



Assignment submission on

**Surprise inside Microsoft windows VISTA: Forbidding  
EULA**

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# MICROSOFT WINDOWS VISTA LICENCE AND THE LIMITATIONS FORGED THROUGH IT

## CONTENTS

Part 1: Microsoft Windows vista licence

Part-2: Limitations that are caused Due through the Licence

### Part-1

#### Microsoft licence:

This section covers the products listed below (*for products with an asterisk, also refer to section B*). It also applies to products we add under this licensing model in the Product List.

- Windows Vista Business\*
- Windows Vista Enterprise\*
- Windows Vista Ultimate\*

See the Software Assurance Addendum for additional license terms for the Enterprise and Ultimate editions.

**A. General License Terms. You have the rights below for each license you acquire.**

**1) Installation and Use Rights.** Before you use the software under a license, you must assign that license to one device (physical hardware system). That device is the "licensed device." A hardware partition or blade is considered to be a separate device.

- a) Licensed Device.** You may install one copy of the software on the licensed device. You may use the software on up to two processors on that device at one time. Except as provided in the Storage section below, you may not use the software on any other device.
- b) Number of Users.** Except as provided in the Device Connections and Other Access Technologies sections below, only one user may use the software at a time.

- c) **Use with other software.** You may not use the software's runtime and other files to run applications not running on the software.

## **II) Additional Licensing Requirements and/or Use Rights.**

- a) **Storage.** You may store one copy of the software on a storage device, such as a network server. You may use that copy to install the software on any other device to which a license has been assigned.
- b) **Device Connections.** You may allow up to 10 other devices to access the software installed on the licensed device to use File Services, Print Services, Internet Information Services, Internet Connection Sharing and Telephony Services.
- c) **Remote Access Technologies.** You may access and use the software installed on the licensed device remotely from another device using remote access technologies as follows.
  - **Remote Desktop.** The single primary user of the licensed device may access a session from any other device using Remote Desktop or similar technologies. A "session" means the experience of interacting with the software, directly or indirectly, through any combination of input, output and display peripherals. Other users may access a session from any device, using these technologies, if:
    - (1) the remote device is separately licensed to run the software; or
    - (2) the user or remote device has the appropriate Remote Desktop License (RDL).
  - **Other Access Technologies.** You may use Remote Assistance or similar technologies to share an active session.
- d) **Remote Desktop Licenses (RDLs).**
  - **Types of RDLs.** There are two types of RDLs: one for devices and one for users. Each device RDL permits one device, used by one user at a time, to access your licensed copies of the software. Each user RDL permits one user, using any device, to access your licensed copies of the software. Your Vista RDLs permit access to your licensed copies of Windows Vista and Windows XP Professional, but not later versions of the software. You may use a combination of device and user RDLs.
  - **Reassignment of RDLs.** You may:
    - (1) permanently reassign a device RDL from one device to another, or a user RDL from one user to another; or
    - (2) temporarily reassign a device RDL to a loaner device while the first device is out of service, or a user RDL to a temporary worker while

the user is absent.

- e) **Other Remote Uses.** You may allow any number of devices to access the software installed on the licensed device for purposes other than those described in the Device Connections and Remote Access Technologies sections above, such as to synchronize data between devices.
- f) **Use with Virtualization Technologies.** You may use the software installed on the licensed device within a virtual (or otherwise emulated) hardware system. If you do so:
  - You may not play or access content or use applications protected by any Microsoft digital, information or enterprise rights management technology or other Microsoft rights management services or use BitLocker.
  - We advise against playing or accessing content or using applications protected by other digital, information or enterprise rights management technology or other rights management services or using full volume disk drive encryption.
- g) **Icons, images and sounds.** While the software is running, you may use but not share its icons, images, sounds, and media.

**III) Potentially Unwanted Software.** If turned on, Windows Defender will search your computer for “spyware,” “adware” and other potentially unwanted software. If it finds potentially unwanted software, the software will ask you if you want to ignore, disable (quarantine) or remove it. Any potentially unwanted software rated “high” or “severe” will automatically be removed after scanning unless you change the default setting. Removing or disabling potentially unwanted software may result in

- other software on your computer ceasing to work, or
- your breaching a license to use other software on your computer.

By using this software, it is possible that you will also remove or disable software that is not potentially unwanted software.

#### **IV) Internet-Based Services.**

- a) **Consent for Internet-based Services.** The software features described below and in the Windows Vista Privacy Statement connect to Microsoft or service provider computer systems over the Internet. In some cases, you will not receive a separate notice when they connect. You may switch off these features or not use them. For more information about these features, see the Windows Vista Privacy Statement at [go.microsoft.com/fwlink/?linkid=20615](http://go.microsoft.com/fwlink/?linkid=20615). By using these features, you consent to the transmission of this information. Microsoft does not use it to identify or contact you.

**Computer Information.** The following features use Internet protocols,

which send to the appropriate systems computer information, such as your Internet protocol address, the type of operating system, browser and name and version of the software you are using, and the language code of the device where you installed the software. Microsoft uses this information only to make the Internet-based services available to you.

- **Windows Update Feature.** You may connect new hardware to your device. Your device may not have the drivers needed to communicate with that hardware. If so, the update feature of the software can obtain the correct driver from Microsoft and install it on your device. You can switch off this update feature.
- **Web Content Features.** Features in the software can retrieve related content from Microsoft and provide it to you. Examples of these features are clip art, templates, online training, online assistance and Appshelp. You may choose not to use these web content features.
- **Digital Certificates.** The software uses digital certificates. These digital certificates confirm the identity of Internet users sending X.509 standard encrypted information. They also can be used to digitally sign files and macros, to verify the integrity and origin of the file contents. The software retrieves certificates and updates certificate revocation lists over the Internet, when available.
- **Auto Root Update.** The Auto Root Update feature updates the list of trusted certificate authorities. You can switch off the Auto Root Update feature.
- **Windows Media Digital Rights Management.** Content owners use Windows Media digital rights management technology (WMDRM) to protect their intellectual property, including copyrights. This software and third party software use WMDRM to play and copy WMDRM-protected content. If the software fails to protect the content, content owners may ask Microsoft to revoke the software's ability to use WMDRM to play or copy protected content. Revocation does not affect other content. When you download licenses for protected content, you agree that Microsoft may include a revocation list with the licenses. Content owners may require you to upgrade WMDRM to access their content. Microsoft software that includes WMDRM will ask for your consent prior to the upgrade. If you decline an upgrade, you will not be able to access content that requires the upgrade. You may switch off WMDRM features that access the Internet. When these features are off, you can still play content for which you have a valid license.
- **Windows Media Player.** When you use Windows Media Player, it checks with Microsoft for

(1) compatible online music services in your region;

- (2) new versions of the player; and
- (3) codecs if your device does not have the correct ones for playing content.

You can switch off this last feature. For more information, go to [www.go.microsoft.com/fwlink/?linkid=44073](http://www.go.microsoft.com/fwlink/?linkid=44073).

- **Malicious Software Removal/Clean On Upgrade.** Before installation of the software, the software will check and remove certain malicious software listed at [www.support.microsoft.com/?kbid=890830](http://www.support.microsoft.com/?kbid=890830) (“Malware”) from your device. When the software checks your device for Malware, a report will be sent to Microsoft about any Malware detected or errors that occurred while the software was checking for Malware. No information that can be used to identify you is included in the report. You may disable the software’s Malware reporting functionality by following the instructions found at [www.support.microsoft.com/?kbid=890830](http://www.support.microsoft.com/?kbid=890830).
- **Network Connectivity Status Icon.** This feature determines whether a system is connected to a network by either passive monitoring of network traffic or active DNS or HTTP queries. The query only transfers standard TCP/IP or DNS information for routing purposes. You can switch off the active query feature through a registry setting.
- **Windows Time Service.** This service synchronizes with time.windows.com once a week to provide your computer with the correct time. You can turn this feature off or choose your preferred time source within the Date and Time Control Panel applet. The connection uses standard NTP protocol.
- **IPv6 Network Address Translation (NAT) Traversal service (Teredo).** This feature helps existing home Internet gateway devices transition to IPv6. IPv6 is next generation Internet protocol. It helps enable end-to-end connectivity often needed by peer-to-peer applications. To do so, each time you start up the software the Teredo client service will attempt to locate a public Teredo Internet service. It does so by sending a query over the Internet. This query only transfers standard Domain Name Service information to determine if your computer is connected to the Internet and can locate a public Teredo service. If you
  - (1) use an application (e.g. Windows Meeting Space) that needs IPv6 connectivity or
  - (2) configure your firewall to always enable IPv6 connectivity

by default standard Internet Protocol information will be sent to the Teredo service at Microsoft at regular intervals. No other information is sent to Microsoft. You can change this default to use non-Microsoft servers. You can also switch off this feature using a command line utility named “netsh”.

- b) Use of Information.** *Microsoft may use the computer information, error reports, and Malware reports to improve our software and services. We may also share it with others, such as hardware and software vendors. They may use the information to improve how their products run with Microsoft software.*
- c) Misuse of Internet-based Services.** You may not use these services in any way that could harm them or impair anyone else's use of them. You may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

## **V) Notices**

- a) Notice about the MPEG-4 Visual Standard.** This software includes MPEG-4 visual decoding technology. MPEG LA, L.L.C. requires this notice:

USE OF THIS PRODUCT IN ANY MANNER THAT COMPLIES WITH THE MPEG-4 VISUAL STANDARD IS PROHIBITED, EXCEPT FOR USE DIRECTLY RELATED TO (A) DATA OR INFORMATION (i) GENERATED BY AND OBTAINED WITHOUT CHARGE FROM A CONSUMER NOT THEREBY ENGAGED IN A BUSINESS ENTERPRISE, AND (ii) FOR PERSONAL USE ONLY; AND (B) OTHER USES SPECIFICALLY AND SEPARATELY LICENSED BY MPEG LA, L.L.C.

If you have questions about the MPEG-4 visual standard, please contact MPEG LA, L.L.C., 250 Steele Street, Suite 300, Denver, Colorado 80206; [www.mpegla.com](http://www.mpegla.com).

- b) NOTICE ABOUT THE VC-1 VISUAL STANDARD.** This software may include VC-1 visual decoding technology. MPEG LA, L.L.C. requires this notice:

THIS PRODUCT IS LICENSED UNDER THE VC-1 PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (A) ENCODE VIDEO IN COMPLIANCE WITH THE VC-1 STANDARD ("VC-1 VIDEO") OR (B) DECODE VC-1 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE VC-1 VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE.

If you have questions about the VC-1 visual standard, please contact MPEG LA, L.L.C., 250 Steele Street, Suite 300, Denver, Colorado 80206; [www.mpegla.com](http://www.mpegla.com).

- VI) Mandatory Activation.** Activation associates the use of the software with a specific device or customer. During activation, the software will send information about the software and the device to Microsoft or to a Key Management Service running on a machine which then sends it to Microsoft. This information includes the version,

language and product key of the software, the Internet protocol address of the device, *and information derived from the hardware configuration of the device*. For more information, see [go.microsoft.com/fwlink/?linkid=69497](http://go.microsoft.com/fwlink/?linkid=69497). By using the software, you consent to the transmission of this information. Before you activate, you have the right to use the version of the software installed during the installation process. Your right to use the software after the time specified in the installation process is limited unless it is activated. This is to prevent its unlicensed use. You will not be able to continue using the software after that time if you do not activate it. If the device is connected to the Internet, the software may automatically connect to Microsoft for activation. You can also activate the software manually by Internet or telephone. If you do so, Internet and telephone service charges may apply. Some changes to your computer components or the software may require you to reactivate the software. The software will remind you to activate it until you do.

## **VII) Validation.**

- a) The software will from time to time update or require download of the validation feature of the software. Validation verifies that the software has been activated and is properly licensed. Validation also permits you to use certain features of the software, or to obtain additional benefits. For more information, see <http://go.microsoft.com/fwlink/?linkid=39157>.
- b) During a validation check, the software will send information about the software and device to Microsoft. This information includes the version and product key of the software, and the Internet protocol address of the device. Microsoft does not use the information to identify or contact you. By using the software, you consent to the transmission of this information. For more information about validation and what is sent during a validation check, see <http://go.microsoft.com/fwlink/?linkid=69500>.
- c) If the software is not properly licensed, the functionality of the software may be affected. For example, you may:
  - need to reactivate the software, or
  - receive reminders to obtain a properly licensed copy of the software, or you may not be able to
  - connect to the Internet, or
  - obtain certain updates or upgrades from Microsoft.
- d) You may only obtain updates or upgrades for the software from Microsoft or authorized sources. For more information on obtaining updates from authorized sources, see <http://go.microsoft.com/fwlink/?linkid=69502>.



## **B. Exceptions and Additional Terms for Particular Products.**

### **For Windows Vista, Windows Vista K, Windows Vista KN:**

Windows Vista and Windows Vista K include Windows Media Player and related technologies identified by the Korean Fair Trade Commission (KFTC) and a link to the Windows Live Messenger Download. Windows Vista KN does not include Windows Media Player or related technologies identified by the KFTC. Windows Vista KN also does not include a link to the Windows Live Messenger Download. Please see the Microsoft Product List at <http://microsoft.com/licensing> for details about which language versions and media fulfillment options are available for each of these editions.

*Windows Vista K.* The KFTC requires that the software contain links to a Media Player Center Web site and a Messenger Center Web site which has links to third party sites to enable you to download and install third party media players and instant messaging software. The third party sites are not under the control of Microsoft, and Microsoft is not responsible for the software or content of any third party sites, any links contained in third party sites, or any changes or updates to the third party software or sites. The inclusion of any link on the Media Player Center Web site or Messenger Center Web site does not imply an endorsement by Microsoft of the third party software, the site or its contents.

*Windows Vista KN:*

*Inapplicable Windows Media Player Use Rights.* The Windows Media Digital Rights Management and Windows Media Player terms, and Notices About the MPEG-4 and VC-1 Visual Standards above do not apply when running this software.

*Notice regarding the absence of Windows Media Player.*

- You will need a media player, either from Microsoft or a third party, in order to play audio CDs or media files, organize content in a media library, create playlists, convert audio CDs to media files, create an audio CD, create personal videos, view artist and title information of media files, view album art of music files, or transfer music to personal music players.
- More information can be found at <http://go.microsoft.com/fwlink/?LinkId=70120>.

*Additional Disclaimer of Warranties.* Microsoft provides no warranty whatsoever with respect to functionality associated with either Windows Media Player, as defined by the KFTC, despite anything to the contrary in your license agreement.

### **For Windows Vista Business N:**

*Inapplicable Windows Media Player Use Rights.* The Windows Media Digital Rights Management and Windows Media Player terms, and Notices About the MPEG-4 and VC-1 Visual Standards terms above do not apply when running this software.

*Notice regarding the absence of Windows Media Player.* The software does not include Windows Media Player, as defined by the European Commission. As a result, you will need a media player, either from Microsoft or a third party, in order to play audio CDs or media files, organize content in a media library, create playlists, convert audio CDs to media files, create an audio CD, create personal videos, view artist and title information of media files, view album art of music files, or transfer music to personal music players. More information can be found at <http://go.microsoft.com/fwlink/?LinkId=70121>.

*Additional Disclaimer of Warranties.* Microsoft provides no warranty whatsoever with respect to functionality associated with Windows Media Player, as defined by the European Commission, despite anything to the contrary in your license agreement.

## Part-2

### LIMITATIONS THAT ARE CAUSED DUE TO THE LICENCE:

**Self-limiting software**, or Mandatory Activation. *"Your right to use the software after the time specified in the installation process is limited unless it is activated. ... You will not be able to continue using the software after that time if you do not activate it."* Moreover, *"some changes to your computer components or the software may require you to reactivate the software."* In order to use Microsoft Vista, you must consent to communication to Microsoft of information about the software and the device on which you have installed it. If you don't do so in time, your software will begin to degrade in function.

**Vanishing functionality through invalidation.** *"The software will from time to time validate the software, update or require download of the validation feature of the software. ... [if validation fails] you may not be able to use or continue to use some of the features of the software."* Again, your computer must make periodic (period unspecified) contact with the Microsoft Servers if you want to continue to enjoy what you thought you paid for. Microsoft, of course, disclaims any liability for the consequences if their servers fail or mistakenly deny you validation.

**Removal of media capabilities.** *"When you download licenses for protected content, you agree that Microsoft may include a revocation list with the licenses." "Content owners may ask Microsoft to revoke the software's ability to use WMDRM [Windows Media digital rights management] to play or copy protected content."* In other words, one movie or music file may take away your ability to play another, if the content owner (not the computer owner) chooses to cut back the Windows Media Player's features. Don't like the reports that Creative is removing radio recording functions from its MP3 players, under music industry pressure? Prepare for that kind of feature flux to be routine in Vista -- you've agreed to it in the license.

**Problem-solving prohibited.** *"You may not work around any technical limitations in the software."* Microsoft might be referring to anti circumvention of technical protection measures here, but since it's often hard to tell the difference, from the user's perspective,

between a TPM and a bug, this reads as a prohibition on user debugging and problem-solving. After all, down-rezzing HD content or refusing to allow users to copy quotes from an e-book don't strike most people as wanted features. Can you work around a document's failure to save properly?

**Limited mobility.** *"The first user of the software may reassign the license to another device one time."* If you upgrade your machines more frequently than you care to change operating systems, you'll just have to pay again. Don't worry about this applying too frequently, though, because most OEMs will probably keep bundling Windows with their hardware, thanks to Microsoft's pricing encouragement, and Microsoft won't offer refunds if you don't like the terms on those OEM bundles.

**One transfer only.** *"The first user of the software may make a one time transfer of the software, and this agreement, directly to a third party.... The other party must agree that this agreement applies to the transfer and use of the software."* You can give your old computer to Dad, but if he wants to give his older computer to the neighborhood poor friend, they'll have to find their own operating system (may I recommend Ubuntu, or mandrake ?).

#### **Bonus. MPEG-4 Visual Standard**

*NOTICE ABOUT THE MPEG-4 VISUAL STANDARD. This software includes MPEG-4 visual decoding technology. MPEG LA, L.L.C. requires this notice: USE OF THIS PRODUCT IN ANY MANNER THAT COMPLIES WITH THE MPEG-4 VISUAL STANDARD IS PROHIBITED, EXCEPT FOR USE DIRECTLY RELATED TO (A) DATA OR INFORMATION (i) GENERATED BY AND OBTAINED WITHOUT CHARGE FROM A CONSUMER NOT THEREBY ENGAGED IN A BUSINESS ENTERPRISE, AND (ii) FOR PERSONAL USE ONLY; AND (B) OTHER USES SPECIFICALLY AND SEPARATELY LICENSED BY MPEG LA, L.L.C.*

Users never asked for these impossible limitations. Microsoft decided unilaterally to add them, claiming it could abrogate personal ownership, fair use, and first sale rights because "The software is licensed, not sold." If Microsoft faced real market competition on the home desktop, users could vote with their wallets, but anticompetitive practices and network effects make Microsoft a like-it-or-not proposition for most users.

#### **Abuse of 'Dominant Position'**

According to Section 4 of the Act, no enterprise shall abuse its dominant position. An abuse of dominant position is said to occur, when an enterprise:

- (a) Directly or indirectly imposes unfair or discriminatory purchase or selling prices on condition, including predatory prices;
- (b) Limits production, markets or technical development to the prejudice of consumers;
- (c) Indulges in action resulting in denial of market

(d) Makes the conclusion of contracts subject to acceptance by other parties;  
(e) Uses dominance in one market to move into or protect other markets.  
For the purpose of determining whether an enterprise enjoys dominant position or otherwise, one or more of the following factors may be taken into account:

- (a) Market share
- (b) Size and resources of the enterprise
- (c) Size and importance of the competitors
- (d) Economic power of the enterprise
- (e) Technical advantages enjoyed by firm
- (f) Dependence on consumers
- (g) Monopoly status
- (h) Entry barriers
- (i) Countervailing buying power
- (j) Market structure and size
- (k) Any other factor which the commission considers to be relevant.

It is evident from the above that the Act is attempting to describe the Meaning of dominant position. In its explanation to Section 4, the Act has defined the term to mean a position of strength enjoyed by an enterprise in the relevant market in India, enabling it to:

- (i) operate independently of competitive forces prevailing in the market; or
- (ii) Effect its competitors or consumers of the relevant market in its favour the power to decide on dominant position is vested in the hands of the Commission, having regard to the factors listed above. The dominance is required to be decided case by case and the rules are subjective in nature. Instead, the Act should have defined dominance in terms of a percentage of market shares. In fact this was the methodology of the old MRTP Act. There are two aspects of this issue. First is the 'determination of dominance' and the second is the 'determination of the abuse of dominance'. Though the first could be effectively determined, the case may be lost on the second ground. The authors of the Law should have followed the Microsoft case very closely and shaped their thinking on this aspect.

As stated earlier ' dominant position ' has a specified meaning under section 4 of the Act , and in the European community Law, in Article 82, on which both the Indian Act and the Competition Act of 1998, UK, are base. It does not contain the commonly understood connotations of dominant position, as constituted by size or market share of an enterprise, though they are relevant in assessing the dominant position. The substance of the definition is that a dominant enterprise is one that has the power to disregard market forces, that is, competitors, customers and others and to take the unilateral decision that would benefit itself and also, in the process, cause harm to the process of free competition, injuring the consumers by saddling them with higher prices, limited supplies, etc.

The capacity to engage in the market in this manner is what is called a 'market power', which is quite different from 'market share', though, the structure of a particular market, may aid an enterprise with a significant market share in acquiring market power. A dominant position is acquired over a period of time and the many factors which may further the acquiring of a dominant position by an enterprise are: technological superiority access to certain intellectual property rights in the supply of the products, early entry, weak competition, the nature of industry, government regulation etc.

### **Ascertaining the dominant position- statutory guidelines under the competition Act 2002.**

In the enforcement of section 4, the first step is to establish an enterprise against which the complaint of abuse has been made enjoys a dominant position within the meaning of the second explanation to sec 4, which is substance means that the enterprise behavior in the market is not constrained by market forces. This has to be proved by facts, section 19(4) lists the factors that the commission shall consider in an inquiry as to whether an enterprise enjoys a dominant position or not. They are the market share of the enterprise; its size and resources; its economic power, including commercial advantages over its competitors; tie existence of any vertical integration of the enterprises; consumers dependence on the enterprise, whether through being a government company or a public sector undertaking or by reason of any statute entry barriers; countervailing buying power; market structure and size of the market; social obligations and social costs; any contribution to economic development by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition. The central government may prescribe further factors that may be considered in making this examination.

As stated earlier, the market share of an enterprise by itself is not determinative of the issue of dominant position. The size of the market, the number of the enterprises, the share of each in the market and the way it is shared by the competing enterprise will only show the importance of the market share of an enterprise for ascertaining its dominant position. For example, if an enterprise has a market share of 65% and the rest is distributed among four or five enterprises as 20%, 10%, and 5%, clearly the first enterprise may be said to be enjoying dominant position. It is only the kind of a distribution of the share of the market that would give that enterprise 'market power' which is necessary to engage in abusive conduct.

Commercial advantages that would help in building up a dominant position are access to raw material, exclusive use of locations, etc. similarly vertical integration of manufacturer with the only supplier of raw materials would promote a dominant position. If there are barriers to enter, in the form of high costs of investment that a new entrant may not or would not otherwise be willing to incur immediately, or there are

statutory regulations preventing new entry, it would help existing enterprise to reach a dominant position an existing enterprise may itself create barriers to entry through exclusive distribution and retail arrangements with itself.

## **THE PROCESS OF DEALING WITH ABUSE OF DOMINANT POSITION**

Section 19(1) of the Competition Act provides that the competition may either on its own motion or on the receipt of a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their associations or trade association or a reference made to it by the central government or a state government or a statutory authority, inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or subsection (1) of section 4. The powers of the commission while inquiring into a case of abuse of a dominant position and the factors that are to be taken into consideration, as set out in sec 19(4) to (7) have been referred to earlier.

Orders that the commission may pass

Section 27, a common provision covering anti-competitive agreements and abuse of dominance, sets out the orders that the commission may pass on finding that an enterprise has contravened section 3 or section 4. In the case of a breach of section 4, viz, abuse of dominant position it may direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in the abuse of a dominant position to discontinue such abuse of the dominant position: impose such penalty as it may deem fit which shall be not more than 10 % of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to the abuse of dominant position: award compensation to parties in accordance with the provision contained in section 34: direct the enterprises concerned to pass such other orders as the commission may pass and comply with the directions, including payment of costs, if any: recommend to the central government for the division of an enterprise enjoying dominant position: and pass such other order as it may deem fit.

The commission is also empowered under section 33 to grant interim relief by way of a temporary injunction, restraining a party from carrying on an act in violation of section 4, till the conclusion of the enquiry or until further orders. A similar order may be passed where it is shown that import of any goods is likely to contravene section 4.

Division of an enterprise

Section 27(f) provides that the commission may recommend to the central government that a division of the dominant enterprise may be ordered. Obviously the purpose will be to remove the power flowing from the dominant position. Sec 28 provides what orders may be passed by the central government in directing a division of a dominant enterprise.

Any such order should provide for reporting to the central government and the commission about the implementation of the order and periodic reviews ought to be made about the state of compliance by the enterprises that were the subject of such orders.

#### References:

1. [http://robertmoir.com/blogs/someone\\_else/archive/2006/10/15/Windows-Vista-Licence-terms-\\_2D00\\_-say-what\\_3F00\\_.aspx](http://robertmoir.com/blogs/someone_else/archive/2006/10/15/Windows-Vista-Licence-terms-_2D00_-say-what_3F00_.aspx)
2. [http://www.boingboing.net/2006/11/03/vista\\_license\\_improv.html](http://www.boingboing.net/2006/11/03/vista_license_improv.html)
3. <http://www.securityfocus.com/columnists/420>
4. <http://www.gripe2ed.com/scoop/story/2006/10/24/0456/5625>
5. <http://www.securityfocus.com/columnists/420/1>
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8. [http://wendy.seltzer.org/blog/archives/2006/10/19/forbidding\\_vistas\\_windows\\_licensing\\_disserves\\_the\\_user.html](http://wendy.seltzer.org/blog/archives/2006/10/19/forbidding_vistas_windows_licensing_disserves_the_user.html)
9. <http://blogs.zdnet.com/Bott/?p=158>