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COMPETITION LAW

- ***Microsoft fined record €900m for further failure to comply with 2004 competition law ruling...***

Microsoft has been fined a further €899m – a record for a single fine - for failure to comply with a 2004 competition law ruling by the European Commission. In 2004, the European Commission had fined the software giant €497m for abusing its dominant position, contrary to Article 82 of the EC Treaty. That decision was recently upheld by the European Court of First Instance. The Commission had agreed with two different complaints – one was that Microsoft had withheld vital information about Windows from makers of server software, thereby gaining an unfair advantage over them for its own server software products; the other was that it unfairly bundled (or tied) its Media Player software into Windows, which had the effect of excluding competitors from selling competing products. The Commission then ordered Microsoft to share complete and accurate information on reasonable and non-discriminatory terms in a way that would enable makers of server operating systems to interoperate with the Windows operating system.

In July 2006, Microsoft was fined a further €280m for failing to provide complete and accurate interoperability information since the 2004 ruling. The Commission's latest fine relates to Microsoft's failure even after that 2006 ruling to provide the information on reasonable and non-discriminatory terms by charging prohibitive royalty rates. The Commission considered that Microsoft has substantially complied with the ruling since October 2007. This latest fine brings Microsoft's total fines from the first ruling to €1.67 billion.

Neelie Kroes - the European Commission's competition commissioner – says: 'Microsoft's behaviour did not just harm a few individuals or a handful of big companies...directly and indirectly this had negative effects on millions of offices in companies and governments around the world.' She went on to say: 'Microsoft was the first company in 50 years of EU competition policy that the Commission has had to fine for failure to comply with an antitrust decision.'

The story does not end there, though. The European Commission has issued new proceedings against Microsoft in January this year. It alleges that Microsoft unfairly tied Internet Explorer – Microsoft's browser that is used by 80% of the market – to Windows. In addition, there have been complaints that Microsoft was not following web standards to enable interoperability with its systems.

- ***National Grid finally feels green after receiving record Ofgem competition fine for stopping supply of energy-saving meters...***

The National Grid has been fined £42m by Ofgem for abusing its dominant position. The UK's gas and power infrastructure operator was penalised after signing deals with five out of the biggest six energy companies which penalised them if they replaced more than a small number of meters, thereby slowing down the introduction of smart meters and meters made by people other than the National Grid. Ofgem said it had imposed its largest ever fine in this case due to the 'serious breach of competition law.'

- ***European Court increases the Commission's competition law fine for the first time following appeal from the wrongdoer – BASF v Commission...***

In 2004, the European Commission fined Akzo, BASF and UCB several million euros for participating in a cartel involving price fixing and market sharing in the choline chloride market. The parties appealed the decision on a number of grounds. The appeal has now resulted in the European Court of First Instance actually increasing BASF's fine on the basis that the Commission had not taken into account the full duration of the parties' conduct. This is the first time that a European Court has increased a competition law fine imposed by the Commission. This shows that appealing against the regulator's decisions may actually worsen the sanctions.

- ***OFT introduces snitches' charter by offering cash rewards for giving information on cartels...***

The Office of Fair Trading – the body in charge of enforcing competition law in the UK – has announced that it is offering rewards of up to £100,000 to people who inform on cartels. The reward will be paid only for information that is accurate, verifiable and proves useful. Companies can be fined up to 10% of their annual turnover, and individuals can be imprisoned for up to five years (and fined), for participating in cartels. The OFT's move follows on from HM Revenue & Customs' recent payment of £100,000 for bank details of Britons in Liechtenstein who may have been linked to a big tax evasion scheme. The OFT believes that cash incentives are necessary to encourage people with information on hard core cartel activity to come forward. However, the OFT has been accused of seeking to encourage people involved in the unlawful activity to make a further profit out of it.

- ***UK airline passengers win class action settlement of damages for customers who overpaid for fuel surcharges...***

A US law firm has won US\$200m in damages on behalf of 8 million passengers who had purchased airline tickets from British Airways or Virgin Atlantic between August 2004 and March 2006. Of that figure, approximately three-quarters has been set aside to compensate purchasers in the UK of flights of over seven hours. The compensation relates to overpayments for tickets as a result of the airlines' agreement to fix the prices of fuel surcharges. The airlines' action had breached both US and EU competition law. British Airways had previously been fined US\$300m by the US's Department of Justice and £120m by the UK's Office of Fair Trading for the breaches. Virgin had escaped without a fine after having been given immunity for whistle-blowing. However, it did not fair so well with the customer compensation claim, where the whistle-blowing immunity did not apply. The refunds will work out at about £10 per person per flight. The settlement between the law firm and the airlines is subject to approval by the US courts.

This comes hot on the heels of *Which?*'s ground-breaking class action settlement in the replica kit case, as reported in February 2008's Upload. For more on that case, please click here: <http://www.upload-it.com/editArticle.aspx?ID=2445>.

- ***High Court judge accuses OFT of 'public relations exercises' and engaging in 'sensationalist publicity' over supermarket milk price-fixing allegations...***

Mr Justice Davis, a High Court judge, has criticised the Office of Fair Trading – the UK's competition law regulator – for having engaged in 'public relations exercises' and trying to attract 'sensationalist publicity' over the way it has handled the investigations into the alleged price fixing of milk by supermarkets. The judge has granted Morrisons permission to seek judicial review over the way the OFT has handled the investigation. Morrisons has also instigated a libel action because of the

