C/2023/995

17.11.2023

Summary of Commission Decision

of 22 September 2023

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union 54 of the EEA Agreement

(Case AT.37990 - INTEL)

(notified under document C(2023)5914 final)

(Only the English text is authentic)

(Text with EEA relevance)

(C/2023/995)

On 22 September 2023, the Commission adopted a decision relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ([1]), the Commission herewith publishes the name of the party and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

1. INTRODUCTION

(1) On 22 September 2023, the Commission adopted a Decision relating to a single and continuous infringement of Article 102 of the Treaty on the Functioning of the European Union (the 'Treaty') and Article 54 of the Agreement on the European Economic Area (the 'EEA Agreement').

(2) The Decision is addressed to Intel Corporation ('Intel'). The infringement consisted in unlawful payments made by Intel to three computer manufacturers (i.e., HP, Acer and Lenovo) to halt or delay the launch of specific products containing the main competitor's x86 Central Processing Units ('CPUs') and to limit the sales channels available to these products (so-called 'naked restrictions'). These restrictions took place between November 2002 and December 2006.

(3) This Decision concerns the partial re-imposition of a fine on Intel after the original Decision from 13 May 2009 was partially annulled by the General Court in 2022.

2. PROCEDURE

(4) On 13 May 2009, the Commission adopted a Decision imposing a fine on Intel Corporation ('Intel') for having abused its dominant position on the market for x86 CPUs, thus infringing Article 102 TFEU and Article 54 of the EEA Agreement (the '2009 Decision'). The 2009 Decision found that Intel had committed a single and continuous infringement by implementing a strategy aimed at foreclosing competitors from the market for x86 CPUs and that this strategy consisted in two types of conduct vis-à-vis its customers (original equipment manufacturers, or 'OEMs'): award of conditional rebates and the naked restrictions. For this infringement, the Commission imposed on Intel a fine of EUR 1 060 000 000 under Article 23(2) of Regulation (EC) No 1/2003.

(5) Intel appealed the 2009 Decision to the General Court, which by judgment of 12 June 2014 in Case T-286/09 dismissed the action in its entirety. Intel appealed this judgment to the Court of Justice, which on 6 September 2017 referred the case back to the General Court for it to review whether the conditional rebates are capable of restricting competition in view of factual and economic evidence.

(6) On 26 January 2022, the General Court delivered its judgment in Case T-286/09 RENV, in which it annulled the 2009 Decision's finding of an infringement related to the conditional rebates. At the same time, it dismissed Intel's claim that the payments to HP, Acer and Lenovo (the naked restrictions) should be subject to the same legal test and

([1]) OJ L 1, 4.1.2003, p. 1. Regulation as amended by Regulation (EC) No 411/2004 (OJ L 68, 6.3.2004, p. 1).

principles as the rebates and therefore upheld the single and continuous infringement insofar as it consisted in the naked restrictions. Since the General Court was not in a position to establish the amount of the fine relating to the naked restrictions only, it annulled the entire fine.

(7) By letter of 2 May 2023, the Commission informed Intel that it intended to adopt a new decision imposing a fine on Intel pursuant to Article 23(2) of Council Regulation No 1/2003, for having committed a single and continuous infringement consisting of the naked restrictions as set out in the 2009 Decision and confirmed by the Court of Justice of the European Union. The Commission also informed Intel about the methodology it intended to apply to calculate the fine. Intel replied to the Letter on 26 June 2023.

(8) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 21 September 2023. On 22 September 2023, the Hearing Officer issued a final report in this case.

(9) This Decision imposing a fine under Article 23(2) of Regulation (EC) No 1/2003 seeks to remedy the situation whereby the Commission's finding of an infringement with regard to the naked restrictions remains in effect and has *res judicata value*, while the fine for that infringement has been annulled.

3. **FINES**

(10) For the calculation of the fine, the Commission relies on the assessment of the facts established in the 2009 Decision and upheld in the judicial proceedings. The Decision is addressed to the same legal entity as the 2009 Decision, namely Intel Corporation, and does not contain any new objections or evidence.

(11) As set out in Recitals (1773) to (1777) of the 2009 Decision, the value of sales taken into account for the purpose of calculating the basic amount of the fine corresponds to the yearly value of x86 CPU sales which Intel invoiced to companies located in the EEA.

(12) In light of the fact that the naked restrictions covered payments conditional on the OEMs cancelling, limiting or delaying the sale of desktops and notebooks based on AMD x86 CPUs, only the value of sales related to desktops and notebooks is considered for the purposes of calculating the basic amount of the fine. Therefore, unlike the case in the 2009 Decision, the Commission is not relying on the value of sales of x86 CPUs related to servers.

(13) Since the last naked restriction ended in December 2006, the Commission takes into account the value of sales in 2006, in accordance with the principles laid down in the Commission's Guidelines on Fines.

(14) As regards gravity, although the serious nature of the infringement, the size and characteristics of the market as well as the geographic scope of the infringement all point to maintaining the original gravity percentage of 5 % in the 2009 Decision, the Commission considers that the naked restrictions had a more limited scope and intensity than the rebates. They concerned three OEMs and focused on specific products or lines of products or sales channels as opposed to entire business segments. Therefore, the Commission applies a gravity percentage of 4 % when calculating the basic amount of the fine.

(15) The naked restrictions lasted from November 2002 to December 2006. Since the first two naked restrictions terminated before the last naked restriction, the overall duration for the purposes of calculating the fine is reduced by the period between the end of the first two naked restrictions and the start of the last naked restriction. This corresponds to the number of years between November 2002 to May 2005 and between June 2006 and December 2006.

(16) No facts have been established in the 2009 Decision that would justify the existence of any mitigating or aggravating circumstances for Intel. The Commission finds no reasons to depart from this stance in this Decision. Nothing suggests that the length of the proceedings has been unreasonable, all circumstances taken into consideration, including the fact that the proceedings to date are the result of an intense series of administrative and judicial actions.

(17) The Commission imposed a fine of EUR 376 358 000 on Intel. This fine does not exceed the 10 % turnover limit under Article 23(2) of Regulation (EC) No 1/2003.