



PRESS RELEASE

Brussels, 6 March 2013

Antitrust: Commission fines Microsoft for non-compliance with browser choice commitments

The European Commission has imposed a €561 million fine on Microsoft for failing to comply with its commitments to offer users a browser choice screen enabling them to easily choose their preferred web browser. In 2009, the Commission had made these commitments legally binding on Microsoft until 2014 (see [IP/09/1941](#)). In today's decision, the Commission finds that Microsoft failed to roll out the browser choice screen with its Windows 7 Service Pack 1 from May 2011 until July 2012. 15 million Windows users in the EU therefore did not see the choice screen during this period. Microsoft has acknowledged that the choice screen was not displayed during that time.

Commission Vice President in charge of competition policy Joaquín Almunia said: *"In 2009, we closed our investigation about a suspected abuse of dominant position by Microsoft due to the tying of Internet Explorer to Windows by accepting commitments offered by the company. Legally binding commitments reached in antitrust decisions play a very important role in our enforcement policy because they allow for rapid solutions to competition problems. Of course, such decisions require strict compliance. A failure to comply is a very serious infringement that must be sanctioned accordingly."*

In December 2009, the Commission had made legally binding on Microsoft commitments offered by the US software company to address competition concerns related to the tying of Microsoft's web browser, Internet Explorer, to its dominant client PC operating system Windows (see [IP/09/1941](#), [MEMO/09/558](#) and [MEMO/09/559](#)). Specifically, Microsoft committed to make available for five years (i.e. until 2014) in the European Economic Area a "choice screen" enabling users of the Windows operating system to choose in an informed and unbiased manner which web browser(s) they wanted to install in addition to, or instead of, Microsoft's web browser.

The choice screen was provided as of March 2010 to European Windows users who have Internet Explorer set as their default web browser. While it was implemented, the choice screen was very successful with users: for example, until November 2010, 84 million browsers were downloaded through it. When the failure to comply was detected and documented in July 2012, the Commission opened an investigation (see [IP/12/800](#)) and before taking a decision notified to Microsoft its formal objections in October 2012 (see [IP/12/1149](#)).

This is the first time that the Commission has had to fine a company for non-compliance with a commitments decision. In the calculation of the fine the Commission took into account the gravity and duration of the infringement, the need to ensure a deterrent effect of the fine and, as a mitigating circumstance, the fact that Microsoft has cooperated with

the Commission and provided information which helped the Commission to investigate the matter efficiently.

Statement by VP Almunia on Microsoft

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Joaquín Almunia

Vice President of the European Commission responsible for Competition Policy

Statement by VP Almunia on Microsoft

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Press conference- Press room

Brussels, 6 March 2013

Today, the Commission adopted a decision sanctioning Microsoft for its failure to comply with the legally binding commitments which it made to the Commission. The Decision imposes a fine of 561 million euros on Microsoft for this very serious infringement.

As you may recall, in December 2009 the Commission made legally binding on Microsoft the commitments offered by the company.

As of March 2010, Microsoft was therefore obliged to display until 2014 a "choice screen" enabling users of Windows in the EU to easily choose their preferred web browser.

Although Microsoft did make the choice screen available in March 2010, the choice screen was not rolled out as required following the launch of Windows 7 Service Pack 1 in May 2011.

As a consequence, during more than a year, until July 2012, around 15.3 million users did not see the choice screen as they should have.

Microsoft has acknowledged that it did not comply with its own commitments.

Immediately after I received information about this fact, I ordered the reopening of proceedings, and in October last year a Statement of Objections was adopted to which Microsoft replied in December.

Following an in-depth investigation and taking into account Microsoft's reply to our objections, today's decision finds that Microsoft has indeed breached its legally binding commitments.

Such a breach is of course very serious, irrespective of whether it was intentional or not, and it calls for a sanction. The Commission has therefore imposed a fine, as foreseen by the EU's Antitrust Regulation.

This is the first time that the Commission has found a breach of legally binding commitments enshrined in an art. 9 Decision.

In setting the level of the fine, the Commission took into account the gravity and the duration of the infringement as well as the need to ensure that the sanction is sufficiently deterrent.

At the same time, once the breach was discovered, Microsoft cooperated with the Commission and provided information which helped the Commission to investigate the matter efficiently. This was taken into account as a mitigating circumstance.

Let me make a more general remark: commitment decisions are a very important tool in the EU antitrust enforcement system. Decisions of this type – so-called art 9 Decisions – can be a good way to solve antitrust concerns swiftly since they avoid lengthy proceedings.

In fast-moving markets such as the IT sector, this can be particularly helpful, making easier for us to obtain concrete results for consumers.

In 2009, the Commission's concerns about the tying of Internet Explorer to Windows were very serious. Windows was the dominant operating system, with a 90% market share, while Internet Explorer still had a 55% market share.

The Commission considered that the tying of these two products created a strong risk that other browser providers could be foreclosed from this market.

At the time, this solution allowed the Commission to put an end to proceedings which potentially could have lasted much longer.

Microsoft's legally binding commitment to provide the choice screen allowed the Commission to close its investigation.

The browser choice screen which was introduced thanks to our decision of 2009 was extremely successful with users: in just a few months, between March and November 2010, 84 million browsers were downloaded through it.

Of course, the browser market has evolved a lot since then – and fortunately so. Users can now easily choose, download and install the browser they prefer, which was precisely the objective of the Commission. Easy access to different browsers encourages companies to continue to innovate to provide users with the best products.

There are obviously many factors behind this development. One of these factors, indeed, was the introduction of the choice screen itself, as shown by these tens of millions of downloads.

Our decision of 2009 provided the right solution to the competition concerns identified at the time.

However, it goes without saying that this type of settled outcome of an antitrust investigation can only work if the commitments are then scrupulously complied with.

Our decision of today reflects this requirement to comply with the commitments agreed with the Commission in art. 9 Decisions.

The lack of compliance is, as a matter of principle, a serious breach of EU law itself.

If companies agree to offer commitments which then become legally binding, they must do what they have committed to do or face the consequences – namely, the imposition of sanctions.

I hope this decision will make companies think twice before they even think of intentionally breaching their obligations or even of neglecting their duty to ensure strict compliance.

Background

When the Commission finds an infringement of EU antitrust rules such as an abuse of a dominant market position (Article 102 of the Treaty on the Functioning of the European Union), it may take a decision under Article 7 of the EU's Antitrust Regulation (1/2003) prohibiting such behaviour and imposing sanctions. The Commission may impose a fine up to 10% of the undertaking's total turnover in the preceding business year.

However, under Article 9 of the Regulation, the Commission may also conclude an antitrust investigation by making legally binding the commitments offered by the companies concerned. Such an Article 9 decision does not conclude that there is an infringement of EU antitrust rules and does not impose a sanction. However, it legally binds the companies concerned to comply with the commitments. Since the entry into force of the Regulation in 2003, the Commission has taken 29 decisions under Article 9, including the decision on Internet Explorer ([IP/09/1941](#)).

If a company breaks such commitments, Article 23 (2) of the Antitrust Regulation empowers the Commission to impose fines of up to 10% of its total turnover in the preceding business year.

The Commission's investigation into the tying of Windows and Internet Explorer was distinct from the antitrust case involving Microsoft which concluded in 2004 with a Decision finding that Microsoft had abused its dominant position and imposing fines. This case focused on interoperability between Windows and work group servers and on the tying of Windows Media Player to Windows ([IP/04/382](#)).

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