

Five Years and Still Counting: ECIS urges an end to Microsoft violations of EU anti-trust law

Brussels – 5 June 2009 – ECIS announced today that it has submitted its comments on Microsoft's response to the European Commission's Statement of Objections¹ to Microsoft's abusive practices in the internet browser market.

The ECIS submission stresses that more than five years after the Commission first condemned Microsoft in March 2004 for illegally tying its Media Player application to its super dominant Windows operating system, Microsoft is still relying on the same illegal practices. This time Microsoft seeks to deprive consumers of real choice and to protect its interlocking Windows monopolies by tying Microsoft's Internet Explorer (IE) browser to Windows. This time the Commission is investigating the tying of Microsoft's Internet Explorer (IE) to Windows, still present on over 90% of all personal computers.

"ECIS shares the European Commission's conclusion that the tie to Windows is liable to foreclose competition in both browsers and application platforms," said Thomas Vinje, partner at Clifford Chance and ECIS Spokesman. *"Browsers have become the strategic gateway to the next era of internet-based services and computing. As consumers use browsers to migrate from the desktop to web-based applications built on open-standards, competing browsers create a direct competitive threat not just to IE itself but more fundamentally to Microsoft's proprietary interlocking desktop monopolies. The illegal IE tie to Windows allows Microsoft to protect itself from both."*

Tying IE to the Windows monopoly gives IE an artificial distribution advantage that competing browsers simply do not have. In the 1990's the tie enabled Microsoft to eliminate the pioneering Netscape browser. Since then, IE has dominated the browser market and continues to hold about an 85% world market share despite being consistently rated an inferior browser². Firefox, with superior ratings and supported by a volunteer non-profit community, has over many years only been able to achieve a distant second place, while all other commercial browsers together account for the minor remaining share.

¹ The Commission's investigation follows a complaint by Opera, the Norwegian browser developer in December 2007, Opera Software filed a complaint with the Commission against Microsoft; on 15 January the Commission issued an SO setting out its concerns; 28 April Microsoft responds to the SO.

² For example: Robert Vamosi, Internet Explorer 7, October 18, 2006, CNET: http://reviews.cnet.com/browsers/internet-explorer-7/4505-3514_7-32111537.html; Gary Marshall, Tested: Google Chrome vs IE8 vs Firefox 3.1, September 4, 2008, TechRadar: <http://www.techradar.com/news/internet/web/tested-google-chrome-vs-ie8-vs-firefox-3-1-462848>; Web Browsers: Reviews, November 2008, ConsumerSearch: <http://www.consumersearch.com/web-browser-reviews>.

Moreover, the “automatic” tied presence of IE on 90% of the world’s desktop computers creates a powerful incentive for internet content producers to always create products compatible with IE’s proprietary Windows standards, but not always with the industry-agreed open standards all other browsers use. This “feedback” effect reinforces IE’s dominance and resulting market foreclosure.

Concluded Thomas Vinje, *“Appropriate and effective remedies and immediate compliance are now more urgent than ever, both to end the artificial dominance of Internet Explorer in the browser market and to prevent the migration of the Windows monopolies onto the internet via Internet Explorer’s artificial dominance. Remedies must also prevent circumvention through the tying of other products. If not, Microsoft will simply tie more and more products to Windows foreclosing competition not only in browsers but also in other areas of the software market.*

“This case in fact involves over a decade of illegal tying that has led to intense, entrenched effects that give Microsoft an advantage unrelated to the quality of its product and that deny consumers a genuine and informed choice of browsers. The remedy must redress these entrenched effects. It is no longer enough simply to end the tying behaviour. As Internet Explorer is currently the only browser pre-installed on Windows, ECIS supports a ‘ballot screen’ remedy requiring Microsoft to present Windows users with a straightforward, unbiased opportunity to choose for themselves among available browsers.”

Additional Background:

The browser investigation seeks to remedy one aspect of the fundamental and ongoing damage caused by Microsoft’s historic anti-competitive practices. For more information see http://www.ecis.eu/documents/Finalversion_Consumerchoicepaper.pdf: “A History of Anticompetitive Behaviour and Consumer Harm” or go to the ECIS website <http://www.ecis.eu/index.html>.

About ECIS

ECIS is an international non-profit association founded in 1989 that strives to promote market conditions in the ICT sector allowing vigorous competition on the merits and a diversity of consumer choice. ECIS has actively represented its members on many issues related to interoperability and competition before European, national and international bodies, including the EU institutions and WIPO. ECIS’ members include large and smaller information and communications technology hardware and software providers Adobe, Corel, IBM, Nokia, Opera, Oracle, RealNetworks, Red Hat, and Sun Microsystems.

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