EUROPEAN COMMISSION
Competition DG

CASE AT.37990 - INTEL

(Only the English text is authentic)

ANTITRUST PROCEDURE
Council Regulation (EC) No 1/2003

Article 7 and 23(2) Regulation (EC) 1/2003
Date: 22/09/2023

EUROPEAN
COMMISSION

Brussels, 22.9.2023
C(2023) 5914 final

COMMISSION DECISION

of 22.9.2023

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement

(AT.37990 - Intel)

(Text with EEA relevance)

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(AT.37990 - Intel)

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1] (the "Treaty"),

Having regard to the Agreement on the European Economic Area (the "EEA Agreement"),

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 Treaty,[2] and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission decision of 26 July 2007 relating to the initiation of proceedings in case AT.37990 - *Intel*,[3]

Having regard to Commission Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement in case AT.37990 – *Intel*,

Having regard to the judgment of the General Court of 12 June 2014 in case T-286/09 *Intel Corporation Inc. v Commission*[4], to the judgment of the Court of Justice of 6 September 2017

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1 OJ, C 115, 9.5.2008, p.47.

2 OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

3 For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p.7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

4 ECLI:EU:T:2014:547

in Case C-413/14 P *Intel Corporation Inc. v Commission*[5], and to the judgment of the General Court of 26 January 2022 in Case T-286/09 RENV *Intel Corporation Inc. v Commission,*[6]

Having given the undertaking concerned the opportunity to make known its views on the intention of the Commission to adopt a new decision imposing a fine on that undertaking for having committed a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement, which consisted of the elements set out in Article 1 (f) to (h) of the Commission Decision C (2009) 3726 final,

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

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

Whereas:

1. BACKGROUND

1.1. The 2009 Decision

(1) On 13 May 2009, the Commission adopted Commission Decision C(2009) 3726 final[7] (the "2009 Decision"). Article 1 of the 2009 Decision stated that Intel Corporation ("Intel") had committed a single and continuous infringement of Article 102 of the Treaty and Article 54 of the EEA Agreement[8] from October 2002 until December 2007 by implementing a strategy aimed at foreclosing competitors from the market of x86 CPUs which consisted of the following elements:

(a) Granting rebates to Dell between December 2002 and December 2005 at a level that was conditional on Dell obtaining all of its x86 CPU supplies from Intel;

(b) Granting rebates to HP between November 2002 and May 2005 at a level that was conditional on HP obtaining at least 95% of its corporate desktop x86 CPU supplies from Intel;

(c) Granting rebates to NEC between October 2002 and November 2005 at a level that was conditional on NEC obtaining at least 80% of its client PC x86 CPU supplies from Intel;

(d) Granting rebates to Lenovo between January 2007 and December 2007 at a level that was conditional on Lenovo obtaining all of its notebook x86 CPU supplies from Intel;

(e) Granting payments to Media Saturn Holding between October 2002 and December 2007 at a level that was conditional on Media Saturn Holding selling only computers incorporating Intel x86 CPUs;

(f) Granting payments to HP between November 2002 and May 2005 conditional on: (i) HP directing HP's AMD-based x86 CPU business desktops to Small and Medium Business and Government, and Educational and Medical customers rather than to enterprise business customers; (ii) precluding HP's channel

[5] ECLI:EU:C:2017:632

[6] ECLI:EU:T:2022:19

[7] Commission Decision C(2009) 3726 final of 13 May 2009 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (AT.37990 – *Intel*).

[8] Unless otherwise stated, references to Article 102 of the Treaty should be also read as including Article 54 of the EEA Agreement.

partners from stocking HP's AMD-based x86 CPU business desktops such that such desktops would only be available to customers by ordering them from HP (either directly or via HP channel partners acting as sales agent); and (iii) HP delaying the launch of its AMD-based x86 CPU business desktop in the EMEA region by six months;

(g) Granting payments to Acer between September 2003 and January 2004 conditional on Acer delaying an AMD-based x86 CPU notebook;

(h) Granting payments to Lenovo between June 2006 and December 2006 conditional on Lenovo delaying and finally cancelling its AMD-based x86 CPU notebooks.

(2) Article 2 of the 2009 Decision imposed on Intel a fine of EUR 1 060 000 000. Article 3 ordered Intel to bring the infringement to an end and to refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or equivalent object or effect.

1.2. The judgments of the General Court in Case T-286/09, the Court of Justice in case C-413/14 P and the General Court in Case T-286/09 RENV

(3) Following an application by Intel pursuant to Article 263 TFEU for the annulment of the 2009 Decision, by judgment of 12 June 2014 in Case T-286/09 ("the initial judgment") the General Court dismissed the action in its entirety. Intel appealed the initial judgment to the Court of Justice. In its judgment of 6 September 2017, (the "appeal judgment") the Court of Justice set aside the initial judgment and referred the case back to the General Court. In the appeal judgment, the Court of Justice rejected Intel's limited challenge to the initial judgment regarding the Commission's international jurisdiction[9] to apply Article 102 TFEU in the 2009 Decision and its challenge to the initial judgment regarding the alleged existence of a material procedural irregularity affecting Intel's rights of defence. However, the appeal judgment clarified earlier case law regarding the substantive conditions for determining when rebates conditional on exclusivity constitute an abuse under Article 102 TFEU and referred the case back to the General Court for it to review whether the conditional rebates were capable of restricting competition in view of certain economic evidence Intel had relied on but which had not been taken into account by the initial judgment.

(4) Intel submitted written observations on the referral back. In those observations, Intel withdrew its pleas in law in the action based on the Commission's jurisdiction and the procedural irregularities. These pleas therefore no longer formed part of the subject matter of the proceedings.[10] The General Court ruled again on all the grounds and arguments put forward by Intel at first instance, with the exception of the pleas that were expressly withdrawn.[11] On 26 January 2022 the General Court delivered its judgment in Case T-286/09 RENV (the "renvoi judgment"). In the renvoi judgment, the General Court (i) annulled Article 1(a) to (e) of the 2009 Decision concerning Intel's conditional rebates, (ii) annulled Article 2 of the 2009 Decision concerning

[9] Intel's Application in Case T-286/09 contested the Commission's international jurisdiction extensively. However, as noted in the initial judgment in Case T-286/09, at paragraph 225, Intel limited the scope of its claim in that respect to its conduct *vis-à-vis* Acer and Lenovo. In its Appeal in Case C-413/14 P, Intel further limited its jurisdictional challenge to its conduct *vis-à-vis* Lenovo, as noted in the appeal judgment, paragraphs 31 and 32.

[10] Case T-286/09 RENV, cited *ut supra*, paragraph 74.

[11] Case T-286/09 RENV, cited *ut supra*, paragraph 82.

the imposition of the fine, (iii) annulled the cease-and-desist obligation in Article 3 of the 2009 Decision insofar as it concerns the conditional rebates, and (iv) dismissed the action as to the remainder.

(5) In the renvoi judgment, the General Court in particular dismissed Intel's claim that its payments to HP, Acer and Lenovo (the so-called "naked restrictions") should be subject to the same legal test and principles as the conditional rebates. The General Court confirmed instead the clear distinction between the naked restrictions and the conditional rebates which has been applied by the Courts in all the judicial proceedings.[12] Intel did also not put forward any argument capable of demonstrating that certain factual matters considered in the initial judgment relating to naked restrictions ought to be reconsidered following the referral back.[13] The General Court therefore confirmed the findings with regard to the naked restrictions in its initial judgment and their unlawfulness under Article 102 TFEU.[14] It follows that the 2009 Decision's finding of a single and continuous infringement and imposition of a cease-and-desist obligation was upheld as regards the conduct set out in Article 1(f) to (h) of the 2009 Decision (the naked restrictions) and that the grounds serving as a basis for this finding, as described in its recitals, still stand. However, since the General Court held that it was not in a position to establish the amount of the fine relating to the naked restrictions, it annulled the entire fine in Article 2 of the 2009 Decision.[15]

(6) Whereas the renvoi judgment is currently under appeal insofar as the conditional rebates are concerned,[16] the General Court's finding concerning the unlawfulness of the naked restrictions has become *res judicata* in the absence of an appeal from Intel in respect of any aspect of the renvoi judgment concerning the naked restrictions. The fine originally imposed on Intel, however, has been annulled in its entirety.

(7) The Commission's re-imposition of a fine in a case where the Court has not exercised its unlimited jurisdiction and ruled on the penalty is permitted under Union Courts' case law: in this case the Commission may reopen the procedure at the stage at which the illegality was found to have occurred and exercise again its power to impose penalties.[17]

(8) In this case, as the annulment of Article 2 of the 2009 Decision does not affect the legality of the preparatory acts adopted prior to the 2009 Decision, nor the 2009 Decision itself insofar as the naked restrictions are concerned, the Commission may take up the procedure at the point at which the illegality found by the General Court occurred. That point corresponds to the adoption of the 2009 Decision, this being the document imposing the fine covering both the conditional rebates and the naked restrictions. The illegality found by the General Court does not, however, concern the findings made in the 2009 Decision in respect of the naked restrictions, with the exception of the amount of the fine as that fine was imposed for both the rebates and naked restrictions.

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12 Case T-286/09 RENV, cited *ut supra*, paragraphs 87-96.

13 Case T-286/09 RENV, cited *ut supra*, paragraph 95.

14 Case T-286/09 RENV, cited *ut supra*, paragraph 96.

15 Case T-286/09 RENV, cited *ut supra*, paragraph 529.

16 Case C-240/22 P, *Commission v Intel Corporation*.

17 See Joined Cases C-238/99, 244, 245, 247, 250-252 and 254/99 P, *Limburgse Vinyl Maatschappij e.a. v Commission ("PVC II")*, ECLI:EU:C:2002:582, paragraphs 693 and 695. See also Joined Cases T-472/09 and T-55/10, *SP v Commission*, ECLI:EU:T:2014:1040, paragraph 277; and Case T-91/10, *Lucchini v Commission*, ECLI:EU:T:2014:1033, paragraph 173.

2. ADOPTION OF A NEW DECISION IMPOSING A FINE WITH REGARD TO THE NAKED RESTRICTIONS

2.1. Commission's assessment

(9) Currently, there is a situation whereby the Commission's finding of an infringement in the 2009 Decision with regard to the naked restrictions remains undisturbed by any of the judgments and therefore has the force of *res judicata*. The fine for this infringement was annulled by the renvoi judgment, but only because the Court found it did not have the information available to identify how much of the original fine should be attributed to the naked restrictions, and did not choose to exercise its unlimited jurisdiction to determine the fine for the naked restrictions. This Decision remedies that situation.

(10) The Commission has discretion as to whether or not re-open a procedure and impose a fine. In this case, the Commission considers such an imposition appropriate in order to ensure that Intel's naked restrictions, which constitute a serious infringement of Article 102 TFEU, do not go unpunished and, as a result, to ensure an appropriate deterrent effect. It should be recalled that the naked restrictions were confirmed already in the initial judgment as pursuing an anti-competitive object and clearly falling outside the scope of competition on the merits, capable by their very nature of restricting competition, a conclusion which remained undisputed during the subsequent judicial proceedings.[18]

(11) The limitation period pursuant to Articles 25 and 26 of Regulation 1/2003 has not expired. Moreover, as further explained in section 3.3.2, there are no factors indicating that the length of the time elapsed has been unreasonable and that imposing a fine for the naked restrictions would no longer be appropriate.

(12) This Decision is addressed to the same legal entity as the 2009 Decision, namely Intel Corporation. This Decision does not contain any new objections or evidence against Intel, beyond those on which Intel was given an opportunity to be heard in the context of the proceedings leading up the adoption of the 2009 Decision. Therefore, the obligation pursuant to Article 27(1) of Regulation (EC) No 1/2003 was fulfilled for the infringement found in the 2009 Decision.

(13) The Commission further notes that it has already guaranteed Intel's right to an oral hearing pursuant to Article 12(1) 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 Treaty. Indeed, after Intel submitted its reply to the statement of objections of 26 July 2007, Intel asked for an oral hearing that was held on 11 and 12 March 2008. According to the final report of the Hearing Officer that followed the 2009 Decision, the oral hearing was "*highly valuable in giving Intel the opportunity to present its views on the allegations, the underlying reasoning*".

2.2. Intel's views on the Commission's intention to adopt a new decision imposing a fine

(14) The Commission informed Intel by letter dated 2 May 2023 (the "Letter") that it intended to adopt a new decision imposing a fine on Intel pursuant to Article 23(2) of Council Regulation No 1/2003, for having committed a single and continuous infringement of Article 102 TFEU, by implementing a strategy aimed at foreclosing

[18] See initial judgment, paragraphs 198 to 220 (confirmed by the renvoi judgment in paragraphs 96 and 531).

competitors from the market of x86 CPUs which consisted of the elements set out in Article 1 (f) to (h) of the 2009 Decision (see recital (1) above).[19] In the Letter the Commission stated that it intended to calculate the fine to be imposed on Intel in accordance to a methodology which corresponds to that described below in Section 3.

(15) In the Letter, Intel was invited to make known its views on the Commission's intended decision within four weeks. Following Intel's request, the Commission granted Intel an extension of four further weeks to reply to the Letter.[20]

(16) Intel submitted a reply to the Letter ("Reply to the Letter") on 26 June 2023.[21]

2.2.1. Commission jurisdiction

(17) In its Reply to the Letter, Intel submits that, before reimposing a fine, the Commission must make a fresh assessment of its jurisdiction with respect to the conduct relating to Lenovo and Acer. Intel submits that, following the annulment of the rebates part of the 2009 Decision, there has been a radical change in the nature and extent of any remaining single and continuous infringement, as Intel's conduct *vis-à-vis* Lenovo and Acer was small in scale and very largely focused on Asia.[22]

(18) The Commission recalls that, as stated in recital (5) above, the naked restrictions related to HP, Acer and Lenovo have been confirmed as a single and continuous infringement and that finding therefore has the force of *res judicata*. This point is also acknowledged by Intel at paragraph 67 of its Reply to the Letter.[23] Intel also acknowledges in its Reply to the Letter that the single and continuous infringement covered the EEA, at least as concerns the restrictions vis-à-vis HP and Lenovo.[24] The renvoi judgment, while annulling the part of the 2009 Decision related to the conditional rebates, has definitively confirmed the 2009 Decision with respect to the naked restrictions, including that they formed part of a single and continuous infringement aimed at foreclosing AMD's access to the market. With respect to the naked restrictions, the renvoi judgment has only annulled the fine, but none of the findings of the 2009 Decision that justify the imposition of a fine for the naked restrictions, as is apparent from the renvoi judgment, paragraph 96.

(19) The Commission further notes that the appeal judgment has already acknowledged the Commission's jurisdiction to fine Intel for its conduct and rejected similar arguments to those now submitted by Intel.[25] Intel's suggestion concerning the lack of jurisdiction by the Commission to fine the company for its conduct *vis-à-vis* Lenovo and Acer is at odds with its acknowledgment of the existing single and continuous infringement. As the appeal judgment found, following Intel's suggestion "*would lead to an artificial fragmentation of comprehensive anticompetitive conduct, capable of affecting the market structure within the EEA, into a collection of separate forms of conduct which might escape the European Union's jurisdiction*".[26]

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[19] ID 4869
[20] ID 4880
[21] ID 4886 and ID 4887.
[22] Reply to the Letter, paragraphs 65 to 72.
[23] Reply to the Letter, paragraph 67.
[24] Reply to the Letter, paragraph 72.
[25] C-413/14 P – *Intel v Commission*, paragraphs 40 to 65.
[26] C-413/14 P – *Intel v Commission*, paragraph 57.

(20) In its appeal judgment, the Court of Justice found that it was important to take into consideration the conduct of the undertaking viewed as a whole in order to assess the substantial nature of its effects on the market of the EU and of the EEA. Regardless of the lawfulness of Intel's conduct in granting rebates conditional on exclusivity, the appeal judgment noted that Intel did not dispute the existence of an overall strategy aimed at foreclosing AMD's access to the most important sales channels.[27]

(21) In light of this acknowledgment of the Commission's jurisdiction by the Court of Justice and the existence of a single and continuous infringement aimed at foreclosing AMD, with an impact on the EEA now being *res judicata*, there is no need for the Commission to make a fresh assessment of its jurisdiction. Accordingly, Intel's claims regarding the need to carry out a fresh jurisdictional assessment must be dismissed.

2.2.2. The alleged lack of clarity

(22) In its Reply to the Letter, Intel submits that it is not able to understand "on what specific basis the Commission intends to proceed" and that "without a clear identification of the 2009 Decision recitals that are purported to be relied on, Intel is not in a position to understand the legal and factual reasoning underlying the Letter". Intel also considers that the Commission must clarify whether the findings in the 2009 Decision concerning the naked restrictions "have to be requalified in light of the annulment of large parts of the 2009 Decision".[28] Intel also complains that the Letter treats the naked restrictions as a single and continuous infringement of the same nature as that including the conditional rebates without identifying the reasons for this.[29] Intel further submits that it is unclear how, following the annulment of part of the 2009 Decision, the Commission intends to calculate the gravity percentage applicable to the fine.[30]

(23) Intel's claim regarding the lack of clarity on the basis for imposing the fine cannot be endorsed. The renvoi judgment, in particular its paragraph 96, made clear the basis in the 2009 Decision for imposing a fine and only refrained from doing so for the reasons given in paragraphs 528-529. Furthermore, the Letter sets out clearly the basis and reasoning for the imposition of a fine for the naked restrictions.[31] Following the renvoi judgment and the fact that the upheld part of the 2009 Decision on naked restrictions is *res judicata*, the purpose of the Letter was to inform Intel about the Commission's intention to adopt a decision re-imposing the fine, as permitted by law, and to explain the methodology to be applied to determine that fine, thereby allowing Intel to comment hereon. As confirmed by Intel's Reply to the Letter, in which Intel provides detailed comments on the fines criteria explained in the Letter, this purpose was clearly achieved.

(24) With respect to the alleged necessity to "requalify" the naked restrictions, as explained in the Letter as well as in recitals (4) to (8) above, this Decision re-imposes a fine for an already established infringement. The qualification of the naked restrictions as set out in Article 1 (f) to (h) of the 2009 Decision as an infringement has been confirmed by the General Court in the renvoi judgment and has not been

[27] C-413/14 P - *Intel v Commission*, paragraph 55. See also paragraph 50 of the same judgment validating paragraph 280 of the General Court's initial judgment.

[28] Reply to the Letter paragraphs 9-10.

[29] Reply to the Letter paragraph 12.

[30] Reply to the Letter paragraph 13.

[31] See paragraphs 6 and 7 of the Letter.

subject of an appeal by Intel. Intel itself in its Reply to the Letter acknowledges at paragraph 67 that the existence of a single and continuous infringement in relation to the naked restrictions has now become *res judicata*.

(25) It is settled case law that a partial annulment of an act of Union law is possible only if the elements which it is sought to have annulled can be severed from the remainder of the act. That requirement is not satisfied where the partial annulment of an act would cause the substance of that act to be altered, a point which must be determined on the basis of an objective criterion.[32] The General Court in its renvoi judgement considered that the naked restrictions were sufficiently clear and severable, without altering the substance of the decision, and it did not annul Article 1 of the 2009 Decision in its entirety.

(26) Furthermore, the renvoi judgment does not question the qualification of the infringement as a single and continuous infringement, but only limits its scope. In the procedure for replacing an annulled act, the Commission is not required to rule again on aspects of the initial decision which were not called into question by the judgment annulling that decision.[33] Therefore, the qualification as a single and continuous infringement still stands for the naked restrictions even after the annulment of the findings on rebates by the General Court and it is not for the Commission to "requalify" that infringement nor to reassess that qualification.

(27) Finally, although not necessary in light of the considerations above, the Commission notes that the 2009 Decision as well as the resulting judgments make a distinction between the rebates and the naked restrictions as being different types of conduct and assess them separately. The fact that the naked restrictions were more limited in scope and duration compared to the rebates, does not call into question that they were the expression of an overall strategy to foreclose the main competitor from the market as outlined in the 2009 Decision and confirmed by the General Court. This Decision adds no new elements to that finding. The more limited scope and duration of the naked restrictions is taken into account when setting the gravity and duration factors of the fine. In this respect, the Commission addresses Intel's claims concerning the alleged lack of clarity about the gravity percentage and its calculation in section 3.2.2 below.[34]

3. FINES

3.1. Introduction

(28) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently, they infringe Article 102 of the Treaty or Article 54 of the EEA Agreement. For each undertaking participating in the infringement, the fine must not exceed 10 % of its total turnover in the preceding business year.[35]

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[32] Case C-441/11 P, *Commission v Verhuizingen Coppens*, ECLI:EU:C:2012:778, paragraph 38 and the case-law cited.

[33] T-224/95*, Tremblay and Others v Commission*, ECLI:EU:T:1997:187, paragraph 53; Case T-471/11, ECLI:EU:T:2014:739, *Editions Odile Jacob v Commission*, paragraph 58.

[34] See in particular recitals (43) to (49) below.

[35] Under Article 15(2) of Council Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty which was applicable at the time of a part of the infringement, the fine for an undertaking participating in the infringement could not exceed 10% of its total turnover in the preceding business year. The same limitation results from Article 23(2) of Regulation (EC) No 1/2003.

(29) As a consequence of the annulment of Article 2 of the 2009 Decision, no penalty has been imposed on Intel for its infringement of Article 102 TFEU consisting of the naked restrictions. A fine should therefore be imposed on Intel having regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Regulation (EC) No 1/2003. The fine imposed must reflect any potential aggravating and attenuating circumstances.

3.2. Basic amount of the fine

(30) In accordance with the principles laid down in the Commission's Guidelines on Fines (the "Guidelines")[36] and the methodology applied in the 2009 Decision and indicated in the Letter, the Commission determines the basic amount of the fine by calculating a variable amount of up to 30 % of the undertaking's relevant value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the undertaking's participation in the infringement.

3.2.1. Value of sales

3.2.1.1. Commission's assessment

(31) In relation to the calculation of the value of sales, the Commission refers to the method applied by Intel in its submission of 3 April 2009 and by the Commission in the 2009 Decision[37] as well as to the figures submitted by Intel on 27 March 2023.[38] Those figures correspond to the yearly value of x86 CPU sales which Intel invoiced to companies located in the EEA during the period ranging from 2002 to 2008.[39] As explained in the 2009 decision, that value very likely underestimates the value of Intel sales of x86 CPUs directly or indirectly related to the infringement in the EEA, given that computers incorporating x86 CPUs which are manufactured or assembled outside the EEA but sold into the EEA are not accounted for in those figures.[40]

(32) In light of the fact that the naked restrictions covered payments conditional on the OEMs cancelling, limiting or delaying the sale of desktops and notebooks based on AMD x86 CPUs, only the above-mentioned value of sales related to those two product types are considered for the purposes of calculating the basic amount of the fine.

(33) In accordance with paragraph 13 of the Guidelines, the Commission will normally take into account "*the sales made by the undertaking during the last full business year of its participation in the infringement*". Since the last naked restriction ended in December 2006, the Commission takes into account the value of sales in 2006, as indicated by Intel in its reply of 27 March 2023 to the Commission's request for information. These figures differ slightly from the sales data provided in Intel's reply of 3 April 2009 to the Commission's request for information of 18 March 2009. Intel has explained that the reason for this difference specifically for the year 2006 is due to the use of a different exchange rate.[41]

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36 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ C 210, 1.9.2006, p. 2-5.

37 ID 3257, Recitals 1773-1777 of the 2009 Decision.

38 ID 4841.

39 At the time, the EEA included the UK.

40 See recitals 1774 to 1777 of the 2009 Decision.

41 Intel's reply of 27 March 2023 to the Commission's RFI, Reply to question 3, ID 4841.

3.2.1.2. Intel's arguments with regard to the value of sales

(34) In its Reply to the Letter, Intel considers that the Commission's methodology to calculate the value of sales is inappropriate. Intel suggests that the Commission has used a wrong reference year.[42] Furthermore, Intel refers to paragraphs 6 and 13 of the Guidelines and essentially argues that the Commission should take account of the scope of the naked restrictions and therefore use as a basis only the x86 CPU units that were directly or indirectly related to the conduct and not the value of all Intel's x86 CPU sales related to desktops and notebooks to all OEMs. Intel submitted an economic consultancy report (Annex 1 to the Reply to the Letter) in support of its claim.[43] The report puts forward a new calculation methodology following the total value of sales associated with the conduct. Intel's Reply to the Letter and the economic consultancy report reach a lower value of sales than the one used by the Commission.[44]

(35) Intel's arguments, as set out in its Reply to the Letter and in the economic consultancy report, are unfounded for the following reasons.

(36) For the selection of the relevant year, the Commission has followed paragraph 13 of the Guidelines. Thus, the year 2006 has been selected as the relevant reference year given that the last naked restriction ended in December 2006 (see above recital (33)). While Intel argues in its Reply to the Letter that only one out of the three practices comprising the conduct continued in 2006, and only for seven months, the Commission sees no reason to depart from paragraph 13 of the Guidelines. Intel has not put forward any evidence to establish that the 2006 turnover did not constitute an indication of Intel's true size, its economic power on the market and the extent of the infringement in question.

(37) As regards the choice of the relevant value of sales, the Commission recalls that the naked restrictions constituted a single and continuous infringement, as acknowledged by Intel and confirmed in the renvoi judgment. The Commission accordingly notes that it has no obligation to break down Intel's value of sales by specific demand. Intel's reference to the three OEMs' demand and the limited effects on the EEA is based on estimates of demand by the OEMs in question during the years in which each of the restrictions was in place. Moreover, Intel acknowledges that at least part of that demand ended up in the EEA.

(38) The Commission further recalls that the single and continuous infringement affected the worldwide market of x86 CPUs. The Court of Justice has found that it would be contrary to the goal pursued by paragraph 13 of the Guidelines if the concept of the value of sales referred to in paragraph 13 of those guidelines were to be understood as applying only to turnover achieved by the sales actually shown to have been affected by the infringement.[45] Accordingly, Intel's proposed approach departs from the calculation method established in paragraph 13 of the Guidelines.

(39) As it follows from recital (32) above, the Commission has taken into account only the sales directly or indirectly related to the conduct insofar as it has excluded Intel's sales for x86 CPU servers, given that these products were not affected by the naked

42 Intel's Reply to the letter, paragraph 47.

43 Annex 1 to the Reply Letter - ID 4887.

44 Intel's Reply to the letter, paragraph 43 to 51.

45 T-342/18, *Nichicon Corporation* ECLI:EU:T:2021:635 paragraph 458 with reference to judgment of the Court, C-227/14 P *LG Display and LG Display Taiwan v Commission*, ECLI:EU:C:2015:258, paragraphs 53 and 54 and the case-law cited.

restrictions. Unlike the 2009 Decision, the Commission no longer relies on the value of sales for x86 CPU servers.

(40) In light of the above, Intel's claims as regards the choice of the value of sales and the reference year are to be dismissed.

(41) The Commission therefore uses a value of sales of EUR 2 977 521 542 for the calculation of the basic amount of the fine.

3.2.2. Gravity

3.2.2.1. Commission's assessment

(42) In accordance with paragraph 19 of the Guidelines, "the basic amount of the fine will be related to a proportion of the value of sales, depending on the degree of gravity of the infringement, multiplied by the number of years of infringement". Further, in paragraph 20 it is stated that "the assessment of gravity will be made on a case-by-case basis for all types of infringement, taking account of all the relevant circumstances of the case".[46]

(43) Consistent with the Statement of Objections of 26 July 2007 and the 2009 Decision, the Commission considers a number of factors, such as the nature of the infringement, the market share of the undertaking concerned and the geographic scope of the infringement.[47]

(44) As stated in the 2009 Decision,[48] by applying naked restrictions *vis-à-vis* HP, Lenovo and Acer, Intel pursued an anti-competitive object. This was confirmed by the General Court.[49] It is therefore undisputed that the naked restrictions pursued an anti-competitive object, clearly fell outside the scope of competition on the merits and were capable by their very nature of restricting competition.

(45) Although not a requirement, in the 2009 Decision, the Commission demonstrated that the naked restrictions indeed led to the OEMs delaying, cancelling or otherwise restricting their commercialisation of the AMD-based computers, thereby strengthening the presumption of the harmful effects of this practice.[50]

(46) As also set out in the 2009 Decision, given the considerable economic size of the x86 CPU market, any anti-competitive behaviour in that respect was liable to have significant impact. In this case, Intel retained a dominant position with a consistent and significant market share of around 80% in a market with only one meaningful

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46 See also paragraph 584 of the Statement of Objections of 26 July 2007, paragraph 422 of the Supplementary Statement of Objections of 17 July 2007 and recital 1779 of the 2009 Decision.

47 See paragraphs 582 and 583 of the Statement of Objections and recitals 1779 to 1786 of the 2009 Decision.

48 See recitals 1643 and 1782.

49 Judgment of 12 June 2014 Case T-286/09, *Intel Corporation Inc. v Commission*, ECLI:EU:T:2014:547, paragraphs 198 to 220 (confirmed by judgment in Case T-286/09 RENV paragraphs 96 and 531). For instance the General Court affirms in paragraph 204 that "*the only interest that an undertaking in a dominant position may have in preventing in a targeted manner the marketing of products equipped with a product of a specific competitor is to harm that competitor*", and in paragraph 210 that it is *necessary to reject the applicant's argument that the Commission was required to demonstrate the possibility or probability of foreclosure of competition, rather than refer to the anti-competitive object of the practices. Given that the anti-competitive object is indissociable in the case in point from the potential effect of the so-called 'naked restrictions' practices (see paragraphs 203 and 204 above), it must be considered that the Commission did not err in relying on their anti-competitive object*".

50 Section 4.3 of the 2009 Decision.

competitor and high entry barriers. Intel represented an unavoidable trading partner for the OEMs.[51]

(47) Intel's exclusionary strategy as enacted by the naked restrictions covered the whole EEA (including the United Kingdom).[52]

(48) Whereas the serious nature of the infringement, the size and characteristics of the market as well as the geographic scope of the infringement all point to maintaining the original gravity percentage of 5 % in the 2009 Decision, it must also be taken into account that the naked restrictions had a more limited scope and intensity than the rebates. They concerned three OEMs and focused on specific products or lines of products or sales channels as opposed to entire business segments.

(49) On the basis of the factors mentioned above, the Letter indicated an intention to apply a gravity percentage of 4 % when calculating the basic amount of the fine of Intel. This reflects the practice applied by the Commission at the time of the 2009 Decision.[53]

3.2.2.2. Intel's arguments with regard to gravity

(50) In its Reply to the Letter, Intel makes three main claims as to the gravity factor. First, it argues that the Commission should properly take into account the more limited nature and scope of the conduct following the renvoi judgment. Intel claims that the naked restrictions had a shorter duration and scope than the rebates and therefore this should be reflected in the gravity factor. Intel takes issue with the reduction of the gravity factor by 1 percentage point (from 5 to 4 %) indicated in the Letter and argues that this would amount to a suggestion that 80 % of the magnitude of the gravity of the entire infringement found by the 2009 Decision was due to the naked restrictions. Intel refers to the number of units affected by the naked restrictions as a relevant criterion to measure the gravity and argues that, on this basis, the gravity factor should be 1/10th of the one used in the 2009 Decision. To support this, it refers to the alleged limited overall significance of the three naked restrictions.[54]

(51) Second, Intel submits that the Commission should take into account the alleged effects of the conduct to reduce the gravity percentage. Intel supports its claim with references to case-law, the Letter and the 2009 Decision and argues that a proper assessment of effects must be conducted. According to Intel, there is no valid finding in the 2009 Decision on the existence of consumer harm. It further submits that AMD grew considerably during the period of the infringement.[55]

(52) Third, Intel argues that the Commission should take into account the fact that the existence of a single and continuous infringement and strategy has changed since the 2009 Decision. Accordingly, the Commission cannot rely any longer on the single and continuous infringement of the 2009 Decision for the purposes of determining the gravity percentage of the fine and should reflect this with a lower gravity percentage.[56]

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[51] Recitals 1780, 1781 and 1783 of the 2009 Decision.

[52] Recital 1784 of the 2009 Decision.

[53] This gravity percentage is significantly lower compared to the Commission's more recent decisional practice in Article 102 TFEU cases, see for example AT.40099 *Google Android* (11 %); AT.40411 – *Google Adsense* (11 %).

[54] Reply to the Letter, paragraph 25 to 30;

[55] Reply to the Letter, paragraph 31 to 37.

[56] Reply to the Letter, paragraph 38 to 42.

(53) Intel supports these claims with an economic report which contains specific calculations concerning the share of units affected by the Conduct, the share of time associated with it and also a breakdown by OEM affected.[57]

(54) Intel's arguments are flawed. As regards its claims that the Commission should take into account the more limited nature and scope of the conduct following the renvoi judgment (see recital (50) above), the Commission notes that the naked restrictions constituted a worldwide and very serious breach of the competition rules, as indicated above in recital (44) and as confirmed by the General Court (see footnote 49). Furthermore, the Commission has sufficiently taken into consideration the more limited character of the naked restrictions by applying a substantial reduction (20 %) of the gravity percentage compared to the 2009 Decision. The Commission recalls that the decreased gravity percentage is not the only adjustment made to take into account the more limited extent of the naked restrictions[58] and further notes that the initial gravity percentage of 5 % was already relatively low, as indicated in footnote 53. In any event, where a fine has been set aside following the partial annulment of findings relating to a series of conducts, in setting the new fine for the part of the infringement that has been upheld, what is relevant is to examine the fine that the Commission would have imposed, in accordance with the Fining Guidelines, if the initial decision had not covered the part of the infringement which was annulled. This implies an assessment of the gravity of the conduct as regards which the fine is imposed, and not the subtraction from the fine initially imposed of the element of the fine notionally attributable to the other conduct which is ultimately not within the scope of the infringement.[59]

(55) Furthermore, Intel's suggestions to use the number of affected units to measure the gravity of its conduct or its attempts to establish a proportionality rule between the naked restrictions and the rebates are not in line with paragraph 20 of the Guidelines. Indeed, the assessment of gravity is done on a case-by-case basis and, in view of the circumstances mentioned above, it is considered that 4 % is a gravity percentage that appropriately reflects the gravity of the conduct at stake. Moreover, Intel itself implies in its Reply to the Letter that it would be wrong to set the gravity factor based on an arithmetical formula.[60] Nevertheless, Intel proceeds to arithmetically calculate the gravity factor.

(56) As regards Intel's arguments concerning the need to take into account the alleged limited effects of the naked restrictions (see recital (51) above), the Commission notes that it is under no obligation to reassess the effects of the naked restrictions, particularly when the naked restrictions have already been confirmed as an infringement by the General Court.[61] The references by Intel to specific statements from the Letter and the 2009 Decision do not support Intel's claim that the Commission needs to assess the effects. As established in point 20 of the Guidelines, the Commission has taken into account "*the relevant circumstances of the case*" for the assessment of gravity.[62] This has been done above, in recitals (43) to (49). In

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57 Annex 1, Intel's Reply to the Letter - ID 4887.

58 As explained in this Decision, the Commission has also considered a lower value of sales and a reduced duration.

59 A partial annulment does not necessarily translate into a specific reduction, such as the original fine "minus" the fine which related to the annulled finding.

60 Reply to the Letter, paragraph 17.

61 A finding which was not appealed by Intel.

62 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (Text with EEA relevance), OJ C 210, 1.9.2006, p. 2–5

addition, the Commission refers, *inter alia*, to recitals 1670 and 1678 of the 2009 Decision, which demonstrate that it did consider the effects of the naked restrictions and concluded that Intel's conduct had a material effect on the OEMs' decision-making in that they delayed, cancelled or otherwise restricted their commercialisation of the AMD-based computers. Accordingly, Intel's claims about the performance of AMD are irrelevant.

(57) Finally, concerning Intel's arguments that the Commission should take into account the fact that the single and continuous strategy has changed for the purposes of the gravity assessment (see recital (52) above), the Commission notes that the renvoi judgment does not question the qualification of the naked restrictions as a single and continuous infringement, but only limits the scope of such single and continuous infringement.

(58) In light of all of the above, the Commission sets the gravity percentage at 4 % (a reduction by 20% of the gravity percentage applied in the 2009 Decision).[63]

3.2.3. Duration

(59) The naked restrictions were applied within a period from November 2002 to December 2006. Since the last naked restriction applied in relation to Lenovo took place later than the first two naked restrictions, the overall duration for the purposes of calculating the fine is reduced by the period between the end of the first two naked restrictions and the start of the last naked restriction.[64]

(60) For the purposes of the calculation of the basic amount of the fine, the value of sales is multiplied by 3.16 to take account of its duration. This corresponds to the number of years between November 2002 to May 2005 and between June 2006 and December 2006.[65]

3.3. Mitigating and aggravating circumstances

3.3.1. Commission's assessment

(61) No facts have been established in the 2009 Decision that would justify the existence of any mitigating or aggravating circumstances for Intel. Accordingly, the Letter indicated an intention not to apply any adjustment of the fine to be imposed on Intel on account of mitigating or aggravating circumstances.

3.3.2. Intel's arguments with regard to mitigating circumstances

(62) In its Reply to the Letter, Intel submits that the fine "*should be reduced to reflect the excessive and unreasonable duration of these proceedings.*"[66] It also considers that the fine should be reduced with reference to the "*extraordinary nature of the exercise that Intel has had to undertake to defend and vindicate its rights*" and to the fact that that process, having lasted almost 20 years, has drawn heavily on Intel's resources.[67]

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63 The Commission notes that in addition to reducing the gravity percentage, the Commission has taken into account the shorter duration and more limited product scope (desktops and notebooks) of the naked restrictions.

64 See judgment of 19 May 2010 Case T-18/05, *IMI v Commission,* ECLI:EU:T:2010:202, paragraph 89.

65 This figure results from the conversion of 1157 days into number of years and rounded down to two decimal places.

66 Reply to the Letter paragraph 54.

67 Reply to the Letter paragraphs 55-56.

Finally, Intel observes that no deterrence is needed, as Intel following the 2009 Decision has ensured that no naked restrictions would reoccur.[68]

(63) The Commission finds no grounds for adjusting the basic amount of the fine on account of mitigating circumstances under Section 2 of the Guidelines.

(64) First, the Commission observes that it falls within the exclusive jurisdiction of the Court of Justice of the European Union, in the context of its review of the legality of the acts of the Union institutions, to establish whether a proceeding has been excessively long.[69]

(65) In any event, the Commission's view is that this is not the case in relation to the present proceedings. The Commission launched its investigation in May 2004 and initiated the proceedings in this case on 26 July 2007. While the time elapsed between this date and the present decision appears objectively long, this does not necessarily mean that it is unreasonable. It follows from the case law, that the reasonableness of the length of a proceeding must be assessed in light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities.[70]

(66) It also follows that "that list of criteria is not exhaustive and the assessment of the reasonableness of the period in question does not require a systematic examination of the circumstances of the case in the light of each of them where the duration of the proceedings appears justified in the light of one of them. […] Conversely, the time taken may be regarded as longer than is reasonable in the light of just one criterion, in particular where its duration is the result of the conduct of the competent authorities. Where appropriate, the duration of a procedural stage may be regarded as reasonable from the outset if it appears to be consistent with the average time taken in handling a case of its type.[71]

(67) In the time elapsed from the Commission's first investigative steps in May 2004 there were inspections in several Member States in July 2005, the opening of proceedings and a Statement of Objections on 26 July 2007, another inspection in February 2008, a Supplementary Statement of Objections notified on 17 July 2008 and a letter from the Commission of 19 December 2008 . Furthermore, during the administrative procedure before the Commission, Intel initiated two sets of proceedings before the Court of Justice of the European Union.[72] In addition, Intel

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68 Reply to the Letter paragraph 57.

69 Intel's complaint of "a process" that has lasted almost 20 years is exaggerated, since that period includes the time taken for the judicial proceedings following the 2009 Decision. The duration of the judicial proceedings cannot be imputed to the Commission, and, to the extent it may be relevant, is explained by the complexity of the proceedings, Intel's application to the Court in Case T-286/09 having been one of the most voluminous ever lodged before the Court.

70 Judgments of 17 December 1998, C-185/95 P *Baustahlgewebe vs. Commission*, ECLI:EU:C:1998:608, paragraph 29; of 15 October 2002, C-238/99 P, *Limburgse Vinyl Maatschappij ("LVM") and others vs. Commission*, ECLI:EU:C:2002:582,paragraph 187; and of 2 October 2003, C-194/99 P, *Thyssen Stahl vs Commission*, ECLI:EU:C:2003:527, paragraph 155.

71 Judgment of 15 October 2002, C-238/99 P, *Limburgse Vinyl Maatschappij ("LVM") and others vs. Commission,* ECLI:EU:C:2002:582, paragraph 188 and of 2 October 2003, *Thyssen Stahl vs Commission*, C-194/99 P, ECLI:EU:C:2003:527, paragraph 156.

72 First, on 10 October 2008, Intel lodged an application with the General Court, registered under reference T-457/08, requesting the Court, inter alia, to extend the deadline for replying to the Supplementary Statement of Objections. This application was withdrawn on 3 February 2009. Second,

was granted two extensions of deadlines to reply to the Statement of Objections by the Hearing Officer and despite a deadline extension to reply both to the Supplementary Statement of Objections and the Commission's letter of 19 December 2008, Intel only provided a written submission beyond those deadlines, namely on 5 February 2009. It is thus evident that the proceedings to date are the result of intensive activity, some of which was initiated by Intel in its exercise of its rights of defence. All this activity has contributed to the overall duration of the proceeding and there are no delays which cannot be justified by the circumstances of the case.[73] Against this background, there are no specific factors indicating that the length of the time elapsed has been unreasonable. The Commission recalls in that respect that in relation to the circumstances of the *LVM* case, the Court of Justice confirmed that an administrative phase of 11 years and 4 months was not excessive.[74]

(68) As regards specifically the period between the renvoi judgment delivered on 26 January 2022 and the present decision, the Commission does not consider that this has been excessive having regard to the time available for Intel and the Commission to lodge an appeal, against the renvoi judgment, the need for the Commission to send requests for information to collect information on legal entities and sales figures respectively on 23 January 2023 and on 10 March 2023, the Letter of 2 May 2023 and Intel's reply to the Letter on 26 June 2023.

(69) In its Reply to the Letter, Intel refers to the Commission's decision of 4 July 2019 in case AT.37956,[75] in which the Commission exceptionally granted a reduction of 50% of the fine. However, that reduction was granted in recognition of the Commission's procedural errors committed in the context of the transition between the ECSC Treaty and the EC Treaty, a delaying factor not attributable to the companies involved. No similar circumstances apply in this case, no error having been found by the Court in relation to the naked restrictions.

(70) As regards the costs and efforts incurred by Intel in the exercise of its rights of defence, this is not an element which in itself qualifies as a mitigating circumstance for the sanctioning of an infringement of competition law, and the Commission sees no reason which would justify a departure from this practice.

(71) Finally, regarding Intel's observation on deterrence, the Commission does not consider that there are grounds for reducing the fine with reference to the fact that deterrence is no longer needed. First, the fact that Intel has allegedly not committed any similar infringement following the adoption of the 2009 Decision is irrelevant, as a sufficiently deterrent fine was imposed on Intel by in the 2009 Decision, which now needs to be replaced. Second, the Guidelines do not foresee any mitigating circumstances for such a case. On the contrary, they provide for specific aggravating circumstances in case of (i) recidivism (paragraph 28) and (ii) large undertakings (paragraph 30). In that regard, the Commission confirms that it will not apply any specific increase for deterrence as set out in paragraph 30 of the Guidelines.

Intel applied for interim measures, registered under T-457/08 R, an application which was dismissed by the General Court on 27 January 2009.

73 Judgment of 15 October 2002, C-238/99 P, *Limburgse Vinyl Maatschappij ("LVM") and others vs. Commission*, ECLI:EU:C:2002:582, paragraph 193.

74 Judgment of 15 October 2002, C-238/99 P, *Limburgse Vinyl Maatschappij ("LVM") and others vs. Commission*, ECLI:EU:C:2002:582, paragraph 199.

75 Decision C(2019) 4969 final of 4 July 2019 in case AT.37956 - *Tondo per cemento* armato.

(72) As there are no aggravating or attenuating circumstances in relation to the single and continuous infringement constituting the naked restrictions, no adjustments are made to the basic amount of the fine.

3.4. Application of the 10% turnover limit

(73) Article 23(2) of Council Regulation No 1/2003 provides that the fine imposed on an undertaking shall not exceed 10 % of its total turnover in the preceding business year. In the financial year 2022, Intel's total turnover was 66.5 billion EUR.[76]

(74) The fine set out in recital (75) does not exceed 10% of Intel's total turnover in the business year preceding the date of the adoption of this Decision.

3.5. Conclusion: final amount of the fine

(75) In light of the above, the final amount of the fine is EUR 376 358 000.

4. CONCLUSION

(76) The Commission concludes that a fine of EUR 376 358 000 should be imposed on Intel Corporation for the infringement consisting of the naked restrictions, pursuant to Article 23(2) of Regulation (EC) No 1/2003 as a result of the methodology described in Section 3. The 2009 Decision should therefore be amended accordingly.

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision C(2009) 3726 final of 13 May 2009 is replaced by the following:

For the infringement referred to in Article 1, a fine of EUR 376 358 000 is imposed on Intel Corporation.

The fine shall be credited, in euros, within a period of three months from the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.37990

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[77].

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[76] Intel's reply of 7 February 2023 to the European Commission's RFI of 23 January 2023, ID 4826.

[77] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rues applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).

Article 2

This Decision is addressed to Intel Corporation, 2200 Mission College Blvd., Santa Clara, California 95054, United States of America

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 22.9.2023

For the Commission
(Signed)
Didier REYNDERS
Member of the Commission