Address by Commissioner Edith Ramirez

The Commission work also started well before I was sworn in on April 5. There was no time for delay because several important matters were about to come to a head.

Before the merger, AdMob was the largest mobile advertising network. Google was the second largest mobile ad network and, of course, is the market leader in Internet search. AdMob and Google competed head-to-7

Apple's control of the iPhone platform, Apple's entry with iAd had the ability to fundamentally alter the current balance of network effects. Apple can leverage its close relationships with application developers and users, its access to a large amount of proprietary user data, and its ownership of iPhone software development tools and control over the iPhone developers' license agreement.

As a result of Apple's entry, my fellow Commissioners and I concluded that we could not use AdMob's success to date on the iPhone platform to accurately predict AdMob's competitive significance going forward, whether AdMob was owned by Google or not. This was particularly important given that AdMob's revenue and market share are derived largely from the iPhone platform. On Google's Android platform, competitive harm from the acquisition appeared unlikely as well because of Google's strong incentive to encourage the development of apps on Android to maintain the competitiveness of Android against the iPhone.

Based on these developments, I became convinced that Apple's increased presence in the market would mitigate any anticompetitive effects of Google's AdMob acquisition and, further, that a combined Google and AdMob could be a competitive counterweight to Apple in the mobile arena. For that reason, I voted to allow the merger to close without a challenge.

This was a tough decision. And it was quite a way to start my tenure at the Commission. After nearly 20 years in the private sector, where I did my best to be a zealous advocate for my clients, I was now in a very different position. I now had to make difficult judgment calls in an effort to do what is right for competition and for consumers.

But one thing that made this decision easier was the team of talented antitrust lawyers and economists at the agency. I came away from this investigation highly impressed with the level of in-house expertise at the

III. The *Intel* Settlement

Let me now turn to the next matter I want to discuss: the *Intel* case.

A. Complaint Overview

With this audience, I don't need to detail all of the complaint allegations, so let me just briefly summarize the conduct challenged in the complaint. As a general matter, the complaint alleged that, over a period of ten years, Intel engaged in a course of conduct that was designed to, and did, stall the widespread adoption of non-Intel products in violation of Section 5 of the FTC Act and Section 2 of the Sherman Act.

In the market for x86 CPUs, Intel allegedly maintained its monopoly by engaging in various tactics, other than competition on the merits, that foreclosed or limited major OEMs from adopting non-Intel x86 CPUs, especially AMD CPUs.

The complaint also challenged Intel's unfair methods of competition in markets for graphics processing units, or GPUs. As GPUs became increasingly powerful and took over some of the traditional functions of CPUs, they threatened to undermine Intel's x86 monopoly. The complaint alleged that Intel engaged in behavior, other than competition on the merits, which created a dangerous probability that Intel would acquire a monopoly in the relevant GPU markets as well.

Finally, the complaint alleged certain deceptive conduct by Intel relating to compilers and benchmarks, resulting from Intel's failure to disclose how changes it made to its compilers (which translate software source code into language readable by CPUs) might skew the performance of non-Intel chips. This conduct created inaccurate perceptions regarding the performance of non-Intel CPUs. These deceptive tactics were charged as violations of both the competition and consumer protection provisions of Section 5 of the FTC Act – that is, as both "unfair methods of competition" and "unfair or deceptive acts or practices."

B. Procedural Posture

It is also worth noting where the case stood, procedurally speaking, at the time the Commission decided to accept the settlement. The parties had been engaged in intense discovery for nearly six months, including nearly 100 depositions, 25 third-party subpoenas, and 200 million pages of documents. A trial before an Administrative Law Judge (ALJ) was set to begin in mid-September 2010.[8] But even so, the case likely was headed down a long path: administrative litigation, an ALJ ruling, an appeal to the Commission in its adjudicative capacity, and an eventual federal court appeal. Even under the best of circumstances, no one expected the case to be resolved anytime soon.

But once the case was withdrawn from adjudication on June 21,[9] the Commission was in a position to consider and ultimately agree to a settlement. The settlement has not

[8] *Intel Corp*., Order Granting Joint Motion to Amend the Scheduling Order (Apr. 30, 2010), *available at* http://www.ftc.gov/os/adjpro/d9341/100430intelaljorder.pdf.

[9] *Intel Corp*., Order Withdrawing Matter from Adjudication for the Purpose of Considering a Proposed Consent Agreement (June 21, 2010), *available at* http://www.ftc.gov/os/adjpro/d9341/100621intelorder.pdf.

yet been accepted as final, but the public comment period ended in September and the Commission is considering whether to implement any changes.

C. Settlement Highlights

The settlement contains a variety of structural and injunctive provisions.[10] Many of the prohibitions relate to specific Intel commercial and pricing practices, corresponding to the allegations of exclusive dealing, market share and loyalty discounts, bundling, and related anticompetitive conduct.

I would like to highlight what I view as four of the most important categories of forward-looking relief – the ones that seem most capable of jump-starting competition, encouraging innovation, and benefitting consumers.

1. x86 Rights

One of these categories relates to x86 rights held by firms other than Intel. The settlement includes several clarifications that will ensure the continuation of existing x86 rights by firms such as AMD, NVIDIA, and Via. It also enhances the ability of these firms to exercise these rights when dealing with foundries and customers, so these firms can more effectively compete against Intel. Also, Via's x86 license will be extended for five years, which may facilitate new entry into the x86 CPU market.

2. PCIe Interface

Another key set of remedies relates to the PCI Express industry-standard bus. This interface is critical to interoperability within the Intel platform, because it is the main way GPUs and other peripheral products co

burden is on Intel to show that any engineering or design change provides an actual benefit.

4. Deception Prohibitions

Finally, I want to specifically mention the remedies relating to the deception allegations. Intel is also subject to specifi

In most cases, market power that is acquired through acquisition is less likely to foster innovation, yet it can create the same incentives to engage in anticompetitive exclusionary conduct.

As the Guidelines now make explicit, the agencies have the prophylactic ability to prevent the creation or enhancement of market power, when it appears likely that the