

EUROPEAN COMMISSION  
Competition DG

Information, communication and media  
Information industries, Internet and consumer electronics

Brussels, 28.03.06 D 001803  
COMP/C-3/ABR/aj D(2006) 1229

Registered with advice of delivery

Mr. Georg M. Berrisch  
Covington & Burling  
Avenue des Arts 44  
B - 1040 Brussels

**Subject: Case COMP/C-3/37792 Microsoft**  
**Access to documents provided by third parties to the Trustee and OTR**  
**Third party comments on the Statement of Objections**

Dear Mr. Berrisch,

Following your request for access to documents provided by third parties to the Trustee, the Commission asked the Trustee to disclose and transmit to the Commission any documents he has directly received from third parties or Microsoft in carrying out his functions pursuant to Article 3.1 of the Trustee Decision and Section C.1 of the Trustee Mandate as well as any minutes he has taken as regards communications with third parties or Microsoft.

After receipt of the documents in question, the Commission requested the views of the concerned third parties on the confidentiality of the documents. After having examined the third parties' claims on confidentiality, we are now in position to provide Microsoft with those documents exchanged between IBM, Oracle and Sun and the Trustee, which are not confidential or which are not unrelated to the subject matter of the Statement of Objections of 21 December 2005. For your convenience we attach a list of the documents which are not transmitted to Microsoft for the above-mentioned reasons. You will notice that certain e-mails received by the Trustee were also addressed to members of the Case Team. As you will see, the e-mails in question are trivial in nature and have no relation to the allegations of fact and of law raised in the 21 December 2005 Statement of Objections and therefore have no

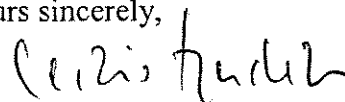
relevance to the present investigation<sup>1</sup>. Strictly speaking they do not form part of the case file and they are provided to Microsoft for the sake of transparency only.

As regards documents provided by third parties to OTR, this company has confirmed in writing that they have not received any documents from third parties.

For your information we are also enclosing non-confidential versions of the comments made by third parties on the Statement of Objections or on Microsoft's response thereto.

I would like to remind you that Microsoft is not entitled to use the information contained in the enclosed correspondence for purposes other than your client's defence under this procedure. In this respect, third parties have expressed serious concerns, based on Microsoft's previous behaviour, that portions of the material disclosed might be made public, in breach of the provisions laid down in Regulation 773/2004. I trust that Microsoft will abide by its obligations under Regulation 773/2004.

Yours sincerely,



Cecilio Madero Villarejo  
Head of Unit

Enclosure

Copy : Mrs Karen Williams, Hearing Officer

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<sup>1</sup> Judgment of the European Court of Justice of 7 January 2004 *In Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P (Aalborg Portland A/S)*, paragraph 126: "However, the Commission is allowed to preclude from the administrative procedure evidence which has no relation to the allegations of fact and of law in the SO and which therefore has no relevance to the investigation. An applicant cannot properly put forward as a ground of annulment the fact that irrelevant documents were not communicated to it."

## **Enclosure**

- List of documents that are not transmitted to Microsoft
- Communications IBM – Trustee
- Communications Oracle – Trustee
- Communications Sun – Trustee
- Comments from Red Hat
- Comments from ECIS
- Comments from FSFE
- Comments from Novell

**List of the documents which are not transmitted to Microsoft**

- E-mail from Mr. Maurits Domans to Prof. Neil Barrett of 8 December 2005 (business confidential)
- Documents included in CD II, referred to in Maurits Dolmans's email to Pro. Neil Barrett of 30 November 2005 (documents not related to the 21 December 2005 Statement of Objections), as follows:
  - C 1-2. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - C-3. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - C-4. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - C-5. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - C-6. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - D. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - E. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - F. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - G. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - H-1 [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - H-2. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - H-3. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
  - I. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]

- J. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- K. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- L. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- M. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- N. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- O. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]
- P. [*Document unrelated to the subject matter of the 21 December 2005 Statement of Objections*]