

>> Jon Leibowitz: Are we ready?

>> Male Speaker: We're ready.

>> Jon Leibowitz: Okay. Good morning. I'm Jon Leibowitz, Chairman of the Federal Trade Commission. I am joined by Commissioner Julie Brill on my left and the eminent and distinguished Rich Feinstein, our Director of the Bureau of Competition, on my right. I am pleased to announce today that a bipartisan and unanimous Commission has voted to settle our litigation against Intel. This is an exceptionally important case, and the Commission was deeply troubled by Intel's actions. Our complaint alleged and we believe the evidence showed that Intel had stepped well over the line. It had moved beyond aggressive competition on the merits and into the realm of unfair, deceptive, and anticompetitive conduct. The staff was prepared to litigate this case to completion. We accepted this settlement because it helps consumers. It opens the door to competition in markets that are critical to our economy. The settlement provides fencing-in protection to make ensure that Intel doesn't come up with new ways to undermine competition. And, just as important, it provides this relief right away, so it helps consumers right now, and that is critical in such a dynamic industry. Our investigation went beyond other investigations of Intel, and our relief in this case goes beyond the relief achieved elsewhere. The settlement covers not only the CPU but market but the markets for chipsets and graphics, as well. These are all important markets. The CPU and graphics technology at the heart of this case matter to every American consumer. These chips are the brains of every computer. This is a Pentium 4. I think it's a Pentium 4. These chips are really the brains of every computer, from huge industrial servers to portable consumer laptops, and ensuring that this market remains competitive and innovative is essential -- essential -- to our economic future. So, let me discuss briefly why we believe this settlement makes sense. The complaint charged that Intel used its monopoly position in the x86 CPU market to exclude competitors in that market as well as in the market for graphics technology. Intel's disturbing behavior took numerous forms. For example, evidence shows that Intel refused to sell chips to some buyers unless they agreed to limit or, in a few case, entirely stop buying chips from the company's competitors. In fact, Intel

paid some customers not to buy competing chips even when those chips were the superior product. The evidence also suggests that Intel may have engaged in predatory design. In other words, it took steps to redesign its CPUs in ways that didn't improve the CPU's functionality but that made it more difficult for graphics designers to connect to Intel CPU, which, of course, made it harder for them to compete with Intel. And unbeknownst to customers, Intel also engaged in deceptive conduct that undermined the performance and ratings of its CPU competitors. So, the sum total of all this anticompetitive conduct was that it unfairly prevented companies from competing, bolstered Intel's monopoly, and harmed consumers by stunting innovation, limiting choice, diminishing quality, and keeping prices higher than they otherwise would have been. We can go into some more detail on this in a few minutes when I turn it over to Rich Feinstein, commission's Director of the Bureau, but let me describe briefly how the consent should open the door to competition. The first goal was to stop Intel's anticompetitive conduct, and the way to do that is pretty straightforward -- identify the anticompetitive behavior, types of actions that I just described, and prohibit Intel from doing it. SO, under the consent, for example, Intel can't use its market power to threaten customers just because those customers have also purchased from rival CPU manufacturers. Intel can't pay customers to not purchase chips from rival manufacturers, and Intel can't redesign its CPU purely to harm a competitor. The second goal was to reinvigorate competition in the market for CPUs, chipsets, and graphics. The conduct restrictions on Intel will provide a level playing field for AMD and a smaller competitor, VIA, to compete against Intel in the CPU market. In addition, the consent contains provisions to restore AMD and VIA closer -- closer -- to the position they would have been in but for the violative conduct with respect to producing competing CPUs and tracking capital for further innovation and investment. For example, Intel has agreed to modify what's known as a change-of-control provisions and to clarify and confirm that AMD and VIA have the legal right to contract out the manufacturing of chips. These provisions relate directly to CPUs, but they also promote competition in graphics. So, one thing to keep in mind is that enhancing competition in the CPU market in and of itself enhances competition in the graphics market because it provides additional options for graphics companies. In other words, it's easier for graphics designers to rely on AMD and VIA, so it's harder for Intel to engage in anticompetitive conduct in the graphics

market. In addition, all of the restrictions on business conduct also apply to chipsets, which are a key part of the graphics market. And, further, Intel has to maintain an open industry-standard connection that's known as the bus so that makers of graphics chips can connect those to Intel CPUs. So, we believe that the consent provides effective relief in the graphics market. Let me just mention one other key aspect of the consent order which will stop deceptive conduct regarding compilers. Now, a compiler is a tool used to write software by translating computer-programming language into zeros and ones. We believe that Intel configured its compiler so that software ran more slowly on non-Intel processors. For example, even though an AMD chip was capable of supporting faster processing, if the software was compiled on an Intel compiler it would run more slowly on an AMD machine. Now, if Mother Teresa ran a microchip company, she probably wouldn't have engaged in this kind of practice -- that is, to disadvantage rivals -- but it wouldn't have been illegal, except that the evidence showed Intel surreptitiously made it look as though that slowdown was AMD's fault. So, software engineers and computer designers mistakenly believed that the AMD chip was responsible for diminished performance and didn't realize that the AMD chip was, in some instances, actually better than the Intel chip. As a result, computer manufacturers didn't purchase AMD's chip as often as they might have and consumers didn't have access to a potentially superior product. This type of conduct is, of course, harmful to competition and consumers. It's sort of reminiscent of the types of false-advertising cases -- almost spyware cases or nuisance-adware cases that we often bring in our Bureau of Consumer Protection. Misleading consumers is completely unacceptable, it is wrong, and the consent requires that Intel must, from now on, fully and clearly disclose how its compiler treats competing products. That way, when a computer manufacturer is deciding which chip to use in its products, it will be making that decision based on true performance capabilities, which is the way we want those decisions to be made. The order also establishes a \$10 million fund to help business customers recompile their software products if they were misled by Intel. Of course, no settlement gets us everything we seek. That is the nature of a settlement. But quick relief for consumers is particularly important in this market, because it is a fast-moving, dynamic industry where rapid technological change is really the norm. If this litigation went forward even under our new, much faster Part 3 internal rules, we would likely not have had

resolution for, really, another two or three years. Case goes from RALJs to the Commission and then to a court of appeals. At that point, much of the remedy we were seeking might not be relevant, and, in the intervening time, consumers and competition would continue to suffer. Instead, today's settlement gives certainty to all those in the industry, including, by the way, Intel, and clarifies the rules of the road, most important, because the relief begins right now. We believe we're going to see or begin to see a more competitive landscape very, very soon. And, of course, the FTC remains a cop on the beat. If Intel violates this order, we will be there to enforce it, and we won't hesitate to fine it for violations. Before turning this over to Julie and Rich, let me make a brief comment about the use of the Commission's Section 5 authority, which was a very important part of this case. Section 5 gives the Commission the ability to protect consumers from unfair methods of competition. Although that term isn't specifically defined in our statute, it's been part of the Commission's arsenal since Congress created the FTC way back in 1915 -- 1914, actually. That was the time when many believed that the courts were not sufficiently aggressive in interpreting the Sherman Act, so Congress decided to create the Commission with a mandate that went beyond the Sherman Act. We sort of have a penumbra around the antitrust laws. That's our jurisdiction. And, as counterbalance, Congress also restricted the remedies that the Commission could seek under Section 5. So, unlike the Justice Department, we can't find malefactors and we can't put them in jail. Now, until recently the Commission has been reluctant to use our Section 5 authority, but as some courts have begun to adopt what might be considered a cramped view of the antitrust laws, in an effort, I suspect, at least, to rein in sort of the toxic combination of private class actions and treble damages. It seems to us at the Commission more important than ever that we use this authority. So, when we see a violation that can be remedied under Section 5, we're going to go after it as we did in this case and as we did in the recent invitation-to-collude case that was brought earlier this summer against U-Haul. U-Haul had attempted to conspire with Budget to raise prices on rental trucks. We're going to be judicious and we're going to use our authority appropriately, but we are going to protect consumers using Section 5. One final point -- Intel is a great American success story, and we want that to continue. The conduct documented in our investigation happened in the past. This settlement will allow Intel and the marketplace to move

forward. I'm confident Intel will honor the letter and the spirit of this agreement and compete fairly on a more level playing field and continue to make all the wonderful, innovative products it now does and, of course, to develop new ones. So, with that, I will stop and I will turn it over to Commissioner Brill -- Julie.

>> Julie Brill: Thanks. Good morning. Let me just add a few additional points to what Chairman Leibowitz has said. I think this case is very important for a couple of reasons. First, maintaining competition in high-tech markets is one of the Commission's top competition priorities. As the Chairman has pointed out, these markets are responsible for many of the benefits we enjoy in our highly wired society, and, more critically, innovation in these markets helps drive our economy through introduction of new products and services, which, in turn, fuels the expansion of existing companies and the birth of new ones. Thus, the harm from anticompetitive conduct in these markets has wide-ranging effects throughout our economy. The fact that the Commission brought this case and vigorously prosecuted it demonstrates that the Commission will not hesitate to challenge conduct involving complex, high-tech products in fast-paced, innovation markets. Second, this case is important because it shows that the Commission is actively engaged in enforcing the antitrust laws against monopolists who abuse their market position. This is not the first monopolization case the Commission has brought in recent years. The Commission has brought monopolization cases in other high-tech markets where there has been an abuse of standard-setting process as well as conduct in the pharmaceutical industry, where branded pharmaceutical manufacturers have acted to delay generic entry. Thus, our case against Intel further demonstrates how active the Commission will be in monitoring monopolists. It is also worth pointing out, if the settlement is finalized after the public-comment period, the Commission will continue in monitoring Intel's conduct for anticompetitive harm, as the Chairman said. Of course, the Commission can challenge and seek civil penalties against Intel for violating the settlement. In addition, the Commission can also challenge any harmful anticompetitive practice that Intel may engage in in the future, even if not specifically prohibited by the proposed consent order. We're hopeful that such action will not be necessary. However, we will not shrink the least

bit from our duty to vigilantly ensure Intel's practices are within the bounds of the antitrust laws in the future. Thank you very much. Rich?

>> Richard A. Feinstein: Thank you, Julie. It was just a little less than eight months ago when I stood in this room and announced that this case was beginning, and I'm delighted to be here today to announce this very successful resolution -- or to share in the announcement. I want to make three broad points, and I'm actually going to be, I hope, relatively brief. This is a complicated document in many respects. It speaks for itself. There is an Analysis to Aid Public Comment, which is an excellent guide and detailed summary that I would commend to anyone who is really interested in the details, but the first thing I want to do is to acknowledge the extraordinary efforts of the staff of the FTC in bringing about today's resolution. It was -- A large, dedicated, extraordinarily productive, and highly skilled team was put together for this -- really, sort of an all-star team from several of our bureaus -- the Bureau of Competition, the Bureau of Economics, the General Counsel's Office. It was a terrific effort of, you know, I think, really, frankly, dedicated public servants at their best. I just want to express my personal appreciation for the enormous hard work that they engaged in and terrific result. My second objective today will be to provide a bit more detail about the goals of the consent order and how the various provisions, broadly speaking, serve those goals, and then, finally, I want to just highlight a couple of the differences between the remedies that are being achieved through this settlement in contrast with some of the other settlements that Intel has entered into over the last several months. This does go, in our judgment, significantly farther than relief that's been obtained in some of the private disputes and also in some of the international decisions. With respect to the goals, again, I really commend to your attention the Analysis to Aid Public Comment, which is now out there for you to read. But it -- it really crystallizes, and in my view, the fundamental goal here, the overriding objective, is to promote competition on the merits in this terribly important market. And it really does that in two ways -- first, by undoing the effects of past restraints on competition by enhancing the ability of competitors such as AMD, NVIDIA, VIA, and others, to compete effectively within Intel, and, second, the second way of furthering that goal of competition on the merits and promoting it is to protect the ability of Intel's customers and

competitors to engage in mutually beneficial trade while prohibiting Intel from using certain practices to thwart such trade that are unrelated to competition on their merits. And, again, this is -- Much of what I'm telling you today is contained in the Analysis to Aid Public Comment. With respect to that first -- the first tool -- that is, undoing the effects of past restraints on competition -- the proposed order seeks first to make it easier for AMD, NVIDIA, and VIA to use third-party foundries to manufacture products, which will enable them to better match Intel's substantial and historical manufacturing advantages. A good deal of the competitive advantage that Intel had achieved over the years and its ability to exploit its advantage related to its capacity, and enhancing the ability of competing manufacturers to use third-party foundries is a way of addressing that going forward. That's in section 3(a) of the consent order. Second, also in section 3(a) of the order, section 3(b), are provisions which will give some of the same competitors flexibility to secure modifications of change-of-control provisions in their licensing agreements with Intel, again, to enable them to better match Intel's ability to finance its operations without facing the immediate threat of an infringement suit if the arrangement with a third party involves a change of control. Again, that's in section 3(b). In section 3(c) of the order, there is an extension on VIA's intellectual property license, and there is also -- There are assurances, and this is also quite important, in section 2 of the order. There -- there's an obligation of assurances to manufactures of complementary and peripheral products that they will be able to connect their devices to Intel CPUs, and that's the PCI Express bus provision in section 2, which will be in place for an additional six years. That's an important -- very important provision relating to the interoperability of complementary and peripherable products. I also want to emphasize that, to the extent that the order in section 3 obligates Intel to make certain offers regarding its conduct going forward, it doesn't compel any third party to accept those offers. The goal here is to require Intel to open the door to renewed competition, not to force a third party to take any particular action. Let me turn now to the second way in which we are seeking to serve the overriding goal of promoting competition on merits, and that is with respect to past practices and prohibitions on certain past practices that we believe were undertaken with the purpose and effect of thwarting competition on the merits. These provisions begin in section 4 of the order, and that section prohibits a variety of pricing practices that we

allege and believe -- and believe the evidence would show were really focused more on finding ways to induce customers not to deal with Intel's competitors rather than competing on the merits and, you know, legitimate price and quality competition -- for example, discounting that was linked to confining the market share that a particular customer might give to an Intel competitor. That is laid out in some detail in section 4 of the order. Section 5 of the order prohibits predatory design that disadvantages competing products without providing a performance benefit to the Intel product. Again, this is -- these are the portions of the order that are intended to prevent the continuation of a variety of past practices which have thwarted competition on the merits. Sections 6, 7, and 8 of the order addressed deception related to Intel's product road maps, its compilers, as mentioned specifically by the Chairman, and product benchmarking and is also noted by the Chairman. I want to emphasize that, in section 7, regarding compilers, Intel has also agreed to establish a \$10 million fund to reimburse software vendors who have relied, to their detriment, on Intel compilers for the cost of recompiling their software using a non-Intel compiler. Intel has agreed to make available a fund of \$10 million over a period of two years to remedy that harm. Finally, let me turn briefly to distinctions between the deal -- settlement -- the consent order, proposed consent order, that was being announced today and those that have preceded it over the past year or so. I think the fundamental distinction is that both the international decisions and the settlement between Intel and AMD, which was announced in December, just a couple weeks, I believe, before our complaint was voted out -- all of those actions so far have focused primarily, if not exclusively, on the exclusionary effect of Intel's conduct on AMD's ability to compete in the CPU market, and, of course, the private settlement between Intel and AMD, also resulted in a substantial payment of money directly to AMD. This settlement, this consent order, goes substantially further in several important respects. First, as I noted at the outset, the overriding objective here is to protect and promote competition, not to focus on the effects on a single competitor or to protect a single competitor going forward. Secondly, the commercial practices prohibitions in this order are substantially broader than those in the prior orders and, in particular, broader than the order that -- the settlement agreement between AMD and Intel. Those prohibitions apply not just to CPUs but also to GPUs and integrated chipsets. As I mentioned earlier, there are prohibitions on specific pricing

conduct that weren't addressed in the AMD settlement, which had the effect of paying customers not to deal with AMD. Those -- the types of prohibitions of that nature are expanded here. There is also -- and this is perhaps the most striking extension of relief, in my judgment -- is the structural relief to remedy past harm and reinvigorate competition. The license extensions, the change of control modifications, the assurances regarding the PCI Express bus -- all of that goes well beyond the prior settlements. And, finally, as the Chairman mentioned and I want to emphasize myself, there are -- I shouldn't say, "Finally," actually. Next, there are -- That's the problem with the page break. Next, there are explicit disclosures to customers and consumers on the compilers and the impact of the compiler on performance on competing CPUs. While there may have been some reference to compiler issues in the prior -- some of the prior allegations, they are dealt with much more extensively in our consent order. In addition, the explicit disclosure on the impact of software compiled using the Intel compiler on industry benchmarks goes beyond anything that's in a prior order -- the fund, of course, that I described earlier relating to harm that was caused to folks who relied, to their detriment, on the deception, and, finally, although the AMD settlement did address the predatory innovation, the standard that is introduced to govern predatory innovation going forward is much tougher in this settlement. So, that's -- that completes my prepared remarks with respect to the three goals that I started with -- acknowledging the staff, providing a bit more detail about the order, and also highlighting the differences, and, at this point, we'd be happy to take questions.

>> Female Speaker: If you would like to ask a question, please press star 1 on your telephone keypad.

>> Male Speaker: Do you want to start with questions from the audience, and then we'll...

>> Jon Leibowitz: Yeah. Why don't we do this? We'll start with questions from people who are here, and then we'll take questions from the phone after that. Is that all right?

>> Richard A. Feinstein: Mm-hmm.

>> Jon Leibowitz: Is that okay? Yeah. Why don't you identify yourself?

>> Stephanie Dhue: Sure. Stephanie Dhue with the "Nightly Business Report." What are third-party foundries?

>> Jon Leibowitz: Rich, you're an expert on foundries.

>> Richard A. Feinstein: Sure. Third-party foundries are essentially -- that's the term that applies to third parties who will contract to manufacture these devices. So, for example, a company like AMD or VIA may have historically been capacity-constrained, and even if it were able to sell more chips, it may have had difficulty manufacturing them in sufficient quantity, due in part -- pardon me?

>> Male Speaker: Or not make them at all.

>> Richard A. Feinstein: Or not make them at all. And they use third parties to make them, and the concern had been that if they were seeking to expand their contractual relationships with third parties to enhance their capacity, that could lead to intellectual-property litigation against those third parties brought by Intel, which could hamstring their ability to expand their capacity. So, there are provisions in this order which require Intel to refrain for a period of time from initiating such litigation and to make a good-faith effort to resolve any potential intellectual-property disputes in a way that will permit its competitors to expand their capacity by contracting with foundries.

>> Jon Leibowitz: Joe Farrell, did you want to add something? Joe Farrell is our fabulous head of the Bureau of Economics, who's been very, very involved in this case. Go ahead.

>> Joe Farrell: Well, just to expand very briefly on what Rich said, it's particularly important in an innovative industry that small firms should be able or not artificially prevented from radically expanding their output when they get a hit product, and so you

really don't want to be relying on the in-house production capability of firms that have historically been relatively small, because that way, if they did get a hit product, they couldn't expand their output to take full advantage of it and consumers would not get the full advantage of that.

>> Jon Leibowitz: Yeah, and just to go back to your original question, a foundry -- it's like a foundry, but they make chips instead of, you know, widgets or anvils, and "third party" is owned by someone else.

>> Richard A. Feinstein: All right. And just one of the theories of competitive harm here was that the ability of Intel's competitors to expand their capacity if they had a hit product had been constrained by Intel, and this is intended to address that.

>> Jon Leibowitz: All right. Next question. Tom.

>> Tom: Can you explain what the change of control provision is?

>> Jon Leibowitz: Yeah. Let me take a stab at that. So, under the agreement that, for example, AMD has with Intel, if someone bought, I believe, 51% or majority ownership of AMD, immediately, they would be in violation of their cross-licensing agreements, and so what one of the provisions does in our settlement that actually goes beyond the AMD settlement is it's a year-long, essentially, cooling-off period in which they could negotiate after there was a change of control. So, we think it's, obviously, very, very useful in ensuring competitive landscape going forward. Did you want to add something?

>> Richard A. Feinstein: No.

>> Jon Leibowitz: Okay. Yes, sir?

>> Jack Cloherty: Yeah, I'm Jack Cloherty with ABC.

>> Jon Leibowitz: Hey, Jack.

>> Jack Cloherty: You said that Intel's behavior was in the past, but how long was Intel engaging in this behavior according to your investigation?

>> Richard A. Feinstein: The investigation focused on a course of conduct going back at least 10 years.

>> Jon Leibowitz: But, again, you know, one of the -- but, again, going forward, Intel is under an order that gives them more certainty, it gives the marketplace more certainty, and we are hoping and we believe that these issue, serious issues, are things of the past. Julie, did you want to add anything? Okay. Yes. Other questions? There are --

>> Female Speaker: One more.

>> Jon Leibowitz: Sure.

>> Female Speaker: What impact and how quickly will people going to buy a computer see any difference?

>> Jon Leibowitz: So, that's a great question. You're going in to buy a computer. You're buying some sort of game that uses these chips. You know, it will take a while. There are cycles in product development. But we think the relief will be sooner rather than later, and one of the reasons we migrated towards -- the Commission unanimously and bipartisanly decided to take this settlement was because it means the door will be open to competition right now, and, hopefully, we'll see a more competitive landscapes sooner. If we litigated, even if we had won, which we like to believe was the likely outcome but we know isn't certain, you know, it would have been two or three years before we got to the appeals court, which would be, probably, the final level of resolution, and it might have gone to the Supreme Court, which would have been longer. And we really thought it was important in

this dynamic industry to move ahead quickly and open the door for competition quickly.
Any other questions? All right. Just before we finish up, let me just mention a few things.

>> Female Speaker: On the phone.

>> Jon Leibowitz: Oh, that's right. We're going to take questions from the phone. Let's take questions from the phone.

>> Female Speaker: Your first question from the phone comes from Jeff Bliss. Your line is now open.

>> Jon Leibowitz: Hey, Jeff.

>> Jeff Bliss: Hi. Yeah, just a quick question. You guys both asked -- both Intel and FTC asked for a delay to hammer out the deal, and I just want to know if you could tell us, broadly, what the sticking points were. And then just one other quick question -- one from the things that people have been complaining about is that Intel has been migrating more graphics capabilities onto its CPU, and I'm wondering how this settlement might stop that and if it should stop that migration.

>> Jon Leibowitz: Well, broadly speaking, with respect to your first question, we can't answer that except to say that, you know, it was a very complex negotiation, it was very hard-fought, and then even once we had an agreement in principle, Commission needs to look at it here. Their board of directors presumably needed to look at it. And then it takes just a little while to sort of dot the I's and cross the T's. In terms of -- You're right about migrating towards graphics. I think Rich made the point that we believe we're opening the door to competition in the graphics market. I believe -- and, Rich, you can correct me if I'm wrong -- that, for example, the PCI E bus will be open for six years, and that's probably about two product cycles, going back to your question. That's probably about two product cycles for graphics folks, so we think that's -- we think it's helpful, and, again, there's so

much more cross-pollination between GPUs and CPUs and their capabilities that we think this will help even in the CPU market.

>> Jeff Bliss: Thank you.

>> Jon Leibowitz: Okay. Next question.

>> Female Speaker: Your next question comes from Steve Johnson. Your line is now open.

>> Steve Johnson: Thanks. One of the major sticking points for Intel in all of this, and I can't -- I don't recall if you addressed this directly, so I apologize if you did, but it was the issue of the FTC had raised the possibility that it might require Intel to share its intellectual property with some its chip competitors. Can you talk a little bit about how you resolved that? Did you deal with that issue in the settlement? And if you didn't deal with that in the settlement, why not?

>> Richard A. Feinstein: I don't think it's appropriate to get into the details of what was and wasn't considered or talked about. I think if you go back and look at the notice of contemplated relief that accompanied the complaint that was voted out by the Commission in December, it included -- and I'm looking specifically at item 17 from the notice of contemplated relief -- it included requiring Intel to make available technology, including whatever is necessary to interoperate with Intel, CPUs or chipsets to others via licensing or other means upon such terms and conditions as the Commission may order, including but not limited to extensions of terms of current licenses. This order does just that. So, I think, in large part, we have accomplished our objective here. And, you know, if you go back and reread that list of notice of potential relief, which has, I think, 26 items, all or nearly all of them have been accomplished by this settlement.

>> Jon Leibowitz: I believe it's 22 out of 26 items. Robbie will correct me if I'm wrong. He's shaking his head yes, so I feel good about that. Next question.

>> Female Speaker: Your next question comes from Mark Hachman. Your line is now open.

>> Mark Hachman: A couple questions have already been asked, so I'll move on to my third one. As you guys know, there's constant change and innovation in the marketplace. I mean, some people refer to the integration of graphics and CPUs. My question was more, actually, specific to the bus. You know, we've moved from the ISA bus, the PCI bus, the PCI Express, and so forth. If Intel just happens to move to some other better bus, is it your understanding that they will be either forbidden to do so or will just have to maintain -- allow -- NVIDIA and AMD open access to the PCI Express bus while it moves on to something better?

>> Jon Leibowitz: Well, they have to allow open access to the PCI Express bus. That's absolutely right. If they move on to something better, I think that's good for consumers, and as long as it's something better and not something designed to diminish competition from their rivals, then they're allowed to do that, and I think that would be a good thing. And I don't know if anybody wants to add anything.

>> Richard A. Feinstein: I would just elaborate on your last point and going back to my theme, which is competition on the merits. If what they develop by way of an innovation reflects genuine competition on the merits, that's terrific. If it's somehow misused in a way to thwart competition, then we'll be the cop on the beat.

>> Mark Hachman: Okay. And just to clarify a previous question that was already asked, you guys had killed -- or you guys had -- the previous talks had broken down because of what Intel called "unprecedented remedy." Are you guys commenting on what those remedies were and how you solved those differences?

>> Jon Leibowitz: I would comment these remedies are agreed to, so...

>> Mark Hachman: Okay. Thank you.

>> Richard A. Feinstein: Yes, they've gone from being unprecedented to precedented. Absolutely.

>> Jon Leibowitz: All right. Next question.

>> Female Speaker: Your next question comes from Stephanie Kirchgaessner. Your line is now open.

>> Stephanie Kirchgaessner: Hi. This is Stephanie Kirchgaessner. Thank you very much. So, just wondering -- You made a statement about section 5 and that this was obviously a very big test case for the Commission, for new aggressive use of sections 5, and I'm wondering if it sends a message that perhaps section 5 may not, you know -- may be used by the FTC in terms of reaching a settlement. But how confident are you that these charges would have held up, say, in an appeals court review and whether -- and how aggressively you plan for the future?

>> Jon Leibowitz: Stephanie, I couldn't get all of your question, but if I understood most of it, you know, we think section 5 is a critical tool in our arsenal. We think it was very, very helpful to have a pure section 5 unfair methods of competition count here, as well as a monopolization count, as well as an unfair deceptive acts or practices count with respect to the compilers and the benchmarks. And we're going to use this authority to stop unfair methods of competition -- again, broader than the antitrust laws -- judiciously but appropriately, and, again, one thing that we have started to see with our use of section 5, although I would say we have a beach head here as opposed to a full-scale endorsement, is that by its own terms, unfair methods of competition isn't an antitrust statute, so it is, in some ways, a hedge against treble damages, and we think, to the extent that the courts have been -- to the extent that the courts have been concerned about the sort of toxic combination of treble damages and class actions and antitrust, and that might be sort of one of the reasons that they have made significant limitations at the Supreme Court and at

the circuit court level. You know, this is a way for us to fulfill our mission of stopping anticompetitive behavior and getting out from under those restrictions which apply to us as well as to private plaintiffs. So, in terms of -- So, we think that -- And our authority goes back to 1914. It is clear. It is unambiguous. If you look at the -- the statute and the legislative history around it, Congress wanted to -- Congress wanted to create this new agency, the FTC, in 1914. It was a Brandeis/Roosevelt/Wilson idea. And they wanted to give us weaker remedies but broader jurisdiction. So, I don't know, Julie, if you want to add anything. You've been --

>> Julie Brill: No, that's -- that's fine.

>> Jon Leibowitz: Probably, I went on a little too long about that.

>> Julie Brill: No, it was good.

>> Jon Leibowitz: Okay, next question. We'll take a few more.

>> Female Speaker: Your next question comes from Gautham Nagesh. Your line is now open.

>> Gautham Nagesh: Hi. Thanks. I was just wondering if you, as part of the settlement, pursued any sort of punitive damages. I know you mentioned that Intel paid a rather large settlement to AMD, but was that a consideration in any sort of fines, or is that something you're reserving if they violate the terms of the agreement?

>> Jon Leibowitz: Yeah, we don't have punitive-damage authority or civil-penalty authority for antitrust cases unless you violate the terms of the agreement. There are probably a majority of Commissioners -- I know Tom Rush, one of my colleagues who wanted to be here today but couldn't, and I -- we both support fining authority for antitrust violations. Commissioner Brill can speak to herself, but I think it would make us a more --

>> Richard A. Feinstein: "For herself."

>> Jon Leibowitz: What?

>> Richard A. Feinstein: "For herself."

>> Jon Leibowitz: Yes.

>> Julie Brill: It's okay.

>> Jon Leibowitz: What did I say?

>> Richard A. Feinstein: "To herself."

>> Jon Leibowitz: "To herself." She can do that, too. She can speak for herself, and I'll let her speak for herself, but, anyway, we would like to see that authority. We just don't have it, so...

>> Julie Brill: Yes, and I absolutely agree. I think civil-money penalties, in appropriate cases, this potentially being one, would be very appropriate for this agency to have and have very much supported that effort.

>> Richard A. Feinstein: The only thing I would add -- excuse me.

>> Julie Brill: So sorry.

>> Richard A. Feinstein: If there are violations of the order -- and we certainly hope that there will not be, but we have a compliance office that will be paying close attention to that. If we can establish violations, the penalty for violations is \$16,000 per violation, and, depending upon the nature of the violation and whether it's a continuing violation, that can

add up very quickly, so if it were to be the case that Intel is found not to be in compliance, then monetary penalties would be appropriate.

>> Jon Leibowitz: All right. We'll take maybe two more questions, if there are.

>> Female Speaker: Again, if you like to ask a question, please press star 1 on your telephone keypad.

>> Jon Leibowitz: All right. There's one question in the room. We will make that the last question, and I have a very brief announcement, but go ahead.

>> Male Speaker: Could you explain how compilers work?

>> Jon Leibowitz: Howard Shelanski, would you like to come up here? Kyle? Kyle? I can hold up a chip, I can put it in the mother board, but --

>> Kyle Andeer: Hi. This is Kyle Andeer. I'm going to do my best to make something very complicated very simple and very short. A compiler is used by software developers to basically write software code, so, in order for the software to communicate with the CPU, you need to write the code using a compiler. Intel is one of several companies that makes a compiler, and so it translates zero and ones into software code. That's gonna be my simple explanation. I hope that will do. [Chuckles]

>> Jon Leibowitz: And now I will speak to myself. No. Let me just mention one thing. We had a small, relatively speaking, but terrific legal team of lawyers and economists working on this case. They did a wonderful job, as Rich mentioned, and I'll just start -- I can't mention everybody, but sitting in the front row, we have Robbie Robertson, who, sadly will be leaving the Commission soon, who is our lead litigator, and you don't win cases and you don't get good settlements without terrific litigators. Melanie Sabo, who runs Anticompetitive Practices, that really began and did much of the investigation. Joe Farrell, our fabulous head of the Bureau of Economics, who really helped us all to

understand these very complex economic issues. Kyle Andeer, you just -- all of you just met in a sense, who was critical in the litigation. Pete Levitas, our deputy head of the Bureau of Competition, who did a wonderful job, along with Howard Shelanski, the deputy head for Competition in our Bureau of Economics. In working through the negotiated settlement, Pete did some of that while in Yellowstone National Park, for which we are deeply appreciative, and, again, there are many more people, and we'll be thanking them as a Commission, but -- and it's also worth mentioning, Edith Ramirez, one of the Commissioners, isn't here, but she and Tom Rush -- and, of course, Tom was here through the pendency of most of the investigation, and when we got process to ratchet up the investigation, have just been integral in helping to think these issues through in what we believe is sort of an aggressive but balanced way. So, with that, I want to thank every- - and Rich Feinstein, who you've met, who has also been wonderful in leading our bureau. We also had the help of the Bureau of Consumer Protection. David Vladeck was here, but he is absent himself. And so, again, we want to thank you all for coming, and we all look forward -- We're all hoping to move forward to a more competitive landscape, and thank you so much. That's it.

>> Female Speaker: This concludes today's conference call. You may now disconnect.