

ADVISORY FROM THE ATTORNEY GENERAL TO GOVERNMENTAL BODIES THAT PURCHASED COMPUTERS AND COMPUTER EQUIPMENT

– Pending Litigation & Request to Preserve Purchase Records to Obtain Damages –

Purpose of Advisory: The purpose of this advisory is to alert New York State political subdivisions, local entities and public authorities to a recent civil action by the New York State Attorney General Andrew Cuomo against Intel Corporation. This action, which filed in the United States District Court for the District of Delaware on November 4, 2009, alleges damages under federal and state antitrust laws, as well as under New York's Executive Law, arising from the purchase of computer and server products which contain x86 CPUs. According to the Complaint, prices for x86 CPUs have been artificially elevated by Intel Corporation's anticompetitive conduct in recent years. This advisory is also intended to alert public entities to the requirement that they take reasonable steps to preserve relevant documents (including without limitation purchase records) from 2001 to the present if they may wish to assert a claim for damages.

The Product Involved: x86 CPUs are a class of microprocessors used in most office and personal computer products, and in many servers. x86 CPUs are typically a component in computer products that the user or agency purchases – generally a desktop or notebook computer, a workstation, or a server. In general, all computers running Microsoft Windows are x86 CPU-based computers. However, x86 CPU-based computers – and particularly servers – can and are used in non-Windows environments as well. In addition, more recent Apple computers are also based on x86 CPUs.

Pending Civil Litigation: On November 4, 2009, the New York Attorney General commenced an action in the federal court in Delaware, seeking injunctive and other relief, as well as monetary damages, for Intel Corporation's alleged anticompetitive conduct in the x86 CPU market. The action seeks to recover damages, *inter alia*, on behalf of the State of New York, including all of its divisions, departments and agencies, as well as on behalf of local entities (e.g., counties, cities, towns, villages, school districts) and public authorities within the State of New York. New York law, like federal law, prohibits certain kinds of anticompetitive conduct and grants the Attorney General authority to bring various legal actions, including cases to recover damages suffered by New York governmental entities.

Other Pending Civil Litigation: Civil antitrust cases seeking damages caused by Intel's allegedly illegal, anticompetitive conduct are also pending in federal court in Delaware, asserted on behalf of classes of purchasers of x86 CPU products who may have been injured.

Protecting the Opportunity for Recovery: As noted above, the New York Attorney General has brought an action asserting damages claims on your behalf. You may wish to seek legal counsel regarding your rights, including your right, under New York State

law, to bring suit on behalf of your entity to recover any damages suffered.

The following information may be useful to facilitate recovery of damages:

1. x86 CPUs are primarily used in personal computers (including desktops, laptops and notebooks), as well as in many kinds of workstations and servers.
2. The Intel Corporation is alleged to have engaged in anticompetitive practices relating to its sale of x86 CPUs. However, damages relating to this misconduct are not necessarily limited to purchases of x86 CPUs manufactured or sold by Intel, but rather, may also include x86 CPUs produced by other semiconductor manufacturers (e.g., x86 CPUs made by Advanced Micro Devices, Inc., usually referred to as "AMD.")
3. Intel is alleged to have engaged in anticompetitive conduct in order to artificially elevate the prices for its x86 CPU products which were in turn sold to certain computer and server manufacturers ("Original Equipment Manufacturers" or "OEMs.") These OEMs include, without limitation, Dell Inc., Hewlett-Packard Company ("HP"), Compaq, Apple Computer Inc., International Business Machines Corporation ("IBM"), Lenovo, Acer and/or Gateway Inc.
4. New York public entities may have suffered damages if they purchased computer products based on x86 CPUs – either directly from a semiconductor manufacturer, including Intel or AMD, or as is more likely the case in certain instances, indirectly from an OEM or from a distributor as a component in a computer or server product.
5. Any New York public entity that purchased such products — including cities, counties, municipalities, villages, public authorities, health care facilities, educational institutions, and school districts — may have been injured to the extent that illegal overcharges were included in their purchases.
6. To prove a claim for damages, victims of the antitrust violations may be called on to establish the quantity and nature of their purchases of the products that were subject of anticompetitive conduct, including where the x86 CPU is a component of a larger product. Thus, purchase records and other documents that show the items purchased, the number of units, the prices paid, and the dates and terms of the transactions, may be needed.
7. The period during of the alleged misconduct is from 2001 through the present. Purchase records from at least this period are therefore likely to be germane.

8. Public entities that believe they may have suffered damages should take reasonable steps to preserve the originals of their relevant records. We understand that many such records are required to be preserved for a period of six years and may thereafter be discarded in the ordinary course. To the extent that such records have not already been discarded in accordance with those policies, public entities should take particular care that relevant records from that time period are preserved rather than routinely discarded.

If you have any questions, or wish to discuss this further, please contact the Antitrust Bureau of the New York Attorney General's Office as follows:

by email: intel.litigation@oag.state.ny.us

- or -

by fax: (212) 416-6015, Att: Ling Feng Fu, Legal Assistant.

Thank you for your attention.

Dated: November 30, 2009

Office of the Attorney General of the State of New York
Antitrust Bureau