



Momentum

EU and Competition

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COMMISSION ISSUES DECISION ON INTEL AND APPLIES PENALTY OF OVER ONE THOUSAND MILLION EUROS FOR ABUSE OF DOMINANT POSITION: THE RESTRICTIONS ON PRICES AND THE DEFENCE OF COMPETITION

It was finally revealed, on 21 September, the non-confidential version of the Commission's decision that, on 13 May 2009, applied to Intel a fine of € 1 060 000 000 (one thousand sixty millions euros) for abuse of dominant position.

In cause was the application of a policy for developing customers loyalty by Intel (with the dimension of *HP, Dell, Nec, Acer, Lenovo* or, in the case of the distribution sector, of big distributors), imposing them exclusive purchasing duties and menacing with retaliations if they acquired products of competitors manufacturers (in the case of manufacturers) or sold products of competitors producers (in the case of the major distributors of these products). However, those customers could obtain rebates.

In cause were secret practises and that generally speaking were not in the written agreements. Or, yet, what were enclosed in the written contracts was contradicted by the practises imposed by Intel.

It is a decision with important groundings for whoever acts in the businesses life.

Firstly, given the identity of national and community rules and of the fines that may be applied both to restrictive practises and to abuses of dominant position.

Secondly, for being one more example that restrictive practises, either cartels (as price fixing agreements between competitors or with enterprises placed at another level of the economic process, as independent or integrated distributors) or practises adopted by



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enterprises with dominant position, can be pursued and punished even when there are not written contracts revealing the restrictive practises.

Thirdly, that the evidence proceedings at disposal of the competition authorities, in Portugal and at the European level, particularly, include the right of unexpected inspections to the undertakings (*dawn-raids*) and even to the residences and personal computers of the administrators and the remaining staff.

Fourthly, that both can be punished, by the Community law or by the national law with fines that can go up to 10% of the total turnover in the preceding business year of the undertaking participating in the infringement (a little while ago, the Portuguese Competition Authority applied a fine over 43 millions Euros to the enterprises of PT Group and ZON Group – press release 16/2009, 2 September).

Finally, that as well as price fixing practises between competitors or between suppliers and costumers are considered extremely grievous, the same happens with practises that, adopted by undertakings holding a dominant position, have the object or the effect of excluding competitors or reducing consumer welfare. These practises are harshly punished by the competition authorities, and the “as efficient competitor analysis” test is used by the Commission to determine at what price a competitor which is “as efficient” as Intel would have to offer its product in order to compensate for the loss of any Intel rebate

A last note to point out that the complaint of such practises, even for a participant in the cartel, before the opening of the infringement procedure may allow for a fine exemption, at least for the first lenient undertaking. Other types of commitments with the competition authorities are available at the national and community applicable legislation.

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