

Final report of the Hearing Officer**In Case COMP/C-3/37.792 — Microsoft — Deletion of Article 7 of Commission Decision 2007/53/EC and repealing Commission Decision C(2005) 2988 ⁽¹⁾**

(2010/C 348/07)

On 24 March 2004, the Commission adopted Decision 2007/53/EC relating to a proceeding pursuant to Article 82 (EC) and Article 54 of the EEA Agreement against Microsoft Corporation (Case COMP/C-3/37.792 — Microsoft, OJ L 32, 6.2.2007, p. 23).

Article 7 of this decision (the Decision) provides for the establishment of a suitable mechanism to assist the Commission in monitoring Microsoft's compliance with the Decision.

By Decision C(2005) 2988 of 28 July 2005 (Trustee Decision), the Commission established a monitoring mechanism by providing for the appointment, functions and obligations of a Monitoring Trustee. The Trustee's function is to assist the Commission in overseeing compliance with the Decision ⁽²⁾.

In its judgment of 17 September 2007, the Court of First Instance ⁽³⁾ upheld the substantive parts of the Decision which Microsoft had appealed. However, the Court annulled Article 7 of the Decision in so far as it orders Microsoft to submit a proposal for the establishment of a mechanism which is to include a monitoring trustee with the power to have access, independently of the Commission, to Microsoft's assistance, information, documents, premises and employees and to the source code of the relevant Microsoft products.

The Commission, having come to the conclusion that this monitoring mechanism as established by the Trustee Decision is no longer appropriate for the purpose of monitoring Microsoft's compliance with Decision 2007/53/EC, has informed both Microsoft and the Monitoring Trustee by letter of 28 January 2009 of its intention to 'delete' Article 7 of the Decision and to repeal the Trustee Decision.

Microsoft has answered by e-mail of 10 February, without commenting on the intended decision. The Monitoring Trustee has replied by letter of the same date not expressing any opinion upon decisions of the Commission that impact upon the matters being monitored.

In my view, the draft final decision, addressed to Microsoft, contains no elements of law or of fact that had not been set out in the letter sent to Microsoft and the Monitoring Trustee, dated 28 January 2009.

In the light of the above, I consider that the right to be heard of Microsoft and of the Monitoring Trustee have been respected in the present case.

Brussels, 16 February 2009.

Karen WILLIAMS

⁽¹⁾ Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings (OJ L 162, 19.6.2001, p. 21).

⁽²⁾ Cf. Article 7 of the Decision and Article 3 of the Trustee Decision.

⁽³⁾ Case T-201/04, *Microsoft v Commission* (2007) ECR11-3601.