

Brussels, 24 March 2004

Commission concludes on Microsoft investigation, imposes conduct remedies and a fine

The European Commission has concluded, after a five-year investigation, that Microsoft Corporation broke European Union competition law by leveraging its near monopoly in the market for PC operating systems (OS) onto the markets for work group server operating systems¹ and for media players². Because the illegal behaviour is still ongoing, the Commission has ordered Microsoft to disclose to competitors, within 120 days, the interfaces³ required for their products to be able to 'talk' with the ubiquitous Windows OS. Microsoft is also required, within 90 days, to offer a version of its Windows OS without Windows Media Player to PC manufacturers (or when selling directly to end users). In addition, Microsoft is fined € 497 million for abusing its market power in the EU.

"Dominant companies have a special responsibility to ensure that the way they do business doesn't prevent competition on the merits and does not harm consumers and innovation " said European Competition Commissioner Mario Monti. "Today's decision restores the conditions for fair competition in the markets concerned and establish clear principles for the future conduct of a company with such a strong dominant position," he added.

After an exhaustive and extensive investigation of more than five years and three statements of objections⁴, the Commission has today taken a decision finding that US software company Microsoft Corporation has violated the EU Treaty's competition rules by abusing its near monopoly⁵ (Article 82) in the PC operating system.

Microsoft abused its market power by deliberately restricting interoperability between Windows PCs and non-Microsoft work group servers, and by tying its Windows Media Player (WMP), a product where it faced competition, with its ubiquitous Windows operating system.

¹ These 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.

² A media player is a software product that is able to 'play back' music and video content over the Internet.

³ The interfaces do not concern the Windows source code as this is not necessary to achieve the development of interoperable products. The interfaces are the hooks at the edge of the source code which allow one product to talk to another.

⁴ A Statement of Objections marks the opening of a formal investigation as the Commission states its charges or objections to the company(ies) concerned.

⁵ Microsoft's operating systems equip more than 95% of the world's personal computers.

This illegal conduct has enabled Microsoft to acquire a dominant position in the market for work group server operating systems, which are at the heart of corporate IT networks, and risks eliminating competition altogether in that market. In addition, Microsoft's conduct has significantly weakened competition on the media player market.

The ongoing abuses act as a brake on innovation and harm the competitive process and consumers, who ultimately end up with less choice and facing higher prices.

For these very serious abuses, which have been ongoing for five and a half years, the Commission has imposed a fine of € 497.2 million.

Remedies

In order to restore the conditions of fair competition, the Commission has imposed the following remedies:

- As regards interoperability, Microsoft is required, within 120 days, to disclose complete and accurate interface documentation which would allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers. This will enable rival vendors to develop products that can compete on a level playing field in the work group server operating system market. The disclosed information will have to be updated each time Microsoft brings to the market new versions of its relevant products.

To the extent that any of this interface information might be protected by intellectual property in the European Economic Area⁶, Microsoft would be entitled to reasonable remuneration. The disclosure order concerns the interface documentation only, and not the Windows source code, as this is not necessary to achieve the development of interoperable products.

- As regards tying, Microsoft is required, within 90 days, to offer to PC manufacturers a version of its Windows client PC operating system without WMP. The un-tying remedy does not mean that consumers will obtain PCs and operating systems without media players. Most consumers purchase a PC from a PC manufacturer which has already put together on their behalf a bundle of an operating system and a media player. As a result of the Commission's remedy, the configuration of such bundles will reflect what consumers want, and not what Microsoft imposes.

Microsoft retains the right to offer a version of its Windows client PC operating system product with WMP. However, Microsoft must refrain from using any commercial, technological or contractual terms that would have the effect of rendering the unbundled version of Windows less attractive or performing. In particular, it must not give PC manufacturers a discount conditional on their buying Windows together with WMP.

The Commission believes the remedies will bring the antitrust violations to an end, that they are proportionate, and that they establish clear principles for the future conduct of the company.

To ensure effective and timely compliance with this decision, the Commission will appoint a Monitoring Trustee, which will, *inter alia*, oversee that Microsoft's interface disclosures are complete and accurate, and that the two versions of Windows are equivalent in terms of performance.

⁶ The European Union plus Norway, Iceland and Liechtenstein.

The investigation

In December 1998, Sun Microsystems, another US company, complained that Microsoft had refused to provide interface information necessary for Sun to be able to develop products that would “talk” properly with the ubiquitous Windows PCs, and hence be able to compete on an equal footing in the market for work group server operating systems.

The Commission’s investigation revealed that Sun was not the only company that had been refused this information, and that these non-disclosures by Microsoft were part of a broader strategy designed to shut competitors out of the market.

This relegated to a secondary position competition in terms of reliability, security and speed, among other factors, and ensured Microsoft’s success on the market. As a result, an overwhelming majority of customers informed the Commission that Microsoft’s non-disclosure of interface information artificially altered their choice in favour of Microsoft’s server products. Survey responses submitted by Microsoft itself confirmed the link between the interoperability advantage that Microsoft reserved for itself and its growing market shares.

In 2000, the Commission enlarged its investigation, on its own initiative, to study the effects of the tying of Microsoft’s Windows Media Player with the company’s Windows 2000 PC operating system.

This part of the investigation concluded that the ubiquity which was immediately afforded to WMP as a result of it being tied with the Windows PC OS artificially reduces the incentives of music, film and other media companies, as well software developers and content providers to develop their offerings to competing media players.

As a result, Microsoft’s tying of its media player product has the effect of foreclosing the market to competitors, and hence ultimately reducing consumer choice, since competing products are set at a disadvantage which is not related to their price or quality.

Available data already show a clear trend in favour of WMP and Windows Media technology. Absent intervention from the Commission, the tying of WMP with Windows is likely to make the market “tip” definitively in Microsoft’s favour. This would allow Microsoft to control related markets in the digital media sector, such as encoding technology, software for broadcasting of music over the Internet and digital rights management etc.

More generally, the Commission is concerned that Microsoft’s tying of WMP is an example of a more general business model which, given Microsoft’s virtual monopoly in PC operating systems, deters innovation and reduces consumer choice in any technologies which Microsoft could conceivably take interest in and tie with Windows in the future.

Note to editors

The European Commission enforces EU competition rules on restrictive business practices and abuses of monopoly power for the whole of the European Union when cross-border trade and competition are affected.

The Commission has the power to force changes in company behaviour and to impose financial penalties for antitrust violations of up to 10% of their annual turnover worldwide.

Commission decisions can be appealed to the European Court of First Instance in Luxembourg.