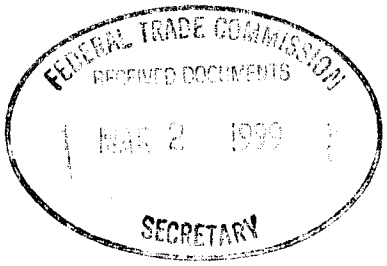

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
INTEL CORPORATION,	)	DOCKET NO. 9288
	)	
a corporation.	)	
	)	

SUA SPONTE ORDER RE
RESPONDENT'S MOTION IN LIMINE

By order of February 5, 1999, respondent's motion in limine was denied. One of the objections in that motion was that complaint counsel intended to offer evidence through their expert, Dr. Scherer, that respondent's conduct inhibited Compaq's ability to innovate. The order denied that objection on the grounds that complaint counsel are entitled to show the nature of the anticompetitive conduct in the industry in which respondent operates.[1]

In their pretrial brief filed February 25, 1999, at p. 40, complaint counsel argue that:

> Compaq and Intel executed a cross-license agreement on January 10, 1996. In return for a lump sum royalty payment, Intel received the right to

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[1] See for example, Judge Wyzanski's opinion in *United States v. Grinnell Corporation*, 236 F. Supp. 244, 255 (1964), *aff'd in part and rev'd in part*, 384 U.S. 563 (1966) where he held that Grinnell's acquisition of three firms was admissible evidence even though they operated outside the relevant market:

> What is significant is not that those 3 concerns fall within or without the relevant market here is issue, for plainly they fell outside that market, but that the acquisitions indicate that ADT's growth, far from being attributable solely to superior techniques and methods of administration and like so-called honestly industrial means, owes more than a little to the special kind of appetite which has characteristically revealed a monopolistic temper and explained a monopolistic growth.

> incorporate Compaq's patented technology in Intel microprocessors, chipsets, and motherboards, and to sell these products to OEM worldwide. . . . The terms imposed by Intel to resolve the conflict *impaired* Compaq's ability to differentiate its products through *chipset* innovation and other "system-level design" efforts. (Emphasis added.)

While this evidence is relevant, its offer contradicts complaint counsel's promise that they: "will not undertake in this case to prove or offer any evidence of the existence of any adverse competitive effects in any market for graphic controller or chipset devices, or on the development of graphics controller or chipset technology."[2] Proof of anticompetitive effects on graphic controllers or chipset technologies violates complaint counsel's promise and, to this extent, respondent's motion in limine is GRANTED.

James P. Timony
Administrative Law Judge

Date: March 2, 1999

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[2] Letter from John O'Hara Horsley to Michael Denger, August 25, 1998, Appendix I to Motion of Respondent Intel Corporation to Exclude Evidence, January 12, 1999.