



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR COMPETITION

Markets and cases II/ information? Communication and Media
Antitrust and Media

Brussels **22/07/2024**
COMP.C2 /MC/msj

CISPE
Avenue Louise 87
1050 Brussels
Belgium

For the attention of Mr Francisco
Mingorance

By email:
francisco.mingorance@europa-insights.com

Via Gide Loyrette Nouel
Rue de l'Industrie 2638
1040 Brussels
Belgium

For the attention of Mr Laurent
Godfroid

By email: godfroid@gide.com

Subject: Case AT.40924 – VMware software licensing
Request for information pursuant to Article 18(2) of Council Regulation (EC) No 1/2003
(Please quote this reference in all correspondence)

Dear Mr Godfroid,

1. The European Commission is currently investigating potentially anti-competitive conduct by Broadcom Inc. (“Broadcom”) in the European Economic Area (“EEA”) ⁽¹⁾. The Commission has received information suggesting that, following the completion of the acquisition of VMware, Inc. (“VMware”) by Broadcom on 22 November 2023, VMware and Broadcom are changing the conditions of VMware’s software licensing, maintenance and support, including in pre-existing contracts, compelling resellers and customers to accept specific conditions such as price increases, larger bundles and additional, unrequested services. The Commission intends to verify whether such conduct constitutes an infringement of Articles 101 /

⁽¹⁾ For the purposes of this request for information, EU / EEA refers to the Member States of the European Union / Contracting Parties to the EEA Agreement, as amended over the period of time for which data is requested, but without the United Kingdom. The EEA comprises the EU Member States together with Iceland, Liechtenstein and Norway.

102 of the Treaty on the Functioning of the European Union (“TFEU”) and Articles 53 / 54 of the Agreement on the European Economic Area.

2. This letter is a formal request for information made in accordance with Article 18(2) of Regulation (EC) No 1/2003 ⁽²⁾, which empowers the Commission to require undertakings and associations of undertakings to provide all necessary information whether or not they are suspected of any infringement of the Union’s competition rules.
3. The entities which are members of CISPE as of 22 July 2024 should reply **in their own name, directly to the Commission**.
4. The information CISPE members are requested to provide in reply to this request for information is set out in the attached questionnaire. It will enable the Commission to assess the compatibility of the alleged behaviour with the Union’s competition rules in full knowledge of the facts and in their correct economic context.
5. Please note that, according to the case-law of the Union Courts, it is incumbent upon undertakings or associations of undertakings, at the very least from the time when they have received the first request for information from the Commission, to act with greater diligence and to take all appropriate measures in order to preserve such evidence as might reasonably be available to them ⁽³⁾. CISPE members are therefore expected to act accordingly.
6. CISPE members reply to this request for information must reach the Commission no later than **19/08/2024**. Information on how to reply to this request for information can be found in Annex 2
7. The information provided in response to this request for information will be added to the Commission’s investigation file and, at a later stage of the proceedings, access to this file may be given to those parties entitled to such access ⁽⁴⁾.
8. In accordance with Article 16(3) of Commission Regulation (EC) No 773/2004 ⁽⁵⁾, CISPE members are required to identify any information in their reply (including the documents or parts of documents submitted with their reply) which they

⁽²⁾ Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the TFEU. The two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 TFEU when appropriate.

⁽³⁾ See judgments of the General Court of 9 April 2019, *Qualcomm and Qualcomm Europe v Commission*, T-371/17, ECLI; EU:T:2019:232, paragraph 136, and of the Court of Justice of 28 January 2021, *Qualcomm and Qualcomm Europe v Commission*, C-466/19 P, ECLI; EU:C:2021:76, paragraph 114.

⁽⁴⁾ Please note that information submitted pursuant to this request may be transmitted to the competition authorities of the Member States and, in the cases envisaged and under the conditions established by Articles 7, 8 and 9 of the Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition rules (OJ L 347, 3.12.2014, p. 3), to the Competition Commission of the Swiss Confederation.

⁽⁵⁾ Commission Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

consider to contain business secrets or other confidential information belonging to their undertaking and to identify the undertakings with regard to which such information is to be considered confidential. CISPE members are required to substantiate their claims for confidentiality and provide the Commission with two versions of the reply: a confidential version and a non-confidential version in which the business secrets and other confidential information are deleted and replaced by a concise description pursuant to the instructions in Annex 2. If respondents do not provide a separate non-confidential version by **02/09/2024**, the Commission may assume that their reply does not contain confidential information pursuant to Article 16(4) of Regulation (EC) No 773/2004.

9. Any personal data submitted in reply to this request for information will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁶⁾.
10. If CISPE members consider that some documents included in their reply (or parts of some documents) contain "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership" or "genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation" ⁽⁷⁾ ("special categories of personal data"), we would request that they provide these documents in a separate submission identified as "SPECIAL CATEGORIES OF PERSONAL DATA" linking each document to the question number to which the document constitutes a reply. We would request CISPE members to highlight the special categories of personal data in the document and provide a motivation/indication as to the specific category in case this is not immediately obvious from the highlight.

⁽⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽⁷⁾ See Article 10(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (EU-DPR), and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39), which is identical to Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR) (OJ L119, 4.5.2016, p.1).

11. For any further questions, you can contact the case team clearly indicating the case number and the case name.

Case team member	Function	Telephone	Email
Marion Carbo	Case handler	+32-229-86071	marion.carbo@ec.europa.eu
Patricia Oliveira	Case handler	+32-229-66492	patricia.oliviera@ec.europa.eu
Friedrich Wenzel Bulst	Case manager	+32-229-51278	Friedrich-Wenzel.bulst@ec.europa.eu
Kassiani Christodoulou	Case manager	+32-229-53547	Kassiani.christodoulou@ec.europa.eu
Mariann Soeby Jensen	Case assistant	+32-229-67991	Mariann.jensen@ec.europa.eu
Maryia Rozum	Case assistant	+32-229-53210	Maryia.rozum@ec.europa.eu

Yours faithfully,

‘e-signed’

Kassiani CHRISTODOULOU
Deputy Head of Unit

Enclosures:

- Annex 1: Questionnaire (including Excel document)
- Annex 2: Instructions for replying to the request

EN

ANNEX 1

QUESTIONNAIRE

Case AT.40924 – VMware software licensing

DEADLINE FOR REPLY: 19/08/2024

1. BUSINESS SECRETS AND OTHER CONFIDENTIAL INFORMATION

1. Does your reply contain any parts that you regard as business secrets or other confidential information?

YES ☐ NO ☐

2. If yes, have you provided a non-confidential version of your reply? (see Annex 2 for details and instructions)

YES ☐ NO ☐

2. CONTACT DETAILS AND INFORMATION ON YOUR UNDERTAKING

3. In order to facilitate possible further enquiries, please indicate the person responsible for the replies to this questionnaire:

Company:	
Contact person:	Phone:
Position:	
e-mail:	
Address:	Country:
Company web-site:	

3. QUESTIONS

For the questions, please see Question 3 of Annex 1 in a separate document.

Please be aware that your reply must include all information concerning your entire undertaking, which also comprises all connected undertakings, such as your ultimate parent company and any of the latter's subsidiaries. ⁽⁸⁾

⁽⁸⁾ See the definition on the term of connected undertakings in point 12.2 of the Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) (OJ C 368, 22.12.2001, p. 13).

ANNEX 2

INSTRUCTIONS FOR REPLYING TO THE REQUEST

1. The reply to the request for information must clearly indicate the name and the number of the case, the date of the request for information, and must be sent to the Commission within the deadline given. The reply should be page-numbered and the paragraphs numbered.
2. If you consider that some documents included in your reply (or parts of some documents) contain "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership" or "genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation" ⁽⁹⁾ ("special categories of personal data"), please provide these documents in a separate submission identified as "SPECIAL CATEGORIES OF PERSONAL DATA" linking each document to the question number to which the document constitutes a reply. Please highlight the special categories of personal data in the document and provide a motivation/indication as to the specific category in case this is not immediately obvious from the highlight.
3. Please submit your reply electronically via DG Competition's EU SEND platform, clearly indicating the **name** and the **number of the case**, as well as the **date** of this request for information. More information on how to register for and use EU SEND can be found on DG Competition website (see https://competition-policy.ec.europa.eu/index/it-tools/eu-send_en).
4. If the size of your reply is more than 4 GB, please contact the case team.
5. Only if it is not possible to submit your reply via EU SEND and if your reply is below 15 MB, you can send it to: COMP-GREFFE-ANTITRUST@ec.europa.eu.
6. The electronic reply is considered by the Commission as an original reply. Therefore do not submit a hard-copy in addition to the electronic version.
7. **Electronic documents** should be submitted according to the 'Recommendations for electronic document submission in antitrust and cartel proceedings' (see https://ec.europa.eu/competition-policy/document/download/b4f349c8-2b10-41be-9a24-27aa96602e9c_en). It is of particular importance that all pre-existing documents are submitted in their native format, preserving and including their original metadata, as indicated in the Recommendations.

⁽⁹⁾ See Article 10(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (EU-DPR), and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p.39), which is identical to Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR) (OJ L 119, 4.5.2016, p.1).

8. If annexes are sent separately, please indicate clearly which request for information they relate to.
9. If it is not feasible to send your response in an electronic format, please contact the case team.
10. Make sure that any non-confidential version of documents submitted is of the same quality as the corresponding version of the confidential documents (for guidance on confidentiality claims during Commission antitrust procedures, please see: https://ec.europa.eu/competition-policy/document/download/ea2cbf27-412c-4394-b872-dd4b4e3a840b_en).