

PROPOSED COMMITMENT

Microsoft gives the following Commitment (the “Commitment”) to address the competition concerns identified by the European Commission in Case No. COMP/C-3/39.530, which are based on the Commission’s interpretation of Article 82 EC and the judgment of the Court of First Instance of the European Communities of 17 September 2007 in Case T-201/04 Microsoft v Commission.

This Commitment is made without prejudice to Microsoft’s position should the European Commission or any other party conduct proceedings or commence any other legal action against Microsoft. Nothing in this Commitment may be construed as implying that Microsoft agrees with the Commission’s preliminary assessment in the Statement of Objections of 14 January 2009 in Case No. COMP/C-3/39.530. Microsoft has, nevertheless, offered this Commitment pursuant to Article 9 of Regulation 1/2003 to address the Commission’s competition concerns. This Commitment is given without any admission by Microsoft that it has engaged in abusive conduct contrary to Article 82 EC or any other aspect of Community competition law.

1. COMMITMENT WITH REGARD TO BROWSER CHOICE

- (1) Microsoft will make available a mechanism in Windows Client PC Operating Systems within the European Economic Area (EEA) that enables OEMs and end users to turn Internet Explorer off and on. If Internet Explorer is turned off, what the user considers as the web browser Internet Explorer, namely its browser frame window and menus (user interface), will not be accessible and will not otherwise launch programmatically. Microsoft will ensure that if Internet Explorer is turned off, then (i) it can only be turned on through user action specifically aimed at turning on Internet Explorer; (ii) the user interface cannot be called upon by applications; and (iii) no icons, links or shortcuts or any other means will appear within Windows to start a download or installation of Internet Explorer. Microsoft will maintain a web page on www.microsoft.com that explains how users can turn Internet Explorer on and off, and will maintain that page so that other browser vendors can link to it if they wish. Annex A sets out the technical implementation of the turning off of Internet Explorer in Windows 7.
- (2) OEMs will be free to pre-install any web browser (or browsers) of their choice on PCs they ship and to set any browser as the default web browser.
- (3) Within *Microsoft’s PC Productivity Applications* distributed in the EEA, Microsoft shall not include any icons, links or short-cuts or provide any other means to start a download or installation of a Microsoft web browser. Microsoft shall not use Windows Update to offer any new version of a Microsoft web browser to users within the EEA unless Internet Explorer is turned on on the user’s computer.

Microsoft may use Windows Update, however, to update those portions of Internet Explorer other than the browser frame window and menus. Windows Client PC Operating Systems shall enable end users to choose their preferred default web browser. Windows Client PC Operating Systems, including Windows Update, and Internet Explorer, shall not override the user's choice of default web browser.

- (4) Microsoft shall not retaliate against any OEM for developing, using, distributing, promoting or supporting software that competes with Microsoft web browsers, in particular by altering Microsoft's commercial relations with that OEM, or by withholding Consideration. Without prejudice to the application of EC competition law nothing in this Commitment shall prohibit Microsoft from providing Consideration to any OEM with respect to any Microsoft web browser where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that web browser.
- (5) Microsoft shall not enter into any agreement with an OEM that conditions the grant of any Consideration on the OEM's refraining from developing, using, distributing, promoting or supporting any software that competes with Microsoft web browsers. Without prejudice to the application of EC competition law nothing in this Commitment shall prohibit Microsoft from entering into an agreement with an OEM for any joint venture that limits the development, use, distribution, promotion or support of the jointly developed web browser technology to use with or in a Windows Client PC Operating System or a Microsoft web browser
- (6) Microsoft shall not terminate a direct OEM license for Windows Client PC Operating Systems without having first given the OEM written notice of the reasons for the proposed termination and not less than thirty days' opportunity to cure. Notwithstanding the foregoing, Microsoft shall have no obligation to provide such a termination notice and opportunity to cure to any OEM that has received two or more such notices during the term of its license

2. COMMITMENT WITH REGARD TO A BROWSER BALLOT SCREEN

- (7) Microsoft will distribute a Ballot Screen software update to users within the EEA of Windows XP, Windows Vista and Windows Client PC Operating Systems, by means of Windows Update as described hereafter: A software update enabling the Ballot Screen to be displayed will be made available to all current and future users of Windows XP and Windows Vista who receive updates from Windows Update. For Windows XP and Windows Vista users the Ballot Screen update will first be made available eight weeks after the adoption of the Commission's decision under Article 9 of Regulation 1/2003 (with the roll-out to all current Windows XP and

Windows Vista users being essentially completed within 5 months after adoption of the Commission's decision under Article 9 of Regulation 1/2003) and remain in place for distribution according to paragraph 9 for the entire duration of this Commitment. If Microsoft encounters objective unexpected technical difficulties which mean that it is unable to complete the full roll-out within 5 months, Microsoft will before the end of this period submit a reasoned request for an extension to the Commission. Such extension shall not be unreasonably refused. For Windows 7, the Ballot Screen update will first be made available to users eight weeks after the adoption of the Commission's decision under Article 9 of Regulation 1/2003 and remain in place for distribution according to paragraph 9 for the entire duration of this Commitment. For Windows Client PC Operating Systems after Windows 7, the Ballot Screen update will first be made available at the general commercial release date of such an operating system and remain in place for distribution according to paragraph 9 for the entire duration of this Commitment.

- (8) The Ballot Screen will give those users who have Internet Explorer set as their default web browser an opportunity to choose whether and which competing web browser(s) to install in addition to the one(s) they already have. The Ballot Screen update will include an initial page that provides basic information concerning the purpose of the Ballot Screen. This page will include a notice that prominently reminds the user to ensure an active internet connection before proceeding to the browser selection page. An initial information page substantially in the form of Annex B will satisfy the stipulations as to the appearance of this screen in this Commitment. Microsoft will design the second Ballot Screen page to display next, no matter what action the user takes, and provide two links associated with each web browser. An "install" link will connect to a vendor-managed distribution server, which, upon the user's confirmation, can directly download the installation package of the selected web browser (and only a web browser, including software to update the web browser only) for local execution (the resulting situation will therefore equal a scenario in which the user himself had downloaded and executed the installation package without being aided by the Ballot Screen). To the extent controllable by Microsoft, installation will not involve more security warning than applicable under the standard Windows security architecture. Microsoft will maintain the "ClickOnce" functionality in Windows for the duration of this Commitment. An "information" link will connect to a vendor-managed web page from which the vendor can offer users more information about its browser and installation options. Users will be able to select one or more of the web browsers offered through the Ballot Screen. Microsoft shall ensure that in the Ballot Screen users will be informed in an unbiased way that they can turn Internet Explorer off.

- (9) In accordance with paragraph 8, the Ballot Screen software update will be distributed and installable via Windows Update in a manner that is designed to bring about installation of this update at a rate that is as least as high as that for the most recent version of Internet Explorer offered via Windows Update. For Microsoft's current operating system releases, the Ballot Screen software update will be distributed and installable via Windows Update at the priority level "Important" for Windows Vista and Windows 7 users and "High Priority" for Windows XP users. The update will be installed automatically for users who have opted for automatic installation of updates via Windows Update. Once the software update with the Ballot Screen is installed and the user logs on to the computer the next time, users who have Internet Explorer set as their default web browser will be prompted with the Ballot Screen in the language designated in the users' settings in Internet Explorer and it can be used immediately. The software update will also install a desktop shortcut for the Ballot Screen. The Ballot Screen will include a "Select Later" button that, if clicked, will cause the Ballot Screen to launch automatically the next time the user logs on to Windows. The Ballot Screen shall be presented in the form of a Web site maintained by Microsoft and updated from time to time as described below. Microsoft may offer tools to volume license users that prevent the Ballot Screen update from being installed on all computers covered by the licence. At the same time, it will remain possible for users to manually install web browsers in the same way that other software is installed on top of Windows.
- (10) Nothing in the design and implementation of the Ballot Screen and the presentation of competing web browsers will express a bias for a Microsoft web browser or any other web browser or discourage the user from downloading and installing additional web browsers via the Ballot Screen and making a web browser competing with a Microsoft web browser the default. When the ballot is launched in Windows 7, the Internet Explorer icon will automatically be unpinned from the task bar. Microsoft may inform users of Windows 7 on the second Ballot Screen page using no more than two sentences that (a) the Ballot Screen software update has unpinned the Internet Explorer icon and (b) users can pin a browser (or other program) to the task bar.
- (11) The Ballot Screen will be populated with the 12 most widely-used web browsers that run on Windows based on usage share in the EEA as measured semi-annually by a source commonly agreed between Microsoft and the European Commission (see paragraph 13). In addition, if a browser's usage share is among the top 12, but that browser is no longer actively offered by its vendor, that browser will not be included in the Ballot Screen. If any dispute arises as to the determination of the source, the Commission will provide Microsoft with the source to use.

- (12) The Ballot Screen will in a horizontal line and in an unbiased way display icons of and basic identifying information on the web browsers. A Ballot Screen substantially in the form of Annex C will satisfy the stipulations as to the appearance of the Ballot Screen contained in this Commitment and in particular paragraphs 8 through 13.
- (13) The Ballot Screen will prominently display the final releases of the five web browsers with the highest usage share in the EEA (i.e. only these browsers will be immediately visible without requiring any user action under typical user settings). These five web browsers will be displayed in alphabetical order of the company names of their vendors. The remaining seven browsers will be displayed according to the same principle. Browser usage share will be determined semi-annually by averaging monthly usage share data for the previous six months for which such data is available, with shares for different released versions of the same vendor's browsers added together to determine a browser's total usage share (e.g., Firefox 2.0, 3.0, 3.5, etc. all count towards the total share for "Mozilla Firefox"). No more than one browser will be listed per vendor. Other than Internet Explorer, the Ballot Screen may not contain any web browser which is based on Internet Explorer's rendering engine and the development or distribution of which is funded in whole or in substantial part by Microsoft. Any web browser vendor selected will be invited to provide Microsoft with two URLs. One URL shall be an "information" URL that will link to a web page that provides relevant information only about such vendor's browser, together with installation options. The other URL shall be an "install" URL that, at the vendor's option, will either (a) link to a web page with instructions for installing its browser and a means to initiate a download of its browser, and no additional software, or (b) directly initiate a download of its browser, and no additional software. If any dispute arises as to the application of this paragraph which, despite best efforts, the parties to that dispute cannot resolve themselves within a reasonable period of time, Microsoft may submit the matter to the Commission for determination.
- (14) Microsoft will provide for a means for the contents of the Ballot Screen, i.e. the descriptions of the web browsers and their icons as well as the URLs provided by web browser vendors, to be updated monthly. This mechanism will stay in place throughout the term of this Commitment.
- (15) Microsoft will ensure that all the Windows APIs on which Internet Explorer relies are disclosed in a complete, accurate and timely manner, so that non-Microsoft web browser suppliers would not be at a competitive disadvantage compared to Microsoft when designing a web browser for Windows. For purposes of this paragraph, Internet Explorer consists of the code that is distributed separately from

Windows and trademarked or marketed as Internet Explorer. Microsoft will bear the costs of the technical implementation of the remedy in Windows and may not charge for the inclusion of a third party web browser in the Ballot Screen.

3. COMMITMENT WITH REGARD TO NON-CIRCUMVENTION

- (16) This Commitment is intended to allow for an unbiased choice between Microsoft web browser and competing web browsers for both OEMs and end users. Microsoft will not circumvent or attempt to circumvent this Commitment.
- (17) For Windows Vista and successors, Microsoft shall ensure that access and the full functioning of the Windows Update online service (currently available at www.update.microsoft.com) is not dependent on the use of the Internet Explorer user interface.

4. TERM AND REVIEW

- (18) The term of this Commitment shall be 5 years from the date of the adoption of the Commission's decision under Article 9 of Regulation 1/2003.
- (19) In addition and without prejudice to the general provision of Article 9(2) of Regulation 1/2003, Microsoft or the Commission may request a review of the Commitment two years or later after the adoption of the Commission's decision under Article 9 of Regulation 1/2003 where either (i) the market circumstances have fundamentally changed or (ii) the Ballot Screen has manifestly failed to provide consumers with an effective choice among browsers in a reasonable way. Microsoft will not unreasonably withhold its cooperation to such a review.

5. DEFINITIONS

"*Consideration*" means any monetary payment, discount or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos or any other preferential treatment.

"*Internet Explorer*" any of the software products marketed, distributed and licensed by Microsoft as Internet Explorer 6, Internet Explorer 7 and Internet Explorer 8, including Service Packs and Updates thereto, or their successors (including Service Packs and Updates thereto).

"Microsoft's PC Productivity Applications" any of the software products marketed, distributed and licensed by Microsoft in Microsoft Office 2007, (which includes Word 2007, Excel 2007, PowerPoint 2007, Outlook 2007, Publisher 2007, Office Accounting Express 2007, Access 2007, Groove 2007, OneNote 2007, InfoPath 2007, and Office Communicator 2007, including Service Packs and Updates thereto, or their successors (including Service Packs and Updates thereto)).

"OEM" means an original equipment manufacturer of personal computers.

"Timely Manner" means as soon as Microsoft has developed a sufficiently stable "beta" testing version of Windows (including Service Packs and Updates) and has made this implementation available to third parties for testing purposes for the first time. This does not include pre-release versions that under standard industry understanding and past Microsoft practice would not constitute a sufficiently stable version to be labelled a "beta".

"Windows Client PC Operating System" ("Windows") any of the software products marketed, distributed and licensed by Microsoft as Windows 7 including Service Packs and Updates thereto, or their successors (including Service Packs and Updates thereto).

"Windows Update" refers to the services in Windows XP, Windows Vista and Windows 7 that enable the user's PC to "call back" to a Microsoft-operated server in order to check for available updates for *Windows Client PC Operating Systems* and to download and install applicable updates if the user agrees.