

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/C-3/39.530 — Microsoft (Tying)

(Text with EEA relevance)

(2009/C 242/04)

1. INTRODUCTION

- (1) According to Article 9 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

- (2) On 14 January 2009, the European Commission adopted a Statement of Objections against Microsoft, a company incorporated in Washington, USA. The Statement of Objections, which constitutes a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003, outlines the Commission's preliminary view that Microsoft has infringed EC Treaty rules on abuse of a dominant position (Article 82) by tying its web browser Internet Explorer with its dominant client PC operating system Windows.
- (3) Operating systems are software products that control the basic functions of a computer. Client Personal Computers (PCs) are general-purpose computers designed for use by one person at a time and that can be connected to a computer network.
- (4) Web browsers are software products used by individual users of client PCs or other devices to access and interact with World Wide Web content hosted on

servers which are connected to networks such as the internet.

- (5) According to the preliminary assessment Microsoft is dominant on the market for client PC operating systems. The Statement of Objections outlines the Commission's preliminary view that Microsoft technically and contractually tied Internet Explorer to Windows at least since 1996 by licensing Windows only with Internet Explorer included. The Commission provisionally considers that this tying conduct amounts to an abuse of a dominant position under Article 82.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

- (6) Microsoft, the party subject to the proceedings, does not agree with the Commission's preliminary assessment. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns.
- (7) The commitments are briefly summarized below and published in full in English on the website of the Directorate-General for Competition at: http://ec.europa.eu/competition/index_en.html
- (8) The commitments offered are intended to allow for an unbiased choice for both computer manufacturers ('Original Equipment Manufacturers' (OEMs)) and end users between Microsoft's browser and competing browsers. The key elements of the commitments are as follows:
- (9) Microsoft will make available a mechanism in Windows Client PC Operating Systems within the European Economic Area (EEA) that enables OEMs and end users to turn Internet Explorer off and on. If Internet Explorer is turned off, the browser frame window and menus will not be accessible to the user or anybody else (nor to software products) in any way.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

- (10) OEMs will be free to pre-install any web browser(s) of their choice on PCs they ship and set it as default web browser. Microsoft will not circumvent the commitments and shall not retaliate against OEMs for installing competing web browsers or by other means.
- (11) Microsoft will distribute a ballot screen software update to users of Windows PC Client Operating Systems within the EEA by means of Windows Update. Users who have Internet Explorer set as their default web browser will be prompted with this ballot screen. The ballot screen will give users an opportunity to choose whether and which competing web browser(s) to install. The ballot screen will display in an unbiased way icons of and basic identifying information on the most widely-used web browsers.
- (12) The commitment will be valid for a period of five years from the adoption date of the Article 9 Decision.
- (14) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'. Legitimated requests will be respected.
- (15) Observations can be sent to the Commission under reference number COMP/C-3/39.530 — Microsoft (Tying) either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax +32 22950128 or by post, to the following address:

4. INVITATION TO MAKE COMMENTS

- (13) The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding. If there are substantial changes to the commitments a new market test will be launched.

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