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EU SEEKS TO MICROMANAGE INNOVATION, BUSINESS DECISIONS THROUGH FINES

The Washington Legal Foundation (WLF) today criticized the European Union Competition Commissioner for threatening U.S. software manufacturer Microsoft with unprecedented fines for what the Commission felt were improperly high prices for licensing of Microsoft technology.

These fines, which would be issued on top of the almost \$1 billion in penalties the company has already paid in relation to the Commission's antitrust action over the last three years, could amount to \$4 million a day, retroactive to December 2005. The Commission objects to the prices Microsoft is charging for access to technology protocols which would allow licensees' software to interface with the Windows operating system. As pointed out by the company's general counsel in a statement last week, Microsoft has obtained 36 U.S. and European patents for the technology at issue, with another 37 pending. The fines come as the Commission and the company await a ruling from the European Court of First Instance on Microsoft's appeal of the EU's March 2004 fine and regulatory order.

"Anyone who does business in Europe should be deeply troubled by the Competition Commission's belief that it should judge what technology is 'innovative' and that it, and not the free market, should determine the financial worth of that innovation," said Glenn G. Lammi, Chief Counsel of WLF's Legal Studies Division. "The Commission seems determined to force Microsoft, a company which invests millions in developing intellectual property and supports its innovation through licensing, to embrace an 'open-source' approach to its technology. If Microsoft wants to pursue interoperability through an open-source, no cost business model, it should be allowed to make that choice, and not have it foisted upon them through antitrust enforcement," Lammi added.

WLF expresses its hope that the European Court of First Instance's ruling will restore businesses' and consumers' confidence in the European competition laws and the concept of due process. "Failure to do so will only embolden European bureaucrats to deal even more harshly with the next business they choose to make an example," WLF's Lammi concluded.

Washington Legal Foundation, a national, non-profit public interest law and policy center, has opposed government abuse of the legal system for 30 years. WLF's Litigation Department and Legal Studies Division have played an integral role in explaining the pitfalls of unreasonable government litigation and regulatory enforcement to policy makers and the public. For further information, contact Glenn Lammi at (202) 588-0302.