
European Court of First Instance Upholds Microsoft Decision

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In a favorable ruling for the European Commission, the European Court of First Instance (CFI) in Luxembourg today upheld the entire substance of the European Commission's 2004 decision against Microsoft, overturning only certain trustee arrangements put in place to oversee implementation of the remedy. As a consequence, the CFI did not see any justification for reduction of the record €497 million fine that the Commission imposed at the time.

In its 2004 decision, the Commission found that Microsoft abused its dominant position by:

- refusing to supply competitors with interoperability information to develop competitive work group server operating system products;
- and tying its Windows Media Player into its Windows PC operating system.

The 155-page ruling focuses narrowly on the facts of the case, finding no manifest error in its detailed review of the Commission's findings. The CFI also noted that Microsoft had failed to substantiate its claim that an obligation to provide interoperability information would undermine its incentives to innovate, in particular given that the disclosure of such information is a common practice in the software industry and is considered to make one's products more attractive and valuable.

On the bundling issue, the CFI held that tying Windows Media Player to the Windows PC operating system gave Microsoft an unparalleled distribution advantage. Coupled with Microsoft's decision not to make available an unbundled version of its PC operating system, tying the two products together ensured the ubiquity of its media player and effectively "tipped" the balance for users and OEMs against third-party players. The CFI held that this behavior impaired an effective competitive structure without providing any technical advantage in performance to users and OEMs.

The CFI did overrule the Commission on a procedural point. It found that certain powers that the Commission delegated to the monitoring trustee could not legitimately be delegated to a third party. The CFI also found that there was no legal basis for forcing Microsoft to pay the trustee's fees and expenses.

The CFI's judgment can be found [here](#), and its press release [here](#). Look for WilmerHale's full assessment of the judgment's implications in the next few days.

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