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Antitrust: Commission initiates formal investigations against Microsoft in two cases of suspected abuse of dominant market position

The European Commission has decided to initiate two formal antitrust investigations against Microsoft Corp concerning two separate categories of alleged infringements of EC Treaty rules on abuse of a dominant market position (Article 82). The first case where proceedings have been opened is in the field of interoperability in relation to a complaint by the European Committee for Interoperable Systems (ECIS). The second area where proceedings have been opened is in the field of tying of separate software products following inter alia a complaint by Opera.

As regards interoperability, in its Microsoft judgment of 17 September 2007, the Court of First Instance confirmed the principles that must be respected by dominant companies as regards interoperability disclosures. In the complaint by ECIS, Microsoft is alleged to have illegally refused to disclose interoperability information across a broad range of products, including information related to its Office suite, a number of its server products, and also in relation to the so called .NET Framework. The Commission's examination will therefore focus on all these areas, including the question whether Microsoft's new file format Office Open XML, as implemented in Office, is sufficiently interoperable with competitors' products.

As for the tying of separate software products, in its Microsoft judgment of 17 September 2007, the Court of First Instance confirmed the principles that must be respected by dominant companies. In a complaint by Opera, a competing browser vendor, Microsoft is alleged to have engaged in illegal tying of its Internet Explorer product to its dominant Windows operating system. The complaint alleges that there is ongoing competitive harm from Microsoft's practices, in particular in view of new proprietary technologies that Microsoft has allegedly introduced in its browser that would reduce compatibility with open internet standards, and therefore hinder competition. In addition, allegations of tying of other separate software products by Microsoft, including desktop search and Windows Live have been brought to the Commission's attention. The Commission's investigation will therefore focus on allegations that a range of products have been unlawfully tied to sales of Microsoft's dominant operating system.

This initiation of proceedings does not imply that the Commission has proof of an infringement. It only signifies that the Commission will further investigate the case as a matter of priority.

What is the legal base for opening formal investigations?

The legal base of this procedural step is Article 11(6) of Council Regulation No 1/2003 and article 2(1) of Commission Regulation No 773/2004.

Article 11(6) of Regulation No 1/2003 provides that the initiation of proceedings relieves the competition authorities of the Member States of their authority to apply the competition rules laid down in Articles 81 and 82 of the Treaty. Moreover, Article 16(1) of the same Regulation provides that national courts must avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings that it has initiated.

Article 2 of Regulation No 773/2004 provides that the Commission can initiate proceedings with a view to adopting at a later stage a decision on substance according to Articles 7-10 of Regulation No 1/2003 at any point in time, but at the latest when issuing a statement of objections or a preliminary assessment notice in a settlement procedure. In the case at stake, the Commission has chosen to open proceedings before such further steps.

The Commission may make public the initiation of proceedings in any appropriate way. Before doing so, it informed the parties concerned. The Competition Authorities of the Member States concerned have also been informed.

The company's rights of defence will be fully respected.