

EXHIBIT 7



Important legal notice

English

EUROPA > European Commission > Press Room > Press Releases

Contact | Search on EUROPA

Midday Express

Recent Press Releases

Select a topic

Search



Competition: Commission warns Microsoft of daily penalty for failure to comply with 2004 decision

- Login
- Register
- Documentation
- What's New
- About

Reference: IP/05/1695 Date: 22/12/2005

HTML: EN FR DE
 PDF: EN FR DE
 DOC: EN FR DE

IP/05/1695

Brussels, 22nd December 2005

Competition: Commission warns Microsoft of daily penalty for failure to comply with 2004 decision

The European Commission has issued a Statement of Objections against Microsoft for its failure to comply with certain of its obligations under the March 2004 Commission decision (the "March 2004 Decision", see IP/04/382). That decision found Microsoft to have infringed the EC Treaty rules on abuse of a dominant position (Article 82) by leveraging its near monopoly in the market for PC operating systems onto the markets for work group server operating systems and for media players. One of the remedies imposed by the decision was for Microsoft to disclose complete and accurate interface documentation which would allow non-Microsoft work group servers to achieve full interoperability with Windows PCs and servers. The Statement of Objections indicates that the Commission's preliminary view, supported by two reports from the Monitoring Trustee (see IP/05/1215), is that Microsoft has not yet provided complete and accurate specifications for this interoperability information. After giving Microsoft an opportunity to reply to the Statement of Objections, the Commission may impose a daily penalty.

Competition Commissioner Neelie Kroes said, "I have given Microsoft every opportunity to comply with its obligations. However, I have been left with no alternative other than to proceed via the formal route to ensure Microsoft's compliance."

The obligations imposed by the March 2004 Decision were suspended pending the Court of First Instance's consideration of Microsoft's request for interim measures, a request denied by the Court of First Instance on 22 December 2004. After that date, the Commission engaged in discussions with Microsoft about its compliance, and conducted a market test of Microsoft's proposals on interoperability (see IP/05/673). In light of the results of that market test, the Commission issued a decision on 10 November 2005 pursuant to Article 24(1) of Regulation 1/2003 (the Article 24(1) Decision). This decision warned that should Microsoft not comply by 15 December 2005 with its obligation to: (i) supply complete and accurate interoperability information; and (ii) make that information available on reasonable terms, it would face a daily fine of up to €2 million.

Since the 24(1) Decision, Microsoft has revised the interoperability Information that it is obliged to disclose. However, the Commission takes the preliminary view that this information is incomplete and inaccurate. This view is supported by the report of the Monitoring Trustee, which concludes that, *"any programmer or programming team seeking to use the Technical Documentation for a real development exercise would be wholly and completely unable to proceed on the basis of the documentation. The Technical Documentation is therefore totally unfit at this stage for its intended purpose."* The report also states that, *"the documentation appears to be fundamentally flawed in its conception, and in its level of explanation and detail... Overall, the process of using the documentation is an absolutely frustrating, time-consuming and ultimately fruitless task. The documentation needs quite drastic overhaul before it could be considered workable."*

Professor Neil Barrett, the Monitoring Trustee, is a computer science expert appointed by the Commission (see [IP/05/1215](#)) on the basis of a shortlist of candidates submitted by Microsoft. He provides impartial technical advice to the Commission on issues relating to Microsoft's compliance with the Commission's March 2004 Decision.

Microsoft has five weeks to respond to the Statement of Objections and has a right to an Oral Hearing. The Commission may then, after consulting the Advisory Committee of Member State Competition Authorities, issue a decision pursuant to Article 24(2) of Regulation 1/2003 imposing a fine on Microsoft for every day between 15 December 2005 and the date of that Article 24(2) decision. The Commission may then take other steps to continue the daily fine until Microsoft complies with the decision.

As regards the second issue highlighted in the Article 24(1) decision, namely the obligation for Microsoft to make the interoperability information available on reasonable terms, the Commission, with the input of the Monitoring Trustee, is currently evaluating additional information provided by Microsoft.

See also [MEMO/05/499](#).