

## Collusive practices - 1

Collusive practices allow firms to exert market power they would not otherwise have, and artificially restrict competition and increase prices.

They can take different forms:

- Agreement on prices
- Allocation of quotas
- Division of markets in influence areas

Institutional arrangements can be:

- Organised cartel with central office
- Some form of communication to coordinate behaviour
- Tacit collusion

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## Collusive practices - 2

The role of free riding

Coordination

Factors that facilitate collusion

- Structural factors
  - Concentration
  - Entry
  - Cross-ownership, interlocking directorates
  - Product homogeneity
  - Inventories and excess capacity
- Price transparency
- Resale price maintenance

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## Vertical agreements

Double marginalisation

Free-riding and horizontal externalities

Strategic effects of vertical restraints in inter-brand competition

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## Vertical agreements

Leverage, foreclosure and exclusive dealing

- Chicago school
- Post Chicago arguments

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## Horizontal and vertical agreements - 1

### Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development, or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
  - any agreement or category of agreements between undertakings;
  - any decision or category of decisions by associations of undertakings;
  - any concerted practice or category of concerted practices,which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
  - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
  - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

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## Horizontal and vertical agreements - 2

- General scope of Art. 81
- Market structure
- Public bodies and undertakings
- Agreements

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## Horizontal and vertical agreements - 3

- **Positive condition 1** Does the agreement [...] improve the production or distribution of goods or does it promote technical or economic progress?
- **Positive condition 2** Does the agreement [...] allow consumers a fair share of the resulting benefit?
- **Negative condition 1** Does the agreement [...] impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives?
- **Negative condition 2** Does the agreement [...] afford the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question?

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## Horizontal and vertical agreements - 4

- Horizontal agreements are generally between direct competitors, and as such they have a very direct and strong effect on competition. Their *a priori* acceptability is much weaker than in the case of vertical agreements.
- Exceptions do exist, such as the Technology transfer agreements and R&D agreements, exempted from article 81 under specific conditions.
- Regulation 2790/99 follows this line, introducing a "block exemption" for vertical agreements, subject to
  - (i) dimensional criterion, exempting exclusive distribution agreements if the market share of the supplier is less than 30%
  - (ii) "black list" of clauses, which if adopted make the agreement unlawful, as for example "resale price maintenance".

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## Horizontal and vertical agreements - 5

- Agreements are illegal if they constitute "concerted practices", not necessarily in explicit form. It is often very difficult to prove that behaviour of firms having no evident link among themselves are in fact concerted and not purely random.
- The Commission needs to achieve a high level of proof, high enough to sustain the scrutiny of the ECJ.
- Policy:
  - A) *Ex-ante* - Deterrence, notices.
  - B) *Ex-post* - Inspections, "dawn raids", inquiries, leniency programmes, fines, applied economic analysis (before and after, yardstick, econometric modelling)

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## Leniency programmes

First introduced by the DoJ in 1978, revised in 1993. The EU Notice was introduced in 1996, revised in February 2002, last modification in December 2006.

The main difference between the 1978 and 1996 versions and the 1993 and 2002 ones is the discretion v. automatism.

- The new system even provides for "markers", which allow firms to win first place in the line immediately but give information later. The new plan also spells out specifically what information the Commission needs.
- The new notice makes it clear amnesty depends on high-quality information, and corroboration is important. A second or other participant can gain fine reduction only if they provide other information or corroboration the Commission needs to make its case.
- The notice also allows a company to continue participating in a cartel even after informing the Commission, so other conspirators will not become suspicious and destroy evidence.
- It makes clear that firms may provide information orally. That will encourage confessions without leaving a paper trail open to subpoena by private litigants who want to win damages in follow-on cases. That problem is acute in the United States, where litigants in private antitrust lawsuits can subpoena a company's confession from that company. The Commission will have the only written record, and need not turn over the internal document.

The Commission has been flooded with information about cartels since it decided to give amnesty to the first member of such a group to blow the whistle. From 2002 through 2005 the Commission conditionally accepted 51 amnesty applications but rejected 23. Another 30 were pending.

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## The ten largest fines imposed by the Commission in cartel cases

BY COMPANY:	mIn €	year
Hoffmann-La Roche AG	462.0	2001
Eni	272.3	2006
Lafarge SA*	249.6	2002
BASF AG**	236.8	2001
Arkema*	219.1	2006
Arjo Wiggins Appleton PLC*	184.3	2006
Solvay*	167.1	2006
Shell	160.9	2006
BPB PLC*	138.6	2002
Shell	108.0	2006
* Appeal lodged before the Court of First Instance.		
** Following judgment by the Court of First Instance.		

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## The ten largest fines imposed by the Commission in cartel cases

BY SECTOR:	mIn €	year
Vitamins	790.5	2001
Synthetic rubber	519.0	2006
Plasterboards	478.3	2002
Hydrogen peroxide	388.1	2006
Acrylic glass	344.6	2006
Copper fittings	314.8	2006
Carbonless paper	313.7	2001
Industrial bags	290.7	2005
Bitumen Netherlands	266.7	2006
Copper plumbing tubes	222.3	2004

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## Nationality of International Price Fixers of Food and agricultural ingredients 1995-2002

Rank	Country	Indicted or Convicted in U.S.	
		Corporations	Individuals
1	Japan	24	22
2	United States	16	13
3	Germany	8	9
4	France	6	3
5	South Korea	6	1
6	Switzerland	6	3
7	Netherlands	5	5
8	Belgium	3	1
9	Canada	1	2
10	United Kingdom	1	3
11	Italy	0	1
11	Sweden	0	1

Source: Connor (2002) Table 7 68

## Modernisation

- Regulation 1/2003, applicable as of May 1<sup>o</sup>, 2004, modified the ancient Reg. 17/62, and has introduced a system of *directly applicable exception*.
- Notifications were abolished, and the Commission renounced to its "monopoly power" on the application of Art 81(3).
- The proposal was met by very strong resistance, centred on the fear of a) uneven application, with the ensuing risk of "jurisdiction shopping", b) inexperienced application in the NSM, c) lack of legal certainty.
- The Commission countered with an extensive consultation and dialogue, with a series of implementing regulations clarifying the respective responsibilities, the allocation criteria and the functioning of the ECN, and with a careful assessment of the capabilities of the NMS in the accession phase.

## Lombard Club

*11 July 2002 - Today the Commission imposed fines totalling € 124,26 million on eight Austrian banks for their participation in a wide-ranging price cartel. In a highly institutionalised price-fixing scheme, the CEOs of the banks met every month, except August, as the "Lombard Club", a cartel which covered the entire Austrian territory – "down to the smallest village", as one bank put it – with a view to fixing deposit, lending and other rates to the detriment of businesses and consumers in Austria. The cartel started well before the accession of Austria to the European Economic Area in 1994. But in this case, the Commission can only levy fines for the period starting with EU membership (1995) until June 1998, when it carried out surprise inspections at the banks' premises putting an end to the cartel behaviour.*

The break down of the fines by bank is as follows (€ million):

- Erste Bank der österreichischen Sparkassen AG (Erste)	37,69
- Bank Austria Aktiengesellschaft: (BA)	30,38
- Raiffeisen Zentralbank Österreich AG: (RZB)	30,38
- Bank für Arbeit und Wirtschaft Aktiengesellschaft (BAWAG)	7,59
- Österreichische Postsparkasse Aktiengesellschaft (PSK)	7,59
- Österreichische Volksbanken AG (ÖVAG)	7,59
- NÖ Landesbank-Hypothekbank AG (NÖ Hypo)	1,52
- Raiffeisenlandesbank Niederösterreich-Wien reg Gen mbH (RLB)	1,52 <sub>70</sub>

## German banks

*11 December 2001 - The European Commission today decided to fine five German banks a total of € 100,8 million for fixing the charges for the exchange of euro-zone currencies. In a clear violation of European antitrust rules, the banks in 1997 colluded to charge no less than 3 % for the exchange of euro-zone banknotes to compensate for the abolition of the buying and selling 'spread' at the dawn of 1999 when the euro was launched.*

Following are the banks found guilty of infringing article 81 of the EC Treaty and the respective fines :

- Commerzbank AG :	28,0 million EUR
- Dresdner Bank AG :	28,0 million EUR
- Bayerische Hypo- und Vereinsbank AG :	28,0 million EUR
- Deutsche Verkehrsbank AG:	14,0 million EUR
- Vereins- und Westbank AG:	2,8 million EUR

## Abuse of dominant position - 1

### Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

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## Abuse of dominant position - 2

To apply Art. 82 it is necessary to prove that:

- (a) A dominant position exists.
- (b) The abuse took place, with the aim of exploiting the dominant position, applying practices:
  - exploitative – *excessive pricing*.
  - exclusionary – predatory pricing, exclusive deals, refusal to deal, tying (to name a few).

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## Exploitative practices – Excessive pricing

- Excessive pricing as a “naked” art 82 abuse would raise serious questions.
- Excessive relative to what?
- In United Brands the ECJ defines as excessive price as a price having no reasonable relation to the *economic value* of the product, and then makes reference to the selling price and the corresponding cost of production.

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## Excessive pricing - 2

- Excessive pricing without entry barriers would be self-correcting in the long run. Otherwise, market failure is to be feared.
- Connection with liberalisation and incumbents.
- Price regulation *ex ante* and excessive pricing as price regulation *ex post*.
- The example of EU regulation of telecoms.
- Excessive pricing test:
  - High and non-transitory barriers, no suitable remedy.
  - No self-correction expected
  - No regulation redress

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## Dominant position

- Existing jurisprudence and Commission practice establish that below 40% market share it is difficult to prove dominance, while above 70% it is difficult to deny it.
- Between 40 and 70% it is up to the Commission to find adequate evidence to prove what was established by the ECJ in the *Hoffman / La Roche* decision, i.e. there is a dominant position when the undertaking has "the power to behave - within certain limits - independently from competitors, customers and ultimately from consumers".
- Abusive behaviour is defined as "the use of methods different from those normally used under competitive conditions".

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## Exclusionary practices

More frequent are the cases for:

- Predatory pricing – prices below  $Ma/Av$  cost, with or without cross-subsidisation, to undercut (in the medium term) competitors. Benefits for the consumer are only in the short term.
- "Tie-in" – forcing customers to buy a product using the market power deriving from a collateral market. Microsoft example.
- Refusal to deal – a producer controlling an essential input can try to exclude from a downstream market that it may want to penetrate.
- Essential facility doctrine: if an undertaking controls an input difficult to replicate, and it blocks access to a competitor even if technically feasible, then there is infraction to Art.82

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## Predatory pricing

How to distinguish between a genuine reduction in prices - incidentally, beneficial to the consumers - by an efficient producer and unlawful predation?

- Existence of a short term loss, not just lower profits.
- Existence in the long run of enough market power for the predator to be able to more than recoup losses.

Long purse

Deterrence

Market imperfections

Limit pricing

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## Predatory pricing test

1. Is there market power, i.e. dominance? If not, dismiss the case. Dominance is needed for the incumbent to more than compensate the losses incurred in the low price period.
2. Analysis of the cost structure:
  - Price above average total cost is legal.
  - Price above average variable cost  $>AVC$  but below average total cost  $<ATC$  should be *prima facie* lawful, with the burden of the proof of the contrary on the plaintiff.
  - Price below average variable cost  $<AVC$  should be *prima facie* unlawful, with the burden of the proof of the contrary on the defendant.
3. The real discriminating element is the sacrifice of profits, not necessarily  $\pi < 0$ .

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## Tying and bundling

Fixed proportions bundling

Requirement tying

Tying as price discrimination device

	Reservation price	
	Cons 1	Cons 2
Good A	7	4
Good B	5	8
A + B	12	12

Tying as metering device

Compatibility and inter-operability

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## Essential facility and refusal to deal

- “Refusal to deal” and “discriminatory dealing” refer to the conduct of an undertaking, which owns or controls a facility or an infrastructure to which competitors **unavoidably** require access in order to provide a service to their customers
- Essential facility and IPRs.
- Demand and supply side substitutability.

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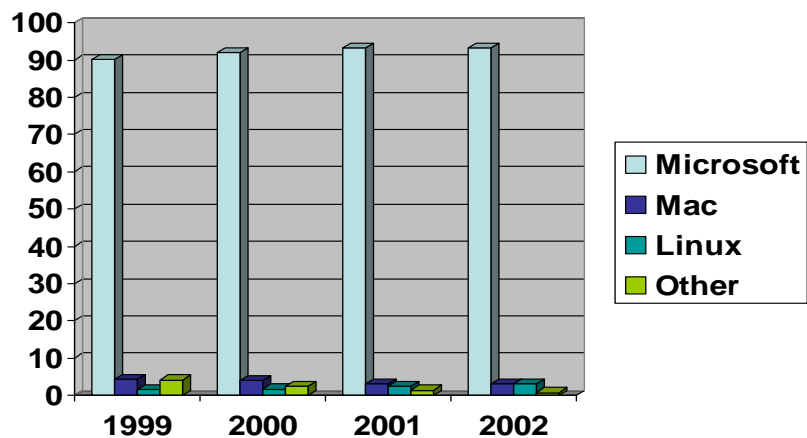
## Microsoft case - Timeline

- December 1998 – Sun’s complaint
- August 2000, 2001, 2003 - 3 SOs
- November 2003 - Oral Hearing
- March 2004 – Decision of the Commission
- 22 December 2004 - CFI interim measures ruling
- 24-28 April 2006 - CFI appeal hearing
- 12 July 2006 - Art 24(2) non-compliance Decision
- 17 September 2007 – CFI Decision
- 22 October 2007 – Microsoft decides not to appeal, and accepts the ECJ decision.

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## Microsoft dominance

Market shares in OS



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## Microsoft dominance

- Network effects relative to applications that run under Windows: a self-reinforcing dynamic, as the higher the number of users of a given operating system platform, the greater the number of applications that applications developers write for that platform and *vice versa*.
- Virtually all commercial applications are written first and foremost to the Windows platform: a very strong network effect protects Microsoft's position, called the *applications barrier to entry*.

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## The “interoperability” case What is “interoperability”?



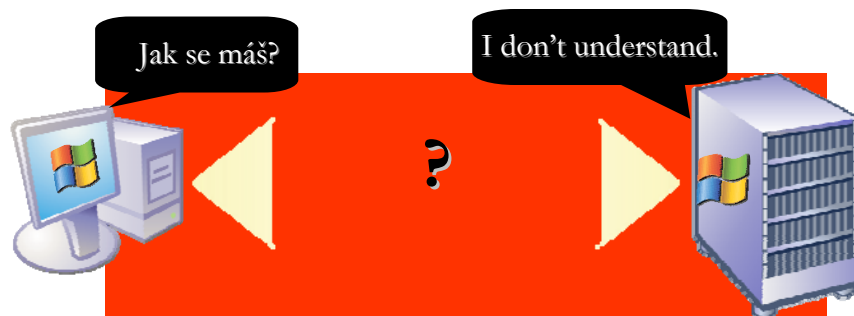
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## Interoperability in the W.G. Server OS Market

- Work group server operating systems – WGSOS - are optimised for file, print and group and user administration
- Demand side substitutability: difference to other server operating system tasks.
  - Supply side substitutability from other markets does not represent an appreciable competitive constraint in the market as each server operating system needs to be optimised according to the tasks that it is designed to fulfill, and this requires a specific development and testing process. This process involves significant time and costs.
  - Also significant barriers to entry in the work group server os market, in particular due to the presence of network effects in that market.

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## The “interoperability” case The interoperability problem



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## Interoperability in the W.G. Server OS Market

- Sun had requested technical information on how Windows WG servers interoperate with Windows PCs in order to adapt its own WG server operating system offering to compete with Microsoft's, and that it had not been provided that information.
- Similar information had been previously provided to the industry at large and with Windows 2000 Microsoft disrupted this previous level of supply.
- The information at issue consists of the rules of connection between software elements in an IT network, not the Windows source code, which constitutes the core of Microsoft's products.
- The relevant information relates to the organisation of Windows work group networks, which is based on an architecture of interrelated PC-to-server and server-to-server connections: for full interoperability with the PC to be achieved in this context, server-to-server connections are indispensable.
- The refusal, although it involves both client-to-server and server-to-server connections that relate to the interoperation within Windows work group networks, is in its essence a denial of compatibility with Windows PCs to competing work group server operating systems.

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## Summary: infringement of Article 82

- Exceptional circumstances
  - Refusal
  - Cutting of previous supply
  - Indispensability – No actual or potential substitute
  - Risk of elimination of competition (dominance + growing market shares + link to refusal)
  - Adverse impact on innovation
- No objective justification

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## Tying of Windows OS and Media Player

The Decision states that Tying is prohibited under Article 82 of the Treaty if the following elements are present:

- (i) the undertaking concerned is dominant in the tying product market: *Microsoft is dominant in the OS market.*
- (ii) the tying and tied goods are two separate products: *although Microsoft has been tying its media player with Windows for some time, there is a separate consumer demand for stand-alone media players.*
- (iii) the undertaking concerned affords consumers no choice to source the tying product without the tied product: *Windows Media Player is always present on a Windows PC.*
- (iv) tying forecloses competition: *the Decision outlined that the tying of Windows Media Player (WMP) to Windows afforded Microsoft unmatched ubiquity on PCs worldwide, as WMP instantly shares the ubiquity of Windows in newly-shipped PCs. Also, supporting several technologies generates significant additional costs, and WMP's ubiquitous presence induces content providers and software developers to rely on Windows Media technology. As applications and content are largely specific to the proprietary infrastructure used, customers will in turn prefer using WMP, since a wider array of complementary software and content will be available for that product.*
- (v) it needs to be examined whether there is any objective justification<sub>92</sub> for the tying: *none was found.*

## Objective justification

### Microsoft's arguments

- Integration preserves the unity of the Windows platform as the standard platform
- Ordering untying will damage the operating system
- Efficiencies for consumers resulting from integration

### Rebuttal

- Standardisation should result from competition on the merits and not unilateral extension of monopoly through tying
- Microsoft already offers a "componentised" operating system
- Efficiencies do not depend on Microsoft's tying

## Remedies

- The Decision orders Microsoft to disclose the information that it refused to supply and allow its use for the development of compatible products. The disclosure order is limited to interface specifications (not source code), and to ensuring interoperability with the essential features that define a typical work group network.
- Microsoft is allowed to require a reasonable and non-discriminatory remuneration for the production of the documentation
- The Decision orders Microsoft to provide a version of Windows which does not include Windows Media Player: it does not prevent Microsoft from also offering a bundled version of Windows including WMP. However, the Decision makes clear that Microsoft must not circumvent the decision by engaging in technical or economic tying.
- A monitoring regime is foreseen by the Decision: Microsoft is required to submit a proposal, including provisions for the establishment of a monitoring trustee. The Decision outlines what the trustee should do, i.e. to assist the Commission in enforcing the decision on an ongoing basis, and in the face of Microsoft's products developing and changing.

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## The “interoperability” case The interoperability remedy



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## Fines

- In view of the above abuses, the Commission imposed a fine of €497.2 million. The fine represents 1.62% of Microsoft's annual worldwide turnover (€30,700.336 million). Microsoft's infringement was considered very serious on the basis of the nature of the infringement, its impact on the market, and the size of the relevant geographic market.
- The initial starting amount of the fine was set at € 165.732 million. In view of Microsoft's size and resources, in order to ensure a sufficient deterrent effect, this was multiplied by a factor of 2. The starting amount was therefore €331.5 million.
- This amount was increased by 50% in order to take into account the 5 years and 5 months duration of the infringement. In view of the absence of both aggravating and attenuating factors, the final amount of the fine was therefore at € 497.2 million.
- Microsoft profits in 2003 were \$1.1million per hour. Its cash holdings in 2004 were \$50bn.

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## Interim measures

- Microsoft applied for suspension of remedies pending the main appeal in June 2004
- 2 day CFI hearing September/October 2004
- Order of the President of the CFI on 22 December 2004
  - Microsoft's request denied
  - Microsoft must comply with the Decision's remedies pending the main appeal
- What are the interim measures criteria?
  - *Prima facie* case - "fumus boni iuris"
  - Urgency - serious and irreparable damage
  - Balance of interests
- Are there any implications for Microsoft's main appeal?

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## CFI appeal

- Microsoft appealed the Decision in June 2004
- 1 week hearing on 24-28 April 2006
- Likely significance of the ruling

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## Article 24(2) non-compliance Decision

On 2 July 2006 the Commission adopted a decision to levy a penalty payment of €280.5 million on Microsoft for continued non-compliance with the Commission Decision of 24 March 2004 in Case COMP/C-3/37.792, Microsoft ("the 2004 Decision").

This was the first time the Commission had to have recourse to its powers under Article 24 of Regulation 1/2003 in order to compel an undertaking to comply with a prohibition decision.

- Microsoft's interoperability information was still not complete and accurate as stated several times by the trustee.
- The Commission will provisionally increase daily periodic penalty payments in the event of ongoing non-compliance to € 3ml.

As for the other remedy, in mid-2005 Microsoft released a version of Windows XP labelled N, and later a Vista N. Both were a flop, as expected.

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## Is traditional antitrust law relevant to the new technology sector?

- In the Microsoft case the commission has relied on classic antitrust rules that prevent a dominant company abusing its strong position to undercut rivals.
- Some lawyers say that traditional antitrust laws are ill-suited to a fast-moving industry such as software where today's leader can be unseated by an innovative upstart in a very short time.
- New software products can quickly find a large market because of the ease with which they can be downloaded from the internet. This means potential competitors can gain market share much more quickly than more traditional products, such as soft drinks, for example, that require a physical distribution mechanism.
- Although particular care should be devoted to analysing new, growing markets, nevertheless these markets do not present features unknown to sectors in the pre-information technology age:
  - Consumer product with high advertising outlays – cola drinks – chemicals, pharmaceuticals and all industries with high R&D sunk costs are an example.
  - As for network externalities, toys, shoes, design, whenever fashion and fad play a role, the more units are sold, the more attractive the product becomes to consumers. Also, electricity appliances, fixed telephones, railways, etc also exhibit considerable network externalities. We do not need a new antitrust theory and policy to deal with them.

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## Ballmer wanted to avoid a precedent

- Microsoft is fighting:
  - The definition of dominant – damaging, but unavoidable and therefore an accepted issue
  - The fines – given its cash and capacity to generate profits, irrelevant.
  - The precedent on tying / bundling: this is the **real wrecking damage!**
- On this last issue the 11<sup>th</sup> hour negotiations failed. Steve Ballmer, Microsoft's CEO, spent three days negotiating with DG COMP, and subsequently submitted a set of proposals that were further discussed by Brad Smith, Microsoft's chief lawyer, and Commissioner Monti, for five hours of talks.
- Microsoft promised to deal with all of the interoperability issues by allowing its rivals access to technical protocols used to connect its own products.
- It also promised to ensure that computer manufacturers included three programs that rival Media Player throughout Europe and most of the rest of the world. It would agree to be bound by a formal Commission "settlement decision" that would have a similar effect to a US court order.
- But it refused to agree to anything that looked like a precedent. And that, at the end of the day, is **why the deal blew up.**

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## The actors



Steve Ballmer, CEO of Microsoft.

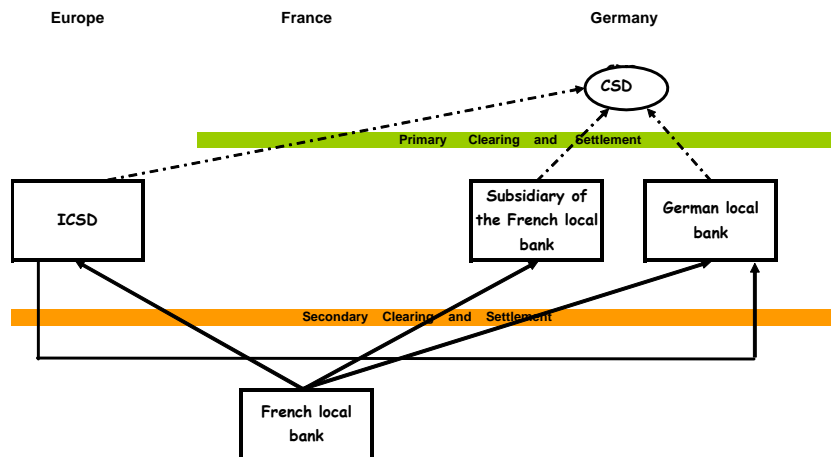
Pictures on the right, clockwise from upper left corner, Philip Lowe, Director General of DG Comp, Sven Norberg, Director, Henry Piffaut, Case handler, Cecilio Madero, Head of Unit.



## Clearstream case

- In a decision adopted on June 2<sup>nd</sup> 2004, the Commission found that Clearstream Banking AG and its parent company Clearstream International SA infringed competition rules by *refusing to supply* cross-border securities Clearing & Settlement services to Euroclear Bank SA and by applying *discriminatory prices* to the detriment of this customer.
- The illegal behaviour of the defendants went on until the Commission started an inquiry in the Clearing & Settlement industry.
- The Commission's enquiry into this case identified two types of abuse: refusal to supply and discriminatory pricing.

## Clearing and Settlement



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## Clearstream case – Refusal to supply

- Clearstream refused to supply to Euroclear Bank clearing and settlement services for registered shares issued under German law. While competition law recognises the freedom of companies to freely choose their trading partners, companies in a dominant position have a special responsibility. In the present case, Clearstream's behaviour qualified as *refusal to supply* because:
  - Clearstream Banking AG is the only final custodian of German securities kept in collective safe custody, which is the only significant form of custody today for securities traded. New entry into this activity is unrealistic for the foreseeable future. Therefore, Clearstream Banking AG is an unavoidable trading partner;
  - Euroclear Bank could not duplicate the services that it was requesting; and
  - Clearstream's behaviour had the effect of impairing Euroclear Bank's ability to provide efficient cross-border clearing and settlement services to clients in the single market.
- Euroclear Bank eventually obtained the clearing and settlement services from Clearstream Banking AG in November 2001 - more than two years after it requested those services. During the entire period Clearstream Banking AG denied Euroclear Bank clearing and settlement for services registered shares. The dilatory behaviour of Clearstream *vis-à-vis* Euroclear Bank contrasts with the usual delay of a maximum four months within which other comparable customers were supplied with clearing and settlement services.

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## Clearstream case – Price discrimination

Between January 1997 and January 2002, Clearstream, for equivalent clearing and settlement services, charged a higher per transaction price to Euroclear Bank than to other securities depositories outside Germany. The Commission examined in detail the content of the services and the costs of providing them in order to establish whether the price difference could be justified and concluded that it was not.