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INTELLigent Lessons from an Antitrust Blunder

By
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The FTC's approval in March of a settlement with Intel closed an unfortunate chapter in American technology policy. Intel and the FTC are calling it a "win for both parties."² But they forgot one thing: the consumer. While consumers were not harmed by Intel's business practices, they are by antitrust cases like this.

In 1971, the Intel 4004 chip sold for \$200 and processed 4 bits in about 10 millionths of a second. Today, a version of the Intel Celeron sells for \$123, and handles 64 bits in about 3 billionths of a second.³ That's a price/performance improvement of over 8 ½ million percent. Intel's innovations are part of a remarkable achievement perhaps unequaled in human history, and they have yielded tremendous consumer benefits.

Trustbusting the hand that feeds: Instead of alleging consumer harm, the FTC accused Intel of "bullying" other firms who want to do business with it. This is astonishing, because the companies in question all made their money in markets that perhaps wouldn't exist if it weren't for Intel. What's wrong with this picture?

There's an old tale of the lemonade stand, used to teach basic business principles to young entrepreneurs. Suppose you're an ambitious 6th grader who wants to sell lemonade. You try different flavors and combinations of ingredients until you get just the right mix. You set up your stand, and people love it. You barely keep up with demand.

Soon other kids want to sell your lemonade. Some have good business plans, and you agree to trade information and to keep their secrets. With other kids, though, things don't work out. Maybe you think their ideas aren't worth giving up your secret formula, or maybe you just don't have confidence in them as business partners. For whatever reason, you aren't comfortable dealing with them, so they don't get your lemonade recipe.

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² <http://www.news.com/News/Item/0,4,33455,00.html>, "Trial Was Risky For Both Sides," March 17, 1999.

³ See for example *Raw Bytes Computer News*, online at

<http://www.physplt.wsu.edu/pub/people/BremnerFiles/MicroHistory02.html>, "Race for the Fastest Chip," *Seattle Times*, online at <http://gateway2.seattletimes.com/pcprimer/timeout/chip.html>, and *Wired*, March 1999, pp. 130-131.

A few days later you get called to the principal. He tells you that because your lemonade is so overwhelmingly popular, it's now "essential." You have to give your lemonade formula to all kids, or you're "bullying" them, and that's against school rules.

That, in a nutshell, was the FTC's case: Intel had become so successful that it was now required to do business with partners on terms to which it didn't agree.

When is a company too successful? When exactly does a company become so successful that it loses the right to negotiate contracts on its own terms? The FTC didn't say. Is it when a dominant company issues inferior products and raises prices? Maybe, because that's the warning sign of monopoly power according to traditional trustbuster theory. But Intel's products get better and cheaper, so that argument doesn't wash.

Is it simply when a company gets a large market share? In that case, every company with a popular product could lose the ability to negotiate contracts. But in today's dynamic marketplace, even the market share of a giant like Intel isn't guaranteed. Intel's portion of the microprocessor market dropped from 87% 75.7% this past year.⁴ Its share of total industry revenues also declined, and profits are down 13% since 1997.⁵ So the "large market share" argument doesn't hold water.

It seems more appropriate on reflection to argue that companies shouldn't lose the right to negotiate contracts, no matter how successful they become.

FTC contract intervention harms consumers: The FTC's arguments place improbable, static notions of monopoly power above more fundamental principles of contract. Companies that want to do business with Intel must be delighted with the settlement. They'll get better terms than they could otherwise negotiate; saving them the trouble of having to compete as hard as they otherwise would have found necessary. And while Intel would rather have avoided any FTC involvement in its affairs, the company at least no longer faces a costly, lengthy and public trial. So they believe they've won a victory.

But consumers, in the long run, will lose. Aggressive companies will get a very clear message from this settlement: if you work too hard to satisfy customers by providing them with better and cheaper products, your ability to conduct business as you deem necessary will be weakened. Is that really the message the government wanted to send?

Intel should be left alone to pursue whatever honest business practices it believes will best serve its customers and stockholders. That includes hard negotiations and the right to refuse to deal with others. That's not bullying. That's business. The bully on the playground is the FTC. It should spend some time in study hall.

⁴ <http://www.news.com/News/Item/0,4,31678,00.html>, "FTC Faces Tough Intel Trial," January 29, 1999.

⁵ *Wired*, March 1999, pp. 130-131.