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What is the new European Commission Microsoft investigation about?

Consumers need and want choice among competing software products and services, which in turn drives innovation and lowers prices. The new Commission investigation is about ensuring these consumer benefits, by ensuring that Microsoft does not monopolize all major software platforms and the software applications (such as word processing and e-mail) and web-based services (such as e-commerce and social networking) which run on them.

Microsoft already controls the PC operating platform, dominates the server, and virtually monopolizes the most important office software that we use on a day-to-day basis (for example Word, Excel and Powerpoint). Microsoft is now also seeking to take over the gateways to the Internet, because web services and applications could well emerge as competitive threats to its dominant platforms. Microsoft is trying to use its market power to eliminate these threats by ensuring that Web services and applications will work properly only in a Microsoft environment.

The new Commission investigation focuses on complaints filed by ECIS in 2006 and by Norway's Opera Software ASA in December 2007. Both complaints address Microsoft's on-going anti-competitive practices in products **not** covered by the European Commission's March 2004 condemnation of Microsoft, as upheld by the European Court of First Instance ("CFI") in September 2007. The 2004 decision covered only the media player and workgroup server markets.

But while these new complaints address different markets, they address precisely the same behaviour – bundling and refusal to disclose interoperability information - confirmed to be illegal by the CFI, as well as certain other practices specific to the new markets under investigation.

Major elements of the ECIS complaint

The ECIS 2006 complaint focuses once again on both bundling and Microsoft's refusal to disclose technical information necessary for interoperability with its dominant products, but also price-tying. Products cited where one or more of these anticompetitive practices are on-going and particularly harmful to competition include the Office suite, e-mail and collaboration software, and software that powers the internet.

Major elements of the Opera complaint

Opera's December 2007 complaint focuses on Microsoft's use of two anti-competitive practices in the market for internet browsers. The first, yet again, is bundling. By bundling Internet Explorer with its monopoly Windows operating system, Microsoft displaces open-standards-compliant browsers such as Opera and Firefox. As a result, web content and applications developers are forced to produce content specifically for Microsoft's ubiquitous, non-standard-compliant browser, to the detriment of competition.

The second anticompetitive practice targeted by Opera is Microsoft's corruption of established, industry-accepted open web standards, which Microsoft either fails to implement or implements by adding undisclosed proprietary extensions. This practice prevents full access to many websites via browsers competing with Internet Explorer, like Opera. Opera has therefore asked the Commission to require Microsoft to support open web standards in Internet Explorer so that web developers can readily create web content and applications accessible consistently via all open-standard-compliant browsers.

What is at stake?

Microsoft's on-going abuse of its interlocking Windows and Office monopolies to restrict competition on the merits among competing software products denies all consumers the benefits of competition-driven innovation and pricing.

It is important to recall that Microsoft did not invent the web browser, the media player, the word processor, or many other key software innovations. Rather, it has repeatedly leveraged its Windows and Office monopolies to eliminate pioneer products with its own later product entries – after which further innovation in its own products typically slowed to a crawl.

This is the outcome that needs to be prevented for current and future innovations and lower cost solutions, many if not most of which have been or will continue to be developed by firms other than Microsoft.

By the same token, much recent software innovation has been in the open standards internet space and in open source software, precisely because these markets are characterized by dynamic competition which has not yet been restricted or eliminated by Microsoft's anti-competitive practices. It is vital to maintain unconditional access and interoperability in these markets. This means especially ensuring that Microsoft's existing dominant positions are not used to supplant industry-wide open standards with proprietary *de facto* standards that can then be manipulated to restrict competition, and thereby inevitably consumer choice.

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