Microsoft tries to drag Google into EU battle

By Nikki Tait in Brussels and Richard Waters in San Francisco

Published: May 8 2009 20:04 | Last updated: May 8 2009 20:23

The European Commission would hand Google even greater dominance of the internet search business if it pressed ahead with planned regulations on Microsoft’s Windows operating system, the US software company has claimed.

Microsoft’s attempt to drag its arch-rival into its own antitrust battle with Brussels is contained in a confidential last-minute submission aimed at heading off European action, a copy of which was seen by the Financial Times.

The proposed European rules are aimed at diluting the advantage Microsoft gets in the browser market by being able to “bundle” its Internet Explorer (IE) browser with the near-ubiquitous Windows operating system.

The Commission is seeking to force a “must-carry” rule on Windows that would require Microsoft to distribute other browsers with the operating system.

Microsoft questioned in its official response whether the EC proposal would be legal, since it claimed the rule would harm competition in the separate but related internet search market.

This is because two of the main rival browser companies, Opera and Mozilla, maker of the Firefox browser, have agreements with Google so that their browsers automatically default to the Google search engine, as does Google’s own browser, Chrome.

Moreover, if the screen showing computer users their various browser choices is created by the PC makers, there would be an opportunity for Google to work directly with these manufacturers and get them to set the search defaults in its favour, the software company claimed.

Google studiously resisted Microsoft’s efforts to drag it into the row, as it issued only a brief rejoinder: “We believe greater competition will mean greater innovation on the Web and that is better for consumers.”

Microsoft declined to comment.

Microsoft’s response was submitted privately last week and sent this week to third parties who have been allowed to join the case, ahead of a possible oral hearing in early-June.

Among other arguments levelled against European regulators, Microsoft also maintains that the Commission is breaching established legal principles that give a company some discretion over how to resolve the situation where illegal tying of products is established.

Moreover, it contends that a “must carry” remedy could also infringe Microsoft’s brand rights and impose a potential intellectual property liability

Microsoft’s challenge to the Commission’s proposed “must carry” remedy is a new line of defence, which has not been publicly aired to date.

But the software company also continues to accuse Brussels of doing insufficient research on the underlying market trends and is invoking new statistics to demonstrate that the browser market is not foreclosed.

The software company is claiming that its own share of the PC browser market in the European Economic Area has fallen from around 85 per cent to under 55 per cent over the past four years, while Mozilla Firefox’s share now exceeds 45 per cent in some individual country markets.

One rival disputed these figures, however, and claimed Microsoft’s IE still accounted for 70 per