Europe threatens new Microsoft fines

By RAF CASERT, Associated Press Writer

30 minutes ago

BRUSSELS, Belgium - The European Union escalated its trans-Atlantic fight with Microsoft Corp. on Thursday, threatening new multimillion fines against the software maker over claims it is asking rivals to pay too much for information that would help their servers work with Windows.

In response, Microsoft charged that the treatment it received from the EU is unprecedented and harmed Europe's efforts to become a thriving high-tech economy.

The EU said the software maker could face daily fines as high as 3 million euros ($4 million), and accused Microsoft of protecting its own interests by setting unreasonable prices for the "complete and accurate" documentation competitors would need to build products that interoperate with Windows PCs and servers.

In a so-called "statement of objections" released Thursday, the EU's executive Commission rejected 1,500 pages of documents Microsoft submitted to back up its pricing.

"I am therefore again obliged to take formal measures to ensure that Microsoft complies with its obligations," EU Antitrust Commissioner Neelie Kroes said in a statement.

Microsoft General Counsel Brad Smith responded that Microsoft had asked for feedback on its pricing proposals and documentation half a year ago, and only Thursday received a reply thinly veiled in a threat.

"We're disappointed that this feedback is coming six months later and in its present form," said Smith during a telephone conference. "You cannot reach an agreement if you are just talking to yourself."

He added "the findings appear to be an attempt to regulate the pricing of our intellectual
property rights on a global basis" something which would go beyond the jurisdiction of
the European Union.

This is not the first time EU regulators threatened fines to push Microsoft to comply with
its 2004 antitrust ruling, in which it found the company broke competition laws and
abused its dominant market position.

Besides the record 497 million euro ($613 million) fine it imposed at the time of the
ruling, the EU levied a 280.5 million euro ($371 million) fine last summer, saying
Microsoft did not supply complete interoperability documentation.

Microsoft has reached licensing agreements with several of the companies that originally
took issue with the software maker's practices and pricing, including Sun Microsystems
Inc. and Novell Inc.

But the company still faces pressure in Europe from open-source software companies
that want to use its technology, said Matt Rosoff, an analyst for Directions on Microsoft,
an independent research group.

"Microsoft has a lot of problems with allowing its intellectual property to be incorporated
into an open-source product," which may be part of the reason the issue has not yet
been resolved, Rosoff said in an interview.

The EU said Thursday that three years after the landmark antitrust ruling, the U.S.
software company was still using heavy-handed tactics to choke rivals in the software
sector, but did not name any specific competitors.

"This is a company which apparently does not like to have to conform with antitrust
decisions," said EU Commission spokesman Jonathan Todd.

Smith said the company has had better back-and-forth negotiations "in other capitals, in
other countries and that is what we need in Brussels if Europe is going to have an
economy that genuinely fosters technology and innovation.

Ronald Cass, chairman of the Washington-based Center for the Rule of Law, said the
EU "has taken another step toward turning successful businesses into regulated
utilities."

"The Commission's new effort, if pursued, will undermine innovation and take Europe
further away from the sort of predictable, stable, sensible legal rules that define the rule
of law," Cass said.

The EU insisted it did not want to douse innovation.

"The Commission does not want Microsoft to have to give away the fruits of its research
for free," said Todd. "Microsoft is perfectly entitled to a fair share of the results of its
innovation. However, the Commission decision does not allow Microsoft to charge for
interoperability information based on its own dominant position in the PC software
market."

The company has four weeks to reply to the Commission's preliminary finding.

Microsoft is challenging the EU's 2004 antitrust ruling — which resulted in the order to
share code and information with rivals at reasonable prices — at the EU's Court of First
Instance. A decision is expected sometime this summer.
In the meantime, said Rosoff, the Directions on Microsoft analyst, "I suspect Microsoft will lower its prices to avoid paying the fines."

AP Business Writer Jessica Mintz in Seattle contributed to this report.