

Intel ruling affirms companies' trust in judicial review, former GC judge says – Concurrences Brussels

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- ECJ judgment establishes conditions for accurate EC assessment and in-depth judicial review
- Ruling further develops EC jurisprudence by emphasising effects-based approach—ex-GC judge

The European Court of Justice's (ECJ) *Intel* ruling sends companies a signal that the judicial system provides all the guarantees of a full and rigorous review of their cases, former General Court (GC) Judge Maria Eugenia Martins de Ribeiro said today (7 September).

On 6 September, the ECJ decided Intel's appeal against a 2009 European Commission (EC) abuse of dominance decision fining the chipmaker EUR 1.06bn, sending the case back to the GC to assess whether the company's rebates were capable of restricting competition.

In the ruling, the top court's judges set aside the GC judgment and instructed the lower court to re-examine Intel's arguments concerning the "as-efficient competitor" test which the EC applied in its infringement decision.

Barely 24 hours after the publication of the judgment, Martins de Ribeiro told the Global Antitrust Hot Topics conference in Brussels that the crucial question following the Intel ruling was not which economic test should be used to assess a company's dominant position.

This is more in general about the EC making an accurate assessment by applying the appropriate tools and an in-depth judicial review of the contested issues presented by the applicants, said Martins de Ribeiro. The former judge completed her term at the court in September 2016.

The ruling explicitly enumerated the circumstances the EC is required to analyse: the market features, the rebates system, and the potential anticompetitive strategy of the dominant company.

The court has the most complete assessment possible in mind, not only of the system of rebates but also of the context and strategy, Martins de Ribeiro said.

With this ruling, the ECJ has further developed its jurisprudence by emphasising the importance of an effects-based approach in the assessment of a company's capability to exclude competitors, she added.

In line with Advocate General Nils Wahl's October 2016

PROPRIETARY

Sector: Computer: Semiconductors
Topics: Abuse Of Dominance/Single Conduct

Grade: Confirmed

Companies

Intel Corporation

Agencies

European Commission - Directorate General For Competition (EC - DG Comp)
 European Court Of Justice
 EU General Court

Case Files

EU Investigation Into Abuse Of Dominance By Intel In The CPU Market (2000)

non-binding opinion, the ECJ did not find useful the GC's distinction between various kinds of presumed illegal rebates.

The important question is not whether one should use categories, but whether the fact of using categories at an early stage could be a way of avoiding the necessary preliminary analysis, the former judge said.

The court mainly relied on *Post Danmark I* and to a lesser extent on *Hoffmann-La Roche*, she noted.

by Simon Van Dorpe in Brussels

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