Since the "as is" situation will be the starting point for Track 3, it is necessary to continue to provide contractual coverage for the existing product base, notwithstanding the actions foreseen under Track 2 in order to introduce controlled diversity.

The procurement procedures for licences as well as for high-level services will be based on **Art. 134(1)(b) of RAP** (negotiated procedure without prior publication of a contract notice) due to the existence of <u>technical reasons</u> and the need of protection of <u>exclusive rights,</u> and thus the contract can be only awarded to one particular economic operator. As Microsoft software is the only product corresponding to the needs of the EUIs in the scope of the EUIs desktop and server environment and given the fact that Microsoft is the sole owner of the licences as well as the sole economic operator possessing the expertise to provide related high-level services, the above mentioned procedure has been chosen.

This procedure was chosen in the context of "Track one" of the agreed "triple track strategy" designed to ensure the necessary <u>business continuity</u> and <u>scale economies</u> flowing from the investments that have already been made.

7.1. Microsoft licences

Our requirement for Microsoft licences stems directly from **business continuity** needs, since critical parts of our office automation platforms are built largely on Microsoft technology:

As explained in section 6.2.1, this implies **continued contractual coverage** for Microsoft licences and explains the need of protection of its exclusive rights, which leads to the applicability of 134(1)(b) of RAP.

7.2. Microsoft high-level services

Premier Support Services are <u>packaged services bundles,</u> as explained in section 8.2 below.

To satisfy their needs in terms of support, a subset of EUI require Premier Support offerings (packaged services) at various tier levels, recommended for appropriately sized EUI (ranging from very big to very small EUI).

The **Consultancy Services** required by EUI need to be of adequately high level. These consultancy profiles are typically used in the design phase of large complex projects, often requiring people with many years of experience in multiple domains, and having very specialised expertise. Only Microsoft itself can make available these highest profiles.

The **Additional Support Services** contain several profiles, such as additional TAM or Proactive hours, Premier Field engineering, or Emergency Premier Field engineering, or on-site support engineers. However, all of these profiles are only available within the framework of an active Premier Support Service.

As demonstrated by the description given above, these support and consultancy services are intrinsically linked to the products covered by the ILA. They require an in-depth technical know-how about those software products of such a high level that only the editor of the software can provide it. Hence it follows that, for technical reasons, Microsoft is the sole economic operator that can provide services for support and consultancy at the high level required by the Commission and other EUIs.