

**European Committee on Interoperable Systems (ECIS) Statement:
EU General Court reduces Commission fine on Microsoft by 4 per cent**

Statement regarding EU General Court case T-167/08:

Brussels, 27 June 2012 - "The European Committee for Interoperable Systems is pleased that the court essentially upheld the Commission's actions regarding Microsoft, making only a 4 percent adjustment in the fine," said ECIS spokesman Thomas Vinje.

"Of course, today's decision in no way changes the remedies or fine which the European Commission imposed on Microsoft eight years ago, when it found that Microsoft illegally used its monopoly power to squelch competition," he said.

"Nor does it change the requirement that Microsoft provide interoperability information on a fair, reasonable and non-discriminatory basis (FRAND)," Vinje said.

FINE

"The decision today makes a minor adjustment for one of two monetary penalties imposed on Microsoft for its delays. Microsoft had delayed its compliance with remedies which the Commission imposed with the aim of restoring competition," Vinje said.

When then-Commissioner Neelie Kroes announced the first fine for non-compliance on 12 July 2006, she said that it was unprecedented for a company to defy the Commission's imposition of remedies, but that Microsoft had done so for more than six months (exact dates in the timeline below).

"This is the first time ever, in the 49-year history of the European Union, that the Commission has had to fine a company for failure to comply with an anti-trust decision. I hope that it is also the last", Kroes said. <http://bit.ly/M6jkCV>

Unfortunately, Microsoft continued to defy the Commission for another 16 months and Kroes had to impose a second penalty for non-compliance, on 27 February 2008. <http://bit.ly/Lwbflw> It is that second fine which the General Court made a minor adjustment today.

"The Commission ultimately succeeded in compelling Microsoft to make interoperability information available. That decision, which promotes competition in the market for work group servers, has been upheld by the EU judiciary," Vinje said.

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ANNEX

MICROSOFT CASE BACKGROUND AND TIMELINE:

Introduction

By the time Microsoft had to face the European Commission decision it was emboldened by its success in the United States, where it won watered-down remedies in 2002 for serious violations of the Sherman Act dating from 1998. The U.S. administration change from Clinton to Bush in 2001 certainly helped Microsoft. As well, tactics of delay and the use of court battles paid off handsomely. Microsoft transported the same strategy across the Atlantic, but not to the same effect.

Microsoft's defiance of law

After the Commission ruled against it in 2004, Microsoft focused its attention on fighting against the ruling. As part of that strategy it defied the Commission.

First, it chipped away at the Commission's court allies. Very soon after the Commission found against it Microsoft began settling lawsuits for large sums of money, on condition the companies end their involvement in the EU case against Microsoft. The companies had been complainants against Microsoft or interested third parties on the side of the Commission. Over a 19-month period Microsoft paid \$3.3 billion to such companies, appreciably more than the \$2.3 billion (€1.68 billion) it paid in fines.

Second, Microsoft ignored a Commission warning in 2005 to comply with the 2004 decision, which required it to provide interoperability information on reasonable terms to rival makers of "work group server" software. Microsoft was fined €280 million in 2006 for failing to comply, then continued its defiance. Microsoft said repeatedly it was doing its best to fully co-operate with the Commission. In fact, it was building market share in work group servers, empowered by its continued violation of the law, and reaping financial benefits for doing so.

Microsoft's gamble was that it would win in court, blowing away the Commission ruling, and pocket the extra money it had made.

That strategy collapsed on 17 September 2007 when the General Court (then called the Court of First Instance) issued a sweeping ruling that upheld nearly every point of the Commission's 2004 decision. In a small point for Microsoft, the court annulled Section 7 of the decision establishing a monitoring trustee paid for by the company. Faced with an overwhelming defeat, Microsoft decided against appeal and agreed a month later, on 22 October 2007, to take steps necessary to comply with the Commission's ruling.

The right combination

The Commission decision required Microsoft to make interoperability information available to rival makers of work group server software so their products could inter-connect to Windows PCs as smoothly as Microsoft's own. Work group servers are used for signing on to networks, printing, and other functions for small groups.

Microsoft had demanded what it said were reasonable royalties for its the interoperability information, called "protocols." The Commission said they were too expensive and the only companies willing to pay were Microsoft allies.

Microsoft said the protocols were worth a lot because they involved a lot of novel ideas. The Commission found they were pretty much plain vanilla, and that Microsoft had added code to make them impenetrable. It's as though Microsoft had bought a standard combination lock on the open market, set a secret combination, and then charged a high price to reveal it. The design of the lock is no secret, and there's no art in setting the combination.

The Commission said the price could reflect no more than the intrinsic value of the information, not the value of Microsoft's strategic control. Most rivals of Microsoft provide such information for free. The Commission approved a one-time royalty payment of €10,000.

Competition today

By the time Microsoft agreed to carry out the remedies, its illegal practices had driven commercial rivals from the market. But Microsoft could not kill the open source community entrant, known as Samba. Samba now has a license from Microsoft and distributes work group server software. Samba, which has a small market share, is distributed with Linux and runs on millions of machines around the world.

Timeline for EU fine against Microsoft for failure to carry out remedies:

2004

- March 24: European Commission finds Microsoft violated European antitrust law through abuse its dominant position in Windows, fines it €497 million and orders it change its business practices.
- April 2: Microsoft pays Sun Microsystems \$2 billion to settle a case and Sun withdraws as an intervenor on the side of the European Commission.
- April 12: Microsoft pays InterTrust Technologies \$440 million to settle a case.
- June 8: Microsoft appeals March 24 decision to EU courts
- June 25: Microsoft asks judge to suspend remedies until its appeals are fully adjudicated.
- November 9: Microsoft pays Novell Inc \$536 million, and promises the Computer and Communications Industry Association (CCIA) and its chairman Ed Black \$9.5 million. They withdraw their EU complaints against Microsoft.
- December 22: Court of First Instance Bo Vesterdorf rejects Microsoft's bid to suspend remedies

2005

- February 1: Microsoft Chairman Bill Gates promises to be responsive to EU
- October 11: Microsoft pays \$762 million to Real Networks to settle an antitrust suit and provide a marketing agreement. RealNetworks drops out of the case as an intervenor against Microsoft.
- November 10: Commission warns Microsoft to comply with its ruling by December 15 or face daily fines.
- December 7: South Korea Fair Trade Commission fines Microsoft \$32 million for blocking competition, orders it to separate instant messaging system from Windows.

2006

- July 12: Commission fines Microsoft €280.5 million for failure to provide interoperability information, at 1.5 million euros daily from December 16 to June 20.

2007

- September 17: Court of First Instance upholds nearly all of the Microsoft decision, except for paying an outside trustee.
- October 22: Microsoft agrees to meet standards set by the Commission for compliance, won't appeal.

2008

- February 27: Commission fines Microsoft €899 million for non-compliance starting on 21 June 2006 and ending on 21 October 2007.
- May 9: Microsoft appeals fine to the General Court (then called the Court of First Instance)

2011

- May 12: US remedies in its 1998 case against Microsoft expire
- May 24: European General Court hearing on appeal of the 899 million euro fine.

2012

- June 27: General Court reduces Microsoft's 899 million euro fine to 860 million euros.