

EU fines Microsoft \$733M for breaking browser pact (Update 2)

March 6 2013, by Toby Sterling



European Commissioner for Competition Joaquin Almunia speaks during a media conference at EU headquarters in Brussels on Wednesday, March 6, 2013. The European Union Commission has fined Microsoft euro 561 million (US dollars 733 million) for breaking the terms of an earlier agreement to offer users a choice of internet browser. (AP Photo/Virginia Mayo)

The European Union has fined Microsoft €561 million (\$733 million) for breaking a pledge to offer personal computer users a choice of Internet browsers when they install the company's flagship Windows operating system.

The penalty imposed by the EU's executive arm, the Commission, is a first for Brussels: no company has ever failed to keep its end of a bargain with EU authorities before.

In 2009, Microsoft Corp. struck a broad settlement with the Commission to resolve disputes over the company's abuse of the dominance of Windows, which had spanned more than a decade.

Back then, the company agreed to pay €860 million and promised to give Windows users the option of choosing another browser rather than having Microsoft's Internet Explorer automatically installed on their machines.

But Microsoft failed to stick to the deal for some 15 million installations of Windows 7 software in Europe from May 2011 until July 2012. The company admitted the failure last year, adding that it was a mistake.

The Commission's top competition regulator, Joaquin Almunia, said at a press conference in Brussels, Belgium, Wednesday that the fine reflected the size of the violation and the length of time it went on for. It was also intended to make an example of Microsoft and deter other companies from doing same thing. In theory, the commission could have fined Microsoft up to 10 percent of its global annual sales during the period the violation took place.

"A failure to comply is a very serious infringement that must be sanctioned accordingly," Almunia said.

Keith Hylton, a professor of law and antitrust specialist at Boston University said the fine was "far in excess of any benefit Microsoft could have gotten from the error, and vastly in excess of any harm to EU consumers, who are all aware of alternatives to Internet Explorer."

In all, Microsoft has now paid €2.2 billion in fines to the Commission since 1998, when regulators opened their first investigations into the company after Sun Microsystems complained it had been denied access to technical documents. Over the years, the EU has broadened its investigation to include whether Microsoft had abused Windows' near-monopoly over the market for computer operating systems to corner other markets, including server software, streaming media software, and Internet browsers.

Anthony Sabino, an antitrust lawyer and professor at St. John's University, said the Commission was right to fine Microsoft for the latest lapse, but the size of the penalty seemed "disproportionate...perhaps even petty, given that Microsoft has paid its fines and yielded to all the demands of the EU."

"They have been slow to acknowledge that, while powerful, Microsoft is not invincible," he said.

Sabino added that Microsoft may be paying the price in part for its aggressiveness in the past in testing the limits of what regulators will tolerate.

Given the length of time the latest violation went on, and the number of users affected, "it does strain credibility" that Microsoft wouldn't have known it had failed to keep its part of the agreement, Sabino added.

For its part, Microsoft was apologetic.

"We take full responsibility for the technical error that caused this problem and have apologized for it," the company said in a statement. "We provided the Commission with a complete and candid assessment of the situation, and we have taken steps ... to help avoid this mistake—or anything similar—in the future."

Microsoft's Internet Explorer still has a 56 percent market share for Internet browsers on personal computers, according to statistics by Net Applications. Mozilla's Firefox has 20 percent while Google's Chrome has a 17 percent share. Microsoft is required to continue to offer consumers a choice of browsers through 2014.

But the wider competitive landscape has changed greatly since the Commission started its action against Microsoft. Software applications on mobile phones usually bypass browsers entirely. Tech companies are now often less concerned with Internet browsers and more concerned about Google Inc.'s dominance in Internet search technology, Facebook's dominance in social networking, and Apple's dominance on mobile devices.

"For technology companies, often the best policeman is technological progress itself," Sabino said.

Rather than imposing unilateral fines, Almunia has advocated negotiated settlements since he took over as commissioner in 2010. He believes that competition issues are best resolved quickly and that slapping big fines on companies years after the fact does little to help consumers.

But he said the whole point of a settlement is undermined when companies then don't abide by its terms.

"They must do what they committed to do, or face the consequences," he said.

Almunia conceded that the Commission had been "naive" in appointing Microsoft itself to oversee compliance with the agreement, and said the Commission won't allow that in the future.

Key dates in EU antitrust action against Microsoft

The European Union has fined Microsoft Corp. €561 million (\$733 million) for failing to live up to the terms of a settlement that was to end the company's 15-year run-in with the continent's competition regulators.

Here's a look at how a 1998 complaint by Sun Microsystems led to Microsoft receiving fines totaling €2.2 billion—\$2.9 billion at today's exchange rates.

The Sun complaint was that Microsoft wouldn't turn over technical documents needed to build interfaces between their products. Over the years, the EU broadened its investigation to include whether Microsoft had abused Windows' near-monopoly over the market for computer operating systems to corner other markets, including server software, streaming media software, and Internet browsers.

Here's how the case developed:

— March 24, 2004: The European Commission finds Microsoft guilty of breaking competition law and abusing its dominance in the operating system market. It fines the company €497 million. It also orders Microsoft to share technical documents with rivals and market a version of Windows without a media player.

— June 15, 2005: After losing an appeal, Microsoft makes Windows XP N—without Media Player—available. There are few takers. The same month, EU also raises concerns about the usability of Microsoft's technical documents.

— July 12, 2006: EU decides Microsoft isn't obeying the 2004 decision and penalizes it an additional €280.5 million.

— March 1, 2007: EU threatens Microsoft with even more penalties, accusing the company of further noncompliance by setting royalty fees

too high for technical documents.

— Oct. 22: Microsoft agrees to slash fees for the technical documents. It also offers access to open source developers and others for a one-time fee of €10,000. Though this resolves key parts of the dispute, but the EU says Microsoft is still subject to penalties for its noncompliance until then.

— Jan. 14, 2008: Following a complaint by Web browser developer Opera Software ASA, the EU announces it is investigating Microsoft again. This time, it's on suspicion of squeezing rival Internet browsers and software rivals dependent on Microsoft programs out of the market.

— Feb. 27: EU regulators impose a €899 million penalty—a record at the time—for failing to fully comply with the 2004 antitrust order. This is on top of the fine imposed in 2004 and the penalty of 2006 and brings the total to nearly €1.7 billion.

— May 9: Microsoft announces it has appealed the penalty.

— Jan. 16, 2009: The European Commission orders Microsoft to untie its Internet Explorer browser from Windows.

— July 24: Microsoft agrees to offer a choice of rival Web browsers on Windows to ward off new European Union antitrust fines.

— Dec. 16: The European Union drops the browser case after Microsoft's offer to give Windows users in Europe a choice of up to 12 other Web browsers. This ends all of the EU's active cases against Microsoft, though the appeal of the 2008 fine remains pending.

— June 27, 2012: The General Court of the European Union rejects Microsoft's appeal of the 2008 penalty, but reduces it to €860 million.

— March 6, 2013: The EU fines Microsoft €561 million for failing to offer users a choice of browsers when they installed a version of Windows 7. The failure went on for 16 months and affected 15 million operating system installations. Microsoft acknowledged the failure and apologized.

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