

Statement of Chairman Leibowitz and Commissioner Rosch
In the Matter of Intel Corporation
Docket No. 9341

After a multi-year investigation, extensive discussions within the Commission – including an unprecedented four Commission meetings – and multiple meetings with Intel Corporation (“Intel”) and other interested parties, the Commission has voted unanimously to challenge an alleged course of conduct undertaken by Intel. Broadly speaking, the complaint alleges that Intel fell behind in the race for technological superiority in a number of markets and resorted to a wide range of anticompetitive conduct, including deception and coercion, to stall competitors until it could catch up. If the allegations in the complaint are true, Intel’s actions over a period of years and continuing up until today have diminished competition and harmed consumers.

The complaint challenges Intel’s conduct as an unfair method of competition, both in violation of the Sherman Act and also as a “stand-alone” violation of Section 5 of the FTC Act, i.e. as an unfair method of competition independent of the Sherman Act. We focus this statement on the stand-alone Section 5 unfair method of competition claim because liability under that standard has the potential to protect consumers while at the same time limiting Intel’s susceptibility to private treble damages cases.

Despite the long history of Section 5, until recently the Commission has not pursued free-standing unfair method of competition claims outside of the most well-accepted areas, partly because the antitrust laws themselves have in the past proved flexible and capable of reaching most anticompetitive conduct. However, concern over class actions, treble damages awards, and costly trials have caused many courts in recent decades to limit the reach of antitrust. The result has been that some conduct harmful to consumers may be given a “pass” under antitrust jurisprudence, not because the conduct is benign but out of a fear the harm might be outweighed by the collateral consequences created by private enforcement. For this reason, we have seen an increasing amount of potentially anticompetitive conduct that is not easily reached under the antitrust laws, and it is more important than ever that the Commission actively consider whether it may be appropriate to exercise its full Congressional authority under Section 5.

It has been understood for many years that Section 5 extends beyond the borders of the antitrust laws, and its broad reach is beyond dispute. Indeed, that broad authority is woven into the very framework of the Commission itself. When Congress passed the Federal Trade Commission Act in 1914, it specifically decided to create an agency that has broad jurisdiction to stop unfair methods of competition, and it balanced that broad authority by limiting the remedies available to the Commission.

¹ Federal Trade Commission Act, 15 U.S.C. § 45. The complaint also includes a claim that Intel’s conduct constituted an unfair act or practice in violation of Section 5.

legitimate interest in seeing this matter resolved quickly. The Commission is fully committed to a speedy resolution of this action. We are bringing this case under the Commission's recently adopted ~~PA~~ rules of practice, and ~~we~~ expect that a trial on the merits will begin within nine months, and a Commission decision will be issued within twenty months. This schedule is substantially ~~more~~ rapid than the far lengthier process usually followed in federal ~~court~~ antitrust litigation.