *Id.* 272-74. The Third Circuit held that “such reports of investigations are presumed to be reliable.” *Id.* at 265, 273.

I. The EC’s Decision Is Trustworthy

Once a party shows that the “evidence” contains “factual findings . . . based upon an investigation made pursuant to legal authority,” the “admissibility of such factual findings is presumed.” *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 143 (2d Cir. 2000). “The burden to show ‘a lack of trustworthiness then shifts to the party opposing admission.’” *Id.* Among the factors to be considered are (1) the finality of the decision; (2) the timeliness of the investigation; (3) special skills or experience of the official; (4) whether a hearing was held and level at which it was conducted, and (5) possible motivation problems. *Id.*

The EC’s 447 page decision relied on the report of a hearing officer and a 4000 document record that included submissions from Intel, original equipment manufacturers (“OEMs”), and other third parties. Decision ¶37.³ The EC’s factual findings are trustworthy because (1) the decision

³ The Supreme Court described the European process and analogized it to the Federal Trade Commission:

If the DG-Competition decides to pursue the complaint, it typically serves the target of the investigation with a formal “statement of objections” and advises the target of its intention to recommend a decision finding that the target has violated European

here is in its final form; (2) the decision is the product of an independent administrative proceeding; (3) there is no indication that the decision was not completed in a timely manner; (4) the decision was based on a record of ascertainable and verifiable facts; and (5) the report was issued by the EC Commissioner for Competition, Neelie Kroes, the highest Commission official directly responsible for antitrust matters.⁴ See *EPDM Antitrust Litigation*, 2009 WL 5218057, 2009-2 Trade Cases P 76,855, at *45.

Intel has publicly attacked the EC decision. First, it claims the EC was “predisposed” to rule against Intel. The EC decision was reached after years of investigation and relied on submissions and testimony from OEMs, Intel and other market participants. Intel was given multiple opportunities to submit responses to the EC and present evidence and economic testimony to support its claims. Intel’s attack seems to be driven by its unhappiness with the outcome rather than evidence of bias on the part of the EC. Second, Intel accused the EC of “suppressing” *potentially* exculpatory evidence. An independent review of Intel’s claims by the EC Ombudsman did not find that the EC suppressed exculpatory evidence.⁵ The Ombudsman’s report did chastise the EC for “maladministration” for its failure to include the notes of a meeting with Dell in 2006 in its official

competition law. EC. *Amicus Curiae* 7. The target is entitled to a hearing before an independent officer, who provides a report to the DG-Competition. *Ibid.*; App. 18-27. Once the DG-Competition has made its recommendation, the EC may “dismiss[s] the complaint, or issu[e] a decision finding infringement and imposing penalties.” EC *Amicus Curiae* 7.

Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 254-55 (2004).

⁴ The European Commission Advisory Committee, with representatives from over twenty European countries, also concurred in the decision. Opinion of the Advisory Committee (Sept. 22, 2009) available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XX0922%2802%29:EN:NOT>.

⁵ Decision of the European Ombudsman Closing his Inquiry 1935/2008/FOR (July 14 2009) available at <http://www.ombudsman.europa.eu/cases/decision.faces/en/4164/html.bookmark>.

case file. However, it did not find that Intel's rights were infringed and allowed the decision to stand.

Intel also publicly suggested that the decision is inconsistent with "evidence" that "microprocessor" prices have fallen dramatically over the last decade. Intel has emphasized the same data from the United States Bureau of Labor Statistics ("BLS") in its Answer to the Complaint in this case. That data is irrelevant to this case. The BLS "microprocessor" pricing data aggregates the prices of *any* product classified as a "microprocessor" by a manufacturer participating in the survey – and includes, for example, the billions of embedded microprocessors used in cell phones, cars, and televisions. The inclusion of these non-relevant products renders the BLS data meaningless here. That flaw is compounded by the fact that Intel has *never* submitted its pricing data to the BLS. Respondent's PUBLIC Answers to Complaint Counsel's Requests for Admission 8 (Mar. 1, 2010). The data is both over-inclusive in that it includes the prices of billions of products that are not in the relevant market and under-inclusive in that it does not include Intel's prices.

Nevertheless, for the purposes of this motion, it does not matter whether Intel believes it can refute the evidence contained in the EC decision. That is the purpose of the trial. *See Korean Air Lines Disaster of September 1, 1983*, 932 F.2d 1475, 1481-83 (D.C. Cir.1991) ("The district court [properly] decided that KAL's trustworthiness objections were more properly addressed to the jury for purposes of evaluating the weight to be accorded" the report.). The only question before the Court at this time is whether the evidence is admissible.

II. The EC Decision Is Material and Relevant

The EC's factual determinations are material and relevant to many of the alleged facts in the Complaint. The EC made findings of fact regarding market definition, Intel's market power, and the existence of Intel's exclusionary arrangements with certain OEM's not to do business, or to do less business, with Intel's competitors.

EC Finding: Intel is a Dominant Firm. The EC's assessment of Intel's market power is relevant to this case. The approach under European law largely mirrors the American approach. Compare Decision ¶¶792-912 with *United States v. Microsoft*, 253 F.3d 34, 52 (D.C. Cir. 2001); *In the Matter of Polypore Int'l, Inc.*, Docket No. 9327, Initial Decision at 303 (Mar. 1, 2010) ("Polypore Initial Decision").

The EC found that the demand substitution evidence supported separate markets for (1) x86 CPUs for desktop computers; (2) x86 CPUs for laptop computers; and (3) x86 CPUs for server computers. Decision ¶799 ("customers do not, in general, regard CPUs for desktop computers, CPUs for laptop computers and CPUs for servers as substitutes on the demand side, and indeed, the prices of CPUs for those three different segments vary significantly."); see also ¶¶795-798, 815, 833-835. However, the EC found that its analysis would remain unchanged even if the market was x86 CPUs for all computers. The EC found that the evidence did not support Intel's argument that the market should include non-x86 CPUs or embedded CPUs used in non-computer devices. *Id.* ¶¶803-808, 821-824 (non-x86 CPUs); 809-813, 825-830 (embedded CPUs). There was no dispute that the relevant geographic market was worldwide. *Id.* ¶836.

The European market power analysis, like that in the United States, relies on an assessment of market shares and entry barriers. Compare Decision ¶840, with Polypore Initial Decision at 303-305 (explaining that "monopoly power may be inferred from a firm's possession of a dominant share of a relevant market"). The EC found Intel was dominant in all four relevant markets given its overwhelming market shares and the significant barriers to entry in those markets. Intel's share of revenues in the relevant markets ranged from REDACTED for the overall x86 market, REDACTED for the desktop x86 market, REDACTED for the laptop x86 market, and

for the x86 server market between 1997 and 2008.⁶ Decision ¶¶44-45 (overall); ¶¶847 (desktop); ¶¶849 (laptop); ¶¶851, (server); Charts 1a-4b (excerpted below). Market shares in excess of 70% not only support a finding of “dominance” under European law but they also support a finding of monopoly power under American law. Compare Decision ¶ 852, *Image Technical Servs. v. Eastman Kodak Co.*, 125 F.3d 1195, 1206 (9th Cir. 1997) (“Courts generally require a 65% market share to establish a *prima facie* case of market power”); Polypore Initial Decision at 310.

REDACTED

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Intel has admitted that its share of the overall market (desktop, notebook, and server) has consistently exceeded 65 percent; that its share of the desktop market has consistently exceeded 70 percent; and that its share of the notebook market has consistently exceeded 80 percent during the relevant time period. Respondent’s PUBLIC Answers to Complaint Counsel’s Requests for Admission (1-4) (Mar. 1, 2010).

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The EC found that there were significant barriers to entry in the relevant markets. Decision ¶¶853-882. Those entry barriers included the substantial research and development costs, the intellectual property rights, the costs associated with a manufacturing facility, scale economies, and reputation. *Compare* Decision ¶¶854-867 *with Microsoft*, 253 F.3d at 51; Polypore Initial Decision at 272-277 (significant barriers to entry included significant capital investment, technical expertise, and reputation). Intel did not contest the EC's findings on barriers to entry. Decision at ¶881.

Intel argued that regardless of its overwhelming market shares and the significant barriers to entry in these markets, it did not have market power. For example, Intel suggested that the OEMs enjoyed sufficient negotiating leverage to discipline Intel. The EC disagreed and found that Intel is an unavoidable business partner. *Id.* ¶886. OEMs have no choice – they have to trade with Intel. *Compare* Decision ¶¶894, 905 *with* Polypore Initial Decision at 289 (“At a basic level, customers

must have alternative suppliers in order to have any real bargaining power.”).

EC Finding: Intel Entered into Exclusionary Arrangements with OEMs. The EC’s assessment of Intel’s arrangements with Tier One OEMs is also relevant to this case.

The EC found that Intel entered into *de facto* exclusive arrangements with Tier One OEMs in an effort to limit or foreclose the adoption of AMD.⁷ The decision relied on a number of Intel and OEM documents to support its findings that Intel had *de facto* exclusive arrangements with Dell, HP, NEC, and Lenovo. Decision ¶¶926. For example, the EC found that Intel conditioned billions of dollars of rebates to Dell in return for Dell’s commitment to purchase CPUs exclusively from Intel. *See* Decision ¶¶187-242; Table 5 (p. 68); Table 6 (p. 69); ¶¶927-950. The *de facto* exclusive arrangement with Dell alone foreclosed AMD from REDACTED of the overall x86 CPU market. Decision ¶182. The EC also detailed Intel’s conditioning millions of dollars for exclusivity or near exclusivity at HP, NEC, and Lenovo. Decision ¶¶325-413 and 951-972 (HP); 455-503 and 973-981 (NEC); 508-546 and 962-972 (Lenovo).

The EC addressed Intel’s payments to OEMs in exchange for their commitment to delay, cancel or in some other way restrict the release of specific AMD-based products. Decision ¶¶1641-1681. For example, Acer planned to launch both a desktop and notebook based on AMD’s 64-bit Athlon in fall 2003. *Id.* ¶415. The EC found that Acer postponed, and later canceled, the launches of these AMD-based products after Intel threatened to reduce its payments to Acer. *Id.* ¶¶418-435; 1659-1662. The EC also discussed Intel’s arrangements with Lenovo and HP to limit the adoption of AMD. *Id.* ¶¶1645-1658 (HP); 1663-1666 (Lenovo). The EC’s factual findings would support a violation of either Section 5 or Section 2. *Microsoft*, 253 F.3d at 62 (“the anticompetitive effect of

⁷ This claim mirrors U.S. law on this point. *See FTC v. Brown Shoe Co.*, 384 U.S. 316, 320-21 (1962) (discussing the legality of exclusive dealing under Section 5 of the FTC Act); *Microsoft*, 253 F.3d at 70 (exclusive and partial exclusive deals entered into by a monopolist can violate Section 2); *LePage’s v. 3M*, 324 F.3d 141, 155 (3d Cir. 2003).

the license restrictions is, as Microsoft itself recognizes, that OEMs are not able to promote rival browsers . . .”); *Conwood Co., L.P. v. U.S. Tobacco Co.*, 290 F.3d 768, 784 (6th Cir. 2002).

The EC decision contains other relevant factual findings regarding the CPU industry and Intel. For example, there is a helpful description of CPU products and the manufacturing process. Decision ¶¶105-148, Table 4. The EC found that AMD’s CPUs enjoyed a performance and price advantage over Intel between 2002 and 2006. Decision ¶¶150-159 (AMD had “CPU of [the] year [for] 3 consecutive years”; “In Dell’s perception [AMD’s Opteron CPU] generally performed approximately 25% better than the comparable Intel Xeon CPU at the time”). The decision highlights the fact that very few of Intel’s sales are documented in a single written contract. Deals worth hundreds of millions and even billions of dollars were agreed to orally and can only be documented by piecing together a number of separate emails and powerpoints. Decision ¶¶167-169.

CONCLUSION

The EC’s factual findings are relevant, material and reliable, and hence are clearly admissible as evidence within Rule 3.43(b) of the FTC’s Rules of Practice. Accordingly, we respectfully ask that the EC decision be admitted into evidence as CX0243 (in camera) and CX0244 (public).

March 17, 2010

Respectfully submitted,



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Attachment A

AFFIDAVIT

I, Thomas H. Brock, state as follows:

1. I am a Senior Litigator, Office of Director, Bureau of Competition, Federal Trade Commission, and I have entered an appearance in In Re: Intel Corp., Docket No. 9341.
2. The European Commission (EC) issued a decision in a case filed against Intel Corporation, COMP/C-37.990 on May 13, 2009.
3. The public version of the EC decision is available at http://ec.europa.eu/competition/sectors/ICT/intel_provisional_decision.pdf We have designated a copy of this public document as CX 0244. This public version includes redactions of numerous facts relevant and material to the EC decision that Intel, the third parties, or the EC considered confidential.
4. The FTC asked the EC to provide it a complete version of its decision. However, the confidentiality rules of the EC are generally more stringent than those applicable in Part 3 proceedings. The EC had to obtain waivers from Intel and the third parties that had provided the confidential information cited or quoted in the EC decision before the EC released the decision to the FTC.
5. I understand that the EC asked Intel and third parties to identify any objections they had to the release of a complete version of the EC decision to the FTC. This request was made with the understanding that, if the EC released a complete version to the FTC that contained redacted information, the FTC would maintain the confidentiality of all information that had been redacted in the EC's public version of its decision.
6. I understand that, with certain exceptions, Intel and the third parties agreed to the EC's release of a complete version of its decision to the FTC, but only on the condition that the FTC treat as confidential the portions of the decision that the EC had redacted in its public version. In addition, Intel and a third party, NEC, specifically objected to the release of the decision to the FTC unless the EC redacted a few discrete portions of its decision.
7. The EC provided the FTC a copy of its decision, which we have designated as CX 0243. This is a complete version of the EC decision, but with the redaction of the portions of the decision requested by Intel and NEC.
8. The EC released the complete version of its decision to the FTC on the condition that, and based on an express agreement that, this version would be given confidential treatment and would not be publicly released if the FTC submitted this in any proceedings filed against Intel.
9. The FTC and EC regularly exchange information regarding their investigative efforts and enforcement actions. This exchange of information is vital to the efforts of both the EC and the

FTC to enforce the antitrust laws. If the FTC does not maintain the confidentiality of the portions of CX 0243 that the EC redacted in its public version of the decision, it would impede the ongoing cooperative efforts of the FTC and the EC.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on: March 16, 2010

A handwritten signature in black ink, appearing to read "Thomas H. Brock". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas H. Brock

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
)

INTEL CORPORATION,)

Respondent.)
_____)

DOCKET NO. 9341

[PROPOSED] ORDER ADMITTING EUROPEAN COMMISSION DECISION

Upon motion of Complaint Counsel and consideration of the arguments in support and in opposition to the motion, it is hereby

ORDERED, that CX0243 meets the standards for *in camera* treatment and is admitted into evidence, and shall be afforded *in camera* treatment indefinitely, and it is further

ORDERED, that CX0244 is admitted into evidence.

D. Michael Chappell
Chief Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

I certify that I filed via hand and electronic mail delivery an original and two copies of the foregoing Motion to Admit European Commission Decision with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-159
Washington, DC 20580

I also certify that I delivered via electronic and hand delivery a copy of the foregoing Motion to Admit European Commission Decision to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing Motion to Admit European Commission Decision to:

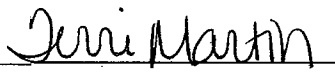
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March 17, 2010

By: 
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PROVISIONAL NON-CONFIDENTIAL VERSION

OF THE COMMISSION DECISION OF 13 MAY 2009

COMP/37.990 Intel

This is a provisional non-confidential version. The definitive non-confidential version will be published as soon as it is available.



EUROPEAN COMMISSION

Brussels, 13.5.2009
D(2009) 3726final

COMMISSION DECISION

of

**relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the
EEA Agreement**

(COMP/C-3 /37.990 - Intel)

(Only the English text is/are authentic)

(Text with EEA relevance)

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COMMISSION DECISION

of

**relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the
EEA Agreement**

(COMP/C-3 /37.990 - Intel)

(Only the English text is/are authentic)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (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 Treaty¹, and in particular Article 7 and Article 23(2) thereof,

Having regard to the complaint lodged by Advanced Micro Devices on 18 October 2000 and on 26 November 2003, alleging infringements of Article 82 of the Treaty and Article 54 of the EEA Agreement by Intel and requesting the Commission to put an end to those infringements,

Having regard to the Commission decision of 26 July 2007 to initiate proceedings in this case,

Having given the undertaking concerned the opportunity to make known its views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 12 of 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 Treaty²,

¹ OJ L 1, 4.1.2003, p. 1.

² OJ L 123, 27.4.2004, p. 18.

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

Having regard to the final report of the hearing officer in this case³,

WHEREAS:

I. PARTIES TO THE PROCEEDINGS

1. Intel Corporation

(1) Intel Corporation ("Intel") was incorporated in the state of California, USA in 1968, and was reincorporated in the state of Delaware, USA in 1989. It has operations in different parts of the world including in locations within the EEA. It describes itself as the "*world's largest semiconductor chip maker, based on revenue*". It states that its "*products include chips, boards and other semiconductor components that are the building blocks integral to computers, servers and networking and communications products.*" It develops "*advanced integrated digital technology products, primarily integrated circuits, for industries such as computing and communications*". Intel offers "*products at various levels of integration, allowing our customers flexibility to create advanced computing and communications systems and products.*"⁴

(2) At the end of December 2008, Intel employed about 94 100 people worldwide. In 2007, Intel had net revenues of USD 38 334 million and a net income of USD 6 976 million. In 2008, Intel had net revenues of USD 37 586 million and a net income of USD 5 292 million.⁵

2. The complainant: Advanced Micro Devices, Inc.

(3) Advanced Micro Devices, Inc. ("AMD") describes itself as "*global semiconductor company with facilities around the world*". It provides "*processing solutions for the computing, graphics and consumer electronics markets.*" AMD was incorporated under the laws of Delaware, USA, on May 1, 1969 and became a publicly held

³ OJ [TO BE ADDED WHEN PUBLISHED].

⁴ Intel's form 10-K report for the fiscal year ended 29 December 2007, <http://www.sec.gov/Archives/edgar/data/50863/000089161808000106/f36442e10vk.htm>, downloaded and printed on 14 January 2009.

⁵ Intel's form 10-K report for the fiscal year ended 27 December 2008, <http://idea.sec.gov/Archives/edgar/data/50863/000089161809000047/f50771c10vk.htm>, downloaded and printed on 6 April 2009.

company in 1972. Since 1979, its common stock has been listed on the New York Stock Exchange under the symbol "AMD".⁶

- (4) At the end of 2007, AMD had approximately 16 420 employees. In 2007, AMD had net revenues of USD 6 013 million and made a net loss of USD 3 379 million. In 2006, AMD had net revenues of USD 5 649 million and made a net loss of USD 166 million.⁷

II. PROCEDURE

1. Commission procedure

- (5) On 18 October 2000, AMD submitted a formal complaint to the Commission under Article 3 of Council Regulation (EC) No 17/62, First Regulation implementing Articles 81 and 82 of the Treaty.⁸
- (6) On 26 November 2003, AMD submitted a supplementary complaint under Article 3 of Regulation (EC) No 1/2003⁹ providing new facts and making new allegations.
- (7) In May 2004, the Commission launched a round of investigations focusing on allegations contained in the supplementary complaint. Within the framework of that investigation, in July 2005, the Commission, assisted by several National Competition Authorities, carried out on-the-spot inspections under Article 20(4) of Regulation (EC) No 1/2003 at four Intel locations in [...] ([...]¹⁰ [...]), [...], as well as the locations of several Intel customers [...].
- (8) On 26 July 2007, the Commission notified a Statement of Objections to Intel in Case No. COMP/C-3/37.990 ("the 26 July 2007 SO"). The Commission took the preliminary view that Intel held a dominant position and had abused its dominant position by engaging in exclusionary marketing arrangements and other practices with certain customers.

⁶ AMD's form 10-K report for the fiscal year ended 29 December 2007, <http://www.sec.gov/Archives/edgar/data/2488/000119312508038588/d10k.htm>, downloaded and printed on 14 January 2009.

⁷ idem.

⁸ OJ L 13, 21.2.1962, p. 204. p.

⁹ OJ L 1, 4.1.2003, p. 1.

¹⁰ [...].

- (9) The Commission originally set Intel a deadline of 8 weeks to submit its reply to the 26 July 2007 SO.¹¹ That deadline was extended twice by the Hearing Officer, first to 4 January 2008,¹² and then to 7 January 2008.
- (10) Intel submitted its reply to the 26 July 2007 SO on 7 January 2008 ("Intel Reply to the 26 July 2007 SO"). Intel asked for an oral hearing to be held ("the Oral Hearing"). The Oral Hearing was held on 11 and 12 March 2008.
- (11) In application of Article 6(1) of Regulation (EC) No 773/2004,¹³ the Commission provided AMD with a copy of the non-confidential version of the 26 July 2007 SO. AMD made its views on the 26 July 2007 SO known in writing on 29 February 2008. AMD also participated at the Oral Hearing.
- (12) After the 26 July 2007 SO was issued, the Commission obtained additional information about Intel's conduct vis-à-vis other customers and distributors of its products. This included information contained in Intel's Reply to the 26 July 2007 SO.
- (13) On 17 July 2006, AMD filed a complaint to the German National Competition Authority, the Bundeskartellamt. In the complaint, AMD alleged that Intel had engaged in exclusionary marketing arrangements and other practices with Media-Saturn-Holding GmbH ("MSH"), a European retailer of microelectronic devices, including Personal Computers ("PCs").
- (14) On 6 September 2006, the German National Competition Authority exchanged information with the Commission on that subject, in application of Article 12 of Regulation (EC) No 1/2003.
- (15) Following that exchange of information, the Commission opened an investigation on the subject, under Case No. COMP/C-3/39.493. Within the framework of that investigation, in February 2008, the Commission, assisted by several National Competition Authorities, carried out inspections under Article 20(4) of Regulation (EC) No 1/2003 at Intel's premises [...], as well as at the premises of several European PC retailers in [...].
- (16) On 17 July 2008, the Commission notified a supplementary Statement of Objections to Intel ("the 17 July 2008 SSO"), and at the same time joined the relevant findings of Case No. COMP/C-3/39.493 to the procedure followed under

¹¹ Letter from the Commission to Intel of 27 July 2007.

¹² Letter from the Hearing Officer to Intel of 12 October 2007.

¹³ OJ L 123, 27.4.2004, p. 18.

Case No. COMP/C-3/37.990. The Commission continued the procedure under Case No. COMP/C-3/37.990.

- (17) The Commission originally set Intel a deadline of 8 weeks to submit its reply to the 17 July 2008 SSO.¹⁴ On 15 September 2008, that deadline was extended to 17 October 2008 by the Hearing Officer.¹⁵
- (18) On 10 October 2008, Intel lodged an application with the Court of First Instance ("CFI") seeking *inter alia* the annulment of the decision of the Hearing Officer of 15 September 2008 granting an extension of the time limit, and of an alleged decision by Ms. Neelie Kroes, Member of the Commission, taken on or about 6 October 2008. Intel also applied for interim measures, asking the President of the CFI to suspend the Commission's procedure pending a ruling by the CFI on its main application and/or to suspend the timetable for service of a reply to the 17 July 2008 SSO and/or, in the event that the Court were to reject the application for interim measures or reject Intel's application in the main action, to grant Intel 30 days from the date of the said judgment to reply to the 17 July 2008 SSO.¹⁶
- (19) Intel failed to provide a reply to the 17 July 2008 SSO by the extended deadline of 17 October 2008. Intel's arguments relating to its decision not to provide a reply to the 17 July 2008 SSO are dealt with in section IV.1.
- (20) On 19 December 2008, the Commission sent Intel a letter drawing Intel's attention to a number of specific items of evidence relating to the Commission's existing objections which the Commission indicated it might use in a potential final Decision. The Commission set Intel a deadline of 19 January 2009 to provide comments on these items. That deadline was extended to 23 January 2009.¹⁷
- (21) Intel failed to reply to the Commission's letter of 19 December 2008 by the extended deadline of 23 January 2009. This was confirmed by Intel's counsel on 27 January 2009,¹⁸ after the Commission had asked Intel about the matter.¹⁹ Intel did not provide reasons for its failure to reply by the extended deadline.
- (22) On 27 January 2009, the President of the Court of First Instance issued an Order rejecting Intel's application for interim measures on the ground that Intel's main

¹⁴ Letter from the Commission to Intel of 17 July 2008.

¹⁵ Letter from the Hearing Officer to Intel of 15 September 2008.

¹⁶ Letter from Intel to the Commission of 13 October 2008.

¹⁷ Letter from the Commission to Intel of 16 January 2009.

¹⁸ Email from Intel to the Commission of 27 January 2009, entitled '*CONFIDENTIAL Case 37.990*'.

¹⁹ Email from the Commission to Intel of 26 January 2009, entitled '*Case 37.990*'.

application was *prima facie* manifestly inadmissible and that the condition of urgency was not fulfilled. This rejection included the rejection of Intel's request for an extension of the 17 October 2008 deadline to reply to the 17 July 2008 SSO. In this respect, the Order sets out that "*in order to have access to all the information it needs to properly conduct the administrative procedure, it is a possibility available to the Commission to grant such an extension in order to allow Intel to serve a reply to the SSO, even though Intel has not complied with the time-limit initially laid down, or to take into account written submissions in response to the SSO received after that time-limit.*"^{20 21}

- (23) On 29 January 2009, Intel 'proposed' to file its reply to the 17 July 2008 SSO and to the Commission letter of 19 December 2008 within 30 days of the day of the Order of the President of the Court of First Instance. Intel also asked the Commission to confirm that it would grant Intel's request for an oral hearing.²²
- (24) On 2 February 2009, the Commission informed Intel by letter that the Commission services had decided not to grant an extension of the deadlines to reply to the 17 July 2008 SSO or to the Commission letter of 19 December 2008, as such an extension would not be justified given that Intel had had ample opportunity to submit such replies within the deadlines and had chosen not to do so. The letter also indicated that the Commission services were nevertheless willing to consider the possible relevance of belated written submissions, provided that Intel served such submissions by 5 February 2009. Finally, the letter indicated that the Commission services considered that the proper conduct of the administrative procedure did not necessitate an oral hearing.²³
- (25) On 5 February 2009, Intel served a written submission including observations related to the 17 July 2008 SSO and the Commission letter of 19 December 2008 (respectively "Intel submission of 5 February 2009 related to the SSO" and "Intel submission of 5 February 2009 related to the Commission letter of 19 December 2008"). Intel characterises its submission of 5 February 2009 related to the SSO as its "reply to the SSO". Similarly, Intel characterises its submission of 5 February 2009 related to the letter of 19 December 2008 as its "reply to the letter of 19 December 2008". However, the Commission cannot accept these characterisations

²⁰ Order of the President of the Court of First Instance of 27 January 2009 in Case T-457/08 R *Intel v Commission*, paragraph 89.

²¹ On 3 February 2009, Intel withdrew its application in Case T-457/08. The case was removed from the register of the Court by Order of 24 March 2009.

²² Letter from Intel to the Commission of 29 January 2009.

²³ Letter from the Commission to Intel of 2 February 2009.

due to the fact that in each case, Intel chose not to reply by the specified deadline. This is described in greater detail in section IV.

- (26) In its submission of 5 February 2009, Intel indicated that it would request that the Hearing Officer grant an oral hearing. On 10 February 2009, Intel wrote to the Hearing Officer and asked to be granted an oral hearing in relation to the 17 July 2008 SSO.²⁴ The Hearing Officer replied by letter of 17 February 2009 rejecting Intel's request.²⁵
- (27) The following companies and associations have been granted the status of Interested Third Party by the Hearing Officer: Silicon Graphics, Inc. ("SGI"); International Business Machines Corporation ("IBM"); Bureau Européen des Unions de Consommateurs ("BEUC"); Union Fédérale des Consommateurs – Que Choisir ("UFC – Que Choisir"); and Hewlett-Packard Company ("HP"). The Commission informed the Interested Third Parties of the nature and subject matter of the proceedings by sending them a summary of the 26 July 2007 SO on 21 December 2007 (SGI and IBM), 3 March 2008 (BEUC), 7 March 2008 (UFC – Que Choisir) and 10 March 2008 (HP), and of the 17 July 2008 SSO on 17 December 2008 (all interested third parties). None of the Interested Third Parties made their views on the 26 July 2007 SO known in writing. BEUC, UFC – Que Choisir and HP participated at the Oral Hearing.
- (28) Access to file was granted three times to Intel (31 July 2007, 23 July 2008 and 19 December 2008).
- (29) In agreement with Intel, the access to file exercises of 31 July 2007 and 23 July 2008 were in part conducted under specific conditions. Instead of receiving access to only the non confidential part of the file provided by certain information providers, Intel was granted access to their entire information and agreed bilaterally with each of these information providers to receive the entirety or a distinct part of their information located on the Commission's file in unredacted format (that is, including confidential information) in exchange for limiting the access to this information to a restricted circle of persons (its outside counsels and economic advisers and in some cases certain in-house counsels).²⁶ The information providers waived their confidentiality rights with regard to the Commission to the extent that such a waiver was necessary for the proper conduct of that information exchange. To the extent that this type of access would amount to a restriction of Intel's rights of access to file, Intel has by letters of [...] waived its right to access

²⁴ Letter from Intel to the Hearing Officer of 10 February 2009.

²⁵ Letter from the Hearing Officer to Intel of 17 February 2009.

²⁶ The information providers that concluded such agreements with Intel are [...].

the file with regard to the Commission, and has agreed to only receive access to the respective parts of the file via the bilateral arrangements with the specific information providers.

2. Procedure in other public jurisdictions

(30) Intel's conduct has also been the object of procedures conducted by other public regulatory authorities.

(31) On 8 March 2005, the Japan Fair Trade Commission (JFTC) found that Intel's conduct violated Section 3 of the Japanese Antimonopoly Act. The JFTC concluded that Intel had *"since May 2002 ... made the five major Japanese OEMs refrain from adopting competitors' CPUs for all or most of the PCs manufactured and sold by them or all of the PCs that belong to specific groups of PCs referred to as 'series', by making commitments to provide the five OEMs with rebates and/or certain funds referred as 'MDF' (Market Development Fund) in order to maximize their MSS [market segment share], respectively, on condition that:*

(a) the Japanese OEMs make MSS at 100% and refrain from adopting competitors' CPUs.

(b) the Japanese OEMs make MSS at 90%, and put the ratio of competitors' CPUs in the volume of CPUs to be incorporated into the PCs manufactured and sold by them down to 10%;

(c) the Japanese OEMs refrain from adopting competitors' CPUs to be incorporated into PCs in more than one series with comparatively large amount of production volume to others."²⁷

(32) The JFTC specified that [...].

(33) On 4 July 2008, the Korean Fair Trade Commission ("KFTC") found that, in the period from 2002 to 2005, Intel had tried to exclude AMD from the market by providing various rebates to local OEMs, including Samsung Electronics and Sambo Computer (TriGem), contingent upon them not purchasing Central Processing Units (CPUs) from AMD. The KFTC imposed a corrective order and a punitive surcharge of KRW 26 000 million (approximately EUR 16,5 million) on Intel. On 9 December 2008, Intel announced that it had filed a formal complaint with the Seoul High Court seeking to overturn the KFTC's final written decision.²⁸

²⁷ See JFTC press release at <http://www.jftc.go.jp/e-p/pressreleases/2005/march/050308intel.pdf>, downloaded and printed on 1 June 2007.

²⁸ See <http://www.intel.com/pressroom/chipshots/chipshots.htm#120908b>, downloaded and printed on 14 January 2009.

(34) The Federal Trade Commission of the United States of America ("US FTC") is also currently engaged in an investigation of Intel's commercial practices. In the context of this enquiry, it served a subpoena to Intel on 4 June 2008.²⁹

(35) The Attorney General of the State of New York is also currently engaged in an investigation of Intel's commercial practices.³⁰

III. INTEL'S ALLEGATION OF BIAS IN THE COMMISSION'S ENQUIRY

(36) Intel has alleged that the Commission's enquiry has been "*discriminatory and partial*".³¹ According to Intel, the Commission "*has blindly adopted wholesale AMD's theories and allegations blaming Intel's pricing and other conduct for each AMD failure to win the business of the OEMs*".³² Intel also alleges that the Commission "*has distorted the evidence and the record*",³³ that it is guilty of "*suppression of exculpatory evidence*",³⁴ and that it has shown "*bias and lack of objectivity*".³⁵ Intel speaks of "*systematic, willful administrative malfeasance that infects the entire administrative procedure*".³⁶ Intel also expressed "*serious doubts on the fairness and the independence of the Case Team [the Commission staff handling the investigation]*".³⁷

(37) The Commission considers that there are no grounds for the serious allegations made by Intel. As the Commission has already specified to Intel during the proceedings, "*the Commission has carried out a thorough and balanced enquiry in the present case. It has conducted several surprise inspections [in 2005 and 2008 at the premises of various actors in the market [21 premises], and has gathered a broad range of information from many sources*".³⁸ As regards the body of evidence that the Commission has gathered, the Commission sent requests for information pursuant to Articles 11 and 18 of Regulation (EC) No 1/2003 to 141 companies in this case, including all major OEMs, the main European PC retailers, Intel and AMD. As a result, there are more than 3900 document

²⁹ See <http://www.intel.com/pressroom/archive/releases/2008/20080606corp.htm>, downloaded and printed on 14 January 2009.

³⁰ See http://www.oag.state.ny.us/media_center/2008/jan/jan10a_08.html, downloaded and printed on 14 January 2009.

³¹ Intel's Application in Case T-457/08. Summary of the Application, p. 2, paragraph 2.

³² Intel's letter to Commissioner Kroes of 25 September 2008, p. 1, paragraph 3.

³³ Intel's Application in Case T-457/08. Summary of the Application, p. 2, paragraph 98.

³⁴ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 810.

³⁵ Intel's Application in Case T-457/08. Summary of the Application, p. 2, paragraph 98.

³⁶ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 810.

³⁷ Intel's letter to Commissioner Kroes of 25 September 2008, p. 3, paragraph 2.

³⁸ Letter from the Commission to Intel of 6 October 2008.

entries in the file, many of which contain several documents with multiple pages. In total, the file numbers several hundred thousand pages. As is apparent from this Decision, the Commission's conclusions are based on extensive sets of evidence originating in their significant majority from third parties or from Intel itself. It is therefore not the case, as Intel claims, that the Commission "*has blindly adopted wholesale AMD's theories and allegations blaming Intel's pricing and other conduct for each AMD failure to win the business of the OEMs*".³⁹

(38) Even though the Commission considers that Intel's allegations are without merit and in any event without relevance to the substance of the Commission's case, in view of the seriousness of Intel's allegations, the Commission will briefly address the three specific '*procedural defects*' which, in its submission of 5 February 2009, Intel claims characterise the case.⁴⁰ Subsection 1 will address the meeting between the Commission and Dell of 23 August 2006. Subsection 2 will address [...]. Finally, Intel also addresses the issue of certain documents from the private litigation between AMD and Intel in the US State of Delaware, which it claims the Commission should have sought to obtain and provide to Intel. This specific Intel claim will be examined in section IV as it is the main element invoked by Intel to explain its failure to reply to the 17 July 2008 SSO and to submit comments on the Commission's letter of 19 December 2008 by the deadlines set by the Commission.

1. The meeting between the Commission and Dell of 23 August 2006

(39) Intel makes reference to a meeting held on 23 August 2006 between members of the Commission's case team handling the investigation in case COMP/C-3/37.990 and [...], [Dell Executive] and [Dell Executive], as well as [...]. According to Intel, the Commission "*failed to take a detailed file note*" of this meeting.⁴¹ Intel notes that in March 2003, [Dell Executive] had provided testimony to the US FTC, which it views as "*highly favourable to Intel*".⁴² Furthermore, Intel relies on a document which it obtained from Dell in the course of discovery during the US private litigation between AMD and Intel entitled "*Indicative list of topics to be discussed with Dell Meeting of 23 August 2006*".⁴³ Intel claims that that document constitutes an agenda of the meeting which the Commission would have failed to provide to Intel in the course of access to file.⁴⁴ On the basis of these two documents, Intel concludes that it is "*inconceivable that a great*

³⁹ Intel's letter to Commissioner Kroes of 25 September 2008, p. 1, paragraph 3.

⁴⁰ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, section V.

⁴¹ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 737.

⁴² *Idem*.

⁴³ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, Annex 615.

⁴⁴ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 615.

*volume of relevant evidence was not given by [Dell Executive] during that interview [the meeting with Dell]" and that it is "virtually certain, given the topics addressed, that the evidence given by [Dell Executive] was exculpatory."*⁴⁵ Finally, Intel alleges that the Commission refused Intel access to a note to the file which had been written subsequent to the meeting.⁴⁶

(40) Intel's arguments are misconceived. In the first instance, there is no general obligation for the Commission to take minutes of meetings.

(41) The Commission Notice on the rules for access 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 139/2004⁴⁷ (hereafter "the Notice on Access to File") states that: "*There is no obligation on the Commission departments to draft any minutes of meetings with any person or undertaking. If the Commission chooses to make notes of such meetings, such documents constitute the Commission's own interpretation of what was said at the meetings, for which reason they are classified as internal documents.*"⁴⁸

(42) The case law underlying that above paragraph of the Notice on Access to File to which it makes explicit reference is stated in paragraphs 349-359 of the TACA Judgement.⁴⁹ In paragraph 351 of the TACA Judgement, the Court states that "*there is ... no general duty on the part of the Commission to draw up minutes of discussions in meetings or telephone conversations with the complainants which take place in the course of the application of the Treaty's competition rules*". The Court has further confirmed this finding in the Groupe Danone Judgement.⁵⁰

(43) In the TACA and the Groupe Danone Judgments, the Court goes on to say that "*if the Commission intends to use in its decision inculpatory evidence provided orally by another party it must make it available to the undertaking concerned so as to enable the latter to comment effectively on the conclusions reached by the Commission on the basis of that evidence. Where necessary, it must create a written document to be placed in the file*".⁵¹

⁴⁵ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 752.

⁴⁶ Intel submission of 5 February 2009 related to the 17 July 2008 SSO, paragraph 737.

⁴⁷ OJ C 325, 22.12.2005, p. 7.

⁴⁸ Notice on Access to File, paragraph 13.

⁴⁹ Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line and others v Commission (TACA)* [2003] ECR II-3275, paragraphs 349-359.

⁵⁰ Case T-38/02 *Groupe Danone v Commission* [2005] ECR II-4407, paragraph 66.

⁵¹ *TACA op. cit.*, paragraph 352; *Groupe Danone op.cit.*, paragraph 67.

(44) Those circumstances do not apply to this case. The Commission did not make use of any information provided orally in the 23 August 2006 meeting with Dell to inculcate Intel. As to Intel's claim that it is '*virtually certain*' that exculpatory evidence relating to Intel was provided by [Dell Executive] during this meeting, that claim is entirely based on Intel's speculation that [Dell Executive] would have provided views during the 23 August 2006 meeting between Dell and the Commission which support Intel's own interpretation of the content of [Dell Executive]'s [...]2003 testimony to the US FTC. In fact, the purpose of the meeting with Dell was to explore further investigative measures related to Dell. The purpose was not to gather information in the format of countersigned minutes or statements pursuant to Article 19(1) of Regulation (EC) No 1/2003.

(45) This reasoning on the part of Intel is incorrect on three counts. Firstly, it must be emphasised that the Commission was under no obligation to take minutes of the meeting of 23 August 2006 under the Notice on Access to File and the case law of the Court in *TACA* and *Groupe Danone*. The relevant case law that exceptionally establishes an obligation to create a written document for the file with respect to inculpatory evidence is not applicable in this case because the meeting did not pertain to information that the Commission "*intends to use in [any possible] decision.*" The present Decision does not rely on the content of the meeting of 23 August 2006.

(46) Secondly, Intel's allegation that exculpatory information was communicated to the Commission at the meeting remains unfounded. In order to substantiate its claim, Intel refers to [Dell Executive]'s US FTC deposition made more than 3 years prior to the meeting and to a document that allegedly shows the indicative topics to be discussed at the meeting⁵² (as explained in recital (39)). The Commission notes that neither of these documents contain evidence of what was actually discussed at the meeting. Without prejudice to whether any statements which a participant of the meeting made three years previously are exculpatory, the fact that such statements were made does not demonstrate that [Dell Executive] provided any information to the Commission which might be exculpatory. In fact, [Dell Executive]'s statement made before the US FTC largely relates to the period preceding the conduct relating to Dell concerned by this Decision.⁵³ This is further confirmed by the questions raised during the meeting to which Dell answered in

⁵² The Commission notes that that document provided by Intel as Annex 615 to its submission of 5 February 2009 related to the 17 July 2008 SSO [...] was previously not part of the Commission's file. From the document itself, it is not possible to determine from whom it originates. It is most likely a personal note of a case handler that was either sent to Dell by email prior to the meeting or handed over to Dell during the meeting. Such notes normally serve as preparation for both the Commission case team and the other parties attending a meeting to acquaint themselves with possible topics that could be discussed at a meeting. However, in the course of a meeting, discussions often depart from the topics outlined in such notes based on the limited time available for such meetings and topics that arise in the meeting.

⁵³ The conduct related to Dell relates to the period starting from December 2002 while [Dell Executive]'s testimony before the US FTC of [...] 2003 mostly relates to the period before December 2002.

writing in a submission dated 22 September 2006 and which largely related to the performance of AMD's product 'Hammer' in the course of 2002. Equally, the indicative list of topics submitted by Dell does not imply that these topics were in fact addressed (partially or in full) at the meeting and, if they were addressed, with what level of detail. Therefore, the Commission concludes that on the basis of the evidence submitted by Intel, it cannot be demonstrated that the meeting covered exculpatory information.

(47) Finally, the claim that the testimony given by [Dell Executive] to the US FTC in [...]2003 would be "*highly favourable to Intel*" is based on a selective reading of [Dell executive]'s testimony. As will be demonstrated in section VI.2.3, when assessed in its entirety, the content of [Dell Executive]'s testimony to the US FTC is fully compatible with the Commission's conclusions on the nature of Intel's conduct with regard to Dell. Moreover, Intel has provided the Commission with a second testimony of [Dell Executive] made in 2009 in the course of the AMD/Intel Delaware litigation. As is described in section VI.2.3.4.3.f), that testimony did not alter the Commission's conclusions in this case. It is therefore highly unlikely that [Dell Executive] would have communicated to the Commission something different and more favourable to Intel at the meeting on 23 August 2006.

(48) Concerning the note to the file written subsequent to the meeting with Dell and to which Intel alleges it was refused access, the Commission notes that this is in fact an internal document which summarises the personal impression of one of the Commission's case-handlers at the meeting. This note was drafted six days after the meeting, and also incorporates in at least one instance information from other sources, personal views and provides the case-handler's views on further investigative strategy. The note was therefore evidently not drafted for the purpose of being countersigned or agreed by any other attendees of the meeting (and indeed it never was) and was not meant to become at any point in time part of the facts (inculpatory or exculpatory) resulting from this investigation. Rather, the function of this note was, as is also evident from the way the case-handler treated it, to be an *aide mémoire* for himself and for other members of the case-team in preparing further investigative measures. As Intel was informed by the Hearing Officer, there is no legal right to access to such internal documents.⁵⁴ Despite the absence of any legal duty on the part of the Commission to provide access to this internal document, a non-confidential version thereof was provided to Intel as a matter of courtesy and in order to dispel any doubts about the nature of that document and of the meeting mentioned in it. The Commission gave Intel an opportunity to provide its comments on the document.⁵⁵

⁵⁴ Letter from the Hearing Officer to Intel of 7 May 2008.

⁵⁵ Letter from the Commission to Intel of 19 December 2008, paragraph 9 and annex 3.

(49) It is also not correct that the Commission would have covered up the fact that a meeting with Dell had taken place on 23 August 2006.⁵⁶ While Intel was aware of the meeting as a result of its access to the file,⁵⁷ the Commission had initially not informed Intel of the existence of that note, as the case team considered that given its internal nature (described above in recital (48)), it was not part of the file. In the course of the access to file procedure, the Hearing Officer overruled that initial position by decision of 7 May 2008⁵⁸ and asked that the note be placed in the file, but at the same time denied Intel access to the note on the basis that the document was internal and therefore not accessible.

2. [...].

IV. INTEL'S FAILURE TO REPLY TO THE SUPPLEMENTARY STATEMENT OF OBJECTIONS OF 17 JULY 2008 AND TO SUBMIT COMMENTS ON THE COMMISSION LETTER OF 19 DECEMBER 2008 WITHIN THE DEADLINES SET BY THE COMMISSION

(53) As described in section II.1, the Commission originally set Intel a deadline of 8 weeks to submit its reply to the 17 July 2008 SSO.⁵⁹ This deadline was extended to 17 October 2008 by the Hearing Officer.⁶⁰

(54) On 10 October 2008, Intel lodged an application with the Court of First Instance (CFI) seeking *inter alia* the annulment of the deadline extension to 17 October 2008. Intel further applied for interim measures to suspend the Commission's procedure pending a ruling of the CFI on its substantive application and to extend the deadline to reply to the 17 July 2008 SSO.⁶¹

(55) Intel did not supply a reply to the 17 July 2008 SSO by the extended deadline of 17 October 2008.

(56) On 27 January 2009, the President of the CFI issued an Order rejecting Intel's application for interim measures on the ground that Intel's application was *prima facie* manifestly inadmissible. This rejection included the rejection of Intel's request for an extension of the 17 October 2008 deadline to reply to the 17 July 2008 SSO. The Order sets out that "*in order to have access to all the information it needs to properly conduct*

⁵⁶ As inferred by Intel in paragraph 750 of its submission of 5 February 2009 related to the 17 July 2008 SSO.

⁵⁷ As admitted by Intel in paragraph 745 of its submission of 5 February 2009 related to the 17 July 2008 SSO.

⁵⁸ Letter from the Hearing Officer to Intel of 7 May 2008.

⁵⁹ Letter from the Commission to Intel of 17 July 2008.

⁶⁰ Letter from the Hearing Officer to Intel of 15 September 2008.

⁶¹ Letter from Intel to the Commission of 13 October 2008.

