

Brussels, 3 August 2000

Commission opens proceedings against Microsoft's alleged discriminatory licensing and refusal to supply software information

The European Commission, at the initiative of the Commissioner in charge of competition, Mr. Mario Monti, has sent a statement of objections to Microsoft Corp for allegedly abusing its dominant position in the market for personal computer operating systems software by leveraging this power into the market for server software. The Commission's action follows a complaint by American software company Sun Microsystems that Microsoft breached European Union antitrust rules by engaging in discriminatory licensing and by refusing to supply essential information on its Windows operating systems.

Microsoft has a market share of about 95 % in the market for personal computer (PC) operating systems (OS) and thus enjoys a practically undisputed market dominance. Most PCs today are embedded into networks, which are controlled by servers. Interoperability, i.e. the ability of the PC to talk to the server is the basis for network computing. Interoperability can only function if the operating systems running on the PC and on the server can talk to each other through links or so-called interfaces. To enable competitors of Microsoft to develop server operating systems which can talk to the dominant Windows software for PCs, interface information - technical information and even limited parts of the software source code of the Windows PC OS - must be known. Without interoperating software and as a result of the overwhelming Microsoft dominance in the computer software market, computers running on Windows operating systems would be *de facto* obliged to use Windows server software if they wanted to achieve full interoperability. This phenomenon is referred to as "*the client (PC) dragging the server*".

Sun Microsystems alleged, in a complaint in December 1998 and in subsequent submissions, that the near monopolistic position of Microsoft in the PC operating system market creates an obligation on Microsoft to disclose its interfaces to enable interoperability with non-Microsoft server software. This obligation would cover the OSs distributed by Microsoft at the time when Sun's request for disclosure of interface information was refused in October 1998, i.e. Windows 95, 98, NT 4.0 and all subsequent updates. Sun alleges that the launch of Windows 2000 on 17 February 2000, was a final step in Microsoft's strategy to strengthen the effects of its refusal to supply interface information with the intention of driving all serious competitors out of the server software market. Sun claims that Microsoft has applied a policy of discriminatory licensing by distinguishing between its competitors according to a so-called "friend-enemy" scheme.

The Commission was given evidence that Microsoft did not carry out its obligation to disclose sufficient interface information about its PC operating system. The Commission believes that Microsoft gave information only on a partial and discriminatory basis to some of its competitors. It refused to supply interface information to competitors like Sun Microsystems.

Resolution of this case is of the utmost importance as operating systems for servers constitute a strategic sector in the development of a global market for information technology and e-commerce.

Underlining the importance of the case, Mr. Monti said: "The Commission welcomes all genuine innovation and advances in computer technology – wherever they come from - as highly positive developments for consumers and industry alike. Effective protection of copyrights and patents is most important for technological progress. However, we will not tolerate the extension of existing dominance into adjacent markets through the leveraging of market power by anti-competitive means and under the pretext of copyright protection. All companies that want to do business in the European Union must play by its antitrust rules and I'm determined to act for their rigorous enforcement"

Background Information

Statements of objections are a formal step in European antitrust investigations. After receiving such statements, companies have two months to defend themselves in writing. They can also ask the Commission to hear their case at an oral hearing which usually takes place about one month after the written reply has been received. Only after having heard the company's defence can the Commission take a final decision, which may be accompanied by fines.

The importance of this case is also emphasised by the fact that the Commission opened in February 2000 –at the instigation of SMEs active in the information technology sector and competitors of Microsoft - an *ex officio* procedure against Microsoft for alleged abuse of dominance linked to its Windows 2000 software. The *ex-officio* case is now being investigated on the basis of exhaustive information presented to the Commission by Microsoft's competitors and on Microsoft's responses.

The subject matter of the US proceedings against Microsoft and the allegations the Commission is investigating are different. The allegations being examined by the Commission are that Microsoft extended its dominance in the PC operating systems market to the server operating systems market. The thrust of the proceedings launched by the US Department of Justice revolves around Microsoft protecting its dominance in PC operating systems through measures aimed at weakening Netscape's Navigator Internet browser and Sun's Java system. A US Court has found that Microsoft, by virtue of its conduct, has attempted to monopolise the Internet Browser market. At the EU level, the Commission will continue to examine the cases pending with all due diligence and will take any appropriate steps in due time.