

Final report of the Hearing Officer ⁽¹⁾**COMP/39.530 — Microsoft (Tying)**

(2013/C 120/05)

- (1) This proceeding concerns the imposition of a fine pursuant to Article 23(2)(c) of Regulation (EC) No 1/2003 ⁽²⁾ on Microsoft Corporation ('Microsoft') for failure to comply with a commitment decision.
- (2) On 16 December 2009, the Commission adopted a commitment decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, making binding commitments offered by Microsoft in order to meet the Commission's concerns relating to the tying of Microsoft's web browser (Internet Explorer) to its dominant client PC operating system (Windows) ⁽³⁾. The commitments included in particular the making available of a 'choice screen' enabling users of Windows in the EEA to easily choose their preferred web browser.
- (3) In July 2012, after having been informed by the Commission of information received from a developer of web browsers, Microsoft acknowledged a failure to roll out the choice screen with all copies of Windows 7 Service Pack 1 ('Windows 7 SP 1'), corresponding to around 15,3 million PCs.
- (4) On 24 October 2012, the Commission adopted a statement of objections. Microsoft received access to the file on 6 November 2012 and replied to the statement of objections on 2 December 2012. Microsoft did not request an oral hearing.
- (5) The draft decision concludes that Microsoft acted negligently and that the failure to comply lasted 14 months. The draft decision also concludes that the fact that Microsoft helped the Commission to quickly investigate the case by providing evidence of the failure to comply is a mitigating factor.
- (6) I did not receive any request or complaint from any party to the proceedings in the present case. The draft decision relates only to objections in respect of which the parties have been afforded the opportunity to make known their views. In view thereof, I consider that the effective exercise of the procedural rights of all parties in this case has been respected.

Brussels, 5 March 2013.

Wouter WILS

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29).

⁽²⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

⁽³⁾ Summary in OJ C 36, 13.2.2010, p. 7.