

**Statement of Chairman Robert Pitofsky and
Commissioners Sheila F. Anthony and
Mozelle W. Thompson**

in The Matter of Intel Corporation

Docket No. 9288

Today, the Commission accepts the proposed settlement in this matter without modification. Our colleague, Commissioner Swindle, remains unpersuaded "that the conduct at issue in this case demonstrably threatened to harm the consuming public" because he "cannot accept that it could appreciably affect - much less stem - the immense tide of invention and improvement that continuously drives this industry." We respectfully disagree with Commissioner Swindle for two simple yet fundamental reasons.

First, we continue to have reason to believe that Intel, which the majority has reason to believe is a monopolist, engaged in "conduct, other than competition on the merits or restraints reasonably 'necessary' to competition on the merits, that reasonably appear[s] capable of making a significant contribution to creating or maintaining monopoly power." *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (*quoting* III P. Areeda & D. Turner, Antitrust Law ¶ 626 at 83 (1978)). Nothing in the public comments submitted to the Commission leads us to depart from our initial judgment.

Second, requiring "demonstrable" harm to competition after pretrial settlement has no legal basis because it has no practical basis. Settlement of the case necessarily prevents us from making any final judgment about the actual evidence of harm to competition from Intel's conduct.