Department of Justice

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**ASSISTANT ATTORNEY GENERAL FOR ANTITRUST,
R. HEWITT PATE, ISSUES STATEMENT ON
THE EC'S DECISION IN ITS MICROSOFT INVESTIGATION**

WASHINGTON, D.C. -- R. Hewitt Pate, Assistant Attorney General for Antitrust, issued the following statement today after the European Commission announced its order that Microsoft disclose certain information to competitors, offer for sale a version of its Windows Operating System that does not contain the Windows Media Player, and pay a fine of 497 million euros (about $613 million):

"The United States filed a complaint against Microsoft in 1998, alleging that Microsoft had restrained competition in violation of U.S. antitrust laws. A lengthy trial and appeal confirmed that Microsoft had violated the Sherman Act, though the court of appeals rejected the breakup remedy the U.S. had advocated and disapproved certain aspects of the district court's theory of liability. Following the remand of the case, the United States reached a settlement, embodied in a Final Judgment, which was thoroughly reviewed and approved by the district court.

"The United States' Final Judgment provides clear and effective protection for competition and consumers by preventing affirmative misconduct by Microsoft that would inhibit competition in 'middleware' programs, such as the web browser that was the subject of the United States' lawsuit and the media player that is the subject of the EC's action today. The Final Judgment, for example, prohibits the use by Microsoft of exclusive contracts or other provisions that inhibit competition, prohibits anticompetitive manipulation of icons and default settings, and requires Microsoft to provide information to allow 'interoperability' of competitors' software. The United States continues to be active in its enforcement of Microsoft's compliance with the Final Judgment, and this work has resulted in substantial changes to Microsoft's business practices.

"The EC has today pursued a different enforcement approach by imposing a 'code removal' remedy to resolve its media player concerns. The U.S. experience tells us that the best antitrust remedies eliminate impediments to the healthy functioning of competitive markets without hindering successful competitors or imposing burdens on third parties, which may result from the EC's remedy. A requirement of 'code removal' was not at any time — including during the period when the U.S. was seeking a breakup of Microsoft prior to the rejection of that remedy by the court of appeals — part of the United States' proposed remedy.

"Imposing antitrust liability on the basis of product enhancements and imposing 'code removal' remedies may produce unintended consequences. Sound antitrust policy must avoid chilling innovation and competition even by 'dominant' companies. A contrary approach risks protecting competitors, not competition, in ways that may ultimately harm innovation and the consumers that benefit from it. It is significant that the U.S. district court considered and rejected a similar remedy in the U.S. litigation.

"While the imposition of a civil fine is a customary and accepted aspect of EC antitrust enforcement, it is unfortunate that the largest antitrust fine ever levied will now be imposed in a case of unilateral competitive conduct, the most ambiguous and controversial area of antitrust enforcement. For this fine to surpass even the fines levied against members of the most notorious price fixing cartels may send an unfortunate message about the appropriate hierarchy of enforcement priorities.

"With respect to the EC's 'interoperability' remedy, which requires Microsoft to license technologies used by Microsoft server software to communicate with other Microsoft software on a network, there is considerably more overlap with the United States' approach. Like the U.S. decree, the EC decision appears to focus on providing competing software developers with the opportunity to build products that communicate and interoperate with Windows-based PCs. The details of the EC's requirements on this point remain to be seen, and we look forward to examining them.

"Notwithstanding today's divergence, it is important to emphasize the overall strong and positive relationship between the U.S. and the EC on matters of competition policy. The continued success of this working relationship is particularly important in the context of global markets, where the sale and use of products stretch across borders. The Justice Department will continue to work constructively with the EC to develop sound antitrust enforcement policies that benefit consumers on both sides of the Atlantic."

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