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## EU Commission imposes an unprecedented fine on Microsoft

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Competition

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**Tremendous attention that has recently been focused on the possible fining of the Microsoft Corporation by the EU Commission has reached its climax on 6 March 2013 in Brussels, when the Commission imposed a new €561 million fine on Microsoft.**

Namely, Microsoft failed to comply with its commitments imposed by Commission Decision of 16 December 2009 (Case COMP/C-3/39.530 – Microsoft (tying)) by which Microsoft was legally committed to offer the European users of Windows a choice among different web browsers, rather than defaulting to Microsoft's Explorer browser. The abovementioned commitments reflected the Commission's concerns that Microsoft may have tied its web browser Internet Explorer to the Windows PC operating system in breach of EU rules on abuse of dominant market position (Article 102 of the Treaty on the Functioning of the European Union – TFEU).

Having in mind that Microsoft Windows is dominant in the world's personal computer market with over 92% market share and that almost every other PC buyer chooses Windows operating system products as the most recognised and safest products in the computing platform market, in 2009 the Commission expressed its preliminary view on the issue in the Statement of Objections. Namely, the Commission stated that competition was distorted by Microsoft via its practice of tying the Internet Explorer to Windows and that this resulted in an artificial distribution advantage for Microsoft. Furthermore, the Commission's preliminary view was that this practice of tying hindered innovation in the market and created artificial incentives for software developers and content providers to design their products or web sites primarily for Internet Explorer.

In response to this, as compromise to meet the Commission's concerns expressed in its preliminary assessment, Microsoft proposed commitments that consisted of the obligation to distribute a browser choice screen to users enabling them to easily choose their preferred web browser, emphasising that the proposed commitments do not mean that Microsoft agrees with the Commission's objection, expressed in the Statement of Objections, that it engaged in abusive conduct contrary to Article 102 of the TFEU or to any other aspect of EU competition law.

On 16 December 2009 the Commission rendered a Decision by which it accepted commitments offered by Microsoft, which legally bound Microsoft until 2014, and which stipulated that if Microsoft were to break its commitments the Commission would impose a fine of up to 10% of Microsoft's total annual turnover without having to prove any violation of EU antitrust rules.

Microsoft eventually did break its commitments and this is what caused the Commission to render its Decision on 6 March 2013 including the enormous fine, as it became clear that Microsoft has not and will not comply with the commitment to roll out the browser choice screen.

This is the first time that the Commission has had to fine a company for non-compliance with commitments decision and it is surely an unprecedented sanction that will act as a warning to other companies involved in EU antitrust disputes.