

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

*The European Commission has decided to initiate formal antitrust investigations against IBM Corporation in two separate cases of alleged infringements of EU antitrust rules related to the abuse of a dominant market position (Article 102 TFEU). Both cases are related to IBM's conduct on the market for mainframe computers. The first case follows complaints by emulator software vendors T3 and Turbo Hercules, and focuses on IBM's alleged tying of mainframe hardware to its mainframe operating system. The second is an investigation begun on the Commission's own initiative of IBM's alleged discriminatory behaviour towards competing suppliers of mainframe maintenance services.*

Mainframes are powerful computers which are used by many large companies and government institutions worldwide to store and process critical business information. It is estimated that the vast majority of corporate data worldwide resides on mainframes. In 2009 approximately € 8.5 billion worldwide and € 3 billion in the European Economic Area were spent on new mainframe hardware and operating systems.

IBM is alleged to have engaged in illegal tying of its mainframe hardware products to its dominant mainframe operating system. The complaints contend that the tying shuts out providers of emulation technology which could enable the users to run critical applications on non-IBM hardware.

In addition, the Commission has concerns that IBM may have engaged in anti-competitive practices with a view to foreclosing the market for maintenance services (i.e. keeping potential competitors out of the market), in particular by restricting or delaying access to spare parts for which IBM is the only source.

The initiation of proceedings does not imply that the Commission has proof of infringements. It only signifies that the Commission will further investigate the cases 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 101 and 102 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.