

Neelie Kroes

European Commissioner for Competition Policy

**Introductory remarks on Microsoft's
compliance with March 2004 antitrust
decision**

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Press conference

Brussels, 22nd October 2007

Ladies and Gentlemen

I want to report to you today that Microsoft has finally agreed to comply with its obligations under the 2004 Commission decision, which was upheld last month by the Court of First Instance.

I have been in almost daily contact with Steve Ballmer over the last two or three weeks. As a result of final contacts that took place early this morning, I am now in a position to present to you the results of those highly constructive conversations.

Under the 2004 decision, Microsoft is obliged to provide information allowing third party developers of work group server operating systems to develop products that interoperate with the Windows desktop operating system. Microsoft has previously offered to license this information to developers on terms that the Commission thought wholly unreasonable.

Following our intensive discussions, Microsoft has now made substantial changes to its provision of this information, introducing the changes that I asked for.

I told Microsoft that its royalty rates were too high for the patents they claim are applicable to the interoperability information. In response, Microsoft has slashed its requested royalties for a worldwide licence, including patents from 5.95% to 0.4% - less than 7% of the royalty originally claimed.

I told Microsoft that the royalties for access to its secret interoperability information were unreasonable and had to be reduced. Microsoft has now abandoned its demand for a royalty of 2.98 % of revenues from software developed using licensed information. That percentage royalty has become a nominal, one-off payment of €10 000. This is all that has to be paid by companies that dispute the validity or relevance of Microsoft's patents.

The Commission will now adopt a decision as soon as possible on the pending non-compliance case regarding **past** unreasonable pricing for the interoperability information, on which the Commission sent a Statement of Objections on 1 March 2007.

I told Microsoft that it had to make interoperability information available to open source developers. Microsoft will now do so, with licensing terms that allow every recipient of the resulting software to copy, modify and redistribute it in accordance with the open source business model.

I told Microsoft that it should give legal security to programmers who help to develop open source software and confine its patent disputes to commercial software distributors and end users. Microsoft will now pledge to do so.

I told Microsoft that developers who sign licensing agreements with them should have the means to ensure respect for the 2004 decision. Microsoft has now accepted that it must give legally binding guarantees to licensees about the completeness and accuracy of the information it provides and that the licensee can obtain effective remedies, including damages, from the High Court in London. These private enforcement tools come on top of the Commission's powers and continued vigilance to ensure that Microsoft complies with its obligations in this area as in others.

I also said that Microsoft had to provide complete and accurate technical documentation – and backed that demand with additional fines last year. I can now say that Microsoft has substantially respected this obligation. That said, Microsoft's obligation to document its protocols is an ongoing one – the documentation needs to be maintained as its products evolve, and new issues may arise once it is being used by developers. But as of today, the major issues concerning compliance have been resolved.

Put together, these changes in Microsoft's business practices, in particular towards open source software developers, will profoundly affect the software industry. The repercussions of these changes will start now and will continue for years to come.

The Commission's 2004 decision set a clear precedent against which Microsoft's anti-competitive behaviour could be judged. Now that Microsoft has agreed to comply with the 2004 Decision, the company can no longer use the market power derived from its 95% share of the PC operating system market and 80% profit margin to harm consumers by killing competition on any market it wishes.

Today's changes to the implementation of that decision set a second clear precedent. When Microsoft illegally uses its market power to destroy competition on a market, the onus is on Microsoft to change its business practices to allow competition and innovation to be restored to the market, so consumers are given the choices to which they are entitled.

Microsoft has finally taken steps to comply with the 2004 Decision. However, I want to stress two points.

First, Microsoft has ongoing obligations to continue to comply with the 2004 Decision. If new issues arise in relation, for example, to the completeness and accuracy of the interoperability information, then Microsoft must address those issues immediately.

Second, the March 2004 Decision, as confirmed by the Court of First Instance last month, also sets a precedent with regard to Microsoft's future market behaviour in this and other areas. Microsoft must bear this in mind.