

COMMITMENTS

Microsoft gives the following Commitments (the “Commitments”) to address the competition concerns identified by the European Commission (the “Commission”) in Case No. COMP/C-3/39.530. Those concerns are laid out in the Statement of Objections of 14 January 2009 (the “Statement of Objections”) and are based on the Commission’s interpretation of Article 102 of the Treaty on the Functioning of the European Union (“TFEU”) (previously, Article 82 of the Treaty establishing the European Community) and the judgment of the General Court (previously, the Court of First Instance) of 17 September 2007 in Case T-201/04 Microsoft v Commission.

These Commitments are made without prejudice to Microsoft’s position should the Commission conduct proceedings or commence any other legal action concerning the objections identified in the Statement of Objections against Microsoft. Nothing in these Commitments 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 these Commitments pursuant to Article 9 of Council Regulation (EC) No 1/2003 (“Regulation 1/2003”) to address the Commission’s competition concerns. These Commitments are given without any admission by Microsoft that it has engaged in abusive conduct contrary to Article 102 of the TFEU or any other aspect of EU competition law.

1. COMMITMENTS WITH REGARD TO BROWSER CHOICE

- (1) Microsoft will make available a mechanism in Windows Client PC Operating Systems¹ 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.

¹ Section 5 below contains a list of defined terms.

- (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 Internet Explorer. Microsoft shall not use Windows Update to offer any new version of Internet Explorer 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 in any way retaliate against any OEM for developing, using, distributing, promoting or supporting software that competes with Internet Explorer, in particular by altering Microsoft's commercial relations with that OEM, or by withholding Consideration. Without prejudice to the application of EU competition law, nothing in these Commitments shall prohibit Microsoft from providing Consideration to any OEM with respect to Internet Explorer where that Consideration is commensurate with the absolute level or commercial value 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 links or conditions the grant of any Consideration on the OEM's refraining from developing, using, distributing, promoting or supporting any software that competes with Internet Explorer. Without prejudice to the application of EU competition law, nothing in these Commitments 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 Internet Explorer.
- (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 similar justified notices during the term of its license.

2. COMMITMENTS WITH REGARD TO A BROWSER CHOICE SCREEN

- (7) These Commitments are designed to ensure the provision by Microsoft of a Choice Screen to 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 in a fair and unbiased way. Microsoft will distribute a Choice 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 Choice 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 Choice Screen update will first be made available thirteen 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 these Commitments. 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 Choice Screen update will first be made available to users thirteen 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 these Commitments. For Windows Client PC Operating Systems after Windows 7, the Choice 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 these Commitments.

- (8) The Choice Screen update will include an initial page that provides basic information concerning the purpose of the Choice 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 these Commitments. Microsoft will design the second Choice Screen page to display next, regardless of whether the user selects "OK" or closes the initial information page, 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 be equivalent to a scenario in which the user had directly downloaded and executed the installation package without being aided by the Choice Screen. To the extent controllable by Microsoft, installation will not involve more security warnings than applicable under the standard Windows security architecture. Microsoft will

maintain the “ClickOnce” functionality in Windows for the duration of these Commitments. 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 Choice Screen. Microsoft shall ensure that in a link from the Choice Screen users will be informed in an unbiased way that they can turn Internet Explorer off.

- (9) In accordance with paragraph 8, the Choice 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 Choice 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 Choice 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 Choice 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 Choice Screen. The Choice Screen will include a “Select Later” button that, if clicked, will cause the Choice Screen to launch automatically the next time the user logs on to Windows. The Choice Screen shall be presented in the form of a Web site maintained by Microsoft and updated from time to time as described below. The Internet Explorer window through which the Choice Screen is presented shall display no more than the following elements of the Internet Explorer user interface: a Title Bar and a URL location box, as shown in Annex C. Microsoft may offer tools to volume license users that prevent the Choice 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 Choice Screen and the presentation of competing web browsers will express a bias for Internet Explorer or any other web browser or discourage the user from downloading and installing additional web browsers via the Choice Screen and making a web browser competing with Internet Explorer the default. When the Choice Screen is launched in Windows Client PC Operating Systems, the Internet Explorer icon will automatically be unpinned from the task bar. Microsoft may inform users of Windows XP, Windows Vista, and Windows Client PC Operating Systems, as

applicable, on the initial information page using no more than three sentences that (a) the Choice Screen software update has un-pinned the Internet Explorer icon, (b) users can easily pin a browser (or other program) to the task bar, and (c) Internet Explorer is still available from Start/All Programs.

- (11) The Choice Screen will be populated with the 12 most widely-used web browsers that run on Windows 7 according to a ranking based on usage share in the EEA as measured semi-annually (see the methodology set out in paragraph 14). In addition, if a browser's usage share is ranked among the top 12, but that browser is no longer actively offered by its vendor, that browser will not be included in the Choice Screen. If a browser vendor does not wish to have its browser included in the Choice Screen, that browser will not be included.
- (12) The Choice Screen will in a horizontal line and in an unbiased way display icons of and basic identifying information on the web browsers. A Choice Screen substantially in the form of Annex C will satisfy the stipulations as to the appearance of the second Choice Screen page referred to in these Commitments and in particular paragraphs 8 through 13.
- (13) The Choice Screen will prominently display the Final Releases of the five highest ranked web browsers based on 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 random order each time the Choice Screen is presented. The remaining seven browsers will be displayed if the user scrolls sideways and will also be displayed in random order.
- (14) For each of the usage share sources listed in Annex D, web 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 Choice 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. The list of the web browsers to be included on the Choice Screen will be determined as follows: First, a list of all web browsers will be established that both, meet the criteria laid down in paragraph 11 and are included in at least two of the three data sources of usage share information for web browsers listed in Annex D. Secondly, the browsers on this list will be ranked according to the arithmetic means of their numerical ranks in the data sources, taking into account their best ranking in two data sources (*i.e.* if a browser is included in three data sources, the two data

sources where it was ranked highest should be used to calculate its arithmetic mean).² Thirdly, if this procedure results in a list of more than 12 browsers, only the first 12 browsers will be included in the Choice Screen. Conversely, if this procedure results in a list of less than 12 browsers the remaining slots on the Choice Screen will be left empty. Microsoft undertakes to provide the Commission every six months with documentation of the application of the mechanism as described above, as well as with the resulting list of web browsers to be included in the Choice Screen during the subsequent six months.

- (15) Any web browser vendor selected will be invited to provide Microsoft with two uniform resource locators (“URLs”) (see also paragraph (8) above). One URL shall be an “information” URL that will link to a web page that provides relevant information only about that 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.
- (16) Microsoft will provide for a means for the contents of the Choice 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 (as noted in paragraph 14 above, the list of the 12 browsers populating the Choice Screen will be updated every six months). This mechanism will stay in place throughout the term of these Commitments.
- (17) 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 will 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 shall not charge for the inclusion of a third party web browser in the Choice Screen.

² If on the basis of this calculation more than one web browser would qualify for position 5 or 12 on the Choice Screen, the web browser with the highest arithmetic mean of its two highest usage shares in the data sources where it is included will be ranked on that position.

3. COMMITMENTS WITH REGARD TO NON-CIRCUMVENTION

- (18) These Commitments are intended to allow for an unbiased choice between Internet Explorer and competing web browsers for both OEMs and end users. Microsoft will not in any way circumvent or attempt to circumvent these Commitments.
- (19) 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) are not dependent on the use of the Internet Explorer user interface.

4. TERM, REVIEW AND REPORTING

- (20) The term of these Commitments shall be 5 years from the date of the adoption of the Commission's decision under Article 9 of Regulation 1/2003.
- (21) 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 these Commitments 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 Choice 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.
- (22) Microsoft shall provide the Commission with a detailed report on the implementation of these Commitments six months after the date of adoption of the Commission's decision under Article 9 of Regulation 1/2003 and thereafter annually each December. This report will in particular address progress and difficulties in the course of the implementation of the Commitments, complaints raised with Microsoft by third parties in the context of this implementation and the uptake of the Choice Screen by users. Reporting on the latter shall be based on quantitative indicators such as the following: Number of users who have received the Choice Screen software update, number of page views for the Choice Screen, and number of clicks on each of the URL buttons and links provided by the Choice Screen. In view of these reports, and without prejudice to paragraph 21, Microsoft commits to make adjustments to the Choice Screen within the scope of these Commitments upon the Commission's request and where proportionate and necessary in order to ensure the effective implementation of these Commitments.
- (23) If for any good cause the use of a usage share source listed in Annex D is no longer appropriate Microsoft shall modify the usage share sources listed in Annex D upon a request by the Commission or on its own initiative in agreement with the Commission. If the Commission and Microsoft do not agree on the appropriateness

of the usage share sources listed in Annex D, the Commission will provide Microsoft with the source to use. Any change in the Choice Screen resulting from such modification will be implemented by Microsoft within two months after the modification came into effect.

5. DEFINITIONS

“*ClickOnce functionality*” means Microsoft’s Windows deployment technology that allows developers to create self-updating Windows-based applications that can be installed and run with minimal user interaction, as described at [http://msdn.microsoft.com/en-us/library/142dbbz4\(VS.80\).aspx](http://msdn.microsoft.com/en-us/library/142dbbz4(VS.80).aspx).

“*Consideration*” is the value provided by a party entering into contractual obligations and includes 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*” means 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, and their successors as well as any other Microsoft web browsers released in the future irrespective of the name or trademark they are marketed under (including Service Packs and Updates thereto).

“*Final Release*” means a generally available version of a software product, *i.e.* one that is no longer being tested in alpha or beta stage.

“*Microsoft’s PC Productivity Applications*” means 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)).

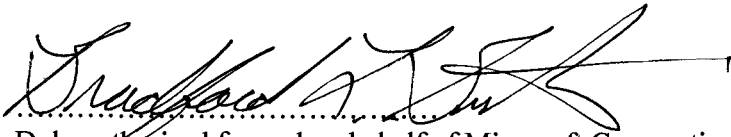
“*OEM*” means an original equipment manufacturer of personal computers.

“*Title Bar*” means the bar at the top of the web browser window which only contains the following items: the web browser icon, the title of the web browser window, the minimize button, the maximize button and the close button.

“*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”) means 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.



Duly authorised for and on behalf of Microsoft Corporation

Bradford L. Smith

.....
Name

Senior Vice President, General Counsel,
Microsoft Corporation

.....
Position

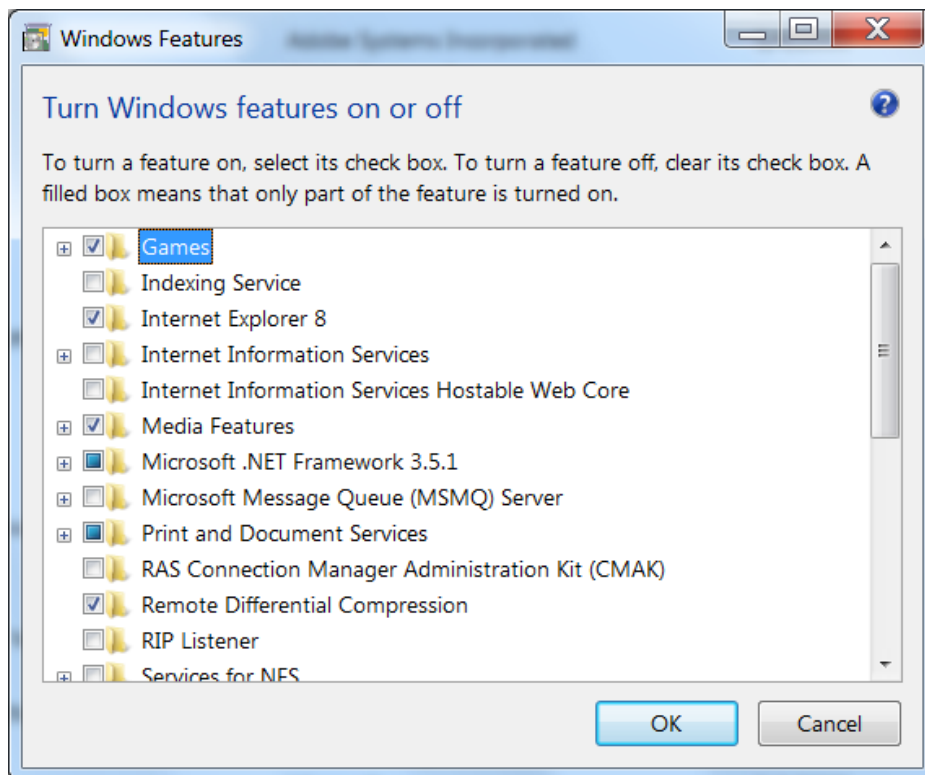
December 1, 2009

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Date

ANNEX A

Paragraph 1 of these Commitments describes Microsoft's obligation to provide a means to enable OEMs and users to turn Internet Explorer on and off. This annex describes how this obligation will be satisfied in Windows 7.

Windows 7 includes a Control Panel feature called "Turn Windows features on or off." OEMs and computer users (and administrators) may use this feature to turn Internet Explorer on or off. Here is a screenshot of this feature, showing Internet Explorer turned on.



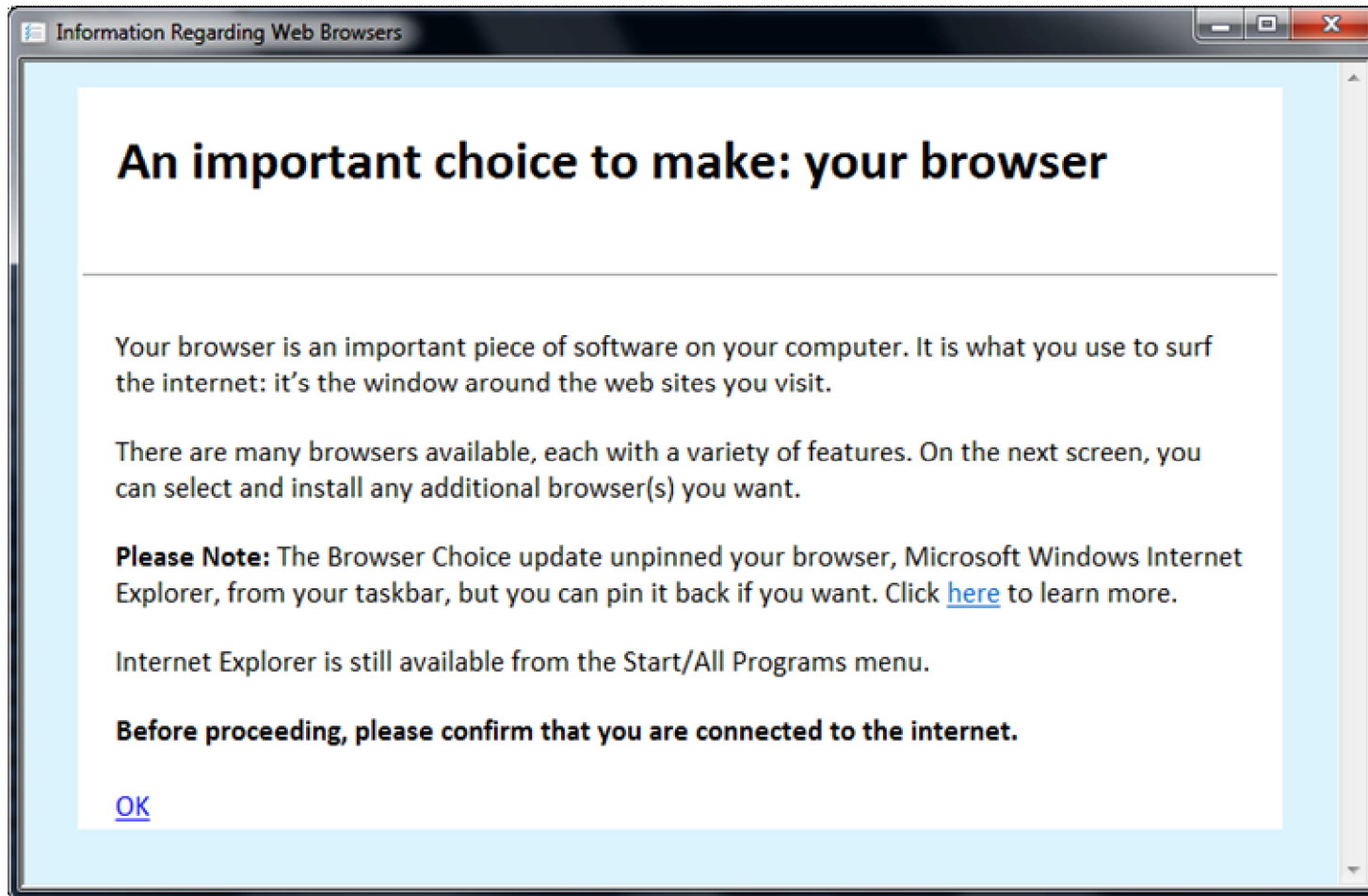
A user can turn Internet Explorer off by unchecking the box. (OEMs will have software tools to do so.) If Internet Explorer is turned off, it is not available for use. As implemented in Windows 7, this means that certain files that are essential to the operation of Internet Explorer (without which it cannot run) are not loaded by the operating system and thus not available to users on the computer. These files, which include the main Internet Explorer executable, the browser frame window and associated menus, are not available to other programs (or other parts of Windows) either, and thus they cannot be called upon in any scenario. This means that Internet Explorer cannot be launched for any reason, even if no other

browser is available on the system. Internet Explorer can be launched only if the user subsequently decides to turn it back on (by re-checking the appropriate box, as shown above).

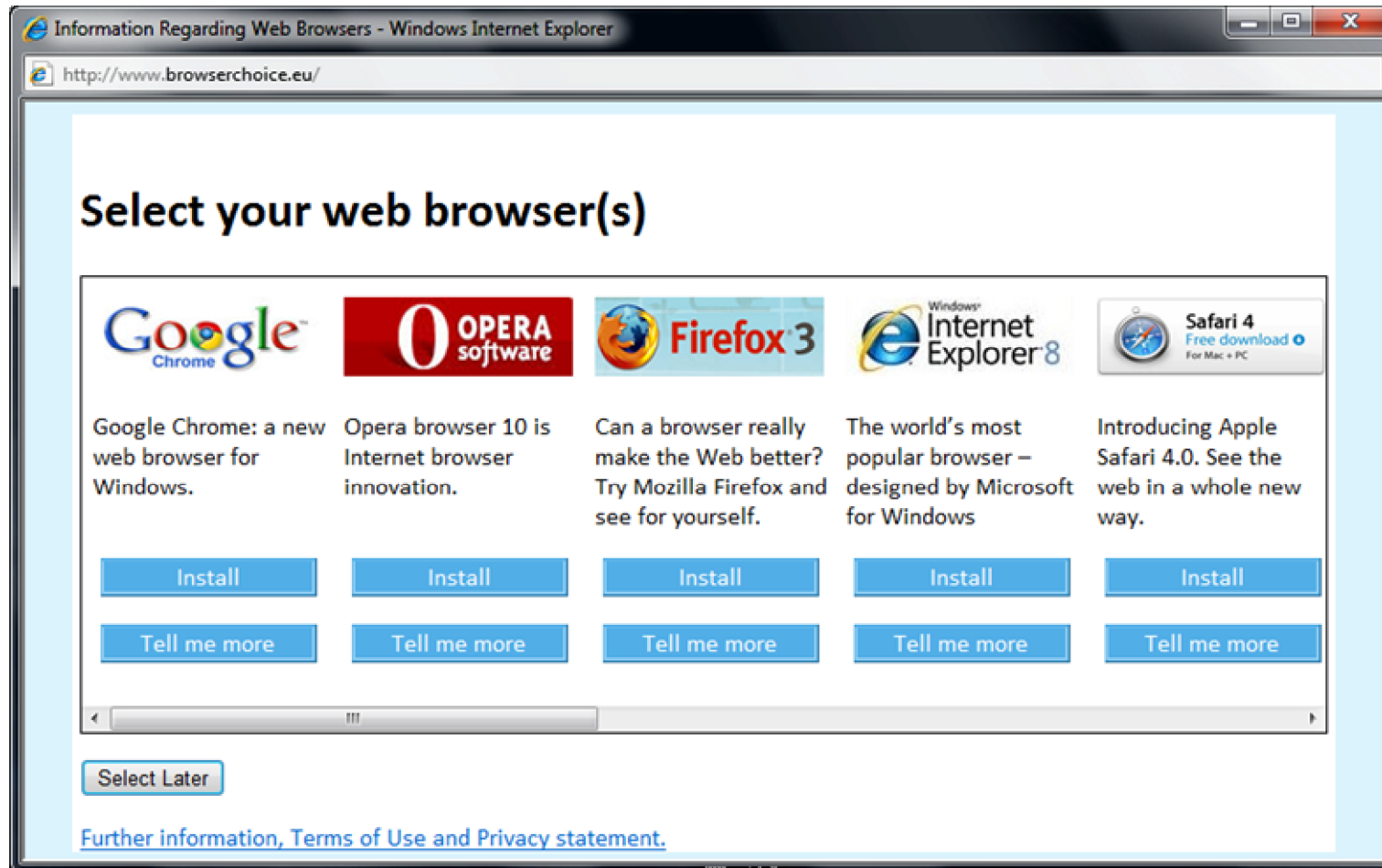
The Internet Explorer files referred to above are removed to a separate storage location as a backup copy so that a user can turn Internet Explorer back on, if the user wishes to do so. If the user turns Internet Explorer on, the files are restored to the operating system.

When Internet Explorer is turned off using this feature there is minimal impact on third-part programs (and other parts of Windows itself) that call upon Internet Explorer APIs. This is because the Internet Explorer files that provide functionality to third parties and other parts of Windows through APIs are left intact when Internet Explorer is turned off.

Annex B



Annex C



Browser order presented randomly

ANNEX D

List of the data sources referred to in paragraph 14

ComScore

NetApplications

StatCounter