

## **Eversheds LLP Europe in Brief**

### **BREAKING NEWS - 22 December 2004**

Microsoft's application for suspension of EU decision reported to have been dismissed

A decision is due to be announced today regarding Microsoft's appeal against a crucial order made against it by the European Commission.

Earlier this year, the European Commission had concluded that Microsoft had abused its dominant position in the market for operating software by making its media player an integral part of Windows, thereby foreclosing the market to competing producers of media players. The company has appealed this decision at the European Court of First Instance, but such an appeal will take years to be decided.

In the meantime, however, the European Commission imposed an order on Microsoft to offer a version of its Windows operating system which does not contain the media player. Furthermore, the company must give competitors access to enough information about its Windows software to enable competitors to make their software compatible. It was this order which Microsoft was trying to get overturned in the current case, arguing that the resulting damage to the company would be irreparable and would defeat the purpose of the substantive appeal.

First press reports have appeared on the Bloomberg online news service stating that the decision has gone against Microsoft. The practical effect of this, if confirmed, would be that Microsoft is forced to change its product and disclose its secrets now, despite the fact that the appeal against the original Commission decision is not finally decided and could be overturned if the European Court of First Instance in a couple of years. The financial impact of this decision could be considerable, particularly as the effects of giving access to the makeup of the software cannot be reversed.

Europe in Brief will keep you informed of all further developments.

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