

Brussels, 17<sup>th</sup> January 2009

## **Antitrust: Commission confirms sending a Statement of Objections to Microsoft on the tying of Internet Explorer to Windows**

*The European Commission can confirm that it has sent a Statement of Objections (SO) to Microsoft on 15<sup>th</sup> January 2009. The SO outlines the Commission's preliminary view that Microsoft's tying of its web browser Internet Explorer to its dominant client PC operating system Windows infringes the EC Treaty rules on abuse of a dominant position (Article 82).*

In the SO, the Commission sets out evidence and outlines its preliminary conclusion that Microsoft's tying of Internet Explorer to the Windows operating system harms competition between web browsers, undermines product innovation and ultimately reduces consumer choice.

The SO is based on the legal and economic principles established in the judgment of the Court of First Instance of 17 September 2007 ([case T-201/04](#)), in which the Court of First Instance upheld the Commission's decision of March 2004 (see [IP/04/382](#)), finding that Microsoft had abused its dominant position in the PC operating system market by tying Windows Media Player to its Windows PC operating system (see [MEMO/07/359](#)).

The evidence gathered during the investigation leads the Commission to believe that the tying of Internet Explorer with Windows, which makes Internet Explorer available on 90% of the world's PCs, distorts competition on the merits between competing web browsers insofar as it provides Internet Explorer with an artificial distribution advantage which other web browsers are unable to match. The Commission is concerned that through the tying, Microsoft shields Internet Explorer from head to head competition with other browsers which is detrimental to the pace of product innovation and to the quality of products which consumers ultimately obtain. In addition, the Commission is concerned that the ubiquity of Internet Explorer creates artificial incentives for content providers and software developers to design websites or software primarily for Internet Explorer which ultimately risks undermining competition and innovation in the provision of services to consumers.

Microsoft has 8 weeks to reply the SO, and will then have the right to be heard in an Oral Hearing should it wish to do so. If the preliminary views expressed in the SO are confirmed, the Commission may impose a fine on Microsoft, require Microsoft to cease the abuse and impose a remedy that would restore genuine consumer choice and enable competition on the merits.

## **Background**

A Statement of Objections is a formal step in Commission antitrust investigations in which the Commission informs the parties concerned in writing of the objections raised against them. The addressee of a Statement of Objections can reply in writing to the Statement of Objections, setting out all facts known to it which are relevant to its defence against the objections raised by the Commission. The party may also request an oral hearing to present its comments on the case.

The Commission may then take a decision on whether conduct addressed in the Statement of Objections is compatible or not with the EC Treaty's antitrust rules. Sending a Statement of Objections does not prejudge the final outcome of the procedure.

In the March 2004 Decision the Commission ordered Microsoft to offer to PC manufacturers a version of its Windows client PC operating system without Windows Media Player. Microsoft, however, retained the right to also offer a version with Windows Media Player (see [IP/04/382](#)).