

Summary of Commission Decision**of 24 July 2018****relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union****(Case AT.40465 — Asus (vertical restraints))***(notified under document number C(2018) 4773 final)***(Only the English text is authentic)**

(2018/C 338/08)

On 24 July 2018, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

- (1) The Decision is addressed to AsusTek Computer Inc., Asus Computer GmbH and Asus France SARL (collectively 'Asus'). Asus is a manufacturer of computer hardware and electronic products. Asus Computer GmbH and Asus France SARL are wholly-owned subsidiaries of AsusTek Computer Inc (Taiwan).
- (2) The Decision relates to two single and continuous infringements of Article 101 of the Treaty on the Functioning of the European Union ('TFEU'). In violation of Article 101 TFEU Asus Computer GmbH and Asus France SARL implemented practices aimed at restricting the ability of retailers to determine their resale prices independently in Germany and France respectively.

2. CASE DESCRIPTION**2.1. Procedure**

- (3) The case against Asus originated from unannounced inspections on 10 March 2015 at the premises of an online retailer in Germany and of another online retailer in France, these retailers sell, inter alia, Asus' products.
- (4) On 2 February 2017 the Commission opened proceedings with a view to taking a decision under Chapter III of Regulation (EC) No 1/2003.
- (5) Shortly after the initiation of proceedings, Asus indicated its interest to cooperate with the Commission and submitted further evidence regarding the relevant conduct.
- (6) Subsequently, Asus submitted a formal offer to cooperate in view of the adoption of a decision pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003.
- (7) On 24 May 2018, the Commission adopted a Statement of Objections addressed to Asus. On 28 May 2018, Asus submitted its reply to the Statement of Objections.
- (8) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 10 July 2018.
- (9) The Commission adopted the Decision on 24 July 2018.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

2.2. Addressees and duration

- (10) The following undertakings have infringed Article 101 TFEU by directly participating, during the periods indicated below, in anti-competitive practices:

Undertaking	Duration
Infringement in Germany: Asus Computer GmbH	3 March 2011-27 June 2014
Infringement in France: Asus France SARL	7 April 2013-15 December 2014

2.3. Summary of the infringements

- (11) The products concerned by the Decision are: (i) in relation to Germany the products sold by Asus' Systems business group and the networking, desktop and display products sold by its Open Platform business group; and (ii) in relation to France, all products in the Open Platform business group. These products were affected by the business strategy of Asus in Germany and France that aimed at keeping resale prices in the two Member States stable at the level of the recommended resale price.
- (12) Asus distributes its products via independent distributors. However, Asus' account managers in Germany and France were frequently in contact with retailers even if there is no direct supply relationship.
- (13) During the infringement periods, price monitoring was conducted in Germany and France via various means, in particular through the observation of price comparison websites and, for some product categories, by way of internal software monitoring tools that allowed Asus to identify the retailers that were selling Asus' products below the desired price level which typically equalled the recommended resale price.
- (14) Asus was also informed about low-pricing retailers via complaints of other retailers. Retailers that were not complying with the desired price level would typically be contacted by Asus and be asked to increase the price.
- (15) Retailers which repeatedly did not observe the desired resale price level were threatened and/or sanctioned by Asus.

2.4. Remedies

- (16) The Decision applies the 2006 Guidelines on Fines ⁽¹⁾.

2.4.1. Basic amount of the fine

- (17) In setting the fines, the Commission took into account the value of sales of the products concerned by these proceedings in 2013, which is the last full business year of the participation of Asus Computer GmbH in the infringement in Germany and of Asus France SARL in the infringement in France.
- (18) The Commission took into account the fact that resale price maintenance, by its very nature, restricts competition within the meaning of Article 101(1) TFEU and that vertical agreements and concerted practices such as resale price maintenance are, by their nature, often less damaging to competition than horizontal agreements. Taking account of these factors and in light of the specific circumstances of the case the proportion of the values of sales is set at 7 %.
- (19) The Commission took into account the duration of the two single and continuous infringements, as mentioned above.

2.4.2. Adjustments to the basic amount

- (20) There are no aggravating or mitigating circumstances in this case.

⁽¹⁾ OJ C 210, 1.9.2006, p. 2.

2.4.3. *Application of the 10 % turnover limit*

- (21) None of the fines calculated exceed 10 % of Asus' worldwide turnover.

2.4.4. *Reduction of the fine in view of cooperation*

- (22) The Commission concludes that, in order to reflect that Asus has effectively cooperated with the Commission beyond its legal obligation to do so, the fine that would otherwise have been imposed should, pursuant to point 37 of the Guidelines on Fines, be reduced by 40 %.

3. CONCLUSION

- (23) In light of the above, the final amount of the fine imposed on Asus pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 for the single and continuous infringement in Germany amounts to EUR 58 162 000 and for the single and continuous infringement in France amounts to EUR 5 360 000.
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