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Competition: Statement of Objections to Microsoft for non-compliance with March 2004 decision – frequently asked questions

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MEMO/05/499

Brussels, 22nd December 2005

Competition: Statement of Objections to Microsoft for non-compliance with March 2004 decision – frequently asked questions

(see also [IP/05/1695](#))

What are the next steps following this Statement of Objections?

The Statement of Objections specifies that Microsoft has five weeks to respond, and then a right to be heard in an oral hearing. The Commission will then make its definitive assessment.

If Microsoft replies in five weeks, when would the Commission expect to issue a final decision?

It is too early to speculate on matters such as these. The Commission would naturally take into account Microsoft's response, and any changes it might make to the Technical Documentation to render it fully compliant with the Commission's March 2004 Decision (see [IP/04/382](#)).

What if Microsoft complies later than December 15th, say in several weeks? Would the Commission fine for the period between December 15th and the day that it judged that Microsoft was in compliance?

The Commission would have that option. However, that is a hypothetical question for the moment, and the Commission would make that decision at a later stage if need be.

How much can Microsoft be fined for non-compliance on this issue (i.e. completeness and accuracy)?

The Article 24(1) Decision relates to two issues and specifies that the fine could be €2 million per day. Any fine for non-compliance on the completeness and accuracy of the technical documentation issue would therefore be less than €2 million per day.

Given that the Article 24(1) Decision also related to royalty levels, what is the situation on this issue? Why is the Commission also not issuing a Statement of Objections on this point now?

The Article 24(1) Decision did indeed state that Microsoft's royalty levels were not reasonable. As a result, Microsoft submitted additional information to the Commission on 15th December relating to the justification of its royalty levels. The Commission must therefore now assess this information, with the input of the Trustee.

What is the scope of the interoperability information that the Commission requires Microsoft to document? Does what the Commission requires force Microsoft to reveal the internal workings of Windows?

The 2004 Decision clearly specifies that Microsoft is required to document interoperability information in order "*to ensure that Microsoft's competitors can develop products that interoperate with the Windows domain architecture natively supported in the dominant Windows client PC operating system and hence viably compete with Microsoft's work group server operating system. Microsoft should thus allow the use of the disclosed specifications for implementation in work group server operating system products*". This standard has not changed since the 2004 Decision. It does not require Microsoft to disclose the internal implementation of Windows, that is to say the source code.

Has Microsoft made any changes to the Technical Documentation it originally submitted?

Microsoft has prepared several versions of the Technical Documentation since the 2004 Decision, and none has complied with the requirements of that Decision. The Commission understands that Microsoft has recently prepared revised documentation addressing only points relating to formatting (e.g. typos, missing hyperlinks), but not the general concerns about completeness and accuracy. That is the reason why it continues to be the Commission's conclusion that Microsoft is not in compliance with its obligations, i.e. that the technical documentation is not complete and accurate.

What is the situation as regards open source?

The Commission has previously stated that it is committed to ensuring that the open source community has access to the non-innovative protocols if the Court of First Instance rules in its favour. That remains the position (see [IP/05/673](#)).

Is the Commission examining other allegations relating to Microsoft?

No allegations against Microsoft have been formally raised yet with the Commission. If they are, the Commission will naturally examine them on their merits.

Will the Commission's Article 82 Staff Discussion Paper change the way that it analyses any potential future Microsoft cases?

The Commission's March 2004 Microsoft Decision serves as a precedent by providing the guiding principles according to which any future cases on similar issues, i.e. interoperability and tying, will be examined. These same principles are reflected in the Commission's Article 82 Staff Discussion Paper (see [IP/05/1626](#)).