

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

<p>In the Matter of</p> <p>INTEL CORPORATION,</p> <p>a corporation.</p>
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Docket No. 9341

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging the Respondent Intel Corporation with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the Respondent having been served with a copy of that complaint, together with a notice of contemplated relief and having filed its answer denying said charges; and

The Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent Order, an admission by Respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 3.25(f) of its Rules, and having modified the Decision and Order in certain respects, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent Intel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Mission College Boulevard, Santa Clara, California 95054.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

I.

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

THE PARTIES

- A. “Respondent” or “Intel” means Intel Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Intel Corporation; and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.

OTHER DEFINITIONS

- C. “AMD Patent Agreement” means the Patent Cross License Agreement between Advanced Micro Devices, Inc. and Intel Corporation dated November 11, 2009.
- D. “Benefit” means any price or non-price benefit including without limitation price discounts, marketing funds, supply, and marketing or engineering support; provided, however, that initiating or forbearance from initiating litigation (including without limitation any activity related to lawfully enforcing its intellectual property rights) shall not be a Benefit.
- E. “Clear(ly) and Prominent(ly)” means that the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it. All disclosures, including audio and video disclosures, shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication containing the disclosure.
- F. “Compatible x86 Microprocessor” means a Microprocessor (i) not designed, manufactured, promoted and sold by Respondent, (ii) that is substantially binary compatible with an Intel x86 Microprocessor without using non-native execution such as emulation, (iii) to perform substantially the same functions as an Intel x86 Microprocessor in response to substantially the same input, (iv) that is designed, manufactured, promoted and sold by any entity other than Respondent (v) for use in, and that is used in, any high-volume Computer Product.
- G. “Compiler” means a computer program that converts the instructions written in a high level computer programming language into assembly language or machine

code that can later be executed directly by a Microprocessor, associated libraries (whether for use with Respondent's or any other compiler, e.g., performance libraries such as Intel Math Kernel Library, Intel Threaded Building Blocks, and Intel Integrated Performance Primitives), and associated development tools.

- H. "Compiler Customer" means any customer that has purchased from Respondent any version of any Intel Compiler or associated libraries listed in Exhibit 1 since January 1, 2003, as reflected in Respondent's business records.
- I. "Computer Product" means any desktop, laptop, netbook, notebook, workstation or server computer; provided, however, that no Non-PC Product shall be a Computer Product. For clarity, any product that includes a screen with a diagonal size of seven (7) inches or greater (i) shall not automatically be considered a Computer Product and (ii) shall not be considered a Computer Product unless it meets this definition.
- J. "Computer Product Chipset" means one or more integrated circuits in a Computer Product that (i) alone or together electrically connect(s) directly with a Relevant Microprocessor Product to connect and allow that Relevant Microprocessor Product to exchange binary information with other Microprocessors, input/output devices, networks, or system memory (also known as main memory or DRAM); and (ii) provide(s) the primary interface between the Computer Product's Relevant Microprocessor Product and storage (including without limitation a hard disk drive) and input devices (including without limitation a keyboard) using a non-proprietary general purpose computer system bus.
- K. "Consent Order Cost" means Respondent's Product Cost of Sales ("PCOS"), as that term is used by Respondent in the ordinary course of business as of August 3, 2010, minus depreciation (as customarily calculated by Respondent in the ordinary course of its business). "Consent Order Cost" shall be computed as a three-quarter rolling average, using the quarter in which assembly and testing of the shipped units of the Relevant Product is completed and the two immediately following quarters. Nothing herein shall be interpreted to mean that any particular component of Consent Order Cost does or does not vary with output over any particular range of production.
- L. "Constrained Supply" means the quantity demanded exceeds supply for one or more of Respondent's Relevant Products, presently or as forecasted by Respondent.
- M. "Customer" means an OEM, ODM or End User Customer.
- N. "Designated Intel Competitor" includes only Advanced Micro Devices, Inc. ("AMD"), Nvidia Corporation ("Nvidia") and Via Technologies Inc ("Via"), or their permitted successors and assignees under the Designated Patent Agreements, each of which is a Designated Intel Competitor.

- O. “Designated Patent Agreements” means the AMD Patent Agreement, the Nvidia Patent Agreements and the Via Patent Agreements.
- P. “Designated Intel Roadmap Competitor” means Nvidia Corporation or its permitted successors and assignees under the Designated Patent Agreements.
- Q. “End User” means a person that purchases Computer Products from an OEM and is not an End User Customer or OEM.
- R. “End User Customer” means a person that purchases Relevant Products from Respondent or a Designated Intel Competitor for use in manufacturing Computer Products for its own use and that derives less than five (5) percent of its revenue from the sale of Computer Products to third parties. Any person that derives five (5) percent or more of its revenue from the sale of Computer Products to third parties shall be deemed an OEM and not an End User Customer for purposes of this Order.
- S. “Extraordinary Assistance” means financial and/or technological support of a value of more than \$50 million that (i) is not made generally available to other Customers and (ii) is intended to enable a Customer to enter into a new (for the Customer) segment or channel or to introduce a new (for the Customer) product that includes new functionality the Customer is not offering in any other product into an existing market segment or channel. Provided, however, that a product that merely enhances or improves existing functionality shall not be a new product.
- T. “Intel x86 Microprocessor” means a Microprocessor designed, manufactured, promoted and sold by Respondent that is substantially binary compatible with Respondent’s x86 instruction set used in Respondent’s Core 2 Microprocessor without using non-native execution such as emulation.
- U. “Mainstream Microprocessor” means any Intel x86 Microprocessor designed, manufactured, promoted and sold by Respondent for use in, and that is used in, any high-volume Computer Product, including any such Intel x86 Microprocessor sold under the Xeon, Core, Pentium, Celeron, Atom and any of their successor brands.
- V. “Mainstream Microprocessor Platform” means each combination of a Mainstream Microprocessor and Computer Product Chipset promoted by Respondent for use together in Computer Products.
- W. “Market Segment Share” means the proportion of a Customer’s requirements for a Relevant Product purchased from a particular vendor.
- X. “Microprocessor” means (i) an integrated circuit (ii) that is capable of processing digital data, (iii) that act(s) as the externally generally programmable central processing unit in a Computer Product, and (iv) that performs arithmetic, logic and control flow operations.

- Y. “Non-PC Product” means any product, other than a Computer Product, including without limitation any smart phone, cell phone, tablet, Pocket PC or other consumer electronic devices. For clarity, any product that includes a screen with a diagonal size of less than seven (7) inches is a Non-PC Product regardless of whether it meets this definition of NonPC Product or not.
- Z. “Nvidia Patent Agreements” means the Patent Cross License Agreement between Nvidia Corporation and Intel Corporation dated November 18, 2004, and the Chipset License Agreement Between Nvidia Corporation and Intel Corporation Dated November 18, 2004.
- AA. “Original Design Manufacturer” or “ODM” means a customer of Respondent whose primary business is the design and/or manufacture of a Computer Product which is specified and eventually branded by another firm for sale.
- BB. “Original Equipment Manufacturer” or “OEM” means a customer of Respondent that manufactures and sells Computer Products and who is not an End User Customer.
- CC. “Product Roadmap” means Respondent’s formal plan of record identifying Respondent’s strategic future product plans for Mainstream Microprocessors.
- DD. “Required Interface Roadmap” means a Respondent document that identifies the internal development name of future Mainstream Microprocessors under development by Respondent and, for each, the calendar quarter within which such product is then-planned to be commercially introduced and the then-planned version of the Standard PCI Express Bus interface.
- EE. “Relevant GPU” means one or more integrated circuit(s) that: (i) is the primary graphics processing unit in a Computer Product; (ii) is capable of performing real-time graphics rendering tasks separate from that Computer Product’s Relevant Microprocessor Product; (iii) does not provide the primary interface between the Computer System’s Relevant Microprocessor Product and storage (including without limitation a hard disk drive); and (iv) does not provide the primary interface between the Computer System’s Relevant Microprocessor Product and input devices (including without limitation a keyboard). In no case shall any one or more integrated circuits that meet this definition of Relevant GPU be considered a Microprocessor or Computer Product Chipset under this Order.
- FF. “Relevant Microprocessor Product” means (a) any Mainstream Microprocessor and (b) any Compatible x86 Microprocessor.
- GG. “Relevant Products” means (i) Relevant Microprocessor Products and (ii) Relevant GPUs.
- HH. “Standard PCI Bus” means a chip-to-chip interconnect designed to comply with a PCI Express (PCIe) Base Specification published by the PCI-SIG.

- II. “Via Patent Agreements” means the Litigation Settlement Agreement Between Via Technologies Inc. and Intel Corporation, dated April 7, 2003, including the Microprocessor Addendum and Patent Cross License Addendum to that Agreement, and any amendments thereto.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall, within thirty (30) days after the date this Order becomes final, for a period of not less than six (6) years, unless pursuant to rule 2.51(c) or 3.72(b) the Commission modifies this Order to reduce the time period in any respect, include in each of its Mainstream Microprocessor Platforms an interface (“Required Interface”) to a Standard PCI Bus.
- B. Respondent may determine the version or specification of the Standard PCI Express Bus interface (e.g., PCIe Base Specification 2.1, PCIe Base Specification 3.0) that will be included in each of its Mainstream Microprocessor Platforms subject to this provision.
- C. Respondent shall not design any Required Interface to intentionally limit the performance or operation of any Relevant GPU in a manner that would render the Required Interface non-compliant with the applicable PCIe Base Specification.
- D. The presence of “bugs” or errata in any product that render an interface non-compliant with the relevant PCI Express (PCIe) Base Specification shall not except such an interface from the definition of Required Interface.
- E. Provided, however, that Respondent need not include the Required Interface in any Mainstream Microprocessor Platform that: (i) was code-named “Oak Trail” when supplied to Customers for pre-production testing prior to the effective date of this Order; (ii) is shipped by Respondent on or before June 30, 2013, and (iii) is promoted and sold only for use in fanless netbooks launched on or before December 31, 2012.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall, within thirty (30) days after the date this Order becomes final, offer to each Designated Intel Competitor to amend its respective Designated Intel Competitor Patent Agreement(s) in a writing executed by both parties to provide that:

1. the Designated Intel Competitor may, without breaching that agreement, disclose, to any customer of the Designated Intel Competitor or any semiconductor foundry with which the Designated Intel Competitor is negotiating regarding a foundry relationship, the Licensed Rights Portions (as defined below) of that Competitor's Designated Patent Agreement(s), so long as the Customer or foundry agrees in writing to keep those terms confidential; and,
 2. upon written request from the Designated Intel Competitor, Respondent will confirm to any semiconductor foundry with which the Designated Intel Competitor is negotiating regarding a foundry relationship or customer of that Designated Intel Competitor the content of the Licensed Rights Portions of its respective Designated Patent Agreement(s), so long as the Designated Intel Competitor agrees that Respondent may do so without breaching its respective Designated Intel Competitor Patent Agreement(s) and so long as the Customer or foundry agrees in writing with Respondent to keep such content confidential.
 3. As used in this Section, "Licensed Rights Portions" shall mean the following portions of the Designated Patent Agreements:
 - a. the AMD Patent Agreement, as filed by AMD with the U.S. Securities and Exchange Commission on November 17, 2009;
 - b. the following provisions of the Via Patent Agreements: Sections 2.1, 2.2, 2.3, 2.4 and 4 of the Patent Cross License Addendum, as well as any defined terms referred to, directly or indirectly, in such sections; and
 - c. the following provisions of the Nvidia Patent Agreements: Sections 3.1, 3.2, 3.3, 3.4, 4.1 and 4.2 of the Patent Cross License and Sections 3.1, 3.2, 5.1, 5.2 and 5.3 of the Chipset License Agreement, as well as any defined terms referred to, directly or indirectly, in such sections.
- B. In the event the Designated Intel Competitor undergoes a "change of control" (as defined in the relevant Designated Intel Competitor Patent Agreement) that is publicly announced or a Designated Intel Competitor otherwise notifies Respondent that it has undergone a change of control within five (5) days of such change of control:
1. for a period of thirty (30) days from the date of the change of control, Respondent shall not initiate patent litigation against the party acquiring the Designated Intel Competitor ("Acquiring Entity") with respect to products previously manufactured by or acquired from the Designated Intel Competitor, unless the Designated Intel Competitor and/or the

Acquiring Entity or another entity controlled by one of them has first filed any suit against Respondent;

2. within ten (10) days from the date of the change of control, Respondent shall offer to enter into a written, reciprocal Standstill Agreement with the Acquiring Entity, such Standstill Agreement to comprise the following terms:
 - a. Respondent and the Acquiring Entity shall enter into good faith negotiations regarding the future patent relationship, if any, between them;
 - b. to facilitate those good faith negotiations, for a period of one year from the change of control, neither Respondent nor the Acquiring Entity (or any Affiliate of either of them) shall initiate patent litigation against the other or any Affiliate thereof;
 - c. the Standstill Agreement shall not act as a license or provide any patent or other intellectual property rights or defenses to any person or party, either expressly or by implication, estoppel, exhaustion, license, waiver, laches or otherwise; and
 - d. Respondent shall afford the Acquiring Entity not less than ten (10) days from receipt of Respondent's written offer to accept in writing the offered Standstill Agreement.
 - e. For purposes of this Section, "Affiliate" means any entity that is directly or indirectly controlled by, under common control with, or that controls the subject entity.

- C. Respondent shall, within thirty (30) days after the date this Order becomes final, offer to Via to sign written amendments to the Via Patent Agreements to:
 1. extend the "Capture Period" in Sections 1.4 of the Litigation Settlement Agreement between Via Technologies, Inc. and Intel Corporation dated April 7, 2003, 1.3 of the Via Patent Cross License Addendum of the same date, and 1.1 of the Via Microprocessor Addendum of the same date, to provide that the Capture Periods end on the fifteenth yearly anniversary of the Effective Date of those agreements;
 2. confirm that under the Via Patent Agreements, Via is permitted to make, use, sell or import Via Microprocessors that are compatible with the x86 instruction set but not pin compatible or bus compatible with Intel Microprocessors, including such Via Microprocessors with graphics technology designed by and supplied to Via by a third party, so long as Via does not exceed the scope of the licenses expressly granted under or otherwise breach the terms of those Agreements; and

3. provide that Respondent shall, upon the request of Via, publicly state that Via is permitted to make, use, sell or import Via microprocessors that are compatible with the x86 instruction set but not pin compatible or bus compatible with Intel microprocessors, including such Via microprocessors with graphics technology designed by and supplied to Via by a third party, so long as Via does not exceed the scope of the licenses expressly granted under or otherwise breach the terms of those Agreements.
 4. Respondent's written offer shall state that Via has thirty (30) days from receipt of Respondent's written offer to accept in writing any or all of the offered amendments. The amendments shall not be conditioned upon any other change to the Via Patent Agreements, including, without limitation, changes to provisions concerning Via's license rights concerning Microprocessors that are not Compatible x86 Microprocessors (including any intellectual property licensed from ARM Holdings) or Via's "have made" rights.
- D. Respondent shall not breach any term of any Designated Intel Competitor Patent Agreement that provides "have made" rights to the Designated Intel Competitor.
- E. Respondent shall comply with the requirements to offer the Designated Patent Agreement amendments described herein by the listed deadlines. Provided, however, nothing in this Order shall confer, by implication, estoppel, exhaustion, license, waiver, laches, or otherwise, to any person or entity (other than the Commission), any license or other right under any Intel patent, copyright, mask works, trade secret, trademark or other intellectual property right.

IV.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing, development, production, manufacture, marketing, promotion, purchase or sale of Relevant Products:

- A. Respondent shall not invite, enter into, implement, continue, enforce, or attempt to enter into, implement, continue or enforce, any condition, policy, practice, agreement, contract, understanding, or any other requirement that:
1. conditions any Benefit to a Customer or End User on that person's agreement to use or purchase Relevant Products or Computer Product Chipsets exclusively from Respondent in any geography, market segment, product segment, or distribution channel;
 2. conditions any Benefit to a Customer or End User on that person's agreement to limit, delay, or refuse to purchase (a) Relevant Products or Computer Product Chipsets from a supplier other than Intel or (b)

Computer Products containing a Relevant Product or a Computer Product Chipset from a supplier other than Respondent;

3. conditions any Benefit to a Customer or End User based on whether that person or entity purchases, sells or launches products incorporating a Relevant Product or a Computer Product Chipset from a supplier other than Respondent;
4. denies any Benefit to a Customer or End User because of that person's design, manufacture, distribution, or promotion of products incorporating a Relevant Product or a Computer Product Chipset from a supplier other than Respondent;
5. conditions any Benefit to a Customer based on the Market Segment Share of a Relevant Product or a Computer Product Chipset that a Customer awards to Respondent or to any competitor;
6. conditions any Benefit to a Customer or End User, either formally or informally, directly or indirectly, upon a Customer's purchase or sale of (a) Mainstream Microprocessors and (b) Computer Product Chipsets in a fixed proportion where, if the entire value of the Benefit were attributed to the Mainstream Microprocessors or Computer Product Chipsets included in the bundle, the selling price of those Mainstream Microprocessors or Computer Product Chipsets, as the case may be, would be below Respondent's Consent Order Cost; or
7. provides to a Customer or End User a discount as a flat or lump-sum payment of monies or any other item(s) of pecuniary value based upon a Customer's sales or purchases of Respondent's Relevant Products or Computer Product Chipsets reaching a specified threshold (in units, revenues, or any other measure) or otherwise reducing the price of one unit of Respondent's Relevant Products because of the purchase or sale of an additional unit of that product; provided, however, that Respondent may offer a discount or other items of pecuniary value based upon sales or purchases beyond a specified threshold. By way of example, Respondent may offer or provide a discount of X% on all sales in excess of Y units, but it may not offer or provide a discount of X% on all units if sales exceed Y units.

B. **Provided, however,** that nothing in this Order shall restrict the ability of Respondent to engage in any of the following activities:

1. conditioning any Benefit not otherwise prohibited by this Order upon the agreement of a Customer or End User to utilize the Benefit as the Customer or End User agreed when seeking or agreeing to receive the Benefit (e.g., for buying or promoting specified Relevant Products, or

manufacturing, selling or promoting Computer Products with agreed-upon specifications);

2. agreeing with any Customer that the customer will not:
 - a. use the same model number for Computer Products containing a Relevant Product or Computer Product Chipset supplied by Respondent in conjunction with Computer Products containing a Relevant Product or Computer Product Chipset not supplied by Respondent;
 - b. falsely designate or label a Computer Product as containing a Relevant Product or Computer Product Chipset sold by Respondent; or
 - c. communicate in a false or deceptive manner, directly or by implication, that a Computer Product contains a Relevant Product or Computer Product Chipset supplied by Respondent.
3. offering a Benefit, including a price discount, reasonably similar to one Respondent reasonably believes is being offered by a rival supplier; provided, however, that in such circumstance:
 - a. the Benefit shall be applicable only to the quantity of Relevant Products or Computer Product Chipsets that Respondent reasonably believes that the rival supplier has offered to supply;
 - b. Respondent may not condition its Benefit upon receipt of exclusivity or a minimum Market Segment Share, regardless of whether or not the rival supplier has so conditioned its offer;
 - c. Respondent may not offer the Benefit for purchases over the course of more than one year; and
 - d. Respondent may condition its bid upon the purchase of a minimum number of units under the terms of its bid.
4. winning all of a Customer's business, so long as Respondent has not bid for more business than a Customer has asked to be bid and so long as Respondent does not engage in conduct otherwise prohibited by this Order to win the business;
5. offering a price discount or other Benefit that otherwise complies with the requirements of this Order to an End User Customer;
6. offering price discounts to an End User if Respondent structures its offer of a discount based on the volume of Computer Products containing a Relevant Product or Computer Product Chipset manufactured by

Respondent actually purchased in a given bid (e.g., \$X per-unit for the first x units; \$Y per-unit for the next y units; etc.), provided the terms are in writing. Such discounts must be based upon the End User's purchases pursuant to a single bid to acquire Computer Products and cannot be contingent on future purchases;

7. when a Relevant Product or Computer Product Chipset is in Constrained Supply, making product allocation decisions for Customers that accounted for two (2) percent or more of Respondent's sales of Relevant Product in the preceding year, provided that, in making such decisions, Respondent shall not retaliate or otherwise punish any Customer because of the extent or existence of any Customer's relationship with an Intel competitor, including without limitation whether the Customer purchases Relevant Products or Computer Product Chipsets from an Intel competitor;
8. agreeing with a Customer that the Customer will not purchase Relevant Products or Computer Product Chipsets from an Intel competitor where:
 - a. Respondent has provided Extraordinary Assistance to the Customer;
 - b. the period of such exclusivity is no longer than necessary for Respondent to achieve a return on invested capital (as that term is used and calculated by Respondent in the ordinary course of business) comparable to the return on invested capital of Respondent's other comparable investments and to ensure that intellectual property made available by Respondent to the Customer in connection with the provision of Extraordinary Assistance is not used in connection with Relevant Products or Computer Product Chipsets purchased by the Customer from an Intel competitor except as otherwise authorized or licensed by Respondent, but in no event longer than thirty months (or such longer time period as the Commission may approve) from the date on which the Customer's product reflecting the Extraordinary Assistance is first sold commercially;
 - c. the exclusivity is limited to the new segment or channel or product;
 - d. any agreement regarding such assistance, investment and exclusivity is in writing, executed by both Respondent and the Customer, and retained by Respondent for at least ten (10) years; and
 - e. Respondent does not (i) enter into more than ten (10) such agreements over the term of this Order (or such additional agreements as the Commission may approve); and (ii) enter into

more than two (2) such agreements in any twelve month period (or such additional agreements as the Commission may approve).

9. agreeing with a Customer that the Customer will maintain the confidentiality of Respondent's confidential business information disclosed to the Customer and that the Customer will use Respondent's confidential business information only in connection with Computer Products incorporating Relevant Products manufactured by Respondent; and
10. providing to a Customer or End User a discount as a flat or lump-sum payment of monies or any other item(s) of pecuniary value based upon a Customer's sales or purchases of fewer than eleven (11) units of any Relevant Product (such as "buy ten, get one free"). This provision does not apply to sales of greater than 11 units to any one customer (for example, Intel may not use this provision to offer 10,000 free units to an OEM in return for a purchase of 100,000 units).

V.

- A. **IT IS FURTHER ORDERED** that Respondent shall not make any engineering or design change to a Relevant Product if that change (1) degrades the performance of a Relevant Product sold by a competitor of Respondent and (2) does not provide an actual benefit to the Relevant Product sold by Respondent, including without limitation any improvement in performance, operation, cost, manufacturability, reliability, compatibility, or ability to operate or enhance the operation of another product; provided, however, that any degradation of the performance of a competing product shall not itself be deemed to be a benefit to the Relevant Product sold by Respondent. Respondent shall have the burden of demonstrating that any engineering or design change at issue complies with Section V. of this Order.
- B. **Provided, however,** that the fact that the degradation of performance of a Relevant Product sold by a competitor of Respondent arises from a "bug" or other inadvertent product defect in and of itself shall not constitute a violation of Section V.A.1. Respondent shall have the burden of demonstrating that any such degradation of performance was inadvertent.

VI.

IT IS FURTHER ORDERED that:

- A. Respondent shall use reasonable efforts to ensure that any Product Roadmap that it discloses to any person will be, at the time it is disclosed, accurate and not misleading. When Respondent discloses a Product Roadmap to a third party, Respondent shall use reasonable efforts to respond accurately to any inquiries

regarding changes in that Product Roadmap received from that third party during the one (1) year following such disclosure.

- B. No later than the first (1st), second (2nd), third (3rd) and fourth (4th) annual anniversaries of the date on which this Order becomes final, Respondent shall provide to each Designated Intel Roadmap Competitor a Required Interface Roadmap that will include the future Mainstream Microprocessor Platforms with a Required Interface that Respondent then-plans to introduce commercially before the fifth (5th) annual anniversary of this Order:
1. Respondent shall use reasonable efforts to ensure that the Required Interface Roadmap provided is, at the time it is provided, accurate and not misleading; and
 2. Respondent shall use reasonable efforts to respond accurately to any reasonable number of inquiries (no more than one per calendar quarter) received on or before the fourth annual anniversary of this Order from a Designated Intel Roadmap Competitor regarding any material changes to the information provided on a Required Interface Roadmap previously provided to that Designated Intel Roadmap Competitor in compliance with this Order.
 3. **Provided, however,** that Respondent may condition the receipt of any Required Interface Roadmap upon (i) the recipient's execution of a written non-disclosure agreement to maintain the confidentiality of the Required Interface Roadmap and/or (ii) the receipt of a certification from the Designated Intel Roadmap Competitor stating that such Competitor is developing a Relevant GPU that is intended to connect, and would be capable of connecting, to a Mainstream Microprocessor via a Required Interface.
- C. Except for the Required Interface Roadmaps required by this Order, Respondent may decline to provide Customers and other entities with Product Roadmaps, updates to Product Roadmaps, and/or pre-release engineering product samples based on any lawful business considerations not otherwise prohibited by this Order, including the customer's or other entity's ability and desire to provide marketing, design, engineering, or other insight or assistance concerning such Product Roadmap information and/or product samples.

VII.

IT IS FURTHER ORDERED that in Respondent's activities, directly or indirectly, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the licensing, development, production, manufacture, marketing, promotion, purchase, sale, application engineering, or customer support of Compilers:

- A. Within ninety (90) days of the date on which this Order becomes effective, Respondent shall Clearly and Prominently inform its Compiler Customers on its web site, documentation, and compiler presentations that relate to compiler performance or optimizations that:
1. Intel's Compiler may or may not optimize to the same degree for non-Intel microprocessors for optimizations that are not unique to Intel microprocessors. These optimizations include SSE2, SSE3, and SSSE3 instruction sets and other optimizations. Intel does not guarantee the availability, functionality, or effectiveness of any optimization on microprocessors not manufactured by Intel. Microprocessor-dependent optimizations in this product are intended for use with Intel microprocessors.
- B. Respondent shall not misrepresent, or assist others in misrepresenting, expressly or by implication, the level of optimizations available in its Compilers for Compatible x86 Microprocessor.
- C. By the time of the next Compiler release, including update releases, but no later than six (6) months from the date on which this Order becomes final and on an ongoing basis, Respondent shall Clearly and Prominently provide the following disclosures in its product documentation (whether in paper form or on an internet site), marketing literature, and promotional literature, where optimizations are discussed, including but not limited to any descriptions of compiler optimization options such as those in user manual tables or in descriptions of library dispatching mechanisms.
1. If an Intel Compiler optimizes for any Intel x86 Microprocessor for instruction sets that are common to Compatible x86 Microprocessors, such as SSE, SSE2, SSE3, and SSSE3 instruction sets, but does not do so equally for Compatible x86 Microprocessors, Intel must Clearly and Prominently disclose that fact, including identifying the specific instruction sets implicated.
 2. If other optimizations which could run on both Intel x86 Microprocessor and Compatible x86 Microprocessors are reserved for Intel x86 Microprocessors, Respondent must Clearly and Prominently disclose that optimizations not specific to Intel microarchitecture are reserved for Intel x86 Microprocessors.
- D. Within ninety (90) days of the date on which this Order becomes final, Respondent shall implement, and shall notify its Compiler Customers that it has implemented, a program to reimburse Compiler Customers who (i) have detrimentally relied on Intel representations as to Compiler availability, functionality or effectiveness when using an Intel Compiler to compile code to be executed on a Compatible x86 Microprocessor and (ii) decide to recompile using a Compiler not developed or sold by Respondent (the "Intel Compiler

Reimbursement Program”). Such a notification must include a link to or a copy of this Order and specifically reference this Section VII of the Order in the notification. The features of the Intel Compiler Reimbursement Program shall include the following:

1. Reimbursement shall be made based upon documented costs of such recompilation (including without limitation testing, distribution, or direct communications with customers) provided by the customer;
 2. Respondent’s total obligation to provide reimbursements under this section shall not exceed ten (10) million dollars;
 3. Respondent shall hold all applications to the Compiler Reimbursement Fund for six (6) months after Respondent’s notification to customers of the Compiler Reimbursement Program. If requests for reimbursement that comply with the requirements of Section VII.D of the Order received in the first six (6) months after Respondent’s notification to customers of the Compiler Reimbursement Program exceed ten (10) million dollars, customers shall be reimbursed from the Compiler Reimbursement Program on a pro rata basis.
 4. All requests for reimbursement from the Compiler Reimbursement Fund that comply with Section VII.D of the Order shall otherwise be reimbursed on a first-come first-served basis until the fund is exhausted;
 5. Respondent may condition reimbursement upon receipt of a declaration from the customer asserting that it has relied upon Respondent’s representations, describing the representations upon which the customer relied, and attesting to the accuracy of and basis for the recompilation reimbursement amount requested;
 6. Respondent may condition reimbursement upon a release of claims by the customer for any damages or other relief relating to Respondent’s representations or to the recompilation; and
 7. Respondent may terminate the program once ten (10) million dollars has been reimbursed to customers under the program or two (2) years after announcement of the program, whichever comes first.
- E. Respondent shall not represent, in any manner, expressly or by implication, that its Compiler provides the same or superior performance than any other competing Compiler unless the representation is true and non-misleading, and, at the time of making such representation, Respondent possesses and relies upon competent and reliable evidence sufficient to substantiate that the representation is true. For purposes of this Part, competent and reliable evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

VIII.

IT IS FURTHER ORDERED that in Respondent's activities in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, in connection with the marketing and promotion of Relevant Microprocessor Products (including promotion on Respondent's website, in advertisements or in other promotional material):

- A. Whenever Respondent (i) makes a claim comparing the performance of a Mainstream Microprocessor and a Compatible x86 Microprocessor, or (ii) makes any claim that references the performance of a Mainstream Microprocessor on any benchmark, Respondent shall Clearly and Prominently make the following disclosure:

Software and workloads used in performance tests may have been optimized for performance only on Intel microprocessors. Performance tests, such as SYSmark and MobileMark, are measured using specific computer systems, components, software, operations and functions. Any change to any of those factors may cause the results to vary. You should consult other information and performance tests to assist you in fully evaluating your contemplated purchase, including the performance of that product when combined with other products.

- B. **Provided, however,** that where the form of the promotion does not reasonably allow inclusion of this language (such as in an audiovisual advertisement or on a retail tear sheet that is too small to allow inclusion of this language in a font size that would be readable), Respondent may instead Clearly and Prominently make the following disclosure: "For more complete information about performance and benchmark results, visit www.intel.com/benchmarks," which website shall contain the disclosure set forth in paragraph VIII.A. above.
- C. **Provided further, however,** that with respect to Respondent's website at www.intel.com, Respondent shall be deemed to have satisfied the requirements of this paragraph VIII if:
1. Respondent Clearly and Prominently displays the disclosure set forth in paragraph VIII.A. on www.intel.com/benchmarks and http://www.intel.com/sites/sitewide/en_US/termsfuse.htm or successor pages to these pages in future versions of Intel's website; and
 2. Respondent Clearly and Prominently displays the disclosure set forth in paragraph VIII.B on <http://www.intel.com/performance/>, http://www.intel.com/performance/resources/benchmark_limitations.htm, http://www.intel.com/performance/resources/perf_doc.htm, and <http://www.intel.com/technology/product/index.htm>, or successor pages to these pages in future versions of Intel's website.

IX.

IT IS FURTHER ORDERED that:

- A. At any time after this Order becomes final, and for the limited purpose of assisting the Commission in monitoring and enforcing Respondent's compliance with Order Paragraphs II., IV.A.6., IV.A.7, IV.B.6-8, V., VI., VII., and VIII., including the definitions of all included terms (hereafter "Technical Consultant Provisions"), the Commission may appoint one or more Technical Consultants, subject to the consent of Respondent whose consent shall not be unreasonably withheld. The Commission shall submit the name, background, expertise and fee structure of any proposed Technical Consultants to Respondent and shall identify the Technical Consultant Provisions for which the Technical Consultants' services are sought by the Commission. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Technical Consultants within ten (10) days after notice by the Commission's staff, Respondents shall be deemed to have consented to the selection of the proposed Technical Consultant.
- B. Respondent shall, not later than ten (10) days after appointment, execute an agreement with any Technical Consultant that, subject to the approval of the Commission, and consistent with this Paragraph, provides, among other things, that the Technical Consultant shall act in a fiduciary capacity for the benefit of the Commission. Any Technical Consultants appointed by the Commission shall serve without bond or surety at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set and as provided in the agreement. If the Commission determines that a Technical Consultant has ceased to act or failed to perform its obligations diligently, the Commission may appoint a substitute Technical Consultant in the same manner as provided in this Paragraph.
1. **Provided, however,** that, pursuant to any agreements with any Technical Consultants, Respondent shall not be required to pay, for the duration of this Order, a total of more than two (2) million dollars to all Technical Consultants.
 2. **Provided further, however,** and for the avoidance of doubt, that Respondent's own expenses in responding to any requests for information, documents, and access, as elsewhere required by this Order, shall not be considered to be payments to Technical Consultants.
- C. Respondent shall expeditiously provide, subject to any demonstrated legally recognized privilege, any information requested by the Commission's staff. If requested by the Commission's staff, Respondent shall provide, subject to any demonstrated legally recognized privilege, and as otherwise permitted by law, any Technical Consultant complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical

information, and such other relevant information related to Respondent's compliance with the Technical Consultant Provisions. Any reports, information, or documents received by the Commission related to the Technical Consultant Provisions may be shared with appointed Technical Consultants at the Commission's discretion.

- D. Respondent may require any Technical Consultants and any of the Technical Consultant's consultants, engineers, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement and to certify that there are no conflicts of interests based on past or present representations. Provided however, such agreement shall not restrict the Technical Consultant from providing any information to the Commission. Technical Consultants will in all other respects be subject to the same ethical obligations as any other Commission consultant.
- E. The Commission may, among other things, require each Technical Consultant, and any consultants, engineers, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Technical Consultant's duties.
- G. **Provided, however,** that nothing in this Paragraph shall prevent the Commission from retaining the services of any Technical Consultant, for any purpose, pursuant to any separate contract or agreement between the Commission and such Technical Consultant.

X.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days of the date this Order becomes final, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied, is complying, and will comply with this Order.
- B. One (1) year after the date this Order becomes final, and annually for the following six (6) years on the anniversary of the date this Order becomes final, as well as at other such times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Among other information that may be required, Respondent shall include in all reports all communications between Respondent and any Designated Intel Competitor that are received during the reporting period regarding compliance with provisions of this Order.

XI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XII.

IT IS FURTHER ORDERED that Respondent shall retain, for a period of five (5) years, all written contracts with any customer for the purchase and sale of Intel Relevant Products.

XIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent, including without limitation assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

XIV.

IT IS FURTHER ORDERED that unless indicated otherwise, the provisions of this Order shall terminate on October 29, 2020.

By the Commission, Commissioner Kovacic recused.

Donald S. Clark
Secretary

ISSUED: October 29, 2010
SEAL

Exhibit 1: Intel Compilers and Associated Libraries

Intel Fortran Compiler for Linux

Intel Fortran Compiler for Windows

Intel C++ Compiler for Linux

Intel C++ Compiler for Windows

Intel C++ Compiler for Mac OS X

Intel® Compiler Suite Professional Edition for Windows

Intel® Compiler Suite Professional Edition for Linux

Intel® C++ Compiler Professional Edition for Windows

Intel® Visual Fortran Compiler Professional Edition for Windows

Intel® Visual Fortran Compiler Professional Edition for Windows with IMSL

Intel® C++ Compiler Professional Edition for Linux

Intel® Fortran Compiler Professional Edition for Linux

Intel® C++ Compiler Professional Edition for Mac OS X

Intel® Fortran Compiler Professional Edition for Mac OS X

Intel® C++ Compiler Professional Edition for QNX Neutrino RTOS

Intel® Application Software Development Tool Suite for Intel Atom™ Processor

Intel® Embedded Software Development Tool Suite for Intel Atom™ Processor

Intel Parallel Studio

Intel Parallel Composer

Intel Cluster Toolkit Compiler Edition for Linux

Intel Cluster Toolkit Compiler Edition for Windows

Intel runtime libraries

Intel® Integrated Performance Primitives (Intel® IPP) for Windows

Intel® Integrated Performance Primitives (Intel IPP) for Linux

Intel® Math Kernel Library (Intel® MKL) for Windows

Intel® Math Kernel Library (Intel MKL) for Linux

Intel® Threading Building Blocks (Intel® TBB) for Windows

Intel® Threading Building Blocks (Intel TBB) for Linux

Intel® Threading Building Blocks (Intel TBB) for Mac OS X

Intel Math Libraries

Intel MPI Library for Linux

Intel MPI Library for Windows