

European court upholds most of Microsoft fine

TOBY STERLING - Associated Press - Associated Press

A European court on Wednesday upheld most of a massive fine levied against Microsoft by the European Commission's competition watchdog, closing a case against the software giant that began in 1998.

In an appeals ruling, the General Court of the European Union rejected Microsoft Corp.'s request to dismiss the fine levied in 2008, but did trim it by €39 million to €860 million (\$1.1 billion). Counting two earlier fines, the case has wound up costing Microsoft a grand total of €1.64 billion.

That's the most ever resulting from a single antitrust case in Europe, though in 2009 Intel Corp. was hit with the largest single fine, €1.09 billion.

The court in Luxembourg said its decision "essentially upholds the Commission's decision and rejects all the arguments put forward by Microsoft in support of annulment."

The €860 million fine is a "penalty for noncompliance" with the watchdog's 2004 order for Microsoft to make computer programming code available that would allow competitors' products to interface properly with Microsoft's server software.

Microsoft did so, but at a price the Commission said was so exorbitant it amounted to not complying.

The court upheld that finding, but said Microsoft deserved a small break because of a letter the Commission sent in 2005 saying the company didn't have to freely distribute code that wasn't its own and was freely available elsewhere. That letter gave Microsoft some room to think it was okay to continue acting the way it had until 2004, and should have been "taken into account in determining the gravity of the conduct found to be unlawful," the written decision said.

The Commission's top regulator Joaquin Almunia said the judgment "fully vindicates" his office's action against Microsoft and "brought significant benefits to users."

"A range of innovative products that would otherwise not have seen the light of day were introduced on the market," thanks to the Commission, he said.

Microsoft was less enthusiastic.

"Although the General Court slightly reduced the fine, we are disappointed with the Court's ruling," the company said in a statement.

Microsoft was initially fined €497 along with the 2004 order, then it was penalized

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another €280.5 million for noncompliance in 2006, and then another €899 million in 2008.

The company has already booked provisions for all the fines and penalties and after the ruling it has no active outstanding quarrels with European regulators.

"In 2009 Microsoft entered into a broad understanding with the Commission that resolved its competition law concerns," the company said.

Most notably in the 2009 deal, Microsoft ended an investigation into allegedly abusive practices for bundling its Internet Explorer web browser along with its operating systems. Microsoft agreed to instead offer customers a range of browsers to choose from.

In a sign of the times, Microsoft itself turned to the watchdog in 2012, asking it to investigate Google Inc. for anticompetitive practices. Microsoft alleged that Google was demanding unreasonable fees to license its technologies and asking courts to pull Microsoft products from shelves if they don't pay up. Google shot back with a similar request for the Commission to again investigate Microsoft last month.

Many observers say companies such as Apple Inc., Google and Microsoft are increasingly acting as "patent trolls," using the legal and regulatory systems as tools to thwart competitors as part of their wider struggle for market share.

Almunia said in February "the Commission will continue to keep a close eye on the behavior of all market players in the sector, particularly the increasingly strategic use of patents."

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