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Court of First Instance Confirms Microsoft Violated EU Competition Rules

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Today, September 17th, the Court of First Instance issued its long awaited judgment in the Microsoft case. The judgment basically confirms the Commission's 2004 decision which found that Microsoft had abused its dominant position within the meaning of Article 82 of the EU Treaty:

- (i) by withholding from competitors information required to permit interoperability between the Windows PC and server operating systems and other operating systems; and
- (ii) by bundling Media Player with the PC operating system.

The amount of the fine imposed by the Commission (approximately US\$ 700 million) remains unchanged. The Court, however, annulled the appointment of a monitoring trustee charged with the implementation of the interoperability remedy.

The judgment is interesting in a number of ways:

- This is a clear victory for the European Commission. The Court has fully endorsed the Commission's flagship decision in its enforcement policy against dominant companies in the high-tech and information technology industries. As a result, it can be expected that US companies will be more likely to seek redress for antitrust infringements in Europe (where they are likely to find a more sympathetic ear than with their home country antitrust agencies). The other side of the coin is however that more cases will be brought against US companies in Europe.
- In particular, the portion of the judgment relating to interoperability confirms that EU competition law is more open than US antitrust law to forcing dominant companies to give competitors access to elements of their technology, at least when the degree of dominance is very strong and the competitors are severely handicapped in their activities on adjacent markets.
- By upholding the part of the decision dealing with the bundling of Media Player with the PC operating system, the Court is giving new oxygen to the VISTA complaint. This part of the decision is also likely to have spill over effects on other companies in the software industry, which will have to carefully consider how to implement additional features in their main products.
- However, by annulling the decision in so far as it orders Microsoft to appoint a trustee with broad investigatory powers, the Court may well be undermining the effectiveness of the interoperability remedy imposed by the Commission.

A more detailed analysis of the judgment will be circulated in the coming weeks.