

The findings of the Microsoft case

December 7, 2005

Korea Fair Trade Commission

On Wednesday, December 7, 2005, the Korea Fair Trade Commission(hereafter the "KFTC") has reached upon a decision to order Microsoft Corporation and Microsoft Korea, *inter alia*, to unbundle the tied product, including Windows Media Player, and to impose surcharge of approximately 33 billion won(approximately 31 million US dollars) for violation of the Monopoly Regulation and Fair Trade Act(hereafter the "MRFTA"), including abuse of market dominant position.

The KFTC found the following practices by the Microsoft to be violative of the MRFTA.

First, tying Windows Media Service to the Windows Server Operating System, where Microsoft has market dominance.

Second, tying Windows Media Player to the Windows PC Operating System, where Microsoft has monopoly power.

Third, tying instant messaging programme to the Windows PC Operating System, where Microsoft has monopoly power.

The KFTC found such tying practices liable because they constitute abuse of market dominant position and unfair trade practices under the MRFTA. The KFTC found that the tying practices by the Microsoft proved to have eliminated competition and exacerbate monopolization of tied product market including streaming media server, streaming media player and instant messenger. Such practices raised entry barrier of the tying product market, namely the PC Server Operating System and PC Operating System, which led to restriction of market competition and obstruction of consumer welfare.

The ground of the KFTC's decision which found Microsoft's tying

violative are as follows;

First, by tying Windows Media Service to the Windows Server Operating System, a product which Microsoft had 78% market share, Microsoft was able to leverage its dominant power of the PC server operating system market to the streaming media server market, as a result monopolizing it.

Domestic streaming media server market, that had been almost fully preoccupied by RealNetworks and domestic venture companies, tipped over to Microsoft which has more than 90% market share.

Second, by tying Windows Media Player and Microsoft's messenger to the Windows PC Operating System, a product in which the Microsoft had 99% market share, Microsoft was able to shift its monopoly to the streaming media player and instant messenger market. As a result, Microsoft restricted competition in the tied product market, which previously had been held by Microsoft's competitors.

In December 2000, right after Microsoft's tying of the Windows Media Player, Microsoft and RealNetworks had 39% and 37% of streaming media player market in Korea, respectively. Recently, however, the market share of the Microsoft has increased to over 60%, whereas that of the RealNetworks has shrunk to 5%.

In the instant messenger market, local instant messaging service companies, which had occupied the market, began to lose market share right after Microsoft tied messaging programme to Windows PC Operating System. As a consequence, in April 2004, Microsoft was able to take 65.2% of the instant messenger market, leaving Daum Messenger with only 5.3% of market share. In June 2005, Nate-On Messenger had 65.5% of market share, but Microsoft's messenger still retained 50.9% of the market, with

the market share of other messaging services continuing to fall.

Third, those tying practices by Microsoft led to increased supply of Windows Media Service, Windows Media Player and other applications that complimented Windows Media Technology. This, in turn, led to raising entry barrier for the PC Server Operating System and PC Operating System market, resulting in enforcing monopoly power of the Microsoft in each operating system market.

For the reasons given above, the KFTC found the three respective tying practices by Microsoft to be liable, as violating Article 3-2 of the MRFTA, which prohibited market-dominant firm from engaging in "act unreasonably interfering with the business activities of other businesses" and "act unfairly excluding competitors or substantially harm consumer benefit".

For the above violations by the Microsoft, the KFTC decided to impose following remedies.

For tying of Windows Media Service, Microsoft was obliged to unbundle Windows Media Service from Windows Server Operating System, within 180 days after the decision.

For tying of Windows Media Player and instant messenger, following remedies have been imposed.

First, Microsoft is required to offer two versions of Windows PC Operating System, within 180 days after the decision.

One version will be stripped of Windows Media Player and instant messenger. Another version will be newly installed with "Media Player

Centre" and "Messenger Centre" that will contain links to web-pages that allow consumers to download competing media players and instant messengers, so that competing softwares can be equally installed into Windows PC Operating System.

Second, for Windows PC Operating Systems already sold and currently in use by consumers at the time of decision, Microsoft is required to provide users with "Media Player Centre" and "Messenger Centre" through CDs or internet updates.

In this case, the specifics such as competitive products to be included in the "Media Player Centre" and "Messenger Centre" will be determined by the KFTC after consulting with the Supervisory Board.

To ensure effective compliance with the decision, the KFTC will appoint the Supervisory Board of three persons. The KFTC, Microsoft and the Minister of Information and Communication will each recommend one member of the Supervisory Board. The Supervisory Board will be endowed with authority to determine the specifics of the remedy and oversee compliance by the Microsoft. All costs involved with the Supervisory Board will be borne by Microsoft.

The remedy will remain effective for 10 years and after 5 years, Microsoft will have an opportunity each year to request KFTC to review the remedy, accounting for changing market environment.

In addition to the above mentioned remedies, a total of 27.92 billion won of surcharge has been imposed on Microsoft Corporation and Microsoft Korea Ltd., 22.92 billion won on the former and 5 billion won on the latter. Surcharge corresponding to 2005 revenue will be imposed later, as the revenue of 2005 was not available as of the date of the decision.

Once Microsoft reports revenue data for 2005, the KFTC will determine and impose surcharge corresponding to year 2005. It is estimated that the total surcharge including the amount for 2005 will be approximately 33 billion won.

The remedies imposed are expected to bring positive effects in many ways.

First, this decision will allow both digital media software and instant messaging businesses to compete on the merits, i.e. by improved technology service, on the level playing field with Microsoft, and provide consumer with wider array of choice, so both businesses and consumers as to enjoy the fruits of competition.

Second, this decision will restore competition in the previously distorted markets, including respective markets for PC operating system, server operating system, streaming media server, streaming media player, and instant messenger. It is expected that the decision will serve as an impetus for domestic software industry, which has been behind in comparison to the hardware industry, to develop further. The KFTC urges the software businesses, both local and abroad, to recognize again that the passage for profit making lies in innovation and maximization of consumer benefits, and accordingly take efforts for development through fair competition.

On the other hand, the possibility that certain consumers and related businesses may temporarily be inconvenienced cannot be ruled out. Nevertheless, if there is to be any minor inconvenience, it is expected to be short term. Therefore, consumers are asked to persevere such inconvenience and consider it as a way to participate in remedying the harm of monopoly, promoting competition and developing software industry.

Finally, Microsoft, as a largest software business in the world, is urged to bear in mind that its market position asks for a corresponding responsibility. Accordingly, the KFTC requests Microsoft to exert efforts so that its customers will not be inconvenienced and their satisfaction should be increased.