



# STANFORD

---

## GRADUATE SCHOOL OF BUSINESS

CASE: [GS-71]  
DATE: 10/02/2009

### MICROSOFT'S EUROPEAN UNION COURT BATTLE

In the landmark March 24, 2004 decision, the European Commission concluded that Microsoft was abusing its market leading position in the desktop software market to stifle competition (the full press release is included as **Exhibit 1**). Under the leadership of Commissioner Monti, the European Commission adopted a decision relating to a proceeding pursuant to Article 82 of the EC Treaty and Article 54 of the EEA Agreement.<sup>1</sup> The Commission found that Microsoft infringed on both articles by: (1) “refusing to supply interoperability information and allow its use for the purpose of developing and distributing work group server operating system products, from October 1998 until the date of this Decision,” and (2) “making the availability of the Windows Client PC Operating System conditional on the simultaneous acquisition of Windows Media Player (WMP) from May 1999 until the date of this Decision.”<sup>2</sup>

To that end, the Commission fined Microsoft a record €497.2 million for violating the European Union’s (EU) antitrust law. The fine exceeds the EU’s previous record of €462 million imposed on the pharmaceutical group Roche.<sup>3</sup> Moreover, Microsoft was required to (1) give rivals

---

<sup>1</sup> Article 82 of the EC Treaty and Article 54 of the European Economic Area (EEA) agreement states the following: “Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Countries. Such abuse may, in particular, consist in: Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.” See EU websites: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12002E082:EN:NOT> and <http://www.eftasurv.int/fieldsofwork/fieldcompetition/legaltext/dbaFile1324.html> for further elaboration on Article 82 and 54, respectively.

<sup>2</sup> “Commission Decision of 24 May 2004 (Case COMP/C-3/37.792 – Microsoft).” *Official Journal of the European Union*. June 2, 2007.

<sup>3</sup> “Microsoft Hit by Record EU Fine.” *BBC*, March 24, 2004. <http://news.bbc.co.uk/2/hi/business/3563697.stm>.

---

Cecilia Hyunjung Mo prepared this case under the supervision of Professor Condoleezza Rice and Professor William Barnett as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

Copyright © 2009 by the Board of Trustees of the Leland Stanford Junior University. All rights reserved. To order copies or request permission to reproduce materials, e-mail the Case Writing Office at: [cwo@gsb.stanford.edu](mailto:cwo@gsb.stanford.edu) or write: Case Writing Office, Stanford Graduate School of Business, 518 Memorial Way, Stanford University, Stanford, CA 94305-5015. No part of this publication may be reproduced, stored in a retrieval system, used in a spreadsheet, or transmitted in any form or by any means — electronic, mechanical, photocopying, recording, or otherwise — without the permission of the Stanford Graduate School of Business.

sufficient information for competitors to create software that integrates better with Microsoft's operating system within 120 days and (2) offer a version of its Windows operation system without WMP within 90 days.<sup>4</sup> Microsoft fought the ruling tooth and nail. However, the Commission was just as determined to battle Microsoft, and fined Microsoft for non-compliance. In the end, Microsoft was left with a total penalty of over USD 2 billion (see **Exhibit 2** for a summary of fines).

## **PROFILE OF PARTIES TO THE PROCEEDINGS**

### **The Complainant: Sun Microsystems**

Founded in 1982 by Andy Bechtolsheim, Bill Joy, Vinod Khosla, and Scott McNealy, Sun Microsystems Inc. ("Sun") is a multinational company based in Palo Alto, California, USA that provides network computing infrastructure solutions, which is comprised of computer systems, software, storage, and professional and educational services.<sup>5</sup> Sun, like Microsoft, is present in all member countries in the EU. Concerned that Microsoft was not releasing necessary information for competing networking software to interact fully with Windows operating systems, Sun officially submitted its antitrust complaints with the Commission. This application triggered the landmark antitrust case against Microsoft by the European Commission.

### **The Plaintiff: European Commission**

Established in the 1950s under the EU's founding treaties, the European Commission is the executive arm of the EU.<sup>6</sup> The Commission is comprised of 27 commissioners, where each commissioner has a sector for which he/she is responsible (e.g., Vice President of Institutional Relations and Communication Strategy, Vice President of Enterprise and Industry, and Vice President of Competition).<sup>7</sup> The 27 members of the Commission are collectively responsible for proposing legislation, managing the day-to-day business of the EU, implementing EU laws, and representing the EU on the international stage. The complaint filed by Sun was seen by the European Competition Commissioner as this individual aims to promote a fair and free business environment in Europe (for greater details on the European Commission, see **Exhibit 3**).

Under the leadership of European Competition Commissioner Mario Monti of Italy, who served between 1999 and 2004, anti-monopoly proceedings against Microsoft were initiated. After his term, Neelie Kroes of Netherlands was appointed as the European Competition Commissioner, and she oversaw the charge that was brought against Microsoft by the Commission since then.

---

<sup>4</sup> Compiled from EU website:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/382&guiLanguage=en>

<sup>5</sup> On April 20, 2009, Sun was acquired by Oracle. See <http://www.sun.com/aboutsun/pr/2009-04/sunflash.20090420.1.xml> for the official press release.

<sup>6</sup> Stephen Castle and David Jolly. "Europe Fines Microsoft \$1.3 Billion," *The New York Times*, February 28, 2008. <http://www.nytimes.com/2008/02/28/business/worldbusiness/28msoft.html>.

<sup>7</sup> Compiled from EU website: [http://ec.europa.eu/commission\\_barroso/index\\_en.htm](http://ec.europa.eu/commission_barroso/index_en.htm)

## The Defendant: Microsoft Corporation

Co-founded in 1975 by Paul Gardner Allen and William (Bill) H. Gates, Microsoft Corporation (“Microsoft”) is a multinational computer technology that manufactures, licenses, and supports a wide range of software products for a variety of computing devices.<sup>8</sup> From Paris La Défense, a major business district for the city of Paris, Microsoft Europe, Middle East and Africa controls its activities in the European Economic Area (“EEA”). Microsoft is present in all member countries in the EU.

Microsoft was the largest company in the world in 2000 and among the 10 largest companies in the world since 2000 by market capitalization.<sup>9</sup> As of 2009, Microsoft’s operating system runs over 90 percent of the world’s computers. Microsoft’s resources and profits are also significant. When the Commission imposed its sanctions against Microsoft in 2004, 2006, and 2008, Microsoft employed 57,086, 71,172, and 91,259 employees around the world and earned net profits of USD 8.17 billion, 12.60 billion, and 17.68 billion respectively (for additional information on Microsoft’s revenue, profit, and headcount, see **Exhibit 4**). Business indicators show clearly that Microsoft has been holding an overwhelmingly dominant position within the computing industry, and hence is susceptible to antitrust scrutiny.<sup>10</sup>

## EVENTS LEADING TO THE MARCH 2004 DECISION

The initiation of the antitrust proceedings against Microsoft began officially on December 10, 1998 when Sun made an application to the Commission pursuant to Article 3 of Regulation No. 17, registered as Case IC/C-3/37.345. Sun expressed grievances that Microsoft enjoyed a dominant position as a supplier of operating systems for personal computers. Sun further contended that Microsoft violated Article 82 of the Treaty by reserving to itself information needed to interoperate fully with Microsoft’s PC operating systems.<sup>11</sup> According to Sun, the withheld information is necessary for firms to viably compete as a work group server operating system supplier.

The Commission investigated Sun’s complaint, and in 2000, opened Case COMP/C-3/37.792 on its own initiative under Regulation 17.<sup>12</sup> The Commission was concerned that Microsoft incorporated the software product “Windows Media Player” into all its PC operating system products, giving “Windows Media Player” an unfair advantage over competing media players.

---

<sup>8</sup> Compiled from Microsoft website: [http://www.microsoft.com/presspass/inside\\_ms.msp#About](http://www.microsoft.com/presspass/inside_ms.msp#About).

<sup>9</sup> “World’s Largest Companies,” *Financial Times*. See <http://specials.ft.com/ln/specials/global5002a.htm> for 200 ranking and <http://www.ft.com/cms/s/0/861d481a-4b97-11de-b827-00144feabdc0.html> for 2008 and 2009 rankings.

<sup>10</sup> In parallel to the Commission’s investigation, Microsoft was under antitrust scrutiny in the United States. See “Commission Decision of 24.03.2004 relating to a proceeding under Article 82 of the EC Treaty” released by the Commission of the European Communities for further elaboration.

<sup>11</sup> OJ L3, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L148, 15.6.1999, p.5).

<sup>12</sup> Regulation No 17 is “aimed at increasing involvement of national courts and competition authorities in the enforcement of EU antitrust law (decentralization) and would allow the Commission to focus its limited resources on the most serious infringements and on policy development.” See [http://www.concurrences.com/article.php3?id\\_article=12354&lang=en](http://www.concurrences.com/article.php3?id_article=12354&lang=en) for more on Regulation No 17.

From April to June 2003, the Commission engaged in a wider market enquiry on Microsoft's business practices. The following companies, comprising major Microsoft competitors, as well as industrial associations, were admitted as interested third parties alongside Sun: the Association for Competitive Technology, Time Warner Inc., the Computer & Communications Industry Association, the Computing Technology Industry Association, the Free Software Foundation Europe, Lotus Corporation, Novell Inc., RealNetworks, Inc., and the Software & Information Industry Association.<sup>13</sup>

## EVIDENCE AGAINST MICROSOFT

### Dominant Market Share

Microsoft was found to have an extraordinary position in the market. The dominant position is characterized by high market shares, and by the presence of high barriers of entry. Since 2000, Microsoft has held market shares consistently over 90 percent with respect to its position in the PC operating system market, allowing only fringe competition to exist (for additional information on Microsoft's operating system market shares since 2000, see **Exhibit 5**).<sup>14</sup> Moreover, the Commission found that Microsoft had achieved a dominant position in the work group server operating system market, holding 60-75 percent of the market.<sup>15</sup>

The dominant position is characterized by high market shares, *and* by the presence of high barriers of entry derived from network effects in the market. Before the US District Court on April 18, 2002, Microsoft's Chairman Bill Gates described this network effect dynamic:

Early on, [Microsoft] recognized that [, as] more products became available and more information could be exchanged, more consumers would be attracted to the platform, which would in turn attract more investment in product development for the platform. Economists call this 'network effect,' but at the time we called it the 'positive feedback loop'.<sup>16</sup>

Microsoft acknowledged that it held "a dominant position in the supply of operating systems that run on personal computers ('PC's)" to the Commission.<sup>17</sup> However, the fact that a firm holds a dominant position does not in itself violate the EC and EEA competition rules. Rather, a firm enjoying a dominant position is under a special responsibility not to engage in conduct that may distort competition.<sup>18</sup>

---

<sup>13</sup> See "Commission Decision of 24.03.2004 relating to a proceeding under Article 82 of the EC Treaty, p.7" released by the Commission of the European Communities for further elaboration.

<sup>14</sup> Operation systems are software products that control the basic functions of a computer.

<sup>15</sup> Work group server services are the basic services that are used by office employees in their day-to-day work, namely sharing files stored on servers, sharing printers, and having their rights as network users administered centrally by their employer's Information Technology department.

<sup>16</sup> Direct Testimony of Bill Gates, Civil Action No. 98-1233 (CKK), at paragraph 25, printed from <http://www.microsoft.com/presspass/trial/mswitness/2002/billgates/billgates.asp> on 8 January 2002.

<sup>17</sup> See Microsoft's submission in response to the Commission's supplementary Statement of Objections on October 17, 2003, p.1.

<sup>18</sup> See "Judgment of the Court of 9 November 1983 in Case 322/81," *Michelin v Commission* [1983] ECR 3461, paragraph 57.

## Refusal to Supply Information

The Commission concluded that Microsoft abused its dominant position by refusing to supply Sun and other undertakings with necessary interface information that enables competing firms to design work group server operating systems that are compatible with the Microsoft platform. Microsoft's refusal to provide interoperability input indispensable for competitors was viewed as a push to eliminate competition. Microsoft's internal communication confirms that Microsoft's executives viewed interoperability as a tool in this leveraging strategy: "What we are trying to do is use our server control to do new protocols and lock out sun and Oracle specifically [...]. Now I don't know if we'll get to that or not, but that's what we are trying to do."<sup>19</sup> Moreover, the Commission concluded that Microsoft's refusal limited technical development to the prejudice of consumers, violating Article 82(b).<sup>20</sup>

Microsoft responded to this accusation by stating that its refusal to supply requested information is objectively justified due to the intellectual property rights that it holds over the information requested by Sun and other competitors.<sup>21</sup> The Commission did not take a position on the validity of Microsoft's general intellectual property claims; however, the Commission found that according to the jurisprudence, an undertaking's interest in exercising its intellectual property rights cannot in itself constitute an objective justification in the presence of "exceptional circumstances."<sup>22</sup> The dominant position of Microsoft coupled with the fact that the refusal led to a disruption of previous levels of supply of competitor products and innovation that benefits consumers were viewed as "circumstances of an exceptional nature."<sup>23</sup>

## Tying

The Commission concluded that Microsoft further infringed Article 82 of the EC Treaty (and Article 54 of the EEA Agreement) by "tying" WMP, a streaming media player, with the Windows PC operating system (automatically installing WMP when installing Windows) based on four elements:<sup>24</sup>

- 1) Microsoft holds a dominant position in the PC operation system market;
- 2) The Windows PC operating system and WMP are two separate products; and
- 3) Microsoft does not give customers a choice to obtain Windows without WMP.
- 4) This tying forecloses competition.

The preceding four elements led the Commission to conclude that Microsoft's choice to bundle the media player with their operating system affords Microsoft an unfair advantage. Having WMP automatically installed on every Windows PC machine coupled with distortionary network

---

<sup>19</sup> See Transcript of a February 1997 speech by Bill Gates to Microsoft's sales force, in Sun's submission of October 14, 1999, at Tab. 5, on p. MSS 505490 (Case IV/C-3/37.345 on p. 5823).

<sup>20</sup> See footnote 22 for more on Article 82.

<sup>21</sup> NERA Report attached to Microsoft's submission of October 17, 2003, paragraph 53.

<sup>22</sup> "Commission Decision of 24 May 2004 (Case COMP/C-3/37.792 – Microsoft)." *Official Journal of the European Union*. June 2, 2007.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

effects (e.g., content providers and software developers primarily relying and building on WMP due to WMP's reach, thereby undermining the competitive process). Data on usage rates of media players right before the decision shows that the usage of WMP had increased and usage of WMP's competitors had declined since Microsoft bundled WMP with its operating system (for information on the share of users using WMP most frequently, see **Exhibit 6**).<sup>25</sup>

## EVENTS PROCEEDING THE MARCH 2004 DECISION

### Microsoft's Response

Microsoft paid its fine in full in July 2004; however, Microsoft claimed that it should not be fined at all because it was not aware that its behavior would violate EU law. While explicitly noting that it would continue to cooperate with the EU, it appealed the Commission's decision by taking its case to the EU's Court of First Instance (CFI).<sup>26</sup> While the company tried to have all sanctions suspended until the court challenge was completed, in December 2005, the CFI ruled that the company had to apply corrective measures before a finding on the appeal against the Commission's decision could be made.<sup>27</sup> Finally, in April 2004, the judges concluded that the European commission's March 2004 decision was justified.

In December 2005, the Commission concluded that Microsoft had failed to implement all mandated remedies from its 2004 decision, stating that the company did not disclose appropriate information regarding its work group server programs. They then gave Microsoft until January 25, 2006 to be in full compliance and threatened an additional € million per day fine until Microsoft was in full compliance starting December 16.<sup>28</sup>

Viewing that Microsoft failed to fully comply with the decision's required remedies or face bigger fines, the Commission fined Microsoft €280.5 million on July 12, 2006 (see **Exhibit 2** for a summary table on Microsoft fines). This fine came on top of the record €497.2 million fine the Commission imposed on Microsoft in 2004. The new penalty covered December 16 to June 20, and was computed by multiplying 187 days at €1.5 million per day (shy of its € million per day threat), and Commissioner Kroes warned that it faced a fine of up to €3 million per day if it continued to not be in full compliance by July 31, 2006.<sup>29</sup> Feeling that the fine was unjustified given Microsoft's "good-faith efforts over the past two years," Microsoft lodged an appeal against the new fines (see **Exhibit 7** for Microsoft's full statement on the July 12 fine).

---

<sup>25</sup> While Microsoft claims to have bundled WMP with Windows since 1992, the competitive importance of tying increased in 1999 when media players that could stream over the Internet was introduced.

<sup>26</sup> "Commission Decision of 24 May 2004 (Case COMP/C-3/37.792 – Microsoft)." *Official Journal of the European Union*. June 2, 2007.

<sup>27</sup> Compiled from EU website: [http://www.eubusiness.com/news\\_live/1189648026.39](http://www.eubusiness.com/news_live/1189648026.39)

<sup>28</sup> "Brussels Poised to Fine Microsoft," *BBC*, June 27, 2006. <http://news.bbc.co.uk/2/hi/business/5120536.stm>. Steve Lohr and James Kanter. "Microsoft Facing Fines in Europe," *The New York Times*, December 23, 2006. <http://query.nytimes.com/gst/fullpage.html?res=9405E1DE1530F930A15751C1A9639C8B63>.

<sup>29</sup> "EU Fines Microsoft at \$280.5 million for Defying Ruling," *The New York Time*, July 12, 2006. <http://www.nytimes.com/2006/07/12/technology/12iht-web.0712msft.html>.

In September 17, 2007, the CFI ruled on Microsoft's appeal. The 13 judges almost unanimously upheld the Commission's decision on Microsoft's abuse of dominant market position.<sup>30</sup> Commissioner Neelie Kroes called the victory "bittersweet" and added that "Microsoft must now comply fully with its legal obligations" from 2004.<sup>31</sup>

At that juncture, it appeared that Microsoft would work towards full compliance, by releasing the following statement: "At the time the Court of First Instance issued its judgment in September, Microsoft committed to taking any further steps necessary to achieve full compliance with the Commission's decision. We have undertaken a constructive discussion with the Commission and have now agreed on those additional steps. We will not appeal the CFI's decision to the European Court of Justice and will continue to work closely with the Commission and the industry to ensure a flourishing and competitive environment for information technology in Europe and around the world."<sup>32</sup>

Microsoft provided information, but imposed a high royalty rate on the information as Microsoft felt that it was releasing valuable intellectual property. The Commission decided that the rate - initially set at 3.87 percent of the licensee's product revenues for a patent license and 2.98 percent for a license giving access to the secret interoperability information - was unjustified. The Commission found that the information was not sufficiently innovative to warrant the amount was Microsoft was charging, and the royalties were unreasonable. Under threat of additional fines, Microsoft reduced it to 0.7 percent for a patent license and 0.5 for an information license for sales within the European community, while leaving the worldwide rates unchanged.<sup>33</sup> On October 22, 2007, Microsoft further reduced its price for the interoperability information, charging firms a flat fee of €10,000 for the desired information and an optional 0.4 percent of licensees' product revenues for an optional worldwide patent license.<sup>34</sup>

The price change came too late. On February 27, 2008, the Commission showed that it was furious at what it took to be foot-dragging by Microsoft, and the EU further fined Microsoft a record €899 million for the time period ending in October 2007 (see **Exhibit 2** for a summary of fines).<sup>35</sup> Commissioner Kroes said Microsoft had continued to "abuse its powerful market position" after March 2004 and "continued to stifle innovation by charging other companies prohibitive royalty rates for the essential information they needed." She further noted that Microsoft was "the first company in 50 years of EU competition policy that the Commission has had to fine for failure to comply with an anti-trust decision (see **Exhibit 8** for the press release of this ruling)."<sup>36</sup> This was the culmination of the European Commission's 2004 decision.

---

<sup>30</sup>Compiled from EU website:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/359&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>31</sup>"Microsoft's Legal Defeat in Europe Will Not Cause the Firm Great Pain." *The Economist*. Sept. 17, 2007.

<sup>32</sup>Compiled from Microsoft website: <http://www.microsoft.com/presspass/press/2007/oct07/10-22msstatement.mspx>

<sup>33</sup>Compiled from Microsoft website: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/318>

<sup>34</sup>Ibid.

<sup>35</sup>Matthew Newman. "Microsoft Fined Record EU899 Million by EU Regulator." *Bloomberg.com*. February 27, 2008. See <http://www.bloomberg.com/apps/news?pid=20601087&sid=aMPGjd80E6to>.

<sup>36</sup>Ibid.

## THE REACTION OF THE US GOVERNMENT

The United States government publicly involved itself in the case at two junctures.

- 2006: The U.S. government urged the European Commission and its member governments in the EU to be fair to the company. The intervention came after complaints that Microsoft had been denied the right to a fair defense in the continuing antitrust case with the European Commission by collaboration with its rivals in the software industry and denying it access to vital documents it needs to prepare its defense. A memo was written by unidentified government officials, and distributed through embassies in Europe and a US mission to the EU in Brussels.<sup>37</sup>
- 2007: Thomas Barnett, the head of the antitrust division at the Department of Justice said “We are concerned that the standard applied to unilateral conduct by the CFI, rather than helping consumers, may have the unfortunate consequence of harming consumers by chilling innovation and discouraging competition.” Commissioner Kroes quickly commented that the reaction by the senior US official was “totally unacceptable.”<sup>38</sup>

According to Richard Epstein, professor of law at the University of Chicago, concerns on the part of the US government are warranted. After Microsoft lost its appeal in 2007 he noted the following: “There is no question that this is a power struggle because it is hard to see how the Court of First Instance would have applied the same rules to domestic EU corporations. There is both the natural home court bias, and the brute fact that most of the dominant firms are American, which is why the following arguments are addressed to the likes of Google and Intel.”<sup>39</sup>

## THE EC AFTER MICROSOFT

Antitrust efforts from the EU have not slowed since the close of this case. The EU mounted further investigations, acting on a complaint made by Norwegian company Opera Software regarding the tying of Microsoft's browser (Internet Explorer) with Windows.<sup>40</sup> The EU also launched a study on whether Microsoft's Open Document Format leads to better interoperability and allows consumers to process and exchange their document with the software product of their choice.<sup>41</sup>

---

<sup>37</sup> Paul Meller. “US Asks European Union to be Fair in Microsoft Case,” *The New York Times*, March 31, 2006. <http://query.nytimes.com/gst/fullpage.html?res=9401EEDE1230F932A05750C0A9609C8B63&sec=&spon=>

<sup>38</sup> “Kroes Calls US Remarks Unacceptable,” *NewEurope*, September 24, 2007. <http://www.neurope.eu/articles/78098.php>.

<sup>39</sup> “Microsoft versus EU,” *Financial Times*, September 17, 2007. <http://www.ft.com/cms/s/2/947f8526-6516-11dc-bf89-0000779fd2ac.html>.

<sup>40</sup> “Microsoft Fights Antitrust Charge Over its Browser,” *The New York Times*, April 29, 2009. <http://www.nytimes.com/2009/04/30/technology/companies/30soft.html>.

<sup>41</sup> “EU Says to Study Microsoft's Open-Source Step,” *Reuters*, May 22, 2008. <http://www.reuters.com/article/technologyNews/idUSL2257119220080522>.

**Exhibit 1**  
**European Commission March 2004 Decision Press Release**<sup>42</sup>

Brussels, 24 March 2004

*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 systems and for media players. Because the illegal behaviour is still ongoing, the Commission has ordered Microsoft to disclose to competitors, within 120 days, the interfaces 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 €497,196,304 for abusing its market power in the EU.*<sup>43</sup>

*"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 objections, 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 monopoly (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.

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.

---

<sup>42</sup> Compiled from EU website:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/382&guiLanguage=en>

<sup>43</sup> Exact value of fine can be found in "Commission Decision of 24 May 2004 (Case COMP/C-3/37.792 – Microsoft)." *Official Journal of the European Union*. June 2, 2007.

**Exhibit 2**  
**Summary of Microsoft Fines**

<b>Date</b>	<b>Fine (in Euros)</b>	<b>Fine (in US dollars)</b>
March 2004	497 Million	613 Million <sup>44</sup>
July 2006	280.5 Million	357.3 Million <sup>45</sup>
February 2008	899 Million	1.35 Billion <sup>46</sup>
<b>Total</b>	<b>1.68 Billion</b>	<b>2.32 Billion</b>

<sup>44</sup> "Brussels Poised to Fine Microsoft," *BBC*, June 27, 2006. <http://news.bbc.co.uk/2/hi/business/5120536.stm>.

<sup>45</sup> "EU Fines Microsoft at \$280.5 million for Defying Ruling," *The New York Times*, July 12, 2006. <http://www.nytimes.com/2006/07/12/technology/12iht-web.0712msft.html>.

<sup>46</sup> "Microsoft's EU Court Battle," *BBC*, February 27, 2008. <http://news.bbc.co.uk/2/hi/business/4938610.stm>.

### **Exhibit 3** **Primer on the European Commission<sup>47</sup>**

The Commission is responsible for proposing legislation, managing the day-to-day business of the EU, implementing EU laws, and representing the EU on the international stage. The Commission is one of five institutions that govern the EU.<sup>48</sup> The Commission is bound to act independently and represent and uphold the interests of the EU as a whole, as opposed to the governments that appointed them. The Commission is based in Brussels, Belgium, with offices in Luxembourg.

#### **Membership:**

**Commissioners.** To ensure equitable representation, there is one commissioner from each EU country (a list of member states of the EU is provided below). As such, the current Commission is comprised of 27 commissioners.<sup>49</sup> A new Commission is appointed every five years, within six months of the election of the European Parliament. The procedure by which a Commission is appointed is as follows: (1) the European Council selects a Commission President; (2) the Commission President-designate is approved by Parliament; (3) the Council and the Commission President-designate selects the remaining 26 Members of the Commission; (4) the list of nominees are subject to a vote approval by the European Parliament; (5) upon approval of the Parliament, the new Commission is formally appointed by the Council. The Commission is politically accountable to Parliament, which has the legal authority to dismiss the whole Commission. Individual members of the Commission must resign if asked to do so by the President, provided the other commissioners approve.

**Permanent Bureaucracy.** Approximately 23,000 administrative officials, experts, translators, interpreters and secretarial staff are responsible for the day-to-day running of the Commission.

**Responsibilities:** The European Commission has four main roles.

**1. Propose legislation to Parliament and the Council.** The Commission has the “right of initiative,” which means that the Commission *alone* is responsible for proposing legislation to Parliament and the Council. All proposals must aim to defend the interests of the EU and its

---

<sup>47</sup> All background information was drawn from EU website: [http://europa.eu/institutions/inst/comm/index\\_en.htm](http://europa.eu/institutions/inst/comm/index_en.htm).

<sup>48</sup> The remaining four institutions are as follows:

- Parliament: comprised of 736 members from all 27 EU countries that are elected by citizens of the EU, the Parliament represent their interests when passing EU laws and the budget;
- Council: comprised of one minister from each EU country, the Council represents national governments and acts as the main decision-making body of the EU;
- Court of Justice: comprised of one judge per member, the Court of Justice functions to make sure that EU legislations is interpreted and uniformly applied in all member states; and
- Court of Auditors: comprised of one member from each EU state, the Court of Auditors ensures that the taxpayers rights are safeguarded by checking that the EU budget is correctly implemented.

<sup>49</sup> The size of the Commission grew to 27 Commissioners after Bulgaria and Romania joined the EU. Given a concern that the Commission that is too large would not be an effective governing body, the number was fixed by the Council by unanimous decision. Moreover, the Council has agreed that when the next Commission is appointed in November 2009, the number of commissioners will be reduced. Commissioners will be appointed by rotation with care being taken to ensure that each EU country and region is represented fairly.

citizens, and not those of specific countries or industries. The Commission abides by the “subsidiarity principle,” the principle of managing things at the lowest possible level. As such, it will only propose legislation if it considers that a problem cannot be solved more efficiently and effectively by national, regional, or local action.

**2. Manage and implement EU policies and the budget.** The Commission is the EU’s executive arm, responsible for managing and implementing the decisions of Parliament and the Council. The Commission is charged to manage policies adopted by the Parliament and the Council, such as the EU’s competition policy. Moreover, under the scrutiny of the Court of Auditors, the Commission is responsible for supervising the EU budget.

**3. Enforce European law (jointly with the Court of Justice).** The Commission acts as the “guardian of the Treaties.” In other words, together with the Court of Justice, the Commission is responsible for ensuring that EU law is properly applied in all member states. When the Commission finds that a EU country is infringing EU law, the Commission takes steps to right the situation.

**4. Represent the European Union on the international state.** The Commission serves as an important mouthpiece for the EU in international forums. Through the Commission, members of the EU are able to speak “with one voice” on the international stage such as the World Trade Organization. In this role, the Commission negotiates all international agreements on behalf of the EU.

#### Member States of the European Union<sup>50</sup>

Austria	Greece	Portugal
Belgium	Hungary	Romania
Bulgaria	Ireland	Slovakia
Cyprus	Italy	Slovenia
Czech Republic	Latvia	Spain
Denmark	Lithuania	Sweden
Estonia	Luxembourg	United Kingdom
Finland	Malta	Croatia*
France	Netherlands	Former Yugoslav Republic of Macedonia*
Germany	Poland	Turkey*

Note: \* denotes European Union candidate countries.

<sup>50</sup> Compiled from the EU website: See [http://europa.eu/abc/european\\_countries/index\\_en.htm](http://europa.eu/abc/european_countries/index_en.htm).

**Exhibit 4**  
**Revenue, Profit and Headcount<sup>51</sup>**

Fiscal Year Ending	Head Count	Net Revenue (USD)	Growth in Revenue	Net Income (USD)	Growth in Net Income
June 30, 2009	92,736	\$58.44B	-3%	\$14.57B	-18%
June 30, 2008	91,259	\$60.42B	18%	\$17.68B	26%
June 30, 2007	78,565	\$51.12B	15%	\$14.07B	12%
June 30, 2006	71,172	\$44.28B	11%	\$12.60B	3%
June 30, 2005	61,000	\$39.79B	8%	\$12.25B	50%
June 30, 2004	57,086	\$36.84B	14%	\$8.17B	8%
June 30, 2003	54,468	\$32.19B	13%	\$7.53B	29%
June 30, 2002	50,621	\$28.37B	12%	\$5.35B	-28%
June 30, 2001	48,030	\$25.30B	10%	\$7.35B	-22%
June 30, 2000	39,170	\$22.96B	16%	\$9.42B	21%
June 30, 1999	31,575	\$19.75B	29%	\$7.79B	73%

<sup>51</sup> Compiled from Microsoft website: [http://www.microsoft.com/presspass/inside\\_ms.msp#About](http://www.microsoft.com/presspass/inside_ms.msp#About). Table last updated on June 30, 2009.

**Exhibit 5**  
**PC Operating System Market Shares Since 2000 (%)**<sup>52</sup>

Operating System	2000		2001		2002	
	Units	Revenues	Units	Revenues	Units	Revenues
Windows	92.1	92.8	93.2	95.4	93.8	96.1
Apple (Mac OS)	3.9	3.3	3.1	2.4	2.9	2.2
Linux	1.7	0.5	2.3	0.4	2.8	0.4
Others	2.4	3.3	1.3	1.8	0.5	1.4
<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0

**Exhibit 6**  
**Percentage of Users Stating that WMP, RealPlayer and QuickTime**  
**is the Player that They Use Most**

Fiscal Year Ending	Oct-99	Oct-00	Oct-01	Oct-02	Oct-03
WMP Most Used	22%	19%	28%	40%	45%
RealPlayer Most Used	50%	35%	33%	24%	19%
QuickTime Most Used	15%	12%	13%	12%	11%

<sup>52</sup> "Worldwide Client and Server Operating Environments Forecast, 2002-2007," IDC.

**Exhibit 7**  
**Microsoft Statement on July 12 Fine**<sup>53</sup>

Redmond, Washington, 12 July 2006

Microsoft Corp. issued the following statement by General Counsel Brad Smith, following the decision by the European Commission to impose a €280.5 million fine against the company:

“We have great respect for the Commission and this process, but we do not believe any fine, let alone a fine of this magnitude, is appropriate given the lack of clarity in the Commission’s original decision and our good-faith efforts over the past two years. We will ask the European courts to determine whether our compliance efforts have been sufficient and whether the Commission’s unprecedented fine is justified.

Despite these fines, Microsoft remains totally committed to full compliance with the Commission’s 2004 decision. We will continue to do whatever the Commission asks to comply with its decision as these issues are considered by the courts.

The record will show that Microsoft has acted in good faith to comply with the Commission’s decision. We delivered thousands of pages of technical documents from December 2004 onward. When it became clear there were disagreements over the technical documentation requirements, we pressed for greater clarity, we delivered revisions promptly, we offered unlimited technical assistance, and we even made our source code available to competitors in an effort to resolve the impasse.

The real issue here is not about compliance, it is about clarity. Having received a clear definition of the documentation requirements this April, we already have met nearly all those requirements in just three months. We have dedicated massive resources to deliver high-quality documentation according to the aggressive schedule set by the Trustee and the Commission. We have delivered each of the first six milestones on time and have over 300 employees working around the clock to meet the seventh and final delivery date for this project, scheduled for July 24. It is hard to understand why the Commission is imposing this enormous fine when the process is finally working well and the agreed-upon finish line is just days away.

The fine announced today is larger than the fines the Commission has imposed for even the most severe competition law infringements, such as price-fixing cartels. When you consider Microsoft’s massive efforts to comply with this ruling, and the fact that more than a dozen companies are already using similar documentation provided in the U.S. to ship actual products, we do not believe this fine is justified.

In the meantime, we will continue to work with the Trustee on the final steps in the work plan established by the Commission in April. I would like to take this opportunity to thank Professor Barrett and his team for their hard work over the past few months. With them, we have created a highly constructive process that we hope can achieve resolution on the technical documentation, and also help resolve any future issues.”

---

<sup>53</sup> Compiled from EU website:  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/382&guiLanguage=en>

**Exhibit 8**  
**Microsoft Statement on February 27, 2008 Decision**<sup>54</sup>

Brussels, 27 February 2008

Antitrust: Commission imposes € 899 million penalty on Microsoft for non-compliance with March 2004 Decision

The European Commission has imposed a penalty payment of € 899 million on Microsoft for non-compliance with its obligations under the Commission's March 2004 Decision (see IP/04/382) prior to 22 October 2007. Today's Decision, adopted under Article 24(2) of Regulation 1/2003, finds that, prior to 22 October 2007, Microsoft had charged unreasonable prices for access to interface documentation for work group servers. The 2004 Decision, which was upheld by the Court of First Instance in September 2007 (see CJE/07/63 and MEMO/07/359), found that Microsoft had abused its dominant position under Article 82 of the EC Treaty, and required Microsoft to disclose interface documentation which would allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers at a reasonable price.

"Microsoft was the first company in fifty years of EU competition policy that the Commission has had to fine for failure to comply with an antitrust decision", said European Competition Commissioner Neelie Kroes. "I hope that today's Decision closes a dark chapter in Microsoft's record of non-compliance with the Commission's March 2004 Decision and that the principles confirmed by the Court of First Instance ruling of September 2007 will govern Microsoft's future conduct".

The Commission's Decision of March 2004 requires Microsoft to disclose complete and accurate interoperability information to developers of work group server operating systems on reasonable terms.

Initially, Microsoft had demanded a royalty rate of 3.87% of a licensee's product revenues for a patent licence (the "patent licence") and of 2.98% for a licence giving access to the secret interoperability information (the "information licence"). In a statement of objections of 1 March 2007, the Commission set out its concerns regarding Microsoft's unreasonable pricing (IP/07/269). On 21 May 2007, Microsoft reduced its royalty rates to 0.7% for a patent licence and 0.5% for an information licence, as regards sales within the EEA, while leaving the worldwide rates unchanged.

Only as from 22 October 2007 did Microsoft provide a licence giving access to the interoperability information for a flat fee of €10 000 and an optional worldwide patent licence for a reduced royalty of 0.4 % of licensees' product revenues (see IP/07/1567).

Today's Decision concludes that the royalties that Microsoft charged for the information licence – i.e. access to the interoperability information - prior to 22 October 2007 were unreasonable. Microsoft therefore failed to comply with the March 2004 Decision for three years, thereby

---

<sup>54</sup> Compiled from EU website:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/382&guiLanguage=en>.

continuing the behaviour confirmed as illegal by the Court of First Instance. Today's Decision concerns a period of non-compliance not covered by the penalty payment decision of 12 July 2006 (see IP/06/979) starting on 21 June 2006 and ending on 21 October 2007. The Decision does not cover the royalties for a distinct patent license.

The Commission has based its conclusions as to the unreasonableness of Microsoft's royalties prior to 22 October 2007 on the lack of innovation in a very large proportion of the unpatented interoperability information and a comparison with the pricing of similar interoperability technology.