



**EUROPEAN COMMISSION**

Competition DG

Policy and Strategy  
**Consumer Liaison**

Brussels, 12.03.2009 D2198  
COMP/A6

**Subject: Complaint against Valve Software**

Dear Sir,

Thank you very much for your enclosed message. Such feedback from interested citizens is a very valuable source of information for us. Since we have got several inquiries concerning the same subject matter, namely the "European Local Currency system" introduced by Valve Software in December 2008, we would like to take the opportunity to provide you with an extensive reply addressing all the concerns that were brought to our attention.

The majority of consumers who turned to us expressed concerns about the euro - U.S. dollar exchange rate applied by Valve Software and the higher prices it results in when purchasing from Europe, except from the UK, which was allegedly exempted from the application of the new exchange rate. Moreover, consumers resident in Member States other than the UK reported to have been redirected to other national web-sites when seeking to purchase products from Valve Software's UK's webstore. Concerns were raised also with regard to the price currencies and VAT-rates applied by Valve Software.

We have analysed these problems from the point of view of Community rules in different areas.

1) First, as far as European competition rules are concerned, it should be pointed out, as a general remark, that price differences are not necessarily the result of (or an indication for) an infringement of competition rules. Often there are also quite big price differences for the same products across different countries of the EU. The same products might also be sold through offline retailers who are free to set their prices as they wish. Thus, there can also be substantial price differences for the same product even in the same country and geographically varying prices do not as such constitute a competition problem. In fact, varying prices are the rule rather than the exception for many products.

As regards price differences for the same product sold in the United States and in Europe, there is no competition rule that would oblige private undertakings to price identically within and outside the European Union or worldwide. Moreover, cost factors (which could also play a role for Valve Software) relating to staff, distribution, production, support etc. may be higher in Europe than in the United States.

As you may know the Commission has recently led an antitrust procedure against Apple to find out whether the price differences between the UK and the rest of Europe for downloading songs from iTunes are the result of any restrictive practices. The procedure, however, clarified that the organisation of iTunes stores in Europe is not determined by any anticompetitive agreements between Apple and the major record companies. Consequently, the Commission has not taken further action in this case. Apple announced its intention to equalise prices for downloads in Europe (a voluntary decision and not because of being bound by a Commission decision to do so).

On the alleged abuse of a market dominance by Valve Software: it shall be emphasized that the issues raised do not seem to meet the conditions of a potential applicability of EC competition rules on the abuse of a dominant position by one or more undertakings (Article 82 of the EC Treaty). On the basis of the information available to us, it is namely not apparent that Valve would hold a dominant position, not least because barriers to market entry do not appear to be insurmountable.

2) Second, with regard to European Internal Market rules we would like to draw your attention to the fact that the provision of information society services in the EU is subject to Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the "E-Commerce Directive").

According to Article 3(1) of this Directive (the so-called "country of origin principle"), providers of information society services have to comply with the provisions applicable in the Member States where they are established for all aspects falling within the "coordinated field" of the E-Commerce Directive. This includes in particular national rules on pre-contractual information, such as commercial communications or price indication (such as the indication of prices in Euro in non-Euro countries)<sup>1</sup>.

However, it must be pointed out that the E-Commerce Directive applies only to traders established in an EU Member State. The Directive does not apply to companies established in a third country. Furthermore, the lawfulness of the pre-contractual information in question is not a matter regulated by the Directive. It is rather subject to the national rules of the Member State where the company is established.

Information society services like those provided by Valve are also covered by the recently adopted Directive 2006/123/EC on Services in the Internal Market (the "Services Directive"), which Member States have to implement in their national legal systems by 28 December 2009 at the latest. The Services Directive contains a provision – Article 20 (2) – which specifically aims at stopping traders discriminating against consumers on the ground of their nationality or place of residence of the consumers and is therefore particularly relevant regarding your concerns. Once the Services Directive has been implemented, practices such as price differentials depending on the place of residence of the consumer or denied access to certain national web-stores will be prohibited unless traders can demonstrate that these behaviours are directly justified by objective reasons.

Since the implementing period of the Services Directive is still pending, at the moment this instrument cannot impose obligations on private parties like Valve. Moreover, as in

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<sup>1</sup> In contrast, the country of origin principle set out in Article 3(1) of the E-Commerce Directive does not cover business to consumer contractual obligations (as stipulated in the Annex to the Directive that lists the derogations to the country of origin principle). Thus, contractual obligations concerning consumer contracts are not subject to Article 3(1) of the E-commerce Directive.

the case of the E-commerce Directive, the Services Directive will apply to this specific case only insofar as it could be demonstrated that Valve has an establishment in an EU Member State and that the on-line services are provided from there, which does not appear to be the case according to the information received.

You will find more information on the E-commerce Directive and on the Services Directive on the following pages in the website of the Commission Directorate General for the Internal Market: [http://ec.europa.eu/internal\\_market/e-commerce/directive\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/directive_en.htm) (E-commerce Directive) and [http://ec.europa.eu/internal\\_market/services/services-dir/index\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/index_en.htm) (Services Directive).

3) Third, as far as Community consumer protection rules are concerned, and in relation to the possible misleading indication of the price, or its components (e.g. VAT) by Valve Software, it should be noted that Directive 2005/29/EC on Unfair Commercial Practices (UCP)<sup>2</sup> requires economic operators to provide consumers with clear, truthful and complete information relating to the "the price or the manner in which the price is calculated..." (Art 6 (d)). In particular, when a commercial communication indicates the characteristics of a product / service and the price ("invitation to purchase"), the price must then include all applicable taxes and additional charges.

It remains, however, the exclusive competence of national authorities and courts to investigate the practices of a particular company in the light of EU consumer legislation and to assess whether, in a real case, a company does mislead consumers in relation, for instance, to the applicability of a given VAT rate. If you consider that Valve Software engages in misleading advertising practices you may address competent national authorities and consumer associations on this matter.

Please find below is a link to the names and contact details of European and national consumer associations:

[http://ec.europa.eu/consumers/empowerment/cons\\_networks\\_en.htm](http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm)

4) Last, we would like to refer to European tax rules. Many consumers informed us that Valve Software may apply the same VAT rate in all European countries. Although we do not have sufficient information on the VAT rates applied by Valve Software in its price formation, within the meaning of European Union tax rules<sup>3</sup>, operators providing electronically supplied services to non-taxable persons (consumers), who are neither established nor otherwise required to be identified for tax purposes within the Community, can under certain circumstances opt for a special taxation scheme, which allows them to be identified for VAT in one single Member State.

They should then charge and account for VAT at the rate applicable in the Member State of the consumer. Although these rates differ, this does not however preclude a company

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<sup>2</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC and 2002/65 of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).


<sup>3</sup> Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services OJ L 44, 20.2.2008, p. 11–22 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

from charging a standard retail selling price across the Community if it wishes as there is no obligation here to have the same pre-tax price everywhere.

If you still feel that the company is not respecting EU tax rules, you may wish to exercise your right to draw attention to this. You should first look at [http://ec.europa.eu/taxation\\_customs/common/rights/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/rights/index_en.htm) and, should you decide to pursue this path, it would be wise to include supporting documentation such as invoices which show what tax has been charged.

Finally, let us assure you that the European Commission remains committed to ensuring the full respect of European law provisions in the software industry. For more information about the competition-related activities of the European Commission we invite you to consult our website: [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

Yours faithfully,

A handwritten signature in black ink, consisting of a large, stylized 'Z' followed by a horizontal line and a vertical line extending downwards.

Zsuzsanna JAMBOR  
Head of Unit