



Welcome to the Rapid New Generation database, operational since **May 19th**. Please visit the **What's New** link on the Menu for more information on Rapid NG.

## Microsoft - Questions and Answers on Commission Decision

Reference: MEMO/04/70 Date: 24/03/2004

HTML: EN

PDF: EN

DOC: EN

### MEMO/04/70

Brussels, 24 March 2004

## Microsoft - Questions and Answers on Commission Decision

**Microsoft is a US company. What gives the European Commission authority to decide whether its behaviour is legal or not?**

Microsoft sells its products globally including in the European Union, which is one of its main markets together with the United States. It must therefore respect EU competition rules in the same way that European companies must respect US law when operating on the other side of the Atlantic.

### What exactly must Microsoft do to comply with EU law?

The company has been ordered "*to disclose complete and accurate specifications for the protocols*" necessary for its competitors' server products to be able to 'talk' on an equal footing with Windows PCs, and hence compete on a level playing-field.

It must also offer a version of Windows for client PCs which does not include Windows Media Player. This applies to Windows sold directly to end users or licensed to Original Equipment Manufacturers - i.e. PC manufacturers.

### Does this go beyond what was agreed between Microsoft and the US Department of Justice?

The US case presents certain similarities with the EU case, and the Commission did take on board those points where the US settlement had addressed its own concerns.

But the EU case also presented different facts, and given the European Commission's duty to uphold EU law in the European single market, the remedies are designed to fit with the specifics of the EU case. As regards interoperability, the Commission requires, *inter alia*, the disclosure of certain server-to-server protocols not covered by the US case. As regards tying, the US remedy did not contain provisions on code removal as it was designed for a monopoly maintenance and not a tying liability.

### **Did the Commission co-operate with the United States on this case?**

The Commission and the United States Department of Justice have kept each other regularly informed on the state of play of their respective Microsoft cases, including holding meetings at regular intervals. These meetings have been held in a co-operative and friendly atmosphere, and have been substantively fruitful in terms of sharing experiences on issues of common interest.

### **Does Microsoft have to pay the fine immediately?**

The fine needs to be paid within three months of the date of notification of the Decision.

### **Where does the money go?**

The money goes into the EU's central budget.

### **Does Microsoft have to pay the fine if it appeals to the European Court of First Instance (CFI) and seeks interim measures?**

In case of appeals to the CFI, it is normal practice that instead of paying the fine outright, companies, with the agreement of the Commission, provide a bank guarantee. Any fine that is paid subsequently has interest payable on it. The interest rate is that applied by the European Central Bank to its main refinancing operations on the first day of the month in which the Decision is adopted, plus 3.5 percentage points. In the present case, that is 5.50%. This is normal practice in all Decisions with fines.

### **What happens if Microsoft does not disclose the specified information or offer a version of Windows without WMP within the deadlines outlined by the Commission?**

The remedies outlined in the Commission's Decision are legally binding, and Microsoft is therefore obliged to comply. Experience shows that companies respect such Decisions taken by the Commission, and the Commission has no reason to believe that it will be any different this time. If a company does not comply with the provisions of a Decision, it is liable for daily penalty payments.

### **What is the geographical scope of the remedies?**

The Commission is competent to ensure the maintenance of effective competition within the borders of the EEA. In this respect, even if markets are defined as world-wide in the Decision, the geographical scope of the remedies is EEA-wide.

### **Does the Commission's Decision seek to protect competitors?**

The Commission does not look at the specific interests of individual companies, but is charged with ensuring that competition on the merits is safeguarded. This creates an environment where consumers can benefit and where innovation can flourish. The Commission in its Decision has not taken up all the elements of Sun's original complaint.

### **Are the Commission's legal theories in the case in any way novel?**

The legal underpinning of the Commission's case is not in any way novel. Both parts of the Commission's case are based on a consistent pattern of Court jurisprudence (interoperability: *inter alia*, Commercial Solvents, Telemarketing, Magill, and tying: *inter alia*, Hilti and Tetra Pak).

### **Why does the Commission believe that the normal competition rules should apply to fast-changing technology markets?**

The specifics of the particular industry in question (be it "hi-tech" or "old economy") must be taken into account when conducting any anti-trust analysis. Differing characteristics will have an influence on the specific assessments that are reached. This, however, does not mean that a soundly conducted anti-trust analysis cannot be applied to "new economy" markets. In fact, the specific characteristics of the market in question (e.g. network effects, applications barrier to entry) could mean that there is in fact an increased likelihood of positions of entrenched market power compared to certain "traditional industries".

**Does Microsoft have intellectual property over the interface information to be disclosed?**

The Commission is not seeking disclosure of Microsoft's source code. The Commission does not exclude that the information that the Decision obliges Microsoft to disclose might be protected by intellectual property rights in the EU. To the extent that it is, the Decision finds that in line with the relevant jurisprudence, the exceptional circumstances of the case (Microsoft's overwhelming dominance, indispensability of the interface information, risk of elimination of competition in the market) would mandate such disclosure.

**How will the Commission ensure that Microsoft does not exclude competitors from the market by setting very high royalties for the information in question?**

To the extent that any of the information in question is protected by intellectual property rights in the EEA, Microsoft is entitled to reasonable remuneration. It will be the role of the Monitoring Trustee, under the authority of the Commission, to ensure that Microsoft does not charge too high a price for the information.

**Is the Decision compatible with international rules on the protection of intellectual property rights?**

The Decision is fully consistent with the Community's international obligations, in particular with those resulting from the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The TRIPS Agreement allows the Commission to order the remedies to bring to an end the abuse of a dominant position identified in the Decision.

**Is the Commission's case in line with US law as far as unbundling of the WMP is concerned?**

Yes. The Commission has followed a "rule of reason" approach in order to establish whether the anti-competitive effects of tying WMP outweigh any possible pro-competitive benefits. This is precisely the framework for tying cases that US Court of Appeals laid down in 2001.

**Does the remedy on the media player mean that, in the future, Microsoft will be forced to offer two versions of all the products it integrates in the Windows operating system?**

No, as any future case will be examined on its own merits. Having said that, the Decision provides a framework within which allegations of future tying in software markets can be examined.

**When is the Decision going to be published?**

The Decision in English (the official language version of the Decision) will be made available shortly on DG Competition's website (once Microsoft's business secrets have been taken out). French and German translations will also be made available on DG Competition's website in due course. A summary of the Decision will be published in the OJ L series in all languages (once the translations are available).

**Were the two sides ever close to a settlement?**

Whilst there was significant progress towards resolving the issues of the present case, the Commission cannot comment on the specifics of the settlement discussions. The Commission believes that it is essential to establish clear principles for the future conduct of a company with such a strong dominant position in the market.