Address by Commissioner Edith Ramirez
Federal Trade Commission

20th Annual Golden State Antitrust and Unfair Competition Law Institute
San Francisco, California

October 21, 2010

Good afternoon. Thank you for inviting me to speak today. As a California native, it is an honor to participate in a gathering of antitrust attorneys from my home state. I am truly enjoying my time in Washington, but it always feels like home when I am back on the West Coast.

I have been at the Commission for just over six months now, and I appreciate this opportunity to talk about some of the Commission's major antitrust enforcement actions since my arrival. This is a particularly active and exciting time at the Commission, and there is a lot to discuss, but I will focus primarily on the *Google/AdMob* and *Intel* matters. Given that we're in the Bay Area, I expect that many of you closely track the Commission's involvement in technology markets. I'll conclude by touching briefly on the revised Horizontal Merger Guidelines, which the Commission recently issued jointly with the Department of Justice.

Before I go further, let me make the usual disclaimer: my remarks today are my own and do not necessarily reflect the views of the Commission as a whole or any other Commissioner.

I. Transition to the FTC

I would like to start by sharing with you a bit of the story of my transition from private practice to the FTC.

It was something of a whirlwind. I was nominated by President Obama last November, the week before Thanksgiving. Less than two weeks later, I found myself in Washington, making courtesy calls on Senators on the Commerce Committee. My confirmation hearing – along with that of my fellow Commissioner, Julie Brill, who was also going through the process at the same time – followed shortly thereafter, in mid-December. There was a little bit of a wait until we were confirmed in March.

Then things really started to move quickly. I only had a few weeks to wrap things up at my firm, find somewhere to live 3,000 miles away, say goodbye to family and friends, pack up and move cross-country, and decide whether an Angeleno could survive without a car in DC. (The answer is no – my car moved with me – although I'm proud to report that I actually walk to work many days.)

The Commission work also started well before I was sworn in on April 5. There was no time for delay because several important matters were about to come to a head. In particular, the clock was about to run out on the Commission's review of the Google/AdMob merger and the Commission and the Department of Justice were in the process of revising the Horizontal Merger Guidelines.

II. Google/AdMob

My first Commission meeting took place on my second day on the job. It was to discuss the Google/AdMob merger. As far as first cases go, Google/AdMob was about as good as you can get. It presented a particularly exciting and challenging set of issues. This was not just a high-profile matter involving the exciting and fast-moving area of mobile advertising. It implicated advertising on the already prevalent iPhone and the newly introduced iPad, among other mobile devices, and presented difficult questions that often arise in nascent markets.

At this point, Commission staff had been investigating Google's plan to acquire AdMob for several months. Most of you are no doubt familiar with the mobile ad network market and the general facts of the merger, but for those who are not, let me step back and provide some background. Ad networks serve as middlemen between publishers (mobile "app" developers or website owners) who provide mobile content, on the one hand, and mobile advertisers on the other. Developers of apps, as well as other mobile publishers, rely on mobile ad networks to sell advertising space that they cannot effectively sell on their own. These ads, in turn, generate revenues that fuel the development of new apps and mobile Internet content.

The mobile ad market has experienced tremendous growth in the last couple of years, and will continue to expand rapidly as more and more consumers start to use smartphones as their primary and most frequent point of contact with the digital world. About one in five Americans owns a smartphone today; according to one industry source, that figure is expected to surpass 80 percent by 2015.[1]

And when you translate these smartphone figures into mobile advertising revenues, it becomes clear that mobile advertising is big business. U.S. mobile ad revenues are projected to increase from $213 million in 2009 to $2.02 billion in 2014.[2] Google alone is on target to achieve $1 billion in annual revenues from mobile, as announced during the company's October earnings call.[3]

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[1] David Goldman, *Your Smartphone Will Run Your Life*, CNNMONEY.COM, Oct. 19, 2010 (citing research by Forrester Research and Frost & Sullivan), *available at* http://money.cnn.com/2010/10/19/technology/smartphones/index.htm.

[2] BIA/Kelsey Press Release, *U.S. Mobile Local Advertising Revenues to Exceed $2B in 2014, According to BIA/Kelsey* (Sept. 28, 2010) (citing update to firm's U.S. Local Media Forecast (2009-2014)), *available at* http://www.kelseygroup.com/press/pr100928.asp.

[3] Google Inc., Q3 2010 Earnings Call (Oct. 14, 2010), transcript *available at* http://seekingalpha.com/article/230158-google-ceo-discusses-q3-2010-results-earnings-call-transcript?source=nasdaq (Google Senior Vice President Jonathan Rosenberg: "Mobile is on an annualized

Before the merger, AdMob was the largest mobile advertising network. Google was the second largest mobile ad network and, of course, is the market leader in Internet search. AdMob and Google competed head-to-head mainly on the iPhone platform. Not surprisingly, the proposed merger of these rivals triggered very close scrutiny by the Commission.

And there were strong reasons for challenging the merger. This was a merger that would result in the combination of the top two competitors. And the evidence also revealed that each firm made business decisions in reaction to the perceived competitive threat of the other.

But, as each day went by, rapidly-unfolding events ultimately led me to vote to allow the merger to go through without a challenge.[4]

As I mentioned, I started at the FTC on April 5. This was just two days after the iPad went on sale. Three days later, on April 8, Apple, which had acquired the ad network Quattro Wireless in December 2009, announced it would be launching its own mobile advertising network, iAd, which would be closely integrated with Apple's own iPhone platform. The launch of iAd and Apple's related strategic plans was a game-changing development for me and my fellow Commissioners, and it ultimately led us to vote unanimously to close the investigation. But let me put Apple to one side for a moment.

Absent Apple's entry, Google's acquisition of AdMob likely would have given Google not only a dominant share of the mobile ad network market, but also a huge head start compared to any would-be competitors with fewer publishers and advertisers in their networks. The market for mobile ad networks, as its name suggests, is a market that exhibits network effects. In the simplest terms, if a mobile ad network includes more publishers and more advertisers, it becomes increasingly valuable to other publishers and advertisers, and far more attractive than its smaller-scale rivals.

We have already observed Google's successful exploitation of network effects in other markets, such as search advertising. It was unclear whether any other mobile ad network would have been able to catch up to, and effectively challenge, a combined Google/AdMob – or whether the merger would have cemented Google's market dominance and increased the likelihood of exclusionary conduct.

These concerns, however, were ultimately outweighed by the evidence that Apple was poised to become a strong competitor in the mobile advertising market. Due to

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run rate of over $1 billion. This means the people who are accessing our products and services through their mobile phones are adding a $1 billion annually to our existing revenue streams. Clearly, this is the future of search in the Internet, more people in more countries coming online from these smartphones. Our mobile search queries have grown five times over the past couple of years.").

[4] Fed. Tr. Comm'n News Release, *FTC Closes its Investigation of Google AdMob Deal* (May 21, 2010), *available at* http://www.ftc.gov/opa/2010/05/ggladmob.shtm; *see also* Statement of the Commission Concerning Google/AdMob, FTC File No. 101-0031 (May 21, 2010), *available at* http://www.ftc.gov/os/closings/100521google-admobstmt.pdf.

Apple's control of the iPhone platform, Apple's entry with iAd had the ability to fundamentally alter the current balance of network effects. Apple can leverage its close relationships with application developers and users, its access to a large amount of proprietary user data, and its ownership of iPhone software development tools and control over the iPhone developers' license agreement.

As a result of Apple's entry, my fellow Commissioners and I concluded that we could not use AdMob's success to date on the iPhone platform to accurately predict AdMob's competitive significance going forward, whether AdMob was owned by Google or not. This was particularly important given that AdMob's revenue and market share are derived largely from the iPhone platform. On Google's Android platform, competitive harm from the acquisition appeared unlikely as well because of Google's strong incentive to encourage the development of apps on Android to maintain the competitiveness of Android against the iPhone.

Based on these developments, I became convinced that Apple's increased presence in the market would mitigate any anticompetitive effects of Google's AdMob acquisition and, further, that a combined Google and AdMob could be a competitive counterweight to Apple in the mobile arena. For that reason, I voted to allow the merger to close without a challenge.

This was a tough decision. And it was quite a way to start my tenure at the Commission. After nearly 20 years in the private sector, where I did my best to be a zealous advocate for my clients, I was now in a very different position. I now had to make difficult judgment calls in an effort to do what is right for competition and for consumers.

But one thing that made this decision easier was the team of talented antitrust lawyers and economists at the agency. I came away from this investigation highly impressed with the level of in-house expertise at the Commission. The depth of their knowledge became increasingly evident during many briefings and the Commission's ongoing deliberations. Whether relating to cutting-edge apps or other markets, I quickly gained confidence that the agency's staff had the capacity to stay on top of marketplace developments, drill down into the specifics, and share their learning in ways that would enable me to make a well-informed decision in this and future cases.

Merger enforcement, of course, is inherently predictive, and the Commission always has to weigh the risks of uncertainty. Unquestionably, that can be particularly challenging in fast-moving technology markets. But even in such markets, the Commission must and will balance those risks against the risk of harm to consumers, and we will take action if the facts support a challenge.

III. The *Intel* Settlement

Let me now turn to the next matter I want to discuss: the *Intel* case.[5] In August, the Commission approved a settlement[6] resolving charges in the Commission's December 2009 administrative complaint[7] against Intel.

It's clear that Intel is a monopolist in the microprocessor market, with a persistent market share of over 80 percent. Of course, it's not illegal to be a monopolist. Intel's x86 monopoly was in large measure gained lawfully, via procompetitive innovation and related IP rights. But it's what a firm does with its monopoly power that matters. The Commission's investigation revealed strong evidence that Intel had acted unlawfully in the past, wielding its monopoly power to engage in various anticompetitive tactics that harmed competition.

As the settlement demonstrates, however, this case is about more than restoring lost competition. Many of the settlement's provisions aim to open the door to renewed competition in the future. By preventing Intel from suppressing competition, the settlement creates new opportunities for firms that might challenge Intel's dominance. Intel already benefits from many legitimate barriers to entry, including its reputation, IP portfolio, scale economies, and manufacturing infrastructure. Vigorous antitrust enforcement will ensure that Intel cannot raise additional barriers to entry, beyond competition on the merits.

The Commission was also careful to preserve Intel's own ability to innovate and offer competitive pricing. In other words, the settlement should allow all firms in the market to move forward, offering new and improved products in a competitive environment. As a result, consumers should benefit from lower prices, greater innovation, and more choices.

The timing of the settlement is also worth noting. Instead of waiting to get through protracted litigation and appeals, we have a settlement that will implement significant structural and behavioral changes immediately, at a time when viable competitors still exist and have the potential to thrive. In any dynamic and fast-moving technology market, crafting effective relief is like trying to hit a moving target. Any delay risks less-complete relief. And the Commission knows from prior experience that the longer Intel engages in anticompetitive practices, the longer the effects tend to linger. For these reasons, we thought it was important to implement meaningful relief as soon as possible, while we still had the opportunity to do so.

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[5] *In the Matter of Intel Corp.*, FTC Dkt. No. 9341 [hereinafter *Intel Corp.*], case index *available at* http://www.ftc.gov/os/adjpro/d9341/index.shtm.

[6] FTC News Release, *FTC Settles Charges of Anticompetitive Conduct Against Intel* (Aug. 4, 2010), *available at* http://www.ftc.gov/opa/2010/08/intel.shtm.

[7] *Intel Corp*. (administrative complaint filed Dec. 16, 2009), *available at* http://www.ftc.gov/os/adjpro/d9341/091216intelcmpt.pdf; *see also* FTC News Release, *FTC Challenges Intel's Dominance of Worldwide Microprocessor Markets* (Dec. 16, 2009), *available at* http://www.ftc.gov/opa/2009/12/intel.shtm.

A. Complaint Overview

With this audience, I don't need to detail all of the complaint allegations, so let me just briefly summarize the conduct challenged in the complaint. As a general matter, the complaint alleged that, over a period of ten years, Intel engaged in a course of conduct that was designed to, and did, stall the widespread adoption of non-Intel products in violation of Section 5 of the FTC Act and Section 2 of the Sherman Act.

In the market for x86 CPUs, Intel allegedly maintained its monopoly by engaging in various tactics, other than competition on the merits, that foreclosed or limited major OEMs from adopting non-Intel x86 CPUs, especially AMD CPUs.

The complaint also challenged Intel's unfair methods of competition in markets for graphics processing units, or GPUs. As GPUs became increasingly powerful and took over some of the traditional functions of CPUs, they threatened to undermine Intel's x86 monopoly. The complaint alleged that Intel engaged in behavior, other than competition on the merits, which created a dangerous probability that Intel would acquire a monopoly in the relevant GPU markets as well.

Finally, the complaint alleged certain deceptive conduct by Intel relating to compilers and benchmarks, resulting from Intel's failure to disclose how changes it made to its compilers (which translate software source code into language readable by CPUs) might skew the performance of non-Intel chips. This conduct created inaccurate perceptions regarding the performance of non-Intel CPUs. These deceptive tactics were charged as violations of both the competition and consumer protection provisions of Section 5 of the FTC Act – that is, as both "unfair methods of competition" and "unfair or deceptive acts or practices."

B. Procedural Posture

It is also worth noting where the case stood, procedurally speaking, at the time the Commission decided to accept the settlement. The parties had been engaged in intense discovery for nearly six months, including nearly 100 depositions, 25 third-party subpoenas, and 200 million pages of documents. A trial before an Administrative Law Judge (ALJ) was set to begin in mid-September 2010.[8] But even so, the case likely was headed down a long path: administrative litigation, an ALJ ruling, an appeal to the Commission in its adjudicative capacity, and an eventual federal court appeal. Even under the best of circumstances, no one expected the case to be resolved anytime soon.

But once the case was withdrawn from adjudication on June 21,[9] the Commission was in a position to consider and ultimately agree to a settlement. The settlement has not

[8] *Intel Corp*., Order Granting Joint Motion to Amend the Scheduling Order (Apr. 30, 2010), *available at* http://www.ftc.gov/os/adjpro/d9341/100430intelaljorder.pdf.

[9] *Intel Corp*., Order Withdrawing Matter from Adjudication for the Purpose of Considering a Proposed Consent Agreement (June 21, 2010), *available at* http://www.ftc.gov/os/adjpro/d9341/100621intelorder.pdf.

yet been accepted as final, but the public comment period ended in September and the Commission is considering whether to implement any changes.

C. Settlement Highlights

The settlement contains a variety of structural and injunctive provisions.[10] Many of the prohibitions relate to specific Intel commercial and pricing practices, corresponding to the allegations of exclusive dealing, market share and loyalty discounts, bundling, and related anticompetitive conduct.

I would like to highlight what I view as four of the most important categories of forward-looking relief – the ones that seem most capable of jump-starting competition, encouraging innovation, and benefitting consumers.

1. x86 Rights

One of these categories relates to x86 rights held by firms other than Intel. The settlement includes several clarifications that will ensure the continuation of existing x86 rights by firms such as AMD, NVIDIA, and Via. It also enhances the ability of these firms to exercise these rights when dealing with foundries and customers, so these firms can more effectively compete against Intel. Also, Via's x86 license will be extended for five years, which may facilitate new entry into the x86 CPU market.

2. PCIe Interface

Another key set of remedies relates to the PCI Express industry-standard bus. This interface is critical to interoperability within the Intel platform, because it is the main way GPUs and other peripheral products connect to Intel CPUs. Intel is required to maintain an open and fully-functional PCIe bus interface for six years. This should ensure the continued viability of GPUs and other peripherals that offer choices to consumers. It should also ensure continued incentives for other firms to innovate on the x86 platform.

3. Predatory Design Provision

I would also like to call your attention to the predatory design provision of the settlement. Intel is prohibited from designing or engineering its CPU or GPU products to solely disadvantage competitive or complementary products. This provision responds to allegations that Intel engaged in predatory innovation by cutting off competitors' access to its CPUs and slowing down various connections to the CPU. It is a violation of the order if an Intel design change degrades performance of a competitive or complementary product, and Intel fails to demonstrate an actual benefit to the relevant Intel product. The

[10] *Intel Corp*., Proposed Decision and Order (Aug. 4, 2010), *available at* http://www.ftc.gov/os/adjpro/d9341/100804inteldo.pdf [hereinafter Proposed Intel Order]; *see also Intel Corp*., Analysis of Proposed Consent Order to Aid Public Comment (Aug. 4, 2010), *available at* (http://www.ftc.gov/os/adjpro/d9341/100804intelanal.pdf.

burden is on Intel to show that any engineering or design change provides an actual benefit.

4. Deception Prohibitions

Finally, I want to specifically mention the remedies relating to the deception allegations. Intel is also subject to specific disclosure requirements to ensure that software developers using Intel compilers will obtain accurate information regarding potential optimization for Intel CPUs. Intel also must disclose information relating to the reliability and relevance of comparative performance claims based on benchmarks, especially if performance tests have been optimized for CPUs.

While it is still early in my term, I suspect the Intel settlement will turn out to be one of the most important matters I consider. I voted to accept the settlement because I believe it offers the best hope of reinvigorating competition and spurring innovation in extremely important technology markets – ones that affect the everyday lives of most American consumers. It will take time, of course, before we know for certain whether we can declare the settlement a success. But when we look back years from now, I am optimistic that consumers will be better off with the settlement than they would have been without it.

IV. Horizontal Merger Guidelines

Let me now turn to my final topic. As I noted a few minutes ago, the Horizontal Merger Guidelines were also at the top of the Commission's agenda when I first arrived. On April 20, the Commission and the Department of Justice jointly released proposed revisions to the Guidelines,[11] which had not been updated since 1997. The new Guidelines were issued in final form this past August.[12]

A main goal of the revisions was to capture more accurately how the agencies are analyzing horizontal mergers today, based on the most current legal and, especially, economic thinking.

I want to highlight one aspect of the revised Guidelines that resonated with me in particular, given that my antitrust background is primarily in conduct cases.

The Intel case serves as an excellent example of the fact that, while the incentive to obtain market power through innovation and marketplace competition benefits consumers, a firm with legitimately acquired market power has both the ability and incentive to maintain that market power through anticompetitive conduct.

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[11] Fed. Tr. Comm'n News Release, *Federal Trade Commission Seeks Views on Proposed Update of the Horizontal Merger Guidelines* (Apr. 20, 2010), *available at* http://www.ftc.gov/opa/2010/04/hmg.shtm.
[12] U.S. Dep't of Justice & Fed. Tr. Comm'n, Horizontal Merger Guidelines (Aug. 19, 2010), *available at* http://ftc.gov/os/2010/08/100819hmg.pdf; *see also* Fed. Tr. Comm'n News Release, *Federal Trade Commission and U.S. Department of Justice Issue Revised Horizontal Merger Guidelines* (Aug. 19, 2010), *available at* http://www.ftc.gov/opa/2010/08/hmg.shtm.

In most cases, market power that is acquired through acquisition is less likely to foster innovation, yet it can create the same incentives to engage in anticompetitive exclusionary conduct.

As the Guidelines now make explicit, the agencies have the prophylactic ability to prevent the creation or enhancement of market power, when it appears likely that the post-merger firm may have greater opportunities to engage in anticompetitive conduct in the future. The clarification in the revised Guidelines is a good reminder, to the agencies and everyone else, that wise use of the agencies' merger enforcement authority may prevent today's merger clearances from becoming tomorrow's conduct challenges.

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Thank you once again for inviting me to share my views with you today. I look forward to working with many of you in my role as an FTC Commissioner.