

Source: International Herald Tribune

EU court rejects Microsoft appeal

Kevin J. O'Brien

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LUXEMBOURG: In a stinging rebuke to the world's largest software maker, Europe's second-highest court on Monday rejected Microsoft's request to overturn a 2004 European Commission ruling that found the company abused its dominance in computer operating systems to gain market share in the server software and digital media player markets.

In a starkly worded judgment read to a courtroom of about 150 journalists and lawyers here, the European Court of First Instance ordered Microsoft to obey a March 2004 commission order and upheld the €497.2 million fine against the company.

The court's presiding judge, Bo Vesterdorf, reading a summary of the decision on his final day in office, said, "The court finds the commission did not err in assessing the gravity and duration of the infringement and did not err in setting the amount of the fine. Since the abuse of a dominant position is confirmed by the court, the amount of the fine remains unchanged."

The decision followed a five-day hearing on the issues in November 2006. Microsoft has indicated in the past that it would appeal any negative ruling to the European Court of Justice, Europe's highest court.

"The court said the commission wins on virtually everything," said Thomas Vinje, a partner at the law firm Clifford Chance and part of the legal team for the European Committee for Interoperable Systems, a coalition that includes Microsoft opponents like IBM. "The court has spoken. The commission was right."

Microsoft has already been forced to pay nearly €1 billion in fines in the nine-year old legal case, which has pitted the Redmond, Washington-based software maker against the commission and a host of competitors, including IBM, Sun Microsystems, RealNetworks and Novell.

In its ruling, the 13-member panel of judges said Microsoft had violated European antitrust law by exploiting its near dominance in operating systems to shut out competitors such as RealNetworks in digital media players and Sun Microsystems in workgroup exchange servers.

Brad Smith, Microsoft general counsel, who was present for the reading, did not have an immediate comment. Any appeal by the company now, a process likely to take at least two years, would focus only on whether the appellate court erred in procedure in reaching its decision, not the facts in the case.

The ruling validated the pursuit of Microsoft by Mario Monti, former competition commissioner for the European Union, and his successor, Neelie Kroes. The case began in 1998 when Sun Microsystems filed a complaint over Microsoft's refusal to disclose its confidential server protocols — computer code that competitors need to make their servers or desktop computers work with Microsoft products.

"I think this means it's about time for Microsoft to comply," Vinje said.

The commission later expanded its probe to include Microsoft's practice of bundling its Windows Media Player into its dominant Windows operating system. After Microsoft began bundling its media player into Windows, it overtook market leader RealNetwork and as of January had a 50 percent share of the global market, according to researcher Nielsen/NetRatings.

Source: the Wall Street Journal

EU Court Rejects Microsoft Appeal

By CHARLES FORELLE

September 17, 2007 3:58 a.m.

BRUSSELS -- One of Europe's highest courts handed [Microsoft](#) Corp. a stinging defeat in its hard-fought antitrust case, dismissing nearly all of the company's appeal of a landmark 2004 decision by the European Union and upholding 497 million euros in fines.

The ruling The European Court of First Instance endorsed in broad strokes the EU's power to regulate dominant companies abusing their market position.

Microsoft is likely to appeal the ruling to Europe's highest tribunal, the European Court of Justice.

The latest ruling arms European antitrust authorities with strong tools to pursue Microsoft further, if it chooses to, as well as other dominant, high-tech players. The court, which sits in Luxembourg, brushed aside Microsoft's arguments that its intellectual property should provide protection from regulation and that high-tech industries, by their fast-moving nature, should be treated with a different hand.

The affirmation is likely to embolden regulators as they pursue probes of [Intel](#) Corp., [Rambus](#) Inc. and [Qualcomm](#) Inc., among others.

The case started in the 1990s with complaints from Microsoft rivals about how the software giant used its presence on most desktop computers to elbow into new markets and block competitors. But it's also always been about something more -- nothing less than the role of Europeans in the regulation of U.S. companies.

Microsoft was accused of deliberately refusing to supply server protocols that would help the server computers that manage groups of desktops communicate with them and with other equipment such as printers. This made Microsoft's own server software more attractive to customers because it would always work with Windows -- while rival offers might not.

The company said this code is protected by patents and it shouldn't be forced to hand it over to sore losers who should find their own ways of engineering link-ups with Windows.

But the EU alleges that this is antitrust abuse, an attempt to kill off server rivals so it could grow market share to what Microsoft says is now around 70%. To fix the problem it ordered Microsoft to hand over the goods -- and fined them when it wasn't happy with the technical manual Microsoft prepared, warning of more fines because the company was overcharging rivals for the patents.

The second part of the case turns on Microsoft's move into media software in the 1990s when it gave away Windows Media Player with every copy of Windows.

Source: The Financial times

Microsoft says rivals may rue siding with EU

By Tobias Buck in Brussels

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[Microsoft](#), which will on Monday learn whether a top European Union court has annulled the landmark 2004 antitrust ruling against the US software developer, is warning technology rivals they should be careful what they wish for.

The developer suggests that other software and technology companies such as [IBM](#), [Google](#) and [Apple](#) could be next in line should the European Commission decision be upheld. It argues that the legal reasoning applied by the Brussels watchdog may well be turned against some of the very companies that have supported the Commission's case and trigger a broader crackdown on the industry.

Brad Smith, Microsoft's general counsel, told the Financial Times: "Obviously, law that is made for Microsoft is going to apply to other market leaders as well. IBM, Google, Apple and others would have to look very carefully at the implications for their business models."

Mr Smith added: "This is a very significant judgement because it will shed light on the answers to two very important questions. Firstly, under what circumstances can market-leading companies improve their products for consumers? And secondly, what rights do market-leading companies have to benefit from their own breakthroughs and inventions?"

"The answers will affect companies far beyond the IT [information technology] sector and will set precedents that will rule the behaviour of market leaders across Europe for many years to come."

Monday's ruling by the European Court of First Instance will decide whether the Commission was right to find that Microsoft had abused its dominant market position by shutting out competitors in adjacent markets such as media players and server software.

The company was fined a record €497m and ordered to change its business practices. This included having to provide technical information about the ubiquitous Windows operating system to rivals.

The court and Microsoft have since been at loggerheads over the precise meaning of the 2004 ruling, and Brussels last year fined the company an additional €280.5m for failing to comply with its orders.

During the nine-year legal battle, the Commission has been supported by companies such as [Sun Microsystems](#), [RealNetworks](#) and [Novell](#) and various industry associations. While some rivals have since struck deals with Microsoft to settle their grievances, some of the biggest names in the software industry continue to back the Commission's hard line.

The most prominent backers of the Brussels line are grouped in an association called Ecis. These include IBM, [Oracle](#), Sun, [Nokia](#), [Adobe](#) and [Red Hat](#). Google has not formally sided with the Brussels regulator, but is understood to have raised concerns about Microsoft's behaviour regarding web search engines.

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Source: Bloomberg

Microsoft Loses Most of Appeal of EU Antitrust Order (Update2)

By Matthew Newman and Stephanie Bodoni

Sept. 17 (Bloomberg) -- Microsoft Corp., the world's largest software maker, lost most of its appeal of a European Union antitrust decision that ordered the company to change its business practices.

The European Court of First Instance in Luxembourg backed the European Commission's decision in 2004 to fine Microsoft a record 497 million euros (\$689 million) and force it to disclose proprietary data and strip music and video software from a version of its Windows operating system. It upheld part of the company's appeal on whether it must pay for monitoring its compliance.

"The commission did not err in assessing the gravity and duration of the infringement and did not err in setting the amount of the fine," the tribunal said in its 248-page judgment today.

Today's ruling may bolster EU antitrust investigations by Competition Commissioner Neelie Kroes. She is also probing Intel Corp., Rambus Inc. and Qualcomm Inc., all of which dominate markets or hold key patents. Microsoft, which reached a settlement with U.S. authorities in 2002, argued regulators shouldn't be allowed to force it to help rivals.

Microsoft or the commission can appeal today's decision at the European Court of Justice, the EU's highest court.

The commission said it welcomes the ruling and will issue a more detailed statement later.

The EU case against Microsoft, whose software runs on about 95 percent of the world's personal computers, started with a 1998 complaint by Sun Microsystems Inc. The commission, the EU's antitrust authority in Brussels, began investigating whether Redmond, Washington-based Microsoft

used its dominance in desktop PCs to quash competition in related markets, such as servers.

Desktop Dominance

The commission fined Microsoft in March 2004 and ordered the company to sell a version of its operating system without a media player and to license protected information about how Windows communicates on a network.

Microsoft had set aside the money for the fine and began selling a version of Windows without a media player in Europe. The part of the decision focused on disclosure has been more controversial.

That aspect of the case led to an unprecedented additional fine of 280.5 million euros in July 2006 when Kroes ruled the company failed to comply. She threatened to levy millions of euros more.

Microsoft's refusal to obey the decision has forced a reassessment of remedies for future cases because "we have never had an experience like this one," Kroes said in April. A breakup, or "structural remedy," may be appropriate when other measures fail, she said.

'Reduction in Sales'

Microsoft has argued in court documents that the EU decision wasn't justified because rivals don't need access to its so-called network protocols to connect their servers with its own. The company also said regulators shouldn't force it to make product design changes to appease rivals.

The EU's March 2004 decision "may limit our ability to innovate in Windows in the future, diminish the developer appeal of the Windows platform and increase our product development costs," Microsoft said in an Aug. 3 filing to the U.S. Securities and Exchange Commission.

The order would allow competitors to "better mimic the functionality of Microsoft's own products which could result in a reduction in sales," the company said.

Nicholas Economides, a law professor at New York University, said the commission's decision on interoperability is "novel" because "that's typically not done with antitrust laws."

"It's very difficult for companies' products to be 100 percent compatible," he said. "It's very difficult to say to what extent they are compatible."

New Probe

The company faces another possible probe in Europe. In February 2006, the European Committee for Interoperability Systems, a group that includes International Business Machines Corp. and Oracle Corp., claimed that Microsoft uses dominance in word processing and spreadsheets to thwart rivals.

The competitors claimed that Microsoft hasn't changed its tactics on protecting data, refusing to provide certain formatting information to allow rival products to work with Word and Excel.

The commission has sent two questionnaires this year to Microsoft competitors, gathering evidence to see whether it should open a new probe into the software maker.

Intel, Qualcomm

The EU is examining whether Intel granted illegal rebates to customers to wrest sales away from rival Advanced Micro Devices Inc. Rambus is accused of illegally obtaining patents on an industry standard for memory chips. Both deny the allegations.

Intel said price competition has hurt both companies' earnings, a sign there is enough competition in the processor market. There is no danger of Advanced Micro going out of business, Intel said.

Los Altos, California-based Rambus said Aug. 22 that it will present its response to the EU "over the next several months."

Qualcomm, the second-biggest maker of chips that run mobile phones, is facing allegations by Nokia Oyj, Ericsson AB and other handset manufacturers of overcharging for patent royalties for

third-generation mobile phones, which allow users to access the Internet and play videos. The EU hasn't decided whether to open a formal probe.

San Diego-based Qualcomm has said the charges ``are factually inaccurate and legally meritless."

To contact the reporters on this story: Matthew Newman in Brussels at Mnewman6@bloomberg.net, or Stephanie Bodoni in Luxembourg at sbodoni@bloomberg.net

Source: Reuters

UPDATE 1-EU court crushes Microsoft's antitrust appeal

Mon Sep 17, 2007 4:52 AM BST.

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(Adds background)

LUXEMBOURG, Sept 17 (Reuters) - A European Union court upheld a landmark 2004 European Commission antitrust decision against Microsoft (MSFT.O: [Quote](#), [Profile](#), [Research](#)) on Monday in a crucial victory for the European competition regulator over the U.S. software giant.

The court dismissed Microsoft's appeal on all substantive points, throwing a small bone to the U.S. company by reversing the Commission on the creation and funding of a monitoring trustee to ensure implementation of one of the remedies.

"The Court of First Instance essentially upholds the Commission's decision finding that Microsoft abused its dominant position," a court statement said.

The EU executive, which has wide-ranging antitrust and merger control powers, found in 2004 that Microsoft had used its 95 percent share of the market in personal computer operating systems to elbow aside and damage smaller rivals.

It ordered the company to sell a version of its ubiquitous Windows platform without its Windows Media Player application used to play video and music, and to share with rivals key information allowing their office servers to work smoothly with Windows.

The ruling of the CFI on facts is final, but matters of law may be appealed to the European Union's highest court, the European Court of Justice.

In a revealing detail, the court ordered Microsoft to pay most of the costs including some of its business rivals' which had supported the Commission's case.

By contrast, Microsoft's allies were forced to bear their own costs.

The ruling was made by the 13-judge Grand Chamber of the Court of First Instance in Luxembourg, the first time such a matter has been broadcast on live television.

The court upheld a record 497 million euro (\$689.9 million) fine imposed on Microsoft as part of the original decision.

The Commission had later said Microsoft failed to comply with its order on interoperability and fined the company an additional 280.5 million euros. It is considering a further fine for non-compliance.

Source: EU Business Ltd

Microsoft loses EU antitrust case at European court

17 September 2007, 09:47 CET

(LUXEMBOURG) - Microsoft lost on Monday a landmark EU antitrust case at Europe's second-highest court, which upheld the main points of a 2004 European Commission ruling against the software giant.

"The Court of First Instance essentially upholds the Commission's decision finding that Microsoft abused its dominant position," it said in its ruling delivered in Luxembourg.

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