



2. The follow legal principles will govern further proceedings in this and all related litigation before this Court:

a. In accordance with *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), and subsequent authority, all antitrust claims that Intel took business from AMD by making price concessions will require AMD to prove that the average price Intel charged for all units in a transaction exceeded an appropriate measure of the costs incurred by Intel for those units. This requirement applies whether the claim at issue is styled as “predatory pricing,” “exclusive dealing,” or any other antitrust category.

b. For purposes of the foregoing, the appropriate measure of cost is incremental or average variable cost, and excludes all fixed costs.

c. Any “exclusive dealing” claim will require AMD to prove, among other things, that Intel either (i) entered into long-term contracts that precluded customers from buying relevant products from AMD or (ii) enforced exclusivity by threatening to withhold needed products or services altogether from customers that did business with AMD.

d. To establish liability, AMD must prove that any transactions as to which AMD has met the burden required by 2(a)-(b) or 2(c), above, themselves harmed competition in the market as a whole.

3. Within 30 days of the date of this Order, AMD shall identify each particular transaction with respect to which it intends to allege that Intel engaged in anticompetitive conduct and, with respect to each, whether it intends to make the showings required pursuant to paragraphs 2(a)-(b) or 2(c), above.

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UNITED STATES DISTRICT JUDGE