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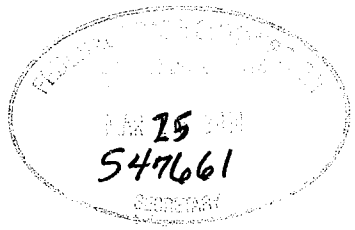
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of	)	**PUBLIC**
INTEL CORPORATION,	)	**DOCKET NO. 9341**
Respondent.	)	

COMPLAINT COUNSEL'S OPPOSITION TO INTEL'S REQUEST FOR LEAVE TO FILE OVERLENGTH MEMORANDUM

Complaint Counsel objects to Intel's Motion for Extension of Time and For Leave to File Overlength Memorandum in Opposition to Complaint Counsel's Motion to Admit the European Commission Decision (Intel's "Motion"). The timing of Intel's response is not the issue. If Intel needs more time to respond to the admissibility of a decision by the European Commission, and it limits its argument to that issue in 2,500 words under Rule 3.22(c), that is fair. But that is not what Intel asked us or this Court to do. Intel wants to disregard the Commission's Rules of Practice and file a response that is three times as long as what is allowed under the Rules. In short, Intel wants this Court to create an exception to Rule 3.22(c) that simply does not exist.

Rule 3.22(c) could not be clearer: "Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words." Unlike the other provisions of Rule 3.22, there are no exceptions to this rule. *See, e.g.*, Rule 3.22(d) (which allows the Administrative Law Judge or the Commission to shorten or lengthen the time required for a response). We see no reason to create one here.

The question presented by Complaint Counsel's motion is simple. Is the European Commission decision admissible evidence in this proceeding? Intel's Motion already makes the argument as to why Intel believes the EC Decision should not be admitted. Intel wants more time, and more words, to challenge specific factual findings in that Decision. Challenging the

evidence is what the hearing and post-trial briefs are for. Whether the evidence is admissible is a completely different question. Indeed, both sides may offer evidence that may or may not be dispositive after all the evidence is in. But the time to argue whether the Court should rely on certain evidence or place weight on it is for closing arguments and briefing. The only question before this Court is whether the evidence is admissible. That could not possibly take 7,500 words, or more than 5,000 more words than Complaint Counsel's motion, to make their points. We believe that is inappropriate and unfair.

Intel says that it wants, for example, to challenge whether the Commission "disregarded authoritative deposition testimony." Intel's Motion at 3. Intel obviously did not agree with the way the Commission weighed the totality of the evidence before it. But re-arguing those facts on a motion to admit evidence is not the appropriate forum. Moreover, Intel has now raised arguments about the sufficiency of the evidence, not just admissibility, that Complaint Counsel has not had an opportunity to address. To address Intel's arguments on the sufficiency of the evidence, Complaint Counsel would have to show the Court additional evidence as to why the Commission was correct in its findings. These issues should be argued after all the evidence is admitted, not now. *See Korean Air Lines Disaster of September 1, 1983*, 932 F.2d 1475, 1481-83 (D.C. Cir.1991) ("The district court [properly] decided that KAL's trustworthiness objections were more properly addressed to the jury for purposes of evaluating the weight to be accorded" the report.).

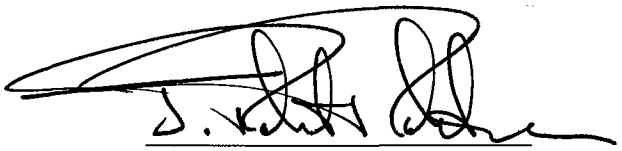
Moreover, Intel's intention to argue over the hearing procedure of the European Commission and its handling of certain testimony has nothing to do with the central facts of the decision regarding market definition, shares, barriers to entry and many issues that Intel did not even contest. Nor is the manner of the hearing of any relevance to those issues. The cases cited in our opening brief allowed as evidence the European Commission's Statement of Objections,

even though those Statements were issued before any hearing or final decision, which we have here. *See, e.g., Information Resources, Inc. v. The Dun & Bradstreet Corp.*, 1998 WL 851607, *1 (S.D.N.Y. 1998) ("to the extent that the [SO] represents conclusions, it is 'subject to the ultimate safeguard-the opponent's right to present evidence tending to contradict or diminish the weight of those conclusions.'"); *Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation,* 2009 WL 5218057, 2009-2 Trade Cases P 76,855, at *9-11(D. Conn. 2009) (Allowing EC Statement of Objections into evidence, despite the fact that the findings were not final and could be challenged, and citing numerous cases); *In re Japanese Products*, 723 F.2d 238, 272-75, 309 (3d Cir. 1983), *rev'd sub nom. on other grounds, Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (Reversing as an abuse of discretion the trial court's exclusion of the Recommendations of the Japanese Fair Trade Commission but explaining that at trial a "fact finder" may reach a "different conclusion").

In sum, Complaint Counsel does not object to an extension of time, either on Intel's response or on the Court's final decision on admissibility. However, we do object if the purpose is to write a brief that is three times longer than Complaint Counsel's original motion to address issues that are not relevant to the simple issue of admissibility.

March 25, 2010

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I filed via hand and electronic mail delivery an original and two copies of the foregoing Opposition to Respondent's Request for Leave to File Overlength Memorandum with:

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Federal Trade Commission
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Washington, DC 20580

I also certify that I delivered via electronic and hand delivery a copy of the foregoing Opposition to Respondent's Request for Leave to File Overlength Memorandum to:

The Honorable D. Michael Chappell
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Federal Trade Commission
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Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing Opposition to Respondent's Request for Leave to File Overlength Memorandum to:

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March 25, 2010

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