

Final Report of the Hearing Officer ⁽¹⁾**Cases AT.40413 – Focus Home AT.40414 – Koch Media AT.40420 – ZeniMax AT.40422 – Bandai Namco AT.40424 – Capcom****(Text with EEA relevance)**

(2022/C 320/06)

This Final Report relates to six draft decisions:

- 1) a draft decision addressed to Valve Corporation ('Valve') in the five Cases AT.40413 – Focus Home, AT.40414 – Koch Media, AT.40420 – ZeniMax, AT.40422 – Bandai Namco and AT.40424 – Capcom;
- 2) a draft decision addressed to Focus Home Interactive S.A. ('Focus Home') in Case AT.40413 – Focus Home;
- 3) a draft decision addressed to Koch Media GmbH (Austria), Koch Media GmbH (Germany) and Koch Media Ltd (the undertaking comprising those three entities being referred to as 'Koch Media') in Case AT.40414 – Koch Media;
- 4) a draft decision addressed to ZeniMax Media Inc., ZeniMax Europe Ltd. and Bethesda Softworks LLC (the undertaking comprising those three entities being referred to as 'ZeniMax') in Case AT.40420 – ZeniMax;
- 5) a draft decision addressed to Bandai Namco Holdings Inc. and Bandai Namco Entertainment Europe S.A.S. (the undertaking comprising those two entities being referred to as 'Bandai Namco') in Case AT.40422 – Bandai Namco; and
- 6) a draft decision addressed to Capcom Co., Ltd, Capcom USA, Inc. and CE Europe Ltd. (the undertaking comprising those three entities being referred to as 'Capcom') in Case AT.40424 – Capcom.

Focus Home, Koch Media, ZeniMax, Bandai Namco and Capcom are together referred to as the 'Publishers', and together with Valve as the 'Parties'.

On 2 February 2017, the Commission initiated proceedings within the meaning of Article 2(1) of Regulation 773/2004 ⁽²⁾ against the Parties and all legal entities directly or indirectly controlled by them in the above five cases concerning alleged anti-competitive agreements and/or concerted practices between Valve and each of the five Publishers of PC video games having the object of preventing or restricting the sale of PC video games across national borders within the EEA contrary to Article 101 TFEU and Article 53 of the EEA Agreement.

On 5 April 2019, the Commission adopted five statements of objections ('SOs'), addressed to Valve (in all five cases) and to each of the Publishers (one in each case).

Between [...], the Parties received an electronic storage device containing the accessible part of the Commission's investigation file as it then stood in the five cases.

On [...], following an invitation to that effect from DG Competition, the Publishers expressed their willingness to engage in cooperation discussions with the Commission, whereas Valve declined the invitation.

By letter of [...], the Commission informed the Publishers that their deadline to respond to the SOs was suspended pending the cooperation discussions and that Valve had decided not to take part in the cooperation discussions.

DG Competition had initially set a time limit of eight weeks for Valve's written response to the five SOs, until 19 June 2019. Upon Valve's requests, I extended the time limit until 17 July 2019.

⁽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) ('Decision 2011/695/EU').

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

On 24 June, Valve requested from the Directorate-General for Competition ('DG Competition') further access to some redacted information. On 5 July 2019, after contacting the information providers, DG Competition granted access to some of the requested information in revised non-confidential versions of the documents. Valve did not subsequently raise the matter with me.

On 17 July 2019, Valve submitted its five written responses to the five SOs, each of which included a request to be heard orally.

The oral hearing of Valve took place on 9 October 2019.

Between [...], each of the five Publishers submitted formal offers to cooperate (the 'Settlement Submissions'). The Settlement Submissions contained:

- an acknowledgement, in clear and unequivocal terms, of liability for the infringements regarding the practices set out in the SOs and as described in the Settlement Submissions, including facts, legal qualifications, their roles in the infringements and the duration of their participation in the infringement;
- an indication of the maximum fine that they would accept in the context of a cooperation procedure;
- confirmation that sufficient opportunity to access the evidence supporting the objections and all other documents in the Commission's file had been granted; and
- confirmation that sufficient opportunity to make their views known had been granted and that the Settlement Submissions constituted their responses to the SOs.

On 18 December 2020, the Commission sent a letter of facts to Valve, in which it informed Valve about additional evidence on which it intends to rely for the purposes of the decision to be adopted in this case. Valve already had access to the documents concerned as part of the regular access to file procedure in April 2019. Upon Valve's request, DG Competition provided it with a revised version of one of the documents concerned in which redactions had been removed on 31 December 2020. On the same day, Valve was granted a short extension of the deadline to respond to this letter of facts, until 7 January 2021. Valve responded to the letter of facts on this date.

Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decisions addressed to the Parties deal only with objections in respect of which they have been afforded the opportunity of making known their views. I conclude that they do so.

As regards the Publishers, the infringements found and the fines imposed in the draft decisions correspond to those acknowledged and accepted in the Settlement Submissions.

The basic amounts of the fines that would otherwise have been imposed are reduced by 10 % for Focus Home, Koch Media, ZeniMax and Bandai Namco and by 15 % for Capcom on the ground that these undertakings have effectively and timely cooperated with the Commission beyond their legal obligation to do so, by acknowledging an infringement of Article 101 TFEU and Article 53 of the EEA Agreement and waiving certain procedural rights resulting in administrative efficiencies. In addition, Capcom submitted evidence and explanations concerning geo-blocking practices, which strengthened the Commission's ability to prove the infringement.

Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 18 January 2021.

Wouter WILS
