

Brussels, 17th September 2007

Antitrust: Commission welcomes CFI ruling upholding Commission's decision on Microsoft's abuse of dominant market position

The European Commission welcomes today's ruling by the Court of First Instance upholding the European Commission's 2004 decision on Microsoft's abuse of its dominant market position and confirming the totality of the fine imposed. In this decision, Microsoft was fined €497 million for infringing the EC Treaty rules on abuse of a dominant market position (Article 82) by leveraging its near monopoly in the market for PC operating systems onto the markets for work group server operating systems and for media players (see [IP/04/382](#) and [MEMO/04/70](#)). This conduct hindered innovation in the markets concerned to the detriment of consumers. To put an end to this abusive behaviour, the Commission ordered Microsoft to disclose interoperability information which would allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers and to offer a version of its Windows operating system without Windows Media Player. The Court's ruling confirms that the Commission was right to prohibit Microsoft's anti-competitive conduct which harmed competition to the detriment of consumers.

Competition Commissioner Neelie Kroes stated: "The Court has upheld a landmark Commission decision to give consumers more choice in software markets. That decision set an important precedent in terms of the obligations of dominant companies to allow competition, in particular in high tech industries. The Court ruling shows that the Commission was right to take its decision. Microsoft must now comply fully with its legal obligations to desist from engaging in anti-competitive conduct. The Commission will do its utmost to ensure that Microsoft complies swiftly."

In upholding the Commission's decision the Court of First Instance (CFI) confirmed the Commission's finding that Microsoft had abused its dominant position in the PC operating system market by refusing to disclose interoperability information that would enable its competitors to fully interoperate with Windows PCs and servers and by tying Windows Media Player with its dominant Windows PC operating system. The CFI confirms that both types of conduct reduced competition in the relevant markets, thereby preventing innovation and choice to the substantial detriment of consumers. The Commission's decision established that Microsoft prevented innovative server products from being brought to the market, and that competition in the streaming media player market was distorted.

The CFI confirmed the Commission's assessment as to the appropriate legal tests to be applied, and the evidence needed to satisfy those tests.

However, the CFI annulled the decision in so far as it orders Microsoft to submit a proposal for the appointment of a monitoring trustee with the power to have access, independently of the Commission, to Microsoft's assistance, information, documents, premises and employees and to the source code of the relevant Microsoft products and in so far as it provides that all the costs associated with that monitoring trustee be borne by Microsoft.

The Commission will carefully analyse the judgment and will consider its implications for future antitrust enforcement in these sectors and in others. It is clear, however, that this is an exceptional case with extremely harmful abuses by a company in a quasi-monopolistic position on a market.

The Commission decision upheld by the CFI focuses on the promotion of interoperability, which contributes strongly to innovation and competition in the software industry whilst also fully recognising the importance of intellectual property rights as incentives for innovation. The decision also made clear that bundling into the Windows operating system of software products otherwise available on a stand-alone basis had the effect of excluding competitors, thereby leading to reduced consumer choice liable to reduce access to innovative products.

Background

Work group server operating systems are operating systems running on central network computers that provide services to office workers around the world in their day-to-day work such as file and printer sharing, security and user identity management. The Commission decision ordered Microsoft to disclose to competitors interoperability information which would allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers - that is to say for their servers to be able to seamlessly 'communicate' with the ubiquitous Windows OS. Microsoft was also required to offer a version of its Windows OS without Windows Media Player. On 7 June 2004, Microsoft filed an application for annulment of this decision with the CFI.

See also

<http://ec.europa.eu/comm/competition/antitrust/cases/microsoft/>
for a complete chronology of the case.