

Brussels, 7th October 2009

Antitrust: Commission market tests Microsoft's proposal to ensure consumer choice of web browsers; welcomes further improvements in field of interoperability

The European Commission will on 9 October 2009 formally invite comments from consumers, software companies, computer manufacturers and other interested parties on an improved proposal by Microsoft to give present and future users of the Windows PC operating system a greater choice of web browsers. The commitments have been offered by Microsoft after the Commission expressed specific concerns that Microsoft may have infringed EC Treaty rules on abuse of a dominant position (Article 82) by tying its web browser (Internet Explorer) to its client PC operating system Windows, and are an improved version of the proposals made by Microsoft in July 2009 (see [MEMO/09/352](#)). The improvements concern greater information to consumers about web browsers, the features of each browser, an improved user experience as well as a review by the Commission to ensure the proposals genuinely work to benefit consumers. Interested parties can submit comments within one month. The Commission welcomes Microsoft's proposal as it has the potential to give European consumers real choice over how they access and use the internet. Following the market test, the Commission could decide to adopt a decision under Article 9 (1) of Regulation 1/2003, which would make the commitments legally binding on Microsoft. The Commission also welcomes further improvements in the field of interoperability information which Microsoft will publish on its website via a public undertaking.

In July 2009, Microsoft made a proposal to address the Commission's competition concerns. Microsoft has now improved its proposal, in particular as regards its practical effectiveness in terms of ensuring genuine consumer choice. These improvements followed discussions with the Commission, which received a number of comments on the Microsoft proposal.

Improvements to the Web Browser Proposals

The improvements that Microsoft has made to its proposal since July would ensure that consumers could make a free and fully informed choice of web browser. Microsoft has in particular agreed to present users with a first screen explaining what web browsers are. "Tell me more" buttons for each browser would also enable users to learn more about the web browser they may wish to install. The user experience would be better and the choice screen would better represent competing browser vendors. Finally, the proposed commitment would now be subject to a clause allowing the Commission to review it in the future to ensure that consumers would continue to have a genuine choice among browsers.

Under its revised proposal, Microsoft would make available for five years in the European Economic Area (through the Windows Update mechanism) a choice screen enabling users of Windows XP, Windows Vista and Windows 7 (Microsoft's next version of its PC operating system) to choose which web browser(s) they want to install in addition to, or instead of Internet Explorer. Likewise, in future versions of Windows, including Windows 7, PC manufacturers would be able to install competing web browsers, set those as default and disable Internet Explorer.

The Commission's concern has been that PC users should have an effective and unbiased choice between Internet Explorer and competing web browsers to ensure competition on the merits and to allow consumers to benefit from technical development and innovation both on the web browser market and on related markets, such as web-based applications. The Commission's preliminary view is that Microsoft's commitments would address these competition concerns and is market testing Microsoft's proposal in light of these requirements.

Background on web browser case

Microsoft's proposal followed a Statement of Objections sent to Microsoft by the European Commission on 15 January 2009 (see [MEMO/09/15](#)). The Statement of Objections outlined the Commission's preliminary view that Microsoft may have infringed Article 82 of the EC Treaty by abusing its dominant position in the market for client PC operating systems through the tying of Internet Explorer to Windows.

The Commission's preliminary view, set out in the Statement of Objections, was that the tying of Internet Explorer to Windows makes Microsoft's web browser available on more than 90% of the PCs worldwide, which distorts competition on the merits between competing web browsers, by providing Internet Explorer with an artificial distribution advantage which other web browsers are unable to match. The Commission preliminary view was also that this tying of Internet Explorer to Windows was detrimental to the pace of product innovation and created artificial incentives for software developers and content providers to design their products or web sites primarily for Internet Explorer.

Invitation for third party comments

Pursuant to Article 27 (4) of Regulation 1/2003, a so-called "market test notice" with a summary of the proposed commitments will be published in the EU's Official Journal on 9 October 2009. The full version of the commitments is available on the Commission's website at:

http://ec.europa.eu/competition/antitrust/cases/index/by_nr_79.html#i39_530

Interested parties will be formally invited by the market test notice in the Official Journal to present their comments within one month of the publication in Official Journal.

Under Article 9 of Regulation 1/2003, the Commission may decide to make the commitments legally binding on Microsoft. Such an Article 9 decision would find that there are no longer grounds for action by the Commission, without explicitly concluding on the existence of an infringement of EC antitrust rules.

Additional proposals on interoperability information

In July 2009, Microsoft also made proposals in relation to disclosures of interoperability information that would improve interoperability between third party products and several Microsoft products, including Windows, Windows Server, Office, Exchange, and SharePoint (see [MEMO/09/352](#)). Microsoft is publishing improved proposals on its website. The Commission welcomes this initiative. Even though it remains informal vis-à-vis the Commission, Microsoft's proposal, which is in the form of a public undertaking, includes warranties that Microsoft offers to third parties and that can be privately enforced.