

# EXHIBIT 5

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## Competition: Commission publishes information on the role of the Monitoring Trustee in the Microsoft case

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### MEMO/06/119

Brussels, 10<sup>th</sup> March 2006

#### Competition: Commission publishes information on the role of the Monitoring Trustee in the Microsoft case

The European Commission has published its Decision defining the role of the Trustee in the Microsoft case, the *curriculum vitae* of the Monitoring Trustee, as well as the *curricula vitae* of his advisors. The Trustee Decision is the formal document which sets the parameters for the Trustee's work in monitoring Microsoft's compliance with the March 2004 Decision (see IP/04/382) in order to advise the Commission on that compliance. These documents can be found at:

[http://europa.eu.int/comm/competition/antitrust/cases/index/by\\_nr\\_75.html#i37\\_792](http://europa.eu.int/comm/competition/antitrust/cases/index/by_nr_75.html#i37_792)

The Trustee Decision sets out the procedure for the appointment of the Trustee, and the functions that the Trustee and his advisors will fulfil.

Paragraph 30 of the Decision, reiterating paragraph 1045 of the March 2004 Decision, provides that, "*the Trustee should not only be reactive, but should play a proactive role in the monitoring of Microsoft's compliance*". Articles 3.1.d and 5.6 of the Decision make clear that the Trustee, under the supervision of the Commission, has to monitor Microsoft's compliance on his own initiative. In order to fulfil that proactive role and to form his own, impartial, view on complex technical questions, the Trustee must be in a position to gather views on compliance issues through contacts not only with Microsoft engineers, but also with potential beneficiaries of the remedy. The Trustee's contacts with such potential beneficiaries are therefore part of his obligations under the Trustee Decision and not in any way a form of inappropriate collusion as has been suggested.

The Trustee Decision also sets out certain of the rights and obligations of Microsoft towards the Trustee and of the Trustee towards Microsoft and third parties. For example, Microsoft is obliged to provide the Trustee with access to information and Microsoft staff necessary to monitor Microsoft's compliance with the March 2004 Decision. In addition, Article 5.2 of the Trustee Decision provides that the Trustee and his Advisors shall not make any public statements relating to their functions. Finally, Article 5.4 of the Trustee Decision provides that a non-confidential version of his final report will form part of the case file and will therefore be accessible under the Commission's rules on Access to the File in competition cases. The Decision states that all other communications between the Commission and the Trustee shall form part of the Commission's "internal documents" (documents which are in principle not

accessible under the Commission's Access to the File rules).

Microsoft suggested Professor Neil Barrett as a possible candidate to be the Monitoring Trustee. The Commission accepted Microsoft's recommendation and appointed Professor Barrett on 5 October 2005 (see [IP/05/1215](#)).

Professor Barrett is a professional computer scientist of many years standing, a full Fellow of the British Computer Society, a Chartered Engineer and Chartered Information Technology Practitioner. He has a PhD and is an external fellow at the University of Glamorgan and visiting professor at RMCS Cranfield University. He has carried out sensitive and detailed work on behalf of the UK police, government, and military and some of the largest corporations in the world.

Professor Barrett has held senior management positions in a large computer company, and has published several books and many papers and articles.

Professor Barrett has appeared as a trusted 'expert witness' in several highly important and complex cases in the UK. On the basis of his competence and independence he now assists in the development of standards for such witnesses in British courts and is recognised as one of the pre-eminent expert witnesses in the UK.

The Trustee is assisted by two technical advisors Professors David Lorge Parnas and John McDermid. Both are computer scientists of international repute.

Professor Parnas is the Director of the Software Quality Research Laboratory in the Faculty of Engineering's Computing and Software Department of the University of Limerick. He is also an associate member of the Department of Electrical and Computer Engineering. He has been Professor at the University of Victoria, the Technische Hochschule Darmstadt, the University of North Carolina at Chapel Hill, Carnegie Mellon University and the University of Maryland. He is the author of more than 200 papers and reports on computer system design. Professor Parnas is a world-renowned specialist in issues of software documentation.

Professor McDermid is a Professor of Software Engineering and the leader of the High Integrity Systems Engineering Group (HISE) within the Department of Computer Science at the University of York. He has published over 300 papers, and written or edited 6 books and produced many research reports on software engineering.