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THE MICROSOFT DECISION:
COMMENT FROM THE CENTRE FOR ECONOMIC PERFORMANCE

Today’s dismissal of Microsoft’s appeal against the European Commission by the European Court of First Instance is a landmark decision for competition policy and the future of the technology sector.

The court essentially upheld the Commission’s 2004 ruling that Microsoft had abused its dominant market position in two ways:

• First, by illegally bundling Windows Media Player into its ubiquitous Windows operating system, it had driven rival media player firms out of the market.

• Second, by refusing to provide critical technical information about Windows, it had severely disadvantaged rival manufacturers who needed this information to make their server operating systems run smoothly with Windows-dominated personal computer operating systems.

A detailed analysis of these issues is available in the Summer 2007 issue of CentrePiece, the magazine of the Centre for Economic Performance (CEP):

http://cep.lse.ac.uk/centrepiece/v12i1/genakos_kuhn_vanreenen.pdf

Co-author Dr Christos Genakos, a CEP research associate, comments on the outcome of the appeal:

‘Perhaps the irony of today’s ruling is that, despite the heavy fine imposed (497m euros), it’s probably too late to influence competition in any of these two markets: Microsoft has cemented its dominant position and has even settled some of the disputes with rivals.’

‘The importance of the court’s decision, however, lies in its future consequences.

• First, forcing Microsoft to unbundle its Media Player and share information regarding the efficient operability of Windows with other products aims at protecting the incentives for all companies to innovate by maintaining an even-level competition field. Protecting new entrants and fostering innovation is critical for the evolution of the technology sector and the productivity of the whole economy.

• Second, the Commission’s carefully argued case sets an important legal precedent that will deter future anti-competitive exclusionary practices by dominant firms in any industry.’

‘The Commission has been much criticised during the last few years for its use of economic (foreclosure) theory in merger cases, with many decisions severely criticised or even overturned.’

‘Today’s court ruling re-established the credibility of EU’s competition policy and proves decisively that there is scope for intervention even in fast-evolving industries when there is careful application of economic arguments and thorough examination of the effects of the remedies on innovation.’

‘Innovation was at the heart of this decision. The Commission decided (and the Court has upheld) that Microsoft used its monopoly power to control new markets and exclude rivals. They did this by restricting the ability of computers to be compatible which other – this was bad for consumers and bad for innovation.’

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Notes for Editors
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