Alabama, to collectively acquire additional voting shares of First Citizens–Crenshaw Bancshares, Inc., and thereby indirectly acquire additional voting shares of First Citizens Bank, both of Luverne, Alabama.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

based form at the weblink: (*https://ftcpublic.commentworks.com/ftc/intel/*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form

[2] The Complaint was brought under Section 5 of the Federal Trade Commission Act, which "was designed to supplement and bolster the Sherman Act and the Clayton Act … to stop in their incipiency acts and practices which, when full blown, would violate those Acts … as well as to condemn as 'unfair methods of competition' existing violations" of those acts and practices. *F.T.C. v. Brown Shoe Co.*, 384 U.S. 316, 322 (1966) (*quoting F.T.C. v. Motion Picture Adv. Serv. Co.*, 344 U.S. 392, 394-95 (1953)); *see also F.T.C. v. Indiana Fed'n of Dentists*, 476 U.S. 447, 454 (1986). In addition, the Commission has the jurisdiction under Section 5 to challenge "unfair or deceptive acts or practices in or affecting commerce . . ."

[3] As a general rule, the Commission's statutory authority is designed to remedy conduct going forward as opposed to punishing past conduct. For example, the Commission does not have the authority to levy fines for antitrust violations.

[5] *Compare LePage' s, Inc. v. 3M Co.*, 324 F.3d 141, 155, 162 (3d Cir. 2003) (en banc) *with Cascade Health Solutions v. PeaceHealth*

particular threshold of purchases from Intel. For example, Intel would be prohibited from offering an OEM a $100 million rebate once it purchases 5 million x86 CPUs. The retroactive nature of these payment structures can disguise implicitly below-cost pricing that can unfairly exclude equally efficient competitors and smaller entrants, resulting in a loss of competition and harm to consumers. Intel, however, would not be precluded from offering volume discounts on incremental purchases above a particular threshold. For example, Intel could offer an OEM a price of $100 for each CPU up to 1 million units and a price of $90 for each CPU in excess of 1 million units. However, Intel would not be permitted to offer a price below Product Cost for the excess units. The Commission will carefully scrutinize Intel's implementation of this provision to ensure it does not price its products in such a way that forecloses competition.

2. Exceptions to the Commercial Practices Prohibitions

The exceptions to the prohibitions in Section IV.A are designed to allow Intel to offer competitive pricing and enter into other procompetitive deals with OEMs, ODMs, and End Users. These exceptions permit conduct that may truly benefit consumers while still preventing Intel from engaging in the type of anticompetitive behavior identified in the Complaint. Nothing in these exceptions, however, would prevent the Commission from pursuing independent claims against Intel under Section 2 of the Sherman Act or Section 5 of the FTC Act if Intel engages in practices that do not violate the Proposed Consent Order but are nonetheless exclusionary or unfair and result in harm to consumers.

Under Section IV.B.1, Intel is not prohibited from conditioning a Benefit on sales terms that are not expressly prohibited by the Order. For example, Intel could offer a discount to an OEM for a CPU with the condition that it is used in a laptop with a screen size of less than 9 inches.

Under Section IV.B.2, Intel is not prohibited from agreeing with an OEM, ODM, or End User customer that the customer will use distinct model numbers for Intel and non-Intel-based products. Similarly, Intel can agree with its customers that the customer will not falsely label a product based on non-Intel parts as based on Intel parts. The provision allows Intel and OEMs to use naming schemes that are intended to avoid customer confusion. For example, Intel could agree with an OEM that a specific laptop model would be branded Laptop-100A if it uses an AMD CPU and Laptop-100B if it uses an Intel CPU. However, this provision would not allow Intel to condition benefits on an OEM's agreement not to market or brand a product, which is explicitly prohibited by IV.A.3 and IV.A.4.

Under Section IV.B.3, Intel is not prohibited from meeting terms or benefits it "reasonably believes" are being offered by a rival supplier. This section does not immunize the offering of more favorable terms and conditions than those offered by the competitor, *i.e.*, predatory pricing. In addition, this exception is limited in that Intel's offer must be limited to the quantity of the competitive offer; it cannot be conditioned on exclusivity or share of the OEM's or end user's business, and it must be limited to less than a year. Intel may condition its bid upon the purchase of a minimum number of units. For example, if Intel reasonably believes that a rival supplier is offering to sell 10,000 CPUs for $90 to an OEM, it can offer to meet that price so long as the OEM agrees to purchase at least 9,000 CPUs.

Sections IV.B.4 and IV.B.5 simply make explicit what is already implicit in the Proposed Consent Order. Under Section IV.B.4., Intel would not violate the Proposed Consent Order merely because it wins all of an OEM's business, so long as it has not engaged in other conduct prohibited by the Order. The fact that an OEM purchases a Relevant Product or Chipset exclusively from Intel would not automatically support a violation of the Proposed Consent Order. Under Section IV.B.5, Intel would not violate the Proposed Consent Order if it engaged in conduct not explicitly prohibited by the Proposed Consent Order.

Under Section IV.B.6, Intel is not prohibited from offering volume discounts directly to purchasers of computers in bidding situations. Intel's offers must be in writing and must be responsive only to single bids and not contingent on future purchases.

Section IV.B.7 would permit Intel to make supply allocation decisions during times of shortage so long as it does not

regarding its compilers or libraries for the costs associated with recompiling their software using non-Intel compiler or library products. A customer seeking to use the Intel Compiler Reimbursement program must describe an Intel statement on which it relied to ensure that the program is used by customers who were misled by Intel's disclosures.