MTC–00027805

From: Sudha
To: Microsoft ATR
Date: 1/28/02 11:04am
Subject: LOGICAL EXPLANATION—
Freedom to Innovate

Below are comments to specific issues addressed in the Court Case, http://www.usdoj.gov/atr/cases/ms-settle.htm#docs

Item #2: Someone else please invent a better operating system than Windows! Also if MS Windows has monopoly, what about Intel—would they be ''monopolizing'' the intel chip market?

Item #3: A better operating system will always win the user market.

Item #4: How ridiculous! When Netscape owned 70% of the market, was it not a monopoly?

Item #7: Java is very difficult to learn. Training is unaffordably expensive.

Item #11: Netscape is NOT the browser innovator—give credit to the real innovator, please!!! (universities!)

Item #18: Microsoft has a right to ''tie'' all ITS products together! Integrating applications makes better use of system resources.

Item #24, 25: As long as Windows is the operating system used, the creator of Windows, who is Microsoft, has the right to present it anywhich way to the users as they please—basic human right of ownership!

Additional Comments: Seems to me like other vendors like IBM and Sun and Netscape had nothing to complain about as long as THEY owned the lion's share of the market. Their products were difficult to use and hard to learn.

Microsoft brought the computing technolgy to the layman's door making it possible for the total computer illiterate people to be able to actually use the computer in effective and efficient ways, which would have been totally impossible otherwise!

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MTC–00027806

From: Bartucz, Tanya Y.
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:03am
Subject: Tunney Act Comments

Attached please find the Association for Competitive Technology's Tunney Act comments on the Microsoft settlement. A paper copy has been submitted by fax.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff, v. Civil Action No. 98–1232 (CKK) MICROSOFT CORPORATION, Defendant. STATE OF NEW YORK ex rel.Attorney General ELIOT SPITZER, et al.,Plaintiffs,) v. Civil Action No. 98–1233 (CKK) MICROSOFT CORPORATION,Defendant.

COMMENTS OF THE ASSOCIATION FOR COMPETITIVE TECHNOLOGY

The Association for Competitive Technology (''ACT'') hereby submits its comments on the Revised Proposed Final Judgment (''RPFJ'') that has been proposed by most of the plaintiffs, including the United States, and defendant Microsoft Corporation. ACT is a trade association representing some 3,000 information technology (''IT'') companies, including Microsoft, on a number of issues important to the industry. ACT's mission is to promote a vibrant, competitive IT industry and a vibrant IT marketplace in which consumers, not the government, pick winners and losers. Because ACT believes that, on balance, the RPFJ will be good for both the industry and consumers, it supports the RPFJ. ACT also opposes the radical proposals advanced by the remaining plaintiffs because they would harm the industry and serve no other purpose than to advance the interests of such Microsoft rivals as Sun Microsystems, Oracle, and AOL Time Warner.

INTRODUCTION AND SUMMARY

The purpose of a Tunney Act proceeding is to determine whether the settlement that the federal government has entered into is within the reaches of the public interest. United States v. Microsoft Corp., 56 F.3d 1448, 1460 (DC Cir. 1995) (internal quotation marks and emphasis omitted). The RPFJ easily meets that forgiving standard. Indeed, as shown in detail below, this conclusion is easily established by measuring the RPFJ against four settled principles that govern relief in all antitrust cases, and by comparing the RPFJ to the radical remedies that have been proposed by the States that have refused to consent to the RPFJ (''Litigating States'').

First, it is well settled that an antitrust remedy should be designed to protect consumers rather than advance the interests of competitors. The RPFJ will accomplish this goal. It prevents Microsoft from engaging in exclusionary or retaliatory tactics, as well as foreclosing a number of more specific paths to unfair competition. However, it is carefully crafted to ensure that Windows will remain available to consumers as a reliable operating platform.

By contrast, many of the Litigating States' proposals seem to have been designed by Microsoft's competitors. Indeed, the companies that will benefit most from the Litigating States' efforts are the same ones that have led the campaign to scuttle settlement efforts case and to impose far-reaching restrictions on Microsoft: AOL Time Warner, Sun Microsystems, Oracle, IBM, and Apple. As a prominent commentator recently noted, Microsoft's enemies were largely responsible for instigating the lawsuit and were active behind the scenes in helping the government frame the charges and compile the evidence. Executives from Sun, AOL, Netscape and other companies testified against Microsoft. Fred Vogelstein, The Long Shadow of XP, Fortune, Nov. 12, 2001. Each of these companies dominates a particular market that is distinct enough from Intel-compatible PCs not to be a part of this case, but related enough that Microsoft's rivals fear Microsoft's competition. For example, Sun Microsystems dominates the market for server operating systems, but its market share is being eroded by lower-cost alternatives from Linux and Windows. Why Competitors Are Largely Quiet on Microsoft Settlement, Associated Press, Nov. 15, 2001; Peter Burrows, Face-Off, Bus. Wk., Nov. 19, 2001, at 104. In asking for must-carry provisions for Java, limits on technical integration and the use of Microsoft middleware, and restrictions on Microsoft's investment in intellectual property, Sun seeks to maintain its stranglehold over the server marketplace. Similarly, Oracle enjoys a privileged position in the server database market but it, too, is facing stiff competition from lower-priced alternatives that are gaining increasing favor with reviewers and customers. As Oracle tries to move into different markets, such as e-mail, where consumers expect tighter integration, it will be unable to maintain its high prices unless Microsoft's capacity for product improvement is limited. Finally, Microsoft and AOL are both dominant companies, orbiting in separate if overlapping domains. Yet both companies regard themselves as being on a collision course, as all forms of information and entertainment, including music and movies, are increasingly rendered in digital form. Steve Lohr, In AOL's Suit Against Microsoft, the Key Word Is Access, N.Y. Times, Jan. 24, 2001. An internal document makes clear that AOL is willing to take any necessary steps to gain control of the desktop, including even spreading false rumors about the stability of Windows XP. See http://www.betanews.com/aol.html.

4 Beyond these companies' own statements and court filings their views are parroted by various proxies. These include organizations that were specifically formed to hobble Microsoft, such as the misnamed Project to Promote Competition and Innovation in the Digital Age (''ProComp''), and existing trade organizations that these companies have recently joined and come to dominate, such as the Computer and Communications Industry Association (''CCIA'') and the Software Information Industry Assocation (''SIIA''). The apparently high level of coordination between these groups and the Litigating States' counsel is ample reason for skepticism when examining some of the States' arguments.

The reality is that these rivals, both directly and through their proxies, are trying to use the courts to increase their own profits rather than consumer satisfaction. This is shown by the fact that, while they condemn Microsoft for integrating its products, they, too, are vying to bring integrated products to consumers. For example, Sun's SunONE initiative tries to offer the same level of integration as Microsoft's .Net service. See SunONE, Services on Demand vision, at http://www.sun.com/software/sunone/overview/vision/. Not surprisingly, Oracle shares this vision of a global network of

centralized information and online services. It envisions an all- Oracle solution, advising businesses to ''wage their own war on complexity'' by turning to Oracle for ''an integrated, complete software suite.'' AOL is likewise promoting its ''AOL anywhere'' strategy, which makes its popular services and features available to consumers anywhere, anytime through multiple platforms and mobile devices. Clearly, these companies do not believe that selling IT products piecemeal best meets consumers' needs, yet that is what they are trying to force Microsoft to do.

Second, it is equally well settled that an antitrust remedy should be tailored to fit the conduct that has been found illegal. Here, the RPFJ carefully addresses each of the types of conduct that the Court of Appeals found illegal. It regulates the agreements that Microsoft can enter into and prevents Microsoft from retaliating against software or hardware distributors. The RPFJ also gives both computer manufacturers and consumers more choices in configuring their computers, and specifically enables them to turn off any Microsoft middleware and replace it with the middleware of their choice. And the RPFJ requires Microsoft to disclose technical information and license its intellectual property to those whose products interoperate with Windows.

To be sure, the RPFJ in some respects goes beyond the findings of illegal conduct affirmed by the Court of Appeals. Unfortunate as that may be, it should not deter the Court from adopting the RPFJ. As the District Court for the District of Columbia stated in another context: If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.DC 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (mem.). Nevertheless, the vast majority of the RPFJ's provisions respond to the findings that were affirmed by the Court of Appeals. Virtually all of the proposals by the Litigating States, by contrast, address areas wholly outside the scope of this case, such as Microsoft's corporate acquisitions, the Office suite of programs and, of all things, Microsoft's conduct of its intellectual property litigation. The Litigating States' proposals should be rejected for that reason alone.

Third, any antitrust remedy should minimize ''collateral damage'' to third parties. Here, the RPFJ carefully avoids serious harm to other sectors of the information technology industry.

The Litigating States' proposals, by contrast, would inflict enormous damage on the rest of the industry. Perhaps most important, their proposals would fragment the Windows standard and, in turn, profoundly disrupt other businesses that rely upon it. The Litigating States' proposals would also weaken intellectual property protections, setting an unnerving precedent for any IT firm aspiring to lead its market, and slow the pace of research and development in the IT field. Fourth, an antitrust remedy should be easy to administer, and not be regulatory. The Litigating States, in an effort to impose their concept of ''competition'' in the information technology industry, would create a court-run agency to supervise Microsoft's every move and to judge its every action. In contrast, the RPFJ would create a more independent, more limited supervisory body that would have full access to Microsoft information, but that would not combine the roles of prosecutor and judge. This too counsels strongly in favor of the RPFJ, and against the proposals advanced by the Litigating States.

The remainder of these Comments is organized as follows. Section I summarizes and explains in more detail the four principles that are pertinent to the District Court's determination of whether the RPFJ is within the reaches of the public interest. Microsoft, 56 F.3d at 1460 (internal quotation marks and emphasis omitted). Section II applies these principles to the RPFJ and, for comparison purposes, to the proposals advanced by the Litigating States.

I. THE PROPER ANALYTICAL FRAMEWORK FOR EVALUATING ANTITRUST REMEDIES.

Antitrust law recognizes that competition gets its vigor from the urge to win. A desire to ensure that all competitors will do equally well makes robust competition impossible and sets the stage for price-fixing and similar behavior. Accordingly, antitrust law and antitrust remedies are designed to foster real competition, so that consumers and the wider economy can ultimately benefit. Thus, while competitors Î driven by their own urge to win Ï may try to misuse antitrust law to further their own goals, government agencies and courts should be vigilant to ensure that their power is used in consumersÓ interests rather than competitorsÓ. The case law on remedies generally Î and antitrust remedies in particular Î supports the goal of harnessing competition. A close reading of that case law reveals four specific principles that promote that goal, and that are dispositive here.

A.Any Remedy Must Have A Probability Of Benefiting Consumers, And Not Be Designed to Punish the Defendant Or, Worse, To Enhance The Position Of the Defendant's Rivals.

Perhaps the most important principle of antitrust law is that any remedy must be designed to benefit consumers, not just punish the defendant or enhance the position of the its rivals. The law is clear that, in a civil antitrust case, any injunctive remedy must be, as its name suggests, remedial rather than punitive. E.g., United States v. E. I. Du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); International Salt Co. v. United States, 332 U.S. 392, 401 (1947); Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944). Moreover, as Judge Robert Bork has shown in his famous book, The Antitrust Paradox, the entire purpose of antitrust law is promotion of consumer welfare, not the protection Î or enhancement Î of competitors. Robert H. Bork, The Antitrust Paradox 51, 56–89 (1978); see also National Collegiate Athletic Ass'n v. Board of Regents, 468 U.S. 85, 107 (1984).

It follows that any remedy must have as its principal purpose the promotion of consumer welfare. And, as the District Court recently noted, the states have the burden of establishing the efficacy of every element of the proposed relief in achieving that objective. Hearing Tr., Sept. 28, 2001, at 8, United States v. Microsoft, No. 98–1232 (D.DC). For two reasons, it is doubtful that any remedy at all is needed to protect consumers in this case. First, it appears that the particular conduct at issue in this case has never harmed consumers in any meaningful sense. The government's own witness, Professor Frank Fisher of

MIT, testified during the trial that the narrow conduct found unlawful by the Court of Appeals had not harmed consumers at all. When asked by plaintiffsÓ counsel whether that conduct had harmed consumers, Fisher replied: [O]n balance, I would think the answer was no, up to this point. Trial Tr., Morning of Jan. 12, 1999, at 29 (Fisher), United States v. Microsoft Corp., 87 F.Supp.2d 30 (D.DC 2000), aff'd in part, rev'd in part, 253 F.3d 34 (DC Cir.), cert. denied, 122 S.Ct. 350 (2001).

If Microsoft's conduct did not harm consumers even on balance it is difficult to see how any remedy is now needed to protect them. But if any remedy is needed, the Court must be careful not to risk harming consumers by adopting remedy proposals such as those advanced by the Litigating States remedies which, to paraphrase Abraham Lincoln, are of the competitors, by the competitors, and for the competitors.

Second, even if Microsoft's conduct could have harmed consumers in some way, any such risk has now abated. This entire case is premised on the assertion that Microsoft enjoys market power by virtue of the fact that a high percentage of IBM-compatible PCs use Windows as their operating system. Whether or not that was true when the case was tried, such knowledgeable industry observers as Sun's president have effectively conceded that whatever market power Windows might once have given Microsoft is now virtually a thing of the past. For example, in his January 3, 1999 interview on 60 Minutes, Scott McNealy rejected Leslie Stahl's suggestion that with its Java software, Sun now ha[d] a chance to make Windows obsolete. Instead, McNealy retorted, Windows is obsolete, [and] we have a chance to show the world that it is. 60 Minutes (CBS Television Broadcast, Jan. 3, 1999). McNealy elaborated this theme in a subsequent Wall Street Journal op-ed piece, which appeared more than two years ago. He asserted that, because of the growth of the Internet, [a]

few years from now, savvy managers won't be buying many, if any, computers. They won't buy or build anywhere near as much software either. They'll just rent resources from a service provider, primarily over the Internet. Scott McNealy, Why We Don't Want You to Buy Our Software, Wall St. J., Sept. 1, 1999, at A26. McNealy's predictions are already being borne out. A recent article

assessed the changes in the operating system market. It noted that Microsoft's main markets are maturing and the entire ground under its empire is shifting. Market researchers expect PC sales worldwide to drop [in 2001] and at best to stagnate in 2002. What is more, software is increasingly a service delivered over the Internet, meaning that operating systems are no longer central. Microsoft: Extending Its Tentacles, The Economist, Oct. 20–26, 2001, at 59. Thus, whatever market power Microsoft now possesses is rapidly being eroded, or is already effectively gone. In short, because Microsoft's present market power is limited at best and will be further eroded in the near future, there is no need for antitrust remedies. See also William E. Kovacic, Designing Antitrust Remedies for Dominant Firm Misconduct, 31 Conn. L. Rev. 1285, 1314 (1999) (explaining that rapid technological change can indicate the instability of market power, and therefore to the need for milder remedies). At a minimum, any antitrust remedy must take into account the dramatic decline in any market power Microsoft might previously have enjoyed, and be limited accordingly.

B. The Remedy Should Be No Broader Than Necessary To Address The Conduct That The Court Of Appeals Held Illegal.

Another principle that must guide the analysis of any proposed antitrust remedy is that it must be no broader than necessary to address the conduct that has been found illegal. As with all injunctive relief, the substantive prerequisites for obtaining an equitable remedy as well as the general availability of injunctive relief . . . depend on traditional principles of equity jurisdiction. Grupo Mexicano de Desarollo, S.A., Inc. v. Alliance Bond Fund, 527 U.S. 308, 319 (1999) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure u 2941, at 31 (2d ed. 1995)). And one of these traditional principles of equity jurisdiction, id., is that an injunction should be no more burdensome than necessary to prevent a recurring violation of the law. See generally Madsen v. Womens Health Center, 512 U.S. 753, 765 & n. 3 (1994), and cases cited therein. This is as true in antitrust as in other areas of the law. For example, in the Lorain Journal case, which Robert Bork believes is the closest to this one, the Court noted that, [w]hile the decree should anticipate probabilities of the future, it is equally important that it ... not impose unnecessary restrictions. 342 U.S. at 156. The Court of Appeals recognized this principle when it instructed the District Court that any remedy should be tailored to fit the wrong creating the occasion for the remedy, Microsoft, 253 F.3d at 107, i.e., that it should be focused on the conduct [the court] has found to be unlawful and should be limited to provisions that are required to rectify [Microsoft's] monopoly maintenance violation, id. at 104, 105.

Consistent with these principles, since at least 1911 it has been the law in antitrust cases that ordinarily ... [an] adequate measure of relief would result from restraining the doing of such [illegal] acts in the future. Standard Oil Co. v. United States, 221 U.S. 1, 77 (1911) (emphasis added). In other words, an injunction simply forbidding the specific conduct found to

Normally, of course, a settlement is reached before a trial on the merits. In that situation, it is clear that a reviewing court cannot expand an antitrust decree to remedy perceived problems that lie outside the scope of the complaint. That was the thrust of the Court of Appeals' 1995 Microsoft decision, 56 F.3d 1448. Furthermore, any such action by a reviewing court would most likely be unconstitutional. Id. at 1459; see also Maryland v. United States, 460 U.S. 1001, 1006 (1983) (Rehnquist, J., dissenting). Here, of course, the Court of Appeals has affirmed some of the district court's findings of liability. Expanding the remedy to address issues as to which liability has not been proven let alone issues as to which liability has never been alleged would clearly exceed the District Court's power.

be illegal is ordinarily considered sufficient. Or, as the District Court recently explained, the scope of any proposed remedy must be carefully crafted so as to ensure that the enjoin[ed] conduct falls within the . . . behavior which was found to be anticompetitive. Hearing Tr., Sept. 28, 2001, at 8.

Some commentators have nevertheless argued that the District Court is obligated to terminate Microsoft's dominant market position, which they characterize as an illegal monopoly. Jennifer Bjorhus, Settlement Draws Frustration From Few Tech Giants That Spoke Out, San Jose Mercury News, Nov. 3, 2001, at 20A. But this argument rests on a misinterpretation of the pertinent case law, including the Court of Appeals' decision. Contrary to this argument, the law does not require that a remedy attempt to recreate the world as it might have existed absent the violation or deprive a defendant of the proceeds of its business. Instead, where a violation is found, the remedy, as the Court of Appeals pointed out, should be designed to unfetter' the market from the anticompetitive conduct.' Microsoft, 253 F.3d at 103 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972)) (emphasis added).

That, moreover, is why the Court of Appeals placed heavy focus on the requirement that, before a court can seek to undo an alleged monopoly, there must be a significant causal connection between the allegedly illegal conduct and the existence of that monopoly. The District Court recently echoed this same theme when it remarked that it intended to fashion an injunction that would avoid a recurrence of the violation and . . . eliminate its consequences. Hearing Transcript, Sept. 28, 2001, at 9 (emphasis added).

There is a vast difference between unfettering or unshackling a market from prior anticompetitive behavior, and attempting to reconstruct the market as it might have existed absent that conduct. The former is a legitimate objective of an antitrust remedy; the latter is not.

In the District Court's words, attempting to reconstruct the market as it might have been absent the conduct at issue goes well beyond simply eliminating the consequences of anticompetitive conduct. Antitrust law does not attempt to recreate or to maintain by detailed regulation a perfect world. Its goal is to restore competition, including legitimate competition by the dominant firm. Ford Motor Co. v. United States, 405 U.S. 562, 577–78 (1972). C.The Remedy Should Avoid Or Minimize Collateral Damage To The Rest Of The IT Industry.

Another traditional principle[] of equity jurisdiction,' Grupo Mexicano, 527 U.S. at 319, is that any relief imposed by a court should not inflict unnecessary harm on third parties. Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade, 412 U.S. 800, 824 (1973) (plurality opinion); Gilbertville Trucking Co. v. United States, 371 U.S. 115, 130 (1962). In this case, there is a real risk of harm to the entire IT industry as well as consumers. As explained in the attached affidavit of ACT's president, Jonathan Zuck, (Exh. A) both consumers and IT companies derive enormous benefits from the existing Windows platform. For IT companies in general, and ACT's members in particular, that platform is unusually valuable and important for at least three reasons.

1. Constant Improvement and Addition of New Features and Functionalities. One reason Windows is so valuable to the IT industry is that Microsoft has constantly improved it. For example, as Mr. Zuck explains, each new release of Windows contains software drivers for the major new printers and other peripheral devices that have been released since the prior version of Windows. This means that developers of applications such as money management software, graphics programs, etc., do not need to create their own drivers for these devices or, worse, choose from among several competing drivers. Affidavit N 7.

Virtually everyone in the IT industry, moreover, has a strong interest in seeing this trend continue in the future. The addition to Windows of such new functionalities as voice recognition, for example, will allow software developers to add such features to their products at minimal cost. Those costs will increase dramatically and consumer benefits will be reduced if software developers are forced to develop their own voice recognition features or, worse, to port their programs to several competing voice-recognition programs. Id. N 8. 2.Windows' Uniformity and Widespread Acceptance. Uniform standards are likewise crucial to an efficient, rapidly evolving IT sector. As Mr. Zuck explains, communications and Internet standards provide the language necessary for many different computers to talk or network with one another, enabling, for example, users of the World Wide Web to locate and retrieve the information they seek. Operating systems perform a similar function, allowing hardware devices and software applications to communicate with a computer. Indeed, it is Windows' consistency that makes it so valuable.

As the Court recognized in its Findings of Fact, Windows exposes a set of application programming interfaces' that lets software interact in a consistent way with any Intel-compatible PC. United States v. Microsoft Corp., 84 F. Supp. 2d 9, 12–13 (D.DC 1999) (Findings of Fact). This means that the same software will run on all Windows-based PCs

and, by and large, all hardware devices can be used as well. Affidavit N 10. Hence, the consumer avoids the need for time-consuming, often expensive retraining, and thus has a greater incentive to learn how to use the existing system. Also, the widespread acceptance that Windows enjoys makes it easier to ensure that computer products (both hardware and software) work the way they are supposed to, and work well with each other. Operating system consistency usually means that software will operate normally even if the type of computer changes. For example, WordPerfect will function as advertised on a Windows-based Dell computer or a Windows-based Compaq computer. Id.

For these reasons, as Mr. Zuck explains, the cost per potential customer of developing a piece of software for the Windows operating system is significantly lower than the cost for the UNIX operating system. And that, of course, translates into more software and lower prices for consumers. Id. N 13.

In addition, more than any other operating system, Windows has remained compatible with software written for older Windows versions. As a result, consumers have much greater confidence that the software they purchase will work when they upgrade to a new Windows release. Hardware manufacturers and developers similarly face much less risk that their research and development expenditures will be stranded if Microsoft releases a new version. Id. N 14.

3. Windows' Low Cost to Consumers. The Windows operating system also allows the developer, or other providers of support services, to support end-users at minimal cost. As Mr. Zuck explains, each operating system not only has signature application interfaces and user commands, it also presents its own set of bugs and system errors. Thus, to provide software or

In its consistency from one computer and software program to another, Windows is markedly different from the UNIX operating system. That system is in reality a collection of similar operating systems, including Sun's Solaris, Digital's UNIX, HP's HP-UX, IBM's AIX and SCO's UnixWare. See http://www.techweb.com/encyclopedia/defineterm?term=unix. Although different versions may be desirable with respect to many products, for most computer users such a proliferation promises nothing but confusion, lost time, fewer applications, and higher prices. For example, a consumer who shifts from one UNIX-based computer to another UNIX- based computer may find that the two computers use different UNIX versions with different features, functions, and idiosyncrasies. Consequently, the consumer may have to devote considerable time and expense learning how to perform the same tasks on the second UNIX- based computer that she already knew how to perform on the first platform. Worse still, the software applications or hardware equipment she purchased for and used on the first computer may be incompatible with the version of UNIX installed on the second computer. And a UNIX user obviously has less incentive to develop skills tailored to her particular system if it is likely that she will use a different UNIX operating system in the future. Affidavit NN 11–12.

15 hardware support, a developer must train personnel to identify and understand the idiosyncrasies of each operating system under which it markets its product. These increased support costs increase prices and decrease consumer demand for products and services. Id. N 15. Consumers, moreover, obtain all of these benefits inexpensively. Compared to the cost of a typical PC, and to the cost of the software typically installed on that PC, the cost of Windows (at about 5% of the PC's price) is relatively small. A low price, coupled with all the benefits stemming from Windows' widespread use, drives up demand by making computer products more affordable and attractive to consumers. Id. N 16.

As Mr. Zuck explains, the widespread use of an inexpensive, constantly evolving operating system is particularly important in an industry as dynamic as the information technology industry, which constantly generates both new products and new uses for those products, and for which new developments such as the Internet can redraw the competitive landscape overnight. A popular operating system like Windows allows consumers and developers to act quickly and with confidence that software and hardware will work on most PCs today and in the future. And the fact that many consumers choose Windows adds a measure of stability to a highly dynamic industry.

For all these reasons, any remedy that resulted in the balkanization of Windows would have a disastrous effect on the entire IT industry. Software developers, Internet access providers, and others rely on the widely installed, constantly improving Windows platform as the groundwork for their own products. If there were no consistent platform, software developers would have to try to port their products to various operating systems, increasing those products' costs substantially, or else they would have to accept a much smaller market share.

This, too, would drive up prices because the cost of distributing software is tiny compared to the cost of developing it.

Windows' importance as a consistent platform is illustrated by the fact that, when it appeared that Microsoft might be broken up, stock prices in the rest of the IT industry fell. Kenneth G. Elzinga, David S. Evans, Albert L. Nichols, United States v. Microsoft: Remedy or Malady?, 9 Geo. Mason L. Rev. 633 (2001). Likewise, any remedy such as those proposed by the Litigating States that would fragment Windows would be unlawful because of the harm it would impose on third parties.

D. The Remedy Should Be Judicially Administrable, Not Regulatory.

Finally, any remedy should be judicially administrable and not put the courts in the position of having to oversee product design. United States v. Microsoft Corp., 147 F.3d 935, 948 (DC Cir. 1998). Some have suggested that the kinds of extreme remedies proposed by the Litigating States are in some sense alternatives to regulation. But history suggests quite the opposite.

In 1982, for example, AT&T entered into a consent decree designed to remedy what the government perceived as anticompetitive practices, and to allow AT&T to compete in new markets. Then too, the provisions of that decree were touted as an alternative to regulation. But in practice, the break-up of AT&T generated pervasive judicial participation in the telecommunications industry. For example, between 1984 and 1995, the court ruled on over 250 waiver requests pursuant to the consent decree. Most of these were necessary to allow the companies spun off from AT&T to respond to market developments that had not been anticipated when the decree was entered. Although 96 % of the requests were eventually approved, the average delay prior to approval was four years. It is not surprising, then, that Congress put the court out of the telecommunications business when it passed the Telecommunications Act of 1996.

This kind of intrusive, time-consuming regulation is particularly ill-suited to a rapidly- changing industry such as IT. For example, many settlement opponents have made proposals resting on a distinction between middleware and the operating system. But this distinction is dubious even now, and is rapidly being eroded. The federal courts are not equipped to draw lines in the shifting sands of information technology.

Notwithstanding this reality, some settlement opponents have proposed ongoing regulation of Microsoft's conduct, or detailed enforcement provisions envisioning ongoing judicial involvement in Microsoft's management. Some have even proposed egregious private attorney general provisions that would simply foment litigation and enrich plaintiff's lawyers. All of these proposals would create the kinds of problems that arose in abundance in the wake of the AT&T consent decree.

Other cases demonstrate the dire consequences that can arise when courts attempt to regulate an industry under the guise of an antitrust decree. For example, in United States v. United Shoe Machinery Corp., 110 F. Supp. 295 (D. Mass. 1953), aff'd, 347 U.S. 521 (1954), the district court imposed extensive regulation on the shoe machinery industry over a ten-year period. The remedies were meant to end United's practice of distributing shoe machinery through long-term leases and to make shoe machinery available from a variety of sellers. To this end, the court restricted lease terms, required United to offer its machines for sale in addition to leasing them, and required United to charge separately for services such as repairs. Id. at 352–53. However, a 1993 study concluded that the court order destroyed many efficiencies arising out of the technical realities of the shoe manufacturing industry, impaired the quality of United's performance, and likely contributed to the dramatic decline of the domestic shoe industry in the 1960s and beyond. Scott E. Masten & Edward A. Snyder, United States v. United Shoe Machinery Corp.: On the Merits, 36 J.L. & Econ. 33 (1993); see also Lino A. Graglia, Is Antitrust Obsolete?, 23 Harv. J.L. & Pub. Pol'y 11, 17 (1999). For all these reasons, judicial regulation of the IT industry, or any portion of that industry, is to be avoided at all costs.

Indeed, that appears to be the main message of the DC Circuit's earlier decision

rejecting the preliminary injunction that the Government sought. Microsoft, 147 F.3d at 948 (Antitrust scholars have long recognized the undesirability of having courts oversee product design, and any dampening of technological innovation would be at cross-purposes with antitrust law.). And the Court of Appeals' most recent decision is entirely consistent with that message. Microsoft, 253 F.3d at 101–07. Indeed, even Judge Jackson has acknowledged that in this case, as in others: The less supervision by this court, the better.' John R. Wilke, For Antitrust Judge, Trust, or Lack of It, Really Was the Issue, Wall St. J., June 8, 2000, at A1.

II. THE RPFJ IS CONSISTENT WITH ALL OF THESE PRINCIPLES, WHEREAS THE PROPOSALS BY THE LITIGATING STATES AND OTHER CRITICS WOULD VIOLATE EVERY ONE OF THEM.

On balance, the RPFJ complies with these four principles and is therefore in the public interest. Like most settlements, it is less than perfect. However, the purpose of this proceeding is not to produce a perfect order. The court must review the settlement that the parties have agreed to, and enter it so long as the proposal falls within the reaches of the public interest.' Microsoft, 56 F.3d at 1458 (DC Cir. 1995) (emphasis in original; citations omitted); see 15 U.S.C. u 16(e) (Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest.).

It is clear that entry of the RPFJ is in the public interest. The federal government has explained at length in its Competitive Impact Statement that the RPFJ will provide a prompt, certain and effective remedy for consumers by enjoining the conduct that the Court of Appeals found to be illegal, and by restoring competitive market conditions. Competitive Impact Statement at 2, United States v. Microsoft, No. 98–1232 (D.DC Nov. 15, 2001) (CIS). Each of the Court of Appeals' findings of anticompetitive conduct is addressed by at least one provision of the proposed final judgment. See Exh. B (table showing which provisions address each finding of illegality). Indeed, the RPFJ's provisions regarding server protocols, and its enforcement provisions, extend beyond the anticompetitive conduct found by the Court of Appeals. Accordingly, any notion that the RPFJ only tells Microsoft to go forth and sin no more, United States v. Microsoft Corp., 159 F.R.D. 318, 334 (D.DC 1995), rev'd, 56 F.3d 1448 (DC Cir. 1995), is ludicrous.

In contrast, the Litigating States and other critics of the RPFJ have proposed a variety of radical remedies that they claim would be more effective than the RPFJ in restoring competition. However, these proposals violate the four principles described above, and are in fact designed to benefit Microsoft's competitors. Indeed, these proposals would advantage Microsoft's competitors in areas other than PC operating systems, which is the only market at issue in this case. Moreover, rather than seeking to restore competition, these proposals and others like them seek to impose a court-designed, court-regulated regime that is especially inappropriate for a rapidly changing area such as IT. A principle-by-principle analysis highlights the flaws in these proposals.

A. The RPFJ Is Designed To Benefit Consumers, Whereas The Litigating States' Proposals Are Designed To Benefit Microsoft's Competitors.

As noted above, the most vital principle in designing an antitrust remedy is that it must be designed to benefit consumers rather than competitors. Unlike the Litigating States' proposals, the RPFJ easily complies. Consumers will benefit from the guaranteed flexibility and choice provisions in the RPFJ. All new Microsoft operating systems, including Windows XP, will have to allow end users to readily remove or re-enable Microsoft's middleware products such as its Internet browser, instant messaging tools, media player, and email utilities. While end users can already remove Microsoft middleware from Windows XP, the RPFJ will make it easier for users to switch and compare among competing middleware products, including those installed by computer manufacturers and those readily accessible over the Internet. Most importantly, the RPFJ preserves the integrity of the Windows standard while making it easier for other platforms to compete with Windows. As discussed above, the network effects that characterize the operating system market mean that consumers and the IT industry both benefit when they know that the platform they rely on is widely used, and will continue to be widely used in the future. Findings of Fact at 19–23; see also Affidavit NN 9–14. By and large, the RPFJ avoids requirements that would encourage the emergence and sale of multiple, incompatible operating systems under the Windows brand name. At the same time, the RPFJ protects Microsoft's competitors in several ways. Most importantly, it forbids retaliation against OEMs, u III.A, requires uniform license terms for the twenty largest OEMs, u III.B, and prevents Microsoft from including various restrictive provisions in OEM licenses, u III.C. Thus the RPFJ opens up the valuable OEM distribution channel to competitors, addressing the Court of Appeals' most substantial concerns. By increasing competitors' access to OEMs and by preventing Microsoft from negotiating quotas with IAPs, the RPFJ reasonably ensures that consumers will have access to whatever products they want.

By contrast, a central thrust of the Litigating States' proposals is to break Microsoft's control over the Windows brand. Forcing Microsoft to break up Windows into what a court conceives of as its component parts both destroys the utility of the standard Windows platform and entangles judges in a maze of technical regulation that they are poorly equipped to solve. If implemented, the LSPFJ would result in the creation of as many as 4,000 different versions of Windows, each requiring support not only by Microsoft but also by OEMs, software developers, and other IT professionals. This outcome would worsen, not improve, the lot of consumers. It would only serve to weaken Microsoft's product offerings, confuse users, drive up prices, and limit software choices.

Such remedies would also create concerns about privacy and security. Consumers are concerned and rightly so about on-line privacy and the security of their electronic information. E.g. David Ho, Identity Theft Tops Fraud Complaints, Wash. Post, Jan. 24, 2002 at E4. Because Microsoft would have almost no control over access to its code and to its technical information under the states' plan, hackers and other unsavory characters would find it much easier to penetrate the most common privacy and security protections. It would also be harder for Microsoft to control computer piracy, which in the end drives up prices to consumers. By making the fruits of Microsoft's innovations readily available to competitors, the Litigating States' proposals would also harm consumers by reducing Microsoft's incentive to innovate in the future. Indeed, it is likely that Microsoft's research and development budget, which has historically been the largest in the industry, would be substantially reduced to the 22 detriment of consumers. Property ownership is the cornerstone of a free market system; as property rights are eroded, so is the incentive to put that property to its most valuable use. Beyond these problems, the Litigating States' proposals are patently designed to provide specific benefits to Microsoft's principal competitors, and to reinforce their dominant positions in markets that are irrelevant to this litigation. This approach to remedies is contrary to the interests of consumers and the rest of the IT industry, and contrary to antitrust law. Benefits to AOL Time Warner. Some of the Litigating States' proposals will directly benefit AOL Time Warner. For example, the Litigating States' proposal to break Microsoft's control over the Windows brand, and the proposed prohibition on making Microsoft middleware the default for any functionality, LSPFJ u 10, unless the OEM or other licensee can override the setting and designate a different default or give the end-user a neutrally presented choice means that consumers who think they are buying a coherent, integrated operating system designed by Microsoft will get something quite different.

To see how this benefits AOL, consider the following scenario: AOL's Magic Carpet service will compete with Microsoft's .Net services. If Microsoft designates .Net as a default service in Windows, AOL can ask computer sellers to re-direct the default to Magic Carpet. Indeed, AOL's strategy is to do just that. Alec Klein, AOL to Offer Bounty for Space on New PCs, Wash. Post, July 26, 2001, at A1 (In internal AOL documents, the media giant lays out a strategy that calls on manufacturers to build into their new personal computers icons, pop-up notices and other consumer messages aimed at pushing aside Microsoft by giving AOL's own products prominent placement on PCs. It's the latest foray in an intensifying feud between the two technology titans over consumers and supremacy on the Internet.) Yet this hybrid product will still be marketed as a Windows system, making Microsoft responsible in consumers' eyes for programs it has no control over, and giving AOL a free ride on Microsoft's reputation and marketing.

Other users will be provided with a bewildering array of choices, all presented in a neutral manner, i.e. without guidance as to what product best suits their needs. Yet sophisticated users who have information

about middleware alternatives do not need neutrally presented choices to help them make their decisions. Less sophisticated consumers are entitled to get the brand they paid for, or at least to be told how to get that brand. The RPFJ's Section III, by contrast, puts Microsoft and its competitors on a level playing field, with minimal judicial intervention.

Benefits to Sun Microsystems. Another Microsoft rival, Sun, would also benefit directly from the Litigating States' proposals. Sun would benefit most obviously from the proposal that Microsoft include Sun's Java with every copy of Windows. LSPFJ u 13. Apparently Sun sees no conflict between that proposal and the proposal that Microsoft make available middleware- free versions of Windows at reduced prices. It is hard to argue that this requirement would benefit consumers, who can already get Sun's Java free from those web sites that use it. The federal government's settlement with Microsoft will make Sun's Java even easier for consumers to obtain by allowing OEMs, IAPs, and ISVs to provide it to their customers without fear of retaliation. But under the Litigating States' proposal, all consumers would have Sun's Java forced on them.

Benefits to IBM and Apple. The Litigating States' proposals also benefit IBM and Apple, giving them each an Office suite. IBM wants Office for Linux, and under the Litigating States' proposal it will get its wish by snatching Microsoft Office source code at the auction price. Under that proposal, Microsoft must maintain and support Office for the Macintosh even if it is a money-losing proposition. And if Apple is unhappy with the Office support Microsoft has to provide, it can snatch the source code at auction, and have an Office all its own. LSPFJ u 14. These porting proposals go far beyond the scope of this case, which is the Windows operating system market.

Conversely, the federal government's settlement with Microsoft addresses the Court of Appeals' only holding of anticompetitive behavior involving Apple, namely the agreement that Apple would distribute Internet Explorer exclusively. Under the RPFJ, Apple, like all ISVs, is free to distribute and promote non-Microsoft platform software without fear of retaliation. The states' proposal would give a free ride to a handful of companies and would impose an unnecessary burden on Microsoft but would not benefit consumers.

The states' proposals also provide free source code for Microsoft's Internet Explorer, LSPFJ u 12, giving IBM a good browser for the entire line of IBM computers and Apple a leg up on its software design. But once again, the problem with all this generosity is that its sole purpose is to benefit competitors and harm Microsoft, not to benefit consumers.

B. The RPFJ Is Narrowly Tailored To The Court Of Appeals' Ruling, Whereas The Litigating States' Proposals Go Well Beyond It.

Another key flaw in the Litigating States' proposals is that they go well beyond the Court of Appeals' ruling. Indeed, the sweeping scope of the Litigating States' proposals suggests that they mistakenly read the Court of Appeals' decision on liability as a broad affirmance, rather than as it was in fact a reversal in part containing very precise, narrow holdings on liability. Indeed, the DC Circuit reversed the District Court's findings that Microsoft had committed attempted monopolization and illegal tying.

As to the remaining findings, the Court of Appeals affirmed only some of the District Court's findings that Microsoft had illegally maintained its monopoly. Microsoft, 253 F.3d 34.

The Court of Appeals held that some exclusionary contracts and negotiating tactics were unlawful; that Microsoft had acted illegally in deceiving developers about its own Java language; and that Microsoft had illegally excluded Internet Explorer from its Add/ Remove facility and intermingled its Internet Explorer and operating system code. The Court also emphasized that, on remand, the District Court must base its relief on some clear indication of a significant causal connection between the conduct enjoined or mandated and the violation found directed toward the remedial goal intended.' Id. at 105 (quoting 3 Philip E. Areeda & Herbert Hovenkamp, Antitrust Law N 653(b), at 91–92 (1996)).

Section III of the RPFJ addresses each of these holdings. As to exclusionary contracts and high-pressure negotiations, the RPFJ forbids Microsoft to retaliate against OEMs, u III.A; requires Microsoft to sell Windows to the twenty largest OEMs under uniform license terms, u III.B; and forbids retaliation against, or exclusionary agreements with, ISVs or IHVs, u III.G, u III.F. As to Java, the RPFJ requires disclosure of information needed to design other software to be fully compatible with Windows, u III.D, and requires Microsoft to license its intellectual property to rivals, u III.I. As to Internet Explorer, the RFPJ forbids Microsoft to restrict any OEM from modifying their computer interfaces in various ways, such as removing the Internet Explorer icon, u III.C, and requires Microsoft to allow end-users to remove access to Microsoft Middleware or to designate a non-Microsoft middleware product as the default instead of the Microsoft product, u III.H.

The Court of Appeals was also quick to note that much of the conduct that Microsoft was accused of and even conduct that was found to be anticompetitive in particular settings is common in business, and is usually not anticompetitive. But the states' proposed categorical bans sweep in a host of pro-competitive conduct, in disregard of the Court of Appeals' instruction that any remedy be narrowly tailored to specific holdings of illegality. For example, the states would ban exclusive dealing across the board. Yet the Court of Appeals explained that: ''exclusive contracts are commonplace especially in the field of distribution in our competitive, market economy, and imposing upon a firm with market power the risk of an antitrust suit every time it enters into such a contract, no matter how small the effect, would create an unacceptable and unjustified burden upon any such firm.'' Microsoft, 253 F.3d at 70.

Similarly, the proposed judgment reflects an implacable hostility to integrating an internet browser or any additional functionality with the basic Windows operating system. Yet, as the Court of Appeals observed, [a]s a general rule, courts are properly very skeptical about claims that competition has been harmed by a dominant firm's product design changes. Id. at 65.

In perhaps the Litigating States' most egregious proposal, Sun CEO Scott McNealy got a special gift he has always wanted, see Peter Burrows, Face-Off, Bus. Wk., Nov. 19, 2001, at 104, — the ability to stop Microsoft from buying anything that could help it compete with Sun. If Microsoft wants to make an acquisition, an investment, or an exclusive license, it must notify the plaintiff states' attorneys two months in advance. LSPFJ u 20. The states make this proposal despite the total absence of any takeover-related findings anywhere in this case. It was precisely this type of overreaching that the Court of Appeals soundly rejected in 1995, when it reversed Judge Sporkin's refusal to approve the federal government's settlement with Microsoft and reassigned the case to a different district judge. Microsoft, 56 F.3d 1448. Judge Sporkin had gone beyond the complaint to try to force the parties to address his own concerns about vaporware. The Court of Appeals found that effort inappropriate. And it is no more appropriate for the Litigating States, at this late date, to try to drag in new issues and punish Microsoft for conduct that it never had a chance to defend. If a claim is not made, a remedy directed to that claim is hardly appropriate. Id. at 1460.

Another example of overreaching is buried in the Litigating States' proposals regarding orders and sanctions, and which singles out for punishment any groundless claim Microsoft makes of intellectual property infringement. Again, Microsoft's conduct in intellectual property litigation is no part of this case.

Finally, the Litigating States' proposed ban on retaliation against those who participated in the litigation is not grounded in any finding of illegality, even though Microsoft has been enmeshed in antitrust cases for years and has presumably had ample opportunity to retaliate unhindered. The RPFJ retaliation ban, in contrast, is clearly aimed at the possibility that Microsoft might try to punish companies that do not cooperate with Microsoft's business goals. The Court of Appeals envisioned that Microsoft would continue its normal business relations, albeit with injunctions in place against specific conduct found to be anticompetitive. The RPFJ provision implements that vision, while the states' proposal would open the door to unfounded claims of retaliation by any disgruntled participant in the litigation.

Of course, the RPFJ itself is overbroad in some respects.

Yet despite these problems with its scope, it is clear that as a whole, the RPFJ falls within the reaches of the public

For example, the Proposed Final Judgment defines Microsoft middleware as including Outlook Express, photo and video editing software, and other products that cannot serve as competitive threats to Microsoft. RPFJ u VI.K.1. This definition clearly

overreaches. This case is about Microsoft's response to the emergence of middleware as a competitive threat a possible alternative platform for software developers that could run on a variety of operating systems and thus would make software independent of Windows. Only middleware that can interest. It addresses the Court of Appeals' findings of illegality, remedies them all, and ensures competitive conditions in the market for Intel-compatible PC operating systems. C.The RPFJ Will Benefit The IT Industry, Whereas The Litigating States' Proposals Would Impose Substantial Harm On Other IT Companies. The RPFJ also offers significant advantages to the IT industry. Most importantly, of course, it preserves the integrity of Windows. But it also serves the IT industry by achieving a relatively quick resolution of this dispute. Litigation over remedies, possibly followed by appeal and remand or further appeal, could take years. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, United States v. ITT Continental Baking Co., 420 U.S. 223, 235–38 (1975); United States v. Armour & Co., 402 U.S. 673, 681–82 (1971), and normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation. Armour, 402 U.S. at 681. The RPFJ has the virtue of bringing the IT industry certain benefits and protections without the uncertainty and expense of protracted litigation, Armour, 402 U.S. at 681; Microsoft, 56 F.3d at 1459; it will provide prompt, certain and effective remedies, CIS at 3.

The RPFJ also directly helps OEMs and other IT firms. Many of the options that will benefit consumers will also benefit the companies they buy from. As discussed above, OEMs serve as an independent basis for software development across different operating systems poses a competitive threat to Windows. Microsoft, 253 F.3d at 53. Similarly, the RPFJ overreaches when it requires that Microsoft disclose communications protocols used to interoperate with Windows 2000 servers and their successors. The Court of Appeals' definition of the relevant market made it clear that servers are not a part of that market and therefore, that they are not a part of this case. Microsoft, 253 F.3d at 52–53. As explained above, the only connection between servers and this case is that Microsoft's competitors in the server market have been highly influential with the Attorneys General who continue to litigate this case. The server protocols themselves are irrelevant and thus compelling disclosure is both overbroad and designed to benefit competitors rather than consumers.

29 that equip their products with any Microsoft operating system will benefit from guaranteed flexibility under the RPFJ. The twenty largest OEMs will also be entitled to uniform licensing terms, with some flexibility for volume discounts and marketing allowances. OEMs will have the ability to lease desktop space as well as space in the boot sequence on their computers by installing or promoting non-Microsoft products and services; IT companies will thus have the option to negotiate with the OEM(s) of their choice for that space. By contrast, the states' proposal to give the OEMs the choice of which parts of Windows to include on their computers and forcing Microsoft to accommodate those choices would fragment the Windows standard. As explained above and in Mr. Zuck's affidavit, such fragmentation would have disastrous effects. Creating multiple versions of Windows would slow the release of new versions of Windows and would make it impossible for software developers to program with confidence. Either they would write only to the leanest version available, depriving consumers of the benefits of most of Windows' functionality, or they would have to write multiple versions of each program, substantially increasing development costs and customer confusion. A stagnant, fragmented Windows would hurt the entire industry.

On another front, the RPFJ benefits all IT providers, including Microsoft's competitors, by guaranteeing access to technical specifications. Microsoft would have to promptly disclose technical information that enables any Windows operating system to communicate with Microsoft servers and with all Microsoft middleware products. uu III.D, III.E. To encourage more non-Microsoft middleware, the settlement forces Microsoft to license any intellectual property rights that others might need to compete with Microsoft. u III.I. And as with OEMs, Microsoft could not penalize any software developer, service provider, or hardware vendor that develops or sells products that compete with Windows and Microsoft middleware. uu III.A, III.F.

By contrast, as discussed above, the Litigating States' proposals would stifle innovation further by weakening or entirely eliminating Microsoft's intellectual property rights, thereby reducing its incentive to innovate. E.g. LSPFJ uu 1 (stripping down Windows), 2(a) (mandatory licenses), 3 (mandatory licensing of predecessor versions), 4 (disclosure of APIs and technical information), 12 (giving away browser), 14 (mandatory porting), 15 (intellectual property licenses), 19(f) (intellectual property claims). These provisions would not only hurt Windows, but also would instill in any sensible IT executive the fear that success will lead to confiscation. Even if these proposals did not end Microsoft's improvements to Windows, another provision would likely do so. That is the Litigating States' proposal to require Microsoft to notify any ISV of non-Microsoft middleware of any planned action, sixty days in advance, if the action will interfere with the middleware's performance or compatibility with Windows, unless the action is taken for good cause. LSPFJ u 5. After the notification, the ISV could complain to Microsoft's court-installed regulators to try to block the change.

The states' broad prohibitions on exclusive dealing and on agreements limiting competition also would prohibit Microsoft from entering into joint ventures with any other members of the IT industry. Because IT products are so interdependent, both consumers and companies would suffer if the only option is to design around Microsoft products, and the option of collaborating with Microsoft on entirely new projects is excluded.

D. The RPFJ Attempts to Structure a Workable Compromise, Whereas the Litigating States Propose to Establish a Court-Run Ministry of Microsoft. Finally, the approach of the RPFJ is not unduly regulatory. To be sure, the enforcement mechanism is too intrusive and could be substantially improved. However, the substantive provisions of the RPFJ focus on improving competition rather than micromanaging markets or product design. Thus, most of the injunctions tell Microsoft what not to do, rather than imagining what a perfect competitor might do and then attempting to enforce that vision. Not so the proposal by the Litigating States. They have proposed ongoing regulation of Microsoft's conduct, including ongoing judicial involvement in Microsoft's management, by a special master who would serve as an investigator, prosecutor, judge, and potentially even witness against Microsoft. LSPFJ u 18. The special master would be free to receive and act on even anonymous complaints, again a procedure that the Court of Appeals harshly criticized when Judge Sporkin used it. Microsoft, 56 F.3d at 1464. These proposals are most likely unlawful, if not unconstitutional. Id.; Microsoft, 147 F.3d. at 954 (granting mandamus to vacate non-consensual reference to a special master where [t]he issue here is interpretation, not compliance; the parties' rights must be determined, not merely enforced). And in all events, they would allow Microsoft's rivals to thwart competition at every turn.

The Litigating States also err in proposing an unduly long duration period. Any remedy in this case must be sensitive to the rapid pace of technological change in the operating system market. An injunction that is appropriate today may be completely unsuited to tomorrow's market. If, as The Economist has written, operating systems are no longer central, then there is little point in regulating that market. Microsoft: Extending its Tentacles, The Economist, Oct. 20–26, 2001, at 59. The RPFJ recognizes this reality by limiting its term to five years, with the possibility of a two-year extension. u V. Not so the Litigating States, who in their rush to ask for the most punitive remedies available seek a ten-year term for the judgment. In an effort to cover unforeseeable eventualities, the States also define key terms such as middleware, browser, and technical information so broadly that the proposed judgment is in some ways absurd. For example, it appears that the middleware definition would include parts of Windows 3.0, which was developed before anyone thought of Java or Internet Explorer. Because they are unworkable, many of the Litigating States' proposals invite additional judicial involvement through complaints by competitors or others; indeed, the provisions for anonymous complaints invite not only involvement, but abuse.

In short, the Litigating States' proposals pose an enormous risk of ongoing judicial regulation. Not only would they require

substantial modification of Microsoft's internal management structure, but they would require the District Court to set up its own regulatory agency, headed by the special master and potentially including a substantial staff, all paid by Microsoft. Courts are simply not designed for this sort of ongoing regulatory role, particularly in a field as far removed from their expertise as IT. At best, the Litigating States' proposals would create a contentious, judicially-regulated regime in place of a market. At worst, they would seriously impair IT innovation, at everyone's expense.

CONCLUSION

For all these reasons, the RPFJ should be adopted, and the Litigating States' proposals should be rejected.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. Civil Action No. 98–1232 (CKK) MICROSOFT CORPORATION, Defendant

STATE OF NEW YORK ex rel.) Attorney General ELIOT SPITZER, et al.,) Plaintiffs, v. Civil Action No. 98–1233 (CKK) MICROSOFT CORPORATION, Defendant.

DECLARATION OF JONATHAN ZUCK

January 25, 2002

Qualifications and Scope of Testimony

1. My name is Jonathan Zuck. I am over 18 years of age. I reside at 3701 Upton Street NW, in Washington, DC. I am President and Executive Director of the Association for Competitive Technology (ACT). I make this declaration in my capacity as President of ACT, which declaration is based on my personal knowledge of the facts set forth herein. To my knowledge, the factual assertions presented in this affidavit are true and correct.

2. ACT is a nonprofit association representing over 9,000 companies and individuals in the information technology (IT) industry. ACT members include independent software developers, hardware developers, systems integrators and on-line companies, many of whom are small and medium-sized businesses who depend on Microsoft technology for their success. Protecting the freedom to achieve, compete and innovate, ACT is dedicated to preserving the role of technology companies in shaping the future of the IT industry. Although their businesses vary, ACT members share a preference for market-driven solutions over regulated ones. Through education, advocacy and collaboration, ACT gives the IT industry a powerful voice in shaping its future. Although Microsoft is also an ACT member, ACT's interest in the remedies phase of this case stems primarily from the serious adverse impact the remedies proposed by the Litigating States will have on ACT's other members, and especially on independent software vendors (ISVs) in the business of developing applications software for use by business and consumers.

3. I became President of ACT in 1998. Since assuming leadership of ACT, I have been responsible for providing analysis, commentary and background information on behalf of the IT industry on a broad range of technology issues being debated in the public policy arena. I have appeared on a wide variety of television and radio programs, and do a large amount of writing for trade publications such as PC Magazine, PC Week, DBMS, the Visual Basic Programmer's Journal, and Windows Tech Journal. I have coauthored several books on the subject of Windows application development, including Visual Basic How-To. I also regularly speak at trade conferences in the United States and around the world on matters important to ACT's membership.

4. Prior to becoming President of ACT, I spent more than 15 years as a professional software developer. Most recently, I served as Director of Technical Services at the Spectrum Technology Group in Washington, DC, a consulting firm specializing in client/server, Internet and data warehouse solutions. Prior to that, in 1988, I founded and served as President of User Friendly, Inc., of Washington, DC, a company providing consulting and software development services to local businesses. The company expanded into commercial software development with Crescent Software in 1992. I also set up U.S. operations for Matesys, a French software firm that produced client/server development tools including ObjectView. At Matesys, I was responsible for product management, marketing and sales, and helped build the company into an $11 million business before it was sold to Knowledgeware.

5. The purpose of ACT's Tunney Act comments, and of my Declaration, is to provide the Court with the IT industry's perspective on the Revised Proposed Final Judgment (RPFJ) as well as the industry's perspective on more radical proposals that have been advanced by various groups, including the Litigating States. Specifically, this Declaration seeks to explain the importance of the standard, constantly evolving Windows platform and the heavy costs that would be imposed by the Litigating States' proposals or any other proposals that impair Windows' integrity. For the reasons explained below, ACT believes that the Litigating States' proposed remedies could well be devastating to the IT industry, with no corresponding benefit. In contrast, the RPFJ will likely preserve and even strengthen the IT industry.

Value of Windows

6. In various ways, the Litigating States' proposals will threaten the three features of the Windows operating system that make it so valuable to the IT industry: (1) the fact that Microsoft constantly improves it by adding new features and functionalities; (2) its uniformity and widespread acceptance; and (3) its low cost to consumers.

7. Constant Improvement and Addition of New Features and Functionalities. One reason Windows is so valuable to the IT industry is that Microsoft has constantly improved it. For example, each new release of Windows contains software drivers for the major new printers and other peripheral devices that have been released since the prior version of Windows. This means that developers of applications such as money management software, graphics programs, etc., do not need to create their own drivers for these devices or, worse, choose from among several competing drivers.

8. Virtually everyone in the IT industry, moreover, has a strong interest in seeing this trend continue in the future. The addition to Windows of such new functionalities as voice recognition, for example, will allow software developers to add such features to their products at minimal cost. Those costs will increase dramatically and consumer benefits will be reduced if software developers are forced to develop their own voice recognition features or, worse, to port their programs to several competing voice-recognition programs.

9. Windows' Uniformity and Widespread Acceptance. Uniform standards are crucial to an efficient, rapidly evolving IT sector. Communications and Internet standards provide the language necessary for many different computers to talk or network with one another, enabling, for example, users of the World Wide Web to locate and retrieve the information they seek. Operating systems perform a similar function, allowing hardware devices and software applications to communicate with a computer. Indeed, it is Windows' consistency that makes it so valuable.

10. As the District Court recognized in its Findings of Fact, with Windows the operation of both the computer and the software is the same from computer to computer. This means that the same software will run on all Windows-based PCs and, by and large, all hardware devices can be used as well. Hence, the consumer avoids the need for time-consuming, often expensive retraining, and thus has a greater incentive to learn how to use the existing system. Also, the widespread acceptance that Windows enjoys also makes it easier to ensure that computer products (both hardware and software) work the way they are supposed to, and work well with each other. Operating system consistency usually means that software will operate normally even if the type of computer changes. For example, WordPerfect will function as advertised on a Windows-based Dell computer or a Windows-based Compaq computer.

11. In its consistency from one computer and software program to another, Windows is markedly different from the UNIX operating system. That system is in reality a collection of similar operating systems, including Sun's Solaris, Digital's UNIX, HP's HP-UX, IBM's AIX and SCO's UnixWare. See http://www.techweb.com/encyclopedia/defineterm?term=unix. Although different versions may be desirable with respect to many products, for most computer users such a proliferation promises nothing but confusion, lost time, fewer applications, and higher prices.

12. For example, a consumer who shifts from one UNIX-based computer to another

UNIX- based computer may find that the two computers use different UNIX versions with different features, functions, and idiosyncrasies. Consequently, the consumer may have to devote considerable time and expense learning how to perform the same tasks on the second UNIX- based computer that she already knew how to perform on the first platform. Worse still, the software applications or hardware equipment she purchased for and used on the first computer may be incompatible with the version of UNIX installed on the second computer. And a UNIX user obviously has less incentive to develop skills tailored to her particular system if it is likely that she will use a different UNIX operating system in the future.

13. For these reasons, the cost per potential customer of developing a piece of software for the Windows operating system is significantly lower than the cost for the UNIX operating system, which translates into more software and lower prices for consumers.

14. In addition, more than any other operating system, Windows has remained compatible with software written for older Windows versions. As a result, consumers have much greater confidence that the software they purchase will work when they upgrade to a new Windows release. Hardware manufacturers and developers similarly face much less risk that their R&D expenditures will be stranded if Microsoft releases a new version.

15. Windows' Low Cost to Consumers. The Windows operating system also allows the developer, or other providers of support services, to support end-users at minimal cost. Each operating system not only has signature application interfaces and user commands, it also presents its own set of bugs and system errors. Thus, to provide software or hardware support, a developer must train personnel to identify and understand the idiosyncrasies of each operating system under which it markets its product. These increased support costs increase prices and decrease consumer demand for products and services.

16. Consumers, moreover, obtain all of these benefits inexpensively. Compared to the cost of a typical PC, and to the cost of the software typically installed on that PC, the cost of Windows (at about 5%) is relatively small. A low price, coupled with all the benefits stemming from Windows' widespread use, drives up demand by making computer products more affordable and attractive to consumers.

17. The widespread use of an inexpensive, constantly evolving operating system is particularly important in an industry as dynamic as the information technology industry, which constantly generates both new products and new uses for those products, and for which new developments such as the Internet can redraw the competitive landscape overnight. A popular operating system like Windows allows consumers and developers to act quickly and with confidence that software and hardware will work on most PCs today and in the future. And the fact that many consumers choose Windows adds a measure of stability to a highly dynamic industry. This Court should avoid any remedies that would threaten or undermine these benefits. Potential Adverse Effects of the Litigating States' Proposals on Consumers and the IT Industry

18. The RPFJ will increase consumer choice while maintaining the integrity of the Windows platform. OEMs and consumers will be free to add whatever products they choose, even to the startup sequence, or to disable access to Microsoft middleware, but consumers will still be able to choose Microsoft products and programmers will still be able to invoke Windows' full functionality. RFPJ u III.

19. In contrast, the Litigating States' proposals will impose tremendous costs on the IT industry, its consumers, and the public at large.

20. Balkanizing Windows. A central problem with the Litigating States' proposals is that they would allow OEMs to create what would amount to separate versions or flavors of the Windows platform. As a result, the proposal would set in motion a process that could well result in the balkanization of Windows, to the detriment of IT companies and consumers alike.

21. The Litigating States' proposals would require Microsoft to offer stripped-down versions of Windows, with the middleware elements removed, at reduced prices. OEMs could then either leave those elements out altogether or replace them with competitors' products. As a result, a software developer can no longer assume that particular Windows components will be readily available to consumers. The developer must then purchase the needed feature from Microsoft and include it with its own program, or it must force the customer to purchase it from Microsoft. Either way, both the developer and the consumer would ultimately suffer from the need for a second, unnecessary transaction.

22. As an example, suppose that a company had an application that relied upon a Windows innovation to automatically support the display and navigation of its HTML-based on-line help system. The proposed remedy lets OEMs sell Windows without that support middleware, so the developer would have to incur the costs to create, distribute, and support its own middleware for on-line help display without delivering any greater value to customers.

23. The Litigating States' proposed remedy, moreover, actually gives OEMs an incentive to strip down Windows before offering it to consumers. That is because Microsoft shall offer each version of the Windows Operating System Product that omits such Microsoft Middleware Product(s) at a reduced price (compared to the version that contains them). Litigating States' Proposed Final Judgment u 1. Under the Litigating States' mistaken notion of Middleware, Windows itself would have been called Middleware, since it originated as an application running on top of DOS. There can be no doubt that the implementation of this concept would effectively balkanize what is now a uniform, coherent software platform. This balkanization would of course destroy one of the characteristics of Windows that makes it so valuable to developers of software and hence consumers its consistency from one Windows-based PC to the next.

24. Uncertainty in the IT Industry. Yet another major cost of the States' proposal is the tremendous uncertainty it would create and, indeed, already has created in the industry and the associated financial markets. The uncertainty surrounding the long-term implications of the proposed remedies is already causing software and hardware developers, as well as their current and prospective clients, significant harm. I do not believe that the vast majority of the conduct remedies proposed by the Litigating States will do anything but create an unwieldy regulatory regime for software and hardware designers.

25. A major source of uncertainty has to do with the future of the Windows platform. We do not know whether, assuming that the Litigating States' proposals or similar proposals are adopted, Windows will continue to be the standard operating system, or whether it will be viable at all.

26. For all these reasons, the mere fact that the Litigating States have proposed such extreme remedies is already creating a certain amount of paralysis among those in the IT industry who are working to improve existing products and to create the products of the future. Conclusion

27. While the RPFJ is superior to the Litigating States' proposals in many ways, a crucial difference is that the RPFJ would preserve the integrity of the Windows standard. By doing so, it will preserve the integrity of the IT and particularly the software development industry.

28. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge:

Jonathan Zuck, President,

Association for Competitive Technology

Signed this the 25th day of January, 2002

MTC–00027807

From: Shaun Savage
To: Microsoft ATR
Date: 1/28/02 11:04am
Subject: Stop MS, for the comsuner sake!!

HI

This is not a legal argument, it is a personal experiance in dealing with MS. The settlement is bad. It does not deal the the problem of MS rape of the consumer and developer.

MS Modis Operandi(sp) is to control the access to computers and make money! This is at the expense of consumers and developers. When Word98 first came out it could not write Word95 format. This prevented the two programs sending file back and forth. This forced the Word95 user to upgrade(spend money).

MS does NOT follow standards!!! Even when thay help define the standards they break the same standards they help define. This forces developers to write new work arounds for the ''intentianl bugs/features''. This make MS products incompatiable with all other software, because these bugs are unpublished.

There is a difference between API (Application Programming Interface) and (protocols/file formats). An API requires a library that know the (protocol/file format).

To be interoperable the lowlevel protocols and file formats need to be known. This includes security protocols. MS does not intovate!! they take existing ideas and comercialize the one method of doing that idea. The only reason they can do that is that they are an monopoly. If low level formats and protocols are published then the ''secret'' is in the quality in programming the application. This is where the compitition come in. If they can do something better than someone else in an open playing field, that is the way to compete. An monoculture of computers is very instable. the security of MS products is terrible!! When you allow the mix of data and program to be exchanged between systems then there is a lack of security. MS allows the transfer of data AND code in its data documents. VERY BAD! A way to force MS to improve service/products to the consumer is to allow compitition. To allow compitition ALL (that means ALL) low level protocols, file formats, and algorithms needs to be in the public domain. MS will try to sneak out of doing any change in its MO, and put paper work and beurcrat stuff, and legal stuff between change. Just look at the lies and ''tricks'' they pulled during the trial phase. Any settlement needs to have teeth. Really BIG teeth!!!

I, as an consumer, can't take legal action against MS, I don't have the money, time,. . .

I may have a justice case the MS harmed me, but I can never seek or have justice on my own.

''The goverment is here to protect me from things I can't protect myself from''

Please protect me from Microsoft!

Shaun Savage
20477 SW Tesoro CT
Aloha OR 97006
savages@pcez.com

MTC–00027808

From: Hans Reiser
To: Microsoft ATR
Date: 1/28/02 11:03am
Subject: Microsoft Settlement

If you are not able to process html format for proper printing, or you lost the html version I sent, please accept this email (excepting this sentence) as my comment on the proposed settlement, otherwise please accept the html version which preceded this.

MS Settlement Reflects Deep Failure To Understand Implications of ''Patching'' Technology

The positions of the DOJ, the States, and even Lawrence Lessig are based on a failure to understand that something unique to the software industry, which programmers call ''patching'' technology, makes software products infinitely separable if an essential facility called ''source code'' is provided. No disclosure of APIs, and no structuring of APIs, can accomodate all potential products in the manner that disclosure of source code plus use of patching does. Every line of source code is a possible location for insertion of new code that forms a new product. This new code can be distributed separately from the original source code, and post-sale added by the consumer, via what programmers call a ''patch''. Patching technology fundamentally changes product separability, making separation dependent on the essential facility called ''source code''. Non-programmers seem to not yet understand this. Persons who work in the Linux industry know this from experience, and I will try to convey this experience as someone who has built a business from the sale of patches (for the ReiserFS filesystem) in the only market where I had access to kernel source code.

Software is unique in that ''Compiler'' technology allows consumers to effectively reassemble software themselves.

A compiler is a computer program that takes a set of instructions about how to build a program (called ''source code''), and builds the software. Almost all software is actually assembled by compilers not humans, and the work of humans is almost entirely in creating the source code.

You have probably never used a compiler to assemble software yourself as a consumer because:

*you are not a Fortune 500 company with a staff of trained system administrators

*you probably use Windows not Linux, and Windows does not give you access to the essential facility known as ''source code'' that your ''compiler'' needs to reassemble your software

*the new crusade by Linux to make the compilation process user friendly has only just started Because you have never done it yourself, your intuition may tell you that it is not feasible, or that it is not feasible for a large market. Beware this intuition, it is simply wrong. The Fortune 500 are a significant market for antitrust purposes, and Linux is rapidly moving towards making asking compilers to perform reassembly a friendly experience for average persons.

It is frequently efficient to post-sale integrate software for a large part of the market, and it is getting more so with time. This is deeply different from physical products such as cars, in that most persons do not find it as effective to buy a collection of parts and self-assemble because they would have to do the work of assembly. With software, the computer does the work of post-sale assembly, and the consumer simply tells the computer to do it, goes to make some tea, comes back, and the job is done.

For instance, the business that I own (Namesys, see www.namesys.com) made its money entirely from sales of a filesystem (ReiserFS) that was sold separately from the operating system (Linux) for the first few years of our business. The revenues from this were enough to support us. Paying consumers such as MP3.com would take our source code, add it to the Linux kernel source code, use a compiler, let their computer do a few minutes of work to reassemble the kernel, and get a better filesystem as a result of it. This allowed MP3.com to save $20 million dollars according to their estimate. Others in my industry also sell filesystems separately from operating systems (www.veritas.com got its start that way, and still makes simply enormous amounts of money from doing so, there are others....).

Notice that I say filesystem. Your intuitive notion of what is an operating system probably tells you that the filesystem is part of the operating system. You may be tempted to think that what is part of the operating system is not viable as a product sold separately from the operating system. Lessig thought so, and this is because he lacks experience selling operating system components in the Linux/Unix programming industry.

Think of Jefferson Parish, and understand that software takes the fine distinctions of Jefferson Parish to their extreme:

*Software can be integrated in its functioning, and yet separate in its sale, and this means separate as a product for purposes of anti-trust law. (Most software products are functionally integrated with a separately sold operating system.)

*Software can be integrated in its physical distribution, yet separate in its sale. (Purchase of a CDROM holding the software is often separated from purchase of a license to use, and it is often considered efficient by publishers to bundle physical distribution without bundling licensing.)

*Software can be sold and transmitted over the Internet with no physical product created at all.

There is only one characteristic that necessarily defines the separation of a software product, and that is the license. A license is a contract, and contractual tying is illegal under the Clayton and Sherman acts.

Yet wait, if software products are so easily separable, why aren't there far more OS components out there being sold? Control over an essential facility is the answer.

Secret source code can be an essential facility the equal of putting a combination lock on every bolt in a car, and then declaring the combination to be a trade secret.

You wouldn't allow this for a car, yet traditional industry practice is that source code is kept a trade secret. The crisis our industry is facing, in which monopoly control is the norm in all parts of it not in infancy, is directly caused by this industry practice of secret source code. It is not necessary that the text be kept secret for copyright protection on books to be maintained, and it is also not necessary for software that the source be kept secret to protect ownership of it. Far from it, the underlying historical motivation of copyright and patent laws is to bring more information out of trade secret status.

We have a widespread well-entrenched industry practice that keeps an essential facility (source code) under the control of monopolists (of which Microsoft is merely the largest), and we have almost complete monopolization of the software industry in each of its mature niches. These are cause and effect.

I pray to you to not allow their continuance. Open up the operating system source code, and go even further. Declare that software is per se separable where source code is available. Declare source code to be an essential facility. Return copyright and patent practices to their historical roots, and require that information created be made public if it is to be protected.

Please do not hesitate to ask me to comment in greater detail or respond to your questions in this matter. I am available for in person testimony if desired.

I have great respect for Reilly and Lawrence Lessig generally, and for their

arguments in most other matters, and I hope it is understood that I merely have an advantage in possessing ''patches'' sales experience.

As for my needs, please create the legal conditions which will allow me to port ReiserFS to Windows and sell it separately from the operating system, by giving me the access to source code that I need to do the port, and to sell the patch separately from the OS.

Essential Facilites Related Citations

[U.S. vs. Trans-Missouri Freight Ass'n, 166 U.S. 290 (1897)] is the original precedent.

[MCI Communications v. AT&T Corp. 708 F.2d 1081 (7th Cir.), cert. denied, 464 U.S. 891 (1983)] describes a case more recent (it is a persuasive rather than controlling authority). Note that the 4 part test lacks any component referencing the need for a market to have been active at some point prior to the refusal to deal, and is the better for that lack.

Profit To The Monopolist From Tying

The Chicago School, to which the current DOJ administration adheres, holds that there is no incentive to monopolists to engage in tying because it believes they cannot extract more profit from forced sales of the tied product than they would from raising the price of the tying product, unless business efficiencies exist. For this reason, they feel that there is no need for the Clayton prohibition against tying, and feel there are civil liberty reasons to avoid government intervention into markets. Their analysis assumes the tied product is part of a fully competitive market, and for this reason it is deeply flawed.

The profit to the monopolist from engaging in tying is the difference between the market price and the marginal cost. For less than fully competitive markets, which is to say most markets, this is a non-zero amount. For software, especially software sold and distributed over the Internet, the marginal cost is close to zero, and the motivation for engaging in tying is extremely high. Senators Sherman and Clayton were much more knowledgable about economics than the Chicago School is paid to think (various monopolists have given large funding sums to pro-trust law schools). Some might like to think that, but for government, free choice expressed in the market would free us, but in sad reality the government is not the only means by which people organize to control and plunder the public. Cartels and monopolies take away our freedoms as well. The only thing worse than a government controlled economy is a monopoly controlled economy.

The Settlement As A Whole

I am opposed to the settlement as a whole. President Bush owns stock in Microsoft, and he appointed to head the antitrust division at the DOJ someone who is widely known to be opposed to laws against tying. When someone is opposed to a law that they are supposed to prosecute, they should not be allowed to settle a case their predecessor started. The proposed settlement is designed to be toothless, and to do nothing. Do not allow President Bush to settle this case, and thereby cripple the ability of the next administration to enforce the law. The failure of Microsoft and the DOJ to adhere to the contact disclosure provisions of the Tunney Act is one more reason to reject the settlement.

Conclusion

If you have the courage to firmly reject this settlement, if you declare software to be per se separable, and if you move aggressively to enforce the claim of the States while we wait for a new administration, you will have earned the admiration of the American people. Some of them will even know this.

More importantly, you will.

Sincerely,

Hans Reiser

Owner/Operator of Namesys

Author of ReiserFS, a significant component of Linux

5918 Marden Lane

Oakland, CA 94611

phone: +1 510–339–1044 (USA)

+7 095 290 6405 (I am currently in Russia)

MTC–00027809

From: Joanne Tur@ao1.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:08am
Subject: Microsoft Antitrust lawsuit

Mr. Ashcroft,

Attached is a letter from me regarding the antitrust lawsuit agaist Microsoft. Please consider my feelings on this matter.

Regards

Joanne Turner
210 Manchester Street
Danville, CA 94506
January 27, 2002
≤Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I write today to document my support of the recent settlement proposed by the DOJ in its antitrust lawsuit against Microsoft. I support this settlement because its formalization will mean that Microsoft's attention will no longer be diverted and they can get back to the business of creating excellent products. The formalized settlement will also mean that the IT industry will get the boost it has lacked since the beginning of this case. This boost will undoubtedly affect our failing economy positively.

I am pleased with the terms of the settlement as it stands, and I feel that Microsoft has made substantial strides to honor these terms. The compliance with these terms will ensure that competitiveness in the IT industry will be highly increased thereby giving consumers greater choices. Microsoft has already agreed to give their competitors license to their intellectual property and have also granted access to internal codes and protocols. These moves are all pro-competition and should more than quell the concerns of Microsoft's opponents.

It is my hope that you will see how crucial formalize this settlement is to the consumer, the IT industry and the economy and bring this matter to an expeditious close.

Sincerely,

MTC–00027810

From: Onnie Shekerjian
To: Microsoft ATR
Date: 1/28/02 11:09am
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
January 28, 2002

Dear Ms. Hesse:

The United States v. Microsoft Corporation litigation, which was brought nearly four years ago, should be ended with the consent decree by your Court.

Products which formed the basis for the Microsoft case in 1998 have since disappeared, becoming obsolete antiquities to be viewed with a smile and a ?remember when? usually reserved for hula-hoops and RC Cola. Other issues at the core of the case have also changed almost unidentifiably or have been sold or merged with others.

The failed Microsoft Network is one of the best examples. It was part of the case in the beginning, but has since faded from the landscape as another of Microsoft's unsuccessful ventures. What's lost in the haze in the anti-trust argument is that Microsoft has probably experienced as many failures as successes, but instead of employing more attorneys to even the playing field by litigation, they employed more developers and more R&D folks.

It's clear that Microsoft's innovations over the past 25 years were not anti-competitive, witnessed simply by the robust software marketplace we have today. In fact, the products and platforms Microsoft offers continue to make other products possible, like educational and learning programs.

New products and consistently decreasing prices cannot be symptoms of a closed or anti-competitive marketplace. The cries of ?monopolist!? against Microsoft, it turns out were an overreach.

More regulation will only damage one of the most promising industries in America. I hope you will sign off on the settlement agreement between Microsoft and the Justice Department and nine state attorneys general.

Sincerely,

Onnie Shekerjian

1301 East Myrna Lane

Tempe, Arizona 85284

MTC–00027811

From: Guinn Unger
To: Microsoft ATR
Date: 1/28/02 11:10am
Subject: Microsoft Settlement
Attorney General John Ashcroft

Dear Mr. Ashcroft:

I believe that the demands to break up Microsoft in the beginning of the antitrust suit against it would have had an adverse effect not only on my business but the IT industry as a whole. Fortunately, the settlement reached between Microsoft and Justice Department is reasonable. To settle this case is in the best interests of the consumer and the economy. While I do believe that sanctions against Microsoft are appropriate, we need to react rationally and not do anything that would result in damage to the economy.

Thank you.

Guinn Unger, President

Unger Technologies, Inc.
Microsoft Certified Partner
Compaq Solutions Alliance Partner
geunger@ungertech.com
www.ungertech.com
281–367–2477

Education is not the filling of a pail, but the lighting of a fire.—
William Butler Yeats

MTC–00027812

From: Frank Patitucci
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:10am
Subject: Microsoft Settlement

The purpose of this email is to add my voice to those opposed to the proposed settlement of the Microsoft Antitrust case. Much stronger penalties and remedies are necessary if Microsoft's behavior is to change.

The company has been convicted of committing crimes. It needs a punishment that matches the crime.

I am the CEO and Chairman of a private, employee owned company with about $20 million revenue and 200 employees. We provide employee relocation services to corporations when they transfer their employees. I am a card carrying capitalist. I have a degree from Stanford Graduate School of Business and have served as a part time professor there. Our capitalist system is the most productive economic engine ever invented. BUT it needs to be protected and guided by government (all branches) in order to continue to serve us and to be a model for the rest of the world.

Unfortunately, Microsoft represents capitalism at its worst. Here's how Microsoft's anti-competitive and anti-capitalistic behavior affects my company.

First, our company is now almost entirely dependent on Microsoft technology to provide our services. Frankly, when our computers go down we cannot do productive work. We are dependent on internal and web based systems to communicate with our clients, to manage our vendors and to perform basic business functions. All of our systems are Microsoft. And according to our IT staff ''we have no choice''.

Second, Microsoft limits the software we can purchase. At one point we had a database system called Foxpro. Foxpro was purchased by Microsoft. We purchased an accounting system called Great Plains. Great Plains was also purchased by Microsoft. We used to use word processor, spreadsheet, e-mail and presentation software produced by other companies that worked on the Microsoft operating system. I am now told by our IT staff that we can no longer purchase these products because they are not ''compatible'' with our other software. What happened to the companies that produced these excellent products? ''We have no choice''.

Third, we are paying more to Microsoft software than we should. How else could they accumulate $35 billion in cash in the face of the current recession? When I ask our staff what would happen if Microsoft increased tripled their licensing fees, they say, ''we have no choice''. We would have to pay whatever price they ask. There is no other product or service that we purchase as a company, other than public utilities, for which we have absolutely no choice.

The long term success of capitalism depends on free markets, fair competition and freedom of choice in selecting products and services. We don't have any of these in this very important sector of our economy, due to the illegal practices of one company: Microsoft.

I believe the Courts have two choices. The first is to allow Microsoft to maintain it's monopoly. If so it should be declared a public utility and regulated as such. Alternatively, the company should be broken up into enough parts that will encourage competition. This kind of remedy has proven to be successful in both the oil and telephone industries.

The proposed settlement is neither of these, and should be rejected. One last point, the fact that Microsoft is actively lobbying for the proposed settlement is cause for very great concern. We need to remember that Microsoft committed crimes and the remedies should be painful to the criminal. The current solution will send the worst message possible to current and future capitalists.

Sincerely,
Frank M. Patitucci
Chairman, CEO
ReloAction

MTC–00027813

From: Carlos Andrade
To: Microsoft ATR
Date: 1/28/02 11:12am
Subject: Microsoft Settlement
January 16, 2002
Attorney General John Ashcroft
The Justice Department
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing in support of the recent settlement between the Department of Justice and Microsoft. I am not as acquainted with all the details of this that I would prefer, but this entire lawsuit seems to have come about simply because some of Microsoft's competitors grew weary of trying to compete with Microsoft's Free Internet Explorer. I personally use IE and have done so for a while. I appreciate the fact of having free software with the operating system that I got with my computer. I understand that Netscape does not appreciate not being able to get my $40 or so dollars which I would have had to pay to them to get an Internet Explorer, because Microsoft provided it for free. This, in my opinion, is not a proper utilization of our legal system.

I use Microsoft products in my business and have found that their software is simply better and more reliable than anyone else's. I have used Netscape which I had received from my ISP, but I found Microsoft's product more user friendly and les problematic when it came to updates. Microsoft exerted no amount of influence for me to reach that conclusion. Simple experience has done that.

I believe that this lawsuit was simply an effort to force Microsoft to ''dumb down'' its efforts and allow other, software developers a chance at catching up. I also think that when a customer buys an operating system that has some added features such as a stable Internet explorer, the only one that benefits is the consumer. They don't need to go out and purchase additional software to get on the web which is what most customer are now getting computer for. This settlement has thankfully nullified the effort to separate IE form Windows. It is fair and offers pragmatic answers to complex problems, such as competitors'' worries about interoperability of Windows and OEMs irritation with Microsoft for shipping additional software along with Windows. Though the settlement extends a bit beyond the scope of the original lawsuit, it does end the litigation and should, in my opinion, be accepted.

Sincerely,
Carlos Andrade
Carlos Andrade
Network Administrator

MTC–00027814

From: carlos kennedy
To: Microsoft ATR
Date: 1/28/02 11:13am
Subject: Fw: Attorney General John Ashcroft Letter
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
January 28, 2002

Dear Mr. Ashcroft:

I am extremely pleased to hear that the Justice Department has finally decided to end its persecution of Microsoft, and agree to a settlement. Microsoft was never a monopoly; it simply provided the best product that people enjoy.

I hope that people will appreciate what Microsoft has sacrificed in order to bring an end to this settlement. Among the many terms they have agreed to, Microsoft has promised to allow computer manufacturers to pick and choose not only what Windows programs they will feature, but they can also include numerous Microsoft competitive programs in the computers they ship.

There are, of course many other terms in the settlement that are also damaging to Microsoft, but I just wanted to make a brief point, as I'm sure there will be numerous emails coming in on the side of Microsoft. Thank you for taking the time to hear me out on this matter.

Sincerely,
Carlos Kennedy
4 Marwood Court
Flat Rock, NC 28731
828–697–1203

MTC–00027815

From: James D Lane
To: Microsoft ATR
Date: 1/28/02 11:13am
Subject: Microsoft Settlement

Gentlemen;

This thing has drawn on far to long. I shiver to think of going back to the good old days of DOS. Force an end to this now and don't let the states draw this out any longer. Jim Lane, a Windows fan.

MTC–00027816

From: ACEEBO@aol.com@inetgw
To: Microsoft ATR

Date: 1/28/02 11:13am
Subject: Re: Has Your Opinion Been Counted?

THE ECONOMICS OF THIS COUNTRY HAVE BEEN DAMAGED BY THE US GOVERNMENT BRINGING AN ANTITRUST SUIT AGAINST MICROSOFT, WHICH COMPANY HAS DONE MORE TO ADVANCE COMMUNICATIONS AND THE COMPUTER INDUSTRY IN THIS COUNTRY THAN ANY ONE ELSE.

FOR LORD'S SAKE, PLEASE ACCEPT THE SETTLEMENT NOW BEFORE THE COURTS AND LET'S GET ON WITH THE REAL BUSINESS OF THE COUNTRY. TOUGH COMPETITION BETWEEN COMPANIES IS WHAT HAS MADE THIS COUNTRY GREAT.

THOSE STATES THAT DON'T WANT TO ACCEPT THIS AGREEMENT SHOULD BE THROWN OUT OF THE UNION. THE PEOPLE OF THEIR STATES HAVE BENEFITED FROM MICROSOFT AND ITS CREATIVE OPERATING SYSTEMS FAR MORE THAN ANY ALLEGED UNPROVEN DAMAGE.

THE DEPARTMENT OF JUSTICE ALMOST RUINED IBM WITH THE EXPENSES OF ITS ANTITRUST ACTI ON AGAINST THEM AND THEY HAVE GONE A LONG WAY IN DAMAGING THE ABILITY OF MICROSOFT TO COMPETE IN THE MARKET PLACE WITH THE EXPENSE OF DEFENDING THEMSELVES AGAINST SOME AN UNWARRATED ANTITRUST ACTION..

ALFRED C. BODY aceebo@aol.com

MTC–00027817

From: Scott Ventura
To: Microsoft ATR
Date: 1/28/02 11:14am
Subject: Microsoft Settlement

From:
Scott Ventura
9 West Squire Drive Apt 1
Rochester NY 14623
585–475–9865
ventura@MailZone.com
To:
Renata B. Hesse
Antitrust Division
u.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
FAX: 202–307–1454 or 202–616–9937
Subject: Microsoft Antitrust Remedy Proposal

I am writing to express my disapproval of certain terms of the remedies set forth in the antitrust case against Microsoft. My concerns stem from examining the document located at the following URL: http://www.usdoj.gov/atr/cases/f9400/9495.htm

The proposed remedy is a bad idea. As currently outlined, it allow Microsoft to gain an even larger market share rather than force it to compete more fairly.

Documentation/Disclosure/Licensing of Security-Related Interfaces III J: No provision of this Final Judgment shall:

1.Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.

There is a saying in the computer security industry: ''Security by obscurity is no security at all.'' The phrasing in the above passage gives Microsoft leeway to obscure from public scrutiny the protocols and APIs that are of greatest importance to computer security. Encryption and authentication are complicated concepts. Encryption systems must be subjected to extensive attacks by the security community at large before they can be trusted. Furthermore, the interfaces to the encryption system must also be examined by security experts before they can be trusted. According to III J 1, Microsoft will not be required to document, disclose, or license this information to the vendors of security-related products whose security would be compromised by flaws in the API or protocol. Microsoft will be the only company in possession of the information needed to make security-related software secure.

Although I am no fan of digital rights management systems, I must express my concern for copyright holders, as well. Copyright holders will be subject to the greatest losses if any level of the digital rights management system is compromised. If the decision of to whom to document, disclose, and license the details of the digital rights management system in Windows is left solely to Microsoft, then Microsoft could enter into exclusive agreements with some copyright holders and not others. This would result in an imbalance in the ability of content providers and copyright holders to protect their properties to the abilities of the best experts royalty money can buy.

Worse, Microsoft could elect to not document, disclose, or license these details to any non-Microsoft entity. Then Microsoft would be poised to become the only copyright holder with access to the information required to make working digital rights management systems for their properties.

Conclusion

Microsoft is an extremely slippery company. They have reached their current position of market dominance through questionable business practices and not quality product. I sincerely hope that the final version of the remedies forces Microsoft to either produce good software or get out of the way so others can. We've been tolerating insufficiently useful computers for too many years already.

Respectfully,
Scott D. Ventura
—
Scott Ventura
ventura@MailZone.com
http://FeedMyEgo.com/

MTC–00027818

From: Brian Gollum
To: Microsoft ATR
Date: 1/28/02 11:15am
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse: I am writing to give my comments on the Microsoft antitrust settlement. I believe this settlement is counter to the interests of the American public, deleterious to the American economy, and inadequate given the findings of fact in the trial. Microsoft's anti-competitive practices are counter to the law and spirit of our free-enterprise system. These practices inhibit competition, reduce innovation, and thereby decrease employment and productivity in our nation. Microsoft's monopolistic practices cause the public to bear increased costs and deny them the products of the innovation which would otherwise be stimulated through competition. The finding of fact which confirmed that Microsoft is a monopoly requires strict measures which address not only the practices they have engaged in in the past, but which also prevent them from engaging in other monopolistic practices in the future.

It is my belief that a very strong set of strictures must be placed on convicted monopolists to insure that they are unable to continue their illegal activities. I do not think that the proposed settlement is strong enough to serve this function.

Sincerely,
s/Brian L. Gollum
Brian L. Gollum
5820 Phillips Avenue
Pittsburgh, PA 15217
412–422–8455

p.s. I agree with the problems identified in Dan Kegel's analysis of the settlement <http://www.kegel.com/remedy/remedy2.html>.

MTC–00027819

From: Erin Barnes
To: Microsoft ATR
Date: 1/28/02 11:15am
Subject: Microsoft Settlement

I think it is time to end the suit against Microsoft. The settlement is sufficient and will allow Microsoft and the rest of the industry to move on and continue building great products for consumers. The continuation of this suit is bad for the US econonmy and bad for consumers.

Thank you,
Erin Barnes
Pacifica, CA

MTC–00027820

From: j jasper
To: Microsoft ATR
Date: 1/28/02 11:16am
Subject: Microsoft Settlement

a bad idea
please reconsider
thanks

MTC–00027821

From: dianaheileman@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:16am
Subject: Microsoft Settlement

I believe the settlement is balanced and fair for the industry and consumers. Given the

current climate after the recession and 9/11, I feel that we need to settle this and not let it drag on, so we can focus on economic recovery and fighting external enemies.

Thanks, Diana Heileman

CC:dianaheileman@hotmail.com@inetgw

MTC–00027822

From: Thomas Vaught
To: Microsoft ATR
Date: 1/28/02 11:16am
Subject: Microsoft Settlement

As a software developer for over 11 years, I am very dissappointed in the Microsoft settlement. It basically validates the Microsoft monopoly without any acknoledgment of guilt or meaningful reparations to the industry they have damaged.

I believe that Microsoft has illegally obtained their monopoly and are using it to further their reach while keeping innovative technology such as Java from reaching consumers.

Please consider forcing Microsoft to ship a standards compliant version of Java with their operating system. This will allow developers and consumers to benefit from the latests technology for writing and delivering applications.

Also, I believe that Microsoft should be forced to ship Netscape along with Internet Explorer so that consumers will have a choice of browers.

Thank you for your time and consideration.

Thomas E. Vaught
9844 S. Bucknell Way
Littleton, CO 80129

MTC–00027823

From: chip@the-altmans.net@inetgw
To: Microsoft ATR
Date: 1/28/02 11:07am
Subject: Microsoft Settlement

I think the remedy is fair and should end the case completely. I do not feel that Microsoft has hurt the public in any matter. Ten to fifteen years ago the computer industry was in a mess. There was no standard operating system. If you went to purchase a computer at Radio Shack you would get a computer running Deskmate. If you went to an Apple distributor you got the Apple operating system. If you went to IBM you got their OS operating system. And then of course you had Windows. Kids in school learned Apple but could not go into businesses and run their computers. The average person had to have an apple computer so their kids could do homework and an IBM computer so they could work at home.

Since then and thanks to Microsoft the industry has been standardized, kids in school can go out in the world and run computers. Employees can go home and work on a computer with the same system they use at work. By becoming standardized, how does this hurt consumers? Microsoft has saved the average consumer thousands of dollars. By their continued innovation and development of the operating system they have added tools and recourses that would have cost the average consumer a lot of money. If Microsoft charged for each addition to its product, or forced the consumer to purchase such things as Internet explorer, word, notepad, a calculator, Paint, the basic TCP/IP protocols, the average person could not afford these add ons and would be shut out of the internet.

As for Internet Explorer, that was the best thing that Microsoft ever did. It made surfing the web enjoyable. Question, did you ever try to use Netscape Navigator before Internet Explorer came along, I have and it sucked. You had to pay around $50.00 for it, it took several hours to down load and would crash so often that trying to look up one item would take hours. Microsoft came and gave you Internet Explorer, which at first had its problems, but when they finally integrated into the operating system, it was fantastic, you could surf the net and really enjoy the experience. System hangs and lockups that occurred often before integrating disappeared. And by integrating the software it saved me money, how DID this hurt me? I know the argument it hurt competition, my argument is it did not hurt competition, it caused competition. It caused Netscape to wake up and make a better product. At a more reasonable price, this let the consumer save money by being able to buy a! better product at a lower cost. Microsoft did nothing wrong. Those consumers that wanted Netscape still continue to use it, if Netscape wanted to keep customers, and gain customers, they should have developed a product that knocked the socks out of Internet Explorer, but did they no, they cried and sued.

They gave up, because they would not take the time and resources to develop a better product. I, know, the argument how could they when they did not have the money because Microsoft was giving the product away, simple, build it and they will come. The consumer wants better products and if the consumer found an item better those that can afford will buy it.

Is it wrong, to build your business, and to protect your business. NO, it is not wrong! Microsoft played hard ball, yes, but how is that different from any other company that wants to grow, expand, and make a difference. Netscape, AOL, Sun Microsystems and others are playing hard ball now, buy suing Microsoft, because of their jealousy over the dominance Microsoft has. If the companies really cared about the consumer, they would build better products that would blow Microsoft way. But do they no, the run and scream and sue Microsoft, because Microsoft does not play fair. If these companies would build better products on the same caliber as Microsoft, consumers will go there; they will buy what they want. But stripping down Windows will only hurt the consumer, because the costs associated with buying each piece of software will be more than the average consumer can afford. But those that can afford the software will buy the better software. How is this any different ! from the auto industry? Yes, I know that there are several companies competing equally, If I went to ford to buy car should they be required to give me a stripped down car. So that I can go to Chrysler to purchase the motor, to Bose for the stereo, to Goodyear for the tires, to Monroe Muffler for the Shocks, and Muffler. NO, they provide the basic systems and then you buy the additional or custom items that you want. Microsoft does that they provide the consumer with the basics and let the consumer buy what they want. The problem is the other companies are not making products that are better and more desirable.

End the lawsuit now and let Microsoft go back and build and innovate so that the envelope of information and knowledge becomes more reliable and available to the average consumer, and so that these other companies will be forced to push the envelope even further buy building better software. If these companies would just worry about building better software that pushes the limits, they would not have to worry about Microsoft.

MTC–00027824

From: Wilhelmina J Matern
To: Microsoft ATR
Date: 1/28/02 11:16am
Subject: mICROSOFT sETTLEMENT

Dear DOJ,

May I beg of you either to stop this Microsoft settlement nonsense, or just retire and get out of the way?

This is all making our government look like something we can all be thoroughly ashamed of. To spend this much time on Microsoft's ''unfairness'', a company so productive and worthwhile to America's economy - and by a government so monopolistic and unproductive of any real benefit to the public, and towards which we are becoming more and more cynical in re the grandstanding for self-aggrandizement that is about all we see government officials doing anymore.... we hear or see another thing on this suit and we just cry out ''oh,no!''. While we are all thinking about an economic stimulus and instead this goes on and on and on and..... the ultimate non-sequitur. Please, get it over with and move on to Marc Rich, or the dishonest Fish and Game people trying to shut down so much of our economy with lynx hairs, or the mess DOI has made of Indian Trust Funds, or .. you can name it, we know you can.

Please reassure us again that the federal government sees and understands itself as the chief impediment to justice in society today and will not tolerate this core human indecency in Washington any longer. And believe me, we'll be pulling for you again with loud hurrahs soon's we see the first inkling of it!!!

We DO wish you all the very best,
Rev. Dick Matern
Ft Defiance ,AZ

MTC–00027825

From: Rich Smith
To: ''microsoft.atr(a)usdoj.gov.''
Date: 1/28/02 11:09am
Subject: Punish Microsoft

Dear Sirs,
PLEASE punish microsoft.
Richard A. Smith
Thousand Oaks, California.

MTC–00027826

From: Chip Witt
To: Microsoft ATR
Date: 1/28/02 11:17am

Subject: Microsoft Settlement

To whom it may concern:

The proposed settlement against Microsoft has many flaws, but my problem with it is more philosophical in nature than most that I have heard. My understanding is that this judgment is supposed to be a punitive measure to correct monopolistic behavior in what should have been an open market place. With that in mind, should not the mere threat of such judgment modify Microsoft's behavior?

I have followed the proceedings against Microsoft fairly closly, as I am an IT Professional. During the trial through today, Microsoft continues to forge ahead mightyly developing partnerships and products that forcably squeeze competitors out of any market they decide to pursue. It is my humble opinion that the proposed settlement should take greater care to protect the consumer by evening up the playing field on which Microsoft competes. I see this proposed settlement as nothing more than a slight public slap on the wrist. Although it is a step towards the right direction in limiting some of Microsoft's anti-competitive practices, it does not prevent Microsoft from finding new ways to exploit the gains they have made in the market place as a monopolist.

This is much akin to closing the barn door after the cow has already gotten out. More must be done.

Thank you for your time and the opportunity to comment. —

CW
Chip Witt, MBA
Witt'z End Technologies
PO Box 885
Cotati, CA 94931–0885
(V) 1–888–719–9277
(F) 1–800–514–3098
(E) chip@wittzend.com
(W) www.wittzend.com

MTC–00027827

From: Fairborn Area Chamber of Commerce
To: Microsoft ATR
Date: 1/28/02 11:18am
Subject: Microsoft Settlement
Attention:
Ms. Renata B. Hesse,
Trail Attorney,
Department of Justic,
Washington DC

Microsoft has for many years provided products to consumers and businesses and has also provided opportunities for other such companies to develop programs for the Windows system as well. The settlement worked out by the Department of Justice and the bipartisan group of state attorneys general to bring the anti-trust case to an end should be agreed to by all parties in order for people to return to work especially during this critical period we are now facing in our economy. We support the Department of justice and the Attorneys General for their untiring efforts to put an end to this case and agree to a settlement that is in our nation's best interest. We don't need any more people added to our unemployment roles.

John G. Dalton, Executive Director
Fairborn Area Chamber of Commerce
12 N. Central Ave.
Fairborn, OH 45324
Ph: (937) 878–3191 FAX: (937) 878–3197
E-Mail: chamber@fairborn.com
Web Page: www.fairborn.com

MTC–00027828

From: Daniel.Jack@us.hsbc.COM@inetgw
To: Microsoft ATR
Date: 1/28/02 11:05am
Subject: Microsoft Settlement

Please refer to the attached letter concerning my support of the proposed Microsoft settlement.

(See attached file: USAG DJ 25-Jan-02.doc)

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CC:fin@mobilizationoffice.com@inetgw
Daniel Jack
81 Bleloch Avenue
Peekskill, NY 10566
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing to voice my opinion of the Microsoft antitrust case.

I think the U.S. Department of Justice should accept the terms of the settlement, which represents the best possible outcome.

Microsoft has agreed to several points, including the licensing of Windows operating system products to the 20 largest computer companies. For the sake of concluding this suit, Microsoft even agreed to several terms that extend to products not at issue in the lawsuit.

Furthermore, I am a proud shareholder (since 1995) and a user of Microsoft products. I believe that I and many other customers worldwide have benefited from Microsoft's products and pricing and have never been harmed by any of their actions in the very competitive global marketplace for information technology, particularly PC software.

This is a respectable agreement. The economy and the American consumer should benefit from the terms in this settlement. I hope you will support it.

Sincerely,

Daniel Jack

MTC–00027829

From: Joanne Backs
To: Microsoft ATR
Date: 1/28/02 11:20am
Subject: Microsoft Settlement

My comment on the Microsoft Settlement is that it should be accepted by all and the litigation ended!

Enough is enough.

P.S. I use Netscape Navigator on an Apple imac.

Joanne Backs

MTC–00027830

From: Aldo Mancini
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:18am
Subject: Microsoft Settlement

Dear Mr. Ashcroft,

I am attaching a letter to express my opinion regarding the lawsuit against Microsoft. Please provide this correspondence your necessary attention.

Sincerely,
Aldo Mancini
President & CEO
Mancini Enterprises, Inc.
1940–1 North Commerce Parkway
Weston, FL 33326
Phone: (954)217–9113 x101
Fax: (954) 217–0113
e-mail: amancini@mancini.net
URL: www.mancinienterprises.com

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<<Letter to John Ashcroft for Microsoft- 01–28–2001 .dot>>
CC: ''fin(a)mobilizationoffice.com''
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

In the hopes to be heard, regarding the Microsoft lawsuit, I am writing this letter to express my opinion.

As a small business owner, we always strive to provide our customers the highest level of service and products they are purchasing from us. In order to differentiate us from our competitors, from time to time, we include free services and add-ons to our products to build on our promise to the customer.

I have always disagreed with the lawsuit against Microsoft and I believe that Microsoft is entitled to dictate the terms under which

it will sell its software, even to its OEM customers. The uniform pricing mechanism will give the 20 OEMs all the benefits of a union with none of the hassles vis-a-vis Microsoft. The very idea that a few of Microsoft's most ardent competitors wanted government sanction to pillage Microsoft's success is disturbing.

I am somewhat pleased that this settlement has been accepted. It has the advantage of ending this sad chapter in our histor3,. However, the terms of the settlement seem to give the government one last poke at Microsoft by requiring it to release some of its venerated source code to its competitors. As a Microsoft partner, Microsoft has always provided to us an insight to its source code to allow us to build better software products without releasing its right to the ownership of such code. It should be to the discretion of Microsoft to determine which companies, if any, need to be provided access to this valuable asset. This, however, is a topic for a future letter.

For now, let's just leave the settlement stand as is and move on.

Sincerely,
Aldo Mancini
CEO
Mancini Enterprises, Inc.

MTC–00027831

From: T. Gray Curtis
To: Microsoft ATR
Date: 1/28/02 11:23am
Subject: Comments on Microsoft settlement
To: Department of Justice
From: Thomas Gray Curtis, Jr.
1443 Beacon Street, Apt 617
Brookline, MA
Subj: Comments re Microsoft Settlement
Date: January 28, 2002

Bill Gates wants to insure innovation by Microsoft. To further this objective, Microsoft has impaired the ability of others to innovate. A marketing genius, Gates wants to convince everyone that empowering innovation by Microsoft is in everyone's interest. Microsoft has damaged the software industry by restraining trade as means of maintaining competitive advantage. I cannot quote you specific dollar values of the impact of this restraint, but I will relate to you one anecdotal instance which may be an illustration.

During the late 1980's and early 1990's two colleagues and I were developing software for IBM and subsequent electrical utility companies. The software implemented on a PC the functionality of Geo Facilities Information System (GFIS) software, which required a more expensive mainframe computer. GFIS was used by electrical utilities to help them manage their electrical grids. The new software ran on IBMs OS2 operating system. Over the course of several years IBM, Florida Power and Light and Duke Power probably invested on the order of one million dollars in the development.

As a result of the competition between IBM and Microsoft (Windows v OS2), what I refer to as the Microsoft Wars, viability of OS2 as a ubiquitous operating system was destroyed. The consequence of this was that the cadre of developers creating applications software was reduced. For a while in the early 1990s I developed software for the AIX unix operating system. The size of that market and the cost of unix development drove me out of software development by 1995. I have finally, starting in 2002, reentered the software development arena. I am reluctantly developing software for use under Windows 2000. Primarily because that is the largest market.

I am not privy to the facts with regard to the abrogation of the contract between IBM and Microsoft for the development of the graphical user interface for OS2. I have seen only from afar, via the news media, the machinations of Microsoft in dealings with companies such as Sun MicroSystems over JAVA and Netscape and AOL over browsers. Microsoft business practices sicken me and damage the ability of the software industry to innovate. I had hoped that the federal government would seek a remedy which would restore some balance to the industry by separating the operating system unit from the application development unit. Microsoft is like a black hole in our solar system. It suppresses competition to such an extent that the light of some new products will never be seen.

Microsoft's practices will continue unless steps are taken to protect the small cap companies which would try to innovate. A case in point is the small Rachis Corporation of Marlboro, MA. This startup company develops software for the emerging interactive TV market. They provide system integration test and evaluation and software for hardware manufacturers, application vendors, middleware, and network operators. Scientific Atlantic, a set-top box manufacturer, partners with RACHIS despite efforts by Microsoft to provide software to Scientific Atlantic. Microsoft appears to be eyeing the media industry as an arena in which to throw it's weight around. Microsoft has created Microsoft TV and with it's holding in ComCast has some influence over the deployment of the cable network acquired by ComCast from AT&T.

Please keep an eye open for the Microsoft guerrilla vis a vis Rachis.

Respectfully submitted.
Gray Curtis

MTC–00027832

From: Ellen Ryan (MSLI)
To: Microsoft ATR
Date: 1/28/02 11:24am
Subject: Microsoft Settlement

I came to the U.S.A 4 years ago from the United Kingdom to work temporarily while my husband attends university out here. Before I came here I believed that America had a fair & competitive economic system that rewarded innovation and hard work. I have been sorely disappointed. Leave companies free to innovate. Stop using tax dollars to defend cases that only satisfy the political agenda rather than protect citizens.

Ellen.

MTC–00027833

From: Mary Rocco
To: Microsoft ATR
Date: 1/28/02 11:25am
Subject: Microsoft Settlement—NO!
BlankRenata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse:

I've been requested by Microsoft to send you a letter in support of their settlement, but I will not do that because I OPPOSE THE SETTLEMENT. Microsoft continues its predatory and unethical business practices unabated and obviously the Department of Justice has not gotten its message through to Mr. Gates yet. I think you should continue to take steps to curb Microsoft's rapacious and insidious monopolistic practices which are not only unfair restraint of trade but also extremely detrimental to the end consumer. Microsoft's programs act more like viruses than computer applications. Please continue attempting to put a stop to this monopoly.

Sincerely,
Mary A. Rocco
3217 Cheviot Vista Place, #108
Los Angeles, CA 90034–3546

MTC–00027834

From: Tennison, James
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:24am
Subject: Microsoft Settlement

To whom it may concern,

I would like to comment on the proposed settlement in the Microsoft Antitrust Case.

The first thing I would like to say is that from day one I have been appalled that such a thing as the Microsoft Anti-trust Case even exists. It is immoral.

My family and various relatives have been using Microsoft products including MS-DOS, Windows 95, 98, NT, 2000 and Internet Explorer for years. Had I been unhappy with Microsoft products I could have purchased other brands such as Apple with their Apple OS, Sun with their Solaris or Red hat with Linux to name a few. I have never been under the ignorant opinion that there are no other choices for my computing needs. Microsoft products have worked well enough and I've been quite happy with all I could do with them.

Microsoft is extremely successful for good reason. Microsoft products provide a full range of capabilities, have great prices and wonderful availability. It is my reasoned opinion that Microsoft products have been a boon to the citizens of the United States and the world. Microsoft's products have only offered positives to the lives of countless people.

Before you think that I am a total Microsoft zealot I will inform you that I have also happily owned and used Sun products (Sun Solaris workstations), Silicon Graphics and Apple products (Macintosh I, II, Quadra 410). I also happily employ the Netscape browser on all three of my PC's.

I strongly hold that Microsoft has the absolute right to freely pursue it's interests in the capitalist market of the United States. This includes their right to bundle their various products any way they see fit. No one, and certainly not our government, has the right to dictate what products Microsoft can produce and must not initiate force against this outstanding company. Microsoft

has always providing products and services in the absence of any compulsion. Moreover, Microsoft, unlike the US Government, cannot use force to make people buy it's products. And, since the only legitimate purpose of government is to deter and punish those who use force, the attack on Microsoft because it is successful completely inverts the role of government. The Microsoft Anti-trust case has once again made our government, justly a protector of rights, instead a powerful violator of rights. It is extremely disheartening to see such rampant totalitarianism! In addition, the antitrust laws being used in an attempt to lynch Microsoft have been called into effect not by citizen's complaints against Microsoft's products, but by Microsoft's unsuccessful competitors. These companies seek to ''win'' in the marketplace by resulting to force and not by offering superior products with superior marketing. Moreover, instead of using guns themselves to force consumers to buy their products, these companies seek to use force by proxy, with the US Government acting as their agent. This is truly a despicable attempt to influence the market through the pure use of force. They are employing the very corrupt anti-trust laws, applied by a government on a mistaken crusade to eliminate the infidel (a hugely successful Microsoft), to ''win'' in the marketplace. This is an unconscionable injustice! This should be the illegal activity which is attacked by a just government. Shame! The Anti-trust laws used by their willing governmental accomplices were unjust at their inception and remain so today. They represent non-objective law. Laws that should not and must not exits.

Individual rights, which also apply to the American businessmen of Microsoft, are not granted by our government. Just government serves only to protect the rights of it's citizens. Microsoft has an inalienable right to it's products (bundled as they desire) and profits.

Many smart people in the United States Justice Department have created a case against Microsoft based on the subjective egalitarian premise that big is bad. They punish success for being success. They have erred in that they never sought to fully understand the legal premises they employ. To find out whether they are just. They relied instead on a history of precedence generated by a wholly mistaken initial premise. That premise is that force can and should be used to do good. That force should be used to elicit an egalitarian ideal. As if the alleged good of society trumps the rights of innocent individuals. Actually, our government is employing a Marxist socialist concept. The group has rights superior to those of the individual.

Let us place reason firmly in it's seat. Leave Microsoft alone to create even better and more successful products for the free American capitalist consumer. Drop this unjust case immediately! No punishment is due Microsoft. With a great flourish of marketing skill, Microsoft has brought the computer to the world and changed history. All of you persecutors should feel the guilt of your brutish and totally unjust quest to destroy the good because it is good.

Thank you for letting me defend the rights of American businessmen.

James G. Tennison Jr.

MTC–00027835

From: Eric Thompson
To: Microsoft ATR
Date: 1/28/02 11:24am
Subject: Microsoft Settlement

Dear Honorable Justices,

Microsoft has twice been found guilty of serious violations of the Sherman Antitrust Act, by a federal District Court and by the United States Court of Appeals. While the Court of Appeals reversed the breakup order issued by the District Court, it upheld the trial court's Findings of Fact and affirmed that Microsoft is guilty of unlawfully maintaining its monopoly. As I understand it, the court must hold public proceedings under the Tunney Act, and these proceedings must give citizens and consumer groups an equal opportunity to participate, along with Microsoft's competitors and customers.

Please allow consumers participation.

Regards,
Eric
Eric Thompson
Strategic Renewables Group
4834 Hart Drive
San Diego, CA 92116
619–521–0444 office/mobile
619–521–0515 fax
erict@strategicrenewables.com
www.StrategicRenewables.com

MTC–00027836

From: Larry Mull
To: Microsoft ATR
Date: 1/28/02 11:27am
Subject: Microsoft Settlement

DEADLINE:In times of a struggling economy, I find it confusing that we're still arguing against Microsoft. It's time for this settlement to be accepted and let's move on. Or maybe it's about states trying to increase their revenues and attorneys building a retirement. Sheez. At one time no on thought the Japanese could compete in the domestic automobile market. Who's going to be the Japanese when it comes to software in 10 to 20 years?

If we continue, we will prove where businesses should not be in the future.

MTC–00027837

From: Carey Gifford
To: Microsoft ATR
Date: 1/28/02 11:27am
Subject: Microsoft Settlement

I oppose the proposed Microsoft Settlement for the reason that it is not in the best interest of the public at large, nor in the interest of the future evolution of electronic technology.

Carey J. Gifford
togiffords@aol.com
Alpharetta, Georgia

MTC–00027838

From: Hbsjps@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:27am
Subject: Settlement

To Whom it May Concern:

I support Microsoft's point of view. Please register me as a supporter of microsoft.

Joan Peven Smith
Miami, FL

MTC–00027839

From: FullcutInc@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:27am
Subject: (no subject)
January 28, 2002
Attorney General John Ashcroft
US Dept of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing to give my support to the agreement reached between Microsoft and the Dept of Justice. I did not support the original lawsuit against Microsoft.

I do not think the case was warranted. The lawsuit was more political than any outrage over unethical business dealings. Bill Gates has carried the technological revolution on his shoulders. He has enabled the average person to become part of the technological ago. Does anyone remember what it was like before Microsoft? Bill Gates standardized computer software to enable its compatibility with other software. And people bought the product, because it was the best and it still is.

Bill Gates has agreed to any number of terms demanded from the Dept of Justice. Microsoft has agreed to share its source codes and books pertaining to Windows, that Windows use to communicate with other programs; Microsoft has agreed to a three person technical committee to monitor future compliance; Microsoft has agreed to contractual restrictions and intellectual property right.

This is more than fair.

Give your approval to this agreement. Allow us to get back to work. Honestly, I do not agree government intervention on technology and its innovation. it only serves as a hindrance. Microsoft's dominance on computer and technology is due to superiority of its products and its marketing skills.

Sincerely,
Marc Hui

MTC–00027840

From: Your Name
To: Microsoft ATR
Date: 1/28/02 11:28am
Subject: Microsoft Settlement

Dear Ms. Hesse,

I am writing in regard to the proposed settlement in the Microsoft Antitrust case. I feel that there are tremendous problems with the proposal and support the open letter written by Dan Kegel. There you will find my signature along with many many other people who are also concerned by this proposal.

I also support Dan Kegel's essay regarding the problems and difficulties that the proposed settlement will create. I hope that the Department of Justice will seriously reconsider the problems with the plan and work to revise it so that it will be of benefit to computer users.

If Microsoft is not reined in and given more stringent guidelines to follow, they will continue to create products which don't work and there won't be any alternatives available. I am glad that there are alternative operating systems available currently, but they deserve

just as much access to the market as Microsoft has.

Thank you for your time and consideration of this matter.

Sincerely,

John D. Brosan

MTC–00027841

From: James R. McCartney
To: Microsoft ATR
Date: 1/28/02 11:27am
Subject: MS v DOJ

I am against the proposed settlement with Microsoft. It does not do enough to punish the software company or ensure changes in behavior in the future. Netscape was replaced as the dominant web browser by Internet Explorer(IE) because IE was free. Microsoft has already been found liable for misusing it's operating system monopoly to make this happen. IE is now used by most Internet users because it is free and supplied with Windows and Macintosh by default. No other browser has a chance to gain market share because of this.

Now that IE has become the leader, it has stopped using Netscape's ''plug-in'' technology for enabling helper applications to open alternate Internet content. Active X is the new proprietary solution and give Microsoft an advantage in writing helper applications for IE. Even if they are required to release the API(Application Programmer's Interface) for Active X, it still gives them the advantage. They have the code first and they have the ''real code.'' I would not be surprised, nor should anyone, if they release to other vendors an inferior subset of the API. This will give Windows Media Player, Word, Outlook, and Messenger a lead on other current market leaders like Real Player, Adobe Acrobat, Eudora, and AOL Instant Messenger.

Microsoft has also dropped support for Java in it's latest operating system, XP. This is hardly in the consumers best interest, as a large quantity of useful programs are written in this platform independent language. This can only be Microsoft's attempt at punishing Sun Microsystems and no one can stop them from doing this. They should work with Sun to make a good version of Java for Windows. The solution proposed by the Justice Department seems like a giveaway. It is notable that it comes right after the executive branch has become Republican. I would like to see a more objective resolution to the illegal behavior by Microsoft. Thank you...

James McCartney
2668 East Hardy Lane
Fayetteville AR 72703

MTC–00027842

From: Jef Pearlman
To: Microsoft ATR
Date: 1/28/02 11:28am
Subject: Microsoft Settlement (Against)

I'm just emailing to add my vote to those against the current proposed settlement. Hopefully I have reached you in time. Plenty of others have emailed their reasons, so I won't spend any time rehashing the arguments here, except to say that I believe that the current settlement in no way punishes Microsoft, and in some ways helps them further their use of their monopoly to spread their influence in various industries. Thanks.

Jef

MTC–00027843

From: GJP85@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:29am
Subject: Microsoft Settlement.

In this litigation and all such endeavors the United States Government has become the ENEMY of the Business Community. If they were concerned about the Economy AND the health of the business community in the United States they would act like foreign governments and support and in some cases provide financial support as well instead of hampering and stifling business and research and development. Please allow Microsoft and all other businesses compete without government interference and do not allow yourselves to be manipulated by competitors constantly complaining, they are only looking for a government sponsored ''Leg-Up''

Jerry Purcell
106 Cedar Drive
New Britain, PA 18901–5229
215–230–1911
CC:fin@mobilizationoffice.com@inetgw

MTC–00027844

From: Nathan Stratton Treadway
To: Microsoft ATR
Date: 1/28/02 11:29am
Subject: Microsoft Settlement
January 27, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NE
Suite 1200
Washington, DC 20530–0001

I think the current proposed settlement with Micrsoft is a bad idea and should be abandonded.

It has many faults, but to pick one: my business is dependent on using Samba to allow our Unix machines to inter-operate with our Windows machines on our network. The proposed settlement does nothing to protect the rights of non-commercial projects like Samba, and the millions of users of such projects, against Microsoft's actions.

Thank you.

Nathan Stratton Treadway
Ray Ontko & Co.
822 E Main St.
Richmond, IN 47374

MTC–00027845

From: Bob Petolillo
To: Microsoft ATR
Date: 1/28/02 11:35am
Subject: Microsoft Settlement

It's time for the government to back off of private lawsuits against businesses and to stop legislating private commerce as much as it is.

The role of government should be to provide NECCESSARY regulation of private commerce.

We have gone WAY BEYOND that role in trying to legislate equality and/or fairness into private industry.

The government bureaucracy is in no way qualified to judge the effects of legislation on the citizens and their economy and has already caused a great deal of damage to the private sector with its extensive meddling.

Lawsuits and legislation targetted against legitimate enterprises like tobacco companies (as disgusting as cigarettes are), gun manufacturers, Microsoft, and many others are not the role of our government.

Continued abuse of legislative and executive power is only going to continue to erode the faith of the citizens in our government and cause more divisiveness and discontent that is already out there. Unneccessary governmental interference and gross fiscal irresponsibility have damaged this country greatly. In the latter half of the twentieth century our culture has gone a long ways toward becoming a ''third-world'' country due, in large part, to out-of-control actions by our legislature and the government bureaucracy. We have a long way to go still, but I shudder to think about the future my children may have to deal with. Please re-think your position on the role of government and let's get back to the basics of running the government, not running the people and industry in it.

Sincerely;

Bob Petolillo
CC:fin@mobilizationoffice.com@inetgw

MTC–00027846

From: Sheldon Robinson
To: Microsoft ATR
Date: 1/28/02 11:22am
Subject: Microsoft Settlement

I don't feel particularly verbose today, but I've written and read much on the reasons Microsoft must be broken into a minimum of two companies.

Microsoft owns the OS which is fine. Microsoft also makes applications for their OS which is not fine. Why? Microsoft does not fairly publish the specification of the interface to their OS. When Microsoft builds an application and another company builds a competing application, Microsoft is guaranteed to build the better application because they have intimate knowledge of the OS. Microsoft knows how the optimize their applications in ways their competitor cannot know.

Any settlement which stops short of breaking Microsoft into an OS company and an applications company is in my view and the view of many others a lost settlement.

Sheldon

MTC–00027847

From: Davis, Mark
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:31am
Subject: Microsoft Settlement

Dear Officials of the Department of Justice,

As a private citizen and long time user of products produced by both Microsoft and its competitors, I support the proposed settlement that has been worked out by the DOJ and Microsoft. I feel that additional punitive measures would be unfair to both Microsoft and, more importantly, to consumers using Microsoft products, and so I urge adoption of the settlement as it exists. Thank you.

Mark F. Davis
1110 Manzanita Dr.
Pacifica, CA 94044
(650) 355–8064

MTC–00027848

From: Harold kline
To: Microsoft ATR
Date: 1/28/02 11:32am
Subject: Microsoft Settlement

Dear Sirs and Madams:

It is time to put to rest the Microsoft Case. This ill-advised litigation was likely the cause of the present recession our country is enduring, and its continuation is only going to prolong the economic troubles.

While the Tunney Act fails to satisfy Microsoft's most vocal critics— the competitors and their greedy lawyers—it provides a fair solution to the alleged monopolistic practices of Microsoft, and it benefits the country as a whole to get this behind us and move on. Dragging on this battle will only pad the pockets of the lawyers, and a few special interest parties.

Many consumers, including myself, do not agree that Microsoft did anything wrong. Without the Windows technology and the innovations that that company continues to develop, the personal computer industry wouldn't be half as strong as it is today. Any continuation of the litigation against Microsoft only smears the entire industry and keeps the economy from recovering.

Please bring this farce to an end.

Harold Kline
Kansas City, MO

MTC–00027849

From: Madison90@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:32am
Subject: Microsoft Settlement

Dear Attorney General Renata Hesse:

The provisions of the Microsoft agreement are tough, but I believe the terms-which have met or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. This settlement represents the best opportunity for a great company like Microsoft (whom has changed the lives of millions of people for the better) and the industry to move forward. Microsoft has helped so many people work and live more efficiently and effectively. It is time to move forward and approve this settlement which is in the best interest of the people of this country.

Thank you.

Jennifer M. Freeman
833 Trailing Ridge Road
Franklin Lakes, NJ 07417
201–891–6040

MTC–00027850

From: Don Briggs
To: Microsoft ATR
Date: 1/28/02 11:32am
Subject: Microsoft Settlement

Dear US DOJ,

One outcome of the Microsoft settlement should be that, when submitting information electronically to government agencies, one should never be required to submit documents in Microsoft proprietary formats. Government agencies should never require text documents in Microsoft Word format, for instance. To do so reinforces Microsoft's monopoly position.

Regards,
Don Briggs
1530 Lockhart Gulch Road
Scotts Valley, CA 95066

MTC–00027851

From: triem@isd.net@inetgw
To: Microsoft ATR
Date: 1/28/02 11:34am
Subject: Microsoft Settlement

Dear Sir or Madame,

I am a consultant working in the Intelligent Transportation Systems area of Transportation Planning. As such, I frequently make recommendations to clients of all types, public and private, about software acquisition and use.

This experience has given me a great deal of exposure to software vendors (particularly Microsoft) and to the various methods they employ in marketing their products and competing with other producers. I also have a background in economics (B.A. University of Minnesota) and am a certified planner (AICP).

My concerns stem from the continuing trend of Microsoft's alterations to licensing policies and the fact that often times no additional value is offered to the consumer, even though a greater revenue stream is generated for Microsoft. This, coupled with a practice of intentionally making newer versions of products incompatible with previous versions, causes a situation of ''forced'' upgrades for consumers. This is particularly troubling for small public entities, such as para-transit providers, whose mission is to provide mobility to handicapped persons, often on very limited budgets.

This is relevant to the settlement at hand for two reasons:

(1) The Settlement does not address the separation of applications from operating systems in any meaningful way. Thus Microsoft is able to build in version incompatibilities and tie them to the operating system itself. In the transportation community, we have a joke: ''If Microsoft made cars, every time you changed your tires you'd have to build all new roads.'' Although exaggerated, this illustrates the point of a monopolist manipulating product to ''force'' secondary purchases.

(2) The Settlement does not address past harm. Under the current proposal, a three-person oversight team would be established to assure that Microsoft does not further abuse monopolist power. Although debate can be had on whether this mechanism would even be effective in that role, my concern is more that there is no provision for punative action against Microsoft or compensation to those harmed by the abuse. An analogy would be a person convicted of bank robbery and simply assigning them a parole officer to assure that they didn't rob the same bank again.

For these reasons, I belive that the proposed Settlement is not in the best interests of the public and should not be agreed to.

Thank you for your consideration in this matter,

Mark R. Gallagher, AICP
999 Grand Ave. #4
St. Paul, Mn 55105

MTC–00027852

From: Tim Egbert
To: Microsoft ATR
Date: 1/28/02 11:23am
Subject: Microsoft Settlement
Attention: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
January 28, 2002

Sirs and Madams:

I oppose the Proposed Final Judgment (PFJ) in United States vs. Microsoft because it (1) does not adequately address the issues raised in Judge Jackson's findings of fact and conclusions of law, (2) will not remedy the past illegal monopolistic behavior of Microsoft, (3) will not prevent Microsoft from committing future monopolistic abuses, (4) will ratify many of Microsoft's practices that have been adjudicated as unlawful, and (5) will allow Microsoft to continue such practices under the cloak of final judgment.

Microsoft has been adjudicated to be a monopoly and to have acted illegally in many particulars, which rulings have been upheld on appeal. It has become evident that to this day, Microsoft does not believe it has done anything wrong and is using all means at its disposal to avoid any real consequences for its illegal actions. The Justice Department and the Court have a duty to promote a remedy that is effective and consistent with previous findings in this case.

I believe that Microsoft has shown that it will not negotiate in good faith to promote an effective and just settlement of this case. It therefore behooves the Justice department and the Federal Court not to insist on a negotiated settlement, to fashion a truly effective remedy, and to seek to impose such a remedy on Microsoft within the proper powers of the judicial system. There is no good reason to continue to negotiate with this intransigent and adjudicated wrongdoer.

Rather than restate all the well reasoned arguments against the PFJ, I have added my name to the ''open letter'' submitted this day by Dan Kegel as set forth on his web site at: http://www.kegel.com/remedy/remedy2.html.

Yours truly,
Timothy P. Egbert, J.D., Ph.D.
4388 Inverary Dr.
Salt Lake City, UT 84124
801–274–0476
CC:Tim Egbert,Attorney General

MTC–00027853

From: PhantomPC2@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:35am
Subject: Microsoft Settlement
2056 E Golf Avenue
Tempe, AZ 85282
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The last three years of litigation against Microsoft has been unjustified. The original intent of the lawsuit was to protect consumer by breaking up a monopoly and stop infringement on consumer rights. Microsoft has consistently delivered high quality goods at normal prices, which goes against standards definition of a monopoly and has never infringed on my rights.

In fact I think their innovation has standardized the technology industry making it easier for users around the world to operate. That is why I disagree with some of the terms of the settlement because they give Microsoft's interfaces and protocols away. This is a violation of Microsoft's intellectual property rights.

I request that your office finalize the settlement as soon as possible and ignore the nine states that are holding this thing up. They are obviously not concerned with the public's bets interests. Thank you.

Sincerely,

Joel O'Connell

cc: Representative Jeff Flake

MTC–00027854

From: Michael Martin
To: Microsoft Settlement
Date: 1/28/02 11:29am
Subject: Microsoft Settlement
Michael Martin
6712 Riviera Drive
North Richland Hills, TX 76180–8120
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Michael R. Martin

MTC–00027856

From: Barling, Roy
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:30am
Subject: Microsoft Settlement

Dear Sirs/Madams,

I'm writing to express my opposition to the settlement being proposed between some of the States and MicroSoft.

Microsoft has been convicted, and that conviction upheld on appeal, of violating several parts of the Sherman Anti-trust Act. The settlement in its current form does nothing to repair the damage that has already been done to the software industry. It also does nothing to prevent them from continuing to abuse their monopoly position. Furthermore it does nothing to place monetary damages on their past abuses, nor does it establish any framework to punish the abuses that they will most assuredly commit in the future. There is no reason that Microsoft should be allowed to keep all of their ill gotten gains or continue to abuse their monopoly with anti-competitive practices. Please consider some of the many suggestions already sent in by industry luminaries that would restore competition and innovation to the software industry. Thank you.

Roy Barling, MCSE

MTC–00027857

From: Tony DeCicco
To: Microsoft ATR
Date: 1/28/02 11:37am
Subject: microsoft settlement
Anthony DeCicco CPA / ABV
7710 Cumberland Road
Largo, FL 33777
January 25, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

It is high time for this antitrust suit between Microsoft and the Department of Justice to come to an end.

For three years now, people in both the IT industry and many average people who depend on Microsoft products, have waited for this case to be settled.

Unfortunately seeing this case put to rest could mean a severe change in the way Microsoft does business.

Opening up its code to the competition and allowing computer manufacturers broader freedoms in how they configure Windows will mean a serious loss of control over its product for Microsoft, and they will have to carefully rethink their business strategy.

But they obviously feel capable of doing so if they have agreed to the settlement, so I can see no reason not to move forward on this issue. Let's put an end to this case at the federal level and move on once and for all.

Sincerely,

Anthony De Cicco CPA / ABV

MTC–00027858

From: Ronald R. Cooke
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:39am
Subject: Tunney Act Comments: Microsoft Settlement

Unfortunatley, the e-mail I sent last week lost the footnotes.

This attachment should include them.

Ron Cooke

January 24, 2002
Ms. Renata Hesse
Trial Attorney
Suite 1200
Antitrust Division
Department of Justice
601 D. Street, NW
Washington, DC 20530.
Reference: Tunney Act comments in United States of America v. Microsoft Corporation, Civil Action No. 98–1232 (CKK) and State of New York v. Microsoft Corporation, Civil Action No. 98-1233 (CKK).
microsoft.atr@usdoj.gov
With copies to: Interested Parties
From: Ronald R. Cooke
Cultural Economist and Industry Analyst

The Settlement Proposed By The Justice Department Overlooks Reality

Consumers within the Information Systems industry have expressed their skepticism about the settlement proposed by the Justice Department. In a poll of readers, for example, ZDNet asked: ''Did Microsoft get off easy in the DOJ settlement?'' Seventy four percent of the respondents said ''Yes''. To quote columnist David Coursey, ''Nobody is precisely sure what it means, but the total effect seems little more than a hand slap .... Prohibitions that exist in one section seem to be rendered meaningless by another'']

Consumer and industry respondents to the Tunney review process will probably contend that the proposed remedy does not effectively end the anticompetitive practices, will not materially deprive the wrongdoer of the fruits of the wrongdoing, and will do virtually nothing to ensure that the illegality does not recur. The terms of the settlement are much too vague to be of much use. They can be manipulated and rendered ineffective through the legal process. The enforcement mechanism is inadequate. And finally, there is no clear cut way to prohibit monopolistic behavior.

There is a more fundamental issue, however, that has not been adequately addressed by the process of law. It can be expressed as a simple question: How much unconstrained power do we want one single company to have? As the Enron debacle has demonstrated, this is not an idle question. Unrestrained corporate behavior can severely damage consumer rights. Microsoft has demonstrated that it can dominate the thinking of the PC Culture that it so zealously nourishes. It has an overwhelming influence over the press—and therefore—the opinions of an uncritical public. Within the information systems industry, Microsoft is acknowledged to have indisputable economic, political and cultural power. Comments by members of congress suggest this company also has a growing influence over the legislative process.

Given its announced strategic plans, it should be obvious this company wants more. Much more. Microsoft wants to wield the same kind of influence over the entertainment and communication industries that it does over the computer industry. It currently has aggressive initiatives to dominate the services and content of the Internet and is pressing forward with plans that will Quotation from: ''MS settlement

reads like a fairy tale''. David Coursey, ZDNet, November 5, 2001.

effectively manage the access, distribution and use of networked consumer entertainment. Mobile and location technologies will be used to penetrate additional consumer services..Net will drive the consumer to Microsoft approved content and services. If these initiatives are successful, this single company will be in a position to dictate how we create, store, edit, access, distribute and use all kinds of electronic information. Worldwide. Across three industries.

The reality of this situation raises a number of questions. Given its growing political and economic power, why do we believe that Microsoft will feel compelled to abide by the proposed settlement terms? Will they modify Microsoft's business strategy? Product plan? Will they prevent Microsoft from using integration, bundling and tying as weapons to lock out competitors in three industries?

Will the proposed behavior monitoring process guarantee the delivery of reliable products? Improve consumer security? Prevent the abuse of corporate power? Ensure open markets? Encourage competitive innovation?

It would appear that the answer to all of these questions is a resounding ''NO''. If that is true, then how can any reasonable person claim that the proposed settlement serves the public interest?

Who Is The Consumer?

Consumers have the right to expect that our federal institutions will deliver a settlement that has an immediate, substantial and permanent impact on the restoration of competition within the information systems industry.

But, who is the consumer?

Media and political personalities frequently project the image that all ''consumers'' are deficient, clueless and vulnerable. It is an image favored by self proclaimed consumer protection groups. Consumers are easily victimized and thus considered in need of protection. Hence in the Microsoft anti-trust case, both the Justice Department and the presiding Judge were concerned that the ''consumer'' had been victimized by excessive software prices and a lack of choice. This somewhat ill-defined person had been forced to purchase Microsoft software through a captive retail channel and may have been overcharged.

In reality, this image of the ''consumer'' is misleading. If we want to reach a settlement that protects both personal and institutional rights, we must first agree on a definition for the word ''consumer'' that incorporates all classes of buyers. For the purposes of this settlement agreement, therefore, we must consider two broad classifications of the concept ''consumer''. There are personal consumers and there are Enterprise consumers.

Personal consumers engage in personal consumption. This happens when people make purchases for themselves, their families, their friends or anyone (or thing) else that commands their interest. They use their own money. Typical purchases include food, clothing, housing, vehicles and so on. Personal consumption accounts for roughly two thirds of America's GDP. Enterprise consumers spend money that belongs to the Enterprise. They buy products, property or services for their employer or their business. Broadly defined, Enterprise consumers include any entity defined by the standard industrial classification codes: i.e. insurers, manufacturers, retailers, hospitals, educational institutions, government agencies, personal service businesses and so on. Enterprise consumption accounts for approximately one third of America's GDP. Both segments of America's consumer population must be protected from Microsoft's assertive marketing power. We must not leave either group of technology buyers in the position that they will be forced to chose key products and services from one vendor, good or not, on terms and prices they can not evade.

One of the more glaring problems with the proposed Microsoft settlement is that while Federal and State authorities have properly reacted to personal consumer complaints, they have failed to deal in a meaningful way with the problems of the Enterprise consumer. Industry wide issues include:

Enterprise networks have become incredibly expensive and difficult to maintain.

Existing PC operating systems are hard to manage and very costly to own.

Internet and Intranet security problems have become so bad that they threaten electronic commerce and the viability of Enterprise operations.

There are multiple industry reports that address these issues in great detail. It is worthy to note that excessive information system costs have been calculated in the $ billions per year and that industry publications continue to report on the related management and operating problems. It is also clear that these impediments will continue to plague the Enterprise consumer because there is no effective competition for the architectural concepts promoted by the dominant vendor.

In this legal action however, Microsoft's alleged disregard of consumer needs was never pursued. There appear to be several reasons: some political, some practical, and some due to the inherent obsolescence of the Sherman Antitrust Law. But the issues remain:

If PC operating system development has been paralyzed by the domination of a single vendor, has the consumer been harmed? And if the products are defective, what is the burden of liability?

If network systems design has been primarily driven by the product plan and business model of a single vendor, has the consumer been harmed? And if the underlying system design was dysfunctional, what is the burden of liability?

If a vendor, in order to deflect competition, announces products that do not exist, or products that never make it to market, has the consumer been harmed? And if the consumer was mislead, at what point does this constitute consumer fraud? What is the associated liability?2

If consumer security and safety have been jeopardized by deficient systems architecture and defective products, what is the vendor's liability?3

The complaints against Microsoft are far more numerous than those covered by this narrowly defined legal action. If the court wishes to impose a meaningful settlement on Microsoft, it will have to consider both the concerns of this specific case and the underlying intent of the Sherman Act. There is case law and there is the reality of dealing with an overwhelming marketing machine that is essentially able to set its own agenda.

This reality puts the court in a quandary. If the court is to be forthright in its desire to protect the consumer, it must provide substantial relief for both personal and Enterprise consumption. It will have to deal with both the specific and the ambiguous. It must certainly expand the interpretation of the Sherman Act. And finally, the court will have to make its findings with the knowledge that this settlement will have a bearing on future actions against AOL/Time Warner.

2 The announcement of non-existent products was an issue in the Justice Department's case against IBM. It puzzles me why Justice chose not to pursue this issue in its development of a case against Microsoft.

3 The National Academy of Sciences has recommended the creation of laws that would establish vendor liability for security breaches that are the result of vulnerable software products.

Microsoft The Company

Microsoft's corporate culture is driven by the mantra of revenue growth, institutional power and market control. Software is developed to gain market share or to demolish competition. Software defects and chronic insecurity have been institutionalized as components of the product plan. Microsoft does not have to be driven by consumer wants and needs. Microsoft is free to be driven by whatever strategy protects its revenues and extends its power into additional markets. Microsoft has been able to adopt competitive software concepts within its Windows architecture, thereby rendering the competitive software irrelevant. Examples include the incorporation of the Internet Explorer browser into the Windows user interface in order to destroy Netscape's Navigator and the inclusion of ''Java like'' features in the company's .Net strategy, a ploy that will eventually render Java redundant within the Windows environment.

When faced with standards based competition, Microsoft has frequently been accused of using an ''embrace, extend, extinguish'' strategy to render the standard useless. Microsoft's version may even flaunt the concept of ''open standard'' by restricting Windows clients from working with any platform other than a Windows server.

Microsoft has convinced a wide range of technologists, journalists, legislators and consumers that it has the exclusive wisdom to provide software innovation.

This—of course—is absolute nonsense. Microsoft is not the only company that understands the fundamentals of software technology. Were it not for the company's monopoly control over the market, consumers would be able to purchase a far superior PC operating system. Other vendors have developed, and are marketing, embedded operating systems with better

technology and excellent reliability. Enterprise users have embraced a variety of alternative server operating systems because they have superior reliability and a lower cost of ownership. There are certainly alternative ways to build consumer friendly Internet, e-mail, word processing, spreadsheet, graphics and data base applications. And there are many companies that develop software for the cell phone, PDA, set top box, in-home server and game markets. Unfortunately, few alternatives can effectively compete against Microsoft's marketing power. This company continues to use integration as a predatory weapon. Competing products, services and content will be hobbled—and thus less desirable.

Management has a vision. Microsoft plans to dominate the computer game, cell phone and PDA/HPC (Personal Digital Assistant/ Handheld PC) markets, will force its way into the cable business and fully intends to be a leading provider of Internet services. These are key revenue growth strategies. The company's XP operating system is important because it drives Microsoft's largest revenue stream and the future of the company's .Net strategy. The Stinger cell phone and Pocket PC HPC OS launches open up new recurring mobile network revenue opportunities. The XBox game platform opens a strategic path to the convergence of entertainment and computing in the home. The company is actively tying its computer and communication software product strategy to its Internet services and content strategy. The Internet gives Microsoft a virtually unlimited marketplace that can be molded to the company's operating philosophy. Hailstorm and Passport fit perfectly into this scenario. Network clients using Microsoft software will be tightly integrated with Microsoft application and content servers.

This is, after all, what convergence is all about.

Unfortunately for the consumer, management's vision has a potential downside. Microsoft will be able to demand access to all of the software we use, modify it with or without our knowledge, and make copies of our files. This company will be in a position to monitor our use of the Internet, our political philosophy, our purchase behavior, and our friendships.

Will Microsoft actually do this? Will a hacker be able to do the same thing? Does the consumer really want to be this vulnerable?

We can understand that Microsoft's business model is driven by the visceral desire to absolutely dominate all high volume software applications. We can also understand that the company's prospects for revenue and profit growth are interdependent with the accumulation of power over the consumer's use of computing technology within the computer, communication and entertainment industries.

It is time, however, to ask one simple question: Does this ubiquity serve the public interest? On the one hand we acknowledge Microsoft's accomplishments, the intensity of its vigorous pursuit of new markets and its right to function as an independent business. But on the other hand, the court must fashion a remedy that incorporates genuine protection for the consumer. The PC era was lots of fun. The Internet era was a wild ride. But going forward, Enterprise and personal consumers must have cost effective software that is reliable, predictable, useful, secure, easy to manage and open.

Will a court imposed settlement provide the key?

Alternative Remedies

Nine States'', along with the District of Columbia, have presented an alternative proposal of remedy that would, if implemented, partially correct these deficiencies. This proposal has credibility because it directly addresses the findings of this specific case and establishes remedies that are consistent with prior court tests that judged the validity of relief from infractions of the Sherman Antitrust Law.

1. Microsoft would have to offer a stripped version of Windows.

Although much thought must go into the implementation methodology of this recommendation, it could have the effect of reducing consumer costs by encouraging the development of alternative personal computing appliances with competitive applications software. It would also have the effect of making it more difficult for Microsoft to exclude competition by tying its operating systems to its applications, content and services.

2. Microsoft must support Java.

Enterprise consumers have espoused Java as a highly useful programming language. Because it is an interpreted, object oriented, platform independent language, Java can be used to reduce the cost of developing, deploying and supporting networked applications. Despite the obvious benefits to the consumer, Microsoft wants to kill Java by making it irrelevant within a Microsoft controlled programming environment. Forcing Microsoft to give its full support to Java would give the Enterprise consumer and applications software developer incremental choice in the selection of development environments.

3. Microsoft would be compelled to make Office available for all popular operating systems. Consumers have been forced to accept either Apple or Microsoft PC operating systems as a defacto prerequisite for using the company's Office suite. If Office were made available for all popular non-Microsoft operating systems, consumers would have a wider choice of operating system environments. In addition, this recommendation would encourage the development of competitive PC operating systems, presumably based on architectures that could deliver superior reliability, function and security.

Given a carefully constructed court approved implementation and supervision methodology, these recommendations would be most helpful to the restoration of competition within the PC and network appliance software industries. However, if we want to preserve an open and competitive market, and if we want to be vigilant in our support of acceptable corporate behavior, then we should consider three additional recommendations.

4. Restrict Microsoft from the Embedded Systems market.

There are a number of reasons to restrict Microsoft's participation in the embedded systems market5. For the purposes of this specific settlement, however, we must focus our attention on the restoration of competition and innovation within the PC market. Going forward, we also need to ensure consumer choice in the markets for set top boxes, entertainment devices and communication appliances, as well as network based content and services. As discussed above, Microsoft's announced strategy is to tie its software products to its services and content businesses. If Microsoft is successful with these initiatives, this company will have greatly extended its marketing power and will be in a position to monopolize segments of the entertainment and communications industries.

For a period of seven years, therefore, Microsoft should be prohibited from selling any embedded systems software products, including CE, its derivatives and any comparable products. If there is to be any credible competition for Microsoft's existing monopoly over PC operating system architectures, it is most likely to come from the manufacturers of network attached appliances. Over time, the embedded software within products will increase in sophistication. There is no reason why these system architectures can not be used to provide the consumer with the whole range of PC applications.

Microsoft would be compelled to establish a separate company for its CE, Stinger, XBox, PocketPC, set top box and all other currently active embedded systems product efforts within 8 months of signing a settlement agreement. Microsoft would not be allowed to own any part of the company or its stock for a period of 7 years. Any funding for the newly spun-off company must come from sources in which Microsoft has no financial interest. Five years after the spin-off, Microsoft would be allowed to start a new embedded software development effort that could be offered for sale no sooner than seven years after signing the settlement agreement.

Placing restrictions on Microsoft's embedded systems efforts will reduce the company's ability to dominate the related communication and entertainment markets. Microsoft would be encouraged to establish partnerships with the existing content and service companies as well as the manufacturers of embedded hardware and software products. These markets can then evolve in ways that are not tied to a single company's business strategy and revenue plan.

5. Place Microsoft under Court Supervision

It is difficult to imagine how the proposed settlement terms will prevent Microsoft from engaging in anti-competitive behavior. One would have to assume that Microsoft is immune from the temptations of corporate power. It would be helpful, therefore, if Microsoft were placed under the supervision of the court. A methodology must be developed that permits complaints of wrongdoing to be reviewed in a prompt and fair manner. Fines and restrictions, where necessary and justifiable, should be imposed by the court after a hearing process.

5 A more detailed discussion of the basis for the recommendations and comments

presented in this document may be found in my book: ''CyberCarnage: Everything We Own Is Obsolete''

Court supervision should reduce the need for further Justice Department action and could be used to establish the parameters for pending civil actions. The intention is that Microsoft could engage in any permitted business practice, strategy and tactic it wished, so long as the court agrees that its actions are lawful. The period of supervision should be continued until the court, by its own determination, believes that supervision is no longer justified.

6. Insist on a Code of Conduct

If we assume that we do not want our larger corporations to be driven solely by the mantra of revenue and profit growth, then any company that achieves a dominate position within any single industry has an obligation to adjust its behavior to operate in the public interest. The usual mechanism is through the imposition of government regulation. Absent this solution, the alternative is to insist that the dominant company have a set of enforceable standards against which it is possible to judge individual employee conduct.

Under court supervision, Microsoft should be compelled to adopt a Code of Conduct. Specific sections should address this company's relationship with competitors, suppliers, consumers, and partners. A methodology must be developed that permits complaints of wrongdoing to be reviewed in a prompt and fair manner. Fines and restrictions, where necessary and justifiable, should be imposed against individual employees.

It would appear that these recommendations can be implemented in a fair and equitable manner. The objective is not to unduly punish Microsoft. The Third and Fourth Waves of computing are history. We must look forward, not backward. Punishment is less desirable than the creation of a competitive, needs driven, marketing environment for the consumer. It would appear that all six recommendations, if implemented as a whole, would have a minimal impact on Microsoft's existing revenues and profits. There would be little interference with the company's PC and server software business. Over the next 5 to 7 years, the net effect is that Microsoft would not grow as fast and it would have to look to industry partners for some products compliment its .Net strategy.

For the consumer, however, the restoration of competition within the PC industry will be enormously beneficial. New innovation can take the form of products that are easier to manage, more reliable, more secure, and less costly to own.

The Sherman Antitrust Law

As a piece of legislation, the Sherman Antitrust Law appears to be obsolete. The Sherman Antitrust Act of 1890 was designed to deal with the political and monopoly power of (frequently interlocking) trusts. Specific companies had pricing, availability, distribution and product power over the consumer. Relief came in the form specific restrictions to business practices and monetary punishment.

The Sherman Antitrust Law does not address the defacto standards issue. Over the last 75 years, the telephone, teletype, electric, water, radio, entertainment, and television industries have been characterized by the evolution of increased concentration based on a company dominated list of defacto standards. Within the public services industries, regulation has been used to ensure that these standards are beneficial to the public interest. There are additional examples of industrial standards that have been promoted for the benefit of all potential players. When RCA set the defacto standards for color television, for example, multiple industry participants were able to adopt them for their individual benefit.

Dominant players set the rules of competition and corporate existence. All industries are vulnerable. Airlines, banking, insurance, manufacturing, retailing—it does not matter. The potential for domination—whether by marketing power, financial strength, or technology—exists.

And if 21st century industries tend to gravitate toward single standards established by one dominant player, then we need to ask multiple questions:

?What is an open and competitive market?

?What is the basis for determining economic concentration?

?What is market domination?

?Should a company be allowed to use it's domination of one market to leverage its customer base into the domination of other markets?

? If the consumer is forced to purchase defective and/or dysfunctional products because there is no viable alternative, what is the dominant company's implied liability?

?What are consumer rights? (How can they be measured?)

?At what point does the power of the dominant player jeopardize consumer rights?

?What is a fair penalty for jeopardizing consumer rights?

If a market is dominated by a single company, at what point does this imply that it must assume a fiduciary responsibility to act in the public interest? And what are the guidelines for corporate behavior? How will they be enforced?

?How much political and economic power do we want a single company to accumulate within a specific market?

?And finally; What is the mechanism for restructuring competition?

Obviously, there are many more questions that need to be addressed if the Sherman Act is to be rendered relevant to the realities of 21st Century Corporations. The purpose of this more limited discussion, however, is to demonstrate the deficiencies of the Sherman Act when considering the specific parameters of this settlement. Neither the Sherman Act, nor the proposed settlement, address the realities of existing market structures, emerging technologies, defacto standards, the issues of convergence or the use of 21st century corporate power. Since the Sherman Act currently provides inadequate guidelines for establishing what will be— essentially—public policy, then the court has two choices:

? Interpret the law within the narrow confines of this case using legal precedent (which essentially will let Microsoft off the hook); or

Broaden the interpretation of the Sherman Act in order to protect the consumer from further harm that may occur in the future (which will require the Court to consider issues and questions not necessarily documented within the scope of this case).

Either way, the court's determination will be sent to the Supreme Court for resolution.

Conclusion

Since the proposed Justice Department settlement provides only limited relief for a very narrowly defined case, it will fail to provide the public policy guidelines that are so desperately needed to protect the consumer from the abuse of corporate authority. It does nothing to relieve the increasing concentration of political, economic and marketing power that is now occurring within the computer, communication and entertainment industries.

We are thus faced with two realities. On the one hand there is the reality of the specifics of this case and the proposed settlement remedies. On the other hand, there is the reality of the need to maintain open and competitive markets for the products, services and content. A really good settlement will bridge these two realities.

As for the Sherman Act? Corporate governance is out of control. Unfortunately, we all know that Congress will not act until it is politically expedient to do so. Failure to act implies acceptance of the status quo. Competition will fade. Corporate power and influence will be concentrated. More Enron's will happen. By the time congress acts, if at all, it may be too late to impose meaningful reform.

So it is up to our court system, and perhaps the Commissions of the European Union, to both make and execute the guidelines we need to protect the consumer. We want our corporations, including Microsoft, to be successful. We expect them to grow their revenues and profits. We want them to pursue new business opportunities. But we also want them to operate within open and competitive markets so that consumers have an opportunity to purchase the products, services and content they want, at a price they can afford, and on terms that make them practical. That means that our legal system must guard against the potential abuse of corporate power and the inherent problems of market domination. In this settlement, we are asking the court to define those guidelines in a way that protects consumers from the potential of future abuse.

Is that too large a task? Too sweeping a challenge? Too far from the specifics of this case? I think not. It is the reality of 21st century technology and market structures. Convergence, after all, implies consolidation. And consolidation breeds domination.

MTC–00027859

From: Bill Horne
To: Microsoft ATR
Date: 1/28/02 11:39am
Subject: Microsoft Settlement

I believe that the proposed DOJ settlement with Microsoft is wrong and will further eliminate lawful competition with this criminal corporation. Do please consider changing the settlement to help struggling Operating Systems developers as well a browzer developers.

Bill Horne

''Five minutes after any agreement is signed with Microsoft, they'll be thinking of how to violate the agreement. They're predators. They crush their competition. They crush new ideas. They stifle innovation. That's what they do.''—Massachusetts Attorney General

Thomas F. Reilly

MTC–00027860

From: Jack
To: Microsoft ATR
Date: 1/28/02 11:37am
Subject: Microsoft Settlement
2601 NE Jack London #14
Corvallis, OR 97330
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am sending this email to show my support for the settlement reached in the Microsoft antitrust case. The settlement should make it easier for other companies to work with Microsoft and its products. I find it weird that the suit was brought in the first place, since companies that wanted more business in this industry could get it by making their products better. I think innovation, by the whole technology industry including Microsoft, should be encouraged, not stifled.

I work in the computer printer segment of the computer technology. Compatibility of our printers with popular software is important to our business. It could be of some considerable benefit to our partners, the computer industry, and us in general, that the settlement will allow us to have the open access to Microsoft's copyright software code for the internal interfaces of the widely used Windows programs.

Industry standards are the lifeblood of peripheral products, such as our printers. Microsoft has greatly helped the industry by setting an affordable, easy to use standard that a wide range of people around the world have chosen to adopt out of the multitude of systems available.

Other terms in the settlement, such as changes to Microsoft's ability to exercise its contract rights will help the industry, including Microsoft's rivals, such as AOL Time Warner. AOL will be able to work with computer manufacturers to remove Microsoft's Internet Explorer and Windows Messenger and replace them with AOL's own Netscape Navigator and AOL Internet Messenger, AIM. So, in terms of the American computer industry as a whole, the settlement's requirements of increased openness, flexibility and disclosure from Microsoft should lead to greater experimentation and innovation. Microsoft should benefit too, from the end of the distractions to its business focus and costs of litigation.

The settlement is, in my opinion, in the public interest.

Sincerely,
Jack Kolb

MTC–00027861

From: Mark McGee
To: Microsoft ATR
Date: 1/28/02 11:38am
Subject: Microsoft Settlement

Dear Sir/Madam:

I am writing in support of the settlement agreement entered into by Microsoft, the Dept. of Justice, and nine states.

It's best for everyone involved to proceed with the provisions agreed to and get on with business.

Sincerely,
Mark McGee
Sammamish, WA

MTC–00027863

From: Guthrie Chamberlain
To: Microsoft ATR
Date: 1/28/02 11:38am
Subject: Microsoft Settlement

Dear Mr. Ashcroft

I am writing today to voice my opinion on the Microsoft Antitrust case. As an owner of a business that is part of the IT industry I feel this case has been dragging on for too long and it has hurt not only Microsoft, the entire IT industry and indeed the entire economy. The government has no rights meddling in the affairs of independent business unless it is truly hurting consumers through unfair practices. This is certainly not the case with Microsoft who has facilitated computing technology to benefit the majority of the world's population. Productivity and creativity has been stifled and it is now showing in the marketplace. Our economy has grown so much in the past two decades, due mainly to Microsoft and other key companies providing innovative products to the general consumer.

I have firsthand experience dealing with Microsoft, as I work as a Systems Integrator, creating and installing networks. Their products have made our business and the majority of our clients run smoothly and more efficient. As Microsoft experienced problems due to these lawsuits, so have we and it has affected the entire economy. I feel part of the recession that we are now experiencing is due to these lawsuits. I ask that you please take the public's concern into consideration and help put an end to the lawsuits. Additionally, I hope that remaining nine states can come to quick settlements, without further scrutiny from the government.

Sincerely,
Guthrie Chamberlain
President www.eagletgi.com
Guthrie.chamberlain@eagletgi.com
Phone: 740.373.9729 x101

MTC–00027864

From: Carol Hansell
To: Microsoft ATR
Date: 1/28/02 11:39am
Subject: Microsoft's campaign for comments

FYI: ''Americans for Technology Leadership'' phoned our (small) office 3 times plus sent us a brochure in the mail soliciting comments in support of their position on the Microsoft case (that the November agreement be accepted as the final word). Only by carefully checking their web site does one find out that they are funded by Microsoft Corp. (a ''Founding Member''). Personally I do *not* support allowing predatory or anti-competitive business practices, and I think any comments submitted through ''Americans for Technology Leadership'' (there is a form to fill out on their web site) should be viewed in light of their being solicited by an intensive campaign funded by Microsoft Corp. (through a front organization) presenting the Microsoft position only in favorable terms.

Thank you for your interest in fairness.

Carol Hansell,
Administrative Assistant
Association of Boards of Certification
208—5th Street, Ames, IA 50010–6259
Phone (515) 232–3623 / Fax (515) 232–3778
http://www.abccert.org

MTC–00027865

From: Adam Wunn
To: Microsoft ATR
Date: 1/28/02 11:39am
Subject: Microsoft Settlement

The settlement is a bad idea. It allows Microsoft to just go about is business of squashing everyone else. Look at the areas they now control! They want more and they are now being rewarded with a slap on the hand. America needs Microsoft stopped from ruining competition in the computing landscape. Microsoft has proven duplicitous and has displayed their outright blatant lying nature over and over again.

Save the taxpayer some money and do the job right this time, otherwise we will just revisit this in a few years. Microsoft has shown a propensity to skirt the rules or follow them long enough to make it pretty window dressing. Fix the problem, make they do the time for the crime.

MTC–00027866

From: psewell psewelll
To: Microsoft ATR
Date: 1/28/02 11:40am
Subject: The way I see the Microsoft settlement

Sir:

How does one go about expressing their opinion, about something that there government said is in their best interest of there citizens of our wonderful USA.

Here are my thoughts on this settlement concerning Microsoft Company , which I believe is the first true all American USA company..

First allow me to say up front here, I started reading the court documents about the terms of the settlement and was very troubled by the findings and ground rules laid down for Microsoft. It reads like more money out of the public pockets and nothing to protect our best interest. in the software or computer world.

I feel that the agreement isn't really in the consumers best interest nor is it in Microsoft's best interest, this is my opinion. The decree reads like a very confusing judgment. which. in the end I believe will put software & computers out of reach for the average everyday American citizen,

Now mind you. I said average citizen, not those who are already at the bottom or top, of the food chain. [no disrespect meant there] Why do I say this. Because you have took a

company in the name of some folks greed and put a price tag on everything which has to do with technology , which, technology has no price tag, nor is mankind a third of the way ready for this wonderful new world of technology. I hope and pray you understand this statement. this could destroy generations of children now, and those to be born.

I wonder in today's world, does any one really care about the citizens of our nation or humanity. Maybe the green god rules in total. Heaven help us. There will never be a standard set for software. that is the way I see it at this time from the decree being handed down..

I have shelf's full of useless software which doesn't work on my computers. I purchase software & hardware from those who only seek profit, and no perfection in there software to work with any OS system. let the buyer be truly aware of what this will eventually lead to with software for the consumer.

Or even Companies at there total own risk we will take your cash and bed... you the consumer. The internet will all but be destroyed by those who would benefit from it, in the name of greed and jealousy by a few. Who only have there interest at hand, so sorry but this is how I see it from the beginning of this to continued law suits against Microsoft. Allow me to state that I have no axe to grind with anyone nor do I work for Microsoft.

I choose on my own to use Microsoft's products because their software was the only software that actually works for me being a lay person, and I didn't need a PhD to use Microsoft's software, they supported there software, with out charging outrageous fees to fix there product if something went wrong with there software, which was a rare thing for such a large software company. to take responsibly for there products... Nor did they tease me with there browser like Netscape did [my very first browser] offer me the bare bones files, in order for there browser to work I had to spend hard earn funds at that time to get it to work for me [very complicated] to enjoy using what my and a lot of other folks tax dollars have already paid for, the Internet.

I hope you understand what I am trying my best to get across to you here. I think this issue should be rethought and support Microsoft more then what it isn't doing now in my opinion, my sixty three years could be wrong , but I don't think so.

This isn't a phone company or a light company, etc.. we cannot continue to destroy companies because someone thinks that they are to wealthy or that they want part of the action, the phone company is a good example.....this company Microsoft is part of the very back bone of our nation the new frontier of the twenty-first century. they are a American Global Company with major assets here in the mother land, supply jobs to the best and brightest of our youth to move forward in the 21st century...who sets good standards on how a company should treat those who work for them fairly.....this is Wonderful.....this is something we can not destroy in the name of greed.....you know like when we first started out as a raw nation, an new frontier the west ..... in the earlier years. We can never revert back, even thought some of us think that is what it will take to get our house in order . it Takes honesty & compassion for mankind to put our house in order, if we are lucky as a nation.

I would also like to suggest that we change some of those outdated Sherman act laws, they are a great guide to follow , but horrible to use against companies in today's world, those standards where for that time period in our history, we also need to remove a lot of business tax shelters and start making them pay there fair share, restore checks and balances, not when someone thinks a company are person is to large are to big. also, we need to allow those who build there own companies from there pockets not the tax payers pockets. a little more legal lead way. Sometimes we will need to allow a company to be a monopoly [this is one of those instances] with guidance's. By those whom we tax payers, pay as our watch dogs to protect us an our country from being devoured. Does that make sense. No two babies are birth the same way, I had to throw that in, It must be said. No I do not own any stock in Microsoft.

Thank you for allowing me to voice my opinions. God bless you and our Nation.

PL Sewell

http://www.sewellsports.com

MTC–00027867

From: Pindel, Dave
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:48am
Subject: Microsoft Settlement
David L. Pindel
Instructor of Biology
Division of Biology and Chemistry
Corning Community College
1 Academic Drive
Corning, NY 14830
(607) 962–9536
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I appreciate the opportunity to comment on the settlement agreement reached between Microsoft and the Justice Department in the antitrust litigation. Please do not forego the opportunity to settle this case now. The settlement provides benefits for the economy which can be taken advantage of now rather than taking the risk of litigation. The remedies awarded by a Court may not be as advantageous to the public.

Microsoft has agreed to eliminate a number of alleged barriers to competition by adjusting its pricing policies, eliminating restrictions in its distribution contracts with third parties, and allowing competition from non-Microsoft software within Windows systems. These changes will help the computer industry as well as provide greater choice of products for consumers.

Sincerely,
David Pindel
418 Sunset Drive #14A
Coming, NY 14830
MTC–0002786/—0002

MTC–00027868

From: Steven White
To: Microsoft ATR
Date: 1/28/02 11:42am
Subject: Microsoft Settlement

Since today is the deadline for public comments, I thought I would add one parting shot to the email I sent some weeks ago and the hand-written note I sent yesterday by fax. I assume that a lot of people more knowledgeable than I have explained the details of why the settlement is too weak to stop Microsoft from stifling innovation (unless it's their own) and driving other companies out of business. I have seen pages of it in mainstream newspapers and computer publications, and I have gotten a clear explanation from my own state attorney general. You must have seen those also. Let me just make one non-technical point.

Don't be swayed by the marketing-type arguments I hear. Some people say that this whole affair is just Microsoft competitors jealous of Microsoft's success and unable to compete with them, and looking to the government to help them. That is not correct. As the findings of fact told, the issue is that Microsoft will not LET other companies compete. Their way of ''competing'' is not to make a better product, it is to drive competitors out of business. That's why they have things like the contracts with computer makers that prohibit computer makers from even talking about competing products, let alone selling them. You might make a settlement that says to Microsoft, ''No, no no, you mustn't do that any more,'' but they will find a way around that. They might not make the contracts any more, but they will use subtle strong-arm tactics, or will find something that follows the letter of the law but not the intent of the settlement. There must be someting structural that forces them to behave, not just what amounts to a scolding.

And also don't be fooled by the ''freedom to innovate'' arguments where Microsoft says that a settlement prevents them from ''innovating'' and puts the government into the software design business. That is not the point. The point is that Microsoft stops others from innovating and that is what prevents the computer industry from being all it can be. Microsoft's tactics starve other companies from the money they could use to offer better products. The BE-OS is a perfect example. Microsoft's contracts prevented BE-OS from being sold by computer makers. This deprived BE of money it could have used to improve its product so more people would want to buy it. BE went bankrupt.

And finally don't be swayed by arguments that what is good for Microsoft is good for America. Bringing Microsoft to heel will not cripple the economy or have some catastrophic consequences.

I have four computers at home and none of them run any Microsoft software. I have to struggle a bit with them, but I get by just fine. With more money going to other companies, it will get only better.

Thank you.
Steven White
City of Bloomington
2215 W Old Shakopee Rd
Bloomington MN 55431–3096

USA
952–563–4882 (voice)
952–563–4672 (fax)
swhite@ci.bloomington.mn.us

MTC–00027869

From: Gary Enos
To: Microsoft ATR
Date: 1/28/02 11:44am
Subject: Microsoft Settlement

To whom it may concern,

I have watched the case against Microsoft and believe the actions to date to be an atrocity of justice. The actions taken against Microsoft have been of questionable substance and lacking a justified agenda. The negative affects on the technology sector and the de-valuation of one of America's greatest assets ''Microsoft'' has been hard to justify.

Microsoft has influenced the growth of the computer and compute environments more than any company in history. Many companies and manufacturers have benefited from the open development and utility of the Windows operating system and Microsoft certifications. The continued attack on Microsoft is un-productive and a challenge to the innovative spirit and freedom to grow that is typified by American business.

The marketplace has demanded close integration of OS and functionality. Integration of form and function is not a wrong doing and Microsoft should be commended for all they have accomplished and brought to America's technical dominance. UNIX manufacturers have been imbedding programs in the OS for years; MacOS contains many imbedded functions. Microsoft has done nothing wrong and has acted responsibly to meet the needs of the market and the installed base of PC users/manufacturers. Microsoft is strong because they develop superior products in response to demand. They must be allowed to continue pushing the envelop and to have the freedom to innovate.

The States which have failed to support the DOJ decision are wrong. It is wrong for AOL/Time Warner and Netscape to pursue or be permitted to pursue continued challenges against Microsoft. There is not value in the pursuit, only further devaluation of a great company and the harm to many investors and the technology industry as a whole.

AOL and MSN both offer messaging. AOL, Compuserve, ATT and other services are offered as part of the Online services load of Windows 98, ME, 2000 and XP systems. The users have complete freedom to select ISP, Browser, and email client. The fact that Explorer, Outlook express, and MSN are options to the OS load is perfectly acceptable. These are also superior applications.

Please take action to prevent further legal challenge and wasted energy to defend Microsoft's freedom to innovate. The DOJ has decided; lets get on with re-building the US economy and re-vitalizing the technology sector of this great country.

Regards,
Gary Enos
6842 West Sherri Drive
Macedonia, Ohio 44056

MTC–00027870

From: Roz Crowell
To: Microsoft ATR
Date: 1/28/02 11:43am
Subject: Microsoft Settlement

To whom it may concern:

For heavens sake, PLEASE, adopt the terms of the agreement with Microsoft and let the country get on with living and move this industry forward!!

Thank you!

Sincerely,
Mrs. H. Crowell

MTC–00027871

From: Bryan Campbell
To: Microsoft ATR
Date: 1/28/02 11:43am
Subject: Microsoft Settlement
Bryan Campbell
bryany@pathcom.com
28 January 2001
Ms. Renata Hesse
Trial Attorney
Suite 1200
Antitrust Division
Department of Justice

A Cornerstone Technology for the Twenty-First Century

''Home users who buy new PCs don't have much choice in operating systems. Once Windows XP ships, nearly all computers will be sold with it installed.'' ''When your six-month-old version of MusicMatch Jukebox doesn't work, you may decide just to live with WMP [Windows Media Player].'' The New Windows, PC Magazine 30 October 2001

http://www.pcmag.com/article/0,2997,s%253D1590%2526a%253D15591,00.asp

This phase of the antitrust trial concerning Microsoft products is occurring at one of the most trying times in the history of the United States. The due deliberation given it (going on as does all business) says much about the resolve of the nation and its allies. Personal Computers are vital to the world economy which means even in this dire time the United States needs to ensure the vitality of the whole Personal Computer industry which is a mainstay for the engine of the world economy in this new century. Security is best served by having a strong economy that has the means to lift up the world into a new prosperity as was done after World War II.

At question in this case is the unfettered access to the next generation of the common infrastructure. Microsoft Operating Systems have become the cornerstone for running a myriad of Personal Computers world-wide! These Operating Systems take a place beside raods and highways, electricity, and the telephone system, as infrastructure services that are fundamental to everyday life in modern society. Care must thus be observed with the newest Microsoft system, Windows, to see that it remains a platform any company or individual may build on and garner the full benefits of any innovation.

1. The Revised Proposed Final Judgement gives Microsoft too much influence over how other developers can implement their programs. Section III.H allows OEM installs of non-Microsoft products. That clause is made too narrow by Section III.H.3.2, which states Windows may invoke a Microsoft product (Section III.H paragraph 2) if another product does not meet a ''reasonable technical requirement'' (ActiveX) consistent with Windows. Once it is in writing, ActiveX support will be a minimum for all programs to meet. That will be anti-competitive by requiring programs to be a proprietary Microsoft ActiveX control as a ''reasonable technical requirement'' to allow OEM installs when some software firms would prefer to use only Java. Studying constitutions and court decisions is part of my background and I have seen innocuous clauses gain unexpected importance.

Section III.H.3.2 could be such a clause causing OEMs to leave Microsoft programs in place. That Microsoft has broad latitude to override OEM software choices makes this Judgement contrary to the public interest. Section III.C of the Judgment, indeed, seeks to leave open such options. Generally, as Microsoft does not give tech support to 0EM built systems, there is not a strong business reason for Microsoft to so closely govern the initial boot. Buyer recourse is to an OEM, which bears the costs of more technical support phone calls if it deploys a confusing initial boot or a confusing configuration. Microsoft costs do not raise due to some inept OEM ideas so OEMs can certainly be left to their own ideas on finalizing systems. OEMs carry the financial burden of manufacturing and selling what they build so OEMs need the freedom to install programs that make those systems most attractive to buyers. If an OEM markets PCs that misbehave, a Web or other review will quickly make that news and the market will react leading that OEM to fix its error without reflecting on Windows itself. Microsoft paternalism is unnecessary. Not to say that it can not protect the reputation of its product, only that in ensuring Windows works as expected Microsoft does not also stifle non-Microsoft programs because those developers choose to use their own vision on the Windows Operating System.

1a. The revised settlement gives Microsoft far too much competitive advantage because Section III.H.3.1 and its preamble let the Windows Operating System select Microsoft programs to connect to a Microsoft server. That leaves the door wide open to Microsoft specifying, for example, only Internet Explorer may be used to update Windows so people wishing to use other browsers still need be familiar with Internet Explorer. People using the Lynx browser perhaps because of reduced vision or Opera's browser due to physical disability would have no way to visit Microsoft Web sites or to update Windows. This settlement may allow discrimination and or infringe upon the Americans with Disabilities Act (ADA) and perhaps other codes if a secondary route is only left to people with disabilities. (Plus their Personal Computers are painstaking configured to allow independent operation which a central authority is unlikely to be able to clone no matter how strong its motivation!) From a wider perspective, this clause gives Microsoft too much latitude to disregard individual choice.

Other vendors will be reluctant to write similar programs knowing reasonable earnings from the work is unlikely as possible customers will not use a program since Windows may by-pass it at critical

times when customers need be most familiar with their programs to ensure successful outcomes. Moreover, the Court of Appeals Ruling on page 30 (using the Adobe PDF rendering) notes having two browsers on systems is unpalatable to OEMs as some customers will phone the support line asking which browser to run. OEMs seek to limit such costly calls so OEMs will not configure systems with two similar programs to avoid customer confusion. Because OEMs carry the burden of product support they need to be able to configure systems to best suit the individual buying a system. Windows is a most adaptable Operating System allowing buyers to run Personal Computers in a personalized fashion, giving OEMs an option to begin the personalization process would be one way to make using a new Personal Computer easier. Conversely, if via Section III.H.3.1 Windows ignores buyer chosen software to increase ease of use by using only one browser buyers will of necessity run Internet Explorer to be able to update Windows. Some violations the Court of Appeals upheld deal with promoting exclusive use of Internet Explorer, no part of any settlement should allow for any similar eventuality. Microsoft must be encouraged to quickly implement open standards so any browser can interact the same way with any server. The guiding goal should be the example of the telephone system which at one time only allowed equipment built by the phone company to be connected to the system. By the early 1980s, equipment built by any manufacturer was allowed to connect to the telephone system something that helped the greatly expanded types of telephone services available now. Plus at that time telephone companies stopped requiring that handsets be wired into the system by their employees as telephone sockets were fitted with jacks that allow easy connection of handsets. Having seen other technologies become much easier for customers to handle alone it would be most unfortunate to go backwards against that trend by letting Personal Computers appear to be devices that only a central authority can setup.

Car dealers offer customers many options, although the supply chain for assembly is long with an involved manufacturing process. Since car dealers let customers pick items such as seat color likewise 0EMs can have options for Web players, browsers, and other preferred software components. (Dell Computer buyers custom configure hardware for new systems http://www.zdnet.com/anchordesk/stories/story/0,10738,2834200,00.html fifth paragraph, doing the same with some Web ''plug-in'' software merely extends an existing concept.) Yes the finishing stages of Personal Computer assemble will change to yield widespread benefit as new systems have the newest versions of programs installed.

Customers satisfaction should go up given less need to update new systems with the most recent versions of programs helping lower or hold steady OEMs costs by reducing phone calls to support on what to do when an update causes a malfunction. Microsoft benefits by having some updates done before customers receive systems. A 3 Dec 2001 article at http://www.wired.com/news/print/0,1294,48756,00.html shows a patch which closes many security holes in Microsoft Outlook is very seldom downloaded as a percentage of estimated Outlook users. And that a tiny test group had little success installing the patch. (Having run desktop systems for 23 years, I'm fully familiar with instructions for software I found those for the patch process involved. Not complex, just a process needing diligence to complete.) All software firms try to make updates easy, yet customers, especially the majority not interested in the technology itself, are fatigued by frequent updates. By having the Operating System supply fewer components (where they become outdated with unfortunate speed) OEMs will be able to relieve buyers of some extra setup chores, making them more immediately productive! For retail sales OEMs could provide CDs (which stores could also update) with new versions of programs.

Returning to the comparison with the phone system where interoperability (meaning seamless operation between components from diverse manufactures) reigns supreme the idea that only Microsoft programs (besides when self-updating) be allowed to access Microsoft servers is as inefficient as calling the phone company for customer service merely to be told to call back on handset it built. Possible problems with other browsers using Microsoft servers probably stem from Microsoft placing proprietary functions in its own Internet Explorer browser (please see http://www.pcmag.com/article/0,2997,s%253D1470%2526a%253D4804,00.asp) and then using those function on Microsoft servers. The public interest is only served by universal Web access as exemplified in continental telephone systems where those responsible for the system do not limit customer choice. lb. My 23 years of experience with desktop class computers (then called ''micros'') stems from my being a person who is physically disabled (having Cerebral Palsy entails lack of fine motor control, unsteady and shaky movements, and difficulty in moving). That familiarity with keyboards began in about 1961 with I began using a headwand to type on a typewriter. My first ''micro'' computer in 1978 enabled me to complete a Bachelor of Arts in History by 1982. Even a computer did not speed up my typing though (a photo at http://www.opera.com/press/guides/operapower suggests how I work) so the whole Degree took seven years to finish, letting me to all the reading (and much more) related to the History, Political Economy, and Economics courses for the Degree. A background enabling me to place this case in a broader perspective than is often done, with the skill to look at all factors and sides before writing an analysis.

Vital to note also is the wide power of software to do amazing things! It is software which transforms the diverse components within desktop computers into cohesive wholes able to a universe of tasks. If you do not want to, or cannot hold down two keys at once solutions abound! A two key command can be programmed on to one key or software 'holds'' modifier keys like Shift on till another key is typed. Personal Computers adapt to the person. For browsing the first thing I did on purchasing Web access in 1995 was Search for a suitable browser and found NCSA Mosaic 2.1 highly usable.

Please see http://archive.ncsa.uiuc.edu/SDG/Software/mosaic-w/releaseinfo/2.1/WBook—60. html for its one key commands which were enough for keyboard Web navigation, at that time. By mid-1996 the Web was more complex and Opera Software http://www.opera.com had a browser that has since filled the bill. Being able to find and run commercial software is huge a cost saving, too. On the Web site for the White House, ''Fulfilling America's Promise to Americans with Disabilities'' http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html says adaptive technology to make Personal Computers usable by people with a disability costs $2000 to $20,000 a system. In comparison Opera and this macro program (to program commands or often used phrases to run by typing one or two keys) http://www.macros.com together cost $65, showing that great software can reduce some expense of making computers usable by people with a disability. Such a large saving is rare, yet it illuminates the power of software.

The malleable nature of software is the vital point as that versatility lower costs. Every program does not have to use the exact same approach to accomplish any task. Most programs even have a few ways to do any one task. Some macro programs carefully guide you through macro building, the one I run also does direct building which is less work for me. Neither approach is more correct, the best solution is the one most suited to the interest and skill level of the person performing the task. With Microsoft moving to place more full programs in the Operating System the best feature of software, its malleable nature, will be lost.

We risk reaching a point where people only know how run a few programs by rote as they service the computer instead of computers serving the individual. In an enlightened age of reduced regulation it is very strange to see Microsoft regulating the Personal Computer industry. Because many clauses in the Proposed Judgement give Microsoft ways around prohibitions, especially Section III.H.3 using the word 'notwithstanding'' (meaning despite stated limits Microsoft may have its way), it is no over statement to say Microsoft may now regulate its industry. With it being able to still influence many aspects of OEM systems customers will largely see Windows in the form Microsoft wants, placing it at the center of the Personal Computer letting Microsoft regulate industry affairs. When a monopoly impedes the free flow of products that is at odds with the nominal workings of a capitalist economy and its open markets.

1c. Technology plays its best role in economic growth when it is deployed in a manner that does not favor or give special status to any party (which is separate from financial returns due product creators). Applying that concept to Operating Systems for Personal Computers is illuminating. DOS began in 1981 as a system with the bare essentials to run a computer, some might say so bare that it was like selling an engine with no spark plugs.

Other vendors began selling software to perform such essential tasks. In 1991 Microsoft released DOS 5 which later with DOS 6 were the first more complete versions, (http://www.nukesoft.co.uk/msdos/dosversions.htm) less requiring third party software to enable computer features of that day.

Notable these implementations left room for improvement and customer choice. Although by 1993 the engine definitely included spark plugs demanding customers seeking their view of complete computing were free to buy software offering a full of range options in areas like memory-management from a number of vendors. What Microsoft added to DOS are functions virtually fundamental to the workings of an Operating System, yet there was no wide attempt to exclude other vendors from those markets. Windows 95 had improved memory-management so third party software for it all but vanished, which is natural because the Operating System should be able to handle a basic computer resource like memory itself.

To understand the impact of combinations a careful review of whether another product brings a finishing touch to an Operating System does help. Optional utility software to check Operating System integrity and better memory-management refine the Operating System, increasing its ability to perform without incident. Those items represent more intensive development of what the Operating System is meant to do, make Personal Computers ready and able to run programs the owner needs. A built-in browser, media player or the like expands the Operating System without increasing the integrity of that software. Expansion adds to the Operating System without polishing it. When such tying occurs the Operating System can become more difficult to maintain, unlike the customer benefits derived from intensive development.

Problems with an expanding Operating System are illustrated by the security holes Internet Explorer lends Windows. Two articles on http://www.extremetech.com/article/0,,s%3D25124&a%3D21033,00.asp explain matters. ''Microsoft Releases IE 'Mega-Patch''' notes that a combined patch now closes various Internet Explorer holes (one even lets someone take over your computer, details on http://www.infoworld.com/articles/hn/xml/01/12/13/011213hnbackdoor.xml). Yet it is not always clear the browser must be updated to version 5.5 before the patch will install, thus after download some people gave up. Brett Glass writes further in the article that stopping is bad, the patch is essential since Microsoft nearly always has Internet Explorer run, (to view email sent in the style Web pages) ''unbidden,'' even if computer ''owners'' act ''to make another browser the default''. That means owners using another browser must still maintain Internet Explorer because Microsoft expanded the Operating System to include its own product. That means just not using Internet Explorer does not avoid security problems in Windows. Extra software in the Operating System brings extra problems. This is a particular bad time for compromised security so it is unwise to make people work hard for security.

Despite such hard work the second article, ''Internet Explorer Violates Basic Security Principles,'' on the above link says that how Javascript runs in Internet Explorer makes it vulnerable. Malevolent Web sites can ''hijack browsing sessions,'' steal items like credit card numbers from browser cookies or read sensitive information from files on computers. No patch existed when the article went to the Web on 10 Jan 2002. Disabling Javascript is the only way to seal the gap for now. And that makes the Web very difficult to use since many sites employ Javascript to exchange information with browsers and to have Web page pieces properly placed. An expanded Operating System makes it difficult for people to decide what browser best serves their interests because Internet Explorer asserts itself in Windows.

And it seems silly, at first glance, to seek other programs when the Operating System maker provides software in a persistent manner to do things. That persistent hampers competitors from fulfilling the browser or other functions. Brett Glass notes that Internet Explorer at time runs despite efforts of computer owners to have Windows launch a non-Microsoft browser when a third program requests browser functions. Such behavior is anticompetitive because it will cause some users to surrender and use Microsoft products to get their jobs done instead of toiling to have Windows always use the browser they want. Usually Microsoft says bundling will not inhibit customer choice of software that does not seem to reflect real world experience. Worse than being anticompetitive is that people are led to using software which is not secure. Bringing the discipline of the market is the best way to let customers choose great and secure software uninfluenced by the first blush of tying.

2. How Microsoft dominance and now monopoly in desktop class computer Operating Systems functions demonstrates surprising durability. A product primarily sold on new computers each edition of the Operating System has a fresh plateau to maintain its dominance. Not depending on static plants or structures to provide goods or services in a certain locality means this monopoly is unlikely to weaken due to age, obsolescence, or outside encroachment. Not having to finance and maintain fixed assets to manufacture tangible products means Microsoft is able to quickly apply resources to new challenges without the lag and expense of having to retool manufacturing plants to build new kinds of products. Which is not to say software development is instantaneous or that Microsoft has no costs only that the expenses are not structural, not binding it to one course for any time span. With little to hinder it Microsoft can quickly respond to meet emerging market trends making the monopoly durable.

What sustains the Operating Systems monopoly is fascinating. Increasing yearly sales of systems licensed to run Microsoft Operating Systems created a huge installed base of systems with the hardware specification derived from the first IBM Personal Computer in 1981. About 100 million Windows client licenses (including corporate updates) now ship yearly, with declining computer prices making it more ''enticing'' to buy new systems than to try upgrading old ones http://www5.zdnet.com/zdnn/stories/news/0,4586,5100875,00.html. With Windows put on many new systems the monopoly is self-renewing as the equipment it runs on is continually updated. For entities running Windows there is not one large unit or factory to age and be replace by equipment from competitors at one moment in time. Interesting too, is that buyers of the Operating System pay for the equipment its runs on, relieving Microsoft of paying for equipment to maintain the monopoly. Low costs to Microsoft, with no decisive point in the product cycle to switch vendors due to continual buying means the Operating System monopoly is durable and long lasting.

Development of this point stems from the Court of Appeals note that Joseph Schumpeter saw only temporary monopolies in technology. The ruling (page 12) cites Schumpeter's idea of product improvement causing many firms to dominant a market in sequence. A dynamic technology market would appear difficult to dominant for long, as another firm will improve the given item such that buyers flock to for a few years till a third firm replaces it and so on. That works when a given item has no dependances on it. If changing the one item, however, demands that other things must be changed too product improvement has difficulty unseating the first monopoly.

Schumpeter's theory does not apply to Personal Computers Operating Systems because Schumpeter could not be expected to foresee the huge network effect in this arena. Producing a better Operating System in isolation will not enable buyers to adopt it. When Microsoft began with MS-DOS and early Windows it did not face a dominant rival ''with a massive an installed base and as vast an existing array of applications'' (Court of Appeals ruling page 23). Instead of being temporary deep support makes the Windows monopoly most resilient.

2a. Remedies to antitrust activities need to reflect the strength of the Microsoft monopoly. It is very durable so the company is much, much more likely to be able to damage other firms than anything in a judgment disrupting it. Windows is as much a cornerstone of personal computing as are plumbing and electricity to a building. Buyers require Windows to be able to run the programs that form their daily activities and will purchase the Operating System in a basic or its present expanded form. Any discomfort experienced by Microsoft is a necessary of result of allowing the free market to again operate. Bumps in the new open market road are just the expected opposite reaction to benefits from antitrust activities. In specifying what Microsoft must not do its ability to employ its own interpretations of matters needs to be considered to achieve the desired result. The firm managed to sidestep the 1994 Consent Decree http://www.usdoj.gov/atr/cases/f000/0047.htm (page nine, paragraph three) item that Microsoft not require notification of any New System line sold with no Microsoft Operating System. In a most innovative

fashion, Microsoft had a contest in early 2001 to have system builders inform Microsoft of systems shipped without Windows. Builder employees gained more valuable prizes for telling Microsoft of higher numbers of non-Windows system sales. Microsoft wanted to see that Enterprise licenses are not misunderstood as covering new systems, a necessary thing noted in, ''Microsoft offers PC builders prizes to be finks'' http://www.infoworld.com/articles/hn/xml/01/05/02/010502hnsitelicense.xml

Letters to Enterprise license holders could of accomplished the same result without garnering builder sales information which is private between seller and buyer! Instead, what Microsoft did went against the idea of the 1994 Decree with a method to gain details on builder sales by using a voluntary entry to contest which seems to get around the point Microsoft not require such information, except perhaps to dissuade clients running non-Microsoft server Operating Systems (''Be a Microsoft Stoolie, Win a Chair'' http://news.cnet.com/news/0–1278–210–5816847–1.html). Though it is unknown if Microsoft used information from the contest to influence software usage it is seen that Microsoft cuts close to prohibited actions in pursuing its goals, for this case all requirements must be exacting to prevent sidesteps. Nor can the anticompetitive ingredient of the contest be ignored as it clearly made known Microsoft's concern over systems selling without Windows. Because builders must be able to put Windows on desktop computers to retain buyers, system builders (particularly less known firms) could take pause and decide not to risk relations with Microsoft by selling relatively few (if more expensive) server systems without Windows. All system software and hardware suppliers can be replaced except for Microsoft because only it licenses Windows which brings together all the products from other suppliers into a cohesive unit that can be sold.

Such complete dependence on a single supplier for the only product with no substitute would make builders wary of offending Microsoft since it is the only firm in the Personal Computer industry that can put other firms out of business by halting access to merely one product. The Court of Appeals ruling on page 16 says customers will not change Operating Systems due to the cost of new programs and training for them which is a burden while other Operating Systems offer fewer programs.

Also, each hardware component requires a piece of software referred to as a ''driver'' to mediate communications between a component and the Operating System the ''driver'' is written for. Component makers write Windows ''drivers'' almost exclusively so system builders lack options for any simple substitution. Thus relations with Microsoft are a prime concern leading builders to stay attuned to what Microsoft wishes. Yes, another Operating System can be used, yet it demands a seldom seen deep commitment. Lack of ''drivers'' deters buyers from trying another Operating System on new computers, adding to why buyers stick to Windows despite frequently new purchases. Linux distributors do provide ''drivers'' with their Operating System, but these seldom drive all features on components making these ''drivers'' unattractive substitutes. Components makers over time have sold many items in their product category making it difficult for distributors of other Operating Systems to timely develop ''drivers'' to suit specific components. A tiny part of the remedy should prohibit Microsoft from in any way deterring or interfering with components makers possible writing ''drivers'' for other Operating Systems.

3. Pricing is the one area where, at a glance, the Operating System monopoly is not readily discerned. The price is usually not high compared to other Personal Computer components so previously cost was not an issue. Point 2 of this submission notes Windows sales are now about 100 million unit a year. Over an approximate three year mainstream life of an Operating System total sales do perhaps yield a monopoly like profit. Especially as Microsoft has low fixed costs. A humble suggestion to the Court is to investigate the cost of producing software in a very high volume to discover how price per unit relates to production cost. Another item to account for is Microsoft having no direct enduser support costs when builders put Windows on systems. Not facing that cost could let a lower price yield unexpected returns.

Annoyance, too, is a reason Microsoft has unremarkable prices. In software development ''the-state-of-the-art'' produces good programs which seldom run as well as common, everyday devices. The science, or art, of software is young so somewhat less reliability is reasonable. That means to sell many units a year prices cannot be maximized to the same extent, for example, as can prices for ad space in the sole newspaper for given area. Annoyances is even the name of a popular Web site http://www.annoyances.org for dealing with Windows so what have been moderate prices were a trade-off to keep buyers. Of Windows 98 a prominent writer said one reason to spend the $90 is that 98 crashed less than Windows 95 http://content.techweb.com/winmag/library/1998/0701/ana0001.htm

4. Bundling is a pivotal matter here making understanding it important. Bundling is common to enhance the value of new kinds of products, movie rentals included with VCR purchases when that product was new to spur customer interest, a process now happening with DVD players, are fine examples of the more frequent kind of bundling. When Personal Computers first became fast enough to display usable graphics on monitors writers of programs to do charts and graphs arranged to have makers of the new, fast graphic boards for systems bundle those programs with new boards to increase sales of both products! All temporary arrangements to boast new product recognition.

Similar to this Operating System and browser packaging, ''AWeb-II 3.4 Packaged with Amiga OS3.9'' http://browserwatch.internet.com/news/story/news-20001229–1.html Amiga is a neat, niche computer and Operating System with some loyal supporters. Bundled with Amiga OS3.9 is the AWeb browser for buyers to try out as v3.4SE Special Edition has some features disabled so if folks wish to keep using it they need to buy a full version. Limited versions let prospective buyers try a product without damaging potential sales. Notable these test versions can be removed from systems if customers so wish. Probably the instances of Operating System and browser bundling presented at the original District Court hearing allowed the browser to be removed from the Operating System, as well. What Microsoft did in binding Internet Explorer to Windows was atypical since other programs can always be removed. Apple Computer could not create and tie the two products together, for instance, being under contract to Microsoft for its MacOS Internet Explorer to be the default browser on Apple systems.

That the Internet Explorer experience can be duplicated on Apple's MacOS without placing that Microsoft browser in the Apple Operating System shows the browser is a product category, not Operating System plumbing like memory-management that wholly depends CPU and Operating System interaction. That the product category exists is illustrated by its functions. Unlike most computer programs a browser is meant to show on a local system information that is formatted into Web pages on remote computers. A browser would quickly become boring without a connection to the Web to provide fresh and new information. A browser is part newspaper, radio, and TV for computers that only really shines because of its outside connection while other programs deal what they create. Separating the browser from other software is that it does not create what it displays. Even most computer games create files to allow games to be resumed at a later time.

Demonstrating a possible market for browser is difficult because once a firm with market power uses its builder distribution network to distribute its browser with no regard to cost by not charging for it buying a second browser seems odd. NetMechanic http://www.netmechanic.com though, is a firm in business to make Web sites work in a variety of browsers, and different types of computers, demonstrating not everyone prefers the Web as presented by Windows through Internet Explorer. Tastes do change. One noted computer commentator recently wrote (20 Dec 2001) he now uses Opera's style of having a number of Web pages open within the browser's one window (called MDI), instead of one program for each Web pages as Internet Explorer does producing a ''blizzard'' of separate programs http://www.scotfinnie.com/newsletter/18.htm.

If the playing field was more level, with no firm having market power using its very special access to computer distribution, there is reason to think buyers would seek browsers that suited their individual preference instead of just happening to use what ships with the computer. Equally important is that other types of computers do access the Web so a proprietary specification of how to interact with browsers is anticompetitive since it favors one type of computer. Microsoft's main focus is the Personal Computer, making it less interested

in the advancement of other computers to protect its principal area of business. That is natural for Microsoft to do, yet it is bad for customers as possible choice for computers will not have the options as the kind Microsoft caters to. An example is on http://www5.zdnet.com/zdnn/stories/comment/0,5859,5101802,00.html noting that Microsoft's PDA named the Pocket PC does not support Apple's Mac computers. Not a big item, yet it is another way to make Windows look better. Microsoft is so fiercely competitive it should not be left to handle a cross-platform standard better formulated by an industrial association.

(I must now apologize to the Court as time is now very short to finish the filing and I still type slowly so I need to work in point form, I hope you will excuse me.)

These 4 columns note that open standards greatly reduce costs for buyer and much improve the number and quality of available choices. ''Standards can put you in control''

http://techupdate.zdnet.com/techupdate/stories/main/0,14179,2837626,00.html

Open Standards Vital, PC's Founding Fathers Say''

http://www.extremetech.com/article/0,3396,s%253D201%2526a%253D11568,00.asp,

''Why we should hail IBM's ode to open source—the Purple Book''

http://zdnet.com.com/2100–1107–503981.html and ''Group builds onto wall of Web standards'' http://news.com.com/2100–1023–802022.html. The W3C stands for Web open standards with interoperability between all software, Microsoft should be urged its lead.

5. The most effective remedy to administer with most ease is that Microsoft only sell Windows with the basic plumbing to run computers for the 1st 30 months of a judgment. That will be called disruptive, yet it is the best way to remind everyone Windows is the means to let many companies run programs on Personal Computers, not just Microsoft, and not as 2nd class players. If that is not done Microsoft will have decreasing reason to accommodate other firms on Windows as those firms will not much add to Windows'' popularity. Plus that will encourage Microsoft to have enough Windows'' APIs so any browser runs all browser functions in Windows instead of the APIs being limited to Internet Explorer.

During that 30 months programs now in Windows will sell at prices as determined from sources like the Web. After 30 months such programs and basic Windows most stay available for 10 years. And Microsoft may then sell 2 other Windows versions with prices reflecting having some extra programs in 1 version, and all extra programs in the 2nd version; as well as direct Microsoft support being of 1 contact for setup (only good if used in 1st 35 days after buying) that may go on for a time after the contact began, and a 2nd 6 months starting from a later contact within 15 months of system purchase. Simple reason for Microsoft support is that it be responsible for any full programs put in with Windows, that is only creating a consequence for Microsoft's action which is fundamental to a well running market economy.

5a. Judgment needs to last a long time so market can develop products and just get use to being fully open (so participants in markets related to Personal Computers have no reason to act in anticipation of its end).

Allowing time for those notions to be entrenched so OEMs will react strongly to unusual demands instead of merely accepting them so Microsoft regains its position.

That is a big concern given Microsoft's habit is to disparage what other firms make, ''Novell sues Microsoft over ad campaign'' http://news.com.com/2100–1001–273775.html while a later review found the Novell progressing quite well, 17 Dec 2001 ''Not Just Another NOS—NetWare 6 includes impressive Web tools, file and print services''

http://www.eweek.com/article/0,3658,s%253D708%2526a%253D20078,00.asp.

Unfortunately such ads and the blocking of 3rd party browsers from some Microsoft Web sites occurred while Microsoft negotiated this Proposed judgment suggesting Microsoft may not be serious about this process. It was soon seen that the browsers dealt well with the Microsoft sites, ''MSN.com shuts out non-Microsoft browsers''

http://news.com.com/2100–1023–274944.html, ''Parts of MSN Still Off-Limits to Amaya, Opera Users''

http://browserwatch.internet.com/news/stories2001/news-20011101–1.html,

''Microsoft backpedals on MSN browser block''

http://news.com.com/2100–1023–274980.html. Perhaps 1 remedy could have Microsoft mostly deal in the benefits of its own products in ads and not supposed flaws in what other firms produce, generally leaving buyers to decide what suits them best.

5b. To give independent developers the opportunity to write a browser based on its code, Netscape Communications made its source code available through http://www.Mozilla.org. As a result the specification for Netscape style ''plug-ins,'' which add functions as helpers to browsers, is now commonly known. This specification allows any company developing a browser to run ''plug-ins'' in its browser application.

Because Microsoft now has such a wide lead in browser usage, its support of ''plug-ins'' in all its browsers is critical to such helpers being created both in ActiveX and ''plug-in'' style. To give market forces the chance to establish a market for browsers, Microsoft shall include ''plug-in'' support in all its browser for 12 years. That period will begin on the first day of the first month after Microsoft demonstrates restored internal ''plug-in'' support in all current (or future) browsers from by Microsoft, its subsidiaries or successors. Menu and other means that exist to modify program options in Windows could turn off ''plug-in'' support. If it becomes apparent ''plug-ins'' fall out of common usage Microsoft may be allowed to end its support early.

A 12-year time period is necessary since many Web sites are built to mainly support Internet Explorer and many Web designers will require time to become accustomed to using an open standard (likely from http://www.w3.org). Customers will also need to adapt and choose a Web browser that best meets their usage requirements, the usual way of choosing products. And the 12-year period approximately doubles the time Microsoft hindered usual market forces through special distribution requirements. Thus, 12 years is reasonable recompense to that market.

Restored Microsoft ''plug-in'' support (dropped in August 2001 http://news.cnet.com/news/0–1005–200–6881773.html) is a fine part of a remedy as it reinvigorates the browser market without steering it in any direction. Requiring Microsoft to publish its source code for Internet Explorer would merely develop copies with strengths and weaknesses similar to the original. Leaving them dependent on Microsoft for core code development, not creating an open market. Browsers do not relate to the booting of computers so showing source code is currently unneeded. So long as a browser is not commingled in the Operating System it is just another program making for easy substitution. Both ActiveX and ''plug-ins'' have strengths and drawbacks with no clear winner. ActiveX deeply ties into Windows, which is troubling if security breaks down. Meanwhile, Microsoft has doubts about ''plug-ins.'' Such issues are exactly the type best left to customer choice.

More importantly, ensured ''plug-in'' support only produces a level playing field since all browsers have good access to helper programs leaving it to market forces to determine what browsers succeed. This point is forward looking as it leaves the market open with minimal or no market distortion making it very much in the public interest.

6. Varied point2: Using ActiveX on the Windows Update site does not exclude people from general access to the Web as the Court of Appeals ruled. The anticompetitive element is that only Microsoft knows how to have browsers run ActiveX meaning that users must maintain Internet Explorer to be-able to reach the Update site which is a crucial, must reach site for anyone running a Windows Operating System! Above this filing shows it is a long and somewhat difficult process to keep Internet Explorer current and secure. Also the Court of Appeals ruling (page 30–1) says Microsoft twice acknowledged two browser icons can be confusing. Running two browsers would be confusing as well, the easiest course for most people is to only run Internet Explorer. It thus has a very distinct advantage over other browsers. Yet Microsoft must ensure the integrity of its products so of course it may have Windows invoke a single purpose client that would check and service only Microsoft software. Such a client would have limited, specialized usage likely only for connecting to Microsoft servers, it will not be anti-competitive because it will not effect perceptions of programs from other vendors. That differs from the present wording of Section III.H.3.1 and its preamble which gives Microsoft programs special rights users could see as making it better than similar products from other vendors.

6a. Relating to Microsoft Passport: If Microsoft wants customers to create a basic account (using an existing e-mail address)

before providing product assistance that account should only be for dealing with Microsoft, and not for dealing with other firms over the Web. Privacy and security concerns of individuals deem that each person be able to make their own decision on whether to create an account to deal with Microsoft alone or a process for giving out information to third parties. Having 2 kinds of accounts means Microsoft will not be able to unduly leverage the Operating System monopoly into the de facto identification and information dispersal process for the Web. That will also much decrease the possibility that newcomers to PCs would erroneously think only Microsoft provides software for this class of computers. A central repository for all personal information will be probably a target for thieves trying to steal credit card number to commit fraud and perhaps where malevolent forces will go for personal information in efforts to build false identities. Signing in to a creation like Microsoft Passport is not something to be done while people are trying to setup another product. It must be considered on its own drawbacks or merits, and then perhaps entered into.

Thank you for this opportunity.

Sincerely,

Bryan Campbell

MTC–00027872

From: Bradley G Leonard
To: Microsoft ATR
Date: 1/28/02 11:44am
Subject: Microsoft Settlement

I, Bradley G. Leonard, am a U.S. citizen who disagrees with the proposed settlement. It is a bad idea.

MTC–00027873

From: Garrett Williams
To: Microsoft ATR
Date: 1/28/02 11:40am
Subject: Microsoft Settlement

To whom it may concern,

I strongly encourage a fair and appropriate settlement concerning Microsoft and their anti-trust violations. The company in question has abused it's position and created an unfair market place to which they are the dominate player. In order to right this situation the government must truly punish Microsoft for their unethical behavior. This means creating opportunities for other companies that have suffered at the expense of Microsoft's business practices. Proposals such as the education solution only increases Microsoft's market share and shows that the current presidential administration is oblivious to the current problem. Microsoft is a monopoly and that is definitely not beneficial to the economy. In order to increase competition steps must be taken to thoroughly punish Microsoft and give businesses such as Apple Computer, Java, and a host of others a fair chance.

Thank you,

garrett williams

MTC–00027874

From: Violet L Hubbard
To: Microsoft ATR
Date: 1/28/02 11:44am
Subject: microsoft setlement

AS A SENIOR CITIZEN, I FEEL THAT THE SETTLEMENT IS AS FAIR AS POSSIBLE. WE CONSUMERS NEED TO WIN ONE EVERY NOW AND THEN.

W.H. HUBBARD,
7700–1 S. ARAGON BLVD.
SUNRISE, FL. 33322

MTC–0027875

From: Rick Spiewak
To: Microsoft Settlement U.S. Department of Justice
Date: 1/28/02 11:39am
Subject: Microsoft Settlement
Rick Spiewak
37 Berkeley Rd.
Framingham, ma 01701
January 28, 2002
Microsoft Settlement U.S. Department of Justice ,

Dear Microsoft Settlement U.S. Department of Justice:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is time for this trial, and the wasteful spending accompanying it, to be over so that companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Thank you for this opportunity to share my views.

Sincerely,

Rick Spiewak

MTC–00027876

From: Gary Hill
To: Microsoft ATR
Date: 1/28/02 11:45am
Subject: Microsoft Settlement Support
Gary G. Hill
44024 Countryside Drive ? Lancaster, CA 93536
January 26, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

As an elected member of the Antelope Valley Health Care District representing 450,000 people, I am writing this letter as in support of the settlement in the case against Microsoft. I believe that this whole suit was a waste of time and money. Only in America do we focus on tearing down success, and destroying a product line the works. There are choices out there, but none of them work as well as the Microsoft products.

There are more pressing issues that are of concern to me in this country such as the energy crisis here in California. The state has lost $22 billion dollars resulting in consumers getting gauged. In addition, the price of gas has risen 20 cents per gallon, just in the last week. The Department of Justice should have taken a strong NO to the rash of oil company mergers this past decade; we can live without a home computer, but must have gasoline (real public transit has not arrived yet)

Microsoft did not get off as easy, as its opponents would have people think. They agreed to terms beyond what was required in the suit. They also agreed to design future versions of Windows, starting with an interim release of XP, to provide a mechanism to make it easy for computer companies, consumers and software developers to promote non-Microsoft software within Windows. Microsoft seemed to be generous when settling the case. Let's end litigation now so that Microsoft can go back to work. We, the American people, need a company like Microsoft to stay strong, so they can continue to create innovative products, well paying jobs, and help strengthen the tech sector of the economy.

Sincerely,
Gary G. Hill
(661) 723–6035
(661) 723–6180—Fax
ghill@qnet.com
Gary G. Hill
Director of Finance
City of Lancaster
Lancaster Redevelopment Agency
44933 No. Fern Avenue
Lancaster, CA 93534
(661) 723–6035
(661) 723–6180—Fax
ghill@qnet.com

MTC–00027877

From: Bill Baker
To: Microsoft ATR
Date: 1/28/02 11:46am
Subject: Microsoft settlement

Please settle this suit now and let Microsoft get on with its business.

Thank you,
Bill Baker
2051 Morningside Drive
Mount Dora, Florida 32757

MTC–00027878

From: Don Campbell
To: Microsoft ATR
Date: 1/28/02 11:47am
Subject: Microsoft Settlement

The current settlement of the Microsoft case is a travesty. Since becoming a monopoly, Microsoft has almost continuously ignored antitrust law against anticompetitive behavior. When caught and tried, they deny the obvious. After agreeing to cease the anticompetitive behavior they carry on as before.

They have shown negligible effort at compliance and continue to operate against consumer interest and consumer choice. If anything, they have extended this approach beyond their traditional software market into other markets of Internet and media commerce.

I do not think that a remedy which falls short of structurally modifying the company will work. Microsoft will go on as usual and destroy more companies. In so doing they will continue to chant the false mantra that they are ''innovating'' and being punished for that. They should be broken up, Windows code should be opened up to the competition and they should not be allowed to leverage their current monopoly into new ones.

Don Campbell

MTC–00027879

From: Tom Skinner
To: Microsoft ATR
Date: 1/28/02 11:47am
Subject: Microsoft Settlement
January 27, 2002
Attorney General John Ashcroft

US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

The antitrust suit against Microsoft has been settled. This agreement was arrived at after extensive negotiations with a court-appointed mediator. The whole process took three years, which I believe is long enough, if not too long. This settlement has profound implications for all software publishers, the rest of the IT industry, and consumers.

New government regulations will be imposed on the IT sector. The proposed agreement requires major changes in how Microsoft develops and markets its products, while allowing competitors the possibility of suing the company if it does not comply with these new rules. The settlement is in the best interests of the state, the economy and our nation as a whole.

The recession has had a devastating effect on budgets at both the state and federal levels. It is important to allow the IT industry the ability to concentrate solely on its business at hand. The original agreement reached by the Justice Department is beneficial to the industry and the economy at this point. The settlement needs to be agreed upon by all members of the federal government, permitting us to continue being a leader in the technological market at home and around the world.

Sincerely,
Tom Skinner
6186 Mountain Vine Avenue
Kannapolis, NC 28081
CC:fin@mobilizationoffice.com@inetgw

MTC–00027880

From: vv.mann (a) home
To: Microsoft ATR
Date: 1/28/02 11:50am
Subject: Microsoft settlement
VIRGINIA V. MANN
3004 Normandy Place
Evanston, Illinois 60201
January 25, 2002
Renata B. Hesse
Anti-trust Division
US Department of Justice
601 D Street, NW
Washington, DC 20530
Dear Ms. Hesse:

I was pleased to hear that the Department of Justice had settled its ridiculous suit against Microsoft.

Clearly, this lawsuit was politically driven and using our government and our laws in this fashion was unfortunate from the beginning. I am relieved to see this dispute resolved, although believe it should never have been brought in the first place.

Although Microsoft has agreed to the restrictions in this settlement, I believe it is unfortunate that our government has chosen to do anything less than completely dropping the case. Microsoft has done more to improve our efficient and effective communications than has any other company in history.

They should be left alone to continue their fine work without further interference from our government. Sincerely,

MTC–0027881

From: VanderPyle, Nicholas
To: Microsoft ATR
Date: 1/28/02 11:51am
Subject: Microsoft Settlement
Whomever it may concern,

My JOB is dependant on the hard work Microsoft has done to create products, support, and certifications!

I depend on being able to go home to a computer that is similar to the one I use at work, being able to keep all my tasks and appointments with me on the road in my handheld computer, and using the internet in an easy and efficient method. Microsoft has jumped through hoops to make sure I can do all of that without learning several new operating systems, buying several browsers, and having compatibility problems with my handheld computer.

Consider a world where your missile defenses are running on a LINUX computer whose core operating software is partially written by a 12year old in Russia... and it has a fatal bug! You can't exactly goto a single company and demand a fix overnight like you can Microsoft.

Don't make a mistake by hurting the one company that has driven innovation as well as created and supported hundreds of thousands of jobs WORLDWIDE.

Thank you for your time.
Nicholas VanderPyle
Boeing
Fort Walton Beach, FL
(850)302–4553
<mailto:Nicholas.Vanderpyle@Boeing.com>

Please update your contact lists to reflect this email address!
Do NOT use HSV.Boeing.com
CC:Microsoft's Freedom To Innovate Network

MTC–00027882

From: Peter Hill
To: Microsoft ATR
Date: 1/28/02 11:51am
Subject: Dear Judge,
Dear Judge,

As a young person, I would like to see growing oppurtunities in computer choices in my future. Microsoft is a wonderful company staffed by wonderful people, but they are guilty of anti-competitive violations. They should be punished according to US laws. If this is accomplished, it will provide a better and more competive market for me to enter.

Thank you,
Peter Hill
66 Hobson St.
Boston, MA

MTC–00027883

From: Jane Quirk
To: Microsoft ATR
Date: 1/28/02 11:51am
Subject: Microsoft settlement
Dear Attorney General Ashcroft:

It seems to me that the Microsoft antitrust suit has gone on long enough and has been subject to some questionable decisions. Microsoft has been a leader in its field and that always brings a certain amount of envy. The settlement agreement seems to be fair and I feel Microsoft has agreed to put some checks and balances in place to avoid the possibility of conflict in the future.

I am in favor of the terms of the settlement and hope you will consider an end to this expensive litigation and allow all parties to move on.

Thank you,
Jane Quirk

MTC–00027884

From: Caghan, Susan
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:51am Subject: Microsoft Settlement
http://www.primepro.com
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I believe that the antitrust suit against Microsoft has been detrimental both to the economy and to the IT community. This suit was an attempt by Microsoft competitors to use the legal system to manipulate a market for their own gain. It is time to let us in the technology industries get back to the work; to do our part in moving our economy forward.

The antitrust suit has had a negative, trickle-down consequence, that if not stopped, will lead to spiraling business downturns both of companies that partner with Microsoft as well businesses that use Microsoft products. The settlement guidelines are tough and rigorous. It is time to finalize the settlement and let us get back to the work of revitalizing the economy and the IT industry.

I urge that all action taking place at the federal level be stopped. Microsoft must be allowed to return to innovation.

Sincerely,
Susan Caghan
President

MTC–0027885

From: Marmelstein Robert E LtCol AFRL/IFSE
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:52am
Subject: Re'' Microsoft Settlement
See atch.
Robert E. Marmelstein
Robert Marmelstein
67 Whitford Ave.
Whitesboro, NY 13492
January 25, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I have been following this case, and don't believe litigation was necessary at all. The computer industry is very competitive. I believe the competition pursued litigation in order to distract Microsoft and level the ''playing field''. Now that several more states and companies want to pursue further litigation, what are they trying to accomplish?

Microsoft has been more than fair in settling this case. They agreed to license its operating system to the twenty largest computer companies for identical conditions and prices. They also agreed to design all

future versions of Windows, to provide a mechanism to make it easier for computer companies, consumers and software developers to promote non-Microsoft software within Windows.

Let's end the distraction and go back to business. Microsoft can go back to reviving its company and the technical sector. Government can work on bringing us out of this recession.

Sincerely,
Robert Marmelstein

MTC–00027887

From: RandyRotter (MSN)
To: Microsoft ATR
Date: 1/28/02 11:53am
Subject: Microsoft Settlement

This whole jihad against Microsoft by varied government officials at the behest of Microsoft's competitors has been ill advised, corrupt and unproductive. It has harmed the company, harmed our international leadership in technology, harmed how young people view a career in technology, harmed the consumer with legal fees added to product cost, and introduced the attempt to have technical elegance determined by states'' attorney generals.

Do not let the zealots and the cynics determine the fate of Microsoft's ability to delivery complex solutions. Look at the strides being made in China with wireless and you will see what can happen quickly if we weaken our own ability to provide large scale solutions. I am old enough to have learned to drive in a beautiful 1960 Buick convertible. Within a few years I watched the automobile industry's abilty to product a decent car greatly decline relative to our competitors and saw the takeover of our main industrial hallmark by foriegn companies. We have had to wait for Microsoft to create an American world competitive flagship company to again provide the ability to command domestic and world markets.

Because this case is about the fragility of intellectual property, the old rules do not always apply and should not be allowed to push an American success story into mediocrity.

Randall Rotter
9013 Nisqually Way NE
Bainbridge Island, WA 98110
(206) 855–9625

MTC–00027888

From: Edward Goodrich
To: Microsoft ATR
Date: 1/28/02 11:52am
Subject: Microft Settelment
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I understand that the Department of Justice is presently accepting public comment on its agreement with Microsoft to settle the antitrust litigation. I wholeheartedly support the agreement. Microsoft was just being punished by the last administration for its success, and that's not fair. Microsoft's competitors complained that they were frozen out of competition by Microsoft's licensing and pricing practices as well as by their inability to offer competing software within the Windows system.

Microsoft has agreed to uniform pricing guidelines as well as less restrictive licensing agreements with distributors. Microsoft has also agreed to open its operating systems to competing software applications.

I believe that Microsoft's actions more than adequately answer the complaints, and Microsoft should be allowed to get back to business. Please implement the settlement as soon as the law allows. Thank you for your consideration and attention.

Sincerely,
Edward Goodrich

MTC–00027889

From: Kenlindsay@lani.net@inetgw
To: Microsoft ATR
Date: 1/28/02 11:50am
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Ken Lindsay
6272 209th. rd.
Live Oak,, FL 32060

MTC–00027890

From: Doug Grinbergs
To: Microsoft ATR
Date: 1/28/02 11:53am
Subject: Microsoft Settlement

With respect to the proposed Microsoft settlement, I would like to offer these brief comments:

To the great disadvantage of its customers, as well as users and manufacturers of competing systems, I believe that it would effectively leave the monopoly intact; well-funded, highly-paid, highly-motivated Microsoft lawyers will easily avoid the vague settlement rules and the giant will continue largely unchecked. Public meetings are essential to a democratic process and there should be public hearings nationwide to afford citizens the opportunity to speak out on this important matter.

Doug Grinbergs
saule@pobox.com
PO Box 17455
Boulder, CO 80308 USA

MTC–00027891

From: Mitch Stone
To: Microsoft ATR
Date: 1/28/02 11:55am
Subject: Microsoft Settlement

I wish to register my strenuous objections to the proposed settlement to the Microsoft Antitrust case.

Of all the provisions which I find most objectionable are those related to so-called ''middleware.'' The proposed settlement provides Microsoft with more control over software to be included with Windows then they have today. If the settlement is approved, they will be permitted to discriminate in ways which before the settlement would almost certainly generate antitrust scrutiny. This proposed settlement does not open the door to middleware development, it slams it shut.

This settlement does not promote competition; it institutionalizes the Microsoft monopoly. To approve it would not be in the public interest.

Mitch Stone
mitch@accidentalexpert.com

MTC–00027892

From: Thomas Hahn
To: Microsoft ATR
Date: 1/28/02 11:55am
Subject: Microsoft Settlement

Gentlemen:

I would like to add my voice to those who feel that this is a just settlement and should go forward without further delay. Thanks.

Thomas Hahn

MTC–00027893

From: Bob Frazier
To: Microsoft ATR
Date: 1/28/02 11:55am
Subject: Microsoft / AOL Settlement

Sir;

I am completely in agreement with the DoJ settlement worked out between Microsoft and AOL. It satisfies the ruling of the Court of Appeals and represents the best opportunity for this industry to move ahead.

Sincerely,
Robert D. Frazier
19 Applewood Lane
Temple, NH 03084

MTC–00027894

From: golubicv2@attbi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:55am
Subject: Microsoft Settlement

Dear Sir/Madam:

I just wanted to comment on the Microsoft matter with respect to ''pending'' matters in the courts. I feel as a consumer that Microsoft has been a strong American company and has helped to ''standardize'' the disparate software in the PC industry over the last 10 years. Competitors such as AOL (who BTW appear one again to be against ''standardization'') are not happy with a ''large systems integrator'' concept, which by default in the software industry goes to the Most Aggressive Company ..in this case Microsoft. Most Microsoft products I purchase are ''fairly priced''. In fact SUN's compilers and tools were once ''way more expensive'' than Microsoft products, but thanks to the ''Microsoft Trial'' their SUN product line ''price'' has improved ''considerably'' for consumers. Microsofts'' has always been in the $100–500 range...I was mystified as to why ''consumers were

hurt'' as SUN claimed. (they were probably jealous of volume)

However aggressive Microsoft has been, it HAS helped to achieve standardization, which the PC industry needed to ''get off the ground'' and bring ''mass market'' consumer awareness to many things, PC desktop, Common Operating Environment, Office tools, etc all of which operate ''together'' with a forward vision that DOES include many growth opportunities for smaller competitors. I know of many small vendors who ''need'' standardization that Microsoft provides as a ''defacto large systems integrator'' for consumers. AOL, who makes only a Browser (purchased for $10B from Netscape) and its AOL instant messenger are only TWO products. This is not enough to ''standardize an industry'' and consumers like myself (who are also software developers) are aware of this and keep Microsoft in the ''lead role'' by spending our consumer dollars for ''better integration''...what in fact comsumers vote for with their $$$.

When AOL makes products that ''hit all bases'' as far as ''developers need'' I'll buy more AOL products...right now they have a limited product line...who's fault is that????? If $10Billion were spent in the right place it may not have happen as it did.

If they (AOL) want to be a ''large systems integrator'' in ''consumers minds'' they they should compete by trying to ''bring together'' lots of smaller companies as Microsoft has done well as a platform and help consumers ''see this'' instead of just complaining and trying to do this ''via other means''...thinking the browser is the ''only thing'' that consumers ''see'' ...in fact alot more goes on in terms of data, binaries and libraries that make an ''integrated product'' which microsoft has been far ''better at doing'' than AOL and their ''vision''. end of comments.

+vfg

Vince F. Golubic

Software Developer & Consumer

Allen, Texas

CC:golubicv@ieee.org@inetgw

MTC–00027895

From: James E. Strang
To: Microsoft ATR
Date: 1/28/02 11:58am
Subject: Letter

Please see attached letter regarding Microsoft.

James E. Strang

Campbell Company

(p): (206)763–5000

(f): (206) 763–6700

e-mail: jstrang@campbell-co.com

CC: fin@mobilizationoffice.com@inetgw

575 S Michigan Street
Seattle, WA 98108
January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between Microsoft and the US Department of Justice. It is time that this foolishness comes to a prompt end. More than enough time has been used to cover all of the bases and I feel that it is just a political standoff at this point.

The terms of the settlement make apparent to me the intense lobbying efforts of Microsoft's competition as they will be granted new rights to configure Windows so that non-Microsoft products can be promoted more easily and also be given interfaces that are internal to Windows'' operating system products.

Even though these concessions do not actually protect consumers and just help Microsoft's competitors that were unable to be innovative on their own, I urge your office to finalize the settlement. It is in the best interests of our economy, IT sector, and public for the case to end and our country to move on. Thank you.

Sincerely,

John Odonnell

MTC–00027896

From: hayas@ib.stortek.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:56am
Subject: MicroSoft Settlement
Date: Mon, 28 Jan 2002, 09:55

Sirs:

Regarding the MicroSoft Settlement ''Proposed Final Judgment'', I am in extreme opposition.

I am in complete agreement with the amendments proposed by Dan Kegel (ref: www.kegel.com/remedy) in his essay to be submitted to the DOJ, entitled ''On the Proposed Final Judgement in the United States vs Microsoft''.

It has been my professional observation over the last 20 years that Microsoft provided useful innovative products SOLELY when there was string and significant competition.

It is my strong belief that should the PFJ be approved, the result will be an extraordinary loss of innovation in commercially available software within the United States; a significant erosion of respect for the US laws and regulations thus established, mainly among commercial and independent software developers in other nations less tolerant of large corporate monopolies; and a significant increase in litigation in the Federal courts to challenge the consequences of the PFJ.

NB: this note represents ONLY my PERSONAL OPINION, and should not be construed as representing any official position of Storage Technology Corporation.

Jeff Hayas

Senior SW Engineer, Storage Technology Corporation

Email: jeff—hayas@stortek.com

Phone: 303–661–8691 (w), 303–938–8933 (h)

Postal: POB 1378; Boulder CO 80306–1378

Proverb: ''Be well, stay in touch, and do good work.''

MTP–00027897

From: cstauffer@swmail.sw.org@inetgw
To: Microsoft ATR
Date: 1/28/02 11:53am
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,

Curtis Stauffer

1600 Univ. Dr. E.

College Station, TX 77840

MTC–00027898

From: Anthony, Kelly K.
To: Microsoft ATR
Date: 1/28/02 11:57am
Subject: Microsoft Settlement

Dear Ms. Hesse:

I am wriing in support of the proposed settlement agreement with Microsoft that would provide technology funds, computers and software to schools in low-income communities.

Wisconsin schools would benefit from the technology funds. Our state falls below the national average in the percentage of fourth through eighth grade students in schools that have computers available in all classrooms. As a future teacher, I am learning about teh benefits of technology in the classroom.

However, many schools do not have the funds or equipment to give the students these experiences. I think teachers and students should be given the opportunities technolgy can give.

Computers are important educational tools in schools. No student or teacher should be denied this opportunity. THe proposed Settlement is very positive and would benefit students, teachers, schools, and communities that need the technology funding most.

Thank you.

Sincerely,

Kelly Anthony

MTC–00027899

From: Steve Anderson
To: Microsoft ATR
Date: 1/28/02 11:57am
Subject: The proposed settlement in the Microsoft antitrust case does not go far enough

Dear Sirs,

The only way to level the playing field after the years of abuse by Microsoft is to let the competition have access to the source code.

Microsoft should be compelled to make available a license to any interested party for the source code for all versions of Windows(R) for a reasonable fee, perhaps $1,000,000.

Thank you.

Steve Anderson

Phone 480–315–8577

FAX 508–300–0337
stevea@eosgroup.com
www.eosgroup.com

MTC–00027900

From: VLKBARKAN@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:59am
Subject: Microsoft settlement
205 Sweetwater Trace
Roswell, Georgia 30076
January 12, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the Microsoft settlement. I feel this debate has gone on long enough, and I feel after three years of litigation enough resources and time have been wasted on this issue. It is time to focus our attention on more pressing concerns facing us today.

I am a believer in free enterprise, and I do not think Microsoft should be penalized for doing its job well. That is the goal of every American worker. This settlement finally ends three years of litigation and will allow Microsoft to continue designing and marketing their innovative software, while no longer focusing on litigation. This settlement was reached after extensive negotiations, and Microsoft has agreed to terms that extend well beyond the original terms of the lawsuit, just for the sake of ending it. For example, Microsoft will now be required to share information regarding the nature of the internal workings of its Windows operating system, allowing them to place their programs on it. Personally I consider this akin to charging the consumer for e-mails because the post office is losing money...paying a competitor because they aren't smart enough to compete.

During these difficult times, one of our highest priorities should be to stimulate our businesses so as to strengthen our lagging economy. Please support this settlement.

Sincerely,
Victoria Barkan

MTC–00027901

From: Gordon Slipko Sr.
To: Microsoft ATR
Date: 1/28/02 12:00pm
Subject: microsoft settlement

I as an american can not beleive that you keep harassing a company that has changed America for the better. It hasn't hurt anyone, but today in our justice system we allow everyone to sue everyone. Its all about money money mnoey, 1st it was one lawsuit, then another,now everyone wants to get in on the pie,because they know microsoft has the money and until they get their hands on it this will just keep continuing. LETS GET ON WITH OUR OTHER PROBLEMS IN THE WORLD TODAY AND LEAVE MICROSOFT ALONE. ENOUGH IS ENOUGH. THANK YOU ROSE MARIE SLIPKO thank u and please confirm this email, have a nice day gordon

MTC–00027902

From: Les Dunaway
To: Microsoft ATR
Date: 1/28/02 12:00pm
Subject: Microsoft

I have been in the business since 1964. I saw the creation of Microsoft and have seen their business practices over the years. Microsoft exists only because of their dishonest and immoral business practices. They have never produced even on product that could have succeded in an open market.

Les Dunaway

MTC–00027903

From: jane wellens
To: Microsoft ATR
Date: 1/28/02 12:00pm
Subject: Microsoft Settlement

I am a shareholder of Msft stock and think this is time to put an end to the trials and settle this at once so we can all get back to business. This is very disruptive to the business climate that is dealing with a whole new set of issues themselves since 9/11. Jane WellensGet more from the Web. FREE MSN Explorer download : http://explorer.msn.com

MTC–00027904

From: Alonzo Gariepy
To: Microsoft ATR
Date: 1/28/02 12:00pm
Subject: Microsoft Settlement

To Whom it May Concern:

Pursuant to the Tunney Act, I am writing to comment on the proposed settlement of the United States vs. Microsoft antitrust case. An important point to be made regarding the large amount of comment that you have received regarding this case is that the many points made must be taken very seriously, although some are not as well presented in these emails as they might be with more time or by other people. I doubt that any quick resolution to this case will do justice to the many issues raised; the answers are not obvious and the exact solutions are not necessarily ones that have been considered by the DOJ up to this point.

Microsoft continues to roll over software companies by incorporating into Windows features that have been developed by other companies as their main product. One continually comes back to this issue of what Microsoft should be allowed to make part of its Windows product. What is needed is some philosophical (and eventually legal) foundation for the consideration of this issue. Despite work on such products as Wine (a linux Windows emulator) Microsoft has a defacto monopoly. Ironically, the hardware involved is one of the most diversely manufactured devices in history. One of the reasons this continues to be so is that Microsoft puts a huge amount of work into making sure that Windows will run on all the different PCs that are manufactured with their huge diversity of devices, and Microsoft includes a great number of drivers for all these devices.

Regardless of whether one can ever forsee an alternative to Windows, the problem is that every time Microsoft adds a feature to Windows, that feature becomes part of its monopoly. The marginal cost for the consumer is perceived as zero, and the originator of the feature in some other company can no longer compete. A perhaps too simple example is that the latest Windows OS supports ZIP files as virtual folders, saving users from having to acquire another piece of software to open ZIP files.

Many such pieces of software are free or shareware, but shareware is a valid marketing model and its developers deserving of protection as anyone else. The greatest example of this would probably be Netscape.

Perhaps what is needed is some kind of patent protection. Once someone else has made an add-on for Windows to perform a certain task, Microsoft (and perhaps others) cannot add that feature to Windows without paying some kind of royalty. Nothing else strikes me as a reasonable long term solution to this problem. As an experienced software developer, I don't generally believe in the concept of patenting software, but in this particular case, it appears an ideal solution.

Sincerely,
Alonzo Gariepy
(ex microsoft software developer)
alonzogariepy@mac.com

MTC–00027905

From: Shu Jan Lin
To: Microsoft ATR
Date: 1/28/02 12:01pm
Subject: Microsoft Settlement
Shu-Jan Grace Lin
204 Christopher Lane
Ithaca, NY 14850–1715
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to support the recent settlement between the US Department of Justice and Microsoft. I think the lawsuit has gone on for way too long now and is becoming a waste of taxpayer dollars. The government interferes with free enterprise too much and should start facilitating business instead of hindering it.

I care about what is fair for the public and I think that although very harsh, the settlement is in the best interests of the public. Microsoft will make some concessions that include disclosing interfaces internal to Windows'' operating system products, granting computer makers broad new rights to configure Windows, and forming three-person team to monitor settlement compliance.

I hope that your office does what is best for the American public, not what is best for politicians, lawmakers, or big business that can't win in the market. Please make the right choice and finalize this settlement. Thank you.

Sincerely,

MTC–00027906

From: Thomas Winzig
To: Microsoft ATR
Date: 1/28/02 12:02pm
Subject: Microsoft Settlement

The problem with the Microsoft settlement is that it leaves them intact. If you want to really open up the computer industry to newcomers, and punish Microsoft for their illegal activities, you should break them up into five or more groups. An operating

system company; an applications company; an internet services company; a hardware company; a gaming/entertainment company. If you are not willing or able to do that, then consider the following:

FAIR OEM CONTRACTS

Force Microsoft's OEM licensing deals to be fair. They killed Be, Inc. and many other companies that offer choices to consumers with these OEM deals. Specifically, Be was unable to deliver it's well-regarded OS via new PC's, because the OEM's would not (could not) bundle it on their new PC's, due to Microsoft's contracts. Be even offered to give their OS to OEM's for FREE to try and break into the market. Only Hitachi risked the wrath of Microsoft, and even then, they were not able to show the installation of BeOS to the end-user (due to Microsoft's license restrictions).

Microsoft should be forced to come up with a fair contract for an OEM which does not provide a BARRIER TO ENTRY for other OS companies, and which is the same for all OEM's.

DISTRIBUTE (BUT NOT NECESSARILY ''OPEN'') WINDOWS SOURCE CODE

Force Microsoft to sell their operating systems with the source code. I'm not talking about Open Sourcing their OS—just provide the source code with the copy of Windows that was purchased. The source code license would restrict distributing the source code, but would NOT restrict developers and consumers from being able to create applications that integrate with Windows just as well as Microsoft's applications. It would also allow developers and consumers to do things like: create patches to remove MSIE entirely; find and fix bugs in security before Microsoft can, etc. But the primary purpose is to allow third parties to be able to develop competing applications that integrate well with Windows.

COMPLETELY DETAIL ALL MS OFFICE DOCUMENT FORMATS

Force Microsoft to release the full documentation and all related source code for their Office document formats. Microsoft has used the full force of its monopoly to get people hooked on Office products. Now that Office has a monopoly on the production suite market, the barrier to entry is maintained because new office suites cannot adequately read/write the MS Office documents. If the full documentation and source code for those document formats was released (and required to be updated for each new version of these formats), then third parties could provide read/write abilities in their competing office suites, and consumers would have a choice. As it is now, most people HAVE to use Office, because their friends and co-workers do, and they must be able to share documents with them.

Thomas Winzig
8187 Sully Dr.
Orlando, FL 32818
407–293–7087

MTC–00027907

From: Mikal Mathisen
To: Microsoft ATR
Date: 1/28/02 12:04pm
Subject: Microsoft Settlement
11753 Sunrise Drive NE
Bainbridge Island, WA 98110–4349
(206) 842–5154
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the Microsoft settlement issue. I support Microsoft and I support the settlement that was reached in November. I believe it will serve in the best public interest to end this costly litigation battle.

This settlement is fair and reasonable. Microsoft has agreed to all terms and conditions, including: disclosing information about certain internal interfaces included in Windows and designing future versions of Windows to make it easier to install non-Microsoft software. A technical oversight committee has been created to monitor Microsoft compliance.

During these difficult times, one of our highest priorities should be to boost our lagging economy. Restricting Microsoft will not accomplish this end. Please support this settlement so this company can get back to the business of creating innovative software, which will benefit all of us. Thank you for your time.

Sincerely,
Stephanie Mathisen

MTC–00027908

From: Chris
To: Microsoft ATR
Date: 1/28/02 12:03pm
Subject: Microsoft Settlement

It is apparent that Microsoft violated the law and the spirit of the law regarding antitrust regulation. The Bush administration's settlement proposal is totally INADEQUATE. It does not do enough to eliminate Microsoft's monopoly and force changes in the software market.

MTC–00027909

From: fred tenore
To: Microsoft ATR
Date: 1/28/02 12:04pm
Subject: Microsoft

I don't side with Microsft,they will do it again Now how is it he came by windows. now how is it microsoft wound up in court, are you goiung to let it happen again. So attack! repeat attack! Fred Tenore

MTC–00027910

From: Charles Faulkner
To: Microsoft ATR
Date: 1/28/02 12:06pm
Subject: Microsoft Settlement
Charles Faulkner
647 Brookfield Avenue
Brookfield, MO 64628–1206
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

In this era of bad economic times, the news of a proposed settlement between the federal government and Microsoft was most welcome. I just hope that the settlement is not unfairly torpedoed during the public comment period.

This settlement was not proposed by Microsoft merely as a way of extracting itself from this litigation. The settlement contains a number of substantial changes in Microsoft's business practices and the proposal has met the preliminary approval of a court- appointed settlement mediator. The most significant concession in my opinion is Microsoft's agreement to grant broad new rights to computer makers to configure Windows operating systems so as to promote competition from non- Microsoft software programs. Both competitors and consumers should applaud these moves.

Please don't allow all of the hard work put in reaching this settlement to have been a waste of time. Thank you for your consideration.

Sincerely,
Charles Faulkner

MTC–00027911

From: Decker F Wong-Godfrey
To: Microsoft ATR
Date: 1/28/02 12:01pm
Subject: Microsoft Settlement

Dear Sir or Madame,

I am writing as a concerned citizen about the proposed settlement with Microsoft. As a professional in the industry, and as a general computer user, I do not believe that the proposed settlement is in the public interest for a number of reasons. These are a few:

* The PFJ doesn't take into account Windows-compatible competing operating systems

* Microsoft increases the Applications Barrier to Entry by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

* The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

* The PFJ supposedly makes Microsoft publish its secret APIs, but it defines ''API'' so narrowly that many important APIs are not covered.

* Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

* Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems.

* The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

* The PFJ allows Microsoft to discriminate against small OEMs— including regional ''white box'' OEMs which are historically the most willing to install competing operating systems—who ship competing software.

* The PFJ as currently written appears to lack an effective enforcement mechanism.

Thank you,
Decker F. Wong-Godfrey
1006 S 312th St #233
Federal Way, WA 98003

MTC–00027912

From: Simon Lewis
To: Microsoft ATR

Date: 1/28/02 12:05pm
Subject: Settlement Comment

I do not agree to the terms of the pending settlement. I believe in the market place and competition, by requiring Microsoft to release all of its API's. That way, companies can innovate new products because they will know how to make them work on the monopoly platform, rather than having to ask Microsoft's permission. No-one owns the English language, and no company should be allowed by *unlawful* conduct) to build a monopoly on what is essentially a computer language.

MTC–00027913

From: William Trueman
To: Microsoft ATR
Date: 1/28/02 12:07pm
Subject: Microsoft Settlement

I wanted to comment on the microsoft settlement that has been reached. Microsoft needs to be punished more that this settlement proposes for its anticompetitive, anti-innovative practices. Due to its monopoly there has been a squash on Operating Systems competition due to the inability for other superior OSes to compete with Microsoft Windows. These operating systems such as Macintosh OS, need to be given a chance. This settlement does not provide enough to resolve the problem of the Microsoft monopoly and its ranging effects on competition.

Will Trueman
Macintosh and Windows user and owner

MTC–00027914

From: amford@american.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 12:07pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Ms. Hesse,

As an educator and working professional in the Computer Industry I thank you for the opportunity to express my concerns regarding the Microsoft Settlement. While unqualified to speak on the legal merits, my opinion on the affects on the computer industry may be of some value.

Microsoft has always been an aggressive marketer of their technology and vision of the computer in business and home. While I respect their right to do so, I disapprove of some of their tactics and the long term consequences of their clear and pervasive market monopoly. Netscape was only one of their most visible victims. Do not forget WordPerfect or Lotus 1–2–3, both overcome, in part, by their inability to operate as effectively on Microsoft operating systems as their Microsoft analogs, Word and Excel.

Because Microsoft has developed this strategy of supporting their internal developers, the marketplace is less able to provide innovative new alternatives. The most recent example is the decision by Microsoft to not support the developing standards for JAVA programming, thus ensuring another round of incompatibility issues with applications developed using non-Microsoft tools. In other words, Microsoft is saying ''Buy our development tools if you want your applications to run as well as possible on our operating systems''.

The critical distinction is between the Operating System and the Application domains. A forward looking option is to enforce transparency on the operating system; that they publish all the specifications, functions, and procedure calls available to any application. This will ensure as level a playing field as possible, so that any application developer will be able to utilize any feature of the system as effectively as a Microsoft application developer.

With regard to counter arguments that this will compromise intellectual property or corporate secrets, their copyright will still be protected under U.S Law. They will have the remedy of the courts for any perceived violation of their rights, and they will be treated as any other author with regard to the fruits of their labor.

While some remedy is necessary, in my opinion, to balance this market influence, I disagree that the firm should be broken up. It is a complex and possibly intractible problem with which you are faced. The advantages Microsoft has provided to all of us in developing, standardizing ,and popularizing personal computer technology cannot be discounted. But some enforcement of checks and balances must be found a reasonable course. The current proposal may be unenforcable and may provide opportunities for Microsoft to avoid compliance or exempt itself from the provisions.

I encourage you to hold open hearings and permit input from any interested party, not only the competitors and the plaintiffs in the case. Provide a forum for robust discussion of opportunities for cooperative change.

Microsoft isn't going anywhere; decisions of this magnitude deserve open dialog, consideration of many differing perspectives, and careful deliberation.

Thank you for taking the time to consider these comments. If you have any questions please contact me at your convenience.

Sincerely,
Alan M. Ford
Instructor
Computer Science & Information Systems
American University
4400 Massachusetts Ave., NW
Washington DC 20016–8116
phone: 202.885.2283
fax: 202.885.1479
email: amford@american.edu

MTC–00027915

From: Joseph Haefeli
To: Microsoft ATR
Date: 1/28/02 11:56am
Subject: Microsoft Settlement

To Whom it May Concern:

After reading about the Microsoft antitrust settlement, I must comment that I do not feel it is in the best interest of the US or the US school systems to give Microsoft yet another opportunity to practice their bombastic, destructive practices. Giving Microsoft the opportunity to further their power via their so-called giving of technology to schools just serves to erode in their favor one of the few remaining fields where they do not currently have a monopolistic grip. Additionally, the amorphous nature of this part of the agreement leaves schools vulnerable to onerous license agreements in a few years.

Thank you for consideration of these comments.

Joseph Haefeli
Director of Computer Resources
College of Performing & Visual Arts
University of Northern Colorado

MTC–00027916

From: Kimberly Brosan
To: Microsoft ATR
Date: 1/28/02 11:22am
Subject: Microsoft Settlement

Dear Ms. Hesse,

I am writing in regard to the proposed settlement in the Microsoft Antitrust case. I feel that there are tremendous problems with the proposal and support the open letter written by Dan Kegel. There you will find my signature along with many many other people who are also concerned by this proposal.

I also support Dan Kegel's essay regarding the problems and difficulties that the proposed settlement will create. I hope that the Department of Justice will seriously reconsider the problems with the plan and work to revise it so that it will be of benefit to computer users.

If Microsoft is not reined in and given more stringent guidelines to follow, they will continue to create products which don't work and there won't be any alternatives available. I am glad that there are alternative operating systems available currently, but they deserve just as much access to the market as Microsoft has.

Thank you for your time and consideration of this matter.

Sincerely,
Kimberly A. Brosan

MTC–00027917

From: Brubaker, Tony
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:07pm
Subject: Microsoft Settlement

Honorable Judge Kollar-Kotally,

I am writing to express concern regarding the proposed Microsoft anti-trust settlement. The settlement does not adequately resolve the damage caused by Microsoft's monopolistic practices and does not provide adequate guarantees that Microsoft will not continue to engage in monopolistic practices.

Even though the courts have determined that Microsoft violated the U.S. anti-trust laws, the proposed settlement would allow Microsoft to retain the profits from its illegal practices and does nothing to provide remedies for the many companies that were negatively impacted or put out of business by Microsoft's illegal activities.

Furthermore, Microsoft is essentially being asked to police itself, so there is no assurance that Microsoft will not continue to engage in illegal practices. Microsoft can largely carry on as it had before, and the government is therefore implicitly endorsing Microsoft's monopoly.

I ask you to reconsider the proposed settlement and find another solution that

addresses the issues that are mentioned above. Thank you very much.
Sincerely,
Anthony Brubaker
13 Viburnum Court
Lafayette Hill, PA 19444

MTC–00027918

From: rcolli23@csc.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:56am
Subject: Microsoft Settlement
Dear Mr. Ashcroft,
That Microsoft has maintained a very strong position in the IT marketplace is a given. That Microsoft has done so unfairly is not. Microsoft has always maintained its position of strength through business strategies that simply make good sense. I am not so sure that these strategies warrant this federal lawsuit.
That the lawsuit suddenly collapsed into a settlement rather makes my point. Even though the terms of the settlement are certainly not favorable to Microsoft, it has the advantage of ending the suit. That Microsoft will be forced into a position of greater cooperation with its OEMs and third party software developers is good. However, that they will be forced to give up some more of its source code is not. Since both sides have agreed to these terms suggests that the settlement will be more constructive than the suit would have been.
I am writing to add my own support to the settlement. I am hopeful that any additional court action on this matter will be unnecessary.
Sincerely,
Ray Collins
Senior LAN Administrator
Computer Sciences Corporation

MTC–00027919

From: Tim Spink
To: Microsoft ATR
Date: 1/28/02 12:08pm
Subject: Microsoft Settlement
Honorable Judge Kollar-Kotelly, As a management student at Boston University, the settlement between that US Justice Department and Microsoft (PFJ) disturbs me.
To begin with, the PFJ still allows Microsoft to operate as a monopoly through its Windows operating system. In addition to giving permission to Microsoft to continue breaking anti-trust laws, PFJ does nothing to punish the company of its monopolistic practices from years past.
Microsoft has routinely used monopolistic strategies to gain a larger market share with little regard to competitive practices defended in the American legal system. Not only has superior software been either absorbed or destroyed by the company, but the chance of other companies moving competition further in the industry has been effectively terminated by Microsoft and this settlement. In fact, the PFJ does little to enforce the weak restrictions demanded of Microsoft.
To sum up, I'm deeply concerned the recent settlement does not regulate Microsoft's monopolistic tactics, nor does it punish the company's disregard for established law. I request that you do your best to overturn this settlement.
Respectfully,
Tim Spink
Box 5778
140 Bay State Road
Boston, MA 02215

MTC–00027920

From: T Bird
To: Microsoft ATR
Date: 1/28/02 12:09pm
Subject: Microsoft Settlement
Dear Judge Kollar-Kotally,
I am objecting to the proposed final settlement that the DOJ and MS have agreed upon behind closed doors. Not only does this go against the findings by the U.S. Court of Appeals but, in facts allows MS to go unpunished for past wrong doings.
In addition the Proposed Final Judgment permits Microsoft to continue its predatory practices at the expense of other companies. Thus, my main argument encompasses the preservation of healthy competition and the promotion of diversity with in the business sector. For a single entity, such as MS, to control 80 to 90 percent of the market for PC operating systems, e-mail readers, and office productivity software (which undoubtedly can spread viruses) is clearly a significant risk to security. To then allow that monopoly to actively attempt to drive out its remaining competition would hardly be in the public interest.
Therefore, I submit to you in all fairness that the Proposed Final Judgment will not solve the Microsoft issue.
ALL THE BEST,
DR. JIMENEZ
1786 LE BEC Court
LODI, CA

MTC–00027921

From: Justin Jones
To: Microsoft ATR
Date: 1/28/02 12:09pm
Subject: Microsoft Settlement
Dear Mr. Ashcroft,
Today I write to encourage the Department of Justice to accept the Microsoft antitrust settlement. This issue has been festering in the courts for over three years now and it is time to put an end to it. A settlement is available and the terms are fair, and I for one would like to see the government accept it.
In order to put this issue behind them Microsoft has agreed to many terms. They have agreed to design future versions of Windows to be more compatible to non-Microsoft software. They have also agreed to change several aspects of the way that they do business with computer makers. Microsoft has even agreed to terms that extend well beyond the products and procedures that were actually at issue in the suit. Microsoft has given a lot to be able to put this issue behind them, I would like to see the government accept it.
Microsoft and the technology industry need to move forward. The only way to move forward is to put this issue in the past. Please accept the Microsoft antitrust settlement.
Sincerely,
Justin Jones

MTC–00027922

From: Sarah E Kleinknecht
To: Microsoft ATR
Date: 1/28/02 12:08pm
Subject: Microsoft Settlement
Dear Judge,
I would like to express my concern about the case against Microsoft. Microsoft has become a monopoly on the operating system on computers. Microsoft needs competition so that we the American people can receive the best products. In the case, the PFJ will allow Microsoft to continue as a monopoly which is not right! Thank you for your consideration.
Respectfully,
Sarah Kleinknecht
184 Earhart Hall
West Lafayette, IN 47906
(765) 495–6126
CC:dkleinkn@yahoo.com@inetgw

MTC–00027923

From: Mark J Antlitz
To: Microsoft ATR
Date: 1/28/02 12:11pm
Subject: Microsoft Settlement
In my opinion the government is bullying Microsoft. Our taxes would be much better spent going after companies such as Enron and friends. It is quite clear to me as well as any other educated individual that our government as well as corporate America wreaks with corruption. It is time to focus on this very real problem and stop attacking the innocent in an effort to hide the guilty.
Sincerely,
Mark Antlitz
mja57@prodigy.net

MTC–00027924

From: Stephen Yoakum
To: Microsoft ATR
Date: 1/28/02 12:10pm
Subject: Microsoft settlement
let it go cut some slack, Accept the offer of Microsofts pack further litagation will only enhance the position of a very few.

MTC–00027925

From: david levitt
To: Microsoft ATR
Date: 1/28/02 12:12pm
Subject: Microsoft Settlement
The proposed settlement will not end abusive, anti competitive acts by Microsoft. Any suitable remedy should include as a minimal subset: Public disclosure of all file, disk, network protocol and other data interchange formats used by Microsoft operating systems and programs. This information to be sufficient to allow seamless translation to and from Microsoft file formats, and seamless interoperation with Microsoft software.
Full disclosure of all Application Programming Interfaces. Microsoft applications forbidden to use interfaces unavailable to independant software developers.
No software discounts other than quantity purchased. Uniform, publiclly available price schedules. Microsoft product licences to be made transferrable and vendable, the same way physical products are treated [e.g. textbooks, novels and other common publications].
No penalties may be asesed by Microsoft against computer manufacturers, software developers or end users for using non-

Microsoft software or supplying it as an option.

Computer manufacturers to have free reign to sell the hardware and software that they deem approriate, including systems without an installed operating system, or systems operable with multiple operating systems.

Microsoft software installations are not permitted to disable currently functional software. Microsoft to be forbidden to announce products prior to 90 days before shipment to customers.

Any group monitoring terms of the settlement to have the right and duty to provide public disclosure.

David Levitt
19 Doral Lane
Bay Shore, NY

MTC–00027926

From: Terri Tenore
To: Microsoft ATR
Date: 1/28/02 12:13pm
Subject: microsoft

I don't side with Microsoft, how do you think he came up windows, why is it Microsoft was in court! ''they will do it again''. attack repeat attack

Fred Tenore

MTC–00027927

From: caos vida
To: Microsoft ATR
Date: 1/28/02 12:12pm
Subject: Microsoft Settlement

I very much feel that Microsoft has too much control of the market and this needs to be corrected. I belive that linux and any other operating system should have an fair chance to gain access to our computing world and be able to coexist. This is no different than the AT&T breakup and the soloution to that worked very well I think in retrospect.

kevin j brennan
rd#2 box 148
frankford de. 19945

MTC–00027928

From: Roger Mullan
To: Microsoft ATR
Date: 1/28/02 12:12pm
Subject: Microsoft is an essential part of the recovering IT industry

To whom it may concern

I am a computer programmer and I feel that a whole and strong Microsoft , as an industry leader, is an essential part of the recovering IT industry. Some of Microsoft's tactics may be less than honorable but that is business , the software and standards they produce are essential to millions of people's business and social lives. I appeal to you to, please not allow any group or individual , to threaten the evolution of the IT industry and the progress that Microsoft is making in all aspects of there newly innovated standards and software.

Any breakup of Microsoft would put the industry back, at least 10 years and who knows how long it would take to recover,affecting the work and recreation of millions.

I trust you will take these facts into account, when making your judgment.

Yours truly
Roger K Mullan
IT Consultant
CC:Microsoft ATR

MTC–00027929

From: David Taber—DOTnet Consulting
To: Microsoft ATR
Date: 1/28/02 12:13pm
Subject: Microsoft settlement citizen/ competitor input

I understand that there is still time to submit public comment/ recommendations on the Microsoft antitrust settlement.
Summary:

* The software industry is so complex, and Microsoft so dominant, that administrative and procedural remedies will be a complete waste of time for the government and Microsoft itself. There are too many loopholes and back- doors to ever regulate the company as structured.

* Splitting the company up would work to an extent, but over the long run would simply create two or more monopolies, rather than one big one.

* Perversely, the industry actually prospers when there is a near-monopoly to drive de facto standardization. The software industry does *not* thrive on the chaos of small players. So the industry would be best if there were a quasi monopolist that didn't do economic harm.

* The only way to actually neutralize a monopoly in the software industry is to fundamentally alter the economics of the monopolist. With the incentive gone, the behavior and damage to the industry would fade away.

* The operating systems market for Intel-based PCs is brain-dead: it exists, but it does not function in any meaningful sense. So there is an opportunity to neutralize the bad effects of the Microsoft monopoly.

* The government can use the argument of eminent domain to declare the PC OS ''marketplace'' as property that will be taken over in the public interest. The government then grants this ''marketplace'' as a dead-zone in which only Microsoft can be a commercial supplier. The government pays Microsoft one dollar a year, and the fees paid by PC vendors for their operating systems goes to the US treasury. (An alternate form of this recommendation is just to put Windows into pure open source, where many vendors can work to make the system more secure and reliable while no vendor can charge for the product.)

* Microsoft thus has an incentive to keep their OS innovations going (to make their applications business prosper, but they get no monopoly profits from the OS. They also have little power over the PC vendors or application vendors.

Now that I've written the ''summary,'' I'll spare you the details.

Regards, and good luck.

David O. Taber
DOTnet Consulting
555 Bryant Street, Palo Alto CA 94301
voice: +1–650–326–3405 (rolls to voicemail)
page: dtaber-page@forte.com (keep your message just one line ! !)
fax: +1–650–326–1475
mail: DOT@D-O-Tnet.com
ICQ: 138661538
www.D-O-Tnet.com

MTC–00027930

From: Raj
To: Microsoft ATR
Date: 1/28/02 12:13pm
Subject: Microsoft Settlement

Judge Kollar-Kotally,

I wish to express my personal perspective on Microsoft vs. U.S

As an 8th grader in Rantoul, Illinois I have concluded and noticed many disturbing views of Microsoft's control of the software industry or as we would say monopoly. I really don't think its fair Microsoft is a monopoly because of the prices it sets on software. $200 on software program which I know it would be about $50 if there was competition.

I have learned in school about the Sherman Anti-Trust Act was too weak or very ineffective because of big companies bribing high officials which I think that Microsoft is doing. I might not have any proof but I know that Microsoft is at least violating some part of the Sherman Anti-Trust Act which I think is really wrong. If we let one company do this then slowly more and more companies will start doing this in other industries.

Although I like the stuff Microsoft makes the thing is that they set the prices to high.We all know that there are many more companies competent enough to make such software if given a chance. That way people will have more variety. Microsoft is just taking it easy with coming out with not so late and just adding a few adjustments to their software at their own price and pace they would like to set it at. If there are more companies the quality of the product will become better and that way many companies will join in to make the best quickly. The prices will be low and the people will be content.

Thank you
Sincerely Yours,
Yashua Bhatti

MTC–00027931

From: Bob Petolillo
To: Microsoft ATR
Date: 1/28/02 12:14pm
Subject: Microsoft Settlement

Please see the attached letter concerning the lawsuit against Microsoft.

Bob Petolillo
Enterprise Data Solutions
148 Basil Court
Lawrenceville, GA 30043–6126
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
January 26, 2002

Dear Mr. Ashcroft:

As a member of the IT industry, I welcome an end to the Microsoft anti-trust case. This case has had a debilitating effect on the IT industry and the economy in general. If fair competition is the desired end to the government's actions, competition is not encouraged by draining the energy of one competitor. You do not get a better race by hobbling the favorite. Howsoever, a means to end this case exists in the proposed settlement agreement before you now for consideration. It should be adopted and this case resolved. The settlement fairly deals

with the positions of all the parties. Microsoft, by its terms, will remain one sole corporation, but will take certain actions to dilute its monopolistic influences in its industry. Microsoft will now configure its Windows platforms to invite the use of non-Microsoft software. It will no longer contractually constrain computer manufacturers to the nearly exclusive use of Microsoft products in licensing agreements. It will submit itself to ongoing review by a new federal oversight committee. It has committed itself to a completely new method of doing business entailing an active effort to foster competition. Microsoft deserves to continue to thrive. It is an elemental force in perhaps our nation's most important industry. Please support this settlement.

Sincerely,
Robert Petolillo

MTC–00027932

From: Kevin McDaniel
To: Microsoft ATR
Date: 1/28/02 12:11pm
Subject: Microsoft Settlement

Distiguished Gentlemen,

Please accept my attached letter of opinion for your consideration on the current Microsoft Settlemt Case. I am hopeful my opinions will be mirrored in policy by the party and administration I so adamantly support.

Respectfully,
Kevin McDaniel
President
Arrival Technologies Inc.
415 Security Square
Gulfport, MS 39507
228–314–1100 ext. 101
228–323–1166 cell
228–897–1109 fax
kmcdaniel@arrivaltech.net
Arrival Technologies, Inc.
Your Single Source for Business Technology
January 16,2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I suspect the Justice Department offered to settle its antitrust lawsuit against Microsoft due to your taking over as head of the agency. As a reasonable man you probably recognize the Clinton Administration's antitrust suit against Microsoft, and their intended break-up of the company, jeopardized software innovation and standardization. This scenario would seriously hinder the United States'' competitive edge and is why the settlement should be finalized without further ado.

If one accepts the premise that Microsoft is a monopoly, which I do not, the settlement will cure the problem. The settlement speaks for itself: 1) Microsoft has agreed not to retaliate against computer makers who ship software that competes with anything in its Windows operating system; 2) Microsoft has agreed not to retaliate against the software developers who make or promote the software that competes with Microsoft. While these are only two tenets of the 22 pages of the settlement, they alone should make Microsoft's competitors happy because they will inhibit anti-competitive behavior. I find it curious that certain opponent's of Microsoft reject the settlement and refuse to sign on to it. It is unfortunate; they should not be allowed to derail the process.

I am a small business owner in South Mississippi who specializes in computer networking and software support. It is my steadfast belief that the free market should be allowed to determine which products are bought and sold by professionals in the industry. Microsoft offers superior products and this is why they possess the market share they do. This lawsuit has not only affected my business but also my investments in the market. It is my hope that the government will accept the settlement in as timely a manner as possible so our industry can begin to heal from this unnecessary intrusion into the free market.

Sincerely,
Kevin McDaniel
President
Cc: Senator Trent Lott
415 Security Square, Gulfport MS 39507
228–314–1100

MTC–00027933

From: Neal Lindsay
To: Microsoft ATR
Date: 1/28/02 12:15pm
Subject: Microsoft Settlement

To Whom it might concern:

I am a network administrator for a small engineering company, and I have been working with computers for half of my life—usually on Microsoft operating systems. I have had the chance to use other operating systems (such as various Unices and Linux) and many have signifigant advanced features that Windows (even XP) has not come close to. Microsoft has the money to implement such advanced features, but it does not have to because its customers are locked into its operating system. This is probably the single largest problem plaguing the computer world right now, and this case has the opportunity to force Microsoft to open up and let in any companies brave enough to challenge it. That being said, I do not believe that the proposed Microsoft settlement goes far enough. The idea of making Microsoft open up its APIs is a good one, but it is weakened by the restrictions placed upon it. For example, any scrutiny of Microsoft's code is bound to reveal security holes (Microsoft software is traditionally full of them). Microsoft would almost certainly use this as an excuse to not open up more than a token amount of what would be needed for a company to compete with them.

This case is complicated from both a legal standpoint and a computer technology standpoint—to the point that almost noone can understand the proposed settlement. You are not likely to find an impartial voice in all of these public comments—everyone has a stake in the outcome. But please, don't let Microsoft off with just a slap on the wrist. They have continued to violate anti-trust laws even as they were in trial for breaking those same laws. They need some sort of serious penalty AND need to take steps to reverse their ill-gained market shares in many different markets.

Thank you.

Neal Lindsay
Network Manager

MTC–00027934

From: O B
To: Microsoft ATR
Date: 1/28/02 12:15pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am filing my objection to the Proposed Final Judgment in the Microsoft case. In the last several weeks, close friends and relatives have brought this proposed settlement to my attention and in all honestly I dont like what I see. I cant possibly imagine the Department of Justice throwing out court findings that indicts Microsoft for all illegal activities both past and present. First and foremost the Proposed Final Judgment grants MS a government mandated monopoly that threatens to destroy any and all serious Microsoft competitors. Im all for free enterprise and what it symbolizes. To strike a huge blow against the spirit of free enterprise, one need not look any further than to allow MS to monopolize every sector, whether it is the gaming industry or the software industry, by eradicating most if not all competitors. By all means diversity is one essential ingredient in maintaining a healthy industry and more importantly a thriving economy.

I submit to the Court that the Proposed Final Judgment does not solve the Microsoft issue.

Respectfully,
ERLIN JIMENEZ
1786 LE BEC COURT
LODI, CA 95240

MTC–00027935

From: RDRoach22@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:16pm
Subject: Re:Moicrosoft Settlement

I favor having al lof the states settlle the Microsoft cases in the manner thant has alreadyh been done by the other states. It is time to bring these actions to a conclusion.

Sincerely.
Robert D Roach Jr

MTC–00027936

From: Bev
To: Microsoft ATR
Date: 1/28/02 12:16pm
Subject: antitrust lawsuit

Microsoft is a creative, tough company which may, or may not, have had some anti-trust practices in the past, but it is time to move on. The company has worked hard to develop products that people need and use. Just because some other companies are unable or unwilling to work as hard and creatively, they should not be allowed to succeed by bringing Microsoft down. This company has done much for the economy and needs to be allowed to move on past this lawsuit. Please find in favor of the Microsoft settlement as presented.

Thank you,
Bev and Morris Crump
6105 284th Street NW
Stanwood, WA 98292

MTC–00027937

From: George J. Papanicolaou

To: Microsoft ATR
Date: 1/28/02 12:15pm
Subject: Microsoft Settlement

To Whom it May Concern:

Pursuant to the Tunney Act, I am writing to comment on the proposed settlement of the United States vs. Microsoft antitrust case. The proposed penalty for Microsoft's violations is entirely prospective and the predictability of the penalty to effect a sufficient diminishment of Microsoft's anticompetitive behavior is completely inadequate, including being overly complex and to vague, especially in light of published comments by Microsoft CEO Steve Balmer after Microsoft's conviction that he does not even know what a monopoly is. Furthermore, Microsoft has failed to live up to previous agreements. In addition, Microsoft did not report its extensive lobbying of Congress or a White House meeting last summer between its chief executive, Steve Ballmer, and Vice President Dick Cheney. This is a violation of the Tunney Act itself.

What would make the settlement fair? Divide the company into Applications and System Software entities with a firewall between them. Had politics not interfered, this approach was the only logical choice. Failing this reasonable approach, other remedies, although half-measures are required.

1) Open up all Windows APIs to all interested parties with thorough documentation and standardization. Exorbitant penalties would be made if either the APIs are not fully documented or if non-open APIs are used by Microsoft.

2) Open up all Microsoft Document Standards and publish them immediately because market dominance has created a defacto standard for such files. In addition, the use of a non-Microsoft standards board, modeled on the W3 organization for web site documents, could insure that office as well as other documents generated by Microsoft applications would be fully usable, readable, and alterable by other programs. This would allow some competition in the office suite industry and hopefully prevent the use of ''Microsoft only'' codes in browser or office apps that prevent others from having a choice in selecting an office suite. Also, features that allow a user to assign the opening of programs with other apps through a central registry would be useful, allowing an individual to easily bypass Microsoft Products and Services.

3) Microsoft should be required to produce Office Software for the Macintosh system as long as Apple remains in business. It should not be able to again threaten Apple with canceling further Mac Office development. In addition, Microsoft must be required to make the Mac Office Suite with the same features and document transparency as the Windows version. They must also not hobble the software in any way to make the Windows version appear faster. As Mac Office is a profitable venture for Microsoft, failing to manufacture it would be indicative of a monopoly threatening a small rival.

In addition, software which can interact with Microsoft server products, such as Outlook, should be made available for the Mac, including subsequent operating systems, and have all features available in the Windows client.

4) In order to give more choices to consumers, either Microsoft should create a Linux version of their Office and Browser software or should license their software and/or ''look and feel'' to anyone wishing to produce software for the Linux system. This would keep Microsoft from keeping offices and homeowners away from alternative operating systems. Microsoft used to offer Word for Unix systems with far fewer users than Linux. It cannot argue that as a company with monopoly powers and rich coffers that it isn't feasible.

As someone who has been using computers and programming them for seventeen years, I have seen little innovation from Microsoft. The advances in the field have been due to smaller players that have been crushed by Microsoft. Currently, Microsoft has monopoly powers and is seems less concerned with innovation, reliability, and security, than with market domination and extension. Our national security and economic competitiveness requires a stronger action than has been proposed by the Justice Department.

Regards,
George J. Papanicolaou, PhD.

MTC–00027938

From: Fred Tenore
To: Microsoft ATR
Date: 1/28/02 12:16pm
Subject: Microsoft

I don't side with and don't trust Microsoft. They will do it again, so attack! repeat attack!

Frederick Tenore

MTC–00027939

From: Adam Christian Smith
To: Microsoft ATR
Date: 1/28/02 12:19pm
Subject: Microsoft Settlement

I would just like to add my two cents on how I personally have seen Microsoft quell, steal, or destroy creativity in the programming and software market using proprietary language. Secondly, they are dirty as hell. They leverage there power and when questioned, they act like they can1t ''innovate'' if they are restricted in any way. Truth be told, Microsoft has never ''innovated'' a thing in their history. It has all been direct copies, cheap rip-offs of other platforms, or buyouts of small companies again putting them in the position to dominate a market.

Thanks,
Adam

MTC–00027940

From: jerldon
To: Microsoft ATR
Date: 1/28/02 12:20pm
Subject: Fwd: [MICROSOFT SETTLEMENT]

DEAR SIR

I AM A CONCERNED CITIZEN WHO BELIEVES THAT THE CLINTON ADMINSTRATION STARTED THIS ANTITRUST STUFF AGAINST MICROSOFT SIMPLE TO ALLOW THEIR ATTORNEY FRIENDS TO MAKE A LOT OF MONEY IN LEGAL FEES AND HAd nothing to do with microsoft being A MONOPOLY. THEY JUST HAPPENED TO BE AN EASEY TARGET. I AM SURE IF YOU

LOOK AROUND YOU CAN FIND SOME REAL PROBLEMS IE ARTHUR ANDERSEN, ENRON, ETC.

SINCERLY
JC BOATRIGHT
1345 FALKENBURG RD
TAMPA, FL 33619
813 657 2663

MTC–00027941

From: Page, Nathan (N.L.)
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:30pm
Subject: Microsoft Settlement

I agree with Microsoft.

MTC–00027942

From: u V
To: Microsoft ATR
Date: 1/28/02 12:21pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

Your honor, I am stating my objection to the Final Settlement agreed upon between the Department of Justice and Microsoft. I wanted to point out several underlying flaws attributed to the Proposed Final Judgment.

One noticeable flaw encompasses an inept enforcement device implementing restrictions. The settlement in other words closely monitors and screens all of Microsofts business activities. This close scrutiny insures MS complies with all restrictions entailed in the agreement.

A three man compliance team will oversee and insure that Microsoft comply with the stated rules and regulations. Yet, this three-man oversight committee will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team.

Also, in the likelihood of any enforcement proceeding, all findings by the oversight committee will not be allowed into court. The sole purpose of the committee is to inform the Justice Department of all infractions by Microsoft. Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing, who will not strictly oversee Microsofts business moves?

In my opinion, the Proposed Final Judgment does not provide appropriate restrictions against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively nor sufficiently address the question. In conclusion, I submit your honor my objection to the final settlement in the Microsoft case.

Sincerely,
Dr. Cesar Ortiz
285 Glennwood Ave.
Daly City, CA 94015
650–758–2658

MTC–00027943

From: Jean Peterson
To: Microsoft ATR,jpeterson@ets.org@
inetgw,djinn1@ix.n...

Date: 1/28/02 12:21pm
Subject: Judgement

If I understand the Judgement correctly, Microsoft is to receive no ''punishment'' at all for it's illegal activities. They are only instructed to stop performing them. This is a problem. Perhaps the Government or the Court feels that Microsoft has already suffered some penalties because of the interruption of business and other interference because of this litigation. However, in other cases where, for instance, a criminal's punishment is limited to something already done (i.e. ''time served''), sentence is still passed for the record and that stipulation that the sentence is to be considered ''fulfilled'' is still entered into record. And considering the amount of money that the various governments have had to spend in legal proceedings simply to force Microsoft to stop behaviors that were illegal to begin with, the governments should at least apply penalties to recoup these monies in the interests of their constituents.

Jean Peterson

MTC–00027945

From: Purple Rose
To: Microsoft ATR
Date: 1/28/02 12:21pm
Subject: Microsoft Settlement

Deborah E. Rose
7804 Briana Renee Way
Las Vegas, NV 89123–0449
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft,

I support the recently proposed antitrust settlement between Microsoft and the Department of Justice. I would like to see an end to this lawsuit and I believe this is one of the more favorable resolutions. Microsoft has given up access to several of its Windows products, and given up much of the code that helps Windows run efficiently.

Historically, Windows has been a large part of its competitive advantage. This is a very generous concession on the part of Microsoft. I hope that you will support Microsoft. It has stood out as a great example of a company that can be charitably generous and still make lots of profit. We should allow it to continue these efforts.

Sincerely,
Deborah Rose

MTC–00027946

From:
DEMatthews2@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:24pm
Subject: Antitrust settlement

Renata Hesse: I believe that the antitrust settlement between the USDOJ, Nine States and Microsoft should be approved. From my perspective, as a consumer, this suit was never about my protection, How am I hurt by getting something for free, that someone else wants me to pay them for? Putting the browser in the operating system is so logical that I have wondered about the suit from the beginning. This entire process has been brought on behalf of competitors. I did not think that this was the purpose of antitrust efforts. But, the judges have ruled, so the best thing to do is get the settlement approved and move on.

Duane E. Matthews
7817 SE 75th Place
Mercer Island, WA 98040–5501

MTC–00027947

From: Peter McDonald
To: Microsoft ATR
Date: 1/28/02 12:25pm
Subject: Microsoft PFJ Comments.

To whom it may concern,
<mailto:microsoft.atr@usdoj.gov>

As a consumer of Microsoft products as well as a business professional in the software industry I would like to add a few important comments concerning the proposed final judgment between the US DOJ and Microsoft. Simply put the proposed settlement does very little to address the three items listed by the US Court of Appeals. Hence, my recommendation is that the PFJ proposal in its current form is not acceptable. I ask that the DOJ needs to address the three key components listed unanimously by the U.S. Court of Appeals ruling. Specifically, to

*terminate Microsoft's legal monopoly

*deny Microsoft the fruits of its past violations

*prevent future anticompetitive activity.

As an observer and professional in the software world I define Microsoft's mantra to be one of domination. Over the past few decades Microsoft has uses both legal and illegal practices to attain their goal of domination. If the current PFJ is accepted, I'm left with two questions.

First, does the DOJ's definition of effective anti-trust work include the supporting of monopolies? Second, is the precedent for dealing with companies with a track record of violating anti-trust laws to condone their track record of violations? I hope the answer to both questions are no. As such I ask that the current PFJ be updated to include the three items unanimously decreed by the US Court of Appeals.

It is great to be an American where each individual has a voice. Thank you for your consideration of this issue.

Regards,
Peter McDonald
Peter McDonald
Director
VerdiSoft
Palo Alto, CA
650 812–8511 office

MTC–00027948

From: Michael Horowitz
To: Microsoft ATR
Date: 1/28/02 12:24pm
Subject: Microsoft Settlement

Hello,

One complication in this case is defining what a computer Operating System(OS) is. Microsoft keeps adding features to Windows and every time it does, it stretches the meaning of the term ''Operating System''. What Microsoft sells now is not so much an OS, but a combination of an OS and assorted applications. No doubt you are aware that what Microsoft does in expanding the scope of the OS is tantamount to what, in other contexts, is called ''dumping''. It is as if Toyota started selling its cars for $3,000 instead of $19,000 to drive Ford Motor out of business. This is exactly what Microsoft does and has done many many times. They can do it because they are rich enough and because the incremental cost of software is almost zero, brutally different from an automobile. This case may have been about web browsers, but people in the computer field have seen Microsoft use the same tactic (give away software to kill the competition) many times.

MY SUGGESTION:

I suggest that development of Windows be assigned to a separate company that is restricted to developing an Operating System in the strictest sense of the term. This will require monitoring by an independent entity as to just what features and applications belong in the base OS and which are considered external applications (more on this below). I'm not sure if this separate Windows OS only company should be for profit or not.

This would let Microsoft add whatever features and applications they want to the core OS and sell a product called Microsoft's Windows. However, Dell and Compaq and Gateway and IBM would also be free to add whatever features and applications they wanted to the core OS and sell it as their version of Windows. Any software company should be free to license the core Windows OS and add whatever features and applications they want and sell it on the open market. Each company selling a version of Windows would compete based on price, their reputation for quality software and support, and the features and applications they chose to include. This, by the way, is how Linux is sold with the exception that the core Linux OS is free. I am not suggesting that the core Windows OS be free.

Drawing the line between the core Windows OS and extra-add-on applications could be a full-time job. In the case of word processing for example, it seems obvious that Notepad and WordPad are not full-blown word processors and therefor could be included in the core OS. In contrast, Word and WordPerfert are full featured word processors and therefore falls into the category of a seprate application. In other areas the distinction will not be so easy to make. If a program to play sound files can have 100 features, which of those features qualify for a bare-bones version that can be in the core OS and how many features does a program need before it qualifies as a full-blown application that can not be included in the core OS? Someone will need to decide.

That's my 2 cents. Thanks.

Michael Horowitz

MTC–00027949

From: HHawkjr@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:24pm
Subject: Microsoft Settlement
Attention: Renata B. Hesse
Antitrust Division
Department of Justice

It is my opinion the settlement represents the best opportunity for Microsoft and the

industry to move forward. The rulings are fair to all parties involved.

It is also my opinion that Microsoft is one of a few American corporations that truly has the ''consumers'' best interest at heart. I can't say that for many other corporations.

Respectfully,
Wendy C. Hawkins
8838 E. Sunnyside Drive
Scottsdale, AZ 85260
480/314–8586

MTC–00027950

From: judythw(a)earthlink.net
To: Microsoft ATR
Date: 1/28/02 12:25pm
Subject: Microsoft Settlement

Sirs:

I ask you to please not allow Microsoft to continue its monopoly operation. I ask for freedom to choose. We are trying to preserve our freedoms now. Please help.

Judyth O. Weaver, Ph.D.
73 Montford Avenue
Mill Valley, California 94941
415–388–3151

MTC–00027951

From: Bock, David
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:27pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally:

I am writing to comment on the Proposed Final Judgement with Microsoft. As one involved in the software industry, I appreciate the contributions of Microsoft. However, their dominance of operating systems has given them extraordinary market power, which they have used ruthlessly to crush competitors and forestall innovation in the interests of consumers. The PFJ needs to be materially strengthened to level the playing field. The sanctions must be strong and the disincentives to further monopolistic behavior clear. Do not allow Microsoft to play on complexity, market uncertainty or promises of different behavior in the future. The company's culture is one of ruthless competition at a time when they should be providing support rather than destruction. They now operate a utility, are enjoying monopolistic returns on capital and are utilizing their financial strength to maintain a monopoly position.

The consumer is served by the standardization that Microsoft's success has brought. But the consumer is also vulnerable to the abuse of monopoly power. The public interest requires that the Federal government either sanction and restrain the monopolist or eliminate the monopoly position.

It's that simple.

Sincerely yours,
David Bock
EVP and CFP
Pedestal Inc.

MTC–00027952

From: bobjomurrell@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: microsoft settlement

Please settle with microsoft.

MTC–00027953

From: Aaron S Kamlay
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: Microsoft Settlement

To Whom It May Concern:

I am writing to comment on the Proposed Final Judgment (PFJ) of the United States v. Microsoft antitrust case. I believe that the PFJ does very little to discourage Microsoft from continuing its anticompetitive practices, and fails to restore balance to the markets which have been seriously damaged by those practices in the past.

Specific Failures of the Proposed Final Judgment:

1. Section III.J.2

Section III.D requires Microsoft to licence ''the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product'' to ''ISVs, IHVs, IAPs, ICPs, and OEMs''. However, section III.J.2 essentially gives Microsoft the freedom to choose which ISVs, IHVs, etc. may receive this information by allowing Microsoft to require that any licensee ''(a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft?''

This gives Microsoft the ability to keep the ''applications barrier to entry'' artificially high. There are no restrictions on what Microsoft may consider ''authenticity and viability of [the licensee's] business'' or even a ''reasonable business need''. It could be used to keep start-up or open source software projects from gaining access to APIs crucial to their success; in fact, it could allow Microsoft to restrict such projects from information to which they had prior access via the MSDN. (See, for example, Jeremy White's analysis of the impact of section III.J.2 on the open source Wine project at http://www.codeweavers.com/jwhite/tunneywine.html.)

2. Section III.D.1

Section III.D.1. exempts Microsoft from the requirement to ''document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems?''

It has been reported by a variety of news agencies that Microsoft has plans to include digital rights management, authentication, and other related security features in future versions of Windows. See for example,

The Register, Mar 23 2001,

''MS plans ''Secure PC'' that won't copy pirated audio files''

http://www.theregister.co.uk/content/4/17851.html

Wired News, Feb 13 2001,

''Windows XP Can Secure Music''

http://www.wired.com/news/technology/0,1282,41614,00.html

Microsoft has already included encryption services in Windows 2000 Service Pack 2

(see http://www.microsoft.com/windows2000/downloads/servicepacks/sp2/def ault.asp).

Given Microsoft's past actions, including integration of Internet Explorer with the Windows OS, and more recently integration of Windows Media Player with WindowsXP (see http://news.com.com/2100–1040–256387.html?legacy=cnet), there is every reason to assume that Microsoft will integrate current and future installations of ''anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems'' into the Operating System. Thus many key APIs, such those dealing with basic network communication, file/disk access, and even simple multimedia capabilities could be claimed as exceptions under section III.D.1. Again, this would serve to keep the ''applications barrier to entry'' artificially high.

3. General Remedies and Penalties

Microsoft has been found guilty of maintaining their monopoly status through illegal means. They should not be allowed to maintain the profits earned by doing so. The PFJ basically codifies the current status quo into law, and neither punishes Microsoft for their past infractions nor prevents them from similar actions in the future. Strong structural and financial remedies and/or penalties are necessary to restore balance to a horribly damaged marketplace.

The Proposed Final Judgment is completely unacceptable as a resolution to the U.S. v. Microsoft case. Please consider stronger, more effective remedies.

Thank you,
(signed)
Aaron Kamlay
Nashville, TN 37212

MTC–00027954

From: v g
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

With all due respect, I object to the (PFJ) Proposed Final Judgment in the Microsoft case. There are numerous flaws in the final proposal, which undoubtedly gives Microsoft absolute, power to continually abuse their existing monopoly position. Based on my review, the proposed settlement overlooks one thing. This one defect contains a faulty mechanism to implement appropriate restrictions. As stated in the settlement, Microsoft will be closely monitored to comply with all restrictions encompassed with in the stated agreement.

A three man compliance team will oversee and insure that Microsoft comply with the stated rules and regulations. Taking a closer look however, this three-man oversight team will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team. Also, in the likelihood

of any enforcement proceeding, all findings by the oversight committee will not be allowed into court. The sole purpose of the committee is to inform the Justice Department of all infractions by Microsoft.

Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing, who will not strictly oversee Microsofts business moves? In my opinion, the Proposed Final Judgment does not provide sufficient and appropriate restrictions or penalties against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively nor sufficiently address the question. Therefore I submit to the court my objection to the Proposed Final Judgment.

Respectfully,
Mrs. Alsida Ortiz
285 Glennwood Ave
Daly City, CA 94015

MTC–00027955

From: esterhazy@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: Microsoft settlement

Consumer interests have been well served and it is time to end this costly litigation against Microsoft now.

Helene K. d'Esterhazy

MTC–00027956

From: Classic de Sign
To: Microsoft ATR
Date: 1/28/02 12:31pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

I am the owner of a small interior design firm and would like to comment on the settlement with Microsoft.

I believe that there is undue haste in reaching a settlement for what has been a carefully executed pattern of illegal behavior by Microsoft. Microsoft controlled the application market so tightly in the Macintosh operationg system that it not only drove out competitors like WordPerfect but used its applications as hostage to obtain concesions from Apple Computer, Inc.

The pattern of illegal behavior forced Apple to offer the Microsoft, Internet Explorer to be the supported application by Apple. If this would not have happened, there would have been no Office, Word or Excel. Futhermore, those us who used Netscape still found that the presence of Microsoft codes in the office applications to crash the Netscape browser. The choice for us was the applications or the Netscape browser. The same type of illegal tactics got its media player dominance after finding that they copied code from QuickTime. This issue was closed when Microsoft gave money to Apple to drop the suit. The patter of illegal tactics by Microsoft is quite large and pervasive and I find the current proposed settlement to be insufficiently punitive to punish or to encourage Microsoft to change its ways.

I strongly suggest that the monetary settlement be cash and that the sum be increased to 5 Billion dollars, a sum that will teach a lesson and one that Microsoft can afford.

Sincerely,
Louis R. de Alvare

MTC–00027957

From: Nolan Lameka
To: Microsoft ATR
Date: 1/28/02 12:28pm
Subject: Microsoft settlement

I believe the microsoft settlement is as fair as it can be . Personally I think the government had no business interfering in business on the side of microsofts'' competitors.

Leave Microsoft alone or at least don't be a tool of AOL, Oracle, and SUNW.

Nolan A Lameka
nal1212@yahoo.com

MTC–00027958

From: jonathon
To: Microsoft ATR
Date: 1/28/02 12:23pm
Subject: Microsoft Settlement

Count this as one vote against the proposed Microsoft/DOJ settlement. I feel this agreement is a bad idea and would not be in the interest of computer users. Concrete steps should be taken to stop bad business practices. Reason needs to prevail.

Jonathon Vreeland
www.spork.nyc.ny.us
email: jv@spork.nyc.ny.us

MTC–00027959

From: Freddy Thomas
To: Microsoft ATR
Date: 1/28/02 12:29pm
Subject: Microsoft Settlement.
18203 Max Middleburg Road
Maxville, FL 32234
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my opinion of the recent settlement between the US department of Justice and Microsoft. I think the lawsuits have dragged on for far too long now and have been a waste of taxpayer dollars. I am a proponent of free enterprise and the government's interference with Microsoft is ridiculous.

The only criticism of Microsoft could be that their marketing tactics are a bit heavy-handed, but that is hardly an antitrust violation. The terms of the settlement are harsh against Microsoft and should appease all competition. Microsoft will be disclosing interfaces that are internal to Windows operating system products. They will also be granting computer makers broad new rights to configure Windows so that competitors can more easily promote their own products. These concessions and more should appease all parties involved in dispute.

I urge your office to do what is right for the public and our economy and finalize the settlement.

Thank you.
Sincerely,
Homer Thomas

MTC–00027960

From:microscopes__sls__svc@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:26pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Harold Anderson
P. O. Box 118
Falls of Rough, KY 40119

MTC–00027961

From: Ken Valero, Sr.
To: Microsoft ATR
Date: 1/28/02 12:29pm
Subject: Microsoft Settlement

As a Macintosh user I feel that Microsoft did nothing wrong. I believe what we have here is envy of Microsoft's competition in that they did develop the idea first. Bill Gates had the foresight and ambition to move ahead when he did. After all is this not the land of opportunity and free enterprise. The competition was asleep at the switch and Gates seized the moment.

Bill Gates and Microsoft should be praised for advancing the technical knowledge of computers that we are all benefiting from.

So, my feeling is that the Federal Government should get off the back of all businesses both big and small so that we can make progress. It is about time that all entrepreneurs are recognized as the people that make this country as great as it is and make the economy strong.

Ken Valero, Sr.
President K V Associates, LLC

MTC–00027962

From: Liz
To: Microsoft ATR
Date: 1/28/02 12:30pm
Subject: Greetings,

Greetings,

I feel that the current settlement does not adequately address Microsoft's nearly complete monopoly in the United States'' computer industry. It also fails to restore competition to the United States'' software industry. Please consider rethinking the settlement.

Thanks,
Liz Loveland
Somerville, Massachusetts

MTC–00027963

From: Mark A. Montgomery
To: Microsoft ATR
Date: 1/28/02 12:29pm
Subject: Microsoft Settlement.
C/O Renata B. Hesse, Antitrust Division,
U.S. Department of Justice,
601 D. Street NW. Suite 1200,
Washington, DC 20530–0001

To: Judge Colleen Kollar-Kotelly

My name is Mark Montgomery. My background includes being an entrepreneur and management consultant who was also an early booster to Microsoft dating back to 1981. Since that time, my consulting assignments have numbered in the hundreds, including dozens of small businesses in networked industries and recently specifically within the IT industry cluster.

I converted our business consulting firm in 1995 into an independent tech incubator and lab. My only business partner joined our firm in 1997 after working for Microsoft for 17 years. I myself trained with Microsoft products to become an NT network administrator, programmer, and analyst who has tested every major public technology Microsoft produced during the period of this case, watching in amazement and sometimes horror at the pace of justice when compared to the environment in question.

I am writing today primarily because circumstances in this case may allow me to see more potential areas of damage than others. As any of us who have worked in predatory environments know all too well, it is rarely what we see that threatens our system, but rather what we cannot. In this case, I do not believe that any human is capable of identifying even a small portion of the damage being done to consumers, much less society, including of course eventually Microsoft and their investors.

I would like to explain some of our attempts to work with Microsoft at every level, and the extreme financial stress, disappointment and embarrassment a few of their executive actions have caused us and others, but the topic today is on the proposed settlement pursuant to the Tunney Act. I have carefully studied the proposed settlement as well as every document filed in this case since the beginning of the trial. In the early stages of the case, I provided analysis for the members of our global digital network.

In addition, I may have been the first to publicly label Microsoft a threat to the global economy, one of the most difficult declarations of my career that may also partially account for our failure in attracting external funding to our ventures.

For me, this case represents a test of the very credibility of the U.S. justice system. Although the case history has been difficult, and I have not always agreed with the rulings or conduct of the court, the system credibility was from my view in a recovery phase until the USDOJ agreed to settle as proposed. The agreement of the USDOJ to settle on the proposed grounds is where the system broke down entirely. I'll leave it to others to speculate and/or determine why.

The proposed settlement is a disgrace and an insult to those of us who risked everything we had, and often lost, to speak out against what I believe ranks among the most dangerous threats to the future of the world in our time; the ability of innovative technology to be conceived, hatched, and reach maturity. I fear that if the proposed settlement is adopted, and the EU and Congress also fail to restore liberty within global IT markets, that our creative scientific genius will fail to meet the significant challenges lying directly in our collective path.

Therefore, from my perspective, the world simply cannot afford to allow the proposed settlement to stand. It would be more favorable to risk having an appeal overturned on technical grounds, and allow the political process to work (or not), than to suffer the stamp of approval from the very entity charged to defend and protect us against illegal predatory practices. A portion of the still untold story of modern predatory strategy, generally speaking, is just how successful preventative efforts have become with respect to the invisible potential competition, and that topic is certainly not limited to Microsoft. Indeed Microsoft is a nascent latecomer in that regard when compared to the more historically entrenched vertical industry leaders, revealing another glimpse of why justice must be served in this case.

I submit to you that a just conclusion to this case is entirely possible, but a negotiated settlement that provides justice may not be.

Thank you for your consideration of my views, and God's speed in your work.

Mark A. Montgomery
Founder/CEO
Global Web Interactive Network LLC

MTC–00027964

From: Raymond.Fairbanks;@LibertyMutual.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:30pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft, US Justice Department
950 Pennsylvania Avenue, Washington, DC 20530–0001

Dear Mr. Ashcroft,

I'm glad that a settlement was reached in the antitrust case between Microsoft, the government and nine states. However, I don't feel there should have been any litigation in the first place. Free enterprise should manage itself.

Not only has Microsoft agreed to make sweeping changes so that to computer manufacturers can configure Windows in order to promote competitor software programs that compete with programs included in Windows. They've also agreed to not enter into any agreements forcing other companies to distribute or promote any Windows technology exclusively or in a fixed percentage, except for a few exceptions where there isn't any competition anyway.

It is obvious to me that Microsoft is cooperating so they can go back to business and help revive the technology sector of the economy. No more action should be taken at the federal level at all.

Sincerely,
Raymond Fairbanks

MTC–00027965

From: Don Monk
To: Microsoft ATR
Date: 1/28/02 12:28pm
Subject: Microsoft Antitrust Case
Please see attachment.
12 Fortune Cove
Brevard, NC 28712–9101
January 27, 2002
Attorney General John Ashcroft
United States Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I am writing in regards to the settlement reached in the antitrust case between the U.S Government and Microsoft in November of 2001. I am asking you to support the agreement. I do not believe any further measures are necessary.

As you know, the settlement requires Microsoft to promote competition from other computer makers. For example, Microsoft must license its Windows operating system to other computer makers and to grant them rights to configure Windows to meet other system specifications. Furthermore, Microsoft has been required to design further versions of Windows in a manner that would make it easier for competitors to promote non-Microsoft software within Windows. It is my opinion that this legislation is sufficient. Microsoft was not dealt with lightly, and I believe that further litigation would be less of a productive and more of a vindictive nature.

I am satisfied that Microsoft has been justly dealt with in the antitrust case. Further litigation would no doubt lead to restrictions and obligations on products and technologies that did not fall within the scope of the case. Microsoft has paid its dues to society; now I ask you to let them get back to business. I appreciate your taking time to consider my views on the issue.

Sincerely,
Donald W. Monk

MTC–00027966

From: I Y
To: Microsoft ATR
Date: 1/28/02 12:32pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am opposed to such a preposterous solution in regards to the Proposed Final Judgment in the Microsoft case. Based on past findings the Court of Appeals has found Microsoft guilty of violating all rules of the anti trust laws.

Yet the PFJ (Proposed Final Judgment), the Department of Justice throws out these findings, indicting Microsoft on all charges of business wrongdoing. More importantly, the PFJ allows Microsoft to continue with its monopolistic practices. I strongly believe you will receive similar appeals entailing the numerous errors apparent in the final settlement. To make a long story short, the PFJ does not effectively break up Microsoft. But in fact, permits Microsoft to leverage its current monopoly position and expand its business into several other technologies markets. In the past most monopolies were either broken up or carefully regulated. Why not Microsoft?

Severe reprimands by the DoJ do not drastically alter Microsofts existing operation methodologies. Time and time again as history will show, Microsoft will abuse its monopoly position. Breaking up Microsofts business into several parts just might be the best antidote to prevent MS from even doing more damage to the industry. Therefore I submit to you that the Proposed Final Judgment does not solve the Microsoft issue.

Respectfully,
Dr. Joseph Ortiz
1001 Vine Street
Paso Robles, CA 93446

MTC–00027967

From: Steve Hill
To: Microsoft ATR
Date: 1/28/02 12:31pm
Subject: Microsoft Settlement

Dear Judge,

As a high school student, I look forward to working with computers. However, Microsoft's recent tactics and monopolistic tendenencies will hurt competition in the computer industry. This will cause the quality of computer related software and operating systems to suffer. The recent settelement between the justice department and Microsoft will allow this to continue.

Please overturn this settlement.
Stephen Hill
66 Hobson St.
Brighton, MA

MTC–00027968

From: Victor Mieres
To: Microsoft Settlement U.S. Department of Justice
Date: 1/28/02 12:26pm
Subject: Microsoft Settlement
Victor Mieres
3914 Caney Creek Rd
Austin, TX 78732
January 28, 2002
Microsoft Settlement U.S. Department of Justice

Dear Microsoft Settlement U.S. Department of Justice:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Victor Mieres

MTC–00027969

From: jorge godoy
To: Microsoft ATR
Date: 1/28/02 12:31pm
Subject: Microsoft Setlement

I'm faxing my opinion today.
Sincerely
Jorge Godoy

MTC–00027970

From: Robert Sartin
To: Microsoft ATR
Date: 1/28/02 12:33pm
Subject: Microsoft Settlement

I am against the current proposed settlement of the United States vs. Microsoft case.

I have been programming professionally for 20 years. In reviewing the terms of the settlement, I am unable to see how the terms will in any meaningful way improve the competitiveness of the current environment. The disclosures required by Microsoft are too weak and the exemptions too great. It will be trivial for Microsoft to continue to keep secret important information and use it for unfair competitive advantage. The proposed settlement will perpetuate an environment in which Microsoft can, and based on past experience will, withold critical information from developers who are perceived to be competing with Microsoft. Lack of access to such information, generally available for other platforms and specifically available to Microsoft and partner teams working on similar applications, will prevent a developer from producing competitive products. Continued tight bundling and coupling of Microsoft's chosen solutions will prevent new entries into the market of better technology at lower prices.

Consumers will continue to be forced to purchase and use the solutions provided by Microsoft. The price we pay will be higher due to the lack of credible competitive alternatives. Technical innovation will be decreased because it will not be necessary for competitiveness. Any settlement in this case must include provisions that will create a truly competitive environment, including competitors in the commercial and free software marketplace, and offer a variety of choices to consumers.

Regards,
Robert Sartin
10412 Ember Glen Drive
Austin, TX 78726

MTC–00027971

From: Faith A Hill
To: Microsoft ATR
Date: 1/28/02 12:33pm
Subject: Microsoft Settlement

Dear Judge,

As a young person, I would like to see growing oppurtunities in computer choices in my future. Microsoft is a wonderful company staffed by wonderful people, but they are guilty of anti-competitive violations. They should be punished according to US laws. If this is accomplished, it will provide a better and more competive market for me to enter.

Thank you,
Faith Hill
66 Hobson St.
Boston, MA

MTC–00027972

From: Johan L Lotter
To: Microsoft ATR
Date: 1/28/02 12:34pm
Subject: Microsoft

We attach a letter pertaining to the Settlement. Sincerely, Johan L Lotter
Lotter Actuarial Partners Inc.
Consulting Actuaries and Project Managers
915 Broadway
New York, NY 10010
TEL (212) 529–8600
FAX (212) 529–6297
jllotter@Iotteract.com
Web: Iotteract.com
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I have followed the case against Microsoft for the past three years, watched media coverage from both sides, and I have concluded that Microsoft, in whatever strong-arm tactics they used, should never have been punished like this. This is a slap in the face to one of the most, if not the most, successful companies in history.

In my opinion, the Department of Justice has no right to seek further legal injunctions against Microsoft. The settlement Microsoft has proposed, benefits the competition far more than it should. The best thing for this company, the economy, and the general public is to settle this case, so that Microsoft can get back doing what it does best, fulfilling the computing needs of users. Windows is incredible; there may never be a product quite like it. I can see how the have-nots want to have a big piece of the haves. The settlement certainly gives the have-nots what they want without handing over Microsoft.

I believe that Microsoft is entitled to this settlement in every way. It appears to be reasonable to Microsoft and more than fair to the competition. Approving this settlement can do so much good for the economy, which has been weakened by stresses on our country. I passionately urge you to agree to settle this case.

Sincerely,
Johan Lotter
President

MTC–00027973

From: Travis Cramer
To: Microsoft ATR
Date: 1/28/02 12:34pm
Subject: Microsoft Settlement

To Whom It May Concern:

I am writing to address the issue surrounding Microsoft, and their abuse of antitrust laws. In my opinion, Microsoft should not be able to abuse these laws. First of all, abusing law is illegal, so the corporation is breaking law. Second, the size of Microsoft is the closest thing to a monopoly. They have unbelievable power, and they are making it extremely difficult for any competition to exist. Our government set

our economy up in such a way to prevent monopolies from forming. Microsoft is violating these laws, and that must be stopped. Microsoft must be kept under the law, punishment of some sort is necessary.

Thank you for your time on this matter.

Sincerely,
Travis Cramer
1247 W 30th St., Apt. 110
Los Angeles, CA 90007

MTC–00027974

From: T Mac
To: Microsoft ATR
Date: 1/28/02 12:35pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I wanted to state my objection and the error existent in the Proposed Final Judgment. There are several apparent flaws with in the final proposal favoring Microsoft. Based on my assessment the proposed settlement does not dish out any due justice or punishment on the side of Microsoft. At the same time no devices are in place to ensure MS compliance to the stated rules enclosed in the settlement.

Although being closely monitored, Microsoft will not have any direct supervision to reassure the company complies with the stated agreement. A three-man compliance team overseeing Microsoft remain in alignment to the stated rules and regulations. This three-man oversight team will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team. All findings by this committee will not be allowed into court. The sole purpose for such a committee is to inform the Justice Department of all infractions committed by Microsoft. Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing. In turn, who will not strictly oversee Microsofts business moves? In my opinion, the Proposed Final Judgment does not provide sufficient and appropriate restrictions or penalties against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively address the question. I object to the Proposed Final Judgment.

Respectfully,
Janice Ortiz
1001 Vine St.
Paso Robles, CA 93446

MTC–00027975

From: earl g harper
To: Microsoft ATR
Date: 1/28/02 12:34pm
Subject: Microsoft Settlement

Gentlemen:

It is time to stop the harrasement of Microsoft by dragging out the legal battle.

This will not benefit them or us tax payers...only add bragging rights to some politcal hacks...and the special interest groups.. Enough is enough..let's get on with business and let Microsoft do the same.

Earl G. Harpor
1430 Regency Drive
Ft. Collins, CO
THE HOUSE OF HARPERS
INDJC
Numbers 6: 24–26 & Rev. 14:2

MTC–00027976

From: iBradley
To: Microsoft ATR
Date: 1/28/02 12:34pm
Subject: microsoft settlement

Dear Renata B. Hesse Antitrust Division U.S. Department of Justice and appointed Judge;

I'll get right to the point, microsoft is about as unamerican and anti-competitive and consumer as ever there was a corporation. They've lied under oath, they've lied to their customers and they've lied to corporate investors. Their total motivation for any and everything they do or will ever do is about GREED, cash flow and bill gates, at whatever the cost to the consumer and customer. They've proven that microsoft suppressed technology by using their power and influence to intimidate. USB technology developed by intel corporation for one. If Apple hadn't built USB into the iMac when it was first introduced and now has become a standard for add-ons, I believe it would still be suppressed today. microsoft has never been honest with those who've purchased their OS! window's has never run or operated as they've claimed. It's not nor has it ever been or ever will be secure or stable! xp their latest release has been heralded to be the most ''Stable and Secure OS they've ever produced! It's better then previous, and that much is somewhat true. But it's far from stable or secure. It has failed to live up to it's claims. The in-store sales say it all to well, It's selling far below previous releases, this is a good sign that the consumer is finally seeing microsoft with ''Eyes wide open instead of Eyes wide shut! But even so it's to late for those who've bought into the lies and are now victims of false marketing and advertising hype. The countless virus attacks and hacks to their online service and severs, prove their statements of ''Stable and Secure are rendered mute.

I'm not nor have I, nor will I ever be an owner of anything with windows as an OS. I don't support anything wintel! (that's a PC running an intel processor with window's OS by microsoft) 95% of the computer market worldwide uses microsoft window's. 51% or above in my estimations would be considered a MONOPOLY! microsoft's .Net, licensing of software (taking away ownership and replacing with leasing) and Passport initiatives is a clear attempt at Corporate slavery and an invasion of our personal privacy! These initiatives are DRONE driven! USE microsoft TECHNOLOGY, AND ONLY microsoft! Where's the consumer's FREEDOM of CHOICE here? It's already been proven what bill gates said when he saw Apples Mac OS with GUI (Graphic User Interface). His words go something like this: bill, I want it! paul, That's stealing bill! bill, I don't care! I want it, this is what I WANT! window's is about 98% similar to the Mac OS. If you're familiar with the Mac OS and you saw window's or use it, you know all to well that the truth behind window's is Apple's Mac OS. To quote a friend of mine's son when he first saw window's 95, ''It looks just like the Mac's we use at school! He turned said Huh! And walked away. If it's that clear to a child, what's wrong with the adults in public, political and corporate America?!

I never have nor will I ever like microsoft! I believe there is at the heart of this company, something very WRONG and DARK and definitely not GODLY! I believe their motives are based and rooted in pure corrupt business practices. The only shining light of Good within the Black on Black existence that is microsoft, is the Macintosh Design Department! There is a saying, ''Sometimes you have to go through hell to get to Heaven.'' The only thing you'll find on the other side of microsoft is pure darkness. microsoft should be hit hard and deep, hit where it will hurt the most and that being in REAL CASH outlays in the amount of 33 billion dollars. This amount would be for all the States involved in the lawsuit, the consumers hurt by microsoft's Monopolistic practices, Corporate businesses, some should go to ''Homeland Security Initiative and finally 7 billion dollars set aside through a Private Organization and distributed for use in Private and Public Schools who need it for use where they feel it is best used and on whatever OS or Computer (Apple) they deem appropriate for the benefit of their Teachers and Students! If microsoft isn't reprimanded severely for their illegal activities through REAL CASH outlays that are made payable within one year of settlement, and hits them where it hurts! They will never stop doing what they do! BREAK the LAW! NOBODY IS ABOVE THE LAW! (The Enron disaster is evidence enough for that!) microsoft will just keep pushing the envelope of illegal activity, simply because they think they can! This time they can't be ALLOWED to get off with a slap on the hand, even if those in power say ''It could be damaging to the economy!'' That argument doesn't hold any water anymore! Not after the events of September 11th and the resulting effects on the economy thus far. In closing; I don't hold any respect for bill gates or steve balmer, nor should anyone! They haven't earned it as individuals or a company, nor do they deserve it! They're not nor is microsoft a Good example of Good Business or Corporate ethics for the youth to look up to and learn from! microsoft has done everything wrong from a moral and ethical perspective. Thank you.

Take Care;
Bradley R Johnson

MTC–00027977

From: A. W. Dalgleish co.
To: Microsoft ATR
Date: 1/28/02 12:34pm
Subject: Microsoft settlement
East Aurora, NY 14052
11738 Liberia Road
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to inform you of my opinion in regards to the Microsoft settlement issue. I support the settlement that was reached in November, and I oppose any further action against Microsoft at the federal level.

This settlement is fair and will be sufficient to deal with the original issues of this lawsuit. Microsoft has agreed to all terms and conditions of this agreement. Under this agreement, Microsoft must share more information with other companies regarding certain internal interfaces included within Windows and any protocols implemented in Windows operating system products. Microsoft has also agreed to be monitored by a technical oversight committee for compliance.

Microsoft has done so much to contribute to our daily lives, in the office and at home. To stifle or restrict this company would be a huge injustice to consumers and will do nothing to stimulate our lagging economy. I urge you to support this settlement so Microsoft's resources and talent can be fully devoted to designing their innovative software, rather than litigation. Thank you for your time.

Sincerely,

James Jaremka (Microsoft shareholder and registered Republican)

MTC–00027978

From: Bob Blake
To: Microsoft ATR
Date: 1/28/02 12:37pm
Subject: MICROSOFT SETTLEMENT
13 Ethel Avenue
Peabody, MA 01960
January 27,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Three years ago, Microsoft was brought to trial for antitrust violations. I have been of the opinion from the start that this has been a false case. Federal antitrust laws are stifling in a global market. Microsoft has never presented a threat to the consumer by using its market dominance to raise prices or to offer a shoddy product. Microsoft would never have been so successful if the consumer had not been satisfied with its actions. Now Microsoft's competitors are upset because they are unable to pry consumers away from Microsoft. They instigated the case in the first place, and now they are seeking to overturn the settlement and bring additional litigation against Microsoft.

I do not believe it is necessary to bring additional litigation against Microsoft. By doing so, these states are essentially crippling America. Foreign competitors are not subject to the same laws that American businesses are, and all this infighting is making the American market vulnerable to foreign interests.

Putting reins on Microsoft's behavior is the same as encouraging foreign competitors to step in. The settlement should be finalized as soon as possible, for the good of the economy, the industry, and the consumer. The settlement allows Microsoft to remain intact, which is, I believe, wise. It also gives Microsoft's competitors a chance to work with Microsoft as well as compete directly. For example, Microsoft has agreed to provide its competitors with source code integral to the Windows operating system so that they will be able to operate within the Microsoft framework. Microsoft also plans to reformat upcoming versions of Windows so that the operating system will support non-Microsoft software.

Microsoft's competitors are not going to gain any greater advantage by continuing litigation. In fact, it is quite possible that they will end up doing America more harm than good. I ask you to support the finalization of the settlement.

Sincerely,

Robert Blake Jr

MTC–00027979

From: peter kloss (BITS)
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:34pm
Subject: Microsoft Settlement

The following is the personal opinion of Peter B Kloss and is not the opinion in any shape or form of his employers, the BBSRC (Biotechnology and Bioscience IT Services)

Dear Sir

I do not know whether non US nationals are allowed to comment on this case. however, what happens in this case will have an enormous influence on what happens elsewhere, so I hope I am permitted to comment.

I am concerned that the settlement will not do what it is intended to do, that is, restrict the predatory behaviour of Microsoft. The nature of the exception clauses in the current agreement makes it possible for MS to continue to do whatever they want without hindrance. I think this is a bad thing to do and a bad message to give.

It is important that while Microsoft have this overarching dominant postion that the interests of the public and consumer are properly protected. This is particularly in the area of choice—Microsoft have continually complained that restrictions on them will inhibit ''innovation'' and choice. however, history teaches us that Microsoft have hardly ever innovated and have acted in a way to restrict choice for OEMs, business customers and consumers like to their advantage.

Let us take innovation: It is true that most OS and application ''innovations'' have been either bought in or copied from third parties:

DOS—bought from a third party

Windows (the concept)—from Xerox and Apple

Excel—bought in from a third party

Windows 95 GUI details—copied from Apple in many places (eg the keyboard short cuts)

Explorer, Web Browsing—copied the concept from NCSA, Netscape etc

Additional features in windows XP such as CD burning, camera connection and video editing—a straight copy of advanced features in Apple's MacOS

As for choice: In most respects Microsoft's leveraging of their position has restricted choice by squeezing out competitors and competing products.

A loss strongly felt personally was that Aldus once made an excellent presentation package called Persuasion. It is now a discontinued product because Aldus could not justify continuing marketing and developing the product in the face of PowerPoint being given away free by Microsoft with MS Office. This is classic predatory pricing killing off a product which was superior in every respect.

A more recent case is the free bundling of Internet Explorer and Internet Information Server with desktop and Server OS to the detriment of competitors such as Netscape and many other smaller but genuinely innovative companies. a recent scandal was the attempt by Microsoft to block access to their Web sites by non—MS browsers on the grounds that they were not ''standards'' compliant. This was strongly contested by suppliers such as Opera Software and Microsoft had to grudgingly relent. but this attempt is only the tip of an iceberg in which MS try to persuade us that their browser is the standard by brute force. This must also be seen in the context that both browser and server are notorious security risks, in part due to the insecure architecture inherent in operating systems and applications supplied by Microsoft.

Furthermore it is also true that Microsoft devote more attention to adding features to their products in an attempt to crush competing products than they do to fixing long existing problems, for example, Excel still has a number of arithmetic bugs which have existed from before version 4 which have never been fixed.

Even now, Microsoft are attempting to extend their grip in other areas to the detriment of consumer and business choice: In the area of network validation of personal credentials with the proprietry ''Passport'' authentication system In the area of video streaming delivery with bundling of ''Windows Media Player'' to the detriment of Real Inc's Real Player and Apple computer's Quicktime (a genuine standard)

In the area of on-line music delivery by attempting to corner the market with windows specific server and delivery technologies In the area of home automation and device control with embedded OS products I have not even touched on Microsoft's attitude towards OEMS, competing OS suppliers etc ..

This kind of behaviour is structural in a provenly monopolistic company. Remedies must be strong to correct this behaviour and I urge the DOJ to rethink its compromises to ensure that restrictions and punishments are appropriate to yield better behaviour. To be truthful, with the current huge market penetration of MS products, restrictions will not hurt the company for a long time to come. When they do, it will becuase genuinely innovative and superior products have taken a hold.

The fact is that in many areas where Microsoft have obtained an almost complete grip of the market they exhibit genuine monopolistic behaviour— such as many price increases forced on business users through less favourable bulk licensing schemes recently introduced. It is only a matter of time before this is attempted in other areas.

Microsoft has been legally proved to be a monopoly and to have abused its position—please treat it as such with remedies that bite.

Thank you for listening to me

with kind regards, Peter Kloss

MTC–00027980

From: dbeausan@Mines.EDU@inetgw
To: Microsoft ATR
Date: 1/28/02 12:36pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–000
2002–01–28

Dear Renata B. Hesse:

I do not believe that the proposed Microsoft settlement is appropriate. I believe there are numerous problems, however, I will only comment on a couple of items here.

Without any requirement that Microsoft provide detailed data file documentation on its application files (for example, the internal format of a .DOC file) there is no hope for inter operability between Microsoft and other potential software suppliers.

The same applies to Microsoft's operating system interface. Without proper documentation of the interface, all the interface, and a constraint that Microsoft may not use undocumented interfaces, other software developers will never be able to produce software that is competitive and will not be independent of changes made, perhaps deliberately, to the os interface that are detrimental to the proper functioning of applications.

May thanks for your time.

Regards,

David Beausang

MTC–00027981

From: Joe Brady
To: Microsoft ATR
Date: 1/28/02 12:36pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
Washington, DC 20530

Dear Mr. Ashcroft,

This lawsuit against Microsoft has proven to be more contentious than most would have anticipated. Its effects have been felt in a slowing down of consumer purchases of computer products due in part to an increased sense of anxiety on the part of the buying public.

It is for this reason that the settlement recently negotiated between Microsoft and the government is good. While I am not too familiar with the specific terms of the settlement, other than that it mandates changes in the way Microsoft licenses its software to OEMs, among other things, since both sides have agreed, then the public litigation is at long last at an end.

I am writing to express my support of this settlement, along with my hope that any further federal action will be unnecessary.

Sincerely,

Joseph Brady

President

MTC–00027982

From: Marty Leisner
To: Microsoft ATR
Date: 1/28/02 12:35pm
Subject: Microsoft Settlement

I wish to comment on the Proposed Microsoft Antitrust Settlement via the Tunney Act. I'm a professional software developer with Xerox Corporation. I have been developing software for over 20 years. I have seen the industry change over 20 years—while the hardware has improved by orders of magnitude, software is a mixed bag—some chores are harder to accomplish (and sometimes take longer) than 20 years ago. One thing that has changed is the growth of the computer industry and the PC on every desk. Almost every PC runs microsoft software. I've been following the Microsoft-DOJ debacle with interest for years. I develop free software. I try to use products which work and which I can customize—it turns out I try not to use microsoft products. I do not want to live in a world where I have to use microsoft products to interact with other people. I have no problem if microsoft defines file formats and networking standards, as long as they are public and correct. The proposed settlement does not appear to address this. As a free software developer software developer, am I entitled to rights as a third party? Software is a new and unique creation. I think its important to have a resolution of this case which actually encourages competiting products (both free and commercial). Dan Kegel's critque is well thought out. I endorse it and urge you to read it: http://www.kegel.com/remedy/remedy2.html

I also endorse Ralph Nader and James Love's views as: http://www.cptech.org/at/ms/rnjl2kollarkotellynov501.html

Thank you,

Martin Leisner

332 Shaftsbury Road

Rochester, New York 14610

Free Software Writer/User

MTC–00027983

From: IRSK1@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:39pm
Subject: Microsoft Settlement

I am forwarding this letter, since I strongly concur with it's premise.

thank you

Karl Heimberger [irskl@aol.com]
1 VAN DYKE PLACE
STONY BROOK, NEW YORK 11790
January 24, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

This letter is in support of the settlement with Microsoft. We must stop wasting money on unnecessary litigation and concentrate our resources on matters that actually need more action. Let's move forward, not backward.

This settlement allows us to go forward and end the waste. Microsoft has agreed not to retaliate against computer makers who ship software that competes with anything in Windows. Plus, Microsoft has agreed to design future versions of Windows so that computer makers and consumers can easily promote non-Microsoft software within Windows. Finally, Microsoft has agreed not to enter into agreements with other companies to promote any Windows technology exclusively. All these will be enforced by a new federal government commission.

The most impressive aspect of the settlement is that it even applies to Microsoft products that were not at issue in the lawsuit. This agreement is fair and reasonable, and it will clearly prevent future anticompetitive behavior. We must accept this settlement and allow the IT industry to concentrate on business as soon as possible.

Sincerely,

Karl Heimberger

MTC–00027984

From: mickeytwomouse@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:37pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,

Joseph Pemberton

609 Danbridge Drive

Hixson, TN 37343

MTC–00027985

From: John W. Manhollan
To: Microsoft ATR
Date: 1/28/02 12:46pm
Subject: Microsoft Settlement

To Whom It May Concern:

I believe that the proposed settlement is problematic for two reasons:

1. The settlement furthers Microsoft's strangle hold on the desktop platform by seeding into thousands of locations where impressionable youngsters will have access to only the Windows environment and thereby influence their future purchases.

2. The settlement only benefits a small number of the individuals who would have been harmed by Microsoft's blatant disregard of the results caused by its business strategy. America's school children of today were not the consumers affected by Microsoft's practices.

Thank you for your time and interest in my comments.

Sincerely,

John W. Manhollan, Technology Coordinator

West Middlesex Area School District
3591 Sharon Road
West Middlesex, PA 16159
v: 724.528.2002 x122
f: 724.528.0380

The directions said, ''Requires Windows 98 or better.'' So I bought a Macintosh.

MTC–00027986

From: Fred Nugen
To: Microsoft ATR
Date: 1/28/02 12:42pm
Subject: Microsoft Settlement

As a United States citizen, I urge you to withdraw your consent to the revised proposed Final Judgment settlement in the United States v. Microsoft Corp. antitrust case. The limitations and punishments imposed upon Microsoft do not sufficiently restore the competitive conditions previailing prior to Microsoft's unlawful conduct. The Settlement only prevents Microsoft from future monopolistic practices; it does not punish Microsoft for previous unlawful behavior. The advantages of immediacy and certainty of the proposed Final Judgment are not sufficient cause for abandonment of pursuit of further litigation.

I urge you to pursue litigation of the issue of remedy, whether as set forth in the Final Judgement entered by the District Court on June 7, 2000, or as one of the other remedy proposals described in the Competitive Impact Statement, section (V) Alternatives to the Proposed Final Judgement.

Fred Nugen
407 W 18th #207
Austin, TX 78701
512.478.9617

MTC–00027987

From: Altes, James
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:44pm
Subject: Microsoft Settlement

It is my opinion that his is not a good idea, will only increase Monoply status of MicroSoft.

James Altes
Electronic Publishing Specialist
The American National Red Cross
202.639.3236
altesj@usa.redcross.org
Together, we can save a life

MTC–00027988

From: Thomas Allbee
To: Microsoft ATR
Date: 1/28/02 12:42pm
Subject: Microsoft Settlement
Thomas Allbee
16870 SW Camino Drive
Tigard, Oregon 97224
503–624–9431
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am sending you this brief letter in hopes of adding my sentiments to those millions who would like to see an end to the Microsoft case. This litigation has stymied an entire industry and contributed to our general economic malaise. There is no further reason to prolong the resolution of this case. I hope you will use your office and influence to see it settled soon. By the terms of the proposed settlement plan, Microsoft will endeavor to actively undermine its own predominance in the IT industry. It has agreed to surrender its past practice of demanding exclusive domain over software in its Windows platforms. It has even agreed to render its Windows platforms in configurations that invite the use of non-Microsoft software. It has agreed to open its technology to exploitation by its competitors. It has, in fact, agreed to facilitate competition.

These and other concessions validate Microsoft's claim to desire an open and fair playing field in the industry. Microsoft deserves this settlement and so does the country.

Sincerely,
Thomas Allbee

MTC–00027989

From: O M
To: Microsoft ATR
Date: 1/28/02 12:43pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I oppose the Proposed Final Judgment in relations to the Microsoft case. As one can plainly see, Microsoft continues to violate business practices. The Proposed Final Judgment does not punish Microsoft for its past violations to the anti-trust laws.

With out a doubt, Microsoft is guilty of breaking several anti-trust laws. Under the final settlement, Microsoft is permitted to retain most if not all profits gained through their illicit activities. Subsequently, the PFJ will not compensate parties injured or harmed through Microsofts egregious misdeeds.

In addition, the PFJ will not take into account all Microsoft gains made through its illegal maneuverings. With all due respect, the final settlement is basically acknowledging the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? I can assure you that the message is clear and simple.

The PFJ encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. In conclusion I submit to you my objection to this Proposed Final Judgment.

Respectfully,
Dr. Marylin Ortiz
1001 Vine St.
Paso Robles, CA 93446

MTC–00027990

From: Laura Akers
To: Microsoft ATR
Date: 1/28/02 12:43pm
Subject: Microsoft Settlement

I oppose the current settlement with Microsoft as not acknowledging and supporting the ability of other organizations, such as those staffed by volunteers, to compete.

Laura Akers
Oregon Research Institute
lauraa@ori.org

MTC–00027991

From: Jeanette Gonzales
To: Microsoft ATR
Date: 1/28/02 12:45pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I'm writing to you as a Supporter the Free Market. Recently it was brought to my attention that over the past 3 years every federal court that has reviewed the Microsoft antitrust case has found that Microsoft repeatedly and aggressively violated U.S. antitrust laws and was liable for its illegal conduct. It was also surprising to know that the Justice Department had announced that it had cut a back-room deal (the Proposed Final Judgement) with Microsoft that granted Microsoft a government mandated monopoly that threatened to destroy any and all serious Microsoft competitors. How can this be allowed to happen? Why here, in a free capitalist country, is it permitted to allow a company like Microsoft infringe the rights of consumers and competitors everywhere. Men have gone before us, seen the issue, and have made a way so that the rights of consumers and other competitors were protected. So why now is there an exception to the rule to let Microsoft be allowed to abuse antitrust laws?

Sure the name Microsoft has prestige, and people trust in the company's quality, however no good can ever come of a monopoly. That is why the Tunney Act passed by Congress is so vital because it ensures that all antitrust settlements proposed by the Justice Department are not ''contrary to the public interest.''

Believe me, the public interest wants to see the Microsoft Industry put to a stop before it completely wipes out all of its competitors—other defenders and leaders of the free world.

Sincerely,
Jeanette Gonzales
Jennyxgx@yahoo.com

MTC–00027992

From: patents@astreet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:46pm
Subject: Microsoft comments

My inputs on the Microsoft matter.

I am a patent attorney, and I take my responsibilities very seriously, of course. I have seen several cases of hackers penetrating Microsoft systems, such as at a law firm I was associated with until recently. While most attacks seemed to be intent on corrupting files, there were some attacks that I am convinced could have and may have resulted in data being taken.

I am unwilling to expose my clients to such risks, especially since I believe the Microsoft XP OS has the capability of allowing ?someone?, such as at Microsoft, to copy data off your system with no indication to the owner. I am changing to Linux, and I find that most companies that offer software packages that run on Microsoft OS systems are discontinuing support for other than Microsoft systems (the exception is Apple, which depends on Microsoft investment and

help for their existence). In fact, since Apple has a Linux-type system and IS supported, it appears that the decision by these companies not to support other Linux-type systems has no legitimate purpose. The companies I refer to that are moving to Microsoft-Apple support only are Adobe, the Acrobat product, and the various companies that make .TIFF readers. I need both .PDF (Adobe Acrobat) and .TIFF for my patent work, and I find that to have them I must use an OS from Microsoft. Even Mapquest, where I have been getting map data, gives very unsatisfactory results on other than Internet Explorer. By unsatisfactory, I mean the results on other than Internet Explorer are such as to indicate sabotage of the Microsoft competitors.

I feel I must not expose my clients to the hazards of a Microsoft system, but I find that Microsoft, directly or through companies that depend on Microsoft, is poisoning all competing systems. I hear even WordPerfect, a clearly superior word processor, is ?on the ropes? due to Microsoft's tactics.

I would like to sue Microsoft. Can you provide any help?

Marion E. Cavanaugh, patent attorney
720 Promontory Point Lane
Suite 2203
Foster City, CA 94404–4025
800.954.2277
650.578.0692
650.533.4363 (cell)
650.572.2370 (fax)
CC:patents@astreet.com@inetgw

MTC–00027993

From: Dolly Waters
To: Microsoft ATR
Date: 1/28/02 12:45pm
Subject: Microsoft settlement Please read.

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Dolly Waters
43 Webster Avenue
Manhasset, NY 11030
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft: I did not agree with the federal government's decision to sue Microsoft, and I am glad to see the two sides have reached a settlement. Microsoft is a strong and successful company because it develops the best products for the industry, and k is time to start spending the government's money on more important issues than trying to hinder this company's success. Microsoft has agreed to change its business operations so that competition will increase in the technology industry. The company will design future versions of its Windows operating system so that computer makers can promote non-Microsoft software within Windows. Microsoft has also agreed not to retaliate against computer makers that ship software that competes with anything in Windows. This settlement was reached after many long and costly hours of litigation, and extensive negotiations. It is fair and reasonable, and k should be finalized as soon as possible.

Settling now will benefit consumers and the industry, and this was what the government sought from the beginning. The American economy needs a boost right now, and stopping this litigation is a great step in the right direction.

Sincerely,
Dolly Waters

MTC–00027994

From: Henning Dalgaard Jeppesen TACDk
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:47pm
Subject: Microsoft Settlement I don't agree

MTC–00027995

From: c c
To: Microsoft ATR
Date: 1/28/02 12:49pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally-

I am stating my objection to the Proposed Final Judgment. Most honorable one, I implore you to see the true facts in the matter and judge accordingly. In the past week it has been brought to my attention an interesting development in the case involving the Department of Justice and Microsoft. A Final Settlement has been reached between the two parties, which will supposedly end the never-ending fiasco. Yet astoundingly enough based on my understanding and the information provided to me, the Proposed Final Judgment would overturn findings by the U.S. Court of Appeals indicts Microsoft on violating antitrust laws. After further review of the proposed settlement I find it hard to believe the Justice Department would withdraw their charges against Microsoft. In fact, based on the assessments made on the proposal, Microsoft will go scotch free from any charges of wrong doing in the matter. How can this be? There are several glaring flaws in the PFJ. However, non-so more apparent than allowing an absentee landlord to govern Microsoft. With all due respect, the final settlement provides no security to restrict MS from breaking any laws in the future. In my humble yet accurate opinion, the future governing body, implementing certain rules or regulations and forcing MS to adhere by them, will not be stringent nor forceful enough to make any dramatic changes. Similarly, I am not convinced that these stiff penalties applied to MS will ensure the security and future growth of other companies, A stiffer penalty and a whole new framework of laws must be established to justly punish MS. The Proposed Final Judgment abstains from such justification and order. Therefore I object to the stated Proposed Final Judgment.

Sincerely,
Dr. Romeo Ortiz
1001 Vine Street
Paso Robles, CA 93446

MTC–00027996

From: C. Scott Ananian
To: Microsoft ATR
Date: 1/28/02 12:50pm
Subject: Microsoft Settlement.

I am a graduate student at MIT, and author and maintainer of many commonly-used ''open source'' applications[*]. I have also contributed code to the Linux kernel that is used by millions of people every day. I wish to express my dissatisfaction with the terms of the DOJ/Microsoft settlement. It does not, in my opinion, serve the public interest and provide remedy for the anti-competitive actions of the monopolist. In particular, I urge a closer examination of how the terms of the proposed settlement impact *non-profit* competitive entities; as a case study you might want to examine the Apache foundation (www.apache.org), which produces the *only* web server which is a real competitive threat to Microsoft at this time. The terms of the agreement, by letting Microsoft decide what constitutes a ''real business'', threaten to exclude independent developers and non-profits like the Apache foundation from the disclosures (API and otherwise) which the settlement hopes will place a check on Microsoft. In this way, Microsoft may actually be able to edge out its last remaining competition from the marketplace —- certainly not the result the DOJ intends, and certainly not in the public interest. As an independent developer who has written (for example) a competitive reimplementation of Microsoft's PPTP protocol *without benefit of any information from Microsoft* and who would almost certainly *not* qualify for API disclosure however Microsoft decides to define ''viable business'', I have a personal interest in seeing this settlement loophole closed. And on behalf of the many people who have used my software, I can state definitively that there is a public interest in allowing developers like myself to compete with Microsoft.

Thank you.
C. Scott Ananian
305 Memorial Drive
Cambridge, MA 02139

[*] More correctly called ''free software'', with the ''free'' referring to freedom, not to price. In fact you are allowed to charge whatever you like for ''free software'', provided you do not restrict the purchaser's ability to make use of it in various specified ways.

MTC–00027997

From: Tom Gardner
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 12:45pm
Subject: Microsoft Relief

To whom it may concern:

It appears to me that a great deal of Microsoft's market power comes from its policy of leasing its software and then using the copyright laws to enforce anticompetitive requirements. May I suggest that Microsoft be required to sell its software and thereby relinquish relevent copyright rights, much as a book seller relinquishes such rights upon sale of a book. Customers, such as PC

manufacturers, would then be free to alter Micorosoft products to provide additional value to the end using consumer.

Microsoft will argue that any such alterations to the software will then make the product not maintainable and thereby void its warranty. While in the limit this is indeed possible, it practice most alterations would have little impact upon maintainability. Microsoft should therefore be also required to maintain any altered product unless and until it can show beyond reasonable doubt that such maintenance is an unreasonable commericial endeavor.

I have participated in the computer industry since 1968 and have at various companies been involved in the selling of hardware and software to PC manufacturers and PC end users. I testified for the people in US vs. IBM on software interface manipulation as an anti-competitive tactic.

The opinions expressed above are mine alone, and not necessarily those of any service provider enabling the transmission of this email.

Thomas E. Gardner
(650) 941–5324
t.gardner@computer.org

MTC–00027998

From: Cherry
To: Microsoft ATR
Date: 1/28/02 12:48pm
Subject: Microsoft

I would like to see this suit finalized as soon as possible.

Sincerely,
Cherry S. Garrison
Pendleton, South Carolina

MTC–00027999

From: Jonathan Doughty
To: Microsoft ATR
Date: 1/28/02 12:50pm
Subject: Microsoft Settlement
TO:
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
FROM:
Jonathan Doughty
9701 Rhapsody Drive
Vienna, VA, 22181

I urge you to reject the Proposed Final Judgement (PFJ) and replace it with one that is simpler to test Microsoft's adherence to, allows for the full range of competitors to Microsoft's practices including explicitly addressing open source alternatives, and better protects consumers from being the continuing victims of Microsoft's monopolistic practices.

The PFJ does not, as stated in the Competitive Impact Statement provide ''prompt, certain and effective remedies for consumers.'' Nor will the PFJ ''eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings'' as also stipulated in that statement.

Microsoft has shown by past and current monopolist behavior, by its tactics of embracing and extending technology in ways that force consumers to use and upgrade only its products (e.g., their extensions to the Kerberos security protocols), by selectively incorporating technology that in some cases it has appropriated from competitors into its operating system (e.g., Stac Electronics disk compression and Mosaic browser-based technology), and by adding code into their operating systems and middleware that unfairly targets competitors products (e.g, the DR/DOS code added to Windows 3.1 and the way in which consumers were steered away from Kodak applications for digital photography in the just released Windows XP) that they actively work against consumer choice.

The PFJ does not ensure ''computer manufacturers have contractual and economic freedom to make decisions about distributing and supporting non-Microsoft middleware products without fear of coercion or retaliation by Microsoft'' because it specifically allows Microsoft to enforce ''any provision of any license with any OEM or any intellectual property right that is not inconsistent with'' the PFJ. One can already find examples of a variety of Microsoft End User Licensing Agreements (EULA) in which Microsoft has forced consumers and OEMs to accept agreements that effectively tie use of Microsoft products to its middleware and operating systems and restrict the consumers right to substitute competitive technology.

The PFJ does not ensure ''that computer manufacturers have the freedom to configure the personal computers they sell to feature and promote non-Microsoft middleware, and ensuring that developers of these alternatives to Microsoft products are able to feature those products on personal computers, by prohibiting Microsoft from restricting computer manufacturers'' ability to install and feature non-Microsoft middleware and competing operating systems in a variety of ways on the desktop and elsewhere.'' Microsoft has already demonstrated they have no intent to adhere to this restriction by insisting, prior to the release of Windows XP, that their own products be given equal display on the desktop to competitive alternatives.

Finally, Microsoft has shown by its behavior of rushing products to market to further extend its monopolies, while continually delaying and extending the trials that might restrict that behavior, that it has no intention of modifying the past behaviors with which it has so successfully eliminated competition and restricted consumer choice. The PFJ is riddled with loopholes, more even than the 1994 consent decree that Microsoft flaunted the intent of, while at the same time providing cover for Microsoft to browbeat competitors with the very language that is supposed to protect those competitors. For example, the PFJ's wording explicitly excludes Microsoft from having to deal with the one consumer alternative that Microsoft has recently shown the most fear of, the open source movement, by explicitly allowing Microsoft to condition the release of documentation of its APIs and communications protocols based on Microsoft's own judgement that the third party ''meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business.''

The PFJ states ''Microsoft shall begin complying with the revised proposed Final Judgment as it was in full force and effect starting on December 16, 2001.'' I believe a court interested in ensuring consumers'' choice would agree that Microsoft's actions since the release of the PFJ on November 6, 2001 with respect to their .NET initiative, their attempts through orchestrated ''grass roots'' campaigns to influence the outcome of the court and legislative inquiries into their activities, the security of their existing products in maintaining consumers privacy and Microsoft's lack of ability to protect that trust, and their attempts to advance their monopolies into other markets (e.g., gaming devices and multimedia) demonstrate that Microsoft's is already flaunting the intent of the PFJ just as it has in the past flaunted the intent of other consent decrees.

Jonathan Doughty

MTC–00028000

From: Robert G. Prickett
To: Microsoft ATR
Date: 1/28/02 12:49pm
Subject: Microsoft Settlement

This vendetta by jealous competitors has got to be stopped. I have watched over the years and only commented to friends how Microsoft is being attacked by companies who want the U. S. Government to make their businesses flourish without working hard for it.

Call the dogs off. They have treed enough ghosts.

Robert G. Prickett

MTC–00028001

From: Douglas Lewan
To: Microsoft ATR
Date: 1/28/02 12:52pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
2002 January 28
Douglas Lewan
10 Fredwood Pl.
Matawan, NJ 07747

Please accept the following comments regarding the Revised Proposed Final Judgement published by the DOJ at http://www.usdoj.gov/atr/cases/f9400/9495.htm .

I agree with the obvious implied spirit of the Final Judgement. However, I believe it fails to truly attain that spirit in practice in several ways, the most important of which I discuss below.

Sections III.D and III.E regarding scheduling the publication of APIs and protocols:

These two sections fail to meet the spirit of the Final Judgement in two important ways.

First, the schedules based on delays of 9 and 12 months respectively would place publication of those APIs and protocols about halfway Microsoft's own development and deployment cycle. Vendors who could benefit from using those APIs and protocols

would thus only be able to deploy products with them as Microsoft has new products looming on the horizon.

Second, the publication mechanisms specified in those two sections remain far too closed to foster competition outside of Microsoft controlled circles.

Publication of APIs as specified in III.D would be only to a select audience and only by the purchase of the MSDN (currently at a cost of between $1000 and $3000). That publication should be entirely public, possibly through a recognized standards body like ISO, ANSI or the IEEE.

Otherwise Microsoft will continue to wield essential absolute control over those APIs and their use.

Similar arguments apply to the publication of protocols.

With regard to protocols and ''interoperating with a Windows Operating System Product'' it should be recognized that all file formats used by Windows Operating System Products fall under the umbrella of ''protocol''. Interoperability must be explicitly recognized to cover any data produced by any program on any medium that might be used by any other program for a specific purpose. The current phrasing is far too weak and vague to allow interoperable alternatives to the likes of Word, Project, Visio, etc., all important Windows Operating System Products.

Section III.J further weakens sections III.D and III.E.

Section III.J has several flaws.

First, in it the Department of Justice and the nine plaintiff states sanction a policy of /security through obscurity/, an mechanism known to be flawed. It is far more secure to allow public scrutiny of security mechanisms to reveal the most egregious holes before commitment, implementation and use. Consider the work regarding DES, AES, Kerberos, etc.; even the theory behind RSA was published and widely discussed long before practical implementations were made. The possibilities and implications of vulnerabilities in the field under such policies are far worse that under published security mechanisms. Among other things, fixes become nearly impossible: (1) backward compatibility is necessary, difficult and counter-productive leading to a false of security and (2) deployments of such fixes can never be expected to be complete.

Second, by not publishing secure aspects of application protocols (authentication and authorization), third party software can never reach the point where it /can/ use the functional application protocols intended by section III.E.

All in all, sections III.D, III.E and III.J create at best a documentary opening of Microsoft products with (1) consequences for Microsoft and (2) no improved opportunities for the rest of the software industry.

Thank you for taking my comments under consideration.

Douglas Lewan

MTC–00028002

From: Kermit Holman
To: Microsoft ATR
Date: 1/28/02 12:51pm
Subject: Microsoft Settlement

During the past few years I have followed the DoJ case against Microsoft and the difficulty with getting an agreement for settlement of the case. In the technology arena this has been deleterious to business and the consumer. I believe it is time to get this item cleared and get on with the business of computing and technology.

Sincerely,
Kermit Holman
holman—ka@msn.com

MTC–00028003

From: Ralph Green, Jr.
To: Microsoft ATR
Date: 1/28/02 12:51pm
Subject: Microsoft Settlement

Introduction

As a software engineer with 25 years experience developing software, mostly for personal computers, I would like to comment on the Proposed Final Judgement in United Stated vs. Microsoft.

I believe that The Federal Government is attempting to achieve a remedy that infringes as little as possible on the market, while trying to stop illegal conduct. I applaud that attempt and think that was just what you should have been trying to do. I think, however, that the Proposed Final Judgement fails to stop the illegal conduct and should be rejected in its present form.

I am not looking for the federal government to pick winners and losers in the marketplace. I want my federal government only to ensure that fair competition will let the marketplace decide the winners. At the very least, any part of this agreement should be neutral in its effect on further entrenching Microsoft's monopoly. And since this agreement is supposed to be a remedy for illegal conduct, it should lean slightly to the effect of opening the market in order to remedy past wrongs. Then, and only then, the free and fair market can benefit the consumer.

As your own Competitive Impact statement says ''The District Court held that Microsoft engaged in a series of illegal anticompetitive acts to protect and maintain its personal computer operating system monopoly, in violation of Section 2 of the Sherman Act and analogous state laws.''

Failures of the Proposed Final Judgement

1) Section III.D states Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network (''MSDN'') or similar mechanisms...''

The problem here is that Microsoft, as a monopolist, is setting standards for the industry. For a competitor to arise, interoperability must be possible. Restricting this API information for the sole purpose of interoperating with a Windows Operating System Product only entrenches the monopoly. There is no legitimate purpose served by restricting this interoperability to only Windows Operating Systems. For example, a competing middleware product may ask for these APIs so they can make their product compatible with both Microsoft Operating System Product and its competitors. Microsoft could refuse and thus their product tying would have succeeded in stifling competition. If Section III.D is to have the effect of fairly documenting these interfaces to stop the tying, the section quoted above should read:

''Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, via the Microsoft Developer Network (''MSDN'') or similar mechanisms...''

2) Section III.E states ''Microsoft shall make available for use by third parties, for the sole purpose of interoperating with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol''

This is a similar failure to number 1, but more serious. These communications protocols need to be documented so that any competing operating system may use them. Microsoft's monopoly does not currently extend to the server market. If Microsoft were to gain a server monopoly by the quality of their product offering, that is fine. If they gain it by tying the server market to their current monopoly, that is the same kind of improper behavior that brought about this case. This judgement should not encourage that improper behavior and so this section I quote should be changed to read:

''Microsoft shall make available for use by third parties, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol''

3) Section III.G.2 states ''on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.''

This is too narrowly drawn and to use a metaphor, confuses the cart with the horse. The illegal conduct was the attempt to preserve the monopoly on operating systems. Middleware was the tool used to preserve the monopoly. Microsoft should not discriminate against businesses that encourage the use of other Middleware, but they should not discriminate against businesses that encourage other operating systems, either. If the phrase ''Microsoft Middleware'' were replaced with ''Microsoft Platform Software'', this would have meaning. With the phrase ''Microsoft Middleware'' in place, an IAP encouraging the use of Linux, BSD or other competitive operating systems could be discriminated against.

4) Section III.H.2(second 2) states ''(e.g., a requirement to be able to host a particular ActiveX control)'' This is a terrible example and significantly lessens the likely intent of this paragraph. Hosting ActiveX controls is not a technical requirement. It is an implementation using a proprietary method. A reasonable technical requirement should not necessitate the use of Microsoft development tools. The only slightly reasonable point here is that ActiveX has been around long enough that there are a few alternative tools. I am not sure whether it is possible to build ActiveX controls withoutout the use of Microsoft development tools. If it is not, ActiveX should definitely go as an example.

5) Section IV.B.9 states ''prohibiting disclosure of any information obtained in the course of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court.''

As worded, the TCs will not even be able to communicate important information to their staff or other TCs. There is also no reason to protect information about improper business practices by Microsoft. This should be amended to read ''prohibiting disclosure of any proprietary information obtained in the course of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than other TC, the TC staff, Microsoft, the Plaintiffs, or the Court.''

6) Section IV.B.10 states ''No member of the TC shall make any public statements relating to the TC's activities.''

This sentence should go. The purpose of the TC is to apply pressure to Microsoft to stay within the law. Secrecy does not serve that purpose. A better clause would read

''The TC shall make quarterly public reports. These shall be available on a web pages provided by Microsoft. Microsoft may fufill this requirement by hosting the web pages or paying for their hosting elsewhere, as long as the web pages are generally available.''

7) Section IV.C.3.h states ''maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.''

The purpose of this judgement is to end the illegal practices of the past. Light must be shed on questionable practices and credit should be given to improvements in behavior. These records should be easily accessible to all and the best way to do this is the change this sentence to read ''maintaining and publishing on a public website at the expense of Microsoft a record of all complaints received and action taken by Microsoft with respect to each such complaint.''

8) Section IV.D.3.c states ''Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, then promptly advise the TC of the nature of the complaint and its disposition.'' and will There is no feedback mechanism here to ensure that complaints are actually resolved. The complaintant should also be notified by Microsoft. If the resolution is unsatisfactory, then the complaintant would be prepared to take appropriate action. This should read ''Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC and the complaintant of the nature of the complaint and its disposition.

9) Section IV.D.4.d states ''No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.''

This is completely unreasonable if the issue is a further proceeding involving this matter. If the TC finds out about illegal behavior, they should have a duty to report it and stand behind their claims.

Conclusions

The final judgement as it now stands will only make things worse for the following reasons.

1. After this suit is ended, there will be tremendous pressure to leave Microsoft alone and see if the judgement leads to a free market. If the judgement is a reasonable one, I would join in protesting actions against Microsoft.

2. The failures of this judgement mean that the illegal and unsportmanlike conduct of Microsoft will likely continue. Because the people who may see the evidence, i.e. the TCs, must keep silent, we will have to wait until great harm is done before we will realize it.

3. That means real competition is less likely to get its foot in the door and offer real chice to the public. This is what really drives me. I think that if Microsoft wins a fair fight in the marketplace, then we are all better off. When they use their monopoly position to keep entrants out of the market, I think everyone but Microsoft loses. I wish Microsoft was prepared to fight a fair fight, but their history tells me they won't.

I really do think kudos are in order on this attempt at a Final Judgement. It is better than I expected in many ways. The breaking up of the company, as proposed at one time was too great a punishment and I am glad to see that solution is gone. In spite of my optimism at what I first heard about this agreement, a careful reading leads me to say that this proposed judgement is not good enough. Because of the significant failures I addressed above, this agreement will not serve to undo any past wrongs and I strongly believe it will only make things worse. With a few changes, it could serve the public interest and not unnecessarily impinge on the rights of a great American corporation. If the only choices are to take the Proposed Final Judgement as is, or reject it, I say you must reject it.

Respectfully submitted on January 28, 2002

Ralph Green, Jr.

MTC–00028003—0005

MTC–00028004

From: Mike Byrns
To: Microsoft ATR
Date: 1/28/02 12:54pm
Subject: Microsoft Settlement

Which of Microsoft's competitors has even expressed an interest in undertaking the gargantuan task that is writing a desktop operating system that could compete with Windows XP? I think we must discount the tiny startups like Be, Inc. since they are no more positioned to compete with Microsoft anymore than Tucker or Rosen Motors was positioned to compete with GM. Both had superior, innovative products but were just not realistically positioned to compete with GM. Face it, there is just as much barrier to entry into any major market as there is into desktop operating systems if you are not already a megacorp.

I think the whole scope of the ''market'' that Microsoft has been found to be monopolizing has been carefully crafted to make them the the only player. That scope makes Intel a monopolist in that market too and by the same token Apple a monopolist in the Motorola-based PC market. Look at some of the dirty tricks Intel has pulled vs. AMD and how Apple displayed undeniable market control in the Motorola-based PC market— it allowed Mac clone vendors to exist and then immediately when Jobs came on board, it canceled all their licenses and put them all out of business.

To me, the market is for ''personal computing devices'' not just Intel-based PCs. It should have included Apple and Palm as well. For this reason I think the case has been fundamentally flawed from the start and I think it's whole reason for being is too. I don't think there would be a case if it weren't for competitors in other markets (Oracle, AOL, SUN) where Microsoft cannot remotely be considered a monopoly (more like a struggling underdog!) playing protectionist politics. Not one of those companies has ever made even the slightest indication of intent to create a full-featured desktop operating system for Intel-based personal computers.

Their only intent in their friend of the court activity is to get back at Microsoft for competing with THEM in their near-monopoly franchises.

If you look at it from that perspective then they are even more anti-competitive than Microsoft and certainly more opportunistic.

The bottom line: Settle this. It was never in the public interest. You've already spent too much of my tax dollars playing marionette for billion dollar Microsoft competitors.

Mike Byrns

MTC–00028005

From: Paul Staudenmeier
To: Microsoft ATR
Date: 1/28/02 12:54pm
Subject: Microsoft settlement
692 Raven Road
Wayne, PA 19087–2329
January 25, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between the US Department of Justice and Microsoft in the antitrust case. Firstly, I do not agree with a lawsuit being brought against Microsoft in the first place. Microsoft is not a monopoly, as they have never tried to deliver poor quality goods at inflated prices. They have at times employed tough marketing tactics, but that is by no means a crime in our capitalist society. In fact, I would say it is often the only way to be successful, let alone survive, in our free enterprise system. Microsoft spent huge amounts of time and money to develop excellent products and services. But rather than being allowed to enjoy the fruits of their labor, Microsoft is now forced in one term of the settlement to disclose interfaces that are internal to Windows'' operating system products. This seems to violate their intellectual property rights. I hope the settlement goes through anyway because I think our IT sector and economy cannot afford further litigation. We need our strongest assets innovating and trying to grow. I know many others echo my opinion that I work and live with. I hope your office takes a firm stance against those who want to drag the suit on still longer, and instead strongly supports the implementation of the settlement.

Sincerely,

Paul Staudenmeier

cc: Senator Rick Santorum

MTC–00028006

From: bob becker
To: Microsoft ATR
Date: 1/28/02 12:54pm
Subject: Microsoft Settlement

To Whom it May Concern:

The proposed remedy for the Microsoft anti-trust case is a bad idea. It does nothing to ensure that Microsoft won't continue to force its standards and use of its products by every possible means.

Bob Becker
CC:becker@primate.wsic.edu@inetgw

MTC–00028007

From: James Houston
To: Microsoft ATR
Date: 1/28/02 12:55pm
Subject: Microsoft Settlement

I hope you can settle this suit ASAP. It has gone on to long and continued litigation is harmful to our economy, due to the disruptions in the software industry. Microsoft is guilty of only trying to put the best product on the market. I've been a software user for over 20 years now and have never felt I was forced to use only a Microsoft version of a program. I have tried several others over the years and have always returned to Microsoft versions, because they are better. Would you want to be forced to buy a KIA vs: a Toyota?. Netscape was a big thing. I tried it for two years and the switched back to MSN. I use earthlink as my browser and not MSN's browser. This was a conscious decision and executed in a free market. I did not fell forced to use MSN's browser. Did breaking up AT&T really help us? We don't know where we are getting our long distance service most of the time. And rates for LD phone service?? You could write another book about that. Why don't you devote your efforts to clarifying the up and down fluctuations of the oil and gas market? That would be something the consumer would really be interested in. These state attorney generals are just looking for political headlines so they can be considered for state governors jobs. What is the average consumer really going to get out of a settlement penalizing Microsoft? Look at the Ag'S track records. How many governors were previously AG's?

Please give us a break and end this Microsoft ''witch hunt'' now.

James M. Houston
jmhouston@earthlilnk.net
CC:Diane Feinstein,Barbara Boxer

MTC–00028008

From: v d
To: Microsoft ATR
Date: 1/28/02 12:55pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally, I oppose the proposed resolution in the MS case, better know as the Proposed Final Judgment. Over and above the usual economic risks presented by an unchecked monopolist—rising prices and monochromatic innovation the nations computer infrastructure will be increasingly vulnerable to attack if a single software system predominates.

Obviously I am referring to Microsoft.

Suppose that 80 or 90percent of the world's grain supply came from a single variety of corns. We would be faced with the unacceptable risk that some single disease, might wipe out an enormous portion of our food supply. Having only one kind of operating system or one kind of browser would make it terribly easier for saboteurs to bring the entire Internet to its knees.

For one entity, such as Microsoft, to control 80 to 90 percent of the market for PC operating systems, Internet browsers, e-mail readers, and office productivity software is clearly a significant security risk. To then allow that monopoly to actively attempt to drive out its remaining competition would hardly be in the public interest. Diversity is the key in producing economic prosperity and improving the society as a whole.

It's now up to you, Judge Kollar-Kotally, to decide whether the proposed settlement between Microsoft and the DoJ is a correct and just solution. However from where I sit, it contains too many loopholes to drastically effect Microsoft's behavior, much less bring about a certain kind of diversity which would enhance our security.

Kind Regards,
Eddie Ortiz
601 Kilpatrick Street
Vallejo, CA 94589

MTC–00028009

From: JLLIZANO@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:56pm
Subject: Microsoft Settlement

I agree with it because it is for the best interest of the American people who use Microsoft products.

Juanita L. Lizano
CC:fin@mobilizationoffice.com@inetgw

MTC–00028010

From: Richard Griest
To: Microsoft ATR
Date: 1/28/02 12:59pm
Subject: Microsoft Settlement
The Honorable Colleen Kollar Kotelly
U.S. District Judge
RE: U.S. DOJ /Microsoft Settlement

Your Honor:

The remedy proposed by the Department of Justice (DOJ) brings to mind the Oct. 22nd statement of the SEC chairman Harvey Pitt, ''the SEC would henceforth be a kindler and gentler place for accountants. We all know what a disaster this attitude has resulted in, the Enron scandal. That DOJ would accept the settlement it has, shows that either they don't understand the impact software has in a modern economy or they don't understand the way that Microsoft exerts a negative influence as a monopolist. This settlement is definitely not in the public interest. I use software everyday on my job, as a controls engineer, in factory automation. Over the past two decades I have seen the software get more complex by an order of magnitude, requiring faster and faster computers just break even, with little increase in accomplishment. Increasingly you spend more time getting your operating systems and interfaces to work than you do actually writing the ladder logic that controls the motions and cycles of the factory equipment.

Personally, I feel the disclosure requirements required by Microsoft so that third parties can interface with Windows should be identical to that required by U.S. patent office. In the case of patents, if you don't publicly disclose enough information so that anyone skilled in the art can replicate your invention (interface with it in this case), your patent is invalidated.

Because it is a monopoly, a Microsoft copyright has the same effect as a patent, in preventing other people from entering the market. Forcing Microsoft to come up with a version of Office that would run on Linix as nine states who refused the DOJ settlement are requesting, still doesn't solve the problem. The real dollars are spent buying the Office product not in buying the Windows operating system. So you save $200-$300 by using Linix instead of Windows XP, you still have to fork over $500-$1000 to get Microso ft's Office for Linix.

In addition, there should be an anti-churning provision in the remedy. We are all familiar with churning in the stock market where your broker buys and sells stocks solely for the purpose of gaining commissions. This is exactly what Microsoft does when it brings out a new version of Windows and forces everyone to upgrade. To prevent this, the court should allow only two versions of Windows to be copywrighted at any one time, a business version and a consumer version. When a new version is brought out, all previous versions would revert to the public domain.

One of the benefits of allowing a monopoly is the standardization that it can bring. With Microsoft having so many different versions of Windows the standardization is gone. This is true both from an operator standpoint and from a software standpoint as many programs will only run on one version of Windows.

Finally let me detail two instances of fraud on Microsoft's part. The first envolves the removing of spelling check from the Internet Explorer 5 browser with Outlook Express.

When I downloaded I.E. 5 for free circa 4/28/99 it came with Outlook Express 5 version 5.00.2314.1300 for Windows 95. Under the tools menu the spelling check was a very useful feature for catching errors in you email. Recently I purchased a Dell Inspiron 3800 laptop that came with Windows 2000 and Outlook Express 5.00.2919.6700 which has the spelling check feature disabled.

In any other business this would be called bait and switch. Just to call up and ask the software support people at Dell about a Microsoft problem like this they want $29 for each question asked. Microsoft refers you to the OEM you bought the computer from. Now that they have browser dominance Microsoft wants you to fork over $500 for Office to get the spell checker you used to get for free. And with a Justice Department that ''hears no evil'', ''sees no evil'' and ''speaks no evil'' they get away with it.

The second instance of fraud involves the removal of QBasic from Windows 200 0. If a person goes to a car showroom and sees an engine listed on the sticker, buys the car and then subsequently finds out it has no engine, he would have little trouble in sending that dealer to jail. Yet when Microsoft does the same thing the DOJ just looks the other way.

The contents of the help file is the sofware equivalent to an automobile window sticker.

The help file for Windows 2000 clearly shows that QBasic is included as part of the product.

When you inquire the Microsoft knowldge base as to why QBasic isn't on your CD rom it suggests copying it from an NT CD rom. In as much as not all people with Windows 2000 have legally purchased Windows NT, Microsoft is clearly guilty of conspiracy to get people to violate the copyright act by making these suggestions.

In as much as DOJ's knowledge of computers seems limited, let me elaborate on the significance of leaving out QBasic. A computer operating system such as Windows 2000 can do nothing towards solving problems, which is the reason most computers are purchased. Without QBasic or some other additional software your computer is a $3000 piece of junk. Deleting QBasic is another example of Microsoft's bait and switch. QBasic was part of Windows NT, and it says right on the Windows 2000 boot up screen ''based on Windows NT'' Yet QBasic is gone. What Microsoft is doing here is described in the Wall Street Journal article ''Technology Grows Up'' by Walter S. Mossberg 10/25/01 pg B1 ''On the software side a similar consolidation and drying up of innovation and competition has taken place ....There are two main reasons for the demise of boxed software. First, Microsoft has become a brutal monopolist in the key software categories squeezaing out competitors.'' (pardon the spelling mistakes, Microsoft took my spell checker away) So now you have to purchase Microsoft's Visual C boxed software if you want to write some code to solve even the simplest of problems, like you can on a programable calculator.

Let me close by saying that it took extraordinary effort to locate the address to send these comments to even though I have been looking for months. I contacted Sun, several attorney generals offices, and my local newspaper's office. I find it significant that neither www.pcmag.com now www.pcworld.com felt comfortable posting the address on their web sites.

This kind of fear only a monopolist commands. Something needs to be done.

Sincerely,
Richard M. Griest
Nashville, TN
CC:bob.clement@mail.house.gov@inetgw

MTC–00028011

From: donlstev@cs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:56pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse: Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Don Stevens
5511 20th Street Lubbock, TX 79407–2005

MTC–00028012

From: LJ Sweet
To: Microsoft ATR
Date: 1/28/02 12:58pm
Subject: Law suit

Stop meddling in the competition between competitors. This is not for the government to decide this should be settled by the consumer let them use the soft wear that works the best and costs the least. Let AOL and netscape make a better product.

Stop whining.

Drop the law suits

MTC–00028013

From: E G
To: Microsoft ATR
Date: 1/28/02 12:59pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I object to the so-called Proposed Final Judgment in the Microsoft case.

As every one knows, Microsoft continues to violate anti-trust laws set in place many years ago. The Proposed Final Judgment goes against all logic. Previously the US Court, has found Microsoft guilty of breaking the anti-trust laws. However, under the proposed final settlement, MS is permitted to retain most of its profits gained through their illegal activities. Subsequently, the PFJ will not compensate parties injured by the Microsoft debacle.

Moving forward, the PFJ does not take into account all Microsoft gains made through its illegal maneuverings. The final settlement basically acknowledges the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? Do you think the public will be in favor of such a move?

I can assure you that the message is clear and simple. The Proposed Final Judgment encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. I submit to you my objection to this Proposed Final Judgment.

Respectfully,
Gigi Ortiz
601 Kilpatrick Street
Vallejo, CA 94589

MTC–00028014

From: coonhnd@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:56pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Carol Morrell
1412 Glen Echo Drive
Huntingdon Valley, PA 19006

MTC–00028015

From: coonhnd@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:56pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you. Sincerely, Carol Morrell 1412 Glen Echo Drive Huntingdon Valley, PA 19006

MTC–00028016

From: Joseph Lin
To: Microsoft ATR
Date: 1/28/02 1:00pm
Subject: Microsoft Settlement

Judge Kollar-Kotally,

I feel the Microsoft settlement before you has serious flaws, and I urge you to reject it. Every court has agreed that Microsoft has used its monopoly powers to reap unjust profits, yet the company is now being allowed to retain those.

Furthermore, there is no provision to ensure that their anti-competitive won't continue.

Respectfully,
Joe Lin

MTC–00028017

From: Adrian M. Fitzpatrick
To: Microsoft ATR
Date: 1/28/02 1:01pm
Subject: Microsoft Settlement

I urge you to accept the Microsoft Settlement as it now is in the best interest of the public to do so. I think to drag this out

longer will just cost more in litigation fees which will ultimately be paid for by the consumer. Thank You

MTC–00028018

From: biokemist@altavista.com@inetgw
To: Microsoft ATR
Date: 1/28/02 12:58pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Dr.Philip Sekar
Box 29729
Thornton, CO 80229–0729

MTC–00028019

From: Brian Gregory (EWU)
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:01pm
Subject: Microsoft settlement

I am an electrical engineer working at a telecom research division in Boulder, CO. I am in favor of ruling as strongly as possible —against— Microsoft in the current case. The only step I'd not advocate is breaking the company up. I find Microsoft's behavior in the matters being investigated if not illegal—which I'm not qualified to judge—reprehensible, immoral and absolutely un-American. They're every bit as manipulative and predatory while hiding behind a panoply of legalisms as the worst stories of turn-of-the-century rail barons ever boasted. Microsoft is clearly an abusive company and near-monopoly. If Microsoft is not reined in, it could continue to foster and force upon an unsuspecting public, mediocre products that have not been properly subjected to the scrutiny and competition of open markets. The result will be a country ill prepared to cope with the 21st-century information age; prone to computer virus infection and poor software reliability.

Punish Microsoft! Share with them some of our pain, please.

Sincerely,
Brian Gregory
Boulder, CO
303.664.1085
brian—gregory@netzero.net

P.S.: Some history

In this case, the DoJ was accepting public input until Jan 28th on the DoJ vs Microsoft case. The DoJ theoretically must weigh public opinion before making their final decision.

CC:'Tom Jones','Kevin Gregory','Home''

MTC–00028020

From: Don Parry
To: Microsoft ATR
Date: 1/28/02 1:02pm
Subject: Microsoft Settlement

To whom it may concern, my wife Carolyn and I wholeheartedly support the Microsoft settlement as presently constituted. Thank You,

Donald S. Parry
Carolyn S. Parry
1178 Wood Duck Hollow
Jacksonville, Fl., 32259–2932
904–287–7720
dsparry@prodigy.net

MTC–00028021

From: N B
To: Microsoft ATR
Date: 1/28/02 1:03pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am object to the final settlement in the MS court case. Not only does this go against the findings by the U.S. Court of Appeals but, in facts allows MS to go unpunished for past wrong doings.

The Proposed Final Judgment allows MS to continue its predatory practices. My main argument entails the preservation of healthy competition. The way to accomplish such a task is by promoting diversity with in the business sector. For a single entity, such as MS, to control 80 to 90 percent of the market for PC operating systems, e-mail readers, and office productivity software (which undoubtedly can spread viruses) is clearly a significant risk to security. To then allow that monopoly to actively attempt to drive out its remaining competition would hardly be in the public interest.

Therefore, I submit to you that the Proposed Final Judgment will not solve the Microsoft issue.

ALL THE BEST,
Bernie Bonefacio
951 2nd Ave
San Mateo, CA 94401

MTC–00028022

From: Rhodes, Vaughn
To: Microsoft ATR
Date: 1/28/02 1:04pm
Subject: Microsoft Settlement

Dear DOJ,

I am the former product manager at Compaq Computer Corporation who was responsible for the Compaq/AOL deal in 1995. I worked for Rod Schrock at the time, who worked for John Rose. You used several of my email messages in your case against Microsoft. Name: Vaughn Rhodes.

I HIGHLY object to the proposed settlement with Microsoft. I'll go a step further: I have a hard time believing that it is even being proposed. It is a gross miscarriage of justice. I know because I was at the heart of the project at Compaq that resulted in Microsoft sending a letter of termination to Compaq.

Let me provide some background for you.

In 1995, I was placed in charge of defining Compaq's consumer online strategy. I proposed a relationship with America Online, one which was great for America Online, and even better for Compaq. It was worth HUNDREDS OF MILLIONS OF DOLLARS IN INCREMENTAL PROFIT to our business unit. The deal, in a nutshell, involved Compaq heavily promoting the AOL service, in exchance for AOL giving Compaq a large revenue share.

Microsoft heard about this forming relationship. They contacted us and asked that we work with them instead of AOL, to promote their new online service code-named Marvel (now known as MSN, the Microsoft Network). We responded the we would be happy to work with them, but we would expect them to pay us in a similar fashion to how AOL was to pay us.

Their response? I'll paraphrase: We are Microsoft. We own the customer, not you, Compaq. You Compaq have three choices:

1) Do the deal with Microsoft. We will pay you NOTHING, but we'll have a closer relationship, with various intangible benefits (wink wink lower price on the OS, etc.)

2) Cancel the deal and do it with nobody. We Microsoft are OK with that.

3) Do the deal with AOL. WARNING: IF YOU PURSUE THIS OPTION, WE WILL PUT YOU OUT OF BUSINESS.

Our team at Compaq reviewed the situation, and concluded that Microsoft must be bluffing. They couldn't do it, because it would be such a blatant violation of anti-trust laws.

We decided to proceed with the deal.

Shortly afterward, Microsoft sent us a letter telling us that we were in violation of their Windows Licence agreement, and we could no longer sell PCs with Windows installed. THEY WERE PUTTING US OUT OF BUSINESS!!!

Needless to say, we ended up having to redo the deal with AOL, dramatically watering it down and making it effectively into a nothing deal: no real benefit to AOL, no real benefit to Compaq.

If this kind of behavior is not a flagrant abuse of monopoly power, I don't know what is.

I would be glad to discuss this further with anyone from the DOJ.

Please contact me at your earliest convenience.

Thank you,
Vaughn Rhodes
Formerly Strategic Planning Manager (and Product Manger) at Compaq
Computer in Houston, TX
650–938–8587 (home)
650–279–6221 (cell)
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MTC–00028023

From: Michael McLay
To: Microsoft ATR
Date: 1/28/02 1:05pm
Subject: Microsoft Settlement

The comments on the Microsoft Settlement by Dan Kegel [1] highlight many reasons for handing down a swift and harsh punishment for Microsoft. There should be no negociating this settlement. They are at the mercy of the court and should suffer the conseqences of their actions. The following suggestion on the nature of the punishment has not been

proposed in any discussions I have seen to date.

I am concerned that the settlement talks with Microsoft have ignored the assignment of a financial penalty. Antitrust law allows for treble damages so the court has ample power to punish violators. An effective settlement must include a stiff financial penalty that is proportionate to the profits that Microsoft gained through their violations of the law. The abuse of monopoly power has resulted in many billions of dollars in windfall profits to the company. A fine of $20–30 billion would send a message that Microsoft will understand. It isn't excessive (it would be less than a year's profits) and wouldn't do excessive harm to the company's financial health (they have the cash to pay the fine immediately). Anything less will be a simple slap on the hands which they will ignore.

Awarding this money directly to those who where damaged by the abuses of Microsoft is not practical. Not everyone registers the purchase of the products involved and even if the fine were distributed the resulting award would only be a few dollars per person. A straight distribution of the fine would have no lasting outcome.

The judgement could leverage the fine against Microsoft to strengthen the punishment and benefit those who were harmed. This can be done by using the money to set up a foundation to fund open source software projects. This would result in a just solution that helps those who were damaged directly by Microsoft. Open source software is freely available to everyone, so everyone benefits equally. Open source software is also the one potential ''competitor'' that Microsoft still fears. A $20B trust fund that assigns matching grants to those who are willing to work for the public good would benefit everyone equally and potentially help restore competition to the software world. There are many open source organizations set up to help fund open source developers. Organizations such as the Free Software Foundation [2] and the Python Software Foundations [3] would be able to make significant progress in projects that otherwise only make progress through the voluntary efforts of motivated and highly skilled software developers. Imagine the good that would be had by funding 20 such organizations with a $1B trust fund. This remedy will do much to help restore the market balance, but it will not be sufficient if Microsoft continues to control the definition of standards.

The punishment must also require Microsoft to participate in the development and use of open and well documented standards. The Kerberose abuse is evidence of their intentions to subvert competition. The punishment must prevent them from further harming the market though the abuse of standards and secret interface definitions.

[1] http://www.kegel.com/remedy/

[2] http://www.fsf.org/

[3] http://www.python.org/psf/

MTC–00028024

From: Bart Locanthi
To: Microsoft ATR
Date: 1/28/02 1:06pm
Subject: Microsoft Settlement

A Better Settlement Proposal

Microsoft was found guilty of violating antitrust law. Microsoft has never abided by any previous findings or judgements beyond the narrowest definition of the letter. During the various legal proceedings, Microsoft continuously demonstrated its contempt for the law and its process. The proposed settlement is, more than anything else, a license for Microsoft to continue and extend its abusive behavior at the expense of the consumer and the industry. Accepting the settlement as is would be an outrage. There must be punishment for previous crimes. There must be compensation for the vast quantity of parties injured by these crimes. There must be consequence for continued, renewed, and new anti-competitive behaviors. And, there must be a mechanism to deter Microsoft from dragging out process, as has been their habit and intent, to outlast competitors, judges, and public attention.

It is with these points in mind that I suggest the following:

1) Require that Microsoft make public all file formats and APIs, past, present, and future, without charge, to anyone who asks. There can be no squirm room here, no hiding behind a supposed need for Microsoft to safeguard internal secrets. Microsoft has always used file formats and APIs as weapons to injure customers and competitors, and any loss of business advantage from this requirement would be a minimal and fair compensation to the world at large.

2) Implement a penalty schedule to force compliance of Item 1. For each file format or API not already published, a clock would start at the first request for it, and a fine imposed for every week said item it not made publicly available. This fine would increase geometrically: a weekly fine would start at $100,000 and be doubled and collected each week. The total cost of delay for four weeks would thus be $1,500,000, and for eight weeks it would be $25,500,000. The fines and penalty schedules for information requests would be independent—by dragging its feet, Microsoft could wind up paying several fines at varying penalty levels at the same time.

This geometric increase is essential, as it addresses the important issue of time, which Microsoft has always used as an ally. Any notion of these fines being ruinous is easily dispelled by two points:

1) all fines can be avoided by immediately complying with information requests, and

2) this is punishment, after all—Microsoft has no business asking for mercy, having always acted with brutality and bad faith in their dealings.

Information may not be witheld for reasons of presentability. Or, rather, if Microsoft cares to polish its presentation, or disentangle it from, say, strategic business information, there would be a known cost for delaying its publication. Again, there can be no excuse for non-compliance. Penalties must be exacted with the extreme prejudice justified by judicial findings and Microsoft's historical refusal to comply with the law.

It is important that fines be collected as they are incurred. There should be no incentive for Microsoft to delay compliance, or hope that by running up a huge total fine they might gain public sympathy and again escape punishment. On the contrary, delay of payment should be met by freezing of their assets and forced collection. There can be no fear of enforcing the law—after all, there is nothing that Microsoft makes that is essential to the economy. To the contrary, the economy has suffered long enough at the hands of Microsoft, and Microsoft needs to learn how to become a proper citizen. The hard way, if necessary.

Bart Locanthi
bart@truedisk.com
Beaverton, OR

MTC–00028025

From: Jay Chell
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:05pm
Subject: Microsoft Monopoly Settlement

I disagree with the current settlement plan. It will leave the fox in charge of the hen house. This settlement will cause the DOJ to visit this issue again when things once again get out of hand.

jay chell
Manager, Delegated Financial Audits
phone: 562–989–4455
fax: 562–989–5192
e-mail: jayc@scanhealthplan.com

MTC–00028026

From: Kenneth Olafson
To: Microsoft ATR
Date: 1/28/02 1:06pm
Subject: Microsoft Lawsuit

January 28, 2002
Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Since the filing of the Microsoft lawsuit by the Clinton Administration Department of Justice, I have tracked the case. I believe it was wrong to file the lawsuit and I am relieved that it is finally over. We do have the unfortunate situation with some renegade Attorney General's around the country, however. Please take the settlement and close the case We need to move forward with our technology investments and with new ideas and technology. We need this case behind us.

Sincerely,
F. Kenneth Olafson
Utah Coalition for Accountable Government

MTC–00028027

From: DJMaytag
To: Microsoft ATR
Date: 1/28/02 l:13pm
Subject: Microsoft Settlement

I have to take objection to this:

''59. The primary channel through which Microsoft distributes its operating systems is preinstallation on new PCs by OEMs. Because a PC can perform virtually no useful tasks without an operating system, OEMs consider it a commercial necessity to preinstall an operating system on nearly all of the PCs they sell. And because there is no viable competitive alternative to the Windows operating system for Intel-based computers, OEMs consider it a commercial

necessity to preinstall Windows on nearly all of their PCs. Both OEMs and Microsoft recognize that OEMs have no commercially viable substitute for Windows, and that they cannot preinstall Windows on their PCs without a license from Microsoft. For example:''

Look at today's PCs and try to buy a PC from Dell, HP with both Windows and Linux factory installed. You can't. You can get Linux in some places, mostly WinMe, but not both. The reason is MS plays a clever game. To use a boot loader, if you're a Windows licensee, you must use the MS loader. Then, if you read the MS Boot Manager license, you can only use it to load MS OSs, DOS, WindowsXX, Windows 2000. Otherwise you lose your Windows license. This explains why you cannot buy a dual boot Windows and a competing OS loaded at the factory. If and when the DOJ wins their case for good and winning means Dell or Compaq can install competing OS at the factory, MS will have to compete on merits. Today, they abuse their monopoly. See http://www.befaqs.com/mirror/classic-be/developers/bmessage/issue01.html for the full article:

Manufacturing Consent

by Jean-Louis Gass,e

Perhaps I should call this column ''Manufacturing Public Opinion,'' rather than ''Manufacturing Consent.'' The idea for it occurred to me as I read the opinion ''polls'' taken right after last Friday's announcement of the DOJ's proposed remedies in the MS anti-trust trial. The pollsters found that the majority (more than 60%) of the American public is opposed to the remedies proposed by Joel Klein's team at the DOJ, working with the attorneys general of 19 states. With more than 20% undecided, that leaves relatively few people supporting the DOJ's position. Vox populi, vox dei? Is the DOJ, which is supposed to fight for the people, out of touch with the public good? That's what the pollster-geist behind the probe would like us to believe. Far from me to suggest that this poll is unscientific. Au contraire. It represents the real science of manufacturing opinion, preferably by creating an avalanche effect. If most people are against breaking up Microsoft, it must be bad; therefore, I must join them, and the next poll might show even stronger disagreement with the DOJ. What's bad for Microsoft is bad for America.

Let's go back to December 1982. You poll consumers for what they want in a personal computers. What do you hear? I want a better, faster, cheaper Apple II, or ///, or PC, or CPM system (yes, these were still around at that time). A month later, you give public demonstrations of the Lisa. The same people now tell you that's what they want. B-b-b-b-but, you stutter, that's not what you said last month. Yes, no, I didn't know this existed.

In other words, the consumer had no words, no concept, to deal with what was unthinkable at the time but which suddenly became describable-and attractive- once seen and touched: a mouse, overlapping windows, a bitmapped screen, pull -down menus. I can only think and discuss what I have reference points for and, in general, I tend to describe the future in today's vocabulary. In this case, most PC users have only been exposed to Microsoft's lineage of operating systems. As a result, there are few reference points for thinking of life with more than one breed of operating system and applications.

Microsoft made sure that an alternative OS such as Be's, Linux, or FreeBSD couldn't be loaded next to Windows by PC OEMs. As a result, people have no data other than the Microsoft experience. They're told that some of the remedies would make the Windows system riskier and that applications might not work as well. We have something that works, the jack-booted thugs at the Justice Department want to make it less than what it is today, so why should I be in favor of breaking up Microsoft? Setting aside the caricature, the point remains: Microsoft's monopoly practices are the very reason why we haven't experienced what a truly competitive situation might be like. This is why the poll is so revealing of a certain kind of science in manipulating the political situation around the suit.

A Crack in the Wall

By Jean-Louis Gass,e

You're the CEO of a PC OEM, delivering some great news to Wall Street: ''In an effort to offer greater variety and performance to the customer, our factory now installs three operating systems on the hard disk—Windows, Linux, and the BeOS. The reaction has been spectacular. Customers love having a choice of OS, and the press—from John Dvorak in PC Magazine to John Markoff in the New York Times to Walt Mossberg in the Wall Street Journal—has heralded us for our bold move. This is a great step forward for the consumer and for the industry. Oh, and by the way, we lost $50 million since we no longer qualify for Windows rebates. But it's a sacrifice for the common good.''

You're now the ex-CEO of a PC OEM.

We know that the Windows rebate scheme exists—but what *is* it, exactly? And why are so many OEMs afraid of losing it? Windows pricing practices are closely guarded secrets, so we don't know exactly how the rebate is structured, but we can assume that it works something like this: The total cost of a Windows license consists of a base price offset by a rebate. The base price is set; the rebate is flexible, and contingent on the ''dedication'' of the licensee. That is, the more you ''advertise'' the product—through prominent positioning, expanded shelf space, and so on—the greater your rebate. This quid pro quo rebate looks innocent enough, and can be a useful tool in a competitive market.

But when you're running a monopoly—and when it comes to out-of-the-box, consumer-grade PC clones, Microsoft *is* a monopoly—''prominent positioning'' and ''expanded shelf space'' have little meaning. Microsoft has no interest in getting ''more'' footage on the OS shelf, because they've already got it all. What interests them—the only useful advantage they can ''buy'' (to be kind) with their rebate—is to ensure that no one else will get any. So how is ''dedication'' measured? A real-life example: We've been working with a PC OEM that graciously—and bravely—decided to load the BeOS on certain configurations in its product line. However, there's a twist in their definition of ''loading.'' When the customer takes the machine home and starts it up for the first time, the Microsoft boot manager appears—but the BeOS is nowhere in sight. It seems the OEM interpreted Microsoft's licensing provisions to mean that the boot manager could not be modified to display non -Microsoft systems. Furthermore, the icon for the BeOS launcher—a program that lets the user shut down Windows and launch the BeOS—doesn't appear on the Windows desktop; again, the license agreement prohibits the display of ''unapproved'' icons. To boot the ''loaded'' BeOS, the customer must read the documentation, fish a floppy from the box and finish the installation. Clever.

One suspects that Linux suffers from the same fealty to Microsoft's licensing strictures. Linux is the culmination of 30 years of development by the Unix community. Surely an OEM can't complain about Linux's quality or its price: It's good, and it's free. If Microsoft licensees are as free to choose as Microsoft claims they are, why isn't Linux factory installed on *any* PC? If you randomly purchase 1,000 PC clones, how many have any OS other than Windows loaded at the factory? Zero. But what about all these announcements from companies such as IBM, Dell, and others? A few URLs are supplied here for your convenience:

<http://www.dell.com/products/workstat/ISV/linux.htm>

<http://www.compaq.com/isp/news—events/index.html>

<http://www.compaq.com/newsroom/pr/1998/wall1298a.html>

<http://www.hp.com/pressrel/jan99/27jan99.htm>

<http://www.hp.com/pressrel/jan99/27jan99b.htm>

<http://www.software.ibm.com/data/db2/linux/>

If you parse the statements, Linux is offered and supported on servers, not on PCs. Another IBM story is that installation is to be performed by the reseller on some PCs or laptops, not by IBM at the factory. As an industry insider gently explained to me, Microsoft abides by a very simple principle: No cracks in the wall. Otherwise, water will seep in and sooner or later the masonry will crumble.

Guarding against even the smallest crack is important to Microsoft, because it prevents a competitor from taking advantage of a phenomenon that economists call the ''network effect.'' The ''network effect'' manifests itself as an exponential increase in the value of a product or service when more people use it. Applied to a computer operating system, the effect works like this: As more people install and use an OS, the demand for applications increases. Developers respond to the demand, which attracts the attention of OEMs and resellers, who promote the OS in order to sell the apps, which attracts more customers... The key to all this is distribution and visibility — in other words, ''shelf space.''

Bill Gates understands the network effect well—he once quoted it to me, chapter and verse. In the Fall of 1983, when I was still running Apple France, I met with Bill in Paris and we got into a conversation regarding the market share limitations of DOS. No problem, he said, with the wide

distribution we enjoy, we'll get the attention of third parties, and the marketplace will fix these shortcomings.

This puts statements by senior Microsoft executive Paul Maritz in perspective. In reaction to my claim that Be wants to co-exist with Microsoft, Mr. Maritz said (as quoted by Joseph Nocera in Fortune Magazine): ''[Gassee is] articulating his strategy for entry into the operating system marketplace. But on the other hand, I know that Be has built a full-featured operating system, so what I believe he's doing here is outlining his strategy about how he will initially co-exist with Windows and, over time, attract more applications to his platform.''

Mr. Nocera interpreted Mr. Maritz's interpretation thus: ''In other words, Gassee's spiel is little more than a trick intended to lull Microsoft. But Microsoft isn't so easily fooled! Microsoft will never ignore a potential threat to its Windows fortress, no matter how slight. The software giant may be in the middle of an antitrust trial, but—as Andy Grove says—only the paranoid survive...''

[The entire article, part of a court house diary, can be found at <http://www.pathfinder.com/fortune/1999/O3/O1/mic3.html>.]

Industry sages such as T.J. Rodgers, the CEO of Cypress Semiconductors, as well as venture capitalists aligned with Microsoft, criticize the Department of Justice's intervention in the new Pax Romana we're supposed to enjoy under Microsoft's tutelage. Don't compete in court, compete in the marketplace, they say. I'm a free marketer myself; I left a statist environment for the level playing field created by the rule of law in this, my adopted country. A free market is *exactly* what we want. One where a PC OEM isn't threatened by financial death for daring to offer operating systems that compete with the Windows monopoly.

We started with a thought experiment. We end with a real-life offer for any PC OEM that's willing to challenge the monopoly: Load the BeOS on the hard disk so the user can see it when the computer is first booted, and the license is free. Help us put a crack in the wall.

Is the Customer King?

By Jean-Louis Gass,e

One would hope to answer this question in the affirmative, but before I elaborate, some follow-up to last week's column, ''A Crack In The Wall,'' along with our thanks.

Our offer of free copies of the BeOS to OEMs willing to load our OS ''at the factory,'' on the hard disk of PCs they sell, got a tremendous response. We appreciate the interest in our product and we intend to do our best to honor the hospitality extended to us. Watch this space or, more generally, www.be.com, for more details. For a number of contractual reasons, this offer applies only in the US and Canada, not to other countries in the Americas or in Asia. For Europe, please contact our VP Europe, Jean Calmon, jcalmon@beeurope.com, for country-by-country details.

As we collect data from the flow of responses, an interesting but not unexpected picture emerges. The OEMs expressing interest are the ones who cannot realistically be ''fined'' by Microsoft—that is, lose their Windows rebate. If you pay the maximum OEM price for Windows, or close to it, you won't be afraid to load Linux or the BeOS on your customers'' hard drives, especially if you don't have to account to Wall Street for your actions. If, on the other hand, your exposure is measured in millions of dollars per quarter, and you are the CEO of a publicly traded company, you'll load Windows and nothing but Windows on the PCs you sell. More precisely, you might load Linux as the OS engine on hardware other than PC servers. In any event, this represents only a preliminary look at the returns—it's too early to draw definite conclusions.

Now, let's turn to the customer in the title of this column. We hear that the Windows monopoly is good for customers—it's a standard, there's no confusion, users can rely on a trusted foundation for their work, and so on. But how can this be if there are so many obstacles placed in the way of a customer's even seeing that (s)he has some (limited) choices? I'll take one example of what I mean by choices. One overseas OEM announced with great fanfare that it would offer some configurations in its PC line with a dual-boot arrangement: Windows 98 for mainstream applications and the BeOS for its natural media uses. Great—exactly what we wanted—the specialized media OS peacefully coexisting with the mainstream platform. Well, not exactly. If you take the machine out of the box and boot it, the BeOS is nowhere to be seen—the computer boots only Windows 98. If you read the documentation carefully, you'll find out how to ''unhide'' the BeOS. Then, through a complicated sequence, you'll finally get to the dual-boot situation. Should the OEM be criticized for this state of affairs? Again, not MTC.00028027—0005 exactly. It appears that the fear of losing Windows rebates intervened to prevent the customer from being offered a genuine dual-boot system. In fact, as we verified for ourselves, the steps the customer must perform are so complicated that it's much easier just to do the simple partition and BeOS installation possible with our retail product, complete with a BeOS Launcher icon on the Windows desktop.

Wouldn't one think that Microsoft behaves, in effect, as if the PC belonged to it, rather than to the OEM or to the customer? It's is hard to see how the customer and, more generally, the industry, benefit if one company decides what's good for all, and what the customer should see or not see.

A Crack in the Wall: Part II

By Jean-Louis Gass,e

Some time ago, I wrote a semi-fictional column regarding the plight of the CEO of a PC clone company (''A Crack in the Wall'' <http://www.be.com/aboutbe/thebenewsletter/volume—III/Issue8.html>). At a quarterly business review for Wall Street analysts, the CEO extolled his vision: Giving buyers more OS choices was A Good Thing. Everything went well—customers loved having Linux and the BeOS installed on their system at the factory, next to the classic Windows. The out-of-the-box experience was great, the options at boot time were easily understood and, since customers could delete the system(s) they didn't want to keep, this was the real thing, freedom of choice—without waste. The PC magazines loved the move, we reaped all the Best Of... awards and generated good will and oodles of free publicity.

Ah, another thing, the CEO continued. The company lost $50 million dollars this quarter because Microsoft fined us for offering other operating systems. Their contract with us gives them the right to increase the price we effectively pay for Windows if we offer other operating systems. Microsoft even invoked an obscure—and confidential—clause in their licensing agreement and grumbled that we had no right to use their boot manager, or any DOS code, to load other operating systems. It's OK for the customer to install a boot manager him/herself, but you, the PC OEM shouldn't. As a result, they claim we shouldn't offer the of out-of-the-box experience I mentioned earlier. Some customer assembly is required. At this stage, the CEO has lost his audience—and his job.

As I said at the beginning, this is a concoction. But testimony is sometimes tastier than what amateur columnists can dream up. What we have before us is a deposition by Garry Norris, an IBM executive and a government witness in the antitrust suit against Microsoft. In his testimony, Garry Norris describes how Microsoft quintupled the Windows royalties it demanded from IBM, to $220 million. There is some dispute about the exact numbers, but you get the idea.

How the media treated this is noteworthy. One title read ''IBM breaks ranks...'' This appears to reflect a commonly held belief: PC OEMs didn't want to break a code of silence for fear of some kind of retaliation. In private, PC OEMs ''share their thoughts'' quite freely. They appear to resent being treated as vassals by Microsoft in its use or abuse of its desktop OS monopoly. In public, they have to take care of business. Who can blame them? Business is competitive enough as it is. Why risk a falling out with Microsoft that will result in a competitive disadvantage? As far as we know, there is no Antitrust Witness Protection Program, so the tension between self -interest and the calculus of common good is understandable. This leads to another thought: Why IBM? Is this an example of the altruism of an enlightened corporation, or have they decided they no longer have anything to lose in the PC business, as various rumors have intimated in the past few months? There has been speculation—and denials—that IBM wanted out of the PC business, because it has become too commoditized and it's been impossible for them to make a profit. Some have even read something of that nature in their multi-year, multibillion dollar agreement with Dell. Whatever IBM's reason for breaking the code of silence, their testimony could make this phase of the trial as surprise-filled as the first Three things you need to remember about me:

1. Alright, alright... I'm a DJ,

2. I changed my mind, OK? (see http://www.djmaytag.com/name/),

3. In any case, I'm STILL not a washer and dryer repairman, either.

http://www.djmaytag.com/ <- Home page

http://www.djmaytag.com/303/ <- The TB-303 re-release page

Fortune cookie: Time is nature's way of making sure that everything doesn't happen at once.

MTC–00028028

From: Patterson
To: Microsoft ATR
Date: 1/28/02 1:08pm
Subject: Microsoft Settlement
VIA E-MAIL
The Honorable Colleen Kollar-Kotelly
United States District Court for the District of Washington, DC
c/o United States Department of Justice
Washington, DC

Dear Judge Kollar-Kotelly:

For the following reasons, I feel compelled to add my voice to those arguing AGAINST Your Honor approving of the Proposed Final Judgment (the ''PFJ'') entered into by the United States of America and several of the States as plaintiffs and the Microsoft Corp. as defendant (the ''Defendant'' or ''Microsoft'') in the antitrust case known as U.S. vs. Microsoft Corp. Judge Thomas Penfield Jackson found Microsoft guilty of being a monopoly and of abusing its monopoly powers, among other things, and he ordered that Microsoft be broken up into a number of separate companies, as well as other remedies. On appeal, the U.S. Court of Appeals for the DC Circuit, in a 7–0 decision, overturned several of Judge Jackson's rulings and vacated his proposed remedies, but the Court of Appeals let one of Judge Jackson's core rulings stand: Microsoft possesses monopoly power and unlawfully used that power to protect its monopoly. Both Microsoft's request to the Court of Appeals for a rehearing and its petition to the United States Supreme Court for certiorari have been denied, so nothing changes the fact that Microsoft is a monopoly and used its monopoly power unlawfully. Now the question arises: What are the proper remedies in the case in question? The quick answer is that the proper remedies are NOT those set forth in the PFJ. Notwithstanding The Honorable Attorney General's pre-nomination pledge not to go ''too easy'' on Microsoft, the U.S. (and some of the States) and the Defendant have entered into a ''sweetheart deal'' by entering into the PFJ. Numerous financial analysts and computer industry experts agree that, under the terms of the PFJ, the Defendant would conduct ''business as usual'' should Your Honor approve the PFJ. Too often, we forget the purpose of remedies. Sure, there should be a rehabilitative component— i.e., the remedies to be applied should mandate or at least encourage the wrong-doer to reform its wrongful ways. But that fails to see the forest for the trees. There should also be a punitive component—i.e., the remedies applied should also mete out a punishment for the injurious conduct that the wrong-doer engaged in, if only BECAUSE there was, in fact, wrongful conduct and concomitant harm.

In the situation before Your Honor, there is no doubt that Microsoft, the defendant, is in the wrong (it is a monopoly) and has engaged in wrongful conduct (it used its monopoly powers to harm the public). The PFJ's terms are simply too generous to the Defendant and provide few rehabilitative provisions and little if any punishment.

Right now, being the de facto monopoly in desktop operating systems, Microsoft simply has no competition. The same could be said of Microsoft's network operating system (at least for the Intel platform). Similarly, Microsoft is the de facto monopoly in desktop application software suites (i.e., its Office suite comprised of word processor, spreadsheet, presentations, database, personal information manager, etc., in various combinations and price levels). The situation will only get worse and Microsoft's monopoly become even greater if the powers that be allow Microsoft to implement its .Net and web services strategies. And that is what the PFJ allows: Microsoft will make some minor— mainly cosmetic concessions—to its desktop operating system, but the PFJ leaves Microsoft's monopolistic business practices virtually untouched. With all due respect, Your Honor should also review and take into consideration the Defendant's past conduct when the U.S. entered into a settlement with it and tried to rehabilitate positively its business practices: Microsoft flouted the spirit (if not the actual provisions) of previous formal or informal settlements with the U.S. and never really changed its wrongful business practices. Out of Microsoft's failures to rehabilitate its business practices arose the current antitrust litigation. Looking at the situation from another angle, Microsoft had its opportunity to ''go straight'' and consciously did not. (For some reason, analogies to the criminal side of jurisprudence keep coming unbidden to mind.) The Defendant was on probation, if you will, and then proceeded to openly violate probation. To add insult to injury, the Defendant as probationer is unrepentant about its continued wrongful behavior and violation of probation. Has the Defendant slowed its openly-stated monopolistic strategies? No! Microsoft rushed to market it's newest desktop operating system, Windows XP, and is rushing to market its software that implements its .Net strategy. In so doing, the Defendant apparently hopes that it can ''beat the system'' by relying upon and cynically utilizing the slow pace of our great system of justice.

Now is not the time to go easy on the Defendant, Your Honor. This is NOT a case of a first offender, Your Honor, where some leniency may be in order. Just as I am confident that Your Honor would NOT go easy on an unrepetenant repeat criminal offender, Your Honor should NOT go easy on the Defendant. In truth, however, the only competition Microsoft has is its own internal divisions. The network operating systems division vs. the desktop operating system division vs. the application suite division vs. the network operating system support software, etc., etc. A break-up of Microsoft is a perfect remedy in that regard. A break-up of Microsoft along product lines provides an appropriate remedy with both rehabilitative AND punitive components. I am sure that Your Honor is considering all possible options in fashioning an appropriate remedy. I am also sure that any remedy Your Honor ultimately imposes will be well-considered and carefully crafted. I cannot know what the exact terms of Your Honor's ultimate remedy will be, but I do know one thing: The PFJ comes nowhere near constituting an adequate remedy for Microsoft's sustained and egregious monopolistic conduct in the case at hand.

For the above reasons, as well as those voiced by others, I respectfully implore Your Honor NOT to approve the PFJ in the U.S. vs. Microsoft Corp. case.

Respectfully yours,
Bob Patterson

MTC–00028029

From: James VanAlstine
To: Microsoft ATR
Date: 1/28/02 1:08pm
Subject: Kill Microsoft

Throughout its existence, Microsoft has been stealing and bastardizing the best ideas of true information technology innovators. It repeatedly, and still, uses its size and aggressive nature to suppress competition ans stifle real innovation.

Only an aggressive break-up, heavy fines, and constant future watch-dogging of this monster monopoly will allow the best and brightest of technology innovators to thrive and keep the US at the top of the world's high-tech economy.

Shamefully, the Bush-era Justice Department has lost what little spine the Clinton era Justice Department had and is now offering Microsoft a sugar coated settlement.

It's a shame we will one day all be sorry for.

MTC–00028030

From: Tom Laming
To: Microsoft ATR
Date: 1/28/02 1:07pm
Subject: Microsoft Settlement

Please see the attached letter.

Thank you,
Tom Laming
P.O. Box 918
Shawnee Mission, KS 66201–0918
January 15, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I am writing to voice my support for settling the Microsoft case. Like many people, I feel that the matter has run its course, and should be resolved as quickly as possible at this point. While I understand why people working in the information technology sector want different programs and operating systems to choose from, average consumers like myself are more interested in products that integrate seamlessly. Continued legal action against Microsoft inhibits their ability to develop products that integrate simply enough for consumers to use without hassle.

Please settle the antitrust case against Microsoft as soon as possible. As a consumer, I support their products and would them to be able to focus on developing their business again.

Sincerely,

Tom Laming

MTC–00028031

From: Steven White
To: Microsoft ATR
Date: 1/28/02 1:09pm
Subject: Microsoft Settlement

I was just reviewing a few things for any final comments I could make on the final comment day, and I came across the point that the proposed settlement does not restrict Microsoft's ability to modify, alter, or refuse to support computer industry standards.

I would like to add one thing to that.

You may have heard of the ''Halloween Document'' where a Microsoft staff person outlines ways to squash the open source movement (LINUX). One way suggested was to use standards slightly altered to Microsoft's advantage, which would, because of Microsoft's monopoly position, make them the de-facto standards. (Bill Gates wrote once in a Microsoft annual report that ''the way to make money is to set de-facto standards.'') This would drive the open source software out of existence because, for all practical purposes, competing software must work with Windows based software.

Now whenever the question of competition comes up, Microsoft likes to point to LINUX and say that they have competition. But the proposed settlement makes it legal for them to do just what they have outlined as a method for getting rid of one of their competitors. Does that make sense?

Remember that a lot of people are forced to use Windows. The common reply to this is that ''no one is holding a gun to their heads.'' Of course not, but the effect is the same. Almost everyone buying a computer is going to want or need Windows because of the need to interact with other computers that use Windows. Thus no computer maker can be in business without selling Windows.

If standards are twisted so that Windows and a competing program are mutually exclusive choices, the choice will have to be Windows. That is unfair and anti-competitive.

We must look to the future. The computer industry should be based on an underlying foundation of public standards.

Thank you.

Steven White
City of Bloomington
2215 W Old Shakopee Rd
Bloomington MN 55431–3096
USA
952–563–4882 (voice)
952–563–4672 (fax)
swhite@ci.bloomington.mn.us

MTC–00028032

From: Tony Biz
To: Microsoft ATR
Date: 1/28/02 1:11pm
Subject: Microsoft Settlement

To whom it may concern,

I am an independent software developer. I develop software products based on the Microsoft platform. Microsoft's operating systems, web browser, and other products have become defacto standards in the computer industry. This allows us to target our products to one platform and reach a broad customer base, instead of having to develop duplicate solutions for many competing platforms. This reduced software cost and allows us provide additional features which are a great benefit to our customers.

I am outraged at the unjust prosecution of Microsoft. The complaint against Microsoft originated not with individual consumers, or with Microsoft's partners, but with Microsoft's unsuccessful competitors. Failed businesses must not be allowed to set the rules for the markets in which they failed. Microsoft is being punished, not because it did something evil, but because it was too good, too successful, produced too much value for its customers. This is a disgraceful inversion of the principal of justice. A successful business and its products are no threat to anyone.

The government is punishing Microsoft for producing better products at cheaper prices than its competitors. Instead of being persecuted for this, they should be congratulated, thanked, and honored. The only people who do not like this are Microsoft's envious unsuccessful competitors, who are not able to produce products as good and as useful as Microsoft.

This action against Microsoft is impeding progress in the high tech industry. Instead of focusing on producing the best products for the cheapest prices for consumers, Microsoft must use their resources to defend themselves and avoid destruction at the hands of our own government. In addition, software developers must waste effort developing duplicate solutions because of the uncertainty associated with this unjust action against Microsoft. Will the government, at a whim, decide that Microsoft does not have a right to exist? Will the government arbitrarily decide to stop Microsoft from adding features to its products, or discontinue products certain products? Unknown.

It is disgraceful that at a time when terrorists are trying to destroy our country from the outside that our own government is attempting to destroy our country from the inside but attacking and persecuting one of our greatest and most productive companies. Microsoft has a fundamental right to exist and control its own property. Our government's job is to protect these rights, not to take them away!

Tony Biz
6130 Buena Vista Avenue
Oakland, CA 94618
CC:Tony

MTC–00028033

From: Husker
To: Microsoft ATR
Date: 1/28/02 1:08pm
Subject: Microsoft Settlement.

DOJ,

The Microsoft witch-hunt has gone on long enough. This is nothing more than a scam in which states hope to obtain money without officially raising taxes. Microsoft has already agreed to hide its IEx icon from the desktop

The case against Microsoft is just ?welfare? for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

I urge you to end this debacle immediately

Mike Kasson
CC:aoctp@aoctp.org@inetgw

MTC–00028034

From: Donald C. Glegg
To: Microsoft ATR
Date: 1/28/02 1:11pm
Subject: Microsoft

I use the microsoft programs all the time and they are made so us older guys can understand and use them.

Please don't keep picking on them. I for one am for them 100%!!!!!!

Thanks!!!!

Donald C. Glegg
406 N. Coffman Street
Park Hills, Mo 63601

MTC–00028035

From: sleepinggiantknr@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:10pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Kathlyn Messina
6870 Manasota Key Road
Englewood, FL 34223

MTC–00028036

From: Chris Brown
To: Microsoft ATR
Date: 1/28/02 1:14pm
Subject: Microsoft Settlement

19414 46th Avenue Northeast
Lake Forest Park, WA 98155
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to encourage the Department of Justice to accept the Microsoft antitrust settlement. This case has been stretched out over three years; it needs to be settled. Now that there is a settlement available and the terms are fair, I think that the government needs to accept it.

All of the major issues in the suit have been dealt with. Microsoft has agreed to give computer makers the flexibility to install and

promote any software that they see fit. Microsoft has also agreed to release part of the Windows intellectual property to its competitors in order for them to develop software that is more compatible as well. To settle the suit, Microsoft has agreed to a long list of concessions. This list is fair and should be accepted.

Microsoft, the industry, and the government all need to move on. Please accept the Microsoft antitrust settlement.

Sincerely
Jesse C. Brown

MTC–00028037

From: sleepinggiantknr@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:10pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Kathlyn Messina
6870 Manasota Key Road
Englewood, FL 34223

MTC–00028038

From: William Stone
To: Microsoft ATR
Date: 1/28/02 1:14pm
Subject: Microsoft Antitrust case settlement

Please see attached letter.
William w. Stone
82 River Drive
Appleton, WI 54915
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing as a retired American who is in support of Microsoft. I feel the settlement reached between Microsoft and the Department of Justice was fair and reasonable. There is no reason to drag it out further.

I believe the terms of the Microsoft antitrust settlement of November 2nd were reasonable and weft thought out. They require significant changes in how Microsoft develops and markets its product. Certainly, other computer makers will now find it easier to work with other software companies'' software that directly competes with Microsoft's Windows system. I'm sure you have looked at this matter thoroughly and will agree to end this case soon. I believe that revisiting the case is continuing to have a negative effect on our economy and slowing its recovery. For the benefit of Wisconsin and the country as a whole, I ask you to leave the settlement be and go on with the business of the country.

Sincerely,
William Stone
cc: Representative Mark Green

MTC–00028039

From: Thomas Canfield
To: Microsoft ATR
Date: 1/28/02 1:16pm
Subject: 718 Saco Court

718 Saco Court
Saint Augustine, FL 32086
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The IT industry and the economy have been affected enough by the suit brought against Microsoft by the Department of Justice. The litigations have wasted time and tax dollars and it is time this matter is resolved. I am of the opinion that Microsoft has done more than they should have in the first place with regards to the settlement. Microsoft has in part, been responsible for the stabilization of the economy in the 90's and I feel that they should be allowed to continue with their business.

Microsoft has agreed to conditions that will allow for more competition in the IT industry that will in turn benefit the economy and the consumer. In order to do this Microsoft will give competitors the ability to make software that is compatible with Windows, and they will not retaliate against them. Also, they will be monitored by a three person technical committee that will make sure Microsoft adheres to the terms of the settlement and it will also help settle disputes. Clearly Microsoft has done more than what they should have to settle this and so should the Department of Justice.

The country's economy and its citizens will benefit from ending this whole mess. Microsoft should be allowed to return to business as usual. Thank-you.

Sincerely,
Thomas Canfield

MTC–00028040

From: azdeal@csi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:15pm
Subject: Microsoft Settlement

Your Honor,

I'm writing to voice my objections to the proposed settlement in the United States vs. Microsoft case. Microsoft has profited greatly from its anti-trust violations, and this settlement would allow the company to keep all of those ill-gotten benefits. Furthermore, the settlement doesn't prevent Microsoft from wielding its monopoly power again in the future. The proposed settlement only serves to expand Microsoft's monopoly by allowing them to increase their presence in perhaps the only market segment they don't already dominate—the education market. I ask you to reject the proposed final judgment.

Respectfully,
Connie Deal
19691 N. 66th Ave.
Glendale, AZ 85308
623–572–2622

MTC–00028041

From: Tejas Naik
To: Microsoft ATR
Date: 1/28/02 1:13pm
Subject: Comments

I believe Microsoft should be broken up. This will spur a wave of innovation in IT industry and offer consumers choice. It's in the interest of consumers/developers. While, there may be a proposal of settling a case without breaking up Microsoft, I'm highly skeptical that Microsoft which gave such a hard time to DOJ will execute the settlement right. The only way to be assured is to breakup.

Thanks
Tejas

MTC–00028042

From: Tony Christopher
To: Microsoft ATR
Date: 1/28/02 1:17pm
Subject: Microsoft Settlement

To DOJ reviewers;

I believe that the settlement the US government has made with Microsoft is a travesty that will allow MS to continue with its self benefiting, conquer-all strategies and tactics. And, over the near future, uncontrolled, Microsoft will create more injustice that it has in the Internet Browser situation. The data for my argument comes from looking at the emerging area of standards for personal identity on the Internet.

I work in the area of virtual community technologies and services—see bio link below. I believe that collaboration/connections among people, worldwide, is one of the most powerful, forthcoming benefits of computer-communications technologies. I have researched and learned a good deal about the importance of ''identity'' on the net. Microsoft's Passport system, distributed through their pervasive Windows OS, could become a major mal-influence in the emergence of holistic identity services. Here is the data:

Gartner Group has recently completed a study of 2100 users of online/web services; the study focuses on consumer web identity and privacy issues— http://techupdate.zdnet.com/techupdate/stories/main/0,14179,2830912,00.html Summary: ''Despite consumers'' apathy and distrust, identity services will succeed because they will be embedded into Windows XP and the Internet services that consumers will use. Accordingly, Gartner predicts that 40 million online U.S. consumers automatically enrolled in identity services will use them to access an average of three Web sites each month by the end of 2003. ''

This data substantiates that consumers will lose in the future (versus the econometric models likely used in the trial to show how consumers have been harmed in the past) if Microsoft maintains as one business both the operating system and the application software & Services businesses. One of the

conclusions that can be drawn from Gartner's study/data is that Microsoft's monopoly will result in consumers putting up with the weak privacy-control that will result with Passport—whereas the data shows that consumers want strong privacy-control. If Microsoft were to be two companies where the web services were split out from the WindowsOS business more competitive dynamics could prevail in the coming generation of net services i.e., Passport would have to compete with the Java authentication/identity offerings—consumers would have more choice and more privacy-control alternatives would likely be available.

I want to go on record as being strongly against the weak terms of the antitrust settlement with Microsoft. They will cause more injustice and harm in the future than they have in the past if we do not take the current judgment against them to mete out remedies that will protect the Internet industrial and consumer participants from the force of this conquering gorilla.

A.J. Christopher

These views reflect my own personal beliefs and do not represent those of my employer.

Anthony J. Christopher
Community Practice Manager
Mongoose Technologies, Inc.
www.MongooseTech.com
Bio: www.MongooseTech.com/RealCommunities/Tony.html
E-mail: Tony.Christopher@MongooseTech.com
Phone-Voice Mail: 650–224–4567
CC:Tony Christopher

MTC–00028043

From: Donna Rogers
To: Microsoft ATR
Date: 1/28/02 1:15pm
Subject: Microsoft Settlement

Judge Kollar-Kotally,

I urge you to reject the proposed final judgment in the U.S. vs. Microsoft case. Every court has found that Microsoft violated antitrust laws, making billions of dollars in the process. This proposed settlement would allow the company to keep virtually all of those illegal profits! There is also no provision that would prevent Microsoft from continuing its anti-competitive behavior. In fact, the monopoly is validated and furthered under the PFJ through the dissemination of Microsoft software to our schools. And Microsoft cannot be allowed to essentially police itself.

Please vote against the PFJ in the interest of the public.

Sincerely,
Donna Rogers
3522 Pine Ridge Way
San Jose, CA 95127
408.729.7468
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028044

From: Robin (Roblimo) Miller
To: Microsoft ATR
Date: 1/28/02 1:14pm
Subject: Microsoft Settlement

A problem just starting to rear its head in regards to Microsoft's desktop monopoly is the company's curent attempt to extend it to all Internet transactions through its .NET initiative and the accompanying C# programming language that is designed to kill Java, JREE, and other non-Microsoft Web interaction tools.

If it is the DoJ's intent to help Microsoft kill off all competitors; to in effect become the sole controller of all Internet standards, then the current proposed settlement should be allowed to stand. If the DoJ wants to foster computer industry competition and innovation, the proposed settlement will be withdrawn, and Microsoft will be penalized harshly enough for its past lawbreaking that its management will not be tempted to break the law in the future. As a U.S. citizen who is employed in the IT industry, I would rather see competition than have one company control our entire computing infrastructure. I think you will find that my opinion is shared by almost all people in this business who do not work directly or indirectly for Microsoft. It is sad that the United States Department of Justice is not protecting citizens'' interests, but has decided to ''lay down'' for a major corporate campaign contributor. Apparently the SEC did pretty much the same thing for Enron, though.

I wish I knew a way to root out this corruption, but it's hard when both the people who make the laws and the people who enforce them are for sale to the highest bidder. Poor America. I fear for our future.

Robin Miller
206 52nd Ave. W.
Bradenton FL 34207
phone 941–704–0779

MTC–00028045

From: Robert L. Butler
To: Microsoft ATR
Date: 1/28/02 1:16pm
Subject: Microsoft Settlement

Robert L. Butler
99 Woodland Avenue
Summit, NJ 07901–2001
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
BY E-MAIL

Dear Mr. Ashcroft:

I am writing to give my support to the agreement reached between Microsoft and the Department of Justice. I did not support the initial lawsuit. This suit was brought more out of political and professional enmity than any supposed damage to the consumer, the necessary basis for antitrust action. Bill Gates produced a better product, the standardization of computer software. Granted, Microsoft was aggressive, and at times heavy- handed.

Microsoft has been chastened though. Both parties agreed to a settlement that is, for the most part, fair. Microsoft has agreed to open the company up more to third party innovation, has agreed to a uniform price list, has agreed to a technical oversight committee, and has agreed to interface disclosure. Microsoft is obviously trying to meet the demands of the Department of Justice.

It is time to move forward. We have more important things to worry about. We need to put our economy back on track; allowing one of our major companies to get back to work is one way to do this. I urge you to give your support to this measure.

Sincerely,
Robert L. Butler

MTC–00028046

From: richard sonnier
To: Microsoft ATR
Date: 1/28/02 1:13pm
Subject: [Fwd: Microsoft kills Real World/ Great Plains Classic]

Reaf World Classic is a ''COBOL'' accounting running on many platforms Unix/ Ibm Aix / Dos and many others (i.e. any os which has Mico Focus Cobol).

Great Plains Bought Real World.

Micro soft bought Great Plains in 2001.

Microsoft scrapping Classic accounting package.

Microsoft only option to 20,000 customers is you must at extrem expense convert to windows based packages?

Richard L. Sonnier Jr.
Gulf Central Systems
800 Mire Street
Houma, La. 70364
985–851–6674
800–367–3094 (WORK)
RLS0938@AOL.COM

MTC–00028047

From: Nuovo1@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:19pm
Subject: Microsoft Settlement

Dear Atty Gen. Ashcroft:

My wife and I are extremely pleased that the settlement agreement which has been reached between Microsoft and the US Justice Department. It is my understanding that the agreement is currently undergoing a sixty day period in which the public is encouraged to provide input on the matter.

Let me say that we fully support this settlement because it is good for the country, the economy and technological innovation.

Microsoft has accomplished so much and has contributed greatly to the success of this great country of ours.

Please STOP the litigation, enough is enough. Our legal system is running rampant and is destroying our Free Enterprise System which has made our country great.

My wife and I plead with you to stop the litigation and settle the matter.

Thank you for your consideration,
Frank & Francesca Nuovo
730 Woodcrest Lane
Monterey, Ca 93940

MTC–00028049

From: Bernard Rogers
To: Microsoft ATR
Date: 1/28/02 1:20pm
Subject: Microsoft Settlement

Honorable Judge Kollar-Kotally,

I'm a concerned citizen requesting that you reject the proposed final judgment in the Microsoft antitrust case. The public would not be served by the slap on the wrist, as Microsoft would lack any deterrent from repeating its offenses.

The proposed final judgment also fails to address the issue of bolting software to its operating system that first led to this suit. It

will thus be free to repeat the antitrust violations that have earned it billions of dollars a year.

Respectfully,
Mr. Bernard Rogers
3522 Pine Ridge Way
San Jose, CA 95127
(408) 729–7468
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028050

From: Bill (038) Carol Roberts
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

Thank you for considering the attached letter.

W. S. Roberts, Jr.
2113 Primrose Lane
Martinsville NJ 08836–2220
Home: 732–469–0824
Fax: 732–469–0639
Cell: 732–245–8049
E-mail: wsrcjr@optonline.net
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am writing because I am in support of ending the antitrust lawsuit against Microsoft. Microsoft's ability to operate under normal conditions remains compromised as long as the litigation continues, and settling the case according to the terms agreed upon in November would be the quickest and fairest way to move on.

The settlement is a reasonable conclusion to the case and will foster market growth for Microsoft's competitors, while still assuring the security of Windows. Easing restrictions on computer makers who license Windows will ultimately enable those companies to offer a broader selection of programs from competing developers. Given that, it seems as though the Department of Justice's goal would be achieved.

I am urging you to settle what has already been too long a case. The public and Microsoft are ready to put the matter behind them, and the government should be as well.

Sincerely,
William S. Roberts, Jr.
2113 Primrose Lane
Martinsville, NJ 08836

MTC–00028051

From: WPARK1220@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

8 Ramblewood Drive
Longview, TX 75605
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
Wahington, DC 20530–0001
Dear Mr. Ashcroft:

Thanks for the effort and direction that you and your departments are taking. My family and I approve of the leadership and wisdom that the Bush administration is taking.

It is my understanding that Microsoft and the government have settled an antitrust lawsuit in which Microsoft has agreed to grant computer makers broad new rights to configure Windows so as to promote non-Microsoft software programs that compete with with programs included within Windows. In my opinion, no more federal litigation against Microsoft is acceptaable beyond this agreement.

Sincerely,
William R. Park

MTC–00028052

From: Catherine Brett
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Please let the present settlement stand.There has been more than enough debate on the subject.

MTC–00028053

From: Christine Rogers
To: Microsoft ATR
Date: 1/28/02 1:26pm
Subject: Microsoft Settlement

Your Honor,

Microsoft must be forced to play by the same rules as everyone else, and the proposed final judgment before your court fails to accomplish that. I ask you to reject it.

For years, strong-arm tactics on Microsoft's part have cut down promising high tech companies and hurt innovation here in Silicon Valley. The courts have ruled against Microsoft—now let's bring about a solution that actually causes them to cease their anti-competitive activities!

I am also concerned that Microsoft's monopoly would only be broadened by the giving of its software to schools. It costs the company virtually nothing to do so, yet the harm to competitors like Apple is enormous.

Please vote against the PFJ.
Christine Rogers
3522 Pine Ridge Way
San Jose, CA 95127
408.729.7468
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028054

From: Kevin Clark
To: Microsoft ATR
Date: 1/28/02 1:26pm
Subject: Microsoft Settlement
From: Kevin D. Clark
191 Mitchell Road
Nottingham, N.H. 03290
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

I am a professional software engineer, with 10+ years of experience in industry. During these 10+ years, I have seen Microsoft grow to dominate the computer software market. Microsoft has achieved this dominance through anti-competitive practices, and I have seen many novel and innovative technologies crushed by Microsoft, all in the name of furthering Microsoft's iron grip over the software market. As someone who is both passionate about working in this field, and as someone who tries to innovate in this field as well, Microsoft's actions over the last few years are very distressing.

I have read the Proposed Final Judgement, and I want to say this: the Proposed Final Judgement will allow many exclusionary practices to persist. So, I don't support this judgement. (unfortunately, due to time constraints, I cannont enumerate all of the ways in which this judgement is flawed—if you are looking for more specific complaints, please refer to: http://www.kegel.com/remedy/remedy2.html

I consider the summary of the problems with the Proposed Final Judgement on this web-site to be excellent.)

Please work to fix this judgement. If you leave any loopholes in this judgement, there is much precedent to show that Microsoft *will* exploit these loopholes to maintain its illegal monololy.

Regards,
Kevin D. Clark
kevin—d—clark@yahoo.com

MTC–00028055

From: ivoryf@cut.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Let Microsoft do what they do best and let s quit spending tax payer dollars to beat the subject over the head. Microsoft may have created a monopoly but was there anyone smart enough to come up with the better product.

MTC–00028056

From: Veritas123@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Mocrosoft is largely responsible for the greatest technology advance the world has ever seen. MS produces good products at ever-lower prices. Competitions is alive and well in the industry—others need to just make their contribution and let the market buy it or not. The Department of Justice (under President Clinton) and the various states Attorneys General are after money and power—let them show what they can produce. So far I havn t seen what they contribute. They have not protected the public at all rather they inhibit industry advancement. And of course they want millions. (Is there any other thought for these guys?) Let them earn it in an honest way: hard work and imagination. End the suit immediately by taking the least intrusive road out. Microsoft should grow or fail by how it treats the American consumer and not by dictates by government employees. In fact the failed government employees should be forced to relinquish their own pay for all the harm they ve done to innovation and to the American public.

MTC–00028057

From: geheuler@verizon.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Microsoft has done more to stimulate the economy has provided more jobs and contributed more to education than any other company or individual anywhere. To say nothing of what they have done for

technology. This country was built on competition and he epitomizes competition.

MTC–00028058

From: tlerb@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:17pm
Subject: Microsoft Settlement

With the current state of the economy we need Microsoft concentrating on business without the distractions of this suit which should have been settled long ago.

MTC–00028059

From: Robert.ewald@worldnet.att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:17pm
Subject: Microsoft Settlement

The lack of credibility of the Attorneys General opposing the Governments settlement is strictly a play for publicity and grubbing for money and should not be permitted to proceed farther. I believe the Government s acceptance of the existing settlement is imperative. Thank you for listening. R. H. Ewald

MTC–00028060

From: zman@c2on.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

please settle with mr. gates perposal so we the tax payer are not burdened any further

MTC–00028061

From: geojenner@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I am writing to urge you to support the proposed Microsoft settlement and end this controversy's tenure in the federal arena. The United States Government has in past administrations provided its citizens with ample evidence of what results when overzealous and uninformed public representatives take regulation of successful private industry to extremes in the mistaken belief that action against private industry will always end in providing a public benefit. Past government actions against AT&T have broken a national treasure Bell Telephone Laboratories and increased prices while decreasing efficiency and customer service in the process. . Microsoft must still contend with several states lawsuits but I believe it s time and best for all parties to get beyond this ridiculous activity and allow everyone to return to the business at hand. The settlement will compel Microsoft to open its systems to competitors software and use. A committee has been provided in the settlement to monitor Microsoft s future business practices to assure compliance with the settlement s terms. I believe that for the sake of our national economy and the continued success of this vital industry this matter should be settled. As a citizen I feel my technological future will be enhanced by innovations which work and that is what Microsoft is all about.

MTC–00028062

From: hking24834@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Microsoft has been has helped the US & other countries to emerge into world leading companies. Netscape & CEO James Barksdale was bundling features years ago & was upset with Microsoft turning the tables on them when Mr. Barksdale conceded engaging in in simular practices & stating He didn t recall. Soon after Netscape merged with another company. Who was calling the kettle black? During the 1940 s U.S. Steel went through similar litigation & settled with- out killing the company as Judge T.P. Jackson was trying to do to Microsoft. Who incidentally was not qualified to make this decision. I believe this company has suffered and paid more than their share through unreasonable and excessive charges. The US has encouraged innovation competition & development of technologies. This built our country and made us strong to prevent any Bleeding Hearts to damage and hurt us such as the Ben Laden's. If anyone was wielding a club in these negotations it was Apple not Microsoft. Will AOL be next? What about the merger between AOL and Time Warner? This changed the competition land-scape in one of the most competitive industry in the world. I think it is time to reflect and close the litigation against Microsoft before the Bleeding Hearts close one of our leading companies in our nation.

MTC–00028063

From: cyvalco@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

The settlement (proposed)is still canted toward the government. I believe that the millions of $$ spent on this investigation far surpasses the $$ value to the consumer. What Microsoft did/is doing is just plain good business sense and I don t think they should be codemned for that.

Thanks!!

MTC–00028064

From: t—odwyer@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

It is time to end this law suit. The people did not suffer from Microsoft integrating the browser or in essence offering it free. In fact the only suffering on the part of the people was the amount of tax payer money spent by the government on the case. The settlement that is there now is in the best interest of the American people and the technology industry.

MTC–00028065

From: rkbrooks@amaesd-net.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I think the settlement reached with Microsoft on Nov. 3rd should be agreed to and bring this lengthy antitrust case to an end.

MTC–00028066

From: birdiebajc@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Stop persecuting innovative firm

MTC–00028067

From: cdj@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I believe the ruling was fair and serves the best interest of both Microsoft and the government.

MTC–00028068

From: batigerlily@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I am very satisfied with the settlement and find no use in any continuing litigation. I feel that the litigation could have been handled in a much better way and that it was motivated by special interests. In any case litigation should end. thank you. Susan Bates

MTC–00028069

From: N M
To: Microsoft ATR
Date: 1/28/02 1:26pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I hereby submit my objection to the Proposed Final Judgement agreed upon between the Department of Justice and Microsoft. I understand that there are several underlying errors attributed to the Proposed Final Judgment.

One noticeable flaw encompasses an inept enforcement device implementing restrictions. The settlement in other words closely monitors and screens all of Microsofts business activities. This close scrutiny insures MS complies with all restrictions entailed in the agreement.

A three man compliance team will oversee and insure that Microsoft comply with the stated rules and regulations. Yet, this three-man oversight committee will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team.

In the likelihood of any enforcement proceedings, all findings by the oversight committee will not be allowed into court. The sole purpose of the committee is to inform the Justice Department of all infractions by Microsoft. In addition the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing, who will not strictly oversee Microsofts business moves?

In my opinion, the Proposed Final Judgment does not provide appropriate restrictions against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively nor sufficiently address the question. In conclusion, I submit your honor my objection to the Proposed Final Judgment in the Microsoft case.

Sincerely,
Adorabell Bonefacio
951 2nd Ave
San Mateo, CA 94401

MTC–00028070

From: rgbagwell@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I am amazed by the statements that Microsoft (MS) has cost the consumer since I am convinced that I have saved at least 60% over what I would have paid without the their operating system. I remember the days that the people around me made fun of MS due to the fact that the included OS support was so rudimentary. MS has designed better built-in support over the years and now the same people say it is too good and is driving other people out of business. (Browsers have been in all operating systems for decades!!) True competitors are having a hard time coming up with something better to sell. This is hard on them but does not increase the cost to the consumer. If they have a better gidget I have the choice of using the built-in capability or buying theirs. A really good choice. I can go on and on but I will only say one more thing. Given a specific function it is always cheaper to have one designer selling to 10 million vs 10 designers selling to 1 million apiece. Since it takes the same number of people to design the function and each is sold to 1/10th the number of consumers the cost to the consumer is 10x the one designer scenario. We have the battle of lower cost to the consumer vs more jobs for designers!!

Sincerely

Roger Bagwell HW/SW Engineer

MTC–00028071

From: bobreist1@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

NetScape should spend less time complaining and a lot more time designing a program that will make them competitive in the market. There has been enough tax-payers Dollars wasted on this already and the Court has handed down a JUST ruling so lets get on with the more important things—-Like Enron for instance.

Sincerely Robert J Reist

MTC–00028072

From: dericwise@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:17pm
Subject: Microsoft Settlement

the witch hunt has gone far enough. let microsoft serve the public and its shareholders and get out of its way.

MTC–00028073

From: Microsoft ATR
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Consumer choices not government management of innovation are the best marketplace regulators. New regulations and unnecessary lawsuits against technology companies will stifle innovation and result in consumers paying higher prices.

MTC–00028074

From: rscully@bellsouth.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Let freedom win out here and get this fiasco over with.

MTC–00028075

From: bgreer22@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I feel that the proposed settlement between the Justice Department and Microsoft is fair. I see no reason to drag this settlement out any longer.

MTC–00028076

From: gibsonrj@nc.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

A bunch of jealous idiots trying to destroy Microsoft will do wonders for China India etc. I m not from the US and you fools are going to really regret losing control of this industry. You can t attack the foundation to 25% of your economy without noticing an impact downturn layoffs recession mean anything to you.

MTC–00028077

From: elroberson@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I strongly support the agreement reached with Microsoft. Let s roll em!

MTC–00028078

From: leigh—jr2@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Microsoft is a wonderful example of American enterprise and achievement. They deserve the thanks of all Americans who care about our economy and global competitiveness. It makes no sense to try to take away through the legal system what Microsoft has assembled through their own hard work.

Please leave them alone and maybe thank them for doing such a good job!

MTC–00028079

From: valleybill@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:17pm
Subject: Microsoft Settlement

THE FEDS LET US DOWN MICROSOFT NEEDS TO BE SEVERELY RESTRICTED IN THE FUTURE AND PUNISHED FOR PREVIOUS ANTI-COMPETETIVE ACTIONS

MTC–00028080

From: brooktl@gte.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

There has been enough court cases. It s time to settle. This settlement sounds just fine. Don t keep beating a dead horse..

MTC–00028081

From: girls@citigraphics.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I think it was pure BS to go after Microsoft and spend all of the taxpayer s money for what amounted to a political witch hunt. Why don t you people look into the health insurance companies who are not willing to provide coverage for people who need it. But they are glad to take the premiums!

MTC–00028082

From: barchas1@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

The settlement should be agreed to. The litigation has taken enough time and money. Now it is time to go after the gas and Oil companies.

MTC–00028083

From: ronlnels@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

It is time to put this case to bed. It is the job of the courts to protect the consumer not competators. From the start this case has been all about vicious compititors fighting with each other and then attempting to get the Federal and State courts to settle the fight for them. The consumer never was harmed by Micorosoft s actions but rather was aided by having interconnected working program with the operating program making the total computer operation more user friendly. If you want to take a shot at a company that has harmed and taken advantage of the consumer go after AOL Just change the payment method. I do not think that Microsoft should be allowed to give equipment and Micorosoft software to the schools because this would give Microsoft an advantage over Apple. If they have done wrong make them buy Apples computers and Apple compatable software. You might also give the schools the right to chose Apple or IBM compatable and make Mirosoft pay for it. If the court has been unable to prove a monopoly that has harmed the consumer than the case should be thrown out and AOL Oracle and the rest of the cry babys should have to pay the court costs. As a taxpayer I do not think that it is my responsiblity to pay it.

MTC–00028084

From: sandford moser
To: Microsoft ATR
Date: 1/28/02 1:27pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

I would like to go on record as saying that the Microsoft settlement should be accepted right away. I feel that delaying it, only makes everything more costly to the public. Court costs increase. The cost to Microsoft increases. It becomes a lose, lose situation rather than a win, win situation.

Thank you for the opportunity to respond.

Sincerely yours,
Sanford Moser
21700 Greenfield Rd.
Suite 271
Oak Park, MI 48237
248–968–4700

MTC–00028085

From: zman@c2on.net@inetgw

To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement please settle with mr. gates perposal

so we the tax payer are not burdened any further

MTC–00028086

From: wolfen616@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I clearly want the court to accept the settlement. It s fair and the litigation has gone on to long.

MTC–00028087

From: wingswren@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

When free enterprise and beaurocratic elements collide history reveals that the forces and energies of free enterprise and industry offers the only viable alternative for progress. The Microsoft senario is a storybook example of industrial leadership leading the way to beneficial development for enterprises both large and small in the scope of macroeconomics. HOORAY FOR THE SETTLEMENT!!

MTC–00028088

From: carolnbruce@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Give it up quit beating a dead horse.Too much money has been spent already. Microsoft will just pass the cost to the purchaser to defend thier position of free interprise.

MTC–00028089

From: halstead6@earthlink.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

WHERE WOULD WE BE WITH OUT MICROSOFT. I CAN OTHER THINGS A LOT WORSE THAN MICROSOFT. MY VOTE FOR BILL GATES

MTC–00028090

From: cortath@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

I believe that the Federal Government and all other State governments should now leave Microsoft alone. The court has made it s decision and now we should move on to more important things. Just because the competition is jealous that they did not invent the same things as those working for Microsoft is no reason that they should have any right to capitalize on the hard work of another. I say move on there are more important problems to plague this country. Deal with them.

MTC–00028091

From: das474—2000@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:18pm
Subject: Microsoft Settlement

Leave well enough alone. this is only going to cost people that use computers more mony. Netcape & AOL can be downloaded on any computer free.

MTC–00028092

From: emelianoff.dimitri@mediaone.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:27pm
Subject: Microsoft Settlement

The ''case'' against Microsoft was, is and shall forever be a sham. The ''problem'' is that Gates and Microsoft got lucky and their competitors didn't. MS was in the right place at the right time and did the right things... the bozo's who are suing them didn't luck out. Let the market decide if Microsoft is a company that the public wants to do business with. Microsoft does not ''own'' the market any more than it owns the souls of it's dustomers. People choose Microsoft products becasue, despite MS's faults, the products are what it's customers want and need and are reasonably priced.

Let the government do what it does best—nothing!!

Dimitri Emelianoff

CC:emelianoff.dimitri@mediaone.net@inetgw

MTC–00028093

From: Chris Waterson
To: Microsoft ATR
Date: 1/28/02 1:28pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I work for Netscape Communications Corportation, on the Netscape browser product. And I am tired of reading uninformed columns in newspapers and answering uninformed questions from friends about 'how Microsoft won the browser war ''fair and square'''. Let's not forget that this is not about the situation —as it is today—, it's about —what Microsoft did that was against the rule of law—. Microsoft has repeatedly flouted the law of the land, and for this, they deserve to be punished.

The settlement fails to terminate the Microsoft monopoly, which they have proven time and again to use aggressively and illegally to expand into other markets. What guarantee do we have that Microsoft will not continue to ''bolt'' new products on to their operating system in the name of ''innovation'', crushing other fledgeling businesses along the way? How will future innovators protect themselves from Microsoft's entry into a market?

Under this settlement, Microsoft will be only marginally penalized for its illegal behavior. Microsoft —broke the law——every court that has reviewed this case has agreed—but yet it will be allowed to retain the profit from its plunder!

I realize that my viewpoint in this matter is far from objective, but I hope that you'll realize that the fate of consumers, entrepreneurs, companies, and even industries rest in your hands right now. Microsoft has proven time and again that they have no regard for the law. They are a threat to innovation in an industry that has powered the economy for the last ten years, and is likely to be a significant economic force for the next fifty years.

Yours,

Chris Waterson
437 Hoffman Ave.
San Francisco, CA 94114
415–642–3522
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028094

From: Robert A. Gerhardt, RFC
To: Microsoft ATR
Date: 1/28/02 1:28pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Dept. of Justice
950 Pennsylvania Boulevard NW
Washington DC 20530
January 28, 2002

Dear Mr. Ashcroft,

I am writing as an investor and as one who helps other people invest in the American capitalistic system. I note the country has had extraordinary difficulties financing the high tech companies who are our hope in improving productivity. This all started about the time that the competitors to Microsoft goaded the government into starting a federal lawsuit. The investing public worried that the leading innovator in computer generated productivity improvements was going to be attacked and wounded by the government, why wouldn't the same happen to others in the industry? This was a major contributor to the failing confidence by the investing public.

I have read about a reasonable settlement that has been negotiated between Microsoft and the government. I understand that it is under public review at this time. Let me add my voice to the millions of shareholders that depend on the American capitalistic system to continue to improve productivity, profits and expand. I believe that the government has had its opportunity to make its point. Microsoft has made good faith adjustments in its operations and has agreed to share ''secrets'' with their competitors, something the competitors had sought from the outset. It is time to lift this cloud of intimidation from the technology community and allow our economy to expand once again. I would hope that the tragedy of Sept. 11th would help all of us including the government refocus on our nation's priorities. It is time to move ahead with improving our people's living conditions and maintaining our economic leadership of the world.

Most Sincerely,
Robert A. Gerhardt
RG/tes

MTC–00028095

From: Dirk Valcke
To: Microsoft ATR
Date: 1/28/02 1:28pm
Subject: Microsoft Settlement

Dear Sir or Madam:

As a consultant in the computer industry I come in contact with many people in many different organizations.

These organizations range from first class Financial Institutions to small enterprises with only a few employees. For all these organizations and especially for the thousands, even millions of small and mid-sized companies Microsoft* provided an easy to use, cheap, out-of-the-box usable computing environment.

As you probably know and experienced yourself, even a child can install and use the Windows* and Office* platforms. To find a platform that is as easy to use and that keeps the whole computing experience affordable we can only look at Apple*. The giants in the industry, especially SUN, could take some lessons in user-friendliness, ease of use and low-cost from both Apple* and Microsoft*. The initiative of the Linux* group seems to go in the right direction, but the product is not yet at the level we are used to (user interface, ease of use, support).

When I consider the enormous number of companies and people, who earn their living by building on an ever-evaluating platform, persons that study these new versions and implement ever more complex and at the same time ever easier to use software, I am amazed. When I try to imagine the number of people that use these inexpensive, easy obtainable systems, at work, at school and home, I am amazed. When trying to imagine even the very Internet that allowed me to send you this message, without the low-priced, easy to use computers, I wonder if it would have been possible!!

The inexpensive computers and software are a result of volume. The volume is the result of popularity. Popularity is the result of content and happy users! I hope you advice and ruling will allow current and future enterprises to work on even more mind blowing and fantastic applications and systems. That it will allow the customers/users to benefit from ever more features and possibilities.

With kind regards,
Dirk Valcke—Director.
Advanced Computer Technologies
Valcke bvba ? Kortrijk Office
Min. A. De Clercklaan, 35
8500 Kortrijk ? Belgium
Valcke bvba ? Brussels Office
Marktstraat, 46 BUS 8
1210 Brussels ? Belgium

MTC–00028096

From: arlen-betty@centurytel.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Microsoft should not have been charged in the first place. Our leaders tend to encourage less than the best from people.

MTC–00028097

From: drwhom@valleyalley.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please leave Microsoft alone. Together we can fight political corruption in this country. Thank you a proud citizen

MTC–00028098

From: itremblay@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please settle the suit and then leave Microsoft alone to offer new technology to the world markets.

MTC–00028099

From: tomas.palmer@i-codesmith.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

This attack on Microsoft was the cause of our current tech recession. If Microsoft competitors cannot not do better then Netscape and think Java is the key to the future they deserve to lose in the marketplace.

MTC–00028100

From: bob@purdue.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I am not speaking on behalf of Purdue University. However as the IT manager for the Purdue University School of Education I have found Microsoft to be a friend of Education. Microsoft has been a friend to Education for many years even while other companies which have a reputation for being education friendly have taken advantage of Education over-priced their products and given Education little or nothing. Unlike other companies that have been hostile towards education and ignorant of our needs Microsoft has delivered quality products for cheap and in many cases for FREE! This long-term commitment demonstrates to me that Microsoft cares for students and educators. The fact that the vast majority of our students *prefer* Microsoft products to other products and operating systems demonstrates this. I urge you to allow the settlement and resolution of the Microsoft case. Please allow what I consider to be one of our countrys' National Treasures the freedom to continue supporting and inspiring the work of Education.

Thank you and best wishes.
—Robert Evans

MTC–00028101

From: NATHAN S MORRIS
To: Microsoft ATR
Date: 1/28/02 1:30pm
Subject: Microsoft Settlement

——major penalties,no breakup——
NATHAN

MTC–00028102

From: ben—dixon@email.msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Microsoft is the engine of our economy train. Leave them along and let them pull all of us forward.

MTC–00028103

From: chstudstill@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I donot feel that Microsoft should be allowed to proceed with its products uninhibited by government or less successful competitors

MTC–00028104

From: mikesuda@gtw.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I THINK THAT THEIR SHOULD BE NO MORE LITIGATION IN THE MICROSOFT CASE. THE STATES SHOULD APPROVE THE SETTLEMENT.

MTC–00028105

From: ggallas1@nycap.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I endorse the settlement between Microsoft and US Government. I am hoping for a Final Judgment.

MTC–00028106

From: kwshaeffer@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please consider ending the legal activity against Microsoft. Microsoft has offered a very large settlement which should be approved in the interest of allowing technology to advance. Microsoft was never a monopoly (as is my garbage service & city sewer/garbage service). It is unfortunate that the Clinton Administration Justice Department originally started this unsupportable suit. Thank you for listening.

MTC–00028107

From: bobleibo@bellatlantic.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

This settlement is very fair. the only people that seem to be complaining are microsofts' competitors and people that think operating systems should be free and not be considered intellectual property. This company is one of the great success stories of the 20th century. don't punish them further for this success. nobody that I know complains about microsoft. they like their products and find them easy to use. stop wasting all this money on this court case. it's ridiculous.

MTC–00028108

From: holly—miller@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

While I disagreed with the government s antitrust case in the first place I am pleased with the settlement insofar as it brings the case to a close.

MTC–00028109

From: nirgal27@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

This entire Microsoft case has done more harm than good. Not only has it wasted time and money but it has also been run at the expense of pursuing various attacks by the Al-Qaeda organization.

MTC–00028110

From: alben4@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Windows XP came installed when I purchased my new computer. I'm very disappointed with this highly praised Operating system. I can't run my printer as I did with Windows 95 and it can't be fixed.

Microsoft should be made to remedy my situation.

MTC–00028111

From: will
To: Microsoft ATR
Date: 1/28/02 1:33pm
Subject: in regards to the microsoft anti-trust case

I used to be a consultant on Microsoft products right up until about 4 years ago when I switched from consulting on systems integration and started doing development work on a variety of other platforms. I've known a lot of the folks at Microsoft over the years and been a part of various Microsoft initiatives. As the years have passed, I've become increasingly concerned with the level of quality of Microsoft products and the direct effects they have on our world. Not just consumers, or businesses, or governments, or the Internet, but —everything—. The reason they have this affect on —everything— is because they outsell other operating system providers in a variety of business spaces. This ability they have comes less from radical product superiority, but mostly from their absolutely amazing business and marketing skills. I think these business and marketing moves that Microsoft has made have become increasingly Machiovellian—the ends absolutely justifies the means in the Microsoft juggernaut's mind (sorry for the personification here). Reading through the findings and my experiences in the Microsoft world and my friends'' lives, I believed as the courts did that Microsoft is guilty of abusing their monopoly.

Reading through the settlement recommendation, I'm appalled. I think it does nothing to curb Microsoft's business and marketing juggernaut which clearly lacks moral sense. I think it actually furthers Microsoft's monopoly in the future without instilling any moral and ethical guidelines.

I am absolutely against this settlement and I think it's ridiculous that it's even being considered by anyone. It's not an issues of good vs. evil, it's an issue of fixing the future so that consumers aren't continually hurt by the continual immoral practices of a behemoth company.

Thank you for your time,

/will

whatever it is, you can find it at http://www.bluesock.org/willg/ except Will—you can only see him in real life.

MTC–00028112

From: ewspak@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I strongly support the settlement reached between Microsoft and the Federal Government. The few state attorneys general who have not signed on appear to be more interested in the political benefits of opposing big business than in the public welfare. Government must not penalize businesses merely because they are successful or large. Innovation should not be discouraged by reducing competitiveness. Competition is essential to developing the technology that our country s economy depends on.

The settlement protects the public while ensuring competition and innovation. The key features include an onsite committee to ensure Microsoft s compliance the ability for consumers to delete Microsoft programs from their operating systems the ability for computer manufacturers to add programs to PC s with Windows and forcing Microsoft to disclose the technical information necessary to competitors so their software will run smoothly on Windows.

Sincerely

Eric W. Spak

MTC–00028113

From: Clintwood456@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I think this is a fair and just settlement. Don t think any changes should be made

MTC–00028114

From: Jumpj52@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I believe the settlement as it stands now between the government and Microsoft is fair and just. I believe the government has been exemplary in it s conduct during the Microsoft case. The nine remaining states should end their suits in this case and join the Federal government in ending this long running case.

They are only wasting the tax payers money. For AOL to bring it s suit against Microsoft on behalf of Netscape is pure folly on AOL s part. The case has pretty much been decided on. They are only try to delay it. For what purpose? Who knows. In my personal opinion I don t believe Microsoft ever did anything wrong. But since it has already been ruled against that s OK. We should move on from there.

End this case now before it does more harm than good.

Thank you for listening.

MTC–00028115

From: ellieford@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

This case has gone on long enough and needs to be settled to get the economy going. Nine states settled and the nine states holding out should settle also. Netscape is a sore loser because people like Internet Explorer better. That's competition on which this country thrives. I have both in my computer but like Internet Explorer better. AOL also has no business bringing a new suit against Microsoft. It should be thrown out. I don't like AOL either. If anyone tries to monopolize the internet it s AOL.

MTC–00028116

From: willo@pillars.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Have you people ever read The Law by Frederic Bastiat? It is not the legitimate role of government to manipulate the free market.

MTC–00028117

From: zhou0628@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Quick and fast settlement is beneficial to the economy as a whole. The current settlement has already posed good restriction on Microsoft on anti-trust related issues.

MTC–00028118

From: fghewitt@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

The governments' actions are threatening the safety liberty and prosperity of the United States and its citizens.

MTC–00028119

From: afreespirit@email.msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Accept the Settlement The proposed settlement already helps the rivals of Microsoft by placing significant restrictions on Microsoft. Hopefully no more time or money will be spent on unnecessary objections by a few state governments that are holding out.

MTC–00028120

From: ctrizogl@cisco.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

In today's highly competitive environment most of Microsoft's practices should not be judged within a legal framework but rather should be seen as aggressive marketing practices. Such extreme cases confuse people and rather than spending time effort and resources to find ways to become more competitive the rely upon a legal system to get them out of the hook. In my opinion the end result of such extreme legal actions is that the consumer does not enjoy the best possible products at the best possible price that come out of competition in so many other markets.

MTC–00028121

From: liloc@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Microsoft where would we be with out you? You are the brain behind todays technologies and we are for you

MTC–00028122

From: sportsranch@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I wish that I had the time to write a response that would reflect my complete disgust on the attack of Microsoft by our government's abusive use of power and influence. Simply I want this government's action against Microsoft only for the benefit of Microsoft's unsuccessful competitors to come to an end.

We need to get on with the economy and tremendous prosperity that we enjoyed

before this government's overzealous bureaucrats and these cry baby spoiled brats from Sun Microystems Oracle and Netscape helped take this country into recession. Accept the settlement and get on with life!!! How stupid! Take the most productive and successful company in the world and try to destroy it! What a bunch of idiots!! I said this as nice as I could with this much anger!!! You should hear the way I really feel about it!!

MTC–00028123

From: bone@apex.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please put a stop to the economically draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop the fact is this case against Microsoft is little more than welfare for Netscape and other Microsoft competitors with not a nickel going to those supposedly harmed by Microsoft the computer user. I do not feel I have been harmed. This is just another method for states to get free money and a terrible precedent for the future not only in terms of computer technology but all sorts of innovations in the most dynamic industry the world has ever seen. Please put a stop to this travesty of justice now.

Thank you

MTC–00028124

From: wtmizuto@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I fully support the current settlement and believe that further litigations against Microsoft should be stopped. It is obvious that Microsoft's competitors Oracle and Sun System are doing everything they can to ruin the company. Our government should not be influenced by this. Enough already. A fair settlement was achieved. Federal government should discourage the remaining states from further litigation. Microsoft one of the most successful American companies should be allowed to continue its efforts in innovation. Our fragile economy needs this and consumers are benefiting from innovation.

MTC–00028125

From: rustynail@hci.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

It is time for the government to get out of the free enterprise systems way! Microsoft has made life easier for everyone. I could have any program that I chose. Noone has forced me to use Microsoft Products. I use them because they work and are economical. What's wrong with that? Since when did making money become against the law? They give more to charity than the U.S. Government.

Give me a break and do something worth while. We have become a nation of wannabes rather than a nation of doers. The justice system needs to mind its own business and it has plenty to mind! What if Microsoft said enough. You can have it and we quit and take our ball to the house. Would software still be as economical and work? I think not!

MTC–00028126

From: judimoore@pioneernet.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please move forth on the Microsoft settlement. This case has slowed down the evolution of technology.

MTC–00028127

From: Adella@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

In my opinion the suit against Microsoft should never have been filed by the DOJ to begin with. It is time to stop it and the settlement should be approved and the Court should force all states and persons to abide by it. Let's stop allowing the incapable ones to enter a field about which they are not sufficiently informed and capable by screaming false accusations. End user consumers have been greatly harmed by the suit already and in fact will continue to be harmed by the suit and the limitations and regulations imposed by the settlement. However better that we at least stop further blood-letting and force the competitors to find their place in the market on the merit of their products and not on the basis of politics.

MTC–00028128

From: emory@iquest.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Keep the government out of Microsoft's business! This is as stupid as saying Henry Ford had an unfair advantage in selling cars. Microsoft built the better mouse trap and is being punished for it THIS IS UNAMERICAN

MTC–00028129

From: carol1335@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

Bogus charge the company has done more for the consumer then could be expected of any company

MTC–00028130

From: nclac@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I do not understand the whole problem or lack of. I have had three different computers in the past five years and Netscape and Compuserve were all loaded in them I presently use both Netscape and Microsoft Explorer. LEAVE MICROSOFT ALONE if it was not for them we would not have the ease of use that we enjoy today.

MTC–00028131

From: tom—talbot@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

Further action against Microsoft is unwarranted and will stifle the development of technology that is critical to America maintaining its leadership role in computer applications.

MTC–00028132

From: Jim AA Wright
To: Microsoft ATR
Date: 1/28/02 1:31pm
Subject: Microsoft Settlement

I think it is time to settle this Microsoft thing and quit wasting Government money on it. I don't think anyone knows how many businesses have been started to carry on and supplement Microsoft. I think it is time they were allowed to continue without the threat of a law suit hanging over them. They have caused no real harm to anyone, but there are those that would like to line there pockets at Microsofts expense.

Jim A Wright
wa7hif@juno.com

MTC–00028133

From: williamandgwenfisk@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I believe it is in the best interest of America to accept the settlement and move on. The settlement despite it's prejudice toward Microsoft will help our economy. I don't think the competitors have suffered from Microsoft exclusion.I think they don't have the expertise to compete. If there was a system that was as user friendly as windows it would have been just as successful. At any rate Microsoft is willing to share their technology with competitors so accept it and move forward.

Sincerely
Gwen Fisk
Owner of Full House Exterminators

MTC–00028134

From: sprice@hyperaction.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I believe this settlement is fair to everyone and allows for continued technology growth.

MTC–00028135

From: mccpb@bellsouth.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

let consumers determine the demand and thus the supply for products. the govt should have a hands off policy in the free market place.

MTC–00028136

From: HMGuzzo@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:31pm
Subject: microsoft settlement

TO WHOM IT CONCERNS,

IT SEEMS TO ME THERE ARE MORE IMPORTANT THINGS TO BE DONE IN THIS COUNTRY, BESIDES RIDE MICROSOFT WITH EVERY WHIM OF THE PEOPLE WHO WANT TO SUE. I THINK THERE SHOULD BE A SETTLEMENT AND GET ON WITH WHAT NEEDS TO BE DONE IN THIS COUNTRY. THERE ARE PLENTY OF CROOKS OUT THERE TO GET IF THAT IS

WHAT YOU WANT.I THINK YOU ARE BARKING UP THE WRONG TREE. GO FIND THE REAL CROOKS
SINCERELY
HOPE GUZZO

MTC–00028137

From: exnun68@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please allow the ruling on Microsoft to stand. We need strong companies to flourish in our economy without undue government interference. Free enterprise is one of the basic principles of liberty and we need the jobs and technology companies like Microsoft provide.

MTC–00028138

From: bobal251@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

This is a terrible miscarriage of justice. Microsoft should not be held to this ridicule. They are the creature of this soft ware and should be governed by the consumers and not by the government. Microsoft and their operating system are vary big and yes their is a reason for that. It's because they made a produce that was needed. They were is the right place at the right time and created a demand for their produce because people wanted it and it was a good product. Now that they are successful they are being penalized for it. Of course others are going to complain about it that's because others are trying to get a piece of the action and get it any way they can. The actions brought against Microsoft is also an action against the free enterprise of the United States of America.

MTC–00028139

From: jorjw@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I think Microsoft is doing a fine job and should be exonerated. The competitors are envious and want the government to control the competition in their favor. They can't win people complain if they give their software away or price it too high. If there wasn't a market for it nobody would buy it. The only ones who seem to have a problem with them is their competitors. Leave them alone and let them keep innovating.

MTC–00028140

From: aerospectrum@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

The currently negotiated settlement is sufficient. Any further action should be suspended.

MTC–00028141

From: byne@home.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please! Please! Get OFF Microsoft's Back! Stop Your SILLY castigation this productive Company!

MTC–00028142

From: Michele Stouffer
To: Microsoft ATR
Date: 1/28/02 1:31pm
Subject: Microsoft Settlement

I do not believe the settlement offered by the Bush administration and other states is in the public interest. I believe more needs to be done to curb Microsoft's monopoly and invigorate competition and real innovation in the operating system and office product software markets.

I am a technical training course developer in Silicon Valley, and use Microsoft's products not because I believe that they are superior, but because there is no real choice. They have become an inferior defacto standard. One would think that with all Microsoft's resources and the number of years their products have been around, that the products would be robust and elegant. But the fact is, a week doesn't go by that either Word or PowerPoint or even the Windows operating system either freezes up or totally crashes. Over ten years of using their products has added up to countless hours of lost productivity.

I believe that consumers would greatly benefit if Microsoft were forced to spend some of their resources on improving their products (by having to compete) instead of protecting their monopoly.

Michele Stouffer

MTC–00028143

From: info@bayermedia.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Dear Antitrust Bureaucrats: First I regard DOJs intrusion into Microsoft's business to be an American Travesty. Now that DOJ has sucked millions of dollars out of the Microsoft pot who will be next? Can't you folks at DOJ understand that you have NOT done consumers a favor in that they [consumers] will ultimately pay for your meddling due to increased costs to produce the Microsoft products? Why can't you government (of by and for the people... yeah right) types understand that simple concept?

Furthermore I DO like many products produced by Microsoft. However if I want a choice of operating systems there are others out there and I DO use them. There are other browser products out there such as Opera which I am using right now.... It is better than the Microsoft browser so I use it. You folks at DOJ DID NOT DO ME ANY FAVORS by getting into Microsoft's business and sucking out millions of dollars THE COST OF WHICH MUST ULTIMATELY BE BORNE BY ME THE CONSUMER. You see... not everyone in America is dumb to what is going on here....

Sincerely
Jeff Bayer
BayerMedia

MTC–00028144

From: tbe@ingeroll.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

I request that the settlement that was agreed upon be allowed to be implemented so we can get on with technology advancement.

MTC–00028145

From: Lee Liaw
To: Microsoft ATR
Date: 1/28/02 1:31pm
Subject: Microsoft Settlement

Thank you for letting us ordinary citizens comment on this lawsuit. I am confused by many of the charges that have been made in this lawsuit. However, the one issue that seems to get a lot of attention, and affects the people, is the charge that Microsoft has hurt the end-user. As an ordinary citizen, I can categorically state that I have not been hurt one bit by Microsoft. My family uses their software products, along with a bunch of other companies'' software products, and I have not experienced any problems. In fact, I feel that the other companies are benefiting because I am buying their products. That is what is confusing. I don't see the ordinary citizen being hurt. In fact, I see them as benefiting from all this technology.

When I read the allegations, I am deeply bothered at the charges and statements made by the attorney generals of the 18 States. Then I read what Microsoft's competitor have to say, and that makes me outraged, because it clearly shows that these companies are bribing the States to do their dirty work. The way I interpret it, is that they are not very astute business people, and they need some help, so they pay-off their Congressmen to do their dirty work for them. This is what really outrages me.

Furthermore, I read the remaining 9 States are extending this lawsuit. In my opinion it sounds like greed! The companies that are in those 9 States are again bribing their attorney generals. My analysis, as an ordinary citizen, is that these companies are not very astute business people. If they can't make a good product that people will buy, then they don't deserve to be in business. If they are not astute business people, I don't want them representing my country when the go overseas and sell to foreign countries. I don't feel like a proud American when I read that these companies are bribing their Congressmen to do their dirty work. It reminds of the government corruption that I read about in other countries. I certainly hope that our government does not stoop that low that we allow our businessmen to corrupt us through bribery and collusion.

I may only be a common ordinary citizen with not much influence as these large businesses, but I wish to exercise my Constitutional right to freedom of expression and certainly hope that you will consider my comments.

Thank you.
Lee Liaw

MTC–00028147

From: pdp216@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Please bring the lengthy anti-trust case to an end. It would be in the best interest of the technology industry consumers and the economy. There was a settlement on Nov.3 2001 with the federal government an a

number of state attorney generals please endorse this settlement.

Thank-you.

Sincerely

Pam & Phil Mehling

MTC–00028148

From: g.weess@worldnet.att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

Do leave Microsoft alone they are the leaders in technology in the world. Without Microsofts ideas we would loose our edge.

MTC–00028150

From: immbfd@gwumc.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I believe the entire trial has been a mistake for America and the economy. I use windows-based computers my mother and sister use apples and my son uses Linux. MS is being punished for providing consumers with an easy to use and affordable operating system. Having said that I believe the settlement reached actually goes beyond the finding of the Court of Appeals. So I will be able to support them exactly as written.

MTC–00028151

From: pdp216@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:22pm
Subject: Microsoft Settlement

PLEASE END THE ANTI-TRUST CASE AGAINST MICROSOFT.

THANK-YOU

H&K MEHLING

MTC–00028152

From: gogadgetstubbs@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

The Microsoft operating systems starting from Windows 98 to the current XP have filters & command lines written within that causes non Microsoft software programs to stall or crash. The error message in the Close Program box is usually Not Responding. No matter how much Ram is being used or what the processor speed is this message appears. My company builds computer systems installs hardware & software and troubleshoots many PC problems. It has been my experience that the bulk of my troubleshooting calls have been non Microsoft software problems. Usually on the new systems that someone has purchased will have Windows 98 NT ME 2000 & XP as the operating system. Common problems are the driver files located in these operating systems. To fix the problem a mass majority of the time I have to uninstall either the hardware or software and then reinstall it with the disk provided by the manufacturer. Ninety-nine percent of the time the first uninstallation/reinstallation works.

There have been times when I had to do this two or three times and keep rebooting the computer to get it to accept the files from the manufacturer instead of the files provided by the Windows operating system. I currently have Windows 98-Second Edition on my home PC and find that system actually helps troubleshoot problems with other Microsoft OSs. Windows 3.1 and 95 didn't carry the same command lines as the newer OSs thus they had less failures. No company should be allowed to dominate a market such as Microsoft. This is America and it should be an equal opportunity for all computer manufacturers. After all computers in this country run a mass majority of business both in the work place and now more so in the private homes of Americans. This should give all companies the opportunity to develop hardware & software that is compatible. For that reason alone companies like Gateway Compaq Packard-Bell & Apple/MacIntosh aren't very successful in the computer

MTC–00028153

From: LSUangel56@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I think this case should end immediately. All citizens have benefitted from Microsoft products. Bill Gates is brilliant and surrounds himself with brilliant people and has done nothing wrong. We only wish we were as smart. To force Microsoft to house a Tech Committee to enforce his compliance with the settlement and then demand he fund it is insane. In America we are suppose to be able to succeed without government punishment for doing well. The government should never have been involved in the first place. CEOs of competitors have thrown money in the right place to bring about this suit in the first place. That is obvious to everyone. To even entertain a forced breakup of Microsoft just simply isn't the American way. Someone somewhere forgot that theory. Maybe the competitors should do better work instead of trying to bring down those that are smarter than them. This is just the opinion of a simple public high school teacher who only wishes to have been so brilliant. Leave Microsoft alone.

MTC–00028154

From: kellythm@Hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I wish the government and states would just drop this nonsense and quit trying to hurt the free enterprise system and economy also control the freedom of companies to succeed and make better products in very competitive market. If they think for a minuet that the whole government finding was fair and just I think NOT! AOL and other companies point the accusing finger at Microsoft for being a monopoly its just a ploy to take a successful company down so they can eat up the whole market. Microsoft has never overcharged the consumer for innovative products. This kind of legal dog and pony show put on by the states and federal government wasting the tax payers money has got to stop.

MTC–00028155

From: Mbanks@sport.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I AGREE WITH THE SETTLEMENT

MTC–00028156

From: rolfglerum@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

As a long-time Microsoft user I find the company's settlement offer to be eminently fair and straightforward. Not only does it provide much-needed support to Microsoft users the world over it answers and pretty much solves the complaints that Microsoft competitors have been talking about since the beginning of this whole controversy. For the good of all it's time to move forward. Please accept this settlement offer.

MTC–00028157

From: rroland@dol.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

I have been a fan of Microsoft and Bill Gates through all of this mess. We as Americans should be grateful for companies and men like Mr. Gates. If Microsoft hadn't developed the technology some other company in another nation would have. All these companies crying and complaining about Microsoft where were they in the early days? Thats right let someone else do the research and development and then cry like a baby that you got screwed. In my opinion Microsoft didn't do anything that someone else could have done if they had been willing to take the Bull By The Horns spend some money and take a risk. I have no ill feelings for Microsoft whatsoever and feel THEY if anyone has been treated unfairly and unjust.

MTC–00028158

From: brians@110.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft Settlement

Every section of this settlement which addresses practices which Microsoft has traditionally used to eliminate the possibility of competition seems to be dependent on definitions of terms such as Non-Microsoft Middleware Product and Windows Operating System Product which are still vague enough to be disputable when Microsoft next feels threatened. Enforcement is by a Technical Committee whose paychecks come from Microsoft who are employed in Microsoft arranged offices with Microsoft provided resources on Microsoft's corporate campus in Redmond Washington.

Even if these controls turn out to be sufficient to stop Microsoft's enforcement of it's desktop monopoly we'll be back in this discussion 5 years from now when they expire. This settlement insures that no other company can use the anti-competitive tactics that Microsoft has taught the industry the hard way against Microsoft themselves. To me this seems unfair as these other companies have already been affected by Microsofts past abuses even though most of these other companies have not proven as untrustworthy in this regard as Microsoft. This settlement does not actually have any effect whatsoever on Microsoft's existing monopoly. In my opinion this settlement is an insult to the DOJ and to computer users in general that we could so easily be fooled

again. Microsoft will continue to buy all competition which can be bought and to find creative ways to kill all competition that they can't buy. Thank you for listening. :-)

MTC–00028159

From: acesinger@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft'settlement

I believe this settlement is not fair. Because I believe this suit should never have been brought in the first place. I have seen firsthand the problems deregulation brought in the telephone industry and I believe it is wrong and rather unAmerican to penalize companys for doing well such as microsoft is being penalized.

The message this sends to the citizens is that if you form a company and do very well the government will step in and force you to give up some of your assets and redistribute your wealth among some of the less wealthy companys. This is the tenents of Carl Marx. We all know what that is called. This has no place in a democracy. This message says Only do moderately well with your company if you make too much money we will step in and redistribute your wealth to others that are less wealthy. Our country needs to take another look at our undemocratic monopoly laws.

MTC–00028160

From: refraxx@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft'settlement

Is there a limit to the potential of capitalism? Is there a cap on the American success story? If Microsoft makes a product that is only compatible with other Microsoft products then so be it. Anyone that wishes to compete against Microsoft' should be able to do so without restriction. That is what free enterprise is all about. As long as the products that Microsoft creates is not a health hazard etc. they should be able to do as they please. If the public gets fed up they have the option to choose another brand. Don't get me wrong I don't like the idea of a giant corporation taking advantage of their position in the market to wield their unlimited capital and public appeal to take advantage of the consumer. However lets not put an end to freedom of enterprise and let's not put a cap on the potential of success in America.

MTC–00028161

From: T.J. Mather
To: Microsoft ATR
Date: 1/28/02 2:09pm
Subject: Microsoft' settlement

I am opposed to the proposed Microsoft'settlement. I agree with the problems identified in Dan Kegel's analysis on the Web at http://www.kegel.com/remedy/remedy2.html

Sincerely,
Thomas J Mather
155 West 15th Street, Apt #4C
New York, NY 10011

MTC–00028162

From: fwcourington@foxinternet.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

The parties opposed to the settlement are beyond children having temper tantrums they are morally obscene. The settlement is more than generous and cessation of the conflict will benefit America at large individual citizens our economy and the well-being of people all around the globe. If I were an enemy of the United States I would be cheering the efforts of the opposition as there can be no greater harm done to our nation than to indulge in continuous unremitting illogical energy draining costly distractions from the productive and creative efforts of paradigm-shifting companies like Microsoft. The motives of those opposing the settlement are transparent they are clearly nothing more than cheap gold diggers.

MTC–00028163

From: dweick@ashland.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

I agree with this settlement only to the extent that it ends a long and expensive litigation process. The entire suite was economically and Constitutionally unsound but it has now grown to the point that government money would be better spent on other perhaps less intrusive projects. The fact that the government is seeking to exert such obscene control over the high-tech industry is frightening but the prospect of millions of taxpayer dollars being used to subsidize a longer trial is even more frightening.

MTC–00028164

From: patinmur@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

gentlemen: it is my belief that an equitable solution in the microsoft law suit has been reached and should be allowed to stand as is. further it does not appear in anyone's best interest to squander court time and resources on expensive lawyers.

sincerely
c.l.bass

MTC–00028165

From: bvarnam@atmc.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

I'm not an expert in the technology field. I've followed the news reports involving Microsoft. I think that this is a case of envy. Microsoft was built by hardwork and genius. Competitors have built off of the work of Microsoft. I think the settlement is unfair to Microsoft. They are being penalized for being innovators. I only wish I had their talent genius & understanding of computers & technology.

MTC–00028166

From: nursejane@worldnet.att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

We are a global economy. We should allow Microsoft a leader in the worlds communication field and a strong American company to continue to operate without government interference. Let the cry babies that couldn't compete take their lumps and address their own business failures. Microsofts success will only enhance third world countries not only by their business endeavors but also in the area of its philanthropy.

MTC–00028167

From: dbyrd@mcomposites.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

Although Microsoft Microsoft' stockholders and the American consumer are losers including the public school system. With attorneys politicians and special interest groups reaping personal gain at the expense of the consumer Let the settlement stand before the rest of the world assumes tech leader ship.

MTC–00028168

From: manuelwc@manuel-associates.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

I strongly endorse the settlement. It is balanced in its approach and it achieves as much fairness as is possible given the complexity of the issues and variety of interests demanding to be served.

MTC–00028169

From: DTPatterson@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

As a user of Microsoft products over the years I am very disappointed in DOJs actions against Microsoft and the $35 Million it spent to cripple the IT industry. Although I do not agree with some provisions of the settlement I find the fact of the settlement and resulting closure to be better for the economy than further harassment of MS and it's chilling effect on entrepreneurial spirit. Let's get on with the task of building a better world through information technology. DOJ owes Microsoft an apology that will never be issued but let's not drag them any further from doing what they do best....creating the best software/systems in the world.

MTC–00028170

From: goliver@kih.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

the government needs to stay out of it all together. if microsoft wants to give the consumer something free this is their right.

MTC–00028171

From: kemmere@home.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:23pm
Subject: Microsoft' settlement

I have reviewed the JD/Microsoft' settlement and I am happy to see that both sides in this action have finally come to a satisfactory agreement. The forces of open competition are essential to build new technology. Also as technology advances the integration issues have to bring us all to a systems solution that is open standards based and therefore competitive in cost. Challenges

to this agreement by competitors are obviously being done for one reason and that is to erode the Microsoft market position. These have to be evaluated for what they are and nothing more!

MTC–00028172

From: tmartsun@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Henry Ford changed the world as far as automobiles are concerned. Bill Gates changed the world as far as computers are concerned. I think he should receive a Hero medal.

MTC–00028173

From: wmconveyarch@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

It would be beneficial to allow the settlement that forty one states agreed to accept be finalized so that the future of Microsoft isn t clouded by litigation for years to come both here and abroad.

MTC–00028174

From: jimthom78@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I believe that the settlement agreed to by Microsoft and the Justice Dept. is quite fair and equitable to all parties involved. I do not believe there is anything to be ained by further litigation in fact it will do great harm to the American public.

MTC–00028175

From: jeronamo69@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

The Anti Trust case over Microsoft should have never even started. It is apparent the only reason why it started was because NetScape and AOL paid off people to bring the case because they knew they couldn t bet Microsoft in the marketplace. Who would really want to have to pay for an Internet Browser when they get one for free? This new case AOL has brought is because they are fuming that MSN is getting bigger and bigger pieces of the market. It is called capitalism live with it and stop trying to bring your rival down with cheap tricks or file for chapter 11 and close down. In capitalism whoever is selling the better product for a cheaper price wins and AOL and Netscape needs to realize that and stop complaining to the government. What President Bush is doing by trying to keep out of the private business sector is a smart descision. Business don t need more government control and this how recession we are going through shows what happens when the government does try to control.

MTC–00028176

From: drgruber@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

The government should have never entered in the suit. Microsoft is a great company. It employs many people and it provides great products. No one is tied to the company with a cord. If someone doesn t want to buy the product he/she doesn t have to buy it. The government should stay out of these things and not punish success. If the government officials are jealous of Bill Gates success they should learn to live with it! There is no crime and was no crime!

MTC–00028177

From: dpost@waypt.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

As an end-user comsumer I feel that this Final Judgement is as good as likely to be. I recommend acceptance of this judgement.

MTC–00028178

From: phy1@milwpc.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I am very much in favor of Microsoft. This is a country of free enterprise. No more tax money on this case.

MTC–00028179

From: waldcwil@bellsouth.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Although I do not always agree with the way Microsoft does business I also have to admit that they have done more than Sun Netscape AOL and others to advance the wide spread use of PCs. As far as using software from a company other than Microsoft I find it very easy to install the software. I have little or no problems with the installation or use of non-Microsoft software. I know that Netscape AOL and Sun seem to think that Microsoft has harmed their businesses but I have used Netscape in the past and let me say that Netscape hurt themselves. As far as Sun AOL Apple and others are concerned if they were so concerned about the general population I did not sense it in their products or their business practices.

In closing I will restate that I do not always agree with Microsoft but if not for them and the IBM compatable PC I would not be using a PC today. Before we go to far down the road of penalties against Microsoft we need to explore the true intent of the other companies. If their products and services are good then people will buy them if not—why force their products and services on us.

MTC–00028180

From: lu-su@clarityconnect.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

This law suit was none other than to intimidate a company that was making too much money and certain persons being envious. Also because they didn t give large political contributions had to be punished. Rediculous to have even instituted the law suit against Microsoft. People were and are able to purchase other products. Microsoft makes things easier. I am strickly against the suit. Clinton should be the one on trial these days not Microsoft.

MTC–00028181

From: archangel525252@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

gentlepersons

After careful and through review of the settlement details I wish to express my agreement that it represents a fair and equtible resolution of most of the issues involved. The intense global technological competition is enough for our U.S. companies to have to deal without further selfinflicting judicial wounds that can only hamper our countries continued leadership in these areas.

yours truly

Mr. J. Podesta

MTC–00028183

From: fsalzone@suffolk.lib.ny.us@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

If our Government spent as much $ and time going after Osama Bin Laden rather then Bill Gates we would not be mourning our loved ones.

MTC–00028184

From: rjm.rn1@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I am appalled that AOL is trying to sue Microsoft after the settlement that has been reached which was too tough on Microsoft in my opinion. Where would the millions on AOL customers have come from without Microsoft??? We all owe a debt of gratitude to them rather than envy at a job well done that benefits us all AOL in particular! Please stop this injustice at once.

MTC–00028185

From: wallgren@flash.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

We've already wasted hundreds of millions of dollars of taxpayers money -the courts have ruled & the settlement was accepted by the justice department. Let s get on with the more important things in our life like the national and homeland security.

MTC–00028186

From: ftrax1@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

the cost of this case is too high. it has stopped technology advance and should be settled now

MTC–00028187

From:lstress@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Settle this suit. Government should not have filed in the first place. Free markets are the best regulators and protectors of consumers!

MTC–00028188

From: pshoup@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

settlement is better than nothing I believe you should settle this as quick as possible ... I am not in favor of the Microsoft suit nor the expenditures of time money and talent...look at the experience with GM IBM etc. Microsoft will have a tough world in this changing environment and you folks are expressing its early demise raising our cost(s) and realy not benefiting anyone! Fine the hell out of them for their sophmoric tactics and get on with business.

MTC–00028189

From: p.luczka@ieee.org@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Please don't allow onerous regulation and endless lawsuits to gum up private enterprise and customer choice. Thank you.

MTC–00028190

From: jhoward964@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I think that we need to fullfill the settlement agreement and move on.

MTC–00028191

From: lhack@ubtanet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I feel that the microsoft settlement reached on November 3 2001 is fair and reasonable and no further legal action needs be taken.

MTC–00028192

From: polymorphic@geocities.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

The argument is clear. Was the consumer hurt by Microsoft bundling the browser with the operating system? The answer is no. The Netscape argument is it could not compete because the consumer did not have a choice. Netscapes claim is Microsoft circumvented the consumers decision to choose. Software is ubiquitous in that anyone can design develop and sell it. Microsoft did not prevent Netscape from designing developing and selling its browser. Netscape gave up trying to make a better browser and at that point the consumer did choose they choose to use Microsofts browser. The fact is Netscapes success depended on Microsoft selling more copies of Windows and therefore Netscape could have sold more copies of its browser.

MTC–00028193

From: rogowski@pacifier.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Don't let Microsoft's competitors use the court system to manipulate the marketplace by pressuring the court to continue this case. The settlement proposed to date is fare and just.

MTC–00028194

From: mav802@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I think we should leave Microsoft Corporation alone. Hooray to Bill Gates he is a very successful man.

My opinion is the government should leave that company alone...and let them get on with their business.

MTC–00028195

From: shors7@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I support Microsoft in settling the law suit.

MTC–00028196

From: hunt4Him@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Dear MS. Hesse: Please end the government s unjustified attack on Microsoft. This embarrassment is a hold over from the previous administration s abuse of the US Justice Dept. and the US justice system. I believe that it is in the best interest of the country to drop the case all together but in light of the unlikeliness of that to occur the current settlement should be allowed to stand.

Sincerely
Steve Hunt

MTC–00028197

From: RBSB@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Enough is enough! Let s get off this subject and go on to More important things!! To persue this subject further would be a waste of tax payers money. Too much has already been spent! Let the settlement stand and let the free market system handle the future! I and millions of other Americans have had enough of this matter!

MTC–00028198

From: leegj@home.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I concur with the action taken by the Federal Government. I do not like sole source suppliers of any product. It appears to me the Microsoft was well on its way to that end. If I could get other software to work on my computer I would do so. Lee

MTC–00028199

From: deane-o@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Again I say I remember when Windows first came out I have a copy of that program. I am thankful for Microsoft other wise we would still be using DOS. Microsoft owns Windows and should not have to give away their codes to help other sofeware companys. They invented it and should have all the rights to it. Just like Henry Ford and Alexander G. Bell look at AT&T now since they were told to give away the store. We all are worse off than we were years ago. Let Microsoft do its thing and make it better without interference. I back Microsoft all the way leave them alone they have a vision of the future in using computers and let them proceed. Maybe the stock market will go up again it went down when they got sued remember.

Thank you
D. Atwood

MTC–00028200

From: azadoks@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Implement the agreed upon settlement without any further delays.

MTC–00028201

From: Michael.Sypek@verizon.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I have been a computer user since the days when every computer had its own operating system. Chaos ruled the field. Microsoft by being in a fortunate position and taking advatage of that position by making a superior product became the standard for personal computers throughout the world. To punish them for being the best in what they do would itself be a crime. Breaking them up would bring chaos out of order at a time when the country s economy needs order. To punish Microfsoft with more than a warning and some survaliance paid for by Microsoft would not be justified. The fact that AOL owns Netscape but uses Microsoft Internet Explorer as its Internet Browser says volumes about the quality of Microsofts products. And it isn t American to punish the succesful nor is it in the interest of the United States to overpunish Microsoft. Sure they did some wrong but they have done far more good.

Thank You
Michael F. Sypek

MTC–00028202

From: Littleangels1120@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I am against the proposed settlement. Microsoft should never have been sued the Clinton Justice Dept. failed miserably and the economic downturn began when Microsoft came under attack and has not recovered since.

MTC–00028203

From: mlanders@triad.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I strongly support this settlement and an end to any further litigation against Microsoft Corporation as it pertains to the current charges. I have always felt that the charges were baseless and that Microsoft did not take advantage of the market any more than any other legal business would have been entitled to. I feel they are being punished considerably for actions that would not have affected the market or consumers. Please

finalize this settlement and stop bleeding taxpayers and shareholders.

MTC–00028204

From: ALLENMMETZGER@PRODIGY.NET@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

I SUPPORT THE SETTLEMENT REACHED BY THE GOVERNMENT AND MICROSOFT. I DID NOT SUPPORT THE LITIGATION. LET S LET MICROSOFT GET BACK TO DOING WHAT IT DOES BEST PROVIDING US WITH THE WORLDS BEST COMPUTER PROGRAMS. STOP HARASSING THIS GREAT COMPANY.

SINCERELY
ALLEN M. METZGER

MTC–00028205

From: Vanny97@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:33pm
Subject: Microsoft Settlement.
Vanessa Castagliola
154 Aspinwall Street
Staten Island, NY 10307
January 26, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I have taken this opportunity to write and express my opinion of the settlement that has been reached in the Microsoft antitrust case. I believe that we need to concentrate on issues of greater importance . I am pleased that a settlement has finally been reached in this case and that Microsoft will be able to continue doing business as a whole entity. It is apparent to me that the people pursuing this litigation are not looking for a good judgment in this case but rather the perpetuation of their own personal agendas. When government becomes involved in business, socialism becomes the rule of the day. I feel that this case has been fueled by jealousy and that until we reach a conclusion to this litigation free enterprise is stymied. The terms of the settlement are fair: Microsoft has agreed to design all future versions of Windows to be compatible with the products of its competitors, and they will also cease any behavior that may be considered retaliatory. Please support this settlement. I trust that you will do all that is within your power to protect American businesses.

Sincerely,

Vanessa I. Castagliola, Leonard D. Castagliola Jr.

MTC–00028206

From: AFeldman@Symantec.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

While I think that this settlement goes too far in restricting Microsoft and that this whole anti-trust case shouldn't have even been brought in the first place I'd really like to see this case end already.

So I am in favor of this settlement agreement.

MTC–00028207

From: APALACHFLA@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:24pm
Subject: Microsoft Settlement

Leave Microsoft alone. Let the free marketplace determine what is good for the free world. Get off their back!

MTC–00028208

From: 2mlech@effingham.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I agree with the proposed settlement. Let Microsoft continue to operate and excel at what it does well. If you want to go after a dangerous monopoly may I suggest Walmart. They have put more Mom and Pop Stores out of business and destoyed the competition than any other corporation in America.

MTC–00028209

From: TERRY C ANDERSON
To: Microsoft ATR
Date: 1/28/02 1:33pm
Subject: Microsoft Settlement

The following comments are submitted for the Court's consideration in the Microsoft case before it. Based on my recent experience in the transfer of my Internet service from Qwest to MSN, I am very disturbed about increasing Microsoft's influence and hegemony in the provision of Internet services. The changeover of services has not been managed well—several errors caused frustration, lost information, and took much time to execute. I was led to believe that these difficulties occured because I was not coming from Microsoft software but rather from Netscape. I have spent hours talking to the technical assistance people to straighten this out. Let me add that simply getting to a person (rather than being routed through the branches of call answering systems) is a feat!

While I was not required to switch to MSN, I was given no information on ways I could switch to another server. Nor could I locate such information from Qwest or MSN. In other words, I felt corraled (indeed compelled) to transfer to the Microsoft system, MSN.

Now I'm subjected to advertisements and ''come ons'' whenever I log on. I strongly feel that it is a step backward for the consumer to allow Microsoft more control over Internet services. I am not a sophisticated computer user, but rather a person who struggles with the technology and gets by through simple, direct choices and customer-oriented service rather than glitz and promises.

Please preserve my choice to obtain the best consumer services I can find, not force me into a gargantuan system that is removed, indifferent, and frequently inaccessible.

Thank you for your attention to my concerns.

Terry Anderson,
Portland, Oregon

MTC–00028210

From: raymarieramirez@prodigy.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:30pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Ramon P & Marie L Ramirez
3295 N 153rd Dr
Goodyear, AZ 85338–8530

MTC–00028211

From: harry—sharp@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Lets please put politics and competitors interests aside and settle this case. Stop tormenting the greatest success story of a company in the history of the world. Let Microsoft Live! Leave Microsoft Alone!

MTC–00028212

From: Aisen, Alex M.
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:33pm
Subject: Microsoft Settlement
Attached please find my comments, as an individual, on the proposed Microsoft settlement.
Alex M. Aisen
<<comments on MS.rtf>>
CC: Aisen, Alex M.
Comments on Microsoft Settlement

Alex M. Aisen

I am writing these comments as a consumer, professional, and computer user. I am an academic physician, not an attorney, and readily admit I do not know the formal rules for a submission such as this. I believe the comments I am making are accurate, but much of what I write is based on what I have read and remember, but have not verified personally. I am writing as an individual only, and not as a representative of my employer.

My position is that Microsoft is a company that has produced, and continues to produce much excellent software. But they often behave in ways which seriously harm both consumers and competitors, and this behavior is likely to get substantially worse if the proposed settlement is approved without substantial modifications. Like many others, I believe the settlement is far too lenient. The best way to encourage Microsoft to continue to produce top quality software in a way which truly benefits consumers is to ensure that there is competition, and to demonstrate to the company that if they behave in an illegal manner, they will be

punished in a meaningful way. The proposed settlement does neither, and should be substantially strengthened.

Here is my list of many of the harmful behaviors I believe Microsoft to be guilty of. Some of these practices may be illegal; most are likely within the law. But it is clear that the only reason Microsoft has been able to get away with things such as I will mention is that they are a monopoly; their customers, be they corporate or individual, often have no practical choice but to play by their rules, onerous as they often are. Anticompetitive Activities. The activities outlined in the lawsuit several years ago by Caldera Corporation over the computer operating system DR-DOS, wherein Microsoft was alleged to have (and probably did) incorporate well camouflaged code in a version of Windows released to software developers that deliberately ''broke'' a competitor's product (DR-DOS, which at the time competed with Microsoft's MS-DOS) is an excellent example. This lawsuit was settled by Microsoft for a substantial sum.

More recently, Microsoft has released a new version of Internet Explorer, version 6, which, unlike previous versions, is deliberately incompatible with plug-ins (third party accessory software) written in the so-called Netscape style. This deliberate incompatibility may be an attempt designed to further hurt their competitor, Netscape

They have also removed support for up-to-date versions of the Java Programming language from the latest version of Windows, Windows XP. Java is a programming language developed by Sun Microsystems, that has been widely adopted by many software developers; it has the important virtue of being cross-platform. That is, programs written in Java can usually run on computer platforms other than Windows, for example the Macintosh, Unix, and Linux. By removing full support that Microsoft provided in earlier versions of Windows, Microsoft is hurting both developers who choose to use Java, and consumers such as myself who bought Java based software from these developers.

Though I certainly cannot prove it, as a long time users of many Microsoft products, I think is possible or even likely that the company has sometimes introduced or permitted ''glitches'' in their software that interfere with competing products, but not with Microsoft's own. For example, in the past the Novell Corporation has produced a file sharing system that competed with Microsoft servers, allowing desktop PC's to store computer files and share printers via centralized server computers. I have found that there are numerous ''glitches'' when using Novell file servers, that seem not to be present when using Microsoft file servers. As a user, I have no real way of knowing whether these glitches are simply bugs or weaknesses in Novell's software code, or ''deliberate'' incompatibilities hidden in the desktop versions of Windows by Microsoft. And even if there is no overt action by Microsoft, the fact that Windows software is proprietary, and the source code generally secret, can make it hard for competitors to produce products that interoperate with Windows.

More recently, I personally found that I could no longer use a popular third party e-mail client, Eudora, with an enterprise Microsoft Exchange e-mail server. Microsoft had included, as an option, what I've read is a proprietary security feature called ''secure password authentication.'' The enterprise had apparently started requiring that this protocol be supported by the client software. Since Eudora could not use this, I was forced to switch to a Microsoft program, Outlook Express. Now, Outlook Express, like Internet Explorer is presently a free program. And, I have insufficient technical information to determine what caused this particular incompatibility. However, I cannot help but wonder if this is part of a larger strategy to marginalize third party e-mail clients like Eudora, and whether ot not Outlook Express will remain free if and when the competition is gone.

Microsoft's treatment of potential competitors is important as well. An excellent example of the sort of thing they are capable of was recently described in the Wall Street Journal, concerning Eastman Kodak. Film-based photography is now being replaced by digital photography, and Kodak hoped to sell digital cameras and software, which consumers would install on their Windows-based computers. However, this was a market Microsoft wished to enter, either directly or through partners. So Microsoft reportedly designed new versions of Windows to steer consumers away from Kodak's offering, and to those supported by Microsoft. Ultimately, Microsoft backed down in this particular case. But one cannot help but wonder if, given a less powerful adversary than Kodak, or the absence of the ongoing legal activities, if the outcome might have been different.

One additional example: the default home page on standard installations of Internet Explorer (which is part of every copy of Windows and hence part of most PC's sold) is the Microsoft Network. Thus, every time most consumers starts Internet Explorer, the web site they first see is Microsoft's own Microsoft Network. Now, it is possible to change the default home page, but most users either will not know how, or will not bother. So, this simple strategy puts other vendors of web portals at an extraordinary disadvantage.

It has been widely reported that in pre-release versions of Windows XP, Microsoft incorporated a feature called ''smart tags'' which would allow them to direct users of the Internet Explorer web browser visiting just about any third party web sites to be ''directed'' at proprietary sites run by Microsoft or its corporate partners. When word of this feature was reported in the news (the Wall Street Journal), there was an outcry, and Microsoft disabled it. However, there is no reason why they could not activate it in the future, particularly if they feel their dominant position in the market place, and the lack of effective oversight, allows them to do so.

Onerous Licensing Terms: Terms in Microsoft software licenses are often onerous, and it seems self-evident that the only reason Microsoft gets away with including them is that they are a monopoly. These onerous terms affect both consumers and businesses.

Two recently publicized examples from consumer software are as follows. The EULA (end user license agreement) found in the download of Microsoft's very popular Windows Media Player, states ''Digital Rights Management (Security). You agree that in order to protect the integrity of content and software protected by digital rights management (''Secure Content''), Microsoft may provide security related updates to the OS Components that will be automatically downloaded onto your computer. These security related updates may disable your ability to copy and/or play Secure Content and use other software on your computer. If we provide such a security update, we will use reasonable efforts to post notices on a web site explaining the update.''

In other words, Microsoft reserves the right to automatically install software, without the users knowledge or permission, which may disable ''r software'' on the user's computer. Microsoft's newest operating system, Windows XP, incorporates an automatic update feature, which could easily be used in this manner. Though the putative purpose of disabling software is to enforce Microsoft's interpretation of digital copyright enforcement, t it is important to note that the language quoted above is very general; further, even properly intentioned disabling of software could have very adverse unintentional effects on an unsuspecting computer user, as has already been reported in the trade press concerned the automatic updates that occur with XP.

The second example on onerous licensing terms is this language, which speaks for itself, which has been widely reported to be present in the printed EULA included with shrink-wrapped boxes of Microsoft's popular website authoring program, FrontPage: ''You may not use the Software in connection with any site that disparages Microsoft, MSN, MSNBC, Expedia, or their products or services, infringe any intellectual property or other rights of these parties, violate any state, federal or international law, or promote racism, hatred or pornography.''

At the enterprise level, I have heard, and had limited experience with myself, licensing clauses that do such things as forbid companies from sharing performance test results performed on Microsoft software. Thus, companies can, and sometimes are, forbidden from sharing their experiences with Microsoft products with their corporate colleagues. Microsoft is even widely reported to have used such language to prevent the publication of comparative reviews of their products.

Cost is an important factor as well. As Microsoft's monopoly in both operating systems and office productivity software has become entrenched, Microsoft uses its licensing terms to effectively raise prices substantially. For example, years ago, when there were competitors to Microsoft Office, the licensing terms on Office allowed concurrent user licensing. This is no longer allowed. More recently, other changes in its licensing terms require users to pay substantially more, oftentimes several-fold more, for software licenses. The important point is, I think, that Microsoft has substantially increased the cost of its

software to enterprise consumers over the years, and they often do this by changing the licensing terms, rather that ''overtly'' increasing the price. The effect is the same—the price goes up dramatically—but the approach used by Microsoft may allow them to masquerade this fact.

Finally, it is well known that Microsoft often include licensing terms and pricing strategies that pressure companies into making upgrades that they otherwise would not, thereby incurring substantial expenses in training, dealing with incompatibilities with other software, reduced efficiency from complex features that may not be needed, etc. Again, this is a practice that cannot practically be regulated; rather it is essential that there be viable competition to Microsoft to keep their licensing practices reasonable.

Privacy. It is clear that Microsoft often uses its monopoly power in ways that seriously compromise privacy. The major reason Microsoft is able to do this, is that they are an effective monopoly. Several examples of such privacy invasion follow.

Several years ago, it was discovered by a third party that all documents created by the then current version of Microsoft's ubiquitous Office software included a unique identifier that allowed the document to be tied to the system that first created it. Further, it appeared that Microsoft had a database of computer registrations that may have allowed this identifier to be tied to the actual individual who registered or purchased the computer. In other words, any letter created in Word could, with access to MS corporate databases, be tied to the computer, and perhaps even the individual who first wrote it. When this was publicized, Microsoft removed the ''feature.'' But, had this occurred today, with their position even more entrenched, they may not have felt this necessary.

It is worth considering the privacy implications of Microsoft's latest operating system XP. XP incorporates functions that have serious privacy implications. Consider two features a user encounters when first installing or using Windows XP, Product Activation, and Passport. Product Activation is now required of the latest consumer versions of Windows and Office, and requires that users contact Microsoft after purchasing, but before they can use the software (to be precise, they are given a short time of use before product activation is necessary). During this contact, which will usually take place over the Internet, information about the users computer is transferred to Microsoft. The stated purpose of Product Activation is as an antipiracy measure, but the privacy implications are serious. Users have no choice but to send Microsoft information about their computer configuration; the nature of the information they send is not fully known, since the data sent is encrypted, and since Product Activation is a somewhat mysterious and proprietary process.

There are even more serious privacy implications in the MS Passport system. Use of Passport is not theoretically required, as is product activation, but in practical terms most individual users will have to sign on to it. When a newly purchased computer is first turned on, the user is asked multiple times to sign up for Passport. Further, participation in Password is required to obtain technical support from Microsoft; as everyone who has used modem software knows, the need for technical support is inevitable. Passport is designed as a system to electronic commerce, and requires that a user provide significant personal information. One cannot help but be concerned about the collection of such information by a corporation with the ambitions and dominance of Microsoft. Again, viable competition and a robust marketplace would be the best means of ensuring that Product Activation and Passport not be used in ways that violate reasonable user privacy.

Software Reliability: Software reliability, or, rather, the lack thereof, has become a major economic drain in this country. As computers become more ubiquitous, there are important safety concerns as well. It is important to note that the financial motivations for software vendors are not necessarily to produce a reliable product. Companies often charge fees for providing technical support, and indeed, this may be a substantial source of revenue. This revenue stream is enhanced the more complex and ''buggy'' software is. Microsoft's consumer products used to come with free technical support; as the company's dominance has increased, they have discontinued this practice; they now generally charge consumers for technical support after a limited number of incidents that are ''free'' (or, rather, included in the price of the software). Corporations are on the hook for far greater fees, with large annual support contracts and per incident fees. And, because Microsoft's software is proprietary, the company is usually the only feasible source of technical support. The way to ensure that commercially sold software is make as reliable as possible is by competition in the marketplace.

(It is noteworthy that, because software is licensed and not purchased, that the usual remedies in the civil courts for ''buggy'' products do not generally apply to software. This may grow even more true if the software industry, lead by Microsoft, is successful in persuading state legislatures to pass UCITA (Uniform Computer Information Transactions Act), which many feel will effectively eliminate any legal liability for bug ridden software.)

In summary, Microsoft is a great company that has produced many wonderful and useful products. However, there are many ways in which Microsoft's business practices harm consumers, both individual and corporate, as well as competitors. Were Microsoft not a monopoly, the marketplace would be the best policeman. But the company is a monopoly, and has been found by the court to become one through illegal means. It has demonstrated, and continues to demonstrate, a disdain for the legal system that should give us all pause. The solution must be to impose financial penalties, restrictions on conduct, and perhaps even structural changes on the firm that will restore competition and bring things back in to balance. The proposed settlement does not even come close to meeting this end; it is essential for the long-term health of the American economy that the court remedy this unfortunate situation.

MTC–00028213

From: clvanauken@mindspring.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

As a consumer who appreciates the advances in the world of technology, it is difficult to understand the necessity of the Justices Department's suit against Microsoft. I do not even pretend to understand how technology works. I do understand the marketplace and as a consumer it is important to have access to products that can improve communication make it easier to access the abundance of knowledge in the world and to be able to enjoy a different venue of entertainment. Consumers with little doubt indicated they were comfortable with the Microsoft product. It appears the Justice Department may have had too much time and money on hand and needed to make a case against some profitable company. One of the beauties of the US is the ability of the consumer to define the marketplace by what works with ease affordibility and accessibility. It appears the other companies needed to improve their product with more creativity and ingenuity rather than turning to the Justice Department. When the consumer is unhappy then the Justice Department should intervene.

MTC–00028214

From: billsanchez@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I fully support the conditions of the Microsoft settlement.

MTC–00028215

From: l.m.james@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:34pm
Subject: Microsoft settlement
Laurel James
14023 NE 8th St.
Bellevue, WA 98007
Office # 425–378–8309
Attorney General John Ashcroft
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing this letter today to voice my support of the settlement reached between the Justice Department and Microsoft. In offering superior, well priced products Microsoft has made my life and my business easier to operate, I have always been extremely happy with their products.

I believe that the enactment of the settlement agreement will spur innovation in the settlement process once more. The settlement agreement contains many stipulations that will benefit the technology industry. Microsoft has agreed under the terms of the settlement to disclose information about the internal interfaces of the Windows system. In addition to this, Microsoft has released contractual restrictions on developers who would wish to enter into multiple contracts.

This lawsuit is old and worn out, and should go away as soon as possible for the

good of America and the economy, and for us, the happy Microsoft consumers.
Sincerely,
Laurel James

MTC–00028216

From: vdrlholl@
westrelay01.boulder.ibm.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:33pm
Subject: Microsoft settlement
I am against the proposed settlement. I believe the only fair solution is to split MS into 2 companies. One company would be operating systems. The other would be applications. The operating systems company would be required to publish all API's (application programming interfaces) to everyone. This would also eliminate the case of breaking another company's application with an upgrade without breaking Microsoft products.

MTC–00028217

From: petitjim@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
Sirs
I am in support of Microsoft not only because I am a small shareholder but I believe in capitalism. Microsoft has grown through research and innovative thinking and has fielded some excellent products which has made them the leaders in their markets. To go against them because their competitors cry foul is an incrouchment of the government into the free market system.

MTC–00028218

From: Carl Keil
To: Microsoft ATR
Date: 1/28/02 1:34pm
Subject: Please Punish Microsoft
Please uphold the spirit of the Microsoft verdict. They were found guilty of breaking the law. Please, don't bend over for bill gates. Punish Microsoft for breaking the law.
Thanks,
Carl Keil
Portland, OR
503–231–0894

MTC–00028219

From: bilretz@webtv.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
get off microsofts back!!!

MTC–00028220

From: cheronad@bellsouth.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I think it is wrong of the United States to do what they are proposing to do to Microsoft. I think Microsoft is a upstanding honest company. They are prosperous because of this and because they have many intelligent people working there. Maybe the government should help fund other companies that aren't as fortunate as Microsoft to give them a chance to compete. I think their decision could hurt them in the future. They may need Microsoft to help them, then what will they do?

MTC–00028221

From: raygps@cs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I believe that the Nov 3rd settlement with Microsoft is fair. Microsoft products have standardized the PC industry, enabled ease-of-use, improved efficiency, created value, and reduced cost.

MTC–00028222

From: lesterh@twave.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
It is my opinion that Microsoft is responsible for uplifting America to the Top in Technology. This Anti-Trust Prosecution by the Clinton Adminisration is nothing less than Corruption for monetary gain. Microsoft should receive support from us and not Prosecution. This is a Common Sense company paid for with honest earned money. If our Nations leaders were not corrupt at the conception of this Lawsuit Common Sense says it would have never happened. Microsofts donations to the people of this Nation are another thing. They have given much to the good causes of our good people. If anyone is guilty of anything it is the Clinton Administation being guilty of a conflict of interest and Microsoft being a victim of its unethical outcome. If the truth be known and when it is the people will side with Microsoft. This is an opinion based on fact.
Thank You
Lester Hopper
6294 Southlake Drive
Hickory NC 28601

MTC–00028223

From: edbar@starband.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
Dear Sirs:
This is to express support for final acceptance of the settlement between Microsoft the Department of Justice, and the nine states. We urge you not to reject this settlement as any delays will not serve the interests of the American people but serve to further the causes of Microsoft's competitors who continue to choose to compete in the courts instead of the marketplace. The American people are insulted by claims that we have been harmed by Microsoft. In truth, we have been harmed by their competitors who have stalled progress in technology and in the economy. These suits must not be allowed to continue. Before said suits our country experienced unparalleled growth and prosperity. Our country regained its dominance in technology due to the innovation and growth of Microsoft and the many companies supporting their operating systems. We respectfully urge you to help return our country towards prosperity by rejecting further lawsuits and further delays in acceptance of the anti-trust settlement.
Edward J. Barsano
CEO NeuralTick Inc.

MTC–00028224

From: stover8@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I feel it is time to drop the law suit against microsoft. This country is based on competition and microsoft has a better product. Why is this wrong? I am also tired with spending money on a law suit that is over with. I demand that you drop this suit now!!!

MTC–00028225

From: denrosep@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I have tried AOL & Netscape and don't like them as well as Internet Explorer

MTC–00028226

From: carollila@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
Enough already. The settlement is fair, stay with it.

MTC–00028227

From: alice-remcheck@webtv.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I believe that in the best interest of everyone the lengthy antitrust case with Microsoft should be brought to an end. The litigation should not continue.

MTC–00028228

From: champcom@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
Based on the issues that I have read, the only people who will gain from further harassment of Microsoft Co. will be the competitors and attorneys. No further penalty should be placed against MS.

MTC–00028229

From: vendor@techcollective.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement
I can't state it strongly enough. The case against Microsoft was a stupid waste of taxpayer money! The end result was millions of $$$ wasted. Because Microsoft was getting its foot in EVERY door and its products were EVERYWHERE the end result of this total waste of money is to FORCE Microsoft to be in even more places than it is now! By forcing Microsoft to donate software to schools the court is MAKING Microsoft do the very thing it got into trouble for doing! Just DROP the whole thing and go away now before you waste any more of MY money in another pointless chase after Microsoft.
I'll agree that there MIGHT be better things out there than what Microsoft produces. but I have seen NOTHING that forces me to use Microsoft. Did Microsoft FORCE Apple to charge too much for a MAC computer so that most people would choose to buy IBM? No. Did Microsoft FORCE IBM to hold Microchannel close to the vest and not let anyone else make Microchannel products? No. Both of these bone-headed decisions

were made without Microsoft input. Did Microsoft benefit from Apple and IBM making stupid choices? You bet. So did I. The one GOOD thing about the case is that it kept a lot of lawyers busy and thinned out the crowds behind the ambulances.

MTC–00028230

From: TDill@rochester.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

The Man (Microsoft) did business and some people felt they were cut out of the process. Since when is it the job of our justice system to make sure a business makes money. If you have all this time on your hands and want to spend our tax dollars, how about going after the electric and gas companies.

MTC–00028231

From: innthyme@twcny.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Microsystems is obviously a monoply even after this decision. Therefore, if other monopolies were either split up or negated why was this one treated differently? I believe that they should have been advised to cease and desist their monopolistic practices. It would have been a sound warning to other companies to not replicate those actions.

MTC–00028232

From: robertsw@mindspring.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I believe the Microsoft case should be settled in its entirety and all states should have to abide by the Federal decision. To do otherwise undermines the economic system which has allowed America to be the economic power that we are.

MTC–00028233

From: Nperricci@cox.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I am very upset about the Microsoft Settlement. I did not really understand how upset until somebody from Americans for Technology Leadership called my home to harass me about how I needed to show support for the Microsoft Settlement. I have an unlisted number I don't even give it out to the credit card companies. Only my work and very few others (including Microsoft) have my number at all. I am possitive that my privacy has been invaded and I am not sure, but I think my civil liberties may have been violated by the disclosure of my personal information. The proposed settlement is stupid. It will give 3rd parties who did not purchase any software, were not affected by the lack of competition, and not forced to obtain certification from Microsoft, to profit. While on the otherhand, all those affected like customers, competitors, and professionals forced to certify and recertify will go uncompensated. Lastly it does not provide any measures for prevention of future violations. I think that any compensation should go to competitors, customers, and certified professionals who have suffered.

MTC–00028234

From: lrhino@dcwis.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I believe the settlement reached in the Microsoft Anti-trust case is fair and equitable. Stop persecuting Bill Gates and let him get on with his work

MTC–00028235

From: barney13@mindspring.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Dear Sir: America has always been the land of the free; to grow, to live, to achieve, to invent and to prosper. On the contrary it seems to me that when someone succeeds in business to the point of making large amounts of money someone or something starts to say this is not right he has to be stopped or he will have a monopoly. Leave Mr. Gates alone. He has been benevolent with his profits, employed thousands and inspired thousands to go into the electronic field. I am not as computer friendly as I would like to be, but at my age, I am doing the best I can with the help of my son. Spend my taxpayer monies and go after the Health Insurance Companies who are dictating who will get the proper care and who won't. I have tried to buy my own health insurance and have been refused because of my age, varicose veins, etc., etc. They didn't care if I could pay; they just didn't want to take the risk. I am sorry I am rambling but my point is there are important issues to take care of. If the product is good, people will buy it. If not, they will buy something else. Frankly I am glad my computer came equipped with Microsoft. It has served me well. I firmly believe in free enterprise. I don't see anyone going after China. They seem to have a Monopoly on every item sold in the USA. When I find something made in the USA, I buy it for a souvenir. Please leave Microsoft and Mr. Gates alone and go catch the bad guys. Thank you.....

MTC–00028236

From: webmaster@seltenrich.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

The settlement should go through. Attempts by competitors of Microsoft to stop the settlement process amount to no more than using the American legal system for their own self-interested business needs.

MTC–00028237

From: edhandlender@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

They have an agreement arrived by compromise. Stop wasting T&M and proceed.

ED

MTC–00028238

From: Soko@kendaco.telebyte.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I have been watching the Microsoft case for a long time. It is time it was over. Please let the settlement stand.

MTC–00028239

From: dallasscowboys@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

government should stay out of microsoft business.. that company provides the economy with lots of jobs and taxes

MTC–00028240

From: wolfman@mwcsd.k12.ny.us@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

No-one complained when Apple gave away systems to schools to get schools to buy Apple. No-one complains about AOL blanket ads on Time-Warner Cable. No-one suffered because of Microsoft but millions benefitted. At least they are real—unlike Enron.

MTC–00028241

From: mutka—ron@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Microsofts interests are compelling personal computer users to use their operating system. This operating system which is compelling me to act in ways that I would otherwise not choose exceeds healthy business. competition is neither fair nor just. Specifically I believe the physically and mentally disabled are marginally included in this revolution of communication, information and processing. Developers fear that the predators and reverse engineers await on the margins of one operating system (XP) at the ready to copy product(s) which are too young to defend themselves. In particular, I cannot use Government protection and resources in a capitalistic society to defend myself unless I can reasonably expect my most basic development assumptions are protected. These basic assumptions ought to have Microsoft preserve and create public Safe Haven operating system components that will promote software development which would not have to be redesigned because the Operating System has changed. Open Platform operating system proponents may find this a compromise. My example is my own product. I continue to struggle to design a product that is open platformed, meaning it should work on most operating systmens and within all browsers. My testing has found I must discover software bugs that seem to benefit the interests of the operating systems. I believe that these software bugs are not intentional but they are so numerous that a manager can work slowly on them and still be rewarded. This is unfair to the public. This Business market is NOT functioning normally! This is not a model of competition with room for a better business to succeed! This current business model is dysfunctional! I think this dysfunction works in the following way. Current Law allows the creation of conflict between software applications, hardware, and operating

systems when a competting business begins to spend resource to point out the unfairness and fix the software bugs.

T

MTC–00028242

From: holgateg@montana.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

to whom it my concern...this whole matter has been nothing but a joke to me...a total waste of money and time...with the money and time spent on this whole debacle, all parties involved could have new technologies out there for everyone to have and us...but instead what we have is a company like AOL Time Warner looking for more money that they don t deserve(let them go out and do it instead of depending on another company to do it for them)...i think that Microsoft has done a good job and has worked hard to get where the're at...i will always buy and use their products...on the other hand i would never us or do anything with AOL Time Warner...sounds like to me they should be investigated for their aggressive business practices also...they are a legal monopoly by our own government...in closing its time to get back to work on newer technologies and get out of the court room... thank you very much...

Martin C. Holgate

MTC–00028243

From: iancoffer@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I bought a new computer in November 2001. The operating system was Windows XP but the web browser was AOL!! Ican't understand why the states which are still pursuing the antitrust suit are being backed by the competitors of Microsoft. Barksdale and Ellison have beene crying spilled milk for years. I think the case should be settled and put to rest so that the country can get back to business.

MTC–00028244

From: John Gallant
To: Microsoft ATR
Date: 1/28/02 1:35pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
RE: Microsoft Settlement

Dear Ms. Hesse,

I have, as a stockholder of Microsoft, watched the antitrust proceedings with interest. It seems that the Government has worked an agreement that was fair to all parties and now wants to change terms and conditions relating to the settlement. I do not feel it is proper or fair that at this late date this be allowed to happen.

I further feel that Microsoft is not responsible for individuals that create products that cannot compete in the marketplace because of their own shortcomings (e.g.. Netscape). I am further annoyed that my government sponsors what I consider a monopoly in the AOL / Time Warner merger. Now AOL is trying use Netscape as a platform to damage a perceived competitor, MSN. Try to visualize the PC software market before microsoft created and organized it. Our ability to communicate, organize and interface between businesses has been improved on a scale beyond anything we could have ever imagined prior to 1980. Why... Because Microsoft and its founders had a vision. This settlement represents the best opportunity for Microsoft and the industry to move forward, therefore I hope it will end the litigation.

MTC–00028245

From: feyrerstation@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I believe the U.S. government acted correctly to investigate Microsoft for anti-trust actions. I don't necessarily agree with every part of the decision handed down. I admit I haven't made time to read all the parts of the decision handed down. I am in favor of our society making market decisions for themselves in general. So the U.S. government should not restrict the free decisions of taxpayers to buy and sell what products they like.

MTC–00028246

From: pyetka@ptialaska.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

Microsoft is a leader in the technology field and needs to have the freedom to do what it does best. That is to improve the computer technology for everyones use. If there are a few who do not wish to use this technology from Microsoft they can choose to disregard what has and is being made available for the consumer. The consumer has the ability to decide what to use at home and at the workplace. Our government should not interfer with private enterprise and the the ideas of Microsoft or any company. The marketplace is where the decisions should be made aabout who wants to use what products. This lawsuit is frivolous.

Thank you.

MTC–00028247

From: dbnee@mc.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I am in agreement with the settlement that brings the lengthy anti-trust case to an end.

MTC–00028248

From: Phan, Anh
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:34pm
Subject: Microsoft Settlement

Dear Antitrust Department officer,

I have read through the settlement proposal between the Justice Department and Microsoft. It sounds like it is a fair, effective way to resolve the issues within the merit of the case. I do not understand why other non-settled states and critics want to include a lot of different things falling outside of the scope of the law suite and still claim they are acting on behalf of consumers!!! Like judge Postner stated in his recent book, individual states should be excluded from the antitrust suite since they are acting for the interests of their own states only, not for the entire American people. The purpose of the lawsuit is to restore the fair competition environment in the industry, not to punish the successful company, rewarding the failures, or helping the competitors. American is a free market environment. It will go against our principle if we force a company to include the product of a rival company. If a company chooses to do so, it must come from their own decision. The government should not dictate a particular company how it would run its business. It should be free to run itself in its own creative way as long as it follows the general rules set and honored by every one. Freedom is the strength of our economy, our spirit and our lifestyle.

Thank you very much for your time.

Regards.

anh.

MTC–00028249

From: LDeriau@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:35pm
Subject: Microsoft Settlement.
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As an active member of my community and a firm believer in American ideals and constitutes, I needed to share my concern with you and the Department of Justice on how unnecessary and detrimental this on-going lawsuit against Microsoft is for our people and our nation as a whole. How can our government leaders not see that this attack on the Microsoft corporation is an attack on the American principles on which this nation was created ? I believe that by accepting the proposed settlement is the only step we can take which will move us forward. This agreement will monitor Microsoft's future production procedures, allowing the technology industry will be allowed to concentrate on business by creating innovative, comprehensible software to keep our IT market evolving.

Your time and attention to this matter is appreciated and I look forward to seeing the end of this litigation once and for all.

Sincerely,

Lisa J Deriau
10215 21st Avenue SE
Everett, WA 98208

MTC–00028250

From: pasqualini@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

I am a registered active voter who supports the settlement in the Microsoft matter. It is time to put this to rest and get on with technological innovation. I hope that special interests and competitors will not derail this settlement for their own selfish and greedy motives.

David A. Pasqualini

MTC–00028251

From: John R. Callahan
To: Microsoft ATR
Date: 1/28/02 1:34pm
Subject: Microsoft Settlement

The proposed Microsoft-DOJ settlement is a judicial travesty. I hereby state that I strongly disagree with the proposed settlement and disapprove of the proposed settlement. I am a 20+ year computer professional (as a member of the Association for Computing Machinery), former (and tenured) academic, civil servant, and current executive in the private sector. Feel free to contact me with any questions or comments. I hereby place this comment in the public domain.

(signed)
John R. Callahan, Ph.D.
jcallahan@acm.org

MTC–00028252

From: wvcoal@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:25pm
Subject: Microsoft Settlement

It is time to end the government's encroachment on private industry. Microsoft has worked well to become a leader in the technology industry while providing an exceptional product. Please end the anti-trust lawsuit and allow Microsoft to continue business as usual.

MTC–00028253

From: Potteryfolk@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:36pm
Subject: microsoft should pay!

I strongly believe that microsoft broke the law and will continue to break the law unless strict rules with real consequences are brought to bear against the company. Microsoft is a monopoly that is using that monopoly to extend unfairly it's control over a huge portion of the US economy. Thank you for stopping this illegal company!

joseph briggs

MTC–00028254

From: David Nadle
To: Microsoft ATR
Date: 1/28/02 1:37pm
Subject: Microsoft Settlement

Dear Sir or Madam:

I am pleased to have the opportunity to add my voice in support of the proposed Final Judgement. In my opinion the proposed Final Judgement protects Microsoft's right to define their product while protecting the right of OEMs to define theirs, and this is good for consumers.

Sincerely,
David L. Nadle, Ph.D.

MTC–00028255

From: UPEA
To: Microsoft ATR
Date: 1/28/02 1:38pm
Subject: Microsoft
Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

The Department of Justice has worked hard to find the compromise between the Microsoft Company and their competitors. I have followed this issue with interest because I believe that business should be allowed to find its own market. With this compromise now done, I hope the Department can approve the settlement and allow business to move forward.

Sincerely,
Audry Wood

MTC–00028256

From: Bob (038) Cathy
To: Microsoft ATR
Date: 1/28/02 1:40pm
Subject: Microsoft Settlement
ROBERT AND CATHY FRISBY
18523 Hottelet Circle
Point Charlotte, FL 33948

January 21, 2002
Attorney General John Ashcroft
US Department of Justice
Washington, DC

Dear Mr. Ashcroft,

The Department of Justice has finally agreed to terms on a settlement that brings an end to the antitrust suit against Microsoft. We are writing this letter to express support for the settlement, and to ask that it is approved as soon as the public comment period is over.

The faster this settlement is approved, the faster the economy can get back on its feet. We can't stand to sit and watch the market fall over 200 points one day, then rebound to close out the next day with gains over 120. The settlement will encourage competition, which will lead to better technology at a lower price. This hopefully we will give us some of the stability our economy needs, and can kiss goodbye to this recession. Microsoft does have to forfeit a good deal of technology to their competitors, and they will be monitored by an oversight committee who makes sure they are abiding by the terms of that settlement, but this will certainly be worth it in the long run.

Everything is now in place for an exodus from this recession. We support this settlement, and hope it is implemented as soon as possible.

Sincerely,
Robert & Cathy Frisby

MTC–00028257

From: Chip
To: Microsoft ATR
Date: 1/28/02 1:41pm
Subject: Microsoft Settlement

I feel the remedy is fair and should end the case completely. I do not feel that Microsoft has hurt the public in any matter. Ten to fifteen years ago the computer industry was in a mess. There was no standard operating system. If you went to purchase a computer at Radio Shack you would get a computer running Deskmate. If you went to an Apple distributor you got the Apple operating system. If you went to IBM you got their OS operating system. And then of course you had Windows. Kids in school learned Apple but could not go into businesses and run their computers. The average person had to have an apple computer so their kids could do homework and an IBM computer so they could work at home. Since then and thanks to Microsoft the industry has been standardized, kids in school can go out in the world and run computers. Employees can go home and work on a computer with the same system they use at work. By becoming standardized, how does this hurt consumers? Microsoft has saved the average consumer thousands of dollars. By their continued innovation and development of the operating system they have added tools and recourses that would have cost the average consumer a lot of money. If Microsoft charged for each addition to its product, or forced the consumer to purchase such things as Internet explorer, word, notepad, a calculator, Paint, the basic TCP/IP protocols, the average person could not afford these add ons and would be shut out of the internet.

As for Internet Explorer, that was the best thing that Microsoft ever did. It made surfing the web enjoyable. Question, did you ever try to use Netscape Navigator before Internet Explorer came along, I have and it sucked. You had to pay around $50.00 for it, it took several hours to down load and would crash so often that trying to look up one item would take hours. Microsoft came and gave you Internet Explorer, which at first had its problems, but when they finally integrated into the operating system, it was fantastic, you could surf the net and really enjoy the experience. System hangs and lockups that occurred often before integrating disappeared. And by integrating the software it saved me money, how DID this hurt me? I know the argument it hurt competition, my argument is it did not hurt competition, it caused competition. It caused Netscape to wake up and make a better product. At a more reasonable price, this let the consumer save money by being able to buy a better product at a lower cost. Microsoft did nothing wrong. Those consumers that wanted Netscape still continue to use it, if Netscape wanted to keep customers, and gain customers, they should have developed a product that knocked the socks out of Internet Explorer, but did they no, they cried and sued. They gave up, because they would not take the time and resources to develop a better product. I know the argument, how could they when they did not have the money because Microsoft was giving the product away. Simple, build it and they will come. The consumer wants better products and if the consumer found an item better, those that can afford will buy it.

Is it wrong, to build your business, and to protect your business. NO, it is not wrong! Microsoft played hard ball, yes, but how is that different from any other company that wants to grow, expand, and make a difference. Netscape, AOL, Sun Microsystems and others are playing hard ball now, buy suing Microsoft, because of their jealousy over the dominance Microsoft has. If the companies really cared about the consumer, they would build better products that would blow Microsoft way. But do they no, the run and scream and sue Microsoft, because Microsoft does not play fair. If these companies would build better products on the same caliber as Microsoft, consumers will go there; they will buy what they want. But stripping down Windows will only hurt the consumer, because the costs associated with

buying each piece of software will be more than the average consumer can afford. But those that can afford the software will buy the better software. How is this any different from the auto industry? Yes, I know that there are several companies competing equally, If I went to ford to buy car should they be required to give me a stripped down car. So that I can go to Chrysler to purchase the motor, to Bose for the stereo, to Goodyear for the tires, to Monroe Muffler for the Shocks, and Muffler. NO, they provide the basic systems and then you buy the additional or custom items that you want. Microsoft does that they provide the consumer with the basics and let the consumer buy what they want. The problem is the other companies are not making products that are better and more desirable.

End the lawsuit now and let Microsoft go back and build and innovate so that the envelope of information and knowledge becomes more reliable and available to the average consumer, and so that these other companies will be forced to push the envelope even further buy building better software. If these companies would just worry about building better software that pushes the limits, they would not have to worry about Microsoft.

Thank you
Gary E. Altman II

MTC–00028258

From: Stevens
To: Microsoft ATR
Date: 1/28/02 1:42pm
Subject: Microsoft settlement
Robert & Natalie Stevens
1717 Joshua Court
Palm Harbor, Florida 34683

January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Regarding the recent Microsoft Antitrust settlement, the PC industry, the economy and the stock market have suffered enough from this misguided lawsuit which was instigated by Microsoft's competitors who elected to compete via lobbying and courtroom tactics rather than in the marketplace. I firmly believe that litigation should come to an end. At this point, it seems ridiculous to prolong this case any further.

Microsoft is much less of a problem than the Cable-Satellite-Broadcast Cartel which has conspired to restrict trade by controlling what consumers will and will not be able to watch by forcing viewing ''packages''. Cable and DBS satellite providers mandate that ''packages'' must be purchased if you want to watch even one of the channels in the package. This lack of a la carte offerings forces consumers to buy a multitude of unwanted channels in order to see a few desired channels.

Business Week (Jan 21, 2002 pg. 71) pointed out that AOL/Time Warner (and other cable and mini-dish satellite providers) are collecting $54 per month from its subscribers while Microsoft is lucky if it sells a home PC user a $90 operating-system upgrade every three or four years. If you are worried about monopoly power forcing consumers to pay more, Microsoft should NOT be your target, the Cable-Satellite-Broadcast Cartel should.

The settlement proposed in early November of last year contains several restrictions and commitments to which Microsoft has agreed. In these commitments, Microsoft permits computer makers to replace access to Microsoft features with access to the competitor's software. This will require that Microsoft change certain interfaces necessary to the Windows'' operating system. However, the list doesn't end there. Microsoft has agreed not to retaliate against its competitors and to ensure this from happening, a three person technical committee will be formed to make sure that Microsoft sticks to the terms of settlement.

As you can plainly see, Microsoft has more than paid for its previous actions. As I believe Microsoft to be a respectable company, I assure you that this settlement will more than suffice.

Sincerely,
Robert Stevens &
Natalie Stevens

MTC–00028259

From: donlwilliams@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:40pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Don Williams
2068 US HWY 71
Clarinda, IA 51632

MTC–00028260

From: CDCIAO4@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:42pm
Subject: Microsoft Settlement
3575 Dutch Hollow Road
Strykersville, NY 14145–9558

Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
January 26, 2002

Dear Mr. Ashcroft:

I am writing in support of the recent settlement between Microsoft and the US department of Justice. I think that government should stay out of free enterprise and this is a classic case where the three years of litigation reflects intense lobbying on behalf of the competition rather than a genuine concern for the American public.

The terms of the settlement go beyond what was originally called for when the lawsuit began. Microsoft will be forced to increase relations with computer makers and software developers, disclose technological information to competitors, grant computer makers broad new rights to configure Windows, and form a three-person team to monitor compliance with the settlement.

While I think that Microsoft is giving away too much, I think there is no alternative since further litigation could be detrimental to Microsoft's and our IT sector's future. Please implement the settlement and look out for the best interests of the American public.

Sincerely,
William Streicher

MTC–00028261

From: Kent Compton
To: Microsoft ATR
Date: 1/28/02 1:43pm
Subject: Microsoft Settlement

Dear Department of Justice,

I think a quick settlement with Microsoft is in the best interest of all consumers. Throughout this trial I've gotten the feeling that a majority of the issues were in large part due to weaknesses in Microsoft's competitors. My favorite example is Netscape which originally paved the way to making browsing the World Wide Web easy. Unfortunately, they became slow and unresponsive to the new features I wanted so I switched to Internet Explorer. Before the third version of, IE Microsoft's product was inferior. Once it was superior I made the change. If someone wanted to use the Netscape browser it's certainly not hard to find. I saw a link to it on both Time and People magazines'' web sites just last night.

Don't prop up bad businesses with legal proceedings. The strong companies will survive and the weak ones should be tasked with changing their business models or perishing.

Please settle this case so that I can focus on the important things like keeping my job. We all have more important things to focus on.

Sincerely,
Kent Compton
907 W. Brittany Dr
Arlington Heights, IL 60004

MTC–00028262

From: Paul Cantrell
To: Microsoft ATR
Date: 1/28/02 1:43pm
Subject: Microsoft Settlement

I am strongly opposed to the proposed final judgment of the Microsoft anti-trust case. It is weak, and unlikely to have any substantive effect on Microsoft's conduct.

The PFJ places far too much trust in Microsoft's willingness to follow the spirit as well as the letter of the settlement. When the PFJ says in section III.J.1, for example, that Microsoft is required to share certain technical details, except when those details would harm security—as determined by Microsoft itself!—it nullifies any real power

the settlement has to force Microsoft to share the details the company most wants to hide.

General opinion in the software world is that obfuscation is the enemy of security. A system is only secure if everyone knows how it works, and agrees it can't be broken. As a software engineer, it is unclear to me how hiding any API, protocol, or documentation would protect or enhance the security of any conceivable ''anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems''. It is eminently clear to me, however, how Microsoft could cite unspecified ''security reasons'' to cripple execution of the judgment. Section III.J.1 is a loophole, and only a loophole. So why is it present in the PFJ? The judgment is rife with similar problems. Microsoft must not be able to ''outsmart'' any judgment in this case. The current settlement fails that test miserably. Thank you for this opportunity for public comment.

Paul Cantrell
Software Engineer
St. Paul, Minnesota

MTC–00028263

From: AESOLVANG@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:44pm
Subject: Fwd: Attorney General John Ashcroft Letter
CC: fin@mobilization.com@inetgw

Attached is the letter we have drafted for you based on your comments. Please review it and make changes to anything that does not represent what you think. If you received this letter by fax, you can photocopy it onto your business letterhead; if the letter was emailed, just print it out on your letterhead. Then sign and fax it to the Attorney General. We believe that it is essential to let our Attorney General know how important this issue is to their constituents. The public comment period for this issue ends on January 28th. Please send in your letter as soon as is convenient.

When you send out the letter, please do one of the following:

* Fax a signed copy of your letter to us at 1–800–641–2255;

* Email us at fin@mobilizationoffice.com to confirm that you took action.

If you have any questions, please give us a call at 1–800–965–4376. Thank you for your help in this matter.

The Attorney General's fax and email are noted below.

Fax: 1–202–307–1454 or 1–202–616–9937
Email: microsoft.atr@usdoj.gov

In the Subject line of the e-mail, type Microsoft Settlement.

For more information, please visit these websites: www.microsoft.com/freedomtoinnovate/ www.usdoj.gov/atr/cases/ms-settle.htm
12724 35th Place NE
Lake Stevens, WA 98258

January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settlement. A settlement is available and the terms are fair, I would like to see the government accept the settlement and move on.

Many people think that Microsoft has gotten off easy, in fact this is not true. Microsoft has agreed to many concessions in order to reach the settlement. The biggest being that Microsoft agreed to release part of the Windows base code to its competitors. This is so Microsoft's competitors can develop more compatible software. Microsoft has spent years and millions of dollars developing their products, now they are required to hand out part of their work.

There is a big difference between companies that develop new products and companies that copy them. Unfortunately, the government has decided to harass the company that develops them. This issue has been drug out for over three year now; it is time to put an end to it. Microsoft and the technology industry need to move forward. It will be virtually impossible to move forward with this issue hanging over the industry's head, Please accept the settlement allow the industry to move on.

Sincerely,
Arnie Solvang

MTC–00028264

From: Terry Williams
To: Microsoft ATR
Date: 1/28/02 1:42pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

For the record, I was against the original lawsuit filed against Microsoft. As a consumer, I purchased my PC from Dell with Microsoft software installed. I made this decision based on past experience with their software. My PC came with Internet Explorer as my browser. I have experience in using Netscape and my personal preference is with Internet Explorer. As a consumer I could have made an easy change to my system and gone with Netscape. The original lawsuit was brought because someone felt that Microsoft had an unfair advantage by bundling all of their software together. In my opinion, this is a false premise and tends to lead us done a slippery slope. What will happen if Lotus 1–2–3 decides that Microsoft has an unfair advantage with bundling their Excel with other products. Price and quality were my major reasons for choosing Microsoft software. Because the best way for Netscape to compete is to create products that compete with Word, Excel, Power Point and Outlook Express. I have used Netscape email in the past and sincerely believe Outlook is a far better product.

I retired on 12/31/99 from CSX Transportation as Director of Interline Switching. I have a Masters Degree from Johns Hopkins with a concentration in Information Technology. I believe overturning the original lawsuit and sending it back to the lower court is the correct approach. I believe Microsoft should be held harmless because a settlement will be giving into those members of Congress that opposes big business. As I have stated, ''There are market remedies for consumers who wish to use Netscape as their browser''.

In closing, if someone spends their private capital and comes up with a automobile engine that runs on water, is the government going to step in and force the developer of this new engine to share it with everyone else? I hope your answer is NO, because when or if we adopt such a stand, all of the values and principles for which we stand will have been destroyed.

Sincerely;
Terry L. Williams, Retired
12489 Turnberry Dr.
Jacksonville, Fl. 32225–4602=

MTC–00028265

From: hbennion@es.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:46pm
Subject: Microsoft Settlement
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

I am a software engineer employed in the computer graphics industry. I am not now, nor have I ever been affiliated with Microsoft or any of its competitors (except, of course, that I use products of both). The opinions and comments expressed are my own. I believe the settlement proposed by the Justice Department falls far short of what would be in the best interest of the industry and of the public. I am particularly concerned about the ability of Microsoft to effectively destroy certain popular and widely used standards such as OpenGL and Java.

For software developers, such as me, these standards are valuable tools that we use to produce our products. Once they are firmly established and widely used, we can count on them to be available and supported for a variety of platforms and devices over a relatively long period of time. I consider these to be a kind of public asset that help to ensure that different products can communicate and be compatible with each other in various ways.

Microsoft has the ability to erode or destroy these standards (and the motivation to do so) only because of the monopoly it holds on the operating system. In a competitive environment, no OS vendor would voluntarily drop support for widely used and still popular standards such as these, since that would give its competitors an important advantage in the marketplace.

Suppose that the nation's electrical power were largely provided by a single company that was also in the electrical appliance business. This company realizes that by changing the standards for power distribution, it can make it much more difficult for any other company to connect to the power grid, or to produce appliances that will work in the vast majority of homes. I believe that this is in effect what Microsoft would like to do and IS DOING in certain ways.

I fear that Microsoft next plans to target Internet standards, with the aim of making it more difficult for other software and platforms to effectively use the Internet and interact with Windows platforms. For most

companies, competitive market pressures would prevent this kind of action, but I believe Microsoft has demonstrated that additional regulatory restrictions are required to restrain a monopoly from such practices.

Heber Bennion
Salt Lake City, Utah
hbennion@es.com

MTC–00028266

From: Melbourne Anderson
To: Microsoft ATR
Date: 1/28/02 1:46pm
3908 59th Street Court NW
Gig Harbor, WA 98335
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the Microsoft antitrust dispute. I support Microsoft in this dispute and would like to see this litigation resolved. Microsoft is a good company that has contributed a great deal to our society. Restricting this company will not benefit anyone. I support the settlement reached in November as a means to end this dispute. This settlement is fair and reasonable. Microsoft has agreed to license its Windows operating system products to the 20 largest computer makers on identical terms and conditions, including price. Microsoft has also agreed to design future versions of Windows to provide a mechanism to make it easy for computer makers, consumers and software developers to promote non-Microsoft software within Windows.

During these difficult times, one of our highest priorities should be to stimulate our lagging economy. Restricting Microsoft will not accomplish this end. Please support this settlement. Thank you for your time.
Sincerely,

Melbourne Anderson

MTC–00028267

From: William R. Kesting
To: Microsoft ATR
Date: 1/28/02 1:46pm
Subject: Microsoft Settlement

Dear Sirs,

I strongly believe that the terms-which have met or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. Please do what you can to bring this matter to a close.

Sincerely,
William R. Kesting
President
Kesting Ventures Corp.

MTC–00028268

From: Lisa Throneberry
To: Microsoft ATR
Date: 1/28/02 1:48pm
Subject: Microsoft Settlement
Lisa Throneberry
338 Knotts Circle Woodstock, GA 30188
770–928–8478 770–516–5059 fax
January 21, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between the US Department of Justice and Microsoft. The antirust case has dragged on far too long to date and should be ended as soon as possible. Microsoft is a leading innovator of technology over the last decade. Under British definition a monopoly delivers poor quality products at inflated rates. Microsoft has consistently innovated excellent products and sold them at fair prices. They have also not infringed upon my rights as a consumer. I am free to purchase any software I desire.

The terms of the settlement are not letting Microsoft off easy. They will have to document and disclose for use by competitors its internal interfaces and protocols. They will also be agreeing to not retaliate against computer makers and software developers who develop or promote software that competes with Windows'' operating system products. These concessions give a huge advantage to competition and violate the principles of free market economics.

At any rate the settlement should be relied since the alternative of further litigation would be too much to bear for Microsoft, the IT sector, and our nation's economy. Please take the next step. Thank you.

Sincerely,
Lisa Throneberry

MTC–00028269

From: k l
To: Microsoft ATR
Date: 1/28/02 1:47pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I oppose such a preposterous resolution to the Microsoft case. In the last several years, the U. S. Court of Appeals has found Microsoft guilty of violating all rules of the anti-trust laws.

Yet in the framework of the PFJ, better know as the Proposed Final Judgment, the DoJ throws out these findings, indicting Microsoft on all charges of business wrongdoing. More profound and astonishing is how the PFJ permits Microsoft to continue with its monopolistic practices. I am completely convinced you will receive similar sentiments entailing the various loopholes apparent in the final settlement.

With the evidence presented, the PFJ does not even make an attempt to break up the software giant. What the PFJ permits is the following: permitting Microsoft to leverage its current monopoly positions and expand its business into several other technologies markets. In the past most monopolies were either broken up or carefully regulated. Why not Microsoft? Does AT&T ring a bell?

At the same time, severe reprimands by the DoJ only hinder instead of instigating change with Microsofts existing operation methodologies. Time and time again as history will show, Microsoft will abuse its monopoly position. Breaking up Microsofts business into several parts just might be the best antidote to prevent MS from even doing more damage to the industry. In closing your honor, I submit to you my disapproval of the Proposed Final Judgment.

Sincerely,

Mr. Amor Paraso
7230 Adams Road
Magna UT 84044

MTC–00028270

From: Shanti Kulkarni
To: Microsoft ATR
Date: 1/28/02 1:49pm
Subject: Microsoft Settlement

Regarding the Microsoft settlement, I hope the court will ensure that any settlement is strong enough to ensure a level of competition which provides value to the public and encourages innovation. As was shown by the 1995 ruling, Microsoft will simply weasel out of any agreement that does not include a strong enforcement mechanism. It will use any provided wiggle room to integrate any emerging PC or Internet technology into its all-consuming operating system. Given the monopoly that Windows enjoys, such integration has the effect stifiling innovation by unaffiliated vendors, and denying the public the value of potential competition. It is in the public interest that Microsoft be barred from doing so again, as it did with its Internet Explorer, and is currently doing again with Media Player. I urge the court to reject DOJ's proposed settlement, and any settlement that lacks strong enforcement and heavy penalties for failing to comply with its terms.

Shanti Kulkarni, CCNP, CNE, RHCE
Sr. Network Engineer, Deltek Systems
703–734–8606 x4590/shanti@deltek.com

MTC–00028271

From: Webb, D. Clinton
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:51pm
Subject: Comments on U.S. v. Microsoft Corporation settlement

To Whom it May Concern:

I am troubled by the terms of, and procedure for seeking the settlement of, the antitrust lawsuit between the U.S. Department of Justice and Microsoft Corporation.

First, I urge the court to confirm whether the parties have strictly adhered to the requirements of the Tunney Act. Second, I urge the court to investigate whether Microsoft Corporation has improperly discussed details of the settlement with Congress. Third, I urge the court and the parties to confirm that the proposed settlement will have the pro-competitive effects of opening the browser market to third parties, particularly in light of (i) the parameters of the Sherman/Clayton antitrust act; (ii) Netscape/AOL's recent lawsuit against Microsoft for alleged anticompetitive business practices in the web browser market; (iii) improper / unlawful bundling of Microsoft's web browser and operating system; (iv) anticompetitive original equipment manufacturer operating system licensing practices.

In addition, I would like to add the following to the public comment process, as it relates to the conclusion of the Microsoft antitrust proceedings:

As an attorney, a Windows operating system and Microsoft Internet Explorer equipped computer user, and more importantly, an American citizen, I am

troubled by the fact that the following summation of anyone's chance at bringing Microsoft to justice receives this type of response from the popular press: Quoted from http://forum.fuckedcompany.com/fc/phparchives/search.php'search=microsoft

Netscape sued Microsoft. I predict:

1) It finally goes to court after a year

2) Microsoft appeals and tries to delay every court date

3) Microsoft is found guilty

4) They appeal

5) Two years have passed

6) More Microsoft products dominate the market

7) Microsoft settles with an arbitrator for $10 million

8) Netscape is pissed

9) Microsoft wins

(you may insert any company or product into the above places where Netscape is)

Thank you for your consideration of this (informal) comment.

Sincerely,
D. Clinton Webb
Palo Alto, California
dcwebb@mofo.comappeal

MTC–00028272

From: tom@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 1:52pm
Subject: Microsoft Settlement

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse:

My qualifications:

Bachelor of Science in Computer Science 1975

Over 20 years of computer programming, software installation, and computer repair experience

My overall complaints of the content of the ''Proposed Final Judgement''

1) No attempt to remedy the past gains in market share and capital amassed by Microsoft through the unfair, illegal, and anti-competetive business practices employed in the intentional quest to dominate the PC market.

2) No attempt to remedy or control the proliferation of Microsoft Office, which is dominant at least in part due to Microsoft's API secrecy, bundling, tie-in, and interoperability tactics. Forcing complete disclosure of the file formats used would be a minimal attempt at restoring competition to this area.

3) No attempt to regulate Microsoft's behavior in non-desktop PC markets (wireless, handheld, internet services, etc.) where they have the leverage and funding amassed to date to overwhelm the competition in any emerging market that they choose to enter.

4) The PFJ contains enough loopholes and Microsoft-friendly definitions to let this company, famous for its past indiscretions, continue to flaunt the intent and purpose of this judgement.

Specific objections to the terms:

III Prohibited Conduct

J 2 ''(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph. THIS ALLOWS MICROSOFT THE LEEWAY TO REFUSE TO COOPERATE WITH OPEN SOURCE DEVEOPERS, WHOM THEY VIEW AS THE MOST SIGNIFICANT THREAT TO THEIR MONOPOLY.

The DOJ should not allow the criminal to define the terms, but rather specifiy that the API shall be available to developers at reasonable, fixed cost.

VI Definitions

N. ''of which at least one million copies were distributed in the United States within the previous year.''

THIS STIPULATION IS A BARRIER TO ANY STARTUP COMPANY, and is unnecessary.

R.''Timely Manner means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers.''

DOES THIS MEAN THAT MICROSOFT CAN HAVE 149,000 BETA TESTERS WITHOUT REVEALING API SPECIFATIONS TO OUTSIDE DEVELOPERS?

Please, substitute wording that promotes fairness.

U.''Windows Operating System Product? means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named ?Longhorn? and ?Blackcomb? and their successors, including upgrades, bug fixes, service packs, etc.

The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion. HERE WE GO AGAIN. LIMITING THE REMEDY TO ONLY ONE SEGMENT OF INFORMATION TECHNOLOGY, WHILE MICROSOFT USES ITS CLOUT IN ANY EMERGING MARKET THAT IT CHOOSES TO ENTER.

Please apply the restrictions more broadly.

Conclusions:

The Proposed Final Remedy is too little, too late. If fails to properly regulate Microsoft's business practices in the future, while wholly neglecting to apply any remedy for the misconduct of the past. The comsumers and software developers and even the hardware developers are NOT adequately served by this document.

If the Department of Justice will not enforce the anti-monopoly law of this country, then where can we, the citizens, look for remedy ?

Tom B. Younker
777 Riderwood Dr.
Decatur, GA 30033
404–248–8082
Ownere/Member of Dare Computer, LLC
404–248–0336

MTC–00028273

From: Ronald K Finn
To: Microsoft ATR
Date: 1/28/02 1:51pm
Subject: Microsoft Settlement

To whom it may concern:

It is my opinion that Microsoft has been hurt enough. We owe a lot to that company for what we have today. It will serve no purpose to the American public to penilize them further.

Sincerely,
Ronald K. Finn,
6507 Rob Road,
Black Hawk SD. 57718

MTC–00028274

From: Gary Shapiro
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 1:55pm
Subject: Microsoft Settlement
OLE—Obj
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington DC 20530–0001
Re: United States v. Microsoft Corp., Civil No. 98–1232

Dear Ms. Hesse:

Microsoft has been a valued exhibitor and partner in the International Consumer Electronics Show for several years. Bill Gates has also been a featured keynote speaker at the CES several times in the last ten years. In introducing Bill Gates to the audience the last two years I used a collection of concepts I summarize below. I hope that in approving the settlement you consider some of the sentiments expressed. Not only does litigation cost the business community and taxpayers billions of dollars every year, but additionally, long drawn-out court battles distract businesses from focusing on their core productive operations. With the U.S. now officially in recession and in the face of new concerns domestically, a settlement is needed to provide stability for the industry that has driven the new economy over the last decade.

Ultimately, Microsoft's story is our nation's story. It's about how ideas and a small scrappy upstart can become a world leader and change the face of history. Our country and Microsoft started with driven people pursuing a dream and providing a compelling benefit. Microsoft offered anyone access to freedom by providing a simple interface to conquer the complexities of a computer. Our founding fathers gave us freedoms embodied in the structure and the standard of the Constitution and the Bill of Rights. The American Bill of Rights are becoming accepted by the world and improving the world standard of living. So, too, are the Microsoft standards being accepted and improving the lives of millions around the world.

In the Information Age, Microsoft gave us access to information. Microsoft is to other

corporations what our country is to the rest of the world. Both are the new kids that did well. Each started as an idea. Each became a world standard. These standards have changed the world for the better. For computer users, Microsoft made it simple to create, edit and send documents and presentations anywhere in the world. I had to edit presentations recently in Egypt, Germany and Switzerland and I was comfortable this year using others'' computers in these countries as they all used Microsoft products.

Microsoft has improved the world's standard of living. Microsoft standards increase world productivity by making computers everywhere easy to use. Without the Microsoft standard it is doubtful so many people would be comfortably using computers. Microsoft has not only made many investors happy, it directly employs some 40,000 exceptional people in some 60 countries. More, many others are employed because of Microsoft products. Microsoft also exports more than it sells domestically. With this positive economic activity, terrific products, and reputation for charity, any other country would consider itself blessed to have Microsoft headquartered within its borders, adding to its tax rolls and employing its citizens.

There is a Yiddish word, ''mensch''. It means doer of good and applies to someone who you know well and does good things for people. I submit to you that when a company or individual does good things of such magnitude then they too can wear the ''mensch'' mantle. Not only has Microsoft improved the world's standard of living, but its founder Bill Gates along with his wife Melinda, have donated some $21 billion to the Bill and Melinda Gates Foundation for global education and healthcare. The magnitude of how Microsoft has changed the world and this generosity are so large, that I submit to you both Microsoft and Bill Gates deserve the appellation ''mensch''.

Sincerely,
Gary Shapiro
President and CEO
Consumer Electronics Association
www.ce.org

MTC–00028275

From: BDS4530@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:54pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

I am a retired government employee who taught software courses for the Navy. My students included military as well as civilians. These were the teams, made up of both men and women, that produced training manuals and exams for the Navy.

After testing many different software programs Microsoft was chosen for a number of reasons; it was very computer friendly and the company offered help desk assistance when no other company did. At that time, because all of us were new to computers, these were most compelling reasons. I do not understand why our government, in this country of freedom and opportunity, insists on the continued harrassment of this young man. Who's next? What other country in recent times has produced such a creative mind? Has democracy actually come to this?

Sincerely,
Bettye D. Schmollinger
CC:fin@mobilizationoffice.com@inetgw

MTC–00028276

From: Anna Gallegos Brannon
To: Microsoft ATR
Date: 1/28/02 1:46pm
Subject: Microsoft Settlement

Thank you for your time and consideration.

Anna Gallegos-Brannon
President, LULAC Council #3027
January 28, 2002
Renata B. Hess
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
via email (microsoft.atr@usdoj.gov)
VIA FACSIMILE: 202/307–1454 (or 202/616–9937)
SUBJECT: Microsoft Settlement

Dear Ms. Hesse:

The League of Latin American Citizens—Long Beach Council believes that the proposed settlement of the Microsoft antitrust case amounts to a reward for misconduct. Indeed, the settlement is so good for Microsoft, that it is attempting to buy off those who oppose it with an offer to California and other states to pay their legal costs—if they will step aside and let the sweetheart deal go ahead unchallenged.

This astonishing offer merely confirms the notion that Microsoft believes that all of its errors can be wished away by money. And, it's not the first time that Bill Gates'' company has reached into its treasury and come up with dollars for politicians. During the 2000 political campaign, the company spent more than $6 million on contributions to political campaigns, state parties and political action committees. One can only assume, it hoped to generate political pressure for a favorable settlement.

Whatever the reason, Microsoft has managed to negotiate a settlement, which to a remarkable degree would make it the arbiter of its own compliance—an astonishing turnabout for a company that has repeatedly skirted U.S. antitrust law and found guilty by several courts of abusing its monopoly power. California Attorney General Bill Lockyer is right to resist the settlement and to continue to press for a tough remedy that would limit Microsoft's ability to leverage its Windows monopoly and extend its market domination into more facets of our information age economy.

Nine state Attorneys General and the Corporation Counsel of the District of Columbia chose not to support the current Microsoft settlement and have offered proposals that will adequately address the agreement's loopholes. More specifically, these proposals require that Microsoft fulfill both technical and licensing obligations that will bring greater competition to the software market and greater choice to consumers. In addition, the proposals include more enforceable oversight provisions and stricter penalties in the event Microsoft does not comply with the settlement. The Long Beach Council of LULAC supports these proposals and urges the Court to adopt them.

Anna Gallegos Brannon President, LULAC Council #3027
Long Beach Council #3027
3824 East La Jara Street,
Long Beach Ca 90805
Phone 562 633 3853
Fax 562 590 6494

MTC–00028277

From: Thane Perkins
To: Microsoft ATR
Date: 1/28/02 1:47pm
Subject: Microsoft Settlement

It think the settlement is a step in the right direction. However, I do not think it is a big enought step. I am not one in favor of splitting Microsoft up or fining MS tens of billions of dollars. However, there are some marketing practices that Microsoft is still employing and will continue to employ because they are successful. Unless Microsoft is additionally shackled in some way so that they stop doing these things, Microsoft will use the power and money that they got from their previous illegal business practices to continue to stifle competition and ultimately hurt innovation:

1) Microsoft does innovate and will occasionally surprise me. However, they often eye a successful idea and decide to develop a similar application. This is not bad in an of itself. But, instead of trying to do compete with improved functionality, Microsoft uses their huge cash reserves to worm their way into the market. If they are way behind the competition, they GIVE the new software AWAY—either by integrating it into their operating system or doing special ''deals'' with OEMs so people get the software free or dirt cheap. So, even if the settlement stops Microsoft from making exclusionary deals with OEMs, Microsoft will out-price the competition.

2) Microsoft is a master of the VAPORWARE. They can really put a damper on the sales of a competing product simply by making a press announcement. I wish they would be restricted about the number of days prior to releasing a completely new product could Microsoft announce its development.

And finally, it is 2002—a long time since the original suit was brought and an eternity in terms of the High-Tech industry. Remember, this suit was brought because Microsoft had broken a previous agreement with the DOJ. So, what happens if Microsoft breaks this agreement? Will we have to wait nearly a decade for the next decision—allowing Microsoft to do business as usual in the mean time?

MTC–00028278

From: MD Dbeis
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft Settlement
M.D.
CS&S Computer Systems, Inc
1505 W. University Dr. Suite 103
Tempe, AZ 85281
www.css-computers.com
480–968–8585
480–968–9544 FAX

Tel (480) 968–8585
CS&S Fax (480)968–9544
Computer Systems
January 28, 2002
Attorney General John Ashcroft
DOJ, 950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

The way that this lawsuit against Microsoft has quickly degenerated into a vengeful exchange of threats of breaking the company up should give pause to any of us in the IT business. It should be acknowledged that Microsoft has not carried itself in the noblest fashion at times, but this alone should not be cause enough to drag the company through the federal courts. Furthermore, if this sort of action can be so easily brought against a company like Microsoft, then other IT companies may soon find themselves in a similar position.

For the sake of clarity, this settlement should be endorsed by all. At it stands, the terms of the settlement go beyond the scope of the original lawsuit. They address the notorious issue of Microsoft's relationship with OEMs, and now Microsoft will have to change the way it sets up contracts with other companies that distribute Windows as well. Of course, its greatest advantage is it will bring to an end this cycle of negative posturing between those on the government's side and those on Microsoft's. My business was noticeably pinched by the lawsuit, and I—and man), others-cannot afford to have the entire IT business in a wait-and-see attitude to see if Microsoft will be split up.

I support this settlement, and convey my hope that this kind of litigation against an American company will not happen again any time soon.

Sincerely,
Mountasir Dbeis
CEO
cc: Representative Jeff Flake
1505 West University Dr. Suite 103
Microsoft
CERTIFIED PROFESSIONAL
Tempe, AZ 85281
Product Specialist

MTC–00028279

From: armen@kazagur.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:56pm
Subject: Microsoft Settlement

Dear Goverment, please dont distry such a great and valueble company as Microsoft. All ''nonefair-monopolist'' accusations are result of their competitors and lobby.

Huge progress of the human civilization build by Microsoft. Millions worked place in the world.

CC:armen@kazagur.com@inetgw

MTC–00028280

From: AlSirkin@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft case settlement

I hope the government will settle this case. I love the Microsoft products and own the stocks. It has been one of the best American companies of all time. It is time to stop beating up on them. Let the other companies that don't like Microsoft make products that are better and let them stop trying to use the Courts. Alan Sirkin

MTC–00028281

From: MOHINDER AGARWAL
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft

Dear Sir;

I believe the terms-which have met or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. This settlement represents the best opportunity for Microsoft and the industry to move forward.

So I support the settlement.

Mohinder Agarwal

MTC–00028282

From: Pamela Mann
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft

In short, I would like to see no action which tramples on the freedom to be innovative and resourceful in the business arena. There are always victims that feel their rights have been compromised when beaten at the finish line. The entrepreneurial spirit is what makes America great.

Thank you,
Pamela Mann
Sr. Sales Director
Mary Kay Cosmetics

MTC–00028283

From: Suzanne Lavine
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft Settlement

Please adopt the agreed on the terms of the settlement. Please stop wasting tax payer's money and everyone's efforts on something that should be done and over with.

MTC–00028284

From: Klain, Ronald
To: ''microsoft.atr(a)usdoj.gov',Klain, Ronald
Date: 1/28/02 1:58pm
Subject: RE: Microsoft Settlement- Tunney Act Comments

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530
Re: Comments of AOL Time Warner

Dear Ms. Hesse:

In the attached ''PDF'' file, you will find the Comments of my client, AOL Time Warner, on the proposed final judgment in U.S. v. Microsoft. Please accept these for the Court's consideration under the Tunney Act, 15 U.S.C. 16.

We will also be submitting these in ''hard copy'' form as well. Please do not hesitate to call me at 202–383–5317 if you have any questions.

Sincerely,
Ronald A. Klain
O'Melveny & Myers
<<millerl.pdf>>

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, UNITED STATES OF AMERICA Plaintiff, v. MICROSOFT CORPORATION, Defendant Civil Action No. 98–1232 (CKK)

STATE OF NEW YORK, et al., Plaintiffs, v. MICROSOFT CORPORATION, Defendant Civil Action No. 98–1233 (CKK)

COMMENTS OF AOL TIME WARNER ON THE PROPOSED FINAL JUDGMENT

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COMMENTS OF AOL TIME WARNER ON THE PROPOSED FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §; 16, AOL Time Warner respectfully submits the following comments on the Proposed Final Judgment (''PFJ'') in the above-referenced matter.

INTRODUCTION

The Proposed Final Judgment sets forth a decree that is too limited in its objectives and too flawed in its execution to meet the Tunney Act's ''public interest'' test. It allows Microsoft to continue to bind and bundle its middleware applications with its Windows Operating System (''OS'')—even though tile Court of Appeals found Microsoft's actions in this regard to be illegal. And its patchwork of constraints on Microsoft's conduct is so loophole-ridden and exception-laden as to render its provisions ineffective. As a result, the PFJ is inadequate to promote competition and protect consumers, and the Court should refuse to find that its entry would be ''in the public interest.'' 15 U.S.C. * 16(e).

The PFJ comes before the Court in an unprecedented posture for a Tunney Act proceeding. This proposed settlement was reached—not as the case was being filed, nor as it was being tried, nor even as it was being appealed—but rather, after the Court of Appeals for the District of Columbia Circuit unanimously affirmed a finding of illegal monopoly maintenance by Microsoft. Such circumstances surely require a more rigorous application of the ''public interest'' standard than a case is settled before the first interrogatory is even served—the usual situation when a Tunney Act review is conducted. Helpfully, a readily available and judicially administrable measure of the ''public interest'' is available for use in this special circumstance: the four-part test for ''a remedies decree'' established by the DC Circuit in this very litigation. United States v. Microsoft, 253 F.3d 34, 103 (DC Cir. 2001). Applying this standard, we believe that the Court should find the PFJ to be in the ''public interest'' only if it (1) ''unfetter[s] a market from anticompetitive conduct''; (2) ''terminate[s] the illegal monopoly''; (3) ''den[ies] to the defendant the fruits of its statutory violation''; and (4) ''ensure[s] that there remain no practices likely to result in monopolization in the future.'' Id. (internal quotations omitted). We believe that there are at least three reasons why the Court should conclude that the PFJ does not meet this test.

First, since July 11,2001 (for the browser) and December 16, 2001 (for other middleware), Microsoft has been implementing many of the PFJ's remedial provisions. Thus, the Court need not speculate about the impact these provisions would have on the industry if they were put in place; rather, it can seek submissions and review evidence on whether these critical provisions are beginning to work as they are being implemented by Microsoft. We believe that any such inquiry will reveal that the original equipment manufacturers (''OEMs'') are not exercising the flexibility that the PFJ ostensibly provides them, because the loophole-ridden PFJ gives too few rights to the OEMs and does too little to protect the OEMs in the exercise of those rights. As a result, there is little reason to believe that the PFJ will prove effective in restoring competition, terminating Microsoft's monopoly, or stripping Microsoft of the fruits of its illegal acts.

How wide a ''gap'' between a hypothetical litigated result and the proposed settlement is permissible in these circumstances is a question that need not be answered here because the PFJ falls so very short of meeting an), reasonable understanding of the ''public interest,'' given its failure to address many of Microsolf's illegal acts and its loophole-ridden provisions in the areas that it does purport to cover.

Second, the PFJ fails to prohibit Microsoft's signature anticompetitive conduct: the binding of its middleware applications to its monopoly operating system, and its bundling of these products to further entrench its OS monopoly. The factual questions that surround these legal issues are quite complex, but here again, the Court has a powerful tool to employ: the extensive factual findings entered by the District Court. (1) These factual findings document Microsoft's purposeful commingling of middleware application code with the Windows OS to harm competition, as well as the contractual bundling of those applications with the OS, to force OEMs to distribute Microsoft's middleware, and to raise distribution hurdles for middleware rivals. Given the PFJ's failure to ban practices that the District Court and the Court of Appeals found to be at the center of Microsoft's illegal maintenance of its OS monopoly, the PFJ does not meet the ''public interest'' standard.

Third, even with regard to those limited objectives that the PFJ does attempt to achieve—i.e., the creation of ''OEM flexibility'' to promote desktop competition—the proposed decree is so ridden with loopholes, exceptions and carve-outs as to render it ineffective. These deficiencies are highlighted when the PFJ is compared to previous remedial plans considered in this case, including Judge Jackson's interim conduct remedies and the mediation proposal offered by Judge Richard Posner (which Microsoft apparently agreed to even before it had been found liable for antitrust violations).

Finally, we believe the Court will find the remedial proposal of the litigating state attorneys general (''Litigating States'' Remedial Proposal'' or ''LSRP'')—and the Court's consideration of that proposal—to be useful in its review of the PFJ. Most immediately, the LSRP provides a benchmark as to what one group of antitrust enforcers believes to be compelled by the ''public interest'' in order to achieve the case's remedial objectives. Moreover, the LSRP provides a helpful point of comparison for some specific aspects of the PFJ—i.e., a way to illustrate why particular PFJ provisions are ineffective, by comparison.

These factual findings were affirmed on appeal. See Microsoft, 253 F.3d at 51–78. In addition, the Court recently held that the factual findings of the District Court ''in support of the liability findings'' should be considered ''undisputed'' for the purpose of this proceeding. (See Transcript of January 7, 2002, at 31.) And third, the Court's consideration of the LSRP will adduce testimony and other evidence that should be weighed in determining whether the PFJ should be approved. Taken as a whole, a comparison of the PFJ with the Litigating States'' Remedial Proposal shows why the latter, and not the former, faithfully meets the remedial objectives set forth by the DC Circuit and serves the ''public interest'' as expressed in the nation's antitrust laws.

I. THE COURT SHOULD USE THE REMEDIAL OBJECTIVES ESTABLISHED BY THE DC CIRCUIT IN THIS CASE AS THE STANDARD FOR ASSESSING WHETHER THE PFJ IS ''IN THE PUBLIC INTEREST.''

Passed by Congress in 1974, the Antitrust Procedures and Penalties Act, commonly known as the ''Tunney Act,'' provides that a proposed consent decree may be entered in an antitrust case only if the district court determines that such entry is ''in the public interest.'' See 15 U.S.C. *16(e). Given that the Court will receive numerous submissions on this point, we do not provide here a recitation of the Tunney Act's provisions, or an extensive analysis of the standard of review under the Act. Instead, we focus on just one, overriding ''procedural'' question: How should the Court measure ''the public interest'' in this unique case? For reasons we will explain below, we believe that the measure of the ''public interest'' to be applied in reviewing the PFJ can be found in the remedial objectives set forth by the DC Circuit in its consideration of this litigation. See Microsoft, 253 F.3d at 103.

First, while the Tunney Act itself does not define ''public interest,'' the case law makes

clear that the Court must begin its analysis ''by defining the public interest'' in accordance with the basic purpose of the antitrust laws, which is to'' ''preserv[e] free and unfettered competition as the rule of trade.'' United States v. American Tel. & Tel. Co., 552 F. Supp. 131,149 (D.DC 1982) (quoting Northern Pacific Ry. Co. v. United States, 356 U.S. 1 (1958)). As a general rule, a court has discretion to reject a proposed consent decree that is ineffective because it fails to address or resolve the core competitive problems identified in the Department of Justice's complaint. United States v. Microsoft Corp., 56 F.3d 1448, 1457–62 (DC Cir. 1995). As this Court stated in United States v. Thomson Corp., 949 F. Supp. 907, 913 (D.DC 1996), the court has a responsibility ''to compare the complaint filed by the government with the proposed consent decree and determine whether the remedies negotiated between the parties and proposed by the Justice Department clearly and effectively address the anticompetitive harms initially identified.'' A court should ''hesitate'' in the face of specific objections from directly affected third parties before concluding that a proposed final judgment is in the public interest. United States v. Microsoft, 56 F.3d at 1462. And it ''should pay ''special attention'' to the clarity of the proposed consent decree and to the adequacy of its compliance mechanisms in order to assure that the decree is sufficiently precise and the compliance mechanisms sufficiently effective to enable the court to manage the implementation of the consent decree and resolve any subsequent disputes.'' Thomson Corp., 949 F. Supp. at 914 (citing United States v. Microsoft, 56 F.3d at 1461–62).

In the context of this proceeding, tremendous guidance as to the content of the public interest test can come from the earlier decision of the Court of Appeals in this case. In that decision, the DC Circuit wrote:

[A] remedies decree in an antitrust case must seek to ''unfetter a market from anticompetitive conduct,'' to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

Microsoft, 253 F.3d at 103 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972) and United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968)). These words, in our view, form the essence of the public interest test to be applied by the Court in this Tunney Act proceeding.

First, on its face, this passage speaks of the object of a ''remedies decree in an antitrust case,'' without differentiating between a decree that is achieved through negotiation and one achieved through litigation. Thus, the Court of Appeals'' ruling would appear to be directly controlling here, insofar as it states the measure of adequacy for any remedial decree, however achieved. There is no apparent reason why the ''remedies decree'' negotiated by the Department of Justice with Microsoft should not have to meet the standard of adequacy generally set forth by the Court of Appeals in its decision.-'' This is particularly true given that the passage merely ''defin[es] the public interest in accordance with the antitrust laws.'' Accord American Tel. & Tel. Co., 552 F. Supp. at 149.[3]

This is not to say that the Court should reject the PFJ if it finds only that it differs in some respects from the remedy that the Court would impose at the end of litigation. For while the public is entitled to a very robust remedy here, especially given the fact that this case has been litigated through trial and affirmed on appeal with judgments against Microsolf, a settlement clearly does not have to match precisely the outcome that would have been achieved in litigation to be deemed acceptable under the tunney Act's public interest test.

Second, the four-part test established by the DC Circuit here would give the Court a clear and manageable standard on which to evaluate the proposed decree's adequacy) Use of the DC Circuit's formulation thus avoids one of the principal bases of controversy and difficulty in Tunney Act reviews -i.e., the lack of a judicially manageable standard for assessing the public interest and the consequent risk that judges will inappropriately use standardless judgment to review an exercise of prosecutorial discretion.[5] Thus, unlike in other Tunney Act cases, where a court lacks an appropriate benchmark on which to measure the purported benefits of the settlement (and thus must be careful not to impose its judgment for that of the Justice Department), here, there is a clear benchmark for the Court to use: the standard set by the Court of Appeals with regard to a ''remedies decree.''

Moreover, to the extent that insisting that the PFJ meet the standard set by the Court of Appeals would result in a more exacting review than the review imposed in other Tunney Act proceedings, that would be appropriate in this circumstance. For while the overwhelming majority of decrees reviewed under the Tunney Act occur in a pre-trial where the court lacks a judicial finding of illegality against which to measure the efficacy of the proposed settlement—this proposed settlement was reached after an appellate affirmance of liability. Because the public has invested its resources and time, and taken the risk to win a judgment of liability and defend that judgment on appeal, it has a right to expect a more rigorous decree that meets a higher standard of review. Under these circumstances, the Court's review under the Tunney Act should not be deferential 1o the Justice Department; instead, the Court should apply the Court of Appeals'' four-part test and determine if the PFJ meets that test.

As explained in more detail below, the PFJ fails to meet the DC Circuit's four-part test, because contrary to the claims of the Department of Justice, it will neither ''provide a prompt, certain and effective remedy for consumers,'' nor ''restore competitive conditions to the market.'' (See CIS at 2.) Specifically, it does not ''unfetter [the] market from anticompetitive conduct,'' because it does not even try to stop Microsoft's illegal binding and bundling practices—or effectively limit Microsoft's ability to coerce OEM behavior to its liking. It does not ''terminate the illegal monopoly'' because it does not effectively promote rival middleware, and because its provisions are so laden with loopholes, exceptions and carve-outs. It does not ''deny to the defendant the fruits of its statutory violation,'' because it allows Microsoft to continue to leverage its OS monopoly to gain market share in other markets.[6] And it does not ''ensure that there remain no practices likely to result in monopolization in the future,'' because it leaves Microsoft free to exploit the OS monopoly to gain don-finance in critical new markets. Failing to address the core anticompetitive wrongs that were found at trial and upheld on appeal against Microsoft, and failing to meet the four-part remedial test established by the DC Circuit, the PFJ is manifestly contrary to the public interest and should be rejected.

II. AS MICROSOFT STARTS TO IMPLEMENT MOST OF THE DECREE'S PROVISIONS, THE COURT SHOULD CONSIDER HOW—IF AT ALL—OEMS ARE RESPONDING.

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[3] This approach generally comports with other Tunney Act cases, which conclude that an antitrust remedy, including a consent decree, must'' ''effectively pry open to competition a market that has been closed by defendants'' illegal restraints.'' Id. at 150 (quoting International Salt Co. v. United States, 332 U.S. 392, 401 (1947); see also 2 P. Areeda & D. Turner, Antitrust Laws * 327 (1978)). A decree ''must ''break up or render impotent the monopoly power found to be in violation of the Act,'' that is, it must leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place.''

American Tel. & Tel., 552 F. Supp. at 150 (quoting United States v. Grinnell Corp., 384 U.S. 563,577 (1966)). ''It must also effectively foreclose the possibility that antitrust violations will occur or recur.'' Id. As the Supreme Court noted in International Salt Co., 332 U.S. at 400:

[I]t is not necessary that all of the untraveled roads to [anticompetitive conduct] be left open and that only the worn one be closed. The usual ways to the prohibited goals may be blocked against the proven transgressor.

Additionally, ''antitrust violations should be remedied ''with as little injury as possible to the interest of the general public'' and to relevant private interests.'' /d. (quoting United States v. American Tobacco Co., 221 U.S. 106, I85 (191 I)).

While the Department of Justice urges the Court to adopt a much more lax review, even the government acknowledges that the Court's ''review of the decree is informed not merely by the allegations contained in the Complaint, but also by the extensive factual and legal record resulting from the district and appellate court proceedings.'' (See Competitive Impact Statement (''CIS'') at 68 (November 15, 2001).)

It was precisely the lack of a judicial finding of liability that caused Chief Justice Rehnquist to question the constitutionality of the Tunney Act. See Maryland v. United States, 460 U.S. 1001, 1004 (1982) (Rehnquist, J., dissenting). This argument does not apply in the present case where there has been both a judicial finding of liability (at trial and affirmed on appeal), and there is a standard for review established by an appellate court.

[6] Indeed, Microsoft has actually seen its share of the browser market grow since being found liable for illegal monopoly maintenance. For example, Microsoft's share of the work browser market increased from 69.3 percent in April 2000 (when Judge Jackson issued his finding of liability) to 79.5 percent in November 2001. Over the same period, Microsoft's share of the home browser market increased from 75.7 percent to 81.8 percent. See Browser Trended Reach Report, Jupiter Media Metrix, January 2002.

As noted above, the question before the Court is whether the PFJ is ''in the public interest.'' 15 U.S.C. *sect; 16(e). In making that determination, the statute indicates that the Court may want to consider, inter alia: (1) ''the competitive impact'' of the PFJ, (2) whether it results in the ''termination of alleged violations,'' and (3) ''the impact of [the PFJ] upon the public generally and individuals alleging specific injury.'' Id.

Fortunately, contrary to most other courts conducting Tunney Act reviews, this Court need not struggle with evaluating the ''competitive impact'' of the PFJ in a factual vacuum because Microsoft has been, according to its own statements, implementing some provisions found in the PFJ since last Jul)'', and the bulk of its provisions since December. That means the Court need not base its ''public interest'' judgment on abstract legal and economic analyses only; instead, the Court's analysis can (at least in part) be shaped by a consideration of how Microsoft is beginning to implement parts of the PFJ, and how the PFJ's provisions are starting to work in practice.[7] We believe that such a practical review will demonstrate that the portions of the PFJ in question show little prospect—if any-that they will ''unfetter the market,'', ''terminate the monopoly,'' or ''den),'' to Microsoft ''the fruits of its violation.''

A. There Is No Indication That Microsoft's Implementation Of Major Aspects Of The PFJ Is Even Beginning To Promote Competition Or Helping To Loosen Microsoft's Control Over The Desktop. In the joint stipulation filed with the Court on November 6, 2001, Microsoft stated that it would ''begin complying with the [PFJ] as [if] it was in full force and effect starting on December 16, 2001 .'' (Stipulation and Revised Proposed Final Judgment at 2 (November 6,2001).) While provisions with specific timetables were exempted from this pledge—resulting in an excessive delay for some of the PFJ's competitive protections— many of the PFJ's remedial provisions were covered by it. Thus, with regard to many provisions of the PFJ, the proposed decree has been ''in effect'' since mid-December.[8]

Microsoft's stipulation offers the Court a unique opportunity to learn, not just how the PFJ would serve the public interest once implemented, but instead, whether the PFJ provisions already in effect are showing signs that they are likely to serve the public interest. These provisions have now effectively been in place for 43 days—and by the time of a likely hearing or other proceeding to consider this question (presumably, in March or April), will have been in effect for three to four months.

Microsoft may protest that a three- to four-month period in which parts of the PFJ will have been applied is inadequate to test those remedies. And that is doubtlessly true with regard to some measures of the PFJ's effectiveness, such as whether Microsoft's share of the OS market has shrunk from near absolute to anything less. But there are other measures of the PFJ's effectiveness that should be readily discernible even in this relatively short time.

Among the questions we believe that the court could determine, by the time of a hearing in March or April, would be:

Have the OEMs exercised (or even attempted to exercise)—in any way beyond the prevailing industry practice prior to December 16th—the flexibilities to remove/replace icons, start menu entries, and default settings for Microsoft middleware products, that are purportedly provided in Section III.C.1 of the PFJ? If not, why not?

Are non-Microsoft middleware products gaining .new distribution via the OEMs as a result of the provisions of Sections III.A. and III.C.2 of the PFJ, as implemented? If not, why not?

Are non-Microsoft middleware products, to a greater extent than before implementation of the PFJ, attaining the benefits of an ''automatic launch,'' pursuant to the provisions of Section III.C.3 of the PFJ? If not, why not?

* Is any OEM offering a dual-boot computer, as authorized by Sections III.A.2 and III.C.4 of the PFJ? If not, why not?

* Are there new IAP offerings being made at the conclusion of PC boot sequences, pursuant to Section III.C.5 of the PFJ? If not, why not?

Has any ISV, IHV, LAP, ICP or OEM gained any additional Windows licensing rights that it did not have prior to the implementation of the PFJ, pursuant to Section III.I of the PFJ? If not, why not?

Has Microsoft terminated any payments to OEMs that were anticompetitively advantaging Microsoft's products, and that are now forbidden, pursuant to Sections III.A and III.B of the PFJ?

Based on our knowledge of industry developments, we believe that the answer to each of these questions is ''no,'' with perhaps some very rare and isolated exceptions.[9] Thus, despite Microsoft's proclaimed implementation of large portions of the PFJ, there is scant evidence of OEMs even attempting, let alone succeeding, to offer consumers new choices with respect to middleware products. Even in a relatively short time frame of a few months, one would expect to find numerous OEMs reaching agreements to promote or carry multiple non-Microsoft products. But no such evidence exists. No doubt, that is why countless industry observers and analysts have concluded, after examining the PFJ, that ''It]he changes we will see are minute. Microsoft can control its own destiny. It can do whatever it wants.'' [10] Presumably, it cannot be in ''the public interest'' to settle a case after years and years of litigation—including a finding of liability for the government at trial, affirmed unanimously on appeal by the Court of Appeals (See Microsoft, 253 F.3d at 46)—for a remedial decree that effectuates only ''minute'' changes in the strategy the defendant was using to illegally maintain its monopoly. And yet, that is precisely what appears to be happening, as the effectiveness—or lack thereof- of parts of the PFJ are starting to be observed in application. While we certainly agree with the Department of Justice that it will only be ''over time'' that any remedy could ''help lower the applications barrier to entry,'' (see CIS at 29), that objective will never be achieved if the PFJ does not lead OEMs to even begin to ''offer rival middleware to consumers and.., feature that middleware in ways that increase the likelihood that consumers will choose to use it.'' (Id.) That is: the pro-competitive probative of nothing more than the compelling need for a hearing so the Court can explore how, if at all, the PFJ journey of a thousand miles can never be completed if—as it appears to be the case—the PFJ does not create a market in which OEMs feel free to take that all-important first step. To the extent that much of the CIS suggests that the goal of the remedy is to create OEM flexibility for its own sake—i.e., to make sure that OEMs have the right to choose non-Microsoft products, whether or not they exercise that right—it misses the mark. The goal of this litigation is not to protect OEMs'' rights, but rather to protect consumers'' rights to enjoy a free and competitive market. In such a market, OEMs can be important surrogates for consumers, but only if they actually offer competitive choices. Likewise, to the extent that the other goal of the remedial proceeding is to reduce the applications barrier to entry, that objective is only achieved to the extent that the OEMs actually distribute and promote non-Microsoft middleware—it is not advanced by the unexercised presence of theoretical OEM choice.

Thus, the determination of whether the PFJ will be effective in promoting its purported ends—i.e., fostering OEMs in making those choices and creating opportunities for competition—need not be left for some subsequent proceeding or for antitrust scholars in future years. It can be ascertained now from the submissions that the Court is receiving, or, if those submissions are inadequate, it could be resolved by the Court

[7] If the Court finds that the submissions made to date are inadequate to assess this question, it can, of course, under the Tunney Act, take whatever testimony or evidence is needed to make such a determination. See 15 U.S.C. *sect; 16(f); Section V.B, infra.

[8] Some examples of PFJ provisions Microsoft has ostensibly been complying with since December 16, 2001, include: Section III.A (anti-retaliation); Section III.B (uniform licensing); Section III.C (OEM licenses); Section III.G (anticompetitive agreements); and Section III.I (licensing of intellectual properly).

[9] Although Compaq and RealNetworks reached an agreement in December 2001, whereby Compaq would place Real's player on its personal computers, see RealNetworks Sets Deal With Compaq, The Los Angeles Times, December 13, 2001, it is unclear, among other things, what the terms of the agreement are, what impact it will have on competition and consumer choice, and whether the agreement was motivated, in whole or in part, by the purported ''flexibility'' of the proposed settlement. While the Court should certainly give the Compaq agreement some consideration in its public interest review, the agreement's mere existence is already affecting the marketplace.

[10] See Jeff O'Heir, Analysis: MS & DOJ Reach Agreement, P.C. Dealer, November 12, 2001 (quoting Roland Pinto); see also Randy Barrett, MS-DOJ Pact Disappoints, Interactive Week, Nov. 8, 2001 (quoting Roger Frizzell, Compaq Spokesman, ''Basically, we don't feel there's a big difference between where we're standing today and where we were last week.''); Id. (quoting Mike Griffin, ''We don't anticipate any changes at all.''□.

in a proceeding where evidence is taken and testimony is heard. See Section V.B, infra. The manner in which Microsoft is already implementing portions of the PFJ is among the most probative considerations the Court can weigh in determining how—it at all—the proposed settlement will promote competition in the years to come.

B. The Provisions Of The PFJ Implemented By Microsoft Since July 11th Are Not Showing Signs That They Will Work To Restore Competition In The Browser Market.

In addition to the general applicability of the PFJ's provisions, several of its provisions have been in place—as they relate to the Internet browser—since Microsoft took steps to implement them after the Court of Appeals'' decision last June. As with the more general PFJ provisions discussed above, the Court should examine whether these browser- specific remedial provisions—which will have been in place for eight months by mid-March—have been effective to date. Again, we believe that the evidence to date shows that the provisions are showing no sign of effectuating change in the market; thus, the PFJ—which (with regard to browsers) does little more than codify these unilateral Microsoft actions— does not meet the ''public interest'' standard.

On July 11, 2001, in response to the decision of the Court of Appeals, Microsoft announced a program of ''greater OEM flexibility for Windows.'' See Press Release, Microsoft Corporation, Microsoft Announces Greater OEM Flexibility For Windows, July 11, 2001. Specifically, Microsoft announced that it would amend its OEM license agreements to provide that:

PC manufacturers will have the option to remove the Start menu entries and icons that provide end users with access to the Internet Explorer components of the operating system. Microsoft will include Internet Explorer in the Add/Remove programs feature in Windows XP.

PC manufacturers will have the option to remove the Start menu entries and icons that provide end users with access to Internet Explorer from previous versions of Windows, including Windows 98, Windows 2000 and Windows Me .... Consumers will be able to use the Add-Remove Programs feature in Windows XP to remove end-user access to the Internet Explorer components of the operating system ....

d. These provisions mirror the browser-related provisions found in Sections III.C.1 and III.H.1 of the PFJ. Indeed, they comprise almost the entirety of all browser-related remedial provisions found in the PFJ.

Thus, the question of whether the PFJ fulfills the Department of Justice's promise of an effective remedy for ''restor[ing] the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings,'' can easily be assessed—at least with regard to the browser threat, which was such an extensive part of the Court of Appeals'' decision—by seeing how effective these unilateral Microsoft actions, taken in July of 2001, have been to date. And unlike the provisions discussed above, which were put in place only in December, it cannot be argued that these browser-related provisions have not yet been tested in the marketplace; rather, the□, were in place for the launch of Windows XP, which Bill Gates recently dubbed the ''best-selling release of Windows ever, and one that is creating great opportunities for PC manufacturers and our other partners in the industry.'' [11] In the simplest terms, as we note above, these ''remedies'' will have been in place for eight months by mid-March of 2002.[12]

We believe that the initial evidence shows that these provisions are completely ineffective. We are unaware of a single OEM that has used the ''flexibility'' provided to it by Microsoft to remove Internet Explorer from the Start menu, or from any of its multiple promotional placements on the PC desktop. Nor are we aware of any OEM that has elected to use any competitor to Internet Explorer as a default browser, or to promote alternative browsers to Internet Explorer in any way.

Moreover, there is no indication—more than six months after Microsoft's July 11th announcement and four months after the first shipments of Windows XP—that Internet Explorer's commanding market share in the browser market has fallen in any measurable way. If the provisions of the PFJ are strong enough to ''restore'' competition to the marketplace, which DOJ claims they are (see CIS at 3 (''[t]he requirements and prohibitions [of the PFJ] will ... restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings'')), one would expect to see that the market shares of Microsoft's browser competitors have increased during this time frame. There is simply no evidence of that. Not only is there a dearth of evidence suggesting that the PFJ's provisions are going to restore competition to the level enjoyed by Microsoft's rivals prior to its illegal conduct, but there is no evidence to suggest they are affecting the market at all.

A remedial provision that has no market impact cannot be said to be in the ''public interest,'' especially in a case like this where the damage from Microsoft's illegal campaign to eliminate rival middleware has already been done. In other words, because Microsoft has illegally driven down the market shares of its rival middleware developers, restoring competition to the marketplace requires much more than simply eliminating the illegal practices: only if the status quo ante is restored would OEM freedom of choice be meaningful. And yet, the evidence suggests that the PFJ provisions that relate to the browser will have no market impact, given the practical experience with highly similar proposals put in place by Microsoft last July. This is important evidence for the Court to consider when reviewing the PFJ.

III. THE PFJ IS NOT IN THE PUBLIC INTEREST BECAUSE IT DOES NOT EVEN ATTEMPT TO HALT MICROSOFT'S MOST INSIDIOUS PRACTICE: ITS ILLEGAL BINDING AND BUNDLING OF MIDDLEWARE APPLICATIONS WITH THE WINDOWS OS.

In this submission—and doubtlessly in the many others the Court will receive - we identify a number of specific deficiencies in the PFJ. See Section IV, infra and Attachment B. But one omission stands out above all others: the failure of the PFJ to limit Microsoft's ongoing and insidious efforts to maintain its monopoly- and leverage and entrench that monopoly—by tying its middleware applications to the Windows OS. This conduct—found illegal by the District Court and upheld as illegal by the Court of Appeals (see Microsoft, 253 F.3d at 67)—is left unchecked by the PFJ. By contrast, a remedy to address this practice appeared in the interim conduct remedies offered by the District Court,[13] as well as the remedial proposal designed by Judge Richard Posner (''Posner Proposal'').[14] The practice is also addressed extensively in the litigating states'' proposed remedy. By failing to remedy one of Microsoft's ''signature'' anticompetitive acts, the PFJ—even before reaching its many other defects—falls far short of the four-part remedial standard set by the Court of Appeals, and by the same token, fails to meet the public interest test established by the Tunney Act.

In explaining why it did not seek to limit Microsoft's tying of middleware applications to Windows in the PFJ, the Justice Department has suggested that there was no basis for such a remedy because of the Court of Appeals'' reversal of the District Court's finding of liability under Section 1 of the Sherman Act, and the appellate court's direction that the remedy here should ''focus[] on the specific practices that the court had ruled unlawful.''[15] This analysis fundamentally misapprehends the

[11] See GM Plans White-Collar Cuts, Financial Briefs, The Washington Post, January 9, 2002, at E02.

[12] Given that the length of the PFJ is only 60 months, see Section V.A of the PFJ, an assessment of the effectiveness of a provision after eight months would be highly significant.

[13] We use the interim conduct remedies as a point of reference—notwithstanding the fact that they were vacated on appeal—because the Department of Justice stated publicly that it would ''seek an order that is modeled after the interim conduct-related provisions of the Final Judgment previously ordered in the case.'' See Press Release, Department of Justice, Justice Department Informs Microsoft of Plans for Further Proceedings in the District Court, September 6, 2001; see also, John Hendren, New Judge Puts Heat on Feds, Microsoft: Quick Settlement Urged to Aid Ailing Economy, The Seattle Times, September 29, 2001 (''Government lawyers have said they intended to model their proposed remedy on an interim conduct order by the previous district judge who oversaw the case, Judge Thomas Penfield Jackson.'').

[14] A draft of the mediation proposal, Mediator's Draft #18 (April 5, 2000) (referred to herein as the ''Posner Proposal''), is available at www.ccianet.org/legal/ms/draft18.php3. At the time, several news reports indicated that Microsoft had agreed to the provisions in the Posner Proposal. See, e.g.. Joe Wilcox, Hard to Gauge Extent. Effectiveness of Microsoft Concessions, CNET News.com, March 30, 2000 (the ''software giant has tentatively agreed to sweeping restrictions on how it does business with its partners'').

[15] See Testimony of Assistant Attorney General Charles James, Senate Judiciary Committee (December 12, 2001); see also Q&A.'' Charles James Defends The Deal, Business Week, Nov. 19, 2001 (''People who suggest that [the decree should have ordered Microsoft to sell a stripped-down version of Windows] are not recognizing that the tying claim was eliminated from the case by the appeals court.'').

implications of the Court of Appeals'' ruling: contrary to DOJ's view, the Court of Appeals did not suggest that an anti- tying remedy was inappropriate or unnecessary here; indeed, much of the Court of Appeals'' decision is a strong declaration of how Microsoft's various forms of tying violated Section 2 of the Sherman Act. See, e.g., Microsoft 253 F.3d at 65–67. A remedy that truly ''focused on the specific practices that the court had ruled unlawful'' would have to address the tying practices that the Court of Appeals ''ruled unlawful''; the PFJ does not.

Because Microsoft's various forms of middleware applications tying are critical tactics that it uses to maintain its illegal monopoly, they must be ended if the remedy is to ''terminate the monopoly.''[16] (See Microsoft's Tying Strategies To Maintain Monopoly Power In Its Operating System (''Mathewson & Winter Report''), attached hereto as Attachment A.) Furthermore, the opportunity to gain market share as a result of such tying is one of the principal fruits of Microsoft's illegality, and should therefore be denied to it.[17] As a result, the failure of the PFJ to address Microsoft's tying is a fundamental flax,,'' that alone merits rejection of the proposed decree.

Importantly, we note that the legal and economic arguments presented below are reinforced by the empirical observations set forth in Section II, supra. That is, the legal and economic analysis below which suggests that a remedy without a ban on tying will be ineffective in theory, is supported by the fact that such a remedy—imposed in part since Jul□'', and more substantially since December—is proving to be ineffective in practice.

A. The Court Of Appeals Explicitly Held That Code Commingling—A Form Of Tying Unaddressed By The PFJ—Violates Section 2 Of The Sherman Act.

In affirming the District Court's findings of fact concerning Microsoft's practice of commingling the code for its own middleware products with the code for the Windows OS, the Court of Appeals made clear that such commingling was an unlawful act in violation of Section 2 of the Sherman Act. See Microsoft, 253 F.3d at 65–67. Specifically, the Court of Appeals concluded that Microsoft's ''commingling has an anticompetitive effect * . . [and] constitute[s] exclusionary conduct, in violation of $ 2.'' Microsoft, 253 F.3d at 66- 67 (emphasis added)*[18] According to the appeals court, Microsoft's ''commingling deters OEMs from pre-installing rival browsers, thereby reducing the rivals'' usage share and, hence, developers'' interest in rivals'' APIs as an alternative to the API set exposed by Microsoft's operating system.'' Id. at 66. Moreover, the Court of Appeals affirmed the District Court's finding that such commingling was done, deliberately and intentionally, to advance Microsoft's anticompetitive aims. Id.

Notwithstanding these clear declarations by the Court of Appeals, this practice is not prohibited by the PFJ. Such a prohibition was omitted despite the finding that it is illegal—and despite the Justice Department's recognition that the first remedial objective in a decree should be to ''end the unlawful conduct.'' (See CIS at 24.) Thus, Microsoft remains free to bind its middleware applications, including the browser, to its Windows OS [19]—making it impossible for an OEM, or a consumer, to remove that application from a PC without doing damage to that PC's operating system.

Microsoft's suggestion that competition is adequately served by allowing OEMs to pre-install rival middleware and to remove end-user access to Microsoft middleware—instead of banning commingling—is incorrect for several reasons. First, as the District Court found and the Court of Appeals affirmed, commingling of code strongly deters - and may even prevent—OEMs and consumers from using middleware products offered by Microsoft's competitors (because the Microsoft product is inextricably intertwined with the OS and is thus both easier to use and harder to remove).[20] Why would an OEM include a competing middleware product that will cost money to install and use up valuable space on the hard drive when Microsoft's product is already there and has been so tightly knit with the OS that it cannot be removed without doing damage to the OS? As the Court of Appeals noted (citing the District Court's holding), Microsoft's commingling has both prevented OEMs from pre-installing other browsers and deterred consumers from using them. In particular, having the IE software code as an irremovable part of Windows meant that pre-installing a second browser would ''increase an OEM's product testing costs,'' because an OEM must test and train its support staff to answer calls related to every software product preinstalled on the machine; moreover, pre-installing a browser in addition to IE would to many OEMs be ''a questionable use of the scarce and valuable space on a PC's hard drive.'' Microsoft, 253 F.3d at 64 (citations omitted).

As long as commingling is permitted, OEMs and other third party licensees will have no incentive to take advantage of the limited freedom provided by the PFJ and will continue to use Microsoft's middleware products at the expense of its competitors. As a result, commingling reduces Microsoft's distribution costs for its middleware applications to zero. It also raises the distribution costs of rival middleware application makers—who not only must pay for something that Microsoft gets for free (i.e., distribution via OEMs), but must also pay an added bounty to persuade OEMs to install their applications as the second such application on a PC. This, of course, assumes that such an added payment strategy for such middleware would even be plausible (which is highly doubtful, except in rare cases) and would not be defeated by Microsoft, a rival with roughly S39 billion in cash available to deter the prospect of being outbid by other middleware developers for PC access.

The other way in which code commingling illegally enhances the position of Microsoft middleware is by encouraging applications programmers to write their programs to Microsoft's products. (Mathewson & Winter Report at ¶¶ 14–16.) Third party developers decide how to write their applications based upon what APIs they believe will be available on the broadest number of computers and will enable their products to function most smoothly. See Microsoft, 253 F.3d at 55. Because the PFJ will allow Microsoft to continue commingling its middleware and OS code, it essentially guarantees that Microsoft's application programming interfaces (''APIs'') are universally available in all Windows environments (in other words, on virtually all PCs)—and that software developers who write their applications to Microsoft's APIs can write directly to the OS. This is true regardless of whether or not end-user access to the middleware product is visible. As a result, third party software developers (whose business interests are to develop successful applications, not to challenge Microsoft's monopoly) will almost always write their programs to Microsoft middleware.[21] Thus, Microsoft's commingling practices only exacerbate the ''applications barrier to entry'' that already encourages developers to create software that runs on Microsoft's dominant OS and interoperates with Microsoft's middleware

[16] See Microsoft, 253 F.3d at 46; 15 U.S.C. * 16(e) (in a Tunney Act proceeding, the court is authorized to consider whether the proposed settlement results in the ''termination of alleged violations''); see also Grinnell Corp., 384 U.S. at 577 (a decree must ''break up or render impotent the monopoly power found to be in violation of the Act'').

[17] See Microsoft, 253 F.3d at 51, 103.

[18] In its Conclusions of Law, the District Court broadly condemned Microsoft's decision to bind ''Internet Explorer to Windows with.., technological shackles.'' United States v. Microsoft, 87 F. Supp. 2d at 30, 39 (D.DC 2000) (''Conclusions of Law''). Specifically, the District Court denounced Microsoft's decision to bind Internet Explorer to the Windows OS ''by placing code specific to Web browsing in the same files as code that provided operating system functions.'' United States v. Microsoft, 84 F. Supp. 2d at 50, ¶161 (D.DC 1999) (''Findings of Fact'')*

[19] The danger of according Microsoft this power is exacerbated—and reinforced—by the PFJ's definition of the Windows Operating System Product (''Definition U''), which states that the software code that comprises the Windows Operating System Product ''shall be determined by Microsoft in its sole discretion.'' Thus, Microsoft can, over time, render all the protections for middleware meaningless, by binding and commingling code, and redefining the OS to include the bound/commingled applications.

[20] 20 See, e.g.. Findings of Fact, 84 F. Supp. 2d at 49–50, ¶ 159 (''Microsoft knows that the inability to remove Internet Explorer made OEMs less disposed to pre-install Navigator .... Pre-installing more than one product in a given category.., can significantly increase an OEM's support costs, for the redundancy can lead to confusion among novice users. In addition, pre-installing a second product in a given software category can increase an OEM's product testing costs. Finally, many OEMs see pre-installing a second application in a given software category as a questionable use of the scarce and valuable space on a PC's hard drive.'').

[21] For example, a developer that creates music search software is far more likely to develop a program that runs on Windows Media Player than RealPlayer, knowing that the new program would interoperate more readily with the OS if it runs on Microsoft's program and would have fewer glitches.

products. (See Mathewson & Winter Report at ¶ 16.)

Thus, in the end, as both the Court of Appeals and the District Court concluded here, commingling itself deters OEMs from installing rival middleware. See Microsoft, 253 F.3d at 66; Findings of Fact, 84 F. Supp. 2d at 49–50, ¶ 159. No doubt this is why every other remedial plan contemplated in this litigation—from the Posner Proposal,[22] to Judge Jackson's interim remedial order,[23] to the proposal set forth by the Litigating States [24]—has prominently included a ban on code commingling (or, at the very least, a requirement that Microsoft make available a non-commingled version of Windows). Yet, despite that, despite the Court of Appeals'' holding, and despite the District Court's factual findings, the PFJ fails to prohibit or limit this practice in any manner whatsoever.

Microsoft has already demonstrated its willingness and ability to fend off threats from competing middleware products by illegally commingling code with the Windows OS.[25] As currently drafted, the PFJ gives the company a green light to continue this anticompetitive and illegal practice. The public interest requires that Microsoft's practice of tying its middleware and operating system, via code commingling, be prohibited.

Microsoft shall not, in any Windows Operating System Product (excluding Windows 98 and Windows 98 SE) it distributes beginning six months after the date of entry of this Final Judgment, Bind any Microsoft Middleware Products to the Windows Operating System unless Microsoft also has available to license, upon the written request of each Covered OEM licensee or Third-Party Licensee that so specifies, and Microsoft supports both directly and indirectly, an otherwise identical version of the Windows Operating System Product that omits any combination of Microsoft Middleware Products as indicated by the licensee.

(See Proposed Text ¶ 1 (hereinafter ''States'' Proposed Text''), attached as Exhibit A to Litigating States'' Remedial Proposal (December 7, 2001).)

B. Microsoft Uses A Variety Of Other Tying Practices To Maintain Its Operating System Monopoly; If The Monopoly Is To Be ''Terminated,'' Such Contractual Tying Must Be Prohibited.

The Justice Department's insistence that the remedy in this case should not include a general tying prohibition because the government abandoned its Section 1 tying claim is logically flawed. Contrary to DOJ's assertions, as discussed at length above, the ultimate remedy in this case must ''terminate'' Microsoft's illegally maintained monopoly- and that can only happen if the remedy addresses those behaviors that anticompetitively maintain the Windows monopoly.

The bundling, or contractual tying, of Microsoft's middleware products to its Windows OS is clearly such an anticompetitive behavior: it is the signature tactic used by Microsoft to maintain its monopoly and fend off competitive challenges, and it has been expressly found to be illegal by the Court of Appeals. See, e.g., Microsoft, 253 F.3d at 61 (the restriction in Microsoft's licensing agreements that prevents OEMs from removing or uninstalling IE ''protects Microsoft's monopoly from the competition that middleware might otherwise present. Therefore, we conclude that the license restriction at issue is anticompetitive.'') (emphasis added); see also Mathewson & Winter Report at ¶¶ 13–33. Put another way, various tying practices were found by the Court of Appeals to illegally reinforce Microsoft's OS monopoly and thus must be banned in order to realize the remedial mandate of the Court of Appeals and the public interest objectives of the Tunney Act.

The anticompetitive nature of tying is apparent on its face: it reduces competition and consumer choice, making it less likely for Windows consumers to acquire and use non-Microsoft middleware products for reasons unrelated to the merits of those products. See Microsoft, 253 F.3d at 60 (upholding District Court's conclusion that contractually restricting OEMs'' ability to remove IE ''prevented many OEMs from distributing browsers other than IE''); see also Mathewson & Winter Report at * 23. Microsoft only makes Windows available for license to OEMs in a bundle that includes a number of its middleware applications (e.g., Internet Explorer, Windows Media Player, Windows Messenger, MSN). Microsoft also contractually prohibits OEMs from removing its applications from the bundled offering.

As explained in the attached economic report from Professors Frank Mathewson and Ralph Winter, such tying is anticompetitive and should fall under the purview of these remedy proceedings for four principal reasons: (1) it reinforces Microsoft's monopoly by increasing the applications barrier to entry against OS competitors; (2) it reinforces Microsoft's monopoly by deterring direct challenges to the OS itself as the platform of choice for software developers; (3) it weakens the greatest current competitor to Windows—prior versions of Windows; and (4) Microsoft's more recent practice of tying the Windows Media Player to the OS creates a new variant of the applications barrier to entry problem for potential OS rivals: a content-encoding barrier to entry. (See Mathewson & Winter Report, passim.)

First, tying anticompetitively strengthens Microsoft's OS monopoly by reinforcing the applications barrier to entry against OS competitors. (Id. at ¶¶ ;14–16.) The dominance of the Windows standard in a wide range of applications, including a few particularly important applications, hampers entry into the operating system market because an entrant has to offer both a new operating system and a full set of applications, or hope that applications will quickly develop once the new operating system becomes available. See Microsoft, 253 F.3d at 55 (applications barrier to entry stems, in part, from the fact that ''most developers prefer to write for operating systems that already have a substantial consumer base''). This is referred to as the applications barrier to entry, and the District Court found that it served to protect Microsoft against an OS challenge from IBM in the 1990s. Id. (upholding District Court's finding that ''IBM's difficulty in attracting a larger number of software developers to write for its platform seriously impeded OS/2's success'').[26]

By engaging in tying to gain dominance in key applications markets, Microsoft can turn the already-daunting applications barrier to entry into a virtually insurmountable shield. As the Court of Appeals explained, ''Microsoft's efforts to gain market share in one market (browsers) served to meet the threat to Microsoft's monopoly in another market (operating systems) by keeping rival browsers from gaining the critical mass of users necessary to attract developer attention away from Windows as the platform for software development.'' Microsoft, 253 F.3d at 60. If Microsoft controls the key applications, it can unilaterally decide not to make those applications available for even the most-promising rival operating systems. Microsoft's tying thus anticompetitively advantages its position in the middleware applications market and sustains its OS monopoly as well. (See Mathewson & Winter

[22] See Posner Proposal * 3(9) (Microsoft is enjoined from ''tying or combining any middleware product to or with a Windows operating system unless Microsoft offers a version of that operating system without such middleware product at a reduced price that reasonably reflects the relative costs of the operating system and the excluded middleware.'').

[23] See United States v. Microsoft, 97 F. Supp. 2d 59, 68 (D.DC 2000) (''Microsoft shall not, in any Operating System Product distributed six or more months after the effective date of this Final Judgment, Bind any Middleware Product to a Windows Operating System .... '').

[24] The Litigating States'' Remedial Proposal would prevent Microsoft from unlawfully reducing the competitive threat from non-Microsoft middleware products by commingling middleware and operating system code. The Litigating States'' Remedial Proposal would prohibit the practice of commingling altogether or, alternatively, require Microsoft to offer, upon written request from OEMs or other third part).'' licensees, its operating system on an unbundled basis:

[25] Note that Microsoft's options for exploiting technological means to advance its tying ends are not limited to code commingling. Code commingling, of course, is an extreme version of such tying, in that it prevents OEMs and consumers from removing applications without threatening the integrity of the OS. Other examples discussed during trial include deliberately harming the interoperability of Netscape's Navigator browser, see, e.g., Findings of Fact, 84 F. Supp. 2d at 31, ¶ 84 (finding that Microsoft executives explicitly offered preferred access to APIs to Netscape as an inducement to them to not expose their own APIs); id. at 33, ¶ 90–91 (finding that when Netscape refused this offer, Microsoft withheld necessary Windows APIs from I Netscape, delaying Netscape's Windows 95 browser launch until after the holiday selling season); id. at 50, ¶ 160 (''We will bind the shell to the Internet Explorer, so that running any other browser is a jolting experience.''); and working aggressively to degrade the performance and desirability of Sun's Java software, id. at 109–110, ¶¶ 404–406 (finding that Microsoft harmed development of Java class libraries and cross-platform Java interfaces).

[26] See Findings of Fact, 84 F. Supp. 2d at 19–22, ¶¶ 36–44.

Report at ¶ 66.)[27] Consider, for example, Microsoft Office. At one point, companies such as Corel and Lotus provided the most popular versions of these applications. At that time, to compete with Microsoft's Windows, rival operating systems needed to persuade Corel and Lotus to port their applications to those rival systems. Now that Microsoft has successfully leveraged Windows to obtain dominance in the Office suite of applications, however, rival OS providers would have to persuade Microsoft to port Office to rival systems.

If Microsoft can gain dominance with key middleware applications such as Office, MSN Messenger, and Windows Media Player, it can ensure that rival operating systems cannot meet customers'' demands for the most popular applications. That is, when Microsoft's browser, Microsoft's media player, and Microsoft's instant messenger are dominant in those applications markets, Microsoft may choose not to write its applications to interoperate with a potential rival OS—making it much more difficult for nascent operating systems to compete with Windows.[28] Thus, Microsoft's tying, over time, takes today's very high ''applications barrier to entry,'' and raises it immeasurably higher. (See Mathewson & Winter Report at ¶ 66.)

Second, bring reinforces Microsoft's monopoly by deterring direct challenges to the OS itself as the platform of choice for software developers. (Id. at ¶¶ 17–19.) A clear incentive for Microsoft to tie its Internet Explorer browser with Windows was the threat that Netscape—on its own, or combined with Java software—would eliminate Microsoft's network advantages in the operating system by providing middleware that would offer a competing platform for software developers. As the District Court and Court of Appeals found, Netscape and Java were particular threats to Microsoft's dominance in operating systems because they potentially represented a platform/programming environment in which software applications could be developed without regard to the underlying operating system. See Microsoft, 253 F.3d at 74. With middleware, the success of a new operating system no longer depended on the development of new code by every application developer. (See Mathewson & Winter Report at ¶ 19.)

If rivals develop valuable, widely distributed middleware, software vendors could very well begin to write most of their applications directly to that middleware, and the applications barrier to entry would disappear. By using anticompetitive tying to dominate each promising field of middleware, Microsoft ensures that software developers face a unified field of proprietary Microsoft OS and middleware interfaces. (Id.) Thus, Microsoft's tying practices serve, in this way too, to reinforce and entrench its illegal OS monopoly.

Third, tying weakens the greatest current competitor to Windows—prior versions of Windows. (Id. at ¶¶ 27–30.)[29] Existing versions of Windows provide competitive constraints on Microsoft for a simple reason: if new versions of Windows are insufficiently innovative or too expensive, consumers will choose to retain their older versions of the product. Through tying, however, Microsoft weakens this source of competition in two ways. First, new versions of Windows are marketed as much for new applications as for new OS features. Windows XP, for example, is being marketed in part for its inclusion of new applications, such as Windows Media Player 8.0—not just based on innovations and improvements to the OS itself. Second, middleware applications such as Internet Explorer, Windows Media Player (with the attendant Microsoft Digital Rights Management), and MSN allow Microsoft to track consumer usage. Microsoft's binding of these products to Windows ''thus creates a total product that lends itself to usage and leasing fees. By gradually reducing the price of Windows and increasing the usage fees on its tied applications, Microsoft can shift to a usage or leasing revenue model, rather than a revenue model based on sales. This eliminates the competitive threat front previous versions of Windows[30]* (in addition to providing Microsoft with the fruits of its illegal behavior, as discussed in Section III.C, below). (See id. at ¶ 28.)

Fourth, in addition to these three general ways in which Microsoft's contractual tying reinforces the OS monopoly, Microsoft's more recent tying of its media player to the OS creates yet another special and highly significant reinforcement of the Windows monopoly. (See Mathewson & Winter Report at ¶ 36.) This problem results from the close connection between the media player and Microsoft's proprietary media encoding format, Windows Media Audio (''WMA''). Because Microsoft does not license the WMA format to some rival media players—including, most notably, the only other media player with substantial market presence, Real Player—Microsoft's media player is the only major player that can play content encoded in Microsoft's format. As Microsoft's format becomes more and more widespread—it is currently growing in use at a rate ten times that of its rivals - more and more content will become viewable and playable only via Microsoft's media player, which is only distributed via Microsoft's OS.

In such a market, then, a rival OS would have to overcome not only today's applications barrier to entry to compete with Windows—that is to say, it would have to persuade application writers to write their applications to interoperate with their OS—it would also have to overcome a new, even more daunting ''content encoding barrier to entry'' - i.e., it would have to persuade owners of thousands (or perhaps even millions) of pieces of multi-media content to re-encode their content in formats that the media player used by'' the rival OS could read. (Id. at ¶¶ 37–38.) This barrier to entry applies not only to rival PC operating systems, but also to evolving operating systems for handheld and mobile communications devices, since consumers v, ill want to access the best streaming content using those devices. Thus, the currently daunting applications barrier to entry is raised many times higher by virtue of the tying of the Windows Media Player (and its related proprietary formats) to the Windows OS.[31]

All four of these anticompetitive effects are mutually reinforcing, because of the network effects operating between the applications sector and the operating system market. (Id. at ¶¶ 31–33.) Achieving dominance in applications (through tying) strengthens the dominance of the OS, because buyers in the OS market are more assured of available applications. The greater dominance in the OS market in turn feeds back into greater dominance in applications, since the tying strategies take the form of imposing an

[27] See Microsoft, 253 F.3d at 59–60 (citing District Court's finding that ''Microsoft's imposition of [licensing] provisions (like man','' of Microsoft's other actions at issue in this case) serves to reduce usage share of Netscape's browser and, hence, protect Microsoft's operating system monopoly'').

[28] This fear is not theoretical: the District Court found that Microsoft made just such a threat to Apple, with regard to Microsoft Office. See Findings of Fact, 84 F. Supp. 2d at 95–97, ¶¶ 345–356.

[29] The District Court's Findings of Fact, 84 F. Supp. 2d at 25, ¶ 57, maintain that the Windows leasing agreement prohibits the user from transferring the OS to another machine so that ''there is no legal secondary market in Microsoft operating systems.'' The Findings of Fact then note at ¶ 58 that there is a thriving illegal market. To limit this, Microsoft charges a higher price for Windows to OEMs that do not limit the number of PCs the), sell without the OS pre-installed. One might argue that the durable-goods monopoly problem is eliminated by Microsoft's refusal to allow OEMs to install (without penalty) old versions of Windows. As explained in the attached Mathewson & Winter Report, this is incorrect for two reasons: ''(i) increases in the price of the new version of Windows will reduce overall demand for new PCs, as users invoke the option to keep existing PCs with the old version, and (ii) there is a retail market for new versions of Windows software for installation on existing PCs. Both (i) and (ii) provide channels through which the existing stock of Windows software provides some competition for a new version of Windows (i.e., it increases the elasticity of demand for the new version). If the price of a new version is increased, the demand for the new version is reduced because fewer consumers will purchase new PCs as the price increase for Windows raises the price of the overall package of the PC and the (mandated by Microsoft) new version of Windows, and because some consumers who would have purchased Windows to install on their old PCs will now refuse to do so.'' (See Mathewson & Winter Report at 12 n. 10.)

[30] See Jeremy Bulow, ''Durable-Goods Monopolists,'' Journal of Political Economy 90(2): 314–332 (explaining how leasing, rather than selling, solves the monopolists'' ''problem'' of competition from previously existing stocks of goods); id. at 330 (a durable-goods monopolist may be able to achieve the leasing result through extending its monopoly to service contracts).

[31] This same theory applies to Microsoft's identity-authentication application, known as ''Passport.'' If Microsoft can leverage its OS monopoly to make Passport ubiquitous, it can persuade e-commerce sites to adopt Passport as the sole identity-authentication standard. If that were to happen, a nascent OS competitor would not only have to develop its own identity-authentication application; it would also have to persuade thousands of e-commerce sites to adopt that application for use on their web sites. Thus, Microsoft's tying of Passport to the Windows OS could potentially create yet another barrier to entry in the OS market.

artificial advantage relative to applications of the dominant OS supplier. The greater Microsoft's share across all middleware applications markets, the greater the applications barrier to entry.

Thus, a remedy that does not forbid Microsoft's anticompetitive tying leaves in place one of Microsoft's most powerful tools to maintain its OS dominance—and as a result, does not ''unfetter'' the market or ''terminate'' the illegal monopoly. For this reason, the PFJ's failure to include a ban on bundling is not in the public interest.

C. By Allowing Microsoft To Continue To Tie Its Middleware Applications To Windows, Microsoft Retains One Of The Most Valuable ''Fruits'' Of Its Illegal Acts.

The Court of Appeals made clear that one necessary element of any remedy in this case was to ''deny to [Microsoft] the fruits of its violation.'' See Microsoft, 253 F.3d at 103 (quoting United Shoe Mach. Corp., 391 U.S. at 250). This is in accord with the prevailing doctrine in this area. See Grinnell Corp., 384 U.S. at 577; 2 P. Areeda & H. Hovenkamp, Antitrust Laws ¶ 325(c) (2d ed. 2000).

The Court of Appeals found that Microsoft illegally maintained its OS monopoly by engaging in anticompetitive practices. See Microsoft, 253 F.3d at 51, 66. Here, because of the nature of its monopoly, one of the most lucrative fruits of Microsoft's illegal behavior is the ability to bundle its other software products with the OS and reap gains in those markets as well. In this way, the PFJ's failure to ban such tying clearly renders it deficient, because without such a prohibition it will fail to prevent future violations of Section 2, as discussed above—and also fail to prevent Microsoft from reaping the benefits of the OS monopoly that it illegally maintained. Without such a prohibition, Microsoft will be able to continue profiting from its anticompetitive behavior and will have evaded any real punishment for breaking the law.

For these reasons, as with the ban on code commingling discussed above, every other remedial proposal considered in this litigation included a ban on Microsoft's contractual tying via bundling. A formulation of such a ban was found in Judge Jackson's interim conduct remedies, which—in addition to the ban on binding middleware products to the OS—would also have prohibited Microsoft from ''conditioning the granting of a Windows Operating System Product license ... on an OEM or other licensee agreeing to license, promote, or distribute any other Microsoft software product that Microsoft distributes separately from the Windows Operating System Product in the retail channel or through Internet access providers, Internet content providers, ISVs or OEMs.'' United States v. Microsoft, 97 F. Supp. 2d 59, 68 (D.DC 2000). Judge Posner's proposal would have prohibited tying any middleware product with the OS unless Microsoft offered a version of the OS without the middleware application, and did so at a reduced price. See Posner Proposal * 3(9). The litigating states also have proposed a very similar remedial approach. (See LSRP at 4–6.) Thus, it is only the PFJ, among the various proposals, that has failed to take this essential step to terminate Microsoft's OS monopoly, and deny Microsoft the fruit of its illegal acts. A remedy without such a provision cannot be in the public interest.[32]

IV. THE PROPOSED FINAL JUDGMENT FURTHER FAILS THE PUBLIC INTEREST TEST, BECAUSE IT DOES NOT ACHIEVE EVEN THE LIMITED OBJECTIVES THAT IT HOLDS OUT AS ITS AIMS.

As demonstrated above, the PFJ fails to address Microsoft's anticompetitive tying of middleware applications to the Windows OS, and consequently fails to fulfill the remedial mandate of the Court of Appeals. Yet. even for those anticompetitive acts that the PFJ does attempt to address, it does not provide an adequate remedy for Microsoft's illegal conduct. Indeed, the PFJ is so replete with carefully crafted carve-outs and exceptions that many of its provisions, though well intentioned, are rendered meaningless. The result is that the PFJ will do little, if anything, either to terminate Microsoft's monopoly or constrain its ability to fend off middleware threats in the future. And, as we argue above, the preliminary experience with these provisions—since the onset of their implementation by Microsoft— provides little reason to believe that the PFJ will be effective in practice. See Section II, supra.

While any conduct remedy will, of course, have limitations and the potential for evasion, none of the major defects in the PFJ are inherent in the nature of this sort of remedy. The Litigating States'' Remedial Proposal provides a useful contrast on this point. Unlike the PFJ, the LSRP does not leave certain of Microsoft's anticompetitive acts unaddressed or leave Microsoft with the ability to perpetuate its operating system monopoly by illegally eliminating competitive threats from middleware developers. The Litigating States'' Remedial Proposal prevents Microsoft from continuing its anticompetitive practices, is designed to restore the competitive balance in the marketplace, and seeks to ensure that competitive threats may emerge in the future unhindered by Microsoft's anticompetitive conduct. As such, it fully comports with the Court of Appeals'' decision and provides this Court with a clear roadmap of what the public interest requires in this case.

To avoid undue length or repetition, we do not here provide a comprehensive list of all the numerous inconsistencies, loopholes, and shortcomings of the PFJ; we have included, in Attachment B, a more complete listing for the Court's benefit. (See A Detailed Critique of the Proposed Final Judgment in U.S. v. Microsoft, Attachment B.) In this Section, instead, we focus on six critical deficiencies in remedies that (unlike tying) are purportedly addressed in the PFJ: (1) the PFJ's failure to prevent Microsoft's discriminatory licensing practices; (2) its limited and slow-moving API disclosure provisions; (3) its inadequate protections for OEMs from retaliation; (4) its failure to promote distribution of Java; (5) its ''gerrymandered'' definition of middleware; and (6) its complete lack of an effective enforcement mechanism. Where helpful, we contrast the relevant provision in the litigating states'' proposal for comparison's sake. By comparing the two proposals on a few central issues, it should be clear why the LSRP, and not the PFJ, addresses Microsoft illegal conduct in manner that both comports with the Court of Appeals'' decision and serves the ''public interest'' under prevailing antitrust law.

A. The PFJ Allows Microsoft To Continue Engaging In Discriminatory And Restrictive Licensing Agreements To Curtail The Use Of Rival Middleware Products.

One of the ways in which the District Court found, and the Court of Appeals upheld, that Microsoft illegally protects its operating system monopoly from rival middleware is through discriminatory and restrictive licensing provisions. Specifically, the Court of Appeals found that Microsoft uses its licenses not only to reward OEMs that utilize and promote its products (and to discriminate against those OEMs that wish to promote non- Microsoft products), but also to restrict the manner in which OEMs can distribute rivals'' products. See Microsoft, 253 F.3d at 61–67.

Despite these findings, the PFJ permits Microsoft to continue to employ discriminatory and restrictive licensing agreements to curtail the use of its competitors'' products. As currently structured, the PFJ allows Microsoft to continue its use of discriminatory and restrictive licensing provisions to fend off nascent threats from middleware competitors in several ways. First, the PFJ explicitly allows Microsoft to provide market development allowances to favored OEMs; it likewise allows Microsoft to enter into ''joint ventures'' with OEMs, that, in practice, are little more than shells for arrangements by Microsoft to shower financial rewards on OEMs that are willing to refuse to deal with Microsoft's competitors. Given the intense competition and low margins in the OEM industry, these rewards would create a decisive competitive disadvantage for ''disfavored'' OEMs, forcing them to accede to Microsoft's restrictive terms.

The PFJ's mechanisms for enabling these anticompetitive tactics are surprisingly explicit. Under Section III.B.3 of the PFJ, Microsoft is allowed to pay OEMs ''market development allowances'' to promote Windows products. Thus, OEMs that promote Microsoft products apparently can receive de facto cash rebates on their Windows shipments, while OEMs that deal with Microsoft's rivals ''.',,ill pay full list price. This preferential behavior in the browser market ,,,,,as found illegal by both the District Court and the Court of Appeals.

[32] We have argued elsewhere that there could be alternatives to a ban on contractual tying that might, over time, also prove effective. For example, if a remedial plan included a strong provision to permit licensing of Windows, not just to OEMs, but to third parties as well, and such a regime became effective— so that there was active and effective retail competition for bundled OS applications offerings—then the necessity for banning Microsoft's contractual tying would be somewhat lessened. In such an instance, Microsoft's potential for abusive tying could be disciplined by competition from competing bundles. However, absent such competition—which the PFJ does not create—a ban on contractual tying is absolutely essential to achieve the remedial objectives of this case—and thus, the PFJ's failure to include such a provision is fatal.

See Microsoft, 253 F.3d at 60–61. Microsoft should be allowed to engage in leg/t/mate pricing decisions, but those decisions should be limited to volume-based discounts published in its price lists?[33]

Second, under Section III.G.2 of the PFJ, Microsoft may use ''joint ventures'' to escape any restrictions the proposed settlement would place on its licensing practices. For example, Microsoft may join an OEM in a joint venture for any ''new product, technology or service'' or improvement to any existing ''product, technology or service,'' provided that the OEM contributes significant developer ''or other resources.'' (See PFJ at Section III.G.2.) In such an arrangement, Microsoft can seek, and obtain, a pledge that its partner be ''prohibit[ed] ... from competing with the object of the joint venture ... for a reasonable period of time.'' (Id. at III.G.) Thus, Microsoft could enter into a ''joint development'' project for the ''new product'' of ''Windows X for Preferred OEM Y.'' The OEM's contribution could be entirely in marketing and distribution. Yet, under the language of the PFJ, it appears that Microsoft would have the ability to contractually prohibit OEMs in such joint ventures from offering products or services that compete with Microsoft. Given Microsoft's history of abusive and coercive behavior toward OEMs, it should not be allowed to enter into joint ventures with OEMs that result in exclusive agreements. Otherwise, in no time at all, Microsoft will use the opportunity to squelch competition.

Third, the PFJ purports to provide OEMs with the freedom and flexibility to configure the computers they sell in a way that does not discriminate against non-Microsoft products. Under Section III.C, the PFJ ostensibly prohibits Microsoft from entering into an agreement that would—among other things—restrict an OEM's ability to remove or install desktop icons, folders and Start menus, and modify the initial boot sequence for non-Microsoft middleware. However, the PFJ contains carve-out provisions that may render these prohibitions effectively meaningless. Under the express terms of Section III.C. 1 of the PFJ, Microsoft may retain control of desktop configuration by being able to prohibit OEMs from installing or displaying icons or other shortcuts to a non-Microsoft product or service, if Microsoft does not provide the same product or service. Thus, for example, if Microsoft does not include a media player shortcut inside its ''My Music'' folder, it can forbid an OEM from doing the same. This turns innovation—and the premise that OEMs be permitted to differentiate their products—on its head: under the PFJ, rivals can ''compete'' with Microsoft, but they are never allowed a chance to bring a product to market first, to offer a functionality before Microsoft does, or to benefit from their innovations before Microsoft determines that it is ready to meet (and if history is a guide, extinguish) these competitive challenges.

Additionally, under the PFJ, Microsoft can control the extent to which non- Microsoft middleware is promoted on the desktop by virtue of a limitation that OEMs may promote such software at the conclusion of a boot sequence or an Internet hook-up only if they display no user interface or a user interface that is ''of similar size and shape to the user interface provided by the corresponding Microsoft middleware.'' (See PFJ at III.C.3.) And OEMs are allowed to offer Internet Access Provider (''IAP'') promotions at the end of a boot sequence, but only for their own LAP offerings (whatever that ambiguous limitation means). (See id. at III.C.5.) Thus, under the PFJ, Microsoft maintains the ability to set the parameters for competition and user interface.

In order to promote competition from rival middleware, Microsoft must be prohibited from entering into restrictive and discriminator)'' contractual agreements with its licensees. Although remedial proposals could have been crafted to address these anticompetitive practices, the PFJ falls short of this mark.

By contrast, the Litigating States'' Remedial Proposal would bring Microsoft's unlawful behavior to an end and thus provide competing middleware the opportunity to receive effective distribution through the important OEM channel. Under the LSRP, Microsoft would be required, at a minimum, to offer uniform and non-discriminatory license terms to OEMs and other third-party licensees. The LSRP would also require Microsoft to permit its licensees to customize Windows to include whatever Microsoft middleware or competing middleware the licensee wishes to sell to consumers. (See LSRP at 7–9.)

In addition, the LSRP specifically prohibits Microsoft from employing market development allowances, including special discounts based on joint development projects?[34] It also gives OEMs and other third-party licensees the flexibility to feature non-Microsoft products in ways that increase the likelihood that consumers will use them, without providing broad exceptions that enable Microsoft to avoid its obligations?[35] Thus, it is the LSRP—and not the PFJ—that meets the Tunney Act's ''public interest'' standard.

B. The PFJ Requires Microsoft To Disclose APIs Only In Certain. Narrow Circumstances. Another key element of the government's case against Microsoft was the company's withholding of the operating system's API information from rivals, so as to illegally decade the performance of rival applications. In any market where Microsoft is allowed to withhold APIs, rival software will perform imperfectly in the Windows environment, and Microsoft will illegally gain dominance. Accordingly, in order to promote competition from rival middleware developers, it is essential that Microsoft be required to provide timely access to all technical information required to permit non-Microsoft middleware to achieve interoperability with Microsoft software.

Section III.D of the PFJ imposes an obligation on Microsoft to disclose to Independent Software Vendors (''ISVs''), and others, the APIs that Microsoft middleware uses to interoperate with any Windows OS product. However, the PFJ's requirement for API disclosure is drawn much too narrowly to allow non-Microsoft middleware to compete fairly with Microsoft middleware. Here again, a comparison with the proposal of the litigating states is instructive.

First, the PFJ's disclosure requirement fails to prevent ''future monopolization,'' because it fails to apply to critical technologies that Microsoft is likely to use to maintain the power of its OS monopoly in the future. Because nascent threats to Microsoft's monopoly operating system currently exist beyond the middleware platform resident on the same computer, any effective API disclosure requirement must apply to all technologies that could provide a competitive platform challenge to Windows, including wizard, desktop, preferences, favorites, start page, first screen, or other aspect of any Middleware in that product.'').)

Second, the PFJ creates an apparent exception for Microsoft's API disclosure requirement in the emerging areas of identity authentication and digital rights management (''DRM'')—critical applications that are also important to the prospects of Microsoft's ''future monopolization.'' Section III.J.1.(a) appears to exempt Microsoft from disclosing any API or interface protocol ''the disclosure of which would compromise the security of... digital rights management.., or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria.'' This exception is written much more broadly than any of the limits on Microsoft behavior, and could easily be used to protect Microsoft's APIs relating to DRM and identity authentication applications. The implication of this is that any rival DRM or authentication software will not function as ,,','ell as Microsoft's DRM, Passport, and .Net

[33] Less explicitly, but perhaps even more nefariously, the same provision that authorizes continuation of ''market development allowances'' (i.e., III.B.3) says that Microsoft may also maintain ''programs ... in connection with Windows [OS] products.'' This appears to be a carefully veiled reference to Microsoft's use of ''Marketing Development Funds''—highly discretionary, highly targeted payments to OEMs that can be yet another means of effectively rendering the list price of Windows economically irrelevant. While the PFJ ostensibly says that these ''programs'' must have ''objective criteria,'' ''neutral'' criteria can be easily formulated that have the effect of rewarding favored players and punishing less cooperative OEMs, given the small number of major OEMs in existence.

[34] (See States'' Proposed Text * 2(a) (''Microsoft shall license, to Covered OEMs and Third-Party Licensees, Windows Operating System Products .... pursuant to uniform license agreements with uniform terms and conditions. Microsoft shall not employ Market Development Allowances or other discounts, including special discounts based on involvement or any joint development process... '').)

[35] (See States'' Proposed Text 2(c) (''Microsoft shall not restrict (by contract or otherwise, including but not limited to granting or withholding consideration) an OEM or Third-Party Licensee from modifying the BIOS, boot sequence, startup folder, smart folder (e.g., MyMusic or MyPhotos), links, internet connection network servers, web servers, and hand-held devices. The PFJ does not; by contrast, the Litigating States'' Remedial Proposal expressly provides that Microsoft must disclose all APIs, technical information, and other communications interfaces so that Microsoft software installed on one computer (including personal computers, servers, handheld computing devices and set-top boxes) can interoperate with Microsoft platform software installed on another computer. (See LSRP at 11.)

My Services (formerly known as Hailstorm). Thus, under the PFJ, Microsoft may be able to degrade the performance of any rivals to any of these services.

These markets, however, are just as important to the next stage of the industry's evolution as browsers were to the last stage. DRM solutions, for example, allow content vendors to sell audio and video content over the Internet on a ''pay for play'' basis. Since the most prevalent use of media players in the years ahead will be in playing content that is protected in this fashion, if non-Microsoft media players cannot interoperate with Windows'' DRM solution, those media players will be virtually useless except for ''freeware'' content.[36] Thus, if DRM is exempt from API disclosures under the PFJ, Microsoft can destroy the competitive market for one of the most vital forms of middleware—media players.

The authentication exemption is potentially even more far-reaching. Most experts agree that the future of computing lies with server-based applications that consumers will access from a variety of devices. Indeed, Microsoft's ''.Net'' and ''.Net My Services'' (formerly known as Hailstorm) are evidence that Microsoft certainly holds this belief. These services, when linked with Microsoft's Passport, may allow Microsoft to participate in a substantial share of consumer e-commerce transactions over the Interact, irrespective of which device is used to access the Internet (cell phones, handheld computers, etc.). If Microsoft prevents competition with its Passport standard, it may be able to realize its stated goal of charging a fee for every single e-commerce transaction on the Internet.[37]

Under the guise of security, Microsoft has obtained a loophole in the PFJ that undercuts a critical disclosure requirement. Microsoft's legitimate security concerns— which, of course, are shared by all of its major business rivals—do not require this loophole. Section III.J.2 of the PFJ excludes from disclosure rights any company with a history of software counterfeiting or piracy or willful violation of intellectual property rights, or any company that does not demonstrate an authentic and viable business that requires the APIs. This means that Microsoft only has to disclose to bona fide software rivals whose interests in security and stability are as Meat as Microsoft's. As added protection, Section III.J.l.(b) of the PFJ allows Microsoft to refrain from any disclosure simply by persuading an impartial government body, on a case-by-case basis, that a specific disclosure would put system security at risk. Together, these provisions provide Microsoft with all the room it needs to take legitimate security precautions.

Once again, the litigating states'' proposal provides a useful contrast. It contains no disclosure ''carve out'' to exempt DRM and identity-authentication from the general disclosure obligation imposed on Microsoft. (See LSRP at 11.) Instead, it creates a regime of timely, complete, and comprehensive API disclosure that will allow competitors an opportunity to challenge Microsoft's efforts to entrench its OS monopoly in a market where distributed computing is the dominant model—an opportunity that was sadly missed as the browser became critical to Internet-related applications, due to Microsoft's anticompetitive refusals to share technical information. Thus, once again, it is the LSRP, not the PFJ, that would meet the Court of Appeals'' objectives and the public interest standard.

C. The PFJ Does Not Ban Many Forms Of Retaliation By Microsoft Against OEMs.

The District Court found, and the Court of Appeals upheld, that in order to create a competitive market structure in which non-Microsoft middleware products are able to compete effectively with Microsoft products, licensees, such as OEMs, must have the ability to distribute and promote non-Microsoft products without fear of coercion or interference from Microsoft. Recognizing the central role that OEMs play in the distribution and ultimate usage of non-Microsoft middleware products, the PFJ includes an anti- retaliation provision which is intended to protect those entities that support or promote non-Microsoft products. According to the Department of Justice, this anti-retaliation provision ''broadly prohibits any sort of Microsoft retaliation against an OEM based on the OEM's contemplated or actual decision to support non-Microsoft software.'' (See CIS at 25.)

Unfortunately, the PFJ does not provide the broad protection from Microsoft's retaliation that the government claims it does. Indeed, the PFJ's anti-retaliation provision is so narrow that it will do little, if anything, to protect OEMs that wish to distribute or promote non-Microsoft products. The PFJ's anti-retaliation provision is deficient in numerous respects. First, it appears to create only a narrow range of procompetitive activities that OEMs can engage in without being subject to Microsoft retaliation. For example, the PFJ prohibits retaliation for OEMs that promote rival middleware, but does not appear to prohibit retaliation against OEMs that promote any other type of rival software (which, under the PFJ's language, probably includes rivals to Passport, MS Money, Windows Movie Maker, and MSN Messenger, just to name a few). Even if this glitch were unintentional, the ambiguity might still be sufficient to allow Microsoft to coerce OEMs into avoiding Microsoft rivals.

Second, even within the scope of protected OEM activities, the PFJ appears to bar only certain types of Microsoft retaliation. The PFJ prohibits Microsoft from withholding ''newly introduced forms of non-monetary Consideration'' from OEMs, but is less clear about whether Microsoft may use already-existing forms of consideration to retaliate against OEMs. (See PFJ at III.A.) More importantly, while the PFJ prohibits Microsoft retaliation via an alteration of commercial agreements, it does not appear to prohibit any other form of Microsoft retaliation (e.g., product disparagement) that Microsoft can imagine.[38]

In addition, under Section III.A of the PFJ, Microsoft may, sua sponte, terminate an OEM's Windows license after sending the OEM two notices stating that it believes the manufacturer is violating its license* There need not be any adjudication or determination by any independent tribunal that Microsoft's claims are correct. All that is required are two notices; after that, Microsoft may terminate an OEM's license. This provision means that the OEMs are, at an), time, just two registered letters away from unannounced economic calamity; after all, given Microsoft's monopoly on the operating system, termination of an OEM's Windows license is a death sentence for an OEM's business.

Again, such inadequate safeguards are not inherent in an effective non- retaliation protection. For instance, the Litigating States'' Remedial Proposal prevents Microsoft from taking any action that directly or indirectly adversely affects OEMs or other third-party licensees that in any way develop, distribute, support or promote competing products, thereby providing the type of protection contemplated by the Court of Appeals. (See LSRP at 13–14.) Thus, the Litigating States'' Remedial Proposal clearly prohibits Microsoft retaliation for any procompetitive OEM behavior and prohibits all forms of Microsoft retaliation. Importantly, the LSRP also prohibits Microsoft from retaliating against any individual or entity for participating in any capacity in any phase of this litigation. Again, it is the LSRP that meets the Court of Appeals'' objectives for this case— not the PFJ.

D. The PFJ Does Nothing To Remedy Microsoft's Illegal Campaign To Eliminate Java.

Yet another aspect of the trial court's decision that was upheld on appeal by the DC Circuit was the District Court's finding that Microsoft's actions in eliminating the threat posed by Sun Microsystems'' Java technology were unlawful under Section 2 of the Sherman Act. See Microsoft, 253 F.3d at 74–75. The PFJ, however, omits any remedy for this core abuse. Thus, unlike either the District Court's remedy or the remedy Judge Posner suggested, the PFJ does not protect those specific products, such as Java, that actually compete with Windows today and offer alternatives to Microsoft's dominance.

The Litigating States'' Remedial Proposal addresses this deficiency by requiring that Microsoft distribute Java with its platform software for a period of ten years. (See LSRP at 17–18.) The LSRP recognizes, as did the District Court and Judge Posner, that in order to ensure that rival products such as Java can compete with Microsoft, they must receive the widespread distribution that they could have obtained absent Microsoft's unlawful behavior.

[36] See Brad King, Microsoft Poised for Music Domination, Wired, June 14, 2001.

[37] As Nathan Myrhvold, Microsoft's former chief technology officer, put it, Microsoft's strategy is to ''get a ''vig,'' or ''vigorish,'' on every transaction over the Internet that uses Microsoft's technology.'' David Bank, Microsoft Moves To Rule On-Line Sales, The Wall Street Journal, June 5, 1997, at B1. The term refers to a gambling house's ''cut'' on all bets placed in the establishment.

[38] For example, the PFJ does not appear to foreclose a Microsoft strategy whereby OEMs would be told that senior Microsoft executives and spokespeople will opine that the product of OEM X works better than the product of OEM Y, if OEM Y refuses to install only Microsoft applications.

The requirement that Microsoft distribute Java with its operating system and Internet Explorer browser takes on even greater importance in light of Microsoft's recent behavior. For example, although the Court of Appeals upheld the trial court's finding that Microsoft targeted and destroyed independent threats from the Java programming language, see Microsoft, 253 F.3d at 53–56, 60, Microsoft announced less than a month later that it was dropping any support for Java from Windows XP. As The Wall Street Journal reported at the time, ''This favors Microsoft's new technologies, and will inconvenience consumers .... [I]f you want your Web page accessible to the largest number of people, you may want to drop Java'' and switch to Microsoft's competing set of products, which is under development and is known as NET.''[39] Thus, notwithstanding the Court of Appeals'' holding that Microsoft illegally maintained its monopoly by requiring major independent software vendors to promote Microsoft's JVM exclusively (i.e., by requiring developers, as a practical matter, to make Microsoft's JVM the default in the software they developed), Microsoft is again acting illegally to maintain—and further entrench—its operating system monopoly against Java's middleware threat.

To remedy the specific and extensive anticompetitive tactics aimed at Java, as found by the District Court and affirmed by the Court of Appeals, Microsoft should be ordered—as outlined in the Litigating States'' Remedial Proposal—to distribute with its platform software a current version of the Java middleware. This would ensure that Java receives widespread distribution, thus increasing the likelihood that it can serve as a viable competitive platform to Windows. Although rivals such as Java will likely remain small players compared to the dominant Windows OS, their existence on the competitive fringe is critical to provide some competitive discipline to Microsoft on pricing and coercion matters. Moreover, the existence of these rivals creates a base for future developments that might one day provide true alternatives to Windows.

E. The PFJ Includes A ''Gerrymandered'' Definition Of Middleware. Though not readily apparent, the effectiveness, or lack thereof, of the PFJ's restrictions on Microsoft's behavior heavily depends on the proposed agreement's definition of ''middleware.'' Under the proposed settlement, OEMs are protected from retaliation and can promote competitive alternatives to Microsoft products only in the area of middleware. Thus, if rival software falls outside of the definition of middleware, Microsoft can essentially use its coercive might to prevent that software from being distributed via OEMs. Conversely, if a Microsoft product is not classified as middleware, Microsoft is permitted to use coercion to force its adoption and promotion.

The PFJ adopts a new, and greatly narrowed, definition of middleware, both in terms of ''Microsoft Middleware Products'' and ''non-Microsoft Middleware.'' The result is significant because under the newly created definition, Microsoft may be able to subvert many of the PFJ's restrictions. Tile Litigating States'' Remedial Proposal defines middleware in a manner consistent with the definition adopted by both the District Court and the Court of Appeals.[40] It thus prevents Microsoft from using a definitional shell game to avoid changing its unlawful behavior.

The District Court and the Court of Appeals adopted the same definition of middleware: software products that expose their own APIs; are written to interoperate with a variety of applications; and are written for Windows as well as multiple operating systems. See Microsoft, 253 F.3d at 53; see also Findings of Fact, 84 F. Supp. 2d at 17–18, ¶¶ 28–29. Thus, while the DC Circuit discussed browsers and the Java technologies as leading examples of middleware, Microsoft, 253 F.3d at 59–78, it never adopted an exclusive list limited to specific products (as the PFJ does).[41] Importantly, the Court of Appeals also agreed with the District Court that the appropriate category of ''middleware'' applications that merit protection against Microsoft's anticompetitive conduct includes .any application that could operate separately or together with other such applications to create even the ''nascent'' potential for alternative platforms that could compete with Microsoft's OS monopoly. Id. at 52–54, 59–60, 74.

These standard definitions of middleware were also endorsed in the Posner Proposal, which, as noted above, Microsoft was reportedly ready to accept last year. Section 2(3) of the Posner Proposal defined middleware broadly, to include any ''software that operates between two or more types of software.., and could, if ported to multiple operating systems, enable software products written for that middleware to be run on multiple operating systems.'' Moreover, the substantive portion of the Posner Proposal, in Section 3(8)(c), explicitly included not just enumerated products, but also an)'' ''middleware distributed with such operating system installed on one personal computer to interoperate with any of the following software installed on a different personal computer or on a server: (i) Microsoft applications, (ii) Microsoft middleware, or (iii) Microsoft client or server operating systems.''

The PFJ departs significantly from these established definitions of middleware and instead adopts wholly new definitions for both ''Microsoft Middleware Products,'' and ''non-Microsoft Middleware.'' These definitions include several flaws that Microsoft may be able to use to anticompetitively advantage its applications, continue to profit from the fruits of its illegally maintained monopoly, and evade the practical consequence of the PFJ for many product lines.

To start, the PFJ's definition of ''Microsoft Middleware Products'' appears to limit this category to five specifically-listed existing products and their direct successors? This makes no sense for two reasons. First, why define the most critical term in the proposed settlement narrowly when Microsoft has already demonstrated its skill at evading consent judgments?[42] And second, why does the list include certain Microsoft products, but arguably not their virtually indistinguishable cousins: i.e., Outlook Express, but not Outlook; Windows Messenger, but not MSN Messenger; the Microsoft JVM, but not MSN RunTime; Internet Explorer, but not MSN Explorer. Likewise, Microsoft middleware applications such as the MSN client software and Passport appear to be excluded. The significance of these omissions cannot be overstated. For example, although Microsoft must allow OEMs, under the PFJ, to remove end-user access to Internet Explorer, the decree's language appears to allow Microsoft to ban any effort to replace MSN Explorer with a competitor. This is a step backwards from the status quo.

Additionally, Section III.H.2 of the PFJ explicitly limits OEM flexibility to set non-Microsoft Middleware as a default so that it can be automatically invoked: the PFJ appears to allow OEMs to do so only with competitors of ''Microsoft Middleware Products'' that (1) appear in separate Top-Level Windows, with (2) separate end-user interfaces or trademarks. Thus, Microsoft might be able to avoid the PFJ's provisions simply by embedding Microsoft middleware with other middleware, or not branding it with a trademark. That means Microsoft—not the OEMs, and certainly not the market—would determine the scope of desktop competition and the pace of desktop innovation.

Conversely, the definition of the rivals to Microsoft Middleware Products— ''non Microsoft Middleware Product''- is also jury-rigged to advantage Microsoft. Under Section IV.N of the PFJ, protected middleware products are limited to those applications ''of which at least one million copies were distributed in the United States within the previous year.'' Thus, developers have no protection from Microsoft's well-honed predatory tactics until they can obtain substantial distribution.

The PFJ's middleware definition also does not explicitly include web-based services, the most important future platform challenge to the Windows monopoly. These web-based services represent an important and growing type of middleware, and the PFJ's failure to explicitly cover them may allow Microsoft to recreate and extend its desktop monopoly to new platforms.[43]

[39] John R. Wilke and Don Clark, Microsoft Pulls Back Its Support for Java: New Windows XP System Won't Include Software Needed to Run Programs, The Wall Street Journal, July 18, 2001.

[40] (See States'' Proposed Text ¶ 22(w).)

[41] See also Microsoft, 253 F.3d at 59 (referring to browsers as exemplary of ''any middleware product, for that matter''); id. at 74 (Java is a set of technologies that ''is another type of middleware posing a potential threat to Windows'' position as the ubiquitous platform for software development'').

[42] The PFJ does contain a generic middlewaredefinition, see Section VI.K.2, but this applies only to new products, and therefore does not capture an)'' product now in existence.

[43] See Rebecca Buckman, Microsoft Says Its Future Lies in Subscriptions, The Wall Street Journal, May 31, 2001.

The newly created and narrowly crafted definitions of middleware in the PFJ pave the way for Microsoft to avoid many of the prohibitions on its conduct. The middleware definitions in the LSRP, on the other hand, are consistent with those endorsed by the District Court and Court of Appeals, and ensure that the protections from Microsoft's illegal conduct are extended to Microsoft's competitors in critical middleware markets.

F. The PFJ Lacks A Meaningful Enforcement Mechanism.

For any remedy against Microsoft to be effective, it must include a strong, timely, and meaningful enforcement mechanism. The PFJ creates an extraordinarily weak enforcement authority—one that likely will be overwhelmed and co-opted by Microsoft. More specifically, as currently drafted, there are two principal problems with the PFJ's enforcement mechanism.

First, the proposed decree leaves all enforcement to a single, three-person Technical Committee (''TC''). With no looming antitrust proceedings to put pressure on Microsoft to behave, Microsoft will have every incentive to hinder the efforts of the TC. Moreover, Microsoft will have substantial insights and influence over the TC—Microsoft will appoint at least one member of the TC (the first two members will appoint the third); the TC will be stationed full-time on Microsoft premises; and the TC will rely for many types of enforcement on a compliance officer hired and paid for by Microsoft. In light of all this, it would be easy to imagine a situation where the TC, during the entirety of its existence, never took a single action critical of or hostile to Microsoft, no matter what behaviors Microsoft engaged in.

Second, the enforcement authority has no power other than the authority to investigate. The TC cannot expedite claims, assess fines, or otherwise move quickly to redress Microsoft's illegal behavior. If the TC finds any abuse, its only recourse will be to the courts, through mini-retrials of United States v. Microsoft. Moreover, under Section IV.D.4.(d) of the PFJ, the TC is prohibited from using any of its work product, findings, or recommendations in any court proceedings. Thus, even if the TC eventually refers a matter to the courts, the proceedings will have to start from scratch. The history of the 1994 consent decree shows the futility of this type of approach.

By contrast, the Litigating States'' Remedial Proposal recommends the creation of a Special Master who is empowered and equipped to investigate Microsoft's behavior in a manner that is prompt and resolute. The appointment of a Special Master with defined remedial powers is essential if Microsoft's unlawful behavior is to be curbed and competition restored to the marketplace. Thus, the creation of a Special Master provides for a mechanism that is much more effective in ensuring Microsoft's compliance with the settlement decree, and does not suffer from the defects identified above in the PFJ's TC proposal.

First, unlike the TC in the PFJ, a Special Master, as selected by the Court, would be independent. He or she would not be dependent on Microsoft for resources, appointment, or other needs.

Second, under the Litigating States'' Remedial Proposal, the Special Master would have the authority to identify, investigate, and quickly resolve enforcement disputes. For example, under the States'' proposal, the Special Master would have the power and authority to take any and all acts necessary to ensure Microsoft's compliance. (See States'' Proposed Text ¶ 18(b).) The Special Master would have the benefit of both business and technical experts. (See id. ¶ 18(d).) Upon receipt of a complaint, it would be required to make an initial determination of whether an investigation is required within fourteen days. After notifying Microsoft and the complainant of its decision to investigate, Microsoft would then have fourteen days to respond. After Microsoft's response, the Special Master would be required to schedule a hearing within twenty-one days, and fifteen days after the hearing, would be required to file with the Court its factual findings and a proposed order. (See id. ¶ 18(f).)

Unlike the enforcement mechanism in the PFJ, the creation of a Special Master as outlined by the States would prevent disputes over Microsoft's compliance from becoming wars of attrition that would drain the system and guarantee Microsoft victory. The history of this case, and of antitrust regulation in general, suggest the need for an enforcement mechanism that can ensure the timely resolution of any disputes and minimize any demand on judicial resources. The enforcement provisions contained in the Litigating States'' Remedial Proposal accomplish these objectives.

V. THE CIRCUMSTANCES OF THIS CASE STRONGLY MILITATE IN FAVOR OF GATHERING EVIDENCE AND TESTIMONY—EITHER IN A HEARING, OR THROUGH THE USE OF THE RECORD FROM THE REMEDIAL PROCEEDING—TO DETERMINE IF THE PFJ MEETS THE PUBLIC INTEREST TEST.

We believe, for the reasons presented above, that the PFJ fails the Tunney Act's ''public interest'' test and should be rejected. At the very least, however, there is ample basis for the Court to conclude that a rigorous hearing is needed to air the objections to the PFJ and resolve the doubts that the Court hopefully has about the proposed decree. While it need not be a lengthy proceeding, the Court may also want to consider accepting evidence and taking testimony- or alternatively, making use of record evidence it will receive in the upcoming proceeding concerning the LSRP. The question of what can be learned about the PFJ's prospects for effectiveness, since its partial implementation began in July (and, in other respects, December), is especially critical, and would benefit from additional fact-finding by the Court.

A. The Complexity And Significance Of This Case—And The Inadequacy Of The CIS -All Militate In Favor Of A Hearing On The PFJ. Of all the cases in which courts have reviewed proposed consent decrees to make a public interest determination under the Tunney Act, the case most similar to the present action is American Tel. & Tel. Co., 552 F. Supp. at 131, aff'd sub nom Maryland v. United States, 460 U.S. 1001 (1983), in which Judge Greene subjected the government's proposed consent decree with AT&T to intense judicial review.[44] In AT&T, the court recognized that the proposed settlement not only would dispose of ''what is the largest and most complex antitrust action brought since the enactment of the Tunney Act, but [] itself raises what may well be an unprecedented number of public interest questions of concern to a very large number of interested persons and organizations.'' American Tel. & Tel. Co., 552 F. Supp. at 145.[45] In light of the size and the complexity of the case,[46] 46 as well as its ''unfortunate history'' and the interests of third parties, the court held an extensive hearing to address key issues raised by the consent decree and the comments of interested parties. Id. at 147, 152. The case for an extensive hearing on the PFJ in this proceeding is overwhelming for similar reasons.

First, this is an extremely complicated case, to say nothing of the profound consequences any settlement will ultimately have on the computer and Internet industries. The economic significance of the computer industry is unquestioned. In such an environment, expert economic analysis is critical to help the Court not only understand the incentives that will drive Microsoft's response to any proposed settlement, but also assess whether the PFJ will succeed in bringing the monopolist's unlawful behavior to an end and promoting competition in a market that has long been restricted. Given the complexity of this case, the Court should not approve the PFJ without an adequate hearing to consider the many- and often technical—objections to it that will doubtlessly be raised in the Tunney Act submissions.

Second, in temps of the impact that an□, proposed settlement in this case will have on the public, Judge Greene's depiction of the AT&T case is, once again, more than fitting here: ''[t]his is not an ordinary antitrust case.'' Id. at 151. Microsoft is one of our nation's largest corporations. It plays a central role in one of the country's most critical and important industries, and thus in our country's economy. Any settlement that

[44] Similar to the case at hand, Judge Greene in ,4 T& T had a well-developed factual record on which to base his public interest determination. In .4 T&T, the parties reached their settlement following a period of discovery, pretrial motions, and an eleven-month trial. Shortly before the evidence phase was to end, the Department of Justice and the defendant agreed upon, and submitted to the court, a proposed final judgment.

[45] Here, of course, the proposed consent decree was reached after a full trial on the merits, as well as an affirmance by the Court of Appeals, upholding the District Court's findings of liability against Microsoft. The court also acknowledged that if approved, the proposed decree ''would have significant consequences for an unusually large number of ratepayers, shareholders, bondholders, creditors, employees and competitors,'' and would affect ''a vast and crucial sector of the economy.'' /d. at 152.

[46] The Senate sponsor of the Tunney Act, Senator Tunney, specifically cited a case's complexity as a factor militating in favor of conducting a hearing on the adequacy of a decree. See 119 Cong. Rec. S3453 (daily ed. February 6, 1973) (statement of Sen. Tunney).

addresses Microsoft's illegal conduct in a manner that is consistent with the Court of Appeals'' decision and prevailing antitrust law will have far-reaching consequences on numerous organizations, both public and private, as well as on Microsoft, its employees, shareholders, competitors, and most importantly, consumers. Thus, a hearing to consider the breadth and depth of these consequences is in order before the PFJ is approved.

Third, a hearing should be held to require the Justice Department to answer the many questions surrounding the PFJ—raised here, and doubtlessly elsewhere—that the Competitive Impact Statement ignores or fails to adequately address. Why was a new, ''gerrymandered'' definition of middleware used in the PFJ—instead of the definition used by both the trial and appellate courts, and in every other remedial proposal? Why was a Java- related remedy omitted, when that was such a key part of the case? Why were only some forms of retaliation, for only some procompetitive acts, prohibited? And most importantly, why does the PFJ not address all of the anticompetitive wrongs that were found at trial, and upheld on appeal—including, most especially, Microsoft's unlawful tying? These questions are not answered by the CIS, as the Tunney Act directs and the public interest demands, and as the Court would surely desire. A full review of these questions, and many others, is needed by the Court before it can approve the PFJ (if it is inclined to approve the PFJ).

Thus, in light of the specific objections from third parties revealing the PFJ's numerous deficiencies—and the oddity of the differing remedial proposals now before the Court—the Court should hear oral argument and, if necessary, take additional testimony. Giving the government an opportunity to explain the omissions in its proposed settlement, and third parties the opportunity to demonstrate the efficacy of the litigating states'' proposal, will afford the Court the necessary basis on which to make its public interest determination in this important and unprecedented case.

B. The Court Should Conduct A Proceeding—Taking Evidence And Hearing Testimony, If Necessary—To Determine How The PFJ's Provisions Have Functioned Since Some Were Put In Place In 2001.

A second rationale for a hearing is to develop a factual record concerning the point we make in Section II, supra: namely, that the Court can assess the prospects for the likely effectiveness of the PFJ by seeing how those provisions that have been implemented are starting to work—or not—in practice.

Above, we have suggested that the empirical record developed in the PC industry since Microsoft's July 11, 2001 announcement of ''greater OEM flexibility for Windows,'' and since Microsoft began to implement many of the PFJ's remedial provisions on December 16, 2001, should be examined carefully by this Court as it determines whether the PFJ is in the ''public interest.'' We also express the view that these provisions have, in fact, been ineffectual in promoting competition and are showing no signs that they will yield change in the competitive position of non-Microsoft middleware—and as a result, cannot be said to be in the public interest.

At the same time—while we doubt it, seriously—we recognize it is theoretically possible that there may be reasons why these provisions have not yet shown signs of effectiveness, but would be effective over time. At least, that is what Microsoft and the Justice Department are likely to assert. If the Court is inclined to give these assertions any credence, that is all the more reason for the Court to conduct a proceeding—taking evidence and hearing testimony, if necessary- to make a determination on such claims based on empirical evidence, rather than relying upon hypothetical contentions or abstract theories. Such a proceeding is authorized by the Tunney Act, see 15 U.S.C. * 16(f), and would be appropriate in this instance.

Evidence and testimony from the OEMs can make clear whether they are taking advantage of the ''new flexibility'' ostensibly being provided under the PFJ—and if not, why not. Given the OEMs'' likely fears of retaliation from testifying in such a proceeding—as reflected by their apparent (and understandable) reluctance to testify in the remedial proceeding—the Court may want to consider appointing a Special Master to take evidence from the OEMs confidentially.[47] Likewise, evidence and testimony from non- Microsoft middleware companies can indicate how the provisions of the PFJ, after they have been in place for several months, are—or are not—enabling them to compete with Microsoft. The same can be said for OS rivals to Microsoft.

The point is that while we firmly believe that the publicly available information and reports all indicate that the PFJ's provisions, as implemented since December 16th (and the browser-related PFJ provisions, as implemented since July 11th), have done little or nothing to promote competition, the Court may wish to base such a conclusion upon a judicially developed record that would allow both proponents and opponents to offer explanations and evidence in support of their views. Such a proceeding could be of a more informal nature, i.e., the Court could solicit comments from the relevant parties and industry experts; or it could be conducted by a Special Master, as we suggest above; or it could be a more formal, trial-type undertaking. All of these approaches are authorized under the Tunney Act, which grants wide discretion to the court to adopt whatever form of proceeding it considers most effective. See 15 U.S.C. § 16, passim. But on one point, the Act, or at least its legislative history, is rather firm: ''[T]he court must obtain the necessary information to make [a] determination that the proposed consent decree is in the public interest.'' 1974 U.S.C.C.A.N. 6535, 6538–39 (H.R. Rep. 93–1463, quoting S. Rep. 93–298, at 6–7 (1973)) (emphasis added). Some sort of proceeding to examine these questions is justified in these circumstances,[48] and could be helpful to the Court in its consideration of the practical effects of the PFJ.

C. In Making Its ''Public Interest'' Determination. This Court Should Take Into Account The Evidence That Will Be Adduced In The Upcoming Remedial Proceeding. Finally, the Court should take advantage of the Tunney Act's broad procedural flexibility to use the record evidence that will be amassed in the upcoming remedial proceeding as it make its ''public interest'' determination in this review. The Court's Tunney Act review of the PFJ in this proceeding can be substantially assisted by the record developed in the forthcoming proceeding on the LSRP. As we have argued, the Court's objectives in both proceedings are the same—namely, to terminate Microsoft's illegal conduct, prevent the recurrence of such conduct, and create a market structure in which competition does not simply exist in theory, but actually yields real alternatives to Microsoft's products. Moreover, the Court's analysis in both proceedings is guided by the[49] same legal principles. See Section I, supra.

Many of the questions the Court must answer in the course of reviewing the PFJ—e.g., What sort of anti-retaliation provisions are needed to empower OEMs and foster real competition? Must third parties be empowered to promote competition through offering alternatives to the ''Windows bundle'' for a remedy to be effective?—will be addressed, in whole or in part, in the remedial proceeding. To the extent that these questions can only be answered by hearing testimony from some of the same individuals and the same sources in the remedial proceeding, the Court's reliance on that evidence in this proceeding would result in a more comprehensively informed review, streamline the Court's resolution of the issues, and lead to a much more efficient use of judicial resources.

The Tunney Act itself grants the Court wide discretion to undertake any procedures it ''may deem appropriate'' in making its public interest determination. 1 5 U.S.C. * 1 6(0(5). This includes using evidence from another proceeding. See American Tel. & Tel. Co., 522 F. Supp. at 136. As the court noted in AT&T, ''[i]n a Tunney Act proceeding the Court is not limited by the rules of evidence but may take into account facts and other considerations from many different sources.'' Id. at 136 n. 7 (emphasis added). In that case, the court relied on a report by the Antitrust Subcommittee of the House Committee on the Judiciary, which had conducted an investigation of the matter, to fill in gaps left in the court record. Id. at 136. Ira court can

[47] The Court is authorized to appoint a Special Master to conduct inquiries as part of this Tunney Act proceeding. See 15 U.S.C. * 16(f)(2). Making a determination as to why OEMs have failed to use their ''new found freedoms''—and whether they are likely to do so in the future—would seem to be a task well suited to a Special Master.

[48] While Congress made clear, in enacting the Tunney Act, that such hearings were to be the exception, and not the rule, see 1974 U.S.C.C.A.N. 6535, 6539 (quoting S. Rep. 93–298, at 7 (1973)), this may well be one of those cases where an evidentiary inquiry is called for.

[49] This is not to say that the PFJ should be rejected merely because it is not identical to the remedy that the Court might impose in the remedial proceeding. See supra note 2. Conversely, acceptance of the PFJ would not preclude the Court from imposing a different remedy in the proceeding being pressed by the litigating states.

weigh an evidentiary record compiled by the Congress, it surely can weigh an evidentiary record of its own creation in a related proceeding. [50]

The Court is currently overseeing a wide range of discovery, both written and oral, in the remedial proceeding. Testimony will presumably be taken from a host of witnesses that will establish, among other things: how Microsoft deals with OEMs, including how various Microsoft practices limit OEM flexibility in configuring the desktop; [51]how Microsoft has used the commingling of code, and other forms of binding its middleware to the OS, to reinforce the applications barrier to entry; how Microsoft has used discriminatory and anticompetitive licensing agreements to limit the distribution and use of rival products; how Microsoft's illegal conduct has worked to destroy Java; how Microsoft's .Net initiative repeats the illegal monopoly leveraging tactics it successfully used to decimate Netscape; how Microsoft's concealment of APIs decades the performance of non-Microsoft products and services; and how Microsoft has manipulated industry standards and developed proprietary standards and formats that limit the interoperability of competing products.

This evidence, which will be presented during the Court's remedial hearing later this Spring, will form the basis on which the Court crafts its remedy in the ongoing litigation. It is our view that this evidence will affirmatively demonstrate why the LSRP, and not the PFJ, fulfills the mandate of the Court of Appeals and comports with well settled antitrust law. By the same token, it will also demonstrate why the PFJ fails to redress Microsoft's illegal behavior in a manner consistent with tile public interest.

Because many of the questions the Court faces in this proceeding mirror those in the remedial proceeding, the Court should take the record evidence from the remedial proceeding into account in conducting its Tunney Act review of the PFJ. Simply put, by utilizing this evidence, the Court will adduce the information it needs to make its ''public interest'' determination in a manner that encourages greater efficiency and avoids unnecessary delay or duplication.

CONCLUSION

The Court should refuse to find that entry of the PFJ is ''in the public interest.'' The PFJ does not unfetter the market from Microsoft's dominance; it does not terminate the illegal monopoly; it does not deny to Microsoft the fruits of its statutory violations; and it does not end Microsoft's practices that are likely to result in monopolization in the future. More specifically, the PFJ does not even attempt to address, let alone end, Microsoft's illegal binding and bundling practices that have done so much to fortify its OS monopoly and to harm desktop competition. And its limited provisions are so filled with loopholes and exceptions that they are rendered ineffective. At the very least, the Court should refuse to approve the PFJ until after it has concluded an extensive review, including an inquiry into whether the PFJ's provisions—as implemented by Microsoft since last year—are showing signs of effectively restoring competition to the marketplace. The Court could conduct an evidentiary hearing, appoint a Special Master, and/or rely upon the record that will be adduced in the trial on the Litigating States'' Remedial Proposal to meet its evidentiary needs.

In the end, it is the proposal of the litigating states—not the PFJ—that meets the public interest standard. The Court should reject the PFJ, and impose a strong, effective and forward-looking remedy that addresses Microsoft's proven anticompetitive conduct in a manner consistent with the mandate of the Court of Appeals and the nation's antitrust laws.

Dated: January 28, 2002

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ATTACHMENT A

MTC–00028284—0067

Microsoft's Tying Strategies To Maintain Monopoly Power !n Its Operating System

(Civil Actions No. 98–1232 and 98–1233 CKK)

Submitted on behalf of AOL Time Warner by Frank Mathewson and Ralph A. Winter

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MTC–00028284—0068

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[50] Although the circumstances in which the AT&T court considered the subcommittee's report are different from those here, the Tunney Act clearly allows this Court to rely on evidence from a variety of sources. The legislative history of the Act makes clear that Congress did not intend to limit the techniques a court could use to make its public interest determination. See 1974 U.S.C.C.A.N. 6535, 6539 (quoting S. Rep. No. 93–298, at 6 (1973)) (''Section 2(f) sets forth some techniques which the court may utilize in its discretion in making its public interest determination. It is not the intent of the Committee to in any way limit the court to the techniques enumerated.'')* Indeed, Congress anticipated that by giving trial courts wide discretion to collect evidence and conduct procedures in the way they saw fit, courts would be able to adduce the necessary information in the least complicated and most efficient manner possible* See id. (''The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests... It is anticipated that the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible.'').

[51] As we note above, the OEMs appear understandably reluctant to testify in the remedial proceeding* This is all the more reason to use a Special Master (or other procedural device) to ascertain confidentially their views of the PFJ's provisions and the likely effectiveness of those provisions. See supra note 47 and accompanying text.

INTRODUCTION

We have been engaged in this case as professional economists [1] to assess the economic incentives and effects of Microsoft's tying practices. Our specific charge is to determine whether Microsoft is tying middleware applications to its operating system (''OS'') in a manner that protects and reinforces its monopoly power in the market for operating systems. Middleware is software that runs on the OS platform, i.e., that calls on the basic operating system through application programming interfaces (''APIs'') of the OS in order to invoke functions of the OS, but which in turn contains its own published APIs that allow higher-level applications to run on the middleware itself.[2] To execute our mandate, we have reviewed the economic incentives at play in this market, conducted interviews with various software developers, and studied the key documents in this case, including the Proposed Final Judgment and the Competitive Impact Statement of the U.S. Department of Justice, the submissions made on behalf of Microsoft, and the Comments Of AOL Time Warner On The Proposed Final Judgment.

Based on our analysis, we conclude that Microsoft has tied its middleware applications to its Windows operating system in ways that preserve and reinforce its monopoly power in the market for operating systems on PCs, damaging competition and harming consumers. The anti-competitive use of tying strategies to maintain a monopoly in this manner is, in our understanding, a violation of Section 2 of the Sherman Act. We conclude that market forces alone do not discipline Microsoft to limit the integration of middleware code into its OS or the bundling of middleware products with its OS to efficiency-enhancing levels. Rather, Microsoft has the ability to tie in ways that lack pro-competitive justification, and in any event has incentives to use tying strategies to integrate applications into its OS more aggressively than justified by efficiency.

We begin in the next section with a brief description of the tying strategies at Microsoft's disposal. We then demonstrate through economic analysis that Microsoft has substantial incentives to tie its middleware products to its monopoly OS to reinforce and entrench that monopoly. Given these incentives, Microsoft's history, and the evidence in this case, we conclude that Microsoft has engaged, and is engaging, in anti-competitive tying, and is doing so in a way that maintains its OS monopoly, to the detriment of consumers and competition.

MICROSOFT HAS MANY TECHNIQUES AT ITS DISPOSAL FOR TYING MIDDLEWARE TO WINDOWS.

Microsoft has various means of binding its middleware products to the Windows operating system. Before describing these practices and the ways in which Microsoft uses them to reinforce its OS monopoly, we explain the general concept of middleware and why Microsoft's licensing of middleware with its OS in the Windows package constitutes tying.

Middleware is exemplified by products such as Internet browsers, including Microsoft's Internet Explorer (''IE'') and Netscape's Navigator, media players, instant messaging, and middleware applications platforms such as Java. By a strategy of tying middleware to the OS, we mean any constraint that Microsoft's operating system be bought with (or bound to) Microsoft middleware products, or any contractual or financial inducement to this end. Microsoft has argued that various middleware applications, especially IE and Windows Media Player (''WMP''), are essential components of an integrated operating system rather than distinct products, and that tying or bundling these products with the core operating system therefore does not constitute tying. Microsoft's argument is incorrect.

Middleware products, such as browsers and media players, are sold in separate markets. Users can obtain Navigator or RealPlayer without purchasing an operating system in the same transaction. Users can also obtain IE or MSN Messenger without obtaining Windows. Until Microsoft bundled WMP into Windows, users could obtain these two products in separate transactions. Moreover, these products are clearly sold by different suppliers. The Court cannot give serious weight to Microsoft's argument that once WMP, for example, is integrated into Windows, the media player ceases to be a separate product: If this argument were accepted, then the mere fact that Microsoft integrates application code into the operating system would itself be a defense for its actions. In other words, tying, as a means of reinforcing a monopoly position, would constitute its own defense. The law, we suggest, cannot intend this.

Tying involves contractual arrangements whereby Microsoft puts pressure on original equipment manufacturers (''OEMs'') or end-users to acquire Microsoft applications as a condition of acquiring Windows. It includes requirements that OEMs install Microsoft applications, rather than applications developed by Microsoft's rivals, and prohibitions on removing or uninstalling those applications. It also includes financial inducements to adopt Microsoft applications when Windows is purchased and installed. Each of these requirements is enforced through Microsoft's coercive power to harm non-adhering OEMs.

Tying also involves desiring the OS so that Microsoft's applications are integrated into the OS code, leaving rival applications unnecessary or even dysfunctional. This type of tying includes: (a) basic integration of code; (b) efforts by Microsoft to hinder disintegration; and (c) efforts to hamper the interoperability of rival applications. Basic integration involves providing, as part of the OS, services previously offered as stand-alone applications. This could be done in a purely modular fashion without the commingling of application code into the kernel of the operating system. If done in this manner, the products can be easily removed and replaced with competing products in a ''plug and play'' fashion. Technological efforts that hinder disintegration, however, have stronger anti-competitive overtones. These include: commingling code in a manner that hampers, and perhaps even bars, the replacement of the products or default options; designing the OS so that Microsoft's applications are chosen as default applications; making it difficult for OEMs or users to replace the icons or launch sequences; and creating utilities to ''sweep'' the Windows desktop and replace non-Microsoft icons. Note that some of these forms of tying, such as hampering rivals'' performance, entirely lack pro-efficiency rationales, while all of them can be used in inefficient, anti- competitive manners. The remainder of this paper demonstrates that Microsoft has strong incentives to engage in such anti-competitive, inefficient bundling, and that it is doing so in a manner detrimental to competition with the goal of maintaining its extant monopoly in operating systems.

ECONOMIC ANALYSIS SHOWS THAT MICROSOFT HAS SUBSTANTIAL INCENTIVES TO USE TYING TO SUSTAIN ITS OPERATING SYSTEM MONOPOLY, HARMING CONSUMERS AND COMPETITION.

Microsoft has maintained that its tying is efficient and that it should be allowed to determine the level of integration of applications into its operating system. Microsoft argues that it should be free to tie its products together in any fashion it sees fit, as this type of product integration is efficient and promotes innovation with eventual consumer benefits. These arguments generally claim to defend Microsoft's intellectual property, and are expressed in terms of the general advantages of product integration, rather than defining specific benefits to users from Microsoft's practice of tying particular middleware products, such as IE or WMP, into the Windows package.

Microsoft's claim amounts to the belief that market forces alone achieve the optimal degree of product integration and separation without any further regulatory or legal constraints. As a matter of economic theory, this argument fails to take note of Microsoft's position as a dominant producer in a market with substantial barriers to entry. For this general market-forces argument to be valid, Microsoft would need to demonstrate that competitive vigor in the market will discipline Microsoft to engage only in tying that enhances efficiency. But such complete reliance on market forces to achieve efficiency, in turn, requires open entry, while the evidence in this case has shown that there are significant barriers to entry in the OS market. This leaves Microsoft in a position to exploit any strategic and anti-

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[2] Middleware and operating systems, i.e., any software which exposes APIs so that higher level applications run on top of the software, are together referred to as platform software.

competitive motives to integrate. As a matter of market reality, as we shall explain, the evidence demonstrates that Microsoft has engaged in tying to an excessive degree, with the sole purpose of achieving anti-competitive aims in general and OS monopoly-preserving aims in particular.

With respect to the practices of tying middleware, Microsoft's interests are not aligned with those of competition and consumers: Microsoft can benefit without improving its product by using tying strategies to reinforce and strengthen its existing OS dominance.

A. As a general matter, absent legal constraints, Microsoft possesses substantial economic incentives to integrate its products in a manner that reinforces its OS monopoly.

Below, we set forth four theories that explain why Microsoft's practice of integrating its applications with the Windows OS helps to maintain its OS monopoly, in a way that is detrimental to consumers and competition. First, tying helps to sustain the applications barrier to entry, and thus serves to enhance Microsoft's OS dominance. Second, tying deters direct challenges to Windows'' position as the dominant platform and thereby maintains or enhances Microsoft's OS dominance. Third, tying involves dynamic leveraging that permits Microsoft to achieve a monopoly in complementary applications as insurance against any possible erosion of the OS monopoly. Put another way, a monopolist, such as Microsoft which produces a pair of perfectly complementary products, aims to protect its full monopoly power by ensuring its future monopoly in at least one of the complementary products. Fourth, tying permits Microsoft to mitigate the competitive constraints on its operating system monopoly provided by previous releases of the OS. These four theories are not mutually exclusive; each of them contributes to a full understanding of Microsoft's anti-competitive conduct. And, to make matters worse, each of these anti-competitive results is mutually reinforcing because of the network effects operating between the applications sector and the operating system market.

(]) Microsoft ties its applications to its operating system us a way of sustaining the applications harrier to entry. Microsoft has a general incentive to engage in anti-competitive tying to protect its dominance in operating systems against the possibility of competitive developments in applications markets. The first means by which it accomplishes this is through enhancing the applications barrier to entry[3] The dominance of the Windows standard in a wide range of applications, or in a few particularly important applications, makes entry into the operating system market more difficult because an entrant has to offer both a new operating system and a full set of applications, or somehow rely on the chance that applications ,,,,,ill quickly develop once the new operating system becomes available. In this way, an entrant faces a ''chicken-and-egg'' problem because of the indirect network effects in the operating system: the entrant could not succeed without a set of applications available to purchasers of its operating system; yet, few software developers would invest in the development of new applications based on an operating system without a large market share. This is referred to as the applications barrier to entry. The dominance of Windows as a standard for applications leads to the applications barrier to entry and growth in the operating system market.

Microsoft is able to sustain this barrier by exploiting a collective action problem among buyers. When Microsoft ties by supplying the OS with an application such as IE or WMP, users must incur a series of costs to replace the application. These costs include purchasing or downloading the substitute browser or media player, installing the application, and incurring any uncertainty associated with the possible compromise in the functional integrity of the system. In an application market, buyers would collectively be better off if each incurred the costs of purchasing from competing suppliers, because doing so would ensure greater competition in the future application market. However, Microsoft's tying practices preclude this result.

Buyers'' purchase decisions with respect to either the operating system or applications collectively affect the future market structure because Microsoft will achieve dominance if most buyers choose Microsoft products. Once Microsoft achieves dominance, network externalities sustain this dominance so that the market structure becomes a monopoly as a result of buyers'' previous purchase decisions. The impact of each buyer's purchase decision on the future market structure, however, is negligible. Moreover, buyers do not take into account the impact of their purchase decisions on other buyers. As a result, even a small disadvantage to purchasing a competing product in the operating system or applications markets is enough to make the individual buyer prefer Microsoft's product.

The result is that buyers'' decisions make them collectively worse off. The future dominance of Microsoft and the higher prices faced by buyers are a result of their collective decision to purchase Microsoft's applications. Microsoft exploits this collective action problem and pursues dominance in the applications markets through its tying practices. [4]

(2) Microsoft ties applications to its operating system as a way of deterring direct challenges to Windows position as the dominant platform for software developers.

Microsoft's incentives for anti-competitive tying are particularly strong in the case of applications that might allow for the development of direct substitutes to the monopolized operating system. A clear incentive for Microsoft to tie its IE browser with Windows has been the threat that Netscape, either individually or combined with Java software, could eliminate Microsoft's network advantages in the operating system, by providing middleware (which serves potentially as universal translation support between any application and any operating system) that would provide a competing platform for software developers. This was a particular threat to Microsoft's dominance in operating systems because it potentially represented a platform/programming environment in which software applications Could be developed without regard to the underlying operating system. Middleware provides a layer of software between applications and the operating system and can accommodate a new operating system with a change in a single set of code. Without middleware, the success of a new operating system would depend on the development of new code by every application developer. This incentive also explains Microsoft's initiatives to develop a Microsoft version of Java in an attempt to undermine the universal-translator aspect of Java.

Some economists have argued that the backwards compatibility of Microsoft's version of Java, i.e., the ability of all general Java applications to run on Microsoft's version, rules out the hypothesis that Microsoft designed its version of Java for the purpose of stifling the potential threat to its dominance in operating systems. [5] This argument is wrong in its static assumption about compatibility. Given the history of the industry, the fact that Microsoft's initial version of Java was universally compatible with Java applications does not lead one to believe that if Microsoft dominated not just browsers but also Java in the future, it would continue to assure both compatibility of applications and free distribution of the pair of middleware products. Were Microsoft to establish dominance in the potential browser-Java bypass of its operating system dominance, why would it allow the bypass to be freely and effectively available? The concerns expressed by Microsoft's executives about the risks of ''commoditization'' of the operating system are well known. [6] Middleware generally has the potential to act to varying degrees as a universal translator

[3] See U.S. v. Microsoft, 84 F. Supp. 2d 9 (D.DC 1999) (''U.S. Findings of Fact''), 36ndash;44.

[4] In the economics literature, modem theories of anti-competitive exclusion, including tying as exclusionary, are linked by the theme that exclusionary contracts have an impact on individuals outside an individual buyer-seller contract. See Dennis Carlton and Michael Waldman (2001) ''The Strategic Use of Tying to Preserve and Create Market Power in Evolving Industries,'' unpublished working paper; Eric Rasmussen et al., (1991) ''Naked Exclusion,'' American Economic Review 81 (5): 1137–1145; Michael Whinston (1990) ''Tying, Foreclosure, and Exclusion,'' American Economic Review 80(4): 837–859; and Philippe Aghion and Patrick Boulton (1987) ''Contracts as a Barrier to Entry,'' American Economic Review 77(3): 388–401.

[5] ''Microsoft's Java virtual machine ... allowed for all programs written for the original (''pure'') Java to be run on it. Thus it preserved backward compatibility with the original Java that ran on all operating systems. Because of that, Microsoft's actions were not anti-competitive.'' Nicholas Economides, ''The Microsoft Antitrust Case,'' Journal of Industry, Competition and Trade.'' From Theory to Policy, March 2001, p. 20 of working paper version.

[6] In a 1995 memo to his ''Executive Staff and direct reports,'' Microsoft CEO Bill Gates stated that Netscape was ''pursuing a multi-platform strategy where they move the key API into the client to commoditize the underlying operating system.'' (5/26'95 ''The Internet Tidal Wave,'' PI. Ex.20, p. MS98 0112876.3.)

between an operating system and specific applications, because (as the name suggests) middleware intermediates between the operating system and applications: it invokes calls through an operating system's APIs and in turn issues its own APIs to applications. To accommodate a new operating system, instead of each application requiring re-coding for compatibility, only the ''bottom half'' of the middleware application must be reprogrammed. If twenty applications run on top of a particular middleware program, for example, compatibility with a new operating system could be achieved by reprogramming the middleware program instead of reprogramming each application. Middleware thus mitigates the indirect network effects of the operating system—and could potentially diminish the dominance of any operating system that these network effects support.

(3) Microsoft has incentives to tie to achieve a monopoly in complementary applications as insurance against possible future erosion Of its OS dominance.

A common response to the argument that monopolies can profit through leveraging into a second market is that monopoly profits can be collected only once: a tie into a complementary market with an increase in the price of the tied good by a dollar will reduce the demand price of the first good by a dollar. According to this response, there is no incentive to leverage. In the simplest, static world in which there are no industry dynamics, no uncertainty, and no variation in consumer demand, this ''one-monopoly theory'' is correct. This theory, however, fails when there is uncertainty about the preservation of monopoly. If the initial monopoly is at some risk, then an incentive for leverage arises as insurance against the loss of monopoly profits. In the event that the first monopoly fails and the second succeeds, the monopolist will have preserved a monopoly in at least one of the markets. [7] Consistent with the common response, having a monopoly in only one of the pair of markets is sufficient to collect the full monopoly profits. If either market's monopoly is uncertain, the monopolist has an incentive to create monopolies in both markets, and thus increase the likelihood of being able to obtain monopoly profits in at least one market.

If Microsoft fears for the longevity of its operating system monopoly, or believes that operating systems are in a mature market with limited prospects for growth, it will have strong incentives to make minor sacrifices to Windows functionality in order to obtain dominance in high-growth markets. This is particularly true if the sacrifices (such as damaging relationships with OEMs and consumers by forcing them to accept an inferior browser or media player) have negligible effects on demand for Windows. The greater the threat to its OS dominance in the future, the more incentive Microsoft has to establish a dominant supplier position in an application market, such as the browser or media player market. To take a hypothetical future contingency, if the development of middleware means that the future OS market turns out to be more competitive than the current market, then Microsoft's actions to achieve dominance in the application market will leave it with dominance in one product of a pair of complementary products, rather than dominance in neither. Microsoft's incentive to establish dominance in key applications is thus strengthened by the fact that Microsoft's monopoly in the operating system market is not guaranteed to always be airtight. [8]

The gains from leveraging are especially strong where network effects are present in applications markets or these markets otherwise promise large potential growth in revenues for any firm that establishes early dominance. [9] Network effects have three implications that make Microsoft's tying practices particularly effective in reinforcing its OS dominance. First, in the early stages of the market's development, purchasers will be on alert for signals of which standard will eventually become dominant, in order to reduce their exposure to later costs of converting to the dominant standard. Tying a new application with the dominant Windows operating system will send strong signals to purchasers that will help to ''tip'' the market toward Microsoft's favored products, particularly given Microsoft's history. Second, a feedback loop will cause both the tying and Microsoft's dominance to steadily accelerate. As Microsoft begins to gain a substantial share in an application market, it will be able to engage in more overt forms of tying, as customers grow to accept even inconvenient results from Microsoft's ant/- competitive behaviors (such as poor interoperability with rivals) because of the reinforcing network effects. This, in turn, will accelerate the tipping toward Microsoft dominance. Third, once Microsoft's dominance is established, proprietary standards and continued tying will lock in this dominance, not just on current production but on ''future applications in the same functional space. While all of these effects promote Microsoft's dominance in applications, it is the feedback effect of this control over applications to reinforce the OS dominance that is relevant for the matter at hand. Network effects or network economies refer to the positive value that any single user derives from the number of other users adopting the same operating system. See U.S. Findings of Fact ¶¶ 39–42 and ¶¶ 65–66 for application to Microsoft. For a general description of networks and positive feedback, see Carl Shapiro and Hal Varian (1999) Information Rules Boston: Harvard Business School Press, pp. 173–225.

The standard ''one-monopoly'' theory, however, tells us that when there are two perfectly complementary products A and B, a monopoly over either, or a monopoly on both, allows the identical profits and results in the identical effects. (This theory holds in a static framework that sets aside the other three theories that we discuss.) With respect to an OS with a set of applications that are virtually universally adopted by all PC users, a monopoly over the OS alone is identical in its effect and in its incentives to a monopoly over the set of applications alone or a monopoly over both the OS and the set of applications. That is, there is only one monopoly: the economic role of tying under the monopoly-insurance theory is not creating a new monopoly, but rather preserving the monopoly (the monopoly being at least one monopoly position in the OS-applications pair). The monopoly-insurance theory thus explains the anti-competitive use of tying to preserve a monopoly in violation of Section 2 of the Sherman Act.

The monopoly-insurance theory of tying has the effect of reinforcing Microsoft's monopoly position even if the preservation-of-monopoly requirement of Section 2 of the Sherman Act is construed narrowly to apply only to Microsoft's existing monopoly on operating systems for PCs. The reason (discussed below) is that all of Microsoft's incentives for tying applications to Windows are mutually reinforcing. Even if Microsoft's incentive for tying were primarily to insure a monopoly in the event that the Windows OS monopoly failed in the future (the insurance theory), one effect of the tying is to reduce the chance that the Windows OS monopoly actually does fail, because of the strengthening of the applications barrier to entry. The impact is preservation, though imperfect, of Microsoft's monopoly in the operating system market.

Microsoft's operating system also has durable-goods qualities that create further anti-competitive incentives for tying.

Part of Microsoft's argument that it should be free to ''innovate'' rests on the notion that an important source of ''competition'' in selling new versions of Windows is the existing stock of old versions of Windows.[10]

[7] This idea is developed formally in J.P. Choi and C. Stefandis (2001), ''Tying, Investment and the Dynamic Leverage Theory,'' The RAND Journal of Economics 32(1): 52–74.

[8] See U.S. Findings of Fact ¶¶ 33–35, 60–64.

[9] It may appear that any preservation-of-monopoly theory must Be applied narrowly to Microsoft's monopoly power in operating systems. If this were the case, then the insurance theory of tying just described would not apply, since this theory explains why tying to establish dominance in a new market can be profitable because of the profits that can be captured in that new market, instead of why it is profitable to protect the monopoly in the operating systems market.

[10] The District Court's Findings of Fact maintain that the Windows leasing agreement prohibits the user from transferring the OS to another machine so that ''there is no legal secondary market in Microsoft operating systems'' (¶ 57). The Findings of Fact then note (* 58) that there is a thriving illegal market. To limit this, Microsoft advises OEMs that Microsoft will charge a higher price for Windows to OEMs that do not limit the number of PCs they sell without the OS pre-installed. One might argue that the durable goods monopoly problem is eliminated by Microsoft's refusal to allow OEMs to install (without penalty) old versions of Windows. This is incorrect for two reasons: (i) increases in the price of the new version of Windows will reduce overall demand for new PCs, as users invoke the option to keep existing PCs with the old version, and (ii) there is a retail market for new versions of Windows software for installation on existing PCs. Both (i) and (ii) provide channels through which the existing stock of Windows software provides some competition for a new version of Windows (i.e., it increases the elasticity of demand for the new version). If the price of a new version is increased, the demand for the new version is reduced because fewer

Continued

While it is true that the durable-goods aspect of the OS market (i.e., the ability of consumers to retain their existing versions of the OS instead of buying a new version) disciplines Microsoft, it only does so in the sense that Microsoft earns fewer profits than it would in a hypothetical world in which it were to lease its OS. The claim that the OS market is, in fact, more competitive than this hypothetical market does not weaken the claim that Microsoft's position in the OS market is dominant and that its activities are illegal.

Moreover, this ''durable good monopolist'' feature of the market contains an incentive for Microsoft to engage in illegal bundling. The strategy of leasing as a means of escaping the durable monopolist's dilemma is well established and has been thoroughly analyzed by economists.[11] Rather than selling the product into the market in each period, if the monopolist seller of a durable good can lease the product on a period-by-period basis, it can retain complete control over the supply of the good into the market in each period. This allows the monopolist to set monopoly prices in each period instead of being constrained by the consumers'' option to continue using the already-purchased stock (or version) of the product. The monopolist who leases for a period can lease both previous and current production together to achieve monopoly profits; doing so eliminates the competitive discipline that would otherwise occur as past sales re-enter current and future markets. If Microsoft could move to a business plan of leasing rather than selling software, it would completely eliminate competition from old versions of the software: as Microsoft leases new versions of software, it could retire leases on old versions. This would serve to protect the monopoly power that Microsoft enjoys from its OS. Tying can allow Microsoft to implement this leasing strategy so as to avoid the durable good discipline. Specifically, tying the use of the OS to some complementary transaction that can be leased, or priced on a per-use basis—rather than sold—provides Microsoft with the opportunity to collect a revenue stream that is immune to the competitive discipline imposed by previous versions of the OS.

The escape from the durable monopolist's dilemma via leasing thus creates another incentive for tying. Tying allows Microsoft to move closer to the leasing outcome by facilitating the collection of transaction fees based on current usage. [12] The set of middleware products that potentially puts Microsoft in the position of collecting a fee on Internet transactions serves this role. These products are IE, WMP, Microsoft's Digital Rights Management (''DRAM'') software, as well as the Net My Services initiative. The Digital Rights Management software, with WMP, will initially support a market for music and video products. The combination of these middleware applications, enabling the Microsoft e-commerce network, will then support the transition to Internet sales transactions of a broad variety of products. As Microsoft begins to shift its revenue structure from Windows sales to Internet transaction fees, it will seek to control the key Internet access choke points such as browsers, media players, and digital rights management. Tying facilitates this control. Moreover, Microsoft can directly charge usage fees for its media player software that it cannot charge for the OS. While the durable-goods monopoly theory of Microsoft's tying incentives can be seen most directly as a theory of the incentive to dominate applications that facilitate a leasing business plan, one important impact of dominating these applications is to preserve Microsoft's dominance in the market for operating systems. The impact, in other words, is a preservation of Microsoft's OS monopoly.

As an empirical matter, versions of Windows are converging in their substitutability. This convergence of versions strengthens tile durable-good monopolist incentive to tie in two ways. First, it increases Microsoft's incentive to escape the durable-good monopolist discipline on prices, since the easier it is to substitute the current version of Windows with existing versions, the stronger this discipline is. Second, there are, in principle, two ways of leasing to escape tile durable-good monopoly discipline. Microsoft could rent the OS or tie it to an application and collect the corresponding stream of revenues each time the application is used. The converging substitutability of Windows'' versions renders the former more difficult, increasing the incentive to escape the durable-good discipline by tying applications. Thus, the increasing substitutability among sequential versions of Windows, even if later versions are superior, reinforces Microsoft's incentives to extend its monopoly to dimensions, such as Internet sales, in which it can charge a rig [13] or rent the application.

(5) Microsoft's anti-competitive tying incentives are mutually reinforcing and are manifest in strategies that lack any competitive justification.

The incentives for anti-competitive tying that we discuss are mutually reinforcing because of the network effects operating between the applications sector and the operating system market. Achieving dominance in applications (through tying) strengthens the dominance of the OS, because buyers in the OS market are more assured of available applications; the greater dominance in the OS market in turn feeds back into greater dominance in applications, since the tying strategies take the form of imposing an artificial advantage relative to applications of the dominant OS supplier. The greater Microsoft's share across all applications markets, the greater the applications barrier to entry. Greater shares in applications markets create a feedback effect of even greater dominance in the OS market. The source of this feedback effect is an ''indirect network effect'': the greater the penetration of any operating system, the more applications will be written to it, and consequently, the more valuable the operating system will be ''to any user. Since the OS monopoly is not perfect, Microsoft will therefore take advantage of anti-competitive opportunities to generally strengthen the applications barrier to entry. As a general principle, therefore, any extension of Microsoft's monopoly to a set of important applications reinforces its monopoly in operating systems.

Microsoft has a clear incentive to engage in tying in the form of hampering rival applications and coding its own applications to be defaults to the detriment of consumer choice. This type of tying has a negligible negative effect on the demand for Windows, and by tipping high-growth markets, could provide Microsoft with long-term profits. Given that the Windows source code is both complex and proprietary, Microsoft can engage in this type of tying surreptitiously. For example, Microsoft can alter the algorithms that set ''favorites'' in folders and task bars so that Microsoft-preferred applications and web sites are used more frequently. In addition, Microsoft can cause subtle performance problems for rival applications in Windows environments. This type of tying, however, is consistent only with anti-competitive behavior—no efficiency benefits result from ham-ting rivals or setting Microsoft options as defaults.

B. Microsoft's anti-competitive incentives are particularly powerful in the markets for browsers and streaming media, as well as the adjacent markets for content-encoding, digital rights management, e-commerce: and convergence.

In markets with network effects and perceived similarity in product functions, directional changes in market shares can ''tip'' the market toward a dominant outcome because consumer expectations as to which format will dominate are self-realizing. In other words, the expectation on the part of consumers that a particular format will dominate leads each consumer to choose that format because of the rational concern that other formats will not be supported—accelerating the dominance and confirming the expectations of consumers. Consider the browser and the media player as examples. In the browser market, Microsoft has achieved the dominance that it sought, and its monopoly power in the OS continues. These are related: browser dominance reinforces OS monopoly power.[14] The connection is that browser dominance

consumers will purchase new PCs as the price increase for Windows raises the price of the overall package of the PC and the (mandated by Microsoft) new version of Windows, and because some consumers who would have purchased Windows to install on their old PCs will now refuse to do so.

[11] See Jeremy Bulow ''Durable-Goods Monopolists,'' Journal of Political Economy 90(2): 314–332 or Jean Tirole (1988) The Theory of Industrial Organization, Cambridge: MIT Press, p. 81.

[12] See Jeremy Bulow (1982:330) who suggests that a durable-goods monopolist may be able to achieve the leasing result through extending its monopoly to service contracts; these are analogous in principle to the application restrictions in the matter at hand.

[13] The term ''rig'' or ''vigorish,'' a term used by Microsoft, refers to a gambling house's ''cut'' on all bets placed in the establishment. See Allen Myerson, Rating The Bigshots: Gates vs. Rockefeller, The New York Times, May 24, 1998, at 4 (''The Gates crowd speaks ... of collecting a ''vigorish'' or ''vig''.... Now Microsoft wants to collect a rig on Internet access too.'').

[14] See U.S. Findings of Fact ¶¶ 68–72.

increases the applications barrier to entry and simultaneously removes the direct middleware threat posed by Netscape. Both of these effects in turn serve to increase the demand for the Windows OS through network effects as buyers anticipate continued dominance of Microsoft formats in both the operating system and applications markets; the two effects thus reinforce the dominance of Windows OS.

Now that Microsoft has effectively achieved dominance in browsers, and through this reinforced its dominance in operating systems, the stage is set for applying the same tactics to markets for other applications. The media player market represents an important current market in which Microsoft's anti-competitive strategies are at play. In the media player market, Microsoft's first incentive for tying is to protect its dominance in the market for operating systems by deterring the development of new middleware platforms. Streaming media players will be essential for Internet browsing in the future because of their ability to enhance Internet content rendering under bandwidth constraints. If Microsoft achieves dominance in the media player market (and as noted above, the ''tipping point'' argument suggests that a trend to dominance can quickly translate into a highly dominant market share), any entrant into the operating system market would also have to provide a media player compatible with the WMP format. For this reason, the applications barrier to entry incentive is especially powerful for streaming media players. Rival operating systems will be unable to provide a functional (i.e., Windows Media Audio-compatible) media player since the Windows Media Audio format is proprietary and Microsoft refuses to universally license it. [15] Because compatibility with streaming media is vital to future operating systems, Microsoft's dominance over operating systems will be ensured. The observation that Microsoft licenses the software for playing downloaded media, but not the software for streaming media, suggests that Microsoft is strategically aware of the profit-enhancing power of retaining exclusive property rights on media streaming software.

To elaborate: with respect to other applications, an entrant into the OS market could—at least in theory- provide an OS plus a set of applications. However, even this potential entry strategy is not available in the case of the media player application, because the use of a media player by a user depends not just on products that could be provided by the new entrant, but on the proprietary formats chosen by Internet sites using media player software. In this sense, the provider selection of Microsoft's proprietary format creates a content-encoding barrier to entry for streaming media players. Again, this reinforces Microsoft's monopoly power over the OS market.[16]

An additional anti-competitive incentive for dominating an application market is to secure a monopoly position in at least one product in the application/OS pair in order to achieve monopoly profits even in the event that the OS dominance is not sustained. This is discussed above in Section III.A.3. The possibility that the OS dominance is not sustained means that the joint monopolist could not necessarily collect the maximum profits through the OS price alone. Dominance of the application market would secure, or at least increase the likelihood of, monopoly profits.

This incentive is particularly relevant to streaming media markets. For example, the OS dominance could be at risk as consumers move to handheld devices for computing and accessing the Internet that do not require Windows OS. Presumably, however, these customers will still wish to play music and see videos on such devices. To the extent that WMP and its accompanying format achieve dominance for streaming media, Microsoft will maintain monopoly power in the pair of products consisting of the OS plus the media player. (Recall that the essential measure of monopoly in the markets for a pair of complementary products is dominance in at least one of the products.) Thus, streaming media players and formats hold the potential for Microsoft to maintain its original monopoly.

Additionally, significant gain accrues ''to Microsoft if its DRM technology dominates the related market for audio and video files. Using encryption technology, DRM technology permits only users with licenses to play the packaged file. The license has a key to unlock the encryption. Should a user without a license attempt to play the file, the application initializes with an application that permits the user to acquire the license. Applications with DRM technology and Windows Media Device Manager enable the use of WMP on devices other than conventional desktop computers. Since market participants will tend to limit their investments to the likely dominant standard, Microsoft can easily become the sole provider of DRM solutions. Moreover, this will be a critical market for Microsoft, since users will require licenses for downloading, and content providers require certificates for encryption. The alternatives of mutual interoperability or even open standards are equally plausible conceptually, but not in Microsoft's interests. Microsoft thus has incentives to use tying to ensure that its DRM solution remains proprietary and becomes dominant. Microsoft can ensure this outcome by making its media player format the format of choice for both users and content providers, and tying WMP to Windows ensures this choice. Once again, this creates a content- encoding barrier to entry that permits Microsoft to maintain its monopoly power in the pair: OS plus WMP as an application. Because of the durable-goods nature of Microsoft's OS monopoly, as described in Section III.A.4 above, Microsoft has additional incentives to tie streaming media technologies to the OS. Indeed, the greatest value for locking in the dominant streaming media and DRM formats may be the rig that Microsoft hopes to collect from Internet transactions. [17]

Dominating the media player format so as to collect a vig on transactions would position Microsoft to collect transactions revenue that may well exceed revenues available from Windows software licenses alone—even if Microsoft's dominance of the OS market is secure. As we discussed in Section III.A.4, monopolists of durable goods recognize that past sales constitute future competition (here, older versions of Windows compete with current and future versions of Windows). The monopolists face a competitive constraint against increasing prices even in the absence of any significant rivals. Such monopolies naturally seek ways to circumvent the constraint. In the case of Windows, the constraint is potentially circumvented by the collection of the rig on transactions.

What is the link between dominance in operating systems, streaming media, digital rights management, e-commerce, and convergence? Microsoft ,,,,'ill attempt to use its dominance in any of these markets to increase the use of Microsoft-favored products in all of these markets. In contrast to the potential situation where different players are strong in each market, Microsoft will leverage its dominance in any market to strengthen its position in all of them. Microsoft's incentive e to do this lies in the many revenue streams that it currently forgoes. For example, Microsoft does not currently charge web sites for the use of Windows media formats. If Microsoft establishes dominance in the media player market, as it translates to dominance in e-commerce hosting, Microsoft will no longer have any constraint on fully exploiting this revenue stream. Once again, this links back to the original dominance in Microsoft's OS. All of these applications are mutually reinforcing and serve to preserve the monopoly power that accrues from packaging Microsoft's OS with complementary applications.

C. The theorized benefits of product integration that may exist in some cases do not apply to the markets at issue in this case.

As a theoretical matter, of course, in many transactions, purchasers would prefer to buy bundles of products and services. Purchasers of glass prefer to have borates included, drivers prefer to have steering wheels with their cars, and purchasers of shoes typically prefer to have laces included. The relevant question here is whether computer applications are similar to those examples—i.e., whether browsers and other middleware such as streaming media players are ''mere inputs'' into the overall ''Windows experience.''

The economics of software markets cast doubt on Microsoft's efficiency'' arguments

[15] Note that licensing at a monopoly royalty would have a similar effect of foreclosing competition.

[16] Microsoft's action with respect to inducing media content providers to code exclusively with Microsoft's proprietary formatting (in Windows Media Audio) is analogous to Microsoft's attempt in the browser market to induce Interne/content and services providers to optimize their content for its Internet Explorer software instead of the competing browser of Netscape. See U.S. Findings of Fact ¶¶ 311,328, and 337.

[17] Microsoft has already established general strategies for obtaining control over e-commerce standards.

These connections are the Microsoft Passport, .Net, and .Net My Services initiatives.

for integration of its own browser and media player with the OS.

As discussed above, many forms of tying have no efficiency justification. Contractual provisions limiting the acceptance of rival technologies, or efforts to redesign code to harm rivals'' performance, create economic loss. As further discussed above, Microsoft has these forms of tying at its disposal, incentives to use them, and a historical record of using them.

Microsoft's claims regarding the efficiencies of its contractual tying—i.e., that it reduces consumer time costs and confusion to have a set of default options provided with a personal computer ''out of the box''—confuse the benefit to consumers of having a browser and its media player bundled along with the OS, with the benefit of having Microsoft's choice of applications bundled with the OS. The efficiencies that come with providing an integrated package of an OS and various applications are not specific to Microsoft's applications. In a market where OEMs were free to offer whichever packages of software consumers desired (e.g., Microsoft Windows with RealPlayer and IE, or Microsoft Windows with WMP and Netscape), the market would provide those varieties of packages preferred by consumers. The market would respond fully to the efficiencies associated with the purchase of a full package of hardware, OS, and software applications, and in addition, the market would be free to offer the variety that consumers demanded.

Our analysis supports the hypothesis that Microsoft's tying of IE and WMP and its efforts to gain DRM dominance are not driven by efficiency concerns. Although selection of some defaults is necessary on each PC, there appear to be no engineering efficiencies to the integration of the choice of default into the OS. To the contrary, choice and market competition (and consequently, efficiency) suffer when knowledgeable OEMs (who act as informed agents of consumers) face artificial barriers to playing that role, such as when Microsoft commingles code or makes Microsoft applications difficult to permanently remove as default settings. By designing system software to hamper the installation or operation of rival software suppliers, Microsoft reinforces the applications barrier to entry; the impact is a strategic reduction in competition and a reinforcement of Microsoft's OS monopoly.

Additionally, the usual arguments made to justify integration in other markets are largely inapplicable to software application markets. It is often argued that integration occurs (i) to reduce transaction, distribution or production costs, or (ii) to increase the value of the final product.

The argument that transaction and assembly costs justify integration does not apply to major software applications. For example, consumers want to purchase some integrated packages of complementary products such as functioning automobiles because separate purchases of steering wheels, engines, dashboards, seats, etc. would impose enormous transaction and assembly costs. By contrast, software markets allow assembly at low cost even without integration, provided that monopolists are legally prohibited from impairing interoperability. With OEMs acting as purchasing and assembly agents for end-users, it is no more efficient for Microsoft to create OS-and-application bundles than for multiple OEMs (or third-parties who can then license such bundles to OEMs) to create those OS-and-application bundles desired by end-users.

Forced integration of particular software brands does not increase value. Instead, it causes an efficiency cost to the extent that end-users value the product variety entailed in the variety of inputs. The value of variety is lost with integration. Steering wheels in cars are typically undifferentiated commodities that comprise a trivial portion of the value of the final product. Thus, even though a consumer could replace the steering wheel with limited effort, there is little reason to do so because a different steering wheel is unlikely to improve the performance of the overall product. By contrast, technological development in software applications markets means that different applications can differ substantially in what they deliver to consumers. Loss of product variety as a result of integration can be costly.

(2) Contrary to Microsoft's claims, issues of pricing and innovation provide further evidence that Microsoft's tying harms the marketplace and consumers.

Microsoft has argued that the extension of monopoly power across a set of complementary products may produce consumer benefits if the monopolist charges lower prices than would be charged if independent monopolists were to separately produce two or more complementary products. In the latter case, each independent monopolist would raise prices higher than the level that would maximize the combined profits of all the monopolists. Thus, according to this theory, consumers benefit from Microsoft's monopoly leveraging through lower prices.

This theory imagines a static world in which innovation and entry are non-existent, and firms simply set prices to maximize profits, given unchanging demand and unchanging technology. The practical implications of the theory for the real world of rapidly changing technology and potential dynamic competition (as opposed to monopoly positions that are airtight) are minimal. In an economic theory that incorporates industry dynamics, strategies taken by a dominant firm to eliminate a firm in a complementary market remove a potential rival or entrant in the primary market. In the reality of software markets, this anti-competitive effect clearly overwhelms any theoretical, static price effect: innovation and dynamic competition thus are, and should be, the focus of the Microsoft case. The driver of consumer benefit in these markets is innovation: over the past ten years, while prices of applications have fluctuated only moderately, the performance of applications has gown dramatically. New applications, such as browsers and media players, have become important sources of consumer benefit, while improvements in existing applications such as financial software have yielded strong consumer benefits. In any analysis on the impact of tying, the most important question is the impact on innovation, not price. Tying harms innovation by preserving Microsoft's monopoly position, protecting it against dynamic competition to the detriment of consumers.

Microsoft argues that a single monopolist over two products has greater incentives to innovate than two separate monopolists. If two complementary products are monopolized separately, the argument goes, each monopolist ignores the positive benefits that accrue to the other firm from an increase in its own pace of innovation. In the matter at hand, this theoretical efficiency would argue that if Microsoft had a monopoly in operating systems, while Novell had a monopoly in browsers, Novell would not innovate as much as possible because it would not take into consideration the positive effects of browser innovation on operating system demand. This reasoning also suggests that innovation in the industry would be enhanced if Microsoft's OS dominance were to be extended further into still more applications markets. The key point missed in this theory is that any extension of Microsoft's OS monopoly power would dampen innovation into substitutes for Microsoft's OS. Enhancing the applications barriers only reduces the incentive for any firm to engage in OS or applications innovation. If an application could be open to competition—i.e., if it could be characterized by some rivalry or competition, as an alternative to Microsoft's integration—then unrestrained competition would strengthen rather than weaken innovation. While Microsoft's dominance in the browser market today may be a fait accompli, untying the OS and media player will lead to such greater competition in media player innovation.

Significantly for this case, untying would also increase competition in the operating system market. As discussed earlier in Section III.A, tying protects Microsoft's operating system dominance by maintaining the applications barrier to entry and weakening or deterring direct platform challenges. If there are separate monopolists in adjacent markets, each will have the incentive to enter or sponsor entry into the other's market, leading to competitive pressure in both markets.[18]

GVIDENCE IN THIS CASE, THE CONCLUSION IS THAT MICROSOFT HAS ENGAGED, AND IS ENGAGING, IN ANTI-COMPETITIVE TYING IN ORDER TO PROTECT AND STRENGTHEN ITS OPERATING SYSTEM MONOPOLY.

A. Microsoft's options, incentives, and history create a strong presumption that Microsoft's tying harms OS competition and consumers.

The District Court's Findings of Fact confirm that it is Microsoft's ''corporate practice to pressure other firms to halt software development that either shows the potential to weaken Microsoft's applications

[18] Of course, that monopolist competition will only occur if the first monopolist is not permitted to use anti- competitive tactics to foreclose the market for unintegrated rivals.

barrier to entry or competes directly with Microsoft's most cherished software products.'' [19] As a historical matter, Microsoft has clearly engaged in anti-competitive, inefficient tying with other applications. [20]For example, Microsoft has forbidden OEMs from changing system defaults so as to make non-Microsoft products the ''default application'' in ''out of the box'' packages.[21] While Microsoft allows the ''installation icons'' of competing applications to be installed on desktops ''out of the box,'' installation icons disappear if they are not invoked. In an even more subtle form of contractual tying, Microsoft requires applications that run with Windows to obtain a certification from Microsoft. This permits Microsoft to monitor and perhaps discipline its applications rivals. [22] While some of these practices differ in form from strict tying (a certification requirement for software is not the same as a contractual requirement that OEMs use Microsoft products), the effect is similar in that Microsoft is signaling to all other market participants that applications may only run with Windows by Microsoft's permission.

Microsoft's profit incentives dictate that Microsoft would tie its products together much more aggressively than efficiency alone would suggest. With regard to the question of the nature of competition in the media player market, one of the current objects of Microsoft's tying, and, in particular its tying of WMP, is clear: as the District Court determined, the ''multimedia stream [represents] strategic grounds that Microsoft [needs] to capture.''[23] That—and not efficiency—is the driving force behind Microsoft's conduct.

B. The evidence indicates that Microsoft is anti-competitively tying the browser and the media player with its operating system.

In the absence of tying, Microsoft would provide an operating system and applications such as the browser and media player that were developed and offered in a modular, plug-replaceable fashion. The applications codes for the browser and the media player would not be commingled with the OS code, but would instead communicate with the OS through a set of well defined APIs. Publishing the APIs and interface protocols in this non-tying world would enhance the value of Microsoft's operating system by ncouraging competition in the innovation of the complementary good—the browser and the media player. Greater competition and functional value in the market for a complementary good always benefit a firm by increasing the demand for its product. In the absence of anti-competitive incentives to reinforce barriers to entry, this strategy would maximize the profits that Microsoft obtains from its operating system. The fact that Microsoft does not engage in such a business strategy demonstrates, in the absence of evidence that tying is efficient, that Microsoft is motivated by anti-competitive'' incentives.

Microsoft openly engages in contractual tying and basic technological integration. By developing and marketing Windows XP as an integrated package of operating system and popular applications, Microsoft directly ignored the findings of fact and law by U.S. courts.[24] Microsoft's history makes it likely that Microsoft is also engaging in various forms of OEM coercion to raise rivals'' distribution costs and encourage the distribution of its own middleware products. Consistent with our analysis, this tying generally serves the purpose of Microsoft profitability and reinforcement of its OS dominance, rather than consumer benefit. Microsoft directly engages in anti-competitive tying when it prevents OEMs and end-users from removing or uninstalling IE and WMP. Microsoft does this through code commingling between the media player and the operating system that renders substitution for WMP difficult, or even impossible.

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Another example of anti-competitive tying is that Microsoft renders its own DRM technology software non-interoperable with other media players because of DRM's interaction with Window XP's own ''secure audio path'' software. While this is not tying in the sense of designing the operating system to be incompatible with rival applications, it does involve designing an application—DRM—that limits the compatibility of rival applications in a closely related market, the market for media players.

More generally, Microsoft anti-competitively undermines the functionality and utility of rival streaming media players and formats. For example, Microsoft denies a license for playing files streamed in Windows content encoding formats to its principal competitor, RealNetworks, thereby reducing the utility to consumers of RealNetworks'' products. Microsoft also disadvantages rival content-encoding formats by designing WMP to record only in Windows media formats. These actions have, in the past, served to reduce consumers'' perceptions of rivals'' performance—for example by deliberately making consumers'' use of Netscape ''a jolting experience'' [25] or damaging MP3 quality and functionality.[26]

In general, OEMs perform a screening function, as agents of consumers, by ensuring that the software products provided out of the box are compatible with each other and with the operating system? Consumers are aware that OEMs perform this function. Consumers are also aware that OEMs'' reputations are based partly on packaging high- quality software products, so that OEMs have the incentive to choose the best software products for the price. Consumers are in general not aware of the contractual restrictions imposed in various contractual arrangements that might explain the choice of media player, including, for example, any threat not to license the Windows OS to the OEM unless all Windows applications are included as defaults. Nor are consumers aware of any financial incentives offered to OEMs by Microsoft to include only Microsoft applications as default options. Contractual tying alone will thus cause consumers to infer, for reasons unrelated to merit, that Microsoft's applications are the optimal products for them.

As suggested above, the interaction of all these effects, combined with rational expectations, can easily lead to the rapid foreclosure of competition. The force of self-realizing expectations is especially strong when one firm or one format is a natural focal point for consumer expectations. In markets where any number of formats could be sustained as dominant because of self-realizing expectations (economists term this ''the multiplicity of rational expectations equilibria''), a focal point property of any one equilibrium can be important in predicting which equilibrium will be sustained. There could hardly be a stronger focal point than the Microsoft/Windows format for predicting the likely dominant (and perhaps sole) format. The history of the PC software industry is one of the dominance of Microsoft

[19] See U.S. Findings of Fact ¶ 93.

[20] Microsoft has a track record of placing code for Microsoft applications in the same files as code providing functions for its OS in order to achieve its anti-competitive ends. This includes the illegal commingling of code for Microsoft's Internet Explorer with the operating code and the tying of with the OS. See U.S. Findings of Fact ¶¶ 161–229.

[21] See U.S. Findings of Fact ¶ 357, relating to Microsoft's attempts through tying and other means to induce users to select Microsoft's Internet Explorer as the preferred, perhaps only, path to the web. It is possible for consumers to incur the cost to change defaults, but the incentives to do this are very small.

[22] See Steven Vaughan Nichols, Resisting the Windows XP Message, ZDNet, May 9, 2001 (''I can't help but wonder if... independent software vendors will have trouble getting that all-important signature for [their] programs .... [W]hy do I feel certain that giving Microsoft absolute power over all XP apps probably doesn't spell good news for anyone in the tech business—except Microsoft?'').

[23] —,3 See U.S. Findings of Fact i 112.

[24] ''In June ... seven appeals judges ruled unanimously that Microsoft was a monopoly that had violated the antitrust laws by integrating its Web browser into its Windows operating system in an effort to freeze out other browsers. [The Court of Appeals ruled that] Microsoft shouldn't be allowed to design Windows in a way that limits consumer choice—the ability of users to discover and easily use other companies'' products and services. [Despite this,] the company went on to launch a new version of Windows—Windows XP—that continued to integrate tightly into the operating system new features that are crucial to extending Microsoft's monopoly onto the next battleground: Internet-based services. And it added these features in a way that hinders consumer choice.'' Walter S. Mossberg, For Microsoft. 2001 Was a Good Year, But At Consumers'' Expense, The Wall Street Journal, December 27, 2001.

[25] See U.S. Findings of Fact ¶ 160.

[26] See Ted Bridis, Technology Industry Aims to Render MP3 Obsolete, The Wall Street Journal, Apr. 12, 2001, at A3. (''Under Microsoft's new restrictions ... MP3 music ''sounds like somebody in a phone booth underwater,'' says P.J. McNealy, an analyst who researches Internet audio issues for Gartner Inc .... early testers of beta versions of Windows XP already complain that the most popular MP3 recording applications—which compete with Microsoft's format—don't seem to function properly, apparently because of changes Microsoft made to how data are written on CD-ROMs under Windows XP. Microsoft says that while other software vendors'' products may not be ''optimized'' to run with Windows XP, those products should run acceptably with the operating system.'').

standards[27] The prediction that the Microsoft standard will predominate in the media player market is natural, perhaps inescapable, for a consumer—uninformed about the media player market specifically—debating about which format to adopt. While it is arguable that strong network effects might yield dominance by a single firm in a good or service and its complements, it is uncertain whether a monopoly outcome is inevitable absent tying. In this context, tying assures OS dominance and is therefore anti-competitive.

Thus, Microsoft's coercion of OEMs to select WMP for the ''out-of-the-box'' experience, and to obscure the differences in capabilities between WMP and rival products, could weaken consumer awareness of the various functionalities available in the open market.

This would increase expectations of a single dominant format, which in turn would accelerate that dominance. The dominance in the media player market, to emphasize the applications-OS interaction once more, reinforces Microsoft's dominance in operating systems.

CONCLUSION

We show in this report that Microsoft has substantial incentives to engage in ant/-competitive tying of its middleware products with Windows. It has incentives to use contractual inducements to OEMs to bundle Windows with its own middleware instead of rival products; commingle applications code into the kernel of the operating system; and hamper the interoperability of rival applications. We also show that Microsoft's tying—in all of its forms—reinforces Microsoft's monopoly in operating systems.

Microsoft's incentives to anti-competitively bundle fall into four mutually reinforcing categories. First, by tying its middleware applications to the Windows operating system, Microsoft can strengthen the applications barrier to entry against its OS competitors. This reinforces Microsoft's OS monopoly. In order for entrants in the operating system market to succeed, they must have a wide variety of applications available for consumers to purchase. But software developers will invest in the creation of new applications only for operating systems that have widespread distribution. If Microsoft attains dominance with both the operating system and key middleware applications, it can ensure that its OS rivals will be unable to meet consumer demands for the most popular applications. With a dominant position in applications markets, Microsoft may choose not to write those applications to interoperate with rival operating systems, thus enhancing the already significant applications barrier to entry.

Second, tying reinforces Microsoft's OS monopoly by deterring direct challenges to the OS position as the platform of choice for software developers. Since programmers can write calls to middleware products, Microsoft's dominance in these products reduces the possibility that a universal translator (middleware) between operating systems and applications would threaten the Windows monopoly. Just as with the browser, Microsoft weakens this competitive threat to operating systems by integrating the potential substitutes directly into the OS.

Third, tying can provide a method of dynamic leveraging to ensure a future monopoly. This involves a direct counterargument to the familiar ''one-monopoly theory,'' which states that a monopolist cannot collect more profits through a monopoly on a pair of complementary products (an operating system and an application) than through a monopoly on either product alone. Where the future entry into each product is uncertain, establishing a monopoly on both products in the pair increases the chance that the monopolist will retain a monopoly on at least one product in the future and therefore is positioned to collect full monopoly profits. In our context, the fact that the Windows monopoly over operating systems is not airtight creates an incentive for Microsoft to leverage its dominance so as to increase the likelihood of future dominance in at least one class of products—the operating system or applications. Dominance in applications provides (partial) insurance against the loss of monopoly power in operating systems, but the key is the preservation of monopoly in at least one of the pair of products: the OS and one or more important middleware applications.

Finally, tying IE and WMP into the OS and locking in Microsoft's streaming media and DRM formats put Microsoft in a position to potentially collect a tax on e-commerce transactions. Tying thus facilitates the move by Microsoft to a business strategy of collecting revenues from per-transaction royalty of its software, rather than outright sale of its software. This business strategy lessens the competition that Microsoft, as a durable-good monopolist, faces from the sales of its own previous versions of Windows. In this sense, the strategy, and its facilitation through tying, reinforce Microsoft's dominance in operating systems.

Product integration can theoretically be beneficial in some markets. Purchasers prefer to purchase some bundles of inputs, such as steering wheels with cars or laces with shoes.

These efficiencies do not apply to the bundling of middleware with Windows. Purchasing a personal computer with a full set of applications and default options ''out of the box'' is valuable for many consumers. But the efficiencies that come with an integrated package of an OS and various applications are not specific to Microsoft's applications. In a market where OEMs were free to offer whichever packages of software consumers desired, without integration of applications into the operating system, and without Microsoft's tying constraints or inducements, the market would provide the variety of packages preferred by consumers. Moreover, the engineering efficiencies claimed for the integration of middleware code into the operating system appear to be negligible, and are therefore more than offset by the anti-competitive effects of tying. In fact, a software design organized around modular programming of the operating system and middleware applications would achieve the efficiencies associated with modular programming and would allow for plug-and-play replacement of the software.

In the absence of tying, Microsoft would offer an operating system and middleware applications that were distinct in the sense of modular programming. For example, neither browser nor media player code would be commingled with OS code: instead, both would communicate with the OS only through a set of published APIs. Microsoft would enhance the value of its operating system by encouraging competition in the innovation of the complementary good—i.e., the browser and the media player. This strategy would maximize value to consumers and the profits that Microsoft obtains from its operating system. The fact that Microsoft does not engage in such a business strategy demonstrates, in the absence of evidence that its tying is efficient, that Microsoft is motivated by anti-competitive incentives that maintain its OS monopoly.

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VI. APPENDIX: CURRICULUM VITAE OF FRANK MATHEWSON

G. FRANKLIN MATHEWSON—Professor of Economics, Director of the Institute for Policy Analysis, University of Toronto

Ph.D. Stanford University

B.Com. University of Toronto

ACADEMIC POSITIONS

1996-present Director, Institute for Policy Analysis, University of Toronto.

1969-present Professor of Economics, Department of Economics, University of Toronto.

1969-present Research Associate, Institute for Policy Analysis, University of Toronto.

1995–1996 Acting Chair, Department of Economics, University of Toronto.

1985 Visiting Professor, Center for the Study of the Economy and the State, University of Chicago, Spring Quarter.

1984 Visiting Scholar, Graduate School of Business, University of Chicago, Spring Quarter.

1978–1983 Associate Chairman and Director of Graduate Studies, Department of Economics, University of Toronto.

1970–1982 Professor of Economics, Faculty of Management Studies, University of Toronto.

1978–1979 Senior Research Associate, Ontario Economic Council.

1976–1977 Visiting Research Fellow, Department of Political Economy, University College, University of London.

HONORS AND FELLOWSHIPS

* Social Science and Humanities Research Council Research Fellowship: 1994, 1991, 1989, 1987, 1986, 1985

* Social Science and Humanities Research Council Leave Fellowship: 1983–1984

* Canadian Council Leave Fellowship: 1976—1977

* Canada Council Doctoral Fellowship: 1966–1969

* Woodrow Wilson Fellowship: 1965

PROFESSIONAL AFFILIATIONS

* Editorial Board, Journal of Economics of Business, 1992-present.

[27] This is similar to the screening function that upscale department stores provide in selecting high-quality products. Intermediaries in retail markets invest in establishing brand names or trust on the part of consumers. :s See U.S. Findings of Fact 33—35, 53, 60, and 62–64.

* Editorial Board, Managerial and Decision Economics, 1994-present.

* Editorial Board, Economic Inquiry, 1987–1997.

* Editorial Board, Journal of Industrial Economics, 1990–1995.

* Associate Editor, International Journal of Industrial Organization, 1982–1988.

Co-editor with M. Trebilcock and M. Walker. The Law and Economics of Competition

Policy, Vancouver: The Fraser Institute, 1990.

Co-editor with J. Stiglitz. New Developments in the Analysis of Market Structures, Cambridge: MIT Press, 1985.

Program Committee, European Association for Research in Industrial Economics, 1983-1991.

Program Committee, Conference on Industrial Organization, International Economics Association, 1982.

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VII. APPENDIX: CURRICULUM VITAE OF RALPH WINTER

RALPH A. WINTER— Professor of Economics and Finance, University of Toronto

Ph.D. Economics, University of California at Berkeley

M.A. Statistics, University of California at Berkeley

B.Sc. Mathematics and Economics (with honors), University of British Columbia

ACADEMIC POSITIONS

1988-present Professor of Economics and Finance, University of Toronto

1985–1988 Associate Professor, Department of Economics and Faculty of Management Studies, University of Toronto

1979–1985 Assistant Professor, Department of Economics and Faculty of Management Studies, University of Toronto

HONORS AND FELLOWSHIPS

* Olin Senior Research Fellowship, Yale Law School, i 988

* National Fellowship, Hoover Institution, Stanford University, 1986–1987 Harry, Johnson Prize (with M. Peters), for best article in the Canadian Journal of Economics, 1983

* Canada Council Doctoral Fellowship, 1975–1979

* John H. Wheeler Scholarship, University of California at Berkeley, 1974–1975

* Dean's Honors List, University of British Columbia, 1974

RESEARCH GRANTS

* Social Sciences and Humanities Research Council Research Grant: 1983–1985, 1986-1987, 1988–1989, 1990, 1991–1993

Social Sciences and Humanities Research Council Post-Doctoral Research Fellowship: 1981–1982 and 1982–1983

PROFESSIONAL AFFILIATIONS

* International Editorial Board, Assurances

* Editorial Board, Journal of Industrial Economics

PROFESSIONAL APPEARANCES

* British Columbia Utilities Commission, regarding capital structure and equity risk premium for Pacific Northern Gas, 1998

Canadian Radio-Television and Telecommunications Commission, regarding price cap regulation for telephone companies, 1996

Alberta Energy and Utilities Board, regarding fair rate of return for TransAlta Utilities Corporation and Alberta Power Limited, 1996

* Expert witness, Nielsen case, before the Canadian Competition Tribunal, 1994

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ATTACHMENT B

A DETAILED CRITIQUE OF THE PROPOSED FINAL JUDGMENT IN U.S. v. MICROSOFT

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INTRODUCTION

This Court may approve the parties'' Proposed Final Judgment (''PFJ''), but only if it first determines that the proposed decree is ''in the public interest.'' In reviewing the PFJ, we acknowledge that there are some beneficial and important restrictions put on Microsoft's unlawful conduct. In too many instances, however, these restraints are inevitably swallowed up by broad exceptions and grants of power to Microsoft. The result is that the proposed settlement will do little, if anything, to eliminate Microsoft's illegal practices, prevent recurrence of those acts, and promote competition in the marketplace. The public interest requires more, and the Court should thus reject the proposed settlement.

The purpose of this document is to expose—on a point-by-point, provision-by-provision basis—the many loopholes, ''trap doors,'' and other critical deficiencies in the PFJ. We present the issues in an order that tracks the proposed decree itself so that they may be easily followed. We also provide ''real world'' examples where helpful. In general, the PFJ suffers from several global, overarching flaws. First, in critical places, the language used in the PFJ to define the protections for competition are not broad enough to cover behavior the Court of Appeals held to be unlawful. Rather, only specific rights are granted, only specific competitive products are protected, and only specific anticompetitive practices are banned. In many cases, the rights and limitations are further clawed-back through carefully crafted carve-outs that benefit Microsoft.

Second, the proposed decree relies too heavily on the personal computer (''PC'') manufacturers (original equipment manufacturers or ''OEMs'') to implement design changes—particularly in the critical area of middleware—without sufficiently ensuring their independence from Microsoft's tight clasp. The PFJ also follows timelines that are too loose and too generous to a company with the engineering resources and product-. update capabilities of Microsoft.

Third, in too many places, the constraints on Microsoft (once the exceptions are taken into account) devolve into a mandate that Microsoft act ''reasonably.'' Aside from the obvious concern about Microsoft's willingness to do so given its track record, this formulation is problematic for other reasons. It does little more than restate existing antitrust law (such provisions cannot be said to be ''remedial'' if they, in essence, are merely directives to refrain from future illegal acts). And, in terms of enforcement, alleged violations of such ''be reasonable'' provisions can only be arrested through proceedings that will become, in essence, mini-retrials of U.S. v. Microsoft itself.

In sum, a consent decree that causes little or no change in the defendant's behavior cannot be found to advance the public interest, especially when the defendant's conduct has been found by both the district and appellate courts to be in violation of the law. As such, based on the numerous shortcomings outlined below, the Court should disapprove the PFJ.

SECTION-BY-SECTION CRITIQUE OF THE PFJ

Section Ill of the PFJ: Prohibited Conduct

A. Retaliation

The Scope Of The Protection Is Narrow: Section III.A of the PFJ appears to be directed at preventing Microsoft from retaliating against OEMs that attempt to compete with Microsoft products, but Microsoft is constrained only from specified forms of retaliation. If it retaliates against an OEM for any non- specified reason, that retaliation is not prohibited. This formulation is particularly problematic because the protected OEM activities are narrowly and specifically defined. Retaliation against an OEM for installing a non-Microsoft application that does not meet the middleware definition is not prohibited; nor is retaliation against an OEM for removing a Microsoft application that does not meet the middleware definition.

For example:

MSN and MSN Messenger do not appear to be middleware under the PFJ's highly specific definition of a ''Microsoft Middleware Product.'' Given this uncertainty, an OEM cannot know with confidence that it is protected from retaliation if it removes the icon and start menu promotion for MSN and/or MSN Messenger.

If client software to support Sun's Liberty Alliance (a competitor to Microsoft's Passport) were developed, it would probably not be middleware under the PFJ definition. Thus, Microsoft can retaliate if an OEM adds that software.

More generally, it is odd to have a formulation that de facto approves of Microsoft's retaliation against OEMs, except where that retaliation is forbidden. That is, given that competitors to Passport, .Net My Services (formerly ''known as Hailstorm), Windows Movie Maker, Microsoft Money, gaming programs, and Microsoft Digital Photography programs—even when shipped through the OEM channel—may not be included in the scope of protected competition, Microsoft would be free to retaliate against OEMs that promote those competitors.

Finally, the provision is substantially weakened in that only certain types of retaliation (i.e., retaliation by changing contractual relations and retaliation by changing promotional arrangements) are forbidden, as opposed to prohibiting any form of retaliation whatsoever. In order to eliminate Microsoft's ability to unlawfully protect its OS monopoly, it is essential that Microsoft be prohibited from taking any action that directly or indirectly adversely affects OEMs or other licensees who in any way support or promote non-Microsoft products or services.

Non-Monetary Compensation Provision: Microsoft is free to retaliate against OEMs that promote competition by withholding any existing form of ''non- monetary Compensation''- only ''newly introduced forms of non-monetary Consideration'' may not be withheld.

OEM Termination Clause Will Intimidate OEMs: Microsoft can terminate, without notice, an OEM's Windows license, after sending the OEM two notices that it believes the licensee is violating its license. There need not be any adjudication or determination by any independent tribunal that Microsoft's two predicate claims are correct; after just two notices to any OEM of a putative violation, Microsoft may terminate without even giving notice. This provision means that the OEMs are, at any time, just two registered letters away from an unannounced economic calamity. Obviously, that danger will severely limit the willingness of the OEMs to promote products that compete with Microsoft.

Pricing Schemes Will Allow Microsoft to Avoid Effects of the Decree.'' Microsoft can price Windows at a high price, and then put economic pressure on the OEMs to use only Microsoft applications through the provision that Microsoft can provide unlimited consideration to OEMs for distributing or promoting Microsoft's services or products. The limitation that these payments must be ''commensurate with the absolute level or amount of'' OEM expenditures is hollow—given that it is not clear how an OEM's costs will be accounted for, for this purpose.

Pricing

Microsoft Can Use Rebates To Eviscerate Competition. Under Section III.B of the PFJ, Microsoft can provide unlimited ''market development allowances, programs, or other discounts in connection with Windows Operating System Products.'' This provision severely weakens the protection for OEM choice, functioning the same way as the rebate provision discussed above, but without any tether or limiting principle whatsoever. Arguably, Microsoft can charge $150 per copy of Windows, but then provide a $99 ''market development allowance'' for OEMs that install WMP.

Presumably, this is intended to be circumscribed by Section III.B.3.c, which provides that ''discounts or their award'' shall not be ''based on or impose any criterion or requirement that is other, vise inconsistent with.., this Final Judgment,'' but this circular and self-referential provision does not ensure that the practice identified above is prohibited. While Microsoft should be allowed to engage in legitimate pricing decisions, those decisions should be limited to volume-based discounts offered on a non-discriminatory basis.

C. OEM Licenses

Microsoft Retains Control Of Desktop Innovation: Under Section III.C of the PFJ, Microsoft would retain control of desktop innovation by being able to prohibit OEMs from installing or displaying icons or other shortcuts to non- Microsoft software/products/services, if Microsoft does not provide the same software/product/service. For example, if Microsoft does not include a media player shortcut inside its ''My Music'' folder, it can forbid the OEMs from doing the same. This turns the premise that OEMs be given flexibility to differentiate their products on its head.

For example:

Sony—as a PC OEM and a major force in the music and photography industries—would be uniquely positioned to differentiate the ''My Music'' and ''My Photos'' folder. And yet, Sony's ability to do so turns solely on the extent to which Microsoft chooses to unleash competition in these areas.

Microsoft Retains Control Of Desktop Promotion.'' Microsoft also, very oddly, can control the extent to which non-Microsoft middleware is promoted on the desktop, by virtue of a limitation that OEMs can promote such software at the conclusion of a boot sequence or an Internet hook-up, via a user interface that is ''of similar size and shape to the user interface provided by the corresponding Microsoft middleware.'' Thus, Microsoft sets the parameters for competition and user interface.

Promotional Flexibility For IAPs Only, And Only For The OEM's ''Own'' IAP: OEMs are allowed to offer IAP promotions at the end of the boot sequence, but not promotions for other products. Also, OEMs are allowed to offer IAPs at the end of a boot sequence, but only their ''own'' IAP offers. Given that this phrase is ambiguous, Microsoft may attempt to read this provision as limiting an OEM's right to offer an IAP product to those IAPs marketed under the OEM's brand. Helpfully, the Competitive Impact Statement suggests otherwise, but whatever this phrase means, it is a needless restriction on an OEM's flexibility.

D. API Disclosure

APIs Defined Too Narrowly: Microsoft can evade the disclosure obligation provided under Section III.D of the PFJ by ''hard-wiring'' links to its applications, and through other predatory coding schemes. Additionally, the disclosure is limited to ''APIs and related Documentation.'' This is too narrow and can be evaded. Moreover, the provision for the disclosure of ''Technical Information'' found in Judge Jackson's interim conduct remedies has been eliminated. These disclosures are necessary to provide effective interoperability.

G. Anticompetitive Agreements

Joint Development Agreements Can Subvert Protections Of The Settlement. The protection against anticompetitive agreements is substantially undermined by the exception in Section III.G of the PFJ that allows Microsoft to launch ''joint development or joint services arrangements'' with OEMs and others. Under this provision, Microsoft can ''invite'' OEMs, ISVs, and other industry players to enter into ''joint development'' agreements and then resort to an array of exclusionary practices.

For example:

Microsoft invites OEM X to form a ''joint development'' project to create ''Windows for X,'' a ''new product'' to be installed on the OEM's PCs. As long as Microsoft's activities are cloaked under this rubric, it is exempt from the ban on requiting the OEM to ship a fixed percentage of its units loaded with Microsoft's applications, and other protections designed to promote competition.

H. Desktop Customization

Add/Remove Is For Icons Only, Not The Middleware Itself.'' The add/remove provisions in Section III.H in the PFJ only allow for removal of end-user access to Microsoft middleware—not removal of the middleware itself. This position is inconsistent with the language in the Court of Appeals'' opinion on commingling or the ''add/remove'' issue.

If Microsoft's middleware remains on PCs (even with the end-user access masked), then applications developers will continue to write applications that run on that middleware—reinforcing the applications barrier to entry that was at the heart of this case. Allowing Microsoft to forbid the OEMs from removing its middleware, and allowing Microsoft to configure Windows to make it impossible for end-users to do the same, allows Microsoft to reinforce the applications barrier to entry, irremediably.

As we have seen with the implementation of this approach (i.e., icon removal only) with regard to Internet Explorer in Windows XP, Microsoft can use the presentation of this option in the utility to make it less desirable to end-users. Moreover, limiting the required ''add/remove'' provision to icons only is actually a step backward from the current state of affairs in Windows XP, where code is removable for several pieces of Microsoft middleware.

Why Are Non-MS Icons Subject To Add/Remove?: The PFJ gives Microsoft an added benefit: it can demand that OEMs include icons for non-MS middleware in the add/remove utility. Why this should be required, in the absence of any finding that assuring the permanence of non-Microsoft middleware on the desktop is anticompetitive, is bizarre. This essentially treats the victims of Microsoft's anticompetitive behavior as if they were equally guilty of wrongdoing.

Microsoft Can Embed Middleware And Evade Restrictions: Under Section III.H.2, end-users and OEMs are allowed to substitute the launch of a non- Microsoft Middleware product for the launch of Microsoft middleware only where that Microsoft middleware would be launched in a separate Top-Level Window and would display a complete end-user interface or a trademark. This, in essence, allows Microsoft to determine which middleware components will or will not be subject to effective competition. By embedding its middleware components in other middleware (and thereby not displaying it in a Top Level Window with all user interface elements), or by simply not branding the middleware with a trademark, Microsoft can essentially stop rivals from launching their products in lieu of the Microsoft products.

Harder For Consumers To Choose Non-Microsoft Products Than Microsoft Products: In the same provision (III.H.2), Microsoft may require an end-user to confirm his/her choice of a non-Microsoft product, but there is no similar ''double consent'' requirement for Microsoft Middleware. There is no reason why it should be harder for users to select non-Microsoft products than Microsoft products.

Microsoft Can ''Sweep'' The Desktop, Eliminating Rival Icons: Additionally,-the OEM flexibility provisions are substantially undermined by a provision that allows Microsoft to exploit its ''desktop sweeper'' to eliminate OEM-installed icons by asking an end-user if he/she wants the OEM-installed configuration wiped out after 14 days. Thus, the OEM flexibility provisions will only last on the desktop with certainty for 14 days, and after that period, persistent automated queries from Microsoft can reverse the effect of the OEM's installations. The effect of this provision is to severely devalue the ability of OEMs to offer premier desktop space to ISVs—and to undermine the ability of OEMs to differentiate their products and provide consumers with real choices. Desktop ''MFN'' Requirements: Finally, nothing in the decree appears to forbid Microsoft from requiring—especially where non-middleware is concerned—so- called MFN agreements from the OEMs. These agreements tax OEM efforts to promote Microsoft rivals by requiring that equal promotion or placement be given to Microsoft products, often without compensation.

I. Licensing Provisions

Licenses Put In Hands Of OEMs Only—The), May Not Be Able To Use Them Without Help: The OEM licensing provision is limited in its effectiveness because the OEMs are prevented in Section III.I.3 from ''assigning, transferring, or sublicensing'' their rights. This may severely limit their ability to partner with software companies to develop innovative software packages to be pre-installed on PCs. This provision is especially harmful when contrasted with the broad partnering opportunities afforded to Microsoft under Section III.G. In addition, the OEMs'' willingness to use these provisions—even if they have the financial and technical wherewithal to do so—may be limited by the weakness of the retaliation provisions discussed above.

Reciprocal License? ''Equal Treatment'' For Law Abiders And Law Breakers Is Not Equal: Under Section III.I.5, the PFJ requires ISVs, OEMs, and other licensees to license back to Microsoft any intellectual property they develop in the course of exercising their rights under the settlement. But that simply rewards Microsoft for having created the

circumstances (i.e., having acted illegally) that necessitated the settlement in the first place. Microsoft should not be able to obtain the intellectual property rights of others simply because those law abiding entities have been required to work with a lawbreaker.

In addition, this provision may inadvertently work as a ''poison pill'' to discourage ISVs, et al., from taking advantage of the licensing rights ostensibly provided to them in Section III.I. The risk that an ISV would have to license its rights to Microsoft will be a substantial deterrent for that ISV from exercising its rights under Section III.I.

J. ''Security and Anti-Piracy'' Exception to API Disclosure

The Settlement Exempts The Software And Services That Are The Future Of Computing: One of the most seemingly innocuous provisions in the PFJ is, in fact, one of the biggest loopholes: the provision found in Section III.J.1 that allows Microsoft to withhold from API, documentation or communication protocol disclosure any information that would ''compromise the security of .... digital rights management, encryption or authentication systems.'' This provision raises several critical concerns:

Digital Rights Management Exception ''Swallows'' Media Player Rule: Since the most prevalent use of media players in the years ahead will be in playing content that is protected by digital rights management (''DRM'') (i.e., copyrighted content licensed to users on a ''pay-for-play'' ''basis), allowing Microsoft to render its DRM solution non-interoperable with non-Microsoft Media Players and DRM solutions essentially means that non-Microsoft media players will be virtually useless when loaded on Windows computers.

Authentication Exception Allows Microsoft To Control Internet Gateways, Server- Based Services: Most experts agree that the future of computing lies with server-based applications that consumers ,,,,,ill access from a variety of devices. Indeed, Microsoft's ''.Net'' and ''.Net My Services'' (formerly known as Hailstorm) are evidence that Microsoft certainly holds this belief. These services, '',,,'hen linked with Microsoft's ''Passport,'' are Microsoft's self-declared effort to migrate its franchise from the desktop to the Internet.

By exempting authentication APIs and protocols from the PFJ's disclosure/licensure requirement, the settlement exempts the most important applications and services that ,,','ill drive the computer industry over the next few years. If Microsoft can wall off Passport, .Net, and .Net My Services with impunity—and link these Internet/server-based applications and services to its desktop monopoly—then Microsoft will be in a commanding position to dominate the future of computing.

Additional Problems Raised By Numerous Provisions in Section III No Ban On Commingling Of Code.'' Nothing in the agreement prohibits Microsoft from commingling code or binding its middleware to the OS. This was a major issue in the case; the Court of Appeals specifically found Microsoft's commingling of browser and OS code to be anticompetitive; it rejected a petition for rehearing that centered on this issue. And yet, the PFJ would permit this activity to continue.

The danger of the absence of this provision is reinforced by what is found in the definition of the Windows Operating System Product (''Definition U''), which states that the software code that comprises the Windows Operating System Product ''shall be determined by Microsoft in its sole discretion.'' Thus, Microsoft can, over time, render all the protections for middleware meaningless, by binding and commingling code, and redefining the OS to include the bound/commingled applications.

Too Many Of The Provisions Require A Mini-Retrial To Be Enforced: In numerous places throughout Section III, the limitations on Microsoft's conduct are basically rephrased versions of the Rule of Reason. For example, in Section III.F.2, Microsoft may enter into restrictive agreements with ISVs as long as those agreements are ''reasonably necessary;'' likewise, the Joint Venture provisions found in Section III.G also employ a rule-of-reason test. As such, they simply restate textbook antitrust law, and alleged violations of these provisions could only be resolved through mini-trials.

Server Interoperability Issues (Found in Sections III.E, III.H and III.J) Only Full Interoperability Can Reduce Microsoft's Barriers To Desktop Competition: The PFJ's proposed server remedy will fail to provide meaningful, competitive interoperability between Microsoft desktops and non-Microsoft servers because:

The applications barrier to entry is central to this case and to Microsoft's desktop monopoly. A remedy that provides true server interoperability can be a powerful tool to reduce the applications barrier to entry. The server has the same potential to provide an alternative platform as did the browser or Java. In that sense, it is directly analogous to middleware products.

Microsoft has plainly recognized the threat that non-Microsoft servers pose as an alternative applications platform and has acted to exclude those products from full interoperation with the desktop and to advantage its own server products. It is able to do so because it controls the means by which servers may interoperate with the functions and features of the Windows desktop. In order to succeed in establishing non-Microsoft servers as an effective alternative application platform, both consumers and application developers have to be convinced that such servers: (1) can overcome the interoperability barriers that Microsoft has erected, and (2) have become viable alternatives to Microsoft's own servers, insofar as they can fully interoperate with the desktop.

An incomplete interoperability remedy fails to meet this test. Neither consumers (professional IT managers) nor server application developers will be attracted to non-Microsoft servers that lack any important interoperability functionality. If important interoperability barriers are left in place, IT managers simply will not buy the product and the remedy will fail to achieve its intended purpose. This is an important guiding principle.

The proposed decree allows Microsoft to continue to exploit dependencies between its desktop applications or its desktop middleware and its servers or handheld devices to exclude server and handheld competition. Section III.I Excludes Competing Server Vendors From The Benefits Of Section III.E's Disclosures: Section III.I limits Microsoft's obligation to license its desktop-server Communications Protocols to ISVs, IHVs, IAP, ICPs, and OEMs; thus, server competitors are excluded from the group of companies that Microsoft must license information to under section III.E.

The Failure To Define ''Interoperate'' Is A Mistake: Neither Section III.E nor any other provision of the PFJ defines the meaning of ''interoperate.'' The failure to define ''interoperate'' is tantamount to the Department of Justice's (''DOJ'') prior failure to define ''integrate'' in the 1995 consent decree, and will form the basis for unending disputes over the scope of Microsoft's disclosure obligations. ''Communications Protocol'' Is Defined Too Narrowly And Too Ambiguously: The definition of ''Communications Protocol,'' which determines the scope of server information to be disclosed by Microsoft, is highly ambiguous and potentially very narrow in scope:

It appears to be limited to the Windows 2000 server, and thus may exclude Microsoft's Advanced Windows 2000 server and Datacenter server.

It is unclear whether ''rules for information exchange'' that ''govern the format, semantics, timing sequencing, and error control of messages exchanged over a network'' mean the rules for transmitting information packets over a network, or the rules for formatting and interpreting information within such packets.

It appears to be limited to information exchanged via LANs and WANs, and therefore may exclude information exchanged over the Internet. In other words, having illegally seized dominance over browsers, Microsoft will be allowed to use that power to establish de facto proprietary protocols for Internet communication and keep them entirely to itself. Even in its broadest possible meaning, the term ''Communications Protocols'' is insufficiently broad or comprehensive to require disclosure of the information. needed to permit interoperability between non-Microsoft servers and the full features and functions of Windows desktops.

Section III.J's Carve-Out Eliminates the Most Important Disclosures: What little Section III.E provides, Section III.J takes away by permitting Microsoft to refuse to disclose the very protocols and technical dependencies it is currently using to prevent non-Microsoft servers from interoperating with Microsoft desktops and servers.

Section IV Of The PFJ: Compliance and Enforcement

A. Enforcement Authority

Enforcement Authority Is Too Difficult To Employ: Clearly, what is missing from the agreement is a quick, meaningful, and empowered mechanism for preventing and rectifying Microsoft's inevitable violations of

the agreement. Thus, while the provision allowing Microsoft to cure any violations of Sections III.C, D, E, and H before an enforcement action may be brought is not itself objectionable, it is but one of a number of provisions that make enforcing the agreement cumbersome, expensive and time-consuming.

B. Technical Committee / D. Voluntary Dispute Resolution

Source Code Access Is Not Enough: While it is helpful that the Technical Committee (''TC'') will have access to Microsoft's source code and can resolve disputes involving that issue, the TC is otherwise powerless to compel Microsoft's compliance with the agreement in any other respect. The prospects that Microsoft will accept the decisions of the TC in a voluntary dispute resolution process are near zero. And the entire mechanism seems designed to extend disputes indefinitely: no time limits or time-lines are specified for dispute resolution.

As it stands now, a party injured by Microsoft's violation of the decree can complain to the TC, which will then conduct an investigation: Once the investigation is complete, the TC will presumably issue some decision; while the investigation is ongoing, the TC is supposed to consult with Microsoft's Compliance Officer, for an indefinite period;

If the TC concludes that Microsoft violated the agreement, and Microsoft does not agree to change its behavior or rectify the wrong, then the TC must decide whether to recommend the matter to the DOJ for further action;

Once recommended, the DOJ—after some review period—may decide to take action, and apply to the court for a remedy, or it may not; * And once the DOJ applies for action, the process in court to obtain relief or remedy may extend for an indefinite period.

This is obviously a lengthy and ineffective process for ensuring that Microsoft complies with its obligations under the decree. In an industry where time is of the essence and delays can be fatal, the built-in delays that allow Microsoft to drag its feet are wholly unacceptable.

Technical Committee's Investigation Has Only Limited Use: The work of the Technical Committee cannot ''be admitted in any enforcement proceeding before the Court for any purpose,'' and the members of the TC are forbidden to appear.

Thus, under the terms of the decree, the substantial time, effort and expense that can go into a TC process may need to be duplicated in an enforcement action—adding to the complexity and expense that the process will pose for victims of Microsoft violations.

Section V Of The PFJ: Termination

A. Five-Year Limit

Five-Year Coverage Is Inadequate: Given the scope of Microsoft's violations, the time period required to restore effective competition, and the pattern of willful lawbreaking on Microsoft's part, a five-year consent decree is inadequate.

B. Two-Year Extension

Penalty For Knowing Violations Is Too Lenient: Amazingly, the PFJ provides that no matter how many knowing and willful violations Microsoft engages in, the restrictions found in the settlement may be extended only for a single two-year period. Thus, if Microsoft is adjudged to have engaged in such a pattern of violations, it essentially has a ''free reign'' to repeat those violations with impunity.

Section VI Of The PFJ: Definitions

A. APIs

API Definition Too Narrow: This is discussed above.

I. ISV

Definition Is Not Forward-Looking: The definition of ISV is drafted too narrowly and should more clearly encompass developers of software products designed to run on new versions of the Windows operating system and next generation computing devices.

K. Microsoft Middleware Product

Definition Exempts Too Much Middleware: Much of the decree is based on this definition—the OEMs'' flexibility turns on what is included or excluded from this category of application. And yet the definition, which is different from the definition used by the District Court (affirmed and employed by the Court of Appeals) is fatally flawed.

First, there are only five existing products that can be known with certainty to be ''Microsoft Middleware Products.'' That means that highly similar items, such as MSN, MSN Messenger, MSN Explorer, Passport, Outlook, and Office may be excluded from the definition of middleware. Why Windows Messenger would be covered by the PFJ, but MSN Messenger would be exempt; or why Internet Explorer would be covered, while MSN Explorer would be exempt—if this is, in fact, how the provision operates—is a mystery. Why ambiguity would be accepted in such a critical area is an even greater mystery.

Given the uncertainty, Microsoft may attempt to retaliate against OEMs that remove even the icons for its applications; it may also attempt to prohibit end-users from removing these applications (or even their icons). This is a step backward from the status quo (even in Windows XP); the ambiguity is a gaping hole.

Second, the generic middleware definition, which applies only to new products, and therefore does not capture any product now in existence, allows Microsoft to define which products are included or not, by virtue of Microsoft's trademark and branding choices. Thus, as long as Microsoft buries these products inside other applications, they are not independently considered middleware.

Third, as suggested in the points above, the definition misses the future platform challenges to Microsoft's Windows monopoly: web-based services. These services should be specifically defined and included in the class of protected middleware.

N. Non-Microsoft Middleware Product

Only Developers With Substantial Resources □Viii Be Protected: The competitive offerings protected by the decree are narrowly limited to offerings that fall within the definition of ''Non-Microsoft Middleware Products.'' Again, as noted above, the guarantees of OEM flexibility, promotion, and end-user choice apply only to these specified products—not to any other software applications.

And yet, sadly, this narrow definition extends protection only to applications ''of which at least one million copies were distributed in the United States within the previous year.'' Thus, ''an innovator in his garage,'' creating a new form of middleware to revolutionize the computer industry, has no protection from Microsoft's rapacious ways until he can achieve the distribution of 1 million copies of his software.

Also, as noted above, ''web-based services'' are not captured in this definition, notwithstanding their importance to future competition to the Windows OS.

R. Timely Manner

Netscape, All Over Again: Microsoft's obligation to disclose APIs and other materials needed to make applications interoperable with Windows in a ''timely manner'' is keyed off the definition of that term in Section R. But Microsoft retains complete control over this timeline because the definition provides that Microsoft is under no obligation to engage in these disclosures until it distributes a version of the Windows OS to 150,000 beta testers. Thus, as long as Microsoft restricts its beta testing program to 149,999 individuals until very late in the development process, it can effectively eviscerate the disclosure requirements. Our review of the available documentation shows, for example, that Microsoft had no more than 20,000 beta testers 1 for Windows XP until very late in the release cycle; thus, had this provision been in place during the Windows XP release cycle, Microsoft would have been under no obligation to release APIs until the eve of product shipping.

Slow disclosure of APIs is precisely how Microsoft defeated Netscape's timely interoperability with Windows 95. Thus, in this way, not only is the decree inadequate to prevent future wrongdoing, it does not even redress proven illegal acts in the past.

U. Windows Operating System Product

The scope of Microsoft's disclosure obligations under the agreement are determined in large part by the meaning of ''Windows Operating System Product.'' The definition of Windows Operating System Product leaves Microsoft free to determine in ''its sole discretion'' what software code comprises a ''Windows Operating System Product.'' In other words, Microsoft's disclosure obligation is subject entirely to its discretion.

Note that the number of ''beta testers'' will be much smaller than the number of ''beta copies'' of a product that is being prepared for release.

From: Philip Johnson
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft

I feel Microsoft has done no wrong and should be left alone to innovate and sell their products at whatever the market will bear. They are no more a monopoly than a lot of other companies, so if you are going to penalize them for that then you need to take action against say AOL also and companies like them.

From: Wildcat
To: Microsoft ATR
Date: 1/28/02 1:57pm
Subject: Microsoft Settlement

I certainly hope you take into account that the effects of Microsoft's business practices are *still* being felt, even today... A brand new computer with anything *other* than Windows on-board is still almost unheard of, many hardware manufacturers don't support Linux or offer drivers for it, and many corporate websites are designed almost exclusively for Internet Explorer in *spite* of the W3C standards that are meant to make the ''World Wide Web'' more accessible to *all* available browsers. I realize that these last two points (drivers and web design) are almost entirely due to the preferences of the manufacturers and designers respectively, but those people are basing those decisions on the atmosphere fostered by Microsoft that it is and shall be the only creator of operating system and web browser software.

Recently, I experienced this form of ''browser discrimination'' firsthand. My browser of choice is Netscape, and I was finding it difficult to access a major retailer's website and on-line shopping outlet — my browser kept choking out. I e-mailed a report of this technical glitch, and received a reply suggesting I use Internet Explorer. To me (to use an analogy), this is like being unable to get a clear picture of CNN from my cable company, only to be told that my RCA television is the problem, and that the CNN signal is designed specifically for a Sony. The bottom line is, I've never been a big fan of Microsoft, and would really rather not give them my money, but as long as they're allowed to operate as they have in the past decade, they're going to wind up with a share of the profit on almost anything I buy, whether I know it or not, whether I *like* it or not.

Thank you for allowing me to state my opinion.

Bart Smith
Independence, KS
wildcat@wildcatslair.com

MTC–00028287

From: Mildred/Jerry
To: Microsoft ATR
Date: 1/28/02 1:56pm
Subject: MICROSOFT SETTLEMENT

I/WE ARE IN 100% SUPPORT FOR MICROSOFT SETTLEMENT. WE NEED TIME AND MONEY SPENT ON THINGS LIKE ENRON INVESTIGATION. TOO MUCH ADO HAS BEEN DIRECTED AT MICROSOFT.

SPEND MY TAX MONEY ON GOING AFTER REAL CROOKS LIKE ENRON EXECUTIVES.

THANK YOU
JERRY & MILDRED ROBERTS

MTC–00028288

From: Matt Goun
To: Microsoft ATR
Date: 1/28/02 1:58pm
Subject: Microsoft Settlement

Matthew Goun
1230 Parkwood Drive
Merrick, NY 11566
mgoun@hotmail.com

I have sent a letter stating my thoughts as to settling Microsoft's ongoing court case and I am afraid I was a little slow in mailing it in.

My feelings are, enough already. Leave things as they are. Microsoft has gotten the right decission and enough tax payers money has been spent.

Sincerely,
Matthew goun
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

MTC–00028289

From: amchugh@speakeasy.net@inetgw
To: Microsoft ATR
Date: 1/28/02 1:46pm
Subject: Microsoft Settlement

To Whom it may Concern,

I would like to add my voice to those in adamant opposition to the proposed Microsoft Settlement. Please reject this proposal in favor of a much stronger remedy.

Please review the current proposed settlement and make sure that it adequately represents the interests of open-source advocates, and consumers of open-source products. Essentially, the question that needs to be addressed first and foremost is ''Are the barriers to entry for competition with Microsoft reduced to a reasonable level for both commercial and volunteer competitive efforts?''. Secondly, I would ask ''Is the punitive element of this ruling sufficient to make executives reluctant to engage in similar anti-competitive behaviour, and stockholders reluctant to support executives who do?''.

I trust that you'll come up with an equitable ruling that represents the current and future interests of consumers, even if the economy must suffer.

Sincerely,
Aaron McHugh
amchugh@speakeasy.net

MTC–00028290

From: Dave Jorgensen
To: Microsoft ATR
Date: 1/28/02 1:59pm
Subject: Microsoft Settlement

Dear Sirs,

As a citizen of the United States of America, and an employee in the High-Tech sector of our nations economy, I feel compelled to write and voice my disagreement with the proposed Microsoft anti-trust settlement. For the past two decades, I have watched again and again as Microsoft leverages its monopoly position to wipe out what were once healthy high-tech markets. Their actions have had a continued, chilling effect on the industry which will be felt long into the future. However one of the few remaining areas where Microsoft has not yet accomplished their monopolistic goals, is in the education market.

It's likely that Microsoft would leverage their monopoly to take the education market if they could, but they've likely hesitated in order to avoid undue attention while the current cases are being judged. However, if the proposed settlement (of product donation to the schools) is allowed to continue, our legal system will in effect be sanctioning, even demanding, that Microsoft flood this additional market with its product and drive out competitors from this area as well. In effect, the proposed settlement will simply reward Microsoft's monopolistic practices by providing them another monopoly in the education market.

I urge the Justice Department, The Court, The Judge, anyone else involved, to -reject- the proposed settlement and -insist- on a more fair remedy.

Microsoft is not like some poor farmer who has to hand over his old tractor to cover back taxes. The settlement amount is just a tiny percentage (3%) of the -huge- cash hoard they have accumulated through their monopolistic practices. Short of breaking up the company (which I still think is justified) certainly we should at the very least, insist that they pay their costs like the rest of us do, in cash. Anything less only reinforces their monopolistic position.

Thank you for your consideration in this matter,

David E. Jorgensen
350 Budd Ave. #E7
Campbell, California
95008, USA
e-mail: davej@ccnet.com

MTC–00028291

From: Chuck1040
To: Microsoft ATR
Date: 1/28/02 2:01pm
Subject: Settlement

I believe that this matter has dragged on too far and should be settled as soon as possible. Get an agreement and move on to other problems.

charles dennard,
1237 vintage place,
nashville, tn 37215

MTC–00028292

From: Patrick Purcell
To: 'Microsoft.atr(a)usdoj.gov'
Date: 1/28/02 1:57pm
Subject: Microsoft Settlement

Hello

My name is Patrick Purcell. As an Applications Developer and consumer of commercial software , I feel I must comment on the proposed Final Settlement.

I will make the following general comments and then move on to specific items in the documents .(Civil Action No 98–1232 and Civil Action No 98–1232 CKK).

It is my understanding that judgment against Microsoft stands. Microsoft was found in violation of the Sherman Act. I believe the original remedy should stand. In document Civil Action No 98–1232 CKK Section III H 3 Microsoft would be prohibited from modifying third party icons,menus, and shortcuts without asking for permission of the user.

The description does not prevent from Microsoft continually asking the user if changes should be made.

In effect the user could be nagged to making a change.

I believe the language should be strengthen to prevent Microsoft from nagging or making

adjustments through a needed software upgrade (in the case of a software fix).

In document Civil Action No 98–1232 CKK Section III J Microsoft is not obligated to license or disclose its API to third parties.

The API allows a programmer to develop software and take advantage of services the operating system offers.

Having a closed API excludes developers from using the operating system to its full extent and does not provide a level playing field. An open API would level the playing field.

It is possible to have a public API and not compromise security and encryption.

The open source software Linux list all its API while providing a high level of security.

The encryption software Pretty Good Privacy (PGP) provides the API and an excellent level of encryption.

Both Linux and PGP clearly illustrate it is possible to provide your complete API to all and still provide levels of security.

An open API would not preclude making a profit. For example Stronghold is a commercial secure web server based on the Apache web server. Stronghold is a successful product using an open API from the Apache web server. Another example is the Apple product, Mac OS X which is based on FreeBSD Unix.

On December 13, 2001, the ECMA General Assembly ratified the C# and common language infrastructure (CLI) specifications into international standards. The ECMA standards will be known as ECMA-334 (C#) and ECMA-335 (the CLI). The C# is a programming language developed by Microsoft. By having ECMA (http://www.ecma.ch) ratify C# and CLI as international standards, Microsoft lost direct control of the future development of these technologies. However Microsoft opened the API to the public to strengthen the acceptance of these technologies. Microsoft recognizes that publishing the API has benefits. Microsoft would not be overall negatively affected from publishing its complete API for its operating system. The actual publishing of the API could be done through an agency such as ECMA.

The above statements are my sole opinions and do not represent the views of my employer.

I hope you will consider these statements in making a final decision.

Sincerely

Patrick Purcell

MTC–00028293

From: Burt Harris
To: Microsoft ATR
Date: 1/28/02 2:01pm
Subject: Microsoft Settlement .

I want to register my support for the proposed settlement of the Microsoft antitrust case. The proposed settlement takes reasonable steps to address the underlying issue without crossing the boundry into the punitive actions that its opponents seem to want inforced.

As a observer of the situation it strikes me that many of the proponents of harsher terms have lost site of the fact that the settlement is intended to be a remedy, not a punishment. This seems to be driven by the fact that many of the financial backers of these groups are in fact competitors of Microsoft.

I for one, want to make sure that the settlement primarily addresses remedying any wrongs suffered by consumers (which I think are actually relativily few) as opposed to benefiting Microsoft's competitors, especially those competitiors who operate outside the narrowly drafted ''market'' for Intel based operating systems.

Burt Harris
15302 182nd Place NE
Woodinville, WA 98072

MTC–00028294

From: Juanita Bergh
To: Microsoft ATR
Date: 1/28/02 2:02pm
Subject: Microsoft Settlement

I have been and still am rather disgusted at the lawsuit against Microsoft. At the time the lawsuit was filed, I was not an employee of Microsoft. Now I am, but my feelings have not changed. I worked for a software company for 10.5 years before joining Microsoft. We used Netscape as a browser for a short period, but then our company switched to Internet Explorer. I don't recall at what point that was. But at the time I was using Netscape, the browser was given away free as an incentive to get people to switch to using their browser. Does this sound familiar? Isn't this part of Netscape/AOL Time Warner's complaint against Microsoft? That by offering it free and making it available as part of the operating system, Microsoft is engaging in non-competative acts. Hmmm. I wonder why it wasn't illegal when Netscape was first trying to gain market share. That's the main reason we used Netscape, it was free and relatively easy to use. However, we found the Internet Explorer worked better for us. There are differences and distinctions between the two that I'm not terribly familiar with as I have no desire to see if Netscape has become more attractive. I have heard that Netscape offers an easy way of uploading data, which isn't available in IE. I also have heard that Mac users prefer Netscape. The browser that fills the need best is the browser that will be used.

The last couple of times we purchased a computer, it came preloaded with a several different internet connectivity options. We did not choose to use any of them because we wanted to use a different one.

The fact of the matter is, that if someone wants to use a software product, they will use it whether it comes preinstalled or not. It's not as though we're talking about a couple hundred dollars to purchase Netscape; I can download it today for free. I'm not sure if Netscape used to have a charge or what those charges are, but it's rather hypocritical to complain about someone else giving something away free when you're doing the same thing. As I said earlier, who cares if it's preloaded or not; many users today are sophisticated enough that they'll find and load what they want.

Another complaint that bugs me in the lawsuit states that OEM's cannot really add much to change the way windows loads; this really irks me because I don't want to get a different look and feel from windows based on the hardware that I purchase! Is that user-friendly? We had a Packard-Bell that loaded a bunch of junk from PB and it drove us crazy, we disabled it because we didn't want it. I want to be able to purchase hardware based on price, not how it interacts with the os that I choose!! There's also the issue of support and service packs; who's going to support those changes? The OEM? Microsoft? Do I get pushed back and forth because the OEM says it's not their problem and Microsoft says it's been changed so they can't help either? There is nothing worse than trying to support a product that has been modified; all your updates are delayed, because when Microsoft releases a fix, the OEM has to do the same thing. I know how this works; I worked for a software company in the support area for 5 years and you cannot support something once someone else has modified it. This is NOT in the consumer's best interests for any software company to allow that. I know that it happens and it has it's advantages, but it's also a miserable position for the consumer who needs an update or help.

I have worked in the computer industry for 11.5 years now and I am tickled that consumers have pretty much selected one OS that we can use as a basis for developing our own applications. The macintosh died in the business application market because Apple's focus appears to be the graphic / educational market. We used to support our applications on the macintosh for many years, but finally discontinued that because it just wasn't a good business proposition for us. Many, many software companies have thrived by developing on the Microsoft platforms because Microsoft is the company that bothers to find out what consumers want and strives to give it to us. That's why Microsoft thrived and Apple did not. Apple had great potential and is doing fine, but they could've been the Microsoft.

Netscape/ AOL Time Warner would be smarter to use their money to improve their products so they can compete based on the products'' merit, not to try to cripple a successful rival.

One more comment on the ''monopoly'' issue. Microsoft is not a phone company or utility company where the customer has never had a choice; Microsoft has earned it's OS monopoly because no other OS has provided customers with what they want. We love to bash Microsoft (well, not since I've become an employee) for system bombs and crashes, but the fact remains that Microsoft has made it possible for millions of users to be able to use and afford a computer. My parents, in-laws, and grandparents, who never grew up using a computer are able to use email and word processing programs because it's easy, simple, and uniform. I can help them figure things out with a phone call because the OS behaves the same way no matter what type of computer they have! My grandparents would never have thought of using a computer in the pre-windows days.

Microsoft contributes a great deal of money, software and time for charitable issues; if anyone has the issues of the consumer at heart, it's Microsoft.

Thanks for listening,

Juanita Bergh

15705 28th St
Casselton, ND 58012

MTC–00028295

From: King, Steve
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:02pm
Subject: Microsoft Settlement
Renata Hesse
Department of Justice, Antitrust Department
601 D St NW
Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

I am a State Senator from Iowa and I also the owner of construction contracting business. In my capacity as a State Senator I am chairman of the state government committee and also serve on the commerce committee. I chose to serve on these committees because as a business owner I am acutely aware of negative impact over regulation can have on business.

It is from this unique perspective that I am writing you today to encourage you to settle the Microsoft anti-trust case

The suit against Microsoft was brought under anti-trust laws that were developed in at a time in our history when our nation was growing into the industrial and economic leader it is today. These laws were meant to protect American consumers from harm inflicted by monopoly companies. These laws have served their purpose in the past. However, in this case, I do not think they apply. The government and Microsoft's critics have yet to prove consumer harm as a result of Microsoft actions or practices.

As a businessman and strong supporter of our free-market system, it is apparent to me that Microsoft's only crime is giving the American public a superior product, and therefore has been able to build a loyal following of committed users. Assumedly, Microsoft worked very hard to develop its products and market. They should not be punished for this or for having the business savvy to take action to protect their market.

A closer look at this suit and the lobbying efforts that have fueled it will expose disturbing realities. Microsoft's competitors do not appreciate that technology consumers are overwhelmingly loyal to Microsoft products. However, instead of committing to production of new products that may allow them to more successfully compete in our free-market, they have banded together and found a way to use outdated anti-trust laws for their own purposes.

The settlement before you is truly a compromise for Microsoft. Certainly, Microsoft will be held to the severe provision of this settlement, not the least of which is the sharing of intellectual property. However, negotiating settlement is the best solution for the technology industry and our economy in general. When this settlement is approved it will send a signal to the technology industry that the threat of government interference has been lifted.

Sincerely,
Senator Steve King

MTC–00028296

From: Kevin Port
To: Microsoft ATR
Date: 1/28/02 2:03pm
Subject: Please See Attachment- Microsoft

Please See Attachment—Microsoft
Thank you,
K. Port
Kevin Port
250 Gorge Road # 29D
Cliffside Park, NJ 07010
January 28,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

After three years of seemingly endless litigation, I was frankly relieved to hear that Microsoft had reached a tentative settlement with the Justice Department in November. This settlement is good for consumers and therefore no further action is needed on the federal level.

The terms of the settlement cover many areas and will require numerous concessions from Microsoft. One area of concession is in relation to intellectual property rights. Microsoft has agreed that if a third party's exercise of any options provided for by the settlement would infringe any Microsoft intellectual property right, Microsoft will provide the third party with a license to the necessary intellectual property on reasonable and non-discriminatory terms. And to assure this provision and every other one is followed, Microsoft will be monitored by a three-member Technical Committee.

As a former worker in the tech industry, I understand the importance of Microsoft's products to our economy. Although I did not feel this suit had any merit to begin with, I realize at this point the best development is to move forward. I hope your support for this settlement continues and that the recent suit by AOL will also be terminated. It is not worth the time and money of the Justice Department to continue to pursue these actions against Microsoft, a successful, entrepreneurial company, that has contributed to the success of the U.S. economy and our technological breakthroughs. Without the efforts of Microsoft, the global computer industry would not have the standards and success we witness today.

Sincerely,
Kevin Port

MTC–00028297

From: N P
To: Microsoft ATR
Date: 1/28/02 2:03pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

In all honesty the Proposed Final Judgment stinks. I disapprove of the tactics uses to get what they want. As one can see, MS, with disregard to the rules put in place, will continue to violate all anti-trust laws. The Proposed Final Judgment is not a panacea to the Microsoft debacle but, in fact, avoids the whole issue altogether.

Undeniably true and accurate, Microsoft is guilty of breaking these laws. Under the final settlement, the DoJ allows MS to retain most of its profits gained through past illegal activities. Therefore, the PFJ will not compensate parties harmed through Microsofts egregious acts.

In addition, the PFJ will not take into account all Microsoft gains made through its illegal maneuverings. With all due respect, the final settlement is basically acknowledging the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? I can assure you that the message is clear and simple.

The PFJ encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. Thus, I conclude by respectfully submitting my disapproval to this Proposed Final Judgment.

Respectfully,
Mrs. Nimfa Paraso
7230 Adams Rd.
Magna, Utah 84044

MTC–00028298

From: BROWNING, CONNIE (AIT)
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/28/02 2:04pm
Subject: Microsoft Settlement

To Whom it May Concern:

Regarding the Microsoft Settlement, as a recent purchaser of a new computer preloaded with Microsoft XP, I believe that MS has gone too far in automating updates from my personal computer to their system. I see the XP software, attempting to contact MS every time that I am on the internet. I firmly believe that the software should have been designed to request my explicit permission before sending information regarding my personal machine.

Furthermore, I think that MS's exclusive and proprietary relationships are not in my best interest, and prevent the further innovation of many independent software developers. It was very clear to me when loading other software on my XP system, which vendors had not paid the price for MS's exclusive arrangements and were suffering from the dramatic negative messages that I received when trying to load ''unapproved'' software.

If I had known the nature of XP when purchasing my new computer, I would have insisted at the time that the manufacturer supply me with another operating system.

Connie Browning
468 Liberty Lane
Westerville, OH 43081

MTC–00028299

From: peter@goldthorp.com@inetgw
To: Microsoft ATR
Date: 1/26/02 3:38pm
Subject: Microsoft Settlement

Microsoft was found guilty in this case. They have a history of similar behavior (examples include DR-DOS and Stac Electronics). They are currently targeting Real Networks using similar tactics to the ones used against Netscape.

I do not believe that the proposed final judgement will restrain Microsoft's anticompetitive conduct. It does not appear to do anything to remedy the effects of their past unlawful conduct.

Their current .Net initiative attempts to leverage their desktop monopoly to gain a dominant position online services. They should not be allowed to do this.

Peter Goldthorp
Software Engineer
Hayward CA

MTC–00028300

From: Grissom, Marlene
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:03pm
Subject: microsoft settlement

I agree with Microsoft management in Hoping for a quick resolve and settlement

Marlene Grissom

MTC–00028301

From: Chris Arsenault
To: Microsoft ATR
Date: 1/28/02 2:05pm
Subject: Microsoft Settlement

To whom it may concern:

After having read the provided case documents, I have come to the following conclusion:

The proposed Final Judgement for United States v. Microsoft as currently written fails to provide a concise and enforceable order from the courts. It is inadequate to the task of addressing the needs of the People. Given Microsoft's past history of compliance with court orders, I feel that it's business practices would be difficult to enforce without consequences being written into the Final Judgement.

Such consequences should be related to the grant of monopoly for copyrights and patents. In effect, should Microsoft continue predatory business practices in a monopolistic fashion, then the United States should revoke the grant of copyright to the various versions of Windows software and Internet Explorer, as well as the foundation source code. This code would be then be placed in the public domain. This removes the need for monitoring for compliance and reminds Microsoft that it undertakes business at the discretion of the People of the United States.

Additionally, the issue which is at the heart of the case—what constitutes a computing platform, is clearly left unanswered by the proposed final judgement as written. Without delving into a lengthy argument here, at least recognize that support for open source and public standards by which the Internet emerged is clearly a wise and prudent action which encourages innovation and discourages format lock-in.

For these reasons and many others, I strongly recommend that the court reject this proposed Final Judgement.

Sincerely,
Chris Arsenault
67 Pole Bridge Rd.
N. Scituate, RI 02857

MTC–00028302

From: Phil Steele
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:03pm
Subject: Microsoft Settlement

To Whom It May Concern:

As US citizen, I am outraged at our government's prosecution of Microsoft, and I believe the whole antitrust case should be closed. I don't need a paternalistic government to tell me which software I should buy or to use my tax dollars prosecuting companies whose products I enjoy and find immensely valuable. This is not the proper role of government, and such antitrust actions must, by their nature, ultimately be destructive of consumer choice in the marketplace.

Please accept this letter as one citizen's plea for a government that protects me from force and fraud—not from valuable products successfully marketed by successful companies.

Philip Steele
691 Ora Avo Drive
Vista, CA 92084

MTC–00028303

From: jack gelin
To: Microsoft ATR
Date: 1/28/02 2:04pm
Subject: Microsoft Settlement
1662 E 24th Street
Brooklyn, NY 11229
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I understand the Courts will make their final decision next week on whether the proposed Microsoft settlement benefits the public. I'd like to express my feeling on this issue.

Microsoft did not get off easy. The settlement was arrived at after extensive negotiations with a court-appointed mediator. The Company agreed to terms that extend beyond what was expected in the suit.

They also agreed to design future versions of Windows, starting with an interim release of Windows XP, to provide a mechanism to make it easy for computer companies, consumers and software developers to promote non-Microsoft software within Windows. This mechanism will make it easy to add or remove access to features built in to Windows or to non-Microsoft software. Consumers will have the freedom to choose or change their configuration at any time.

Microsoft really needs to get back to business because they helped the economy far more than they could ever hurt the economy. Let's end the litigation!!

Sincerely,
Jack Gelin
cc: Representative Anthony David Weiner

MTC–00028304

From: Fred Murhammer
To: Microsoft ATR
Date: 1/28/02 2:07pm
Subject: Microsoft Settlement

I am opposed to the Department of Justice's settlement with Microsoft. I believe it is not in the public interest due to the many loop holes in the settlement agreement. I believe that the nine states which are opposing this settlement are acting in the public interest. I urge the D.O.J. to join forces with these nine states, who are seeking stiffer penalties and safeguards to be imposed on Microsoft. If the D.O.J. settlement with Microsoft is enacted it will allow Microsoft to return to business as usual, which is to abuse it Monopoly position to squash competition and innovation to the detriment of the general public.

Thank you,
Fred Murhammer

MTC–00028305

From: Bill Kirtley
To: Microsoft ATR
Date: 1/28/02 2:09pm
Subject: Microsoft Settlement

To Whom it may concern-

I am writing as a US taxpayer, voter, and citizen to protest the Proposed Final Judgment in the matter of the United States vs. Microsoft antitrust lawsuit.

I do not feel that the solution as proposed either punishes Microsoft for previous anticompetitive behavior, reduce the barriers to entry for vendors other than Microsoft innovating in the field, or inhibits Microsoft from engaging in monopolistic behavior in the future.

A number of well reasoned arguments have been written on the subject, and I won't revisit them here. One good one can be found at: http://www.kegel.com/remedy/remedy2.html I feel that the best way to protect the market without unduly punishing Microsoft shareholders would be to sever Microsoft into separate companies, and require that those companies interact with each other in an above-the-board way. They should use only each others published APIs. There should be clear delineation of the money being spent and earned on individual products. Furthermore I am shocked by the timing of this agreement. The Justice Department has abandoned all attempts to preserve the appearance of enforcing the law. A cynical observer might conclude that the defendant in this case was successful in purchasing influence during the last Presidential election season.

Thank you for your attention.
Bill Kirtley;
117 Newport Street;
Arlington MA 02476

MTC–00028306

From: The Young Family
To: Microsoft ATR
Date: 1/28/02 2:07pm
Subject: RE. Microsoft Settlement

Please accept the settlement as is. This has got to end. Thank You,

Sondra Young

MTC–00028307

From: pjmet@quixnet.net@inetgw
To: Microsoft ATR
Date: 1/28/02 2:05pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel

going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Mary Ellen Torres
121 Crest Haven Drive
Belleville, IL 62221–4387

MTC–00028308

From: james bohan
To: Microsoft ATR
Date: 1/28/02 2:08pm
Subject: RE: M.S. case

I think that at the very least they should be broken up. In addition, I would recommend that the us gov not spend any more money on their operating systems, when there are cheaper and better ones out there.

MTC–00028309

From: Hugh B. Brawford
To: Microsoft ATR
Date: 1/28/02 2:08pm
Subject: Microsoft anti- trust settlement

I support the settlement..it is time to encourage our hard working succesful USA businessmen.

Thank you
Hugh B. Brawford C.R.S.

MTC–00028310

From: bwood@providentmutual.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:08pm
Subject: Microsoft Settlement

Here is a letter I am trying to fax you. The fax lines are very busy so I'll give email a try.

(See attached file: BonnieMS.doc)
Bonnie F. Wood
Provident Mutual Life Insurance Company
B3S
Bonnie—Wood@providentmutual.com
610–407–1462
fax 302–452–7264

MTC–00028310—0001

Bonnie Wood
116 Timber Springs Lane
Exton, PA 19341
January 28, 2002
Attorney General John Ashcroft Fax 1–202–307–1454
US Department of Justice Page 1 of 1
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

This letter is to give my support to the Microsoft and Department of Justice settlement. Microsoft is one of our greatest companies and I resent the government interference in what is basically competition between technology companies. I doubt whether Microsoft has done anything that the other firms have not. More likely, the other firms could not compete and have gone crying to the government. They just want a bigger piece of the pie.

You don't have to look any further than AT&T to see the havoc that can result from breaking up certain so-called monopolies. AT&T was deemed a monopoly while we had the best service in the world. Now, no one can understand the half-dozen phone bills received each month from strange sounding phone companies. Phone companies come and go with alarming frequency, and those that stay in business seem to be merging all back together. I often wonder if I would have been better off if AT&T had been left alone.

The same may be true for Microsoft. In any event, Microsoft and the Justice Department have reached an agreement. Microsoft has agreed to open the company up to third party innovation; has agreed to disclose internal source codes for Windows; and agreed to an oversight committee. This is more than fair.

I urge you to give your approval to this agreement.

Thank you for your consideration of my views.

Sincerely,
Bonnie Wood
cc: Senator Rick Santorum
202–228–0604

MTC–00028311

From: Nutton, Thomas G
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:07pm
Subject: aol

I believe this can not go forward and in this will be in the best interest of the USA. Tom N.

MTC–00028312

From: Adam C Powell IV
To: Microsoft ATR
Date: 1/28/02 2:10pm
Subject: Microsoft ''settlement''

Greetings,

I am writing to strongly oppose the terms of the ''settlement'' offer in the Microsoft antitrust case. That Microsoft has violated the law is without question. But the proposed settlement in fact rewards that company for its misdeeds, rather than punishing them. I must remind you that the marginal cost of software is a tiny fraction of its retail price, and therefore the stated monetary value of the cost to Microsoft is far in excess of the actual cost to that company. Furthermore, this ''punishment'' allows Microsoft to expand its market share in education, which has long been one of their weakest markets. In other words, this does not punish Microsoft at all, and in fact rewards their lawbreaking activity, handing them more of a monopoly on a silver platter.

As an administration and political party which prides itself on being ''tough on crime'', I would urge you to not reward Microsoft for commiting a crime whose impact on society is unmeasurable. The nation awaits your decision, and hopes that you will bring about justice in this case.

Sincerely,

Adam Powell http://lyre.mit.edu/powell/ <http://lyre.mit.edu/%7Epowell/>

Thomas B. King Assistant Professor of Materials Engineering

77 Massachusetts Ave. Rm. 4–117 Phone (617) 452–2086

Cambridge, MA 02139 USA Fax (617) 253–5418

MTC–00028313

From: James Love
To: Microsoft ATR
Date: 1/28/02 2:10pm
Subject: Microsoft Settlement

MTC–00028313—0001

Subject: Microsoft Settlement
Date: January 28, 2002
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Email: microsoft.atr@usdoj.gov
(Note: In the Subject line of the e-mail, type Microsoft Settlement.)
Fax 1–202–307–1454 or 1–202–616–9937
From: Ralph Nader
P.O. Box 19312
Washington, DC 20036
James Love
Consumer Project on Technology
P.O. Box 19367
Washington, DC 20036

Introduction

Having examined the proposed consent final judgment for USA versus Microsoft, we offer the following comments. We note at the outset that the decision to push for a rapid negotiation appears to have placed the Department of Justice at a disadvantage, given Microsoft's apparently willingness to let this matter drag on for years, through different USDOJ antitrust chiefs, Presidents and judges. The proposal is obviously limited in terms of effectiveness by the desire to obtain a final order that is agreeable to Microsoft. We are disappointed of course to see a move away from a structural remedy, which we believe would require less dependence upon future enforcement efforts and good faith by Microsoft, and which would jump start a more competitive market for applications. Within the limits of a conduct- only remedy, we make the following observations.

On the positive side, we find the proposed final order addresses important areas where Microsoft has abused its monopoly power, particularly in terms of its OEM licensing practices and on the issue of using interoperability as a weapon against consumers of non-Microsoft products. There are, however, important areas where the interoperability remedies should be stronger. For example, there is a need to have broader disclosure of file formats for popular office productivity and multimedia applications. Moreover, where Microsoft appears be given broad discretion to deploy intellectual property claims to avoid opening up its monopoly operating system where it will be needed the most, in terms of new interfaces and technologies. Moreover, the agreement appears to give Microsoft too many opportunities to undermine the free software movement.

We also find the agreement wanting in several other areas. It is astonishing that the agreement fails to provide any penalty for Microsoft's past misdeeds, creating both the sense that Microsoft is escaping punishment because of its extraordinary political and economic power, and undermining the value

of antitrust penalties as a deterrent. Second, the agreement does not adequately address the concerns about Microsoft's failure to abide by the spirit or the letter of previous agreements, offering a weak oversight regime that suffers in several specific areas. Indeed, the proposed alternative dispute resolution for compliance with the agreement embraces many of the worst features of such systems, operating in secrecy, lacking independence, and open to undue influence from Microsoft.

OEM Licensing Remedies

We were pleased that the proposed final order provides for non-discriminatory licensing of Windows to OEMs, and that these remedies include multiple boot PCs, substitution of non-Microsoft middleware, changes in the management of visible icons and other issues. These remedies would have been more effective if they would have been extended to Microsoft Office, the other key component of Microsoft's monopoly power in the PC client software market, and if they permitted the removal of Microsoft products. But nonetheless, they are pro-competitive, and do represent real benefits to consumers.

Interoperability Remedies

Microsoft regularly punishes consumers who buy non-Microsoft products, or who fail to upgrade and repurchase newer versions of Microsoft products, by designing Microsoft Windows or Office products to be incompatible or non- interoperable with competitor software, or even older versions of its own software. It is therefore good that the proposed final order would require Microsoft to address a wide range of interoperability remedies, including for example the disclosures of APIs for Windows and Microsoft middleware products, non-discriminatory access to communications protocols used for services, and non-discriminatory licensing of certain intellectual property rights for Microsoft middleware products. There are, however, many areas where these remedies may be limited by Microsoft, and as is indicated by the record in this case, Microsoft can and does take advantage of any loopholes in contracts to create barriers to competition and enhance and extend its monopoly power.

Special Concerns for Free Software Movement

The provisions in J.1 and J.2. appear to give Microsoft too much flexibility in withholding information on security grounds, and to provide Microsoft with the power to set unrealistic burdens on a rival's legitimate rights to obtain interoperability data. More generally, the provisions in D. regarding the sharing of technical information permit Microsoft to choose secrecy and limited disclosures over more openness. In particular, these clauses and others in the agreement do not reflect an appreciation for the importance of new software development models, including those ''open source'' or ''free'' software development models which are now widely recognized as providing an important safeguard against Microsoft monopoly power, and upon which the Internet depends.

The overall acceptance of Microsoft's limits on the sharing of technical information to the broader public is an important and in our view core flaw in the proposed agreement. The agreement should require that this information be as freely available as possible, with a high burden on Microsoft to justify secrecy. Indeed, there is ample evidence that Microsoft is focused on strategies to cripple the free software movement, which it publicly considers an important competitive threat. This is particularly true for software developed under the GNU Public License (GPL), which is used in GNU/Linux, the most important rival to Microsoft in the server market. Consider, for example, comments earlier this year by Microsoft executive Jim Allchin: http://news.cnet.com/news/0–1003–200–4833927.html ''Microsoft exec calls open source a threat to innovation,'' Bloomberg News, February 15, 2001, 11:00 a.m. PT

One of Microsoft's high-level executives says that freely distributed software code such as Linux could stifle innovation and that legislators need to understand the threat.

The result will be the demise of both intellectual property rights and the incentive to spend on research and development, Microsoft Windows operating-system chief Jim Allchin said this week. Microsoft has told U.S. lawmakers of its concern while discussing protection of intellectual property rights . . .

''Open source is an intellectual-property destroyer,'' Allchin said. ''I can't imagine something that could be worse than this for the software business and the intellectual-property business.'' . . .

In a June 1, 2001 interview with the Chicago Sun Times, Microsoft CEO Steve Ballmer: again complained about the GNU/Linux business model, saying ''Linux is a cancer that attaches itself in an intellectual property sense to everything it touches. That's the way that the license works,''1 leading to a round of new stories, including for example this account in CNET.Com: http://news.cnet.com/news/0–1003–200–6291224.html ''Why Microsoft is wary of open source: Joe Wilcox and Stephen Shankland in CNET.com, June 18, 2001. There's more to Microsoft's recent attacks on the open-source movement than mere rhetoric: Linux's popularity could hinder the software giant in its quest to gain control of a server market that's crucial to its long-term goals.

Recent public statements by Microsoft executives have cast Linux and the open-source philosophy that underlies it as, at the minimum, bad for competition, and, at worst, a ''cancer'' to everything it touches.

Behind the war of words, analysts say, is evidence that Microsoft is increasingly concerned about Linux and its growing popularity. The Unix-like operating system ''has clearly emerged as the spoiler that will prevent Microsoft from achieving a dominant position'' in the worldwide server operating-system market, IDC analyst A1 Gillen concludes in a forthcoming report*

. . . While Linux hasn't displaced Windows, it has made serious inroads. . .] . . In attacking Linux and open source, Microsoft finds itself competing ''not against another company, but against a grassroots movement,'' said Paul Dain, director of application development at Emeryville, Calif.- based Wirestone, a technology services company*

. . . Microsoft has also criticized the General Public License (GPL) that governs the heart of Linux. Under this license, changes to the Linux core, or kernel, must also be governed by the GPL. The license means that if a company changes the kernel, it must publish the changes and can't keep them proprietary if it plans to distribute the code externally. . .

Microsoft's open-source attacks come at a time when the company has been putting the pricing squeeze on customers. In early May, Microsoft revamped software licensing, raising upgrades between 33 percent and 107 percent, according to Gartner. A large percentage of Microsoft business customers could in fact be compelled to upgrade to Office XP before Oct. 1 or pay a heftier purchase price later on.

The action ''will encourage—'force'' may be a more accurate term—customers to upgrade much sooner than they had otherwise planned,'' Gillen noted in the IDC report* ''Once the honeymoon period runs out in October 2001, the only way to ''upgrade'' from a product that is not considered to be current technology is to buy a brand-new full license.''

This could make open-source Linux's GPL more attractive to some customers feeling trapped by the price hike, Gillen said. ''Offering this form of ''upgrade protection'' may motivate some users to seriously consider alternatives to Microsoft technology.'' . . .

What is surprising is that the US Department of Justice allowed Microsoft to place so many provisions in the agreement that can be used to undermine the free software movement. Note for example that under J.1 and J.2 of the proposed final order, Microsoft can withhold technical information from third parties on the grounds that Microsoft does not certify the ''authenticity and viability of its business,'' while at the same time it is describing the licensing system for Linux as a ''cancer'' that threatens the demise of both the intellectual property rights system and the future of research and development.

The agreement provides Microsoft with a rich set of strategies to undermine the development of free software, which depends upon the free sharing of technical information with the general public, taking advantage of the collective intelligence of users of software, who share ideas on improvements in the code. If Microsoft can tightly control access to technical information under a court approved plan, or charge fees, and use its monopoly power over the client space to migrate users to proprietary interfaces, it will harm the development of key alternatives, and lead to a less contestable and less competitive platform, with more consumer lock-in, and more consumer harm, as Microsoft continues to hike up its prices for its monopoly products.

Problems with the term and the enforcement mechanism Another core concern with the proposed final order concerns the term of the agreement and the enforcement mechanisms. We believe a five-to-seven year term is artificially brief, considering that this case has already been

litigated in one form or another since 1994, and the fact that Microsoft's dominance in the client OS market is stronger today than it has ever been, and it has yet to face a significant competitive threat in the client OS market. An artificial end will give Microsoft yet another incentive to delay, meeting each new problem with an endless round of evasions and creative methods of circumventing the pro-competitive aspects of the agreement. Only if Microsoft believes it will have to come to terms with its obligations will it modify its strategy of anticompetitive abuses.

Even within the brief period of the term of the agreement, Microsoft has too much room to co-opt the enforcement effort. Microsoft, despite having been found to be a law breaker by the courts, is given the right to select one member of the three members of the Technical Committee, who in turn gets a voice in selecting the third member. The committee is gagged, and sworn to secrecy, denying the public any information on Microsoft's compliance with the agreement, and will be paid by Microsoft, working inside Microsoft's headquarters. The public won't know if this committee spends its time playing golf with Microsoft executives, or investigating Microsoft's anticompetitive activities. Its ability to interview Microsoft employees will be extremely limited by the provisions that give Microsoft the opportunity to insist on having its lawyers present. One would be hard pressed to imagine an enforcement mechanism that would do less to make Microsoft accountable, which is probably why Microsoft has accepted its terms of reference.

In its 1984 agreement with the European Commission, IBM was required to affirmatively resolve compatibility issues raised by its competitors, and the EC staff had annual meetings with IBM to review its progress in resolve disputes. The EC reserved the right to revisit its enforcement action on IBM if it was not satisfied with IBM's conduct.

The court could require that the Department of Justice itself or some truly independent parties appoint the members of the TC, and give the TC real investigative powers, take them off Microsoft's payroll, and give them staff and the authority to inform the public of progress in resolving compliance problems, including for example an annual report that could include information on past complaints, as well as suggestions for modifications of the order that may be warranted by Microsoft's conduct. The TC could be given real enforcement powers, such as the power to levy fines on Microsoft. The level of fines that would serve as a deterrent for cash rich Microsoft would be difficult to fathom, but one might make these fines deter more by directing the money to be paid into trust funds that would fund the development of free software, an endeavor that Microsoft has indicated it strongly opposes as a threat to its own monopoly. This would give Microsoft a much greater incentive to abide by the agreement.

Failure to address Ill Gotten Gains

Completely missing from the proposed final order is anything that would make Microsoft pay for its past misdeeds, and this is an omission that must be remedied. Microsoft is hardly a first time offender, and has never shown remorse for its conduct, choosing instead to repeatedly attack the motives and character of officers of the government and members of the judiciary.

Microsoft has profited richly from the maintenance of its monopoly. On September 30, 2001, Microsoft reported cash and short-term investments of $36.2 billion, up from $31.6 billion the previous quarter—an accumulation of more than $1.5 billion per month.

It is astounding that Microsoft would face only a ''sin no more'' edict from a court, after its long and tortured history of evasion of antitrust enforcement and its extraordinary embrace of anticompetitive practices—practices recognized as illegal by all members of the DC Circuit court. The court has a wide range of options that would address the most egregious of Microsoft's past misdeeds. For example, even if the court decided to forgo the break-up of the Windows and Office parts of the company, it could require more targeted divestitures, such as divestitures of its browser technology and media player technologies, denying Microsoft the fruits of its illegal conduct, and it could require affirmative support for rival middleware products that it illegally acted to sabotage.

Instead the proposed order permits Microsoft to consolidate the benefits from past misdeeds, while preparing for a weak oversight body tasked with monitoring future misdeeds only. What kind of a signal does this send to the public and to other large corporate law breakers? That economic crimes pay!

Please consider these and other criticisms of the settlement proposal, and avoid if possible yet another weak ending to a Microsoft antitrust case. Better to send this unchastened monopoly juggernaut a sterner message. 1 http://www.suntimes.com/output/tech/cst-fin-micro01.html ''Microsoft CEO takes launch break with the Sun-Times,'' Chicago Sun Times, June 1, 2001.

James Love
Consumer Project on Technology
P.O. Box 19367, Washington, DC 20036
http://www.cptech.org, mailto:love@cptech.org
voice: 1.202.387.8030 fax 1.202.234.5176
mobile 1.202.361.3040

MTC–00028314

From: Drgesq2@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:10pm
Subject: Microsoft Settlement!!!!!—-Tunney Act Period

Attn: DOJ and Judge: This note is to support the proposed settlement in the Microsoft case. It is about time this case be ended. In all the years of watching litigation, this case is the clearest example I have ever sceen of a competitor induced lawsuit. Clearly, the Clinton Adm raised millions and got the Calif. electoral votes in exchange for this case. Further, so called judge jackson railroaded Microsoft in every aspect of the case. As a CONSUMER the prices paid by me and every one else is essentially nominal to the benefits realised by use of this software.

Each computer based ahrdware and software company seeks to use their innovation over the competition. These competitors just dont have the skill and talent to realize the kind of success that has come to Microsoft. Please put an end to this matter as clearly as can be done.

Thank You!!
David R. Gray, Esq.
(drgesq2@aol.com)

MTC–00028315

From: LETTIE POE
To: Microsoft ATR
Date: 1/28/02 2:11pm
Subject: ''Microsoft Settlement''

Gentlemen:

URGENT REQUEST!!!

Three years ago, the U. S. Department of Justice charged Microsoft with having engaged in anti-competitive behavior based on allegations by its top competitors. I feel that Microsoft was singled out in this action taken, and now I realize that The Justice Department is in the final stages of deliberating on the proposed Microsoft settlement to decide whether to accept the settlement or to litigate it further.

Personally, I believe that the proposed settlement offers a reasonable compromise that will enhance the ability of seniors, like myself, and all Americans, as well, to access the internet and use innovative software products to make their computer experience easier and more enjoyable. I am e-mailing you at this time to request that you not allow Microsoft's competitors to undermine the settlement negotiated with the federal government and nine states; although, the settlement is tough on Microsoft as it is, I feel it is a fair outcome for all parties concerned particularly senior consumers. I feel that it not only will benefit the seniors, but this settlement more importantly will have a very positive impact on the American economy and will help to pull the Country from the jaws of recession in which we have been experiencing over the past year.

I feel that consumer interests have been served well, and that now the time has come to end this costly and damaging litigation. Continuing with this legal battle further will only benefit the wealthy competitors, lawyers, and special interest groups.

Please do not litigate this matter further, and go ahead and accept the settlement for the betterment of the public interest; all the Country.

Sincerely,
Lettie Ann Poe
2214 Hemerick Place
Clearwater, FL 33765–2227
Telephone Number (727) 796–6992
E-mail lapoe5@msn.com
CC: Lettie Ann Poe

MTC–00028316

From: a p
To: Microsoft ATR
Date: 1/28/02 2:11pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally-

I implore you to reconsider the guidelines set forth in the Proposed Final Judgment. Most honorable one, please analyzes the true facts in the final settlement and judge

accordingly. In the past week it has been brought to my attention a most astonishing development in the MS case. A Final Settlement has been reached between the two parties. However, based on the details provided to me, the PFJ overturns findings by the U.S. Court of Appeals indicts Microsoft on violating antitrust laws. After further review of the proposed settlement I find it hard to believe the Justice Department would withdraw their charges against Microsoft. In fact, based on the assessments made on the proposal, Microsoft will go scotch free from any charges of wrong doing in the matter. How can this be?

There are several glaring flaws in the PFJ. However, non-so more apparent than allowing an absentee landlord to govern Microsoft. With all due respect, the final settlement provides no security to restrict MS from breaking any laws in the future. In my humble yet accurate opinion, the future governing body, implementing certain rules or regulations and forcing MS to adhere by them, will not be stringent nor forceful enough to make any dramatic changes.

Similarly, I am not convinced that these stiff penalties applied to MS will ensure the security and future growth of other companies. A stiffer penalty and a whole new framework of laws must be established to justly punish MS. The Proposed Final Judgment abstains from such justification and order. I conclude therefore by objecting to the Proposed Final Judgment.

All the Best,
Ariel Paraso
3450 West 8539 South
West Jordon, UT 84088

MTC–00028317

From: Grant Young(b)
To: Microsoft ATR
Date: 1/28/02 2:11pm
Subject: Microsoft Settlement
January 28, 2002
Renata Hesse, Trial Attorney
Antitrust Division—US Department of Justice
601 D Street NW—Suite 1200
Washington, DC 20530
microsoft.atr@usdoj.gov
Attorney Hesse:

I am emailing to urge the approval of the settlement of the Microsoft antitrust case. The DOJ, Microsoft and the Attorney Generals that have signed onto this case deserve enormous credit for finding a way to settle this case.

Our economy is the envy of the rest of the world because we have created a successful free-market based competition. As with any competition there are winners and losers. Microsoft has been the leader of the software industry for so many years because they create good products at a decent price. The people who run this company have worked hard to achieve this and work even harder to protect the companies leading status.

While there are those who believe Microsoft has engaged in unfair practices and even harmed consumers, I fail to see where this has been proven over the last 4 years of this case. I believe that many of those involved in this case have come to see it is a losing battle. Microsoft will not be broken up.

Settleing this case is the right thing to do.

Respectfully,
Grant Young
3000 Grand Avenue, #910
Des Moines, Iowa 50312
grantyoung72@hotmail.com

MTC–00028318

From: richard sonnier
To: Microsoft ATR
Date: 1/28/02 2:06pm
Subject: [Fwd: Microsoft kills Real World/ Great Plains Classic]

direct quote from letter to customers dated january 22,2002.

''Your Microsoft Great Plains Classic accounting solution (peviously known as Real World Classic) has benn an important part f both your and our business success, Since it has been available many companyies have relied on Classic to accurately track and report financial information, we are proud to have played a role in your business in the past and we hope to play that role in the future.''

''due to the flexibility of Windows-based products, sales of Classic have been dropping, with demand for technical support steadily declining.

TEREFORE WE ARE ANNOUNCING THAT TELEPHONE SUPPORT OF CLASSIC WILL END JANUARY 31,2003, AND ELECTRONIC SUPPORT WILL END MARCH31,2003, iN ADDITION SALES OF CLASSIC WILL END JUNE 30,2002, THIS NOTICE GIVES YOU ADEQUATE TIME TO WEIGH YOUR OPTIONS AND DETERMINE YOUR NEXT STEP''

1. CLASSIC RUNS ON MANY PLATFORMS (UNIX,DOS,IBM,SUN, HP) AND THE ONLY OPTIONS GIVEN TO CUSTOMERS IS CONVERT AT EXTREME EXPENSE TO ''WINDOWS-BASED''.

2. THE SALES AND SUPPORT ARE DECLINING BECUASE MICROSOFT HAS NOT FURNISHED ANY ENCHANCEMENTS!!!!

3. MICORSOFT PURCHASED GREAT PLAINS WHICH HAD PREVIOUSLY PURCHASED REAL WORLD LESS THEN 1 YEAR AGO.

AND ARE NOT ELIMINATEING 20,000+ USERS PF OTHER PLATFORMS. tHIS IS A CLEAR VIOLATIONS OF ANTITRUST.

BY THE WAY MICROSOFT DID THE EXACT SAME THING ''FOX SOFTWARE'' BOUGHT/CHANGED TO FOXPRO ''WINDOWS-BASE:'' AND ELIMINATED OTHER PLATFORMS.

RICHARD L. SONNIER
GULF CENTRAL SYSTEMS
800 MIRE STREET
HOUMA, LA 70364
985–851–6674
RLS0938@AOL.COM

MTC–00028319

From: James Hertzog
To: Microsoft ATR
Date: 1/28/02 2:12pm
Subject: microsoft

Dear Mr. Ashcroft:

Why are you not letting Microsoft get back to work? Please encourage research and development in our country instead of persecuting it.

Sue N. Hertzog
248 Hwy 289N
Ash Flat, AR 72513

MTC–00028320

From: Stephen Calandrino
To: Microsoft ATR
Date: 1/28/02 2:13pm
Subject: Microsoft Settlement

8 Domidion Court
Middletown, New Jersey 07748
January 3, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am writing you to express my belief that the time has come to end the Microsoft antitrust case. The Justice Department's proposed settlement plan should be implemented immediately.

I believe the plan is more than fair from the complainants'' standpoint. The procedures and policies Microsoft will adopt exceed the original demands of its competitors. Microsoft will have to share code, change marketing and licensing practices, and submit to government oversight. The company will open itself up to more than mere market competition; it will be required to aid its competitors. This is more than sufficient.

This company should be allowed to return to the business of developing and producing the world's most accessible computer systems. It's time to end this case.

Sincerely,
Stephen Calandrino

MTC–00028321

From: AmericoC@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:11pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001
Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Americo Cardillo
168 Lake Garden Dr.
Cranston, RI 02920

MTC–00028322

From: Bryce Carey
To: Microsoft ATR
Date: 1/28/02 2:11pm
Subject: Microsoft Settlement

Hello,

I understand you are collecting comments on the proposed Microsoft settlement under the provisions of the Tunney Act. Please count me as an interested party (consumer and citizen) who is OPPOSED to the settlement as it currently stands.

I would like to see the settlement re-negotiated with terms that are more carefully selected to protect competitors to Microsoft and especially to change the provisions that could potentially allow Microsoft to inhibit competition from non-commercial software projects such as the Open Source software available on the GNU/Linux platform. As a Monopoly, Microsoft must be actively restricted from tilting the proverbial ''level playing field'' by their legal and marketing influences. I do not think the current settlement proposal does enough to assure a fair competitive environment.

Thank you,
Ralph Bryce Carey
rbcarey@pima.edu
Instructional Specialist,
Aztec Middle College,
Tucson Unified School District
Tucson, Arizona

MTC–00028323

From: Jules Feldmann
To: Microsoft ATR
Date: 1/28/02 2:16pm
Subject: Microsoft Settlement

January 28, 2002

TO: Renata B. Hesse

U.S. Department of Justice

In 1976, I purchased a computer to use in my business. It was an IBM and I was forced to use their proprietary ''operating system.'' Application programs for this computer were limited as to vendors because each vendor had to develop their software for use on a specific machine or operating system.

When Microsoft entered the scene, they utilized an ''open architecture'' approach allowing their ''operating system'' to utilize any brand of computer. Because their ''operating system'' was not specific to a particular hardware brand, the soffware application developers were able to write application programs that would work on any computer running the DOS operating system. Because of this ''open architecture'' we consumers were given the choice of many more computer hardware manufacturers, rather than being limited to the manufacture's computer that ran our intended application.

There are several operating systems available that offer an alternative to MS DOS or Windows. Microsoft has been a boon to the small business computer user and to the U.S economy as well.

The government's antitrust activities directed at Microsoft has damaged our economy to a much greater extent than leaving Microsoft to the forces of a free market.

I believe in free markets and I am convinced that a new competitor would have eventually developed a challange to Microsoft by offering a viable alternative.

It is time for the government to stop pursuing this destructive course of antitrust prosecution.

Accept the settlement and let the industry move forward.

Thank you for taking the time to listen to my concerns.

Jules Feldmann, CPA
cpand@minot.com

MTC–00028324

From: D P
To: Microsoft ATR
Date: 1/28/02 2:15pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I oppose the proposed resolution in the MS case, better know as the Proposed Final Judgment. Over and above the usual economic risks presented by an unchecked monopolist—rising prices and monochromatic innovation the nations computer infrastructure will be increasingly vulnerable to attack if a single software system predominates.

Obviously I am referring to Microsoft.

Suppose that 80 or 90percent of the world's grain supply came from a single variety of corns. We would be faced with the unacceptable risk that some single disease, might wipe out an enormous portion of our food supply. Having only one kind of operating system or one kind of browser would make it terribly easier for saboteurs to bring the entire Internet to its knees. For one entity, such as Microsoft, to control 80 to 90 percent of the market for PC operating systems, Internet browsers, e-mail readers, and office productivity software is clearly a significant security risk. To then allow that monopoly to actively attempt to drive out its remaining competition would hardly be in the public interest. Diversity is the key in producing economic prosperity and improving the society as a whole.

It's now up to you, Judge Kollar-Kotally, to decide whether the proposed settlement between Microsoft and the DoJ is a correct and just solution. However I believe it contains too many loopholes to create the desired effect, changing MSs behavior, let alone bring forth a certain types of diversity which would enhance our security.

Kind Regards,
Debbie Paraso
3450 West 8539 South
West Jordon, UT 84088

MTC–00028325

From: wad@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 2:17pm
Subject: Microsoft Settlement

As a professional developing both computer hardware and software, I feel that the proposed DOJ settlement with Microsoft will not prevent Microsoft from continuing to act contrary the the best interest of the public.

In particular, non-profit organizations are particularly harmed by allowing Microsoft to refuse cooperation. If non-profit organizations developing software for free distribution are not in the public interest, what is ? Microsoft became the unstoppable behemoth that it is today through unsavory and illegal commercial tactics. It must be held accountable and punished.

The proposed DOJ settlement appears to be written by Microsoft, for Microsoft.

Please strike down this proposal, and continue to pursue a solution which adequately addresses past Microsoft actions, and prevents future abuses.

Sincerely,
John A. Watlington
4 Pinewood Rd.
Acton, MA 01720

MTC–00028326

From: Philip I. Long
To: Microsoft ATR
Date: 1/28/02 2:15pm
Subject: Microsoft Settlement

As I'm sure many have pointed out, the current settlement is deficient for many reasons. I would like try to summarize the most important issues as I see them:

Microsoft was found to be a monopolist due to the applications barrier to entry. Microsoft has shown itself very adept at leveraging it's desktop monopoly to creating barriers to entry, as well as defending that desktop monopoly. Therefore an effective settlement must take into account that the monopolist is strong, smart, unrepentant, and resistant to any measures that diminish it's control.

The necessary and sufficient remedy to a monopolist is the possibility for competition in this case, several things would be helpful to allow this to occur:

1) Microsoft must lack the ability to use intellectual property protection (patents, trade secrets, etc.) to prevent —any— entity (company, open source coalition, etc.) to create and distribute (in any way they choose) their own implementation of Microsoft functionality in any of their products. In other words, they must not be allowed any means to stop another entity from creating and distributing their own implementation of anything they want.

2) Microsoft must expose the functional specifications of all of their products so that others could implement them. This includes protocols, file formats, APIs, etc. It should also include all information it's own developers have regarding future directions. I should emphasize that I believe that Microsoft has a right to keep secret their own implementation. Requiring the monopolist to publish the source code to all of their software (without granting the license to copy or compile it) would be effective, but would go too far in my opinion.

3) Microsoft should be prohibited from using their PC desktop monopoly to promote (in any way) other business initiatives. Eastman Kodak's experience with their photo software is telling cautionary tale on this point. As is AOL's/Real's struggles with the MS media player. In particular, the control Microsoft aims to obtain with passport is in need of very close scrutiny. Any effective settlement should prevent the monopolist from approaching these or other initiatives in this manner.

4) Any settlement should prohibit Microsoft from taking any action that discourages alternative desktop operating system adoption. A particularly egregious examples is the rumored OEM license agreement prohibiting the ability to boot to other operating systems if a Microsoft operating system is also present. This works

to prevent Dell, Gateway, etc. from giving the public an option to have a PC that would multiboot BE, Linux, etc. in addition to windows. Clearly this helps the monopolist maintain it's monopoly, but hurts consumers. Another example would be discontinuing existing support of on alternative platforms. Microsoft should be prohibited from, for example, releasing windows versions of MS Office without simultaneously releasing a Mac version. I would not go so far as to say that they should be forced to release a Linux version of Office, but that would be nice (and I'd buy it if they did even at full retail of $500 or whatever they are charging these days).

5) Because the harm they cause is hidden in secret agreements, Microsoft should be prohibited from keeping secret any contracts they enter into.

They should all be available for public review.

I believe that Microsoft would balk at any settlement that effectively addressed any of these points. That they object should not be of any concern to the public or justice because they benefit from intellectual property laws (cf their BSA campaign). As they have built their corporation on the benefit of these laws and have been found to have gone too far and become a monopoly, they must be subject to measures that could not be fairly applied to an entity that had not violated the law to the detriment of consumers. I do not expect them to take kindly to the notion that they must compete on price and quality alone, but it would be of great benefit to consumers, innovation, and the global economy if they had to.

I urge the Department of Justice to ensure that any settlement effectively address these concerns.

Thank You,
Philip Long
373 Daniels Rd.
Barboursville, VA 22923–2808
—
Phil Long
Lead Software Applications Development Engineer, The MITRE Corporation's
Center for Advanced Aviation System Development
Voice: (703) 883–5810 Fax: (703) 883–1367

MTC–00028327

From: Peter Olend
To: Microsoft ATR
Date: 1/28/02 2:16pm
Subject: Microsoft Settlement
4848 Carberry Creek Road
Jacksonville, OR 97530–9329
January 15, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I was pleased to hear that the Department of Justice and many of the states decided to settle the Microsoft antitrust case. I would like the judge handling the case to approve the settlement.

In my opinion, this case should never have been brought against Microsoft. Through hard work and innovation, Microsoft has changed our world for the better. Microsoft has broken the inter-operability barrier and operational obfuscation that the likes of IBM, Sperry-Rand, Digital Equipment Corporation, Varian, ATT and others carefully nurtured prior to the 1980's.

For this, Microsoft is being punished under the guise that they have engaged in anti-competitive behavior. Do you remember the way ATT handled the release of the original Kernigan and Ritchy UNIX into the public domain and the antics of the ''UNIX Consortium''? That was anti-competitive behavior. Nothing breeds contempt like success. However, in the interest of wrapping up this suit, I support Microsoft's decision to be bound by the terms of the settlement agreement.

Microsoft has gone so far as agreeing to disclose to its competitors various interfaces internal to the Windows operating system. As a development systems engineer, I find nothing inhibiting about the public interfaces. They have also agreed not to take action against those who violate Microsoft's intellectual property rights. Similarly, they will not take action against computer manufacturers who ship computers containing the competition's software.

Settling this case is in the best interests of all involved. I urge the Court to approve this settlement agreement. Thank you.

Sincerely,
Peter Olend

MTC–00028328

From: Chauncey Orton
To: Microsoft ATR
Date: 1/28/02 2:18pm
Subject: Microsoft Settlement

Attached is our pro-opinion for the settlement of the Microsoft case.

CC: fin@mobilizationoffice.com@inetgw
29651 Wilhite Lane
Valley Center, CA 92082
January 27,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

Approval of the Microsoft case settlement will be in the best interests of America. The case has gone on long enough for the parties to state their cases and present their evidence. Also, the settlement addresses all the issues in the litigation and goes beyond the scope of the litigation. The parties could agree to terms beyond the litigation, but the judge would be restricted to only the formal issues. So, the settlement is better than anything even the judge could do. What is more, the settlement means that there would be no time consuming and potentially derailing court proceedings. The economy does not have stability needed for growth when one of America's leading industries is in an unsettling wrangle.

The settlement will provide greater flexibility, cooperation and stability within the information technology industry. Microsoft will open up its business practices and software code. A committee of technically skilled and recognized software engineering expert parishioners will see that the terms are followed and hear and investigate any complaints.

Enriching our legal system further is counter productive to expanding businesses. A one time legal business charge this past year, of 2/3 of a billion dollars to defend itself from its own government, is outrageous. The U.S. government is very concerned about what Enron did to their employee's retirement funds and they should be. But on a much larger scale, the government should look at what their actions did to the Microsoft stockholders'' retirement funds.

We look forward to your leadership of bringing the Gov. vs. Microsoft's legal case to an end and focus on the real threat against the U S.- the terrorist.

Thank you.
Sincerely,
Steve and Suzanne Orton
cc: Representative Darrell Issa

MTC–00028329

From: ROSEFR@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:21pm
Subject: I support the settlement
Rose Ryba Pomeranz
16 High Meadow Lane
Oyster Bay Cove, NY 11771

MTC–00028330

From: Lee Kenna
To: Microsoft ATR
Date: 1/28/02 2:20pm
Subject: Microsoft Settlement

I believe that the Proposed Final Judgement in the Microsoft case is flawed, principally because it allows continued ''bolting'' of non— integral software to the Windows operating system, in such a way as to minimize the opportunity for other (non -Microsoft) competing products in the market space for these types of non—integral software. Competitiveness and the American economy are not served by allowing Microsoft, in spite of the Judges'' ruling that they had acted unlawfully, to continue these practices.

Respectfully,
Lee M. Kenna
CEO
SIMCO Electronics
1178 Bordeaux Drive
Sunnyvale, Ca. 94089
Tel 408–734–9750

MTC–00028331

From: G M
To: Microsoft ATR
Date: 1/28/02 2:20pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am opposed to the back-room deal cut between Microsoft and the DoJ. Several close friends and relatives have informed of this matter entailing a proposed settlement, notoriously understood as the Proposed Final Judgment. Truthfully from where I sit, I dont like what I see.

I cant believe the Justice Dept. threw out all court findings indicting Microsoft for all illegal activities. First of all the Proposed Final Judgment grants MS a government mandated monopoly that threatens to destroy any and all serious Microsoft competitors. Im all for free enterprise and what it symbolizes. To strike a huge blow against the spirit of free enterprise, one need not look any further than to allow MS to monopolize every sector, whether it is the gaming industry or the

software industry, by eradicating most if not all competitors. By all means diversity is one essential ingredient in maintaining a healthy industry and more importantly a thriving economy.

I submit my disapproval to the Proposed Final

Judgment.

Kind Regards,

Gladys Montefrio

6024 Palamino Court

Stockton, CA 95210

MTC–00028332

From: McGreal, Martin P.
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:40pm
Subject: Microsoft Settlement

This settlement proposal—agreed to by the DOJ and all but nine states— seems alarmingly lenient for a company that was proven not only to be an illegal monopoly, but to have repeatedly abused that monopoly.

I vehemently oppose this settlement, wishing for more austere punishment of the defendant, as well as provisions for the prevention of future monopolisic abuse by the defendant.

Sincerely,

Martin McGreal

St Louis, MO

MTC–00028333

From: Argo, Rich W.
To: Microsoft ATR
Date: 1/28/02 2:10pm
Subject: Microsoft Settlement

I believe that the proposed settlement is a bad idea.

First and foremost, the proposed settlement primarily deals with Microsoft's dealings with OEMs. While this is a start, it does not go nearly far enough.

It also does not appear to enable OEMs to ship a PC with no operating system on it at all. Many users wish to install Linux, FreeBSD or many other free and open source operating systems and should not be forced to pay for an operating system that they do not want to use.

Furthermore, additional provisions need to be implemented in the settlement that will force Microsoft to make versions of Microsoft Office available for the 3 most popular desktop operating systems Currently that would be Linux, Macintosh and Windows. Currently Microsoft only produces versions for Windows and Macintosh. Macs aren't used in the business world very much and are more expensive relative to Intel-based PCs—which is what Microsoft Windows runs on. If there was a version of Office available for Linux, there would then be a choice for consumers that use Intel processors. This would open up competition for operating systems on the Intel processing platform as many businesses are reluctant to switch to another OS since they may not be able to run Office applications. In order to help enforce the spirit of this proposal, provisions would have to be implemented to force Microsoft to release versions of Office concurrently on all platforms.

Additionaly, all Windows API's should be open so that competitors that wish to produce software for Windows would be allowed to compete fairly with Microsofts products. All Microsoft Office file formats should be standardized with an open API so that anyone wishing to compete with an Office-like package could do so fairly.

Microsoft should not under any circumstances be allowed to ship any additional Microsoft software product free of charge along with their Windows operating system. The only exceptions to this rule should be utilities such as Notepad, WordPad and the various command line utilities that currently ship with Windows. Internet Explorer should not ship as a free part of Microsoft Windows. Neither should Microsoft Money. No Microsoft software that competes with another software product should be included with the operating system. If other competing products are offered for download for free from competitor's sites, then Microsoft should be allowed to offer free downloads for those kinds of products, but should not be allowed to ship those with the operating system. If they are allowed to do so, they are unfairly extending their monopoly power. If Microsoft so wishes to ship a software product in with their operating system, they should have to submit that request to a third party committee that would vote on whether or not to allow said inclusion, but only after a 90 day period whereby anyone wishing to protest said inclusion is given the opportunity to do so before the committee in person, via email or paper mail.

If Microsoft is found to have violated any part of the settlement they should be fined a minimum of $1 billion. On the surface, this may sound like an exorbant amount. However, nothing short of this will likely prevent Microsoft from violating the settlement and adequately punish them if they do.

Thank you,

Richard W. Argo

Web Designer, McLeodUSA

MTC–00028334

From: Andrew Hagel
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:26pm
Subject: RE: United States v. Microsoft Settlement

Dear Sir or Madam:

After reviewing the documents concerning the case, it is my personal opinion that the remedies currently proposed by the Department of Justice are in the best interests of the consumer, and that the marketplace is the appropriate competitive venue, as opposed to the court system.

Yours truly,

Andrew Hagel

CC:'andrewhagel(a)mediaone.net''

MTC–00028335

From: jlewin@mail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:25pm
Subject: Microsoft Settlement

I would like it to be known that I fully support the settlement proposed by the Government and Microsoft. This decision will bring about stability and confidence to the technology sector and conclude a case that I strongly disagree with. Microsoft makes products that benefit the public. As a software developer who uses Internet Explorer in most of my projects, I've never understood the lawsuit. Why so much attention was directed at I.E. hurting consumers and competitors I will never know. No modern OS would be complete without a web browser. In addition, I.E. is a fantastic product that provides features and functionality that have always surpassed any other products on the market. Please accept this document into record as evidence of one consumer, developer and taxpayer who agrees with settlement hopes to see the case come to a close.

Sincerely,

John Warner Lewin

CC:jlewin@mail.com@inetgw

MTC–00028336

From: Ajay Ramachandran
To: Microsoft ATR
Date: 1/28/02 2:25pm
Subject: Microsoft Settlement.

Hello,

I wanted to write saying that the current settlement in the case seems to be a reasonable one. While I understand that some changes might be necessary I think it very important that the consumers be the ones who gain from any settlement or settlement modification. In this regard specifically it just does not make sense to entertain other competitor wishes, they really ought to work with their customers to provide better products for them instead of attacking Microsoft,

Sincerely,

Ajay S. Ramachandran,

Redmond, WA.

MTC–00028337

From: satteson@pclink.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:27pm
Subject: Microsoft Settlement

I'm writing to express my reservations about the proposed settlement of the anti-trust case between the United States (as represented by the Justice department) and Microsoft Corporation. I speak as a concerned citizen with broad and significant computing experience. I've used computers in various capacities for over twenty years and have worked with half a dozen different operating system families, including the complete Microsoft family of products from MS-DOS to XP. I also have wide experience with many computer applications from both Microsoft and other parties.

I have provided network and systems administration of Microsoft and Linux systems on a part-time basis and rely on secure and stable computing environments in my primary occupation as a research and development consultant to startup medical device companies.

The proposed settlement offers insufficient redress of Microsoft's previous wrongs and provides too little protection from this company's ongoing anti-competitive practices. While a just settlement should address Microsoft's past practices, I am more concerned that a settlement provide adequate protection to consumers, competitors, and indeed the economy as a whole, from

Microsoft's ongoing and likely future anti-competitive practices.

With the release of it's latest, highly-integrated operating system product, XP, Microsoft has demonstrated that it has no intention of voluntarily curbing the sorts of predatory anti-competitive practices that have enabled it prosper at the expense of competitors and consumers alike. In my experience, succeeding generations of Microsoft operating system products have integrated increasing numbers of middleware applications, and the configuration tools needed to replace these applications with third party products have become more obscure and less effective, locking many consumers into a monolithic, Microsoft-only environment.

The lack of choice implied by Microsoft's monolithic model of computing is contrary to the workings of free market enterprise and is ultimately harmful to consumers. It is apparent that this trend has the goal of maintaining and expanding Microsoft's dominant position in the desktop computing marketplace.

The unnecessarily tight integration of middleware applications into its operating system products is far from the only illegitimate tool that Microsoft has used to dominate the desktop market in the United States. Microsoft has plausibly been accused of: extorting exclusive installation of its products on computers by OEM manufacturers via differential pricing, of corrupting open software standards to gain exclusive access to important domains of computing, and waging so-called FUD (fear, uncertainty and doubt) campaigns against competitors and consumers. An appropriate settlement would address not only the particulars of continued forced, artificial integration of its products but as many of the other tools against free competition that Microsoft has been using as is possible. It is bad public policy and poor economics to allow a single entity to maintain its position in the marketplace via unfair and illegal practices. Among the particular adverse effects of Microsoft's continued anti-competitive behavior are: stifled innovation, corruption of the marketplace, deterioration of the United State's position in the world's information technology economy and unnecessary security vulnerabilities.

Though Microsoft claims to be a leader in innovation, the record suggests that it is instead a follower (or perhaps a gatekeeper) of innovation. The Netscape saga illustrates this point. Microsoft failed to take the internet and its potential seriously until web's usefulness and the great value of effective browser technology were demonstrated by Netscape. Once Netscape was too successful to ignore, Microsoft used all of the anti-competitive tools at its disposal to neutralize Netscape. If Microsoft is allowed to escape effective punishment for this infraction, it will continue its current practices and will be a brake on rather than an engine of innovation. This result would be a loss for everyone, except perhaps Microsoft.

The stifling of innovation is just one of many symptoms of the market distortion created by Microsoft's all too effective use of anti-competitive tactics. There are a number of other ills created by this induced market failure, the most obvious of which are increased prices and lower product quality. Indeed, Microsoft has managed to defy the trends toward lower price and higher quality that typify all other aspects of the computer industry. As hardware has become ever more capable and less expensive, the cost of the software provided by Microsoft has remained high and improvements in quality have been slow and ''grudging'' at best. An overall effect of these opposing trends has been that Microsoft has been able to garner an increasing, and I would say, excessive fraction of every dollar spent on computers. Microsoft is richly rewarded by the market distortions that it has been able to engineer. It is time for these distortions to come to an end, and for the market to freely assert itself. Then the winners will be not only the consumers, who will get better quality at a lower price, but other hardware and software producers who will be able to command a more equitable share of the revenues from their products.

In the long run, Microsoft's illegitimate domination of the domestic information technology (IT) market threatens the United States'' preeminent position in the international IT marketplace. Though Microsoft has a global reach, it is clear that its market power is neither as pervasive nor as potent as it is domestically. Because these overseas markets are less burdened by Microsoft's stifling anti-competitive practices, they can be more efficient and innovative. If this disparity is allowed to persist, it is likely that the United states will suffer an erosion of its now strong position in the world IT economy. The best way for the United States to prevent this deterioration is to open the domestic market to free and fair competition by preventing Microsoft from exerting its anti-competitive tools to distort the domestic IT market.

Microsoft has a history of using its market dominance to gloss over security problems with its products. Rather than act quickly to patch and publicize its security vulnerabilities, Microsoft uses all means at its disposal to suppress news of and information about its security problems. This ''security through obscurity'' approach is well know to be one of the worst possible responses to computer security problems; it leaves the computing community open to security problems for much longer than is necessary. It is typical for weeks or even months to pass between the discovery of a Microsoft security flaw and the company's issuance of a proper security patch. This poor security behavior is completely unacceptable in the face of the heightened security concerns following the events of September 11. Though Microsoft has recently paid lip service to improving the security of its products, it has shown no inclination to replace its antiquated and dangerous security model with a more open, proactive and effective model. Indeed, its recently issued code of security ethics for Microsoft professionals calls for strict adherence to the security through obscurity model. This code dictates that these professionals'' paying customers be kept in the dark regarding security vulnerabilities until such time as Microsft deems it appropriate to reveal the problem. Microsoft's bad citizenship in regard to security is dangerous and should not be tolerated. A properly formulated settlement of the current case should include measures to force Microsoft to follow a more appropriate security model.

Microsoft's anti-competitive practices are not merely illegitimate and contrary to the principles of market capitalism and free enterprise, they greatly harm the American people in a significant number of concrete ways. The proposed settlement fails to address these ills in any meaningful sense. It needs to be reformulated to provide appropriate and strong protection of the market and the people from Microsoft's rapacious and counterproductive practices. A strong and effective settlement would not only serve the cause of justice, it would preserve an important sector of the United States'' economy from unnecessary harm.

It is imperative that the Justice department act in a wise and decisive manner and prevent Microsoft from continuing to isolate itself from market discipline via unfair and illegitimate means.

Michael Satteson,
St. Paul, MN
satteson@pclink.com

MTC–00028337—0004

MTC–00028338

From: Leonard Bernstein
To: Microsoft ATR
Date: 1/28/02 2:26pm
Subject: RE: Microsoft settlement

Please accept the Microsoft settlement and bring this matter to closure.

Thank you,
Leonard Bernstein

MTC–00028339

From: j rim
To: Microsoft ATR
Date: 1/28/02 2:29pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I object to the so-called Proposed Final Judgment in to Microsoft case.

As every one knows, Microsoft continues to violate anti-trust laws set in place many years ago. The Proposed Final Judgment goes against all logic. Previously the US Court, has found Microsoft guilty of breaking the anti-trust laws. However, under the proposed final settlement, MS is permitted to retain most of its profits gained through their illegal activities. The PFJ will not compensate parties injured by the Microsoft debacle.

The PFJ does not take into account all Microsoft gains made through its illegal maneuverings. The final settlement basically acknowledges the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? Do you think the public will be in favor of such a move?

The PFJ encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. Thus, I object to this

Proposed Final Judgment. It solves nothing in the matter.

Sincerely,
Simplicio, Tualla Jr.
8959 Tam OShanter Dr.
Stockton, CA 95210

MTC–00028340

From: jason.walker@flyingj.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:28pm
Subject: Microsoft Settlement
2185 W 6410 N
Brigham City, UT 84302
January 25,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

For nearly four years now, the Microsoft antitrust case has been mired in the federal courts. Finally, after six months of negotiation, Microsoft and the Department of Justice were able to reach an agreement, and in November, their settlement was proposed. That settlement is currently pending approval. Next week, the courts will reconvene and determine whether the settlement serves the best public interest. I ask you, Mr. Ashcroft to support the finalization of the settlement.

Microsoft and the Justice Department have agreed on a wide variety of terms and conditions, all of which are aimed at preventing monopolistic behavior and restoring a competitive balance within the technology market. For example, Microsoft has agreed not to enter into any contracts wherein a third party is compelled to distribute or endorse Microsoft software either exclusively or at a fixed percentage. Microsoft also plans to reformat future versions of Windows so that competitors will be able to introduce their own products directly into the Windows operating system. This will enable computer makers and software developers to use Microsoft as a springboard to launch their own software.

I do not believe that further action against Microsoft needs to be taken on the federal level. In fact, it is likely that extended litigation could be detrimental to an already damaged economy. I ask you to support the finalization of the settlement.

Sincerely,
Jason Walker

MTC–00028341

From: Rick Deno
To: ''microsoft.atr(a)usdoj.gov.''
Date: 1/28/02 2:28pm
Subject: Microsoft Settlement

Lets'' do what is good for the Country and put this litigation behind us.

Time to MOVE ON! I know, AOL and other competitors of Microsoft would love to have Microsoft destroyed, broken up, have all there software coding made public, and all there money taken away. After all, there main crime was competing and being better and smarter than everyone else. Whatever crime thy did commit had nothing to do with them being successful. The Public chose them over Apple, and many other Operating Systems years age because the provided a great produce that worked with a lot of different hardware, which allowed the price of a PC to be affordable. They and there work has only benefited the public, the US economy, and most of Microsoft's competitors. After all, Where would AOL be today if no Microsoft? Do we want to distort the marketplace and get rid of Microsoft? What does this tell the next Microsoft? Don't be too successful or the government will get rid of you. Is this what the free enterprise system is all about? A monopoly is the result of good business moves against bad business moves. This is All about Microsoft's competitors wanting the Government (States and Federal) to do what they couldn't, which is compete.

Thanks,
Richard Deno

MTC–00028342

From: The Young Family
To: Microsoft ATR
Date: 1/28/02 2:28pm
Subject: Microsoft Settlement
——— Original Message ———
From: Microsoft's Freedom To Innovate Network <fin@MobilizationOffice.com>
To: <bsmyoung@adelphia.net>
Sent: Monday, January 28, 2002 2:03 PM
Subject: Attorney General John Ashcroft Letter

Attached is the letter we have drafted for you based on your comments. Please review it and make changes to anything that does not represent what you think. If you received this letter by fax, you can photocopy it onto your business letterhead; if the letter was emailed, just print it out on your letterhead. Then sign and fax it to the Attorney General. We believe that it is essential to let our Attorney General know how important this issue is to their constituents. The public comment period for this issue ends on January 28th. Please send in your letter as soon as is convenient.

When you send out the letter, please do one of the following: * Fax a signed copy of your letter to us at 1–800–641–2255; * Email us at fin@mobilizationoffice.com to confirm that you took action.

If you have any questions, please give us a call at 1–800–965–4376. Thank you for your help in this matter.

The Attorney General's fax and email are noted below.

Fax: 1–202–307–1454 or 1–202–616–9937
Email: microsoft.atr@usdoj.gov

In the Subject line of the e-mail, type Microsoft Settlement.

For more information, please visit these websites: www.microsoft.com/ freedomtoinnovate/ www.usdoj.gov/atr/ cases/ms-settle.htm

January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The Department of Justice and Microsoft have finally reached a decision ending the three-year-long antitrust suit against the company. I want to add my support to this settlement. It has gone on for far too long. We are trying very hard to come out of a economic downturn, which I think was precipitated by the lawsuit, and we need to focus on more important matters than nitpicking over what should be the final decision in the Microsoft lawsuit.

Microsoft has also been more than accommodating with the demands from the Justice Department. Microsoft has agreed to a technical committee to oversee future compliance (consisting of software engineers, not lawyers); Microsoft has agreed to a uniform price list; Microsoft has agreed to internal interface disclosure; Microsoft has agreed to open the company up to third party innovation. This is more than fair.

I urge you to give your support to this agreement.

Sincerely,
Melvin Young
22 Club Drive
illicothe, OH 45601

MTC–00028343

From: Cheryl Stearn
To: Microsoft ATR
Date: 1/28/02 2:29pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

Microsoft's behavior is such that due to their size and capitalization, they can and will dominate any market they choose. Recently, they decided to compete directly with their ''Microsoft Partners'', firms who integrate and install Microsoft networks by essentially offering the same technical services that firms such as ours do. It is only in the last couple of weeks that Microsoft has rescinded their push to compete with us, primarily, I belive, because they would like us to support them in their fight with the Department of Justice. If this letter is read by Microsoft, I am sure that our business involving their products is toast.

The settlement with Microsoft is a joke. If anything it will tighten Microsoft's hold on the computer market, increase prices and make the US less competitive in the world market.

Sincerely,
Cheryl Stearn
Partner
P.S. Signed pdf document attached
cheryl—stearn@digitalsunrise.com

MTC–00028344

From: Woody McLendon
To: Microsoft ATR
Date: 1/28/02 2:30pm
Subject: Microsoft Settlement comments
January 28, 2002

To Whom it May Concern,

I am writing to express my very strong concern about the nature of the settlement proposal in the DOJ case against Microsoft. I believe that the settlement has major flaws and will do nothing to limit Microsoft in its future attempts to quash competitors in the IT industry.

My work is in IT for a non-profit organization. I use computers daily, including Microsoft products. I do not think Microsoft is ''evil'' but I am greatly

concerned that the company has shown an ongoing history of using its monopoly position to overtake and overwhelm competitors. Microsoft's ''shadow'' on the software and IT industry is huge. They have the ability to out-spend and out-last almost all of their competitors, and if they don't do that, they try to buy them out. With their new products such as Windows XP, Xbox game console, PocketPC handheld computers, they continue the same behavior.

I am not a person that usually writes letters such as this, but because of my involvement in the IT industry and the importance for the future, I felt compelled to write. The recent events with Enron only highlight more fully to me that the US Government has a definite oversight responsibility in industry. I do not believe that market forces alone will protect against abuse. Microsoft has been found to be a monopoly that misuses its position to protect and grow its markets. That behavior must be stopped. Please reconsider the decision and make strong, enforceable structural changes in Microsoft for the good of consumers and the industry. The US Government dealt with monopolistic issues with IBM and the industry did not disappear. Neither did IBM. I believe that the entire computer industry will be better off with a stronger penalty for Microsoft.

Sincerely yours,
William W. McLendon, Jr.
7905 Agape Lane
Waxhaw, NC 28173
woodym@mac.com

MTC–00028345

From: Robert Lancaster
To: Microsoft ATR
Date: 1/28/02 2:30pm
Subject: microsoft settlement

In regard to the settlement between Microsoft Corporation and the Department of Justice: On the findings of the District Court and the Court of Appeal, the settlement is no more than a gift from the DOJ to Microsoft, giving it the right and power to continue its monopolistic and predatory practices in spite of the above- mentioned legal judgements. In fact, its monopoly power would be effectively increased by the failure to require anything which would restrict the ability of XP, Hailstorm, and Microsoft's other current releases to control the user's access to the Internet and the World Wide Web and prevent any other competing innovative products from obtaining a foothold. A radical modification of what appears to be a shameful collusion to allow Microsoft to continue business as usual in defiance of the legal judgements of the courts is imperative for the continuance of free development, innovation, and entrepreneurship in this country (and even to some extent in the developed world).

Robert Lancaster
145 Fairview Lane, Paso Robles, CA

MTC–00028346

From: ROSIEMUS@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:31pm
Subject: microsoft settlement
To the Department of Justice:
1/28/02

I strongly believe that Microsoft and the American public deserve a fair, equitable, and timely settlement of the Microsoft dispute. Microsoft is the firm that ''got their first'' and through their innovative technologica and economic skills built the business that exists today. The entire technological industry is exploding now and growth has it's own momentum. Much of it is due to Microsoft that got the ball rolling. Now is the time to quit the haggling and let Microsoft get on with its business, unencumbered by repeated challenges.

I became a small stockholder in the 1980's because my intuition told me they were on track. They had the key that opened the door then, and I believe they still are a wonderful example of American ingenuity in an open market. Have me become a nation that punishes the successful? I hope not.

Sincerely,
Rose Musacchio
52 Bader Avenue
Gowanda,NY 14070

MTC–00028347

From: abelem@mcnet.marietta.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 2:31pm
Subject: Supporting microsoft

Dear Mr. Ashcroft:

I am writing to express to you my approval of the recent settlement in the antitrust dispute between Microsoft and the Department of Justice. The economy needed this settlement. The decline in the stock market began with the attacks on Microsoft.

I sincerely hope litigation on any level is terminated. Thank you for your time and please put me down in favor of the settlement.

Sincerely,
Mona Abele
Marietta, OH

MTC–00028348

From: Tom O'Toole
To: Microsoft ATR
Date: 1/28/02 2:33pm
Subject: To the District Court: Microsoft Antitrust case...
January 28, 2002
Honorable Court Officials,

I am writing today because I have been made aware of the Tunney Act permitting public comment on the proposed settlement between the U.S. Department of Justice and Microsoft Corp.

I strongly believe that the proposed settlement does little or nothing to curb the anticompetitive practices of which Microsoft has been found guilty. In particular, the settlement doesn't resolve the issue of software bundling, which is a fundamental part of the case against Microsoft. Under the terms of the settlement agreement, Microsoft will essentially be given carte blache to include whatever software components they desire into the Windows system which is pre-installed on approximately 90% of computer systems sold, and which has been shown to have a monopoly market. This permits them to continue to use their operating system monopoly to create monopolies in new markets, directly counter to antitrust law.

Microsoft has, in the face of legal action, monopolized the internet browser market, and is in the process of creating a monopoly in audio-visual software with Windows Media Player. The new Windows XP operating system requires users to register with Microsoft. This is just the first part of a plan to maintain a comprehensive database of almost all computer users. It will then be used to monopolize internet commerce using the .NET and Passport services being deployed by Microsoft. This is all being done with blithe disregard to the antitrust findings made by the U.S. court. This attitude (being above the law) was plainly evident in the demeanor of Bill Gates during the trial. Microsoft has preferred to spend vast quantities of money to make the case go away, mostly playing a game of delaying tactics. I feel this settlement gives them exactly what they want, and is antithetical to any concept of fairness.

Microsoft will probably try to ''stuff the ballot box'' with comments in favor of the settlement. It is a well known Microsoft tactic to use pseudo-'grassroots'' marketing efforts on internet newsgroups and bulletin boards, and I expect them to do that in this instance. I urge the court to see through this underhanded scheme and make a decision based on logic, precedent and fairness.

I am a computer user who uses several different systems: Macintosh, Linux and Windows, and I am deeply concerned about the future and what choices we consumers will have. Thank you very much for your time. I'm confident you will do the right thing.

Tom O'Toole
5885 El Cajon Blvd. #317
San Diego, CA 92115
ereiamjh@pacbell.net

MTC–00028349

From: sturde@az.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:33pm
Subject: Re: MS Settlement

Dear Madam:

The communication below states far more ably than I the reason the proposed DOJ/MS settlement is so objectionable. It simpley will not break the monopoly. If there is anti-trust law, if anti-trust law applies to MS and since MS has violated anti-trust law, then how will the proposed settlement break MS monopoly. It simpley will not.

James Sturdevant
Subject: Microsoft Settlement
Date: January 28, 2002
To: Renata B. Hesse Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Email: microsoft.atr@usdoj.gov
(Note: In the Subject line of the e-mail, type Microsoft Settlement.) Fax 1–202–307–1454 or 1–202–616–9937
From: Ralph Nader
P.O. Box 19312
Washington, DC 20036
James Love
Consumer Project on Technology
P.O. Box 19367
Washington, DC 20036

Introduction

Having examined the proposed consent final judgment for USA versus Microsoft, we offer the following comments. We note at the outset that the decision to push for a rapid negotiation appears to have placed the Department of Justice at a disadvantage, given Microsoft's apparently willingness to let this matter drag on for years, through different USDOJ antitrust chiefs, Presidents and judges. The proposal is obviously limited in terms of effectiveness by the desire to obtain a final order that is agreeable to Microsoft.

We are disappointed of course to see a move away from a structural remedy, which we believe would require less dependence upon future enforcement efforts and good faith by Microsoft, and which would jump start a more competitive market for applications. Within the limits of a conduct-only remedy, we make the following observations.

On the positive side, we find the proposed final order addresses important areas where Microsoft has abused its monopoly power, particularly in terms of its OEM licensing practices and on the issue of using interoperability as a weapon against consumers of non-Microsoft products. There are, however, important areas where the interoperability remedies should be stronger. For example, there is a need to have broader disclosure of file formats for popular office productivity and multimedia applications. Moreover, where Microsoft appears be given broad discretion to deploy intellectual property claims to avoid opening up its monopoly operating system where it will be needed the most, in terms of new interfaces and technologies. Moreover, the agreement appears to give Microsoft too many opportunities to undermine the free software movement.

We also find the agreement wanting in several other areas. It is astonishing that the agreement fails to provide any penalty for Microsoft's past misdeeds, creating both the sense that Microsoft is escaping punishment because of its extraordinary political and economic power, and undermining the value of antitrust penalties as a deterrent. Second, the agreement does not adequately address the concerns about Microsoft's failure to abide by the spirit or the letter of previous agreements, offering a weak oversight regime that suffers in several specific areas. Indeed, the proposed alternative dispute resolution for compliance with the agreement embraces many of the worst features of such systems, operating in secrecy, lacking independence, and open to undue influence from Microsoft.

OEM Licensing Remedies

We were pleased that the proposed final order provides for non-discriminatory licensing of Windows to OEMs, and that these remedies include multiple boot PCs, substitution of non-Microsoft middleware, changes in the management of visible icons and other issues. These remedies would have been more effective if they would have been extended to Microsoft Office, the other key component of Microsoft's monopoly power in the PC client software market, and if they permitted the removal of Microsoft products. But nonetheless, they are pro-competitive, and do represent real benefits to consumers.

Interoperability Remedies

Microsoft regularly punishes consumers who buy non-Microsoft products, or who fail to upgrade and repurchase newer versions of Microsoft products, by designing Microsoft Windows or Office products to be incompatible or non- interoperable with competitor software, or even older versions of its own software. It is therefore good that the proposed final order would require Microsoft to address a wide range of interoperability remedies, including for example the disclosures of APIs for Windows and Microsoft middleware products, non-discriminatory access to communications protocols used for services, and non-discriminatory licensing of certain intellectual property rights for Microsoft middleware products. There are, however, many areas where these remedies may be limited by Microsoft, and as is indicated by the record in this case, Microsoft can and does take advantage of any loopholes in contracts to create barriers to competition and enhance and extend its monopoly power.

Special Concerns for Free Software Movement The provisions in J.1 and J.2. appear to give Microsoft too much flexibility in withholding information on security grounds, and to provide Microsoft with the power to set unrealistic burdens on a rival's legitimate rights to obtain interoperability data. More generally, the provisions in D. regarding the sharing of technical information permit Microsoft to choose secrecy and limited disclosures over more openness. In particular, these clauses and others in the agreement do not reflect an appreciation for the importance of new software development models, including those ''open source'' or ''free'' software development models which are now widely recognized as providing an important safeguard against Microsoft monopoly power, and upon which the Internet depends.

The overall acceptance of Microsoft's limits on the sharing of technical information to the broader public is an important and in our view core flaw in the proposed agreement. The agreement should require that this information be as freely available as possible, with a high burden on Microsoft to justify secrecy. Indeed, there is ample evidence that Microsoft is focused on strategies to cripple the free software movement, which it publicly considers an important competitive threat. This is particularly true for software developed under the GNU Public License (GPL), which is used in GNU/Linux, the most important rival to Microsoft in the server market.

Consider, for example, comments earlier this year by Microsoft executive Jim Allchin:

http://news.cnet.com/news/0–1003–200–4833927.html ''Microsoft exec calls open source a threat to innovation,'' Bloomberg News, February 15, 2001, 11:00 a.m. PT

One of Microsoft's high-level executives says that freely distributed software code such as Linux could stifle innovation and that legislators need to understand the threat.

The result will be the demise of both intellectual property rights and the incentive to spend on research and development, Microsoft Windows operating-system chief Jim Allchin said this week. Microsoft has told U.S. lawmakers of its concern while discussing protection of intellectual property rights .

''Open source is an intellectual-property destroyer,'' Allchin said. ''''I can't imagine something that could be worse than this for the software business and the intellectual-property business.''

In a June 1, 2001 interview with the Chicago Sun Times, Microsoft CEO Steve Ballmer: again complained about the GNU/Linux business model, saying ''Linux is a cancer that attaches itself in an intellectual property sense to everything it touches. That's the way that the license works,''1 leading to a round of new stories, including for example this account in CNET.Com:

http://news.cnet.com/news/0–1003–200–6291224.html ''Why Microsoft is wary of open source: Joe Wilcox and Stephen Shankland in CNET.com, June 18, 2001. There's more to Microsoft's recent attacks on the open-source movement than mere rhetoric: Linux's popularity could hinder the software giant in its quest to gain control of a server market that's crucial to its long-term goals

Recent public statements by Microsoft executives have cast Linux and the open-source philosophy that underlies it as, at the minimum, bad for competition, and, at worst, a ''cancer'' to everything it touches.

Behind the war of words, analysts say, is evidence that Microsoft is increasingly concerned about Linux and its growing popularity. The Unix-like operating system ''has clearly emerged as the spoiler that will prevent Microsoft from achieving a dominant position'' in the worldwide server operating-system market, IDC analyst A1 Gillen concludes in a forthcoming report.

* While Linux hasn't displaced Windows, it has made serious inroads. . .]. . In attacking Linux and open source, Microsoft finds itself competing ''not against another company, but against a grassroots movement,'' said Paul Dain, director of application development at Emeryville, Calif.- based Wirestone, a technology services company.

Microsoft has also criticized the General Public License (GPL) that governs the heart of Linux. Under this license, changes to the Linux core, or kernel, must also be governed by the GPL. The license means that if a company changes the kernel, it must publish the changes and can't keep them proprietary if it plans to distribute the code externally.

Microsoft's open-source attacks come at a time when the company has been putting the pricing squeeze on customers. In early May, Microsoft revamped software licensing, raising upgrades between 33 percent and 107 percent, according to Gartner. A large percentage of Microsoft business customers could in fact be compelled to upgrade to Office XP before Oct. 1 or pay a heftier purchase price later on.

The action ''will encourage—'force'' may be a more accurate term—customers to upgrade much sooner than they had otherwise planned,'' Gillen noted in the IDC report. ''Once the honeymoon period runs out in October 2001, the only way to ''upgrade'' from a product that is not considered to be current technology is to buy a brand-new full license. ''''

This could make open-source Linux's GPL more attractive to some customers feeling trapped by the price hike, Gillen said. ''Offering this form of ''upgrade protection'' may motivate some users to seriously consider alternatives to Microsoft technology.''

What is surprising is that the US Department of Justice allowed Microsoft to place so many provisions in the agreement that can be used to undermine the free software movement. Note for example that under J.1 and J.2 of the proposed final order, Microsoft can withhold technical information from third parties on the grounds that Microsoft does not certify the ''authenticity and viability of its business,'' while at the same time it is describing the licensing system for Linux as a ''cancer'' that threatens the demise of both the intellectual property rights system and the future of research and development.

The agreement provides Microsoft with a rich set of strategies to undermine the development of free software, which depends upon the free sharing of technical information with the general public, taking advantage of the collective intelligence of users of software, who share ideas on improvements in the code. If Microsoft can tightly control access to technical information under a court approved plan, or charge fees, and use its monopoly power over the client space to migrate users to proprietary interfaces, it will harm the development of key alternatives, and lead to a less contestable and less competitive platform, with more consumer lock-in, and more consumer harm, as Microsoft continues to hike up its prices for its monopoly products.

Problems with the term and the enforcement mechanism Another core concern with the proposed final order concerns the term of the agreement and the enforcement mechanisms. We believe a five-to-seven year term is artificially brief, considering that this case has already been litigated in one form or another since 1994, and the fact that Microsoft's dominance in the client OS market is stronger today than it has ever been, and it has yet to face a significant competitive threat in the client OS market. An artificial end will give Microsoft yet another incentive to delay, meeting each new problem with an endless round of evasions and creative methods of circumventing the pro-competitive aspects of the agreement. Only if Microsoft believes it will have to come to terms with its obligations will it modify its strategy of anticompetitive abuses.

Even within the brief period of the term of the agreement, Microsoft has too much room to co-opt the enforcement effort. Microsoft, despite having been found to be a law breaker by the courts, is given the right to select one member of the three members of the Technical Committee, who in turn gets a voice in selecting the third member. The committee is gagged, and sworn to secrecy, denying the public any information on Microsoft's compliance with the agreement, and will be paid by Microsoft, working inside Microsoft's headquarters. The public won't know if this committee spends its time playing golf with Microsoft executives, or investigating Microsoft's anticompetitive activities. Its ability to interview Microsoft employees will be extremely limited by the provisions that give Microsoft the opportunity to insist on having its lawyers present. One would be hard pressed to imagine an enforcement mechanism that would do less to make Microsoft accountable, which is probably why Microsoft has accepted its terms of reference.

In its 1984 agreement with the European Commission, IBM was required to affirmatively resolve compatibility issues raised by its competitors, and the EC staff had annual meetings with IBM to review its progress in resolve disputes. The EC reserved the right to revisit its enforcement action on IBM if it was not satisfied with IBM's conduct.

The court could require that the Department of Justice itself or some truly independent parties appoint the members of the TC, and give the TC real investigative powers, take them off Microsoft's payroll, and give them staff and the authority to inform the public of progress in resolving compliance problems, including for example an annual report that could include information on past complaints, as well as suggestions for modifications of the order that may be warranted by Microsoft's conduct. The TC could be given real enforcement powers, such as the power to levy fines on Microsoft. The level of fines that would serve as a deterrent for cash rich Microsoft would be difficult to fathom, but one might make these fines deter more by directing the money to be paid into trust funds that would fund the development of free software, an endeavor that Microsoft has indicated it strongly opposes as a threat to its own monopoly. This would give Microsoft a much greater incentive to abide by the agreement.

Failure to address Ill Gotten Gains

Completely missing from the proposed final order is anything that would make Microsoft pay for its past misdeeds, and this is an omission that must be remedied. Microsoft is hardly a first time offender, and has never shown remorse for its conduct, choosing instead to repeatedly attack the motives and character of officers of the government and members of the judiciary.

Microsoft has profited richly from the maintenance of its monopoly. On September 30, 2001, Microsoft reported cash and short-term investments of $36.2 billion, up from $31.6 billion the previous quarter—an accumulation of more than $1.5 billion per month.

It is astounding that Microsoft would face only a ''sin no more'' edict from a court, after its long and tortured history of evasion of antitrust enforcement and its extraordinary embrace of anticompetitive practices—practices recognized as illegal by all members of the DC Circuit court. The court has a wide range of options that would address the most egregious of Microsoft's past misdeeds. For example, even if the court decided to forgo the break-up of the Windows and Office parts of the company, it could require more targeted divestitures, such as divestitures of its browser technology and media player technologies, denying Microsoft the fruits of its illegal conduct, and it could require affirmative support for rival middleware products that it illegally acted to sabotage. Instead the proposed order permits Microsoft to consolidate the benefits from past misdeeds, while preparing for a weak oversight body tasked with monitoring future misdeeds only. What kind of a signal does this send to the public and to other large corporate law breakers? That economic crimes pay!

Please consider these and other criticisms of the settlement proposal, and avoid if possible yet another weak ending to a Microsoft antitrust case. Better to send this unchastened monopoly juggernaut a sterner message. sturde@az.com

MTC–00028349 0007

MTC–00028350

From: Scott Shriver
To: Microsoft ATR
Date: 1/28/02 2:33pm
Subject: Microsoft Settlement

To Whom It May Concern:

I hope it's not too late to voice my objection to any plan requiring Microsoft to provide computers to schools as part of a settlement in the

DOJ's antitrust suit against the corporation.

As the computer lab supervisor in an Ohio middle school, I never thought I'd see the day when I'd turn down the possibility of free computer equipment or software. We sure could use whatever assistance may be provided in our goal of increasing student access to computers and the Internet. The substantial costs of modern technology makes it difficult to provide quality technology instruction in any but the most affluent schools. I know the objective is to penalize Microsoft in a way that helps our nation succeed in reforming and invigorating our public school system, but as well-meaning and obvious as this solution may seem, to give such a ''gift'' of computers will create several potential difficulties.

I have used ''Wintel'' computers for many years and have only recently replaced worn-out machines with comparable Apple iMac computers. I have used identical software on both machines and find that the Macintosh is far easier to instruct with and keep running. Maintenance and troubleshooting time has been slashed. Networking, even between Macintosh and Windows machines has never been easier. Our school is now reaching the conclusion of a long process of migrating to the Mac platform.

Apple has worked hard, I am sure to maintain a niche in the education market and has rebounded from recent economic problems. They would have difficulty competing with a company that is literally giving away their products to schools. The proposed settlement will cost Microsoft some money, to be sure. But the gains made by the company as it seeks to make inroads into the education sector will, I believe, more than make up for the heartburn of giving away product. In fact, I would liken this settlement solution to Brer Rabbit's briar patch: they may complain about the cost, but they would relish the opportunity to get away with a forced increase in marketshare. It is my

opinion that to provide any settlement to Microsoft which would erode Apple's ability to continue to provide great service and equipment to the education market does a disservice to the corporation as well as to schools.

Couldn't Microsoft be asked to provide either free technology OR a comparable amount of money that might be used to purchase technology of choice for the schools?

Thank you for your time and attention.

Very sincerely,

R. Scott Shriver

R. Scott Shriver

Talawanda Middle School voice: 513.523.1989

4030 Oxford-Reily Road fax: 513.523.5144

Oxford, OH 45056–8943 email: sshriver@po.tcs.k12.oh.us

MTC–00028351

From: E F
To: Microsoft ATR
Date: 1/28/02 2:33pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I honorably object to the Proposed Final Judgment in the Microsoft case. There are several flaws with in the final proposal. One noticeable error is keeping Microsoft intact and not severely admonishing them for violating anti-trust laws. Another apparent defect entails the ineptitude to establish an effective mechanism that implements restrictions or regulations on MS.

As stated in the proposed settlement, Microsoft must comply with restrictions encompassed in the agreement. A three man compliance team will oversee and insure that Microsoft comply with the stated rules and regulations. Taking a closer look however, this three-man oversight team will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team.

Yet, in the likelihood of any enforcement proceeding, all findings by the oversight committee will not be allowed into court. The sole purpose of the committee is to inform the Justice Department of all infractions by Microsoft. Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions.

What does this all mean? Translation- the oversight committee purely is an absentee landlord, who will not scrutinize Microsofts business dealings. Therefore in all fairness, the Proposed Final Judgment does not sufficiently provide the appropriate restrictions or penalties placed on Microsoft. What reassurance do we have that Microsoft will not continue to abuse it monopoly position and break the anti-trust laws? I can assure you that the Proposed Final Judgment will not effectively address the question in this matter. Therefore I respectfully submit to the court my objection to this Proposed Final Judgment.

Sincerely,

Eric Fontanilla

1855 Baring Blvd Apt 2105

Sparks, NV 89434

MTC–00028352

From: Steve Bentley
To: Microsoft ATR
Date: 1/28/02 2:34pm
Subject: Microsoft Settlement

Dear Sirs:

I am writing this in regards to the proposed Microsoft settlement. I am against accepting the proposal as currently understood.

Perhaps it is only my naivety that I continue to imagine that one of the roles of government is to protect the little guy from those more powerful then himself. In that vein, Microsoft is the bully on the block that us little people need government to step in and protect us from. The ''slap on the wrist'' provided by the settlement as currently proposed does not, in my view, do any more than say to Microsoft that it is acceptable to continue to be the bully on the block. This proposed settlement would be akin to telling the bully at school to give back 1 cent of every dollar extorted from your classmates, hardly a just penalty.

Thank you for considering my arguments against accepting the proposal before you.

Sincerely,

Steve Bentley

187 W Randall Ave.

Norfolk, VA 23503

(757) 583–5919

NAstarchld@sybercom.net

MTC–00028353

From: Mildred/Jerry
To: Microsoft ATR
Date: 1/28/02 2:33pm
Subject: 910 Hester Drive

910 Hester Drive
Harrison, AR 72601
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my support of the settlement reached between the Justice Department and Microsoft in the antitrust case in federal court.

I am glad that this case is in its final stages. Microsoft and its competition have spent far too much time competing in court rather than in the marketplace. The case has drained resources on both sides for far too long and should be brought to an end as soon as possible.

In order to foster greater competition and consumer choice, Microsoft has agreed to design future versions of Windows to provide a mechanism to make it easier for computer makers, consumers and software developers to promote non-Microsoft software within Windows. It is in the public's best interest to implement this agreement so that the industry and consumers can take advantage of the new opportunities for competition and choice.

Sincerely,

Jerry Roberts

cc: Representative Bob Stump

MTC–00028354

From: FELLNER, CLAYTON
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:37pm
Subject: Microsoft Settlement

To whom it may concern,

I have used Microsoft products for many years. I want you to know that I believe their products are superior in many ways to their competitors. I enjoy the fact that many of their products are integrated into their operating system. This is a feature that is very useful for people like me, with little computer savvy.

Even though I don't consider myself a technical wizard, I am by no means a hapless victim who cannot choose software that is useful to me. And I do not think that the government has any right to decide what can be in my computer. Also, I resent the idea that a successful business and its products are a threat to anyone, especially me.

This antitrust case was brought about by Microsoft's whiny competitors, not disgruntled customers. Failed businesses must not be allowed to set the rules for the markets in which they failed. Continued application of the antitrust laws against successful businessmen can only lead to corruption and economic disaster as shown in many other countries.

I want to see an America where success is not discouraged or punished, but embraced and held as a goal for others to reach for. I want a free America where anyone with enough intelligence and hard work can be a self-made man like Microsoft Chairman Bill Gates.

And lastly, and most importantly, Microsoft has a fundamental right to its property. It is the government's job to protect this right, not to take it away.

Regards,

Clayton Fellner

3813 Harrison Drive

Carrollton, TX 75010

CC:'activism(a)moraldefense.com''

MTC–00028355

From: Andrew Johnson
To: Microsoft ATR
Date: 1/28/02 2:35pm
Subject: Microsoft Settlement

It is my belief the current proposed settlement with Microsoft is insufficient to punish Microsoft for illegally attempting to extend its desktop operating systems monopoly and to prevent it from re-attempting illegal activities in the future. While I believe an oversight board is necessary to ensure Microsoft's compliance with the court's ruling, I do not believe an oversight board alone is enough.

In the past, Microsoft has used its control of proprietary protocols and application programming interfaces (APIs), and extensions to open protocols and APIs, to prevent third party software from interacting properly with Windows. This has forced users wanting to use these protocols with Windows to use other Microsoft software, rather than third party software. It is also clear Microsoft intends to use similar tactics to establish a lock on Internet traffic and e-commerce through its control of .NET/ HailStorm, MSN, and its other online properties. By causing Windows to require use of Microsoft online properties such as Passport, and building hooks to other

Microsoft online properties into Windows, Microsoft hopes extend its desktop operating system monopoly to control the Web sites a user sees and uses on the Internet. Businesses trying to reach consumers via the Internet will have to do business with Microsoft or lose a vast majority of their audience.

I propose two additions to the settlement that will hopefully deny Microsoft the ability to illegally extend their current monopoly into new markets while allowing the company to retain its current monopoly and its ability to innovate:

(1) Require Microsoft to publish all of its proprietary application programming interfaces (APIs) and protocols, and require its software to comply with published protocols. By forcing Microsoft to publish all of its proprietary protocols and APIs, the settlement would ensure non-Windows software could interoperate freely with Windows desktop software. Microsoft would also be required to comply with public specifications from third parties, since it has ''embraced and extended'' public protocols in the past in such a way as to prevent users from using third party software with Windows. The oversight board, in addition to ensuring Microsoft publishes all of its protocols and APIs, would monitor Microsoft for compliance with its own standards and standards published by others. It would receive and investigate complaints from third parties questioning the corporation's compliance, and take appropriate action if Microsoft was found to be incorrectly implementing standards to lock users into using only Microsoft software.

(2) Require Microsoft to divest MSN and its other online properties, and bar it from owning online services in the future. This will prevent Microsoft from using its desktop monopoly to gain a monopoly on Internet traffic in general and Internet-based e-commerce in specific. Microsoft would be free to develop innovative new software solutions, but would be unable to use them to coerce users to use its online services only. Adding these provisions to the Microsoft anti-trust settlement will both tangibly punish Microsoft for attempting to illegally extend its monopoly and help prevent it from doing the same in the future. Microsoft's monopoly in desktop operating systems would remain intact, as well as Microsoft's freedom to innovate. These measures would force the corporation to be a good industry citizen by denying it the capability to take advantage of its desktop operating system monopoly to dominate other markets.

Thank you for your time and consideration.

Lawrence Andrew Johnson
andy@lightweapons.com

MTC–00028356

From: Cheeseater
To: Microsoft ATR
Date: 1/28/02 2:37pm
Subject: Microsoft Settlement

Dear Judge Kotelly,

I have been informed that you have the responsibility of reviewing the Microsoft antitrust case. I wanted to take a second of your time to express my opinion on this matter. As many know, the Microsoft Corporation has been trying to corner the computer market for nearly a decade. This latest move in attempting to get what is essentially a governmental exemption from antitrust laws. Please do all you can to stop this abuse of our justice system and to help us retain our free market system. Competition is vital to our survival as a nation. Please don't let Microsoft have their way with us and our government. Thank you for your time.

Sincerely,
Adam S. Hammill
1247 W. 30th St. #117
Los Angeles, CA 90007
(323) 733–5381
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028357

From: Tom Ulrich
To: Microsoft ATR
Date: 1/28/02 2:36pm
Subject: Microsoft Case Concerns

Please see the attached letter with comments and concerns.

Thank you.
Tom Ulrich
Arthur N. Ulrich Company
tulrich@anu-co.com
800–848–2090
1≤ARTHUR N. ULRICH COMPANY FAX 740–927–6017
10340 PALMER RD. S.W. PATASKALA, OHIO 43062 740–927–8244 TOLL FREE 800–848–2090
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft

Why is there hesitation in Washington to finalize the settlement in the Microsoft case? The cost to the taxpayers of this nation for the government's attacks on one of our nation's most successful companies has been enormous. Not only have we funded what appears to be a vindictive attack via our tax dollars; we have watched billions or trillions of dollars in value evaporate from our personal investments, our profit sharing programs, and our retirement and mutual funds as the market values of Microsoft and other technology related firms fell precipitously as a direct result of the government's illogical efforts.

I'm just a middle class American and a small time investor, but the losses on just the 200 shares of Microsoft stock I owned was nearly equivalent to one-year s tuition and board for my daughter at Miami University. That is not an insignificant amount to me, and it is the Justice Department I have viewed though this process as the ''enemy'' of the consumer, not Microsoft! The posturing of the Department and that of many state attorney generals lining up for their ''dibs'' reminds me a bunch of blood sucking parasites.

My suspicion is that there must be BIG MONEY SPECIAL INTERESTS that prodded the original investigations and that must continue to do so, and that disturbs me. In a market economy, the government generally should not take ''sides'' in commercial and marketing issues Letting Microsoft get back to business would significantly help end the recession; spending tax money on more litigation certainly would not help the national recovery.

I run a small business and have been a Microsoft user since the mid-80s. I have been using Microsoft not because they were a monopoly holding a gun to my head, but because they have created decent and useful products. We don't use them for all our needs; and in fact use Novell and IBM/Lotus for our networking requirements because of their features and benefits. I don't like their latest activation'' policies on XP products, but not once have I felt ''trapped'' or ''manipulated'' into having to buy, use or upgrade Microsoft products.

Please—can't we, for the public good, just get this case over with, and let Microsoft and others in the industry get back to the business of computers.

Sincerely,
Thomas Ulrich
cc: Senator Mike DeWine

MTC–00028358

From: thunderhawk
To: Microsoft ATR
Date: 1/28/02 2:37pm
Subject: Microsoft settelment
Dennis C. Daggett
363 Center Road
Lopez Island, WA 98261–8298
Jnauary 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settelment. The issue was brought about by the former administration that simply did not understand the technology industry. They ignored one of the things that makes our country the best in the world, our free enterprise system. Then to top it all off, they extended their socialistic philosophy to apply antiquated antitrust laws to a band new industry.

In the free market, Microsoft rose to the top because they had the best products. Their products are user friendly and Microsoft has made them very easy to integrate and at lower cost than the alternitives. It is no wonder that where people had a choice most choose Microsoft software. Under the terms of the settelment Microsoft has agreed to allow computer makers the flexibility to install and promote any software they see fit. Microsoft has also agreed not to enter into any agreement that would require a computer maker to use a fixed percentage of Microsoft software. I beleive that computer makers will continue to predominatly pre install Microsoftware because it is the best and most computer buyers will chose a Microsoft windows based computer when making a new perchase. This is not a monoply problem, Microsft simply is, supplying a better product and most people know it.

My experiance as supervisor of an electric power generation plant for over 15 years, offered me the oppertunity to try many brands of computer software products and computer equipment. What I found over time

was that even when cost was not a consideration, products that were not Microsft based, did not perform satisfactorly. Microsoft products and windows based computers were simply the best. On top of that we experianced significant savings over other options. Sure Microsoft has made a lot of money, but can you imagine the cost to the people of our nation if Microsoft and all they have provided for us vanished or had never existed? This is my plea for justice in our mecanized and technological society. Microsoft has gotten to where they are by developing better products, not by crushing their competitors.

This suit and the fact it has gone on for over three years is simply mind-boggling. It is time to end it. DO NOT PUNISH MICROSOFT FOR BEING BETTER. Please acept the Microsoft antitrust settelment.

Sincerely,
Dennis C. Daggett

MTC–00028359

From: Jason Irwin
To: Microsoft ATR
Date: 1/28/02 2:35pm
Subject: Microsoft Settlement

I am a concerned citizen who does not think that Microsoft should have been granted the Proposed Final Judgment by the Justice Department. Please review these proceedings so that Microsoft will not have a monopoly. There are laws in place to ensure that there are not monopolies in business in the US and I think they should be abided by.

Jason Irwin
510 Irving Ave
San Jose, CA 95128
408–977–1512
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028360

From: Helen Bauch
To: Microsoft ATR
Date: 1/28/02 2:36pm
Subject: Microsoft Settlement
Food Smarts
1119 S. Mission Rd.
Fallbrook, CA 92028
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

For over three years the Department of Justice and the Microsoft Corporation have been pouring millions of dollars down the drain due to court costs. The antitrust suit that was filed against Microsoft has not only cost these two entities millions, but look at what happened to the market after the suit was launched. The suit has cost more than millions, just look at the recession that it has partially caused.

Although the suit should have never been initiated to begin with, I am relieved to see that a settlement has been reached. The settlement is the best thing that could have happened to the antitrust case, and it will benefit the economy. Microsoft's competitors can now produce and ship software that competes with Microsoft's, and will not have to worry about Microsoft trying to prevent that. They have agreed not to retaliate against competitors, which is a move that will boost competition and result in an overall better product. This will encourage people to hit the stores, which will push up the economy. Everyone wins.

I support this settlement, and urge you to implement as soon as possible.

Sincerely,
Helen Bauch
cc: Representative Darrell Issa
Helen Bauch
Food Smarts
1119 S. Mission Rd. PMB317
Fallbrook, CA 92028–3225
(760) 731–9911 FAX (760) 731–9922

MTC–00028361

From: Paul Tait
To: Microsoft ATR
Date: 1/28/02 2:37pm
Subject: Microsoft Settlement
26484 Carrington Boulevard
Perrysburg, OH 43551
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am what you is usually called a ''head hunter''. I try to find qualified personnel for companies. I therefore have a good idea of how the business world is doing, or not doing. Unfortunately, it is not doing very well, and I put much of the blame for this on the antitrust suit brought against Microsoft. This case was totally unwarranted. All these firms started out on the same playing field.

Microsoft is a firm that created a product that people wanted. Bill Gates standardized computer software, allowing the average person to understand computers, and computer programs. There was no need to have five different programs to do a spreadsheet. Bill Gates simply was the best at giving the consumer what they wanted.

Microsoft has been more than accommodating to the Department of Justice's demands. Microsoft has agreed to a technical committee to oversee future adherence; Microsoft has agreed to grant computer makers broad new license to configure Windows as to promote non-Microsoft software; Microsoft has agreed to terms that extend far beyond the products and procedures that were actually at issue in the original suit.

Let's put this matter to rest. I urge you to give your support to this agreement. We need to help our country get beyond this pettiness.

Sincerely,
Paul M.Tait
Consulting and Recruiting
paulm—tait@yahoo.com
(419)874–1500
Perrysburg, Ohio 43551

MTC–00028362

From: Peter Schultz
To: Microsoft ATR
Date: 1/28/02 3:38pm
Subject: Microsoft Settlement

Hello,

The current status of the Microsoft anti-trust case scares me.

When I first got into computers it was 1995 and I thought Windows 95 would be the way to go. The price was better than Apple Macintosh and the whole platform seemed better for programmers. After a short time I became frustrated by the stability of Windows so I began searching for a better alternative.

Then fortune struck! It was late 1996 and I was looking through a Macintosh related magazine when I came across an article about the BeBox by Be, Incorporated. This brand new and highly innovative computer had dual processors and ran the Be operating system, all of which was engineered from the ground up to be modern, or as they called it, a system for the next millennium. I hopped on the Internet right away and looked into buying one of these BeBoxes and found to my surprise that I could get one for a very good price. This system made me happy because I never had any mysterious system problems that required me to waste my time reinstalling as I had done many times with Windows.

Soon thereafter BeOS was up and running on Intel compatible computers and being a total computer geek I had always wanted a laptop computer. So in 1998 I purchased a Dell Inspiron 3000, which I had figured would be able to run BeOS. I was right, Be had the resources to make this possible and I was able to stay current with their latest developments.

There is an alternate side to this Dell computer. It was purchased only weeks before Windows 98 was released yet I did not get any credit for the purchase and was given an ugly hacked version of Windows 95 that made it look like Windows 98. Here's another reason I'm very upset by Microsoft. To my absolute horror this unstable factory installation only lasted about a week before I had to do a clean install of Windows! You'll note that this is the one of the disputed factors in the antitrust case, the tying in of Internet Explorer to Windows 95 is not only a questionable business practice, but it made my brand new very expensive computer a pile of junk.

I called Dell about this and since it was a software problem they brushed it off. I then called Microsoft and before I even talked to an actual person I was informed that I would have to pay them money to even talk to anyone! I instantly hung up the phone and felt angry, sad, and helpless to this ugly situation. I thought to myself, ''why after having spent over $3000 am I being treated this way?'' It was at this time that I decided I did not agree with the Microsoft End User License Agreement and called Dell back to see about getting compensation for this. Dell told me it would not be possible.

I eventually brushed it off because I was primarily a BeOS user and had great hope that Be would be able to continue developing their amazing OS. Unfortunately, Microsoft's stranglehold made it nearly impossible for BeOS to be installed on factory systems and now the result is that for all anyone knows, BeOS will never be updated again! Palm, Inc. has recently purchased the technology and there may be a chance that the public will see another version, but there's just no way to tell.

Microsoft has steadily moved from shrewd business to leveraging everyone into doing what they want. As a computer science student and a part-time consultant I deal with Microsoft in some way everyday. This is not by choice! If I were to attempt to discontinue the use and/or support of Microsoft products I would be putting myself into obscurity. It might be a case where I won't be able to view important documents that are only readable by the latest version of Microsoft Office, or it might be that a web page is only designed to be viewed in Microsoft Internet Explorer. Ask any Macintosh user what would happen if these applications were not available for their platform.

Microsoft is a massive corporation that has gone beyond mere profit and has long been in the business of screwing people over. Even as they have been on trial for being a monopoly they have been making their position stronger. They recently purchased Great Plains Software here in Fargo, North Dakota, and I'm sure it won't take long before they're dominating the small business software market.

As a user who depends on computers for my livelihood I feel depressed about this, and I know that I'm not alone. This American company is making people across the entire planet feel as I do, please do something soon so that at the very least we can enjoy a good variety of platforms. My hope is that your decision will be such that Palm sees opportunity with BeOS and that other small truly innovative companies also see openings thereby giving users like me a choice. As for today the future of computing is gloomy, grayed over by the drab blanket that is Microsoft.

Without your intervention I see absolutely no hope for small truly innovative companies like Be.

Do not simply settle for handing power off to Apple; give it all back to the people. I want Microsoft to hurt as badly as they've hurt me.

Sincerely,
Peter Schultz
1105 13th Ave. N #2
Fargo, ND 58102

MTC–00028363

From: dave parsh
To: Microsoft ATR
Date: 1/28/02 2:37pm
Subject: Microsoft Settlement

I would like to give an opinion no the Microsoft case.

Microsoft is a powerful, innovative company. The sould be congratulated on their success, not punished. In the United States, if we allow people to be creative and innovative then our society will be a better place. By restricting and punishing people for being excellent at what they do, people will be less inclined to take risks and improve our lives. Microsoft's success is at the heart of a capitalistic society. They must continue to innovate and produce new products or else they will fail as a business.

They should not be punished for being successful.

Dave Parsh

MTC–00028364

From: Jamie Folsom
To: Microsoft ATR
Date: 1/28/02 2:38pm
Subject: Microsoft Settlement

I am a web developer for a public tv station, making web sites for kids, and in my professional work have seen much to be concerned about regarding Microsoft's business practices.

Microsoft, in its business and technical decisions, has shown deep-rooted disregard for the openness of the internet, an engine of economic possibility, and has coopted standards ''for the benefit of competition/consumers/<fill in the blank>'', when it suits their purposes.

The Microsoft money machine, a bulldozer in the rain forest of software diversity, must be kept in check, and companies, technologies and individuals inclined to contribute to this great new medium must be clearly told that their freedom, in the form of open, commonly owned standards, will be defended.

Thanks
Jamie Folsom
jamie.folsom@post.harvard.edu

MTC–00028365

From: Mark Moran
To: Microsoft ATR
Date: 1/28/02 2:38pm
Subject: Microsoft Settlement
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I understand that Microsoft and the Department of Justice have decided to reach a settlement in the antitrust lawsuit that has been dragging on for the last three years. I never agreed with this case from the beginning, and I hope to see this settlement finalized in the near future.

Settling now will only have positive effects on the industry as well as the economy. Microsoft will share information with its competitors regarding Windows, and redesign the operating system to allow other companies'' software to be placed within the system. Competition will increase and the consumers will see many more choices in the marketplace.

Thank you for stopping this litigation. We need to put this case to rest so that Microsoft can get back to creating great products, and the government can focus its energies on more important issues.

Sincerely,
Mark Moran
309 W. 109th St. #5F
New York, NY 10025

MTC–00028366

From: J F
To: Microsoft ATR
Date: 1/28/02 2:39pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am filing my personal objection to the proposed final judgment on the Microsoft case. Supposedly, the Court has found Microsoft guilty of violating all rules of proper business ethics and practices. However with the PFJ, the Department of Justice throws out, if not abandons all previous court findings that indicts Microsoft. In fact, the PFJ permits Microsoft to continue with its monopolistic and predatory practices, which in my opinion is a detriment not only to the software sector but also to the technology industry as a whole. Without a doubt, I strongly believe you will receive thousands of similar appeals encompassing the many flaws that are apparent in the proposed final settlement. My main focus entails one fundamental flaw clearly noticeable in the proposed settlement: The PFJ does not effectively break up Microsoft, but in fact allows Microsoft to leverage its current market position, or should I say, Monopoly to expand its business into several other technology markets. Under the general rule, most monopolies in the past, such as AT&T and Standard Oil, are either broken up or carefully regulated. However, Microsoft is given a pardon or a waiver to this general rule of thumb altogether. The implementation of reprimands by the Justice Department is not a cure-all to the MS calamity. As history has proven over and over again, Microsoft will undoubtedly abuse its monopoly position at the expense of others. Unless something extraordinary is done such as breaking up Microsofts business into several parts or meting out severe punishment, Microsoft will persistently continue to implement illegal business practices. I submit to the Court my rejection to the Proposed Final Judgment.

All the Best,
Jennifer Fontanilla
Eric Fontanilla
1855 Baring Blvd Apt 2105
Sparks, NV 89434

MTC–00028367

From: Dave Walton
To: Microsoft ATR
Date: 1/28/02 2:50pm
Subject: Microsoft Settlement

I urge you to reject the negotiated settlement with Microsoft.

The only way I see that you can prevent monopolistic and anti-competitive practices that have continued to this day is to separate the Applications and Operating Systems divisions of Microsoft into different companies. It is essential that their Application programs be ported to work with operating systems other than Windows.

I am seriously concerned that representatives of our government could have negotiated a settlement with Microsoft that does nothing to punish them for the acts they have been found guilty of, and does nothing to prevent such acts in the future. I urge you to open all proceedings to public scrutiny so we can see just what transpired that allowed this to happen. I question the impartiality and motivations of those responsible.

Thank You
Dave Walton
2986 Warrington Road
Shaker Heights OH 44120
216–751–6646
Walton@Ameritech.Net

MTC–00028368

From: Gregg Williams

To: Microsoft ATR
Date: 1/28/02 2:41pm
Subject: Microsoft Settlement

Dear Department of Justice:

I am writing regarding the Microsoft settlement as someone with more-than-average credentials to have an opinion. From 1979 to 1988, I was Senior Editor of BYTE magazine, the personal computer industry's first major magazine. From 1988 to 1998, I worked for Apple Computer, where I wrote to third-party developers about the advantages of the Mac OS platform over the Microsoft Windows platform. In both jobs, it was my responsibility to be aware of Microsoft's acts and how they affected the computer industry.

With that introduction, let me add my voice to that of the many people and companies who believe that the Department of Justice's proposed settlement is not in the public interest. The final judgment after a trial should punish the guilty, discourage similar offenses in the future, and if possible, repair the damage done. The proposed settlement actually causes harm, in several ways: It does not provide the remedy that it was meant to; it implicitly encourages the reoccurrence of similar wrongdoing; and it does not address significant larger issues that need attention.

The final judgment for this case is important in more than just its immediate context; it also has important consequences in our increasingly digital world. Our country (and the world) has most of its eggs in one basket—Microsoft's—and this is dangerous. Just as any natural ecology is endangered when its diversity is lessened and one species dominates, so is our digital ecology endangered by Microsoft's overwhelming market share and its stifling of competition. As just one example, observe the devastating effects of the denial-of-service attacks against amazon.com and other online businesses a few years ago. They would not have been as effective if a significant fraction of the country's Internet users had not been using Microsoft's email programs. Also, all hacker attacks are tied to the vulnerability of a specific product; if there were, say, three email programs and three browser programs in common usage (instead of Microsoft's Outlook and Internet Explorer), such attacks would injure fewer users, spread more slowly, and consume less Internet bandwidth than is the case today. For the above reasons, this judgment is doubly important, and the currently proposed judgment is doubly dangerous. I believe that a good final judgment must both prevent further wrongdoing and counteract Microsoft's dominance in current and future markets. Any attempt to regulate Microsoft's conduct MUST be given the resources to succeed, and its workings MUST be visible to the public. Without these two provisions, Microsoft will evade lawful punishment again, just as it did in the mid-1990s.

Finally, Microsoft should be made aware that it has no say in selecting or refusing its punishment. Nor should the court be pressured into compromise for fear that punishing Microsoft will damage this nation's economy. In fact, it is Microsoft's actions that are causing long-term damage, and any judgment that leads to competition, innovation, and meaningful customer choice will help repair that damage our economy.

I support the efforts of the states that are pressing for a more comprehensive punishment for Microsoft's illegal acts. As an informed and active citizen, I expect nothing less.

I submit my opinion to the Department of Justice with great respect, out of a deep concern for this nation's long-term technological and economic health.

Gregg Williams, greggw@telocity.com

MTC–00028369

From: Karenlda@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:43pm
Subject: Microsoft

To The Department of Justice

I hope Judge Colleen Koller-Kotelly does not forget about all of us who use Microsoft products and are very satisfied with their performance. They produce a very good product that is easy to use. You get what you pay for! Unfortunately, I have a MAC Power Book and MSN does not have a compatible internet program. At present I have AOL (overpriced) but plan to buy a new laptop that is MSN compatible and cancel my AOL. Has anyone ever told us how many cancel AOL?.....or only brag about how many sign up. Fortunately, the world is full of choices and I am no longer interested in contributing to dissenting states with my AOL monthly fee. Netscape did themselves in and AOL was stupid to buy them. Everyone should read Erick Schonfeld's January 25, 2002 ''A RIDDLE: WHY DOES NETSCAPE STILL EXIST?''. He tells it like it is!

AOL stock is down 50% since I sold mine and a lawsuit against Microsoft is not going to bring it back up.

I am getting fed up with my tax dollars paying for goverment funded lawsuits and in the States vs Microsoft it needs to be settled in a reasonable manner. If Microsoft had beeen contributing to Clinton as the illegal Asian money he probably would have told the DOJ to back off and let Netscape finance their own lawsuit. As it should have been. The nine disssenting states are beginning to sound revengeful and stupid.

I guess they see success and money and their fangs go out. They seem to be blind to the fact that a reasonable settlement could also affect the business in their state in a positive manner. Microsoft is not asking them to divulge their secrets.

I shall be watching the outcome and look forward to my new laptop and cancelling AOL.

Karen Dahlgard Age 65

MTC–00028370

From: tcrech@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:42pm
Subject: microsoft settlement

Dear Mr Ashcroft,

Please do not increase the microsoft penalties over what was agreed to.

The settlement although severe seemed fair. Futher penalties would in my opinion be overkill and would result in slowing an already weak economy.

Thank you for considering this important matter.

MTC–00028371

From: Samira Lama
To: Microsoft ATR
Date: 1/28/02 2:42pm
Subject: Microsoft Settlement
5445 Elmview Drive
Bay City, MI 48706
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I want to express my support for the Microsoft settlement negotiated last November. I was against the lawsuit against Microsoft and felt a break-up of the company was totally unjustified; consequently, I think the compromise is a necessary move to allow us to move on.

The terms accepted in the agreement are very generous to the competition. Computer manufacturers will have greater flexibility in trading Microsoft software for non-Microsoft products on the Windows operating system without obligation, while software developers will gain access to Windows internal code and even be able to license Microsoft intellectual property.

The terms highlight the fairness of this proposal, which will be regularly monitored by an objective group of technical experts in order to confirm its implementation. I ask that you allow these measures to go through without further legal action. Thank you very much.

Sincerely,
Sam Lama

MTC–00028372

From: Mister Thorne
To: Microsoft ATR Date; 1/28/02 2:42pm
Subject: Microsoft Settlement

I am offering my comments on the Proposed Final Judgment (PFJ) that was submitted by the United States in Civil Action No. 98–1232. I am also sending you these comments via USPS.

I am encouraging the Court to not accept this settlement for these reasons:

1. The settlement is ineffective;

2. The settlement does not serve the public interest;

I encourage the Court to determine an effective remedy, one that (1) ends the unlawful conduct; (2) avoids a recurrence of the violation and others like it; and (3) undoes the anticompetitive consequences of that unlawful conduct.

Effect of Proposed Remedies

The PFJ is ineffective. It does not restore ''competitive conditions in the personal computer operating system market'' as the U.S. claims in its Competitive Impact Statement (CIS). In fact, the PFJ does nothing toward that end.

As the U.S. noted in its complaint, ''PC manufacturers (often referred to as Original Equipment Manufacturers, or ''OEMs'') have no commercially reasonable alternative to Microsoft operating systems for the PCs that they distribute.'' The PFJ does nothing to alter that. Instead, it offers a series of

restrictions and prohibitions aimed at opening the market for ''middleware.'' It offers nothing to restore a competitive market for operating systems for personal computers.

The PFJ does not ''obtain prompt, effective and certain relief for consumers.'' On the contrary; it's effect will be to leave consumers with no viable choice for personal computer operating systems, other than different versions of Windows, or for browsers, other than different versions of Internet Explorer. Consumers will not reap the benefits of competition among operating systems or browsers, as they have the benefits of competition among OEMs.

In the CIS, the U.S. claims that the PFJ ensures that ''consumers will be able to choose to use'' non-Microsoft products like Internet browsers. That assumes that such competing products will come to market, but this is unlikely given that Internet Explorer is given away at no cost. As Jon DeVaan, a Senior Vice President of Microsoft, would testify (see Microsoft's offer of proof in opposition to the entry of the government's proposed final judgment): ''No sensible company devotes large resources to projects from which it sees no potential return on its investment.'' The PFJ does nothing to open the market for Internet browsers or other applications, and so it does nothing to give consumers more choice.

In the CIS, the U.S. says the PFJ ''forbids Microsoft from stopping OEMs from offering dual-boot systems.'' Yet the Court has determined that there exists an ''applications barrier'' to entry to the market for personal computer operating systems. The PFJ does nothing to remove that barrier.

The District Court concluded that Microsoft violated the Sherman Act, and the Court of Appeals upheld the ruling, determining that Microsoft's ''commingling of browser and operating system code constitute exclusionary conduct, in violation of s 2,'' of the Sherman Act. Yet the PFJ does not address the issue of commingling and leaves Microsoft free to integrate whatever it wishes with Windows, to continue to use its operating system monopoly to extend its reach into new, emerging markets.

The PFJ requires Microsoft to disclose to ''ISVs, IHVs, IAPs, ICPs, and OEMs'' the APIs used by Microsoft Middleware to interoperate with Windows. The provision requires the disclosure to occur in a ''Timely Manner.'' But ''Timely'' means only after Microsoft has sent any new version of Windows to at least 150,000 beta testers. The result is that if Microsoft distributes a new version of Windows to 149,999 beta testers, they don't need to disclose the APIs to anyone.

The PFJ contains a provision that if Microsoft engages in ''willful and systemic violations of the agreement,'' then the ''requirements and prohibitions'' in the PFJ may be extended for two years. What the U.S. is basically saying is this: ''if the agreement proves ineffective, our plan is to extend it!''

Finally, things have changed since the U.S. filed its complaint. Microsoft's dominance in the market has continued to grow. It's share of the market for operating systems, browsers, and common applications like word processors, spreadsheets, and e-mail software has increased. And Microsoft is moving on, leveraging its monopoly for operating systems to extend its control of the market with its .NET initiative.

The .NET initiative is Microsoft's program to offer a new development platform, one that sits above the operating system. As Steve Ballmer, CEO of Microsoft, notes, this initiative is ''the pillar on which we are building the next version of Microsoft.'' When the initiative was announced, Ballmer commented: ''Starting this year, everything we do will revolve around Microsoft .NET.'' Having conquered the market for personal computer operating systems, Microsoft is poised to conquer new, emerging markets.

In the CIS, the U.S. says appropriate injunctive relief in an antitrust case should: (1) end the unlawful conduct; (2) avoid a recurrence of the violation and others like it; and (3) undo the anticompetitive consequences of the unlawful conduct. The PFJ achieves none of these objectives. Microsoft's unlawful conduct in the browser market is history, the PFJ does nothing to reopen that market, and it leaves Microsoft free to continue to violate the Sherman Act. And Microsoft's leaders have suggested that that is precisely what they plan to do.

As the U.S. stated in its complaint, ''Microsoft has made clear that, unless restrained, it will continue to misuse its operating system monopoly to artificially exclude browser competition and deprive customers of a free choice between browsers,'' and ''Microsoft's conduct with respect to browsers is a prominent and immediate example of the pattern of anticompetitive practices undertaken by Microsoft with the purpose and effect of maintaining its PC operating system monopoly and extending that monopoly to other related markets.''

Microsoft's leaders continue to give us reason for concern. At the start of the trial, Steve Ballmer stated in an e-mail message sent to Microsoft employees: ''Microsoft's business practices [are] entirely consistent with the way other companies throughout our industry compete.'' After the Court of Appeals upheld the District Court's finding that Microsoft violated the Sherman Act, Steve Ballmer made these statements:

''I do not think we broke the law in any way, shape, or form. I feel deeply that we behaved in every instance with super integrity.''

''We were born a competitor, and we'll continue to compete as we have in the past: vigorously and responsibly.''

These statements from the company's CEO do not portend a change in the way Microsoft conducts business.

Comments made by the leaders of Microsoft after the court determined it broke the law illustrate what many informed commentators have noted: ''Microsoft just doesn't get it.'' While we can expect Microsoft to follow the restrictions in the PFJ, we cannot expect it to live up to the spirit of it. And why not? Thomas Friedman, a New York Times columnist put it well in a column he wrote after the District Court ordered a breakup of the company: ''Microsoft isn't a threat because it's big. GE is big, Intel is big, Cisco is big. Microsoft is a threat because it is big and deaf to some of the bedrock values of the American system.''

The PFJ is ineffective. It does not ''eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that (other software) products posed prior to Microsoft's unlawful undertakings'' as the U.S. claims.

Rather, it cements Microsoft's position as the sole supplier of personal computer operating systems for the Plaintiffs, It allows Microsoft to continue to dump products on the market in order to maintain market dominance. It allows Microsoft to continue to tie its applications to its operating systems, effectively closing the market to would-be competitors. And it allows Microsoft to build upon its monopoly position to establish market reliance on its next-generation development platform (.NET).

The Public Interest

It is in the public interest for the U.S. to enforce antitrust law; it is not in the public interest for the Court to accept the PFJ. That's because the PFJ does not address the central issue in this matter: Microsoft's monopoly position, and its abuse thereof, in the market for operating systems for personal computers.

The public has benefited from competition among PC manufacturers. We've benefited from lower prices, increased functionality, and those innovations that naturally occur when firms compete fairly in a dynamic and open market. If the PFJ is entered as is, then Microsoft is left with its monopoly. And that means no increased competition for operating systems despite the U.S. claim in the CIS that the PFJ would restore ''competitive conditions in the personal computer operating system market.''

The U.S. offers no justification for its claim of increased competition for operating systems: none at all. While the PFJ might enhance competition for middleware, it leaves Microsoft in the same monopoly position it was in at the beginning of this action. In fact, since 1990, when the FTC first investigated Microsoft for antitrust, the company's position has only gotten stronger.

The lack of any effective corrective action in the PFJ lets others know that they can get away with similar tactics, that it will take so long for antitrust complaints to be resolved that they don't even matter. The courts are seen as so slow to act that—in a rapidly changing and advancing market—they can be ignored, and that is definitely not in the public interest.

The public interest would be better served by some remedy that ensures that Microsoft won't be back in court, yet again, for antitrust violations. But that is precisely what we can expect given that Microsoft's leaders have stated that they did nothing wrong, that they operated within the law and always have, that they plan on conducting their business as they have in the past, even after the Court of Appeals upheld the District Court's determination that Microsoft employed ''anticompetitive means to maintain a monopoly in the operating system market.''

The public interest is served by ''the Government defining the contours of antitrust laws so that law-abiding firms will have a clear sense of what is permissible and

what is not.'' Entry of the PFJ works against that. It says, in effect, that if a company has the resources, then it can violate antitrust law.

It can raise all sorts of ridiculous arguments to support its violations. It can use obfuscation to avoid answering questions. It can present the court with bogus exhibits that are not what they are claimed to be. It can protest that an antitrust action is simply a means for the U.S. to help the company's competitors, or that the U.S. doesn't know enough about computers or the computer industry to enforce antitrust laws there. The company can buy so much time that the courts and, hence, the laws become ineffective: by the time the courts act, the company has achieved its objectives, and after the courts act, the company keeps its ill-gotten gains. How is that in the public interest?

An Effective Remedy

I encourage the Court to accept nothing less than an effective remedy, one that serves the public interest, that restores competition in the market for personal computer operating systems and applications, and which discourages Microsoft from continuing to function with limited regard for antitrust law.

But this is problematic. The new administration seems to have little interest in pursuing this matter, even though it is charged with enforcing the law and the court has determined that Microsoft broke the law.

One effective way to open the market could be done by executive order, rather than court order. If the Plaintiffs can require that all their personal computers run Microsoft Windows, then they can just as well require that all their computers run some other operating system, such as UNIX. And there are good arguments in favor of such a change.

Just about every personal computer on just about every desk in just about every government office is equipped with Microsoft Office and Internet Explorer. That application suite includes the most common applications, comprising something like 95% of the applications that 95% of computer users use 95% of the time. That same application suite is available (from Microsoft) for the Macintosh operating system, which is a UNIX-based operating system.

So, if the Plaintiffs adopted a program to use UNIX instead of Windows with their personal computers, the ''applications barrier'' would be fairly low. (The ''applications barrier'' is a fallacy; Windows isn't more popular than Macintosh because there are so many more applications avaiable for Windows; the reason there are so many more applications for Windows is because Windows is more popular, the Plaintiffs and Corporate America long ago having decided that desktop computers must be IBM compatible.)

Of course, the Plaintiffs also make use of specialized applications. Public agencies of all sorts use specialized applications to manage more and more of their operations; a wide variety of government workers use specialized applications on a regular basis. So, there is a real barrier to adopting an operating system other than Windows: specialized applications that were written for Windows need to be rewritten for UNIX. But there is also an opportunity to eliminate that barrier now.

With its .NET initiative, Microsoft claims it is reinventing its business. Steve Ballmer claims that as .NET versions of its products are released, they will make non-.NET versions of products obsolete in four to six years. And that means that the Plaintiffs, unless they intend to use obsolete products in the future, have these two choices: either they can remain dependent on Microsoft and adopt .NET, or they can start to become independent now; they can switch from Windows to UNIX.

While the DOJ claims (without support) that the PFJ is good for the economy, what would be a boost for the economy is for the Plaintiffs to adopt UNIX. The plaintiffs are a sizeable market for software developers. If the Plaintiffs adopt UNIX, ISVs will develop software for UNIX. And, in a marketplace not controlled by Microsoft, one in which market forces are allowed to operate freely, we'll have open competition, and the benefits of it.

And we won't have to worry about a single firm having sole control of an important component of our modern economy. In two decades, the personal computer has gone from being as popular as ham radio, to being an essential tool, and fundamental to our way of life. We could not enjoy our modern way of life were it not for the development of the personal computer and the software that makes it so useful in so many ways.

The public isn't served when there is only one source of oil, or one bank. or one TV station. And the public is not served by having just one supplier of the most basic software for personal computers. The public is served by free and open competition, and the Plaintiffs have a responsibility to enforce the laws that apply.

I don't think the settlement contained in PFJ is good for the public or the economy. I would like to see the Court require a settlement that accomplishes what the U.S. claims this settlement accomplishes.

Sincerely,
Mister Thorne

MTC–00028373

From: Cynthia Roy
To: Microsoft ATR
Date: 1/28/02 2:45pm
Subject: microsoft settlement

Your Honor:

As you know, there was a time in America when Roosevelt had to launch an aggressive campaign against corruption in the corporate world. History has already shown us what happens when industries, because they are monopolies, have too much power. The question is not supposed to be considered on a situation basis, the antitrust laws were made so that, among other reasons, the general public would not and COULD NOT be taken advantage of. Therefore, with all due respect,I don't think that Microsoft should be allowed to abuse antitrust laws.

Thank you sincerely for your time,
Cynthia Roy
e-mail: sequin101@

MTC–00028374

From: M Y
To: Microsoft ATR
Date: 1/28/02 2:45pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I wanted to let you know that I am against the Proposed Final Judgment. For the most part, the goals that were to be accomplished such ridding out MSs illegal monopoly will be overturned with this proposed settlement. I oppose such a deal. MS must be dealt with. I submit to you my objection to the Proposed Final Judgment.

Sincerely,
Marilyn Yu,
310 S. Orange Ave Apt. 19
Lodi, CA 95240

MTC–00028375

From: John Transue
To: Microsoft ATR
Date: 1/28/02 2:46pm
Subject: Microsoft Settlement

Microsoft is clearly a monopolist and stifles competition. A deeper punishment is vital to the industry and also to retain the authority of the government in anti-trust matters.

Microsoft is predatory and parasitic. They are incredibly arrogant about this case. The DOJ has to demonstrate that the US is a country of laws not of men. They have been found to be monopolists. Do the right thing and punish them. Don't let their wealth, power, and treachery get them off the hook.

They frequently make changes to their OS and applications for no reason other than to diminish competition.

Please do the right thing and punish Microsoft.

Sincerely,
John Transue
Assistant Professor
Department of Political Science
Duke University
transue@duke.edu
(919) 660–4336

MTC–00028376

From: John R. Morris
To: Microsoft ATR
Date: 1/28/02 2:45pm
Subject: The Microsoft Anti-trust Case

Dear To whom it may concern,

I am a user of the OS/2 (operating system from IBM). I have found this to be a technologically superior product over any of the operating systems offered by Microsoft, especially their latest version, Windows XP. I Believe that their further bundling of an instant messager (The MSN Instant Messanger), the 3 year limitation on usage, Cd burning software and other included multimedia software makes it clear and obvious that Microsoft is trying to extend and/or maintain their monopoly. Unfortunately, OS/2 has been in decline for a number of years from what I believe to be unfair monopolistic marketing tactics of Microsoft. As a result, vendors of OS/2 related products have also diminished over the years. Contrary to arguments by Microsoft that their products encourage competition, I believe the opposite is true; that Microsoft's marketing practices actually discourages competition and stunts technological growth.

Consequently, I do not believe that the Department of Justice's proposed settlement

with Microsoft, in its current form, is anywhere near adequate and that stricter measures need to be imposed on the company to prohibit such tactics from being used in the future.

In addition, I am appalled that after all the effort, my tax dollars, and other resources that the Department of Justice has used and this is the best settlement that they can come up with. Futhermore, I am greatly troubled that the other Attorney Generals have fought so hard over the past years and have spent enormous amounts of their money, and then settle for this unrealistic package.

Sincerely,
John R. Morris
Morr109@yahoo.com
Corvallis, OR
United States of America

MTC–00028377

From: wvdavid@access.mountain.net@inetgw
To: Microsoft ATR
Date: 1/28/02 2:58pm
Subject: Comment on Microsoft Settlement

Hello,

Attached (better) and below are my comments on the microsoft settlement.

David McMahon
DAVID B. McMAHON / ATTORNEY AT LAW
1624 Kenwood Road, Charleston, West Virginia 25314
Phone 344–3620 / Day 415–4288 / Fax 344–3145
e-mail wvdavid@access.mountain.net
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001
microsoft.atr@usdoj.gov
Re: Microsoft Settlement.
Dear Ms Hesse,

I am a lawyer for low income people. I am also a ?Consumer Fellow? to the Business Law Section of the American Bar Association. I was an Official Observer on behalf of consumers on the drafting committee of the National Conference of Commissioners on Uniform State Laws that revised Article 9 of the Uniform Commercial Code. I am on the Board of an organization opposing the Uniform Computer Information Transaction Act in the states.

Thank you for the opportunity to comment on the Microsoft settlement. I share generally the opinion of Hon. Darrell McGraw, the Attorney General of my state, the State of West Virginia.

It is my personal position that the settlement between Microsoft and the U.S. Department of Justice is not in the public interest. The settlement does not offer remedies that sufficiently address Microsoft's illegal, anticompetitive behavior as a monopoly that puts grabbing market share above the quality of the software it produces. The settlement fails to include critical provisions that will counter Microsoft's monopolistic tactics, and does not contain appropriate and enforceable penalties for non-compliance. Changes to the settlement must be made to address these issues, in order to bring the benefits of competition, choice and innovation to consumers.

Sincerely,
/s/
[Intended as a signature.]
David B. McMahon
DBM/dbm
David McMahon
E-Mail: wvdavid@access.mountain.net
Phone/Voice Mail: 304–415–4288
Fax: 810–958–6143
Work Address: 922 Quarrier Street, Charleston, WV 25301
Home Address: 1624 Kenwood Rd., Charleston, WV 25314

MTC–00028378

From: Gfound@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:47pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20560–0001
26 January 2002

Dear Mr. Ashcroft:

As a former Federal Government employee who was forced to retire on 2 October 1998 due to a major reduction in force (RIF) in the Defense Department (I was over 55 years of age and I had more than 5 years of service), I have been following the Microsoft antitrust case. Personally, I feel that Microsoft should be left alone. Microsoft has been very good for the economy and the technological advancement of our country. Because of its innovative software, they have brought about increased computer literacy. Can any other software company say the same? Microsoft has also been very flexible in agreeing to the terms of the settlement beyond what is required in any antitrust case.

Microsoft agreed to not enter into any agreements that would obligate a third party to distribute or promote any Windows technology exclusively or for a percentage of sales. I am sure competitors will like that. They have also agreed to allow access to their operating systems protocols that are used to operate within their server to the competition for use with their software. That sounds generous to me.

Now that Microsoft has gone out of their way to cooperate, shouldn't we? Let us end this litigation and move on to more pressing issues. Thank you.

Sincerely,
Georgia Foundotos
4 Damin Circle
St. James, New York 11780 -1604

MTC–00028379

From: dhurst@KsuMail.Kennesaw.Edu@inetgw
To: Microsoft ATR
Date: 1/28/02 2:51pm
Subject: Microsoft Settlement

I do not agree with the current proposed settlement as it stands. I have signed Dan Kegel's petition being submitted to you. Also, I ask you to reconsider your position and read Dan's website. http://www.kegel.com/remedy

Without fixing this problem now we, as a nation, are consigning ourselves and future generations to facing a severe monopoly in the software market in America. Competition in this market in a fair and equitable basis lowers prices for vital research and business functions of public and private markets. Most significantly, from my point of view, research funded by the government cannot afford a Microsoft dominated market. Linux and open source free software is just now setting research programs free of huge licensing overheads. American business needs a cost reduction in software licensing, especially in desperate economic times in the IT market.

All the horror stories of excited young companies with fresh new ideas and new technology being eaten and destroyed by Microsoft should fuel your drive to tame this monster! If Microsoft had decent ethics and treated people right, I wouldn't feel this way or be writing this letter. In fact, you would not have the case you have. I respect the work and time Dan Kegel has put into his review of the proposed settlement. Please give it your consideration. Thank you,

Dow
Dow Hurst
Office: 770–499–3428
Systems Support Specialist Fax: 770–423–6744
1000 Chastain Rd.
Chemistry Department SC428
Email:dhurst@kennesaw.edu
Kennesaw State University
Dow.Hurst@mindspring.com
Kennesaw, GA 30144

MTC–00028380

From: Edwin van Beuzekom
To: Microsoft ATR
Date: 1/28/02 2:51pm
Subject: 1/28/02 3 PM
1/28/02 3 PM

Gentlemen,

This letter is to emphasise my opinion that it would help busines to settle the microsoft anti trust case. Please expedite your decision and help business to grow again.

Sincelery,
Edwin van Beuzekom
email: vanbeuzekom@yahoo.com

MTC–00028381

From: CTMCCUNE@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:51pm
Subject: Microsoft settlement

I am extremely disappointed in the government's proposed settlement of the Microsoft case. The judge found that Microsoft had abused its monopoly power to crush the competition and rig the retail environment to ensure that consumers would have virtually no choice but Microsoft. The proposed settlement barely gives Microsoft a slap on the wrist and does nothing to make the market work as intended: in a free and fair competition.

However, with a Republican administration in charge, I am not surprised that the DOJ chose to ''wimp out'' and let Microsoft off the hook. The Microsoft settlement, like the Enron debacle, demonstrates that those with big money don't have to play by the same rules as the rest of us. If they contribute enough to the right campaign coffers, and use buzzwords like ''free market'' and ''competition'' to cover their dirty deeds, they can usually get

government officials to either gut existing regulations and rewrite tax laws to their specifications, or at least look the other way when they break the rules. And this means that big corporations like Microsoft and Enron can get away with almost anything.

I'd like to have faith in the U.S. system of justice, but I doubt the DOJ will redeem itself on this case. My only hope is Microsoft does not yet own the EC, and Europe will refuse to be bought out or bullied. That might at least slow down the Microsoft juggernaut.

Sincerely,
Cynthia A. McCune
3177 Greenoak Court
San Mateo, CA 94403

MTC–00028382

From: Chuck Broms
To: Microsoft ATR
Date: 1/28/02 2:53pm
Subject: Microsoft Settlement

I support the purposed DOJ settlement with Microsoft.

Charles Broms

MTC–00028383

From: Douglas W. Lantz
To: Microsoft ATR
Date: 1/28/02 2:53pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to express my views surrounding the Microsoft settlement. I believe that the agreement is fair and reasonable, and would like to see the issue put behind us. Not only does the settlement address the concerns that brought about the case in the first place, but it also sets up guidelines of how to deal with possible future problems. Microsoft has made unprecedented concessions in an effort to end this debacle, and I will outline just a few of them for you.

Under the settlement, Microsoft has agreed to grant computer makers new rights to configure Windows so as to promote non-Microsoft software in direct competition with programs included within Windows. Microsoft will document and disclose for use by its competitors various interfaces that are internal to Windows operating system products. Also, Microsoft has agreed to license Windows to the twenty largest computer manufacturers, which make up a vast majority of PC sales.

There will always be those that try to pull down whoever is on top, just as there will always be those that support it. I feel that if this case is judged by the value of its merits, rather than the depth of the lobbyists'' pockets, it is apparent that the original problems have been solved. I believe that the suit has been pushed by competitors rather than consumers. It has negatively affected our entire industry. In short, three years has been long enough. It is time to allow Microsoft and the IT industry as a whole to return their focus to innovation, rather than litigation. We must ensure our country's place in the world technology market, and the best way to do it is by moving on. I thank you for your time and consideration of my thoughts.

Sincerely,
Douglas W. Lantz, President
Advantage Technology Group, Inc.
dlantz@advtechgroup.com
513.563.3560

MTC–00028384

From: E L
To: Microsoft ATR
Date: 1/28/02 2:53pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

Id like to make my position known that I am against the Proposed Final Judgment. MS has been given all the breaks in the case. The Proposed Final Judgment pretty much seals the deal with Microsoft walking away unscathed. Justice must be served and MS should be dealt with accordingly. I again concur with my previous statement by saying I oppose this Proposed

Final Judgment.

Sincerely,
Edith Landero,
310 S. Orange Ave Apt. 19
Lodi, CA 95240

MTC–00028386

From: Karina Montgomery
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 2:55pm
Subject: Microsoft Settlement

Dear Renata Hesse:

As a United States citizen, I urge you to withdraw your consent to the revised proposed Final Judgment settlement in the United States v. Microsoft Corp. antitrust case. The limitations and punishments imposed upon Microsoft do not sufficiently restore the competitive conditions previailing prior to Microsoft's unlawful conduct.

The Settlement only prevents Microsoft from future monopolistic practices; it does not punish Microsoft for previous unlawful behavior. The advantages of immediacy and certainty of the proposed Final Judgment are not sufficient cause for abandonment of pursuit of further litigation.

The damage done to individuals and businesses by design of Microsoft and its engineers and practices requires more punitive measures than a slap on the wrist and a promise to never get caught at doing it again.

I urge you to pursue litigation of the issue of remedy, whether as set forth in the Final Judgement entered by the District Court on June 7, 2000, or as one of the other remedy proposals described in the Competitive Impact Statement, section (V) Alternatives to the Proposed Final Judgement.

Thank you for your time and consideration,

Karina J. Montgomery DOB 1/13/70
4556 Park Blvd #1
San Diego CA 92116

Please refer to my voter registration or passport registration which you as a government agency surely have access to in order to verify my US Citizenship.

CC:Karina Montgomery

MTC–00028388

From: Odysseynorth@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:55pm
Subject: Microsoft Settlement

Attached please find a letter voicing my thoughts and questions.

Charlene Howe
(907) 333–7207
Charlene Howe
8050 Resurrection Drive
Anchorage, AK 99504–4731
Phone: (907) 333–7207
E Mail: OdysseyNorth@aol.com
January 25, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I tried to fax this to you on my personal letterhead but your fax lines were constantly busy. There must be a lot of people like me wanting to express our concerns.

As a businesswoman and a veterinarian's wife who has been following the Microsoft antitrust case, I believe the settlement is pretty fair. I have a lot of respect for Microsoft; they've contributed to the prosperity of the ''90's, produced well-paying jobs, and provided great software at reasonable prices. Since the technology sector accounts for a third of economic growth, I am afraid what might happen to the industry if litigation continues.

Microsoft has been very cooperative throughout this ordeal. Not only have they agreed to document and disclose various Windows'' internal interfaces to competitors. They also agreed to the establishment of technical team to monitor Microsoft's compliance to the settlement. What other company would risk such great exposure to competitors?

Unfortunately, the technology industry faces numerous challenges in protecting the entrepreneurial spirit we depend on. Some special interests are lobbying for increased litigation, regulation, and legislation that could impact entire industries and threaten this country's economic vitality. Should we allow this to happen?

Sincerely,
Charlene Howe

MTC–00028389

From: Gregory Gerard
To: Microsoft ATR
Date: 1/28/02 2:56pm
Subject: Microsoft Settlement

The proposed settlement does not redress the wrongs Microsoft has been found guilty of.

Gregory Gerard
255 Manzanita Avenue
Palo Alto, CA 94306

MTC–00028390

From: Tracyalindgren@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 2:56pm
Subject: Microsoft Settlement
January 28, 2002
Hon. Colleen Kollar-Kotelly
U.S. District Court, District of Columbia
c/o Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW

Suite 1200
Washington, DC 20530–0001

Dear Judge Kollar-Kotally:

As a long time political activist I am concerned about the leniency regarding the proposed settlement between the Department of Justice and Microsoft in U.S. v. Microsoft. It is my belief that this will not put an end to Microsoft's monopolistic practices.

The settlement abandons the principle that fueled consumer criticism and which gave rise to this antitrust case in 1998: Microsoft's decision to bind—or ''bolt''—Internet Explorer to the Windows operating system in order to crush its browser competitor Netscape. This settlement gives Microsoft ''sole discretion'' to unilaterally determine that other products or services which don't have anything to do with operating a computer are nevertheless part of a ''Windows Operating System product.'' This creates a new exemption from parts of antitrust law for Microsoft and would leave Microsoft free to bolt financial services, cable television, or the Internet itself into Windows.

The settlement does nothing to deal with the effects on consumers and businesses of technologies such as Microsoft's Passport. Passport has been the subject of numerous privacy and security complaints by national consumer organizations. However, corporations and governments that place a high value on system security will be unable to benefit from competitive security technologies, even if those technologies are superior to Microsoft's. Why? Microsoft controls their choices through its monopolies and dominant market share, and still is able to dictate what technologies it will include.

The weak enforcement provisions in this proposed deal leave Microsoft free to do practically whatever it wants.

A three-person technical committee will be appointed, which Microsoft appointing one member, the Department of Justice appointing another, and the two sides agreeing on the third. This means that Microsoft gets to appoint half of the members of the group watching over its actions.

The committee is supposed to identify violations of the agreement. But even if the committee finds violations, the work of that committee cannot be admitted into court in any enforcement proceeding. This is like allowing a football referee to throw as many penalty flags as he likes for flagrant violations on the field, but prohibiting him from marching off any penalties.

Finally, Microsoft must comply with the lenient restrictions in the agreement for only five years. This is not long enough for a company found guilty of violating antitrust law. The end result is that this proposed settlement allows Microsoft to preserve and reinforce its monopoly, while also freeing Microsoft to use anticompetitive tactics to spread its dominance into other markets.

After more than 11 years of litigation and investigation against Microsoft, surely we can— and we must—do much better than this flawed proposed settlement between the company and the Department of Justice.

Sincerely,

Tracy Lindgren

2825 Grand Avenue, Apt. 206

Des Moines, IA 50312

MTC–00028391

From: Chris Metzler
To: Microsoft ATR
Date: 1/28/02 2:56pm
Subject: Microsoft Settlement

Enclosed please find my personal comment on the proposed settlement in the U.S. vs. Microsoft antitrust action. The comment comes in the form of four attachments.

The first attachment is a text copy of a letter containing my main comment.

The second attachment contains a text copy of an appendix to that letter, going through the proposed settlement in detail and providing a point-by-point critique.

The third and fourth attachments contain the letter and appendix above again, but in .PDF format rather than text, making for more attractive viewing and printing.

Thank you for the opportunity to provide a comment.

Dr. Christopher A. Metzler

CC: cmetzler@speakeasy.net@inetgw
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001

To the United States Department of Justice, and to the United States District Court for the District of Columbia:

I am writing to take advantage of the public comment period regarding the proposed settlement in the antitrust action United States v. Microsoft Corporation, provided under the Tunney Act. I thank you for the time you will take to consider my opinions. Many of the letters you will receive as public comments on the settlement will come from computer industry professionals—persons in the pay of either Microsoft or their competitors. I am neither. Nor, for that matter, do I have informal connections to the software development industry. My profession has been that of a research astrophysicist at prestigious research institutions. I mention this to indicate both that I believe I have the competence to critically examine the settlement and the opinions for and against, and that I have no direct or indirect material stake in the outcome of this settlement.

Despite my independence from the computer industry, as an citizen and a computer user I have strong feelings about this settlement. I believe that this settlement is not only contrary to the public interest, but would damage it instead.

As I understand, it is not illegal for Microsoft to hold an effective monopoly in personal computer operating system software. What is illegal is for Microsoft to maintain that monopoly, and attempt to extend their monopoly into other domains, using predatory or anti-competitive practices. The District Court has found that Microsoft has done this; the Court of Appeals has confirmed this judgment, and the Supreme Court has effectively confirmed it again by choosing not to hear a further appeal by Microsoft. Therefore,

Microsoft has once and for all been declared guilty of such illegal conduct. Numerous Supreme Court decisions in anti-trust cases have indicated that any remedy arising out of a successful anti-trust action should deny the offending corporation the fruits of its violations. And yet, despite the fact that Microsoft was judged guilty by the court of damaging several companies illegally by its actions, there are *no* penalties aimed at making amends for Microsoft's past actions contained in this settlement. In fact, while there are numerous terms clarifying how future operations by Microsoft can be considered legal, there is *nothing*, anywhere in the settlement, that penalizes Microsoft for its past actions. In light of those past Supreme Court decisions, and in light of the flagrant nature of Microsoft's violations of the law (given that this is the second Federal anti-trust action against them, and their violation of the previous consent agreement), a settlement that entirely fails to penalize Microsoft for their past actions and denies them the fruits of their illegal conduct cannot possibly be considered to be ''in the public interest.''

Instead, the focus of the agreement appears to be simply to prevent future anti-trust violations. This approach is tantamount to saying ''it's OK that you violated anti-trust law and illegally damaged other companies a second time, but you should stop it now.'' Perhaps a better way to describe it is as saying ''Stop, or I shall say ''stop'' again!'' It fails to penalize Microsoft for the wrongs already done, and only tries to instruct Microsoft to obey a law that (being a law) they're supposed to obey anyway! This alone would be unacceptable; but in addition, the settlement as written does very little new to hinder Microsoft from continuing to maintain its monopoly, or extend it into other areas, using anti-competitive tactics. Indeed, analysts within the computer industry press have typically described the settlement as demanding almost nothing new from Microsoft. Legal specialists in technology antitrust issues not employed by Microsoft or their competitors have described the settlement as ''business as usual for Microsoft . . .no significant change in the way it develops its products or sells to the marketplace.''

It is true that the agreement outlines constraints on Microsoft's business practices, with the apparent intent of preventing Microsoft from using its influence as a monopoly holder either to force unfair agreements on other hardware or software vendors or to retaliate against them for actions involving non-Microsoft software. However, these constraints are extremely limited in scope, are defined in terms of subjective descriptions which are not easily enforceable, and are laden with loopholes. An appendix to this letter covers several specific flaws in the agreement in more detail; meanwhile, I wish to make several general points.

My appendix below notes how, because of subjective descriptions and loopholes, the agreement fails to set viable restrictions on Microsoft regarding the topics it actually considers. Such subjective descriptions and loopholes matter, because Microsoft has a history of using such flaws to violate agreements coming out of legal actions. For example, the consent decree originating from

the earlier anti-trust action was meant to prevent such actions as the bundling of Windows 98 and Internet Explorer, but this current anti-trust action had to be started because of subjective terms Microsoft successfully entered into the previous agreement that allowed them to ignore its constraints. In the time this action has taken, Microsoft's monopolies have become even more firmly entrenched. To the extent that the requirements of Microsoft in the agreement are concrete, they are comparable to what Microsoft has been doing up to this point. And it is patently absurd to constrain a company guilty of the sorts of actions demonstrated in this court case simply be requiring them to act ''in good faith.'' In other words, not only does the agreement fail to punish Microsoft for its past illegal actions—actions which have damaged or even destroyed other companies attempting to compete—but the agreement also fails in the considerably less ambitious task of clearly defining illegal actions or procedures that Microsoft must avoid.

Finally, there are many topics not addressed by the agreement at all, such as Microsoft's use of proprietary standards in file formats, and how those standards combined with Microsoft's monopoly status effectively block competing products from the marketplace. Microsoft has an effective monopoly on certain types of productivity software, such as word processors and spreadsheets (Microsoft Word and Excel, now bundled together as part of Microsoft Office). Because these monopolies are so entrenched, competitors cannot produce competing software of these types unless their software can read and write Microsoft file formats. Rather than attempting to beat such competitors in the open market, Microsoft has repeatedly acted to prevent competition from taking place at all by keeping the internal file formats for these software packages secret, and by periodically changing those file formats to block potential competitors'' attempts at reverse-engineering them. That this topic is not addressed at all is yet another major failure of the agreement.

What are the consequences of these failures? Dreadful, if Microsoft's past actions predict their future ones. There has been a long history of companies profoundly damaged, or even completely destroyed, by Microsoft's anti-competitive business practices. Digital Research and Stac are two examples of companies whose products were essentially run off the market in a flood of fraud and misinformation and, in the latter case, simple copying of their technology (for which Microsoft lost in court). This case has centered on the damage to Netscape, Sun and Apple by Microsoft's actions; there are many other such companies. we are left with a situation where an environment of innovation and competition is stymied—stymied by fear of even bothering to enter the market, given the expectation that Microsoft will do anything to destroy your enterprise.

In the courtroom, it has been demonstrated that Microsoft has falsified and even destroyed evidence. Despite these events, accepted as fact in a court of law, no criminal penalties have been forthcoming. In recent months, we have seen news stories covering attempts by Microsoft to manipulate public opinion in unethical fashion, ranging from organized efforts to get employees to stuff online ballot boxes/polls about Microsoft and their products, to writing letters to officials on Microsoft's behalf using the names of people who are deceased.

Given this past history, that the Department of Justice would arrive at such an empty settlement with Microsoft is bizarre. After all, the verdict from the District Court was strongly in the Federal Government's favor. While the Court of Appeals subsequently rejected the breakup order, they clearly affirmed Microsoft's guilt. The position of the Federal Government was strong, and Microsoft's announcements of what penalties or restrictions they would not accept in a judgment should have carried no more weight than the assertions of a convicted felon that he ''would not accept'' jail time. It has been noted by Rep. John Conyers Jr., the ranking member of the House Judiciary Committee, that this settlement in fact is less onerous for Microsoft than the terms that Microsoft was willing to concede in settlement talks *before* it lost the case in the Court of Appeals.

Conyers went on to describe the settlement as ''like losing a game by forfeit when your team was ahead with the bases loaded and your best batter on deck.'' (Washington Post, 2 November 2001) Or, as an acquaintance wrote, ''Can someone explain to me how you can win the trial, win the appeal, have the Supremes deny cert to the defendant, and then let the perps walk?''

So why ''forfeit''? Why this settlement? The most commonly-encountered explanation is that the settlement springs purely from politics: the executives of Microsoft were major campaign contributors to the current administration. For example, Robert Lande, a professor of antitrust law who has followed the case closely, has commented that ''Microsoft broke open the champagne when Bush was elected.'' This may or may not be an accurate assessment of the source of this agreement; but it is a difficult suspicion to dismiss; and if this suspicion is true, the claim that the agreement is in the public interest seems even more preposterous. Another explanation offered for this settlement has come from Microsoft and its employees, who have argued that the settlement is indeed in the public interest simply because it halts the continuing hindrance of the operations of the leading computer software company, and therefore is good for the high-tech industry and the economy. These statements are the modern-day equivalent of ''what's good for General Motors is good for America,'' and they are false. It is true that our modern economic engine depends strongly upon the continuing innovation of the computer industry. However, that innovation depends in turn upon the ability of many different sources to imagine and create new software, and for those creations to be able to compete for public attention. It is indeed a bad thing to stifle the ability of the nation's largest software company to produce new products; but it is not an acceptable alternative to stifle the ability of everyone *but* that company to innovate instead.

In short, this settlement is a disaster for the citizens of the United States. It is the polar opposite of an action in the public interest.

It neither penalizes Microsoft for its past illegal, destructive acts, nor does it force the kind of change in Microsoft's current business practices necessary to prevent further predatory, anti-competitive behavior. This despite a contempt for the public and the law displayed in Microsoft's behavior in the courtroom and up to this very moment. If this settlement is upheld, I can guarantee that over its five year course, the problem with Microsoft will only worsen. This may result in yet another court challenge against Microsoft; but we have seen in this case alone how Microsoft attempts to slow the pace of court action as long as possible, the better to create a ''fait accompli'', as they successfully have here. If history, and this and the previous agreements in particular, are any guide, Microsoft will yet again be able to hang on to their ill-gotten gains, and be faced with a set of ''restrictions'' that effect no change and allow them to continue to reinforce their monopolies. The resulting damage to the prospects for innovation and competition in the high-tech sphere will be incalculable, and to the public interest even more so. If Microsoft's hegemony in the computer industry is allowed to solidify further, as this agreement would guarantee, then we will bequeath to our children the kind of future that the early anti-trust actions against Standard Oil or Jay Gould were intended to prevent: where one entity controls the dominant new industry in our economy. We can be better ancestors than that. I therefore urge you, as strongly as I can, not to accept this settlement.

Thank you for your consideration.

Sincerely,

Dr. Christopher A. Metzler
2702 Hemlock Avenue
Alexandria, VA 22305

APPENDIX: SOME DETAILED COMMENTS ON THE TERMS OF THE AGREEMENT

The most significant complaint about this agreement is a general one. Microsoft has been found to be a monopoly by a court of law; that verdict has been affirmed by the Court of Appeals, and the Supreme Court has chosen not to review that affirmation. Therefore, under existing antitrust laws, Microsoft is required to conduct its business practices in a non-predatory/non-anti-competitive fashion. This is a standing requirement of law upon Microsoft. As noted in my letter, the agreement as written holds no penalties for past action, only ''restrictions'' upon future behavior. In my letter, I noted how these ''restrictions'' are ineffective; below, I go into more detail on some of these. But most important of all is the fact that such restrictions should be unnecessary; they attempt to restrict Microsoft from doing things that are illegal in the first place, since as a monopoly Microsoft is bound not to conduct its business in a predatory fashion. For example, requiring Microsoft in the agreement not to retaliate against companies that sell competing products with their computers is no great accomplishment; that was already illegal! In fact, enumerating such restrictions, and then

providing exceptions shortly afterward, gives the impression that there are certain terms under which Microsoft is actually *allowed* to violate the law. This cannot be considered acceptable.

Below are specific comments on parts of the agreement.

—Section III, Part A—

Section III, Part A. has several problems. First, it only restricts what Microsoft can do against OEMs, which means makers of ''Personal Computers'' according to the definition given later in the settlement.

The definition of ''Personal Computers'' used in the agreement excludes a wide class of technologies which should not be. For example, a maker of machines which are intended to be used as servers does not fall under this definition—odd given that the distinction between machines intended as desktop PCs and machines intended as servers is often blurry. The phrasing in this Part indicates that Microsoft is perfectly free to retaliate however they choose for whatever they choose against manufacturers/vendors of server hardware.

Second, it says that Microsoft cannot retaliate by altering commercial relations with OEMs. But they can certainly retaliate by doing nice things for everyone *but* the target OEM. That might seem to be forbidden from the next clause in that sentence (including the parenthetical remark), but it isn't; that only forbids withholding *non-monetary* Consideration that others get. They can withhold new *monetary* Consideration that others get without running afoul of the agreement.

Furthermore, this Part restricts retaliation, but it doesn't restrict Microsoft from entering into really predatory licenses with companies with whom they hadn't previously been doing business. In other words, Microsoft could act so that if you were not previously licensing Windows, and wanted to be, you'd better not do anything that upsets them (such as described in Subparts 1, 2 and 3 of this Part, III A.) or you'll only get a bad license from them. You might think this is prevented by Part B immediately following; but that only applies to ''Covered OEMs'', not new ones.

Next, Section III, Part A restricts Microsoft from retaliating against OEMs that ship Personal Computers that include Windows and another OS or will boot more than one OS; but it doesn't restrict them from retaliating against companies that ship or are contemplating shipping machines which do not include a Windows OS at all. Against OEMs that ship some of their Personal Computers with only a competing operating system installed, or with no operating system installed, Microsoft is perfectly free to retaliate however they like.

Next, OEMs which are not Covered OEMs can have their Windows licenses terminated without the notice and opportunity to cure described here as to be provided to Covered OEMs. What is the purpose of this distinction? Why do only the bigger OEMs get this protection? The obvious reason is ''to lock them into selling Windows.'' In other words, a clause assisting Microsoft in further solidifying its monopoly is contained within the agreement itself!

Finally, the last paragraph says that Microsoft is not prohibited from providing Consideration if it's commensurate with the OEM's effort/expenses related to Microsoft products. But since Microsoft is not required to provide this Consideration, this means that they can use this provision of Consideration as a carrot for the kind of behavior they want OEMs to follow. The first part of this restriction might seem to forbid that, since it talks about withholding Compensation—but that's non-monetary compensation only. They could certainly give monetary compensation (i.e. kickbacks) under this ''restriction.'' One might think this is prevented by the restrictions in Part B immediately below—but again, that only applies to Covered OEMs, not new ones.

—Section III, Part B—

Similar to the guarantees of license termination warnings/ opportunities to cure described in the previous Part, the presence of such volume discounts, and different volume discount schedules for 1–10 vs. 11–20 Covered OEMs, strongly discourages those OEMs from selling any other OS. This is another clause which *helps* Microsoft maintain its monopoly.

—Section III, Part C—

Since the constraints of this part only apply to Microsoft's interactions with OEMs—makers of ''Personal Computers''—other hardware manufacturers, such as people making machines which are intended to be used as servers, *can* be restricted by Microsoft from exercising the options listed here.

—Section III, Part D—

Under these terms, in order to obtain information about the Windows APIs etc., one has to join MSDN or ''similar mechanisms.'' What are the terms of so joining? Presently, MSDN subscriptions cost a lot of money. This constraint seems to be saying that to get Microsoft to play fair, everyone has to pay them! Furthermore, what's to prevent Microsoft from making joining this mechanism difficult for entities they wish to punish or abuse?

Also, this section requires Microsoft to begin providing access to APIs in a ''Timely Manner,'' which is defined as ''the time Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers.'' So if they only release it to 149,999 beta testers, this time never arrives (and so the restrictions which are to occur at that point don't)?

Clearly, this ''Timely Manner'' demand is easily circumvented. And, for the purposes of this agreement and definition, what's a beta tester?

If the software is sent to a company, such as a member of MSDN, to be tested, does that company count as one beta tester? Or are there as many as the company has employees that *ever* sit down in front of a machine. This is not clear, and is full of possibilities for exploitation.

—Section III, Part F—

This section hinges on the ban against ''retaliating''; it is not clearly defined what would constitute ''retaliation.''

Furthermore, the entities used in this Part are defined in terms of the term ''Personal Computer,'' which again is defined in a very restrictive fashion. Again, Microsoft is allowed under this Part to retaliate against manufacturers of machines which are intended to be used as servers, for example.

—Section III, Part G—

Once again, Microsoft is permitted under this Part to retaliate against a wide class of hardware manufacturers and vendors because of the bizarre definition of ''Personal Computer'' used in this agreement.

Furthermore, an exception is provided where Microsoft ''obtains a representation that it is commercially practicable'' for the other party to do equal or bigger business with competing software. Nowhere does the agreement indicate from where such a representation of feasibility must come—it could come from inside Microsoft itself!

The agreement does say that the representation should be obtained ''in good faith''; but that's subjective, and absurdly generous to a company that has been found guilty of repeated abusing past agreements.

—Section III, Part H—

In Subpart 1, allowing MS to present the options for MS or non-MS software to people as ''one group'' or ''the other group'' virtually guarantees no one will use the non-MS stuff.

Regarding the exceptions 1. and 2. to the rest of Part H, both listed near the end of the part, 2. is an enormous loophole! It allows Microsoft, and their Windows OS, to shun some non-Microsoft software simply because Microsoft or some capability of Windows itself claims that software is not up to snuff. It could be a ridiculous claim; but in the time it takes to sort it out, the practical damage to the company providing that software is done, and Microsoft's monopoly position is that much stronger. And, of course, ''reasonably prompt'' is a subjective term, and based on their past behavior, Microsoft can be counted upon to interpret it to their advantage.

—Section III, Part I—

Again, this section is hobbled both by the use of subjective terms (''reasonable'') and the bizarre definition of ''Personal Computer'' used throughout this agreement.

Subpart 5 seems to be saying that in any agreement Microsoft signs to give people APIs or documentation or similar information, like they're supposed to provide under the agreement, Microsoft can in turn require the software makers to license to Microsoft any intellectual property rights they might have associated with anything the software companies might do that's described in this Judgment, even if those properties are unrelated to the project for which the APIs/ etc. are used. This effectively authorizes one of Microsoft's more strongly anti-competitive tactics!

—Section III, Part J—

This is perhaps the most flawed Part of the entire agreement. Regarding Subpart 1 . .who decides whether disclosure of a particular piece of information compromises the security of anti-piracy etc. systems? Microsoft? They can just say that it does, without substantiation, and thus avoid terms of this agreement. Any disagreement with Microsoft's claim, and they just drag it out forever in court while the other company dies. This sequence of events could not be more predictable. It will happen. Count on it.

Furthermore, it is important to note that effectively all communications protocols of interest include some sort of authentication process, that Microsoft's future plans involve license subscription with online verification, etc. The claim can be made that none of their APIs, relevant documentation, or Communications Protocols are completely empty of information on security protocols, software licensing, encryption, authentication, digital rights management, etc. This clause basically means that Microsoft can withhold pretty much everything. It is a loophole through which a supertanker could be sailed.

Regarding Subpart 2, how is it determined whether a licensee has a history of willful violation of intellectual property rights? Is it from past legal convictions, or findings against them in civil courts?

Or is it just that Microsoft says so? And who decides whether he licensee has ''a reasonable business need for the API, Documentation, or Communications Protocol''? Microsoft? And who gets to decide whether the standards Microsoft gets to establish for certifying the authenticity and viability of the business are in fact ''reasonable'' or ''objective''? Microsoft has stated that they do not consider Open Source to be a viable model; does this mean that no one writing Open Source software would be allowed to look at the APIs or Communications Protocols? Apparently, according to the terms in this agreement.

In particular, this is an effective lock-out for designers wishing to create free software relating to anything which contains ''security''-type subsystems (of the types listed in the Subpart). And regarding 2d), since the third party, that gets to test/ensure verification and compliance with Microsoft specifications, has to be approved by Microsoft, what's to stop Microsoft from using this third party evaluation as a barrier to other companies'' bringing their products to market? Nothing in this judgment.

This Part is a disaster.

—Section IV, Part A—

The presence of subjective terms such as ''reasonable opportunity'' seems like a recipe for further delays while court actions proceed.

—Section IV, Part B

Three people is not a sufficiently large group to vigorously pursue everything the Technical Committee is tasked to oversee. Furthermore, the small size of the committee makes it strongly susceptible to politics: a pro-Microsoft administration means two pro-Microsoft members on the Committee voting in the third member. To a great many people, this committee appears to be an empty gesture.

And the constraint on public comments by the TC has enormous ramifications. It prevents whistle-blowing, for example. If the system breaks, and two members of the Committee are protecting Microsoft, the third can't say anything about it.

—Section IV, Part D

Subpart 4c) indicates that ''If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the United States of its conclusion and its proposal for cure.'' No provision is made for what happens next. What if Microsoft disagrees with the Committee? What mechanism exists to decide what the appropriate response to the complaint will be? How long can Microsoft drag out the proceedings?

Subpart 4d) is, to be blunt, appalling. Under this agreement, if the TC finds that Microsoft has been brazenly violating this agreement, that fact can't be used in any court proceeding? And the Committee members can't talk about it in any legal proceeding? This is simply absurd; it seems intended to make sure that the Committee cannot actually accomplish anything.

—Section V, Part A—

This Part defines the length of the agreement as five years. This is too short for any penalty agreement, of course; anyone following this case knows that Microsoft can drag out a court action for three years at a minimum.

—Section VI—

''Consideration'' is poorly-defined. It is not sufficiently general; there are many other forms of compensation than are listed here. Under the definition of ''Microsoft Middleware Product,'' existing technologies which are not listed there—such as IIS, SQL software, etc.—are not Microsoft Middleware Products, and so Microsoft can go ahead and continue to exploit secret capabilities of the kernel/APIs in their design, and thus maintain an unfair advantage over competing software.

As noted above several times, the definition of ''Personal Computer'' is far too narrow. In particular, there is often no practical distinction between desktop, ''intended-for-single-user'' machines, and machines intended to be used as servers. Excluding servers from the definition (and thus from the constraints of any agreement) makes no practical sense.

Also as noted above, ''Timely Manner'' is defined in an easily-circumvented fashion.

The definition of ''Windows Operating System Product'' notes that Microsoft alone gets to decide what is part of the Windows OS and what is not. If this restriction had been in place in the past, many of the claims Microsoft made in this case, later disproven, would simply have been accepted as fact. This is a bad definition.

MTC–00028392

From: Wayne Smith
To: Microsoft ATR
Date: 1/28/02 2:57pm
Subject: Microsoft Settlement

The currently proposed settlement with Microsoft seems bad in that it does not appear to penalize or restrain Microsoft enough.

Wayne L Smith
669 Los Ninos Way
Los Altos CA 94022
WayneLSmith@hotmail.com

MTC–00028393

From: A L
To: Microsoft ATR
Date: 1/28/02 2:58pm
Subject: Microsoft Settlement

Dear Judge,

I want to let you know that I am against the Proposed Final Judgment. Microsoft should not go unpunished for leveraging their illegal monopoly and utilizing anti-competitive behavior. MSs fruits of their illegalities must be dealt with in a proper manner. The PFJ does non-of this. Thus I submit my stance opposing the Proposed Final Judgment. Thank you for your time in the matter.

Respectfully,
Aubrey Landero
310 S. Orange Ave. Apt. 19
Lodi, CA 95240

MTC–00028394

From: joeikel
To: Microsoft ATR
Date: 1/28/02 2:57pm
Subject: Pubic Comment

I desired to get a signed copy of my comments to you concerning the Microsoft case and requested Mail-Etc to send a FAX to you but they have reported difficulties in establishing a connection.

To assure that my comments will arrive in a timely manner I am sending them as an attachment to this e-mail. Mail-Etc will continue to send a FAX and if they succeed there will be a duplication of documents in your files.

Thank you!
Joe G. Ike

MTC–00028394—0001

3410 76th Avenue, SE
Mercer Island, WA 98040–3439
January 25,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am writing to you today to encourage you to bring the litigation against Microsoft to an immediate and decisive closure. I must state that I have been unequivocally and strongly against this case from its very inception. It appears evident to me that it is very unfair to punish a company for excelling in their industry. I am a volunteer instructor with a non-profit organization teaching senior citizens how to enrich their lives by becoming computer literate. This is no easy task but at the close of every session I thank God that Microsoft has been so innovative and far sighted as to integrate their basic Operating System with applications to provide the User with a basis of commonality that makes the learning process infinitely easier. This applies not only to senior citizens but also to those individuals learning the use of new software to increase their knowledge and consequently leading to industrial efficiency. Prior to my retirement I vividly remember the days when it was a nightmare when attempting to home-brew our own integrated system. I have experienced the fact that Microsoft has expended every effort to provide us with the features that we sorely needed.

As I dwell upon the past three years I conclude that it must have been very taxing on the IT industry, the economy, Microsoft and its employees. I understand that Microsoft has spent millions of dollars in their defense—money that could have been put into the development of new products

resulting in further advancement of technology and industrial efficiency. The employees of Microsoft have had to endure an air of uncertainty during this entire situation. As a citizen I am extremely concerned with the possible flight of talent that is the backbone of Microsoft's awesome capability.

It is difficult for me to understand the problems related to the proposed, but rejected, settlement. Judging from what the media has reported, Microsoft has agreed to the terms included in the settlement as well as to the terms brought forth on issues that were not considered to be unlawful. To name two concessions, Microsoft has agreed to avoid agreements that would obligate any third party to exclusively distribute Windows technology. Additionally, Microsoft will not obligate software developers to refrain from developing competing software. Frankly, I personally cannot understand why Microsoft should have to divulge the code that makes up their Operating System. I would certainly include that in the realm of being proprietary and intellectual property. To put it more strongly, to me it smacks of being a case of sour grapes by certain other organizations that have not been as successful.

MTC–00028394 0002

Chairman Greenspan commented, with words to the effect, that the Guide-On that is going to lead the economy of our nation out of the doldrums is technology. It is our future. There is absolutely no doubt in my mind that Microsoft has been a major contributor to technology. As a result, and to reiterate, I personally would like to see this matter closed as soon as possible and I am sure that I am among many who share this same point of view. Thank you for your time and giving me this opportunity to voice my opinion.

Sincerely,
Joe G. Ike
Engineer(retired)
e-mail joeikel@attbi.com
tel: (206) 232–5643

MTC–00028395

From: dave@ipgroup.org@inetgw
To: Microsoft ATR
Date: 1/28/02 3:04pm
Subject: Microsoft Settlement

Sir:

The Intellectual Property Group strongly urges the government to conclude that the proposed settlement with Microsoft is wholly inadequate to encourage Microsoft to comply with applicable legal and ethical practices.

Microsoft has often played the game that simply because an action is not specifically illegal, then it is acceptable to take the action, even if such action is contradictory to common business ethics. In many cases, Microsoft has taken this concept a step further and unilaterally decided that certain laws are extremely limited, as in the case of failing to identify communications with Congressional representatives because, as Microsoft alleges, they are not part of the government (referring specifically to Microsoft's interpretation of the Tunney Act). In fact, Senator Tunney recently declared, with respect to Microsoft's interpretation of the law, ?I do have some pride in my legislative record and my history of service in the Senate, and I don\'t like to have my words and my intention being misinterpreted,? reported at http://www.siliconvalley.com/docs/news/depth/tunney012602.htm. ?The disclosure provisions were designed to help ensure that no defendant can ever achieve ! through political activities what it cannot obtain through the legal process.? Id. ?Failure to comply with these provisions raises an inference or, at a minimum, an appearance of impropriety.? Id. Microsoft has a long record of disregarding the law and intellectual property rights of others in favor of its determination to sustain its monopoly. Microsoft executives have often criticized competition without factual basis, and have launched smear campaigns against people who take positions contrary to their immediate business interests. Moreover, Microsoft has a long record of campaigning against fair competition by other technologies, including open source technologies. Microsoft has attempted numerous times to quash and tarnish the goals of the open source movement. Such tactics are not only fundamentally unfair and unethical, but also against the interest of consumers, especially in view of Microsoft's dismal software security record.

The Intellectual Property Group urges the government to insist on a settlement or verdict that serves to benefit consumers. Such a settlement would not only require Microsoft to timely share relevant portions of its software code with the business community, but would also require that it agree to offer reasonable royalties to intellectual properties in which it holds a controlling interest. Without this second aspect to the settlement, smaller companies could be subject to intimidation and lawsuits by Microsoft. Such actions would stifle competition and result in fewer choices for consumers.

Sincerely,
Dave Ashby
The Intellectual Property Group
http://www.ipgroup.org

MTC–00028396

From: Todd Symionow
To: Microsoft ATR
Date: 1/28/02 2:58pm
Subject: Microsoft Settlement

The settlement that the DOJ and Microsoft came up with is ineffectual and is bad for the people of the United States. After reading the agreement, it appears to me that Microsoft dictated the document to the DOJ, who typed it up for them. Microsoft has received a judgement of being a Monopoly by the courts.

Microsoft should have received a fine of several billion dollars, plus stiff oversight into its practices (like IBM had to go through). The settlement does not punish Microsoft for its illegal and monopolistic activities and doesn't prevent it from continuing to operate in illegal and monopolistic ways. The most important part of the case was ignored by the DOJ—Microsoft's tying of software to its operating system. The largest harm that Microsoft has done to the citizens of the United States is the integration of more and more software into its operating system (Microsoft calls it middleware). Every time Microsoft integrates another program into the operating system, it harms the marketplace by killing competition, forcing us to use Microsoft's proprietary technology (such as activeX, rather than Java), and preventing us from uninstalling unwanted features/software. Microsoft keeps talking about innovating. When it talks about innovation it's really talking about monopolization.

The agreement talks about removing shortcuts and icons. The real answer is for the web browser (and other middleware) to be separate from the operating system so that the consumer can choose which browser (middleware) to use. This wasn't in Microsoft's monopolistic interest, because having the browser (middleware) separate from the operating system prevented Microsoft from locking consumers into using Microsoft's proprietary technologies. I am extremely concerned about Microsoft's .net technology. Not only is Microsoft tying all of their products into .net, but they are beginning to require consumers to use it. An example includes the messaging and multimedia features built into Windows XP. To take advantage of these features, you have to sign up for a Passport (.net) account. This is another form of Microsoft's illegal and monopolistic behavior.

Microsoft has continuously broken previous consent decrees. I have no confidence that Microsoft will abide by this decree either. Besides, this decree is just a slap on the wrist. The world's largest monopoly in history must be fenced-in and controlled so that it doesn't continue to harm consumers. I truly feel that the current DOJ, under the current Pro-business Bush administration is doing a disservice to the American people by not dealing with Microsoft more harshly. This is a turning point. Our government has the opportunity to change Microsoft's behavior now and to restore competition in the computer software marketplace. The Microsoft settlement will not restore competition and it does not punish Microsoft for its illegal, monopolistic actions.

I do not support the current Microsoft Settlement. The opinions expressed in this email are my own.

Todd Symionow
CC:Todd Symionow

MTC–00028397

From: david.anderson@jpl.nasa.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 2:59pm
Subject: Microsoft Settlement

To whom it may concern

I don't feel that the current Settlement will curtail or discourage Microsoft from continuing the same illegal practices. Something has to be done to truly level the playing field. There are many talented and creative people who do not further our current technology because they know that Microsoft would use their money to crush it no mater how good it is. Almost all of my co-workers feel the same way. And many of them feel that Microsoft has the DOJ in it's

pocket and will be able to get away with what ever it wants to. If people could commit a crime that would make them $50,000,000,000 and all they had to do was give back $1,000,000,000 most people would do it as many time as they were allowed. And with the current settlement, Microsoft WOULD NOT be giving up a billion dollars and WOULD be furthering their Monopoly! I read an editorial in Barrons, December 10th, metro section in which a Dr. Jeffrey Smith gave a very good analysis and solution to the problem. I would highly recommend a read of the article and especially his solution.

Thank You,

David Anderson

This is my opinion and I am not speaking for JPL or NASA.

MTC–00028398

From: WILLIAM ROSSI
To: Microsoft ATR
Date: 1/28/02 3:00pm
Subject: Microsoft Settlement
20 Bea Avenue East Northport, NY 11731
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft: I am supportive of the Department of Justice's efforts to settle the antitrust case against Microsoft. I prefer the remedies provided by the settlement agreement, as opposed to breaking up Microsoft. Anticompetitive business practices will be curtailed by Microsoft's agreement; for example, it will become easier for consumers to remove features of Windows from their computers and replace them with other software programs. Additionally, Microsoft has agreed not to retaliate against software developers who promote software that competes with Windows. The settlement agreement provides the appropriate remedies to the complaints made by the plaintiffs. No further action should be taken against Microsoft at the federal level.

Sincerely,

William Rossi r

MTC–00028399

From: Richard Murchy
To: Microsoft ATR
Date: 1/28/02 3:06pm
Subject: Microsoft Anti-trust case.
Attorney General John Ashcoft
U S Department of Justice
950 Pennsylvania Ave.NW
Washington D C 20530

Dear Mr Ashcroft,

This letter is to show my support for the pending settlement of the Microsoft Amti-trust case. The compromise represents a fair resolution to this legal dispute.It has gone on long enough.

Microsoft has made the Computer easy to use and the breakup of this great company is a poor decision to make. The proposed settlement provides flexibility for computer makers with uniform licensing, rights to re-configure Windows with other programs, abilities to license Microsoft technologies and to have access to the Windows internal code. With these conditions in place Microsofts rivals will have ample opportunity to carry on their own operations and will allow Microsoft to operate without further disruption, which of course, will be an asset to the computer consumer and the current struggling economy.Don't breakup this fine company that has put the world at our fingertips.

Sincerely,
Richard S. Murchy
W.188 Lake Forest Lane W.
Shelton, WA 98584
CC:fin@mobilizationoffice.com@inetgw

MTC–00028400

From: Mueone@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:01pm
Subject: Fwd: Attorney General John Ashcroft Letter

THEY MADE SOME BRUTAL BUSINESS DECISION, BUT TO BREAKUP A TECHNOLOGY COMPANY WHO STARTED FROM SCRATCH IS DISASTEROUS AGAINST ALL BUSINESS GROWTH PRINCIPLE. hOWEVER i BELIEVE THE SHOULD PAY A CONSIDERABLE FINE WHICH SHOULD BE to PROVIDE INTERNET SERVICE TO SMALL COMMUNITY FARMS REALLY UNDERPRIVELEGED AND THEY SHOULD BE ABLE TO CHOOSE THWE INTERNETSERVICE FOR THEIR OWN CHOICE AND msft SHOULD PAY FOR 3 YEARS.

I AM A VERU SMALL FRY INTERESTED IN BUSINESS AND TECHNOLOGY. P L E A S E get ENRON and these crooks Thanks I hope yopu give my thought some time.

Respectfully
Josef Brunner

MTC–00028401

From: mofish
To: Microsoft ATR
Date: 1/28/02 3:03pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft: Thank you for finally ending the antitrust lawsuit against Microsoft with a settlement that is more than fair. I personally feel that enough is enough. We have expended millions of dollars on this suit already, and I believe our tax dollars could be more prudently allocated.This is a strong agreement. It grants computer manufacturers new rights to configure systems with access to various Windows features. In addition, it creates a governmental technical oversight committee to review Microsoft software codes and books, and to test Microsoft compliance to ensure that Microsoft abides by the agreement. The only term of the settlement I believe is inappropriate is the internal interface disclosure. I do not believe that Microsoft should have to divulge any information to its competitors relating to how it designs or secures its product. This particular term defies the very foundation upon which this nation was built: free enterprise. Your decision demonstrates insightful leadership on your part. I am glad that our Attorney General is a friend of American business. In my opinion, no more action should be taken at the federal level in this case.

Thank you.

Sincerely,
Chris Johnson
20821 Hillcrest Pl. Edmonds, WA 98026

MTC–00028402

From: FBROKER@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:03pm
Subject: Microsoft Settlement

I believe the settlement by the mediator was fair and beneficial to consumers and the United States economy. It is time to move beyond this litigation.

Joyce & John Hammill

MTC–00028403

From: Mark G. Munsell
To: Microsoft ATR
Date: 1/28/02 2:59pm
Subject: Microsoft Settlement

MTC–00028404

From: t t
To: Microsoft ATR
Date: 1/28/02 3:04pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

Your honor I submit my objection to the Proposed Final Judgment. Apparently, there are several loopholes encompassed in the framework of the final proposal, which favors Microsoft. The proposed final settlement does not dish out any due justice or punishment on the side of Microsoft. At the same time no devices are in place to ensure MS compliance to the stated rules enclosed in the settlement.Although being closely monitored, Microsoft will not have any direct supervision to reassure the company complies with the stated agreement. A three-man compliance team overseeing Microsoft remain in alignment to the stated rules and regulations. This three-man oversight team will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team. All findings by this committee will not be allowed into court. The sole purpose for such a committee is to inform the Justice Department of all infractions committed by Microsoft. Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing. In turn, who will not strictly oversee Microsofts business moves? In my opinion, the Proposed Final Judgment does not provide sufficient and appropriate restrictions or penalties against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively address the question. I am against the Proposed Final Judgment. It in fact pardons MS of all wrongdoing.

Respectfully,
Travis Thurman
311 Estes Ct.
Travis Airforce Base 94535

MTC–00028405

From: Hugh Queen
To: Microsoft ATR

Date: 1/28/02 3:03pm
Subject: Microsoft Settlement
301 Bobby Jones Road
Sarasota, FL 34232
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I hope that this settlement will mean the end of any further action at the federal level and put an end to any more attacks on Microsoft. Microsoft has never been a monopoly and the government certainly has no place telling people how to run their businesses.

Microsoft is willing to put this behind them; they are sacrificing potentially millions of dollars in profits in order to get a settlement agreed upon. They are giving up access to their source code without retaliating when it is used to compete with Microsoft products. This alone will cover any complaints against Microsoft by allowing a greater number of products to be used in what were predominantly Microsoft areas.

I hope that his will satisfy everyone, as it well should. Microsoft is going above and beyond what was expected of them and it should be appreciated.

Sincerely,
Hugh Queen
CC:fin@mobilizationoffice.com@inetgw

MTC–00028406

From: Betty Brennan
To: Microsoft ATR
Date: 1/28/02 3:04pm
Subject: Microsoft Settlement

Please settle the Microsoft case with the current findings. We feel the prosecution of Microsoft has been and is detrimental to the entire economy. The public has been penalized by actions of the federal government in this unreasonable prosecution by the government, Microsoft competitors, various states where the competitors reside and a prejudiced judge. We feel Microsoft has a better product and should not be prosecuted for making the best successful economy in history and its prosecution led to the recession. It appears the other giants, i.e. Exxon and Mobil, merging banks, merging lumber companies, etc. manage to merge and be monopolistic to the detriment of the regular citizen causing increased prices and the federal government does not interfere. While Microsoft gets punished for going it alone (without political aid) and the other giants lobby Congress, we (everyday citizens) have to pay the higher prices.

Please settle this matter with the current decisions and do not carry it out any longer. Forcing Microsoft to help their competitors is unAmerican.

Joe and Betty Brennan
FAX206–878–1681

MTC–00028407

From: Edward Votypka
To: Microsoft ATR
Date: 1/28/02 3:04pm
Subject: Microsoft Settlement See attached, please.

MTC–00028407—0001

@??d;7??-——R*EDWARD A. VOTYPKA
16611 Mohican Trail
Chagrin Falls, OH 44023
January 25, 2002
Attorney General Mr. John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

This is to voice my support for the settlement recently reached between the Department of Justice and Microsoft. In my opinion, this lawsuit should never have happened. The basis of antitrust laws is damage to the consumer and monopolization of the market. There was no damage to the consumer. Bill Gates, through Microsoft, has helped consumers enormously. He standardized computer software. You do not need five different programs to do something. Nor is the price exorbitant; in fact, prices for software have gone down. Microsoft put out a better product at a better price. His competitors had every chance, and still do, to put out a better product and they have not. Instead, they have gone crying to the federal government citing lack of competition. While it is true that Microsoft plays to win, so does every other firm in the IT business ?? indeed, in any business. Microsoft has tried to be fair in meeting the Department of Justice demands. Microsoft has agreed to open the company up to more competition, agreeing to allow other developers more of its copyrighted code to aid in the development of third party programs; Microsoft has agreed to a uniform price list; Microsoft has agreed to disclose interfaces that are internal to Windows'' operating system. This is more than most companies would do.

I urge you to support this agreement and allow us to put this matter to rest.

IF MERGEFIELD PARA4 1/2 PARA4+<> .....

Sincerely,
Edward Votypka

MTC–00028408

From:
macrist@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 3:04pm
Subject: Microsoft Settlement

Good Day:

Short and simple, I am a consumer. A consumer who has been harmed by Microsoft's monopoly in the form of inflated prices, lack of software choice and shoddy software produced by Microsoft. I join with the top Consumer ogranizations in America (Ralph Nader's Consumer Project on Technology, The Consumer Federation of America and Consumer's Union) in asking you to reject the proposed settlement as it does little to preserve real competition going forward and does nothing to punish Microsoft for their illegal past behaviors. Thank you for your consideration.

Respectfully,
Michael A. Crist
5416 Palos Verdes Blvd.
Torrance, CA 90505
macrist@netscape.net

MTC–00028409

From: Lauren Kosty
To: Microsoft ATR
Date: 1/28/02 3:06pm
Subject: Microsoftsettlement

To Whom it May Concern,

I think that Microsoft should not be allowed to abuse the antitrust laws or force consumers to use their own internet browser because there must be competition in the market, otherwise Micosoft will not be motivated to produce a product that is of good quality. It is unfair to take away the consumers right to choose the product they prefer and it is not beneficial to our countries economy to lose its competative edge by permitting monopolistic companies to exist.

sincerely,
Lauren Kosty
huesofgreen@yahoo.com

MTC–00028410

From: Paul Svitenko
To: Microsoft ATR
Date: 1/28/02 3:06pm
Subject: Microsoft Settlement

Dear DOJ,

From time to time, I hate Microsoft and its product.

At all times I hate this antitrust effort. It is unnecessary. Costly. Hypocritical. History is replete with antitrust prosecutions that have wreaked nothing but havok. Doing something to end a government-granted monopoly is one thing. Attacking the most successful company of our day is another. They got to the top by offering what the public wanted. We paid them all the way.

Let those who have the skills and honest desire punish Mr. Gates and company in the market place. There are many out there. If Microsoft lets down even for a minute, they will suffer ? alternatives abound, as the Apple, Linux, and AOL-Netscape-Lindows possibilities show.

In the end, it is not Microsoft that beat AOL, Sun, Apple and the rest of them ? it was I and other consumers who chose a cheap, relatively reliable, available standard in computing. The rest remind me of Carl Marx ? riding on the coattails of their betters and trying to bite the hand that has enabled them to feed themselves. It's disgusting, and you should find something more constructive to do with my tax dollars.

Best regards,
Paul L. Svitenko, Esq.

MTC–00028411

From: Don Carlson
To: Microsoft ATR
Date: 1/28/02 3:07pm
Subject: Microsoft Settlement

Please get this settled and move on with life. Don't cave in to the demands of inferior companies and their whining senators etc. Show me a better product at a better price and I will buy it. Until then, leave Microsoft alone and let's get on with serious business. Thank you for your consideration.

Sincerely, Don Carlson
PO Box 867
Winthrop, WA 98862
509–996–3631

MTC–00028412

From: K T
To: Microsoft ATR
Date: 1/28/02 3:09pm

Subject: Microsoft Settlement
Dear Judge Kollar-Kotally,
I am in opposition to the Proposed Final Judgment in the Microsoft case. Undoubtedly, MS continues to violate business practices. The Proposed Final Judgment does not punish Microsoft for its past violations to the anti-trust laws. Microsoft is guilty of breaking several anti-trust laws. Under the final settlement, Microsoft is permitted to retain most if not all profits gained through their illicit activities. Subsequently, the PFJ will not compensate parties injured or harmed through Microsofts egregious misdeeds.
In addition, the PFJ will not take into account all Microsoft gains made through its illegal maneuverings. With all due respect, the final settlement is basically acknowledging the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? I can assure you that the message is clear and simple.
The PFJ encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. In conclusion I submit to you my objection to this Proposed Final Judgment.
Respectfully,
Karen Thurman
311 Estes Ct.
Travis Airforce Base 94535

MTC–00028413

From: Mark Sutherland
To: Microsoft ATR,nolandpeebles@attbi.com @inetgw
Date: 1/28/02 3:10pm
Subject: Microsoft anti-trust
Please don't let Microsoft get away with it. Microsoft would have been just fine if not for their cut throat business practices. Releasing a OS that compeats fairly on the market would mean that microsft would have about 50–60% market share. But when a hardware manufacturer has to sign an agreement to only sell computers with only the one type of operating system it hurts all of us. Competition is what makes our capitalist economy go round and when the OS manufacturer stops that from happening we become little more than a communist commune. Their control of the market has been unmeasurable and this control has damaged the way we live, the way we learn, and the way we work. Microsofts Monopoly has cost businesses in the US alone Billions in dollars that could have been paid back to stock holders or be used to pay off loans and help the economy instead of hurting it. Don't let Microsoft screw us all again make them work with binders on for awhile and see if they can deal with some of their own medicine.
Mark Sutherland
548–59–5236

MTC–00028414

From: Jeryl
To: Microsoft ATR
Date: 1/28/02 3:12pm
Subject: Microsoft Settlement
Don't let Microsoft get away with their tactics any longer! I do not want to see a world dominated by a company that seeks to control all flows of information, whether in the office, school, home or on the net.
A concerned citizen
J Barnett
Norfolk VA

MTC–00028415

From: Tom Stevenson
To: Microsoft ATR
Date: 1/28/02 3:13pm
Subject: Microsoft Settlement

MTC–00028416

From: Gordon Ruby
To: Microsoft ATR
Date: 1/28/02 3:12pm
Subject: Microsoft Settlement
I don?t believe that the proposed settlement in the Microsoft anti trust case is fair in any way. I am a computer technician that has been working with Microsoft software for more that 12 years. I have repeatedly seen Microsoft use its monopolistic advantage to destroy the competition. The proposed settlement only helps Microsoft conquer one of the last areas that it doesn?t have a monopoly: the education system. I find this to be absurd. Also there are so many loop holes in the proposed settlement that the punishment will be less than a slap on the wrist.
Gordon Ruby
River City Technical Services
10534 NE Beech St.
Portland, or 97220
503–262–1930

MTC–00028417

From: Rob Ellis
To: Microsoft ATR
Date: 1/28/02 3:12pm
Subject: Microsoft Settlement
Renata B. Hesse Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
A. Robert Ellis
88 College Road W
Princeton, NJ 08544
To the Court:
As a citizen, a student, a programmer, and a consumer, I would like to comment on the anti-trust case against Microsoft, as allowed by the Tunney Act.
I feel that the proposed settlement with Microsoft does not do enough to punish the company for past anti-competitive actions, nor is it specific enough to ensure that future incidents will not occur. For details, please see the statement made by Dan Kegel and others, which has been, or will be submitted. I agree entirely with their comments.
I hope that a stronger, more detailed agreement can be reached that will resolve current complaints, and protect businesses, programmers, and consumers in the future. Thank you for your time.
Sincerely,
Arthur Robert Ellis

MTC–00028418

From: McDaniel-Neff, Clifton
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:12pm
Subject: Microsoft Settlement
I am thoroughly opposed to the settlement that has been reached between the Justice Department and Microsoft in the Antitrust case. Microsoft is, without a doubt, a monopoly that has abused its power and will continue to do so unless it is reigned in by the government. Microsoft corp. does not compete on the merit or value of its software, but by using unfair tactics to get where it wants.
Any settlement, etc. in this case should set very clear rules that Microsoft must adhere to. It should also set forth punishments for past and/or future abusive action. Please do not allow this settlement.
Clifton McDaniel-Neff
Visual Information Specialist
For Your Information, Inc.
Phone: (202) 267–2818
Email: cmcdanielneff@comdt.uscg.mil

MTC–00028419

From: E T
To: Microsoft ATR
Date: 1/28/02 3:14pm
Subject: Microsoft Settlement
Dear Judge Kollar-Kotally-
Please consider my disapproval at the Proposed Final Judgment. Consider the true facts in the matter and judge accordingly.
From my understanding a Final Settlement has been reached between the two parties. However the Proposed Final Judgment will overturn the evidence found by the U.S. Court of Appeals indicting Microsoft in violation of antitrust laws.
The proposed settlement has the Justice Department withdrawing their charges against MS. In fact, based on the assessments made on the proposal, Microsoft will be cleared of all wrongdoing in the matter. How can this be?
There are several glaring flaws in the PFJ. However, non-so more apparent than allowing an absentee landlord to govern Microsoft. With all due respect, the final settlement provides no security to restrict MS from breaking any laws in the future. In my humble yet accurate opinion, the future governing body, implementing certain rules or regulations and forcing MS to adhere by them, will not be stringent nor forceful enough to make any dramatic changes. Similarly, I am not convinced that these stiff penalties applied to MS will ensure the security and future growth of other companies,
A whole new framework of laws must be established to justly punish MS. The Proposed Final Judgment abstains from such justification and order. Again I submit my objection to the stated Proposed Final Judgment.
Sincerely,
Eduardo Tualla
Sacramento, CA

MTC–00028420

From: Marty Irwin
To: Microsoft ATR
Date: 1/28/02 3:14pm

Subject: Microsoft Settlement

Please accept my attached letter of response regarding the Microsoft Settlement with the Department of Justice. Thank You ! Marty Irwin Send and receive Hotmail on your mobile device: http://mobile.msn.com
1116 NW 52nd Street
Vancouver, WA 98663
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing today regarding the settlement that was reached between the Department of Justice and the Microsoft Corporation in their three year long antitrust battle. I believe that this case has been propagated for far too long and the money and resources expended on both sides of this dispute could have been put to better use elsewhere.

The terms of this settlement are fair. Microsoft has agreed to design all future versions of its Windows operating system to work in conjunction with the products of its competitors. The company will also cease any action that may be considered retaliatory. Adherence to this settlement will also be ensured by a government appointed oversight committee which will monitor Microsoft. It is clear to me that this settlement addresses the issues that were brought in this suit and then some. The reluctance of some people to accept these terms is proof that they are more concerned with perpetuating their own political agendas than they are with finding a suitable solution to this problem.

Thank you for supporting this settlement and for allowing me to voice my opinion on this issue.

Sincerely,
Marty Irwin

MTC–00028421

From: Matthew Stoecker
To: Microsoft ATR
Date: 1/28/02 3:15pm
Subject: I urge acceptance of the proposed settlement (EOM)

MTC–00028422

From: carmar
To: Microsoft ATR
Date: 1/28/02 3:15pm
Subject: Support settlement of Microsoft case

Dear Atty. General Ashcroft:

I am writing to request your support of the settlement Microsoft has offered and the Department of Justice has agreed to. There will always be rivals and special interests who object. It is time to put closure and I trust you will support the settlement of this case.

Sincerely,
Carolyn Palmquist
Havana, Florida

MTC–00028424

From: Dave
To: Microsoft ATR
Date: 1/28/02 3:14pm
Subject: Microsoft Settlement

I am writing in the hope that my thoughts and concerns may be heard by the court of Judge Colleen Kotar-Kelley. I'll be brief. The settlement, as proposed by the DOJ, the accepting states and Microsoft is fair to all concerned and the general in public. This case has only minimally been about consumer protection from a monopoly and has largely been about protecting the interests of a very few, large corporate and government interests to make sure that their brand of technology isn't usurped by vendors like Microsoft who work to find unique technologies and incorporate them into a coherent, useable form for large numbers of people to benefit from the technologies use. In regard to this competition, the proposed settlement is very fair, for two of it's primary stipulations, in my mind. The first is that OEM's are assured that Microsoft can not take retribution on the OEM's if the OEM's decide they find one technology more compelling than a Microsoft technology. It also provides the means for Microsoft's competitors to find out about underlying interfaces into it's applications and operating systems, by allowing the sharing of specific technology information,

but which does so, in a controlled atmosphere that protects Microsoft's rights to it's intellectual property.

This is the most important reason to accept this proposal. It DOES protect the intellectual capital of this company without the wholesale rape and plunder of it's most important technological secrets. In a communist/socialist system, one would expect that the details of how a successful business is operated would be viewed in extreme detail without any regard for the rights of those individuals who have worked so hard to make that company a success. But this is America. Organizations and individuals in our society have the right to protect and keep private the fruits of their hard work and share those fruits with others in a way that rewards those who worked to create those fruits. Microsoft's competitors, including the states who are objecting to this settlement (these states also have compelling interests on the behalf of Microsoft's competitors in my humble opinion) care not about competition, but how to get as much intellectual property as possible and eliminate Microsoft as a threat to their very profitable franchises which are far from affordable for the average consumer (which is what they keep telling us this is all about, that this is for Jane and Joe consumer).

Finally, I am not surprised, even in the light of all the stuff that has gone on at ENRON, that the loss of billions of dollars from investor funds (holding Microsoft stock) is not a big deal to our government leaders because of all the money that state and federal representatives hope to acquire from a major shake up of Microsoft, and because their corporate benefactors (IBM, SUN, AOL/TimeWarner, et. al) will benefit from a coup in obtaining Microsoft's intellectual property. ENRON is a big deal, because so many government leaders had there hands involved in that organization in so many ways. Microsoft is, on the other hand, not a big deal to the government and needs to be done away with, because rather than spend a lot of time throwing money at congressional leaders and lobbying congress, Microsoft went about it's business. Microsoft did do and still does an excellent job of finding the best and the brightest talent to become one of the best marketing and technology companies in the world. If you really want to find out about competition, then why don't you go out and compare a Microsoft solution, to that of one of it's competitors (IBM, SUN, AOL/TimeWarner, Linux or other OS/Application variants) and evaluate on all facets (up front costs, consulting needs, ongoing support, etc), and you will see that if more draconian remedies are pushed upon Microsoft that the high prices already charged by these Microsoft competitors will do everything except become more competitive.

Thank you for your time and consideration!

David J. Renner

MTC–00028425

From: W. Curtiss Priest
To: Microsoft ATR
Date: 1/28/02 3:17pm
Subject: Proposed Microsoft settlement: woefully insufficient

Dear Justice Department,

As a software innovator and holder of several software patents, I have first hand knowledge of how extremely brutal, unfair and bullying Microsoft is to others in the industry. I was involved for five years in negotiation, arbitration and potential legal action against Microsoft which only caused Microsoft to spend incredible resources to deny me and Humanic Systems any just and due compensation for our innovative work.

In my opinion, as President of Humanic Systems, a company that was (above) abused by Microsoft regarding our intellectual property for significant components of Microsoft Outlook, the proposed remedy is extremely inadequate:

1. It does not provide substantial redress for the prior losses caused by MS on others

2. Secrecy provisions undermind the ability to obtain API information and will systematically be used by MS, in my opinion, to continue its monopoly stranglehold

3. There are no structural remedies, and, without those, the ''fascist'' mindset of Ballmer and Gates will continue to dominate the thinking of each and every employee

4. Microsoft's stated opinions about various forms of open software, being a ''cancer'' undermines the ability for consumers to get the maximum benefit for the least cost This position, alone, demonstrates that they want ''all the marbles'' and it is a ''winner take all'' game Consider, for example, a PBS documentary about extreme competition as taught within the Gates family as Mr. Gates grew up This person does not know the word cooperation, and, without extremely directive measures, will never show cooperation to the rest of the software industry that is slowly dying under his ruthless hand.

Very truly yours,
Dr. W. Curtiss Priest
President, Humanic Systems
Director, Center for Information, Technology & Society
Member, American Economics Association
Prior, Principal Research Associate, MIT
Author, —Technological Innovation for a Dynamic Economy—, 1980 (Pergamon Press)
—Risks, Concerns and Social Legislation—, 1988 (Westview Press)

—W. Curtiss Priest, Director, CITS
Center for Information, Technology & Society
466 Pleasant St., Melrose, MA 02176
Voice: 781–662–4044 BMSLIB@MIT.EDU
Fax: 781–662–6882 WWW: http://Cybertrails.org

MTC–00028426

From: Rick Balian
To: Microsoft ATR
Date: 1/28/02 2:18pm
Subject: Microsoft settlement

To Whom It May Concern,

I hope Microsoft does not get off with a warning or a fine. Warnings have been disregarded in the past. And a fine will only be earned back by higher prices on its products. I think for Microsoft to curtail its illegal domination there have to be specific, strict instructions as to what it may and may not do. Windows XP is even more bundled with Microsoft products than previous versions. How did that happen; why was that product allowed to be shipped? Microsoft does not play well with others and must be severely restricted in its drive to curtail and bully competition, ignore industry standards and push through its own proprietary standards and hamper innovation.

Sincerely,
Rick Balian —

MTC–00028427

From: Evelyn Kessler
To: Microsoft ATR
Date: 1/28/02 3:18pm
Subject: Microsoft Settlement

In my opinion, Microsoft's proposed settlement to the law suit is a fair solution to ending this long, ongoing fight by competitors to try to bring Microsoft its knees. The willingness of nine states to accept the settlement clearly demonstrates that it is fair and reasonable. But nothing will ever be enough ''punishment'' for those states who want to damage Microsoft.

I urge the DOJ to recommend acceptance of the settlement proposal. Allow Microsoft, along with its new awareness of business practices, to continue building great software and services for users around the world.

Evelyn Kessler

MTC–00028428

From: Leon A Wilson
To: Microsoft ATR
Date: 1/28/02 3:18pm
Subject: DOJ: AOL vs. MSFT

MTC–00028429

From: Anatoly Hiller
To: Microsoft ATR
Date: 1/28/02 3:15pm
Subject: Microsoft Settlement

The PFJ should terminate Microsoft's illegal monopoly. The PFJ should deny to Microsoft the profits of its past behavior and penalize them.

The PFJ should prevent any future anticompetitive activity. Anatoly Hiller (650) 473–3617

MTC–00028430

From: Adams, Michele
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:19pm
Subject: Microsoft Settlement

Attached please find letter in support of the Microsoft settlement.

Michele M. Adams
GTECH Corporation
55 Technology Way
West Greenwich, RI 02817
email: madams@gtech.com
Ph: 401–392–5556
Fx: 401–392–4808

MTC–00028430—0001

20 Pepin Street, Unit 4
West Warwick, RI 02893
January 28, 2002
VIA FACSIMILE (202–307–1454) & E-MAIL (microsoft.atr@usdoj.gov)
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
RE: Microsoft Settlement

Dear Attorney General Ashcroft:

I am sending this public comment via email to record my support for settlement of the court case against Microsoft Corporation. I seek your continuing support in the effort to persuade the judge that the settlement will be in the better public interest of the United States than the alternative of costly and unfocused, continued litigation.

The settlement, whatever its effects on Microsoft Corporation, will be quite beneficial to the community that uses personal computers, PC makers will be able to re-configure the desktop package of programs that come with Microsoft?? Windows, or even to combine making PCs with operating systems from Microsoft and other software makers, with the ending of exclusive distribution and promotion terms in contracts, These and other changes will bring greater flexibility and opportunity for experimentation to the PC world, If Microsoft wants to continue to lead the industry it will have to come up with new and better innovations faster than it has in the past.

Please continue to support the settlement. Thank you.

Respectfully yours,
Michele Adams Pizzitola

MTC–00028431

From: Rose, David
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:22pm
Subject: personal opinion of MS settlement

To whom it may concern.

I am very concerned regarding a quick and non-remedying settlement against Microsoft. I feel as thought I am a pet of this particular corporation ... I am only allowed to have what they will allow me to have. Not only are my software choices very limited, but even some of those competing choices are taken away from me because of the reasons which found Microsoft guilty of being an illegal monopoly.

One thing I do not understand is why Microsoft has not been sued by corporations using their software. There are many software ''bugs'' in their past software—Office 95, 97 2000, etc. Windows 95, 98, 98 second edition, millennium, etc. If I am buying a license to use software, and not the software itself, it stands to reason that I would expect the licensor to keep fixing the ''bugs'' in software for a specified amount of time; and that new releases are just software with new features.

However, there are many unresolved software ''bugs'' which are never fixed. With no competing software, my only recourse is to buy a new license for a different version of software. This may be an expensive remedy which I should not have to afford.

Also, I have heard that major resellers MUST sell Microsoft software on their computers. From Dell, Gateway, etc I can not get a computer only. I must purchase an operating system. But, on a previous computer that will no longer be used, I already paid for an operating system. If that computer is no longer to be used, or to be used with Linux, Unix, FreeBSD, Be, or some other ''ground roots'' operating system, why must I pay again for a software license when one is already freely available for use?

I believe I have been wronged. I have been duped out of my hard-earned money. I insist that this will not happen again! I want the party found guilty by a jury to be considered guilty by the judicial system!

S. David Rose
Stamford, CT, US
mailto:david.rose@us.wmmercer.com

This e-mail and any attachments may be confidential or legally privileged. If you received this message in error or are not the intended recipient, you should destroy the e-mail message and any attachments or copies, and you are prohibited from retaining, distributing, disclosing or using any information contained herein. Please inform us of the erroneous delivery by return e-mail.

Thank you for your cooperation.

MTC–00028432

From: Linda Charlie Puls
To: Microsoft ATR
Date: 1/28/02 3:21pm
Subject: Microsof Settlement

PO Box 639
Shoreham, NY 11786
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I support the settlement between your office and Microsoft in the ongoing antitrust trial. I believe that Microsoft has the right to free enterprise, and the terms it will comply with to end the case are fair to its competitors. Microsoft's concessions in the settlement will ensure that their rivals have more opportunities to gain market share. Making new program removal features available in Windows XP and giving computer makers new freedoms to integrate non-Microsoft programs into Windows will ensure that other companies who make good products will have a greater chance of distributing them to the public.

Please settle the Microsoft case, and be mindful of their right to innovate and reach as many people as possible with their products.

Sincerely,
Linda J. O'Neill -Puls
Linda Puls

MTC–00028433

From: Gary Robson
To: Microsoft ATR
Date: 1/28/02 3:22pm
Subject: Microsoft Settlement

I believe that the findings in the Microsoft antitrust case were accurate and reasonably stated, but that the remedies do not go far enough to prevent recurrence or to compensate consumers and competitors for the damage done by Microsoft.

When I first began using computers with Microsoft operating systems, the OS represented around 1% of the total cost of the computer (an IBM PC with MS-DOS). Now, I can buy a computer for under $1,000 and a copy of MS Windows will cost over $100. They've gone from 1% to 10%. The vast amounts of profit Microsoft is raking in from their operating systems monopoly is funding advertising, price cutting, and other methods of invading other profit centers, including not only middleware, but video games, the ISP/ASP market (through MSN), and many less visible incursions through acquisitions and partnerships.

Breaking up Microsoft is the only realistic solution. ———

Gary D. Robson
1284 Highway 72 North
P.O. Box 9
Belfry, MT 59008–0009
406/664–3067 (home)
406/446–2742 (work)
gary@robson.org http://www.robson.org/gary/

MTC–00028434

From: David Martin
To: Microsoft ATR
Date: 1/28/02 3:22pm
Subject: Microsoft Settlement
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200 Washington, DC 20530–0001

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement. In my opinion, the Proposed Final Judgement (PFJ) does not protect the interests of the American public, and does not address the anti-competitive practices Microsoft was found guilty of. In particlular, I would like to make the following points:

The PFJ doesn't take into account Windows-compatible competing operating systems The PFJ Contains Misleading and Overly Narrow Definitions and Provisions The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs The PFJ as currently written appears to lack an effective enforcement mechanism As a professional working in the Computer Software industry, I have personally observed the effect Microsofts monopoly power has had. It has stifled innovation, blocked investment in promising competitive technologies, and severely distorted the efficiency of the software marketplace. Today, no one knows what the economic value of a PC operating system is, or a web browser, or an email client. Microsofts monopoly has blocked the free flow of information and capital that is essential to a healthy market. The decision by the Justice Department to capitulate to Microsoft is a gross injustice to the average consumer of computer software.

In summary, the Proposed Final Judgment, as written, allows and encourages significant anticompetitive practices to continue, would delay the emergence of competing Windows-compatible operating systems, and is therefore not in the public interest. It should not be adopted without substantial revision to address these problems.

Sincerely,
David M. Martin
74 Shelters Rd.
Groton, Massachusetts
Dmartin82@yahoo.com

MTC–00028435

From: bboam@infowest.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:22pm
Subject: Mircosoft settlement

MTC–00028436

From: Tom Hayes
To: Microsoft ATR
Date: 1/28/02 3:25pm
Subject: Microsoft Settlement

My Opinion/Vote: Settlement needs to be completed and minimal penalties, if any, need to assessed and allow Microsoft freedom to be innovative, creative and competitive and survive in the world competitive economy and free market. At the rate the legal proceeding are going, throwing this case is completely an option.

I am pro-settlement with Microsoft, DoJ and the nine states. The issues, who and why's are not reflective of the general populating and I am convinced this is being driven by Sun, IBM and AOL/Netscape and several other competitors who lack product creativity and success. After all the legal battles and information about harming consumers, at the end, you ask the general population and consumers thru the Tunney Act. If this was really truly driven by the consumers, I am pretty sure we would be hearing from them more then Sun, IBM, and AOL/Netscape funded legal battles.

Settlement: Microsoft, economy, consumers and innovative productivity has suffered enough. There should minimal penalties against Microsoft and many of the practices in question are no longer in place or even applicable. Companies need to be innovative, creative and competitive to survive in the world economy and free market.

Issues:

*These legal fees are costing the US and Microsoft many dollars. I see where Microsoft took a finical cost, $660 Million dollars battling these legal issues, but where/what are the funds fueling the DoJ and nine states and the other previous other nine states? My income, state and local tax dollars and maybe some selective corporate sponsorship? I would challenge opposing corporate sponsorship in the court of law on a case slated on behalf of the people.

*Other legal issues related to suing Microsoft i.e. the Class-Action Suit http://www.microsoft.com/presspass/Press/2002/Jan02/01–11ClassActionDe cisionPR.asp and the resent AOL/Netscape suit http://www.microsoft.com/freedomtoinnovate/info/news—01—22—02.asp *Where has the end consumer been harmed by Microsoft IE browser, in the scope of this case? For that matter Microsoft's technology harming consumers? And one should look back in history and see where technology has come from and improved consumers, productivity and world wide economy.

Other 100 Class-Act Suite, and suggested settlement:

''Under the proposed settlement, Microsoft had agreed to provide more than $1 billion in cash, training, support and software to help make computer technology more accessible to public schools serving nearly 7 million of America's most economically disadvantaged children.'' Would have helped those schools and prepared those students for the current real world computing skills. But no, Apple/Mac's has the loin-share of that market and go figure they are training students on non-Microsoft technology in preparation their profitable careers.

AOL/Netscape Suit:

Who killed Netscape? Well, AOL purchased Netscape for $10 billion dollars in the midst of the DoJ trial, even after hearing concrete evidence that IE's success in the market was based on merit, not market share. And in the middle of a so called browser war, sound like a poor business decision gone bad and now want the sue.

Regards,
Tom Hayes
425–442–8322

MTC–00028437

From: Tim Pawlenty
To: Microsoft ATR
Date: 1/28/02 3:25pm
Subject: RE: Microsoft lawsuit settlement

January 28, 2002
Ms. Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Dear Ms. Heese:

I applaud the leadership displayed by the Department of Justice and the nine Attorneys General for developing the proposed Microsoft settlement agreement that balances the protection of consumer interests and the competitive process. I believe that this settlement will preserve Microsoft's ability to innovate and engage in normal procompetitive activities, critical during our nation's current economic recession. At the same time, the settlement is a win for consumers, with its broad scope of prohibitions and obligations imposed on Microsoft. It will certainly require substantial changes in the way that Microsoft does business. It imposes significant costs on the company and entails an unprecedented degree of oversight. Furthermore, the agreement strikes an appropriate balance within the technology industry, providing opportunities and protections for firms

seeking to compete while allowing Microsoft to continue to innovate and bring new technologies to market.

This reasonable settlement will help consumers, the industry, and the economy to move forward.

Very truly yours,
Tim Pawlenty
Majority Leader
Minnesota House of Representatives

MTC–00028438

From: legwatch@reliableanswers.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:21pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. T

his is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Annette Hall
5409 Highview Lane
Citrus Heights, CA 95610–7405

MTC–00028439

From: Miles C
To: Microsoft ATR
Date: 1/28/02 3:26pm
Subject: opposed to settlement

From what I have read in the majority of trade publications is that the consensus is that this is not a settlement that will significantly benefit anyone other than Microsoft.

I hope that 9 states pursuing a separate path is enough to at least give whomever might be in charge of this case that it this case is strongly questionable. I would put forth the suggestion that attorney generals in 9 states are also experts in the matters of law, so even though 9 states have gone along with it the matter has some serious issues. As near as I can tell, Microsoft is and will remain a monopoly. They make the rules for their OS. They will also use unfairly their considerable resources to enter in and dominate any aspect of the software industry because there does not exist another corporation who can print money like they can. The idea of leveraging a monopoly is something that I don't think was adequately explored.

I think that they have adopted the old Royal philosophy of don't explain and don't apologize as much as possible. It works, most people will go away if you deny anything long enough. They have added to it with significant amounts of money in contributions making the party line that much more difficult to dispute.

At this juncture, they seem to be trying to make new inroads into people's lives such that they will control large portions of commerce with the Internet by holding much of the information used for marketing and purchasing. If the Department of Justice can have its case split so cleanly at this juncture how much less of a chance will there be an answer in the future when no doubt the political pressure will likely be even greater because of greater profit?

I truly doubt that they are significantly changed from their earlier tactics simply because those tactics worked and now no longer are necessary rather than they are facing any punitive measures. There will remain the fact that no one can develop for their platform as easily as they can. They have the source code and expertise in developing it that automatically gives them an advantage in experience.

I honestly feel as though I was sold out as a consumer. I don't doubt that any company that is developing in a field that MS looks at as potentially profitable feels even worse knowing that they will be acquired or destroyed as a force in that market through no special ability of MS other than not having that market niche fund its development. Office will help pay for Money, which will help pay for Age of Empires, for instance. Please reconsider this settlement. I truly believe that a diversified software industry will be much better for us than a gigantic corporation kept healthy through government intervention on its behalf.

Sincerely,
Miles Cannon

MTC–00028440

From: rglenn@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 3:28pm
Subject: Microsoft Settlement

I wish to comment on the proposed Microsoft settlement. I agree with the problems outlined in Dan Kegel's analysis posted on the web at http://www.kegel.com/remedy/remedy2.html It is my opinion that the current proposed settlement will NOT do enough to prevent further anti-competitive practices by Microsoft, and to restore consumer choice to the software market.

Robert A. Glenn
360 W 22nd St #11K
New York, NY 10011

MTC–00028442

From: Bill Keough
To: Microsoft ATR
Date: 1/28/02 3:28pm
Subject: Microsoft Settlement

The recent history of antitrust has been a jihad by the Department of Justice against a pantheon of American industry. Antitrust cases against IBM, Intel and Microsoft seemed to have been designed to wreck the high tech industry. Al-Qaida could not have designed a more devious program to destroy the U.S. economy. Hyperbole? The current recession was started or at least given a boost by the tepped up legal action against Microsoft and the consequent fall of it's stock. Hundreds of billions of dollars have been lost.

This suit has unleashed a mob of whining moochers angling for a chunk of cash or control of Microsoft. If this lawsuit is upheld it will result in the virtual destruction of the company, maybe not at once, but surely in a drawn out death by fragmentation and bankruptcy. No more operating systems, no more Web browsers, no more games, no more office software, no more jobs, no more nothing. Contrast the way Microsoft does business with the way the Post Office, a real monopoly, does business. Can Microsoft prevent the entry of competitors into its realm of business? No it can't, but the Post Office routinely does this the only way possible: by the use of force or the threat of force. There is no other way to bar competition than to resort to force. Entry in a field of business however does not ensure success. Your competitors do not have to make allowances for your weaknesses by tailoring their business practices so you can survive. Everything is permitted except force or fraud. As Bill Gates has said many times, no one has been forced to do business with them. If their partners do not like the terms Microsoft sets they are always free to leave. Microsoft should not be compelled to open up its products to competitors. Windows and Internet Explorer are their property to dispose of as they see fit.

This is the essence of the case, or lack of a case, against Microsoft. Envious competitors complain about Microsoft's business practices, which they themselves routinely use. On a personal level, I started with the Prodigy browser and then switched to AOL. Finally when I bought a new computer I ended up with Internet Explorer. I never had any trouble switching browsers and from a business point of view it would not make sense to impede the installation of new software. After all what would be the point of an operating system that sabotaged certain programs? That Microsoft includes an internet browser with windows does not mean you have to use it. Competing browsers on CDs are so numerous they are regarded as junk mail. The Department of Justice case against Microsoft is not just senseless but in a recession and a time of war it is doubly destructive. Reason and justice dictate that this case should be dismissed.

William B. Keough
Seattle, Washington

MTC–00028443

From: Bill Young
To: Microsoft ATR
Date: 1/28/02 3:28pm
Subject: Microsoft Settlement

To Whom It May Concern:

Many others have eloquently voiced their opposition to the proposed settlement. I cannot hope to express the same concerns as well in a brief email.

I am against the proposed settlement because I do not feel it goes far enough in restricting the anti-competitive practices that currently allow Microsoft to maintain a monopoly position in the desktop operating systems market. Further examples of these practices are evident in software releases subsequent to the court findings, further

justifying the need for strong measures that cannot be circumvented by Microsoft's interpretations of loose wording.

- signed—
William J. Young
Ph.D., Computer Science
26069 Highway 72
Golden, CO 80403
CC:byoung@pcisys.net@inetgw

MTC–00028444

From: gigi.burton@us.cgeyc.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:32pm
Subject: FW: Microsoft Settlement [CGEY Virus checked]

Thanks,
Gigi Burton
Critical Technologies Recruiter
425.990.6932 (Direct)
425.802.1232 (Cell)
425.990.6801 (Fax)
CapCom 9976898
http://www.usa.capgemini.com
Send to: microsoft.atr@usdoj.gov

My Opinion/Vote: Settlement needs to be completed and minimal penalties, if any, need to assessed and allow Microsoft freedom to be innovative, creative and competitive and survive in the world competitive economy and free market. At the rate the legal proceeding are going, throwing this case is completely an option.

I am pro-settlement with Microsoft, DoJ and the nine states. The issues, who and why's are not reflective of the general populating and I am convinced this is being driven by Sun, IBM and AOL/Netscape and several other competitors who lack product creativity and success. After all the legal battles and information about harming consumers, at the end, you ask the general population and consumers thru the Tunney Act. If this was really truly driven by the consumers, I am pretty sure we would be hearing from them more then Sun, IBM, and AOL/Netscape funded legal battles.

MTC–00028445

From: Susan Greenbach
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:41pm
Subject: Microsoft Settlement

Dear District Court Judge:

I am writing to you to as I am frustrated with the prosecution of Microsoft. I am the Information Systems manager for our office and deal with Computers and Servers daily. Streamlining computer software and hardware can be the most difficult, time consuming and costly expense for our company.

Compatibility and support are key. I appreciate that Microsoft has helped immensely with this task. We don't need this process mucked up by government intervention. I resent that the government does not believe that I can decide for myself which software/hardware is useful to me. I can't believe our government views Microsoft as a threat, when after all it is Microsoft that has brought the industry to where it is....on real earnings, not ''puffed-up'' .com hype. Don't forget the bubble bursting for the .communists and all of their venture capital. Those bringing suit are not individual consumers, but Microsoft's unsuccessful competitors. Failed businesses must not be allowed to set the rules for the markets in which they failed.

Protecting some businesses from others is a dangerous policy. I want to see an America where success is embraced, not punished and throttled! Bill Gates is a self-made man who has brought America, the world, to new levels of progress. Microsoft has a fundamental right to its property, and it is the governments job to protect this right, not to take it away. Microsoft, should be lauded and left alone to continue to develop and prosper so that, we the people, can too.

Susan Greenbach
CC: 'activism(a)moraldefense.com'

MTC–00028446

From: Dave Jorgensen
To: Microsoft ATR
Date: 1/28/02 3:36pm
Subject: Microsoft Settlement

Dear Sirs,

This is a follow-up to my e-mail from 11am this morning. My earlier letter was intended for those handling the civil anti-trust suit against Microsoft. This additional letter is in regards to the federal anti-trust case. As a citizen of the United States of America, and an employee in the High-Tech sector of our nations economy, I feel compelled to write and voice my disagreement with the proposed federal anti-trust settlement with Microsoft.

For the past two decades, I have watched again and again as Microsoft leverages its monopoly position to wipe out what were once healthy high-tech markets. While only a few of these cases have seen a courtroom, and while some would disagree about whether Microsoft's dominance in these instances has provided more pluses or minuses for the end customer, one thing is painfully clear: Microsoft has now been caught red-handed, showing the very worst of intentions, as they abused their monopoly position to destroy competition and seize control of the web browser market. What's more, Microsoft has shown in court, in the press, and in the marketplace, that they do not recognize their mistakes in this area. They are simply not capable of the kind of introspection, conscience and respect required to regulate themselves as a result of the findings of this case. As we have seen throughout this long ordeal, Microsoft shows an arrogant disrespect for the letter and spirit of the law; sometimes manipulating technical evidence, other times violating the temporary restrictions placed against them, all showing a clear pattern that they are truly unrepentant in their actions. The currently proposed settlement, which is basically that ''we won't do it again'' is laughable under the existing circumstances. I urge the Justice Department, The Court, The Judge, anyone else involved, to reject the currently proposed federal case settlement, which is merely a slap on the wrist (like so many slaps Microsoft has ignored before) and insist on pursuing truly punitive, active remedies against this company which is so wreckless in the marketplace and so disrespectful of the courts and of the American people.

Short of breaking up the company (which I still think is justified) certainly there should be, at the very least, some hefty fines applied against Microsoft, and perhaps even a loss of property rights (creating an open source library for) the various technology pieces Microsoft has used for monopolistic anti-competitive leverage, such as Microsoft Office, Microsoft Internet Explorer, Windows 95/98/NT, and so on. For us to hesitate on doing this because Microsoft is a ''flagship'' for the industry, or because their products are now such established, fundamental tools in our marketplace, really shows how entrenched and uncontrollable Microsoft truly is.

Again, despite arguments of past or future behavior, at least in this case the findings are clear. Microsoft has been caught abusing its monopoly position in the worst of ways, to the intentional detriment of the browser market. Microsoft has shown that it cannot self-regulate, and that it usurps the court and the will of the people at every opportunity. There has to be a more severe consequence for such destructive actions and intent.

Thank you for your consideration in this matter,

David E. Jorgensen
350 Budd Ave. #E7
Campbell, California
95008, USA
e-mail: davej@ccnet.com

MTC–00028447

From: Wynn (038) Gail Williams
To: Microsoft ATR
Date: 1/28/02 3:43pm
Subject: Gail Williams

Gail Williams
P.O. Box 1693
Tahlequah, OK 74465–1693
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am a proponent of free enterprise and believe that the government's interference with Microsoft hover the last three years has been appalling. How can our nation and economy grow if politicians and lawmakers keep attacking business?

The antitrust lawsuit has been ridiculous and now that a settlement has occurred I see that Microsoft is being forced to grant broad new rights to computer makers to configure Windows so that competitors can more easily promote their own products. They are also forcing Microsoft to disclose for use by competitors interfaces that are internal to Windows operating system products.

The terms of the settlement seem aimed at nothing more than to give competition an edge it did not have before. Nevertheless, your office has to finalize the settlement. Our economy cannot afford further litigation against Microsoft. I hope your office does what it can to deter the states still eager to sue.

Sincerely,
Gail Williams
cc: Senator Don Nickles

MTC–00028448

From: D T
To: Microsoft ATR

Date: 1/28/02 3:38pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

In relation to my objection to the final settlement in the MS case, I want to point out several loopholes attributed to the Proposed Final Judgment.

I am not in agreement to the oversight committee proposed by the PFJ. With in the confines of the settlement this committee must closely monitor and screen all activities by MS. This close scrutiny insures MS complies with all restrictions entailed in the agreement.

A three man compliance team will oversee and insure that Microsoft comply with the stated rules and regulations. Yet, this three-man oversight committee will be composed of the following: one appointee from the Justice Department, one appointee from Microsoft, and another appointee chosen by the two existing members. In turn, Microsoft will control half of the oversight team.

Also, in the likelihood of any enforcement proceeding, all findings by the oversight committee will not be allowed into court. The sole purpose of the committee is to inform the Justice Department of all infractions by Microsoft. Subsequently the Justice Depart will launch its own investigation into the matter and commence litigation to halt all infractions. When all is said and done, the oversight committee is just window dressing, who will not strictly oversee Microsofts business moves?

In my opinion, the Proposed Final Judgment does not provide appropriate restrictions against Microsoft. What reassurance do we have against Microsofts illegal and illicit activities? I can assure you that the Proposed Final Judgment does not effectively nor sufficiently address the question. Subsequently, I again submit my objection to the final settlement in the Microsoft case.

Sincerely,
Doray Tualla
Sacramento, CA

MTC–00028449

From: Mark Bohannon
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:25pm
Subject: Microsoft Settlement

Please find attached a copy of comments from the Software & Information Industry Association (SIIA) on the proposed PFJ in the case U.S. v Microsoft. Please do not hesitate to contact us if there is an error in the transmission or if you are unable to open the document. <<SIIA 28 Jan 2002 Tunney Act.doc>>

A Message from:
Mark Bohannon
General Counsel and Vice President for Government Affairs
Software & Information Industry Association (SIIA)
1090 Vermont Avenue, NW 6th Floor
Washington, DC 20005
Direct Dial: (202) 789–4471
Switchboard: (202) 289-SIIA (7442) x 1325
Fax: (202) 289–7097
Internet: MBohannon@siia.net
SIIA 2002 Annual Conference: Trends Shaping the Digital Economy
April 13–16, 2002 San Diego, CA Hotel Del Coronado
http://www.siia.net/spring2002
CC:Ken Wasch,'Hilleboe Douglas''

MTC–00028450

From: David Grant
To: Microsoft ATR
Date: 1/28/02 3:40pm
Subject: Microsoft Settlement

I am writing to you today, giving official notice of my objection to the current DOJ anti trust settlement with Microsoft.

As a small business owner and software developer I strongly urge you to reconsider your settlement. Microsoft is a successful company not because their products are superior in quality, but because Mr. Gates and his associates are excellent salesman.

These salesman are selling the United States government into a shitty deal. For years, Microsoft's operating system alone grew to monopolistic power because of exclusive agreements with hardware vendors that eliminated any chance other competitors in that market had. The emergence of the Internet and the browser led to a weak but understandable argument that Microsoft intended to use ''brute force'' in the business world to eliminate its competitor.

While I am all for the American way, and all for free trade and freedom of commerce, I believe along with many intelligent, educated professionals that the American way is now threatened by this settlement. This settlement will bind the United States government to a monopoly that should not exist, a monopoly that already hinders free trade and creativity. Being Microsoft Certified myself, I will leave you with this thought; Microsoft builds software for the lazy IT employee. While many people may be employed as IT professionals, these IT people are short minded and lacking pertinent knowledge. The arrogance this combination breeds; stupid people making good money, establishes security risks.

At this point in time, the last thing the United States government needs is arrogant uneducated individuals at the helm of all the critical data in this country.

David M Grant
President
Busy Data LLC

MTC–00028451

From: Tom Groman
To: Microsoft ATR
Date: 1/28/02 3:37pm
Subject: Microsoft Settlement

Dear Sirs:

Please end the litigation against Micro Soft. What has been agreed to is a fair settlement for all concerned.

Thank You,
Rev. & Mrs. Tom Groman

MTC–00028452

From: Sunshine
To: Microsoft ATR
Date: 1/28/02 3:35pm
Subject: Microsoft Settlement
7199 Bahne Road
Fairview, TN 37062
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

We wanted to write to you today to express our dismay over the Microsoft antitrust dispute. As Americans, we feel that this suit is contrary to the very ideals of free trade and capitalism that we treasure in this nation. It is our opinion that punishing a company or an individual for demonstrating the very cleverness and ingenuity upon which we have built this nation is un-American.

Americans are unlike any other people in the world. It is our goal to become a success; to become something more than our fathers and grandfathers were; to start with nothing more than a good idea and a diligent work ethic and end up a success. This is the American dream, and it is this dream that is under attack in this suit.

This litigation is not a question of whether or not Microsoft violated antitrust laws. It is a question of whether or not we, as Americans, have the right to become successful without the interference of the government. We are pleased that this heinous suit has finally reached a conclusion that is satisfactory to all of the parties involved. However, it is our fondest wish that none of this unpleasant litigation had begun in the first place. Please keep the government out of the private sector.

Thank you.
Sincerely,
Don Crohan
Gayle Crohan

MTC–00028453

From: MFBartley@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:41pm
Subject: Microsoft Settlement

Good Afternoon,

I certainly hope that you finally reach a settlement in this case and let one of the finest entities in America get on with business. Throughout my school years and all my years in busines, I have never received greater value and more productive tools than Microsoft software. MS Word and MS Excel are the envy of the software world as is the MS Windows operating system in all its versions. I am sure that all Microsoft's competitors are jealous; however, they should not be allowed to use the courts t achieve that which they cannot achieve through innovation. Sam Walton never resorted to the courts to beat out Sears, J.C Penny, K-Mart and the now defunct Ward's. He used innovation and fair pricing and we all get better value for that. WalMart is now the largest corporation in the world.

Judge Penfield Jackson was so biased in his handling of this case that he should be removed from the bench. I thought that the federal courts operated at a much higher standard but am sorry to say they all don't.

Michael F. Bartley
3616 N. Knoxville Avenue
Peoria, IL 61603–1017

MTC–00028454

From: R M
To: Microsoft ATR
Date: 1/28/02 3:41pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I oppose the proposed resolution in the MS case, better know as the Proposed Final Judgment. Over and above the usual economic risks presented by an unchecked monopolist—rising prices and monochromatic innovation the nations computer infrastructure will be increasingly vulnerable to attack if a single software system predominates.

Obviously I am referring to Microsoft. Suppose that 80 or 90percent of the world's grain supply came from a single variety of corns. We would be faced with the unacceptable risk that some single disease might wipe out an enormous portion of our food supply. In the same respects translate that example over to the Microsoft issue. Having only one kind of operating system or one kind of browser would make it terribly easier for saboteurs to bring the entire Internet to its knees. For one entity, such as Microsoft, to control 80 to 90 percent of the market for PC operating systems, Internet browsers, e-mail readers, and office productivity software is clearly a significant security risk. To then allow that monopoly to actively attempt to drive out its remaining competition would hardly be in the public interest. Diversity is the key in producing economic prosperity and improving the society as a whole. The PFJ goes against allowing diversity to flourish. Therefore I object to the Propose Final

Judgment.

Sincerely,

Reynold Mamon

179 River Pines Way

Vallejo, CA 94589 CC: microsoftcomments @doj.ca.gov@inetgw

MTC–00028455

From: Randolph S. Kahle
To: Microsoft ATR
Date: 1/28/02 3:45pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Randolph S. Kahle
6161 N Canon del Pajaro
Tucson, AZ 85750
28-January-2002

Dear Ms. Hesse:

I have worked in the computer industry for over 25 years. During that time I have worked as a developer, a marketing/business strategist, and as a consultant to large and small companies. I have a degree from Rice University in software and hardware design and an MBA from the Amos Tuck School of Business Administration at Dartmouth College.

My work experience includes Hewlett-Packard as well as six years as a marketing and business strategist at Microsoft working on database and developer products. I have seen Microsoft from both the inside and now, for the last ten years, from the outside.

As I am not an attorney, I cannot speak to the legal specifics of the Proposed Final Settlement, however, I am qualified to speak to the practical implications of the terms in the computer industry as well as other industries and markets into which Microsoft may enter.

COMMENTS IN GENERAL

As the computer industry moves towards a future, fully-distributed, computing environment, it is vital to have an environment which fosters and rewards innovation. While it may seem a mature industry, we are still only at the early stages. To date, there have been several waves of general innovation and consolidation. Each wave brings cost reductions, creative ideas, whole new companies and new technologies. After a wave, there has been consolidation around standards and then the next wave appears. These waves could be named the ''mainframe era'', the ''minicomputer era'', and the ''personal computer era''. We are now leaving the ''personal computer era'' and entering a new one centered on distributed computing and information, the ''distributed computing era''. As each era transitioned to the next, the companies and products of each successive wave accommodated the past, while providing new innovations. IBM anchored the mainframe era, Digital and Hewlett-Packard emerged during the minicomputer era, and Microsoft, Dell, Gateway, and others emerged during the personal computer era.

What is different about the current transition, is that a single company, Microsoft, is attempting to leverage their monopolistic power created in the personal computer era and their position in the industry to define and control the next era.

COMMENTS ON CULTURE

I worked at Microsoft before Windows was a monopoly. What I observed was a culture fixated on domination at all costs. While Microsoft was growing, these actions and activities were not illegal. After becoming a monopoly, they clearly are (and were found to be so by the courts). What is important to note is that these illegal behaviors stem from the culture of the company.

Because of this strong culture, I do not believe that any external monitoring of internal operations would ever be successful (e.g. the ''TC'' as proposed). Microsoft managers are simply too smart, experienced, and aggressive to ever agree to submitting to external pressures. This comes from the top, Bill Gates himself. In my experience, I have never encountered a discussion in which anyone at Microsoft ever thought that they were in the wrong. This would never occur to anyone. This is a cultural factor, an arrogance of doing no wrong. With this culture, it seems extremely unlikely that Microsoft would be able to self-monitor or even work with an external auditing agency.

REMEDIES

My first choice for a remedy is to break Microsoft up into smaller competing entities. The reason for this is to attempt to reshuffle the organization so that there could be cultural and behavioral change. I petition the court to explore this remedy as the best way to combat future violations by Microsoft.

If the court does not pursue a break-up of Microsoft, then I strongly agree with many others, that there must be changes to and additional provisions added to the Proposal Final Settlement. For example, I fully support, and have sign Dan Kegel's open letter (http://www.kegel.com/remedy/letter.html).

OPENNESS AND TRANSPARENCY

My second choice for a remedy is to force openness and transparency in Microsoft's technology. Distributed computing systems are very complex and can be very subtle. To help the court, many other petitioners have listed specific technology disclosures that will help create openness. I will add that, in a general way, if Microsoft's technologies can be viewed by the industry and the market as *components* rather than as a *whole*, then a good balance may be struck between Microsoft's ability to innovate, and the industry's ability to compete and develop both complementary technology as well as competing technology. The tricky question is this: ''Where are the boundaries between the components?''

A simple answer can be found by focusing on and leveraging the up- coming pressures that will be felt as the distributed computing era arrives. The answer I propose is simple, easily monitored and enforced:

* Force Microsoft to fully disclose all wire-level (binary) protocols used between independent computing devices. (This include .Net protocols, SMB/NBT protocols for file sharing, and others)

* Force Microsoft to disclose the APIs which they expect other components to use as they access the wire-level protocols.

* Force Microsoft to fully disclose all file formats used to store persistent information.

The reason these are good remedies relies on the following:

* The future direction of computing is toward small, distributed computing devices. The economic and technological pressures will force the definition of boundaries between distributed components. This will be a constant pressure to

* increase* disclosure over time.

* It is easier to monitor and audit compliance at these boundaries compared to other more abstract and more easily re-defined boundaries. (Microsoft is a master at redefining boundaries for their own benefit).

* These disclosures provide significant value to competitors and innovators.

However, I must also point out that this is only a first step. This describes the technological boundaries and requirements. The Settlement must also address the legal issues such as Microsoft's attempt to prevent open-source software from running on Windows, and other licensing and cross-tie issues. I will leave these issues to the legal experts.

Violation of the Settlement must bring with it a powerful and costly punishment. I propose that if Microsoft violates the provisions of the Settlement that they be forced to place any software or system found to be in violation or associated with a violation into the general domain through an open-source license. This, more than any financial penalty, would be a real deterrent.

Regards,

Randolph S. Kahle

Tucson, AZ

MTC–00028456

From: Judy Quandt

To: Microsoft ATR
Date: 1/28/02 3:43pm
Subject: Microsoft Settlement

MTC–00028456—0001

70 Konci Terrace
Lake George, NY 12845–4101
January 24,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

The settlement with Microsoft is in the best interests of the public and the economy. It not only will restore fair competition but also prevent future antitrust violations. But most importantly, the agreement will allow the technology industry to move forward with developing new products, rather than further burdening it with government lawsuits. The settlement has imposed many restrictions on Microsoft. For example, Microsoft has agreed not to enter into any agreements with any third party to promote any Windows technology exclusively. Additionally, Microsoft has agreed to a technical committee that will monitor the company's compliance with the settlement. Furthermore, Microsoft has agreed to design future versions of Windows to make it easier for computer makers and consumers to promote non-Microsoft software within Windows. Clearly, these changes will benefit both consumers and the economy.

The most impressive part of this settlement is that it includes matters that were not even at issue in the lawsuit. Enough is enough. Let's stop wasting money and time on unnecessary litigation.

Sincerely,
Judith Quandt

MTC–00028457

From: M M
To: Microsoft ATR
Date: 1/28/02 3:44pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I oppose the Proposed Final Judgment in relations to the Microsoft case. As one can plainly see, Microsoft continues to violate business practices. The Proposed Final Judgment does not punish Microsoft for its past violations to the anti-trust laws. Based on supporting evidence found by the Court of Appeals, Microsoft is guilty of breaking several anti-trust laws. Under the final settlement, Microsoft is permitted to retain most if not all profits gained through their illicit activities. Subsequently, the PFJ will not compensate parties injured or harmed through Microsofts egregious misdeeds. In addition, the PFJ will not take into account all Microsoft gains made through its illegal maneuverings. With all due respect, the final settlement is basically acknowledging the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? I can assure you that the message is clear and simple. The PFJ encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. With all due respect your honor, I am outraged at such a preposterous proposal that only helps Microsoft to remain intact and continue with its unethical practices. In conclusion I submit to you my objection to this Proposed Final Judgment.

Best Regards,
Mylene Mamon
179 River Pines Way
Vallejo, CA 94589
CC: microsoftcomments@doj.ca.gov@inetgw

MTC–00028458

From: Norwood Catron
To: Microsoft ATR
Date: 1/28/02 3:45pm
Subject: Microsoft Settlement

I am an IT professional, specializing in providing Microsoft solutions for small to mid-size businesses. I've worked in the field for four years now, and have used Microsoft operating systems and applications for fifteen years. I've invested considerable time and financial resources in becoming an expert with Microsoft products and have obtained several Microsoft specific certifications. My continued livelihood will continue to depend on Microsoft's dominance in the market.

Having said that, I feel strongly that the currently negotiated settlement does not do enough to punish Microsoft for past anticompetitive behavior or to prevent such behavior in the future. I don't believe that a break up of the company is a solution. The lines between application and operating system are quickly disappearing. Future technologies will continue to blur those lines. But I feel that Microsoft has used strict contracts with OEM's as well as unnecessary integration of applications into the OS (Internet Explorer in Windows 95/98/ME/2000 and XP, and now Windows Media Player in XP) to hinder consumer choice and competition.

In addition to the solutions already proposed, Microsoft should be forced to open the source code to ALL operating system API's, and quite possibly the entire OS. This would allow competing application developers to successfully create applications that work correctly with Microsoft operating systems. I feel strongly that the inaccessibility of the API information was one of the reasons Netscape, Corel, Novell and other application providers have had such a difficult time distributing bug free software.

Microsoft should also be strictly monitored in terms of its contracts with OEM's and other providers. Currently, if a consumer purchases a new PC from a manufacturer, it is quite literally impossible for the consumer to get one without a Microsoft OS. And if a consumer is successful at such an endeavor, that consumer can not be properly reimbursed from the OEM or Microsoft for the Microsoft software costs that are automatically incorporated into the cost of the PC. It is imperative that the federal government return the operating system and application market to a more stable playing field. As well it is important that Microsoft make reparations for past wrongs. Please reconsider the current settlement, and come up with more appropriate and harsher consequences. Microsoft must not get off with just a slap of the wrist.

Sincerely,
Norwood Catron
Independent IT consultant and concerned consumer
ncatron@earthlink.net
23747 Vassar
Hazel Park, MI 48030

MTC–00028459

From: aschan@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 3:44pm
Subject: microsoft settlement

It is time to end the persecution of Microsoft. This persecution could set a precedent that can ultimately have dire consequenses to our American system of free markets. Should the D of J pursue legal action against McDonalds for the benefit of Burger King and Wendy's? Or Intel, or General Motors, etc?

The government should not be a tool of one group of businesses'' attempts to gain ground on their competition. I am not an employee of Microsoft, nor do I own, nor have I ever owned any Microsoft stock. I purchase their products solely because they are the best on the market.

Andre Schan
41 Horseneck Road
Montville, NJ 07045

MTC–00028460

From: R M
To: Microsoft ATR
Date: 1/28/02 3:47pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I object to the Proposed Final Judgment in the Microsoft case. There are several apparent flaws with in the final proposal that I just dont like. One the PFJ does not terminate the MS illegal monopoly. 2nd MS will be able to continue with its ant-competitive activities. 3rd MS will be allowed to partake in the fruits of its past violations. I dont see how such a settlement punishes Microsoft for breaking the anti-trust laws. Therefore I oppose a settlement- The Proposed Final Judgment.

Sincerely,
Rose Mamon
179 River Pines Way
Vallejo, CA 94589
CC: microsoftcomments@doj.ca.gov@inetgw

MTC–00028461

From: DEDLYDON@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:47pm
Subject: Microsoft
January 25,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am frustrated that, despite all efforts to serve justice, problems continue to arise in the Microsoft antitrust case. Now, even as a settlement is pending in the federal courts, Microsoft's opponents are seeking to overturn the settlement and bring additional litigation against Microsoft. This is highly inappropriate. Microsoft has done nothing to warrant such vicious persecution except be

successful. The litigants who seek to overturn the settlement have no altruistic aims—they only want to squeeze all the profit they can out of Microsoft.

After six months of supervised negotiations, Microsoft and the Department of Justice were able to reach a settlement in the antitrust case. Microsoft's opponents claim the settlement is too lenient and that Microsoft has merely received a slap on the wrist, but such is not the case. Some of the terms agreed to in the settlement extend to products and policies that were not found to be unlawful by the Court of Appeals; Microsoft has agreed to these terms in the interest of wrapping up the case. I agree that it is time to settle and move on, and I do not think the settlement is in any way unfair. For example, Microsoft has agreed to license the Windows operating system to twenty of the largest computer makers on identical terms and conditions, including price. Additionally, Microsoft will refrain in future from retaliating against anyone who produces software that directly competes with Microsoft technology.

I do not believe that additional action is necessary on the federal level. Microsoft has paid its debt to society, and it is time to let this go. I ask you to support the settlement in its entirety.

Sincerely,
Donald Decker
183 San Remo Road
Carmel, CA 93923

MTC–00028462

From: Andy Oliver
To: Microsoft ATR
Date: 1/28/02 3:48pm
Subject: Microsoft must be strongly punished for illegal behavior

Microsoft must be strongly punished for its anticompetitive behavior. As a software developer for the past 10 years, I have witnessed first hand the detrimental effect of the Microsoft monopoly on innovation and pricing. Punishments must be far stronger than the proposed settlements in order for them to have any effect on Microsoft's behavior.

Please break up Microsoft and force the separate groups to publicly document all programming interfaces (APIs) and file formats, with strong, regular oversight.

Thank you.
Andy Oliver
Professional Software Developer
andy—o—netcom@yahoo.com

MTC–00028463

From: Jcc1@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:48pm
Subject: Microsoft Settlement

I think it is unfair for the government to punish companies for being successful and that is what is happening here.

MTC–00028464

From: Essfor@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:48pm
Subject: Microsoft Settlement

Dear Sir or Madam—

Regarding the settlement of the antitrust case with Microsoft— Microsoft's unethical and anticompetitive business practices must be stopped. There must be an injunction or other legal device, or Microsoft must be split into separate business entities in order to restore competition. Microsoft's operating system must be unbundled from its internet browser and other software so that the consumer and free market will determine the best products and foster healthy competition.

I have purchased several software packages such as spreadsheet, word processing, project scheduling that I greatly preferred over the Microsoft products; however, they are no longer available for update due to the unfair competition from Microsoft. I have been personally hurt by Microsoft in that I am forced to use inferior, crash prone software.

Thank you for your consideration.
Sincerely,
KR Schroepfer
310 Rider RIdge
Santa Cruz, CA 95065
1–831–809–1561
essfor@aol.com

MTC–00028465

From: Bob Peterson
To: Microsoft ATR
Date: 1/28/02 3:48pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice

I'm writing this to you because I'm gravely concerned over the settlement between our DOJ and Microsoft. There is no teeth to the settlement. It places too much trust in a company that is not trustworthy and has proven as such over its entire history. All that it will do is enhance Microsoft's grip on the desktop market and allow it to expand and also destroy other areas. Already the signs are everywhere that with every step in Microsoft's control and destruction of our computing industry, innovation has crawled to a near stop. When I say innovation, I am referring to the true meaning of the word and not another mad-twist meaning from Microsoft when they use ''innovate'' as part of their questionable ad campaign.

I am a user of Linux. Lately, I've noticed that Microsoft has increasingly tried to squeeze out non-windows platforms by their usual dirty tactics. It used to be that I could access my hotmail account. Now I'm forced to have a Passport account. Passport is a Microsoft product and Microsoft refuses to support a Linux version of Passport. Remember the debacle with MSN.com not allowing any non Internet Explorer browsers to visit their site? While on the subject of Internet Explorer; who on earth wants to view their file directory as a webpage (like in the Windows operating system)? This is the result of you allowing Microsoft to tie-in their browser and falsely claim that it's an integral part of Windows. It is not necessary and anyone with a slight understanding of computers should know that... except for some reason the DOJ.

As part of the settlement you Microsoft must be forced to sell a version of Windows without all the predatory tie-ins. And they must be forced to port all their applications to other operating systems. Those ported applications must be of equal quality and functionality. Typically, when Microsoft ports their software to another platform (Mac), that software is usually a crippled version of the windows original. They can claim that Windows is superior and thus providing more features but any software engineer would say otherwise. Then Microsoft must provide all the necessary specifications for 3rd party software vendors so as not to give Microsoft another area of unfair advantage.

Another point to bring up is the myth that Microsoft is good for our economy. Is it? I don't think so. How can Microsoft justify charging hundreds of dollars for an operating system that is no better than its previous version? The cost of manufacturing is nearly zero. But yet, everyone PC owner including businesses are strong-armed into buying this poor excuse for an upgrade. Those businesses are then forced to pass on that cost to the consumer. The cost amounts to a heavy burden on our national economy. Then Microsoft uses this money not to truly innovate and create more secure software, but to use their legal monetary might to crush the competition. Thus putting more people out of jobs. This is bad for our economy.

So please do not let Microsoft escape unscathed with yet another blatant violation of the law. Just look around you. The software landscape is nearly bare in the Windows market as far as ''genetic'' diversity. Without strong restrictions on their business tactics, we will be left with a very weakened engineering base as the world will continue to truly innovate. Having our schools teach Microsoft products instead of real software engineering will amount to suicide of the knowledge base. Then we'll have to answer to our children and grandchildren when they ask why we have to import quality software from Asia and Europe. And, why we had such a lead in that field and chose to allow one company (Microsoft) to sabotage everything we've worked for. Do the right thing now before it's too late and we lose everything.

Sincerely,
Bob Peterson
1007 NE 126th
Seattle, WA 98125

MTC–00028466

From: clcorea@sierratel.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:46pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the

most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Christine Corea
38777 Road 600
Raymond, CA 93653–9504

MTC–00028467

From: Julie Rocheville
To: Microsoft ATR
Date: 1/28/02 3:50pm
Subject: Microsoft Settlement

Please settle this ugly dispute with Microsoft NOW! MS has created more jobs and has done more positive things for the US economy than any other employer in history. Do us ALL a favor and keep Windows together. It truely is time for you say ''enough is enough'' and get back to some more pressing issues. J

on & Julie Rocheville

MTC–00028468

From: N T
To: Microsoft ATR
Date: 1/28/02 3:50pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I do not approve of the Proposed Final Judgment in the MS case. First of all every one know the U.S. Court of Appeals ruled unanimously that Microsoft had clearly violated anti-trust laws. It was understood as well as established that the government was in the process of developing a plan the accomplished the following: abolish the illegal monopoly implemented by Microsoft, deny MS the fruits of its past violations, and last but not least prevent further anti-competitive activity or behavior by MS. To my bewilderment, I cannot yet fathom how it is possible the Department of Justice would agree to such an egregious settlement that for the most part goes against all objectives stated previously in the MS case. Logically this proposal does not accomplish what the U.S Court of Appeals set forth. Therefore I am submitting my disapproval of the Proposed Final Judgment in the Microsoft Case.

Sincerely,
Nils Trulssen
1742 Edgewood Dr.
Lodi, CA 95240

MTC–00028469

From: Charlotte Muse
To: Microsoft ATR
Date: 1/28/02 3:50pm
Subject: <no subject>

I am writing to let you know that in my opinion the proposed settlement between Microsoft and the Department of Justice is a travesty. Microsoft's predatory behavior represents a profound threat to the health not only of the technology sector, in which I work, but of US industry as a whole, and of the United States itself.

If Microsoft can dictate its terms to the US government, who is it that really governs?

I urge you to reinstate the eminently fitting decision of Justice Jackson, and break the company up so as to separate the ownership of the operating system from that of the desktop applications.

Charlotte Muse
1020 Louise Street
Menlo Park, CA 94025

MTC–00028470

From: Andy Warner
To: Microsoft ATR
Date: 1/28/02 3:49pm
Subject: Microsoft Settlement

Dear Person,

I have been employed by Netscape Communications for nearly five years as a software developer and I've been in the Information Technology field for over 20 years. Microsoft should not be allowed to destroy companies at their will, whenever they feel threatened by new technologies or decide to expand into a new market. Obviously, they can put any company into near bankruptcy, by using the revenue from the monopoly OS business to fund development and give away competing products. Allowing that behavior to continue will dramatically slow the growth rate of new technologies by giving the perception that the profits from those very difficult efforts can easily be taken away by the likes of Microsoft. Anything short of severe punishment will just signal that its ok to steal market share and destroy businesses as a tactic of growing your business. If that were allowed, then any business that has more money than another business can destroy it by simply building a competing product and giving it away until you've put them out of business. Is that the kind of business environment that we are trying to promote in this country? This is a great opportunity to show all businesses that integrity and fairness is a requirement to do business in the United States. That the people of the United States will not allow unfair market take-overs by giving away products to destroy companies. We could now show investors that their investments in new technologies will be protected from the predatory practices of companies like Microsoft.

This is not the time to allow ''politics as usual'' and hinder the investment in new technologies by showing that once you begin selling your new idea, any larger company can develop a similar product and give it away until your bankrupt. If you wonder where all the investment is in Silicon Valley startups, just think about the signal that we've given investors through the Microsoft trial. Who would want to invest in building new products knowing that if your successful your business will be stolen from you by any wealthy company that has the inclination.

Thanks,
Andy Warner

MTC–00028471

From: Laurie Wieder
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:10pm
Subject: Microsoft Settlement

I am e-mailing to you a copy of the letter we are attempting to fax to you at 202–616–9937 in support of the Microsoft settlement. We will keep trying to fax the letter to you, and we are placing the original of the letter in the mail.

Laurie Wieder
President
Prince William Regional Chamber of Commerce
''The Region's Leading Voice for Business''
4320 Ridgewood Center Drive
Prince William, VA 22191
(703) 590–5000 (703) 590–9815 fax
www.RegionalChamber.org
<<Microsoft Settlement.doc>>
PRINCE WILLIAM REGIONAL CHAMBER OF COMMERCE
4320 Ridgewood Center Drive
Prince William, VA 22192
703–590–5000
January 28, 2002
Ms. Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street, Suite 1200
Washington, DC 20630
RE: Comments on the Microsoft Proposed Settlement Agreement

Dear Ms. Hesse:

The Prince William Regional Chamber of Commerce is writing this letter to express its support for the settlement reached by the U.S. Department of Justice, nine state attorneys general and Microsoft in the long-running antitrust lawsuit initiated by the federal government.

The Region's Chamber is critically aware of how important it is to our national economy that all businesses be able to ''get back to business.'' There were many knowledgeable people guided by an internationally recognized mediator to reach the Microsoft settlement. We believe that additional litigation, following on the heels of many years of costly legal proceedings and on the subsequent work of those in mediation would serve only to prolong the negative impact on our economy of the Microsoft litigation.

Therefore, the Prince William Regional Chamber of Commerce, an organization of more than 800 businesses in the Prince William area, respectfully encourages the U.S. Department of Justice to urge the Courts to adopt the agreement with all due speed so that business and our national—and even international—economy can move forward again with certainty.

Sincerely,
Carol A. Kalbfleisch
Chairman of the Baord
Laurie C. Wieder
President

MTC–00028472

From: Emily L Hughes
To: Microsoft ATR
Date: 1/28/02 3:49pm
Subject: Microsoft settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530–0001

John

I am writing you today to encourage you to accept the Microsoft antitrust settlement. This issue has been drug out much more than necessary.

Microsoft has agreed to design future versions of Windows to be more effective for other companies software. They've also agreed to all other terms of the settlement.

Why is our court system punishing Microsoft? What are they afraid of?

Please accept this antitrust settlement, so our court system and Microsoft can get on with other more productive issues.

Thank you.

Emily Hughes

Bellingham, Washington

CC:fin@mobilizationoffice.com@inetgw

MTC–00028473

From: rshwake@mailhub-4.net.treas.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 2:41pm
Subject: Microsoft Settlement

Though I am not an attorney, I have followed this case from the beginning and am appalled that Justice could consider accepting such a settlement. It does not address the criminal wrongdoing described in the Finding of Fact, nor the Findings of Law, almost all of which were upheld by the Appeals Court. More critically, there is neither punishment nor adequate means in place to prevent Microsoft's current market dominance from being leveraged into new ventures. The control mechanisms (''three person team'') is a joke, and the ''exceptions'' provide, as some have described it, ''loopholes on loopholes''. I can only hope that Judge Kottelly has the sense to reject this proposal for failing the test of ''public interest''.

Raymond Shwake

rshwake@rsxtech.atww.org

MTC–00028474

From: Arthur Vardy
To: Microsoft ATR
Date: 1/28/02 3:54pm
Subject: Microsoft

Dear Sirs:

Get off a Microsoft and do something worthwhile like take on Enron.

Sincerely

Beverly Vardy

MTC–00028475

From: C T
To: Microsoft ATR
Date: 1/28/02 3:53pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I wanted to make my opinion count. In turn, I object to the Proposed Final Judgment in the MS case. As history will prove, Microsoft continues to violate business practices. The Proposed Final Judgment in a sense, does not deny Microsoft its past violations and illegal acts. As one can see, every court, which has been involved with the case, has found Microsoft guilty of breaking the anti-trust laws. However, under the proposed final settlement, Microsoft, surprisingly enough, will be permitted to retain most if not all profits gained through their illicit activities.

Subsequently, the PFJ will not compensate parties injured or harmed through Microsofts egregious misdeeds. In addition, the PFJ will not take into account all Microsoft gains made through its illegal maneuverings. With all due respect, the final settlement is basically acknowledging the acceptance of Microsofts anti-competitive behavior. What kind of message does this send out to the public? I can assure you that the message is clear and simple. The Proposed Final Judgment encourages big corporations to engage in monopolistic and predatory conduct, which in turn is detrimental to the technology industry at large. I am angered at a proposal that only helps Microsoft to remain intact. Therefore I submit my objection to this Proposed Final Judgment.

Kind Regards,

Cookie Trulssen

1742 Edgewood Dr.

Lodi, CA 95240

CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028476

From: donb@gasullivan.com@inetgw
To: Microsoft ATR
Date: 1/28/02 3:54pm
Subject: Microsoft Settlement

With all that has been said, I will be brief and to the point:

(1) Microsoft has been a great partner to our firm, G. A. Sullivan, and has been instrumental in helping us grow dramatically during the last decade. Among the honors we have received, Greg Sullivan, our founder, was named the 1999 U.S. Small Business Administration National Small Business Person of the Year. The success we have enjoyed has often been due to our strong partnership with Microsoft.

(2) Competition is alive and well in our industry. In the operating system marketplace, for example, IBM has thrown its considerable clout behind Linux and is aggressively advertising this fact. During the recent National Football League NFC Championship, they ran advertisements using basketball players as a metaphor for computer industry products and forces. For example, the ?opposing team? included players named ?Hacker?, ?Virus?, and ?Downtime?. ?Linux? was characterized as an incredibly talented player who would play for ?almost nothing? because ?he loves the game?. It remains to be seen how effective this ad campaign will be, but IDC predicts that Linux's market share will increase to 41% by 2005.

(3) While Microsoft does have some advantages in its daily business operations, advantages that we believe they have earned through hard work, it also still faces formidable obstacles and some important disadvantages. For example, as Microsoft attempts to sell its operating systems and platforms to corporate America, in the largest corporations (sometimes called the Enterprise marketplace) they are often viewed with condescension as a ?desktop? vendor selling personal productivity tools, computer mice, and games. They continue to build a channel of partners to help provide the necessary services to install, configure, and support their offerings in large corporations, but face stiff competition from IBM Global Services, often an entrenched competitor of huge proportions. Other large service organizations are also most often working against, rather than for, Microsoft.

(4) In many key areas of new research and growth (e.g. Personal Digital Assistants (PDAs), instant messaging, and highly scalable clustering for scientific purposes), Microsoft is a distant second or third place competitor to other firms and technologies (e.g. Palm, AOL, and Beowulf). To summarize our opinion?in almost every case Microsoft has been a tough but fair competitor in the marketplace. In the areas their practices were found anti-competitive, the remedies that have already been recommended are sufficient.

Microsoft has been a great partner to our firm, and we do our best every day to help ensure their success. Contrary to what many of Microsoft's competitors state, we find the marketplace to be a VERY competitive place, and hope that a more comprehensive ?remedy? is not enacted.

CC:donb@gasullivan.com@inetgw

MTC–00028477

From: bking@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 3:50pm
Subject: Microsoft Settlement

I'm against the propsed settlement. It is way too easy on Microsoft.

I think Microsoft should be broken up into 1) operatings systems and 2) applications.

MTC–00028478

From: Jeff Fabijanic
To: Microsoft ATR
Date: 1/28/02 3:55pm
Subject: Microsoft Settlement.

To whom it may concern:

I am writing you today to express my concern and oppostition to the Proposed Final Judgement in the United States v. Microsoft antitrust case. I believe this settlement is counter to the best interests of the American people, harmful to our economy, and clearly inadequate given the findings of fact in the trial.

As a professional computer user and technology developer for the past 15 years (over twenty five if you consider my student years in high school and then MIT), I have watched as Microsoft has used any number of unethical and anti-competitive strategies to attain and maintain dominance at the expense of other companies, competing software platforms and consumers such as myself. In this respect, I am satisfied with the findings of fact in the case, as they confirm this viewpoint.

However, as upset as I am with Microsoft's past behaviours, I am extremely concerned that these same types of behavior are prevented in the future. Given the findings of fact, any judgement should demand strict measures which address not only the practices the company has engaged in previously, but which should also prevent them from engaging in other monopolistic practices in the future. I do not think that the Proposed Judgement is strong enough to serve this function.

As I read the Proposed Judgement, many—perhaps most—of the remedies will be ineffective against a company such as Microsoft which is determined to circumvent them. That Microsoft will work to bypass the original intent of the Judgement is clear for both technical and business practices—even during the course of the trial and settlement negotiations it has continued to use tactics that should be blocked by a solid agreement.

In fact just this month Bill Gates declared ''security'' to be the future direction of Microsoft's focus. Of course, under the

Proposed Judgement anything related to security need not be disclosed even if such would otherwise be mandatory. Under a strict reading, if Microsoft adds even basic security interfaces to its APIs then *none* of those APIs would need to be disclosed and there would be no penalty for not disclosing them. And to add insult to injury, the settlement as written actually seems to codify some of Microsoft's predatory practices. For example, although the settlement forces Microsoft to share its APIs with certain competitors, it also would force those who use these APIs to share all their finished code with Microsoft. As a result, Microsoft would see these companies'' code trade secrets and have the oportunity to replicate or circumvent them.

Another example—a requirement for receiving documentation for those APIs is that any organization needing it must meet *Microsoft-developed* standards of business viability; ''non-businesses'' (eg small or non-profit companies, and individual developers) probably won't qualify and so access to those APIs will simply not be available to them. Similarly, the clause requiring that Microsoft's competitors be allowed to place their own icons on the PC desktops only applies to companies which have already sold more than a million copies of their software in the U.S. So the very companies who most need a competitive advantage can not, in this case, receive it.

There are numerous other problems or oversights in the Proposed Judgement. However, for the sake of brevity, I will limit my comments to this last statement—I feel that the Proposed Final Judgement is deeply flawed and needs to be substantially revised to remove these flaws. Microsoft deserves more than a wrist-slap for the destructive abuse of its monopoly power, and all of us, including Microsoft and its investors, need to be protected against future abuses.

Sincerely Yours,
Jeff Fabijanic
Boston, MA.
Jeffrey Fabijanic
MIT Media Lab Liaison
Panasonic Information and Networking Technologies Laboratory
jeff@research.panasonic.com (617) 577–1280 x115

MTC–00028479

From: Stapleton, Mark
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 3:55pm
Subject: Microsoft Settlement

Department of Justice:

I am writing to comment on the proposed settlement with Microsoft. I believe that the settlement is fair for both Microsoft and consumers. Microsoft deserved a penalty for their behavior and the penalty is harsh enough for Microsoft to learn their lesson.

Microsoft's competitors continue to fund lobbying efforts to overturn the settlement and inflict harsher penalties. The settlement is for the consumers, not competitors who find their best way to compete is fund lawsuits against Microsoft. An antitrust remedy should be designed to protect consumers rather than advance the interests of competitors.

The Department of Justice must stand-by the settlement, and not allow competitor-funded lobbying efforts to sway them. In no way do the competitors (i.e. AOL, Sun Microsystems, Oracle) have the consumer rights in mind when they continue to pour money into lobbying efforts. They want to create harsher penalties on Microsoft so they may be better equipped to compete. If they did have the consumers in mind they would be pouring money into research and development to compete with Microsoft in the marketplace.

It's time to end this with the proposed settlement and all these companies should get back to what they do best...create innovative products for consumers.

MTC–00028480

From: hjordan@csonline.net@inetgw
To: Microsoft ATR
Date: 1/28/02 3:54pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Gaynelle Jordan
110 Breed St.
Titusville, PA 16354–2122

MTC–00028481

From: Xana Kim
To: Microsoft ATR
Date: 1/28/02 3:57pm
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice

I must say that I am appalled at the proposed final judgment in United States v. Microsoft.

Briefly, I do not feel that the settlement will in any way punish Microsoft for it's past violation of the law, nor will it prevent future violation.

Xana Kim

MTC–00028482

From: Tommy Ward
To: Microsoft ATR
Date: 1/28/02 11:44pm
Subject: Fwd: Microsoft Antitrust Comments
Date: Mon, 28 Jan 2002 11:46:45 -0800
To: microsoft.atr@us-doj.gov
From: Tommy Ward <tommy@msbit.com>
Subject: Microsoft Antitrust Comments

>Dear Staff,

>As a 20 year veteran in the network industry, I would like to take this >opportunity to provide my comments on the settlement of the Microsoft >anti-trust case. My opinions are based on both my professional experience >as well as my experiences as a consumer.

>First, the currently proposed settlement terms reached by Microsoft and >Justice Department negotiators is completely inadequate to protect >consumers. It should be dismissed out of hand.

>Second, controls must be put in place to guard against Microsoft's ability >to leverage their current desktop monopoly into effective control of the >public Internet. If they are able to dictate the terms and conditions by >which meaningful business can be conducted over the Internet, this >dynamic forum of social and business intercourse will be extremely >stifled. What would constitute such effective controls? Rather than >focusing on contracts with computer vendors (which might be a >reasonable choice if we were concerned about the maintenance of the >desktop monopoly), the controls should be aimed squarely at the >integration of all Microsoft software—both client and server, with >no distinction between operating system and application—with any >Internet services provided by Microsoft. If Microsoft chooses to >build support for authentication, payment, name resolution, routing, >search, or any other useful functionality into their software they >should be allowed to do so, as long as they do not also provide >such service which is accessed by that software.

>An example of such integration which already exists is >the Passport system, whereby multiple Microsoft application >software products use common procedures to make use of an authentication >service provided by Microsoft over the Internet. An effective >curb on potential Microsoft abuse would be to disallow the company >to provide the Internet service portion of that function. If such a curb >is not implemented, Microsoft may be able to leverage their monopoly >on Internet client software into a very effective control over Internet >commerce. I suggest that the most effective method of implementing

>such a control would be to force the company to divest all Internet >lines of business other than those which are used to market and >support it's software business.

>If effective controls are not placed on Microsoft's business conduct, >this company will be able to leverage undue influence in practically >every area of public life in the United States, including commerce, >entertainment, news, personal correspondence, and government. Not >only would such a situation be bad for business, it would be detrimental >to democracy. We can not allow one company to threaten our >future in the way that Microsoft will if allowed free reign.

>Regards,
>Tommy Ward
>Saratoga, CA
>tommy@msbit.com

MTC–00028483

From: Phyllida@aol.com@inetgw

To: Microsoft ATR
Date: 1/28/02 3:59pm
Subject: Microsoft settlement

Dear DOJ,

Due to the various continuing suits against Microsoft, I am forced to exit Microsoft Explorer (the company's browser and entrance to the internet) and bring up AmericaOnLine to read and send email. My other choice would have been, again, to close Microsoft Explorer and to bring up Microsoft Outlook Express which, as you well know, is split off from Microsoft Explorer. But isn't it ironic; AOL is suing Microsoft over its overweening powers, yet I can use AOL for both purposes: to receive and send email AND TO USE THE INTERNET but I CANNOT use Microsoft Explorer to use both services. Just who IS the monopolist here?

And last I looked on the tv screen, AOL, which also has a pretty good control of the NYC cable market, is spending zillions on advertising its AOL Time Warner direct cable hookup. And doesn't AOL have control of some magazines? and some TV stations? and some books? and some records? Excuse me, while I fall down the rabbit hole, said Alice. As a stockholder of Microsoft, Sun Micro and others and fortunate seller of AOL (at breakeven) and as user of Apple, Microsft Word etc and AOL since 1985, AND attempted user of Netscape which has been largely defunct since being taken over by AOL, I would find the not so sly tactics of the AOL/Sun etc gang who use stockholder monies to launch extensive and expensive litigation (which then becomes their raison d'Atre) laughable if it weren't so harmful to consumers, stockholders and profitably run businesses. It isn't just off balance sheet limited partnership that drain assets.

My support for Microsoft is based on many years of using their products and services which have always worked smoothly, reliably and efficiently which is, after all, what I pay for. As a stockholder I find Microsoft reports earnings in a conservative manner and maintains a strong balance sheet both of which indicate the company tends to its business and is not wasting stockholder assets. Everytime the market sneezes I don't feel as though I am going to lose my entire investment in Microsoft as I might with others. If the interest is the consumer and the stockholder, Microsoft will win hands down. If not, we'll see just how fair the US markets really are.

Ruth Sumners
January 28, 2002

MTC–00028485

From: Bruce Wynn
To: Microsoft ATR
Date: 1/28/02 4:00pm
Subject: Microsoft settlement

The govenment, my government should make sure they understand that the consumer is not harmed by Microsoft it's products are cheaper than and better ever. Is Microsoft not allowed to compete, it should be allowed to compete and those cry babies Sun, Oracle and AOL will just have to make better products rather than lobby with governments about a competior—Microsoft. They are trying the exact same thing in Europe and I hope our legislators see through this smoke screen and see the facts Microsoft has superior products and the market proves that.

I feel the government should not pursure any further actions against Microsoft. I believe the terms-which have met or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. This settlement represents the best opportunity for Microsoft and the industry to move forward. However, the settlement is not guaranteed until after the review ends and the District Court determines whether the terms are indeed in the public interest.

Bruce Wynn

MTC–00028486

From: Lawrence A. Husick
To: Microsoft ATR
Date: 1/28/02 4:00pm
Subject: Microsoft Settlement

Appropriate injunctive relief in an antitrust case should: (1) end the unlawful conduct; (2) ''avoid a recurrence of the violation'' and others like it; and (3) undo its anticompetitive consequences. See Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 697 (1978); United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); Int'l Salt Co. v. United States, 332 U.S. 392, 401 (1947); United States v. Microsoft Corp., 253 F.3d 34, 103, 107 (DC Cir. 2001) The proposed settlment fails utterly to achieve these goals. Rather, it is another opportunity for Microsoft to litigate the definitions of the settlement, rather than participate fairly in the market. A settlement which leaves Microsoft free to hide features and functions of its operating system behind license restrictions and nondisclosure agreements, and then to use these functions to advantage its own applications development process and products is inadequate. The source code of Microsoft's operating system must be published and made available at nondiscriminatory rates to all users in order to prevent future misuse of this substantial advantage by Microsoft. The source code to Microsoft's Office products must be auctioned to vendors wishing to compete with Microsoft, whether on the Windows platform or elsewhere in order to redress the violations that use of these hidden functions by Microsoft has created. Microsoft must create an independent, not-for-profit entity, transfer title to its Internet Explorer code to that entity, and pay royalties for each copy of IE to that entity, which should then use the proceeds to fund development of software products which function across multiple platforms in order to open up the application development arena to non-Microsoft products.

Lawrence A. Husick
LIPTON, WEINBERGER & HUSICK
Intellectual Property and Technology Law
Lawrence@LawHusick.com
http://www.LawHusick.com
P.O. Box 587
Southeastern, PA 19399–0587
610/296–8259 Voice 610/296–5816 Fax
AOL/Netscape IM: LawHusick

''It is, in fact, nothing short of a miracle that the modern methods of instruction have not yet entirely strangled the holy curiosity of inquiry.''

—Albert Einstein (1879–1955)—Autobiographical Notes

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(Official-Looking Notice V1.5fc3)

MTC–00028487

From: Frank Zepf
To: Microsoft ATR
Date: 1/28/02 4:01pm
Subject: Microsoft settlement
52 Pennsylvania Avenue
Massapequa, NY 11758
January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft: The antitrust suit against Microsoft has gone on for long enough. I believe that this suit is just trying to gore the fat cat just because it is fat. If Time Warner packages Netscape with AOL, then what is the harm with Microsoft packaging Explorer with Windows? This suit's contradicting demands are having a detrimental consequence on the nation's financial situation.

The settlement that was reached between Microsoft and the Justice Department will be beneficial in reviving consumer confidence. Microsoft has agreed to license its Windows operating system to 20 of the largest computer makers on identical terms and conditions. The settlement instructs Microsoft to also make all future versions of its Windows to be compatible with non-Microsoft software.

The settlement may seem to challenge the free-market, but it is vital to settle the case to help provide assistance in revitalizing the economy.

Sincerely,
Frank Zepf
Frank V. Zepf
52 Pennsylvania Ave.
Massapequa, NY 11758–4838
Phone 516–798 0353

MTC–00028488

From: SHOCK4952@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:01pm
Subject: Microsoft Settlement

Your Honor,

After reading and listening to the mass of information being presented to the general consumer regarding a potential miscarriage of justice, it would appear to me that I may have a rather unpopular opinion. I'd like explain my thoughts, but before I do...I need to clarify that I do NOT work for, recieve monys from, nor do I get any special benefits from either party in doing so.

We've seen what Apple computer tried to do in the past, by making everything they make propriatory. The average working person can't afford the equipment, let alone the software that works ONLY on their system. Tandy corporation (Radio Shack) tried to do the same thing, and nearly sunk them financially. ....because of Microsoft. Seems to me that if a competitor can't come up with a competitive system, ad a competivitve cost...they cry monopoly. If any legal decision favors these flag carrying towncriers of ''healthy competition''.....the ONLY ones that will benefit from it, will be them!

I don't know if I'm adequately articulating my position, but I just feel if 10,000 people can easily afford to buy a computer, and use software that's readily available, it's better for those 10,000 people than if say only 1,500 could afford to pay the EXTREMELY high prices of a system made by Apple or Sun technologies. It's true the profit to Apple and/or Sun is considerably higher from these 1,500 than the 10,000 working class like myself, but in my opinion...through all the smoke and mirrors...that's what this is REALLY all about. $$$$$$ Yes...monopoly CAN be a bad thing, but the only thing Microsoft is guilty of is providing an easy to use product at a low cost. Something the others just can't seem to do.

Go with your instincts, and stick with ''Of the People, By the People.....and FOR the people''. It's an old system...but it still works.

Thanks for your time,
Steve Shockley
PO BOX 237
West Creek NJ 08092

PS: It would interest me greatly to know if you ever recieve this letter.

MTC–00028489

From: Donald E. Barlow
To: Microsoft ATR
Date: 1/28/02 4:01pm
Subject: Microsoft Settlement
Forwarded by Donald E. Barlow/PSG/Prudential on
01/28/2002 04:00 PM
''Microsoft's Freedom To Innovate Network'' <fin@MobilizationOffice.com>
Monday January 28, 2002 03:55 PM
To: ''donald—barlow@prusec.com'' <donald—barlow@prusec.com>
cc:
Subject: Attorney General John Ashcroft Letter

Attached is the letter we have drafted for you based on your comments. Please review it and make changes to anything that does not represent what you think. If you received this letter by fax, you can photocopy it onto your business letterhead; if the letter was emailed, just print it out on your letterhead. Then sign and fax it to the Attorney General. We believe that it is essential to let our Attorney General know how important this issue is to their constituents. The public comment period for this issue ends on January 28th. Please send in your letter as soon as is convenient.

When you send out the letter, please do one of the following:

* Fax a signed copy of your letter to us at 1–800–641–2255;
* Email us at fin@mobilizationoffice.com to confirm that you took action.

If you have any questions, please give us a call at 1–800–965–4376. Thank you for your help in this matter.

The Attorney General's fax and email are noted below.

Fax: 1–202–307–1454 or 1–202–616–9937
Email: microsoft.atr@usdoj.gov

In the Subject line of the e-mail, type Microsoft Settlement.

For more information, please visit these websites:
www.microsoft.com/freedomtoinnovate/
www.usdoj.gov/atr/cases/ms-settle.htm

(See attached file: USAGBarlow—Donald—1044—0124.doc)

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One Seaport Plaza New York, NY 10292
610 Old York Road Suite 400
Jenkintown, PA 19046
January 28,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am sending you this brief message to simply say I favor a swift settlement of the Microsoft anti-trust case. This case has gone on long enough. After four years of litigation, appellate hearings and constant clamor the parties have a fair and workable settlement proposal, endorsed by the court, your department, Microsoft and the majority of state complainants. The proposal should be ratified and the case closed.

The settlement requires Microsoft to radically alter its business practices and its philosophy. Microsoft will now be required to configure its Windows platforms in a manner that readily accept non-Windows software. The company will be required to license its Windows systems to major computer Manufacturers on uniform terms. Microsoft has agreed not to use retaliatory practices against manufacturers whose products compete against its product. It has promised generally to abjure any predatory or anti-competitive market practices. It has agreed, as I said above, to adopt a whole new market philosophy that encourages not just competition, but its competitors. Surely such concessions are sufficient consideration for an end to this lawsuit.

Please support this agreement and help bring this case to a close.

Sincerely,
Donald Barlow
cc: Senator Rick Santorum

MTC–00028490

From: Alan Q. Thompson
To: Microsoft ATR
Date: 1/28/02 4:02pm
Subject: Microsoft Settlement

My name is Alan K. Thompson. I live in Riverdale, MD, am a US citizen, and am 37 years old. I feel that the proposed DOJ settlement with Microsoft is a travesty of justice. The Sherman anti-trust act was created to prevent the sort of illegal extension and protection of monopoly for which Microsoft has been found guilty. Microsoft has demonstrated in the past that it will use every arguably legal means to avoid restrictions on its actions, and the proposed settlement will allow it too much room. A much more structurally enforced remedy, such as that proposed by Judge Jackson in the original conviction or proposed by the ''dissenting states'' in early December 2001, is necessary to restore competition to this vital segment of the economy.

Thank you.
Alan K. Thompson
4711 Sheridan Street Suite 316351
Riverdale Park, MD 20737

MTC–00028491

From: WILLIAM YOCUM
To: Microsoft ATR
Date: 1/28/02 4:02pm
Subject: MICROSOFT SETTLEMENT

WHAT DESIRE WOULD ANY COMPANY HAVE TO DEVELOP PRODUCTS, IF THEY WERE NOT PROTECTED BY PATENTS??? NONE. THIS IS WHAT THE GOVERMENT IS TRYING TO TAKE FROM MICROSOFT. GET OFF THEIR BACKS.

MTC–00028492

From: Rolejoele2@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:03pm
Subject: Microsoft Settlement Please see attached> Sincerely Earl R. Ramsey
3705 Arctic Boulevard #1451
Anchorage, AK 99503–5774
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

As a retiree who has been following this Microsoft antitrust case, I must admit I was disappointed that this case was even brought to court. There are so many other companies with a high market share like Cisco and Oracle. No one pursued those companies. Microsoft has been great for the economy, for the shareholders, and for technology. What are the ramifications for this country, if litigation were to continue another four years? Would Microsoft be able to survive? They are already vulnerable, now that they've agreed to disclose portions of their source codes in their operating system to the competition.

Microsoft has been more than cooperative in resolving this matter and agreed to terms well beyond what is expected in any antitrust case. That ought to be enough.

Let's stop the litigation so the government can focus on more pertinent issues. Not only is it good for the company, but for the economy as well. Thanks for your consideration in this matter.

Sincerely,

Earl Ramsey

MTC–00028493

From: EON
To: Microsoft ATR
Date: 1/28/02 4:03pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

I am very concerned that the proposed Microsoft settlement is not in the public interest. My fear as a computer user is that the all important freedom of choice which distinguishes our democracy will be further eroded. I appreciate your attention and hope you will include the following in your considerations.

My objections include the following points: 1) The settlement leaves the Microsoft monopoly intact. It is vague and unenforceable. It leaves Microsoft with numerous opportunities to exempt itself from crucial provisions.

2) The proposed settlement ignores the all-important applications barrier to entry which must be reduced or eliminated. Any settlement or order needs to provide ways for consumers to run any of the 70,000 existing Windows applications on any other operating system.

3) Consumers need a la carte competition and choice so they, not Microsoft, decide what products are on their computers. The settlement must provide ways for any combination of non-Microsoft operating systems, applications, and software components to run properly with Microsoft products.

4) The remedies proposed by the Plaintiff Litigating States are in the public interest and absolutely necessary, but they are not sufficient without the remedies mentioned above.

5. The court must hold public proceedings under the Tunney Act, and these proceedings must give citizens and consumer groups an equal opportunity to participate, along with Microsoft's competitors and customers.

Respectfully,

Mary Beth Brangan
117 Terrace Avenue
Bolinas, CA 94924
415–868–1901

MTC–00028494

From: Dave McGinley
To: Microsoft ATR
Date: 1/28/02 4:04pm
Subject: Microsoft Settlement

Respectfully submitted:

I oppose any settlement with Microsoft. I consider Microsoft's tactics to be monopolistic, unfair to competition, and predatory. Consider,

I was an Apple computer user from the late ''70s. Apple computer is no longer a viable option do primarily to Microsoft. The original MS Office came out on the Macintosh. When Apple begin to compete with Microsoft (late 80's), the Office programs suddenly were no longer supported on the Apple Platform and then when again supported MS Word was interpeted causing painfully slow execution (early 90's). Finally, when Apple capitulated to MS, a new fully functional release was made late 90's. I was a Netscape Navigator user. After running in to so many e-sites that would not support Netscape I was forced to change to Internet Explorer. I was a Eudora e-mail user. Again I was forced to change to Outlook Express for compatibility.

Lastly, when using an Apple Postscript printer, mysteriously, MS Office products would encounter errors printing. Research by my programmer showed MS had ''added'' a Postscript command of their own, thus preventing and Apple Standard Postscript command from executing without errors. The bottom line, if MS wants the market they have the financial and technical capability to drive any competitor from the market. Watch what happens with XBox vs Playstation and Ninetendo.

HELP.

Dave McGinley
Pericle Communications Company
1910 Vindicator Drive, Suite 100
Colorado Springs, CO 80919
mcginley@pericle.com 719–548–5014 Vx 719–548–1211 Fx

MTC–00028495

From: Thomas Saeda
To: Microsoft ATR
Date: 1/28/02 4:04pm
Subject: Microsoft settlement

2308 Delina Drive
Las Vegas, NV 89134
January 27, 2002
Attorney General John Ashcroft
U.S. Justice Department
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am in support of the Microsoft antitrust settlement. It is clearly a compromise for both parties involved.

This is, out of the possible options, one of the more reasonable choices. Restrictions have been set upon Microsoft by the government under the terms of this settlement. These include contractual restrictions on the promotion of Windows technology, relationship with software developers and design obligations.

Please support this settlement. It is important that the technology industry concentrates on business now. The terms will mean a new wave of innovation, promoted by increased competition. I would appreciate it if the folks in Washington spent the taxpayers'' money in more efficient ways.

Sincerely,

Thomas Saeda

CC: Senator Harry Reid
CC:fin@mobilizationoffice.com@inetgw

MTC–00028496

From: bruce guenard
To: Microsoft ATR
Date: 1/28/02 4:04pm
Subject: microsoft settlement

Dear Judge,

I am(just) a personal user of computers and software since 1982. I have not read all the legal docs, but have followed the rise of the personal compuger industry for about two decades. Microsoft has produced good products and bad products. The culture of Microsoft,(like the culture of Enron) is unhealthy: Before the death of Lotus 123, the Microsoft mantra was''DOS isn't done ''til Lotus won't run.'' The ''winner take all, damn the ethics'' attitude of MS might be tolerable if there were real competition in the operating system(OS) market. But there is no competition. No admission of guilt, no repentance. ''Innovation'' to Microsft is finding new ways to squeeze dollars out if the public. Microsoft will *always* use its OS and browser monopoly to maintain and extend it's illegal monopolies.

If It's a monopoly, it must be regulated. But when has Microsft ever followed a judges'' order or an anti-trust law it doesn't like? Better, separate the OS/Browser business from the rest of Microsoft. THEN use a couple billion of MS illegal profits to fund at least two open source OS alternatives, like Lindows. (using all MS internal tech data) IF there is real competition in the OS market, the public can choose to use or not to use MS products on their merits, not because the OS/Browser demands it.*

We don't want the Chinese Communists creating a Linux future for the Intel/AMD* PC do we?

Bruce Guenard
san jose ca

* There are no good analogies to the power the OS has over the consumer. What if GM were the only car maker in earth and it sold a car, but licensed the key? The key controlled the gas and brake and would only work properly if the car contained GM manufactured products. The car crashes a lot, but really crashes if not using GM tires, gas, oil, batteries etc. And the key quits working after 5 years. Break a key, out of luck. Just buy a new car and license the key

Car costs $19,999.00. Key licences for $1,990.00 for driving in the city, $2,990.00 to go to the suburbs or out of state. (relative pricing of home vs prof versions.) If your spouse or kids want a key, they must buy a license, too.

** With AMD battling Intel in the CPU market, hardware prices drop, with real choice. With the Microsoft OS Monopoly, forced upgrade prices rise. Let there be the end of software monopolies!! (pardon my spelling)

MTC–00028497

From: mike k
To: Microsoft ATR
Date: 1/28/02 4:05pm
Subject: Microsoft Settlement

Dear Sirs,

I believe that Microsoft has proven that they can and will find a way to sidestep the intent of the judgement against them. They will likely muddy the waters in such a way that the details of the settlement will become largely irrelevant. I believe that the current judgement is not enforceable against such a slippery company.

thank you,
Mike Kirita

MTC–00028498

From: Des Owens
To: Microsoft ATR
Date: 1/28/02 4:05pm
Subject: Microsoft Settlement

I find the DOJ proposed settlement with Microsoft to be a disgrace! Microsoft after snookering the original preparer of PC DOS was handed a monopoly by IBM. They have exploited that monopoly in a number of illegal ways. After being found guilty, they are now being rewarded by the DOJ with such weak ''punishment'' and unenforceable behavior restrictions, that Microsoft can now declare victory and continue on their merry way. Considering the relationship between Microsoft and the Bush administration, the money and the Ballmer visit to VP Cheney, one might have expected the DOJ to recuse itself.

This is an ''honorable'' administration—value is given for value received!

Yours truly,
Desmond H. Owens
1839 Kirkmont Drive
San Jose, CA 95124

MTC–00028499

From: Benjamin Curtis
To: Microsoft ATR
Date: 1/28/02 4:05pm
Subject: Microsoft Settlement

Please consider this email a vote for not allowing the proposed settlement to stand. Microsoft has previously ignored and/or violated previous decrees, and have continued to exhibit predatory business practices to both establish and maintain their monopoly in the technology sector. The current proposed settlement does not go far enough to ensure that competition will be restored to the marketplace, and is not in the consumer's interest.

Microsoft has used various means to eliminate any and all threats of competition, including hiring away critical employees of competing companies (Borland), eliminating a profitable market for a software segment (Netscape), and integration of new products with current market-dominating products (Microsoft Word vs. Word Perfect). An oversight committee trying to enforce disputable sections of the settlement will simply be no match against both the entrenched competition-killing culture of Microsoft and the cadre of attorneys used to support that culture's goals. Instead, more drastic measures, such as those proposed by the nine dissenting states, should be put in place to help restore the competition that Microsoft has so effectively eliminated.

There are certain details of the proposed settlement that would seriously weaken the settlement if it were to be implemented as it currently drafted. For example, very little consideration is given to competition that may come from non-profit-oriented organizations such as the developers of the SAMBA project. This project's main goal is to provide software to allow users of other operating systems to provide file-sharing services in a network including Microsoft Windows clients. SAMBA's developers have had to continually adapt to Microsoft's changing of APIs and protocols to achieve this goal. The provisions in the current settlement proposal for releasing of API information simply are not stringent enough to be effective, as they don't address in enough either sharing APIs with non-profit groups or the timeliness of those transfers of information. SAMBA has been the only effective competition to Microsoft when it comes to file-sharing in dominantly Microsoft Windows environments, and this settlement does little to encourage that competition. Granted, this is only one case of a weakness in the proposal, and the settlement is not intended to benefit any one specific entity, but this is an example of how there are significant weaknesses in the settlement's ability to help restore competition and to be in the public interest.

In summary, this proposed settlement is not in the public interest for many reasons—many of which have been well documented elsewhere. Please do not allow the best interests of consumers to be forgotten. Please do not endorse this settlement. Thank you.

Sincerely,
Benjamin Curtis
15 Lake Bellevue Drive, Suite 202
Bellevue, WA 98005
425–454–0088

MTC–00028500

From: Mary
To: Microsoft ATR
Date: 1/28/02 4:04pm
Subject: Microsoft Settlement

To the Justice Department:

I am deeply disturbed by the prosecution of the Microsoft Company and Microsoft Chair Bill Gates. With Microsoft products, I have had the option of using other manufacturer's software and was often supplied at hardware purchase with software like Lotus and Claris and browsers from Mosaic to Netscape. I have received immeasurable benefit from the features of Microsoft products and they continue to be my preference. The reason I say this is that I very much resent the prosecution's contention that I am some kind of helpless consumer that can't even pick which software suits my purpose. And I don't believe the Justice department has the right to tell me what kind of deals I can make with my supplier. The court's job is not to protect one business from another, but to arbitrate contracts and protect individual and property rights (businesses are owned by individuals). Microsoft products are not a threat to anyone. As I remember, this case didn't start with consumers like me feeling ripped-off, or even with a violation of any contract between Microsoft business partners. It started with Microsoft's unsuccessful competitors! Since when do competition's losers get to sue? I want to live in a country where anyone with enough on the ball, putting in sufficient effort, can be a self-made-man like Bill Gates. That is the American Dream. It is a fundamental right! I want to know that my country is there to protect my right to my property, not to worry that if I succeed that my own country will take it away from me and turn it over to my competitors.

Sincerely,
Mary Bachmann
136 Galleon Loop N.E.
Ocean Shores, Washington 98569

P.S. If I (the consumer) have been wronged, shouldn't I be the one getting the settlement?

MTC–00028501

From: Troy Harkey
To: Microsoft ATR
Date: 1/28/02 4:05pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to you to express my support for the settlement reached between Microsoft and the Department of Justice. Consumer confidence in tech stocks has dwindled as the federal case has dragged on. Since the US District Court entered its judgement against Microsoft on April 3, 2000, we have witnessed a historic decline in investor confidence in the technology industry. The technology-heavy Nasdaq Composite stock index, which managed to get as high as 4504 that day, now rests comfortably below 2000 representing a loss of 56%.

Now we are in a recession. Massive layoffs are announced every week. Once mighty companies are folding. I believe it is time to put this issue to rest and enact the settlement.

Microsoft has made many concessions throughout this process. They have agreed to disclose the protocols of their windows system. This means that Microsoft will be required to make its proprietary information available to competitors. I wonder if those companies will have to share their proprietary data with Microsoft? It seems to me we should be rewarding innovative companies not penalizing them, or slicing them up, and feeding them to the competition.

I can remember when DOJ disassembled AT&T. As a result, my local telephone service is now far less reliable and much more expensive. I can?t even get anyone to answer the phone at the phone company to address a problem with my bill!

Finally, I would like to state that the enactment of the settlement will benefit the technology industries. Microsoft has done its

share to resolve the issue. Please enact the settlement reached in November.

Sincerely,

Troy Harkey

MTC–00028502

From: Frank M. Kepics
To: Microsoft ATR
Date: 1/28/02 3:45pm
Subject: Microsoft Settlement

I'm writing to voice my opinion regarding the proposed Microsoft settlement. I believe that the proposed settlement is woefully inadequate as a deterrent to the anti-competitive and monopolistic business practices employed by Microsoft currently or in the future. Enactment of this agreement as currently proposed will be ineffective in establishing a competitive business environment in the software industry.

I am strongly opposed to the terms and conditions imposed by this agreement and would like to see a re-negotiated settlement that provides more safeguards to competition and effective enforcement than that offered by the currently proposed ''slap-on-the-wrist'' agreement.

Respectfully,

Frank M. Kepics

Frank M. Kepics
School of Biomedical Engineering,
Science and Health Systems
MS 7–709
Drexel University
3141 Chestnut St.
Philadelphia, Pa. 19104 **
(215) 895–2221 (voice)
(215) 895–4983 (fax)

MTC–00028503

From: Carl Kipp
To: Microsoft ATR
Date: 1/28/02 4:06pm
Subject: Microsoft Settlement

WHAT.

This is the penalty in the main DoJ suit after MS lost the appeal. The supression of Netscape's browser is the primary issue, but loss of BeOS is as bad.

HARM.

The MS IE bowser has been a main entry point for viruses, and its extensions have harmed the www. Tim Berners-Lee (who DID invent the Web) dislikes the damage propietary MS extensions has done. His goal was equality of operation across platforms.

MS has harmed Opera, Netscape by GIVING IE away. MS has harmed Carl Kipp by corrupting sites and starving the publisher of my preferred browser: NetScape Communicator! This is written on NetScape's e-mail program!

REMEDY?

I request forcing MS to be split (the original penalty) or source code opened without the ''security'' exemption. MS's recent ''$1 Billion'' settlement proposal for another suit is typically self-serving. They account their $10 MS Office package cost as ''$600'' retail AND hook students in the education market.

This is like letting the tobacco companies pay their fines in cartons of cigarettes!

US Judge Judge Colleen Kollar-Kotelly is going to look at OUR public comment on the remedy/penalty now that Microscoff has been confirmed

GUILTY!

Letting Microsoft off easily leads to:

World ''Dumb-in-Nation''!

Carl Kipp

Columbus, OH, 43202

In Unauthorized Windos 95, Andrew Schulman (wizard & editor) has many quotes from the DoJ vs MS [''settled'' out of court, 1994!] including his own congressional testimony. One was from a MS VP who said ''...my job is to see that Microsoft gets a fair share of the application market. I define that as 100%.'' Perfidy.

This case is an outgrowth of that one. MS agreed to not bundle the browser, did it anyway and claimed it was built-in. A lie, as testimony showed. I own 98Lite a program which merely uninstalls the IE browser.

Drug on the market.

MS's recent ''$1 Billion'' settlement proposal for another suit is typically self-serving. They account their $10 MS Office package cost as ''$600'' retail AND hook students in the education market. This is like letting the tobacco companies pay their fines in cartons of cigarettes!

Or the Carlos Lehder, of Medellin cartel pay fines in cocaine packets!

Judge T.P. Jackson did compare MS to a dealership.

Damage to Society.

Microscoff is bad for innovation. [See Caldera's suit for damage to DR-DOS. See Borland.].

Microsloth is bad for programmers. [You don't program, you use MFC objects. Dumb.]

Microstuff is bad for IT. [No one understands their proprietary stuff. Even MS! See IIS buffer over run. See the FBI warns MS about security. See Universal P'nP holes] Microscruff is bad for ZDNet, a media company. [Users have given up understanding. ZD loses readers looking for enlightenment.

They are since under new management.] ZDNet editor Kingman said ''No single company, not even Microsoft, is the enemy.'' WRONG. MS=Dumbination The GATES to Dumb-in-Nation!

Carl Kipp

Columbus OH, 43202

MTC–00028504

From: Rolejoe1e2@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:06pm
Subject: Microsoft Settlement

Please see attached document, explaining my feeling about the treatment of Microsoft. Thank You Ellen M Ramsey

3705 Arctic Boulevard #1451
Anchorage, AK 99503–5774
January 26,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

As a retiree who has been following this Microsoft antitrust case, I must admit I was disappointed that this case was even brought to court. There are so many other companies with a high market share like Cisco and Oracle. No one pursued those companies. Microsoft has been great for the economy, for the shareholders, and for technology. What are the ramifications for this country, if litigation were to continue another four years? Would Microsoft be able to survive? They are already vulnerable, now that they've agreed to disclose portions of their source codes in their operating system to the competition. Microsoft has been more than cooperative in resolving this matter and agreed to terms well beyond what is expected in any antitrust case. That ought to be enough.

IF MERGEFIELD PARA2 But clever people like me who talk loudly in restaurants, see this as a deliberate ambiguity. A plea for justice in a mechanized society.

Let's stop the litigation so the government can focus on more pertinent issues. Not only is it good for the company, but for the economy as well. Thanks for your consideration in this matter.

IF MERGEFIELD PARA5 But is suspense, as Hitchcock states, in the box. No, there isn't room, the ambiguity's put on weight.

Sincerely,

Ellen M. Ramsey

MTC–00028505

From: PlattDJ@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:07pm
Subject: Mirosoft Settlement.

I feel that the provisions of the agreement are reasonable and fair to all of the parties involved. This would be the best opportunity for MSFT and the industry to move forward. Please accept the agreement. Donna Platt

MTC–00028506

From: S P Arif Sahari Wibowo
To: Microsoft ATR
Date: 1/28/02 4:07pm
Subject: Microsoft Settlement

I think the settlement proposal is NOT good enough:

The technical comittee should give written report to the public, and answer questions from the public as much as they can.

The time of remedy should allow growing of competition, therefore 5 years are not enough, it should be a least 10 years.

Thanks you.

MTC–00028507

From: Wesley Williams
To: Microsoft ATR,Microsoft ATR
Date: 1/28/02 4:10pm
Subject: microsoft settlement

I am a stockholder in microsoft and i believe the settlement should be completed as soon as posible. Approval of the settlement would be in the best interests of all concerned, in my opinion. Please consider approving the settlement. Thank you for your consideration.

Sincerely,

Wesley Williams

MTC–00028508

From: Richard A Martin (DTG)
To: Microsoft ATR
Date: 1/28/02 4:06pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft,

Please read my attached letter...

Richard Martin, Senior System Architect/ President

Dominion Technology Group, Inc.

mailto:rmartin@dominiontechnology.com
(614) 529–1284 Home
(614) 216–7197 Cell
Richard Martin
Assistant Professor
DeVRY Institute of Technology
(614) 253–7291 x2551
mailto:rmartin@devrycoIs.edu
January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am a professor at a technical college, and work as an IT consultant. I acknowledge that there are legitimate reasons that brought about this case three years ago, but Microsoft become powerful not by being a predatory attackers, but by making excellent products. This case should not punish Microsoft for being the industry leader, but should rule that exclusionary practices should be changed. The concerns that give merit to the case have been addressed with the introduction of new Microsoft software, and that provisions are in place under the agreement that will ensure competition in the market.

The concerns of independent vendors, computer makers, and software engineers all have been taken into account to produce licensing and development changes within Microsoft software. Protocol has been set up to ensure that Microsoft remains a responsible industry leader by forming oversight committees and reevaluating future lawsuit guidelines. I do not understand what more can be done at the federal level. This case has already had an impact on the industry and the economy, and the effects of Microsoft being broken up would be devastating. The loss of standardization and operability would halt innovation, and might jeopardize our country's position as the world leader in technology development. We must resolve this case, and the sooner, the better. The necessary steps have been taken to foster competition, and would like to see the settlement given a chance to prove itself.

Sincerely,
Richard Martin
CEO

MTC–00028509

From: BRogoff@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:09pm
Subject: Microsoft Settlement

Dear Renata B.Hesse,

On behalf of the computer dummies please settle this case for the ordinary computer user, because we prefer Microsoft to be allowed to continue to innovate simple software.

Thank you.
Sicerely,
Myrna Rogoff

MTC–00028510

From: Fred Savalli
To: Microsoft ATR
Date: 1/28/02 4:10pm
Subject: Please Settle Microsoft Suit
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am very adamant the lawsuit against Microsoft is unwarranted and should never have started in the first place.

I believe it was politically motivated by significant contributions of Netscape to the Democratic party. Further the suit, I believe has contributed to the down turn in the economy.

I fully suport for settlement that the DOJ has proposed. If Microsoft deems this settlement fair then I will support Microsoft's decision to comply. If you ask me, the lawsuit has only helped to strengthen Microsoft as a company rather than fulfill the intentions of the opposition—to tear the company apart.

Microsoft's willingness to comply should be some indication of the caliber company we are dealing with—a company that possesses true leadership. One of the signs of a great company is the willingness to concede when it is evident that alternative choices are limited. I don't the think the concessions on Microsoft's part where as much an admission of guilt as it is Microsoft sincere desire to get back to what they do best—innovate!

If the remaining opposition were to truly look closely at this case they would see that Microsoft has not gotten of easily as they have implied in the past. Microsoft will have to basically strip themselves of their competitiveness by allowing significant access to their internal interfaces and intellectual property.

Microsoft's efforts to comply, the disastrous effects on the economy, the vast of amounts of tax payer dollars spent should be plenty of reason to bring a speedy end to this case. I hope you hear the plea of the public and wrap up this matter.

Sincerely,
Frederick Savalli
1523 Tangerine Street
Clearwater, Florida 33756

MTC–00028511

From: Justin Lower
To: Microsoft ATR
Date: 1/28/02 4:08pm
Subject: Microsoft Settlement

To Whom It May Concern:

As a long time BeOS (Be Inc. Operating System) user I cannot say how disappointed I am in what remedy's have been discussed to deal with Microsoft's monopoly. These remedies are for me, the consumer, yet I have no doubt that when all is said and done that Microsoft will still be a monopoly, that I will remain to have a very, very limited choice of operating systems to use. (I don't consider Linux, BSD, etc to be valid choices—few companies have been able to provide a easy, usable operating system that does not require a degree in Computer Science to feel one is in control.) Apple and Be Inc. are the only choices I had apart from Windows in the last 5 years or more. Now, with the BeOS ''dead'', largely due to Microsoft's illegal bootloader license forcing system vendors to ignore Be Inc. or ,worse, to force a dual boot system to ignore the BeOS partition unless ''activated'' (see what Hitachi had to do to ship a system with BeOS preinstalled) I have little choice but to move to the Macintosh platform.

Remedy? There are plenty of methods where Microsoft could be forced to pay for illegal activities and possibly save the BeOS platform. They could be forced (with Palm's understanding) to purchase the BeOS/BeIA source code— forced to pay community developers to remove all third party code and release it to the public as open source. I sure that other options are available—ones that might be more realistic, but the fact remains—if the settlement does not result in the renewed development of the BeOS then I will have considered it a failure.

Justin Lower
746 E 19th Ave #4
Eugene, OR 97401
(541)484–2353 <- Home #
(541) 554–7250 <- Cell #

MTC–00028512

From: Susan Chatman
To: Microsoft ATR
Date: 1/28/02 4:11pm
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
January 28, 2002,

Dear Ms Hesse,

I have been trying to understand the intricacies of the proposed settlement. I am very concerned that the final outcome does not promote a free market, and therefore allows Microsoft to continue monopolistic activities. It is best for the American consumers that viable alternatives to Microsoft have the opportunity to compete freely.

I have a friend that has published several detailed and well-argued points about the basic unfairness of the proposed settlement. Please do not let the free market be hijacked by Microsoft's lawyers. We must have access to code, alternative to both operating systems and application interfaces must be allowed to exist, and we should not let this proposed settlement go through the way it is currently written.

Please reference http://www.kegel.com/remedy/letter.html for more details on the specific changes that will help make this a much better settlement.

Thank you very much for your time.
Sincerely,
Susan Chatman
6665 Green Valley Circle, #322, Culver City, CA 90230–8111

MTC–00028513

From: Frances B. Smith
To: Microsoft ATR
Date: 1/28/02 4:11pm
Subject: Microsoft Settlement
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street, NW
Suite 1200
Washington, DC 20530–0001

Subject: Microsoft Settlement

Dear Ms. Hesse,

I would like to express Consumer Alert's support for acceptance of the Proposed Final Judgment to resolve the antitrust case against Microsoft. Consumer Alert, founded in 1977, is a non-profit, non-partisan consumer group with individual members in all 50 states. In addition, Consumer Alert is the founder and coordinator of the National Consumer Coalition (NCC). The NCC is an on-going coalition made up of 23 non-profit organizations, with those groups'' members numbering over 3 million.

In today's uncertain economic climate, it is in the best interests of consumers to have the issues settled and to bring to an end litigation that could further stymie our economic recovery. The agreement is needed to ''provide a prompt, certain and effective remedy for consumers.'' The technology sector and its resurgence could be vital to renewed economic growth, not only in the U.S. but in the world economy.

The remedies provided in the settlement are far-reaching and address the business practices that the court found to be anti-competitive. Offered by the U.S. Department of Justice, the proposed settlement was endorsed by nine State Attorneys General. The settlement could bring an end to litigation that has created an uncertain and disruptive climate.

With this settlement, consumers likely will continue to benefit from the products and services offered by firms that operate in dynamic and rapidly changing markets and are innovative in their distribution systems. Those who would seek further redress would try to shape the markets of today into a narrow and static mold of competition—one that would threaten consumer welfare. Satisfying the demands of competitors, at the expense of consumers, should not be the principal factor governing the resolution of this antitrust suit.

Throughout the three-year litigation process, no evidence of consumer harm was offered. Instead, it appeared that competitors wanted the legal system to help them with their business plans. Some of those who are pressing for further restrictions may claim that those are needed to protect consumers from anti-competitive practices. Yet consumers are the ones who benefit from creative institutional and technological change and are far more likely to be injured by political restrictions on such change, especially when such restrictions favor competitors.

Obstructing the agreement is likely to have widespread unintended consequences that could disrupt the continuation of these consumer benefits.

Consumers are benefiting from intense competition that has ?democratized? access to technology in the past decade. Not least of these are dramatically lower prices, ease of use for even the untutored, and the continuous unveiling of innovative products and services. Even during the past three years while this case was being litigated, technological advances continued unabated, many offered by Microsoft, but others portending new possibilities in information technology and new alignments.

Consumers are the ones who benefit from the vibrant competition that exists. They are the ones who would suffer from further antitrust action or draconian remedies that attempt to delineate how competition should evolve. The nature and speed of institutional and technological change is misunderstood. Today, no one can predict the future of IT—who the players will be and who are the likely winners and losers. Those who would use antitrust policy to mold their view of the future are likely to create impediments to innovation. Predicting where systems will go in the future is a task for markets and ultimately the customers in those markets—consumers.

Sincerely,
Frances B. Smith
Executive Director
Consumer Alert
1001 Connecticut Ave., NW, Suite 1128
Washington, DC 20036
Phone: 202–467–5809
Fax::202–467–5814
www.consumeralert.org

MTC–00028514

From: John Ilgen
To: Microsoft ATR
Date: 1/28/02 4:14pm
Subject: Public Comment on Microsoft Anti Trust Settlement

January 25, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I believe that the Department of Justice was justified in filing this lawsuit against Microsoft. I support the settlement that the Justice Department has proposed and think that any other action, is just Microsoft's competitors looking for judicial remedies for what they can't obtain the free market!

As far as the nine remaining states action, there has been no loss to consumers as a part of Microsoft's actions. Microsoft sells in volume and at non monopolist prices. Just look at what its competitors charge for an operating system, Sun and Apple. In fact, it is Microsoft's products that have been the biggest contributor to productivity gains in the US economy in the last five years.

I hope that the settlement will be sustained during this public comment period, and that there will be no further federal action against Microsoft, or any other American company.

Sincerely,
John Ilgen
CEO
CitationSoft Corp
CC:John Ilgen

MTC–00028515

From: Tony Niesz
To: Microsoft ATR
Date: 1/28/02 4:17pm
Subject: Microsoft Settlement

I think the proposed Microsoft settlement is a gross miscarriage of justice. Microsoft is a convicted monopolist, and such a heinous one that the only possible competition is the decentralized, guerilla Linux movement that arose at the grassroots level in the face of Microsoft's anticompetitive tactics. In other words, Microsoft is such an abusive monopoly, that many of the world's most technically proficient volunteered their time and effort to provide an alternative, because any for-profit organization that tried would be run into the ground.

People care about this case. This won't be swept under the rug; it will be remembered in future elections.

Sincerely,
Anthony D. Niesz

MTC–00028516

From: cole
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: Microsoft Settlement

I oppose the proposed ''Microsoft Settlement'' that is now before Judge Kollar-Kotelly for consideration. MicroSoft represents how an inferior operating system can achieve and maintain predatory market monopoly through dishonest, unethical and illegal business practices. Break this monstrous company up!

Audrey Cole
270 West Cornwall Rd.
West Cornwall, CT 06796
28 January 2002

MTC–00028517

From: ROTH David R
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: Microsoft Settlement

I have been following the most recent case against Microsoft with considerable interest. Whatever objections may have been raised about the objectivity of the original judge, his conclusions about Microsoft's anti-competitive conduct were based on such persuasive evidence that no one outside Redmond has bothered to question it.

He found that Microsoft's conduct was so consistently and pervasively corrupt in it's anti-competitive conduct, that there was no hope of reform without the most dramatic intervention. I agree with him that the company should be broken up, so that the operating system and the applications are developed and sold by separate companies. Short of that, it is obvious that the only effective way for the Government to prevent renewal of the abuses would be to establish a very comprehensive set of guidelines and strictures, with oversight sufficient to enforce them in the rapid and far-flung operation of the business.

I recently signed the petition on this matter which has been circulated by Dan Kegel. I endorsed that petition because it does such a thorough job of identifying ways in which the proposed settlement misses the target. Please heed those warnings.

The defenders of Microsoft originally argued that the Government could not hope to understand and supervise such a dynamic technology. Then the Government prosecutors successfully demonstrated impressive mastery of the issues, sweeping the defense aside in one master stroke after another. Wouldn't it be ironic if the new Administration threw away what the previous Administration had accomplished by formulating a settlement which was based on such a naive and simplistic approach to

the problem. Now that Enron is hanging around the new Administration's neck, does it want to add a sweetheart deal with Microsoft?

MTC–00028518

From: Don Carrington
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: Microsoft
Date: January 28, 2002
To: The United States Department of Justice
From: Don Carrington
Vice President, John Locke Foundation
Raleigh, NC
RE: Microsoft Settlement

The Microsoft trial was a waste of taxpayers'' money and a significant disincentive to investors. While both Microsoft and the plaintiffs may be happy with the settlement, the truth is that the plaintiffs should never have filed this action to begin with.

We have seen government sponsored lawsuits against the tobacco industry, against Microsoft, and now fully expect to see lawsuits against the fast food industry. While private parties should always have the freedom to use our courts, the rise in government sponsored lawsuits is a danger to our great country.

This case should be ended as soon as possible, so I am in support of this settlement only to expedite the process.

I have attached the following opinion piece from one of my associates.

Please consider it a part of my official comment.

Cooper Gets It Right on Microsoft

By Dom Armentano and ROY CORDATO

''I have concluded that this settlement with Microsoft is in the best interest of North Carolina consumers.'' With this statement Atty. Gen. Roy Cooper announced that North Carolina, along with eight other states, has joined the U.S. Department of Justice in reaching a settlement in its antitrust lawsuit against Microsoft. Cooper should be commended for deciding to scrap this ill-conceived and ultimately anticonsumer lawsuit brought by his predecessor, now Gov. Mike Easley.

The Microsoft antitrust case, as brought by both the Reno and Easley Justice Departments, was a mistake from the start. The fatal flaw was that the Reno-Easley argument against Microsoft was essentially a legal brief for Microsoft1s disgruntled competitors who simply could not compete. Antitrust laws prohibit restraints of trade and higher prices, yet Microsoft was prosecuted for the opposite behavior?for rapid innovation, increasing production, and lowering prices. Indeed, Microsoft was being prosecuted not because of its monopolist behavior but because it was being too competitive.

Like most antitrust suits since passage of the Sherman Act in 1890, the Microsoft case was not about protecting competition but protecting competitors.

Postsettlement complaints by some of Microsoft1s competition bear this out. In urging the states to continue their war on Microsoft, Real Network1s Kelly Jo MacArthur said the settlement was a ''reward, not a remedy.'' Scott McNealy, CEO of Sun Microsystems, quipped that ''I can1t retire now?I can1t leave the world to anarchy.'' From McNealy1s perspective the world of falling software prices and innovative new products stimulated by Microsoft1s presence in the market is anarchy. Apparently ''order'' is the pre-Microsoft world where consumers paid up to $1,000 for word processing and spreadsheet programs and internet users had to fork over about $100 to use Netscape.

True competition always looks anarchic to those who can1t compete. Microsoft should be praised for refusing to cave in to ludicrous demands from self-styled ''trustbusters'' like Janet Reno and Mike Easley that it unbundle its web browser from its Windows operating system (appeasing Netscape) or that the company be split into three separate pieces. Instead, it courageously fought the government for years to arrive at what amounts to a legal draw and a victory for consumers.

Ultimately the government got almost nothing, and consumers are better off for it. Under the consent decree, Microsoft is prohibited from engaging in exclusive dealing arrangements with original equipment manufacturers (OEMs), access providers, and suppliers, a practice it had all but abandoned anyway. Further, Microsoft is required to share its applications program interface code and allow all OEMs that license its Windows operating system more freedom to display non-Microsoft software applications. Again, Microsoft was already moving in the direction of what they call ''shared sources.'' Finally, Microsoft must charge OEMs published rates and offer them uniform discounts.

But Microsoft is left entirely free to determine its own prices and discounts and change them at any time. This is crucial because it is Microsoft1s aggressive pricing strategies that have made the consumer software market as competitive as it is.

Finally, Microsoft is a clear winner on the issue that first sparked the lawsuit: the tying of its Web browser to its operating system. Not only is that bit of efficient bundling now perfectly legal but more importantly, there are no specific restrictions on any future bundling of applications with operating systems going forward. This is the most important innovational development to come out of the settlement and it1s strongly pro-Microsoft and proconsumer.

It was never in the interest of North Carolina consumers to be part of this witch-hunt. Nearly all antitrust suits are brought or instigated by competitors and are blatantly anticonsumer. Antitrust has a long history of prosecuting aggressively competitive companies that have innovated rapidly and lowered prices to consumers; this includes such famous cases as Standard Oil and IBM. Consumers and businessmen need free, open markets and they need protection from force and fraud, but they don1t need antitrust laws that hamper innovation and harm society. Three cheers for Cooper in his decision to settle the state1s suit against Microsoft, and solid brickbats to Easley for bringing it in the first place.

Dom Armentano is professor emeritus in economics at the University of Hartford and author of ''Antitrust and Monopoly (Independent Institute, 1998) and Antitrust: The Case for Repeal (Mises Institute, 1999)''. Roy Cordato is vice president for research and resident scholar at the John Locke Foundation in Raleigh.

MTC–00028519

From: Jim Abell
To: Microsoft ATR
Date: 1/28/02 4:16pm
Subject: Microsoft Settlement

Dear District Court Judge:

I am writing to you to as I am frustrated with the prosecution of Microsoft.

I am the Information Systems manager for our office and deal with Computers and Servers daily. Streamlining computer software and hardware can be the most difficult, time consuming and costly expense for our company.

Compatibility and support are key. I appreciate that Microsoft has helped immensely with this task. We don't need this process mucked up by government intervention. I resent that the government does not believe that I can decide for myself which software/hardware is useful to me. I can't believe our government views Microsoft as a threat, when after all it is Microsoft that has brought the industry to where it is....on real earnings, not ''puffed-up'' .com hype. Don't forget the bubble bursting for the .communists and all of their venture capital. Those bringing suit are not individual consumers, but Microsoft's unsuccessful competitors.

Failed businesses must not be allowed to set the rules for the markets in which they failed. Protecting some businesses from others is a dangerous policy. I want to see an America where success is embraced, not punished and throttled! Bill Gates is a self-made man who has brought America, the world, to new levels of progress. Microsoft has a fundamental right to its property, and it is the governments job to protect this right, not to take it away. Microsoft, should be lauded and left alone to continue to develop and prosper so that, we the people, can too.

Jim Abell

MTC–00028520

From: Steve Love
To: Microsoft ATR
Date: 1/28/02 4:11pm
Subject: Microsoft Settlement

I haven't seen any improvement in Microsoft antitrust situation. I think the current settlement that lets the Microsoft corportation to not be divided is misguided and shortsighted.

Steve Love steve43@starpower.net
CC:steve43@starpower.net@inetgw

MTC–00028521

From: MCFLOYD01@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:16pm
Subject: Settlement

Dear Renata Hesse:

I wanted to send you a brief e-mail expressing my hopes that ''our'' government will settle the Microsoft case as soon as possible.

I hate that because a man builds and muti-billion dollar business from the ground up that the government has to attack him.

I believe given that the economy is now in recession the last thing we need is more litigation and regulation of the high-tech industry. This litigation is cost us millions of dollars that we could be using for Homeland Security. Also, there has been no consumer harm as a result of any actions taken by Microsoft. They have only helped us.

Settlement of this case is in everyone's best interests ??? the technology industry, the economy and consumers.

Thank you for your time.

Sincerely,

Monty C. Floyd

MTC–00028522

From: WILLIAM YOCUM
To: Microsoft ATR
Date: 1/28/02 4:18pm
Subject: microsoft settlement

WHAT DESIRE WOULD A COMPANY HAVE TO DEVELOP PRODUCTS IF IT WERE NOT FOR PATENTS???. NONE. THIS IS JUST WHAT THE GOVERNMENT IS TRYING TO TAKE FROM MICROSOFT.

MTC–00028523

From: Daniel L Christie
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: microsoft settlement

We strongly urge setllement of the microsoft suits as soon as possible why penalize micorsoft for being successful?We need microsoft to help lead the market ahead. dan christie and o.b.v. inc.

MTC–00028524

From: jhunt@seniorexplorer.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:20pm
Subject: I believe consumer interests have been well served.

I believe consumer interests have been well served.

John R. Hunt

MTC–00028525

From: Frank Keenan
To: Microsoft ATR
Date: 1/28/02 4:22pm
Subject: Microsoft has continued to thumb their nose at the Dept. of Justice. For the approximately two yea Microsoft has continued to thumb their nose at the Dept. of Justice. For the approximately two years, every PC sold has included software giving one year FREE internet service via their MSN. In the meantime small internet providers across the country are going out of business. Typical Microsoft operation!

Frank Keenan
38 Gail Dr.
Littleton, NC 27850

MTC–00028526

From: paul.ilgen@highmark.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:13pm
Subject: public comment on microsoft
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I believe that the Department of Justice was justified in filing this lawsuit against Microsoft. I support the settlement that the Justice Department has proposed and think that any other action, is just Microsoft's competitors looking for judicial remedies for what they can't obtain the free market! As far as the nine remaining states action, there has been no loss to consumers as a part of Microsoft's actions. Microsoft sells in volume and at non monopolist prices. Just look at what its competitors charge for an operating system, Sun and Apple. In fact, it is Microsoft's products that have been the biggest contributor to productivity gains in the US economy in the last five years.

I hope that the settlement will be sustained during this public comment period, and that there will be no further federal action against Microsoft, or any other American company.

Sincerely,

Paul Ilgen

Northeastern Executive Group

MTC–00028527

From: Ken Wingert
To: Microsoft ATR
Date: 1/28/02 4:21pm
Subject: Fw: Microsoft Settlement
Ken Wingert
3000 Grand Ave, #910
Des Moines, IA 50312
Renata Hesse
Trial Attorney
Anti-trust Division
US Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Attorney Hesse:

Please accept the proposed settlement of the Microsoft antitrust suit.

It has been four years since this case was first brought and I fail to see what we have gained. I strongly believe our government must consider the financial impact this case has had and the benefits our economy will gain if it is settled quickly.

This lawsuit has had a very damaging effect on the technology markets. It was not that long ago that we all looked forward to the continued growth of the ''New Economy'' that revolved around the computer industry. Unfortunately, the DOJ's antitrust suit can be closely associated with the downfall of the NASDAQ. We can never forget that when the courts announced that breaking up Microsoft was the correct path to take, all technology stocks dropped.

We have finally reached a point in this case that all parties have come together to negotiate a settlement. There can be no doubt that real compromises were made by Microsoft to put this case behind it. The best example of this is that Microsoft agreed to the establishment of an independent committee to monitor its actions.

Please accept this fair settlement.

Sincerely,

Ken Wingert

MTC–00028528

From: Donald Bauer
To: Microsoft ATR
Date: 1/28/02 4:21pm
Subject: Please Enforce Antitrust Laws, Anticompetitive Practices

Greetings:

I am saddened and angered at the soft and non-punative nature of the proposed Microsoft settlement. You people owe it to your constituency of hard-working American men and women who feel you coziness with Microsoft is an outrageous affront to common decency and moral decency. Shame on you if you allow them to come out of this case with anything resembling the cozy, soft ''penalties'' described in the brief of the proposed settlement. My friends, colleagues and myself feel this settlement has the appearance of undue influence with respect to Microsoft's business practices and the Federal Government's willingness to make them tow the line. Shame!

Microsoft will continue to be an unfairly dominant player in the software market SOLELY BECAUSE of their ability to buy off or otherwise influence legislators and others within our Federal Government because their products are of such mediocre-to-poor quality that they would have trouble competing on a level playing field. Shame!

Please do the right thing; please do the moral thing; please do your job and punish Microsoft in a manner that pleases average American consumers and taxpayers like me and dozens of my colleagues with whom I've spoken of this horrendously-handled issue. PUNISH MICROSOFT—DON'T SUBSIDIZE THEM!!!

Donald Bauer,

California, USA

MTC–00028529

From: tom zukowski
To: Microsoft ATR
Date: 1/28/02 4:21pm
Subject: Microsoft
Tom Zukowski
5746 Oak Hill Road
Gibsonia, Pennsylvania 15044
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I feel bittersweet pleasure at the fact that Microsoft settled with the Department of Justice. Litigation should have ended long ago. As a user I feel that my rights have never been infringed upon my Microsoft.

In fact, their products have made it easier for me to operate efficiently with computers, more so now than ever before. I realize their market dominance precludes competitors from gaining any edge. But, their products are far superior to any other vendors.

I am glad to see that Microsoft has agreed on particular concessions with the US department of Justice, but I am not happy with nine states holding out. I support the settlement, and look forward to the end of this case.

Sincerely,

Tom Zukowski

cc: Senator Rick Santorum

MTC–00028530

From: John P. Kopp

To: Microsoft ATR
Date: 1/28/02 4:21pm
Subject: Microsoft Settlement
John Kopp
342 Wellington Rd
Mineola, N.Y. 11501
January 10,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

When the federal government decided to pursue Microsoft in an antitrust suit three years ago, the intention was to determine if Microsoft exercised unfair market advantage in the software industry. The result that the plaintiffs (including the government) in the suit did not consider was the harm to other businesses in the technology industry created by the lawsuit.

Unlike other software companies, Microsoft has an open platform that allows many manufacturers of computer software and hardware to be profitable due in part to the enormous investment Microsoft placed in creating the Windows operating system. Being involved in the video industry, I do a great deal of work with computers. The truth is, creating the highly complex codes that are needed to support the programs used in business these days can only be done by a company that has vast economic resources and technical expertise. By harming Microsoft, the lawsuit is harming companies that are dependent on its software for their livelihoods.

Thanks to the extremely low price of the Windows operating system, computers and technology have found the widespread use that benefits all of us. For this and many other reasons, I am in support of this settlement.

Sincerely,
John Kopp

MTC–00028531

From: Kuo, Benjamin P
To: Microsoft ATR
Date: 1/28/02 4:22pm
Subject: Microsoft Settlement

Dear Sir or Madam:

I am writing to express my disapproval over the proposed Microsoft Settlement.

I believe this deal is a sellout to Microsoft. Consumers get no real benefits and Microsoft goes unpunished for their antitrust behavior. We have no reason to spend millions of taxpayer dollars pursuing this case, only to hand out such lenient penalties when the facts are on the government's side. Microsoft is and continues to be a monopoly.

I urge you to reconsider the terms of the deal so that real progress can be made to restore competition in the marketplace.

Sincerely,
Benjamin Kuo

MTC–00028532

From: Florence Fredrichs
To: Microsoft ATR
Date: 1/28/02 4:23pm
Subject: I hope the Department of Justice considers well before punishing I hope the Department of Justice considers well before punishing innovative enterprises in our country. Microsoft has improved much of our systems of communication and i stongly feel that the case against their company is more or less moot. There is always competition in any field and the best systems will succeed.

I urge your department to let market forces reward or punish public ventures and spare the court system for more serious injustices.

Thank you for your attention, Florence A. Friedrichs-7045 HWY 135

Pilot Grove,MO

MTC–00028533

From: jdettre
To: Microsoft ATR
Date: 1/28/02 4:22pm
Subject: Microsoft Settlement
Antitrust Division
Department of Justice
Attached is a letter concerning the Microsoft Settlement.
John W. Dettre
3038 Harbour Drive
Palmyra, NJ 08065–2206
(856) 829–0704
jdettre@home.com
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I am writing in support of Microsoft's antitrust settlement with your Department of Justice. I think it is very reasonable. You should do your utmost to have it approved by the Court.

It is unfortunate that Microsoft's competitors had to resort to exploiting our legal system as their only way of staying in business. In the settlement Microsoft agrees to license its Windows operating system products to the 20 largest computer makers (who collectively account for the great majority of PC sales) on identical terms and conditions, including price (subject to reasonable volume discounts for computer makers who ship large volumes of Windows). Microsoft will make available to its competitors, on reasonable and non-discriminatory terms, any protocols implemented in Windows'' operating system products that are used to interoperate with any Microsoft server operating system. Microsoft will not to enter into any agreements obligating any third party to distribute or promote any Windows technology exclusively or in a fixed percentage.

In addition to the above, it appears that some of our ''REPRESENTATIVES—?'' in Washington are being ''Politically Correct'' and favor those companies that support them There are also'' State Officials'' trying to enhance their position and will do what they can to disrupt Microsoft. Microsoft has given its competitors the opportunity to stay afloat. American consumers have always benefited form Microsoft's innovations.

Sincerely,
John W. Dettre

MTC–00028534

From: Paul D. Shervey
To: Microsoft ATR
Date: 1/28/02 4:22pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

In my following of the Justice Departments antitrust action against Microsoft I am compelled to write this letter in of support of Microsoft and what I feel is an unjust prosecution of a company.

First—is bigness a crime? If it is you should take action against the Federal Government and several Sate Governments.

Second—is offering a software package at a lower price than any one else can produce a comparable product a crime?

Third—Microsoft has brought utility and time savings to small business and computer users that is unprecedented in its impact on our nations economy. Microsoft Software's contribution to productivity of individuals and business in the 17 years since they opened their doors has to be one of the major contributions of the 20th Century.

If our economy has produced the greatest standard of living in history it is because of the free enterprise system. This was made possible by the laws and the thinking of our Founding Fathers laid down in the Constitution and Bill of Rights. Our Country cannot maintain it's world leadership in freedom and free enterprise with a twisting of justice such as this case against Microsoft.

Yours truly,
Paul D. Shervey, President
Faber Shervey Advertising
8101 Lea Road
Bloomington, Minnesota 55438–1259
Phone 952–944–5111

MTC–00028535

From: James E. Willems
To: Microsoft ATR
Date: 1/28/02 4:23pm
Subject: Microsoft Case

Usdoj,

When I retired I made microsoft stock the heart of our joint retirement because I believed that this company represents the future america where service rather than production will be our world wide contribution. The government through there failure to settle this case has and continues impact the lives of us retired citizens. Please settle this case so that our lives arenot impacted in such a negative way. Microsoft has done more to make life better for all american citizens, then any other company that I can recall. The settlement as I understand is fair and should be finalized.

Thank you,
James E Willems, Age 75

MTC–00028536

From: David Richard Larochelle
To: Microsoft ATR
Date: 1/28/02 4:24pm
Subject: Microsoft Settlement

I am writing to inform you of my opposition to the proposed settlement in the Microsoft case. As a researcher and a member of the security community I am extremely dismayed by the previsions of the settlement

which allow Microsoft not to disclose details of their software which they deem to be security related.

For over 20 years it has been a widely accepted in the security community that ''security through obscurity'' does not work. Keeping the details of software secret does not make it more secure. Time and again it has been shown that malicious users are still able to find and exploit security holes in software even if the details of the software are not disclosed.

I am extremely distressed that these prevision of the settlement disregard the accepted views of the security community. They will do little or nothing to increase security and provide Microsoft with a giant loop hole to avoid releasing software.

David Larochelle

MTC–00028537

From: Bloom, Larry
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:22pm
Subject: Microsoft Settlement

''Microsoft and its critics both worked to ensure their views were reflected in the comments. Americans for Technology Leadership, made up of Microsoft and several others friendly to the software giant, offered letter writers extra chances to win a handheld computer.''

The above quote is a perfect example of why Microsoft must be reigned in. Microsoft will always stoop to any level to be sure that their products remain the only platform offered to consumers...in this case, by trying to bribe letters of comment for their own support.

Please add my name to the ranks of those who believe that Microsoft must be controlled by an order with more effective enforcement and with more strict controls of their anti-competitive practices.

Larry Bloom
Director, Internet Design & Development
HealthPlanServices
lbloom@healthplan.com
(813) 289–1000 x4904

MTC–00028538

From: Justin Meredith
To: Microsoft ATR
Date: 1/28/02 4:24pm
Subject: Microsoft Settlement

I wholeheartedly disagree with the pending settlement between the DOJ and Microsoft. I see the settlement as further stifling competition. Furthermore, it appears to give Microsoft little more than a ''slap-on-the-wrist'' and send them on their way.

I understand this is not a democratic issue. I'm not casting a vote;

I'm only making a public opinion known.

Justin Meredith
2189 W 480 N
Provo, UT 84601

MTC–00028539

From: Leon H. Carrington
To: Microsoft ATR
Date: 1/28/02 4:27pm
Subject: resend faxed comments

I am resending my comments for your convenience as an attachment. Was concerned that I can not sign them because I am sending from computer and have no scanner to include my signature. Am advised it does not matter. Attachment is to allow you to double space my comments, or manage electronically for your convenience. Attachment is in form of MS Word97.

Sincerely,
Leon H. Carrington
From Leon H. Carrington
22022 Gloucester Court 3–B
Lexington Park, Md. 20653
January 28, 2002
To: Renata Hesse, Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, NW Suite 1200
Washington DC 20530

My name is Leon H. Carrington, I am a citizen of the United States and I am herewith submitting my comments regarding the Proposed Final Judgement in Civil Action No. 98–1232, United States of America v. Microsoft Corporation.

The government has breached its duty to the public by offering the Revised Proposed Final Judgement (Final Judgement) as a Final Judgement and settlement in the case United States v. Microsoft Corporation. The remedy proposed is not effective for correcting or eliminating the violations alleged in the Complaint (Civil Action No. 98–1232 (CKK)). The remedy proposed would create more harm to the public than the damage alleged due to the fact that the proposed remedy would ignore serious allegations and behavior found by the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia, to be in violation of the Sherman Act; and it would confer upon Microsoft powers and authority the market does not allow it to possess currently. Thus, the proposed remedy would not be in the public interest and would be disastrous for many third parties, while greatly benefitting Microsoft.. If the remedy proposed includes both the Final Judgement and the Competitive Impact Statement, the proposal is wholly inconsistent with the Complaint and its allegations due to the fact that the Competitive Impact Statement is not even consistent with the Final Judgement which in turn is not responsive to the Complaint.

Specifically, the most glaring and perverse inconsistency is the base of nearly all damage rendering the Final Judgement inadequate and insulting. That inconsistency is the fact that the Complaint is substantially built on the definition of an operating system. The Competitive Impact Statement defines an operating system in a manner wholly consistent with the Complaint. The Competitive Impact Statement definition is in Section III ''Description Of The Practices Giving Rise To The Alleged Violations'', subsection B ''Factual Background'', subsection 1 ''Microsoft's Operating System Monopoly''. The Complaint definition is in Section IV ''The Relevant Markets'', subsection A ''The PC Operating System Market''. Astonishingly, in this very subsection the Complaint states truthfully, that ''No other product duplicates or fully substitutes for the operating system.'' Yet the Complaint incorrectly states in Section IV ''The Relevant Markets'', that ''There are two relevant markets. The market for personal computer operating systems, and the market for Internet browsers.'' This is foolish, indeed. There are two relevant markets. The market for personal computer operating systems, and the market for applications which includes Internet browsers. Note also that the District Court found and the Appeals Court agreed, that Microsoft illegally tied its Explorer browser into Windows in a nonremovable way while excluding rivals, in 1 violation of section 2 of the Sherman Act. The illegal tie-in also injured certain other application developers developing under Windows, who may not have been involved with browsers..

Notwithstanding, the Complaint makes reference to ''Microsoft's Windows operating system'' in section III subsection C. The Complaint refers often to ''Microsoft's Windows operating system monopoly''. That an operating system enables virtual software unification of the hardware computer components and resources, exposing them, and thus facilitates use of those resources and comnponents by users (consumers) and applications, is a perfectly acceptable and commonly understood definition of an operating system. However the Final Judgement creates a new class of product called a Microsoft Operating System Product (my emphasis) This new class, according to the Final Judgement, includes Windows 2000 Profession, Windows XP Home and Professional, and their successors. The Final Judgement further states in the definition of the term ''Microsoft Operating System Product'', that the code comprising the same ''shall be determined by Microsoft in its sole discretion.'' (Section VI—Definitions) We are lost. In spite of the fact that the Competitive Impact Statement recognizes what an operating system is, it confers upon the above listed Microsoft operating systems the designation ''Microsoft Operating System Product''. The new class and the reliance on Middleware by the Final Judgement and the Competitive Impact Statement, permits Microsoft to evade due penalties for established violations and further abuse their operating system monopoly by expanding their ''tie-in'' policy and rendering harmed ISV's among others, to the status of market irrelevance. This is a position Microsoft does not currrently enjoy. Allowing Microsoft to define what an operating system is (through their monopoly control and now U.S. Justice Department assistance) eliminates the threat of Middleware and applications which may compete with Microsoft applications. Indeed, applications not yet conceived can be preempted until Microsoft ''discovers'' them and adds them to their monopoly.

For such cause, many people recognize that breaking up Microsoft is the best first step in correction of alleged and established abuse. Recognizing and enforcing the legitimate (in this case) separation of operating system and applications is the best way to eliminate the basis by which Microsoft's abuse of its monopoly operating system caused damage and continues to do so. Separating the operating system would encourage its owner to make public all features provided by the underlying hardware manufacturers. It would further encourage competion between hardware

component manufacturers which manufacturers are as much victimized by Microsoft's abuse of its monopoly operating system as consumers and ISVs by virtue of the fact that hardware components'' interfaces must suit the Microsoft vision or be excluded. This why so many computer software game manufacturers continued to develop for DOS well into the late 1990%: the Windows interface denied them full access to the functionality that enabled them to distinguish themselves and satisfy their customers. No other vertical software market had a customer base that would allow it or the underlying hardware verticle market to ''rebel''. We are missing many new innovations.

Evading the operating system definition eliminates or surely deteriorates the possibility of illegal tie-ins. All potential beneficiaries of just and reasonable corrections that would have been established by faithfully addressing the allegations of the also semi-adequate Complaint, are instead further damaged or untreated (left damaged) by the Final Judgement. In the Complaint Section I subsection 5 it is stated that''Microsoft's conduct includes agreements tying other Microsoft software products to Microsoft's Windows operating system;...'' The effects of these tie-ins are well known but not part of the allegations of the Complaint. A Microsoft application with hidden interfaces (tie- ins) to the operating system has a chilling effect on the development of competitive products and prevents those few who may discover this interface from remaining competitive because of course, the hidden interface may be changed upon upgrade of Microsoft's application or operating system, 2 and the former interface removed, thus ''breaking'' the competitors application and causing consumers to spend more money unnecessarily. This situation also allows Microsoft to occasionally appear to be competing on the merits of their offering when such is not the case. Promoting middleware as is done in the Complaint, the Final Judgement, and the Competitive Impact Statement, does nothing to alleviate this problem. As stated in the Complaint and noted above, ''No other product duplicates or fully substitutes for the operating system.'' Indeed, middleware is just another application, however useful. Denying ISVs and consumers the benefits afforded them by a legitimately marketed bona-fide operating system as opposed to an ''Operating System Product'' can not be in the public interest, and is not responsive to the Complaint, including prior court judgements.

When the ''Nimda'' computer virus appeared last year, I was amazed at how it performed its activities. I was more astonished when it occurred to me that I was reading about functionality only a person familiar with Microsoft applications programming would understand. What astonished me was the fact that this and many other common viruses could not occur if Microsoft applications were not tied in to the operating system. Operating system vulnerabilities are policed, as it were, by the entire computing community. Application vulnerabilities are not so well noted, because applications other than middleware do not generally offer much exposure to the programming consumer, and competition keeps them distributed, not concentrated through the entire PC universe. This is not the case with Microsoft applications. Commonly used Microsoft applications are part of the ''programmers toolkit'' for Windows developers. If they were not, the anticompetitive position they occupy would be more blatant as only Microsoft could interoperate with them, using the exposed underlying functionality. On the other hand, having these products so fully integrated into the operating system and each other while exposed and enjoying the proliferation obtained from Microsoft's illegal use of its monopoly operating system, facilitates more and more clever exploits by hackers. The most common viruses affecting consumers have used the victims own Microsoft applications. It is not so easy to wreak havoc in other operating system environments where there are no externally programmable, ubiquitous applications which applications are fully integrated into the operating system via hidden APIs or interfaces. Strangely enough, in the Linux community, where essentially nothing is hidden, applications of this power could exist and remain secure because the open source community polices its environment jointly and severally. Interesting... someone can break Microsoft products but only Microsoft can fix them. Who pays? Thus we have another nasty by-product of the ''tie-in'' problem. It would be eliminated or greatly reduced with a return to application development competition based on an operating system exposed on a non- discriminatory basis.

It would thus be disastrous for ISVs and consumers alike if Microsoft had authority to regulate security issues for operating system and applications alike. That power is also effectively granted by the Final Judgement where security APIs and documentation are to regulated directly or indirectly by Microsoft, the antithesis of security in consumer and commercial computing.

That the Final Judgement creates a new class called Microsoft Operating System Product, is reprehensible, clearly evading the issues addressed by the complaint. That ISVs who know how to use computing facilities as well as and better than Microsoft should be relegated to the use of middleware for protection from abuse and for development is not contemplated by the Complaint or Court findings; is unjustly discriminatory, and not in the public interest; denying the public the expected benefits of many new applications which may or may not use, or be middleware; yet must have the access to the same APIs and documentation as any other entity in the computing arena. Indeed, many of the best among us study hardware documentation for software development, 3 and vice versa. Shall the United States Justice Department and Microsoft alter this historic landscape of a market in the interest of anyone other than Microsoft?

The Competitive Impact Statement seeks to limit the competition that competes against Microsoft and others in selected markets, by requiring that ISVs must be of a certain size in the market and have had that position over a particular period of time in order to obtain API disclosure relief under Section III.D of the Final Judgement; further enabling Microsoft to evade Complaint allegations and even Sherman Act violations it has been found guilty of. This is the case because again, some small mind has not yet learned that computing facilities are continually reused by bright agile minds. Interfaces used for middleware in one mind are perfect and necessary for another application in the mind of another party. This reuseability is the inherent nature of computer software and even the smallest computer hardware components. The various underlying markets must not be constrained by this taking on behalf of Microsoft. The limited vision of Bill Gates'' nightmares and appetites are not the proper perspective to use to correct the abuses of Microsoft's monopoly operating system.

The Competitive Impact Statement states in defining a Non-Microsoft Middleware Product, that such a product must have ''at least one million copies distributed in the U.S. within the previous year'' (my emphasis) .It further states that this requirement ''is intended to avoid Microsoft's affirmative obligations—including the API disclosure required by Section III.D .... being triggered by minor or even nonexistent products that have not established a competitive potential in the market and that might even be unknown to Microsoft development personnel.'' (my emphasis) This is preposterous! This constitutes unjust and unlawful restraint of trade and unjust discrimination. The Final Judgement does not restrict ISVs to a size or type insofar as their right to obtain the benefit of relief under Section III.D is concerned. If such were the case, the U.S. and Microsoft have decided who has the fight to compete where in the computing market which as stated above, consists of many integrated and simultaneously distinct and competing markets. This carving of the competing development community, to the benefit of Microsoft, is ironically, the exact opposite of what should be carved. Neither the U.S. nor Microsoft has the fight to determine what merely new, useful, and innovative products may be created using any functionality of a legitimate operating system. Is this why the evasion technique deployed is to call an operating system an operating system product instead of an operating system?

How dare this decree suggest that Microsoft development personnel should be aware of what all or any others are doing in development. Microsoft development personnel can not provide consumers a finished product after any number of beta tests, nor can they secure the products they make. The Revised Proposed Final Judgement and related Competitive Impact Statement are a stench in the nostrils of intelligent, informed consumers. Unless a settlement can resolve the issues raised herein, Microsoft should be broken into at least two separate pieces: operating systems and applications.

Respectfully Submitted,

Leon H. Carrington,
STB Practitioner
(301) 862–1604

MTC–00028541

From: Ann smith
To: Microsoft ATR
Date: 1/28/02 4:27pm
Subject: microsoft settlement

states sueing microsoft as well as aol using netscape to get money from microsoft thru the courts is wrong. microsoft is being bullied by the goverment and stockholders have lost money because of this court action. it also does not let microsoft give all the attention it needs to fight the hackers and make the internet safe for all users including aol.

The reason we are so interested in Microsoft Programs is that children all over the world are benefiting by Microsoft products,games and all sorts of programs as an educational tool. I'm so pleased when I see my 4year old granddaughter open the computer and do what she wants to do. She spends hours doing games and playing her videos, instead of watching T.V all the time.

We have eight babies we encourage to learn all they can by buying programs for them at Birthdays and just for fun.

We the elderly have fun also and we invest money into the future of Microsoft and other companies for the future.

MTC–00028542

From: Ron
To: Microsoft ATR
Date: 1/28/02 4:27pm
Subject: Microsoft settlement- further evidence

I have further indication that Microsoft continues to exercise monopolistic behavior such that the only solution is to break it into separate companies.

I recently purchased a subscription to MSDN (a service of Microsoft that includes their software on CD or DVD).

I went to install Win/XP. They had not supplied me with a product code for XP, and such a code is required in order to be able to install the product I had paid for.

It turns out that in order to get a product code, I must register an Email address with Microsoft[1]. Further, I must use Microsoft Passport[2] in order to get a product code. The product I'm installing has no relation to Email or Passport.

[1] I should not need an Email address to install something that is not an Email application. Last time Microsoft got my Email address, it took me nearly a year plus a letter to the gripe line at Infoworld to get them to stop spamming me.

[2] Microsoft Passport requires that:

1. You trust them to hold the required information about you.

2. You accept cookies, which has privacy implications

3. You use an approved browser. Microsoft rejected the browser I tried to use. —

Ronald Tansky

MTC–00028543

From: Karl J. Smith
To: Microsoft ATR,karl@karl.com@inetgw
Date: 1/28/02 4:29pm
Subject: Microsoft Settlement

The following is my comment about the proposed Microsoft Settlement under the Tunney Act:

First, let me state that I agree completely with Dan Kegel's comments abot the issues at http://www.kegel.com/remedy/remedy2.html. He has done a great job summarizing the many problems with the proposed settlement. In particular, however, I feel that the public will be harmed most by the fact that the proposed settlement doesn't account for any potential Open-Source competition. It allows Microsoft to decide which entities it's required to share documentation with, and has too many exceptions for Microsoft to use as reasons for not documenting their protocols and API's. Given that Microsoft has a documented history of refusing to cooperate, this portion of the settlement is not very helpful at all in restoring competition, and interoperability of protocols and data is absolutely required for any real competition to exist.

The settlement is not in the public interest, for the many many reasons listed above.

Sincerely,
Karl J. Smith
12525 SW Foothill Dr.
Portland, OR 97225
karl@karl.com

MTC–00028544

From: Dean (038) Danielle Fulcer
To: Microsoft ATR
Date: 1/28/02 4:27pm
Subject: Microsoft Settlement

I am in favor of this settlement. Microsoft has already changed many of its business practices that were shown to be in violation of the antitrust laws. These antitrust laws were meant from the beggining to protect consumers, not simply allow competitors who refuse to innovate and meet customer needs stay in business. Microsoft has taken incredible risks by investing in technology R&D when many other businesses would rather just keep the status quo.

It's time to move on. Accept this settlement. Protect innovation while monitoring Microsoft for compliance. Do not stifle Microsoft's sucees. THAT would hurt consumers, not Microsoft coming out with major new versions of their software that itegrate key features every couple of years. Could you imagine buying a computer from a manufacturer that was not allowed to integrate a CD-RW drive, or a DVD, or for that matter a laptop without a monitor? This is analagous to what Microsoft has done, integrate key user needs into a single product. Please do not force me as a cosumer to shop for each of my operating system needs individually. That would hurt me in terms of time and money.

Sincerely,
Dean Fulcer
428 SW 347th ST
Federal Way, WA 98023

MTC–00028545

From: Beverly Offutt
To: Microsoft ATR
Date: 1/28/02 4:28pm
Subject: USAGOffutt—Beverly—1007—0122

5873 Warnke Road
Michigan City, IN 46360
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my approval of the settlement reached between the Justice Department and Microsoft.

As I understand the settlement, Microsoft has agreed to modify its Windows operating systems to allow for the use of non-Microsoft programs and services within Windows. The amount of additional consumer choice brought about by this concession could be very significant.

In addition, Microsoft has agreed to eliminate many of its more restrictive covenants from its agreements with licensees and distributors. I believe that this agreement will also provide additional consumer choice after a period of time.

I know that you will agree that you have more pressing problems on your agenda right now. Please take advantage of this opportunity, settle the case, and move on. Thank you for your attention.

Sincerely,
Beverly Offutt

MTC–00028546

From: JJ Gifford
To: Microsoft ATR
Date: 1/28/02 4:29pm
Subject: Microsoft Settlement

To Whom It May Concern:

Attached are my comments re. United States et al. v. Microsoft, pursuant to the Tunney Act.

I have attached two copies of the same document, one in Microsoft Word format; the other in Rich-Text Format. Either document should be readable on any modern PC using up-to-date software.

Thanks in advance,
JJ Gifford
212 226 3462

Jonathan Gifford
117 Sullivan St., 5A
New York, NY 10012
doj.ms@jjgifford.com
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
microsoft.atr@usdoj.gov
re. Deficiencies in Microsoft settlement.

Pursuant to the Tunney Act, I am filing these comments on the proposed resolution of United States, et al. v. Microsoft.

My Perspective, Experience, and Interest

I believe this case is tremendously important. As personal computers and the Internet have become increasingly important to our everyday lives, so too has the landscape of the technology markets become increasingly important. Not only will the outcome of this case impact the fortunes of a host of technology companies, but it will also affect how I and millions of others communicate with our friends and family, what choices we have for online services such as digital photography, and of course how much we and businesses spend on technology infrastructure.

Once the government decided not to seek a structural remedy, it necessarily embarked

on a course of regulation. Regulation only works when the conduct prohibitions truly restrain anti-competitive behavior, and create a genuine opportunity for innovators to enter the market and compete in it based on their merits. Unfortunately, the Proposed Final Judgement (PFJ) presented by the Department of Justice and several states fails on all counts.

Its results will be only a mild, temporary modification to Microsoft's well-documented behavior, with no lasting or significant effect on competition. Microsoft will retain its monopoly and every incentive to maintain it through any means not specifically prohibited by the PFJ. Consumers will continue to be deprived of the innovations and other benefits of a truly competitive market, in part because innovators will be deprived of the opportunity and incentive to challenge Microsoft's monopoly as it expands and evolves. Most importantly, America's technology industry will stagnate, as ever fewer competitors see any value in entering markets dominated by Microsoft.

While I believe that many if not most Americans will be affected by the disposition of this case, I have a particular interest in it as a long-time technology consumer, entrepreneur, and enthusiast. Since 1980, I have used personal computers nearly every day, first as a hobby, then for school, and later for my career in the technology industry. In the early 1990s, I managed a small but pioneering desktop publishing department for a large advertising agency. Later, I joined a groundbreaking multimedia company that produced CD-ROMs for both Macintosh and Windows-based computers.

Most recently, I was a partner in a successful Internet development firm, which designs and produces web sites and other interactive media for corporate clients. Having sold my share of that business, I currently consult for other companies in the technology industry.

Definitions Are Critical: the Devil Is in the Details

1. Most provisions of the PFJ depend on the definition of ''Microsoft Middleware.'' Accordingly, we should expect this term to be well-defined, with clear boundaries and unquestionable meaning. Unfortunately, the reality is that it is vaguely defined, in language that grants Microsoft itself much control over what software it, and therefore the PFJ, governs.

1.1.

Definition: According to the PFJ (PFJ VI.J), ''Microsoft Middleware'' is any software which:

.* is distributed separately from the operating system,

.* controls the user interface of the Microsoft Middleware,

.* provides substantially similar functionality as a Microsoft Middleware Product, and

. is trademarked.

1.2.

Definition gives Microsoft control. So Microsoft, which has long stated its goal of incorporating browsing and other middleware functions into its operating system products, can exclude code from the Microsoft Middleware definition simply by not distributing it separately from the operating system, or even just by not trademarking it. Microsoft therefore will have enormous latitude in determining which new operating system features will be governed by the PFJ.

Clarity Is Essential to Compliance and Public Confidence.

The PFJ consists largely of vague prohibitions hobbled by numerous qualifiers and exemptions.

For instance:

Limited replacement of Microsoft Middleware.

2.1. The PFJ requires Microsoft to enable users and OEMs to specify that Non-Microsoft Middleware be used in place of Microsoft Middleware (PFJ, III.H.2). This is a welcome change because it had previously been difficult to replace Microsoft's Internet Explorer (IE) without facing ''considerable uncertainty and confusion'' when IE would nonetheless unexpectedly be invoked under certain circumstances (Findings,] 171).

2.1.1. Exemption for Microsoft servers. Unfortunately, Microsoft is exempt from this requirement when the Middleware Product would be invoked ''solely for use in interoperating with a server maintained by Microsoft'' (PFJ III.H). This may exempt Microsoft's current move into network services (''.NET'') from the judgement, inasmuch as such services communicate with Microsoft-owned servers. Microsoft considers .NET to be the next phase of the Internet, at last offering 'real'' applications and services. The first .NET service, Microsoft Passport, aims at becoming a cornerstone of Internet shopping and authentication transactions, and stores its data exclusively on Microsoft-owned servers.

2.1.2. Exemption for proprietary technologies. Another exemption allows Microsoft to launch its own middleware when the Non-Microsoft Middleware ''fails to implement a reasonable technical requirement'' (PFJ III H 3). Microsoft will be able to capitalize on this loophole simply by emphasizing proprietary technologies not supported by Non- Microsoft Middleware. To the extent that Microsoft can implement features using proprietary technologies, it will better be able to exclude Non-Microsoft Middleware. A truly pro-competitive PFJ would encourage Microsoft to use open industry standards.

OEM Distribution Channel Opened, But For Whom?

2.2. The PFJ requires Microsoft to allow OEMs to customize the user's desktop by installing icons for Non-Microsoft Middleware and other products (PFJ, III.C.1). This is important to the PFJ because Microsoft has in the past excluded Netscape and other competitors from the valuable OEM distribution channel, often by contractually limiting an OEM's ability to customize the desktop. In addition, Microsoft has used its control over the valuable desktop real-estate as an incentive to get IAPs such as AOL to support Microsoft Middleware instead of competing products.

2.2.1. OEMs lack incentive. Unfortunately, because Microsoft's Internet Explorer is now the market leader, there is today little consumer demand for alternatives to Microsoft Middleware. This makes it unlikely that an OEM would see much gain, if any, in installing Non-Microsoft Middleware. Such distribution may benefit the middleware developers, but would not greatly benefit the OEM.

2.2.2. Customizations will be short-lived. This prohibition remains in effect only for a 14-day window starting after the end user first turns on his or her PC. Thereafter, Microsoft is free to re-arrange the desktop as it sees fit, including automatic removal of any non-Microsoft icons, e.g. by operating system features such as the ''Clean Desktop Wizard'' built-in to Windows XP (PFJ, III.H.3). So, any Non-Microsoft Middleware developers who do manage to secure OEM distribution could well see their products wiped off the desktop after a short two weeks.

2.2.3. Likely results. These limitations beg the question: will any OEMs risk irritating Microsoft for such minor benefits? If they do, will the results truly be increased competition in the middleware market?

General Rule on Sharing APIs.

2.3. The PFJ requires Microsoft to share APIs used by Microsoft Middleware with ISVs, et al. (PFJ III.D). In its Findings of Fact, the District Court found that Microsoft had repeatedly withheld such information from ISVs, or used its disclosure as an incentive for 'friendlier'' behavior, in an effort to preserve the applications barrier to entry (Findings,] 84, 90, 91). Because ISVs depend on such information to develop software for a given platform, withholding APIs can limit or destroy an ISV's ability to create competitive products. Therefore full API disclosure should be considered a basic condition for any kind of effective competition.

2.3.1. Only APIs necessary to mimic Microsoft's products will be disclosed. Unfortunately, the PFJ requires Microsoft to share only those operating system APIs used by Microsoft Middleware. This is a limited set of APIs, of use only to those ISVs who want to develop middleware products similar to Microsoft's. It does little to help ISVs offer features or innovations not already offered by Microsoft's products. Since ISVs typically must provide innovations to gain market share against an entrenched market leader, this requirement is unlikely to promote competition in the middleware market.

2.3.2. Many APIs may be withheld on dubious 'security'' grounds. The PFJ allows Microsoft to exclude any APIs the disclosure of which ''would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems'' (PFJ III.I. 1).

. This is a surprising exemption because few security professionals believe API disclosure could weaken any well-designed security system. Indeed, the complete source code (a level of disclosure far greater than simple APIs) is publicly available for several operating systems and security-related products that are widely considered to be more secure than Windows (e.g. the Linux operating system).

. Yet the inclusion of this exemption implies that there in fact are such APIs

whose disclosure could compromise security, and thereby opens the door for Microsoft to make claims about which ones they are. There is no basis for the Competitive Impact Statement's (''CIS'') optimism that security-related exemptions will be limited to ''keys and tokens'' (CIS, IV.B.5) of particular installations. Nothing in the PFJ's language so limits the exemptable APIs, and such entities aren't generally visible at the API level, anyhow.

. With Microsoft's current push into network services (under the .NET moniker), we can expect privacy and security features to be suffused throughout the code, increasing the number of APIs Microsoft will try to exempt from disclosure. Indeed, Microsoft has just this month announced that privacy and security will henceforth be its main priorities. 1

1 Associated Press, ''Microsoft Announces Strategy Shift'', D. Ian Hopper and Ted Bridis, January 17, 2002.

Inadequate Enforcement

3. The task of detecting whether Microsoft has violated these and other provisions falls to a three- person ''Technical Compliance'' committee (the ''TC''). This committee will have access to the source code and tools used to create Microsoft's products, as well as access to the relevant Microsoft staff (PFJ IV.B.8). In theory, the TC's oversight will prevent Microsoft from using technical strategies to camouflage non-compliance, for instance by wrongly claiming that some important API should not be disclosed for security reasons. While such oversight may in fact be helpful, the TC is an inadequate, inefficient and non-transparent attempt to ensure enforcement of a Judgement that otherwise relies on voluntary compliance and enforces few penalties for transgressions.

3.1. Severe employment restrictions threaten the TC's performance. The PFJ includes employment restrictions which will dramatically narrow the pool of TC candidates—first, to those experts not currently working for Microsoft or a competitor, and then to those remaining candidates willing to forego any such employment for two years after serving on the TC. In so doing, it excludes nearly all of those experts in operating systems design and programming whom the TC most needs, since it will be very difficult to find any such experts not currently working for, and with no intention of working for, Microsoft or a competitor. As a professional in this field, I cannot imagine why a highly competent independent minded computer scientist would wish to serve on the TC under these circumstances.

3.2- The TC will be buried under a mountain of technical data. Even if well staffed, the committee will have all enormously difficult task from a technical standpoint. Inasmuch as deciphering computer source code can be difficult even for the code's author, much less a new reader, and inasmuch as Windows XP alone consists of some 45 million lines of code 2, this committee will have an enormously difficult task. Even with a large support staff, it is hard to imagine this committee effectively analyzing Microsoft's source code and fully investigating allegations of non-compliance.

3.3. The TC cannot ensure timely remedies. Further, because the committee is prohibited from public comment (PFJ, IV.B.10), it will be unable to confirm any ISV's suspicions about Microsoft's compliance, nor could it force a timely remedy. Its only recourse will instead be to notify Microsoft and the Plaintiffs and to suggest a possible remedy. Therefore, an ISV suspecting Microsoft of non-compliance will not receive an immediate remedy, but must instead rely on a bureaucracy whose natural tendency will be not to pursue minor infractions. While such infractions may indeed be minor in the scope of the overall judgement, they would assuredly be of great importance to the ISV.

3.4. The TC's findings may not be presented to the Court or the public. Under the PFJ, the TC may not testify in any matter relating to the Final Judgement, nor may its work product and recommendations be submitted to the Court (PFJ, IV.D.4.d). Similarly, the TC is prohibited from public comment (PFJ, IV.B.10). Thus, even if the TC's exclusive access to source code should produce evidence of deception and non-compliance by Microsoft, this evidence will not be presented to the Court. 2

BusinessWeek, ''Windows XP: a Firewall for All'', Alex Salkever, June 12, 2001.

. In theory, the TC will report to the Plaintiffs, who may in turn report such non-compliance to the Court, and produce evidence of it via other means. This may well happen in the case of massive or severe non-compliance. However, what happens to the small ISV who suspects Microsoft of non-compliance, e.g. by not disclosing some necessary API? Such an injured party may report its concerns to the TC, and then hope that the TC is able to verify its claims, and further is able to convince the Plaintiffs to go to court on their behalf. During this bureaucratic pursuit, the ISV's business may suffer irreparable harm, or even vanish altogether (as has very nearly happened to Netscape). Were such ISVs to have access to Microsoft's source code, perhaps in a secure facility, they could investigate such concerns themselves, directly and immediately. Indeed, API disclosure would not be an issue in the first place.

. The point here is that the nature of the TC is as the first step in a bureaucracy whose natural instinct will be to pursue only the most serious transgressions. In the context of a rapidly changing technology industry, this is a serious weakness in the PFJ.

3.5. PFJ places enormous weight on third TC member. The PFJ proposes that the Plaintiffs appoint one member of the TC, Microsoft appoint a second, and then these two members themselves choose a third (PFJ IV.B.3). This structure places enormous responsibility on the third member, who can be expected to decide any disagreement between Microsoft's representative and the Plaintiffs'', especially in the context of the Voluntary Dispute Resolution process in IV.D. It is unclear whether the TC reports to the Plaintiffs only as a single unit, or whether a dissenter's view also gets submitted to the Plaintiffs. A better structure would at the very least make it crystal clear that any single member of the TC may report, to the Plaintiffs.

Also, creating such a fulcrum position in the TC makes this third seat much less attractive and harder to fill, and injects an element of politics into the TC that will distract from its technical mission and smooth functioning. Because the TC is not a decisional body, but simply a means to keep a watchful eye on Microsoft's compliance, it is unclear why Microsoft should have representation here at all. All of the TC's members should be appointed by the Plaintiffs, perhaps with the DOJ appointing one member, the States appointing a second member, and the Plaintiffs collectively appointing the third.

3.6. Catch-22. Given the enormity of the TC's tasks, the limits on its powers and enforcement abilities, and the severe employment restrictions surrounding service in the TC (IV.B.2), it is clear that any candidate for the TC willing to accept the job is almost certainly too inexperienced to be legitimately qualified for it. In Today's Market, More is Needed.

4. In perhaps its broadest weakness, the PFJ fails to recognize that the circumstances of the original case were unique, and that circumstances today are very different. The Internet's rapid public acceptance around 1994–1995 took many established computer-industry firms by surprise, and radically changed the personal computer market. The basic reasons users wanted to own personal computers changed dramatically within less than two years. Two companies in particular, Netscape and Sun Microsystems, were able to aggressively exploit the new technologies and to take advantage of Microsoft's slow response to the burgeoning consumer demand. As a result, they were able to present a serious threat to the applications barrier to entry that has long protected Microsoft's monopoly in Intel-compatible operating systems.

4.1. No longer any consumer demand for non-Microsoft Middleware. But that window of opportunity is long closed. The Internet is an established part of the personal computer market. Microsoft's Internet Explorer is the dominant browser. There no longer is any great consumer demand for alternative browsers. Netscape no longer exists as an independent company, and development of the Netscape browser occurs at a fraction of its former pace. Even the CIS acknowledges that Microsoft has ''perhaps extinguished altogether the process by which these two middleware technologies [Java and the Netscape browser] could have facilitated the introduction of competition into the market for Intel-compatible personal computer operating systems'' (CIS, III.B.3).

4.2. Cannot resuscitate existing middleware competitors. Nothing in the PFJ can or will restore these competitors to their former strength. There is no way to rekindle the massive consumer demand, then left unserviced by Microsoft, that gave these companies their initial momentum.

4.3. Hoping for another thousand-year flood. Still, the CIS claims the PFJ will ''restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings'' (CIS, II). Given that Microsoft now dominates the browser market and retains its operating

systems monopoly, and given that the PFJ allows Microsoft to support its browser market share by tying the browser to the operating system, this claim seems to rest on the optimistic hope that some new disruptive technology will appear, will be ignored by Microsoft, and will create massive consumer demand for some non-Microsoft Middleware. Without such an event, the PFJ merely establishes rules for a game that has no players.

Unconditional Surrender

5. Finally, in a bizarre and extreme limitation, the PFJ will expire in only five years—regardless of whether or not Microsoft retains its operating systems monopoly (PFJ, V.A). The DOJ must believe that not only is the PFJ an effective remedy, but that it will be so effective that Microsoft will be reduced to a shadow of its former self and must be unshackled in just five years (seven, if the Plaintiffs seek and receive the maximum extension permitted by the PFJ). Unfortunately, this clause is so careless that it will release Microsoft no matter the circumstances—that is, even if Microsoft retains or even strengthens its monopoly power. The message that the PFJ sends is ''we'll try this for five years, and then we're giving up.'' Any judgement should remain in effect until the Court finds that Microsoft no longer holds a monopoly in Intel-compatible operating systems. It makes little sense to release Microsoft until competition has re-entered the market and Microsoft may no longer commit the illegal acts described by the Court's Findings of Fact.

Alternatives

This PFJ illustrates the difficulty in devising effective conduct remedies for complex software cases such as this, especially where the defendant retains its monopoly power and the incentive to expand and maintain it by any method not prohibited by the PFJ. Vague technical definitions and even apparently narrow exemptions can be exploited by the monopolist to maintain its ill-gotten gains. It would be vastly preferable to create the proper structural conditions for competition by decoupling parts of the monopolist enterprise. Without a structural remedy, it is imperative that the definitions and prohibitions in the Final Judgement be as clear and comprehensive as possible, so as to fully restrict the anti-competitive behavior that has been denying consumers choice, innovation and fair market pricing. There are a number of specific changes that ought to be made to the PFJ:

. Any judgement should remain in effect until Microsoft no longer holds a monopoly in Intel- compatible operating systems. Starting in 5 years, the Court should annually review

Microsoft's position in the Intel-compatible operating systems market. Should it find that Microsoft no longer exercises monopoly power in that market, and therefore cannot commit the illegal acts described in the Court's Findings of Fact, it could release Microsoft from the terms of the judgement.

.* The TC should be appointed entirely by the Plaintiffs, perhaps with the DOJ appointing one member, the States appointing a second member, and the Plaintiffs collectively appointing the third.

.* Definitions such as that of ''Microsoft Middleware'' should be tightened considerably, and the PFJ reworked to minimize its reliance on such narrow categories.

. Microsoft should be required to make the full source-code for its Intel-compatible operating systems available for viewing by ISVs et al.. This will allow ISVs to better develop competitive products, and will allow the ISVs themselves to monitor Microsoft's compliance with the judgement's other technical requirements, instead of relying on an inefficient, overworked TC.

.* If the Court decides against requiring source-code sharing, it should at a minimum require the disclosure of all operating system APIs used by any Microsoft products (i.e. not just those APIs used by Microsoft Middleware). A blanket disclosure requirement such as this will close those existing loopholes whereby Microsoft might withhold critical information from ISVs whose products threaten its operating system monopoly.

.* Exemptions permitting various proscribed behaviors under certain circumstances should, as a whole, be stricken.

.* Finally, the judgment should include real consequences for non-compliance, such as further conduct prohibitions, financial penalties, or further disclosure requirements. The PFJ currently provides only a possible Court-imposed two-year extension of its rather toothless provisions.

Conclusion I hope that the PFJ is modified by the DOJ or the Court, and that what seems to be a great opportunity for antitrust law to make a difference for tomorrow's entrepreneurs and consumers is not lost in a fog of complexity. The technology may be complex and changing, but the underlying competitive issues are fundamental. I take both comfort and concern from the fact that I am clearly not alone in expressing these concerns. As the Financial Times editorialized:

...It would be wrong for the states, or the judge, to reject this settlement merely because it is not sufficiently punitive. The test is whether the proposal provides enough protection for the public and for Microsoft's competitors. As it stands, it does not meet this test. Though a continued trial would be expensive and distracting, it would be better than an unsatisfactory settlement. This proposal should be rejected..

(Financial Times, ''Micro-too-soft'', November 5, 2001)

I believe that the PFJ, if accepted by the Court in its current form, will lead to clear and irreparable harm to consumers and to the United States'' technology industry. So pervasive has technology become that the technology industry is an obviously critical component of the American economy.

Even BusinessWeek, itself no anti-capitalist Microsoft critic, recognized the broad implications of the resolution of this case:

... [T]he Justice Dept.'s weak censure of Microsoft for its serious monopolistic practices could cost the U.S. mightily in the years ahead. The great strengths of the American economy are its openness, its competitiveness, and its innovativeness. Monopoly is the enemy of all three.

(BusinessWeek, ''Slapping Microsoft's Wrist'', November 19, 200!) Based on my experience, I do not find the PFJ to be in the ''public interest'', which is the standard that the DOJ and the Court are subject to under the Tunney Act.

Respectfully submitted,
Jonathan Gifford
January 28, 2002

MTC–00028547

From: Lorenzo Thurman
To: Microsoft ATR
Date: 1/28/02 4:27pm
Subject: Microsoft anit-trust settlement

I feel the settlement does not punish Microsoft for their wrong doings. Note that I did not say ''punish enough'', because I do not feel they are being punished at all. The agreement calls for oversight, not puninishment, and a large donation to schools. Neither of these will force Microsoft into changing its behaviour nor will they help create a more competitve environment. I, as a software developer, feel that any business I start would be threatened if I develop technology like Java that threatens their Monopoly.

I've heard some of Secretary Ashcroft's comments about the settlement and at least part of his reasoning is that it would be good for the economy. In the short term, this may be true, but the downturn in the economy and the war on terrorism will pass, and we will be left with a very non-competitive environment with one company dominating both the operating system and the applications area. This potentially has global ramifications. As you may be aware, some European countries and China are looking elsewhere for their technology. They are concerned about their own security and having only one company to provide the bulk of their productivity, security etc. This will only serve to create markets outside of the US. The Justice Department's current settlement may solve short term problems, but will only serve to isolate the American software vendors, unless you act now to reduce and/or restrict the Microsoft monopoly.

Thank you

MTC–00028548

From: Gordon Fox
To: Microsoft ATR
Date: 1/28/02 4:28pm
Subject: Microsoft Settlement

As an individual and user of the Microsoft Operating System and bundled software I have appreciated the ease of having it all in one package. I believe that most individual consumers would agree. The government broke up Ma Bell and now there are many larger businesses. All it did was to make prices rise. A business should be allowed to produce their product without governmental restraint unless it in some way will do physical harm to a person.

To those of us who are retired and hold stock in these companies such as Microsoft, the ongoing dispute over who is right has only served to hurt the stockholders. Let's get this suit over with once and for all and let

Microsoft get back to doing what they do best ? innovate!

Thank you for your time,

Gordon Fox

MTC–00028549

From: ldlininger@attbi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:29pm
Subject: Microsoft Settlement

The U.S. government, via the USAF, trained me to use and repair computers over 30 years ago. One of the first things I learned was that there are two kinds of software: operating system software and application software.

The operating system software, such as Windows, controls how the computer functions, whether it be one with an Intel Pentium or another manufacturer's CPU chip. Application software consists of programs that use the computer to perform tasks, such as word processing, money management, or browsing the internet. By Microsoft controlling the operating system market for PCs, they have unfairly competed in the marketplace for years.

By allowing Microsoft to continue to modify its operating system and add application software to it, you are allowing Microsoft to retain their monopoly and unfair advantage.

Microsoft will continue to stifle competition by using its unfair advantage. Consider that Netscape, who developed the network browser, has had to practically give its software away. In 2–3 years, why will anyone want to buy RealPlayer software when Microsoft will have imbedded their media player software in the operating system?

The only way to settle this issue fairly for all concerned is to split Microsoft into two companies. By requiring Microsoft to form a company that produces only operating systems, you will not only make the marketplace more fair for all application software companies, you will force Microsoft to make the best operating system they can.

And, yes, the world needs a better operating system, not just the operating system Microsoft allows consumers to buy. I want an operating system that will efficiently use the software I want to install, not an operating system that is loaded with applications I might not want. By requiring Microsoft to form a company that produces only application software, you will place Microsoft into a position where the quality of their software determines whether they succeed, not because they can use their operating system to an unfair advantage. Splitting Microsoft into two companies would give application software companies a fair chance to succeed. Real and fair competition will return and innovation will drive the market.

In the last 20 years, Microsoft has earned billions of dollars in profits, often at the expense of other companies. Consider Netscape who has had to give away their product. Consider Novell who had the best networking software available, but fell because Microsoft put networking software in their NT operating system. There are dozens, if not hundreds, more.

The settlement that has been negotiated is laughable. It does not change anything. Microsoft will continue with their current way of doing business. And innovation and competition will continue to be stifled.

Respectfully,

Larry Lininger

3130 Hancock Place

Fremont, California

MTC–00028550

From: Brian Showalter
To: Microsoft ATR
Date: 1/28/02 4:30pm
Subject: Microsoft Settlement

As a United States citizen and experienced computer professional who has at times been compelled to work with Microsoft products,I would like to express my opposition to the settlement that has been proposed for the USDOJ's antitrust lawsuit against Microsoft. I feel that the terms of the settlement as currently specified are weighted far too heavily in favor of Microsoft, and that they will do nothing to prevent Microsoft from continuing abuse its monopoly position to stifle competition and lock customers into its products. The terms also significantly underestimate the lengths to which Microsoft has shown it swilling to go to root out loopholes in any agreements it enters into and exploit them in such a way that any intended restrictions on its behavior are effectively neutralized. I also feel that the terms will do literally nothing to ease the market barrier to entry for new products, particularly open-source products such as the Linux operating system, which may happen directly compete with Microsoft's offerings.

There are a number of problems with the settlement which other shave outlined and on which I will not go into further details.However, I am dismayed by the extent to which the proposed settlement focuses almost completely on attempting to restrict Microsoft's behavior on the Windows desktop and middleware platforms, to the virtual exclusion of server platforms and other operating system products that are offered or soon to be offered Microsoft. In particular, the name ''Windows'' is mentioned 56times in the document, yet no mention is made of the embedded operating system market or of Microsoft's explicitly stated intention to replace the Windows desktop and server platform with the .NET initiative. Furthermore, the definitions of ''operating system,'' ''personal computer,'' ''Microsoft Platform Software,'' and''Windows Operating System Product'' refer entirely to desktop operating systems intended for use by a single user at a time.

This loophole would have the effect of rendering Section III.A moot in its entirety should Microsoft attempt to retaliate against an OEM that is attempting to market a competing Server Platform on its products. Additionally, the proposed settlement does nothing to preclude Microsoft from dropping the Windows Brand name altogether and continuing their customer lock-in,competition-stifling and monopoly-extending behavior on a similar but differently named platform.

Dan Kegel has done an excellent analysis which may be found online at (http://www.kegel.com/remedy/remedy2.html). Mr.Kegel's site also contains links to several other very compelling analyses. Due to the flaws which I and others have pointed out,the settlement as it is currently written does not serve the public interest and should not be accepted without considerable revisions to ensure that the market is not tilted unfairly inMicrosoft's favor.

Thank you for your time and for considering my point of view.

Sincerely,

Brian Showalter, Programmer/Analyst

14713 W. 149th Court

Olathe, KS 66062

MTC–00028551

From: Dave Janne
To: Microsoft ATR
Date: 1/28/02 4:31pm
Subject: Microsoft case

Gentlemen- I'll make this short. It's time to settle this case. I think the settlement is more than fair, and any more delay in this is ongoing to hurt the economy more than it already has.

Thank you

L. David Janne- Pres.

Steuben Electronics Inc.

CC:fin@mobilizationoffice.com@inetgw

MTC–00028552

From: Larry Boler
To: Microsoft ATR
Date: 1/28/02 4:31pm
Subject: Microsoft Settlement

Enough is enough. Let's end the legal assaults on Microsoft.

Microsoft has done more for the consumer than anybody else in the industry.

Without Microsoft's excellent leadership and ongoing product improvements we would not be where we are today. Are we about to go back in time?

Let the Free Enterprise System function the way it should and give Microsoft a chance to once again put 100% of it's efforts to making better products for the benefit of consumers.

Larry Boler

MTC–00028553

From: John Jackson
To: Microsoft ATR
Date: 1/28/02 4:30pm
Subject: Microsoft Settlement
13223 46th Place W
Mukilteo, WA 98275
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the settlement that was reached in November between Microsoft and the government. I support this settlement and believe it is a fair and sufficient agreement to end the three-year antitrust dispute.

This settlement contains provisions that will foster competition. Microsoft has agreed to share more information with other companies and is willing to follow procedures to make it easier for companies to compete. Under this agreement, Microsoft must design future versions of Windows to make it easier to install non-Microsoft

software. Microsoft has also agreed to license its Windows operating system products to the 20 largest computer makers on identical terms and conditions, including price. Microsoft will be monitored for compliance by a technical committee established by order of the settlement.

This settlement will serve in the best public interest. Microsoft has contributed so much to our society that stifling this company will only serve to negatively impact the public. Please support this settlement. Thank you for your time.

Sincerely,

John Jackson

MTC–00028554

From: Arman.Oruc@CliffordChance.com@ inetgw
To: Microsoft ATR
Date: 1/28/02 4:28pm
Subject: Microsoft Settlement

Attached please find comments by Palm, Inc. to the Revised Proposed Final Judgment in United States v. Microsoft Corporation, No. 98–1232, State of New York, et al. v. Microsoft Corporation, No. 98–1233, submitted pursuant to the Tunney Act, 15 U.S.C. 16.

The attached is a .pdf file. We are also delivering hardcopies for your convenience.

Please contact Craig Waldman at (212) 878 8458 with any questions or comments.

<<Palm's Tunney Act Submission.pdf>>

For further information about Clifford Chance please see our website at http://www.cliffordchance.com or refer to any Clifford Chance office.

MTC–00028556

From: Henry Keultjes
To: Microsoft ATR
Date: 1/28/02 4:32pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Re.: Microsoft Settlement

Dear Ms. Hesse:

In response to the request for comments in USDOJ vs Microsoft in accordance with the Tunney Act I ask that such settlement be rejected. Having read the Revised Proposed Final Judgment between USDOJ and Microsoft, and having read the alternate proposed settlement by the nine states and DC, and having understood that the purpose of the Tunney Act to solicit feedback from US citizens affected by the outcome of a final judgment is to make sure that any such final judgment is in the best interest of the consumer, let me start by asking three questions:

1. Now that Microsoft has been at the center of antitrust controversy forever, starting when Novell sued Microsoft culminating in a consent decree in 1994, is it not in the best interest of the consumer and our country as a whole to find a solution that will keep Microsoft out of the courts, at least for a while?

2. Can the USDOJ vs Microsoft settlement proposal be in the best interest of the consumer if the agreement cannot be clearly understood even by the fairly educated person with a fairly good understanding of law that I am?

3. Can the USDOJ vs Microsoft settlement proposal be in the best interest of the consumer if the agreement ignores that, because Microsoft's marginal cost is effectively zero, remedies, that might have been effective for a predatory competitor that *does* have real marginal costs, are totally ineffective here?

What I, as the president of a company and as a consumer seek is simply an environment in which I can buy at a fair price what has become as ubiquitous a product as typewriters once were. In this case, however, this ubiquitous product is without the traditional competitive market place price pressures that go with ubiquitous products. Therefore prices for those Microsoft products that have replaced our typewriters are about four times higher then a competitive market would allow.

The solution, the remedy, that USDOJ and Microsoft offer to solve the issue of Microsoft having been found guilty of anti-trust violations gives me very little comfort, if any, that such a competitively priced market will develop as a result of that agreement. As a matter of fact, if the agreement is allowed to become final, Microsoft will be emboldened to eliminate some of the loopholes that have allowed sophisticated buyers to avoid the so-called Microsoft tax, the fact that the consumer pays for Microsoft products when s(he) buys a PC, whether s(he) needs those Microsoft products or not.

On the other hand, the alternative settlement agreement proposed by the nine states and DC appears to offer a solution that *does* create a competitive environment where it now counts most, the desktop.

Rather than addressing the various aspects of the USDOJ vs Microsoft proposal further, I will just address one issue, the clause in the alternate proposal that Microsoft establish three competitors for its MS-Office product through an auctioning process.

The real sticky problem in trying to find a good solution to *this* anti-trust case lies in the fact that, although an individual or a company may want to switch to a competitor's OS, the huge investment in training and learning MS-Office products, such as MS-Word and and MS-Excel, effectively discourages or even prevents such a switch.

If one draws an analogy between the oft cited Standard Oil anti-trust case, Microsoft has managed to bring about a situation where 90% (including Apple's 5%) of the desktop software can only run on MS-Windows gasoline. Forcing Microsoft to sell off gas stations under those circumstances is obviously not a remedy. However, by forcing Microsoft to auction off three copies of MS-Office, complete with formulas and technical assistance for ten years, competitors can develop desktops that people already know and like but which desktops run on the gasoline of those competitors.

Forcing Microsoft to just share the formula for the gas is an inadequate remedy, not only because, in the eyes of its competitors and a significant segment of the hightech industry, the quality of Microsoft gas is not very good, but also because of the time delay to build a refinery capable of producing that special gasoline.

The solution that the nine states and DC are proposing is therefore an analogy to a Standard Oil case that is even more threatening to the consumer because, in this case, Microsoft also owns the factory that makes the special cars that more than 90% of the people are using now and which cars only run on Microsoft's own special gasoline. Forcing Microsoft to become the non-exclusive manufacturer of those proprietary MS-Office cars is therefore a brilliant remedy on the part of the nine states and DC as well as a meaningful punishment for Microsoft because it is neither a cash punishment not a punishment that will hobble the company.

Competition for the dollars that consumers will spend to buy MS-Office is not only a desirable end to this anti-trust case, by having an MS-Office version that effective runs on OSes like Linux and Unix, this solution will also lead to a more lasting end to this energy sapping Microsoft antitrust hassle. By punishing Microsoft fairly for its proven illegal behavior, the government in effect discourages other illegal behavior, such as cracking, by large groups of people who feel justified to take the law into their own hands if their government fails to afford its consumers protection from a monopolist under the law.

Unless our government punishes Microsoft fairly for its illegal behavior, our government in effect creates an atmosphere in which lawlessness can blossom.

Restated in simple terms, it is my belief that it is in the best interest of the consumers and our country that the court reject the proposed USDOJ vs Microsoft final judgment and instead adopt the remedies in the proposed final judgment of the nine states and DC as the final judgment.

Sincerely,

Henry B. Keultjes
President
Microdyne Company
POB 1056
Mansfield OH 44901–1056
Voice 419–525–1111
HBK/s 27 January 2002

MTC–00028557

From: Bruce Morgan
To: Microsoft ATR
Date: 1/28/02 4:33pm
Subject: Microsoft Settlement

I fully support the proposed settlement between Microsoft and the DOJ. Despite months of testimony and years of legal wrangling, no one has ever given any significant evidence of any consumer harm as a result of Microsoft's actions and behaviors.

Microsoft's Windows operating system including the Internet Explorer browser is far and away the most user friendly, functional, and highest value operating system available. By building the browser functionality into the operating system (both as a user-level feature like IE and as the MSHTML components for ISVs to use), Microsoft has provided a level of functionality far beyond anything any other vendor has delivered.

I think settling this case is the best way for the software industry to move forward,

competing in the market instead of in the courts.

Sincerely,
Bruce Morgan
Bellevue, WA

MTC–00028559

From: Fred Rone
To: Microsoft ATR
Date: 1/28/02 4:32pm
Subject: Microsoft Settlement

Dear DOJ:

Please impose penalties on Microsoft that will encourage new competition in operating systems. The current de facto monopoly results in the price gouging that is apparent in Microsoft's extremely high profit margins.

Sincerely yours,
Fred Rone
frone@prodigy.net

MTC–00028560

From: Bob Ray
To: Microsoft ATR
Date: 1/28/02 4:33pm
Subject: Microsoft Settlement

I can't believe that the government's response to Microsoft's criminal behavior is a mere slap on the wrist. Not only will Microsoft continue to engage in anti-competitive and probably illegal behavior but other large companies will be encouraged to do so as well.

Bob Ray

MTC–00028561

From: Chris Waterson
To: Microsoft ATR
Date: 1/28/02 4:35pm
Subject: Microsoft Settlement

One rememdy that I would find particularly satisfactory would be for Microsoft to have to ship a copy of Netscape's product with every copy of their operating system. :-)

Chris Waterson
437 Hoffman Ave.
San Francisco, CA 94114
415–642–3522
CC:microsoftcomments@doj.ca.gov@inetgw

MTC–00028562

From: Robert Randall
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject'' Microsoft Settlement

Attached, in WordPerfect format are a cover letter and comments regarding whether the Microsoft settlement is in the public interest. Let me know if you have difficulty opening the attached WordPerfect files.

Robert L. Randall
RainForest ReGeneration
1727 Massachusetts Ave NW
Washington, DC 20036
Tel: (202) 205–3366
Fax: (202) 483–5175
RAINFOREST REGENERATION
THE RAINFOREST REGENERATION INSTITUTE
?27 MASSACHUSETTS AVENUE NW
WASHINGTON, DC 20036
26 January 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse:

Accompanying are public comments regarding the proposed Microsoft settlement submitted for consideration pursuant to the Tunney Act proceedings before the District Court for the District of Columbia.

I am not a lawyer, computer professional, or Microsoft competitor. I use personal computers to perform business ''office'' functions and am concerned by how unwieldy and unreliable Windows has become as new ''features'' I do not want or use are incorporated. I also use Linux and find it better than Windows for my needs. However, few of the specialized applications programs I need for my work (in addition to general purpose ''office'' applications) are available for that platform without custom programming or adaptation so using Windows is a practical necessity. Microsoft products are priced considerably higher than their functional equivalents by other publishers, a phenomenon I attribute to Microsoft's monopoly pricing power that the instant Tunney Act proceedings are intended to curb in the public interest while not losing the benefits of vigorous innovation in computer and communications technology.

You have my permission to publish these comments and to make whatever use of them in the Tunney Act proceedings you see fit. I hope these comments will be helpful to the Court.

Respectfully submitted,

Is the Microsoft Settlement in the Public Interest?

The settlement negotiated between Microsoft and the Justice Department and several of the plaintiff States appears to rest on the dubious proposition that the public interest is synonymous with the summation of private interests. Secondly, while the settlement arguably addresses the ''middleware'' problem that was the focus of much attention in the trial, it is weak, if not completely ineffectual, with respect to the equally important prevention of Microsoft's apparent extension of its operating system monopoly to the most widely used business applications software programs. These observations are amplified below.

While the Sherman Act provides for a private right of action seeking trebling of private damages suffered from monopolization, its strong feature was declaring monopoly and monopolization to be detrimental to the general public interest beyond the summation of losses to identifiable private parties who might sue. These days, in a case such as this, the loss to the general public interest might be seen as a stifling and channeling of innovation into forms approved by the monopolist, a hard-to-predict and quantify loss to an undefined and disparate ''public.'' This is the putative loss the Sherman Act is intended to mitigate through the Tunney Act proceedings. The Justice Department observed in its Competitive Impact Statement that the Court does not have the authority to write a different settlement that it might prefer and that what might emerge from further proceedings, and when, in the event the Court rejects the settlement as not in the public interest is indeterminate. It is also the case that several plaintiff States have not agreed to the instant settlement, though they could yet do so, suggesting that any final resolution with respect to their continuing action would need to be integrated, or made compatible, with this negotiated settlement in the event this settlement is accepted by the Court, if the public interest is not to be undermined by a patchwork of remedies applied to one monopolist by various parties. Moreover, it must also be observed that if this settlement is approved for all the practical reasons noted by the Justice Department, it is also nearly a foregone conclusion that another, more far-reaching governmental antitrust action against Microsoft is practically precluded during the five years duration of this consent decree, even if the consent decree were manifestly not working adequately. In the fast moving field of computers, software, communications, entertainment, and their conjunction—of possibly great value to at least some members of the public—five years is a long time. Lastly, it must be noted that Microsoft is likely to be the landmark case in applying antitrust law and principles to fast moving, high-technology businesses so it is important to get a sound foundation in place for future reference and consideration.

The Court found at trial, and the Court of Appeals affirmed, that Microsoft has a monopoly in its Windows operating system for Intel-compatible personal computers (without any finding that its Windows monopoly is either per se unlawful or unlawfully obtained) and that Microsoft had reinforced and extended its monopoly by a variety of business practices that the instant remedy is intended to rectify. Indeed, the trial Court asserted at some length that computer operating systems may be a natural monopoly in that: (a) the customer generally is buying the computer for the functionality provided by their chosen application programs, (b) OEMS have an over-riding need to sell a machine that works with their hardware and the unknown customer's application programs, (c) software publishers find it easier and more economical to write for only one operating system rather than for several platforms, and (d) most customers want the operating system that works with the most readily available standard software so as to be protected with respect to future needs not fully foreseeable now.

The Court's Findings of Fact noted that while most consumers might have no objection to a ''free'' internet browser bolted into their Windows operating system, many business customers might prefer not to make it easy for their employees to browse the Internet if their duties do not require it. More generally, there may be a broader divergence of what features, capabilities, and level of ''pre-integration'' is wanted and valued by household consumers and by business (office) customers for personal computers, and possibly by other significant identifiable market segments for personal computers. Whether or not the new features may be in some sense ''free'' of extra charge, they manifestly take up more memory, disk space, and other computer resources, none of which are free, and may be more prone to ''bugs'', security holes, and incompatibilities

unrelated to the features a particular user actually wants, needs, values, and in purchasing a personal computer system.

Much of the trial was taken up with ''middleware'', in particular internet browsers and the Java programming language, as both were seen as actually—or at least potentially—offering a new standard set of applications programming interfaces (''hooks'') for other, unrelated application programs of possibly less market penetration potential, while the ''middleware'' itself is more susceptible of being made compatible with non-Windows operating systems (or even native code interfaces) on the machine hardware side. Others can comment more perceptively on how effectively the settlement addresses that problem through its proposed Technical Committee. Though not as thoroughly addressed at trial, Microsoft appears to have extended its Windows monopoly into the large business applications software market (e.g., word processing, spread-sheets, small databases) through the same kinds of business practices as were found unlawful with respect to ''middleware.'' That is, when word processing, spreadsheets, and databases were observed to be applications that were inducing businesses (including government, non-profit, etc., ''office'' environments) to buy computers to put on nearly every employee's desk, Microsoft first tried to program such applications themselves, then if unsuccessful, buy up a third-rate contender in the field, threaten the first-rate contender that if they didn't sell out Microsoft would not make new API ''hook'' information available to them on a competitively timely basis, and apparently design special, undisclosed ''hooks'' into Windows that would make Microsoft's own applications software run better, faster, and/or more reliably than competitors'' products, such compatibility providing great marketing advantage (and commanding higher market prices) over rival applications program publishers whose products might be functional superior to Microsoft's offerings in consumers'' perceptions. Microsoft thereby eventually established a monopoly for these widely used, and lucrative, ''business'' application programs. Whether the Technical Committee approach proposed works for ''middleware'', where there are likely to be only a few, very sophisticated ''middleware'' developers, it is likely to be much less successful in providing relief to general software and applications developers and publishers, who are less likely to have the depth of programming expertise of a middleware developer, or to be able to make a good case for requesting new API ''hooks'' of Microsoft's Windows that might be helpful to their new application, yet that might have the potential to become the new ''next big thing.'' (That adaptability for new or special needs is one of the great virtues of open-source operating systems like Linux as one can add new API hooks as needed and push them into the operating system when the application program loads. Microsoft, of course, is unalterably opposed to open-source software as an expropriation of their intellectual property. While that may be their legitimately chosen business strategy, it leaves them open to antitrust charges if they exercise monopoly power in pursuing such a strategy.)

In summary, the Court should carefully consider whether the negotiated settlement decree will fully and reasonably protect the public from stifling and channeling of innovation in personal computers, aside from its direct effects on competitive private parties. In particular, the Court should inquire carefully into whether the Technical Committee approach underlying the proposed consent decree, particularly with respect to general applications developers/publishers as distinguished from ''middleware'' developers is sufficient to protect the public interest in this fast moving field.

Respectfully submitted,
Robert L. Randall
The RainForest ReGeneration Institute
1727 Massachusetts Avenue NW
Washington, DC 20036
Telephone: (202) 205–3366
From: BigStrains@aol.com @inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

Renata B. Hesse:

I beleive the Proposed Settlement with Microsoft is fair.It is time for the Government to move forward, lets get the economy back on its feet. This should be a good stimulus to the stock market and us individual investors.

The DOJ should spend more time going after the Enron's who have been robbing the small investors of their pensions.

John J. Strain
16 Corte Almaden
San Rafael, CA> 94903
415–492–3310
CC: fin@mobilizationoffice.com@inetgw

MTC–00028564

From: Katz, Diane S.
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:39pm
Subject: Microsoft
28 January 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

Pursuant to the Tunney Act, please accept these comments in support of the proposed settlement in the case of U.S. v. Microsoft. The Mackinac Center for Public Policy is an independent, non-profit research and educational institute dedicated to consumer choice and economic growth. Having closely followed the Microsoft case, we have concluded that consumers have largely benefited from the company's innovative products and services. In particular, the bundling of software applications has greatly enhanced consumer capability and convenience. In the absence of evidence of harm to consumers, it is in the public interest to end this protracted litigation. A settlement of the matter would allow Microsoft to focus its attention once again on producing useful products while also halting the enormous waste of taxpayers'' dollars on punishing private-sector success.

There is no question that Microsoft has proved to be an aggressive competitor. But there is no evidence of either a shortage of software products or rising prices. Indeed, the software market has grown tremendously in recent years while product prices have fallen dramatically. It thus appears that this case was largely provoked by rivals intent on gaining a competitive advantage through government force. The unjustified nature of the antitrust complaint does not warrant further punishment.

Thank you for the opportunity for comment.

Diane Katz
Director of Science Environment and Technology Policy
Mackinac Center for Public Policy
140 West Main Street
P.O. Box 568
Midland, MI 48640

MTC–00028565

From: Mark Cooper
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject'' Microsoft Settlement

Please accept the attached comments on behalf of a variety of consumer groups.

Dr. Mark N. Cooper
Director of Research
Consumer Federation of America
(www.consumerfed.org)
mailto: markcooper@aol.com
tel: 301/384–2204

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
UNITED STATES OF AMERICA, Plaintiff, VS. MICROSOFT CORPORATION, Defendant

STATES OF NEW YORK ex rel. Attorney General ELIOT SPITZER, et al., Plaintiff, VS. MICROSOFT CORPORATION, Defendant
Civil Action No. 98–1232 (CKK)
Civil Action No. 98–1233 (CKK)

Tunney Act Comments of
Consumer Federation of AmericaCalPIRG
Connecticut Citizen Action Group
ConnPIRG
Consumer Federation of California
Consumers Union
Florida Consumer Action Network
Florida PIRG
Iowa PIRG
Massachusetts Consumers'' Coalition
MassPIRG
Media Access Project
U.S. PIRG
Submitted January 25, 2002

A FINAL JUDGMENT MUST CORRECT THE VIOLATION OF THE LAW

THE MICROSOFT-DOJ PROPOSED FINAL JUDGMENT IS NOT IN THE PUBLIC INTEREST

We find the Microsoft-Department of Justice final judgment proposal to be fundamentally flawed. It is as an entirely inadequate remedy to the sustained, egregious, illegal conduct engaged in by Microsoft to thwart competition in the software industry and protect and enhance its own monopolies. Because it fails to protect consumers, it fails to serve the public interest. It should be rejected by the District Court.

FEDERAL LAW REQUIRES PUBLIC COMMENT. THE COURT SHOULD REVIEW ALL COMMENTS

Federal antitrust law (Tunney Act, 15 U.S.C. § 16) requires the Department of Justice to ''receive and consider'' comments related to the proposed Microsoft-DOJ resolution currently under review by Judge Colleen Kollar-Kotelly of the U.S. District Court for the District of Columbia. Judge Kollar-Kotelly has ordered the Justice Department to provide to her by February 27 its response to comments received. The Tunney Act requires Judge Kollar-Kotelly, in turn, to determine whether the Microsoft-DOJ proposal is in the ''public interest'' To make that determination, she may —to our mind must— consider the competitive impact of the proposal, including:

* termination of alleged violations and prevention of future monopolization,

* provisions for enforcement and modification,

* duration or relief sought,

* anticipated effects of alternative remedies actually considered, and

* any other considerations bearing upon the adequacy of such judgment.

Under the Tunney Act, Judge Kollar-Kotelly is also given the option of reviewing the original comments provided to the Department of Justice, rather than just the DOJ's response to them. We believe that Judge Kollar-Kotelly should endeavor to read all comments submitted in this highly contentious and landmark case. We believe that the Department of Justice is institutionally disposed to give inadequate consideration to comments such as these critical to a resolution that it, along with Microsoft, has proposed.

Our comments demonstrate that determining whether the DO J-Microsoft proposal is in the public interest should be a fairly straight forward exercise. The proposal fails to terminate the antitrust violations of which Microsoft has been found guilty (at trial and on appeal). Its enforcement provisions are weak at best. It restricts Microsoft behavior for a much-too-short period of time. Myriad other problems, discussed below as well as in detailed analysis attached to these comments prepared by the Consumer Federation of America and Consumers, encumber and eviscerate an otherwise vague and loophole-fiddled settlement proposal. Finally, a strong, workable alternative remedy, advanced by the state attorneys general who continue to aggressively pursue the case, already has been submitted to the Court for review. Unlike the Microsoft-DOJ proposal, that alternative would protect consumers and the public interest. With such numerous and obvious shortcomings, the District Court should reject the Microsoft-DOJ proposal in short order.

THE PUBLIC INTEREST TEST REQUIRES THAT FINAL JUDGMENT PROTECTS CONSUMERS

We insist on such an outcome on behalf of our constituencies, who are America's average consumers. Our groups have worked on basic consumer pocketbook issues across the nation for decades, and our membership numbers in the tens of millions. We believe that the public interest in this case is properly understood to include the harms that average consumers have experienced due to Microsoft's illegally anti-competitive activities. Individual consumers ultimately paid the price of Microsoft's past abuses of monopoly power, directly and indirectly, and they will pay for a continuation of the Microsoft monopoly. Any remedy endorsed by the Court needs to benefit consumers by restoring competition in those segments of the software industry that Microsoft has monopolized or is in danger of monopolizing. We acknowledge that, considering Microsoft's long-standing unfair business practices and deeply entrenched monopoly, such a task will not be easy. It is because of these same factors, however, that it is necessary.

THE SOFTWARE INDUSTRY IS RIPE FOR COMPETITION AND DOES NOT LEND ITSELF NATURALLY TO MONOPOLY

We begin by rejecting claims that the software industry is prone to natural monopoly.

Were that the case, Microsoft would not have had to engage in its systematically anti-competitive practices to maintain and extend its monopolies. The trial record and reams of trade press accounts bear testimony to the unnatural acts embraced by Microsoft to create and protect its monopoly power over the years. These include leveraging the Windows operating system, slowing or stopping its own deployment cycle, denying access to application interfaces, threatening to deny access to its operating system, threatening to stop developing software for competing platforms, bloating the operating system with unnecessary functionality, hiding prices in whole computer configurations, compelling computer manufacturers (original equipment manufacturers, or OEMs) to use its browser, reaching pacts with other companies to deny the use of alternative browsers, and on and on. Though the Department of Justice at least appears to agree in principle that monopoly in the software industry is neither natural nor desirable, in practice its proposal—prepared jointly with Microsoft allows for the continuation, if not exacerbation, of Microsoft market power.

In our view, the software industry is ripe for competition. Competition would yield an explosion of innovation and consumer convenience. Consumers care about applications, not about operating systems. Furthermore, most consumers are inclined to invest time and money in functional applications that they reasonably feel will endure, be supported, and work compatibility with other programs and their hardware. Independent vendors are interested, therefore, in creating products that match consumer expectations.

With the entrenched Microsoft monopoly, independent developers confront an applications barrier—Microsoft has such a significant lock on the computer platform and on applications used, that many developers are dissuaded from producing new products. Should the Microsoft monopoly be broken down, developers would look to create compatible, consumer-friendly products. In fact, that is what Netscape and Sun attempted to do with Navigator and Java—create software, known as ''middleware'' because they insert themselves between the operating system and applications running on top of the middleware. Because Netscape/Java was compatible across systems, it threatened Microsoft. Microsoft's reaction was to launch an illegal campaign to crush Netscape and undermine Java.

Because Microsoft illegally undertook to prevent competition, consumers were left with products that did not honestly earn their place in the marketplace. Microsoft products have not been disciplined for price and quality by competitors because of the company's anti-competitive practices. Remove the monopoly, and an avalanche of competition —aiming towards operable standards, innovative products, and better pricing— will be unleashed. Such developments would provide undeniable benefit to consumers. The software market will support, and therefore the public interest demands, actual competition within and between markets.

THE CHALLENGE BEFORE THE COURT

MICROSOFT'S DEEP-ROOTED ANTI-COMPETITIVE BUSINESS MODEL

Detailing Microsoft's anti-competitive business model is a nearly interminable task, though it was accomplished well by the District Court in its Findings of Fact, virtually all of which were upheld on appeal. The analysis attached by Consumer Federation of America and Consumers Union describe at length the depths to which Microsoft would sink to prop up its operating system monopoly, and to conquer other markets, such as for the browser and business productivity suites. The list of corporate victims is long, and includes not just Netscape and Sun, but also IBM, Intel, and Apple. Figure 1, below, summarizes in simple terms the barriers to competition that Microsoft has repeatedly erected. We reiterate that the Department of Justice and the Court should not lose sight of the fact that such practices ultimately negatively impact individual consumers, in the forms of higher prices, reduced choice, and inferior products and service.

CONSUMERS ARE HARMED BY MICROSOFT'S ABUSE OF MARKET POWER

Microsoft's widespread, unlawful practices, which the Microsoft-DOJ proposal fails to correct, harm consumers both qualitatively and monetarily. The harms are sufficiently great to require that the Court avoid a ''quick fix.'' It is much more important to devote a reasonable amount of time to get the final judgment right and protect consumers.

Microsoft's anticompetitive practices deny consumers choice. Microsoft strictly forces computer manufacturers to buy one bundle with all of its programs preloaded and biases the screen location, start sequences and default options. As a result, it becomes substantially difficult to choose non-Microsoft products. Products tailored to meet individual consumer needs (consumer friendly configurations, small bundles) are una vailable and eventually competing products disappear from the market. Further, by foreclosing the primary channels of

distribution with exclusive contracts and other deals, Microsoft forces consumers of non-Microsoft products to acquire them in time-consuming and inconvenient ways.

FIGURE 1: HOW MICROSOFT STOPS COMPETITION AND HARMS CONSUMERS CONSUMER

DENY CUSTOMER CHOICE Force bundles so OEMs won't install competing software Control the boot screen and desktop Restrict icons and add/remove buttons

CLOSE DOWN DISTRIBUTION<5>Exclusionary deals with Internet Access Providers. Prevent computer manufacturers from preinstalling non-Microsoft products Commingling code to make it hard to preinstall non-Microsoft products

UNDERMINE FUNCTIONALITY DEVELOPMENT AND PRODUCT SUPPORT Restrict functionality Prevent developers from focusing on non-Microsoft products Deceive developers into supporting proprietary products Undermine compatibility Prevent support for competing products

SOFTWARE DEVELOPER

In addition, Microsoft's practices impair quality and innovation. Because of Microsoft's leveraging of the operating system, superior products are delayed or driven from the marketplace. The District Court noted at least six instances in which Microsoft sought to delay the development of competing products. It noted as well several instances in which it delayed the delivery of its own products to accomplish an anti-competitive purpose. Resources are denied to and investment is chilled in competing products, slowing advances in technology and rendering some libraries of content obsolete. In addition, in several instances the Court found that Microsoft had undermined the ability of software applications or middleware to function properly with the Windows operating system. Thus, Microsoft has been quite willing to undermine the quality of its own and of competing products to preserve its market dominance.

In addition to qualitative harm, consumers have suffered monetary harm. The historical behavior of prices makes it possible to draw a direct line between competition and lower prices. Eliminating competition, as Microsoft has, results in higher prices. The fact that the excess price results from a failure to pass cost reductions through to consumers does not change the fact that consumers are overcharged. Nor does the fact that consumers do not pay for the software directly. In fact, there was a substantial increase in the price of Microsoft products in the 1990s that consumers paid in the price of the PCs they purchased. Of course, consumers do pay directly in the case of upgrades and for applications.

The centerpiece of Microsoft's pricing strategy has been to increase operating system prices while other components of the delivered PC bundle have fallen. Evidence at trial gave explicit estimates of the price of operating systems. The average preinstalled price is given as $19 in 1990 and over $49 in 1996. During that time span the average Microsoft revenue for preinstalled software rose from $25 to $62. Microsoft recognizes that it has been the beneficiary of volume growth created by the falling price of the PC, which masks its increasing prices. Thus, one of the key elements in Microsoft's business model is to bury its products in bundles. This hides the price from the public and allows Microsoft to hide behind the declining price of the total package.

The Consumer Federation of America has estimated that in the five years between the start of the anticompetitive attack on the browser in 1995 and the District Court finding of liability, Microsoft overcharged consumers by about $20 billion. The economic analysis of other experts suggests overcharges of as much as $30 billion.

In addition to direct monetary costs, indirect monetary costs of the Microsoft monopoly also present themselves. Though difficult to calculate, they are no less significant, and demand to be considered. Consumers, individual and corporate, have undoubtedly lost hundreds of millions of dollars due to such issues as training, rapid upgrade cycles, software crashes, bloated bundles, debugging, service, and hardware upgrades.

WINDOWS XP/.NET, LEFT UNCHECKED, ENHANCES AND EXPANDS THE MICROSOFT MONOPOLY

Microsoft's brazen disrespect for the antitrust laws is nowhere more readily apparent than in the design of its newest bundle of products (''Windows XP,'' and the ''.NET'' initiative, hereafter referred to as ''Windows XP/.NET'). The product is so blatantly at odds with the Court's ruling Microsoft must have designed it on the mistaken assumption that Microsoft would prevail in its appeal.

The extreme reliance of ''Windows XP/.NET'' on a huge bundle of entire applications and the continued reliance on contractual and technological bundling fly in the face of the Court's cautionary words. Windows XP and the .NET initiative are a bundle of services bolted together by technological links (code embedded in the operating system), contractual requirements, and marketing leverage.

The software, applications, and services that Microsoft has bundled cover all of the functionalities that are converging on the Internet, including communications, commerce, applications, and service. Today these Internet activities are vigorously competitive, just as the browser was before Microsoft launched its victorious attack against Netscape. In other words, the anticompetitive and illegal business practices Microsoft used to win the browser war are being extended to virtually every other application that consumers use. The bundle is built on commingled code, proprietary languages, and exclusive functionalities that are promoted by restrictive licenses, refusal to support competing applications, embedded links, and deceptive messages. A strong remedy, unlike the weak one proposed by Microsoft and the Justice Department, is needed before Microsoft becomes the monopolist of virtually all computer and Internet applications.

THE PROPOSED FINAL JUDGMENT FAILS TO PROTECT INDEPENDENT SOFTWARE DEVELOPERS, COMPUTER MANUFACTURERS, AND CONSUMERS

The history of the case and our analysis of the software industry show that in order for new software to have a fair chance to compete, the remedy must:

ù create an environment in which independent software vendors and alternative platform developers are free to develop products that compete with Windows and with other Microsoft products,

* free computer manufacturers to install these products without fear of retaliation, and

* enable consumers to choose among them with equal ease as with Microsoft products.

The Microsoft-Department of Justice settlement is an abysmal failure at all three levels. Under the proposed Microsoft-Department of Justice settlement, Microsoft will be undeterred from continuing its anticompetitive business practices.

INDEPENDENT SOFTWARE VENDORS GET LITTLE RELIEF UNDER THE MICROSOFT-DOJ PROPOSAL

Independent software vendors and competing platform developers will get little relief from Microsoft's continual practice of hiding and manipulating interfaces. Microsoft has the unreviewable ability under the proposed settlement to define Windows itself. It therefore controls whether and how independent software developers will be able to write programs that run on top of the operating system. The definitions of software products and functionalities and the decisions about how to configure applications programming interfaces (APIs) are left in the hands of Microsoft to an extreme extent. As a consequence, the company will be encouraged to embed critical technical specifications deeply into the operating system and thereby prevent independent software developers from seeing them. To the extent that Microsoft would actually be required to reveal anything, it would be so late in the product development cycle that independent software developers would never be able to catch up to Microsoft's favored developers.

Furthermore, the Court of Appeals recognized that the Microsoft monopoly is protected by a large barrier to entry, as many crucial applications are available only for Windows. The proposed settlement does nothing to eliminate this ''applications barrier to entry,'' such as by requiring the porting of Microsoft Office to other PC platforms. Rather than restore competition, the Microsoft-DOJ proposal all but legalizes Microsoft's previous anticompetitive strategy and institutionalizes the Windows monopoly.

COMPUTER MANUFACTURERS HAVE LITTLE ABILITY OR INCENTIVE TO INSTALL NON-MICROSOFT PRODUCTS UNDER THE PROPOSED FINAL JUDGMENT

The Microsoft-DOJ proposal does not shield computer manufacturers from Microsoft retaliation. The restriction on retaliation against computer manufacturers leaves so many loopholes that any OEM who actually offended Microsoft's wishes would be committing commercial suicide. Microsoft is given free reign to favor some, at the expense of others, through incentives and joint ventures. It is free to withhold access to its other two monopolies (the browser and

Microsoft Office) as an inducement to favor the applications that Microsoft is targeting at new markets, inviting a repeat of the fiasco in the browser wars. Retaliation in any way, shape, fit, form, or fashion should be illegal. Any adequate remedy, unlike the Microsoft-DOJ proposal, must include a prohibition on retaliation that specifically identifies price and non- price discrimination as well as applying to all monopoly products.

CONSUMER SOVEREIGNTY IS NOT RESTORED BY THE SETTLEMENT.

Because the proposed settlement requires no removal of applications, only the hiding of icons, Microsoft preserves the ability to neuter consumer choice. The boot screen and desktop remain entirely tilted against competition. Microsoft retains the ability to be the pervasive default option and is allowed to harass consumers who switch to non-Microsoft applications. Furthermore, it still gets to sweep third party applications off the desktop, forcing consumers to choose them over and over.

GIVEN MICROSOFT'S PAST BEHAVIOR, ENFORCEMENT MUST BE SWIFT WITH SUBSTANTIAL SANCTIONS FOR NON-COMPLIANCE, BUT THE PFJ PROVIDES NO SUCH MECHANISMS

After the District Court identifies remedies that can address these problems, it must enforce them swiftly and aggressively. Microsoft has shown —through a decade of investigations, consent decrees and litigation— that it will not easily be deterred from defending and extending its monopoly. Microsoft behaves as though it believes it has the right to do anything to eradicate competition. Every one of the illegal acts that led to the District Court findings of liability, unanimously upheld on appeal, took place after Microsoft signed its last consent decree.

With three monopolies to use against its potential competitors (the Windows operating system, the Internet Explorer browser, and Office in desktop applications), enforcement must be swift and sure, or competition will never have a chance to take root. The proposed settlement offers virtually nothing in this regard. The technical committee set up to (maybe) hear complaints can be easily tied up in knots by Microsoft because of the vague language that creates it. Because of the delay in its implementation, the crucial element of API disclosure will be in place for only four years. If Microsoft violates the settlement, nothing happens to the company, except that it must ''endure'' the annoyance of this weak settlement for an additional two years. Moreover, Virtually every specific measure of the proposed settlement is either fiddled with ambiguities or put under the sole discretion of Microsoft. In other words, Microsoft defines its own sanctions. The Department of Justice and the Court must not forget that independent software vendors were the targets of Microsoft's campaign and that the competitive process in the software market was its victim. When we review the question of whether the proposed settlement will lift the yoke of anticompetitive practices from this market, we find that it will not (see Figure 2). Under the proposed settlement, Microsoft preserves immense market power and discretion. The settlement cannot work to restore competition because independent software developers will not be freed to produce software products in a competitively neutral environment. As a result, consumers will continue to suffer at the hands of the Microsoft monopolies. The proposed settlement does not serve the public interest and must be rejected.

FIGURE 2: SOFTWARE COMPETITION WILL NOT BE RESTORED BECAUSE THE SETTLEMENT DOES NOT CREATE A LEVEL PLAYING FIELD FOR INDEPENDENT SOFTWARE VENDORS

DO I HAVE A FAIR CHANCE TO HAVE CONSUMERS USE MY PRODUCT?

Consumers have to choose my software twice to get my icon on the screen.

Consumers never have to choose Microsoft's; it's still the default.

Microsoft can sweep my icon off the system every 14 days.

WILL OEMs PUT MY PRODUCT ON THE PC?

Microsoft's code is guaranteed to be in every PC, only its icons are removed.

My code gets into only those PCs that I convince OEMs to install.

Microsoft can still give OEMs ''considerations'' to promote its product.

Microsoft can engage in Joint Ventures and prevent OEMs from using mine.

Microsoft can leverage its monopoly applications to keep my products out.

WHAT APIs DO I GET TO SEE?

Only APIs for products Microsoft has already developed.

Only APIs that Microsoft has decided not to move into the operating system.

Only APIs that Microsoft decides do not compromise its piracy, virus, licensing, digital rights management, encryption or authentication systems.

WHEN DO I GET TO SEE THE APIs?

Very late in the process, after Microsoft has had a huge head start in developing its products.

MTC–00028566

From: Michael Leibowitz
To: Microsoft ATR
Date: 1/28/02 4:32pm
Subject: Microsoft Settlement

I think the proposed settlement stinks. What public good does it serve?! The enforcement provisions are a farce!

Michael Leibowitz [michael.leibowitz@cirrus.com]

Applications Engineer, Embedded Processors
Cirrus Logic, Inc.
4210 S. Industrial Dr.
Austin, TX 78744
(512)912–6592

MTC–00028567

From: Michael Shaw
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement
Michael Shaw
Systems Administrator
Johnson & Wales University
8 Abbott Park Place
Providence, Rhode Island 02903
P: 401–598–4357 F 401–598–1511
Michael Shaw
Johnson & Wales University
8 Abbott Park Place
Providence, RI 02903
January 27, 2002
John Ashcroft, Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

Based on my background and experience in the technology industry, I think that the Microsoft antitrust case should be settled on the terms that are on the table now. Obviously, the terms could be tinkered with endlessly. Still, after three months of negotiate with the mediator appointed by the new federal judge on the case, the parties should have had ample opportunity to make the agreement as good as they could get it. The terms of the agreement will make it easier to work with Microsoft, which has been a stickler for holding to its legal fight from copyright and patent infringement, to driving a hard bargain in contract negotiations. For example, Microsoft has been insisting on exclusive marketing agreements, under which a personal computer, PC, building company must put Microsoft's Windows operating system on all of its computers or not receive the legal fight to use Windows at all. The other terms reflect the same opening up of Microsoft to enable its partners, rival and competitors an even greater participation in its overwhelming, and hard earned, success. This settlement will be good from computing, and good for America.

Thank you for your leadership on this issue.

Sincerely,
Michael Shaw

MTC–00028568

From: Hamid Tabassian
To: Microsoft ATR
Date: 1/28/02 4:40pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Fax: 1–202–307–1454 or
1–202–616–9937
Email: microsoft.atr@usdoj.gov

I believe the terms that Microsoft has met or gone beyond the findings of the Court of Appeals ruling are reasonable and fair to all parties involved. Furthermore, I believe this settlement represents the best opportunity for Microsoft and the industry to move forward.

Thank you.
Hamid Tabassian
128 Sawmill Lakes Blvd
Ponte Vedra, FL 32082

MTC–00028569

From: Brian Greenwood
To: Microsoft ATR
Date: 1/28/02 4:40pm
Subject: Microsoft Settlement

Greetings,

As an executive,engineer and inventor (20+ patents) I would like to provide the following comments as the final decisions are made concerning the Microsoft Settlement.

I have been a user of Microsoft Products since buying my first personal computer in about 1983. I have also been responsible for the coordination of information technology within my employer's organization. In submitting these comments, I am not claiming to represent the official position of my current employer, but only my personal views.

The standardization in file formats and software interfaces over the years has greatly improved the ability of people to communicate with each other both within organizations and between organizations. Much of this standardization has come because people selected Microsoft's Products instead of those of other vendors. Taken as a whole, Microsoft's solutions have been superior to those offered by other vendors. The network effect of many users using a common tool has driven the level of deployment of Microsoft's products.

Do not go beyond the current settlement and impair the ability of Microsoft's engineers and programmers to create new and improve their existing software. It should not be the the role of Government to be in the middle of a company's design efforts.

The current settlement takes sufficient steps to correct the commercial missteps which were made by the Microsoft team.

Sincerely,
Brian F. Greenwood
6007 Castleton Manor
Cumming, Georgia 30041
email: bfgx@yahoo.com

MTC–00028570

From: Ernest W.
To: Microsoft ATR
Date: 1/28/02 4:40pm
Subject: Microsoft Settlement
US Department Of Justice,

I'm writing to offer support for Microsoft's position in the current Antitrust scenario against them. I feel that the government should NOT take adverse action against Microsoft. The marketplace will do that if the company deserves it. Other parties against Microsoft in the business realm stand to gain financially against Microsoft if the software giant gets penalized. They would therefore offer tons of reasons why Microsoft should be penalized—of course.

Please leave business matters of this sort to the marketplace and consumers instead of lawyers eager for their fees and jealous business rivals holding daggers behind them.

Thank you.
Ernest Wiatrek
19203 CR 341
Abilene, TX 79601
Ph: 915–676–4178

MTC–00028571

From: dank@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 4:39pm
Subject: Microsoft Settlement
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
28 January 2002

Ms. Hesse, As a software engineer with 20 years'' experience developing software for Unix, Windows, Macintosh, and Linux, I'd like to comment on the Proposed Final Judgment in United States v. Microsoft. Please find my comments below. A copy of my comments is also posted on the Web at http://kegel.com/remedy/remedy2.html.

Sincerely,
Dan Kegel
901 S. Sycamore
Los Angeles, CA 90036

On the Proposed Final Judgment in United States v. Microsoft

Contents

Introduction

As a software engineer with 20 years'' experience developing software for Unix, Windows, Macintosh, and Linux, I'd like to comment on the Proposed Final Judgment in United States v. Microsoft.

According to the Court of Appeals ruling, ''a remedies decree in an antitrust case must seek to 'unfetter a market from anticompetitive conduct', to terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future'' (section V.D., p. 99).

Attorney General John Ashcroft seems to agree; he called the proposed settlement ''strong and historic'', said that it would end ''Microsoft's unlawful conduct,'' and said ''With the proposed settlement being announced today, the Department of Justice has fully and completely addressed the anti-competitive conduct outlined by the Court of Appeals against Microsoft.''

Yet the Proposed Final Judgment allows many exclusionary practices to continue, and does not take any direct measures to reduce the Applications Barrier to Entry faced by new entrants to the market.

The Court of Appeals affirmed that Microsoft has a monopoly on Intel-compatible PC operating systems, and that the company's market position is protected by a substantial barrier to entry (p. 15). Furthermore, the Court of Appeals affirmed that Microsoft is liable under Sherman Act .7 2 for illegally maintaining its monopoly by imposing licensing restrictions on OEMs, IAPs (Internet Access Providers), ISVs (Independent Software Vendors), and Apple Computer, by requiring ISVs to switch to Microsoft's JVM (Java Virtual Machine), by deceiving Java developers, and by forcing Intel to drop support for cross-platform Java tools.

The fruits of Microsoft's statutory violation include a strengthened Applications Barrier to Entry and weakened competition in the Intel-compatible operating system market; thus the Final Judgment must find a direct way of reducing the Applications Barrier to Entry, and of increasing such competition.

In the following sections I outline the basic intent of the proposed final judgment, point out areas where the intent and the implementation appear to fall short, and propose amendments to the Proposed Final Judgment (or PFJ) to address these concerns.

Please note that this document is still evolving. Feedback is welcome; to comment on this document, please join the mailing list at groups.yahoo.com/group/ms-remedy, or email me directly at dank-ms@kegel.com.

Understanding the Proposed Final Judgment

In crafting the Final Judgment, the judge will face the following questions:

* How should terms like ''API'', ''Middleware'', and ''Windows OS'' be defined?

* How should the Final Judgment erode the Applications Barrier to Entry?

* How should the Final Judgment be enforced?

* What information needs to be released to ISVs to encourage competition, and under what terms?

* Which practices towards OEMs should be prohibited?

* Which practices towards ISVs should be prohibited?

* Which practices towards large users should be prohibited?

* Which practices towards end users should be prohibited?

Here is a very rough summary which paraphrases provisions III.A through III.J and VI. of the Proposed Final Judgment to give some idea of how the PFJ proposes to answer those questions:

PFJ Section III: Prohibited Conduct

A. Microsoft will not retaliate against OEMs who support competitors to Windows, Internet Explorer (IE), Microsoft Java (MJ), Windows Media Player (WMP), Windows Messenger (WM), or Outlook Express (OE).

B. Microsoft will publish the wholesale prices it charges the top 20 OEMs (Original Equipment Manufacturers) for Windows.

C. Microsoft will allow OEMs to customize the Windows menus, desktop, and boot sequence, and will allow the use of non-Microsoft bootloaders.

D. Microsoft will publish on MSDN (the Microsoft Developer Network) the APIs used by IE, MJ, WMP, WM, and OE, so that competing web browsers, media players, and

email clients can plug in properly to Windows.

E. Microsoft will license on reasonable terms the network protocols needed for non-Microsoft applications or operating systems to connect to Windows servers.

F. Microsoft will not force business partners to refrain from supporting competitors to Windows, IE, M J, WMP, WM, or OE.

G. (Roughly same as F above.)

H. Microsoft will let users and OEMs remove icons for IE, MJ, WMP, WM, and OE, and let them designate competing products to be used instead.

I. Microsoft will license on reasonable terms any intellectual property rights needed for other companies to take advantage of the terms of this settlement.

J. This agreement lets Microsoft keep secret anything having to do with security or copy protection.

PFJ Section VI: Definitions

A. ''API'' (Application Programming Interface) is defined as only the interfaces between Microsoft Middleware and Microsoft Windows, excluding Windows APIs used by other application programs.

K. ''Microsoft Middleware Product'' is defined as Internet Explorer (IE), Microsoft lava (MJ), Windows Media Player (WMP), Windows Messenger (WM), and Outlook Express (OE).

U. ''Windows Operating System Product'' is defined as Windows 2000 Professional, Windows XP Home, and Windows XP Professional.

The agreement can be summed up in one breath as follows: Microsoft agrees to compete somewhat less vigorously, and to let competitors interoperate with Windows in exchange for royalty payments.

Considering all of the above, one should read the detailed terms of the Proposed Final Judgment, and ask one final question:

* Is the Proposed Final Judgment in the public interest?

In the sections below, I'll look in more detail at how the PFJ deals with the above questions. How should terms like ''API'', ''Middleware, and ''Windows OS'' be defined?

The definitions of various terms in Part VI of the PFJ differ from the definitions in the Findings of Fact and in common usage, apparently to Microsoft's benefit. Here are some examples:

Definition A: ''API''

The Findings of Fact (? 2) define ''API'' to mean the interfaces between application programs and the operating system. However, the PFJ's Definition A defines it to mean only the interfaces between Microsoft Middleware and Microsoft Windows, excluding Windows APIs used by other application programs. For instance, the PFJ's definition of API might omit important APIs such as the Microsoft Installer APIs which are used by installer programs to install software on Windows.

Definition J: ''Microsoft Middleware''

The Findings of Fact (? 28) define ''middleware'' to mean application software that itself presents a set of APIs which allow users to write new applications without reference to the underlying operating system. Definition J defines it in a much more restrictive way, and allows Microsoft to exclude any software from being covered by the definition in two ways:

1. By changing product version numbers. For example, if the next version of Internet Explorer were named ''7.0.0'' instead of ''7'' or ''7.0'', it would not be deemed Microsoft Middleware by the PFJ.

2. By changing how Microsoft distributes Windows or its middleware. For example, if Microsoft introduced a version of Windows which was only available via the Windows Update service, then nothing in that version of Windows would be considered Microsoft Middleware, regardless of whether Microsoft added it initially or in a later update. This is analogous to the loophole in the 1995 consent decree that allowed Microsoft to bundle its browser by integrating it into the operating system.

Definition K: ''Microsoft Middleware Product''

Definition K defines ''Microsoft Middleware Product'' to mean essentially Internet Explorer (IE), Microsoft Java (MJ), Windows Media Player (WMP), Windows Messenger (WM), and Outlook Express (OE).

The inclusion of Microsoft Java and not Microsoft. NET is questionable; Microsoft has essentially designated Microsoft. NET and C# as the successors to Java, so on that basis one would expect Microsoft. NET to be included in the definition.

The inclusion of Outlook Express and not Outlook is questionable, as Outlook (different and more powerful than Outlook Express) is a more important product in business, and fits the definition of middleware better than Outlook Express.

The exclusion of Microsoft Office is questionable, as many components of Microsoft Office fit the Finding of Fact's definition of middleware. For instance, there is an active market in software written to run on top of Microsoft Outlook and Microsoft Word, and many applications are developed for Microsoft Access by people who have no knowledge of Windows APIs.

Definition U: ''Windows Operating System Product'' Microsoft's monopoly is on Intel-compatible operating systems. Yet the PFJ in definition U defines a ''Windows Operating System Product'' to mean only Windows 2000 Professional, Windows XP Home, Windows XP Professional, and their successors. This purposely excludes the Intel-compatible operating systems Windows XP Tablet PC Edition and Windows CE; many applications written to the Win32 APIs can run unchanged on Windows 2000, Windows XP Tablet PC Edition, and Windows CE, and with minor recompilation, can also be run on Pocket PC. Microsoft even proclaims at www.microsoft.com/windowsxp/tabletpc/tabletpcqanda.asp:

''The Tablet PC is the next-generation mobile business PC, and it will be available from leading computer makers in the second half of 2002. The Tablet PC runs the Microsoft Windows XP Tablet PC Edition and features the capabilities of current business laptops, including attached or detachable keyboards and the ability to run Windows-based applications.''

and

Pocket PC: Powered by Windows Microsoft is clearly pushing Windows XP Tablet PC Edition and Pocket PC in places (e.g. portable computers used by businessmen) currently served by Windows XP Home Edition, and thus appears to be trying to evade the Final Judgment's provisions. This is but one example of how Microsoft can evade the provisions of the Final Judgment by shifting its efforts away from the Operating Systems listed in Definition U and towards Windows XP Tablet Edition, Windows CE, Pocket PC, X-Box, or some other Microsoft Operating System that can run Windows applications.

How should the Final Judgment erode the Applications Barrier to Entry?

The PFJ tries to erode the Applications Barrier to Entry in two ways:

1. By forbidding retaliation against OEMs, ISVs, and IHVs who support or develop alternatives to Windows.

2. By taking various measures to ensure that Windows allows the use of non-Microsoft middleware. A third option not provided by the PFJ would be to make sure that Microsoft raises no artificial barriers against non-Microsoft operating systems which implement the APIs needed to run application programs written for Windows. The Findings of Fact (?52) considered the possibility that competing operating systems could implement the Windows APIs and thereby directly run software written for Windows as a way of circumventing the Applications Barrier to Entry. This is in fact the route being taken by the Linux operating system, which includes middleware (named WINE) that can run many Windows programs.

By not providing some aid for ISVs engaged in making Windows-compatible operating systems, the PFJ is missing a key opportunity to encourage competition in the Intel-compatible operating system market. Worse yet, the PFJ itself, in sections III.D. and III.E., restricts information released by those sections to be used ''for the sole purpose of interoperating with a Windows Operating System Product''. This prohibits ISVs from using the information for the purpose of writing operating systems that interoperate with Windows programs. How should the Final Judgment be enforced?

The PFJ as currently written appears to lack an effective enforcement mechanism. It does provide for the creation of a Technical Committee with investigative powers, but appears to leave all actual enforcement to the legal system.

What information needs to be released to ISVs to encourage competition, and under what terms? The PFJ provides for increased disclosure of technical information to ISVs, but these provisions are flawed in several ways:

1. The PFJ fails to require advance notice of technical requirements

Section III.H.3. of the PFJ requires vendors of competing middleware to meet ''reasonable technical requirements'' seven months before new releases of Windows, yet it does not require Microsoft to disclose those requirements in advance. This allows Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

2. API documentation is released too late to help ISVs Section III.D. of the PFJ requires

Microsoft to release via MSDN or similar means the documentation for the APIs used by Microsoft Middleware Products to interoperate with Windows; release would be required at the time of the final beta test of the covered middleware, and whenever a new version of Windows is sent to 150,000 beta testers. But this information would almost certainly not be released in time for competing middleware vendors to adapt their products to meet the requirements of section III.H.3, which states that competing middleware can be locked out if it fails to meet unspecified technical requirements seven months before the final beta test of a new version of Windows.

3. Many important APIs would remain undocumented

The PFJ's overly narrow definitions of ''Microsoft Middleware Product'' and ''API'' means that Section III.D.'s requirement to release information about Windows interfaces would not cover many important interfaces.

4. Unreasonable Restrictions are Placed on the Use of the Released Documentation

ISVs writing competing operating systems as outlined in Findings of Fact (?52) sometimes have difficulty understanding various undocumented Windows APIs. The information released under section III.D. of the PFJ would aid those ISVs—except that the PFJ disallows this use of the information. Worse yet, to avoid running afoul of the PFJ, ISVs might need to divide up their engineers into two groups: those who refer to MSDN and work on Windows-only applications; and those who cannot refer to MSDN because they work on applications which also run on non-Microsoft operating systems. This would constitute retaliation against ISVs who support competing operating systems.

5. File Formats Remain Undocumented

No part of the PFJ obligates Microsoft to release any information about file formats, even though undocumented Microsoft file formats form part of the Applications Barrier to Entry (see ''Findings of Fact'' ?20 and ? 39).

6. Patents covering the Windows APIs remain undisclosed

Section III.I of the PFJ requires Microsoft to offer to license certain intellectual property rights, but it does nothing to require Microsoft to clearly announce which of its many software patents protect the Windows APIs (cf. current practice at the World Wide Web Consortium, http://www.w3.org/TR/patent-practice). This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users, as illustrated by this report from Codeweavers, Inc.:

When selecting a method of porting a major application to Linux, one prospect of mine was comparing Wine [a competing implementation of some of the Windows APIs] and a toolkit called 'MainWin'. MainWin is made by Mainsoft, and Mainsoft licenses its software from Microsoft. However, this customer elected to go with the Mainsoft option instead. I was told that one of the key decision making factors was that Mainsoft representatives had stated that Microsoft had certain critical patents that Wine was violating. My customer could not risk crossing Microsoft, and declined to use Wine. I didn't even have a chance to determine which patents were supposedly violated; nor to disprove the validity of this claim.

The PFJ, by allowing this unclear legal situation to continue, is inhibiting the market acceptance of competing operating systems.

Which practices towards OEMs should be prohibited?

The PFJ prohibits certain behaviors by Microsoft towards OEMs, but curiously allows the following exclusionary practices:

Section III.A.2. allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Section III.B. requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box'' OEMs, if they offer competing products.

Section III.B. also allows Microsoft to offer unspecified Market Development Allowances—in effect, discounts—to OEMs. For instance, Microsoft could offer discounts on Windows to OEMs based on the number of copies of Microsoft Office or Pocket PC systems sold by that OEM. In effect, this allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas, such as office software or ARM-compatible operating systems.

By allowing these practices, the PFJ is encouraging Microsoft to extend its monopoly in Intel-compatible operating systems, and to leverage it into new areas.

Which practices towards ISVs should be prohibited?

Sections III.F. and III.G. of the PFJ prohibit certain exclusionary licensing practices by Microsoft towards ISVs.

However, Microsoft uses other exclusionary licensing practices, none of which are mentioned in the PFJ.

Several of Microsoft's products'' licenses prohibit the products'' use with popular non-Microsoft middleware and operating systems. Two examples are given below.

1. Microsoft discriminates against ISVs who ship Open Source or Free Software applications

The Microsoft Windows Media Encoder 7.1 SDK EULA states ... you shall not distribute the REDISTRIBUTABLE COMPONENT in conjunction with any Publicly Available Software. ''Publicly Available Software'' means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models ... Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); The Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); ...

Many Windows APIs, including Media Encoder, are shipped by Microsoft as add-on SDKs with associated redistributable components. Applications that wish to use them must include the add-ons, even though they might later become a standard part of Windows.

Microsoft often provides those SDKs under End User License Agreements (EULAs) prohibiting their use with Open Source or Free Software applications. This harms ISVs who choose to distribute their applications under Open Source or Free Software licenses; they must hope that the enduser has a sufficiently up-to-date version of the addon API installed, which is often not the case.

Applications potentially harmed by this kind of EULA include the competing middleware product Netscape 6 and the competing office suite StarOffice; these EULAs thus can cause support problems for, and discourage the use of, competing middleware and office suites.

Additionally, since Open Source or Free Software applications tend to also run on non-Microsoft operating systems, any resulting loss of market share by Open Source or Free Software applications indirectly harms competing operating systems.

2. Microsoft discriminates against ISVs who target Windows-compatible competing Operating Systems The Microsoft Platform SDK, together with Microsoft Visual C++, is the primary toolkit used by ISVs to create Windows-compatible applications. The Microsoft Platform SDK EULA says:

''Distribution Terms. You may reproduce and distribute ... the Redistributable Components... provided that (a) you distribute the Redistributable Components only in conjunction with and as a part of your Application solely for use with a Microsoft Operating System Product...'' This makes it illegal to run many programs built with Visual C++ on Windows-compatible competing operating systems.

By allowing these exclusionary behaviors, the PFJ is contributing to the Applications Barrier to Entry faced by competing operating systems.

Which practices towards large users should be prohibited?

The PFJ places restrictions on how Microsoft licenses its products to OEMs, but not on how it licenses products to large users such as corporations, universities, or state and local governments, collectively referred to as 'enterprises'. Yet enterprise license agreements often resemble the per-processor licenses which were prohibited by the 1994 consent decree in the earlier US v. Microsoft antitrust case, in that a fee is charged for each desktop or portable computer which could run a Microsoft operating system, regardless of whether any Microsoft software is actually installed on the affected computer. These agreements are anticompetitive because they remove any financial incentive for individuals or departments to run non-Microsoft software.

Which practices towards end users should be prohibited?

Microsoft has used both restrictive licenses and intentional incompatibilities to discourage users from running Windows

applications on Windows-compatible competing operating systems. Two examples are given below.

1. Microsoft uses license terms which prohibit the use of Windows-compatible competing operating systems MSNBC (a subsidiary of Microsoft) offers software called NewsAlert. Its EULA states ''MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of the operating system for which the SOFTWARE PRODUCT was designed [e.g., Microsoft Windows(r) 95; Microsoft Windows NT(r), Microsoft Windows 3.x, Macintosh, etc.] .... ''

Only the Windows version appears to be available for download. Users who run competing operating systems (such as Linux) which can run some Windows programs might wish to run the Windows version of NewsAlert, but the EULA prohibits this. MSNBC has a valid interest in prohibiting use of pirated copies of operating systems, but much narrower language could achieve the same protective effect with less anticompetitive impact. For instance, ''MSNBC Interactive grants you the fight to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of Microsoft Windows or compatible operating system.''

2. Microsoft created intentional incompatibilities in Windows 3.1 to discourage the use of non-Microsoft operating systems

An episode from the 1996 Caldera v. Microsoft antitrust lawsuit illustrates how Microsoft has used technical means anticompetitively.

Microsoft's original operating system was called MS-DOS. Programs used the DOS API to call up the services of the operating system. Digital Research offered a competing operating system, DR–DOS, that also implemented the DOS API, and could run programs written for MS–DOS. Windows 3.1 and earlier were not operating systems per se, but rather middleware that used the DOS API to interoperate with the operating system.

Microsoft was concerned with the competitive threat posed by DR-DOS, and added code to beta copies of Windows 3. I so it would display spurious and misleading error messages when run on DR-DOS. Digital Research's successor company, Caldera, brought a private antitrust suit against Microsoft in 1996. (See the original complaint, and Caldera's consolidated response to Microsoft's motions for partial summary judgment.) The judge in the case ruled that ''Caldera has presented sufficient evidence that the incompatibilities alleged were part of an anticompetitive scheme by Microsoft.''

That case was settled out of court in 1999, and no court has fully explored the alleged conduct. The concern here is that, as competing operating systems emerge which are able to run Windows applications, Microsoft might try to sabotage Windows applications, middleware, and development tools so that they cannot run on non-Microsoft operating systems, just as they did earlier with Windows 3.1.

The PFJ as currently written does nothing to prohibit these kinds of restrictive licenses and intentional incompatibilities, and thus encourages Microsoft to use these techniques to enhance the Applications Barrier to Entry, and harming those consumers who use non-Microsoft operating systems and wish to use Microsoft applications software.

Is the Proposed Final Judgment in the public interest?

The problems identified above with the Proposed Final Judgment can be summarized as follows:

* The PFJ doesn't take into account Windows-compatible competing operating systems

o Microsoft increases the Applications Barrier to Entry by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

* The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

?? The PFJ supposedly makes Microsoft publish its secret APIs, but it defines ''API'' so narrowly that many important APIs are not covered.

?? The PFJ supposedly allows users to replace Microsoft Middleware with competing middleware, but it defines ''Microsoft Middleware'' so narrowly that the next version of Windows might not be covered at all.

?? The PFJ allows users to replace Microsoft Java with a competitor's product—but Microsoft is replacing Java with .NET. The PFJ should therefore allow users to replace Microsoft. NET with competing middleware.

?? The PFJ supposedly applies to ''Windows'', but it defines that term so narrowly that it doesn't cover Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box—operating systems that all use the Win32 API and are advertised as being ''Windows Powered''.

?? The PFJ fails to require advance notice of technical requirements, allowing Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

?? The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware—but only after the deadline for the ISVs to demonstrate that their middleware is compatible.

?? The PFJ requires Microsoft to release API documentation—but prohibits competitors from using this documentation to help make their operating systems compatible with Windows.

?? The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents.

?? The PFJ does not require Microsoft to list which software patents protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users.

* The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

?? Microsoft currently uses restrictive licensing terms to keep Open Source or Free Software apps from running on Windows.

?? Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

?? Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system—even for computers running Linux. (Similar licenses to OEMs were once banned by the 1994 consent decree.)

* The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

?? Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems.

* The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

?? The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

?? The PFJ allows Microsoft to discriminate against small OEMs—including regional 'white box'' OEMs which are historically the most willing to install competing operating systems—who ship competing software.

?? The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft Office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

* The PFJ as currently written appears to lack an effective enforcement mechanism. Considering these problems, one must conclude that the Proposed Final Judgment as written allows and encourages significant anticompetitive practices to continue, and would delay the emergence of competing Windows-compatible operating systems.

Therefore, the Proposed Final Judgment is not in the public interest, and should not be adopted without addressing these issues.

Strengthening the PFJ

The above discussion shows that the PFJ does not satisfy the Court of Appeals'' mandate. Some of the plaintiff States have proposed an alternate settlement which fixes many of the problems identified above. The States'' proposal is quite different from the PFJ as a whole, but it contains many elements which are similar to elements of the PFJ, with small yet crucial changes.

In the sections below, I suggest amendments to the PFJ that attempt to resolve some of the demonstrated problems (time pressure has prevented anything like a complete list of amendments). When discussing amendments, PFJ text is shown indented; removed text in shown in [bracketed strikeout], and new text in bold italics.

Correcting the PFJ's definitions

Time constraints do not permit a complete list of needed changes. As an example, Definition U should be amended to read U. ''Windows Operating System Product'' means [the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and

successors to the foregoing, including the Personal Computer versions of the products currently code named ''Longhorn'' and ''Blackcomb'' and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.] any software or firmware code distributed commercially by Microsoft that is capable of executing any nontrivial subset of the Win32 APIs, including without exclusion Windows 2000 Professional, Windows XP Home, Windows XP Professional, Windows XP Tablet PC Edition, Windows CE, PocketPC 2002, and successors to the foregoing, including the products currently code named ''Longhorn'' and ''Blackcomb'' and their successors, including upgrades, bug fixes, service packs, etc.

Release of Information

Because any new competitor in the Intel-compatible operating system market must be able to run Windows applications to have a chance in the market, and because Microsoft has traditionally used undocumented Windows APIs as part of the Applications Barrier to Entry, the Final Judgment should provide explicitly for a clear definition of what APIs a competing operating system must provide to run Windows applications.

The best way to do this is by submitting the API definitions to a standards body. This was done in 1994 for the Windows 3.1 APIs (see Sun's 1994 press release about WABI 2.0 and the Public Windows Initiative).

The result is Standard ECMA–234: Application Programming Interface for Windows (APIW), which provides standard definitions for an essential subset (four hundred and forty-four out of the roughly one thousand) of the Windows 3.1 APIs; it was rendered mostly obsolete by the switch to Windows 95. The Final Judgment should provide for the creation of something like ECMA–234 for the various modem versions of Windows.

Because Microsoft currently claims that it has intellectual property rights that protect the Windows APIs, but has never spelled out exactly which patents cover which APIs, the Final Judgment should force this to be spelled out.

To achieve the above goals, the PFJ should be modified as follows:

First, Sections III.D and III.E should be amended to remove the restriction on the use of the disclosed information:

... Microsoft shall disclose ... [for the sole purpose of interoperating with a Windows Operating System Product,] for the purpose of interoperating with a Windows Operating System Product or interoperating with application software written for Windows,

Second, a new section IV.E should be created as follows:

E. Establishment of a Windows API Standards Expert Group

1. Within 60 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a six person Windows API Standards Expert Group (''WASEG'') to manage the creation, publication, and maintenance of a Windows APIs Standards Definition (''WASD'') and associated Windows APIs Standard Compliance Test Suite (''WASCTS''), and to guide the WASD through the process of being adopted by a standards body such as ECMA or the IEEE.

The WASD shall be a document, suitable for approval by a standards body such as ECMA or IEEE, which accurately defines the inputs, outputs, and behavior of each Windows API, and enumerates any Essential Claims.

The WASCTS shall be software source code which, when compiled and run, automatically tests an operating system for compliance with the WASD, and produces a list of APIs which fail to comply with the WASD. The test suite should run unattended; that is, it should be capable of running without human interaction or supervision.

2. Three of the WASEG members shall be experts in software design and programming, and three of the WASEG members shall be experts in intellectual property law. No WASEG member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. No WASEG member shall have entered into any non-disclosure agreement that is still in force with Microsoft or any competitor to Microsoft, nor shall she or he enter into such an agreement during her or his term on the WASEG. Without limitation to the foregoing, no WASEG member shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall he or she be so employed during his or her term on the WASEG.

3. Within seven days of entry of this Final Judgment, the Plaintiffs as a group shall select two software experts and two intellectual property law experts to be members of the WASEG, and Microsoft shall select one software expert and one intellectual property law expert to be members of the WASEG; the Plaintiffs shall then apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to this section.

4. Each WASEG member shall serve for an initial term of 30 months. At the end of a WASEG member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the WASEG member in the same manner as provided for above.

5. If the United States or a majority of the Plaintiffs determine that a member of the WASEG has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the WASEG resigns, or for any other reason ceases to serve in his or her capacity as a member of the WASEG, the person or persons that originally selected the WASEG member shall select a replacement member in the same manner as provided for above.

6. Promptly after appointment of the WASEG by the Court, the United States shall enter into a Windows API Expert Group services agreement (''WASEG Services Agreement'') with each WASEG member that grants the rights, powers and authorities necessary to permit the WASEG to perform its duties under this Final Judgment. Microsoft shall indemnify each WASEG member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the WASEG's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the WASEG member. The WASEG Services Agreements shall include the following:

a. The WASEG members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The WASEG Services Agreement shall provide that each member of the WASEG shall comply with the limitations provided for in section IV.E.2. above.

7. Microsoft shall provide the WASEG with funds needed to procure office space, telephone, other office support facilities, consultants, or contractors required by the WASEG.

8. The WASEG shall not have direct access to any part of Microsoft's computer software source code that is not normally available to all ISVs. The WASEG shall not enter into any non-disclosure agreements with Microsoft or third parties. No implementations of any Windows APIs shall be written or published by the WASEG.

9. The WASEG shall have the following powers and duties:

a. The WASEG may require Microsoft to provide comprehensive answers to questions about Microsoft intellectual property claims.

b. The WASEG may require Microsoft to provide comprehensive answers to questions about the inputs, outputs, and functionality of any Windows

API; in particular, the WASEG may compel Microsoft to provide complete documentation for Windows APIs, including hitherto undocumented or poorly-documented Windows APIs.

c. The WASEG may engage, at the cost and expense of Microsoft, the services of outside consultants and contractors as required to fulfill the duties of the WASEG.

d. The WASEG shall establish a publicly available web she not owned or otherwise controlled by Microsoft, and will publish status reports and other information there at least as often as once per month. Documentation on the web site shall be made available subject to the terms of the GNU Free Documentation License; test suite source code made available on the web site shall be made available subject to the terms of the GNU General Public License.

e. The WASEG shall compile to the best of their ability a complete list of Windows APIs, including for each API the DLL name, entry point name, entry point ordinal number, return value type, and parameter types, as well as which versions of Windows it is supported by and an estimate of what percentage of Popular Windows Applications use it. The WASEG shall publish this list on the WASEG web site subject to the GNU Free Documentation License, according to the following schedule: Within 90 days after the WASEG is convened, the WASEG shall

publish this information for at least five hundred Windows APIs. On the 1st of each month thereafter, the WASEG shall publish this information for another five hundred Windows APIs. This shall continue until a complete list of Windows APIs is available on the web site. The WASEG shall update the list periodically to add previously unlisted Windows APIs. The WASEG shall periodically check the list for completeness by installing and running a representative sample of Popular Windows Applications and Microsoft Middleware while using tools such as Apius from Sarion Systems Research to watch the Windows APIs actually invoked by the product or its installer. The WASEG shall also set up a way for third parties to report Windows APIs which should be listed, and shall update its list of Windows APIs accordingly as appropriate.

f. The WASEG shall compile a complete list of Essential Claims, and an evaluation of which Windows APIs each Essential Claim covers. The WASEG shall publish this information on the WASEG web site subject to the GNU Free Documentation License, according to the following schedule:

Within 90 days after the WASEG publishes a portion of the list of Windows APIs on its web site, Microsoft shall deliver to the WASEG a list of the Essential Claims that cover the published Windows APIs. Within 90 days after the WASEG receives the list of Essential Claims, the WASEG shall publish its evaluation of which APIs those Essential Claims cover. This shall continue until such evaluations for all Essential Claims have been published on the WASEG web site.

g. The WASEG shall compile documentation for the list of Windows APIs defined above in section IV.E.9.e, including a complete description of the meanings of the return values and parameters, and the effects of the API. The documentation should be composed in a style similar to that used for the Single Unix Specification documentation (http://www.UNIX-systems.org/go/unix). Within 180 days after the WASEG is convened, and on the 1st of every month thereafter until complete, the WASEG will make available the currently completed portion of this documentation via its web site.

h. When the three documents described above—the list of Windows APIs, the list of Essential Claims and which Windows APIs they cover, and the documentation for the listed Windows APIs—is complete, the WASEG shall undertake to submit them to a standards body such as ECMA or the IEEE as a Draft WASD Document, and to make such enhancements and revisions as needed to gain the acceptance of that document as a standard.

i. The WASEG shall create a WASCTS, and publish it on the WASEG web site subject to the GNU General Public License, according to the following schedule: Within 180 days after the WASEG is convened, the WASEG shall publish test cases for at least one hundred Windows APIs. On the 1st of each month thereafter, the WASEG shall publish test cases for at least another one hundred Windows APIs. This shall continue until a complete WASCTS is available on the web site.

j. In the event that a planned update to Windows or any other Microsoft product is expected to result in the creation of new Windows APIs or Essential Claims, or WASEG's list of Windows APIs is updated, the WASEG shall create addenda to the WASD and WASCTS covering the new Windows APIs or Essential Claims, make them available via its web site, and undertake to submit them to the same standards body as above as an addendum to the standard.

Third, in section VI, Definition A should be amended to read

A. ''Application Programming Interfaces (APIs)'' means the interfaces, including any associated callback interfaces, that [Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.] Microsoft Middleware or Popular Windows Applications running or being installed on a Windows Operating System Product use to call upon that Windows Operating System Product or Microsoft Middleware in order to obtain any services from that Windows Operating System Product or Microsoft Middleware.

and two new definitions should be added:

V. ''Popular Windows Applications'' means the top 10 selling applications as reported by NPD Intelect Market Tracking in each of the categories

Business, Education, Finance, Games, Personal Productivity, and Reference, plus all Microsoft Middleware Products.

W. ''Essential Claims'' shall mean all claims in any patent or patent application, in any jurisdiction in the world, that Microsoft owns, or under which Microsoft has the right to grant licenses without obligation of payment or other consideration to an unrelated third party, that would necessarily be infringed by implementation of the Windows APIs Standard Definition by a competing Operating System. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the required portion of the Windows APIs Standard Definition.

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

1. any claims other than as set forth above even if contained in the same patent as Essential Claims; and

2. claims which would be infringed only by portions of an implementation that are not required by the Windows APIs Standard Definition, or enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Windows APIs Standard Definition but are not themselves expressly set forth in the Windows APIs Standard Definition (e.g., compiler technology, object-oriented technology, etc.) or the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Windows APIs Standard Definition.

Prohibition of More Practices Toward OEMs

? III. A. 2. of the Proposed Final Judgment should be amended to read

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System, or (c) includes a non-Microsoft Operating System but no Windows Operating System Product; or...

Summary

This document demonstrates that there are so many problems with the PFJ that it is not in the public interest. It also illustrates how one might try to fix some of these problems.

Dan Kegel
28 January 2002
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
28 January 2002

Ms. Hesse,

As a software engineer with 20 years'' experience developing software for Unix, Windows, Macintosh, and Linux, I'd like to comment on the Proposed Final Judgment in United States v. Microsoft.

Please find my comments below. A copy of my comments is also posted on the Web at http://kegel.com/remedy/remedy2.html.

Sincerely,
Dan Kegel
901 S. Sycamore
Los Angeles, CA 90036

On the Proposed Final Judgment in United States
v. Microsoft
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Introduction

As a software engineer with 20 years'' experience developing software for Unix, Windows, Macintosh, and

Linux, I'd like to comment on the Proposed Final Judgment in United States v. Microsoft.

According to the Court of Appeals ruling, ''a remedies decree in an antitrust case must

seek to unfetter a market from anticompetitive conduct'', to terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future'' (section V.D., p. 99).

Attorney General John Ashcroft seems to agree; he called the proposed settlement ''strong and historic'', said that it would end ''Microsoft's unlawful conduct,'' and said ''With the proposed settlement being announced today, the Department of Justice has fully and completely addressed the anti-competitive conduct outlined by the Court of Appeals against Microsoft.''

Yet the Proposed Final Judgment allows many exclusionary practices to continue, and does not take any direct measures to reduce the Applications Barrier to Entry faced by new entrants to the market.

The Court of Appeals affirmed that Microsoft has a monopoly on Intel-compatible PC operating systems, and that the company's market position is protected by a substantial barrier to entry (p. 15). Furthermore, the Court of Appeals affirmed that Microsoft is liable under Sherman Act * 2 for illegally maintaining its monopoly by imposing licensing restrictions on OEMs, IAPs (Internet Access Providers), ISVs (Independent Software Vendors), and Apple Computer, by requiring ISVs to switch to Microsoft's JVM (Java Virtual Machine), by deceiving Java developers, and by forcing Intel to drop support for cross-platform Java tools.

The fruits of Microsoft's statutory violation include a strengthened Applications Barrier to Entry and weakened competition in the Intel-compatible operating system market; thus the Final Judgment must find a direct way of reducing the Applications Barrier to Entry, and of increasing such competition.

In the following sections I outline the basic intent of the proposed final judgment, point out areas where the intent and the implementation appear to fall short, and propose amendments to the Proposed Final Judgment (or PFJ) to address these concerns.

Please note that this document is still evolving. Feedback is welcome; to comment on this document, please join the mailing list at groups.yahoo.com/group/ms-remedy, or email me directly at dank-ms@kegel.com.

Understanding the Proposed Final Judgment

In crafting the Final Judgment, the judge will face the following questions:

* ù How should terms like ''API'', ''Middleware'', and ''Windows OS'' be defined?

* ù How should the Final Judgment erode the Applications Barrier to Entry?

* ù How should the Final Judgment be enforced?

* ù What information needs to be released to ISVs to encourage competition, and under what terms?

* ù Which practices towards OEMs should be prohibited?

* Which practices towards ISVs should be prohibited?

* Which practices towards large users should be prohibited?

* ù Which practices towards end users should be prohibited?

Here is a very rough summary which paraphrases provisions III.A through III.J and VI. of the Proposed Final Judgment to give some idea of how the PFJ proposes to answer those questions:

PFJ Section III: Prohibited Conduct

A. Microsoft will not retaliate against OEMs who support competitors to Windows, Internet Explorer (IE), Microsoft Java (MJ), Windows Media Player (WMP), Windows Messenger (WM), or Outlook Express (OE).

B. Microsoft will publish the wholesale prices it charges the top 20 OEMs (Original Equipment Manufacturers) for Windows.

C. Microsoft will allow OEMs to customize the Windows menus, desktop, and boot sequence, and will allow the use of non-Microsoft bootloaders.

D. Microsoft will publish on MSDN (the Microsoft Developer Network) the APIs used by IE, MJ, WMP, WM, and OE, so that competing web browsers, media players, and email clients can plug in properly to Windows.

E. Microsoft will license on reasonable terms the network protocols needed for non-Microsoft applications or operating systems to connect to Windows servers.

F. Microsoft will not force business partners to refrain from supporting competitors to Windows, IE, MJ, WMP, WM, or OE.

G. (Roughly same as F above.)

H. Microsoft will let users and OEMs remove icons for IE, MJ, WMP, WM, and OE, and let them designate competing products to be used instead.

I. Microsoft will license on reasonable terms any intellectual property rights needed for other companies to take advantage of the terms of this settlement.

J. This agreement lets Microsoft keep secret anything having to do with security or copy protection.

PFJ Section VI: Definitions

A. ''API'' (Application Programming Interface) is defined as only the interfaces between Microsoft Middleware and Microsoft Windows, excluding Windows APIs used by other application programs.

K. ''Microsoft Middleware Product'' is defined as Internet Explorer (IE), Microsoft Java (MJ), Windows Media Player (WMP), Windows Messenger (WM), and Outlook Express (OE).

U. ''Windows Operating System Product'' is defined as Windows 2000 Professional, Windows XP Home, and Windows XP Professional.

The agreement can be summed up in one breath as follows: Microsoft agrees to compete somewhat less vigorously, and to let competitors interoperate with Windows in exchange for royalty payments.

Considering all of the above, one should read the detailed terms of the Proposed Final Judgment, and ask one final question:

* ù Is the Proposed Final Judgment in the public interest?

In the sections below, I'll look in more detail at how the PFJ deals with the above questions. How should terms like ''API'', ''Middleware, and ''Windows OS'' be defined?

The definitions of various terms in Part VI of the PFJ differ from the definitions in the Findings of Fact and in common usage, apparently to Microsoft's benefit. Here are some examples:

Definition A: ''API''

The Findings of Fact (* 2) define ''API'' to mean the interfaces between application programs and the operating system. However, the PFJ's Definition A defines it to mean only the interfaces between Microsoft Middleware and Microsoft Windows, excluding Windows APIs used by otherapplication programs. For instance, the PFJ's definition of API might omit important APIs such as the Microsoft Installer APIs which are used by installer programs to install software on Windows.

Definition J: ''Microsoft Middleware''

The Findings of Fact (¶28) define ''middleware'' to mean application software that itself presents a set of APIs which allow users to write new applications without reference to the underlying operating system. Definition J defines it in a much more restrictive way, and allows Microsoft to exclude any software from being covered by the definition in two ways:

1. By changing product version numbers. For example, if the next version of Internet Explorer were named ''7.0.0'' instead of ''7'' or ''7.0'', it would not be deemed Microsoft Middleware by the PFJ.

2. By changing how Microsoft distributes Windows or its middleware. For example, if Microsoft introduced a version of Windows which was only available via the Windows Update service, then nothing in that version of Windows would be considered Microsoft Middleware, regardless of whether Microsoft added it initially or in a later update. This is analogous to the loophole in the 1995 consent decree that allowed Microsoft to bundle its browser by integrating it into the operating system.

Definition K: ''Microsoft Middleware Product''

Definition K defines ''Microsoft Middleware Product'' to mean essentially Internet Explorer (IE), Microsoft Java (MJ), Windows Media Player (WMP), Windows Messenger (WM), and Outlook Express (OE).

The inclusion of Microsoft Java and not Microsoft. NET is questionable; Microsoft has essentially designated Microsoft. NET and C# as the successors to Java, so on that basis one would expect Microsoft.NET to be included in the definition.

The inclusion of Outlook Express and not Outlook is questionable, as Outlook (different and more powerful than Outlook Express) is a more important product in business, and fits the definition of middleware better than Outlook Express. The exclusion of Microsoft Office is questionable, as many components of Microsoft Office fit the Finding of Fact's definition of middleware. For instance, there is an active market in software written to run on top of Microsoft Outlook and Microsoft Word, and many applications are developed for Microsoft Access by people who have no knowledge of Windows APIs.

Definition U: ''Windows Operating System Product''

Microsoft's monopoly is on Intel-compatible operating systems. Yet the PFJ in definition U defines a ''Windows Operating System Product'' to mean only Windows 2000 Professional, Windows XP Home,

Windows XP Professional, and their successors. This purposely excludes the Intel-compatible operating systems Windows XP Tablet PC Edition and Windows CE; many applications written to the Win32 APIs can run unchanged on Windows 2000, Windows XP Tablet PC Edition, and Windows CE, and with minor recompilation, can also be run on Pocket PC. Microsoft even proclaims at www.microsoft.com/windowsxp/tabletpc/tabletpcqanda.asp:

''The Tablet PC is the next-generation mobile business PC, and it will be available from leading computer makers in the second half of 2002. The Tablet PC runs the Microsoft Windows XP Tablet PC Edition and features the capabilities of current business laptops, including attached or detachable keyboards and the ability to run Windows-based applications.'' and

Pocket PC: Powered by Windows

Microsoft is clearly pushing Windows XP Tablet PC Edition and Pocket PC in places (e.g. portable computers used by businessmen) currently served by Windows XP Home Edition, and thus appears to be trying to evade the Final Judgment's provisions. This is but one example of how Microsoft can evade the provisions of the Final Judgment by shifting its efforts away from the Operating Systems listed in Definition U and towards Windows XP Tablet Edition, Windows CE, Pocket PC, X-Box, or some other Microsoft Operating System that can run Windows applications.

How should the Final Judgment erode the Applications Barrier to Entry?

The PFJ tries to erode the Applications Barrier to Entry in two ways:

1. By forbidding retaliation against OEMs, ISVs, and IHVs who support or develop alternatives to Windows.

2. By taking various measures to ensure that Windows allows the use of non-Microsoft middleware.

A third option not provided by the PFJ would be to make sure that Microsoft raises no artificial barriers against non-Microsoft operating systems which implement the APIs needed to run application programs written for Windows. The Findings of Fact (¶ 52) considered the possibility that competing operating systems could implement the Windows APIs and thereby directly run software written for Windows as a way of circumventing the Applications Barrier to Entry. This is in fact the route being taken by the Linux operating system, which includes middleware (named WINE) that can run many Windows programs.

By not providing some aid for ISVs engaged in making Windows-compatible operating systems, the PFJ is missing a key opportunity to encourage competition in the Intel-compatible operating system market. Worse yet, the PFJ itself, in sections III.D. and III.E., restricts information released by those sections to be used ''for the sole purpose of interoperating with a Windows Operating System Product''. This prohibits ISVs from using the information for the purpose of writing operating systems that interoperate with Windows programs.

How should the Final Judgment be enforced?

The PFJ as currently written appears to lack an effective enforcement mechanism. It does provide for the creation of a Technical Committee with investigative powers, but appears to leave all actual enforcement to the legal system.

What information needs to be released to ISVs to encourage competition, and under what terms?

The PFJ provides for increased disclosure of technical information to ISVs, but these provisions are flawed in several ways:

1. The PFJ fails to require advance notice of technical requirements Section III.H.3. of the PFJ requires vendors of competing middleware to meet ''reasonable technical requirements'' seven months before new releases of Windows, yet it does not require Microsoft to disclose those requirements in advance. This allows Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

2. API documentation is released too late to help ISVs Section III.D. of the PFJ requires Microsoft to release via MSDN or similar means the documentation for the APIs used by Microsoft Middleware Products to interoperate with Windows; release would be required at the time of the final beta test of the covered middleware, and whenever a new version of Windows is sent to 150,000 beta testers. But this information would almost certainly not be released in time for competing middleware vendors to adapt their products to meet the requirements of section III.H.3, which states that competing middleware can be locked out if it fails to meet unspecified technical requirements seven months before the final beta test of a new version of Windows.

3. Many important APIs would remain undocumented The PFJ's overly narrow definitions of ''Microsoft Middleware Product'' and ''API'' means that Section III.D.'s requirement to release information about Windows interfaces would not cover many important interfaces.

4. Unreasonable Restrictions are Placed on the Use of the Released Documentation ISVs writing competing operating systems as outlined in Findings of Fact (¶ 52) sometimes have difficulty understanding various undocumented Windows APIs. The information released under section III.D. of the PFJ would aid those ISVs—except that the PFJ disallows this use of the information. Worse yet, to avoid running afoul of the PFJ, ISVs might need to divide up their engineers into two groups: those who refer to MSDN and work on Windows-only applications; and those who cannot refer to MSDN because they work on applications which also run on non-Microsoft operating systems. This would constitute retaliation against ISVs who support competing operating systems.

5. File Formats Remain Undocumented

No part of the PFJ obligates Microsoft to release any information about file formats, even though undocumented Microsoft file formats form part of the Applications Barrier to Entry (see ''Findings of Fact'' * 20 and * 39).

6. Patents covering the Windows APIs remain undisclosed Section III.I of the PFJ requires Microsoft to offer to license certain intellectual property rights, but it does nothing to require Microsoft to clearly announce which of its many software patents protect the Windows APIs (cf. current practice at the World Wide Web Consortium, http://www.w3.org/TR/patent-practice). This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users, as illustrated by this report from Codeweavers, Inc.:

When selecting a method of porting a major application to Linux, one prospect of mine was comparing Wine [a competing implementation of some of the Windows APIs] and a toolkit called 'MainWin'. MainWin is made by Mainsoft, and Mainsoft licenses its software from Microsoft. However, this customer elected to go with the Mainsoft option instead. I was told that one of the key decision making factors was that Mainsoft representatives had stated that Microsoft had certain critical patents that Wine was violating. My customer could not risk crossing Microsoft, and declined to use Wine. I didn't even have a chance to determine which patents were supposedly violated; nor to disprove the validity of this claim.

The PFJ, by allowing this unclear legal situation to continue, is inhibiting the market acceptance of competing operating systems.

Which practices towards OEMs should be prohibited?

The PFJ prohibits certain behaviors by Microsoft towards OEMs, but curiously allows the following exclusionary practices:

Section III.A.2. allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Section III.B. requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box'' OEMs, if they offer competing products.

Section III.B. also allows Microsoft to offer unspecified Market Development Allowances— in effect, discounts—to OEMs. For instance, Microsoft could offer discounts on Windows to OEMs based on the number of copies of Microsoft Office or Pocket PC systems sold by that OEM. In effect, this allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas, such as office software or ARM-compatible operating systems.

By allowing these practices, the PFJ is encouraging Microsoft to extend its monopoly in Intel-compatible operating systems, and to leverage it into new areas.

Which practices towards ISVs should be prohibited?

Sections III.F. and III.G. of the PFJ prohibit certain exclusionary licensing practices by Microsoft towards ISVs.

However, Microsoft uses other exclusionary licensing practices, none of which are mentioned in the PFJ.

Several of Microsoft's products'' licenses prohibit the products'' use with popular non-Microsoft middleware and operating systems. Two examples are given below.

1. Microsoft discriminates against ISVs who ship Open Source or Free Software applications

The Microsoft Windows Media Encoder 7.1 SDK EULA states

... you shall not distribute the REDISTRIBUTABLE COMPONENT in conjunction with any Publicly Available Software. ''Publicly Available Software'' means each of (i) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models ... Publicly Available Software includes, without limitation, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); The Artistic License (e.g., PERL); the Mozilla Public License; the Netscape Public License; the Sun Community Source License (SCSL); ...

Many Windows APIs, including Media Encoder, are shipped by Microsoft as add-on SDKs with associated redistributable components. Applications that wish to use them must include the add-ons, even though they might later become a standard part of Windows. Microsoft often provides those SDKs under End User License Agreements (EULAs) prohibiting their use with Open Source or Free Software applications. This harms ISVs who choose to distribute their applications under Open Source or Free Software licenses; they must hope that the enduser has a sufficiently up-to-date version of the addon API installed, which is often not the case.

Applications potentially harmed by this kind of EULA include the competing middleware product Netscape 6 and the competing office suite StarOffice; these EULAs thus can cause support problems for, and discourage the use of, competing middleware and office suites. Additionally, since Open Source or Free Software applications tend to also run on non-Microsoft operating systems, any resulting loss of market share by Open Source or Free Software applications indirectly harms competing operating systems.

2. Microsoft discriminates against ISVs who target Windows-compatible competing Operating Systems

The Microsoft Platform SDK, together with Microsoft Visual C++, is the primary toolkit used by ISVs to create Windows-compatible applications. The Microsoft Platform SDK EULA says:

''Distribution Terms. You may reproduce and distribute ... the Redistributable Components... provided that (a) you distribute the Redistributable Components only in conjunction with and as a part of your Application solely for use with a Microsoft Operating System Product...''

This makes it illegal to run many programs built with Visual C++ on Windows-compatible competing operating systems.

By allowing these exclusionary behaviors, the PFJ is contributing to the Applications Barrier to Entry faced by competing operating systems.

Which practices towards large users should be prohibited?

The PFJ places restrictions on how Microsoft licenses its products to OEMs, but not on how it licenses products to large users such as corporations, universities, or state and local governments, collectively referred to as ''enterprises''. Yet enterprise license agreements often resemble the per-processor licenses which were prohibited by the 1994 consent decree in the earlier US v. Microsoft antitrust case, in that a fee is charged for each desktop or portable computer which could run a Microsoft operating system, regardless of whether any Microsoft software is actually installed on the affected computer. These agreements are anticompetitive because they remove any financial incentive for individuals or departments to run non-Microsoft software.

Which practices towards end users should be prohibited?

Microsoft has used both restrictive licenses and intentional incompatibilities to discourage users from running

Windows applications on Windows-compatible competing operating systems. Two examples are given below.

1. Microsoft uses license terms which prohibit the use of Windows-compatible competing operating systems

MSNBC (a subsidiary of Microsoft) offers software called NewsAlert. Its EULA states ''MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of the operating system for which the SOFTWARE PRODUCT was designed [e.g., Microsoft Windows(r) 95; Microsoft Windows NT(r), Microsoft Windows 3.x, Macintosh, etc.] .... ''

Only the Windows version appears to be available for download. Users who run competing operating systems (such as Linux) which can run some Windows programs might wish to run the Windows version of NewsAlert, but the EULA prohibits this.

MSNBC has a valid interest in prohibiting use of pirated copies of operating systems, but much narrower language could achieve the same protective effect with less anticompetitive impact. For instance, ''MSNBC Interactive grants you the right to install and use copies of the SOFTWARE PRODUCT on your computers running validly licensed copies of Microsoft Windows or compatible operating system.''

2. Microsoft created intentional incompatibilities in Windows 3.1 to discourage the use of non-Microsoft operating systems

An episode from the 1996 Caldera v. Microsoft antitrust lawsuit illustrates how Microsoft has used technical means anticompetitively.

Microsoft's original operating system was called MS-DOS. Programs used the DOS API to call up the services of the operating system. Digital Research offered a competing operating system, DR-DOS, that also implemented the DOS API, and could run programs written for MS-DOS. Windows 3.1 and earlier were not operating systems per se, but rather middleware that used the DOS API to interoperate with the operating system. Microsoft was concerned with the competitive threat posed by DR-DOS, and added code to beta copies of Windows 3.1 so it would display spurious and misleading error messages when run on DR-DOS.

Digital Research's successor company, Caldera, brought a private antitrust suit against Microsoft in 1996. (See the original complaint, and Caldera's consolidated response to Microsoft's motions for partial summary— judgment.) The judge in the case ruled that

''Caldera has presented sufficient evidence that the incompatibilities alleged were part of an anticompetitive scheme by Microsoft.''

That case was settled out of court in 1999, and no court has fully explored the alleged conduct.

The concern here is that, as competing operating systems emerge which are able to run Windows applications, Microsoft might try to sabotage Windows applications, middleware, and development tools so that they cannot run on non-Microsoft operating systems, just as they did earlier with Windows 3.1.

The PFJ as currently written does nothing to prohibit these kinds of restrictive licenses and intentional incompatibilities, and thus encourages Microsoft to use these techniques to enhance the Applications Barrier to Entry, and harming those consumers who use non-Microsoft operating systems and wish to use Microsoft applications software.

Is the Proposed Final Judgment in the public interest?

The problems identified above with the Proposed Final Judgment can be summarized as follows:

* ù The PFJ doesn't take into account Windows-compatible competing operating systems

?? Microsoft increases the Applications Barrier to Entry— by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

ù The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

?? The PFJ supposedly makes Microsoft publish its secret APIs, but it defines ''API'' so narrowly that many important APIs are not covered.

?? The PFJ supposedly allows users to replace Microsoft Middleware with competing middleware, but it defines ''Microsoft Middleware'' so narrowly that the next version of Windows might not be covered at all.

?? The PFJ allows users to replace Microsoft Java with a competitor's product— but Microsoft is replacing Java with .NET. The PFJ should therefore allow users to replace Microsoft. NET with competing middleware.

?? The PFJ supposedly applies to ''Windows'', but it defines that term so narrowly that it doesn't cover Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box— operating systems that all use the Win32 API and are advertised as being ''Windows Powered''.

?? The PFJ fails to require advance notice of technical requirements, allowing Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

?? The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware—but only after the deadline for the ISVs to demonstrate that their middleware is compatible.

?? The PFJ requires Microsoft to release API documentation—but prohibits competitors from using this documentation to help make their operating systems compatible with Windows.

?? The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents.

?? The PFJ does not require Microsoft to list which software patents protect the Windows APIs.

This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users.

* The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

?? Microsoft currently uses restrictive licensing terms to keep Open Source or Free Software apps from running on Windows.

?? Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

?? Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system— even for computers running Linux. (Similar licenses to OEMs were once banned by the 1994 consent decree.)

* The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

?? Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems,

* ù The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

?? The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

?? The PFJ allows Microsoft to discriminate against small OEMs—including regional 'white box'' OEMs which are historically the most willing to install competing operating systems— who ship competing software.

?? The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft Office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

* . The PFJ as currently written appears to lack an effective enforcement mechanism. Considering these problems, one must conclude that the Proposed Final Judgment as written allows and encourages significant anticompetitive practices to continue, and would delay the emergence of competing Windows-compatible operating systems. Therefore, the Proposed Final Judgment is not in the public interest, and should not be adopted without addressing these issues.

Strengthening the PFJ

The above discussion shows that the PFJ does not satisfy the Court of Appeals'' mandate. Some of the plaintiff States have proposed an alternate settlement which fixes many of the problems identified above. The States'' proposal is quite different from the PFJ as a whole, but it contains many elements which are similar to elements of the PFJ, with small yet crucial changes.

In the sections below, I suggest amendments to the PFJ that attempt to resolve some of the demonstrated problems (time pressure has prevented anything like a complete list of amendments). When discussing amendments, PFJ text is shown indented; removed text in [], and new text in bold italics.

Correcting the PFJ's definitions

Time constraints do not permit a complete list of needed changes. As an example, Definition U should be amended to read

U. ''Windows Operating System Product'' means [] any software or firmware code distributed commercially by Microsoft that is capable of executing any nontrivial subset of the Win32 APIs, including without exclusion Windows 2000 Professional, Windows XP Home, Windows XP Professional, Windows XP Tablet PC Edition, Windows CE, PocketPC 2002, and successors to the foregoing, including the products currently code named ''Longhorn'' and ''Blackcomb'' and their successors, including upgrades, bug fixes, service packs, etc.

Release of Information

Because any new competitor in the Intel-compatible operating system market must be able to run Windows applications to have a chance in the market, and because Microsoft has traditionally used undocumented Windows APIs as part of the Applications Barrier to Entry, the Final Judgment should provide explicitly for a clear definition of what APIs a competing operating system must provide to run Windows applications. The best way to do this is by submitting the API definitions to a standards body. This was done in 1994 for the Windows 3.1 APIs (see Sun's 1994 press release about WABI 2.0 and the Public Windows Initiative). The result is Standard ECMA-234: Application Programming Interface for Windows (APIW), which provides standard definitions for an essential subset (four hundred and fourty-four out of the roughly one thousand) of the Windows 3.1 APIs; it was rendered mostly obsolete by the switch to Windows 95. The Final Judgment should provide for the creation of something like ECMA-234 for the various modem versions of Windows.

Because Microsoft currently claims that it has intellectual property rights that protect the Windows APIs, but has never spelled out exactly which patents cover which APIs, the Final Judgment should force this to be spelled out.

To achieve the above goals, the PFJ should be modified as follows:

First, Sections III.D and III.E should be amended to remove the restriction on the use of the disclosed information:

... Microsoft shall disclose ... [], for the purpose of interoperating with a Windows Operating System Product or interoperating with application software written for Windows,

Second, a new section IV.E should be created as follows:

E. Establishment of a Windows API Standards Expert Group

1. Within 60 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a six person Windows API Standards Expert Group (''WASEG'') to manage the creation, publication, and maintenance of a Windows APIs Standards Definition (''WASD'') and associated Windows APIs Standard Compliance Test Suite (''WASCTS''), and to guide the WASD through the process of being adopted by a standards body such as ECMA or the IEEE.

The WASD shall be a document, suitable for approval by a standards body such as ECMA or IEEE, which accurately defines the inputs, outputs, and behavior of each Windows API, and enumerates any Essential Claims. The WASCTS shah be software source code which, when compiled and run, automatically tests an operating system for compliance with the WASD, and produces a list of APIs which fail to comply with the WASD. The test suite should run unattended; that is, it should be capable of running without human interaction or supervision.

2. Three of the WASEG members shah be experts in software design and programming, and three of the WASEG members shall be experts in intellectual property law. No WASEG member shah have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner.

No WASEG member shah have entered into any non-disclosure agreement that is still in force with Microsoft or any competitor to Microsoft, nor shah she or he enter into such an agreement during her or his term on the WASEG. Without limitation to the foregoing, no WASEG member shah have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall he or she be so employed during his or her term on the WASEG.

3. Within seven days of entry of this Final Judgment, the Plaintiffs as a group shall select two software experts and two intellectual property law experts to be members of the WASEG, and Microsoft shall select one software expert and one intellectual property law expert to be members of the WASEG; the Plaintiffs shall then apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to this section.

4. Each WASEG member shall serve for an initial term of 30 months. At the end of a WASEG member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the WASEG member in the same manner as provided for above.

5. If the United States or a majority of the Plaintiffs determine that a member of the WASEG has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the WASEG resigns, or for any other reason ceases to serve in his or her capacity as a member of the WASEG, the person or persons that originally selected the WASEG member shall select a replacement member in the same manner as provided for above.

6. Promptly after appointment of the WASEG by the Court, the United States shall

enter into a Windows API Expert Group services agreement (''WASEG Services Agreement'') with each WASEG member that grants the rights, powers and authorities necessary to permit the WASEG to perform its duties under this Final Judgment. Microsoft shall indemnify each WASEG member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the WASEG's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the WASEG member. The WASEG Services Agreements shall include the following:

a. The WASEG members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The WASEG Services Agreement shall provide that each member of the WASEG shall comply with the limitations provided for in section IV.E.2. above.

7. Microsoft shall provide the WASEG with funds needed to procure office space, telephone, other office support facilities, consultants, or contractors required by the WASEG.

8. The WASEG shall not have direct access to any part of Microsoft's computer software source code that is not normally available to all ISVs. The WASEG shall not enter into any non-disclosure agreements with Microsoft or third parties. No implementations of any Windows APIs shall be written or published by the WASEG.

9. The WASEG shall have the following powers and duties:

a. The WASEG may require Microsoft to provide comprehensive answers to questions about Microsoft intellectual property claims.

b. The WASEG may require Microsoft to provide comprehensive answers to questions about the inputs, outputs, and functionality of any Windows API; in particular, the WASEG may compel Microsoft to provide complete documentation for Windows APIs, including hitherto undocumented or poorly-documented Windows APIs.

c. The WASEG may engage, at the cost and expense of Microsoft, the services of outside consultants and contractors as required to fulfill the duties of the WASEG.

d. The WASEG shall establish a publicly available web site not owned or otherwise controlled by Microsoft, and will publish status reports and other information there at least as often as once per month. Documentation on the web site shall be made available subject to the terms of the GNU Free Documentation License; test suite source code made available on the web site shall be made available subject to the terms of the GNU General Public License.

e. The WASEG shall compile to the best of their ability a complete list of Windows APIs, including for each API the DLL name, entry point name, entry point ordinal number, return value type, and parameter types, as well as which versions of Windows it is supported by and an estimate of what percentage of Popular Windows Applications use it. The WASEG shall publish this list on the WASEG web site subject to the GNU Free Documentation License, according to the following schedule: Within 90 days after the WASEG is convened, the WASEG shall publish this information for at least five hundred Windows APIs. On the 1st of each month thereafter, the WASEG shall publish this information for another five hundred Windows APIs. This shall continue until a complete list of Windows APIs is available on the web site. The WASEG shall update the list periodically to add previously unlisted Windows APIs. The WASEG shall periodically check the list for completeness by installing and running a representative sample of Popular Windows Applications and Microsoft Middleware while using tools such as Apius from Sarion Systems Research to watch the Windows APIs actually invoked by the product or its installer. The WASEG shall also set up a way for third parties to report Windows APIs which should be listed, and shall update its list of Windows APIs accordingly as appropriate.

f. The WASEG shall compile a complete list of Essential Claims, and an evaluation of which Windows APIs each Essential Claim covers. The WASEG shall publish this information on the WASEG web site subject to the GNU Free Documentation License, according to the following schedule: Within 90 days after the WASEG publishes a portion of the list of Windows APIs on its web site, Microsoft shall deliver to the WASEG a list of the Essential Claims that cover the published Windows APIs. Within 90 days after the WASEG receives the list of Essential Claims, the WASEG shall publish its evaluation of which APIs those Essential Claims cover. This shall continue until such evaluations for all Essential Claims have been published on the WASEG web site.

g. The WASEG shall compile documentation for the list of Windows APIs defined above in section IV.E.9.e, including a complete description of the meanings of the return values and parameters, and the effects of the API. The documentation should be composed in a style similar to that used for the Single Unix Specification documentation (http://www.UNIX-systems.org/unix). Within 180 days after the WASEG is convened, and on the 1st of every month thereafter until complete, the WASEG will make available the currently completed portion of this documentation via its web site.

h. When the three documents described above—the list of Windows APIs, the list of Essential Claims and which Windows APIs they cover, and the documentation for the listed Windows APIs—is complete, the WASEG shall undertake to submit them to a standards body such as ECMA or the IEEE as a Draft WASD Document, and to make such enhancements and revisions as needed to gain the acceptance of that document as a standard.

i. The WASEG shall create a WASCTS, and publish it on the WASEG web site subject to the GNU General Public License, according to the following schedule: Within 180 days after the WASEG is convened, the WASEG shall publish test cases for at least one hundred Windows APIs. On the 1st of each month thereafter, the WASEG shall publish test cases for at least another one hundred Windows APIs. This shall continue until a complete WASCTS is available on the web site.

j. In the event that a planned update to Windows or any other Microsoft product is expected to result in the creation of new Windows APIs or Essential Claims, or WASEG's list of Windows APIs is updated, the WASEG shall create addenda to the WASD and WASCTS covering the new Windows APIs or Essential Claims, make them available via its web site, and undertake to submit them to the same standards body as above as an addendum to the standard.

Third, in section VI, Definition A should be amended to read

A. ''Application Programming Interfaces (APIs)'' means the interfaces, including any associated callback interfaces, that Microsoft Middleware or Popular Windows Applications running or being installed on a Windows Operating System Product use to call upon that Windows Operating System Product or Microsoft Middleware in order to obtain any services from that Windows Operating System Product or Microsoft Middleware. and two new definitions should be added:

V. ''Popular Windows Applications'' means the top 10 selling applications as reported by NPD Intelect Market Tracking in each of the categories Business, Education, Finance, Games, Personal Productivity, and Reference, plus all Microsoft Middleware Products.

W. ''Essential Claims'' shall mean all claims in any patent or patent application, in any jurisdiction in the world, that Microsoft owns, or under which Microsoft has the right to grant licenses without obligation of payment or other consideration to an unrelated third party, that would necessarily be infringed by implementation of the Windows APIs Standard Definition by a competing Operating System. A claim is necessarily infringed hereunder only when it is not possible to avoid infringing it because there is no non-infringing alternative for implementing the required portion of the Windows APIs Standard Definition.

The following are expressly excluded from and shall not be deemed to constitute Essential Claims:

1. any claims other than as set forth above even if contained in the same patent as Essential Claims; and

2. claims which would be infringed only by portions of an implementation that are not required by the Windows APIs Standard Definition, or enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Windows APIs Standard Definition but are not themselves expressly set forth in the Windows APIs Standard Definition (e.g., compiler technology, object-oriented technology, etc.) or the implementation of technology developed elsewhere and merely incorporated by reference in the body of the Windows APIs Standard Definition.

Prohibition of More Practices Toward OEMs

§ III. A. 2. of the Proposed Final Judgment should be amended to read

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System, or (c) includes a non-Microsoft Operating System but no Windows Operating System Product; or ...

Summary

This document demonstrates that there are so many problems with the PFJ that it is not in the public interest.

It also illustrates how one might try to fix some of these problems.

Dan Kegel

28 January 2002

MTC–00028572

From: Riddle, Doug
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:39pm
Subject: Micrsoft Settlement

To Whom It May Concern:

Whatever steps necessary to bring Microsoft onto a level playing field where they are accountable to the users of their software and their competitors should be used. Their software is a National Security risk and their corporate policies toward competitors only serve to increase that risk. Do not settle out of court.

Regards,
Doug Riddle
EMCO / Addis MIS Dept.
Mobile (225) 806–9715
Pager: (225) 339–8275
Office: (225) 267–3225
Home: (225) 775–5691

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MTC–00028573

From: dank@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 4:40pm
Subject: Micrsoft Settlement
(corrected date)
Open Letter to DOJ Re: Microsoft Settlement
To: microsoft.atr@usdoj.gov
Subject: Micrsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
28 January 2002
Ms. Hesse,

Please find below a joint open letter signed by 2366 people from across the United States. I composed the open letter and offered to collect signatures by email as a simple way for people to express their views on the Proposed Final Judgment.

I certify that the following list of names was compiled from email sent to petition@kegel.com; that return email was used to provide some small degree of assurance that each submission came from a valid email address; and that I have verified to the best of my ability that all co-signers are US residents or citizens.

I am sending the document (http://www.kegel.com/remedy/remedy2.html) referenced in the joint open letter under separate cover as my personal Tunney Act comment.

Sincerely,
Dan Kegel
901 S. Sycamore
Los Angeles, CA 90036
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Ms. Hesse,

Under the Tunney Act, we wish to comment on the proposed Microsoft settlement. We agree with the problems identified in Dan Kegel's analysis (on the Web at http://www.kegel.com/remedy/remedy2.html), namely:

* The PFJ doesn't take into account Windows-compatible competing operating systems

o Microsoft increases the Applications Barrier to Entry by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

* The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

o The PFJ supposedly makes Microsoft publish its secret APIs, but it defines ''API'' so narrowly that many important APIs are not covered.

. The PFJ supposedly allows users to replace Microsoft Middleware with competing middleware, but it defines ''Microsoft Middleware'' so narrowly that the next version of Windows might not be covered at all.

. The PFJ allows users to replace Microsoft Java with a competitor's product —but Microsoft is replacing Java with .NET. The PFJ should therefore allow users to replace Microsoft.NET with competing middleware.

. The PFJ supposedly applies to ''Windows'', but it defines that term so narrowly that it doesn't cover

Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box—operating systems that all use the Win32 API and are advertised as being ''Windows Powered''.

. The PFJ fails to require advance notice of technical requirements, allowing Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

. The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware—but only after the deadline for the ISVs to demonstrate that their middleware is compatible.

. The PFJ requires Microsoft to release API documentation—but prohibits competitors from using this documentation to help make their operating systems compatible with Windows.

. The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents.

. The PFJ does not require Microsoft to list which software patents protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users.

* The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

. Microsoft currently uses restrictive licensing terms to keep Open Source and Free Software apps from running on Windows.

. Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

. Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system—even for computers running competing operating systems such as Linux! (Similar licenses to OEMs were once banned by the 1994 consent decree,)

* The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

. Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems.

* The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

. The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

. The PFJ allows Microsoft to discriminate against small OEMs—including regional ''white box'' OEMs which are historically the most willing to install competing operating systems—who ship competing software.

. The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

* The PFJ as currently written appears to lack an effective enforcement mechanism. We also agree with the conclusion reached by that document, namely that the Proposed Final Judgment, as written, allows and encourages significant anticompetitive practices to continue, would delay the emergence of competing Windows-compatible operating systems, and is therefore not in the public interest.

It should not be adopted without substantial revision to address these problems.

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Scott Baumann, San Francisco, CA; Creative Director, Heavy Graphics

Scott Bell, Los Angeles, CA; Consumer, n/a

Scott Call, Santa Rosa, CA; Network Engineer

Scott Clark, Canton, MA; Principal Member of Technical Staff, General Dynamics C4 Systems

Scott Disher, Overland Park, Kansas; Consultant, OnLine Technical Solutions

Scott Dunbar, Kansas City, MO; Calibration Technician, Test & Measurement, Inc.

Scott D. Webster, Bergenfield, NJ; Owner, Etc Services

Scott Dylewski, Ph.D., San Jose, CA; Hardware Development Engineer, Agilent Technologies

Scott Francis, Murfreesboro, TN; Systems Administrator, Rum Consortium

Scott Francis, North Hollywood, MO; Systems/Network Manager, Tonos Entertainment

Scott Furman, Menlo Park, CA; Software Engineer, n/a

Scott J. Lopez, Chicago, IL; Unix System and Network Engineer, n/a

Scott Lewis, Great Falls, Montana; Software Developer/Service Technician, Davis Business Machines

Scott Lowe, Germantown, FiD; Director of Information Technology, n/a

Scott Maxwell, Pasadena, CA; Software Developer, n/a

Scott M. Brylow, London, UK (US citizen living abroad); Independent consultant (technology management)

Scott McMullen, Dripping Springs, Texas; n/a

Scott Meyer, St. Louis, Mo; Student, Fontbonne College

Scott Parish, Arma, KS; System Administrator, Pittsburg State University

Scott Rachlinski, Baltimore, MID; Software Engineer, Advertising.com

Scott Rockwell, San Jose, CA; Member, QOS, LLC

Scott R. Wilson, Ph.D., Corrales, New Mexico; Engineering Manager, n/a

Scott Sesher, Raymore, MO; Systems Administrator, Sprint

Scott Thomason, East Troy, WI; Consultant, Interactive Business Systems

Scott Wilder, Denver, CO; Lead Java Developer, Digital Reliance

Scott W. Starkey, Dayton, IN; Computer Support Technician, Purdue University

Scott Yates, Des Moines, Iowa; Developer, Yatesframe.com

Sean Bruton, Dallas, Texas; Senior Engineer, NeoSpire

Sean McCune, Natrona Heights, PA; President, Red Hand Software

Sean M Lentner, Norwalk, CT; CEO, Lentner.com

Sean Perry, Palo Alto, CA; Student, UC Davis

Sean Reilly, Richmond, VA; Chief Technology Officer, Appgen Personal Software

Sean Russell, Bend, OR; Sr. Software Developer, Germane Software

Sean T. Brann, Boston, MA; Principal, Bigcity Interactive

Sean T. Canty, Kansas City, MO; System Intergrator, Sunset Systems

Sean Woods, Philadelphia, PA; Senior Network Engineer, The Franklin Insitute

Seon Lee, Potomac Falls, VA; Software Engineer, n/a

Sergio Rey, La Mesa, CA; Associate Professor, Department of Geography, San Diego State University

Seth Bjorn, Santa Ana, California; Network Engineer, Goodwill Industries of Orange County

Seth Delackner, Brooklyn, N-Y; Programmer, Contractor

Seth Gordon, Boston, MA; Scientific Programmer, Whitehead Institute

Seth Herstad, Urbana, Illinois; EE Graduate Student, University of Illinois at Urbana-Champaign

Seth House, Salt Lake City, Utah; Student, University of Utah

Seth Lytle, Somerville, MA; programmer, independent contractor

Seth Russell, Ellensburg, WA; Student, Central Washington University

Seth Taplin, Nederland, Colorado; Senior Software Engineer, DigitalGlobe

Shane Kerr, Amsterdam, (US citizen, voting in Virginia); Senior Database Software Engineer, RIPE NCC

Shane Williams, Austin, Texas; Systems Administrator, UT Austin

Shannon E. Bock, Rio Rancho, New Mexico; Business Systems Support Analyst, Unisys

Sharon Lake, Los Angeles, CA; Web Designer, n/a

Sharon Stevens, Tucson, AZ; Student, University of Arizona

Shaun Reynolds, Northfield, MN; Student, Carleton College

Shawn Allen, Vancouver, WA; Software Engineer, self

Shawn Campbell, Canton, Ohio; Student Network Administrator, Malone College

Shawn Cornelius, Broken Arrow, OK; Network Engineer, n/a

Shawn Dunn, Spring Creek, Nevada; Chief Cook and Bottlewasher, Dumpsterdivers.net, and Dunn Consulting, Ltd.

Shawn Fogle, San Diego, CA; Aircraft Mechanic, USMC

Shawn Kinzel, St Paul, MN; System Engineer/Administrator, Self

Shawn McCarthy, Bowie, MD; Systems Administration Manager, n/a

Shawn Yarbrough, San Antonio, Texas; Software Developer, nailstorm.com

Sherman Wang, Los Angeles, California; Student, University of California Los Angeles

Shilon Shoaf, High Point, NC; Vice President, Orion Adv and Design

Shimone Samuel, Pacifica, California; Web Developer, n/a

Shing Cheng, New York, New York; Graduate Student, New York University

Shmuel (Seymour J.) Metz, Annandale, Virginia; Atid/2

Shon Burton, Irvine, CA; President, Dataverse Corporation

Sinan Karasu, Seattle WA; Electrical/Software Engineer, bozuk.com

SI Reasoning, Birmingham, Alabama; Chief Technology Officer, Protection Products

Sky Golightly, Capitola, CA; Systems Architect, Walking Thunder Productions

Spencer Carter, Traverse City, MI; Lead Network Analyst, n/a

Spencer Cathey, Colville, WA; video game developer, unrapt.com

Sriram Kota, Miami, F1; Consultant, Independent

Stan Gatchel, Dallas, TX; President, Process Sciences Laboratory

Stan Novacki, Arlington, VA; Systems Engineer, n/a

Stefanie DeFiglia, Washington, DC; Program Manager, n/a

Steffen Hulegaard, Tiburon, California; President, TXL, Inc.

Stephan A. Greene, Herndon, VA; Systems Engineer, n/a

Stephen Bovy, Los Angeles, CA; Software Engineer, Computer Associates

Stephen Degler, Philmont, New York; Director—Systems and Technology, Allegheny Energy Global Markets

Stephen Hughes, Dearborn, Michigan; President/CEO, Honeycomb Electronics, Audio and

Stephen J. Wright, Madison, WI; Professor, University of Wisconsin-Madison

Stephen Kemler, Cleveland, Ohio; Network Administrator, Athersys

Stephen Kuenzli, Phoenix, AZ; Software Engineer, Motorola

Stephen Martin, Murray Hill, NJ; Senior Developer, Binary Blizzard Software

Stephen M. Deal, Perinton, NY; Systems Engineer, n/a

Stephen Mencik, Gambrills, Maryland; Senior INFOSEC Engineer, ACS Defense (affiliation shown for identification only)

Stephen Milton, Redmond, Washington; ISP Owner, ISOMEDIA.COM

Stephen Moore, Tucson, AZ; Computer Programmer, University of Arizona

Stephen Peters, Cambridge, MA; Doctoral Student, MIT AI Lab

Stephen Ronan, Cambridge, MA; Managing Director, Community Technology Centers'' Network

Stephen R. Walter, Menlo Park, CA; Associate Chief Geologist, US Geological Survey
Stephen Saunders, Los Angeles, CA; President, Kodan Web Technologies, Inc.
Stephen Scrivner, Boulder, CO; Software Engineer, Micro Motion—division of Emerson
Stephen Waits, San Diego, CA; CEO, Waits Consulting
Stephen W. Hurst, Austin, Texas; Information Analyst, University of Texas at Austin
Steve Colwell, Santa Barbara, CA; Software Architect, CodeWell LLC
Steve Domenico, Louisville, Colorado; Webmaster, wildwoodguitars.com
Steve Feldman, Newark, NJ; System Administrator, University of Medicine and Dentistry of NJ
Steve Fox, Rochester, MN; Software Engineer, IBM
Steve Guerrero, San Francisco, California; concerned citizen, n/a
Steve Johns, Greenbelt, MD; Software Engineer, Independent
Steve Kann, Roslyn Heights, NY; Chief Engineer, HorizonLive.com
Steve Kostecke, Providence, RI; Developer, Debian
Steve Lindt, San Jose, CA; Application Engineering Manager, LSI Logic
Steve Metter, West Carrollton, OH; Senior Architect, Digineer
Steve Murtha, West Long Branch, NJ; President, Simulation Tools
Steven Armstrong, Milwaukee, WI; Information Technology Consultant, Wisconsin Electric
Steven Bryant, New York, NY; Lab Manager, The Juilliard School
Steven Davis, Nurnberg, (originally Arizona); Solution Manager, T-Systems
Steven Edwards, Nashville, TN; Software Engineer, (independent)
Steven F. Crisp, Amherst, NH; Senior Principal Engineer, MITRE Corporation
Steven H. David, New York, NY; President, Steve David Productions, inc.
Steven H Snover, Pasadena, California; Deputy Sheriff, Los Angeles County Sheriff's Department
Steven K. Sharp, San Diego, California; Sr. Software Engineer, n/a
Steven L. Bratt, Brush Prairie, WA; Communications Services Manager, Vancouver School District
Steven L. Salzberg, Ph.D., Gaithersburg, MD; Senior Director of Bioinformatics, The Institute for Genomic Research
Steven M. Palm, Loves Park, Illinois; Software Developer, n/a
Steven Nolting, Leslie, MO; IT Manager, SN Design
Steven O'Toole, Irvine, CA; Software Developer, self-employed
Steven Pierce, Kenosha, Wisconsin; Manager—IS, ASF-Keystone
Steven Pothier, Tucson, Arizona; Senior Scientist, SAIC
Steven Spencer-Priebe, Crofton, MD; Telecom System Engineer, Science Applications International Corporation
Steven Thibault, Beverly, MA; Consultant in Engineering Systems, FM Global Insurance
Steven Thomas, Boyton Beach, FL; IT Consultant, eDiets.com
Steve Wahl, Chanhassen, MN; Software Engineer, n/a
Stuart D. Pompian, Hanover, N-H; VP, Dartware, LLC
Stuart Levy, Champaign, IL; Sr. Research Programmer, University of Illinois
Stuart Schneider, Portland, OR; Contractor, n/a
Sudhir Kumar, Ashburn, VA; Principal Member of Technical Staff, Portal Software
Suman Karamched, Norcross, GA; PDM Consultant, n/a
Susan Farrell, Portland, OR; User Experience Specialist, ACM
Sylvester La Blanc, Anaheim. CA; Sr. Software Engineer, Anamex Corp.
Tara Andrews, Somerville, MA; Systems Engineer, Akamai Technologies
Tara de Wet, Tallahassee, FL; Student, n/a
Ted Chiang, Bellevue, WA; technical writer, (self-employed)
Ted Grzesik, Goffstown, N-H; Principal Software Engineer, i2 Technologies, Inc.
Ted Nitz, Santa Cruz, CA; Network Administrator, APT Technologies Inc.
Ted Wright, Cleveland, Ohio; Engineer, NASA
Teresa L. Beumeler, Raleigh, NC; Accounting Assistant, Wright Construction Company
Terrance C. Hansen, Sandy, Utah; Software Designer/Developer, n/a
Terrence Egan, Cupertino, CA; Independent Software Developer, Geodesic Tripoint
Terry Badger, Paso Robles, CA; Computer Technician, Cal Poly San Luis Obispo
Terry Hibdon, Grandville, MI; Teacher, n/a
Terry Melton, Hoboken, NJ; Network Administrator, Engineering Information
Thack Douglas, Denver, CO; senior network administrator, gambro bct
Thaddeus Selden, Fredericksburg, VA; Scientist, Navsea
Theodore A. Jump, Austin, Texas; Senior Software Engineer, NewsStand
Theodore J. Allen, Geneva, New York; Assistant Professor of Physics, Hobart & William Smith Colleges
Theodore J Oliver, Tucson, Arizona; Database Administrator/System Administrator, Desert Archaeology
Thomas A. Brown, San Diego, CA; Retired
Thomas Bohmbach, Jr., Minneapolis, FIN; Senior Software Engineer, MLT Vacations, Inc.
Thomas Bradford Smith, El Paso, Texas; President/CEO, Southwest-Technology Inc.
Thomas Gabriel von Schwerdtner, Wheaton, MD; Web Designer/Web Applications Programmer, n/a
Thomas G. Moertel, Pittsburgh, PA; President, Moertel Consulting
Thomas J. Mather, New York City, NY; Software Developer, Longitude
Thomas J. Philpot, Houston, Texas; Software Engineer, IBM
Thomas J. Teters, Ft. Collins, CO; Internet Tech., The Galactic WareHouse
Thomas K. Egan, Altoona, PA; Programmer and Web Designer, Liquidbinary
Thomas Malone, Long Beach, NY; Manager of IT Systems and Administration, Lancer Insurance Company
Thomas McElroy, Morrisville, NC; Staff Software Engineer, n/a
Thomas Parker, Burke, VA; Technology consultant, n/a
Thomas P Mensch, Oakland, CA; Contracting Programmer, Independant
Thomas P. Taggart, State College, PA; College Student, Penn State University
Thomas R. Corbin, Fairfax, VA; CTO, SamSix
Thomas Smith, West Lafayette, IN; Developer, Debian
Thomas Warnock, Syracuse, New York; Senior Software Engineer, AppliedTheory Corp.
Thomas Wiest, Orem, Utah; n/a
Thom Dieterich, Lynnwood, WA; Software Engineer, n/a
Tim Anderson, Walnut Creek, CA; President, T. Anderson Associates, Inc.
Tim Curtin, Essex Junction, VT; Test Engineer, IBM
Tim Kennedy, Tewksbury, MA; Sr. Hardware Design Engineer, Avid Technology, Inc.
Tim McClarren, San Francisco, CA; n/a
Tim O'Brien, Evanston, IL; Software Engineer, n/a
Timothy Basham, Bloomington, IL; Senior Programmer, AutoSafe Intl.
Timothy E. Jedlicka, Glen Ellyn, IL; Network Entomologist, US Citizen
Timothy E. Miller, Winston-Salem, North Carolina; Research Assistant, Vanderbilt University Physics Department
Timothy Gray, Rosevelt Park, Michigan; I.S. Specialist, Gray Technologies
Timothy H. Clapin, Laurel, MD; Systems Administrator, n/a
Timothy J. Stegner, Bolton, MA; Senior Systems Engineer, Computer Corporation of America
Timothy J. Wood, Seattle, WA; Vice President, Omni Development
Timothy Kuo, Sterling, VA; Engineer, Orbital Sciences Corp.
Timothy MacDonald, Houston, Texas; Unix Administrator, Houston Information Team
Timothy Musson, Cleveland; Software Engineer, Zin Technologies
Timothy P. Egbert, J.D., Ph.D., Salt Lake City, Utah; Senior Software Developer, n/a
Timothy R. Butler, St. Peters, MO; Chairman & CEO, Universal Networks (www.uninetsolutions.com)
Timothy Wall, Boston, MA; Director of Software Development, Oculus Technologies
Timothy W. Lewis, Toledo, OH; Computer Science Student, University of Toledo
Tim Sirianni, Cottage Grove, MN; SGI
Tim Thomas, Anchorage, AK; Editor, The Communique, Alaska Apple User Group
Tim Uckun, Missoula, MT; IT Director, USIS
Todd A. Mizukami, Alpharetta, GA; NOC Manager, America Online
Todd Chatman, Urbana, IL; Graduate Student, University of Illinois
Todd Eshler, Blacksburg, Virginia; Computer Engineering Graduate Research Assistant, Virginia Tech
Todd Flinders, Sacramento, California; System Software Specialist, California Department of Justice
Todd Hanson, Madison, WI; Software Engineer, Luhata Group

Todd Johnson, Evansville, IN; Unix Specialist, OneStar Long Distance
Todd Lamothe, Boston, MA; Student, n/a
Todd Lawson, Phoenix, Arizona; Attorney at Law, n/a
Todd Sackett, San Francisco, CA; Software QA Engineer, n/a
Todd Warner, Durham, NC; Software Engineer, Red Hat Inc.
Tod Schmidt, Falls Church, VA; Network Engineer, Cable and Wireless
Tom Arons, Davis, CA; Programmer/Analyst, University of California
Tom Barclay, Long Beach, CA; Systems Analyst, PacifiCare Health Systems
Tom Burton, Seward, AK; Student, Alaska Vocational Technical Center
Tom B. Younker, Decatur, GA; Owner/Member, Dare Computer, LLC
Tom Callaway, Durham, NC; Software Engineer, Red Hat
Tom Cloud, Jamestown, RI; Senior Software Engineer, Healthcare Automation
Tom Emmons, Chicago, IL; Technology Architect, Confirmative Technologies
Tom Howland, San Jose, CA; Computer Scientist, n/a
Tommy M. McGuire, Austin, TX; Graduate Student, Dept. of Comp. Sci., UT Austin
Tom Phoenix, Portland, Oregon; Perl Mentor, Stonehenge Consulting Services
Tom Rauschenbach, Peterborough, New Hampshire; Computer Programmer, U.S. citizen
Tom Raymond, Wausau, WI; Programmer/Analyst, Eastbay
Tom Rockwell, Lansing, MI; Graduate Student, Michigan State U.
Tom Scott, Bowling Green, Ohio; President, Vedatel
Tom Vanderpool, Kansas City, Mo; email administrator, n/a
Tom Voorheis, Ann Arbor, MI; Student, n/a
Tony Beauregard, San Antonio, TX; Manager, ISTI
Tony Duckett, Herndon, VA; System Administrator, n/a
Torleiv Ringer, Saint Paul, Minnesota; System Administrator, n/a
Toshi Isogai, Centennial, Co; Hardware Engineer, SEAKR Engineering
Tracy Budd, Arlington, VA; Senior Software Engineer, Exadata Analytics
Trammell Hudson, Bethesda, Maryland; CEO, Rotomotion Corporation
Travis J. Eckman, Jamestown, New York; Network Administrator, Allied Fire Protection Systems
Travis Morga, Shawnee Mission, KS; Systems/Network Engineer, CIO Inc.
Trever Furnish, Indianapolis, Indiana; Unix Administrator, Herff Jones
Trevin Beattie, West Hollywood, CA; Software Developer, n/a
Trevor Johnson, Gardena, California; Software Engineer; Contributor, FreeBSD Project
Trey Merrell, Newberg, OR; Programmer, Student
Troy D. Smith, Chicago, IL; Software Developer, Shoptalk
Troy Gutman, Lexington, KY; Programmer, Wyncom, Inc.
T. Shannon Gilvary, Union Beach, New Jersey; n/a
Tyler Palmer, Lawrence, Kansas; Software Architect/Network Administrator, DesignLab
Ty Norton, Redmond, Washington; Network Administrator, n/a
Ty van den Akker, Arlington, MA; Java Developer, Oculus Technologies
Valdis Kletnieks, Blacksburg, Virginia; Computer Systems Senior Engineer, Virginia Tech Computing Center
Vance Shieh, Kingwood, TX; student, n/a
Vartan Piroumian, Palo Alto, CA; Senior Java Consultant, Sun Microsystems
Vasant Ram, Richardson, TX; Electrical Engineer, none
Vaughan Johnson, San Francisco, CA; CEO, Vaughan Johnson Systems
Vic Parekh, Los Angeles, CA; Computer Programmer, n/a
Victor Didra, Quincy, WA; Graphics Artist, Quincy Valley Post-Register
Victor D. Odhner, Phoenix, Arizona; Programmer/Analyst; n/a
Vijay Ramasubramanian, Manchester, CT; Aerospace Engineer, n/a
Vincent Broman, San Diego, CA; Scientist, Space and Naval Warfare Systems Center
Vitaly Luban, Mountain View, CA; Software Development Consultant, Los Altos Software Testing House
Vladislav Imshenetskiy, New York, NY; Software Engineer, Micromuse Inc.
Wade E. Masshardt, Madison, WI; System/Network Administrator, Wisconsin Alumni Association
Wade Hought, Mission viejo, California; Consultant, n/a
Wade Newbern, New York, NY; Copyeditor, n/a
Wally Flint, Marina del Rey, California; Independent Software Developer, n/a
Walter Ellinthorpe, Herndon, VA; Field Engineer, United Messaging
Walter Josh Staiger, Akron, OH; Student, Case Western Reserve University
Walter K. Zydhek, Charlotte, North Carolina; NT Administrator, Genesis II Networks, LLC
Walter W. Asher, Troy, Tennessee; TAGMA of Northwest Tennessee
Walter Wilson, Lexington, NC; Student-Computer Science, College
Warren Ferguson, Cary, North Carolina; Senior Software Engineer, n/a
Warren Togami, Honolulu, Hawaii; Founder, Mid-Pacific Linux Users Group
Warren Turkal, Memphis, TN; Computer Science Intern, DotLogix, Inc.
W. C. Ryan Lewis, Janesville, WI; Owner, Red Moon Computers
Wendy Seltzer, New York, NY; lawyer and Fellow, Berkman Center for Internet & Society
Wes Groleau, n/a, Indiana; Software Engineer, n/a
Wesley Ferrel, Omaha, NE; Technical Engineer, Distribution Management Systems
Wesley P. Taylor, Bellingham, WA; Database Programmer, Premier Agendas, Inc.
Wesley Townsend, Guttenberg, NJ; Computer Consultant, Deloitte Consulting
Wesley Watters, Pittsburgh, PA; Graphic Artist, n/a
Wes Loder, Deer Lake, Pennsylvania; Campus Librarian, Penn State Schuylkill
Wes Morgan, Grand Rapids, MI; Computer Science Undergrad Student, Calvin College
Wes Price, Irving, TX; Systems Engineer II, Southwest Airlines
Whitney Tracy Austin, TX; n/a
Wilbur Liebson, Tucson, Arizona; retired
Will Grzanich, Chicago, IL; Software Developer, Morningstar
William A. Birch, New Ipswich, NH; Chief Techical Officer, The lyte Research Group
William Barnett-Lewis, Madison, WI; Owner, Brain Candy Computing
William B. Cushman, Ph.D., Pensacola, Florida; President, Poiesis Research
William Biese, Kaukauna, WI; Systems Analyst, Claim Management Services Inc.
William Birch, New Ipswich, NH; CTO, The lyte Research Group
William Breen, Drexel Hill, Pennsylvania; Sr. Software Engineer, InterDigital Communications Corp.
William Chapple, Ponchatoula, LA; Director of IS, n/a
William Costa, Durham, NH; Information Technologist, University of New Hampshire
William Croft, Menlo Park, CA; Engineer, MITEM Corporation
William E. Shotts, Jr., Rockville, Maryland; VP, Technical Services, Media Cybernetics, Inc.
William E. Stuckey, Indianapolis, IN; Network and Information Systems Coordinator, School of Liberal Arts
William F. Mann, Sudbury, MA; Computer consultant, Self-employed
William G. Thompson, Jr., Bridgewater, NJ; Chief Japple Evangelist, Saucon Technologies
William Hubscher, Huntsville, Alabama; Media Relations Manager, Carleton Public Relations, Inc.
William James Stewart, Charleston, SC; Software Specialist, Buist
William Lamb, Aurora, Illinois; President, William Lamb Development, Inc.
William Leddy, Alexandria, VA; Director, St. Stephen's & St. Agnes School
William Lee Irwin III, Hillsboro, OR; Linux kernel programmer, IBM
William L. Moss IV, Atlanta, GA; Digital Technologies Specialist, Atlanta Journal-Constitution
William Riley, Kirksville, MO; Owner, R and D Technologies
William Schneider, Rochester, Minnesota; Esquire, Retired
William Warner, Seattle, Washington; Software Engineer, A large wireless carrier
William Wise, Norfolk, VA; Manager, Cell Signaling Technology
Will Secrest, Atlanta, Ga; IS Development Manager, Intercall
Will Sergent, Lakewood, OH; System Administrator, n/a
Will Symonds, Houston, TX; IT Consultant, thincpc.com
Will Wainwright, University City, Missouri; System Administrator, Washington University in St. Louis
Wilson Jones, Vinita, OK; Independent Programmer, n/a
Winfield Hill, Stoneham, MA; Dir of E.E., Rowland Institute
Wolfgang Rupprecht, Fremont, CA; Software Engineer, wsrcc.com
W. Wood Harter, Orange, CA; Owner/President, Side-Eight Software (www.side8.com)

Wyatt Bode, Lebanon, Pennsylvania; Manufacturing Information Systems Coordinator, Curwood Specialty Films

Wynette Richards, Albuquerque, NM; Software Engineer, Los Alamos National Laboratory

Young Hyun, San Diego, CA; Software Developer, San Diego Supercomputer Center

Zac Feuerborn, Boise, ID; Consultant, n/a

Zachary Erbaugh, Richmond, Indiana; Computing Support Specialist, Bethany Theological Seminary and Earlham School of Religion

Zachary Weinberg, Berkeley, CA; Consultant, CodeSourcery LLC

Zach Dennis, Columbus, OH; Resource Specialist, EPRI

Zach Johnson, Minneapolis, MN; Student, University of Minnesota—Twin Cities

Zephaniah Hull, Atlanta, GA; Developer, Debian

Please note: we are signing this letter as individuals, not as official representatives of the companies we work for or organizations we belong to.

MTC–00028574

From: Brian Bender
To: Microsoft ATR
Date: 1/28/02 4:41pm
Subject: Microsoft Settlement

To Whom It May Concern,

As I understand the proposed settlement regarding the anti-trust trial against Microsoft, little if anything is done to correct the actions that have been found anti-competitive. The agreement simply prevents them from continuing. This hardly seems sufficient to deter a corporation from cheating its way into a dominant position. There should be, in my opinion, actual peanalties paid for past actions, so that there is a real disincentive to engaging in these practices in the future.

Consider this a ''no'' vote on the proposed settlement.

Thanks for your attention.

Sincerely,

Brian Bender

Pittsburgh, PA, USA

MTC–00028575

From: Lissa Levy
To: Microsoft ATR
Date: 1/28/02 4:41pm
Subject: Microsoft Settlement

I believe that the proposed settlement is a bad idea. It gives too much control to Microsoft without concern for the consumer.

Thanks,

Lissa Levy

Chapel Hill, NC

MTC–00028576

From: Ford, Jim
To: Microsoft ATR
Date: 1/28/02 4:41pm
Subject: Microsoft Settlement

To Whom It May Concern:

I am writing this last minute email to state my support for the Microsoft Settlement. I believe that this battle the DOJ has waged against Microsoft has been, at the least, misguided, and has threatened competition more than anything Microsoft itself has been accused of. I would also point out that most of the key players in this battle on the corporate side stand to gain greatly not because DOJ will eliminate a threat to their well-being, but because DOJ is beating down a competitor who has the pulse of the marketplace (which they often do not).

Let's get this travesty of litigation out of the way and move on to something important!

Jim Ford
Network Consulting
jford@ncmidwest.com
(888) 969–6699

MTC–00028577

From: TSULLV@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:42pm
Subject: Microsoft settlement

Sir:

I am but a lowly consumer and cannot afford 10,000 dollar an hour lawyers.

I have no way to file any briefs with any judges and would not even know how. I can tell you one thing. On my computer I cant even remove one small icon that has to do with the MSN network. I would not even begin to be able to come close to removing or using any other soft ware on my home PC. Now I know little of the law and have no way of sending this letter to the judge.

I can tell you one thing micro soft has monopolized my system and that's a fact.

Thank You

Thomas F. Sullivan

little guy consumer

MTC–00028578

From: Susan Kaltenbach
To: Microsoft ATR
Date: 1/28/02 4:43pm
Subject: Microsoft Settlement

To the Department of Justice (DOJ):

I would like to submit my comment on the issue of the Microsoft settlement.

I understand that complainants against the settlement state that it (a) Does not correct Microsoft's ''anti-competition'' errors, and (b) Having Microsoft donate $1B of hardware, software and training is wrong because it perpetuates Microsoft's domination of the operating system marketplace.

I cannot comment on topic (a) because I am not well educated on the complaints and resolutions of this large and complex case. But I can comment on topic (b).

I am an individual who cares deeply about getting more underrepresented school kids interested in the sciences, and I have expended effort and mentorship to try to facilitate this. (In Washington state, ''underrepresented'' means racial minorities and ''first generation'' college students—students who are the first in their family history to attend college. I personally am a ''first generation'' college student.) I've heard comments from those opposed to the $1B donation that these kids should receive Linux software, since it is ''free'' and ''open code,'' and would help loosen Microsoft's grip on the operating system's marketplace.

I want to make my message perfectly clear: These kids would be further ghettoized if the Linux proponents get their way. The Microsoft Windows software and applications model is used throughout the business world and is the dominant international software. To donate a fringe operating system like Linux would make these non-employable.

Not only is Linux useless in developing work skills for these kids, it is also extremely difficult to learn. Thus, only those who are supremely motivated—such as young boys already pursuing the maths and sciences—would make the effort to learn. The other, majority of students would avoid computing. And they would lack computer skills needed for them to succeed academically and professionally.

The present paradigm is to introduce kids to Windows or MacIntosh operating systems. Then, the kids move to more specialized operating systems as the need arises. Unix and Linux are often used by academics— not by the rest of the world.

I therefore respectfully submit that the settlement agreement is, on topic (b), completely fair and valuable to the nation as a whole.

Thank you for the opportunity to comment.

Susan Kaltenbach

Mercer Island, Washington

MTC–00028579

From: JJ Gifford
To: Microsoft ATR
Date: 1/28/02 4:43pm
Subjec: Microsoft Settlement

To Whom It May Concern:

Attached are my comments re. United States et al. v. Microsoft, pursuant to the Tunney Act.

I have attached two copies of the same document, one in Microsoft Word format; the other in Rich-Text Format. Either document should be readable on any modern PC using up-to-date software.

Thanks in advance,

JJ Gifford
212 226 3462
Jonathan Gifford
117 Sullivan St., 5A
New York, NY 10012
doj.ms@jjgifford.com

January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
microsoft, atr@usdoj.gov
re. Deficiencies in Microsoft settlement.

Pursuant to the Tunney Act, I am filing these comments on the proposed resolution of United States, et al. v. Microsoft.

My Perspective, Experience, and Interest

I believe this case is tremendously important. As personal computers and the Internet have become increasingly important to our everyday lives, so too has the landscape of the technology markets become increasingly important. Not only will the outcome of this case impact the fortunes of a host of technology companies, but it will also affect how I and millions of others communicate with our friends and family, what choices we have for online services such as digital photography, and of course how much we and businesses spend on technology infrastructure. Once the government decided not to seek a structural remedy, it necessarily embarked on a course

of regulation. Regulation only works when the conduct prohibitions truly restrain anti-competitive behavior, and create a genuine opportunity for innovators to enter the market and compete in it based on their merits. Unfortunately, the Proposed Final Judgement (PFJ) presented by the Department of Justice and several states fails on all counts.

Its results will be only a mild, temporary modification to Microsoft's well-documented behavior, with no lasting or significant effect on competition. Microsoft will retain its monopoly and every incentive to maintain it through any means not specifically prohibited by the PFJ. Consumers will continue to be deprived of the innovations and other benefits of a truly competitive market, in part because innovators will be deprived of the opportunity and incentive to challenge Microsoft's monopoly as it expands and evolves. Most importantly, America's technology industry will stagnate, as ever fewer competitors see any value in entering markets dominated by Microsoft.

While I believe that many if not most Americans will be affected by the disposition of this case, I have a particular interest in it as a long-time technology consumer, entrepreneur, and enthusiast. Since 1980, I have used personal computers nearly every day, first as a hobby, then for school, and later for my career in the technology industry. In the early 1990s, I managed a small but pioneering desktop publishing department for a large advertising agency. Later, I joined a groundbreaking multimedia company that produced CD-ROMs for both Macintosh and Windows-based computers.

Most recently, I was a partner in a successful Internet development firm, which designs and produces web sites and other interactive media for corporate clients. Having sold my share of that business, I currently consult for other companies in the technology industry.

Definitions Are Critical: the Devil Is in the Details

1. Most provisions of the PFJ depend on the definition of ''Microsoft Middleware.'' Accordingly, we should expect this term to be well-defined, with clear boundaries and unquestionable meaning. Unfortunately, the reality is that it is vaguely defined, in language that grants Microsoft itself much control over what software it, and therefore the PFJ, governs.

1.1. Definition: According to the PFJ (PFJ VI.J), ''Microsoft Middleware'' is any software which:

. is distributed separately from the operating system,

. controls the user interface of the Microsoft Middleware,

. provides substantially similar functionality as a Microsoft Middleware Product, and

. is trademarked.

1.2.

Definition gives Microsoft control. So Microsoft, which has long stated its goal of incorporating browsing and other middleware functions into its operating system products, can exclude code from the Microsoft Middleware definition simply by not distributing it separately from the operating system, or even just by not trademarking it. Microsoft therefore will have enormous latitude in determining which new operating system features will be governed by the PFJ.

Clarity Is Essential to Compliance and Public Confidence.

2. The PFJ consists largely of vague prohibitions hobbled by numerous qualifiers and exemptions.

For instance:

Limited replacement of Microsoft Middleware.

2.1. The PFJ requires Microsoft to enable users and OEMs to specify that Non-Microsoft Middleware be used in place of Microsoft Middleware (PFJ, III.H.2). This is a welcome change because it had previously been difficult to replace Microsoft's Internet Explorer (IE) without facing ''considerable uncertainty and confusion'' when IE would nonetheless unexpectedly be invoked under certain circumstances (Findings ¶ 171).

2.1.1. Exemption for Microsoft servers. Unfortunately, Microsoft is exempt from this requirement when the Middleware Product would be invoked ''solely for use in interoperating with a server maintained by Microsoft'' (PFJ III.H). This may exempt Microsoft's current move into network services (''.NET'') from the judgement, inasmuch as such services communicate with Microsoft-owned servers. Microsoft considers .NET to be the next phase of the Internet, at last offering ''real'' applications and services. The first .NET service, Microsoft Passport, aims at becoming a cornerstone of Internet shopping and authentication transactions, and stores its data exclusively on Microsoft-owned servers.

2.1.2. Exemption for proprietary technologies. Another exemption allows Microsoft to launch its own middleware when the Non-Microsoft Middleware ''fails to implement a reasonable technical requirement'' (PFJ III H 3). Microsoft will be able to capitalize on this loophole simply by emphasizing proprietary technologies not supported by Non- Microsoft Middleware. To the extent that Microsoft can implement features using proprietary technologies, it will better be able to exclude Non-Microsoft Middleware. A truly pro-competitive PFJ would encourage Microsoft to use open industry standards.

OEM Distribution Channel Opened, But For Whom?

2.2. The PFJ requires Microsoft to allow OEMs to customize the user's desktop by installing icons for Non-Microsoft Middleware and other products (PFJ, III.C.1). This is important to the PFJ because Microsoft has in the past excluded Netscape and other competitors from the valuable OEM distribution channel, often by contractually limiting an OEM's ability to customize the desktop. In addition, Microsoft has used its control over the valuable desktop real-estate as an incentive to get IAPs such as AOL to support Microsoft Middleware instead of competing products.

2.2.1. OEMs lack incentive. Unfortunately, because Microsoft's Internet Explorer is now the market leader, there is today little consumer demand for alternatives to Microsoft Middleware. This makes it unlikely that an OEM would see much gain, if any, in installing Non-Microsoft Middleware. Such distribution may benefit the middleware developers, but would not greatly benefit the OEM.

2.2.2. Customizations will be short-lived. This prohibition remains in effect only for a 14-day window starting after the end user first turns on his or her PC. Thereafter, Microsoft is free to re-arrange the desktop as it sees fit, including automatic removal of any non-Microsoft icons, e.g. by operating system features such as the ''Clean Desktop Wizard'' built-in to Windows XP (PFJ, III.H.3). So, any Non-Microsoft Middleware developers who do manage to secure OEM distribution could well see their products wiped off the desktop after a short two weeks.

2.2.3. Likely results. These limitations beg the question: will any OEMs risk irritating Microsoft for such minor benefits? If they do, will the results truly be increased competition in the middleware market?

General Rule on Sharing APIs.

2.3. The PFJ requires Microsoft to share APIs used by Microsoft Middleware with ISVs, et al. (PFJ III.D). In its Findings of Fact, the District Court found that Microsoft had repeatedly withheld such information from ISVs, or used its disclosure as an incentive for ''friendlier'' behavior, in an effort to preserve the applications barrier to entry (Findings, ¶ 84, 90, 91). Because ISVs depend on such information to develop software for a given platform, withholding APIs can limit or destroy an ISV's ability to create competitive products. Therefore full API disclosure should be considered a basic condition for any kind of effective competition.

2.3.1. Only APIs necessary to mimic Microsoft's products will be disclosed. Unfortunately, the PFJ requires Microsoft to share only those operating system APIs used by Microsoft Middleware. This is a limited set of APIs, of use only to those ISVs who want to develop middleware products similar to Microsoft's. It does little to help ISVs offer features or innovations not already offered by Microsoft's products. Since ISVs typically must provide innovations to gain market share against an entrenched market leader, this requirement is unlikely to promote competition in the middleware market.

2.3.2. Many APIs may be withheld on dubious ''security'' grounds. The PFJ allows Microsoft to exclude any APIs the disclosure of which ''would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems'' (PFJ III.J.1).

. This is a surprising exemption because few security professionals believe API disclosure could weaken any well-designed security system. Indeed, the complete source code (a level of disclosure far greater than simple APIs) is publicly available for several operating systems and security-related products that are widely considered to be more secure than Windows (e.g. the Linux operating system).

. Yet the inclusion of this exemption implies that there in fact are such APIs

whose disclosure could compromise security, and thereby opens the door for Microsoft to make claims about which ones they are. There is no basis for the Competitive Impact Statement's (''CIS'') optimism that security-related exemptions will be limited to ''keys and tokens'' (CIS, IV.B.5) of particular installations. Nothing in the PFJ's language so limits the exemptable APIs, and such entities aren't generally visible at the API level, anyhow.

. With Microsoft's current push into network services (under the .NET moniker), we can expect privacy and security features to be suffused throughout the code, increasing the number of APIs Microsoft will try to exempt from disclosure. Indeed, Microsoft has just this month announced that privacy and security will henceforth be its main priorities.1 Associated Press, ''Microsoft Announces Strategy Shift'', D. Ian Hopper and Ted Bridis, January 17, 2002.

Inadequate Enforcement

3. The task of detecting whether Microsoft has violated these and other provisions falls to a three- person ''Technical Compliance'' committee (the ''TC''). This committee will have access to the source code and tools used to create Microsoft's products, as well as access to the relevant Microsoft staff (PFJ IV.B.8). In theory, the TC's oversight will prevent Microsoft from using technical strategies to camouflage non-compliance, for instance by wrongly claiming that some important API should not be disclosed for security reasons. While such oversight may in fact be helpful, the TC is an inadequate, inefficient and non-transparent attempt to ensure enforcement of a Judgement that otherwise relies on voluntary compliance and enforces few penalties for transgressions.

3.1. Severe employment restrictions threaten the TC's performance. The PFJ includes employment restrictions which will dramatically narrow the pool of TC candidates—first, to those experts not currently working for Microsoft or a competitor, and then to those remaining candidates willing to forego any such employment for two years after serving on the TC. In so doing, it excludes nearly all of those experts in operating systems design and programming whom the TC most needs, since it will be very difficult to find any such experts not currently working for, and with no intention of working for, Microsoft or a competitor. As a professional in this field, I cannot imagine why a highly competent independent minded computer scientist would wish to serve on the TC under these circumstances.

3.2. The TC will be buried under a mountain of technical data. Even if well staffed, the committee will have an enormously difficult task from a technical standpoint. Inasmuch as deciphering computer source code can be difficult even for the code's author, much less a new reader, and inasmuch as Windows XP alone consists of some 45 million lines of code2, this committee will have an enormously difficult task. Even with a large support staff, it is hard to imagine this committee effectively analyzing Microsoft's source code and fully investigating allegations of non-compliance.

3.3. The TC cannot ensure timely remedies. Further, because the committee is prohibited from public comment (PFJ, IV.B.10), it will be unable to confirm any ISV's suspicions about Microsoft's compliance, nor could it force a timely remedy. Its only recourse will instead be to notify Microsoft and the Plaintiffs and to suggest a possible remedy. Therefore, an ISV suspecting Microsoft of non-compliance will not receive an immediate remedy, but must instead rely on a bureaucracy whose natural tendency will be not to pursue minor infractions. While such infractions may indeed be minor in the scope of the overall judgement, they would assuredly be of great importance to the ISV. 3.4.

The TC's findings may not be presented to the Court or the public. Under the PFJ, the TC may not testify in any matter relating to the Final Judgement, nor may its work product and recommendations be submitted to the Court (PFJ, IV.D.4.d). Similarly, the TC is prohibited from public comment (PFJ, IV.B. 10). Thus, even if the TC's exclusive access to source code should produce evidence of deception and non-compliance by Microsoft, this evidence will not be presented to the Court. 2 BusinessWeek, ''Windows XP: a Firewall for All'', Alex Salkever, June 12, 2001.

. In theory, the TC will report to the Plaintiffs, who may in turn report such non-compliance to the Court, and produce evidence of it via other means. This may well happen in the case of massive or severe non-compliance. However, what happens to the small ISV who suspects Microsoft of non-compliance, e.g. by not disclosing some necessary API? Such an injured party may report its concerns to the TC, and then hope that the TC is able to verify its claims, and further is able to convince the Plaintiffs to go to court on their behalf. During this bureaucratic pursuit, the ISV's business may suffer irreparable harm, or even vanish altogether (as has very nearly happened to Netscape). Were such ISVs to have access to Microsoft's source code, perhaps in a secure facility, they could investigate such concerns themselves, directly and immediately. Indeed, API disclosure would not be an issue in the first place.

. The point here is that the nature of the TC is as the first step in a bureaucracy whose natural instinct will be to pursue only the most serious transgressions. In the context of a rapidly changing technology industry, this is a serious weakness in the PFJ. 3.5. PFJ places enormous weight on third TC member. The PFJ proposes that the Plaintiffs appoint one member of the TC, Microsoft appoint a second, and then these two members themselves choose a third (PFJ IV.B.3). This structure places enormous responsibility on the third member, who can be expected to decide any disagreement between Microsoft's representative and the Plaintiffs'', especially in the context of the Voluntary Dispute Resolution process in IV.D. It is unclear whether the TC reports to the Plaintiffs only as a single unit, or whether a dissenter's view also gets submitted to the Plaintiffs. A better structure would at the very least make it crystal clear that any single member of the TC may report to the Plaintiffs.

Also, creating such a fulcrum position in the TC makes this third seat much less attractive and harder to fill, and injects an element of politics into the TC that will distract from its technical mission and smooth functioning. Because the TC is not a decisional body, but simply a means to keep a watchful eye on Microsoft's compliance, it is unclear why Microsoft should have representation here at all. All of the TC's members should be appointed by the Plaintiffs, perhaps with the DOJ appointing one member, the States appointing a second member, and the Plaintiffs collectively appointing the third. 3.6. Catch-22. Given the enormity of the TC's tasks, the limits on its powers and enforcement abilities, and the severe employment restrictions surrounding service in the TC (IV.B.2), it is clear that any candidate for the TC willing to accept the job is almost certainly too inexperienced to be legitimately qualified for it.

In Today's Market, More is Needed.

4. In perhaps its broadest weakness, the PFJ fails to recognize that the circumstances of the original case were unique, and that circumstances today are very different. The Internet's rapid public acceptance around 1994–1995 took many established computer-industry firms by surprise, and radically changed the personal computer market. The basic reasons users wanted to own personal computers changed dramatically within less than two years. Two companies in particular, Netscape and Sun Microsystems, were able to aggressively exploit the new technologies and to take advantage of Microsoft's slow response to the burgeoning consumer demand. As a result, they were able to present a serious threat to the applications barrier to entry that has long protected Microsoft's monopoly in Intel-compatible operating systems.

4.1. No longer any consumer demand for non-Microsoft Middleware. But that window of opportunity is long closed. The Internet is an established part of the personal computer market. Microsoft's Internet Explorer is the dominant browser. There no longer is any great consumer demand for alternative browsers. Netscape no longer exists as an independent company, and development of the Netscape browser occurs at a fraction of its former pace. Even the CIS acknowledges that Microsoft has ''perhaps extinguished altogether the process by which these two middleware technologies [Java and the Netscape browser] could have facilitated the introduction of competition into the market for Intel-compatible personal computer operating systems'' (CIS, III.B.3).

4.2. Cannot resuscitate existing middleware competitors. Nothing in the PFJ can or will restore these competitors to their former strength. There is no way to rekindle the massive consumer demand, then left unserviced by Microsoft, that gave these companies their initial momentum.

4.3. Hoping for another thousand-year flood. Still, the CIS claims the PFJ will ''restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings'' (CIS, II). Given that Microsoft now dominates the browser market and retains its operating systems monopoly, and given that the PFJ

allows Microsoft to support its browser market share by tying the browser to the operating system, this claim seems to rest on the optimistic hope that some new disruptive technology will appear, will be ignored by Microsoft, and will create massive consumer demand for some non-Microsoft Middleware. Without such an event, the PFJ merely establishes rules for a game that has no players.

Unconditional Surrender

Finally, in a bizarre and extreme limitation, the PFJ will expire in only five years—regardless of whether or not Microsoft retains its operating systems monopoly (PFJ, V.A). The DOJ must believe that not only is the PFJ an effective remedy, but that it will be so effective that Microsoft will be reduced to a shadow of its former self and must be unshackled in just five years (seven, if the Plaintiffs seek and receive the maximum extension permitted by the PFJ). Unfortunately, this clause is so careless that it will release Microsoft no matter the circumstances—that is, even if Microsoft retains or even strengthens its monopoly power. The message that the PFJ sends is ''we'll try this for five years, and then we're giving up.''

Any judgement should remain in effect until the Court finds that Microsoft no longer holds a monopoly in Intel-compatible operating systems. It makes little sense to release Microsoft until competition has re-entered the market and Microsoft may no longer commit the illegal acts described by the Court'' s Findings of Fact.

Alternatives

This PFJ illustrates the difficulty in devising effective conduct remedies for complex software cases such as this, especially where the defendant retains its monopoly power and the incentive to expand and maintain it by any method not prohibited by the PFJ. Vague technical definitions and even apparently narrow exemptions can be exploited by the monopolist to maintain its ill-gotten gains. It would be vastly preferable to create the proper structural conditions for competition by decoupling parts of the monopolist enterprise. Without a structural remedy, it is imperative that the definitions and prohibitions in the Final Judgement be as clear and comprehensive as possible, so as to fully restrict the anti-competitive behavior that has been denying consumers choice, innovation and fair market pricing. There are a number of specific changes that ought to be made to the PFJ:

. Any judgement should remain in effect until Microsoft no longer holds a monopoly in Intel- compatible operating systems. Starting in 5 years, the Court should annually review Microsoft's position in the Intel-compatible operating systems market. Should it find that Microsoft no longer exercises monopoly power in that market, and therefore cannot commit the illegal acts described in the Court's Findings of Fact, it could release Microsoft from the terms of the judgement.

. The TC should be appointed entirely by the Plaintiffs, perhaps with the DOJ appointing one member, the States appointing a second member, and the Plaintiffs collectively appointing the third.

. Definitions such as that of ''Microsoft Middleware'' should be tightened considerably, and the PFJ reworked to minimize its reliance on such narrow categories.

. Microsoft should be required to make the full source-code for its Intel-compatible operating systems available for viewing by ISVs et al.. This will allow ISVs to better develop competitive products, and will allow the ISVs themselves to monitor Microsoft's compliance with the judgement's other technical requirements, instead of relying on an inefficient, overworked TC.

. If the Court decides against requiring source-code sharing, it should at a minimum require the disclosure of all operating system APIs used by any Microsoft products (i.e. not just those APIs used by Microsoft Middleware). A blanket disclosure requirement such as this will close those existing loopholes whereby Microsoft might withhold critical information from ISVs whose products threaten its operating system monopoly.

. Exemptions permitting various proscribed behaviors under certain circumstances should, as a whole, be stricken. Finally, the judgment should include real consequences for non-compliance, such as further conduct prohibitions, financial penalties, or further disclosure requirements. The PFJ currently provides only a possible Court-imposed two-year extension of its rather toothless provisions.

Conclusion

I hope that the PFJ is modified by the DOJ or the Court, and that what seems to be a great opportunity for antitrust law to make a difference for tomorrow's entrepreneurs and consumers is not lost in a fog of complexity. The technology may be complex and changing, but the underlying competitive issues are fundamental. I take both comfort and concern from the fact that I am clearly not alone in expressing these concerns. As the Financial Times editorialized: ''. . .It would be wrong for the states, or the judge, to reject this settlement merely because it is not sufficiently punitive. The test is whether the proposal provides enough protection for the public and for Microsoft's competitors. As it stands, it does not meet this test. Though a continued trial would be expensive and distracting, it would be better than an unsatisfactory settlement. This proposal should be rejected..'' (Financial Times, ''Micro-too-soft'', November 5, 2001)

I believe that the PFJ, if accepted by the Court in its current form, will lead to clear and irreparable harm to consumers and to the United States'' technology industry. So pervasive has technology become that the technology industry is an obviously critical component of the American economy.

Even Business Week, itself no anti-capitalist Microsoft critic, recognized the broad implications of the resolution of this case: ''. . . [T]he Justice Dept.'s weak censure of Microsoft for its serious monopolistic practices could cost the U.S. mightily in the years ahead. The great strengths of the American economy are its openness, its competitiveness, and its innovativeness. Monopoly is the enemy of all three.'' (BusinessWeek, ''Slapping Microsoft's Wrist'', November 19, 2001)

Based on my experience, I do not find the PFJ to be in the ''public interest'', which is the standard that the DOJ and the Court are subject to under the Tunney Act.

Respectfully submitted,
Jonathan Gifford
January 28, 2002

MTC–00028580

From: noreen.willig@verizon.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:40pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse, Antitrust Division 601 D Street NW, Suite 1200 Washington, DC 20530–0001 Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Noreen Willig 7394 E. Brisa Drive
Scottsdale, AZ 85262

MTC–00028581

From: Peter Anderson
To: Microsoft ATR
Date: 1/28/02 4:44pm
Subject: MICROSOFT SETTLEMENT
Please find attached my comments in the Microsoft Settlement.
Peter Anderson
5749 Bittersweet Place
Madison, WI 53705
(608) 233–6167
Daytime: (608) 231–1100

MTC–00028581—0001

5749 Bittersweet Place
Madison, Wisconsin 53705
(608) 233–6167
January 28, 2002
Ms. Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW Suite 1200
Washington, DC 20530–0001
Re: MICROSOFT SETTLEMENT COMMENTS

Ms. Hesse:

I would like, if I may, to forgo adding any further efforts to muddy the law and, instead, just comment on the proposed settlement as a consumer who uses a PC computer. With all the drang and sturm already surrounding this case, the interests of the consumer can sometimes get lost in the legal crossfire.

Separate from the arcana of the law, there are two competing views that have been expressed to determine the consumer's interest, as regards the benevolence of the monopoly that Microsoft maintains over desktop operating systems, and against

which the proposed settlement ought to be judged.

The first, and most easy to understand, is the view ably championed by Microsoft. That points to the great advantages in convenience from having a single seller that, alone, can erect a seamless intra and inter connectivity among the various applications on one's own desktop and in electronic communications with different computer users using different platforms. Certainly the convenience factor has some merit and, I must confess, some of my computer-using colleagues with whom I discuss these issues second Mr. Gates'' feelings.

On the other hand, and less readily understood but eminently as vital, is the essential creative energy for dynamic change and future progress that only emanates from disorganization and chaos, both of which are, too often, swallowed in the maw of a monopoly, especially one, like here, that has been found to wantonly abuse its monopoly power. That is why I believe this excerpt from the Pulitzer Prize winning book, Guns, Germs and Steel, is so instructive for how to structure a remedy in this case, if you will indulge me in this short detour to an explanation of why civilizations expand and fall-

''Why did China lose its [technological] lead [over Europe]? Its falling behind is initially surprising because China enjoyed undoubted advantages . . .

''These advantages and head start enabled medieval China to lead the world in technology. The long list of its major technological firsts . . . In the early 15th century it sent treasure fleets, each consisting of hundreds of ships up to 400 feet long and with total crews of up to 28,000, across the Indian Ocean as far as the coast of Africa, decades before Columbus's three puny ships crossed the narrow Atlantic Ocean to the Americas'' east coast. Why didn't Chinese ships proceed around Africa's southern cape westward and colonize Europe, before Vasco da Gama's own three puny ships rounded the Cape of Good Hope eastward and launched Europe's colonization of East Asia? Why didn't Chinese ships cross the Pacific to colonize the America's west coast? Why, in brief, did China lose its technological lead to the formally so backwards Europe?

''The end of China's treasure fleets gives us a clue. Seven of those fleets sailed from China between A.D. 1405 and 1433. They were then suspended as a result of a typical aberration of local politics that could happen anywhere in the world: a power struggle between two factions at the Chinese court (the eunuchs and their opponents). The former faction had been identified with sending and captaining the fleets. Hence when the latter faction gained the upper hand in a power struggle, it stopped sending fleets, eventually dismantling the shipyards, and forbade oceangoing shipping . . . But in China . . . because the entire region was politically unified . . . [o]ne decision stopped fleets over the whole of China.

''Now contrast those events in China with what happened when fleets of exploration began to sail from politically fragmented Europe. Christopher Columbus, an Italian by birth, switched his allegiance to the duke of Anjou in France, then to the king of Portugal. When the latter refused his request for ships in which to explore westward, Columbus turned to the duke of Medina-Sedonia, who also refused, then to the count of Medina-Celi, who did likewise, and finally to the king and queen of Spain, who denied Columbus's first request but eventually granted his renewed appeal. Had Europe been united under one of the first three rulers, its colonization of the Americas might have been stillborn.'' Jared Diamond, Guns, Germs and Steel: the Fates of Human Societies, W.W.Norton & Co. (1999), at pp. 411–413 (emphasis added).

The same motivating forces that animate a civilization described by Mr. Diamond similarly infect those of companies, technologies and markets. Microsoft certainly has much to be proud of in prevailing over so many of its competitors. But innovation does not number high on that list.

Whether we think back to the first ''killer app,'' the spreadsheet, or the word processor, not to mention the mouse, the user-friendly WYSIWYG interface, the world wide web, media streaming, music sharing or almost anything else that has caught fire in the market, it was someone other than Microsoft who conceived and gave life to these ideas so critical to the realization of the full potential of computing. Furthermore, the fact that Microsoft exercised its monopoly power over the desktop to destroy so many of these inventors, depriving them of their just reward for their labors, is of great concern for an economy whose lifeblood literally depends upon the nourishment of innovation.

What Microsoft has added to the equation apart from technical refinements is, essentially, marketing—marketing with the unique power that arises not because it has developed the newest or best product for the consumer, but rather the dominance that derives from the illegal extension of its desktop operating system monopoly.

This is not a contentious statement. The company's executives openly acknowledge the fact, as in the Wall Street Journal profile that ran following Mr. Gates handing day-to-day control over to Mr. Ballmer two years ago at the height of this litigation. ''Mr. Ballmer's ascension signals— ''the shift in power at Microsoft from those with purely technical minds to those who can fuse technology with business sense and customer concerns. For example, Microsoft's consumer chief Rick Belluzzo, a longtime Hewlett-Packard Co. executive whom Mr. Ballmer recruited, says the success of Microsoft's Web efforts depend more on marketing than technology.'' David Bank, ''How Steve Ballmer Is Already Remaking Microsoft,'' Wall Street Journal (Jan. 17 ''00) (emphasis added).

Nor ought that statement to be surprising. It is in the essential nature of organization that, once primacy in some endeavor is achieved, every sinew in its corporeal body is marshaled toward the defense of the product at the source of its power, to be free of the unpleasantness of brutish competition, and to enjoy the quiet life of the monopolist.

Understandable though that may be for any monopoly, including Microsoft, this condition does not demarcate the consumer interest. Rather it is antithetical to it. Messy but vibrant competition is the only proven engine to maintain the pressure to constantly strive and to provide rewards for those who succeed.

Absent clear and enforceable constraints on the extension of Microsoft's desktop monopoly to the web and beyond, the future will be the worse for the dead weight of their monopoly. If the trial court's original structural remedy breaking up the operating system monopoly from applications and the web is off the table, then it is absolutely essential that the final judgment erect an impenetrable wall preventing Microsoft's conduct from extending its monopoly into the new frontiers that advanced computation have opened.

This includes a ban on bundling or otherwise tying the sale of its Windows operating system with any other software product whose essential purpose is to communicate to or from the world wide web or manipulate digitized sights and sounds, all of which are outside the OS market and none of which is mission critical for a desktop computer to operate. At the same time, Microsoft must also open all its evolving source code with complete documentation to competing developers so that they are given a fair opportunity to be the First to market for mid-ware with product that is seamlessly integrated into the operating system. Lastly, the defaults built into the operating system cannot steer the passive user to Microsoft's products, such as the Word folder that Outlook Explorer continues to steer me to when attaching fries such as this to email, impervious to my best efforts to change that default setting.

Mind you, none of this means that Microsoft ought to be stopped from marketing any product that they chose, so long as it is unbundled in its own shrink wrap to insure that they are forced to compete on a level playing field. Even if they had acquired their monopoly power on the desktop legally—and the trial court found otherwise—that tragedy would be inexcusably compounded in a black mark on the legal system were they now permitted to leverage that illegal monopoly into new markets and, in the process, slow the development of future opportunities on which America's leadership depends.

For all his accomplishments, Mr. Gates ought not to be heard to complain about the intervention of the anti-trust laws in his path to market power inasmuch as Microsoft only exists by virtue of the fact that the Justice Department had previously sued IBM for anti-trust violations, which at the time had a near monopoly in mainframe computers. The reason IBM visited young Mr. Gates that fateful day in 1979 in search of an outside party to provide an operating system for IBM's first personal computer was, by moving that product extension in someone else's hands, to throw the antitrust wolves off their traces, not because they had any capacity or desire to develop their own product in-house.

Now it is time for him to recognize that the sun which has shined on him is setting. For the immediate future, Microsoft can continue to enjoy monopoly rents on a mature business so long as it refrains from those acts

found unlawful that illegally sustain its monopoly, but it must leave future markets to be conquered only by those who fairly prevail on the field of competition.

It is in its dynamic economy that America has defined its greatness. In that achievement, however, lay the seeds of our own decline if we let ourselves become prey, as so many civilizations have before us, to subside into complacency, lured by the siren call of convenience and its hand maiden, the status quo.

With the future of economic growth so tied to the ability to multiply human productivity through advances in computation, it would be a tragedy of the first order to let that happen. This case creates the opportunity to seize a far better future than the convenient but far more limited one promised by Microsoft.

Sincerely,
Peter Anderson

MTC–00028582

From: JLennox@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:45pm
Subject: Anti Trust settlement

Mr. Ashcroft,

Please read the attached letter regarding Microsoft. Thank you.

Regards,
James J Lennox

MTC–00028582—0001

James Lennox
19 Dellwood Drive
Florham Park, NJ 07932
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

The purpose of this letter is to go on record as a supporter of the settlement that Microsoft and the Department of Justice has reached. The antitrust suit against Microsoft has drained state and federal government funds, as well as Microsoft's; am relieved to see that it has ended.

A inordinate amount of money has been spent pursuing Microsoft, and this settlement finally allows an end to the litigation. The settlement was actually harder on Microsoft than I would have liked, but I am relieved to see an end to the dispute. In fact, Microsoft will be required under the agreement to supply its competitors with its intellectual property in the form of source code and design data, which makes up the internal structure of the Windows operating system. This does not seem fair to me, but if it ends the suit against Microsoft, I support it.

This settlement is fair enough, and I just hope that there will be no further litigation against Microsoft.

Sincerely,
James Lennox

MTC–00028583

From: paul—knutson@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

I urge the Federal Government and those states involved in the settlement of the anti-trust case with Microsoft in November 2001 to continue with the process of settlement and see it through to its completion. I have read the terms of the settlement and the punishment of Microsoft is stern but fair for all involved. I and the other consumers who ultimately drive the economy will benefit from this settlement and that is of utmost importance today. It is time for the Federal Government the participating States and all those who seek to further delay this settlement to move on to other issues by allowing the completion of this settlement and ending the Microsoft anti-trust case once and for all.

MTC–00028584

From: nanandkitty@bigplanet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Please honor this settlemnt and free time money and resources to pursue solutions to the truly outrageous abuses perpetrated by ENRON and ANDERSEN!!!

MTC–00028585

From: trasharp@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

The government has no business determining software/hardware combinations how technology can be improved how technology companies can form partnerships and how companies can manage their intellectual property. The market and consumers have already made that decision and make it every day in their purchasing choices. This settlement should be approved so that we can all move on to the business of innovation.

MTC–00028586

From: smodan@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Because I am old (68) I remember the growth of computer technology and it has been great. Microsoft has led the way. But along the way there has been a lot complaining about the leadership. As I remember it would come from people who were experts. It seemed they had control of their world and didnt want it to change. But technology is about change and therefore what ever Microsoft did it made the present better and pushed us into the future. From my point of view we should stop all law suites aginst Microsoft and get on with business.

MTC–00028587

From: cdydr@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

The settlement proposal appears to be more than fair and with all the protection features necessary.

MTC–00028588

From: febetz@toad.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Throughout this process Microsoft and Bill Gates have shown no remorse or even signs that they have infringed on the rights of others in the marketplace. The current settlement is a sellout to Microsoft.

They concede nothing and give nothing. The day after this settlement concludes Microsoft will continue to bully and coerce smaller competitors protect their programs and deny what everyone thought that they were supposed to yield. Their lawyers will find protection in the samll print. Microsoft gained leadership through shrewd buisness alignments initially and afterward by borrowing technology from others. Did Microsoft introduce the mouse or pull down screens? No! If it wern t for other competition Microsoft would still have us using DOS. Microsoft has continuously introduced mediocre software and mediocre upgrades that crash and crash again. If they were building automobiles no one would buy a second one. Microsoft has dominated the personal computer software field with poor products soley because they have muscled every competitor into submission. The proposed settlment does nothing to stop this still arrogant corporation from continuing as it has in the past. Break up Microsoft!

Give the Nation an honest and fair playing field for all. Thanks !

MTC–00028589

From: robinpur@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

I am shocked that the government has brought this case against Microsoft. Microsoft is an innovative company that does a lot for it s consumers. It s amazing that a small business can be successful with the tools Microsoft has developed. This case against Microsoft needs to be dropped. It s harming consumers and our economy to continue such a fight against a company that has done so much for the consumers and America! Please drop this case and move on. Settlement is needed to help the economy to move forward. I am so disappointed in the 9 states that are continuing the fight against Microsoft. They are obviously not listening to the American people since most of us do not want this to continue since Microsoft has done so much to help improve our lives. It s so obvious that the 9 states are being pushed to continue to fight Microsoft just for money and their power-hungry competitors that have not been able to develop products as well as Microsoft. As a consumer I choose which products I want to use. It s not forced upon me! Therefore I m not sure how I m being harmed. I choose what I want to use and I will continue to choose Microsoft. Please move forward and let things continue the way they are.

MTC–00028590

From: twotoads@webtv.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

It is time this case is settled as determined in November and stop any futher costs

MTC–00028591

From: eeldon@juno.com@inetgw

To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Leave Microsoft alone. They have simplified the use of computers. What happened to free enterprise?
they came up with a better mouse trap and other companies want to capitalize on their expertise.

MTC–00028592

From: frankcaicedo@holmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Leave Microsoft alone. This is the first company in the history of the United States to be number one in the world at what they do. I think that Mocrosoft has done a wonderful service to this country and I do not want any damage to the company that has managed to keep the foreigners away from the leadership in this technology. Microsoft deserves all of our support so that they will be able to concentrate on bringing to us the newest advances in computer software and related technology. Sincerely Frank
Caycedo
M.D.

MTC–00028593

From: rogowski@pacifier.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
It seems the loudest voice against the settlement is Microsoft competitors. That should indicate to the court that they intend to use the justice system to their benifit. The settlement is just and fair and should be granted.

MTC–00028594

From: dchadwell@executive.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Dear Sirs I encourage you to complete and settle the Microsoft case as soon as possible in a manner that is the least intrusive of Microsoft. It is my opinion that this entire case is based not upon what is best for consumers as we enjoy the greatest technological advantage in the world here in the USA largely due to the contributions from Microsoft but based upon the desire of others as Larry Elison and Scott McNealey (Oracle & Sun Corporations) to themselves be # 1 in place of Microsoft. Both have openly and repeatedly said as much on many venues. It is time to close this case and move on. Best
Regards
Danny Chadwell

MTC–00028595

From: jana30@ameritech.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
The origin of Microsoft is the story of America.Competition and innovation should be encouraged cultivated and applauded.Tempered with some rules and regulations but not punished for triumph.Every contest has a winner and a loser.Does not the vanquished perpetually cry foul upon defeat?Technology today is a profusion of opportunities let‘s not support regulatory suffocation!

MTC–00028597

From: gillesdebordeaux@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Microsoft is among the few companies who allowed the USA to become the number one software exporter in the world. Don t break or harm a company that brings so much money to the USA and that employs (directly and indirectly) so many people. Microsoft keeps bringing a lot of inovations at a very low cost for the customer.

MTC–00028599

From: wearent@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
i disagree with the gov. interfering with microsoft s effort to increase the use of technolgy. i wish to support the settlement that has been worked out between microsoft and the gov! please alow us the opportunity to determine what we want—-now get off their back so they can provide us with new technolgy sincerely wesley and lois arent.

MTC–00028601

From: sbcascade@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Please settle the case against Microsoft. Pursuing the case against Microsoft is harming consumers. Microsoft has done a lot for me as a small business owner. I do not support the actions of fighting Microsoft since their programs and tools have helped my business be successful. Please settle and let us consumers decide which products we want to use.

MTC–00028602

From: monette@freeway.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Why tear down one of your biggest corporations just to destroy them? (EX> K-Mart). You have much bigger fish to fry. Go after the real problems—the stock market. The manipulations of the anaylasts have done major damage to the ecomony. Go after those people who are one of your biggest problems instead of wrecking another major industry who has done so much to advance technology in the country and the world.

MTC–00028603

From: monette@freeway.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
Microsoft brought the computer to this country for the common people. They have done what the government could not do. Actually Microsoft brought the computer to the World. You should be thankful for this. Shame on you for being so selfish. Marcia

MTC–00028604

From: ahowens@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
It s a shame when corporations suing Microsoft can t stand competition. It also appears our legal system is willing to continue trying to destroy Microsoft. Why don t we just let the market system work? Let the people buy the product they want instead of forcing Microsoft to give incentives to it s competitors.

MTC–00028605

From: dcmcder@swbell.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
The involvement of the government in this matter disturbs me a great deal. The tax dollars used to fund the prosecution of Microsoft far outweigh the consumer benefit (if any) a judgment would provide. As I see it the only people who are being assisted by this would be AOL SUN Oracle and others. So as a consumer I would like to once again thank you for all you ve done to help big business in my name.

MTC–00028606

From: joec504@earthlink.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement
Get on with the settlement! As long as all parties aggree let s get back to good competitive business.

MTC–00028607

From: maxrice@charter.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
I think the proposed settlement is in the public interest and should be accepted.

MTC–00028608

From: ilsawing@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement
It is my belief that government has gone too far in it s pursuit/vendetta against Microsoft. When the public buys more goods from a certain company it is usually because that company had the foresight to see the needs of the public. Also the public has in essence cast it s vote by buying goods and services from Microsoft thereby showing it s trust and it s wish to continue a consumer/producer relationship with that company. It makes me wonder what is next on the government s agenda to attack and break up. This divide and conquer strategy taken by our government can next attack anything American. The people should beware and vote accordingly to be assured that those who intend to use big government against the public are not in a position to do so.

MTC–00028609

From: gip4all@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

I do not support the settlement/s as written with Microsoft. Microsoft retains a monopoly on my PC. I can not remove MS Explorer from my PC. I favor Netscape. MS has been let off much to lightly. MS should be split up ASAP.

MTC–00028610

From: ERUTHDUBUISSON@prodigy.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Settle this problem now! This suit was not necessary to begin with. Taking up to much precious time and money of the tax payers.

MTC–00028611

From: lmiller@dragonbbs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Yes I agree hope it is settled and finished let Microsoft continue with the creative course that made it famous and helped it bring about so many new products and ideas!! Feel Bill Gates is a deservering man —- let him go on and on and on .....

MTC–00028612

From: colvinnl@muohio.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

It seems clear that the settlement reached in the Microsoft case is a good one. The most important goal should be to end the use of the taxpayers money on such an unworthy cause. Let s end the waste!

MTC–00028613

From: patandal@asapnet.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

THE ATTEMPTED RUINATION OF AN INOVATIVE COMPANY BY VINDICTIVE COMPETITORS SHOULD NOT FIND AN ALLY IN THE U.S. JUSTICE DEPT.. SETTLE THIS CASE AND LET S GET BACK TO BUSINESS.

MTC–00028614

From: Matt.Allen@unitedstates.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

I am concerned that this process has draged on long enough and $35 Million taxpayer dollers was too much to spend already.

MTC–00028615

From: mrdubridge@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

It seems to me to be more a matter of extortion than justice.The complaints were brought by competitors rather than consumers. The anti trust and monopoly laws were intended to protect consumers yet consumers are not for the most part the ones complaining.If Microsoft is a monopoly then how can there be competitors to bring about these complaints? It seems to be another case like that of the tobacco co.s of the government seeing a huge pile of cash that it can extort from a legal corporation operating in a legal manner producing a legal product being used in a legal manner.

MTC–00028616

From: gelliott@bigskytel.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

Although it is obvious that Gates is a communist I can t see any lawful authority for the government to tell him how to run his business. And just as the government asked Howard Hughes to finance World War II who do you think the government is going to ask to finance World War III?

MTC–00028617

From: lillian.bensley@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:36pm
Subject: Microsoft Settlement

This is to register my support of Microsoft s position. I think we should support a company that is contributing to the US and world economy by providing a good product. It frustrates me that the government goes after Microsoft... why weren t they on Enron instead? Not enough contributions?

MTC–00028618

From: ajimenez@milesgr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

We as Americans need to quit spending our time and valuable economic resources and focus on the real problems. Corporations like Microsoft keep America s economy running the war is not against Microsoft who provides job to thousands of Americans and helps to the financial health of our nation. Microsoft as a leading technology improvement corporation should be an example to follow restraining it will cause a regression of the high tech industry. I as a consumer and concerned citizen would like to see a little bit of wisdom in my elected representatives if they could do a better job by focusing on real problems and keep America rolling.

MTC–00028619

From: jblack000@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Companies against Microsoft should go to work each day to innovate rather than collude with the state AG s to litigate! It seems that the only way to satisfy Microsoft s competitors is to legislate and litigate the Microsoft Corp. completely into oblivion!

MTC–00028620

From: paulbarker—1@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I think that the speedy resolution of the settlement is in the best interest of everyone—the technology industry the economy and especially consumers. The nation has spent enough money on this case and should move on to other cases more important. Besides the lengthly negotiated settlement have been endorsed across the business spectrum. Let s just move on.

MTC–00028621

From: sueamark@msn.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

This a fair and reasonable settlement time to let the agreement move forward and gauge the results speak for themselves!! Not only have i not benn overcharged for software but have received technical support free of charge whenever it was needed usually because of a problem on my end....I own a lot of software and by far Microsoft has been the most deserving of it s price....features combined with excellent customer service far exceedes almost all other competitors software I have used....other operating systems that i have seen are of no interest regardless if you give it to me for free! price vs. results is of the utmost importance....and free or cheap has it s costs....let free compition be thy guide not lawyers andspecial interests....i stand firmly behind a company that stands behind their products!!!! a satisfied Microsoft customer.....

MTC–00028622

From: joe—213@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

My Opinion is that the government should stay out of technology and the web. They are currupting freedom of speech with every attack on the Internet & Microsoft. People shouldn t be prosocuted for doing good business and making good products. there hasn t been a company that is better at doing business OR making good software for consumers and business to use. Most Commerce on the internet is backed by microsoft servers and a technology that microsoft has made. That awesome advance (known as ACTIVE SERVER PAGES) in the internet is downplayed by one or more tiny little losers in the consumer market. Most people know and love windows its on something like 90% of consumers PCs.

Your alternatives are Macintosh or Linux. Both of these options are either too technical or too expensive. Windows is easy enough for most Non-Technical people to use and learn. Macintosh says they are the easiest but with most people they dont want a Macintosh because they look dumb or they are too expensive you choose why. Plus $1000 for a low end computer isn t desireable for me how about you!?

Your other option are linux and OS2 (all flavors) do you program C? I dont and im a database administrator enough said. Another person (or the government) might take the opposite view. Well they are soo good they are tring to take over all the companies that make technology. I don t believe they are tring to take over anything. I think that the consumers are making them. they are making products that are far better than any others.I don t work for microsoft nor do I believe in thier mission statements. But as a consumer in the technology field I believe in their products. So be it is I will continue to buy

Microsoft products reguardless of any government regulations%

MTC–00028623

From: emoss@agloan.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I feel that the US Gov t cannot keep their mitts off of anything. I feel bad for the U.S. that we should target the entrepreneurial spirit of this country and lambaste the winners of the contest to see who can come out on top. It is to our shame that an outfit like Microsoft (being the biggest boy on the block by far) is hounded by the U.S. s own legal offices. My feelings about this whole incident lean towards the abstinence of the corporate entity in the marketplace from today on. In other words MS would close their doors from this point on retire those people that they can furlough those people that can t be retired and shut the doors. If the U.S. infrastructure begins to fail so be it. The justice dept. caused the whole thing. If the entire economic structure of the U.S. is placed in jeopardy because of this incident maybe the DOJ will put noses up their own a** instead of into other peoples businesses.

MTC–00028624

From: rdo@community.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Microsoft has done more for this country than any other ten companies put together. Stop the action that seems to be planned to go on forever. Finalize the settlement and stop further action.

MTC–00028625

From: pss@comcast.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I am encouring a swift and fair conclusion to the Microsoft case. They should be allowed to innovate and offer the consumer their best product. They should be fair. The consumers will ultimately determine the software choices best suited for their needs.

MTC–00028626

From: jmurphy@rsmeans.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I do not believe that taxpayer interests are served by government continuing to hear competitor-driven antitrust lawsuits against Microsoft. It is regrettable that the original lawsuit was heard.

Sincerely
Jeannene Murphy

MTC–00028627

From: john@inetplus.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I think that Microsoft has been unjustly treated. They happen to make the best internet browser and operating software in the industry. Microsoft has made is easy for first time computer users to access the Internet and I herald them for thier efforts... Now get off of them and let them do business.

MTC–00028628

From: ACrawford@phillynews.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Microsoft should be prevented from its longstanding and ongoing deceptive and predatory business practices. If this requires breaking the company into two or more smaller companies so be it.

MTC–00028629

From: lisagludwig@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Attention: I am writing to tell you that I believe that there has been no consumer harm whatsoever as a result of any actions taken by Microsoft. In fact Microsofts products and services have led to tremendous benefits for consumers such as my myself and my family such as better products and lower prices. Antitrust law is supposed to be about consumer harm and on that one key issue alone the government has failed to show any harm whatsoever. So lets back off now and leave Microsoft alone and this will also help our economy tremendously! Given that the economy is now in recession the last thing we need is more litigation and regulation of the high-tech industry. Settlement of this case is in everyones best interests the technology industry the economy and consumers. I hope you heed this advice! Thank you! Sincerely Lisa Ludwig

MTC–00028630

From: melendy@bellsouth.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

In my humble opinion it is long past time to cease this ridiculous persecution of the most innovative corporation in the nation. The benefit that has accrued to the nation from Microsoft s standardization of software and the continued increase in the productivity thereof are vitually beyond calculation. And what do they get as their reward? Persecution by the government because a passel of would-be competitors simply are not sufficiently creative to keep up with them. Can it.

MTC–00028631

From: kkidder778@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

The Dept. Of Justice should drop it s lawsuit against Microsoft. Do not penalize a company for success. I feel that the lawsuit against Microsoft in early 2000 was one of the prime reasons the stock market started it s slide in 2000. Big Business drives the economy of this country do not stand in the way of the economy lets get the economy rolling again.

MTC–00028632

From: dp@ontariodesign.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Please let the settlement stand. Do not pursue further action against Microsoft.

MTC–00028633

From: fghill@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

you have tried to strangle the goose that laid that golden egg and spent too much $$$ onit.

MTC–00028634

From: tefzel@earthlink.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I buy Microsoft products because I like them and I want them. The thought that Netscape or any other company is losing market share due to a monopoly is ridiculous. If I thought other products had merit I would buy them. The only reason Microsoft seems to have a monopoly is because their products are many times better than the competition! In my opinion the plaintiffs in this case are wasting my tax dollars.

MTC–00028635

From: kconover@ilcc.cc.ia.us@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I believe that the Microsoft settlement is fair and equitable for the technology industry. Further litigation would be counter-productive to the technology industry and to the general business climate. It is time to end this protracted court action.

MTC–00028636

From: PatrickPlock@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I believe this settlement proposal unfair to Microsoft and prohibits Microsoft to conduct their normal course of business not unlike any other corporation. Microsoft has been unfairly targeted as an industry monster and this settlement sends the wrong message to other businesses and consumers alike.

MTC–00028637

From: ballweber@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I have been a consumer of Microsoft products since 1991. I have never felt disadvantaged by their pricing of their products. In fact my personal productivity has increased significantly every year as their products improved through innovations they incorporated into their software and services. I think the settlement is fair and it is time to end this costly legal battle. Our government has better battles to fight. I would urge the judge to pressure the remaining State s Attorney s to also settle the case and let s move on to more serious offenders than Microsoft which has helped make America the World leader in technology and software.

Sincerely

Rober J. Ballweber Jr.
President

MTC–00028638

From: dflex@worldbank.org@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I do not agree that MicroSoft has violated any antitrust laws. If it weren t for the intellect of Bill Gates where would we be today? He has made a difference!!!

MTC–00028639

From: lscott@dollar.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I would strongly encourage the resolution of this suit by agreeing to the terms of the proposed settlement.

MTC–00028640

From: bryanrogowski@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Renata Hesse: Please find in favor of the Microsoft Corporation and direct the DOJ attention at more important matters such as corporate welfare and Enron.

thank you
Bryan Rogowski

MTC–00028641

From: maweber@execpc.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Our anti-trust laws should be modified to reflect the contemporary marketplace. Microsoft's competitors took advantage of antiquated laws to hurt the company that has provided unprecedented benefit to our society economy productivity as a nation and ability to comunicate globally. Free enterprise has prevailed. It is indeed the very size of Microsoft that enabled continuous reinvestment into improving it's products. The state of our present computing systems is now well ahead of where it might have been were Micrsoft restricted. Re-do the laws. Leave Microsoft alone. Tell the competitors to take their case to the market and not the courts.

MTC–00028642

From: ew—ross@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

To whom it may concern

I believe as a citizen of this free country the government does not have right to intervene with any company. The companies of the United States are like the citizens of the United States. They both have the freedom to excel. This is what makes America what it is. In the case regarding Microsoft I believe they have their right to excel. They company has brought us new technology has helped out the economy and had begin a new market. The comapny should not be punished. I believe the majority of the citizens of the United States are grateful for what Microsoft has done and what they will continue to do. Its a shame that my tax money is being used against a company that wanted to excel.

Thank you for this opportunity and your time.

Take Care
Eric W. Ross

MTC–00028643

From: Rick Moore
To: Microsoft ATR
Date: 1/28/02 4:42pm
Subject: Microsoft Settlement

Dear Sir or Madam,

The proposed settlement does not go nearly far enough in stopping microsoft's egregious behavior. The company should be dealt with decisively. How many anti-trust suits do my tax dollars have to fund. You have a mandate to protect the consumer and competition. Microsoft has repeatedly shown contempt for our government and our people. If we are to fight terrorism around the world we should begin at home. This monopoly only inhibits the growth of our economy, It does not represent it. As a business manager I am forced into disadvantageous purchasing decisions as a direct result of microsoft breaking compliance with technologies before their life cycles are realized. We are forced to spend capital to replace equipment that is not broken just to remain on a platform that they support. You let the best remedy escape when you opposed the break up now you don't even have an enforceable doctrine. Please for all our sakes take stronger action. I just don't want to continue to buy lesser products because I have no choice.

Thank You
Richard Moore

MTC–00028644

From: kcsimon@acm.org@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

I am computer professional who for 20 years has worked for large companies small startups and my own business. I urge the court to accept the proposed settlement. Further litigation will severely disrupt our industry and only serve those companies that directly compete with Microsoft. This case has never been about the interests of consumers or software developers. We have voted overwhelmingly in the marketplace for Microsoft products. They have been the underpinning of the great productivity and economic gains which we experienced in the past decade. The courts should not be used by corporations with inferior products as a mechanism for overturning the will of the free market. I resent the use of my hard earned taxpayer dollars to reverse my well thought out choices. I urge the court to settle this case now.

Sincerely
Casey Simon

MTC–00028645

From: clevno@realexcellence.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Best would have been for the government to halt the lawsuit. But this is acceptable

MTC–00028646

From: steckd@sandersoncmi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:37pm
Subject: Microsoft Settlement

Judge Kollar Kotelly RE: U.S. vs. Microsoft Your Honor The U.S. Government has no business going after Microsoft in the first place—Bill Gates started in a garage and made it work—his whining competitors should get over it. Please let Microsoft get back to business. One thing about Microsoft is that it is a U.S. company—please free it from U.S. and state lawsuits. We need good products to compete in the world market. Thank you Sir. Sincerely H. David Young 7165 E. St. Rte. 41 Troy OH 45373–9020 937–335–6422

MTC–00028647

From: croy0001@umn.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

My thoughts concerning the settlement are few and simple. I believe that the government should have little to do with obstructing the free actions of the marketplace. To my knowledge Microsoft has not used force to compel anyone to purchase their products.

MTC–00028648

From: ohiotax@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

On behalf of the Ohio Taxpayers Association and our over 5,000 Ohio members I am writing in support of the proposed settlement between the Justice Department and the State of Ohio. No further legal action is necessary or welcomed. The settlement provides a fair and reasonable settlement that benefits technology consumers and brings to end this lengthy case. Thousands of Ohioans are employed in well paying jobs because of the work of Microsoft in addition many more Ohioans are shareholders in the company. Settlement allows Microsoft and the rest of the technology industry in Ohio get back to work. The only thing this lawsuit has succeeded in doing is driving down the share prices of technology companies and wasted taxpayers dollars The positive benefits are numerous to this agreed upon settlement. Implementation of the settlement is a positive step for the American and Ohio taxpayer.

Sincerely
Scott A. Pullins
Ohio Taxpayers Association
www.ohiotaxpayers.com

MTC–00028649

From: jcowsert@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

This settlement is for the COMPETITORs NOT the consumer !!! I always thought a free market system would let the market decide. We are not a free market system when the government dictates the market especially when it has been obvious over the last 4 years of this lawsuit that the competitors are

using our own government to gain their own advantages. Not many consumers in the US today believe this lawsuit has anything to do with them. We all know it has to do with jealously and posturing by the competitition.

Please stop this nonsense and let consumers decide what is best for them. Our dollar speaks loudly in a free market system.

MTC–00028650

From: joshthunt@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

The settlement action recently undertaken between the Justice Department and Microsoft Corp. represents a fair and unbiased end to the legal battles that have gone on for these several years. To allow Microsoft s competitors to block this just settlement to aid their own deficient products would be a travesty and not at all in line with the fair competitive nature which benefits both consumers and producers.

MTC–00028651

From: ddd153@psu.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

Though I do not believe that justice should be swayed by the majority's opinion for majority'ssake I provide my opinion here because the Microsoft case has been made open for public comment. The American government has taken Microsoft to task for being a productive innovative and successful company. The purpose of the government is to defend its peoples' individual rights these rights are impinged upon when force is used to undermine another's ability to think live or produce through free choice. Controls on legitimate spending contracts and productivity undermine civilized human behavior and only cause more controls. Microsoft has settled rather than fight the court system with its energy money and time. But the justice system is wrong. These laws should never have existed in America. There should be a complete separation between economy and state only cases of national security fraud and broken contract should be business matters of the court domain. To punish Microsoft for being so successful is the equivalent of punishing an individual for being good at living. I can only hope that the precedent set by the outcome of this case does not seek to completely undermine all that America stands for.

MTC–00028652

From: christopher.shaffer@gbbragg.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

I think that the settlement between Microsoft and the state attorneys general is fair and reasonable. I think it is time that this lengthy process is over. The parites that are upset about the settlement obviously want to see Microsoft crushed at the hands of the federal government. If these parties were genuinley interested is fairness which is what they claim then they should endorse the settlement as well. The settlement is in the best interest of the nations economy and the technology industry.

MTC–00028653

From: Doug Riddle
To: Microsoft ATR
Date: 1/28/02 4:47pm
Subject: Microsoft Settlement

To Whom It May Concern:

I think the increasing frequency of computer viruses and denial of service attacks only serve to underscore how important competition is in the market place, and how poor quality and service can get in the face of a monopoly. Microsoft is knowingly producing shoddy products because they can force suppliers to comply with their demands. They use their size, market share and media assets to avoid competition, while their lawyers tie up what competition and complaints there are. I do not want to see them shut down, but I want real accountability to the public built into the remedy. Please help see to it that any proposed settlement has teeth, or do not settle.

Warmest Regards,
Doug Riddle
http://www.dougriddle.com

MTC–00028654

From: smyczpe@auburn.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 4:38pm
Subject: Microsoft Settlement

This ruling against Microsoft is unjust. Settlements like these will scare any company into becoming too successful. The evidence against Microsoft failed to prove that Microsoft is a monopoly. This was just an action by the business-hating Clinton Administration. Don t Hang Microsoft out to dry.

MTC–00028655

From: Griffin, Joanne
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:45pm
Subject: I support Microsoft settlement
Please see my attached memo. THx.JSG
CC: ''fin(a)mobilizationoffice.com''
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to you to express my support for the settlement of the anti-trust lawsuit against Microsoft. The agreement that has been reached will not only help the economy, but it will ensure that in the future, anticompetitive corporate action will not be tolerated. Microsoft has not been let off lightly and the government has proven its point.

The biggest provision of the settlement is the fact that Microsoft will not attack other computer manufacturers who produce rival products. This will definitely open up the market to fair competition without fear of reprisal. I support Microsoft's position and also think that it is necessary for small business to flourish in partnership with larger companies. This settlement allows this to happen.

Three years is long enough for a case to continue. Microsoft has agreed to this settlement and now it is time for the government to respond in kind. Anticompetitive laws have benefited greatly from the result of this case and so have all sides concerned. Let Microsoft continue to develop software that benefits us all without the threat of further litigation hanging over the company. I urge you to accept this settlement. Thank you.

Sincerely,
Joanne Griffin
1152 Center Drive
Saint Louis, MO 63117

MTC–00028656

From: Bruce Nazarian
To: Microsoft ATR
Date: 1/28/02 4:49pm
Subject: Microsoft Settlement.

Dear DOJ

The fact that this government has backed down from properly seeking a strong settlement from Microsoft, in view of the finding that it has promulgated monopolistic behavior is distressing. In my view, and that of MANY literate computer professionals, what Microsoft has wrought on the Country, World, and the Computer business at large is nothing more than a thinly -veiled attempt to create a monopolistic stranglehold on how we compute, and what we compute with.

If there needs be any further evidence about how ineffective Microsoft is at innovation, and how little they care about anything other than Market share, it would be this: Their Latest ''state of the art'' operating SYstem Windows XP, is so full of security breaches and bugs that it makes matters WORSE rather than better. And they KNOW it! In addition, they are patching these flaws so quickly and so often that it is virtually impossible for IT professional to maintain a stable computing environment in their businesses.

I, for one, CATEGORICALLY REFUSE to operate their software, and avoid using the Windows operating system completely. Many IT professional are now switching to UNIX, Mac OS X and LINUX as a stable alternative.

i wish that DOJ would SERIOUSLY REVIEW their proposed settlement (which has been watered down significantly since, coincidentally, a REPUBLICAN administratin took power) as it DOES NOT provide protection for the American Computing Public, and, in fact, lays the way clear for Microsoft to continue to promulgate Monopolistic control of the way we work—Iff you need more proof, look seriously as the .NET Strategy, and their abusive software upgrade ''purchase'' policies.

I am disappointed with DOJ being prepared to THROW AWAY the ONLY opportunity we have to remedy Microsoft's egregious business practices, and to properly punish them. Please do the right thing—since you won't break them up, at least LEVEL THE PLAYING FIELD so they can no longer usurp INNOVATION from third parties and call it WINDOWS. LOOK AT WHAT THEY DID TO NETSCAPE!!!! Mad, you're damn right I'm mad—I pay your salaries! Now please do the will of the people, NOT the will of the politicians. WE WANT THIS ABUSER PUNISHED!

Bruce C. Nazarian
Common Citizen, and NON-Mircrosoft user

MTC–00028657

From: WALSHARPE7A@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:49pm
Subject: Microsoft settlement

My wife and I enjoy the quality and reliability of Microsoft products. We have used competitors products in the past and have found them to be inferior time and time again.

We think it would be in everyone's best interest to resolve the case. We may just be two individuals in the population but our opinion is that this drama has gone on too long as it is. The company that provides a superior product at a reasonable price should not be ''bashed'' just because it is preferred by the user.

Approximately fifteen years ago a competition issue arose with telephone companies and I have not experienced the same degree of satisfaction in telephone service since the breakup of AT&T. I would hate to see history repeat itself.

Maybe the time and monies used to prosecute Microsoft could be better used investigating the pricing and merger activities within the cable industry. At the consumer level these appear to be unfair, monopolistic, and not in the best interest of the public.

Wesley & Lynn Sharpe

MTC–00028658

From: Orrinstromswold@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:49pm
Subject: Microsoft Settlement

Dear Mr Ashcroft:

The settlement between Microsoft and the Department of Justice in regards to the antitrust suit is a very fair settlemant for all sides involved. I feel that there is no need to continue litigation. It is a wast of time and money. the only people who profit from this are the lawyers and the companies whose product are less popular with consumers.

I feel that the settlement is a good thing and that it should be finalized.

Regards Orrin O. Stromswold 2706 169th Ave N.E. Bellevue, Wa. 98008

MTC–00028659

From: Reid Flickinger
To: Microsoft ATR
Date: 1/28/02 4:49pm
Subject: Microsoft Settlement

Good Afternoon,

As a professional with 20 plus years of computer technical experience and a decade-long owner of several successful computer service companies I feel that I have a relevant perspective on this case that should not be ignored. Important background to consider first is that I initially gained experience with Microsoft's competitor Apple, followed by various other competitor's systems. I was slow to move to Microsoft's products but eventually found that they offered superior products and support. As a developer in the computer business, they were far more responsive to my needs than Apple and delivered more cost effective solutions. Since then on countless projects, this has been the case and it is for no other reason then Microsoft's ability to offer better products and support with lower total-cost-of-ownership that they have my business.

This case was never created for or even by consumers but for the benefit of failed market competitors to Microsoft. It was presided over by a judge with a personal axe to grind who was incapable of understanding anything technical. The prosecution of Microsoft was an insult and the behavior of the court was worse. Microsoft's proposed settlement is more than fair and should be accepted.

Thank you for your time,
Sincerely,
Reid Flickinger
Reid Flickinger
Chief Technical Officer
MFC Inc, SaleView Systems & Contact24
Continuous Web Monitoring and Notification
Reid@SaleView.Com
925.831.8942 Ext. 11
www.saleview.com & www.contact24.com
Danville, California U.S.A
CC:activism@moraldefense.com@inetgw,letters@capitalis...

MTC–00028660

From: Minoofar(a)cox.net
To: Microsoft ATR
Date: 1/28/02 4:48pm
Subject: Microsoft
44 Blue Horizon
Laguna Niguel, CA 92677
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I was recently informed that the DOJ has asked for the public's opinion on the antitrust lawsuit against Microsoft. As I feel very strongly about this issue, I decided to take full advantage of this opportunity. I am an avid support of Microsoft and if this settlement brings closure to this three-year battle against them, then I support the settlement as well. In my opinion, this lawsuit as done nothing but attempt to tear down the IT industry leader. In the process, major damage has been done to this industry and the economy. It is time to bring closure to this case and I hope that you will make the necessary decision to ensure this.

I have a hard time understanding the reasons behind the States'' dissatisfaction with the settlement. The settlement seems fair and serves to ensure that future antitrust violations will not occur. Microsoft has even agreed to alter business practices that were not found to be unlawful, just so that this matter will close quickly. As for Microsoft competitors, they should be more than pleased that Microsoft has agreed to grant them much easier access to their company codes and interfaces. This is the first time that this has happened in an antitrust case. Additionally Microsoft will adhere to findings by a Technical Committee as it relates to compliance disputes.

I am confident that I am one of many people who feel the same way about this matter and hope that my comments and those of others will play heavily on your decision to wrap this matter up quickly. Thank you for taking the time to consider my thoughts on this matter.

Sincerely,
Albert Minoofar
cc: Representative Darrell Issa
CC:fin@mobilizationoffice.com@inetgw

MTC–00028661

From: Liz Bradley
To: Microsoft ATR
Date: 1/28/02 4:51pm
Subject: Microsoft anti-trust settlement

Greetings—

I am a professor of computer science at the University of Colorado at Boulder. I am a lifelong Unix user, but my professional life has been significantly affected by the Microsoft monopoly, and I would like to make a few points about the settlement.

Microsoft has a long history of business practices that intentionally and effectively tie its users'' hands—in ways that benefit Microsoft, and that perpetuate and extend its monopoly. Their business practices are predatory, and their design choices have made it difficult for anyone to use any kind of competing software or format. This is true from the system level (e.g., the netscape lockout) to the social/practice level—for example, how hard it is to get a Microsoft email program to send email messages in anything but Microsoft-proprietary format.

This last example, which hits me many times every day, may seem petty, but it is really pernicious—in the way that my history classes taught me that the anti-trust act is intended to fix. I get email from a non-computer-scientist colleague, complete with a Word attachment. I email back, asking for a lingua franca format like pdf or ascii. My correspondent can't figure out how to do the translation, eventually gets frustrated, and castigates me for not ''getting with the program'' and using Microsoft. Since I use computers professionally, doing so is not an option; moreover, I know enough to not succumb to that kind of pressure. Neither of those things is true for most people, and the pressure propagates the Microsoft monopoly.

Encouraging an entire community of users to use a single set of proprietary software is not only a matter of monopoly. It is also a matter of security. Microsoft's email programs, for example, not only force their naive users to send Microsoft-format attachments, but also make those users vulnerable, because the defaults are set up so incoming attachments are automatically ingested. Moreover, those programs are full of security holes. This combination causes dozens of virus attacks to propagate around the world every year. My colleagues'' computers are routinely paralyzed during these events, but I have never—NEVER—been affected by a virus in my 20 years at MIT and Colorado.

It is well known in ecology that a diverse population is far more robust. The goal of Microsoft's direct and indirect pressure is a homogeneous population of computer users running Windows. A single smart hacker would be able to take down this entire country if they succeed.

File formats should be open, just like the design of a car interface —- the steering

wheel/accelerator layout, etc.—is open. Competitors should not be smothered using heavy handedness. (This is EXACTLY what catalyzed the suit that ended up in Sherman!) The open-source community, in particular, should be allowed to thrive, not squelched. Manufacturers should be able to install any OS that they can sell, without fear of retaliation. That kind of force is the very antithesis of the free and open market.

Sincerely,
Elizabeth Bradley
Boulder CO
CC:lizb@sogol.cs.colorado.edu@inetgw

MTC–00028662

From: Oliver Harris
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:47pm
Subject: Settlement

Our government or any part thereof, should never be used as some sort of wrecking ball used against those entities which through superior strategy and innovation realize the maximum benefits of our capitalistic system. It is through such practices that the consumer realizes the greatest benefits of innovations at competitive market costs.

Therefore, it is a credit to our system of justice and fairness that the anti-trust case against Microsoft, encouraged and driven by those entities that choose to whine rather than compete, be concluded in this settlement rather than some heavy handed judgement by the DOJ against the Microsoft Corporation.

Thank You.
Oliver Harris
Loan Officer
CWCapital, Mid-Atlantic
6395 Dobbin Road
Suite 206
Columbia, MD 21045
410.772.2260 x4
410.772.0503
oharris@cwcapital.com

MTC–00028664

From: Jan Chesne
To: Microsoft ATR
Date: 1/28/02 4:50pm
Subject: Microsoft Settlement

The purpose of the settlement, I hope, is to restrain Microsoft's monopolistic tactics in the future. Allowing them to donate their software and compatible hardware to schools would be a step in the wrong direction, only furthering their monopoly. Anything to equalize the playing field would be helpful, e.g., let them purchase competitors'' products for the schools.

I believe MS should be required to make most of its products and Web services compatible with all other systems. Windows should be provided separately from other MS products (Outlook Express, etc.) so that hardware makers could include competing products and users could make easier choices.

Good luck.
Janet Chesne
61 Village Park Way
Santa Monica, CA 90405

MTC–00028665

From: astrong@privo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:51pm
Subject: Microsoft Settlement

We strongly support the settlement and want to see this put behind us. Microsoft is one of America's great companies and has been punished enough. Let's move on.

Albert Strong
Privo.com
CC:astrong@privo.com@inetgw

MTC–00028666

From: Danny O. Bielby
To: Microsoft ATR
Date: 1/28/02 4:52pm
Subject: Microsoft Settlement

Freedom to inovate.

If this was a drug, wouldn't you have a patent on it. You can't, what's new today is old tomorrow invclving the internet. In some cases there having law suits today and making the rules tomorrow. I have a little company,so should I automaticaly sue a bigger company with not much of a cause. Who knows, I might win, if not it will be a tax deduction.

Thank you, Danny O. Bielby

MTC–00028667

From: philippa jeffery
To: Microsoft ATR
Date: 1/28/02 4:56pm
Subject: Microsoft Settlement

Dear Sir/Madam,

Please find attached the Tunney Act Comments for Citizens Against Government Waste.

Philippa Jeffery
Media Associate
Citizens Against Government Waste
1301 Connecticut Ave., Suite 400
Washington, DC 20036
202–467–5318- Direct Line
202–467–4253- Fax Number
pj@cagw.org

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
UNITED STATES OF AMERICA,
Plaintiff
Civil Action No. 98–1232 (CKK)
V.
MICROSOFT CORP.,
Defendant
COMMENTS ON THE PROPOSED SETTLEMENT BY:
Citizens Against Government Waste
Thomas A. Schatz
President
1301 Connecticut Ave., NW—Suite 400
Washington, DC 20036
(202) 467–5300 FAX: (202) 467–4253

On behalf of the one million members and supporters of Citizens Against Government Waste (CAGW), I am providing comments on U.S. v. Microsoft pursuant to the Tunney Act. CAGW supports the settlement as being in the public interest and opposes further litigation in this case. Further expenditure of tax dollars and government resources on this case, which has stifled technology, innovation, and investment at a time when the economy is in recession and the nation is at war, would not benefit the American people.

CAGW is a nonprofit, nonpartisan organization founded in 1984 by J. Peter Grace and Jack Anderson following the report of President Reagan's Private Sector Survey on Cost Control, better known as the Grace Commission. Since its founding, CAGW has been researching, publicizing, and working to eliminate wasteful government spending. In particular, CAGW has exposed mismanagement of governmental resources in the technology sector, such as incompatible computer and accounting systems, as well as billions of dollars spent on hardware and software that simply did not work. On the basis of our 18 years of nationally recognized expertise representing the interests of American taxpayers, we are submitting our comments to you today.

On November 6, 2001, Microsoft, the Department of Justice (DO J) and nine states agreed to a Proposed Final Judgment (PFJ) in the lawsuit against the company. As the overriding element of the Tunney Act is whether an antitrust settlement is in the public interest, CAGW submits that the PFJ clearly meets this standard.

CAGW estimates that to date the Microsoft lawsuit has cost taxpayers more than $35 million. It has also hobbled one of America's premier high-tech engines of growth at a time when we need to jump-start our economy. The PFJ is fair to all sides in the case, including:

Microsoft, which will continue to be able to provide new software that integrates new products;

Competitors, who will have more access to the Windows platform to incorporate their products or make them compatible;

Software manufacturers, who will get back to the business of creating innovative products;

Consumers, who will have more choices among software products; and,

Investors, who will have stability in the marketplace.

Perhaps of greatest benefit to the American people, the settling states will avoid additional costs and now be able to focus their time and resources on matters of far greater significance. As noted by District Court Judge Colleen Kollar-Kotelly, who pushed for a settlement after the attacks of September 11, it is vital for the country to move on from this lawsuit. The parties worked extremely hard to reach this agreement, which has the benefit of taking effect immediately rather than months or years from now when all appeals from continuing the litigation would finally be exhausted. Furthermore, Microsoft, DOJ and the nine states have accepted the settlement as better than continued proceedings.

Specifically, Microsoft will not be broken up and will be able to continue to immolate and provide new software and products. Software developers and Internet service providers (ISPs), including competitors, will have unprecedented access to Microsoft's programming language and thus will be able to make Microsoft programs compatible with their own. Competitors also benefit from the provision that frees up computer manufacturers to disable or uninstall any Microsoft application or element of an operating system and install other programs. In addition, Microsoft cannot retaliate against computer manufactures, ISPs, or other software developers for using products

developed by Microsoft competitors. Plus, in an unprecedented enforcement clause, a technical committee will work out of Microsoft's headquarters for the next five years, at the company's expense, and monitor Microsoft's behavior and compliance with the settlement.

The settlement is compatible with the findings of the U.S. Court of Appeals for the District of Columbia, which substantially narrowed the scope of legal liability and instructed the U.S. District Court to created remedies that fit the ''drastically altered'' findings. As Assistant Attorney General for Antitrust Charles James said in testimony before the Senate in December:

Of the twenty anticompetitive acts the court of appeals reviewed, it reserved with respect to eight of the acts that the district court had sustained as elements of the monopoly maintenance claim. Additionally, the DC Circuit reversed the lower court's findings that Microsoft's ''course of conduct'' separately violated Section 2 of the Sherman Act. It reserved the district court's rulings on the attempted monopolization and tying claims, remanding the tying claim for further proceedings under a much more difficult rule of reason standard. And, or course, it vacated the district court's final judgment that set forth the break-up remedy and interim conduct remedies.

Acceptance of the PFJ would send a clear signal to the nine remaining states and the District of Columbia opposed to the settlement that their remedy is not appropriate given the findings of the court of appeals. The alternative proposed by the remaining plaintiffs appears to be based on the original district court decision, which is no longer relevant. Dragging the proceedings out further, with a new remedy hearing, a new district court decision, another appeal to the DC Circuit, an appeal to the Supreme Court, and remand back to the court of appeals and district may be in the interests of Microsoft's competitors, but it is not in the public interest.

Most importantly, this settlement is fair to the computer users and consumers of America, on whose behalf the lawsuit was allegedly filed. Consumers will be able to select a variety of pre-installed software on their computers. It will also be easier to substitute competitors'' products after purchase as well. The PFJ even covers issues and software that were not part of the original lawsuit, such as Windows XP, which will have to be modified to comply with the settlement.

Public opinion is squarely in favor of settlement. Voter Consumer Research conducted polls of 1,000 eligible voters in Utah and Kansas in November, 2001, and opposed further action by their state attorneys general following the settlement by a 6 to 1 margin. This is an even greater percentage than previous polls concluding, by a 2 to 1 margin, that the lawsuit brought by DOJ and the 19 states was a waste of tax dollars.

The Microsoft case was supposedly brought on behalf of American consumers, who have paid the price of litigation through their taxes. Investment portfolios have been substantially devalued during this battle, and now more than ever, the country needs the economic stability this settlement can provide. This settlement is in the public interest, and should be accepted without change.

Respectfully Submitted,
Thomas A. Schatz
President, Citizens Against Government Waste

MTC–00028668

From: sybill@2fords.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:51pm
Subject: Microsoft Settlement
Attn: Renata B. Hesse
Antitrust Division
U.S. Dept of Justice

In my opinion, the terms of the findings of the Court of Appeals ruling has been met by Microsoft who has not only met but gone beyond said findings. Microsoft has agreed that the terms are reasonable and fair to all parties involved. It's time to drop the matter and allow Microsoft, as well as the industry, to move forward. Please NEVER forget what MICROSOFT has done for the INDUSTRY.

Thank you for your attention to the foregoing.

Sylvia Earnst

MTC–00028669

From: Billy SG McCarthy
To: Microsoft ATR
Date: 1/28/02 4:50pm
Subject: Lack of Punishment

To whom it may concern,

I'm writing as a concerned citizen, and as a computer science major to express my feelings about the settlement reached between the United States Department of Justice and Microsoft. Like many others out there, I do not think that the settlement reached goes nearly far enough to punish Microsoft for it's illegal actions. Also, the settlement does not give anyone any real power to prevent any further antitrust issues from arising.

Microsoft was found guilty of numerous violations of antitrust law, and they are walking away pretty much unscathed. It feels like the US DOJ doesn't have the stamina to fight against a huge corporation, and therefore took the easy way out. This is not right. It is the government's job to find a remedy that is in the best interest of the citizens of the United States of America. We are the ones who were injured by Microsoft's anticompetive actions, and we want to make sure that will never happen again.

Thank you for your time, and I hope that this joke of a settlement is never agreed upon.

William SG McCarthy
18 Allston St.
Allston, MA
USA

MTC–00028670

From: Christina Jordan
To: Microsoft ATR
Date: 1/28/02 4:52pm
Subject: Microsoftsettlement

The anti-trust lawsuit the government filed against Microsoft was the beginning of the recession. Let it go so we can get our economy going again!

Christina Jordan

MTC–00028671

From: John Roth
To: Microsoft ATR
Date: 1/28/02 4:52pm
Subject: Microsoft Settlement

Dear Ladies and Gentlemen:

I would like to register my deep dissatisfaction with the settlement terms offered by the Justice Department to Microsoft. These terms are not in the public interest; rather, they seem to serve only the interest, not even of the shareholders, but of the executives of a few powerful corporations, including Microsoft.

I will not bother to repeat the observations of, for example, Consumers Union, but rather focus on one specific failure of the settlement: namely, to address the concerns of open-source software development.

Many the most important tools that I use in my work as a software developer are ''open-source'' software, including the GNU/Linux operating system. These are non-commercial products with many qualities that Microsoft products have never achieved, such freedom from crashes, support for networking with standard security protocols, compatibility between versions, and adaptability which make them ideally suited to software development. These products are developed largely on the volunteer work of thousands of developers; their quality stems directly from the openness and liberality of the copyright. Their low dollar cost does not reflect their value.

One of the greatest challenges in open-source software development is to implement interfaces to obfuscated, proprietary protocols that companies such as Microsoft develop to lock-out competitors. This point that was not lost on the Department of Justice only a year or two ago. Unfortunately, the terms of the settlement enable Microsoft to continue to use its monopoly power against open-source products, since many of the remedies that are supposed to prevent Microsoft from dominating by implementing proprietary protocols are conditioned on there being an economically viable corporation, rather than a more reasonable definition, perhaps in terms of the number of users represented.

This is a slap in the face to open-source developers, absolutely contrary to the public interest, which it is the Governments'' special responsibility to protect, and a failure to enforce the spirit of anti-trust law, which is to prevent mere market domination from stifling competition. There is no real wealth created by Microsoft's use of proprietary protocols; only a guarantee of its ability to stifle alternative platforms in the future.

Your Truly,
John Charles Roth

MTC–00028672

From: u7c28@raytheon.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:52pm
Subject: Microsoft Settlement

Greetings...

As a long time computer user (since ''82) and software developer (since ''85), I have been extremely bothered and dismayed at the methods that Microsoft has utilized in its business practices. However, because of the

combination of Microsoft's massive pocketbook and their ability to intimidate others within the industry, it seemed the the only relief from Microsoft's tactics lay with the anti-trust efforts of the US Govt and the various states. When Microsoft was found guilty of predatory monoplistic behavior, Judge Jackson's orginal solution was right on target for what was deserved and needed to remedy the actions of Microsoft.

After this valid punishment was overturned on a technicality, an settlement was proposed which does nothing but provide Microsoft with a slap on the wrist and a promise to ''go forth and sin no more''. This is the same ''punishment'' that Microsoft received in ''94.. after which they went out and obliterated Netscape from the Internet, held PC makers hostage to their demands for the desktop and threatened Apple Computer with actions that would have destroyed Apple unless Apple played the game the Microsoft way.

Microsoft has truly proven itself to be a company that cannot be trusted, despite all of Bill Gates'' ''aw-shucks'' mannerisms and speeches. This is a company that choses to not play by the rules or behave like a responsible corporate citizen. Just like with any other individual who continually operates outside the rules, the Federal and State governments MUST PUNISH Microsoft in a way that is comenserate with their crimes.

The proposed settlement does not in any way begin to match what the court documents clearly show that Microsoft deserves. It should be thrown out and a new plan devised that exacts from Microsoft the punishment it deserves.

Thank you.

Dean Gillispie david__d__gillispie@raytheon.com (281) 280–2883 (voice)

SSTF-Vehicle Sys Raytheon Technical Services Co. Houston, Texas, USA

MTC–00028673

From: Anthony Correia
To: Microsoft ATR
Date: 1/28/02 4:52pm
Subject: Government Persecution of Big Business

Stop ''killing'' Big Business! Get on with the job you all are getting paid for with our tax dollars— constitutionally—to provide for the common defense of the ''several states'! Fight TERRORISM not American companies that hire citizens who pay the very taxes you people frivolously fritter away on ''unjust'' causes''.

If we find crooks in our American industries, there are many legal and local authorities to chase them and prosecute to the ''fullest extent of the law''.

I pray to God that this message is CLEAR enough for the least of you and your limited understanding of the Constitution!

An angry Korean ''Conflict'' veteran...

MTC–00028674

From: VaughnRho@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:54pm
Subject: Microsoft Settlement

Dear DOJ,

I strongly object to the proposed settlement with Microsoft. It is a gross and negligent miscarriage of justice.

I have some unique first-hand knowledge of the kind of financial damage that Microsoft has inflicted upon other companies. I know this because I was at the heart of the project at Compaq that resulted in Microsoft terminating Compaq's license to Windows.

Let me provide some background for you. I am the former product manager at Compaq Computer Corporation who was responsible for the Compaq/AOL deal in 1995. I worked for Rod Schrock, who was Vice President of the consumer division. You used several of my email messages in your case against Microsoft.

In 1995, I was placed in charge of defining Compaq's consumer online strategy. I proposed a relationship with America Online, one which was great for America Online, and even better for Compaq. It was worth HUNDREDS OF MILLIONS OF DOLLARS IN INCREMENTAL PROFIT to our business unit. The deal, in a nutshell, involved Compaq heavily promoting the AOL service, in exchange for AOL giving Compaq a significant ongoing revenue share.

Microsoft heard about this forming relationship. They contacted us and asked that we work with them instead of AOL, to promote their new online service code-named Marvel (now known as MSN, the Microsoft Network). We responded that we would be happy to work with them, but we would expect them to pay us in a similar fashion to how AOL was to pay us.

Their response? I'll paraphrase: We are Microsoft. We own the customer, not you, Compaq. You Compaq have three choices:

1) Do the deal with Microsoft. We will pay you NOTHING, but we'll have a closer relationship, with various intangible benefits (wink wink lower price on the OS, etc.)

2) Cancel the deal and do it with nobody. We are OK with that.

3) Do the deal with America Online. WARNING: IF YOU PURSUE THIS OPTION, WE WILL PUT YOU OUT OF BUSINESS.

Our team at Compaq reviewed the situation, and concluded that Microsoft must be bluffing. They couldn't do it, because it would be a blatant violation of anti-trust laws. We decided to proceed with the deal.

Shortly afterward, Microsoft sent us a letter telling us that we were in violation of their Windows License agreement, and we could no longer sell PCs with Windows installed. Our license to Windows was terminated. Since Microsoft Windows is the only viable operating system on the market, we were effectively shut down as a company. As Microsoft had threatened, THEY WERE PUTTING US OUT OF BUSINESS!!!

Needless to say, we ended up having to quickly appease Microsoft and redo the deal with AOL, dramatically watering it down and making it effectively into a nothing deal: no substantive benefit to AOL, no substantive benefit to Compaq.

If this kind of behavior is not a flagrant abuse of monopoly power, I don't know what is. Microsoft regularly wields this kind of abusive power. They have it, and they use it most aggressively. Speak with any of the myriad companies that have fallen victim to Microsoft's stranglehold. Their corpses litter the high-tech industry.

Just how powerful is Microsoft? Powerful enough to put just about any company out of business in short order if they were determined, including other huge powerful companies such as Intel. How would they accomplish such an impossible-sounding feat? Simply by making the following announcement: ''Microsoft today announces a strategic relationship with Advanced Micro Devices. Beginning with the next version of Windows, which will ship in six months, only new co-branded AMD/Microsoft processors will run Windows optimally. Legacy Intel processors will still run Windows, but only at 1/4 speed, and only for a limited time. Microsoft strongly encourages its customers to begin migrating to the AMD/Microsoft platform immediately, in preparation for the release of the exciting new Windows system.''

The proposed settlement does little or nothing to prevent this kind of behavior in the future. The absurd thing is, it actually gives Microsoft a government-sponsored leg-up to claim an additional monopoly in one of the rare markets that they don't currently own: the education market.

Microsoft (and some supporters) say that ''Microsoft is good for the U.S. economy... they are a brilliant high-tech success story for America ... don't punish successful companies.'' There is a half-truth in what they say, but their logic is flawed. By that line of thinking, Standard Oil would never have been broken up. In truth, Microsoft has not been a strong force for innovation. To the contrary, they have systematically stifled innovation. Their policy seems to be ''crush anything that Microsoft doesn't own and control''.

We will never know how much innovation and economic growth might have emerged from companies that fell victim to Microsoft's control ploys. However, we can guess by looking at one rare example where they failed. We know that Microsoft did not want the open Internet to happen, that instead they had a vision of a Microsoft-owned-and-controlled worldwide network (see early presentations on Microsoft's Marvel Project). In this case, for once, they did not move quickly enough to stop this emerging threat, and by the time they began their attack, they met a force so powerful that even they could not stop it. We now know just how much benefit the U.S. and the world have realized from the advent of the Internet. How many other promising technologies and markets has Microsoft successfully stopped? How much economic growth has been stunted by the Robber Baron of high-tech? The time has come to force Microsoft to play fair.

I would be glad to discuss this further with anyone from the DOJ. Please contact me at your earliest convenience.

Thank you,

Vaughn Rhodes

Formerly Strategic Planning Manager (and Product Manger) at Compaq Computer in Houston, TX

650–938–8587 (home)

650–279–6221 (cell)

vrhodes@archway.com (work email address)

vaughnrho@aol.com (home email address)
CC:vrhodes@archway.com@inetgw

MTC–00028675

From: Richard Ballard
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4:53pm
Subject: Microsoft Settlement

I find it interesting that now, after you made your decision, you permit comments on your to little to late actions.

While following this case not once did I see where it was mentioned all the third party software stolen by Microsoft and ''added'' to their Operating System. ICQ (now MS Message), MP3 (Winamp, MuchMusic, etc. and here they decided to lower the standard 128BPS), Java (They usurped the whole idea of java, making programs usable on ALL OSs, by changing the code so it wouldn't work on their own system). Internet Connection Sharing wasn't an MS idea, I bought that programming back in Win 95s day. Now its a feature? Another company product down the drain.

These are a few of many examples of Microsoft's brazen theft that seemed to be ignored, while they cry ''foul''.

And for punishment you are trying to give them a foothold in the Education market they ignored until Apple started showing it as a viable market? What about the businesses and programmers they put under?

Your punishment couldn't have been any better for Microsoft. Do you own stock?

Richard Ballard
8812 Spring Lake RD.
Pine Bluff, AR

MTC–00028676

From: redebeets@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:51pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Rita Carder
4 Brooks Road
none
Bel Air, MD 21014

MTC–00028677

From: Michael Myers
To: Microsoft ATR
Date: 1/28/02 4:53pm
Subject: Microsoft Settlement

I would like to take a moment to voice my objection to the propsed settlement in the Microsoft Anti-Trust case. I believe that the proposal is far too weak to have any meaningful effect on the marketplace.

In the past, Microsoft has demonstrated it's willingness to do whatever it sees fit in spite of the law, and to use it's billions to fend off any legal action until it is far too late to rectify the damage. I expect that if this settlement is accepted, it will be less than a year until Microsoft breaks the agreement in the pursuit of some competitor and creates another prolonged legal battle that will not be resolved until the competitor is long dead. And I expect that every last word in the agreement will be endlessly debated in court case after court case, as Microsoft forestalls any enforcement for years. Microsoft has shown little respect for the law to date (in terms of previous broken agreements, falsifying testimony related to IE and Windows, forging letters of support, etc). There is no reason to expect them to behave differently in the future.

Such outrages are funded by a public that has little choice but to pay Microsoft for it's products. I am writing this letter on a Linux machine that I bought with Windows 98. Despite the fact that I do not use MS products, I find that I am forced to buy them whenever I buy hardware. So long as MS can ''tax'' us this way, they can afford unlimited legal bills. I feel that any settlement that does not split up the company or prevent it from using Windows to enter new markets is doomed to fail.

Finally, I find it absurd that the DOJ won the first case, and essentially ''won'' the appeal (in that all the findings were upheld and only the remedy was vacated), and then suddenly turned about and proposed the weakest remedy imaginable (filled with all the legal loopholes MS could dream of). This smells heavily of politics. It seems very much as if the new DOJ lead by Mr Ashcroft is not interested in enforcing antitrust law or achieving justice for consumers, but is instead catering to the worst elements of the Republican party. Hopefully, the court will not accept this.

Sincerely,
Michael J Myers
Manchester, PA 17345
mjm306@yahoo.com

MTC–00028678

From: Bruce McDiffett
To: Microsoft ATR
Date: 1/28/02 4:53pm
Subject: Microsoft Settlement

Greetings,

I'd like to express my extreme personal and professional disappointment at what I deeply believe will be the almost total ineffectiveness of the proposed Microsoft antitrust settlement agreement.

You might just as well sentence a serial killer to probation, with the stern warning to not kill the victims again.

As a computer designer, I've had the opportunity to work with Microsoft since the late 1970's. I've watched them stifle technical innovation for almost a quarter century now. For nearly 25 years, regardless of their corporate size, they have consistently shown their only interest is maximizing their corporate profit by any means, legal or illegal.

Microsoft has indeed made a bunch of money for some people. So does dumping toxic waste into the environment. Why should Microsoft be treated differently than anyone else, simply because they've made a lot of money?

As a revealing exercise, consider how much human effort is wasted by Microsoft software each year. Assuming 100,000,000 PC's running MS software, and also assuming a week of unnecessary downtime each year (a conservative estimate), every year we have almost 2 million man-years of human life squandered—simply thrown away. This is technical innovation? This is business leadership? No, this is an appalling disregard for human life. And this tyrannical contempt for the lives of the people is made possible by Microsoft's monopoly. Our country was founded to defend the people from tyrants. And though the founding fathers of our country believed in market freedoms, they believed more in the power of our government to protect the public interest. That's why we have a federal government, and not a federal marketplace. Please, have the courage to create a settlement agreement that will actually protect the American people.

Millions of us are depending on you.

Sincerely,
Bruce McDiffett

MTC–00028679

From: marklavigne@pacificcoastinc.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:53pm
Subject: microsoft settlement-influence peddling

Dear US District judge Colleen Kollar-Kotelly,

The fact that Microsoft has blatantly failed to comply with any honest behavior including the Tunney Act, as evidenced by the interpretation of the acts creator, via his affadavit filed with the court, comes as no surprise to anyone.

Surely any company which doesn't disclose that their top monopoly monger, StevieBoy Balmer met with his kin, (Dickie to drunk to disclose his three drunken driving convictions Cheney,) can't be counted on to comply with a little ole paperwork disclosing the millions spent lobbying the rest of congress and their staff's.

We all know Steve and Dick didn't talk technology shop. They talked about the EnronBushCheney energy monopoly policy! But hey, by golly, thats priviledged information according to Dick. Or maybe they had a concensual sexual relationship, But hey a concenting sexual relationship isn't covered under executive priviledge !!!! So forget antitrust,enrongate,insider trading influence peddling and the rest! Lets be good Republicans and spend 60 million and see if those secret meetings were were about Steve bobbing

Dick!

MTC–00028680

From: Akers117@aol.com@inetgw

To: Microsoft ATR
Date: 1/28/02 4:53pm
Subject: Microsoft Settlement
117 James Garland Road
Hot Springs, AR 71913
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am glad to see that the Microsoft case is coming to a close. I believe that you should settle the case pursuant to the terms of the agreement you reached with Microsoft in November 2001.

This settlement agreement provides you not only with the chance to bring a close to the federal government's case, but also to help the economy in the process.

Microsoft's agreement to discontinue a number of its more restrictive business practices should have a positive impact on the computer and software sector of the economy. The agreement to allow competition from non-Microsoft software within Windows is of particular importance because it could provide immediate opportunities for designers and developers of non-Microsoft software products.

I hope you approve the settlement and close this case as soon as the law allows. Thank you for your time.

Sincerely,
Suzanne C. Akers
Robert C. Akers
E-mail—Akers117@aol.com

MTC–00028681

From: Franziska Raedeker
To: Microsoft ATR
Date: 1/28/02 4:55pm
Subject: Microsoft Settlement

I want a fair choice of several options in computer applications.

1. The proposed settlement is not in the public interest. The settlement leaves the Microsoft monopoly intact. It is vague and unenforceable. It leaves Microsoft with numerous opportunities to exempt itself from crucial provisions.

2. The proposed settlement ignores the all-important applications barrier to entry which must be reduced or eliminated. Any settlement or order needs to provide ways for consumers to run any of the 70,000 existing Windows applications on any other operating system.

3. Consumers need a la carte competition and choice so they, not Microsoft, decide what products are on their computers. The settlement must provide ways for any combination of non-Microsoft operating systems, applications, and software components to run properly with Microsoft products.

4. The remedies proposed by the Plaintiff Litigating States are in the public interest and absolutely necessary, but they are not sufficient without the remedies mentioned above.

5. The court must hold public proceedings under the Tunney Act, and these proceedings must give citizens and consumer groups an equal opportunity to participate, along with Microsoft's competitors and customers.

Sincerely,
Franziska Raedeker
925 Spruce Street
Berkeley, CA 94707
fraedeker@alumni.haas.org

MTC–00028682

From: PDonoso@amanet.org@inetgw
To: Microsoft ATR
Date: 1/28/02 4:55pm
Subject: Microsoft Settlement

Any company that dominates the vehicles by which companies achieve daily tasks and goals (while maintaining the illusion of open market participation, owns and controls the very same roads that facilitate those vital components of commerce AND maintains mafia-esque enforcement practices to insure as few vehicles from any and all rival competitors are equipped with the necessary technology and mechanisms to use those purported ''public'' roads constitutes the key issue in assessing the true injustice of monopolistic practices.

To my mind the appropriate analogy would be if Ford or GM suddenly decides to buy up all the major highways in the US and then equip those highways with exclusive features and benefits that can be only realized if you own their car. As a matter of fact, if your vehicle is not made by that dominant manufacturer, it just doesn't drive as well when it accesses those highways...it seems to go slower, has trouble with maneuvering and steering and the radio signal is weak or generates nothing but static. As a daily consumer of those highways, one becomes quickly convinced to buy a vehicle manufactured by the same company that is optimized for those highways by virtue of their exclusive ownership and that can also take exclusive advantage of any and all the extras and amenities that are not accessible to any other manufacturers'' vehicles.

Microsoft must be disavowed of their monopoly in being made to relinquish ownership either the Windows operating system or the right to develop and market the primary applications which are optimized to run within the Windows OS environment. Individually, each currently dominates their respective markets (solely by virtue of their combined ownership) and jointly present a total supremacy of the marketplace in both areas.

MTC–00028684

From: Gossett, David M.
To: Microsoft ATR
Date: 1/28/02 4:5 1pm
Subject: Microsoft Settlement

Attached please find:

(1) Cover letter;

(2) Comments of Computer & Communications Industry Association on the Revised Proposed Final Judgment;

(3) Declaration of Joseph E. Stiglitz and Jason Furman; and

(4) Declaration of Edward Roeder.

Please confirm receipt of this message. Thank you. Note that we are having a copy of these documents delivered by messenger as well.

Regards,
David Gossett
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1909 K Street, NW, Washington, DC 20006
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January 28, 2002
VIA E-MAIL AND MESSENGER
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Re: Microsoft Settlement: United States v. Microsoft Corp., No. 98–1232 Tunney Act proceedings

Dear Renata:

Enclosed please find the following comments on the settlement:

(1) Comments of Computer & Communications Industry Association on the Revised Proposed Final Judgment;

(2) Declaration of Joseph E. Stiglitz and Jason Furman; and

(3) Declaration of Edward Roeder.

Thank you for your assistance. Please feel free to call my Washington colleague, David Gossett (202–263–3384) or me if you have any questions.

Hope all is well with you. It's a long way from the ELQ days.

Sincerely,
Donald M. Falk
Enclosures

CHARLOTTE CHICAGO COLOGNE FRANKFURT HOUSTON LONDON LOS ANGELES NEW YORK PALO ALTO PARIS WASHINGTON INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE UNITED STATES OF AMERICA Plaintiff, v. MICROSOFT CORPORATION, Defendant. Civil Action No. 98–1232 (CKK) United States District Court for the District of Columbia

STATE OF NEW YORK ex rel. Attorney General ELIOT SPITZER, et al., Plaintiffs, v. MICROSOFT CORPORATION, Defendant. Civil Action No. 98–1233 (CKK) United States District Court for the District of Columbia

COMMENTS OF COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION ON THE REVISED PROPOSED FINAL JUDGMENT

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TABLE OF CONTENT§

INTEREST OF THE COMMENTER

The Computer & Communications Industry Association (''CCIA'') is an association of computer, communications, Internet and technology companies that range from small entrepreneurial firms to some of the largest members of the industry. CCIA's members include equipment manufacturers, software developers, providers of electronic commerce, networking, telecommunications and on-line services, resellers, systems integrators, and third-party vendors. Its member companies employ nearly one million persons and generate annual revenues exceeding $300 billion. CCIA's mission is to further the interests of its members, their customers, and the industry at large by serving as the leading industry advocate in promoting open, barrier-free competition in the offering of computer and communications products and services worldwide. CCIA's motto is ''Open Markets, Open Systems, Open Networks, and Full, Fair and Open Competition,'' and its website is at www.ccianet.org.

For nearly 30 years, CCIA has supported antitrust policy that ensures competition and a level playing field in the computer and communications industries. That involvement antedates the founding of Microsoft, much less its acquisition of its first monopoly and its refinement of anticompetitive techniques. CCIA supported the Tunney Act in the 1973 congressional hearings preceding the enactment of that legislation, and played active roles on the side of competition in other significant antitrust cases, including those against AT&T and IBM. Before participating as amicus curiae at the trial and appellate stages of the current Microsoft case, CCIA participated as a leading amicus curiae in the proceedings examining the last Microsoft consent decree in 1994-1995, both in the district court and in the court of appeals. As a consequence, CCIA and its members are intimately familiar with the shortcomings of that decree, and its failure to prevent or deter Microsoft from continuing on an anticompetitive course. Microsoft's conduct in the intervening years, including the period while this case has been litigated, has only sharpened CCIA's awareness of Microsoft's dedication to driving out competition from as many aspects of the computer-software and related industries as possible. Microsoft may repeat

its attempts to mischaracterize CCIA as a mere voice for competitors, but that innuendo cannot withstand scrutingy in light of the diversity of CCIA's membership now and over the years, combined with CCIA's 30 years of vigorous commitment to supporting openness and competition in the computer technology and communications industries. In hopes that a meaningful remedy in this case will prevent Microsoft from further expanding the scope of its monopoly, and with the certainty that the current Revised Proposed Final Judgment (''RPFJ'') falls far short of that task, CCIA submits this analysis of the RPFJ in conjunction with the economic analysis of Nobel laureate Joseph Stiglitz and his colleague Jason Furman, and the Declaration of Edward Roeder.

INTRODUCTION

The Tunney Act was designed to constrain the Department of Justice (''DOJ'') from entering into settlements that provided DOJ with an exit from an antitrust case but did not provide the public with a remedy commensurate with the defendant's antitrust violations. The Revised Proposed Final Judgment (RPFJ) in this case does not provide adequate relief for the extensive and thoroughly proven antitrust violations it purports to remedy.

Review of the RPFJ in this case should be especially searching because there can be no doubt about Microsoft's liability. For the first time in the history of the Tunney Act, the Court will review a proposed settlement reached after liability has been not only imposed, but unanimously affirmed on the government's most sweeping and economically significant theory. That clear-cut liability, and the voluminous Findings of Fact and trial record, place the Court in this case in a different position from courts reviewing pre-trial settlements.

Because there is no litigation risk on liability, the Court is uniquely situated to evaluate any asserted litigation risk as to remedy. Established principles of antitrust relief provide the Court in this case with concrete, recognized standards to ensure that the settlement serves the public interest in a way that courts reviewing pre-trial settlements cannot. Magnifying the need for close measurement of the RPFJ by objective principles is Microsoft's silence, in its filing under 15 U.S.C. § 16(g), about its effort to truncate this case by a lobbying campaign of unprecedented scope directed at the Executive and Legislative Branches alike—despite extensive public reports of that lobbying. Microsoft's effort to deny the obvious gives rise to an inference that it has something to hide.

The terms of the RPFJ provide the strongest reason for close scrutiny, because they cannot withstand analysis. The RPFJ would not provide a meaningful remedy for Microsoft's extensive campaign of exclusionary acts. That campaign suppressed the most serious threat to Microsoft's monopoly in the past decade, and not only prevented the erosion of the applications barrier to entry that insulates the monopoly, but increased the bar to new competition. The RPFJ ignores some of the most significant holdings of the court of appeals, however, including its separate imposition of liability for Microsoft's commingling of middleware code with the code for the Windows operating system.

More fundamentally, the RPFJ misses the point of Microsoft's illegal conduct, which was to prevent erosion of the applications barrier to entry by preventing middleware from attracting software developers to the middleware application programming interfaces (''APIs''). The RPFJ's basic premises, moreover, ignore the current economic and technical realities of the computer and software markets. In the seven years since Microsoft began the illegal conduct at issue in this case, Microsoft has strengthened its operating systems monopoly. The Internet browser, formerly a threat to that monopoly, has become an adjunct to it, with Microsoft's 91% share of that product adding further insulation to the operating systems monopoly. Microsoft's unadjudicated monopoly over personal productivity applications—a key to the applications barrier to entry in the operating systems market—likewise has grown in market share and market power.

But the RPFJ does not try to deprive Microsoft of any of the benefits of its illegal activity directed at the browser and other middleware. DOJ's remedial theory rests entirely on unidentified future middleware threats. In fact, there are no technologies today presenting a threat as intense as that presented by the Netscape browser and Java, and the duration of the RPFJ is so short that it almost certainly will expire before any significant new threats materialize.

Aside from some restrictions on commercial retaliation that at best might keep matters from getting worse, the RPFJ relies on two sets of putative obligations to achieve a more competitive market. But neither the provisions aimed at original equipment manufacturer (''OEM'') flexibility nor those addressing information disclosure requirements in fact require anything competitively meaningful. In large part, these provisions replicate Microsoft's current business practices respecting the disclosure of technical information and the configuration of end-user access to middleware products.

The OEM flexibility sections in RPFJ §§ III(C) and III(H) are literally superficial, principally addressing desktop icons rather than the middleware code itself, which contains the APIs relied on by software applications developers. Even if successful, the flexibility provisions would not affect the applications barrier to entry. Moreover, these provisions largely restate current business practices or provide OEMs with flexibility that both Microsoft and DOJ understand from experience will never be exercised. OEMs have little or no incentive to exercise their options; if they decline to do so, then the flexibility provisions will have no competitive consequences for the industry.

The RPFJ's information disclosure sections (§§ III(D) and III(E)) are so transparently insubstantial as to cast doubt on the entire proposal. The purported disclosure requirements trace back to definitions that are committed to Microsoft's control, are circular, or simply do not exist. Neither DOJ nor any other objective observer could have any idea precisely which APIs or protocols must be disclosed.

The RPFJ's provisions and definitions are so vague that only two practical results are possible. Either everyone will simply ignore the decree, which plainly would not be in the public interest for an antitrust remedy, or the Court will have to take primary responsibility for defining its terms during enforcement proceedings. DOJ's answer seems to be to let Microsoft set the terms of its obligations: the RPFJ gives the defendant ''sole discretion'' to define the decree's most important term, ''Windows Operating System Product,'' which appears 46 times to delimit the RPFJ's 10 substantive provisions.

Indeed, much of DOJ's Competitive Impact Statement (''CIS'') seems to reflect an understanding that the RPFJ is inadequate in several critical respects. The CIS defines terms not defined in the RPFJ, exaggerates the scope of certain RPFJ provisions, and redefines other terms in order to minimize the impact of some of the broad exemptions in the RPFJ. It is the RPFJ that the Court would have to enforce, however, as the CIS is not part of the contract between DOJ and Microsoft.

In sum, although the RPFJ's provisions superficially seem to restrict Microsoft's practices, there is no substance behind them. The provisions accomplish little beyond laying down criteria for Microsoft to follow in order to avoid any interference with its continuing campaign of illegal monopolization.

The terms of the RPFJ, as much as the circumstances of the settlement, strongly suggest that Microsoft and the Department of Justice shared a desire to end this case, rather than to provide an effective remedy for Microsoft's substantial antitrust violations. The 1995 consent decree with Microsoft produced uninterrupted illegal monopolization, prompting the filing of this case in 1998. The Court can expect the same with this decree. The RPFJ, if approved, might temporarily end DOJ's involvement, but would not provide the type of remedy that the public interest and the Tunney Act demand. To the contrary, because the harm to the competitive process caused by Microsoft's adjudicated illegal conduct is certain, a remedy that masks but does not cure that harm affirmatively injures the public interest, and therefore should be rejected.

A. Liability Rests On Microsoft's Suppression Of Middleware Threats That Threatened To Erode The Applications Barrier To Entry This case is about Microsoft's devastatingly thorough suppression of threats to its Windows operating system (''OS'') monopoly by ''middleware.'' That monopoly was insulated from competition by the applications barrier to entry described by the court of appeals and the CIS. See United States v. Microsoft Corp., 253 F.3d 34, 55–56 (DC Cir. 2001) (''Microsoft III''); CIS 10–11, 66 Fed. Reg. 59,452, 59,462 (2001). See also Declaration of Joseph E. Stiglitz & Jason Furman 7–9 (''Stiglitz/Furman Dec.'') (attached). The middleware at issue in this case exposed APIs that could be used by software applications developers to write programs

that did not rely on the underlying Windows operating system. As Microsoft recognized, if developers embraced non- Microsoft middleware APIs and designed their products to run on that middleware rather than directly on an operating system, ''middleware'' of this kind ''would erode the applications barrier to entry,'' as ''applications * * * could run on any operating system on which the middleware product was present with little, if any, porting.'' Microsoft III, 253 F.3d at 55. The threat that ''middleware could usurp the operating system's platform function,'' id. at 53, prompted Microsoft's anticompetitive conduct.

But non-Microsoft middleware can become a competing platform only if developers write software that calls on the non-Microsoft middleware APIs. Most developers will create software only to run on platforms that are distributed widely enough for the developers to be reasonably certain that the APIs (on which their programs rely) will be present on most, if not all PCs. Likewise, if developers can be certain that Microsoft's middleware APIs are present on all PCs, this will strongly influence their initial decision as to whether it is worth the effort to write applications to alternative, non-Microsoft middleware APIs.

The successful theory of the case—proved and accepted by two courts—is that Microsoft engaged in an ''extensive campaign of exclusionary acts'' that were designed ''to maintain its monopoly'' by suppressing middleware threats posed by the Netscape Navigator Internet browser and the cross-platform Java technologies. CIS 9, 66 Fed. Reg. 59,462; Microsoft III, 253 F.3d at 53–56, 60–62, 74–78. Microsoft's response to this threat guaranteed that developers would not use the APIs of competing middleware, destroying the platform threat.

Because Microsoft has a monopoly over the OS, it can ensure that its own versions of a middleware product have universal distribution, so that Microsoft's middle- ware APIs will be present on all PCs. For example, because Windows is both an operating system and a distribution channel for Microsoft's technologies, Microsoft could and did ensure that the code for its Internet Explorer (''IE'') browser was distributed to every PC.

Ensuring that the code for Microsoft middleware was on every PC accomplished two related goals. First, it guaranteed instant and unassailable ubiquity for the Microsoft version of the middleware and the middleware APIs on which developers rely. Second, the forced ubiquity of Microsoft middleware prevents competing middleware from achieving ubiquity, or anything like it, because few distribution channels will incur the support and other costs of distributing two versions of the same functionality. A key theory of the case is that the applications barrier to entry could have been eroded only if developers chose and used alternative middleware platforms on which to write software. End-user access to middleware was significant only to the extent it influenced developers'' choices to write to the APIs of that middleware.

Thus, ensuring that the code for the Microsoft version of middleware is on every PC destroys the competitive threat presented by the competing middleware's APIs, since few developers will them in preference to Microsoft middleware APIS that are certain to be ubiquitous. This fact provides the essential context for any meaningful analysis of the information disclosure and OEM flexibility provisions of the RPFJ.

B. The RPFJ Does Not Prevent Microsoft From Abusing Its Position And Does Not Meet Basic Standards For An Antitrust Remedy

The DC Circuit set out a simple standard for measuring the legal sufficiency of any remedy selected in the Microsoft litigation: the remedy must ''seek to unfetter [the] market from anticompetitive conduct,'' * * * to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''' Microsoft HI, 253 F.3d at 103 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972), and United States v. United Shoe Machinery Corp., 391 U.S. 244, 250 (1968)). As the District Court recognized in beginning remedy proceedings on remand (9/28/01 Tr. 6–7), not one word in the DC Circuit's opinion suggests the slightest antipathy toward any conduct remedy related to the illegal monopolization that the Court of Appeals exhaustively condemned.[1] The District Court warned the plaintiffs to be ''cautiously attentive to the efficacy of every element of the proposed relief.'' 9/28/01 Tr. 8. That is, the plaintiffs must make sure that the proposed remedy works.

That admonition appears to have fallen on deaf ears. Because liability has been established and affirmed in great detail, the scope of the District Court's appropriate deference to DOJ is extremely limited because the range of permissible action by DOJ is closely confined. There is no litigation risk other than the risk that the District Court would not approve a particular remedy, or that the District Court's exercise of discretion in approving a remedy might be reversed on appeal. A remedy, even one imposed by agreement, must provide adequate relief for the violations that have been proved, however. DOJ is entitled to deference only for choices that fall within the range of adequate relief.

The RPFJ misses the point of the central theory of liability. The RPFJ does not impose certain, enforceable, or competitively significant obligations on Microsoft to restore competition or to avoid suppressing future threats. The RPFJ allows Microsoft to keep every anticompetitive gain that resulted from its illegal conduct, simply requiring Microsoft to find new and slightly different ways to accomplish its anticompetitive goals. DOJ seems to recognize that the case focused on two specific products—Netscape Navigator and Java—that embodied the broader threat of middleware and the Internet to the stability and significance of Microsoft's monopoly. The RPFJ does nothing to restore the specific competitive threat posed by an independent Internet browser. It does nothing to restore the threat of cross-platform Java. And it does nothing to protect any other middleware threat—in the unlikely event that another such threat might arise within the short duration of the RPFJ—from much similar exclusionary conduct, or indeed from the identical commingling of code that sealed Netscape's fate. Rather, the RPFJ appears to assume that it is still 1995, and that the threat of the Internet browser can begin anew without confronting a more thoroughly entrenched Microsoft. The RPFJ does not take account of the impact on participants at different levels of the computer and software industries of an additional seven years of Microsoft's anticompetitive abuses. That view does not accord with reality, and the provisions intended to permit open competition in that counterfactual world cannot achieve their goal.

C. The Obligations That Supposedly Restore Competitive Conditions In Fact Make Microsoft Do Virtually Nothing Against Its Will

The RPFJ purports to give current and future middleware the ability to present the same threats to the Microsoft monopoly that Netscape and Java presented before the onset of Microsoft's illegal conduct. DOJ describes the obligations in the RPFJ as if they would have stopped Microsoft's suppression of Netscape, and as if they would allow rival middleware vendors to obtain the technical information that they need to ''emulate Microsoft's integrated functions'' (Testimony of Charles James before Senate Judiciary Committee 7 (Dec. 12, 2001)) and to step into the shoes of Microsoft middleware in relation to Windows and the Windows monopoly. The RPFJ does not achieve those goals.

Most of the RPFJ reduces to two sets of obligations, along with some prohibitions on exclusive deals and on retaliation against those who take advantage of Microsoft's obligations. One set of obligations appears to restrain Microsoft from taking particular actions to interfere with OEMs'' placement of the icons of Non-Microsoft Middleware on their machines, or with end-users'' use of those products. These OEM flexibility provisions principally rely on the OEMs to provide a remedy for Microsoft's misconduct. The other set of obligations requires a certain degree of disclosure of APIs and Communications Protocols to allow competing software products can ''interoperate''— an undefined term—with the monopoly OS.

For the most part, the obligations placed on Microsoft by the RPFJ simply replicate current options voluntarily provided by Microsoft. For example, Microsoft must continue to disclose the APIs it currently discloses in the Microsoft Developers'' Network (MSDN), a program Microsoft developed to further its self-interest in making the Windows platform popular with software developers. And Microsoft must continue to allow end-users to delete icons from the desktop and start menu. Such provisions at most simply prohibit Microsoft from making matters worse than they are after Microsoft's years-long anticompetitive campaign. Indeed, the RPFJ in some instances specifically approves potential

[1] Indeed, in denying rehearing, the DC Circuit made crystal clear that ''[n]othing in the Court's opinion is intended to preclude the District Court's consideration of remedy issues.'' Order, at 1 (DC Cir. Aug. 2, 2001) (per curiam).

misuse of Microsoft's current voluntary implementations of the flexibility and disclosure provisions.

To begin with the flexibility provisions, their chief flaw is their focus on icons rather than on middleware functionality. This is literally a superficial approach. Microsoft can include its own middleware and middleware APIs on every PC. Developers will know those APIs are there and consequently will write to them in preference to the APIs of a competing product that may or may not be on a particular machine. No provision of the RPFJ restricts Microsoft's insertion and commingling of middleware code into the ''Windows Operating System Product'' bundle that Microsoft receives the right to define for decree purposes ''in its sole discretion.'' RPFJ § VI(U). From the point of view of developers—and thus of the ability of middleware to erode the applications barrier to entry—these ''flexibility'' provisions are meaningless.

Even to the extent that competing middleware vendors might obtain favorable placement for their products'' icons in preference to the icons for Microsoft products, that achievement would be both superficial and temporary. The functionality of the Microsoft product would remain on the machine, and Microsoft could insist on its invocation for a variety of functions. And, 14 days after a PC first boots up, Microsoft would be free to nag users to click a ''Clean Desktop Wizard'' which would organize icons in the way that suited Microsoft. There is nothing in the RPFJ to stop that ''Wizard'' from resetting default applications to coincide with Microsoft's preferences as well, or even from enhancing the product so that it becomes a Clean File Wizard to remove code of competing middleware with a single click.

These provisions place responsibility for restoring competition on innocent OEMs and ISVs rather than on Microsoft. And many provisions give end-users what they have now: the ability to remove an icon from the desktop or a program menu by right-clicking it and selecting ''Delete,'' or by dragging it to the Recycle Bin. The provisions do change the status quo in one way. The ''Add/Remove'' function, which now removes some underlying code for applications, will only remove a few icons when the removed application is Microsoft middleware.

The disclosure provisions are no better. The RPFJ requires Microsoft to disclose APIs between ''Microsoft Middleware'' and a ''Windows Operating System Product,'' but the definitions of those terms are so completely within Microsoft's control that it is impossible to tell whether Microsoft ever would have to disclose an API that might have competitive significance. As noted above, a ''Windows Operating System Product'' is whatever Microsoft says it is. ''Microsoft Middleware'' must be distributed separately from the OS (unlike, e.g., the current version of Windows Media Player). ''Microsoft Middleware'' must be ''Trademarked'' in a way that would exclude Windows Messenger, may exclude Windows Media Player, and certainly would exclude any products that followed Microsoft's practice of simply combining the Microsoft(r) or Windows(r) marks with a generic or descriptive term.

Indeed, because ''Microsoft Middleware'' need not mean any more than the user interface of a middleware functionality that meets the other definitional requirements, see RPFJ § VI(J)(4), the only APIs that must be disclosed are those between the middleware user interface and ''Windows,'' which Microsoft in its discretion can define to include all of any given middleware functionality. See id. § VI(U). Microsoft need not disclose how the middleware actually invokes Windows to work, except for the way that the OS displays the middleware's shell.

The disclosure provisions applying to Communications Protocols are similarly weakened by non-existent definitions. The disclosable Protocols are those required to ''interoperate''—whatever that may mean—with equally undefined ''Microsoft server operating products.'' RPFJ § III(E). In addition, the Communications Protocol disclosure provisions are limited by sweeping exceptions applying to security protocols that are intertwined with all significant computer-to-computer communication. See id. § III(J)(I). Microsoft can withhold parts of those Protocols (and, indeed, parts of APIs) on the basis that disclosure would compromise security of an installation.

If this exemption were limited to the customer-specific data like encryption keys or authorization tokens, it would be necessary, not objectionable. But the exemption explicitly permits Microsoft to withhold portions of the Protocols and APIs themselves, which necessarily makes ''interoperation'' (as that term normally is used) incomplete. Interoperation, however, is an all-or-nothing state. Software that can use only parts of APIs and Communications Protocols simply cannot ''intemperate'' with the software on the other side of the API or Protocol.

But that is not all. RPFJ § III(J)(2) permits Microsoft to refuse to (disclose security-related Protocols or APIs to any company that does not meet Microsoft's standards of business viability or its standards for a business need. Again, little if anything is left of this disclosure requirement if Microsoft chooses to resist disclosure when that serves its anticompetitive goals.

One thing is certain. Unless Microsoft and DOJ alike render the RPFJ irrelevant by simply ignoring it, the District Court will be faced again and again with the task of interpreting the RPFJ's indistinct provisions. Microsoft has demonstrated its incentive and ability to contest even the most seemingly obvious points of any court order.

D. The Public Interest Requires An Effective Remedy That The RPFJ Does Not Provide

Despite the belated efforts of DOJ to minimize the scope of this case, it remains the largest, most successful prosecution for monopolization liability since at least the Second World War. The DC Circuit affirmed ''the District Court's holding that Microsoft violated ? 2 of the Sherman Act in a variety of ways.'' 253 F.3d at 59. The breadth of that holding is clear from the 20 Federal Reporter pages consumed by the court's detailed discussion of Microsoft's array of exclusionary behavior. The competitive significance of the conduct condemned by that holding is explained both in the opinion, in the Declaration of Joseph E. Stiglitz and Jason Furman (''Stiglitz/Furman Dec.'') 16–20, and in the Comment of Robert E. Litan, Roger G. Noll, and William D. Nordhaus (''Litan/Noll/Nordhaus Comment'') 12–31, among other submissions for this Tunney Act proceeding. The difficulties encountered by peripheral claims are irrelevant, particularly because all of the challenged conduct supported monopolization liability in addition to one or more of the since-abandoned theories. The supposed ''narrowing'' left a huge monopolization case with a stark judgment affirming the government's theory. e RPFJ does not provide a remedy commensurate with that liability.

The RPFJ is insufficient for another overarching reason. The passage of time has only exacerbated the problem of Microsoft's successful abuse of its operating systems monopoly to extend that monopoly to embrace other sectors of computing and to forestall threats to the monopoly from those sectors. Microsoft's monopoly over Internet browsing is complete, as its current 91% market share indicates. Julia Angwin, et al., AOL Sues Microsoft Over Netscape in Case That Could Seek Billions, WALL ST. J., Jan. 23, 2002, at B 1. Even the RPFJ recognizes, albeit through toothless provisions, that Microsoft is using its desktop OS monopoly to force greater use of its server operating systems. And Microsoft's efforts to use the inclusion of its Passport authentication software on every Windows machine as a means of directing through a Microsoft server all authentication and identification transactions—gaining a literal chokehold over the communications aspect of Internet computing—is so significant that Microsoft sought and obtained an exemption in the RPFJ specifically designed to excuse that known monopolistic strategy. See RPFJ § III(H)(1)[second] [2] see also id. § Ill(J).

Microsoft has made ample use of the seven years since the beginning of the conduct at issue in this case. The RPFJ is wholly inadequate even on its own terms, which assume that the world has returned to 1995. But the RPFJ does not begin to address what has happened since then. The public interest in a remedy that achieves what antitrust law says it must cannot be obscured by focusing either on the preference of the technology industry for standards, or on the never-litigated assumption that Microsoft obtained its original operating systems monopoly legally in the 1980s. The last premise, after all, still suggests that the last ten years or so of Microsoft's hegemony have resulted from the illegal acts that prompted two government antitrust lawsuits. If DOJ's enforcement history is to be credited, Microsoft has at least doubled the life of its monopoly through illegal conduct.

In addition, even if the nature of software platforms generally, or computer operating

[2] RPFJ § III(H) contains two subsections (1) and (2). We distinguish between the two sets of subsections with the bracketed terms ''first'' and ''second.''

systems in particular, results in transitory single-firm dominance, that does not mean that competition has no place, or that entrenched monopoly is somehow without social costs. See Stiglitz/Furman Dec. 13–16. Innovation results in the periodic replacement or ''leapfrogging'' of one standard by another. This is not some meaningless replacement of one monopoly with another, as some would have it. To the contrary, as economists—including those of the Chicago school—have recognized, ''competition * * * 'for the field''' provides consumers with substantial benefits. See Microsoft III, 253 F.3d at 49 and sources cited therein. But if competition in a market is limited in scope to serial competition for transitory dominance, predatory conduct is especially harmful. See generally Stiglitz/Furman Dec. 13–16. The monopolist may need to eliminate only a few incipient but significant threats in the course of a decade in order to transform transitory dominance into a durable, even impregnable monopoly.

That is what happened here. Although Netscape Navigator had not developed into a competing applications platform when Microsoft cut off its revenue sources, Netscape contemplated just such a development—and Microsoft both contemplated and deeply feared it. The outcome of the competition that Microsoft thwarted is unknowable. But there will be no further competition—much less competitive outcomes—if Microsoft is allowed to repeat the course of conduct it undertook here.

But the RPFJ permits Microsoft to continue to fortify and expand its monopoly. Indeed, the RPFJ provides an imprimatur for Microsoft to continue and expand a whole range of additional, related anticompetitive practices. As a consequence, the RPFJ is an instrument of monopolization, not a remedy for it. The Court should not add judicial endorsement to DOJ's agreement to give up the case. The ''public interest,'' within the meaning of the Tunney Act, 15 U.S.C. § 16(e), requires far more effective relief.

I. THE TUNNEY ACT REQUIRES CLOSE SCRUTINY UNDER THE PRESENT CIRCUMSTANCES

The Tunney Act exists ''to prevent 'judicial rubber stamping''' of proposed antitrust consent decrees. United States v. Microsoft Corp., 56 F.3d 1448, 1458 (DC Cir. 1995) (quoting H.R. Rep. No. 1463, 93d Cong. 2d sess. 8, reprinted in 1974 U.S.C.C.A.N. 6535, 6538) (''Microsoft/''); United States v. BNS, Inc., 858 F.2d 456, 459 (9th Cir. 1988); In re IBM, 687 F.2d 591,600 (2d Cir. 1982). Upon enactment it was immediately clear that ''Congress did not intend the court's'' review of a proposed settlement ''to be merely pro forma, or to be limited to what appears on the surface.'' United States v. Gillette Co., 406 F. Supp. 713,715 (D. Mass. 1975) (Aldrich, J.).

The Tunney Act requires particularly close scrutiny of the RPFJ in this case. The government seeks to remedy a proven, well-defined, serious violation of the antitrust laws. Microsoft's heavy lobbying of the executive and legislative branches in order to bring political pressure for a lenient settlement heightens the need for scrutiny, and in addition makes necessary the Court's active investigation into Microsoft's failure to disclose the bulk of that lobbying despite the command of 15 U.S.C. 16(g). The lenient terms of the RPFJ itself further underscore the need for close judicial scrutiny. Never in the history of the Tunney Act has a Court been confronted with this combination of an impregnable judgment of liability, pervasive lobbying, and apparent surrender by the federal government. The circumstances here indicate exactly the sort of ''failure of the government to discharge its duty''—whether or not actually ''corrupt''—that even DOJ concedes warrants close judicial scrutiny of a settlement. CIS 66, 66 Fed. Reg. 59,476 (quoting United States v. Mid-America Dairymen, Inc., 1997–1 Trade Cas. * 61,508, at 71,980, 1977 WL 4352 at * 8 (W.D. Mo. 1977)).

A. The Government's Victory On Liability Removes Litigation Risk And Therefore Limits Deference

The CIS suggests (at 65–68, 66 Fed. Reg. at 59,475–476) that the Court owes nearly absolute deference to DOJ's decision to retreat from its appellate victory. That is not true. The affirmance of liability on appeal removes any speculation that ''remedies which appear less than vigorous'' simply ''reflect an underlying weakness in the government's case.'' Microsoft I, 56 F.3d at 1461. There is no ''underlying weakness''; liability is a given, and provides a clear benchmark for measuring whether the proposed relief is sufficiently effective to come ''within the reaches of the public interest.'' Id. at 1460. Those ''reaches'' are narrower when liability is proved and affirmed than when it is merely alleged, as it was in Microsoft I.

1. The Imposition And Affirmance Of Liability Remove Any Constitutional Concerns About Searching Review And Require The Court To Perform Its Constitutional Duty

Most important, the current posture of this case places it beyond the scope of the prudential and constitutional concerns expressed by some courts (and dissenting Justices) about judicial scrutiny of DOJ's charging decisions, or of its settlement of unproven claims. It may be that when ''the government is challenged for not bringing as extensive an action as it might, a district judge must be careful not to exceed his or her constitutional role.'' Microsoft I, 56 F.3d at 1462. Such concerns did not persuade the majority of the Supreme Court, however, which over a dissent rejected similar arguments in summarily affirming the modifications imposed by the district court in the AT&T consent decree. See Maryland v. United States, 460 U.S. 1001 (1983).

In any event, when the action has been brought, tried, and won, and the only question is whether the proposed relief is adequate, the constitutional concerns dissipate. Because DOJ already made the discretionary decision to bring the case, and successfully proved liability to the satisfaction of two courts, the Court in reviewing this settlement runs no risk that by exercising its normal remedial discretion under established legal principles it somehow might be said ''to assume the role of Attorney General.'' Microsoft I, 56 F.3d at 1462. It was precisely the absence of a ''judicial finding of illegality'' that might impede the Tunney Act from ''supply[ing] a judicially manageable standard for review.'' Id. at 1459. Here, two courts have provided the ''findings that the defendant has actually engaged in illegal practices'' that were missing in both Microsoft I and AT&T (like other cases settled before trial). Id. at 1460–1461 (emphasis added). In addition, the appellate affirmance imposed monopolization liability for all of the significant conduct that had been alleged to support the additional, largely supererogatory legal theories that were rejected as ground for additional liability.

It is accordingly entirely appropriate, and indeed necessary, for the Court in this case ''to measure the remedies in the decree as if they were fashioned after trial,'' Microsoft I, 56 F.3d at 1461, because they were ''fashioned after trial'' and appellate affirmance. The Court need not ''assume that the allegations in the complaint have been formally made out'' (id.), but rather knows beyond doubt exactly which allegations were proved. There is a ''judicial finding of relevant markets, closed or otherwise, to be opened'' and ''of anticompetitive activity to be prevented.'' Maryland v. United States, 460 U.S. at 1004 (Rehnquist, J., dissenting). ''IT]hat there was an antitrust violation,'' and ''the scope and effects of the violation,'' were not assumed, as they must be in a pretrial settlement, but proved to the satisfaction of two courts. Id.

Very limited prosecutorial discretion remains in this situation. The amorphous, policy-laden choices whether to bring a case and how much to allege, are behind us. The predictive judgment as to the chances of success on liability likewise is beyond serious dispute in light of the unanimous affirmance of monopolization liability by the en banc court of appeals. DOJ has some leeway in choosing a remedy, but its chosen remedy must be ''adequate to remedy the antitrust violations alleged in the complaint,'' United States v. Bechtel Corp., 648 F.2d 660, 665 (9th Cir. 1981), under the well-established legal standards for antitrust relief. See Microsoft III, 253 F.3d at 103. Those standards inform the ''public interest'' determination under the Tunney Act, and, by contrast with the ''public interest'' standing alone, are judicially manageable without a doubt.

The DC Circuit has made crystal clear that a consent decree ''even entered as a pretrial settlement, is a judicial act,'' so that ''the district judge is not obliged to accept one that, on its face and even after government explanation, appears to make a mockery of judicial power.'' Microsoft I, 56 F.3d at 1462. Judicial approval of the settlement in this case is far more of a classic ''judicial act'' than the typical settlement without proof of liability. As in the context of post-conviction criminal sentencing, the Court must act as more than a passive recipient of arrangements made between the parties

There is no serious question that a federal court may reject a plea bargain in its sound discretion, Fed. R. Crim. P. 11, Santobello v. New York, 454 U.S. 257, 262 (1971), for reasons that may include the ''court's belief

that the defendant would receive too light a sentence under the circumstances.'' United States v. Adams, 634 F.2d 830, 835 (5th Cir. 1981).[3] Granted, plea bargains in the criminal context generally involve admissions of liability. But the case here, if anything, is stronger here, where liability has been, not admitted, but established after extensive litigation and affirmed by an en banc court of appeals over the vigorous objection of the defendant.

At this stage, ''the discrepancy between the remedy and undisputed facts of antitrust violations'' can ''be such as to render the decree 'a mockery of judicial power.''' Massachusetts School of Law, Inc. v. United States, 118 F.3d 776, 782 (DC Cir. 1997) (quoting Microsoft I, 56 F.3d at 1462). By contrast with the concerns expressed in the pretrial settlement context about the intrusion of Tunney Act courts on functions that are constitutionally allocated to the executive branch, the situation after liability is established presents opposite concerns under our system of separated powers, and of checks and balances between the branches of government. Constitutional concerns in this case would arise only if the Court failed to apply the legal standards governing antitrust relief to the adjudicated liability here. DOJ asks the Court not only to abandon its traditional power over the relief to be imposed in an adjudicated case, but also to ignore the clear command of Congress to provide a check on the irresponsible exercise of power by a suddenly and inexplicably compliant prosecutor. The Court should refuse that suggestion.

2. The Extensive Record And Judicial Opinions Provide Clear, Manageable Standards For Substantive Review Of The RPFJ

None of the authorities on which DOJ relies involved a full trial in which liability was proved, much less one in which liability was affirmed on appeal. Indeed, the statements quoted in the CIS draw heavily on that fact—that in each case there had been no finding of liability, and that review of the settlement at issue necessarily involved second-guessing DOJ's prosecutorial discretion in making two rather standardless assessments: (1) whether to bring a case at all, and thus place the matter in a judicial forum, see Microsoft I, 56 F.3d at 1459–1460, and (2) the chances for success. See, e.g., Mid-America Dairymen, 1977 WL 4352, at *8 (Tunney Act ''did not give this Court authority to substitute its judgment about the advisability of settlement by consent judgment in lieu of trial'') (emphasis added).

Here, neither of these fundamentally discretionary prosecutorial judgments is at issue. The decision to bring the case was made years ago, and the case was litigated and won, establishing liability to a known extent.

It is telling that in asking for broad deference DOJ places heavy reliance on language from the Ninth Circuit's decision in United States v. Bechtel Corp., 648 F.2d 660 (9th Cir. 1981). See CIS 66–67 & n.4; 66 Fed. Reg. 59,476. One could hardly find a setting more distant from this one. Not only did Bechtel not involve a finding of liability after full litigation and affirmance on appeal; and not only did the setting there—alleged complicity in the ''Arab boycott'' of Israel in the mid-1970s—implicate the foreign policy powers of the executive branch; but the issue before the curt in Bechtel was the defendant's effort to avoid its own settlement by arguing that the settlement to which it had agreed was ''not in the public interest.'' Bechtel, 648 F.2d at 665.[4]

As it happens, however, the court of appeals in Bechtel enunciated the legal standard that should be applied here: ''whether the relief provided for in the proposed judgment was adequate to remedy the antitrust violations alleged in the complaint.'' Bechtel, 648 F.2d at 665 (emphasis added). That is precisely the standard that DOJ wishes to avoid. Where liability is a given, as it is here, the Court must ensure that the ''remedies negotiated between the parties and proposed by the Justice Department clearly and effectively address the anticompetitive harms'' that have been proved. United States v. Thomson Corp., 949 F. Supp. 907, 913 (D.DC 1996). When the ''anticompetitive harms'' and their illegality have been proved, the fit between those harms and the proposed remedies must be closer than when those harms merely have been ''initially identified,'' id., as is usually the case in Tunney Act proceedings.

Even if there were no finding a liability, the Court would not be compelled ''unquestionably [to] accept a consent decree as long as it somehow, and, however inadequately, deals with the antitrust problems implicated in the lawsuit.'' United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (citing United States v. AT&T, 552 F. Supp. 131,151 (D.DC 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). With liability in place, however, the Court need not proceed ''on the assumption that the government would have won.'' Gillette, 406 F. Supp. at 716 n.2.

The government did win. The Court in this case need not ''speculate in regard to the probability of what facts may or may not have been established at trial.'' United States v. Mid-America Dairymen, Inc., 1977 WL 4352, at *1. Those facts are a matter of record.

Whatever narrow deference may be afforded here amounts only to the tested rule that ''[i]t is not the court's duty to determine whether this is the best possible settlement that could have been obtained.'' Gillette, 406 F. Supp. at 716 (emphasis added). Although the Court may not be able to insist on the ''best possible'' decree, the proof and affirmance of liability require the Court to ensure that the RPFJ is at least adequate on that record under well-established remedial principles. Bechtel, 648 F.2d at 665.

The differences are real, but not dramatic, between the Court's role in deciding whether to accept this settlement in Track I, and in deciding in Track II what relief to impose at the request of those plaintiffs who have not abandoned the pursuit of a full and effective remedy in this case. In each track, the Court must measure proposed remedies against the legal standards set out by the DC Circuit and by the Supreme Court. In each track, the Court should not approve a remedy that is inadequate to meet those standards. In evaluating the RPFJ, the Court is not at liberty to substitute its view of equally effective, or marginally more effective relief, if the terms of the RPFJ are fully adequate to the task as the law defines it. That is, the DOJ's choices among adequate alternatives warrant deference, but its determination of what is adequate warrants none. In the other track, the Court does have the liberty, not merely to go beyond any decree that might be entered in this track, but also to insist that the final decree address the competitive issues in a way that satisfies the Court's view as to the best and most effective means of opening the operating systems market to competition, depriving Microsoft of the fruits of its illegal conduct, and preventing similar monopolistic abuses in the future. That is, while in this track of the proceeding the Court cannot insist on the ''best possible settlement,'' Gillette, 406 F. Supp. at 716, so long as the proposed relief meets the remedial standards anchored in antitrust law, in Track II the Court has not only the power but the duty to impose the ''best possible'' decree.

B. Broad Deference Is Particularly Circumstances Are Suspicious

1. Inappropriate Because The Microsoft's Manifestly Inadequate Disclosure Under The Tunney Act's Sunshine Provisions Weighs Strongly Against Judicial Deference To The Terms Of The RPFJ Section 2(g) of the Tunney Act requires Microsoft to file a ''true and complete description'' of ''any and all written or oral communications'' by it or on its behalf ''with any officer or employee of the United States concerning or relevant to'' the proposed settlement. 15 U.S.C. § 16(g) (emphasis added). The only exception from this requirement is for settlement negotiations between ''counsel of record alone'' and ''employees of the Department of Justice alone.''/d. (emphasis added).

When Senator Tunney first introduced his bill, he focused on the significance of the disclosure provision. ''Sunlight is the best of disinfectants,'' he explained (quoting Justice Brandeis), and thus ''sunlight * * * is required in the case of lobbying activities attempting to influence the enforcement of the antitrust laws.'' 119 Cong. Rec. 3449, 3453 (1973). Minor amendments to Section 2(g) were designed ''to insure that no loopholes exist in the obligation to disclose all lobbying contacts made by defendants in antitrust cases culminating in a proposal for a consent decree.'' H.R. Rep. No. 1463, at 12 (emphasis added).

The breadth of Microsoft's effort to use political pressure to curtail this case has no parallel in the history of the antitrust laws.

[3] See also, e.g., United States v. Robertson, 250 F.3d 500, 509 (6th Cir. 2001); United States v. Greener, 979 F.2d 517, 521 (7th Cir. 1992); United States v. McGovern, 822 F.2d 739, 742 n.4 (8th Cir. 1987); United States v. Randahl, 712 F.2d 1274, 1275 (8th Cir. 1983).

[4] 4 Decided in an equally remote context was United States v. BNS, Inc., 858 F.2d 456 (9th Cir. 1988), in which the Ninth Circuit approved a preliminary injunction, entered over DOJ's objection, against a tender offer for an acquisition that a proposed consent decree would have permitted.

The ITT episode that prompted the Tunney Act pales in comparison. It has been widely known that since 1998 Microsoft has comprehensively lobbied both the legislative and executive branches of the federal government in an effort to create political pressure to end this case.[5] But Microsoft did not disclose any of these contacts, much less all of them, as the Tunney Act requires.

Rather, Microsoft disclosed only meetings that occurred during the last round of settlement negotiations ordered by the Court. Microsoft's insupportable interpretation of its statutory disclosure duty effectively nullifies the sunshine provisions of the Act, which are crucial to the Act's protection of the public interest.

a. Contacts With All Branches Must Be Disclosed.

All contacts with ''any officer or employee of the United States'' must be disclosed. As Senator Tunney explained,

Included under [section 16(g)] are contacts on behalf of a defendant by any of its officers, directors, employees, or agents or any other person acting on behalf of the defendant, with any Federal official or employee. Thus, * * * the provision would include contacts with Members of Congress or staff, Cabinet officials, staff members of executive departments and White House staff 119 Cong. Rec. at 3453 (emphasis added). In other words, the disclosure applies equally to contact with any branch of Government, including the Congress. * * * [T]here is a great deal to be gained by having a corporate official who seeks to influence a pending antitrust case through congressional pressure, know that this activity is subject to public view.

Id. Indeed, it is firmly established in other areas of the law that ''officer'' of the United States includes Members of Congress and their employees.[6]

But Microsoft did not disclose its extensive and heavily reported lobbying of Congress. Indeed, upon the remand to the District Court, Microsoft's lobbying of Congress produced a letter signed by more than 100 Members urging a swift settlement. But Microsoft did not disclose even that lobbying, aimed at pressuring a swift capitulation by the government despite its victory on appeal, directly before the last round of settlement negotiations.

b. The ''Counsel of Record'' Exception Is Very Narrow.

Section 16(g) provides a narrow exception from disclosure for contacts between ''counsel of record alone'' (emphasis added)—that is, without any other corporate officers or employees also involved—and ''the Attorney General or the employees of the Department of Justice alone.'' As Senator Tunney explained, this ''limited exception'' for attorneys of record ''is designed to avoid interference with legitimate settlement negotiations between attorneys representing a defendant and Justice Department attorneys handling the litigation. * * * [T]he provision is not intended as loophole for extensive lobbying activities by a horde of 'counsel of record.'' 119 Cong. Rec. at 3453. The House Report further clarifies that this ''limited exception'' distinguishes '''lawyering'' contacts of defendants from their 'lobbying contacts'.'' H.R. REP. No. 1463, supra, at 9.

Microsoft did not disclose the well-publicized participation in the last round of settlement negotiations of its lobbyist-lawyer, Charles F. ''Rick'' Rule. It appears that the critical ''negotiations'' leading to the RPFJ took place, not in the offices of Microsoft's counsel of record, but ''in Justice's offices and those of Microsoft legal consultant Rick Rule.'' Paul Davidson, Some States Fear Microsoft Deal Has Big Loopholes, USA TODAY, Nov. 5, 2001. Rule has been a registered lobbyist for Microsoft for some years, but was not named as counsel of record until November 15, 2001, after the settlement negotiations were complete. See Notice of Appearance (D.DC filed Nov. 15, 2001). That designation—long after the settlement deal had been struck cannot retroactively shield his extensive prior contacts with Mr. James or other executive or legislative officials from disclosure. Contacts by ''[a]ttorneys not counsel of record'' must be disclosed. Id. Of course, Microsoft's many other lobbyists do not conceivably come within this exception. But Microsoft concealed all of those lobbying contacts.

c. All Communications Urging The Government To Abandon Or Settle The Case Were ''Relevant To'' The Proposed Settlement

Section 16(g) requires the disclosure of all contacts ''concerning or relevant to'' a proposed settlement. This statutory definition is intentionally broad. Microsoft's disclosure interprets the word ''concerning'' very narrowly, so that the provision covers only actual settlement discussions—and only the last round of them. In Microsoft's view, the Tunney Act would require disclosure only of the very meetings that must precede any settlement. Microsoft reads the words ''relevant to'' right out of the statute. That this statutory provision is broad is obvious by its very terms; in order for the phrase ''relevant to'' not to be mere surplusage, it must encompass contacts less directly focused on the settlement than those that ''concern[]'' that agreement.

Senator Tunney an example: ''the provision would require disclosure * * * of a meeting between a corporate official and a Cabinet officer discussing 'antitrust policy'' during the pendency of antitrust litigation against that corporation.'' 119 Cong. Rec. at 3453. The Act borrows from evidentiary concepts, including the privilege for settlement discussions, which prompted the narrow exception for counsel of record. The evidentiary concept of relevance is very broad. See Fed. R. Evid. 401. ''Relevance of evidence is established by any showing, however slight, that the evidence'' makes a legally important factor ''more or less likely.'' United States v. Mora, 81 F.3d 781,783 (8th Cir. 1996) (emphasis added) (citation omitted). Plainly ''relevant'' to the question whether a defendant's lobbying activities influenced the existence and terms of a consent decree are contacts with the administration, and with members of Congress, that touch on the desirability of the government's agreeing to end the case. It is startling, for example, that Microsoft would omit reference to its efforts to enlist support for congressional proposals that would have cut DOJ's funding for the pursuit of this case, and for antitrust enforcement in high technology industries in general.[7]

Disclosure under Section 2(g) is not usually burdensome; most defendants do not try to win their case politically rather than in the courtroom. Microsoft's massive and unprecedented effort to distort the judicial process through political pressure makes its compliance burdensome, but all the more necessary. It is exactly this sort of manipulation that the Tunney Act was designed to discourage by bringing it to light.

d. Microsoft's Flouting Of Its Statutory Duty Counsels Painstaking Judicial Scrutiny Of The RPFJ

Microsoft's cunning ''interpretation'' of the statutory disclosure requirements—so that disclosures reach only the very settlement discussions that the Tunney Act was not concerned about—sheds considerable light on Microsoft's likely ''interpretations'' of any remedy imposed on it, especially one like the RPFJ of which it can claim to be an equal drafter, if not the principal author. Microsoft's disclosure is so inadequate as to raise questions about Microsoft's good faith. The filing includes no disclosure of any lobbying contacts between Microsoft and the administration; it includes no disclosure of any contacts between Microsoft and members of Congress; it includes no disclosure of any contacts whatsoever before September 27, 2001, although it is well known that Microsoft and the government have tried to settle the government's antitrust action since before it was filed, and that Microsoft lobbied Congress to bring pressure on DOJ to settle or simply abandon the case.

Microsoft should face contempt sanctions for its certification ''that the requirements of [Section 16(g)] have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.'' DOJ should refuse to acquiesce in Microsoft's deception. Although DOJ cannot be expected to be

[5] See generally Declaration of Edward Roeder (attached). See also, e.g., Ian Hopper, Microsoft Lobbied Congress Over Case, SAN JOSE MERCURY NEWS, Jan. 11, 2002, at C3; Heather Fleming Phillips, Washington Politicians Chime In On Microsoft, SAN JOSE MERCURY NEWS, June 30, 2001, at A1; Rajiv Chandrasekaran & John Mintz, Microsoft's Window of Influence,'' Intensive Lobbying Aims to Neutralize Antitrust Efforts, WASH. POST, May 7, 1999, at A 1; James Grimaldi & Jay Greene, Microsoft Hard At Work Outside Courtroom, SEATTLE TIMES, Feb. 17, 1999, at A1. See also Microsoft's Political Donation In Question; South Carolina GOP Says Decision To Quit Lawsuit Coincidental, CHI. TRIB., Dec. 25, 1998, at 3.

[6] ee, e.g., Williams v. Brooks, 945 F.2d 1322, 1325 n.2 (5th Cir. 1991) (''a congressman is an ''officer of the United States'' within the meaning of [28 U.S.C. 1442(a)(1)]''); Nebraska v. Finch, 339 F. Supp. 528, 531 (D. Neb. 1972) (''It is * * * clear that a representative to the Congress of the United States is an officer of the United States, not an officer of the district in which he was elected.''); United States v. Meyers, 75 F. Supp. 486, 487 (D.DC 1948) (''Obviously, a Senator of the United States is an officer of the United States.'').

[7] See Chandrasekaran & Mintz, supra, WASH. POST, May 7, 1999, at A 1; Grimaldi & Greene, supra, SEATTLE TIMES, Feb. 17, 1999, at A1.

aware of all of Microsoft's lobbying of Congress in an effort to create pressure for a favorable settlement, DOJ should reveal the end-product of that pressure in the form of communications from Members and their staffs. And there is no excuse for DOJ to be complicit with Microsoft when it comes to contacts with DOJ itself. In particular, DOJ certainly is aware of Mr. Rule's lobbying contacts with before he belatedly appeared as counsel after the settlement had been concluded. The proper resolution of this issue is the appointment of a special master with the ability to examine the relevant participants under oath. In view of its responsibility to enforce 15 U.S.C. § 16(g) along with the rest of the antitrust laws, DOJ should request (and support) the implementation of such a procedure by the Court.

2. The RPFJ Represents A Swift And Significant Retreat By DOJ

Another factor counseling against deference here is the DOJ's striking capitulation to Microsoft's view of an appropriate remedy, despite the unanimous affirmance of the core of DOJ's case. The insubstantial provisions of the RPFJ provide ample ''reason to infer a sell-out by the Department,'' Massachusetts School of Law, 118 F.3d at 784.

After prevailing on liability in the district court, DOJ sought and obtained not only structural relief—as is ''common'' in broad monopolization cases, see Microsoft III, 253 F.3d at 105—but also ''interim'' conduct restrictions that clearly could not stand alone as a monopolization remedy. DOJ earlier recognized that the interim conduct remedies were stopgaps to keep the competitive situation from continuing to decline in the year or so before divestiture jumpstarted competition. See Plaintiffs'' Memorandum in Support of Proposed Final Judgment 30–31 (corrected version) (filed May 2, 2000). On remand, DOJ abandoned the structural relief that it formerly found necessary, even though liability on the monopolization claim—which alone could support structural relief in the first place—was affirmed with minor modifications. DOJ stated that it would pursue relief ''modeled upon'' the interim ''conduct-related provisions,'' along ''with such additional provisions as Plaintiffs may conclude are necessary to ensure that the relief is effective, given their decision not to seek a structural reorganization of the company.'' Joint Status Report 2 (filed Sept. 20, 2001).

Instead of fortifying the proposed decree to compensate for the abandonment of structural relief, however, DOJ moved considerably backward from the interim remedies, narrowing Microsoft's duties and providing broad exceptions. Indeed, the RPFJ is weaker than the final proposal in the settlement negotiations that took place during Spring 2000, before any judgment of antitrust liability, much less appellate affirmance.[8] Then, there was litigation risk as to liability. Now there is none. Nonetheless, the definitions and obligations in the current RPFJ fall short of those in the pre-judgment offer.

''[T]he government's virtual abandonment of the relief originally requested'' is ''a sufficient showing that the public interest was not * * * adequately represented'' in the RPFJ. United States v. Associated Milk Producers, Inc., 534 F.2d 113, 117 (8th Cir. 1976). It is precisely when DOJ appears to have ''abruptly ''knuckled under,'' id. at 118, as here, that judicial scrutiny under the Tunney Act should be most substantive and searching.

3. The CIS Overstates The Terms Of The RPFJ, Reflecting The Indefensibility of the RPFJ Itself

The CIS underscores the need for close scrutiny of the actual terms of the RPFJ and their effectiveness. The CIS seeks to convey an image of stringency by adding terms to provisions of the RPFJ that are absent from the RPFJ itself. But it is the RPFJ, not the CIS, that defines the enforceable bargain between the parties. As the Supreme Court has recognized, ''any command of a consent decree * * * must be found within its four comers, and not by reference to any purposes of the parties.'' United States v. ITT Continental Baking Co., 420 U.S. 223,233 (1975) (citations and internal quotation marks omitted). While the CIS may be useful in interpreting ambiguous terms in the REFJ, the wording of the CIS is not independently enforceable. Only the RPFJ would be entered as a judgment, and ''[t]he government cannot unilaterally change the meaning of a judgment.'' Bechtel, 648 F.2d at 665. It would be different, of course, if the CIS or its relevant refinements were ''expressly incorporated in the decree.'' ITT Continental, 420 U.S. at 238. In particular, the CIS goes beyond the text of the RPFJ to paint a far stricter picture of Microsoft's disclosure obligations than the RPFJ supports. It is no wonder that DOJ seeks to defend a document—the CIS—to which Microsoft would not be bound, rather than the far weaker RPFJ that alone would be judicially enforceable. The CIS cannot transform the RPFJ into a better deal for competition and consumers than it is.

II. THE RPFJ MUST MEET THE LEGAL STANDARDS NORMALLY APPLICABLE TO ANTITRUST REMEDIES

The ''public interest'' standard in the Tunney Act is not without content. Rather, those ''words take meaning from the purposes of the regulatory legislation,'' NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). The well-developed jurisprudence of antitrust remedies provides sound guidance for the public interest determination.

Although a district court should not ''engage in an unrestricted evaluation of what relief would best serve the public,'' Microsoft I, 56 F.3d at 1458 (quoting Bechtel, 648 F.2d at 666) (emphasis added), principled restrictions for that evaluation in this case arise from the extensive, unvacated Findings of Fact, the comprehensive opinion affirming monopolization liability on appeal, and the long-standing remedial principles of antitrust law, principles that the DC Circuit instructed the District Court to apply to any proposed relief on remand. See Microsoft III, 253 F.3d at 103. The ''appropriate'' inquiry (Bechtel, 648 F.2d at 666) is ''whether the relief provided for in the proposed judgment [i]s adequate to remedy the antitrust violations'' that were proved at trial and affirmed on appeal. Id. at 665.

The DC Circuit provided benchmarks rooted in Supreme Court jurisprudence to guide the evaluation whether a remedy is ''adequate.'' A remedy in this case must serve ''the objectives that the Supreme Court deems relevant,'' Microsoft III, 253 F.3d at 103. That is, a remedy must ''seek to * * * [1] 'terminate the illegal monopoly, [2] deny to the defendant the fruits of its statutory violation, and [3] ensure that there remain no practices likely to result in monopolization in the future.'" Id. at 103 (quoting Ford, 405 U.S. at 577, and United Shoe, 391 U.S. at 250).[9]

A. The Relief Should ''Terminate The Illegal Monopoly''

In a monopolization case, the problem to be remedied is the monopoly itself. Because the RPFJ would leave the illegally maintained monopoly in place without making the market structure more competitive, to satisfy this criterion relief must exclude the possibility that Microsoft again will prolong its monopoly power by abusing it. At a minimum, however, a monopolist should emerge from a remedy facing competitive threats of similar scope and significance to those it illegally stamped out. The DC 35

Circuit recognized that the illegal conduct in this case was aimed at increasing and hardening the applications barrier to entry that insulates Microsoft's OS monopoly. See id. at 55–56, 79. The CIS similarly recognized that ''[c]ompetition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry * * * by thwarting the success of middleware.'' CIS 24, 66 Fed. Reg. 59,465. A remedy that does not literally terminate the monopoly accordingly must undermine the applications barrier to entry that was strengthened by the illegal conduct.

B. The Relief Should Prevent ''Practices Likely To Result In Monopolization In The Future''

To satisfy this criterion, any remedy must both (1) prevent the monopolist from

[8] 8 That final proposal, known as Draft 18, was formerly posted on a now-defunct website, www.contentville.com, in connection with a review of a book that detailed the progress of this case. The text of Draft 18 may now be viewed at www.ccianet.org/legal/ms/draft 18.php3.

[9] 9 It is telling that the CIS ignores the remedial standard that the DC Circuit set out. See CIS 24, 66 Fed. Reg. 59,465. The CIS submerges the need to craft relief that tends to ''terminate'' the illegally maintained monopoly, despite the court of appeals'' contrary instructions. See 253 F.3d at 103. Rather, the CIS endorses a watered-down standard in order to set a lower bar for the RPFJ to clear, in tacit recognition that the RPFJ cannot satisfy the DC Circuit's standard. The CIS would require relief only to ''[e]nd the unlawful conduct,'' to prevent recurrence of the violation ''and others like it,'' and to ''undo its anticompetitive effects.'' CIS 24, 66 Fed. Reg. 59,465. The RPFJ falls short even of these modified, more modest objectives, however, particularly when measured by its failure to prevent future violations that work slight variations on the conduct condemned by two courts, and its failure to ''undo'' any of the ''anticompetitive effects'' of Microsoft's sweeping, coordinated, and successful anticompetitive campaign.

engaging in the same sorts of conduct that underlie the current finding of liability, and (2) prevent other types of conduct that could preserve the monopoly. The ''monopolization in the future'' that must be prevented includes both the simple maintenance of the current monopoly and the expansion of that monopoly's scope. Relief should make it impossible for the monopolist to continue its pattern of using current market power to foreclose imminent or contemplated competitive threats. Because Microsoft has been ''caught violating the [Sherman] Act,'' it ''must expect some fencing in.'' Otter Tail Power Co. v. United States, 410 U.S. 366, 381 (1973).

A monopolist that has been litigating for years no doubt has developed anticompetitive techniques that achieve the same goals through slightly different means. Microsoft embarrassed DOJ by obtaining language in the 1995 consent decree that was tailored to exclude, at least arguably, the company's next planned anticompetitive initiative. Exemptions, provisos, and narrow definitions should be scrutinized on the assumption that Microsoft again has tried to ensure that the RPFJ will not impede currently planned anticompetitive acts.

C. The Relief Should ''Deny To The Defendant The Fruits Of Its Statutory Violation''

Relief in an antitrust case not only must prevent ''recurrence of the violation,'' but also must ''eliminate its consequences.'' National Society of Professional Engineers v. United States, 435 U.S. 679, 697 (1978). Thus, a remedy should prevent a monopolist from retaining the accrued competitive benefits of its illegal conduct. These advantages may permit a monopolist to maintain its monopoly without additional antitrust violations. Relief that allows a wrongdoer the full benefit of its illegal activity fails the most basic test of any remedy under any branch of the law.

In this case, the ''fruits'' of Microsoft's illegal conduct may be the most important target of a responsible remedy. One of the chief advantages that Microsoft gained by incorporating the Internet browser into the Windows monopoly was the ability to control not only the browser for its own sake, suppressing the possibility that the Internet browser would provide a source of alternate, OS-neutral APIs, but also the browser as the gateway to all Internet computing. As the Litan/Noll/Nordhaus Comment explains (at 58–60), one of the most important fruits of monopolistic conduct is the suppressed development of competitive threats. That is why a forward-looking remedy must be rooted in current market conditions, and must seek to restore competition to where it likely would have been in the absence of the anticompetitive conduct. Litan/Noll/Nordhaus Comment 35–36, 40–42, 58–59.

D. Broader Principles Applicable To Injunctive Relief Also Should Inform The Analysis Of The RPFJ

The remedial analysis here resembles other remedial undertakings. Although civil antitrust relief is not punitive, effective antitrust relief shares with criminal sentencing the broad goals of incapacitation and deterrence. As much as possible, an illegal monopolist should be flatly prevented from engaging in the same or similar suppression of competition in the future. In addition, the remedy should be enforceable with sufficient speed and certainty to make stiff contempt sanctions likely if the monopolist nonetheless manages to engage in anticompetitive conduct again.

The point of antitrust relief after a finding of liability is to learn from history, not to permit the offender to repeat it. This consideration is particularly acute here, where the purposes of the expiring 1995 consent decree clearly have not been realized, but rather have been evaded or neutralized.

Because antitrust relief necessarily is forward-looking, a remedy's effectiveness should be judged with respect to where the market is going, not where it has been. Microsoft has directed its efforts to destroy the competitive threat of Internet computing. The more functionality that is performed on the Web, the less significant the operating system on a particular client device connected to the Web. Thus, Internet computing represents the maturation of the competitive threat posed by the Internet browser and squelched by Microsoft's illegal conduct. The current industry-wide focus on Web-based services reflects the realization that a competitive market still survives in this sector. The Court will have to consider whether the RPFJ in fact is ''all about the past, not the future battle in Internet services[, and] doesn't touch the company's ability to use Windows XP to extend its monopoly to these new areas.'' Walter Mossberg, For Microsoft, 2001 Was A Good Year, WALL ST. J., Dec. 27, 2001, at B1. See Stiglitz/Furman Dec. 38–39.

III. THE RPFJ FALLS FAR SHORT OF PROVIDING A REMEDY FOR PROVEN OFFENSES UPHELD ON APPEAL

The RPFJ lights upon narrowly defined practices and prohibits narrowly defined versions of them, in ways that might have mitigated, but would not have ended, the very conduct at issue in this case. The RPFJ does not measure up to the sweeping monopolization violations found by two courts. The RPFJ's provisions do not address Microsoft's ability and incentives to strengthen the applications barrier to entry, which was the underlying issue at the core of the case, instead focusing on techniques of monopolization that have been defined so narrowly that Microsoft's actual behavior need not change. And when addressing a precise technique that directly implicated the reinforcement of the applications barrier to entry—Microsoft's ability to stop porting its Office productivity suite to the Apple Macintosh platform—the RPFJ permits Microsoft to retain the ability to repeat that threat in slightly altered contexts.

A. DOJ's Effort To Minimize The Scope Of The DC Circuit's Affirmance Cannot Obscure The Failure Of The RPFJ To Remediate Clear, Proven Violations

DOJ has tried to lower the bar for approval of its proposal by minimizing the most significant appellate imposition of monopolization liability in the past half-century, and adopting Microsoft's crabbed view of its own liability. In Senate testimony, Assistant Attorney General James made the remarkable assertion that the DC Circuit, despite affirming ''the District Court's holding that Microsoft violated ¶ 2 of the Sherman Act in a variety of ways,'' 253 F.3d at 59, somehow precluded any consideration, for remedial purposes of Microsoft's astonishing anticompetitive campaign as a whole. See James Testimony 5. To the contrary, the court of appeals never rejected the common-sense notion that ''Microsoft's specific practices could be viewed as parts of a broader, more general monopolistic scheme''; much less did the court of appeals insist (or even hint) that ''Microsoft's practices must be viewed individually'' for all purposes. Id. Rather, the court of appeals clearly considered some illegal acts in the context of others. Thus, the court held that Microsoft's exclusive contracts with ISVs, though affecting only ''a relatively small channel for browser distribution,'' had ''greater significance because * * * Microsoft had largely foreclosed the two primary channels to its rivals.'' 253 F.3d at 72.

The DC Circuit's examination of the divestiture remedy is telling. If the many separately illegal monopolistic acts could not be viewed as cumulatively contributing to the illegal maintenance of Microsoft's monopoly, divestiture would have been an unthinkable remedy, since no specific act held illegal on appeal changed the structure of the company or of the market. But the court of appeals recognized that divestiture could be justified if the many separate illegal acts, taken together, were shown to have had a sufficiently certain causal connection to justify using structural relief to undermine, if not end, the monopoly. See 253 F.3d at 80, 106–107.

The court of appeals did ''reverse [the] conclusion that Microsoft's course of conduct separately violates 2 of the Sherman Act.'' 253 F.3d at 78 (emphasis added). But the reversal occurred because the district court purported to find that a series of acts that did not constitute separate, free-standing antitrust violations had a ''cumulative effect * * * significant enough to form an independent basis for liability''—but never specified acts other than those that separately violated Section 2 that might be aggregated into such a violation. Id.

It is a remarkable leap from this unremarkable holding to the absurd notion that Microsoft's extraordinary series of separate adjudicated antitrust violations cannot be considered together for any purpose. Even the CIS recognizes that those violations are part of one coordinated and ''extensive pattern of conduct designed to eliminate the threat posed by middleware.'' CIS 11, 66 Fed. Reg. 59,462. They should be remedied as such.

B. The RPFJ Simply Restates The Antitrust Laws At Critical Points And Thus Forfeits The Clarity And Efficiency Of The Contempt Process

Another striking feature of the RPFJ is its repeated reliance on a reasonableness standard of conduct that simply imports full rule-of-reason analysis under the antitrust laws. Antitrust remedies, like other injunctive decrees, are supposed to be amenable to swift and sure enforcement,

according to standards that give warning of what is forbidden and what is permitted both to the wrongdoer and to its potential victims. But the RPFJ would regularly require the decree Court to determine whether Microsoft's conduct was ''reasonable.'' For example, the Court would have to determine

* whether volume discounts were ''reasonable'' or exclusionary (RPFJ § III(B)(2));

* whether technical requirements for the bootup sequence that Microsoft imposed on OEMs were ''reasonable'' (id. § III(C)(5));

* whether the terms on which Microsoft makes Communications Protocols available are ''reasonable'' (id. § III(E));

* whether exclusivity requirements imposed on ISVs were ''reasonable'' in ''scope and duration'' (id. § III(F)(2)); see also id. § (III(G)(2));

* whether technical requirements designed to force the invocation of Microsoft Middleware despite contrary consumer or OEM preferences are ''reasonable'' (id. § III(H)(2)[second]);

* whether the licensing terms accompanying required disclosures, and terms of mandatory cross-licenses required for access to the disclosures, are ''reasonable'' (id. ???* and whether Microsoft's bases for excluding ISVs from access to security-related protocols are ''reasonable'' (id. § III(J)(2)(b)–(c)).

It is telling that the RPFJ states so many of its provisions in terms that simply duplicate the antitrust rule of reason. Rule of reason disputes are notoriously difficult to litigate, see Arizona v. Maricopa County Medical Soc., 457 U.S. 332, 343 (1982) (noting ''extensive and complex litigation'' involving ''elaborate inquiry'' at ''significant costs''), — and difficult for plaintiffs to win. These provisions add nothing to the antitrust laws themselves, either in clarity of obligation or in efficiency of enforcement. That is no remedy at all.

C. The RPFJ Provides No Remedy For Microsoft's Suppression Of The Browser And Java.

As noted above, perhaps the most glaring deficiency of the RPFJ is that it does nothing to restore the competitive threats to Windows posed by the Internet browser and cross-platform Java. That cannot be an oversight. The bulk of the evidence, and much of the opinion of the court of appeals affirming liability, focused on Microsoft's successful efforts to suppress these threats to the applications barrier to entry. See Microsoft III, 253 F.3d at 58–78. Even the CIS recognizes the primacy of these products in the case. See CIS 10–17, 66 Fed. Reg. 59,462–463.

Yet the RPFJ does not change the competitive picture for either product in the least. The RPFJ does not deprive Microsoft of these ''fruits'' of its illegal conduct, but instead takes that illegal conduct, and the advantages derived from it, as a tacit baseline for future competition. The RPFJ leaves Microsoft with the full benefit not only of the years of insulation from the competitive threats posed by those products, but also of the expanded power it has accumulated by incorporating Internet Explorer into the Windows monopoly. Microsoft thus has more, and stronger, weapons to suppress any middleware threats that it identifies in the future, since its monopoly control over the browser—now labeled part of the Windows monopoly product—provides Microsoft with complete control over the universal client for Internet computing. The RPFJ's approach is like sentencing a bank robber to probation, but letting him keep his weapons and the loot.

But the RPFJ's failure to provide relief that restores the specific competitive threats that Microsoft illegally suppressed is worse than that. In a platform technology market like that for PC operating systems, single standards tend to prevail, so that only sweeping changes can dislodge the incumbent. Platform threats are very rare. It could easily be another five or ten years or more before a comparable threat arises again; certainly no threat of similar strength to the Internet browser or Java has surfaced in the nearly seven years since Microsoft began the course of illegal conduct condemned by the court of appeals. See Stiglitz/Furman Dec. 35–36. That is what makes anticompetitive conduct directed at them so potentially profitable. The RPFJ makes that conduct profitable beyond any rational actor's wildest dreams, and greatly increases the incentives for its repetition. Having been caught illegally suppressing two related platform threats, Microsoft retains all the benefits that it sought through its illegal acts.

By eliminating Navigator, Microsoft has not only eliminated consumer choice in browsers, but it also seized the power to control the interfaces and protocols through which an enormously valuable set of Internet applications—ranging from instant messaging and e-mail to streaming video and e-commerce—are delivered to desktop computers and other digital devices. Microsoft's Internet Explorer is now the bottleneck through which all Internet-related middleware must pass. Instant messaging and media player technology are equally dependent on browser software. Microsoft has also seized the power to decide whether that browser functionality will be ported to any competing operating system, and, if so, to which ones. Finally, in destroying Navigator, Microsoft has also destroyed an important alternative distribution channel, one free of Microsoft's control or influence, through which Microsoft's competitors could formerly distribute middleware runtimes and products to desktop consumers and application developers.

Although Navigator has practically disappeared from the competitive scene, Java has not. But Java's importance has been limited to servers, where Microsoft has a leading share but not yet an operating systems monopoly. Microsoft's conduct appears to have assured that Java will not function as cross-platform middleware for client computers. Java thus poses no threat to the desktop OS monopoly. But the RPFJ lets Microsoft keep that anticompetitive benefit of its conduct.

IV. THE ICON-FOCUSED OEM FLEXIBILITY PROVISIONS ARE INEFFECTIVE

RPFJ §§ III(H)(1)–(2)[first] superficially allow OEMs and end users to rearrange icons and menu entries relating to middleware.[10] These provisions are hollow, however. Section III(H)(1) duplicates only what Microsoft unilaterally agreed to permit OEMs to do back on July 11, 2001. And the end-user provisions simply restate and preserve end-users'' longstanding options to delete icons and menu entries if they right-click and delete or drag the icon or menu entry to the Recycle bin. The default provisions in Section III(H)(2) are so limited, and so fully subject to Microsoft's architectural control, as to be competitively meaningless as well.

The icon provisions do not adequately address the competitive harms of Microsoft's adjudicated misconduct because Microsoft remains able to ensure that the Microsoft versions of middleware will appear, ready to be invoked by applications, on every PC. Even if the icon provisions had greater competitive significance in theory, they are unlikely to have any significance in fact, because few if any OEMs are likely to take advantage of the options provided. DOJ cannot claim to be unaware of this market reality. These provisions are mere window-dressing. See Stiglitz/Furman Dec. 35.

A. The PFJ Permits Microsoft's To Continue Illegally Commingling Middleware Code With The Code For The Monopoly Operating System

The RPFJ capitulates on DOJ's most hard-fought and significant substantive victory: the finding that Microsoft illegally preserved its monopoly by commingling the middleware code with the operating system, foreclosing the competitive threat to Windows while effectively expanding the scope of the monopoly to encompass middleware. DOJ's inability to enforce the 1995 consent decree against the binding of IE to Windows, see United States v. Microsoft, 147 F.3d 935 (DC Cir. 1998) (''Microsoft II''), was widely viewed as prompting this action. The conduct itself was viewed as the most successful in furthering Microsoft's anticompetitive goals.

Rather than repeat and strengthen the prohibition in the 1995 decree that failed to achieve its goals, the RPFJ does not even impose the type of superficial prohibition applied to other conduct condemned at trial and on appeal. To the contrary, under the RPFJ, the operating system is whatever Microsoft says it is, and Microsoft can commingle any new product to the monopoly product—foreclosing competition for the OS and the new product alike. See Stiglitz/Furman Dec. 34–37. Not only does Microsoft preserve its anticompetitive gains, but it obtains a green light to repeat the same conduct to destroy any new middleware threats. In a market characterized by serial dominance, an incumbent monopolist may need only to suppress one threat every few years in order to make its monopoly virtually permanent. Cf. id. at 35–36. A continued ability to commingle middleware gives Microsoft limitless tenure over the OS market. If Microsoft emerges from this case free to bind middleware to the OS, this action will be an exercise in futility.

1. The DC Circuit Specifically Condemned Commingling Twice

[10] 10 See n.2, supra.

DOJ's victory on the commingling point was crystal clear, and repeatedly underscored by the court of appeals. The court of appeals recognized that ''Microsoft's executives believed'' that ''contractual restrictions placed on OEMs would not be sufficient in themselves'' and therefore ''set out to bind'' IE ''more tightly to Windows 95 as a technical matter.'' Microsoft III, 253 F.3d at 64 (quoting Findings, 84 F. Supp.2d at 50 (¶ 160)). In the CIS (and in Assistant Attorney General James'' Senate testimony), DOJ appears to assume that icon-based relief that subjects some Microsoft Middleware Products to the Add/Remove utility equates with relief for commingling code. Thus, the CIS blends the two offenses in stating that Microsoft violated Section 2 when it ''integrated Internet Explorer into Windows in a non-removable way while excluding rivals.'' CIS 7, 66 Fed. Reg. 59,461. In affirming liability for both courses of conduct, however, the court of appeals clearly distinguished between Microsoft's ''excluding IE from the 'Add/Remove Programs'' utility'' and its ''commingling code related to browsing and other code in the same files.'' 253 F.3d at 64–65, 67. The court of appeals found no justification for commingling code or, indeed, more broadly, for ''integrating the browser and the operating system.'' Id. at 66. One could hardly ask for a clearer statement.

Microsoft argued bitterly against liability for commingling, and for a declaration that its product design decisions were beyond the reach of the antitrust laws. Instead, the DC Circuit pointedly rejected Microsoft's argument that it ''should vacate Finding of Fact 159 as it relates to the commingling of code.'' Microsoft III, 253 F.3d at 66; see Findings, 84 F. Supp.2d at 49–50 (¶ 159). And the court of appeals ''conclude[d] that such commingling has an anticompetitive effect,'' because it ''deters OEMs from pre-installing rival browsers, thereby reducing the rivals'' usage share and, hence, developers'' interest in rivals'' APIs as an alternative to the API set exposed by Microsoft's operating system.'' 253 F.3d at 66 (emphasis added). See generally id. at 64–67. That is, commingling helps reinforce the applications barrier to entry that shields the Windows monopoly.

The DC Circuit's holding reflected a principle of critical importance to the enforcement of the antitrust laws in the software industry, where the complementarity of different programs makes product design a potentially devastating weapon to foreclose competition: a ''monopolist's product design decisions'' can violate the antitrust laws just as any other economic conduct can. 253 F.3d at 65. Product design decisions may be grossly anticompetitive, particularly in the software industry where lines of code can be packaged (and marketed) in many different ways without affecting the operation of programs once they are installed. As Microsoft's James Allchin recently acknowledged, software ''code is malleable,'' so that ''[y]ou can make it do anything you want.'' Microsoft Net Profit Fell 13% in Recent Quarter, Wall St. J. Europe, Jan. 18, 2002, 2002 WL–WSJE 3352885 (quoting Allchin).

Lest there be any doubt on the matter, the court of appeals flatly rejected Microsoft's reheating petition aimed squarely at the remedial issue. Microsoft specifically sought to preclude relief that addressed the commingling violation, and instead to treat the commingling and the lack of add/remove functionality as the same. Microsoft's reheating petition made clear that the ''ruling with regard to 'commingling'' of software code is important because it might be read to suggest that OEMs should be given the option of removing the software code in Windows 98 (if any) that is specific to Web browsing [as opposed to] removing end-user access to Internet Explorer.'' Appellant's Petition for Reheating, at 1–2 (July 18, 2001). Microsoft argued that affirmance only on the ground of the add/remove issue would ensure that the remedy was tightly confined, because the ''problem will be fully addressed by including Internet Explorer in the Add/Remove Programs utility, which Microsoft has already announced it will do in response to the Court's decision.'' Id. at 2.

The court of appeals rejected this argument out of hand, adding this remarkable sentence in a terse per curiam order denying reheating: ''Nothing in the Court's opinion is intended to preclude the District Court's consideration of remedy issues.'' Order at 1 (DC Cir. Aug. 2, 2001) (per curiam). Nonetheless, the RPFJ would settle this case as if rehearing had been granted, requiring Microsoft only to allow OEMs and end users to ''add/remove'' the icons for middleware. This is insufficient to remedy technological binding—commingling [] since it does nothing to remove the underlying middleware code on which developers will continue to rely. If only the Internet Explorer icon is removed from the desktop, the IE middleware remains, and with it the same applications barrier issues that Microsoft preserved by stifling competition by Netscape and Java.

It is true that the interim conduct relief in the vacated Final Judgment required only that Microsoft offer an operating system where OEMs and end-users were permitted to remove end-user access to the middleware components, United States v. Microsoft Corp., 97 F. Supp.2d 59, 68 (D.DC 2000), vacated, 253 F.3d 34 (DC Cir. 2001), a provision similar to that in RPFJ § III(H)(1)[first]. That transitional provision of course assumed the existence of structural relief that would remove Microsoft's economic incentive to bind middleware to the OS unless the binding was independently justifiable. Without a structurally more competitive market, those modest provisions would be meaningless, and would permit Microsoft to follow much the same course that triggered the lawsuit.

There is no excuse for DOJ's failure to do anything about one of the principal, and most easily replicable, violations in the case. Even one of Microsoft's vocal, libertarian defenders, University of Chicago law professor Richard Epstein, recognized that the minimum plausible remedy after the DC Circuit decision would involve ''undoing a few product-design decisions.'' Richard Epstein, Phew/, Wall. St. J., June 29, 2001, at A10. But DOJ did not even insist on that. Instead, the RPFJ's omission of any relief for this violation gives Microsoft something the DC Circuit twice refused: a victory on the hardest-fought legal issue in the case. Given the central importance of middleware to the theory of the case, failing to address the principal means by which Microsoft bundled browser middleware to Windows would be plainly inadequate.

2. The Failure To Limit Commingling Is Critical Because Ubiquity Trumps Technology In Platform Software Markets

The failure to prohibit commingling of middleware deprives the RPFJ of any significant procompetitive effect on the emergence and adoption of competing platform software. The critical competitive phenomenon in this case was not middleware in itself, but rather the potential, and deeply feared, development of particular middleware into a competing platform for software applications. Middleware can develop into a competing applications platform by attracting software developers to use its Application Programming Interfaces (APIs) in preference to, or at least in addition, to the APIs offered by Microsoft in Windows. Developers will write their applications to invoke particular APIs—i.e., to run on a particular platform—based on how widely available the APIs will be.

Although potential platform software not distributed by Microsoft must attract users in order to achieve the widespread availability of their APIs that will attract developers, it is the expected presence of the APIs that matters, not how much consumers directly use the application exposing the APIs. Non-Microsoft middleware depends on the availability of the application in order to gain the critical mass of users that, in turn, may attract developers.

The availability and prominence of the application's icon may be significant for the purpose of attracting end-users. In platform competition, however, the availability of the application is only a means to the desired end. Developers don't write to icons; they write to APIs. The inclusion of Microsoft Middleware functionality in every copy of Windows is determinative, regardless of how or whether the icons are featured, and regardless even of the presence of the user interface or shell? [11] If developers know that the plumbing for a Microsoft version of middleware will be on every PC because it is commingled with Windows, then developers will write to the Microsoft version's APIs. Because the RPFJ permits Microsoft to include the APIs accompanying the software functionality that mimics middleware that is a potential platform threat, Microsoft will be able to defeat any middleware threat in exactly the same way it destroyed the threat of Netscape and Java on the PC desktop. See Stiglitz/Furman Dec. 36.

Under the RPFJ, developers will continue to assume that Windows Media Player, for example, is present on every computer. This will be true regardless of whether ''end user access'' is removed, because the remedy does

[11] The user interface is especially insignificant because the browser window already can serve as the user interface for many products, and could easily be adapted to serve as the user interface for many more.

not require Microsoft to remove the middleware. The result is that software developers will write applications to, for example, the Windows Media Player APIs, rather than to the APIs supplied by rival platforms. That is an advantage that no competitor can overcome.

It is no answer to say that OEMs can offer rival middleware even if the code for a Microsoft version of the same product is commingled with Windows, so that the Microsoft version of middleware appears on every desktop PC. If Microsoft's version of a product is everywhere, few OEMs will go to the effort of providing another product that does largely the same thing. The district court and court of appeals alike recognized that OEMs faced strong disincentives to install two competing products with similar middleware functionality, disincentives arising largely from support costs and disk space. See 84 F.Supp.2d at 49–50, 60–61 (¶¶ 159, 210); 253 F.3d at 61. If the Microsoft Middleware is there, the OEM will have to support it, even if—perhaps especially if—the end-user does not know that it is there.

Thus, rival middleware cannot undermine Microsoft's monopoly unless (1) the rival middleware is ubiquitous, or (2) the Microsoft version is not ubiquitous. If developers do not feel compelled to write to the rival middleware as well as the Microsoft middleware, the rival middleware will not undermine the monopoly. And if Microsoft's version of particular middleware can be ubiquitous by virtue of its inclusion in the monopoly operating system, as the RPFJ plainly allows, there is virtually no likelihood that rival middleware will ever achieve the ubiquity needed to present a platform challenge. See Stiglitz/Furman Dec. 36–37; see generally Litan/Noll/Nordhaus Comment 44–47.

3. The RPFJ Retreats From The 1995 Consent Decree

Microsoft uses Windows as an instant, universal distribution channel for Microsoft software that represents a response to a threat to the dominance of Windows as a program development platform. As a consequence, ''Windows'' has become whatever bundle Microsoft needs it to be to forestall competition. The 1995 Consent Decree contained a prohibition on contractual tying of applications to the operating system in order to prevent anticipated conduct that would maintain the operating systems monopoly by anticompetitive means. That the earlier provision failed in its purpose suggests that the provision should be broader, not that it should be abandoned, particularly since this case began as a way to stop conduct that had escaped summary condemnation under the earlier decree. It would be senseless as a matter of enforcement policy to bring and win an action prompted by an evasion (if not a violation) of a monopolization consent decree, win the case on the monopolization theory most closely related to the object of the earlier consent decree, and then reward the violator by removing the relevant restriction upon the expiration of the earlier decree rather than broadening it as proposed here.

Microsoft's monopoly gives it the power to make all systems integration and software bundle decisions, a power that Microsoft is exercising more broadly, as the breadth of the Windows XP bundles clearly illustrates. The RPFJ should not step back from the 1995 Consent Decree.

4. The RPFJ Encourages Illegal Commingling By Placing The Critical Definition of Windows Under Microsoft's Exclusive Control

But the RPFJ does step back from the 1995 Decree, and makes matters still worse. Not only does the RPFJ completely fail to prevent future illegal commingling, but it effectively approves that conduct by permitting Microsoft ''in its sole discretion'' to ''determine[]'' exactly which ''software code comprises [sic] a Windows Operating System Product.'' RPFJ § VI(U). That provision permits Microsoft an unearned advantage in repelling any future challenges to illegal commingling of applications code with Windows. Were the Court to enter this provision as part of its judgment, Microsoft could point to DOJ's capitulation on this issue—and the Court's approval—as extraordinarily persuasive evidence that its monopoly product was as broad as it says it is, and that, despite the contrary holding of the DC Circuit, any commingling of an application with the operating system is per se legal.

The Court can and should disapprove provisions that appear to endorse practices of apparent anticompetitive effect and dubious legality. Thomson Corp., 949 F. Supp. at 927–930 (refusing to approve fee schedule for mandatory license for legally dubious copyright). The Court should not approve this provision, which defangs many of the other obligations in the RPFJ.

Rather than learning from the difficulties with the ''integration proviso'' in that Decree, DOJ has ceded the issue to Microsoft, permitting Microsoft to decide for purposes of the decree obligations where the OS stops and where middleware begins. Much of the RPFJ rests on the relationship between the Windows OS and middleware. But the RPFJ places Microsoft firmly in control of every technical aspect of the proposed decree by permitting Microsoft absolute control over the definition of ''Windows Operating System Product.'' That subjects many of Microsoft's purported obligations to Microsoft's own discretion.

No term is more important in the RPFJ than ''Windows Operating System Product,'' which appears fully 46 times in the RPFJ: 26 times in the descriptions of substantive obligations, and 20 times in the definitions that circumscribe those obligations. The definition of Application Programming Interfaces (APIs) is the starkest example. ''Windows Operating System Product'' appears three times among the 41 words of the API definition. See RPFJ § VI(A.). Thus, Microsoft can determine ''in its sole discretion'' what an API is, and thus what must be disclosed.

One would think that DOJ would do everything possible to ensure that a new decree did not contain an analogue to the ''integration proviso'' that nullified much of the anti-tying provision of the 1995 decree. See generally Microsoft II, 147 F.3d 935. Instead, Section VI(U) ensures that few, if any, of the technical provisions of the RPFJ will mean anything except what Microsoft wants them to mean, and that none can be enforced without lengthy litigation that will further shrink the tightly limited duration of the proposed relief.

B. Empirical Evidence Shows That The Icon Flexibility Provisions Will Not Be Used

Not only do the icon flexibility provisions address the wrong problem, but the market already has tested their consequences. On July 11, 2001, Microsoft announced that OEMs and end users would be permitted to remove access to Microsoft's Internet Explorer browser, just as RPFJ § III(H)(1) permits. As of this writing, not one OEM has availed itself of this new liberalized policy. Windows XP is shipping with Internet Explorer on every single personal computer shipped by every single OEM. This real-world experience speaks volumes about the practical significance of this relief.

C. The Icon Flexibility Provisions Require—And Accomplish—Little

1. The icon flexibility provisions do not permit OEMs to swap out Microsoft Middleware Products and replace them with other products. Rather, the OEMs at most can hide the Microsoft icon, but need to be prepared to support the underlying Microsoft software when another software application invokes it. That means that these provisions do not address the added ''product testing and support costs'' that discourage OEMs from including more than one version of particular functionality. Microsoft III, 253 F.3d at 66.

This is a step backward from DOJ's settlement posture before liability was established. At that time, DOJ insisted that OEMs be allowed to alter or modify Windows, and that Microsoft provide OS development tools for that purpose. See Draft 18, §§ 4(1)(d), 4(g). The RPFJ provisions, by contrast, only permit OEMs to display icons, shortcuts, and menu entries for Non-Microsoft Middleware. The RPFJ does not require Microsoft to permit OEMs to remove any Microsoft Middleware Products, although even current Microsoft practice permits this. The RPFJ requires Microsoft only to allow the removal of ''icons, shortcuts, or menu entries.'' RPFJ § III(H)(1)[first].

2. Section III(H)(2)[first] seems to permit OEMs and end-users to choose default middleware for particular functions. Microsoft's obligations are far less than they appear.

The provision applies only where a Microsoft Middleware Product would launch into a top-level display window (rather than operating within another interface) and would either display ''a// of the user interface elements'' or the ''Trademark of the Microsoft Middleware Product.'' RPFJ § III(H)(2)(i)–(ii) (emphasis added). Thus, the provision does not apply if Microsoft designs the slightest variation on the interface elements that launch from within another application, so long as the trademark also is not displayed in the top-level window. These do not present serious programming challenges. Microsoft's ability to preclude OEM installation of desktop shortcuts that ''impair the functionality of the [Windows]

user interface'' (RPFJ § III(C)(2)) provides another, largely unreviewable set of opportunities to impede the use of innovative shortcuts to innovative software. Microsoft asserted similar reasons to defend some of the conduct condemned by the DC Circuit. See Microsoft III, 253 F.3d at 63–64. The DC Circuit rejected Microsoft's approach, but the RPFJ adopts it.

3. As explained above, the code beneath the surface is critically important to the success of middleware in undermining the applications barrier to entry in the OS market. The RPFJ contains exceptions that ensure that, however icons may be displayed on the surface, Microsoft Middleware will be firmly (and unchallengeably) established in the plumbing of each PC.

Sections III(H)(1)–(2)[second], undo what might be left of the obligations earlier in Section III(H). Section III(H)(1)[second] permits Microsoft to ensure that Microsoft Middleware Products are invoked whenever an end-user is prompted to use Microsoft Passport or the group of Microsoft web services now known as Hailstorm. Section III(H)(2)[second] ensures that Microsoft need only program in functions that invoke Active X or other similar Microsoft-proprietary implementations of common functions, in order to ensure that Microsoft Middleware Products constantly appear regardless of an end-user's stated preferences. And none of the provisions in Section III(H) would apply unless the corresponding Microsoft Middleware Products existed seven months before the last beta version of a new Windows release. As with other provisions, Microsoft would be constrained by these requirements only if it paid no attention to them when it decided when and how to release its products.

D. The 14-Day Sweep Provision Effectively Nullifies RPFJ § III(H)

Even if these provisions otherwise might mean something, the RPFJ ensures that they will be competitively meaningless by permitting Microsoft to nag users to give permission for Microsoft to override any array of non-Microsoft icons and menu entries 14 days after the initial boot-up of a PC. See RPFJ § III(H)(3). Thus, Microsoft only needs to prompt users with a dialog box inviting them to ''optimize the Windows user interface'' every time they boot up, or when they download the inevitable bug fixes and security patches among Windows updates, in order to undo any OEM's or end-user's customization of icons. Microsoft apparently provided DOJ with the name for this feature, which DOJ uses in the CIS: ''Clean Desktop Wizard.'' CIS 48, 66 Fed. Reg. 59,471. What user would not agree to have a cleaner desktop? No ISV is likely to pay an OEM a fee sufficient to cover the trouble of rearranging icons, and supporting additional software, for the privilege of having non-Microsoft software icons displayed advantageously for as little as two weeks.

The CIS suggests that the ability of Microsoft to sweep away icons of competing middleware and other products 14 days after a computer first boots up (RPFJ § III(H)(3)) applies only to ''unused icons'' (CIS 48, 66 Fed. Reg. 59,471), but the decree terms contain no such limitation. Once its ''Clean Desktop Wizard'' (id.) secures a click of user consent, Microsoft can hide any icons that offend it. Indeed, there is nothing in the RPFJ that would stop Microsoft from including similar ''wizards'' that would prompt users to reset middleware defaults, or even to remove Non-Microsoft Middleware,'' in order to ''optimize performance'' or to ''take full advantage of powerful new Windows features.''

E. By Placing The Burden To Restore Competition On OEMs, The PFJ Leads To No Remedy At All For Much Of The Misconduct At Issue

One of the most misguided elements of the RPFJ is its allocation to OEMs, ISVs and end-users of the primary responsibility for injecting competition into the OS market. The icon and default flexibility provisions of the RPFJ allocate to the OEMs almost all of the financial risk and responsibility for remediating Microsoft's antitrust violation, while the monopolist has no obligations except to allow others to make changes to hide (or add to) Microsoft's middleware. That approach ignores the fact that OEMs are motivated by their own fiduciary and economic considerations, not by the drive to remedy a monopolization offense. OEMs are risk-averse, as they operate in a low-margin, highly competitive environment in what has become a commodity-product market. In that environment OEMs are highly dependent on the good graces of Microsoft, not only for favorable pricing on Microsoft's monopoly software products [] Office as well as Windows [] but also for timely technical assistance, and access to technical information.

The Stiglitz/Furman Declaration confirms (at 32–34) that the economics of the OEM industry—a commodity industry captive to a bottleneck monopolist—discourage expenditures of this kind. It is bizarre and counterproductive to place the burden to restore competition on the innocent, low-margin OEMs rather than the monopolist. The ''hapless makers of PCs'' still ''aren't in any position to defy Microsoft,'' Walter Mossberg, For Microsoft, 2001 Was A Good Year, But At Consumers'' Expense, Wall. St. J., Dec. 27, 2001, at B1, any more than they were when the illegal conduct in this case first occurred. See, e.g., Findings, 84 F. Supp.2d at 62 (¶ 14) (Hewlett-Packard observation to Microsoft that ''[I]f we had a choice of another supplier, * * * I assure you [that you] would not be our supplier of choice''). But if OEMs choose not to exercise their new ''flexibility'' under the middleware provision %62 a choice that seems likely in view of the demonstrated lack of a response to Microsoft's offer of July 11, 2001 [5 the government is left with no antitrust remedy for much of its case.[12]

Nor can ISVs be expected to pay OEMs to take advantage of the limited flexibility provided by RPFJ §§ III(C) and III(H). The RPFJ gives ISVs very slight incentives to subsidize OEM alterations of Microsoft's preferred desktop display, since the ISVs who sell middleware that competes against a Microsoft offering cannot buy exclusivity on the desktop of any computer. Rather, at best an ISV can obtain parity in the availability to developers of its middleware's code. No matter what ISVs and OEMs do, Microsoft Middleware will be ubiquitous. And ISVs could buy only 14 days of advantageous icon display before a Microsoft ''Clean Desktop Wizard'' (CIS 48, 66 Fed. Reg. 59,471) would begin prompting users to undo the OEM's arrangement of icons and reinstate the arrangement favored by Microsoft. No ISV would pay more than a pittance for such a shallow and short-lived advantage on the desktop.

F. The RPFJ Permits Microsoft To Control Consumers'' Access To Innovation To Suit Its Monopolistic Aims

The RPFJ allows Microsoft to exercise full control over the pace of innovation in middleware because Microsoft can ensure that consumers are denied access—or have only severely impeded access—to competitively threatening middleware products to which Microsoft has no analogue. Section III(C)(3) allows Microsoft to prohibit OEMs from configuring PCs to launch non-Microsoft middleware from any point unless Microsoft already has a competing product that launches from that point. Microsoft can prohibit OEMs from configuring non-Microsoft middleware from launching automatically at the end of the boot sequence or upon the opening or closing of an Internet connection unless a Microsoft Middleware Product with similar functionality would launch automatically. RPFJ §III(C)(3).

Even after this catch-up provision serves its delaying purpose, Microsoft can control how competing middleware products reach and serve consumers, so that products launch only in the way that best suits Microsoft. This provision appears designed to protect Microsoft from competition, and to give the monopolist a clear imprimatur to control the pace of innovation. See Stiglitz/Furman Dec. 28.

V. THE API AND COMMUNICATIONS PROTOCOL DISCLOSURE PROVISIONS ARE INEFFECTIVE

A. The API Provisions Require Little, If Anything, Beyond Current Disclosure Practices In Microsoft's Self-Interest

The API and Communications Protocol disclosure provisions (§§ III(D)–(E)) contain little in the way of hard, fast, enforceable obligations, and do not appear to add anything significant to Microsoft's current disclosure practices. As the CIS recognizes: Through its MSDN [Microsoft Developer's Network] service, Microsoft presently makes widely available on the Internet an extensive and detailed catalog of technical information that includes, among other things, information about most Windows APIs for use by developers to create various Windows applications. MSDN access is presently broadly available to developers and other interested third parties.

CIS 34, 66 Fed. Reg. 59,468.

Microsoft already discloses literally thousands of APIs to software developers

[12] Similarly, the RPFJ places no limits on Microsoft's conduct toward one of its largest current groups of licensees—direct corporate licensors of bulk Windows licenses. The corporate market has always been Microsoft's point of leverage, and those buyers now often buy direct. Microsoft has made clear its intention to make Windows and other software a renewable ''service.'' Microsoft can undo all of the provisions applying to OEMs upon the first license renewal with an end-user.

through MSDN for the good reason that it is in Microsoft's self-interest to promote the Microsoft Windows platform to software developers. The extent of information disclosure required by the RPFJ must be understood in the context of Microsoft's current information disclosure practices. A ''requirement'' that Microsoft disclose APIs for the most part simply ''requires'' that Microsoft do what it does voluntarily.

Microsoft has a business incentive not only to disseminate Windows APIs but to assist ISVs in understanding and implementing Windows APIs in their products. Microsoft and other platform software vendors compete to attract developers by disclosing technical information, creating easy-to-use development tools, and ''evangelizing'' their development platforms. Attracting developers helps Microsoft perpetuate the substantial network effects that produce the applications barrier to entry protecting the Windows monopoly. Because the strength of the Windows monopoly and the power of the applications barrier to entry are directly related to the number of developers writing applications for Windows, it is in Microsoft's interest to provide a robust information disclosure program.

By widely disclosing APIs, Microsoft ensures that applications will continue to be written for its platform software rather than for rival platforms. Properly understood, Section III(D) does not actually require Microsoft to provide any new disclosure of APIs and technical information to promote interoperability; Microsoft already engages in these disclosures. Rather, the incremental effect of the API disclosure provisions of the RPFJ is at most to prevent Microsoft from selectively withholding certain APIs from certain vendors. As explained below, however, the disclosure ''requirements'' in the RPFJ are too insubstantial and too easily manipulated to accomplish even that limited goal.

B. The RPFJ Does Not Require Disclosure of Windows APIs, But Rather Lets Microsoft Determine The Scope of Disclosure Through The Design and Labeling of Its Operating System And Middleware

To begin with, the API disclosure requirements aim at the wrong thing. The RPFJ defines APIs as the interfaces used by Microsoft Middleware to invoke resources from a Windows Operating System Product. RPFJ § VI(A). But innovative rival software vendors do not need APIs between Microsoft Middleware and Windows. The really threatening innovators are threatening precisely because their products perform functions that Microsoft's do not. In those cases, by definition, there will not be any fully analogous Microsoft middleware—just as Microsoft did not have an Internet browser when Netscape Navigator first appeared. Those developers need full access to Windows APIs—APIs for all functionalities enabled by the Windows platform, whether Microsoft calls them ''internal'' calls within Windows or external APIs that may be distributed to ISVs—not to the limited subset used by a Microsoft version of similar middleware.

That is what Netscape needed in 1995; there was no Internet Explorer to speak of at that time, and certainly Microsoft's rudimentary browser did not perform anywhere near the range of functions performed by Netscape Navigator. See Findings, 84 F. Supp.2d at 31–32 (§ 82–84), 33–34 (§ 91–92). The RPFJ provisions would not have helped Netscape then. See Letter from James L. Barksdale, former CEO of Netscape, to Chmn. Leahy & Sen. Hatch, Senate Comm. on the Judiciary, Attachment, Question 1 (Dec. 11, 2001). 13 And they will not help any software developer whose products exceed the functionality of existing Microsoft middleware. The API disclosure provisions in the RPFJ thus ensure that Microsoft can control the pace of middleware innovation, providing another level of assurance that non-Microsoft products will not gain the type of head start that might result in ubiquity before a similar Microsoft product can be included

Mr. Barksdale's letter in lieu of hearing testimony is available at http://java.sun.com/features/2002.01.barksdale-letter.html, and the attachment is available at http://java.sun.com/features/2002.01.barksdale-attach.htm in the bundle of products sold with every Windows operating system.

That limitation on API disclosure is severe enough. But it is just a beginning. The disclosure obligation is further limited by the definition of APIs at RPFJ § VI(A): ''Application Programming Interfaces (APIs)'' means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.

Setting aside the circularity, the malleability of the two principal defined terms renders this definition (and the corresponding obligations) a practical nullity. The API definition depends on the relationship between two ''products,'' each of which is defined solely by Microsoft. As noted above, Microsoft has ''sole discretion'' to identify software code as part of a ''Windows Operating System Product.'' RPFJ § VI(U). Many APIs can disappear from view simply as a result of Microsoft's unreviewable decision to relabel certain interfaces as internal to Windows. If Microsoft says that an operation takes place entirely within Windows, rather than requiring the interaction of a middleware and Windows, then there is no API to disclose.[14]

C. The Definition of ''Microsoft Middleware'' Gives Microsoft Further Leeway to Limit Its Disclosure Obligation

The only APIs that need be disclosed are those used by ''Microsoft Middleware.'' But ''Microsoft Middleware,'' too, is defined in a way that gives Microsoft fight control over the scope of its own obligations. Remarkably, Assistant Attorney General James testified that this definition would have been difficult for DOJ to achieve in a litigated proceeding. Statement of Charles James to Senate Judiciary Committee 8 (Dec. 12, 2001). But it is difficult to imagine what Microsoft would have contested. Just as in the dispute whether Internet Explorer is part of Windows, Microsoft can simply relabel software as part of one product rather than another. The label does not affect the commands and operations in the software.

1. The RPFJ Requires Microsoft To Disclose Only The APIs Used By The ''User Interface'' Or Shell Of Microsoft Middleware

The APIs that must be disclosed are those that ''Microsoft Middleware * * * uses to call upon [a] Windows Operating System Product.'' RPFJ § VI(A); see id. § III(D). But Microsoft determines how much code performing a Microsoft Middleware function is part of the Middleware, and how much is part of the Windows Operating System Product, since the latter definition is within Microsoft's ''sole discretion.'' Id. § VI(U). The only code in Microsoft Middleware that Microsoft must consider separate for the purposes of API disclosure is the user interface, or shell, of the Middleware—or, rather, ''most'' of the shell. Id. § VI(J)(4). The only limit is that ''Microsoft Middleware'' must ''[i]nclude at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.'' Id. Thus, the terms of the RPFJ permit Microsoft to provide only the APIs that go between 51% of the user interface elements of Microsoft Middleware and the rest of the Windows bundle of products. None of the APIs used by the Middleware's functionality—the APIs that permit the Middleware perform its functions while running on Windows—need be disclosed, so long as the shell APIs are disclosed. This definition appears to be designed to have nothing to do with developer preferences, or with the applications barrier to entry.

2. The RPFJ Requires Microsoft To Disclose APIs Only For ''Microsoft Middleware'' That Is Distributed Separately From Windows, Yet Is Distributed To Update Windows

To come within the disclosure obligation, Microsoft Middleware must be ''distributed separately from a Windows Operating System Product.'' That restriction alone is enough to take Windows Media Player 8 outside the definition, as that product is available only as part of the Windows XP bundle. But not all separate distributions prompt the API obligations; Microsoft must characterize the distribution as one that ''update[s] th[e] Windows Operating System Product.'' See RPFJ § VI(J)(1). Thus, the scope of the obligation depends entirely on the labeling of the product, which Microsoft can easily manipulate.

3. The Limitation Of Microsoft Middleware To ''Trademarked'' Products Further Eviscerates The API Disclosure Provision

But that is not all. At least equally significant is the restriction of the Microsoft Middleware definition, and thus the API disclosure obligation, to Middleware that is ''Trademarked.'' RPFJ § VI(J)(2). The definition of ''Trademarked'' allows Microsoft to exclude current middleware from the API disclosure obligation, and to prevent future middleware from becoming subject to the API disclosure obligation,

[14] Moreover, the term ''interfaces'' is not defined in the RPFJ. The CIS explains that '''[i]nterfaces'' includes, broadly, any interface, protocol or other method of information exchange between Microsoft Middleware and a Windows Operating System Product.'' CIS 33–34, 66 Fed. Reg. 59,468. But that definition would not be part of the judgment.

simply by manipulating its use of trademarks.

a. Microsoft Easily Can Ensure That Middleware Is Not ''Trademarked'' By Using A Generic Or Descriptive Name Combined With Microsoft(r) or Windows(r)

The definition of ''Trademarked'' does not include ''[a]ny product distributed under * * * a name compris[ing] the Microsoft(r) or Windows(r) trademarks together with descriptive or generic terms.'' Id. § VI(T). That is how Microsoft has chosen to name some of its newest and most important products: the combination of a monopoly brand with a simple descriptive mark that helps identify an entire software function with the Microsoft implementation of it. Windows(r) Messenger instant messaging software is one example.

Moreover, by the terms of the RPFJ Microsoft disclaims any rights in the use of such combinations of the Microsoft(r) or Windows(r) marks with generic or descriptive terms, and abandons any rights that may be acquired in the future. RPFJ § VI(T). These provisions suggest that Microsoft can change the scope of the definition of Middleware, and thus of the API disclosure obligation, by abandoning some marks it has registered as combinations of Microsoft(r) or Windows(r) with generic or descriptive terms—if the RPFJ does not accomplish that in itself. Windows Media Player is an example. Although Microsoft has registered the combination of Windows(r) and the generic term ''Media'' as Windows Media(r), at bottom the name Windows Media Player is a combination of the Windows(r) mark with the generic term ''media player.''

Indeed, Microsoft could plausibly argue that the Windows Media(r) mark does not come within the ''Trademarked'' definition as it is, since even that mark consists of no more than the Windows(r) mark in combination with the generic term ''media.'' 15 RPFJ § VI(T) may therefore embody Microsoft's ''disclaim[er of] any trademark rights in such descriptive or generic terms apart from the Microsoft(r) or Windows(r) trademarks.'' But even if Section VI(T) does not go so far, Microsoft could easily get Windows Media(r) Player outside of the ''Trademarked'' definition—and thus outside the scope of the In this discussion we set aside the non-trivial question whether ''Windows'' itself is a generic, or at best descriptive, mark for the type of ''windowing'' graphical user interfaces invented at the Xerox Palo Alto Research Center in the 1970s, popularized by the Apple Lisa and Macintosh in the 1980s, and since used by Microsoft and many other software vendors. disclosure obligations that apply only to ''Microsoft Middleware''—simply by abandoning the registration mark and moving the registration symbol to the left. Thus, Microsoft can transform ''Windows Media(r) Player,'' which might be subject to API disclosure requirements, into ''Windows(r) Media Player,'' which clearly is exempt.

b. The ''Microsoft Middleware'' Definition Governing Disclosure Obligations Is Far Narrower Than The ''Microsoft Middleware Product'' Definition Governing OEM Flexibility

That this highly restrictive definition is no accident is clear from comparison with the ''Microsoft Middleware Product'' definition which governs the icon-display obligations. To provisions paralleling the ''Microsoft Middleware'' definition, the ''Microsoft Middleware Product'' definition adds several named current products, including ''Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors,'' RPFJ § VI(K)(1), although only to the extent that Microsoft ''in its sole discretion'' (id. § VI(U)) decides that those products are ''in a Windows Operating System Product.'' Id. § VI(K)(1). Thus, Microsoft's icon display/removal obligations for those named products would not change merely because of a strategic product renaming or abandonment of a trademark that combines the Microsoft(r) or Windows(r) name with generic or descriptive terms. But none of those current products is named in the ''Microsoft Middleware'' definition that governs the disclosure obligations. That enables Microsoft to manipulate whether those products, although surely middleware, also satisfy the four subparts of RPFJ § VI(J).

c. The CIS Broadens The ''Trademarked'' Definition Beyond Its Terms

The CIS overstates the breadth of the ''Trademarked'' definition, contending that it ''covers products distributed * * * under distinctive names or logos other than by the Microsoft(r) or Windows(r) names by themselves.'' CIS 22, 66 Fed. Reg. 59,465. The CIS further claims that the exception for products known by combinations of generic terms with Microsoft(r) or Windows(r) does not cover marks that ''are presented as a part of a distinctive logo or another stylized presentation because the mark itself would not be either generic or descriptive.'' CIS 23, 66 Fed. Reg. 59,465 (emphasis added). To the contrary, the terms of the RPFJ definition of ''Trademarked'' focus entirely on ''names,'' not ''logos'' or ''marks'' as a whole. RPFJ § VI(T). The distinction is striking: the word ''name'' appears five times in the definition, and ''descriptive or generic terms'' appears three times. Neither ''logo'' nor ''mark'' appears at all.

Microsoft clearly appreciates the distinction. Although Microsoft apparently has not yet formally abandoned the mark ''Internet Explorer'' (U.S. Trademark Reg. No. 2277122), it does not assert that mark when it lists its trademarks as a warning to the public. See http://www.microsoft.com/misc/info/cpyright.htm. Microsoft does list its trademark for the Microsoft Internet Explorer logo, however. Id.; see U.S. Trademark Reg. No. 2470273.

d. Microsoft Can Easily Manipulate Which Middleware Releases Are ''New Major Versions''

Indeed, even a ''Microsoft Middleware Product'' satisfying that four-part test may not be ''Microsoft Middleware'' subject to the disclosure obligation unless it is a ''new major version'' of the product, that is, if the release is ''identified by a whole number or by a number with just a single digit to the right of the decimal point.'' RPFJ § VI(J). That has two implications. First, Microsoft can simply adopt a different method of naming new releases. Second, even under current practice a version with two digits to the right of the decimal point may fix significant errors, so that disclosure only of the prior version of the APIs might leave developers without the ability to invoke some needed functionality with the disclosed APIs.

D. The Disclosure Provisions—Particularly Those Concerning ''Communications Protocols''—Depend On An Undefined And Thus Unenforceable Concept of ''Interoperability''

Both the API and Communications Protocol disclosure provisions define the scope of the data to be disclosed as that necessary to permit non-Microsoft products to ''interoperate'' with the Windows client OS and to ''interoperate natively'' with Microsoft server operating system products. See RPFJ § III(D), (E). The disclosure obligations are limited to ''the sole purpose of interoperating with a Windows Operating System Product.'' Id.

The obligations depend on the meaning of ''interoperate,'' but the RPFJ never defines that term, and there is no non-discrimination provision attached to this obligation. That is critical because interoperability is not something that can be achieved half way. Either two software products interoperate for all functions that they must perform together, or they do not. Any impediment in any aspect of the interoperation nullifies the interoperability. The CIS seems to equate ''interoperate'' with ''fully take advantage of,'' see CIS 36, 66 Fed. Reg. 59,468, but there is no such language in the RPFJ itself.

The Communications Protocol disclosure provision (RPFJ § III(E))outlines a seeming ''obligation'' that is entirely undefined. Section III(E) seems to require disclosure of Communications Protocols on Windows clients that are ''used to interoperate natively * * * with a Microsoft server operating system product.'' But just as ''interoperate'' is not defined, neither does the RPFJ define ''Microsoft server operating system product.''

One of the most important aspects of the Windows 2000 Server product bundle is Microsoft's web server, IIS. In the absence of a definition of ''Microsoft server operating system product,'' however, it is unclear whether the disclosure obligation encompasses protocols used to interoperate with this and other aspects of the current server product. Cf. RPFJ § VI(U) (defining ''Windows Operating System Product'' as all software code ''distributed commercially * * * as Windows 2000 Professional'' and other named products, and ''Personal Computer versions'' of their successors).

Again, the CIS attempts to provide assurances that go beyond the terms of the proposed judgment. The CIS states (at 37, 66 Fed. Reg. 59469):

The term ''server operating system product'' includes, but is not limited to, the entire Windows 2000 Server product families and any successors. All software code that is identified as being incorporated within a Microsoft server operating system and/or is distributed with the server operating system (whether or not its installation is optional or is subject to supplemental license agreements) is encompassed by the term. For example, a number of server software

products and functionality, including Internet Information Services (a ''web server'') and Active Directory (a ''directory server''), are included in the commercial distribution of most versions of Windows 2000 Server and fall within the ambit of ''server operating system product.''

That definition would be appropriate. But no corresponding language—no enforceable definition—appears in the RPFJ.

E. The Narrow Scope Of The Disclosure Provisions Contrasts Sharply With The Broader Definitions In DOJ's Earlier Remedy Proposals

Before liability had been confirmed on appeal, DOJ took a far broader view of what should be disclosed. The interim remedies in the vacated judgment required disclosure of APIs, Communications Interfaces, and ''technical information'' needed to enable competing products ''to interoperate effectively with Microsoft Platform Software.'' 97 F. Supp.2d at 67 (3(b)). That disclosure requirement was backed up by a requirement, absent from the RPFJ, that Microsoft create a secure facility so that developers could work with Windows source code to ensure that their applications worked properly on the Microsoft platform, gee id.

The definition of ''technical information,'' moreover, helped ensure that disclosure would be complete and not subject to many different methods of manipulative narrowing. The ''technical information'' definition encompassed the following items: all information regarding the identification and means of using APIs and Communications Interfaces that competent software developers require to make their products running on any computer interoperate effectively with Microsoft Platform Software running on a Personal Computer. Technical information includes but is not limited to reference implementations, communications protocols, file formats, data formats, syntaxes and grammars, data structure definitions and layouts, error codes, memory allocation and deallocation conventions, threading and synchronization conventions, functional specifications and descriptions, algorithms for data translation or reformatting (including compression/decompression algorithms and encryption/decryption algorithms), registry settings, and field contents.

97 F. Supp.2d at 73 (7(dd)).

Indeed, DOJ's position was stronger even before liability had been imposed at all.

Draft 18 from the Posner mediation imposed a disclosure obligation using this definition Of ''technical information'':

all information, regarding the identification and means of using APIs (or communications interfaces), that competent software developers require to make their products running on a personal computer, server, or other device interoperate satisfactorily with Windows platform software running on a personal computer. Technical information includes reference implementa- tions, communications protocols, file formats, data formats, data structure definitions and layouts, error codes, memory allocation and deallocation conversions, threading and synchronization conventions, algorithms for data translation or reformatting (including compression/decompression algorithms and encryption/decryption algorithms), registry settings, and field contents. The RPFJ, by contrast, contains no analogue to these precise and inclusive definitions. Instead, the RPFJ relies solely on the circular (and completely manipulable) definition of API (RPFJ § VI(A)), a similarly narrow definition of ''Communications Protocol'' (id. § VI(B)), and a definition of ''Documentation'' that is wholly dependent on the API definition (id. § VI(E)).

F. The ''Security'' Exceptions in Section III(J) Permit Microsoft To Avoid Its Disclosure Obligations

RPFJ § III(J) provides Microsoft with two additional lines of defense in the event that any competitively sensitive APIs nonetheless fall within the malleable definition of API. Section III(J)(1) severely undercuts the disclosure requirements to the extent they apply in the modem world where security protocols are critical to any communication between networked computers, particularly over the Internet. And Section III(J)(2) provides Microsoft with seemingly unfettered discretion to decide who is worthy to receive technical information necessary to make middleware function on the Internet.

Microsoft can plausibly rely on Section III(J) to decline to comply with disclosure requests based on concerns with authentication and security that it will be able to assert with respect to any program that involves communication between a PC and a server on the Internet (or even within many private networks). Authentication, security, and similar protection mechanisms are and will continue to be integral parts of the functioning of those products. See, e.g., Comment, William A. Hodkowski, The Future of Internet Security: How New Technologies Will Shape the Internet and Affect the Law, 13 SANTA CLARA COMPUTER & HIGH TECH. L.J. 217 (1997). Indeed, security and rights-protection are particularly critical to Internet-based economic activity, which encompasses much of the computing on the Internet. As a consequence, the security mechanisms are critically important to any Internet-based middleware threat to the Windows OS monopoly.

For example, digital rights management (''DRM'') has become a principal part of Windows Media Player. Allowing Microsoft to withhold data needed to permit rivals to interoperate with the DRM specifications in Windows Media Player—specifications that Microsoft is making universal by including Windows Media Player on every PC— may well end effective competition for media players within the next upgrade cycle for Windows. Similarly, any distant remaining possibility of Internet browser (or even e-mail client) competition should be squelched by the RPFJ's approval for Microsoft to withhold parts of encryption-related protocols (again, as distinct from the customer-specific keys that make use of those protocols). For another example, Secure Socket Layer (SSL) is an open standard that has been critical to the open development of a relatively secure Internet. As Microsoft implements a proprietary version of SSL—one that others will have to follow given the ubiquity of the Microsoft browser as a result of the misconduct at issue in this case—it will be able to conceal critical layers of that altered protocol from rivals, essentially ending the possibility of competition for client software for Internet computing. And by giving Microsoft a basis to conceal authentication protocols (not merely data), the RPFJ frees Microsoft Passport from scrutiny and permits Microsoft to bind a proprietary universal password and identity utility to its monopoly operating system without hope of interoperation.

By permitting Microsoft to withhold key parts of encryption, digital rights management, authentication, and other security protocols, the RPFJ effectively allocates Web-based computing to the monopolist of the desktop. A decree could hardly try to place a clearer stamp of approval on an expansion of the scope of an illegally maintained monopoly.

1. The Exclusions for Security-Related APIs and Protocols in RPFJ(J)(1) Permit Microsoft To Hobble Disclosures That Are Critical in Internet Computing

It is no coincidence that Bill Gates has now emphasized the centrality of security concerns in Microsoft's future software offerings. See, e.g., John Markoff, Stung by Security Flaws, Microsoft Makes Software Safety a Top Goal, N.Y. TIMES, Jan. 17, 2002, at C1. That is no more than an acknowledgment of market and technical realities that have been widely known throughout the industry for years as Internet computing has taken hold. That market reality should have been sufficient to make clear that an indistinct exception of the type in RPFJ § III(J)(1) would allow Microsoft to disclose ''crippled'' versions of APIs and Communications Protocols. Microsoft's sudden dedication to security leaves no doubt that it will inject security aspects into its proprietary APIs and its proprietary, extended implementations of Communication Protocols. Under the terms of Section III(J)(1), Microsoft can easily argue that disclosure of those aspects—necessary for one machine to communicate with another—will compromise the security from any installation or group of installations. See also Stiglitz/Furman Dec. 30.

The CIS maintains that Section III(J)(1) simply protects Microsoft and its customers from disclosure of customer-specific ''keys, authorization tokens, or enforcement criteria,'' and states that the exception ''does not permit [Microsoft] to withhold any capabilities that are inherent in the Kerberos and Secure Audio Path features as they are implemented in a Windows Operating System Product.'' CIS 52, 66 Fed. Reg. 59,472. But that reading does not square with the text of the exemption. The quoted examples are specifically presented ''without limitation.'' RPFJ § III(J)(1). The RPFJ language easily permits Microsoft to contend that any release of the way its proprietary security protocols work ''would compromise the security of a particular installation.''

Most important, Section III(J)(1) clearly permits Microsoft to withhold portions of APIs or Communications Protocols, but the examples given of keys and authorization codes are not parts of APIs or Communications Protocols. They may be part

of customer- specific Documentation, rather than the Documentation used by customers, consultants, and developers to create or identify and implement particular keys, tokens, or enforcement criteria.) The APIs and Communications Protocols for security-related applications are not customer-specific, nor does their disclosure compromise security. To the contrary, the most powerful encryption and other security-related software is openly disclosed, as is the Kerberos standard, or even open source, as is the federal government's new encryption standard. See, e.g., Watch your AES: A new encryption standard is emerging, Red Herring (Dec. 1, 1999) (open source government standard).

Unless RPFJ § III(J)(1) refers to a null set, however, Microsoft will have a basis to withhold some parts of Communications Protocols and APIs. The CIS states that Communications Protocols ''must be made available for third parties to license at all layers of the communications stack,'' (CIS 36–37, 66 Fed. Reg. 59,468 (emphasis added)) but the RPFJ to which Microsoft agreed—and which alone is potentially enforceable— says no such thing. To the contrary, Section III(J)(1) explicitly relieves Microsoft from the obligation to license some ''portions or layers of Communications Protocols'' (and some ''[p]ortions of APIs'')—not just client-specific data. If part of a Communications Protocol is withheld, not ''all layers of the communications stack'' are ''available * * * to license.'' And if part of a Communications Protocol is unavailable, interoperation is impossible; at certain points, the interaction between two computers will break down.

Limited withholding of APIs or Communications Protocols (rather than merely withholding customer-specific data) will render middleware non-functional, since software cannot interoperate with other software partially. Carving off some aspects of interoperability means that there is no interoperability, thwarting the premise of the disclosure provisions altogether.

The CIS also describes other limits that do not exist in the text of the RPFJ. The CIS claims that the RPFJ requires disclosure of the Communications Protocols used for the Microsoft-proprietary implementation of the Kerberos security standard a ''polluted'' Kerberos that is the strict analogue to the ''pollute[d]'' Java that figured prominently at trial. See Microsoft III, 253 F.3d at 76–77 (quoting 22 J.A. 14,514). But Section III(J) explicitly relieves Microsoft of the obligation to disclose ''portions'' of APIs or Communications Protocols that would ''compromise the security of a particular installation or group of installations of security software. That is an open invitation to withhold some part of the Microsoft-proprietary variation of Kerberos.

The type of customer-specific information that the CIS claims is all that can be withheld could and should be described much more accurately and specifically in the RPFJ, not as [p]ortions of APIs or * * * portions or layers of Communications Protocols,'' but rather as ''customer-specific or installation-specific data the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation keys, authorization tokens or enforcement criteria.'' But that is not the approach the RPFJ takes. Rather, the RPFJ makes clear that Microsoft is entitled to withhold, not merely customer- or installation-specific data, but some ''portions'' of APIs and some ''portions or layers'' of Communications Protocols. All communication of substance between desktops (or other client computers) and server computers over the Internet increasingly involves layers of security protocols, anti-virus routines, and the like. And one of Microsoft's principal current efforts is to foist its own version of digital rights management (DRM) upon providers of copyrighted content over the Internet.

When Microsoft asserts a right to withhold information, it will be difficult indeed for the Technical Committee, DO J, or the Court to exclude the possibility that particular ''portions or layers of Communications Protocols,'' or ''[p]ortions'' of the APIs that permit middleware programs to operate atop Microsoft operating systems, in fact ''compromise the security of a particular installation or group of installations.'' RPFJ § III(J)(1). Any such determination is likely to be time-consuming, and related enforcement therefore would be slow. It should be a simple matter for Microsoft to delay disclosures of this type long enough to disadvantage competitors.

2. RPFJ III(J)(2) Permits Microsoft To Refuse Effective Disclosure To A Range Of Potentially Effective Competitors

While RPFJ § III(J)(1) allows Microsoft to refuse to disclose portions of APIs, RPFJ § III(J)(2) permits Microsoft to withhold all of any ''API, Documentation, or Communications Protocol'' having to do with ''anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product.'' The RPFJ allows Microsoft to select to whom it will disclose this information by imposing several tests that may be based on standards apparently committed to Microsoft's sole discretion as much as is the definition of Windows Operating System Product.

Thug, RPFJ § III(J)(2)(b) permits Microsoft to evaluate whether a competitor has a ''reasonable business need'' for the desired information. What Microsoft is likely to consider a ''reasonable'' business need by a competitor may be narrow indeed. As the DC Circuit observed, Microsoft viewed its desire ''to preserve its'' monopoly ''power in the operating system market'' as a procompetitive justification for exclusionary conduct. Microsoft III, 253 F.3d at 71. No doubt Microsoft will view direct or indirect efforts to undermine its hammerlock on the OS market as unreasonable efforts to confuse consumers or impair the ''Windows experience.''

Even bona fide attempts by a monopolist to objectively evaluate a potential competitor's ''reasonable business need'' can scarcely be expected to produce consistent or foreseeable results. Rather, that amorphous standard is likely to produce a flood of disputes—each of which will delay the competitor's receipt of technical information while Microsoft gains more time to respond (by legal or illegal means) to the competitive threat. Moreover, the ''reasonable business need'' must be for a ''planned or shipping product.'' If the product is already ''shipping,'' it may be too late for disclosure to be helpful in the market. How fully ''planned'' a product must be raises further questions that Microsoft will be able to resolve to its own disadvantage.

In addition, Microsoft need not provide security-related APIs, protocols, or documentation to any vendor that does not ''meet[] reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business.'' RPFJ § III(J)(2)(c) (emphasis added). That provides Microsoft with a basis for excluding almost all nascent competitors except for those associated with established, profitable companies. It would not be difficult to craft ''reasonable, objective standards'' for ''viability of [a] business'' that would exclude any Internet-focused startup, including Netscape in 1995. Indeed, the history of the software industry both before and after the dot-com bubble shows that very few software companies have had ''viable'' businesses. Certainly Section III(J)(2)(c) would give Microsoft at least a debatable basis for withholding the APIs and Communications Protocols needed to interoperate with Microsoft software over the Internet from all open source ISVs—who are more interested in constantly improving the quality of software than in obtaining licensing profits. Although open source software is widely recognized as a major threat to Microsoft's monopoly power, the business models even of the leading Linux providers might fail any number of ''reasonable, objective standards'' for ''viability.'' Indeed, Microsoft's CEO Steve Ballmer describes open source software as a ''cancer'' that threatens the viability of any software business. See Mark Boslet, Open Source.'' Microsoft Takes Heat, INDUSTRY STANDARD, July 30, 2001; Dave Newbart, Microsoft CEO Takes Launch Break with the Sun-Times, CHI. SUN-TIMES, June 1, 2001, at 57. For that matter, it is not entirely unreasonable to regard head-to-head competition with Microsoft in platform software as a less than viable business plan; certainly most venture capitalist and other investors hold that view. It would not be difficult for Microsoft to craft ''objective'' standards of business viability that would exclude Corel and Novell, to name two examples. Microsoft should be able to exclude many sources of potential cross-platform middleware threats through RPFJ § III(J)(2)(c) alone.

Yet RPFJ § III(J)(2) contains yet another method for screening competitors from access to technical information needed by Internet-centric middleware applications. Any ISV that clears the hurdles and receives the information nonetheless must submit its implementation of the APIs, Documentation or Communications Protocols for review by a Microsoft-approved third party (likely a captive commercial ally) ''to test for and ensure verification and compliance with

Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.'' RPFJ § III(J)(2)(d). ''[P]roper'' no doubt will mean ''the way Microsoft does it,'' making this provision into yet another way in which Microsoft can control the pace of innovation to ensure that the market has no or limited access to products that improve upon Microsoft's offerings. This mechanism means that vendors who tried to adapt APIs to function as bridges to other platforms would have to give Microsoft the ammunition to defeat that function—if not simply disapprove it and await the slow operation, if any, of the RPFJ enforcement mechanism.

The CIS suggests that there are strict limits on Microsoft's discretionary ability to deny access to security-related aspects of Communications Protocols and APIs, CIS 53, 66 Fed. Reg. 59,473, but those limits are absent from the decree language. The CIS contends that these exceptions ''are limited to the narrowest scope of what is necessary and reasonable, and are focused on screening out individuals or firms that * * * have a history of engaging in unlawful conduct related to computer software * * *, do not have any legitimate basis for needing the information, or are using the information in a way that threatens the proper operation and integrity of the systems and mechanisms to which they relate.'' Id. Setting aside the opportunity for Microsoft to argue, as it has in other contexts, that the injection of competing software ''threatens the proper operation and integrity'' of its products, see Microsoft III, 253 F.3d at 63–64, the CIS simply does not address the broadest basis for withholding APIs and Communications Protocols under Section 111(1)(2): Microsoft's ability to decide, based on criteria within its own discretion, that an ISV is not ''authentic[]'' and ''viab[le].'' RPFJ § III(J)(2). That provision could provide a basis for excluding all but a handful of other software companies.

G. RPFJ § III(I) Would Place A Judicial Imprimatur On Microsoft's Use Of Technical Information As A Lever To Extract Competitors'' Intellectual Property

The RPFJ would actually increase Microsoft's bargaining power by explicitly placing a judicial imprimatur on demands by Microsoft that recipients of APIs cross-license any intellectual property developed using the APIs. Section III(I) of the RPFJ permits Microsoft to use intellectual property licensing terms to impede whatever competitive benefits otherwise might have arisen from its disclosure obligations. Microsoft's licenses ''need be no broader than is necessary to ensure'' the licensee's ability to ''exercise the options or alternatives expressly provided'' by the RPFJ. RPFJ III(I)(2). A welter of litigation over the breadth that is ''necessary''—and the collateral restrictions that are permissible—is certain to continue through the life of the decree.

Similarly, Microsoft should have no difficulty delaying the use of any option for which it is entitled to charge a royalty, simply by setting a ''reasonable'' royalty (RPFJ § III(I)(1)) beyond what any OEM could afford to pay in that competitive, low-margin business. If OEMs have to pay Microsoft to exercise any of their icon-shuffling options — a state of affairs clearly envisioned in RPFJ § III(I)—the slim likelihood that any OEM will take advantage of those provisions will be lessened still further. Microsoft need not permit transfers or sublicenses of API rights, imposing yet another barrier to entry. Id. § III(I)(3). And Microsoft could ensure, through licenses, that end-users could not make competitively significant alterations to the Microsoft-approved package.

Most important, however, the RPFJ specifically permits Microsoft to use its monopoly as a means to force access to others'' intellectual property. Microsoft can assert a right to license ''any intellectual property rights'' a competitor ''may have relating to the exercise of their options or alternatives provided by'' the RPFJ. RPFJ § III(J)(5). Thus, to take advantage of a competitive option, an ISV will need to license its product to Microsoft, and hope that Microsoft does not use that license as a means to produce a copycat program and bundle it into Windows. Many companies long since departed the software industry after entering into what they thought were limited exchanges of intellectual property with Microsoft. 16

Although the CIS states that Microsoft could demand only any IP rights it would need to comply with its own disclosure obligations under the RPFJ, CIS 50–51, 66 Fed. Reg. 59,472, the broad ''relating to'' language does not compel that narrow reading, and may not support it at all. The vague limitations in Section III(I)(5) are unlikely to reassure ISVs that Microsoft will not use its license to analyze the ISV's IP rights well enough to design around it and bundle a copycat program into Windows or Office, as has happened many times before. This weapon should give Microsoft additional ability to prevent industry participants from taking advantage of the superficially appealing provisions of the RPFJ.

VI. BUILT-IN DELAYS EXACERBATE THE DECREE'S UNJUSTIFIABLY BRIEF DURATION

It is remarkable that the RPFJ would reward Microsoft for litigating and losing broadly on liability with a consent decree that is shorter than other such decrees, and may 16 See, e.g., Testimony of Mitchell Kertzman before the Sen. Jud. Comm., July 23, 1998 (detailing Sybase's difficulties in this regard); Statement of Michael Jeffress before the Sen. Jud. Comm., July 23, 1998 (after TVHost revealed its intellectual property to Microsoft in failed negotiations to sell the company, Microsoft imitated the product). be the shortest ever. DOJ antitrust consent decrees now routinely last ten years. 17 Section V of the RPFJ provides for a term of only five years, however, less time even than Microsoft has engaged in the illegal conduct that was the subject of this litigation. The decree plainly should be longer than the period between the initiation of the misconduct and the imposition of relief, and at least as long as the typical relief. 18 Microsoft has enjoyed the benefits of its misconduct for at least seven years. The RPFJ not only would allow Microsoft to retain those benefits, but would subject Microsoft to its light and uncertain obligations for no more than five years, and scarcely four and one-half years for the many obligations that are delayed.

The RPFJ further abbreviates its already brief duration, and undermines its already insubstantial requirements, by building in long delays before Microsoft must comply with its limited duties. Thus, Microsoft need not comply with the icon-related requirements until November 2002, see RPFJ § III(H)(1), although Microsoft needed only two weeks after the DC Circuit decision to offer OEMs roughly the same flexibility with icon display as the RPFJ requires, and needed no more than three additional months to implement that flexibility on Windows XP. See Microsoft Announces Greater OEM Flexibility for Windows (Microsoft press release July 11, 2001). Similarly, Microsoft need not comply with its API disclosure requirements or the OEM flexibility provisions until November 2002, RPFJ §§ III(D), (H), and need not comply with the Communica-

As of 1998 it was the policy of the Antitrust Division that consent decrees last for at least 10 years. See ANTITRUST DIVISION MANUAL, at IV:54 (3d ed. Feb. 1998); see also V VON KALINOWSKI ET AL., ANTITRUST LAWS AND TRADE REGULATION §§ 96.01[2], at 96–4; 96.02[1] at 96–10 (2d ed. 2000).

If Microsoft actually and convincingly lost its monopoly before the expiration of a decree of appropriate length, it could, of course, move for modification or termination of the decree under Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992).

Protocol disclosure requirement until August 2002. Id. § III(E). See also Stiglitz/Furman Dec. 30. These built-in delays cut far into the unusually brief term of the decree.

The ''Timely Manner'' governing Microsoft's disclosure obligations in RPFJ §§ III(D)-(E)—after the initial delay—permits Microsoft to withhold that disclosure until a product version has been distributed to 150,000 beta testers. See RPFJ § VI(R). ''Beta testers'' in undefined. Until recently, Microsoft, like other vendors, distinguished between ''beta testers'' who agreed to provide substantial feedback to the software manufacturer, and ''beta copies'' of a program that might be distributed without such obligations or expectations. Few, if any, beta testing programs involved 150,000 beta testers under that usage. A return to the former terminology could postpone the ''Timely Manner'' until commercial release. And in any event, it should be a simple matter for Microsoft to delay distribution of any beta version to 150,000 testers, however defined.

Here again, the contrast with the interim remedies of the original decree is striking. The ''Timely Manner'' definition in that judgment required Microsoft to disclose ''APIs, Technical Information and Communications Interfaces * * * at the earliest of the time that'' those items were

(1) disclosed to Microsoft's applications developers, (2) used by Microsoft's own

Platform Software developers in software released by Microsoft in alpha, beta, release candidate, final or other form, (3) disclosed to any third party, or (4) within 90 days of a final release of a Windows Operating System Product, no less than 5 days after a material change is made between the most recent beta or release candidate version and the final release.

97 F. Supp.2d at 73–74 (§ 7(ff)) (emphasis added). While the vacated judgment made a strong effort to place outside developers on the same footing as Microsoft's applications developers throughout the development process, the RPFJ permits Microsoft to delay disclosure until the last minute, without any analogue to the requirement that Microsoft promptly update changes made in the final pre-release stage.

Another significant built-in delay results from the definition of ''Non-Microsoft Middleware Product'' to include only products that have one million users. RPFJ § VI(N) (ii). That definition governs the extent of the anti-retaliation provisions in RPFJ §§ III(A)(1), III(C), and III(H). Moreover, the icon flexibility and information disclosure provisions apply only to Microsoft Middleware and Microsoft Middleware Products, each of which must have functionality similar to a Non-Microsoft Middleware Product. See RPFJ §§ VI(J)(3), VI(K)(2)(b)(ii). By restricting all of these protections to middleware products that have distributed more than one million copies, the RPFJ encourages Microsoft to crush new middleware threats at the earliest stages. That is, the RPFJ puts a premium—indeed, a judicial imprimatur—on the monopolistic exclusion of nascent threats before the innovations in those products reach a sizable mass of consumers. That flies in the face of the concerns behind the judgments of liability in this case. See Microsoft III, 253 F.3d at 54, 79.

VII. ADDITIONAL WEAKNESSES UNDERCUT THE RPFJ

A. The Anti-Retaliation Provisions Are Deeply Flawed

Although anti-retaliation provisions are clearly necessary, the provisions in the RPFJ proceed from a misguided premise that retaliation by the monopolist—abuse of monopoly power—is permitted unless squarely forbidden. The well-meaning restrictions in the RPFJ leave Microsoft with ample recourse to use its monopoly power to retaliate against those who aid competitive threats. See Stiglitz/Furman Dec. 31–32.

Most important, the anti-retaliation provisions permit Microsoft to withdraw the Windows license of any OEM (or other licensee) that does not serve Microsoft's anticompetitive bidding. The CIS (at 27, 66 Fed. Reg. 59,466) suggests that the provision of RPFJ § III(A) requiring notice and opportunity to cure a violation provides some kind of protection to OEMs. But the protection is evanescent, disappearing entirely after two notices within a license term. See RPFJ § III(A). See also Stiglitz/Furman Dec. 31–32.

Such notices will become routine, quickly and completely nullifying this provision. In the rough-and-tumble of everyday business, parties frequently diverge in minor respects from the terms of their agreements. The CIS admits that ''Windows license royalties and terms are inherently complex.'' CIS 28, 66 Fed. Reg. 59,466. Given that complexity, it would be surprising if most OEMs did not transgress some term of their Windows licensing agreements every year or so, if not more often. Such transgressions would provide ample basis for Microsoft to retaliate without fear of interference from the RPFJ.

There is no limit on what Microsoft can invoke as a reason for termination, that is, there is no requirement that terminations be for cause, much less for a material breach of the license agreement. Indeed, the sudden termination that Microsoft may impose after two notices—even notices of purported violations that were promptly and completely cured—need not even be based on something the OEM could cure.

The anti-retaliation provisions for software and hardware vendors contain another weakness. Section III(F)(1)(a) forbids retaliation against hardware and software vendors who support software that competes with Microsoft Platform Software or that runs on other platforms. But that provision therefore permits Microsoft to use its Windows monopoly to crush middleware vendors if Microsoft does not yet have competing middleware (see RPFJ §§ VI(K)-(L)) and whose middleware applications are used on the Windows platform—where any middleware would have to start in order to be a practical bridge to another platform.

Moreover, when prohibiting a specific type of retaliation would also help undermine the applications barrier to entry, the RPFJ hews to a general approach rather than focusing on precise adjudicated conduct. For example, Microsoft threatened to discontinue its port of Microsoft Office for the Macintosh unless Apple ceased supporting Netscape Navigator. See Microsoft III, 253 F.3d at 73–74. Yet the RPFJ does not require Microsoft to continue to offer Mac Office (much less to keep the port current)—an expedient that would take away Microsoft's weapon rather than merely admonishing it to behave well, and would tend to undermine the applications barrier to entry as well.

B. Microsoft Can Evade The Price Discrimination Restrictions

The uniform pricing provisions in RPFJ § III(B) have too narrow a reach to provide significant limits on Microsoft's ability to engage in price discrimination in order to force OEMs to eschew non-Microsoft products that may threaten Microsoft's OS monopoly. Microsoft's well-known market position in other products permits easy evasion of these limits. For example, nothing prevents Microsoft from discriminating in the pricing of its monopoly suite of desktop productivity applications, Microsoft Office, to which every OEM of any size needs access. Moreover, the leading PC OEMs all build server computers using Intel-based hardware, and increasingly rely on revenue from servers to make up for the exceptionally low margins on desktop PCs. To continue in the Intel-based server business, PC OEMs must license Microsoft's server operating systems, which are dominant on the Intel-based platform. The RPFJ places no limits on Microsoft's pricing of server operating systems, providing another outlet for the nullification of RPFJ § III(B).

Even on their own terms, however, the RPFJ pricing provisions contain a substantial loophole. Microsoft can reward an OEM for an ''absolute level * * * of promotion'' of Microsoft products. RPFJ § III(A). That provides a means for Microsoft to distinguish between OEMs who make sure that Microsoft software dominates their offerings, and OEMs who either promote competing software or simply do not interfere with consumers'' choices.

C. Microsoft Can Enforce De Facto Exclusivity

Despite a superficial prohibition, Sections III(F)(2) and Ill(G) permit Microsoft to impose practical, effective exclusivity obligations on ISVs and others who need access to Windows to develop their products. Microsoft need do no more than recast its agreements with ISVs as contracts to ''use, distribute, or promote * * * Microsoft software'' or ''to develop software for, or in conjunction with, Microsoft,'' RPFJ § III(F)(2), or as a ''joint venture,'' joint development * * * arrangement'' or ''joint services arrangement.'' Id. § III(G). New ''joint development agreements'' or ''joint services arrangements'' likely will supersede the current licenses for use by ISVs of Microsoft software developments tools and perhaps also the current arrangements for preferential access under MSDN. At best, a decree court would have to undertake a full antitrust analysis of whether the joint venture was ''bona fide.'' Id. § III(G). To nullify RPFJ § III(F)(2), Microsoft could simply change its development tools agreements to require use of Microsoft software— which literally would be ''a bona fide contractual obligation * * * to use * * * Microsoft software.'' Since any ISV that wants its software to run on Windows almost certainly would need to use Microsoft's development tools, the anti-exclusivity provision, like so many others in the RPFJ, would have no practical effect.

DOJ has defended this provision as necessary to permit legitimate ''procompetitive collaborations.'' CIS 44, 66 Fed. Reg. 59,470. But the broad terms of the RPFJ itself provide little basis for hope that the objects of joint ventures permitting exclusivity will not include a variety of ''new'' products that amount to little more than routine alterations to Windows and other Microsoft products in conjunction with requests from other industry participants. It is not uncommon for an ISV to ask for a new API, or for an IHV to ask for some other specification in Windows. These exercises soon may become objects of ''joint ventures'' or ''joint development agreements'' under RPFJ § III(G).

RPFJ § III(G)(1) undercuts its superficial prohibition on contracts that would require participants at different levels of the market to install or promote Microsoft Platform Software to a ''fixed percentage'' of those participants'' own customers. Section III(G)(1) permits Microsoft to impose such contracts so long as it ''in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with

Microsoft Platform Software.'' Such representations should be easy to come by, so long as Microsoft pays enough. There is nothing to require a single party making such a representation actually to carry out the parallel distribution that it told Microsoft was ''commercially practicable.'' And it should be easy enough for Microsoft, through a wink and a nod, to ensure that any such representations were not accompanied by efforts to prove that commercial practicability to Microsoft's detriment.

VIII. THE RPFJ'S ENFORCEMENT MECHANISMS ARE FUNDAMENTALLY INADEQUATE.

As we have shown above, the RPFJ fails adequately to prevent Microsoft from engaging in illegal and anticompetitive practices, and allows it to continue the patterns of behavior that led to this litigation in the first place. The RPFJ suffers from an important secondary flaw, however: the enforcement mechanisms contained in Section IV are fundamentally inadequate. The RPFJ commits much of the practical enforcement responsibility to a ''Technical Committee,'' RPFJ § IV(B), that would monitor ''enforcement of and compliance with'' the RPFJ. Id. § IV(B)(1). The Technical Committee is likely to impede enforcement rather than aid it.

First, Microsoft—the antitrust violator—could exert inappropriate control over the membership of the Technical Committee. Rather than creating a special master or an independent review committee to monitor compliance with the consent decree, the RPFJ allows Microsoft to have an equal voice with the plaintiffs in choosing the members of the Technical Committee; indeed, Microsoft may choose one of the three members outright. Id. § IV(B)(3). Although appointing a special master with real (though reviewable) power might make sense as a matter of judicial administration, allowing Microsoft to choose its own monitor makes no sense at all.

The composition of the Technical Committee suffers from a second defect. The RPFJ provides that ''[t]he Technical Committee members shall be experts in software design and programming.'' RPFJ § IV(B)(2) (emphasis added). The interpretation of the RPFJ is largely a legal matter, however, dependent on adequate knowledge of the antitrust Section after section of the RPFJ is extraordinarily vague. 19 Experts in software design simply will not have any basis adequately to review complaints that Microsoft's 19 For example, as we discussed above the RPFJ relies heavily on a ''reasonableness'' standard of conduct that simply reproduces a full analysis under the antitrust laws. Antitrust remedies, like other injunctive decrees, are supposed to be amenable to swift and sure enforcement, according to standards that give warning of what is forbidden and what is permitted both to the wrongdoer and to its potential victims. But again and again, the RPFJ would require both the Technical Committee and eventually the decree court to determine whether Microsoft's conduct was ''reasonable.'' behavior fails to comply with the RPFJ. However, that is the entire purpose of the Technical Committee. Not only is the selection and composition of the Technical Committee problematic; the RPFJ's restrictions on how the Technical Committee can go about its business are equally inadequate. For example, it is likely that all third-party allegations of misconduct by Microsoft will be reviewed by the Technical Committee. 20 But the Technical Committee lacks any real power, and operates almost entirely in secrecy. Even if the Technical Committee finds Microsoft to be violating the RPFJ, its sole recourse is to ''advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.'' Id. IV(D)(4)(c). If DOJ or the settling State plaintiffs proceed with a complaint, none of the ''work product, findings or recommendations by the Technical Committee may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the Technical Committee shall testify by deposition, in court or before any other tribunal regarding any matter related to [the RPFJ].'' Id. § IV(D)(4)(d). Enforce- ment would have to start over from scratch. In effect, the Technical Committee's investigation is simply a waste of time. Even were the plaintiffs to decide, based on a Technical Committee report, that Microsoft had violated the RPFJ, the plaintiffs would need independently to investigate that violation under Section IV(A)(2). Indeed, the Technical Committee's reports to the 20 While third parties have the right to raise complaints with the Internal Compliance Officer, see RPFJ § IV(C)(3)(g), the RPFJ gives them no incentive to do so; such complaints would merely allow a proven antitrust violator itself to determine whether it has violated the RPFJ or again violated the antitrust laws. Although the RPFJ also allows third parties to submit complaints directly to the plaintiffs, see id. § IV(D)(1), the plaintiffs can thereafter at their sole discretion refer any such complaints to the Technical Committee, id. § IV(D)(4)(a), or to the Internal Compliance Officer, id. § IV(D)(3)(a). plaintiffs will be secret. See RPFJ § IV(B)(8)(e), (9). Ultimately, the Technical Committee simply injects delay into the process. But delay is indisputably in Microsoft's interest; Microsoft's monopolies bring it $1 billion each month in free cash flow, see Rebecca Buckman, Microsoft Has the Cash, and Holders Suggest a Dividend, WALL ST. J., Jan 18, 2002, at A3. Microsoft not only can afford to contest enforcement vigorously, but would not have to postpone enforcement for long before the RPFJ expires.

Finally, the ''crown jewel'' provision in the RPFJ is grossly inadequate. If at any point the court were to find that Microsoft had ''engaged in a pattern of willful and systematic violations,'' RPFJ § V(B) (emphasis added), the RPFJ provides only one remedy for plaintiffs or the court: to extend the inadequate, and already overly-short, consent decree by ''up to two years.'' But that is no deterrent. Willful and systematic violations should result in divestiture that terminates the illegally maintained monopoly once and for all. See Microsoft III, 253 F.3d at 103; United Shoe, 391 U.S. at 250. Slightly prolonging a failed decree makes no sense at all.

CONCLUSION

The Revised Proposed Final Judgment should be rejected as contrary to the public interest.

Respectfully submitted.

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BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE UNITED STATES OF AMERICA, Plaintiff, V. MICROSOFT CORPORATION, Defendant. Civil Action No. 98–1232 (CKK)

STATE OF NEW YORK ex rel. Attorney General Eliot Spitzer, et al., Plaintiffs, v. MICROSOFT CORPORATION, Defendant. Civil Action No. 98–1233 (CKK)

DECLARATION OF JOSEPH E. STIGLITZ AND JASON FURMAN

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I. QUALIFICATIONS

Our names are Joseph Stiglitz and Jason Furman. Dr. Stiglitz is a Professor at Columbia Business School, Columbia's Graduate School of Arts and Sciences (in the Department of Economics), and Columbia's School of International and Public Affairs. In 2001, Dr. Stiglitz was awarded the Nobel Prize in Economic Sciences. In addition, Dr. Stiglitz serves as a Senior Director and Chairman of the Advisory Committee at Sebago Associates, Inc., an economic and public policy consulting firm.

Dr. Stiglitz previously served as the World Bank's Chief Economist and Senior Vice President for Development Economics. Before joining the Bank, he was the Chairman of the President's Council of Economic Advisers. Dr. Stiglitz has also served as a professor of economics at Stanford, Princeton, Yale, and All Souls College, Oxford.

As an academic, Dr. Stiglitz helped create a new branch of economics—''The Economics of Information''—which has received widespread application throughout economics. In the late 1970s and early 1980s, Dr. Stiglitz helped revive interest in the economics of technical change and other factors that contribute to long-run increases in productivity and living standards. Dr. Stiglitz is also a leading scholar of competition policy.

In 1979, the American Economic Association awarded Dr. Stiglitz its biennial John Bates Clark Award, given to the economist under 40 who has made the most significant contributions to economics. His work has also been recognized through his election as a fellow to the National Academy of Sciences, the American Academy of Arts and Sciences, and the American Philosophical Society, as well as his election as a corresponding fellow of the British Academy. He has also been awarded several honorary doctorates.

Jason Furman is a Lecturer in economics at Yale University. In addition, Mr. Furman is a Director at Sebago Associates. Mr. Furman previously served as Special Assistant to the President for Economic Policy at the White House, where his responsibilities included tax policy, the Federal budget, Social Security, anti-poverty programs, and other economic policy issues.

II. PURPOSE

This Declaration was commissioned by the Computer & Communications Industry Association (CCIA) as an independent analysis of the competitive effects of the Proposed Final Judgment. The views and opinions expressed in this Declaration are solely those of the authors based on their own detailed study of the relevant economic theory and court documents; they do not necessarily reflect the views and opinions of CCIA. In addition, the views and opinion expressed in this Declaration should not be attributed to any of the organizations with which the authors are or have previously been associated.

III. INTRODUCTION

Competition is the defining characteristic of a market economy. It provides the incentive to produce new products that consumers want, to improve efficiency and lower the costs of production, and to pass on these innovations in the form of lower prices for consumers. In a competitive market, a firm that does not act in the best interests of consumers will be punished and, ultimately, will fail. But when competition is imperfect—or when it is nonexistent as in the limiting case of monopoly—the incentives to undertake these beneficial actions may be attenuated. In fact, a firm may even face incentives to behave in ways which do not serve the interests of consumers or the economy more generally. Monopoly power may lead a firm to underinvest in innovation, misdirect its investments, or undertake other activities in order to stifle competition rather than to improve products. Costs of production may be excessive because the monopolist has insufficient incentives for efficiency, has incentives to undertake costly measures to deter competition, or undertakes measures to raise rivals'' costs. And consumers will face higher prices and fewer choices in the short run; in the long run, the losses to consumers may be even more severe.

In a unanimous decision, the full Court of Appeals for the DC Circuit upheld the District Court finding that Microsoft was guilty of violating 2 of the Sherman Act through its illegal maintenance of a monopoly in the market for Intel-compatible personal computer (PC) operating systems.[1] The Court of Appeals also affirmed numerous findings of fact concerning the consequences of this illegal monopolization for misdirecting innovation, raising rivals'' costs, and limiting consumer choice.

The desire to maintain this monopoly, even against potentially superior products, creates a powerful incentive for Microsoft to eliminate or weaken competition that could erode or even eliminate its monopoly. In the mid-1990s, the principal threat to Microsoft's Windows operating system came from the development of the Netscape browser and Java technologies,[2] which allowed programmers to write applications to Netscape and Java, meaning that such programs would then work on any operating system that would run Netscape or lava. By reducing or even eliminating the cost of producing applications for different operating systems, these technological rivals reduced the barriers to entry for a new operating system and threatened, over the longer run, to erode Microsoft's monopoly in Intel-compatible PC operating systems by allowing competitors to provide superior products at a lower cost.

Microsoft's conduct has effectively eliminated the threat posed by Netscape and Java. Given ongoing rapid technological progress, it is impossible to predict with certainty where the next challenge to Microsoft Windows will come from. The experience in this area, however, suggests that it is likely to come from rivalry at the borders of operating systems, in particular from ''middleware'' that makes it possible for programmers to write to the ''middleware'' rather than to the underlying operating system. One such example comes from the increasingly important area of multimedia: streaming media players. Whether the next challenge to Microsoft's operating systems monopoly comes from a multimedia package or another technology, Microsoft will continue to have the same incentives and ability to stifle competition as it displayed against Netscape and Java in the mid- 1990s.

The principal goal of any remedy for Microsoft's illegal behavior in this case should be to foster competition and expand choices for consumers. The key to achieving this goal is changing Microsoft's incentives and taking steps to increase competition. A structural remedy, such as splitting up the company, would most directly alter incentives. Where such structural changes are not possible, the remedy should prohibit and regulate the conduct that Microsoft has used in the past and will have an incentive to use in the future to eliminate threats from ''middleware'' products that threaten to limit its monopoly power by usurping some, and perhaps eventually all, of the important functions of the Windows operating system.

The Revised Proposed Final Judgment (PFJ) of November 6, 2001 does not change Microsoft's incentives to undertake anticompetitive acts to stifle consumer choice by thwarting potentially superior products[3]) Furthermore, the PFJ provides few effective prohibitions against future anticompetitive conduct: It alternatively ratifies Microsoft's existing conduct, contains sufficient loopholes to allow Microsoft to circumvent the legislation, and suffers from toothless enforcement procedures that would allow Microsoft to reap the fruits of its monopoly for a significant, and potentially even indefinite, period. In our view, the PFJ would leave intact Microsoft's ability to maintain, and benefit from, its Windows operating system monopoly, while allowing

[1] United States v. Microsoft Corp., 253 F.3d 34 (DC Cir. 2001).

[2] ''The Java technologies include: (1) a programming language; (2) a set of programs written in that language, called the 'Java class libraries,'' which expose APIs; (3) a compiler, which translates code written by a developer into 'bytecode'; and (4) a Java Virtual Machine ('JVM'), which translates bytecode into instructions to the operating system.'' See 253 F.3d at 74, citing Findings of Fact ¶ 73, United States v. Microsoft Corp., 84 F. Supp. 2d 9, 29 (D.DC 1999).

[3] United States v. Microsoft Corp., Revised Proposed Final Judgment, in the U.S. District Court for D.C, November 6, 2001.

it to continue to limit choices for consumers and stifle innovation.

The PFJ does not even accomplish the limited remedial goals articulated in the U.S. Department of Justice's Competitive Impact Statement (CIS).[4] Specifically, in addition to its loopholes and its inadequate enforcement mechanism, the PFJ is entirely silent on several key findings of the Court of Appeals, including the commingling of applications and operating systems code, the pollution of Java, and the applications barrier to entry more broadly.

The PFJ should be rejected and replaced with a remedy that changes Microsoft's incentives to unfetter the market for competition. At a minimum, a remedy in this case needs to restrain Microsoft's conduct, by restricting the means through which Microsoft can illegally maintain and benefit from its monopoly.

The goal of this Declaration is to analyze the PFJ. It does not propose a detailed alternative remedy. It is important to note, however, that the proposal by the litigating States, while imperfect, is clearly superior to the PFJ in all of these regards. We do not address more aggressive remedies—such as structural changes to break up Microsoft or impose more extensive limitations on its intellectual property rights—but we note that such broader measures may well be necessary and desirable in order to alter Microsoft's incentives for anti-competitive behavior.[5] We are convinced, however, that the PFJ fails to meet the minimum requirement of an acceptable remedy—that is, it is unlikely to substantially increase competition in the relevant market.

The remainder of this Declaration contains five sections. First, it presents a brief discussion of the modem theory of competition, focusing on its relation to innovation. Second, it summarizes the relevant facts and legal conclusions relating to Microsoft. Third, it outlines what an effective remedy in this case should entail. Fourth, it examines the PFJ and highlights its deficiencies in comparison to this effective remedy. Finally, the paper concludes with a brief discussion of practical measures that could provide a more effective remedy.

IV. THE MODERN ECONOMIC THEORY OF COMPETITION AND MONOPOLY

This section presents a brief overview of the modem economic theory of competition and monopoly. The theory of competition has evolved rapidly in the last few decades, due in part to the natural evolution of economic thought and in part to the issues raised by the ''new economy'' (such as the importance of network effects and rapid innovation). Given the vast literature on the topic, this discussion is necessarily selective and focuses on the most relevant issues for Microsoft's monopoly of the market for operating systems for Intel-compatible PCs. This theoretical background motivates the conclusions about the PFJ.

A. Acquisition of a monopoly

The traditional view of monopoly is that in specific industries, like public utilities, increasing returns to scale create a situation in which luck or initial success will eventually lead to one firm that can maintain its monopoly by controlling an entire market and thus benefiting from the lower average costs of production that result from the larger scale of production. This aspect of the traditional view is still salient in the software market. Producing a software program has high fixed costs in the form of investments in research and development but, once this investment has been made, virtually no marginal cost from producing additional units. As a result, the larger the scale of production, the lower the average cost. By itself, these increasing returns to scale will provide a powerful force for consolidation.

The modem view of monopoly has added an additional effect that can strengthen the advantages enjoyed by the lucky or initially successful firm: network effects.[6] 6 Network effects arise when the desirability of a product depends not just on the characteristics of the product itself but also on how many other people are using it.

Network externalities may be direct: as a user of Microsoft Word, I benefit when many other people also use the program because it is easier to share Word files. Network externalities may also be indirect: I am more likely to purchase a computer and operating system if I know that more software choices are currently available (and will be available in the future) for this system. An operating system with a larger set of existing (and expected) compatible applications will be more desirable. This indirect network effect has been called the ''applications barrier to entry.'' [7] The main reason that consumers demand a particular operating system is its ability to run the applications that they want. In developing applications, Independent Software Vendors (ISVs) incur substantial sunk costs and thus face increasing returns to scale. This motivates ISVs to first write to the operating system with the largest installed base. Because ''porting'' an application to a different operating system will result in substantial additional fixed costs, a firm will have less incentive to produce the application for operating systems with a smaller installed base, and may do so with a delay or forgo porting completely.

The applications barrier to entry can skew competition for an extended period of time and ensure that any monopoly power, once established, will tend to persist. In choosing a PC and an operating system, consumers make a large fixed investment. In addition, because a considerable amount of learning is associated with the use of operating systems and associated applications, and because files created under one applications software program may not be easily or perfectly transferable to others, there are large costs associated with switching. As a result, consumers will evaluate, among other factors, the current existence of compatible applications and the likely number of future compatible applications.[8] 8 The current number of compatible applications is likely to depend directly on the past and current market share of the operating system. A consumer's reasonable evaluation of the prospects for the continued support of his or her favorite applications and the development of new applications is also likely to be based on current market share. As a result, increased market share indirectly increases the desirability of an operating system.

Empirically, this applications barrier to entry is dramatic. At its peak in the mid-1990s, IBM's operating system, OS/2 Warp, had 10 percent of the market for operating systems for Intel-compatible PCs and ran approximately 2,500 applications. In contrast, Windows supported over 70,000 applications.[9] Establishing a new operating system that effectively competes head-to-head with Windows would require the hugely expensive task of attracting ISVs to port thousands or even tens of thousands of programs to the new operating system, a process with a substantial fixed cost and, in the absence of a large guaranteed market, little scope to benefit from economies of scale. Particularly important to the applications barrier to entry is the availability of applications providing key functionalities, such as office productivity. Microsoft's dominance in this area, and its choice about whether or not to port its Microsoft Office program to alternative operating systems, can add a new and even higher level to the applications barrier to entry.

With this barrier to entry, a monopoly once established may be hard to dislodge. Anticompetitive practices early in the competitive struggle can lead to a market dominance that can persist, even if the anticompetitive practices which gave rise to the monopoly position are subsequently prohibited. These hysteresis effects are reinforced by switching costs. Learning a language or a program interface may involve significant costs. Users must therefore be convinced that an alternative program is substantially superior if they are to be induced to incur the learning and other costs associated with switching to an alternative product. These ''lock in'' effects make it more difficult to dislodge a firm that has established a dominant position, even when it is technically inferior to rivals.

This perspective has two important policy implications. First, it is imperative to address anticompetitive practices as quickly as possible. Delay is not only costly, but it impedes the restoration of competition even in the longer run. Second, prohibiting the

[4] U.S. Department of Justice (November 15, 2001), Competitive Impact Statement in United States vs. Microsoft Corp.

[5] Restrictions on intellectual property rights have been used as a remedy in past antitrust cases, for example IBM's 1956 tabulating machines case, in a manner that is both effective and largely without adverse effects.

[6] For an overall survey, see Michael Katz and Carl Shapiro (1994), ''Systems Competition and Network Effects.'' Journal of Economic Perspectives, 8:2, 93–115. For a specific application to Microsoft, see Timothy Bresnahan (2001), ''The Economics of the Microsoft Case.'' Mimeo available at http://www.stanford.edu/tbres/Microsoft/The Economics of The Microsoft Case.pdf.

[7] Franklin Fisher, ''Direct Testimony of Franklin Fisher'' in United States v. Microsoft Corp.

[8] Nicholas Economides (1996), ''The Economics of Networks.'' International Journal of Industrial Organization, 14:2.

[9] Findings of Fact, ¶ 40 and ¶ 46, 84 F. Supp. 2d at 20, 22.

practices that gave rise to the monopoly may not suffice to restore competition. Stronger conduct, and possibly structural, remedies may be required.

B. Potential for competition

In the most simplistic view, a monopoly once attained is permanent. Increasing returns to scale and network externalities make the monopolist impregnable—any new entrant can be priced out of business by the monopolist—which can then go back to charging the monopoly price for the product.

In contrast to this simplistic static view, the economist Joseph Schumpeter presented a dynamic vision of technological change giving rise to a series of temporary monopolies. In his vision, the most successful firm in a winner-take-all contest would become a temporary monopolist, benefiting from the rents that this monopoly confers—a process necessary to justify incurring the sunk costs in research and development required to obtain the monopoly in the first place. But, in the Schumpeterian vision, this monopoly would eventually be toppled by entry as a newly innovative entrant displaced the monopolist with a superior product, thus reaping the benefits of increasing returns to scale and network externalities.[10]

The real world likely lies somewhere between these two views. A monopoly is not a fixed part of the economic landscape. But the downfall of a monopoly is not inevitable. In fact, more recent economic research strongly indicates that Schumpeter's conclusion was wrong; when restraints on anticompetitive conduct are absent, a monopoly can take steps to ensure that it is likely to be perpetuated.[11] These steps can suppress the overall level of innovation and have other high social costs.[12] Significant network effects combined with switching costs, as discussed above, represent one way in which a firm can perpetuate its market power.

Understanding this point is central to understanding what motivated the actions of Microsoft in promoting Internet Explorer and restraining Netscape and Java, and also to understanding the motivations of a conduct remedy to improve competition. Network externalities are not a ''d factor'' in the economic landscape. They depend, at least in part, on decisions by the monopolist. A monopolist has substantial resources at its disposal to strengthen barriers to entry and thus to maintain and strengthen its monopoly power. Exclusionary conduct by the monopoly can be used to prevent a reduction in the barriers to entry or even affirmatively to raise them even higher. Java and Netscape would have reduced the monopoly power of Windows by allowing a greater variety of programs to function on a greater variety of operating systems. The social benefits from such innovation were likely significant, but Microsoft would have experienced significant losses from the innovation through the erosion of its monopoly power.

Similarly, this same point can provide the rationale for structural or conduct remedies that can potentially reduce barriers to entry and thus increase competition in part, or all, of the market. The fundamental idea is that Microsoft acted as it did because it was afraid that Netscape and Java would reduce the applications barrier to entry and thus undermine its operating systems monopoly. By preventing this anticompetitive behavior, and indeed promoting competition, a conduct remedy could have precisely the opposite effect, creating the conditions for the dynamic, innovative Schumpeterian competition that would otherwise be absent in this market.

In understanding the monopoly in the operating systems market, and how it fits into the overall PC platform, it is useful to introduce some issues specific to this area. Timothy Bresnahan, a Professor of Economics at Stanford University and a former Deputy Assistant Attorney General and Chief Economist at the U.S. Department of Justice Antitrust Division, formulated the concept of ''Divided Technical Leadership.'' [13] The concept is that although each aspect of the platform is dominated by a single company, different companies dominate different ''layers'' of the platform: ''At one stage, all of IBM and Compaq (computer), Microsoft (OS), Intel (CPU), Netware (networking OS), WordPerfect and Lotus (near-universal applications) participated in technological leadership of the PC platform.'' [14] In a situation of divided technical leadership, according to Bresnahan, competition comes from two sources: ''(1) firms in one layer encouraging entry and epochal change in another layer and (2) rivalry at layer boundaries.'' [15] To the degree that divided technical leadership is absent, because for example Microsoft controls many of the layers (operating system, office applications, networking, browsers, etc.), competition will be restricted. Any measures to facilitate divided technical leadership, even if they leave the monopoly at any given layer intact, will facilitate competition and thereby benefit consumers in the form of greater innovation, more choices, and lower prices.

C. Consequences of monopoly

Traditional economic theory suggests that the principal consequence of a monopoly is to raise prices and restrict production. This combination has two consequences. First, higher prices allow the monopolist to capture some of the surplus previously enjoyed by consumers. Second, restricted production results in a deadweight loss for society, the so-called ''Harberger triangle,'' to the extent that the value placed on the forgone consumption by consumers exceeds its cost to producers.[16]

Over the last few decades, economists have substantially enhanced this traditional theory and explored other ways in which market power imposes social costs. The modem view is that when competition is imperfect, firms try to maintain and extend their market power by taking actions to restrict competition. firms is producing innovations In the world of perfect competition, the source of success for that benefit consumers and reduce prices. In the world of imperfect competition, an additional—and perhaps paramount—source of success is the effort to reap monopoly profits, capture rents, deter entry into the market, restrict competition, and raise rivals'' costs.[17]

Under the new view, the social costs of monopolies go well beyond the ''Harberger triangles'' that result from higher prices and restricted output. In fact, even if the monopolist is not currently restricting output, the steps taken to maintain the monopoly will result in substantial economic inefficiencies and costs to society. These costs may be far larger than the monopoly profits and far larger than the Harberger triangles. These social losses reflect higher costs of production (both for the firm and its rival), limited or distorted investment in innovation, a restricted set of potentially inferior choices for consumers, and, in the long run, higher prices.

D. Monopolies and innovation

The information technology industry is characterized by a rapid rate of technological change. As the modem theory of competition and monopoly underscores, it is important to focus not just on the static issues that affect consumers today, but also on how the mixture of monopoly, competition, and the intellectual property regime affects the pace and direction of innovation.

Schumpeter emphasized that monopolies would provide both the incentives and the means for innovation. According to Schumpeter, the fear of losing monopoly rents would drive a monopolist to continue innovating and these monopoly rents—or the promise of further monopoly rents in the future—would provide the financing for these innovations. Schumpeter's vision contains elements of truth: the threat of competition may induce monopolists to invest more in innovation than it otherwise might. But the pace of innovation may be even higher if the incumbent's monopoly power were curtailed. Monopoly power could lower the pace of innovation for four reasons.

First, previous innovations are inputs into any subsequent innovation. Monopoly power can be thought of as increasing the cost of one of the central inputs into follow-on innovations. Standard economic theory

[10] Joseph Schumpeter (1942 / 1984), Capitalism, Socialism and Democracy. Harper Collins, New York.

[11] See, among other references, Richard Gilbert and David Newbery (1980), ''Preemptive Patenting and the Persistence of Monopoly.'' American Economic Review 72(3), pp. 514–526 and Partha Dasgupta and Joseph Stiglitz (1980), ''Uncertainty, Market Structure and the Speed of R&D,'' Bell Journal of Economics, 11 (1), pp. 1–28.

[12] Joseph Stiglitz (1987). ''Technological Change, Sunk Costs, and Competition.'' Brookings Papers on Economic Activity, 3, pp. 883–937.

[13] Timothy Bresnahan and Shane Greenstein (1999), ''Technological Competition and the Structure of the Computer Industry.'' Journal of Industrial Economics, 47(1): pp. 140 and Bresnahan (2001).

[14] Bresnahan (2001), p. 5.

[15] Bresnahan (2001), p. 6.

[16] Arnold Harberger (1954), ''Monopoly and Resource Allocation,'' AEA Papers and Proceedings, 44: 77–87.

[17] Partha Dasgupta and Joseph Stiglitz (1998), ''Potential Competition, Actual Competition and Economic Welfare.'' European Economic Review, 32: 569–577. For an extended discussion and additional references see Joseph Stiglitz (1994), Whither Socialism, MIT Press, Cambridge.

predicts that as the cost of inputs into any activity increases, the level of that activity falls.

Second, with more substantial barriers to entry, the threat of Schumpeterian competition and therefore the incentives to innovate are diminished. In the extreme case, if a monopoly could ensure that there were no threat of competition, it would no longer have to innovate. A monopolist's anticompetitive actions to raise barriers to entry will reduce its future incentives to innovate, similarly measures that increase competition will increase the Schumpeterian incentive.

Third, innovation itself may be misdirected in order to secure a monopoly by deterring entry and raising rivals'' costs. In operating systems, for example, the development of alternative proprietary standards and the construction of non-interoperable middleware are examples of innovations that could potentially strengthen monopoly power.

Fourth, the incentives of a monopoly to innovate are limited.[18] Since a monopolist produces less than the socially optimal output, the savings from a reduction in the cost of production are less than in a competitive market. Also, a monopolist's incentives to undertake research will not lead it to the socially efficient level. Rather, its concern is only how fast it must innovate in order to stave off the competition—a level of innovation that may be markedly lower than socially optimal. Consider, for example, a simple patent race in which a monopoly incumbent can observe the position (at least partially) of potential rivals. The monopolist's incentive is to move out in front of the potential rivals by just enough to convince them that they cannot beat the monopolist. Given those beliefs, the rivals do not engage in research, and the monopolist can then slow down its research to a lower level (since it no longer faces a viable threat).

In short, monopolization not only harms consumers by raising prices and reducing output in the short run, but may reduce innovation in the long run. These long-run harms, which are especially important in innovative industries, may substantially exceed the short-run costs to consumers.

v. FACTS AND LEGAL CONCLUSION RELATING TO MICROSOFT

In its decision, the Court of Appeals affirmed the District Court's overall judgment, albeit on a narrowed factual and legal basis. The Court of Appeals concluded that ''Microsoft violated § 2 of the Sherman Act by employing anticompetitive means to maintain a monopoly in the operating system market.'' 19 In addition, the Court of Appeals overturned the lower court's judgment that Microsoft violated § 2 of the Sherman Act by attempting to monopolize the web browser market. The Court of Appeals remanded the decision on whether the tying of Internet Explorer to Windows violated § 1 of the Sherman Act and indicated that tying should be evaluated under the rule of reason, rather than under a per se rule; the U.S. Department of Justice chose not pursue this issue further. The Court of Appeals also vacated the District Court's Final Judgment, in part because of the narrowed scope of the judgment on the conclusions of law.

The current task in this case is to develop a remedy that addresses the central finding of the Court of Appeals: the monopolization of the operating systems market. This judgment was based on findings of fact and conclusions of law in three areas: Microsoft has monopoly power in the relevant market, Microsoft behaved anticompetitively, and Microsoft's anticompetitive behavior contributed to the maintenance of its monopoly. These are briefly discussed in turn.

A. Monopoly power

Monopoly power is the power to set prices without regard to competition. It can be inferred by the combination of market share in the relevant market and significant barriers to entry. The District Court found that Microsoft's share of the worldwide market for Intel- compatible PC operating systems exceeded 90 percent in every year of the 1990s and has risen to 19 253 F.3d at 46.

more than 95 percent in recent years. Microsoft did not dispute these facts, but instead argued that the relevant market was broader and should include all platform software (e.g., servers, handheld devices, Macintosh computers, etc.). The Court of Appeals, however, rejected Microsoft's attempt to broaden the definition of the market, agreeing with the District Court that these other platforms were not '''reasonably interchangeable by consumers for the same purposes.''' [20]

In addition, the Court of Appeals affirmed the finding that Microsoft's dominant market share was likely to persist. This conclusion was based on the substantial barriers to entry, including increasing returns to scale and the applications barrier to entry discussed above. As a result, according to the Court of Appeals, ''Because the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft the power to stave off even superior new rivals. The barrier is thus a characteristic of the operating systems market, not of Microsoft's popularity.'' [21]

B. Anticompetitive behavior

The Court of Appeals found numerous instances where Microsoft behaved anticompetitively through exclusionary conduct that harmed consumers, had an anticompetitive effect, and had either no ''procompetitive justification'' or an insufficient ''procompetitive justification'' to outweigh the harm. These actions, according to the Court of Appeals, had the intention and effect of preserving or increasing the applications barrier to entry. The Court of Appeals upheld most of the general categories of anticompetitive behavior originally found by 20 253 F.3d at 52, quoting United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 395 (1956).

the District Court, but overturned some of the District Court's specific findings in these areas. The key instances of this anticompetitive behavior found by the Court of Appeals include: Restrictive Licenses to Original Equipment Manufacturers (OEMs).[22] Microsoft's Windows license placed restrictions on OEMs that limited their ability to change the look of the Windows desktop, the placement or removal of icons for browsers, or the initial boot sequence. The result was to increase the user share of Internet Explorer, not because of its merits, but because Microsoft limited the crucial OEM channel of distribution for Explorer's chief rival, Netscape. ú Integration of Internet Explorer into Windows.[23] Microsoft discouraged OEMs from installing other browsers and deterred consumers from using them by not including Internet Explorer in the Add/Remove programs list for Windows 98 and commingling the operating system and browser code.

úAgreements with Internet Access Providers (IAPs).[24] Microsoft engaged in exclusionary conduct to restrict the second main distribution channel for Netscape by offering IAPs, including America Online, the opportunity to be prominently featured in Windows in exchange for using the Internet Explorer browser exclusively. Dealings with ISVs and Apple.[25] Microsoft further restricted additional outlets for Netscape by providing ISVs with preferential access to information about forthcoming releases of Windows 98 in exchange for their writing to Internet Explorer rather than Netscape. In addition, Microsoft negotiated with Apple to restrict the ability of Macintosh consumers to use Netscape in exchange for continuing to develop and support Microsoft Office for the Macintosh operating system. ú Polluting Java. The Court of Appeals also found that much of Microsoft's behavior vis- a-vis Java was an attempt to limit a threat to its operating system monopoly rather than benefit consumers. These illegal actions included entering into contracts requiring ISVs to write exclusively to Microsoft's Java Virtual Machine, misleading ISVs into thinking that Microsoft's Java tools were cross-platform compatible, and forcing Intel to terminate its work with Sun Microsystems on Java.[26]

[18] Kenneth Arrow (1962), ''Economic Welfare and the Allocation of Resources for Invention.'' In The Rate and Direction of Inventive Activity, Princeton University Press, Princeton: pp. 609–625.

[20] 253 F.3d at 52, quoting United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 395 (1956).

[21] 253 F.3d at 56.

[22] The Court of Appeals narrowed the scope of this anticompetitive behavior slightly, rejecting the District Court's finding that Microsoft's restrictions on alternative interfaces was anticompetitive, arguing that the ''marginal anticompetitive effect'' of Microsoft's license restrictions was outweighed by the alternative, the ''drastic alteration of Microsoft's copyrighted work.'' See 253 F.3d at 63.

[23] The Court of Appeals, however, overruled the District Court in one instance, finding a sufficient justification for the fact that in certain situations Internet Explorer will override user defaults and launch, for example when alternative browsers do not provide the functionality required by Windows Update. See 253 F.3d at 67.

[24] The Court of Appeals found that several inducements offered by Microsoft to encourage IAPs to use Internet Explorer were not anticompetitive. See 253 F.3d at 68.

[25] The Court of Appeals overturned the finding that Microsoft's deals with Internet Content Providers were anticompetitive. See 253 F.3d at 71.

[26] See 253 F.3d at 74–78. The Court of Appeals, however, found a sufficient procompetitive justification for Microsoft's development of its own version of a Java virtual machine. See id. at 74–75.

C. Effectiveness of anticompetitive behavior in maintaining the monopoly

Finally, the Court of Appeals found that Microsoft's anticompetitive efforts to increase usage of Internet Explorer and Microsoft's Java Virtual Machine at the expense of Netscape and Sun's Java had the effect of increasing the applications barrier to entry and thus helping to maintain Microsoft's monopoly of the market for operating systems for Intel-compatible PCs. This finding is the crucial link to the economics of the case; a monopoly is neither automatically permanent nor automatically transient. Rather, its persistence depends, in part, on the barriers to entry which, in turn, depend on the actions of the monopolist and the regulation of the government. This finding is also crucial to the development of proposed remedies.

Specifically, the Court of Appeals found that although neither Netscape nor Java posed an imminent threat of completely replacing all the functions of the operating system (and thus should be excluded from the definition of the relevant market for the test of monopoly power), they did pose a nascent threat to Microsoft's future dominance of the operating system market. Though not part of the ''operating systems market,'' they clearly affected the nature of competition in this market. Both Netscape and Java established Applications Programming Interfaces (APIs) that allowed developers to write some programs to Netscape and Java. These programs would then be able to run on any operating system that runs Netscape or Java. The result would be, at least in one segment of applications, a dramatic reduction in the applications barrier to entry. No longer would software developers have to incur additional costs to run on additional operating systems. As a result, Netscape and Java had the potential to act as a crucial level of ''middleware'' between the operating system and the programs, and eventually could ''commoditize the underlying operating system,'' to use the memorable words of then-Microsoft Chairman and CEO Bill Gates in an internal memo.[27]

The Court of Appeals wrote:

We may infer causation when exclusionary conduct is aimed at producers of nascent competitive technologies as well as when it is aimed at producers of established substitutes... the question in this case is not whether Java or Navigator would actually have developed into viable platform substitutes, but (1) whether as a general matter the exclusion of nascent threats is the type of conduct that is reasonably capable of contributing significantly to a defendant's continued monopoly power and (2) whether Java and Navigator reasonably constituted nascent threats at the time Microsoft engaged in the anticompetitive conduct at issue.'' [28]

The court answered in the affirmative on both issues.

VI. OUTLINE OF AN EFFECTIVE CONDUCT REMEDY

The Court of Appeals was clear that the District Court has ''broad discretion'' to fashion a remedy that is ''tailored to fit the wrong creating the occasion for the remedy.'' [29] In the CIS, the Department of Justice appears to take a minimal view of the goals of a remedy, writing that it should ''eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings.'' [30] We believe that the PFJ fails even within the narrow terms that the Department of Justice set for itself.

The Court of Appeals appears to provide guidance for a broader remedy, quoting the Supreme Court in saying that the role of a remedies decree in an antitrust case is to ''unfetter a market from anticompetitive conduct'' and ''terminate the illegal monopoly, deny the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.'' [31]

One type of potential remedy, imposed by the District Court but vacated by the Court of Appeals, is structural. Such a structural remedy would involve breaking Microsoft into two or more companies with the goal of establishing a new set of incentives that foster competition. Although potentially disruptive in the short run, the goal of a structural remedy is to terminate the monopoly and create the structural conditions to prevent it from re-emerging, without requiring ongoing regulation or supervision by the court or the government. Such structural remedies are particularly suitable when there have been a wide variety of anticompetitive practices in the past and when changing market conditions (such as innovation) provide opportunities for new types of anticompetitive conduct in the future. Structural remedies have the further advantage of fundamentally altering incentives.

A second type of potential remedy relates to conduct or licensing, seeking to prevent anticompetitive conduct and foster competition. A conduct remedy has the advantage of avoiding the dramatic and potentially deleterious changes associated with a structural remedy, but suffers from the defect that it is necessarily complicated and requires at least some involvement of the court and the government in regulating private enterprise. Ideally, a conduct remedy would also be structured to affect incentives: in particular, such a remedy should raise the costs of acting in an exclusionary manner.

The remainder of this section discusses an outline of the elements of an effective conduct remedy that seeks to achieve three goals: creating more choices for consumers, reducing the applications barrier to entry, and preventing Microsoft from strengthening its operating systems monopoly by bringing new products within its scope. A. Creating more choices for consumers

A conduct remedy should empower rival computer companies to modify their own versions of the computer experience to appeal to consumers. Not only will consumers benefit from the greater product choice, but entry and competition may be enhanced as consumers learn how to interact with a variety of interfaces. At a minimum, empowering OEMs and possibly ISVs to create more choices for consumers would involve: (1) the right to modify the desktop, the start menu, or other fundamental aspects of the computer experience so that OEMs can market PCs with alternative overall ''looks'', different software packages (including supplementing, replacing, or removing Microsoft middleware), and to offer lower-priced options with reduced features; (2) adequate information and technical access to develop applications for, and even modifications to, functionalities included with Windows, which would allow ISVs to develop their own bundle of the Windows operating system plus applications (and/or minus Microsoft middleware) that could be marketed either to OEMs or directly to end users; (3) protection from retaliation by Microsoft for engaging in this conduct; and (4) financial incentives to make changes that benefit consumers.

B. Reducing the applications barrier to entry

The central goal of Microsoft's illegal conduct was to preserve and strengthen the applications barrier to entry so that the Windows operating system continued to be essential to desktop computing. An effective conduct remedy in this case should take steps to reduce the applications barrier to entry, by creating conditions conducive to more competition and by requiring Microsoft to undertake actions that would lower that barrier. Reducing the applications barrier to entry is consistent with the findings of the Court of Appeals and is central to an effective remedy in this case. Although the Court of Appeals rejected or remanded the District Court's findings of liability for tying and for monopolization of the browser market, both of these actions were central to the Court's finding of liability on the § 2 Sherman Act violation for monopolizing the market for operating systems. The Court found that Microsoft used commingling of code and other exclusionary measures to increase the market share for Internet Explorer and reduce the distribution of Netscape and Java in order to strengthen the Windows monopoly.

There are two specific aspects to reducing the applications barrier to entry:

(1) encouraging competition in middleware in a manner that makes it easier for developers to write programs that run on a variety of operating systems, and (2) requiring Microsoft to port its dominant applications to alternative operating systems.

C. Preventing Microsoft from strengthening its operating system monopoly by bringing new products within its scope

Microsoft's ability to leverage its Windows monopoly to control other aspects of computing that then reinforce the Windows monopoly is a key part of its strategy of 23 anticompetitive conduct that formed the foundation for the Court o[Appeals ruling. To deal with the anticompetitive practices that are ''likely to result in monopolization in the future'' requires a remedy that addresses not just areas of past misconduct, but emerging areas as well.

[27] United States v. Microsoft Corp., Government Exhibit 20.

[28] 253 F.3d at 79.

[29] 253 F.3d at 105, 107.

[30] CIS, p. 3.

[31] 253 F.3d at 103, quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972).

The next section compares the actual agreement to these elements.

VII. ANALYSIS OF THE PROPOSED FINAL JUDGMENT

The PFJ fails to fulfill even the minimal goals set by the CIS. It does not address many of the proven illegal practices, including commingling, polluting Java, and strengthening the applications barrier to entry more broadly. Furthermore, in our judgment the PFJ would not ''restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings.'' [32] Nothing in the PFJ would be likely to resuscitate the conditions of greater ''divided technical leadership'' that prevailed in the mid-1990s when Netscape and Java both presented a serious threat to Microsoft, which Microsoft suppressed through anticompetitive actions.

The PFJ also falls dramatically short of all three elements of the guidelines that appear to have been endorsed by the Court of Appeals for the DC Circuit: it allows Microsoft's illegal monopoly in operating systems to continue and perhaps even be strengthened, it allows Microsoft to keep the fruits of its statutory violation, and it leaves intact all of the incentives— and many of the means—for Microsoft to maintain and extend its monopoly in the future, especially in the important emerging areas of web services, multimedia, and hand-held computing.

The main impact of the PFJ is to codify much of Microsoft's existing conduct. Where the agreement limits Microsoft's conduct, there are often sufficient exceptions, loopholes, or alternative actions that Microsoft could undertake to make the initial conduct limits meaningless. Even where the limits are binding, Microsoft could still flout the conduct restrictions without fear of a timely enforcement mechanism. Because the Technical Committee [33] is essentially advisory and only has expertise in software design, not law and marketing, the only enforcement of the PFJ is through a full legal proceeding—which would provide enough time for Microsoft to inflict irreversible harm on competition. The time issues are especially important because in a market characterized by increasing returns to scale and network externalities, once a dominant position is established it will be hard to reverse, even if the original abusive practices are subsequently circumscribed.

The fundamental problem with the agreement is that it does not change the incentives that Microsoft faces. All of the illegal anticompetitive actions identified by the District Court and affirmed by the Court of Appeals were the result of rational decisions by Microsoft about how best to enhance its value by maintaining and expanding its monopoly. These same incentives will persist under the PFJ; given these incentives, it impossible to foresee—let alone effectively prohibit—the wide variety of potentially anticompetitive conduct that may result. Indeed, the reason that many economists have argued for the more drastic structural settlement (such splitting up Microsoft) is that such structural changes would alter incentives.[34] Though the Court of Appeals has determined that such a remedy might be too drastic, the imperative in evaluating any remedy is to ascertain its impact on incentives.

The following analyzes the details of the PFJ by comparing it to the principles outlined in the previous section. Our discussion does not aim to be comprehensive, but instead to focus on areas that illustrate or represent important economic aspects of the PFJ. Although the enforcement aspects of the PFJ, in particular the powers of the Technical Committee, are essential to understanding the limitations of the agreement, we only briefly discuss these issues.

A. Creating more choices for consumers

In developing a remedy, the court is well aware of its technical shortcomings in deciding exactly what should or should not be included as part of an operating system today—or in the future. Neither should these determinations be made solely by a monopolist. These choices should be made by consumers through the choices they have between different OEMs and ISVs. Stanford Law Professor Lawrence Lessig described this strategy as follows: ''To use the market to police Microsoft's monopoly... by assuring that computer manufacturers and software vendors remain free to bundle and support non-Microsoft software without fear of punishment by Microsoft.''[35] We agree with Professor Lessig that this should be among the goals of a final judgment and that the current agreement is woefully inadequate in meeting this objective. In our view, this is in fact a minimal objective that mitigates some of the harms to consumers from Microsoft's monopoly position but, by itself, would do little to reduce the applications barrier to entry or facilitate competition in the operating systems market itself. applications would be designed and marketed to maximize their own profits, with no regard to how this might affect the profitability of the operating system.

As noted above, a remedy that turns this overall strategy into a reality requires four different elements: (1)ensuring that OEMs and potentially ISVs have the right to modify the desktop, the start menu, or other fundamental aspects of the computer experience in any way they choose; (2) ensuring that OEMs and ISVs have adequate information and technical access to develop applications for, and even modifications to, Windows; (3) ensuring that they are protected from retaliation by Microsoft for providing alternatives to consumers; and (4) ensuring that they have financial incentives to make changes that benefit consumers. The PFJ is deficient in all four.

1. Ensuring that OEMs and potentially ISVs have the right to modify fundamental aspects of the computer experience in any way they choose

The PFJ codifies several new rights for OEMs to modify the desktop or the computer experience, some of which were already voluntarily announced by Microsoft on July 11,2001 and implemented with the release of Windows XP on October 25, 2001. Specifically, Section III.C of the PFJ prohibits Microsoft from restricting OEMs from ''Installing or displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware... distributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape...'' among other actions.

This new required latitude, however, is unduly limited in several respects: New flexibility is quite narrow. OEMs can only modify the initial boot screen to market IAPs to users, but cannot modify it to uninstall Microsoft middleware or to market middleware that competes with Microsoft middleware (Section III.C.5). Nothing in the PFJ would allow ISVs to acquire licenses to create their own bundles of Windows plus applications to market to consumers or OEMs, a measure that could enhance competition by bringing additional participants with substantial experience in software development into the market. While the benefits to consumers and competition of allowing ISVs to acquire such licenses are evident, Microsoft Would only be harmed to the extent that it reduces its monopoly power. There is no other convincing explanation for these restrictive trade practices.

u It contains several limitations that limit the overall look of Non-Microsoft Middleware and pace of innovation. For example, the PFJ requires that the user interface on automatically launched Non-Microsoft Middleware[36] must be ''of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware Product'', can only be launched when a similar Microsoft product would have been launched, and Microsoft can impose non-discriminatory bans on icons (Section III.C.3). In addition to the fact that these limitation are frivolous, asymmetric, and would seem to serve no purpose other than restricting competitive threats—no such limitations apply to Microsoft—they could also have a severe impact in limiting competition. Specifically, it allows Microsoft to control the pace of innovation in the computer experience, letting Microsoft delay the effective launch of a new type of product until it is ready to compete in that area. Thus

[32] CIS, p. 3.

[33] The Technical Committee consists of three experts in ''software design and programming''—one appointed by Microsoft, one by the plaintiffs, and the third by these previous two. The Committee would have broad access to internal Microsoft documents, source code, etc. It would be responsible for reporting any violations of the PFJ to the plaintiffs. They would not, however, be able to rely on the work of the Technical Committee in Court proceedings. See PFJ, Section IV.B.

[34] See, for example, Robert Litan, Roger Noll, and William Nordhaus (2002), ''Comment of Robert E. Litan, Roger D. Noll, and William D. Nordhaus on the Revised Proposed Final Judgment.'' United States v. Microsoft Corp., Before the Department of Justice. The point is simple: now strategy with respect both to applications and the operating system is designed to maximize total profits, including the monopoly profits. With structural separation,

[35] Lawrence Lessig (December 12, 2001). ''Testimony before the Senate Committee on the Judiciary.''

[36] 36 AS defined in Section VI.M.

both competition and innovation may be impeded.

u It is unnecessarily delayed. Specifically, Section III.H gives Microsoft up to 12 months or the release of Service Pack 1 for Windows XP, whichever is sooner, to provide end users and OEMs a straightforward mechanism to remove icons, shortcuts, or menu entries for Microsoft Middleware Products or to allow OEMs or end users to designate alternative Non-Microsoft Middleware Products [37] to be invoked by the Windows operating system in place of Microsoft Middleware Products.[38] There is certainly no economic or legal justification for this delay and our understanding is that it is technically feasible to carry out these changes in a few weeks time, as demonstrated by Microsoft's July 11, 2001 voluntary agreement to implement elements of this provision. As we have emphasized, there can be significant long-run consequences for competition from even short delays.

u Microsoft could encourage users to undo changes after 14 days. The value of the new contractual freedoms is limited by Microsoft's ability to encourage the user to undo all OEM changes after 14 days by allowing a user-initiated ''alteration of the OEM's configuration... 14 clays after the initial boot up of a new Personal Computer.'' (Section III.H.3) This provision, in effect, would allow Microsoft to present a message to end users (e.g., ''Press 'yes'' to optimize your computer for multimedia'') that could bias choices toward Microsoft products, regardless of what the OEM had chosen. This provision could therefore greatly reduce the scope and value of the changes that OEMs make.[39]

2.Ensuring that OEMs ISVs have adequate information and technical access to develop applications for, or even modifications to, Windows

The right to make modifications to Windows will only work effectively if OEMs and ISVs have the knowledge to exercise this right. Microsoft currently releases an enormous quantity of information on the Windows operating system and its APIs, through the Microsoft Developer Network (MSDN) and other means. Indeed, the indirect network externalities supporting the Windows monopoly provide a strong incentive for Microsoft to ensure that as many applications as possible run well on its system. But Microsoft also has an incentive to bolster its operating system monopoly by selectively withholding timely information to impede or delay the development of products that threaten to reduce the applications barrier to entry.[40] In addition, Microsoft has also required anticompetitive actions in exchange for information, as in the ''first wave'' agreements found illegal by the Court of Appeals.[41]

The PFJ requires disclosure of ''the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product'' (Section III.D) and specified Communications Protocols (Section III.E).

These requirements, however, are deficient in several ways:

u Windows APIs are not covered. In particular, the PFJ does not require the disclosure of the APIs used by Windows. Although Microsoft already has an incentive to disclose Windows APIs, there are circumstances where delay could be more profitable. The consequences of this omission are aggravated by the definition in Section VI.U: ''the software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.'' Thus, as middleware gets blended in the operating system, the scope of disclosures could be narrowed.

u Internet Explorer and other middleware APIs are not covered. Furthermore, the agreement does not require the disclosure of the APIs used by Internet Explorer. Although the government did not prove that Microsoft was guilty of monopolizing the browser market, dominating this market played a key role in shoring up its monopoly in the operating systems market. As a result, requiring disclosure of the APIs for Internet Explorer and other middleware could play a role both in denying the fruits of that monopoly and reducing this barrier to entry in its operating systems market. . Definitions could limit disclosure even further. The scope of APIs required to be disclosed under the agreement could be potentially limited even further by the control Microsoft has over what is ''Microsoft Middleware'' and what is the ''Windows Operating System Product.''

. Additional loopholes further limit disclosure and ability of non-Microsoft middleware to fully interoperate with Windows. Section III.J.1 provides a substantial loophole that exempts from the disclosure requirements anything that ''would compromise the security of a particular installation,... digital rights management, encryption or authorization systems...'' These are all very important technologies for Windows Media Player, Passport, the Internet Explorer browser, and any of the many programs that rely increasingly on security and encryption. In addition to giving Microsoft substantial discretion and blurring the disclosure requirements further, these exceptions would make it impossible for competitors to design middleware that fully interoperated with the Windows operating system, leaving certain features only accessible to Microsoft middleware.

. Disclosures are not timely. The disclosures are not very timely, allowing Microsoft enough time to ensure that its products—and products by favored OEMs and ISVs— enjoy a substantial ''first to market'' benefit in taking advantage of the functionality of the operating system. Microsoft has up to 9–12 months to disclose the APIs and communications protocols. In the case of a new version of the Windows Operating System Product, the PFJ bases the timing of the disclosure on the number of beta testers, effectively giving Microsoft substantial discretion over the timing of the required disclosures through its definition of the term ''beta tester'' and its control over their number. (Sections III.D and VI.R)

. Microsoft could cripple rival products. The PFJ does nothing to prevent Microsoft from deliberately making changes in Windows with the sole or primary purpose of disabling or crippling competitors'' software products. 30

3. Ensuring that OEMs and ISVs are protected from retaliation by Microsoft for providing alternatives to consumers The right to make alterations to the Windows desktop will only be effective if companies are protected from retaliation for exercising it. The PFJ provides some protection against retaliation (Section III.A) and requirements for uniform licensing and pricing for Microsoft Windows (Section III.B). The protections, however, are only partial, in that they omit several important behaviors, still leave substantial scope for Microsoft to retaliate, and contain a very large loophole.

First, the prevention against retaliation only applies to a very specific set of actions that are specified in the PFJ, such as altering the icons on the desktop or promoting an IAP in the initial boot sequence. This rule does not apply to other actions by OEMs, such as the inclusion of third party software that does not fall under the definition of Non-Microsoft Middleware.

Second, there may still be some scope for discrimination and retaliation. Section III.B.3 of the PFJ explicitly gives Microsoft the right to use ''market development allowances,'' for example to provide a pre-license rebate to selected OEMs on the basis of potentially ambiguous joint ventures. Although these incentives would have to be offered uniformly, there still could be some scope for defining them in an exclusionary manner. Furthermore, the relationships between Microsoft and computer companies are very complex and multifaceted, leaving substantial scope for retaliation in aspects not covered by the PFJ, including potentially the pricing of Microsoft Office and the server business.

Finally, Section III.A allows Microsoft to terminate the relationship with an OEM without cause and within a brief span of time simply by delivering two notices of termination. With no ready substitutes for Windows available, this power would give Microsoft substantial leverage in its relationships with OEMs. Although the OEM would have the option of litigating Microsoft's denial of a Windows license, the text of Section III.A and the lack of ''bright

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[37] As defined in Section VI.N.

[38] As defined in Section VI.K.

[39] This provision would allow Microsoft to run the ''Desktop Cleanup Wizard'' that removes unused shortcuts from the desktop in a non-discriminatory manner. Nothing in our reading of the language of Section III.H.3, however, would limit the power of Microsoft to remove all user access to non-Microsoft middleware or restore access to Microsoft middleware.

[40] 40 For example, the District Court found that Microsoft withheld the ''Remote Network Access'' API from Netscape for more than three crucial months in mid-1995. Findings of Fact, • 90–91, 84 F. Supp. 2d at 33.

[41] These agreements, which were entered into between the Fall of 1997 and Spring of 1998 between Microsoft and several ISVs, provided preferential early access to Windows 98 and Windows NT betas and other technical information in exchange for using Internet Explorer as the default browser. See See 253 F.3d at 71–72.

line'' rules in the PFJ would make this litigation costly and uncertain—and thus an imperfect means of protection against this threat. 4. Ensuring that OEMs have financial incentives to make changes that benefit consumers

Even if the three previous conditions were met, they would be economically irrelevant if OEMs did not have financial incentives to take advantage of the new licensing freedoms. The production of PCs is a highly competitive industry with very low profit margins.[42] PCs are virtually a commodity that can be priced based on a limited set of characteristics like processor speed and hard drive size. All of the steps allowed by the PFJ—including installing non- Microsoft middleware or removing user access to Microsoft middleware—entail higher costs for the OEMs both in the costs associated with the initial configuration of the system and in the added costs of end user support.[43] In addition, OEMs may perceive that Microsoft would take additional steps to raise their costs through forms of retaliation either permitted by the PFJ or imperfectly banned. These costs may explain why, to our knowledge, no major computer manufacturer has yet taken Microsoft up on its July 11, 2001 offer to remove access to Microsoft middleware and replace it with non-Microsoft middleware.[44]

As a result, the key source of greater competition and consumer choice in the computer experience—OEMs—would have limited economic basis for promoting such choice. In part this is because the value of some of the new freedoms obtained by the OEMs in the PFJ are limited

by loopholes. For example, by allowing Microsoft to bar OEMs from marketing non-Microsoft middleware in the initial boot sequence, the PFJ removes one source of revenue and choice. In addition, allowing Microsoft to encourage users to ''voluntarily'' revert to the Microsoft-preferred configuration of icons, the Desktop, and the Start Menu after 14 days may reduce substantially the value of this screen ''real estate.'' As a result, the PFJ precludes some of the principal means by which OEMs could be remunerated for providing additional or alternative functionality desirable to consumers.

The more fundamental problem is that OEMs continue to be required to license a version of Windows that includes middleware like Internet Explorer, Windows Media Player, and Windows Messenger. By not requiring Microsoft to sell a cheaper, stripped-down version of the operating system—excluding many of these added features—the PFJ in effect would require OEMs to pay twice—once for Microsoft's version of the product (as bundled into the price of Windows) and once for the alternative. Such bundling is a particularly invidious way of undermining competition. In effect, it implies that the marginal cost of any item in the bundle is zero, making competitive entry, even for a superior product, impossible. The fact that such entry has occurred is testimony to the superiority of the rival products—consumers are willing to pay substantial amounts for the alternatives. In addition, forced bundling can have adverse effects on consumers, because it uses up memory and storage space, and there is always the possibility that the commingled code will interfere with the performance of other applications.

In summary, under the PFJ, OEMs are not provided the rights, means, protections, or incentives to create alternative choices for consumers. As a result, the lynchpin of the PFJ's strategy for promoting competition would be greatly attenuated.

B. Reducing the applications barrier to entry

The applications barrier to entry was central to the Court of Appeals'' understanding of this case. It is the principal barrier to entry that protects Microsoft's overwhelming dominance of the market for operating systems for Intel-compatible PCs. Furthermore, the court found that Microsoft engaged in illegal acts to increase the applications barrier to entry, principally by suppressing Netscape and Java at the expense of Internet Explorer and Microsoft's version of Java. Thus, any remedy that is ''tailored to fit the wrong creating the occasion for the remedy'' must necessarily take affirmative steps to reduce the applications barrier to entry and also prevent Microsoft from engaging in anticompetitive actions to increase this barrier. Unfortunately, the PFJ barely addresses this central issue.

The following discusses two key aspects of the applications barrier to entry: the use of anticompetitive means to reduce the market share of rival middleware (and thus its potential to reduce the cost of porting applications to different operating systems) and the use of decisions about Microsoft Office to influence the prospects of rival operating systems. 1. Middleware and the applications barrier to entry

The CIS states that under the PFJ, ''OEMs have the contractual and economic freedom to make decisions about distributing and supporting non-Microsoft software products that have the potential to weaken Microsoft's personal computer operating system monopoly without fear of coercion or retaliation by Microsoft.''[45] Even if the PFJ did give OEMs this contractual and economic freedom without fear of retaliation, and the previous subsection expressed severe doubts on this point, it still would do little if anything to weaken Microsoft's operating system monopoly.

Enhancing competition by allowing OEMs and ISVs to provide consumers with a greater variety of choices, the subject of the previous subsection, is in some sense literally superficial. It involves the ability of firms in the computer industry to change the outer appearance of a computer and the way it is perceived and used by users, including the ability and ease of accessing programs that are included with the Windows operating system or added by the OEM or end user. The issues raised by the applications barrier to entry go deeper, to the underlying code in Windows. In particular, although the PFJ allows end users or OEMs to remove user access to Microsoft Middleware, it also allows Microsoft to leave in place all of the programming underlying this middleware. This code could still be accessed by other programs that write to the APIs exposed by the middleware.

The Court of Appeals explicitly rejected Microsoft's explanation for commmingling the code of Windows 98 and Internet Explorer, concluding that it deterred users from installing Netscape, had no substantive purpose, and thus that ''such commingling has an anticompetitive effect.''[46] Despite this strong finding, no provision in the PFJ addresses this issue.[47]

Netscape and Java represented a very rare challenge to Windows—they offered the opportunity to develop middleware that would allow a wide range of applications to be costlessly transferred between different systems. It is difficult to imagine when, if ever, there will be a challenge of this magnitude again. Nonetheless, some existing middleware—and future middleware that we may not even be able to forecast today—will continue to present challenges to Windows. For example, there is still substantial competition in the market today for multimedia players, with Windows Media Player, RealNetworks RealOne player, and Apple's QuickTime, among others, all offering different versions of similar functionality.

The treatment of middleware is crucial because the market for middleware, like the market for operating systems, is subject to substantial network externalities. These externalities mean that the desirability of a middleware package increases as the installed user base increases. As with operating systems, such externalities arise for direct reasons (e.g., users can share files in a particular media format) and indirect reasons (writing a program to different middleware, so the dominant middleware will have the most programs associated with it). With regard to indirect network effects, the key point is that the installed base is not the number of computers with shortcuts to the given middleware, but the number of computers with the underlying code permitting the middleware to be invoked by a call from another program. A programmer that wanted to develop, for example, an interactive TV program could still use Windows Media Player regardless of whether or not an OEM or end user had removed the icons or shortcuts that allow easy user access to this program.

By providing no means for OEMs or end users to undo the commingling of code that ties

[42] For example, the Washington Post recently noted that profit margins are in ''single digits.'' See Rob Pegoraro and Dina E1 Boghdady (January 20, 2002), ''Building Creativity Into the Box'' Washington Post.

[43] In the Microsoft trial numerous industry witnesses testified to the user confusion and added support costs associated with having alternative browsers pre-installed on a computer. See 253 F.3d at 71–72.

[44] Microsoft Press Release (July 11, 2001), ''Microsoft Announces Greater OEM Flexibility for Windows.''

[45] CIS, p. 25.

[46] See 253 F.3d at 66.

[47] The Court of Appeals rejected, per curiam, Microsoft's petition for a reheating on this point. Order (DC Cir. Aug. 2, 2001).

Microsoft middleware to the operating system, the PFJ ensures that Microsoft middleware will have an installed base, in the relevant sense, of nearly the entire PC market. As a result, programmers will find it cheaper to write to Microsoft middleware rather than to rival programs. In this case, ubiquity could trump quality—because the size of a middleware's installed base could be more important than the quality of the middleware program. Microsoft middleware thus increases the applications barrier to entry in the same manner that promoting Internet Explorer and restricting the distribution of Netscape do. By allowing Microsoft to continue to commingle the code for middleware and its operating system, and preventing OEMs or end users from making real choices, the PFJ contributes to Microsoft's ability to restrict the market share of its rivals in neighboring ''layers'' to the operating system, reducing the main form of potential future competition at ''layer boundaries.''

2. Microsoft Office and the applications barrier to entry

As noted above, in the mid-1990s, Microsoft Windows was compatible with more than twenty times as many programs as IBM's OS/2 Warp. This offers a dramatic example of the applications barrier to entry. One crucial feature of Microsoft is that in addition to producing the Windows operating system, it is also a leader in many other applications. Network externalities work here to help create and maintain market dominance. Thus, for a rival operating system to succeed it would need not only to persuade ''neutral'' software companies to write to it, but also persuade Microsoft itself to port some of its leading applications to the operating system. To the degree that Microsoft produces leading or essential applications, they can use their refusal to port these applications to reinforce their Windows monopoly.

One application, in particular, is especially important to users: Microsoft Office and its associated programs, including Word (for word processing), Outlook (for e-mail and scheduling), Excel (for spreadsheets), and PowerPoint (for presentations). Indeed, Microsoft Office has about 95 percent of the market for business productivity suites. 48

The Court of Appeals affirmed the District Court's finding that the desire by Apple to ensure that Microsoft continued to maintain and update Mac Office was central to its motivation to enter into an illegal, anticompetitive deal with Microsoft to suppress Netscape and promote Internet Explorer. In addition, Microsoft does not currently have a version of Office that operates on Linux, the primary alternative to Windows in the PC operating system market. Withholding or simply threatening to withhold Microsoft Office from other operating systems is 48 Richard Poynder (October 1, 2001). ''The Open Source Movement.'' Information Today, 9:18. a powerful way in which Microsoft can use anticompetitive means to reduce the desirability of rivals while also extracting concessions or exchanges that help support the Windows monopoly of PC operating systems.

The PFJ, however, does not address any issues relating to the pricing, distribution, or porting of Microsoft Office. This considerable loophole has been used by Microsoft in the past. In the future, Microsoft will have the same incentives to use this loophole again. In addition, it may be necessary to examine additional Microsoft applications that can be used to reinforce the Windows monopoly. Given the difficulty of undoing a monopoly of this sort, once established, it is particularly appropriate to reach beyond remedies that are narrowly circumscribed.

C. Preventing Microsoft from strengthening its operating system monopoly by extending it to encompass additional products

The Court is charged with fashioning a remedy that ''ensure[s] that there remain no practices likely to result in monopolization in the future.'' Some of the most important newly emerging areas are multimedia, networking, web services, and hand-held computing. Microsoft is already making substantial investments in these areas with its .NET strategy, Microsoft Passport, MSN, Windows Messenger, Windows Media Player, and the Pocket PC operating system.

The recently released Windows XP is characterized by substantial integration between all of these features; indeed the seamless integration is one of Microsoft's chief selling points for Windows XP. Microsoft has marketed Windows XP (standing for ''experience'') on the basis of its seamless integration between the Internet, multimedia, and the computer. For example, on the day it was released, a Microsoft press release announced, ''Windows XP Home Edition is designed for individuals or families and includes experiences for digital photos, music and video, home networking, and communications.'' [49]

Like Internet Explorer, these new areas present new opportunities for Microsoft to leverage its monopoly in the operating system to dominate other markets. In addition, Microsoft could use its strong or dominant position in these new markets to erect new barriers to entry that prevent potential competitors from offering products and services with part or all of the functionality provided by Windows. For example, if Passport is successful then a rival operating system would not just need to persuade other developers to write for it, but would also need to develop its own version of Passport and convince numerous e-commerce sites to use it. If the rival operating system failed in any of these steps, its attempts to establish itself could be seriously curtailed. The PFJ, however, does not address any aspects of these important emerging barriers to entry.

VIII. STEPS TO IMPROVE THE PROPOSED FINAL JUDGMENT: THE LITIGATING STATES'' ALTERNATIVE

The goal of this Declaration is to explain why we believe that the PFJ is deficient and why the Court should exercise its discretion to fashion a remedy in this case that would promote competition and benefit consumers. We do not propose an alternative remedy or provide an exhaustive analysis of any other proposals. Our analysis of the shortcomings of the PFJ, however, can be illustrated and strengthened by a selective comparison of some of the provisions in the PFJ with the proposal transmitted to the court by the nine litigating States and the District of Columbia on December 7, 2001.[50]

Many of the issues in the ''Plaintiff Litigating States'' Remedial Proposals'' are technical and involve loopholes, some of which were discussed above including stronger anti-retaliation provisions and a broader definition of middleware that could not be manipulated by Microsoft. In addition, this proposed remedy makes an important change in enforcement: it proposes a Special Master, rather than requiring new legal proceedings to enforce the judgment. None of these important issues are discussed here. Instead, we focus on selected areas in which the litigating States'' proposal illustrates some of the principal economic points identified in the preceding analysis.

A. Fostering competition through OEMs and reducing the applications barrier to entry

The litigating States proposal would require Microsoft to license a cheaper version of Windows that does not include commingled code from added middleware. [51] In addition, the proposal would require Microsoft to continue to license older versions of its operating system without raising its prices. This would have two effects. First, it would more effectively promote competition and consumer choice by allowing OEMs to ship computers with a wide range of alternative middleware, thereby allowing consumers to choose between different versions or

Moreover, such a provision would provide Microsoft with better incentives; only if it produced an operating system which performed substantially better would it be able to sell its new releases. It would at least attenuate its ability to use new releases as a way of extending its market power. Some have advocated even stronger measures to ensure Microsoft faces pro- consumer, pro-competition incentives, including requiring Microsoft to release all of its Windows source code and requiring the free distribution of its operating system after 3 to 5 years. Second, this provision would directly address the Court of Appeals finding that Microsoft's commingling of code was anticompetitive. By

[49] Microsoft Press Release, ''Windows XP is Here!'' 10/15/01.

[50] United States v. Microsoft Corp., ''Plaintiff Litigating States'' Remedial Proposals,'' in the U.S. District Court for D.C, December 7, 2001.

[51] The Court of Appeals overturned the District Court, finding that Microsoft could not be held liable for the fact that in certain situations, like updating Windows or accessing help files, Internet Explorer overrides the user's default browser settings and opens automatically. This implies that the complete removal of HTML-reading software is impossible. But Windows could be shipped with, for example, a stripped-down browser that performs essential system functions. Most of the functionality of Internet Explorer, however, is not necessary for the examples Microsoft invoked. This is analogous to the way in which Windows is shipped with a stripped-down text editor, Notepad, but not with a full-fledged word processor.
combinations. The lack of financial incentives for OEMs to take advantage of the more liberalized licensing rules is one of the principal deficiencies in the PFJ.

disentangling the middleware from the operating system, this proposal would allow greater competition in middleware—and thus ultimately in operating systems—by reducing the network externalities that benefit Microsoft middleware at the expense of potentially superior products.

B. Internet Explorer browser open source and Java distribution

Two of the fruits of Microsoft's monopolization of the operating systems market are the dominance of the Internet Explorer browser and the destruction of Java as a viable competitor.

The anticompetitive measures that helped achieve these goals protected a crucial ''chink in the armor'' of the Windows operating system. The PFJ does nothing to ''deny the defendant the fruits of its statutory violation.'' [52] Furthermore, it does not enhance the ability of competitors to interoperate with Internet Explorer because it includes no disclosure requirement for the Internet Explorer APIs.

The litigating States propose to remedy these deficiencies by requiring Microsoft to publish the source code and APIs for Internet Explorer and freely license them to competitors. In addition, their proposal would require Microsoft to distribute a Sun-compatible version of Java Virtual Machine with all future operating systems. The result would be to decrease the applications barrier to entry and promote competition.

C. Cross-platform porting of Office

As discussed in the previous section, Microsoft Office is one of the most crucial applications for many users. The existence of this application for a particular operating system is one key factor in the demand for the operating system. The litigating States'' proposal would remove the ability of Microsoft to either threaten to withhold Office or actually withhold Office by requiring Microsoft to continue to port Office to Macintosh. In addition, the proposal would require Microsoft to auction off licenses to ISVs that would provide them with the entire source code and documentation for Office in order for them to port the product to alternative operating systems. Although we draw no conclusions about the particular rules proposed by the litigating States, this proposal would clearly reduce Microsoft's ability to deliberately raise the applications barrier to entry.

D. Mandatory disclosure to ensure interoperability

The PFJ requires some disclosure to ensure that Microsoft is not able to withhold certain information to illegally benefit Microsoft Middleware at the expense of Non-Microsoft Middleware. The disclosures are limited in scope and timing. The litigating States'' proposal is substantially broader.

Of particular importance, the litigating States'' proposal recognizes that ''nascent threats to Microsoft's monopoly operating system currently exist beyond the middleware platform resident on the same computer'' and thus the States'' proposal requires timely disclosure of technical information to facilitate ''interoperability with respect to other technologies that could provide a significant competitive platform, including network servers, web servers, and hand- held devices.'' [53] In doing this, the proposal would reduce the ability of Microsoft to use its dominant position in operating systems to eliminate emerging threats at the boundary of this ''layer'' of computing.

IX. CONCLUSION

The Revised Proposed Final Judgment agreed to by the U.S. Department of Justice, the Attorneys General of nine States, and Microsoft Corporation is critically deficient. The overall aims of the PFJ are laudable—to increase competition and reduce Microsoft's ability to maintain its monopoly at the expense of consumers. But the PFJ will not succeed in achieving these goals. It does not change any of the incentives faced by Microsoft to undertake anticompetitive actions. It restrains these anticompetitive actions only with highly specific and exception-ridden conduct requirements. And it has an insufficient enforcement mechanism.

The interest of consumers in a greater range of choices, lower prices, and greater innovation would be served by rejecting the PFJ and replacing it with a more effective conduct remedy. A remedy for this case should recognize that the monopoly power created by Microsoft's past anticompetitive, illegal practices is likely to persist, and that it will therefore be likely to continue to enjoy the fruits of its illegal behavior, unless there are far stronger remedies than those in the PFJ. The new remedy should change Microsoft's incentives. It should restrict Microsoft's ability to repeat its past, or develop new, anticompetitive practices. It should provide OEMs and ISVs with the means and incentives to stimulate genuine competition in the provision of platforms. And it should take whatever steps are possible to reduce the applications barrier to entry so that there is greater scope for genuine competition in the market for PC operating systems.

I, Joseph E. Stiglitz, declare under penalty of perjury that the foregoing declaration is true and correct. Executed on January 28, 2002.

E. Stiglitz

I, Jason Furman, declare under penalty of perjury that the foregoing declaration is true and correct. Executed on January 28, 2002.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, UNITED STATES OF AMERICA, Plaintiff, v. Civil Action No. 98–1232 (CKK) MICROSOFT CORPORATION, Defendant.)))

STATE OF NEW YORK, et al.,)) Plaintiffs, v. Civil Action No. 98–1233 (CKK) MICROSOFT CORPORATION,) Defendant.))

DECLARATION OF EDWARD ROEDER

Edward Roeder declares under penalty of perjury as follows:

I. INTRODUCTION

1. I am a Washington journalist, author, lecturer, and editor, expert on the U.S. Congress, elections and efforts to influence the U.S. government. My byline has appeared in most major U.S. newspapers, many top magazines, and on all major wires and networks. I have written, edited, produced and reported on money in politics, Congressional ethics and the American political economy for more than three decades. My experience includes work as a Senate subcommittee counsel, House select committee chief investigator, United Press International editor, publisher, White House speechwriter, government aide at level GS-15, freelance reporter and publisher. I founded Sunshine Press Services, Inc., a Washington news service and publishing house specializing in ''Casting Light on Money and Politics.'' Sunshine has developed References to Use,

Not Just Peruse TM, computer-based reference works on U.S. politics. As National Political/Finance

Editor for United Press International, I produced the nation's first weekly state-by-state computer- generated reports on federal election financing. In 1974, I became the first freelance correspondent fully accredited to U.S. House & Senate Press Galleries. As a freelance print and broadcast reporter, I specialized in covering elections and election financing. In Roeder v. FEC, I successfully sued Federal Election Commission under the federal Freedom of Information Act, forcing a reduction in fees for records and release of computerized data.

My experience includes lecturing about covering influences on government at the graduate schools of journalism at Columbia, Northwestern (Medill), American, Maryland and other universities, and at the Hastings Center, the Heritage Foundation, and many other forums, and testifying before U.S. House and Senate committees. I also taught a public affairs course, Shadow Government in the Sunshine State, for three terms at Florida State University. I have appeared on ABC's Nightline, the CBS Evening News, World News Tonight (ABC), NBC Nightly News, All Things Considered (NPR), John McLaughlin, and many other broadcast outlets.

My reference publications include PACs Americana, the 1,150-page authoritative reference on political action committees and their interests, Congress On Disk TM, the pioneer diskette publication on politics, PAC-Track TM, covering all transactions by political action committees and party committees, FatCat-Track TM, covering ''soft money'' and all contributions of $200-and-up from individuals to any federal party, campaign or PAC, and Ready Money Reports TM, comparing relative financial standings of each federal campaign. A partial list of news clients is attached as Appendix B.

[52] 253 F.3d at 103, quoting United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968).

[53] Litigating States, pp. 10–11.

2. I was commissioned by the Computer & Communications Industry Association to conduct a review of publicly available documents, news reports, and commentary regarding Microsoft's lobbying and political contributions since the United States Department of Justice and 19 States filed suit against Microsoft in 1998. [1]

3. My review of the available documents has led me to conclude that over the past five years Microsoft has engaged in a ''pattern and practice'' of political influence peddling in many ways unprecedented in modem political history. [2] What makes Microsoft's lobbying efforts so unique is not necessarily the size (i.e. level of political contributions) but the scope of its efforts and the speed at which Microsoft went from having almost no political presence in Washington DC to having one of the largest and most sophisticated political operations in history.

4. By ''scope'' I am referring to the breadth of Microsoft's efforts. Microsoft has not merely established one of the largest Political Action Committees, or leapt to the top of the corporate contributor list in ''soft money,'' unregulated corporate contributions. Over the past five years Microsoft has also assembled a large lobbying office and retained dozens of high-powered consultants; Microsoft has created numerous ''front'' groups and has contributed heavily to a variety of think tanks and other organizations willing to espouse Microsoft's view of antitrust policy and this case; and Microsoft has created a variety of grassroots capabilities that appear to be directed at state-level government.

5. Two key factors indicate that Microsoft's lobbying efforts were designed and directed to try to minimize the impact of its lawsuit and try to achieve a result in the political process that it is Wall Street Journal October 15, 1999. ''Microsoft Paid For Ads Against DoJ Case.'' Madeleine Acey. TechWeb September 20, 1999. ''Microsoft Paid For Ads Backing Its Trial Position.'' David Bank. The Wall Street Journal September 20, 1999. ''Microsoft Paid For Ads Backing It In Trial.''

Seattle Times September 19, 1999. ''Pro-Microsoft Ads Were Funded by Software Giant.'' Greg Miller. Los Angeles Times September 18, 1999. ''Microsoft Paid for Ads About Trial.''

Associated Press September 18, 1999. ''Microsoft Covered Cost of Ads Backing It in Antitrust Suit.'' Joel Brinkley. New York Times September 18, 1999. ''Rivals fear Microsoft will cut a deal.'' John Hendren. The Seattle Times June 21, 2001. ''Bush's Warning: Don't Assume Favors Are Due.'' Gerald F. Seib The Wall Street Journal January 17, 2001. ''Bounty Payments are offered for pro- Microsoft letters and calls.'' The Wall Street Journal October 20, 2000. ''Microsoft is Source of 'Soft Money'' Funds Behind Ads in Michigan's Senate Race.'' John R. Wilke. The Wall Street Journal October 16, 2000. ''Microsoft leans creatively on levers of political power as breakup decision looms, 'stealth'' lobbying efforts aim for survival.'' Jim Drinkard and Owen Ulmann.

USA Today May 30, 2000. ''Microsoft's All-Out Counterattack.'' Dan Carney, Amy Borrus and Jay Greene. BusinessWeek May 15, 2000. ''Aggressiveness: It's Part of Their DNA.'' Jay Greene, Peter Burrows and Jim Kerstetter. BusinessWeek May 15, 2000. ''The Unseemly Campaign of Microsoft.'' Mike France. Business Week April 24, 2000. ''Microsoft's Lobbying Abuses.'' Editorial. New York Times November 1, 1999 ''Awaiting Verdict, Microsoft Starts Lobbying Campaign.'' Joel Brinkley. New York Times November 1, 1999. ''Microsoft Seeks Help Of Holders.'' John R. Wilke. The Wall Street Journal November 1, 1999. ''Microsoft's Bad Lobbying.''

Editorial. Washington Post October 24, 1999. ''Microsoft Attempt To Cut Justice Funding Draws Fire.'' David Lawsky. Reuters October 17, 1999. ''Microsoft Targets Funding for Antitrust Office.'' Dan Morgan and Juliet Eilperin. Washington Post October 15, 1999. ''Pro-Microsoft lobbying to limit antitrust funding irks top lawmakers.'' The Wall Street Journal October 15, 1999.

''Microsoft Paid For Ads Against DoJ Case.'' Madeleine Acey. TechWeb September 20, 1999. ''Microsoft Paid For Ads Backing Its Trial Position.'' David Bank. The Wall Street Journal September 20, 1999. ''Microsoft Paid For Ads Backing It In Trial.'' Seattle Times September 19, 1999. ''Pro-Microsoft Ads Were Funded by Software Giant.'' Greg Miller. Los Angeles Times September 18, 1999. ''Microsoft Paid for Ads About Trial.'' Associated Press September 18, 1999. ''Microsoft Covered Cost of Ads Backing It in Antitrust Suit.'' Joel Brinkley. New York Times September 18, 1999. apparent it could not achieve in the legal process. First, Microsoft's efforts are new. Their onset coincides with the time the government sued Microsoft and they have continued and escalated ever since. Second, Microsoft's efforts are completely out of proportion to the rest of the high- technology industry. There is not one other example of a software, computer hardware, or Internet firm that comes anywhere near Microsoft's level of campaign contributions.

6. I am not a lawyer, an expert on antitrust or an expert on the Tunney Act. My substantive views of of the Proposed Final Judgment are based primarily on the analysis of Nobel economist Joseph Stiglitz, whose declaration also supports the CCIA submission.

7. The Tunney Act was enacted after the ITT scandal during the Watergate affair. As the court is aware, Watergate spurred a number of political reforms requiring ''sunshine'' on the political activities of special interests, in particular. But the Tunney Act was also enacted during a different political era, when political influence peddling was far less sophisticated than it has become after a quarter-century of efforts to circumvent the ''reforms'' of the 1970s. By necessity, political influence peddling is no longer necessarily marked by a single ''transaction'' or a single ''meeting,''

or even an overt ''quid pro quo.'' In fact, one of the effects of the modem reforms has been to legalize many activities—especially the transfer of funds from corporate to political coffers—that had long been illegal under laws in effect since 1907 or 1934. Lobbying today is marked by incrementalism, where there may not be any single meeting, or any single contribution, or any single agreement. Rather, over time, what may develop is an ''understanding'' of the respective parties'' interests, objectives, and desired outcomes. Instead of corruptly influencing politicians to buy a discreet government decision, the money exerts far broader influence over appointments, policy frameworks or positions, and ultimately, decisions. Much of it may be legal, but it's far more corrupting than simple bribery.

The simple matter of paying off a corrupt politician to obtain a favorable government decision is certainly offensive and unfair to the voters and those who are disadvantaged by the decision. Yet such petty or grand corruption, if isolated, does not seriously threaten the American system. What Microsoft has accomplished over the past half decade, however, presents a far darker prospect.

By pouring money into America's institutions of political pluralism, rewarding those organizations and individuals that do its bidding and denying or limiting funding to its opponents, Microsoft has in some ways corrupted American political discourse itself. Newspapers that have run an editorial or opinion article sympathetic to a Microsoft position, reporters who have interviewed a professor, politician, or pundit about this antitrust action, and anyone who has hosted or observed public discourse on the subject must now wonder: Were the views expressed independent and sincere, or were they purchased by an unseen hand, smothering the American marketplace of ideas? As is detailed below, Microsoft's efforts to subvert democratic institutions such as political campaigns and debates, party organizations, news outlets, think tanks and government offices have been so vast as to be a new phenomenon, unenvisioned and unaddressed by existing political mechanisms intended to check the influence of special interests. Limited campaign contributions can serve the purpose of encouraging, facilitating, extending and opening political discussion.

But political money in such vast amounts is a substitute for politics, not a means of undertaking political action.

While the modem-day political pressure brought to bear by Microsoft in the last decade may not be precisely the same as that undertaken by ITT in the 70's, it is no less objectionable to the Court's charge of acting on behalf of the ''public interest.''

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[1] I am aware that Microsoft has undertaken an effort to use the Court discovery process to build a political case against its competitors. The relevancy of Microsoft's strategy will have to be determined by the Court since Microsoft—and not its competitors—have been found to be liable under the antitrust laws. I took input and advice from a broad range of sources in conducting this research, including CCIA and its members. This research is nonetheless based on the extraordinary public record of Microsoft's political activities during the timeframe of this case. I have also undertaken extensive original review of the records of the Federal Election Commission regarding election finance. These records covering all election cycles since 1970–80 have been available in computerized format since the court-ordered settlement of Roeder v. FEC, a Freedom of Information lawsuit I filed in this very courthouse two decades ago.

[2] ''Microsoft Targets Funding for Antitrust Office.'' Dan Morgan and Juliet Eilperin. Washington Post October 15, 1999. ''Pro-Microsoft lobbying to limit antitrust funding irks top lawmakers.''

8. Based on my review of the public record and the declaration provided by Dr. Stiglitz, it is apparent that the Department of Justice undertook a major ''change in policy'' at a critical moment this past fall. My belief—again based largely on Dr. Stiglitz'' analysis and substantiated by a wide array of antitrust experts and scholars—is that the Proposed Final Judgment cannot be reconciled with the government's extensive court victory. The public record suggests a Microsoft strategy that appears to defeats in the legal process, but which focuses on winning an acceptable outcome through the political process. It appears to be working. Indeed, if it weren't working, such vast expenditures might give rise to a shareholder suit for breach of fiduciary duty. If Microsoft's money has had the desired effect of inducing the U.S. government to throw in the towel on the biggest antitrust suit in history, such a suit could be easily defended. But to argue that Microsoft had no such intent is tantamount to suggesting that its corporate spending it in the control of squandering fools.

9. I have also reviewed Microsoft's lobbying disclosures filed before the court as part of the Tunney Act. Again, while I am not a lawyer, my review of public documents, press reports and the plain language of the statute leads me to believe that disclosures made to the court can not possibly be reconciled with Microsoft's lobbying activities surrounding both this case and this settlement.

10. Various press reports indicate that Microsoft is trying to convince the court and the public that the litigating states have been ''put up to this'' (i.e. continuing to litigate through the remedy phase) by Microsoft's competitors, and therefore cannot be acting in the public interest. My review of public documents suggests this theory is backwards and should be particularly alarming to the Court. The far more likely scenario, into which the Court must inquire, is whether the Department of Justice has executed Administration policy in response to the unprecedented campaign to influence the new Administration's antitrust policy generally, and as antitrust policy applies to the high-technology sector and Microsoft, in particular.

11. In fact, with the benefit of hindsight, various Justice Department actions make perfect sense in the context of my research. The Department went to great lengths to create the appearance they were going to be ''tough'' with Microsoft, beginning with enlisting President Bush's renowned litigator, Phillip Beck. What actually occurred, however, is they systematically appear to have given away their hard-fought court victory. First, the Department unilaterally abandoned its pursuit of structural relief, and informed the court it would not seek a review of the Sherman Act Section tying claim on remand. Then the Department suggested it would base its remedy on the interim conduct remedies ordered by Judge Jackson. Then the Department began speaking of the extensive litigation risk involved in pursuing a remedy based on the need for immediate relief. Finally, the Department—outside of public scrutiny—emerges with the Proposed Final Judgment, which based on Dr. Stiglitz'' analysis appears to be woefully inadequate.

12. I declare to the court that where ''there is smoke there is typically fire.'' Even if the ''fire'' in the context of modem day political influence peddling is very subtle, it nonetheless does not serve the public interest. My view is that Microsoft's political campaign has been so extensive the court should take immediate notice. In modem political influence-peddling and purchasing, Microsoft has set a new bar. South Korea's spreading cash throughout Washington in the 1970s Tongsun Park scandal paled in comparison.

13. During the course of my research I was struck by the similarities between Microsoft and the current scandal involving Enron Corporation. While Enron, of course, is in an entirely different business, it seems the core issue—from a public disclosure perspective—is its campaign contributions and its ability to influence the nation's energy policy. Microsoft's campaign contributions significantly surpassed those of Enron; Microsoft was a defendant in a major governmental lawsuit; and it appears Microsoft may have successfully influenced the Administration's antitrust policy, with major implications for legal antitrust precedent.

14. My recommendation to the court is to undertake an immediate review of Microsoft's lobbying activities surrounding this settlement, with particular attention to meetings with the Justice Department or the White House by Microsoft or its agents. Included in this review should also be contacts made on Microsoft's behalf to the Justice Department or the White House by Members of Congress, their official staff, and campaign staff. The court should also interview Department of Justice staff who do not operate within the sphere of political appointees. And the court should interview the political appointees of the Attorney General and their staff. Moreover, the court should review any contacts or communications between the Republican National Committee, the National Republican Senatorial Committee, the Republican Congressional Campaign Committee, and the White House or the Justice Department. Lastly, the court should review any contacts or communications between Microsoft and the settling states. Anything less would clearly not vindicate the public interest.

II. REVIEW OF PUBLIC RECORD

15. Since May 1998, Microsoft has fought strenuously in the courtroom to defend its ''freedom to innovate'' and to continue with business as usual. In fact, plugging in ''Microsoft + trial'' into the Google search engine produces more than 697,000 article hits. When ''Microsoft + politics'' is entered into the search engine, Google produced nearly 448,000 articles and links. But as hard as it fought inside the courtroom, Microsoft fought far harder—often secretly—outside the courtroom to influence the outcome of the trial. In a campaign unprecedented in its size, scope, and cost, Microsoft used campaign contributions, phony front groups, intensive lobbying, biased polling, and other creative, if not possibly unethical, pressure and public relations tactics to escape from the trial with its monopoly intact. According to media accounts, experts, and my own research, Microsoft spent tens of millions of dollars to attempt to create an aura outside the courtroom of what it could not prove inside—innocence. According to Business Week Magazine: ''Even seasoned Washington hands say they have never seen anything quite as flamboyant as the Microsoft effort.'' [3]

16. In late 2001, when the Department of Justice and a group of state Attorneys General agreed to the currently proposed settlement, it appeared as if Microsoft's efforts were successful. Fortunately, two obstacles stand in the way of Microsoft and the continued monopolization of the software industry: the remaining state Attorneys General who are continuing to litigate for a more effective remedy and the Tunney Act, which—among other things—requires Microsoft to divulge all of its dealings with the Administration and Congress in conjunction with the antitrust trial. A. Campaign Contributions

17. In 1995, before the United States Department of Justice and state Attorneys General from 19 states and the District of Columbia brought an antitrust case against it, Microsoft had virtually no presence in Washington, DC The company had only one lobbyist working out of a Chevy Chase, Maryland sales office and had contributed less than $50,000 in the previous election cycle. [4] Its lobbyist, Jack Krumholtz, had no secretary and its PAC was financed by only $16,000. In those days, the Microsoft lobbying operation was affectionately referred to in press reports as ''Jack and his Jeep.''

18. However, since the beginning of the antitrust case against Microsoft, the company has become a major political contributor and was the fifth largest during the 2000 election cycle [5], alongside the giants of the tobacco, telecommunications, pharmaceuticals and insurance industries. Microsoft's political contributions to elected leaders in a position to help the software giant in this election cycle when the trial was at its peak, was greater than all previous, cumulative campaign contributions. In the history of American PACs, only three companies that have raised at least $50K in one election cycle have increased receipts by 500% in the next. In 1984–86, Drexel Burnham Lambert, the corrupt and now-defunct securities brokerage, increased its receipts from just under $67,000 to more than $446,000, a 567% jump. In that same cycle, AT&T, facing antitrust divestiture, increased its PAC receipts by 745%, from $215,000 to $1.8 million. In the history of corporate PACs, only 68 have increased their spending by half in one election cycle after reaching a level of a quarter of a million dollars. Only 15 have doubled their spending in one election cycle after reaching that level. Only one—Microsoft—has approached tripling its spending after reaching that threshold. Microsoft increased its spending almost fivefold, from $267,000 to more than $1.2 million, between the 1997–98 and 1999–2000 election cycles. (Table 5.)

20. Every year, Microsoft tops itself. The company's political giving in the 2000

[3] BusinessWeek, May 15, 2000, Carney

[4] ''The Microsoft Playbook'' Common Cause

[5] San Francisco Chronicle, July 1, 2001, Wildermuth

cycle—the time leading up to its day of judgment in federal court—was again more than it contributed in all previous cycles combined. Campaign money to candidates and political parties in just one state was greater than Microsoft's contributions from 1990 through 1996 to every state and federal candidate combined. (Note that the government first levied antitrust charges against Microsoft in 1995.)

Except for Microsoft, no corporate PAC sponsor in American history has increased its PAC receipts by an order of magnitude, starting from a base of $50,000 or more. Since 1986, the only such firm that has increased its PAC receipts by as much as 500% in one election cycle is Microsoft. Receipts for Microsoft's PAC rose a record-setting 903%, froth $59,790 in 1995–96 to just under $600,000 in 1997–98. (Table 1.) Microsoft followed this by another jump of 165% in 1999–2000, to $1.59 million. (Table 2.) In the history of corporate PACs, only 15 have had as much as a 300% rise in receipts after achieving a base of $50,000. (That requires rising from at least $50,000 to at least $200,000.) None has ever followed such a rise with another three-digit percentage increase in receipts, except Microsoft. (That would require a subsequent rise to at least $400,000.) 21. Between 1995 and 2000, Microsoft donated more than $3.5 million to federal candidates and to the national parties, about two-thirds of which was contributed during the 2000 election cycle alone.[6] Including company and employee donations to political parties, candidates and PACs in the 2000 election cycle, Microsoft's giving (that of the company, its PAC and its employees) amounted to more than $6.1 million, far more than has been previously reported. [7] Nearly $1 million came in the 40 days immediately before the November 7th election. As most political operatives know, these late contributions often are made by donors who don't want their participation known until after the election, when financial reports for the final days of a campaign are due, and public and news media attention are no longer focused upon the election. The effect of delaying contributions until very near the election is to thwart efforts by the news media and the political opposition to make disclosures meaningful to voters before they vote.

i. Federal Contributions

(a) ''Soft'' Money

22. Comprising the majority of Microsoft's campaign contributions was soft money.[8] Like their overall presence in Washington, Microsoft's soft money donations grew substantially since the beginning of the antitrust trial. In fact, in the seven days preceding Judge Thomas Penfield Jackson's ruling against Microsoft, the company donated more in soft money to the national political parties than it gave to federal candidates and political parties between 1989 and 1996. 23. During the 1999–2000 election cycle, Microsoft and its executives accounted for some $2,298,551 in ''soft money'' contributions, according to FEC records. For context, consider that this was two-thirds more than the $1,546,055 in soft money contributed by the now-bankrupt Enron and its executives during the same period. candidates and political parties and PACs federally and in all 50 states.

As one business commentator put it: ''...there's something quite disturbing about watching the world's richest man trying to buy his way out of trouble with Uncle Sam... Gates's actions undermine the legal system itself.'' [9]

(b) Political Action Committee (PAC) Money

24. Microsoft's PAC donations also grew substantially in the years since the beginning of the antitrust trial. In 1998, the company made a concerted effort to increase the size of its PAC.

Within a matter of days, the company grew its PAC from $31,000 to $326,000. [10] Employees contributed $1.6 million to Microsoft's PAC for the 2000 election cycle which allowed the PAC to contribute more than $1.2 million. The PAC began the 2002 election cycle with an impressive $772,000 cash-on-hand—more than any other American corporate PAC.

Microsoft's unprecedented rise as a political player took its PAC from just under $60,000 in 1995- 96 receipts to just under $1.6 million in 1999–2000. In the history of corporate PACs, only two have had a rise of more than 1,000% in receipts over four years (two election cycles), after attaining $50,000. Only one, Microsoft, has had an increase of more than 2,000%. From 1995–96 through 1999–2000, Microsoft's PAC increased in size by more than 2,500%. (Table 4.)

(c) Party Breakdown

25. While Microsoft has donated to both national political parties, the company has tended to favor Republicans, who have been more vocal in their defense of the company. Between 1995 and 1998, 72% of Microsoft's contributions went to Republicans, while the GOP received only 55% of the company's donations during the 2000 election cycle. [11] Republicans received a total of $3.2 million, about half of which—$1.69 million—went to the national Republican Party. 26. Yet, when analyzing Microsoft's campaign contributions by donating entity, some stark disparities emerge. Virtually all of the money donated by individual Microsoft employees ($222,750) benefited Democratic 527s, groups that raise and spend money independent of political campaigns During this same period Microsoft employees gave $15,000 to Republican affiliated 527s. Democratic PACs also benefited from Microsoft's employees largesse, receiving $222,100 compared to just $42,875 for Republican PACs.

27. But Republicans enjoyed an edge in every other category; the majority of donations to leadership PACs, state parties and candidates went to the Republican Party. The following table illustrates the disparity.

Republican Democrat

Leadership PACs $162,000 $41,500

State Parties $255,025 $38,887

Candidates $1,053,792 $818,951

(ii) State Contributions

28. Along with the Department of Justice, 19 states and the District of Columbia initially prosecuted Microsoft. Naturally, then, Microsoft concentrated a good deal of its campaign contributions on state races.

29. Candidates and political parties in all 50 states received contributions from Microsoft, but none more so than the company's home state of Washington, which received $830,478. Republicans received $359,000 while $458,000 went to Democrats. Nearly all of the $100,000 edge for the Democrats came from contributions to the State Democratic Party, which totaled $85,387. 30. One of the original states participating in the suit was South Carolina, whose attorney general, Charles Condon, was facing re-election in 1998. Shortly before the election, Microsoft contributed $25,000 to the South Carolina Republican Party. According to the Chairman of the South Carolina Republican Party this was the largest unsolicited donation ever received. Three weeks after he won, Attorney General Condon withdrew from the antitrust case. Two years ago, Condon solicited and received a $3,500 donation from Microsoft.[12]

31. In California, a state represented by Attorney General Bill Lockyer, Microsoft contributed $25,000 to the 1998 election campaign for challenger Dave Stirling, a Republican; a contribution made nine days before election day. The company contributed an additional $10,000 to gubernatorial democratic candidate Gray Davis, whose opponent was among the original 19 state attorneys general to bring the antitrust suit against Microsoft.

32. Within weeks of the 2000 election, Microsoft CEO Steve Ballmer made late contributions of $50,000 each to two state Republican Parties, Michigan and Washington, where Microsoft found its defenders under fire. Then U.S. Senator Spencer Abraham, a Michigan Republican who is now Secretary of Energy, had been an outspoken supporter of Microsoft. Former U.S. Senator Slade Gorton, a Washington state Republican, who proudly called himself ''the Senator from Microsoft'' had even sought to cut the funding of the Justice Department's Antitrust Division while the court case was ongoing.

33. Microsoft used back channels to direct even more undisclosed soft money into the 2000 Michigan Senate race. According to The Wall Street Journal, Microsoft ''funneled'' soft money into the race by secretly making undisclosed contributions to the Michigan Chamber of Commerce to fund negative ads aimed at Abraham's opponent, now U.S. Senator Deborah Stabenow. Some close to the Chamber have estimated that the contributions, while legal and not requiring reporting, may have amounted to more than $250,000.[13] Such contributions are usually made to organizations to support the organization's activities, not political ads—which is why there is no disclosure

[6] Common Cause

[7] Independent analysis of giving to elective office

[8] ''Soft'' money is the term generally applied to unregulated, unlimited corporate and individual contributions that can not go to candidates but typically goes to political parties in support of party ''efforts.''

[9] BusinessWeek, April 24, 2000, France

[10] ibid.

[11] ibid.

[12] USA Today, 5–30–00, Ullman, Drinkard

[13] Wall Street Journal, Oct. 16, 2000, Wilke

requirement. Microsoft knew this and took advantage of the loophole in Michigan. Political operatives throughout the country reported similar occurrences in other political races considered ''top targets'' by both national parties, but efforts to gain access to contributor lists from some of the ''independent'' groups believed to be accepting the contributions have unsuccessful.

34. Significant contributions were also made in Missouri by Microsoft to help re-elect Senator John Ashcroft, the current U.S. Attorney General. Missouri was another state where independent groups without significant resources of their own suddenly were flush with money to run ads defending Ashcroft and attacking his opponent. Ashcroft, whose campaign benefited greatly from Microsoft's disclosed campaign contributions—$19,000 in reported donations—lost his election bid. He now runs the federal executive department responsible for proposing the settlement offer, and his office is now staffed with political operatives who played a role in raising the $19,000 from Microsoft, coordinating his campaign efforts with those of Microsoft in Missouri, and in one case, directing the entire Republican National Committee fundraising and political campaign operation in the 2000 election cycle.

35. Deborah Senn, the Democratic primary opponent of Washington State Senator Cantwell, received $15,000 more from Microsoft than did Cantwell who received $30,150. This total, however, dwarfs the money poured into now-former Senator Gorton's campaign—$131,160. Only

Democratic Congressman Jay Inslee's total of $126,850 comes close to that of former Senator Gorton. Congressman Inslee represents Microsoft's home district, and defends the company vigorously in Washington, D.C.

36. In addition to those in Washington State, candidates or parties in three other states received contributions totaling six figures. California was second at $174,900 with virtually the entire amount going to Leadership PACs—Members'' PACs that contribute money to other allied candidates—and directly to Members of Congress. Texas was third at $107,250 although this amount does not include contributions to the Bush/Cheney campaign. This was an unusually large amount for the state when compared to previous giving patterns.

37. While Microsoft contributed $100,000 to the Bush/Cheney Inaugural Committee in January 2001, virtually all contributions to presidential campaigns were made prior to July 31st, with the exception of contributions to Libertarian Party candidate Harry Browne's campaign. (This is presumably because, to be eligible for federal matching funds for the primaries and federal funding for the general election, major party candidates receiving are not allowed to solicit or receive campaign contributions after they are nominated at their conventions.) Only four primary presidential candidates received contributions greater than $10,000: Bill Bradley, $33,400; George Bush, $57,300; Al Gore, $28,000, John McCain $39,448.

Table 1. Candidates & Organizations Receiving $10,000 or more from Microsoft Following is a breakdown of Microsoft's contributions of more than $10,000 to candidates and organizations during the 2000 election cycle.

Abraham for Senate $24,650.00 Kerrey for US Senate $10,000.00

Adam Smith for Congress $31,750.00 Leadership PAC 2000 (Oxley) $10,000.00

American Success PAC(Drier) $11,750.00 Majority Leader's Fund (Armey) $11,000.00

Ashcroft (combined) $19,250.00 McCain 2000 $39,448.00

Bill Bradley for President $33,400.00 McIntosh for Governor $25,000.00

Brian Baird for Congress $38,400.00 Michigan Republican State Ctte. $50,000.00

Bush for President $57,300.00 Montana Republican State Ctte. $10,000.00

Bush/Cheney Inaugural $100,000.00 NDN $38,750.00

California FriendsLatino PAC $10,000.00 New Majority Project $15,000.00

California Women Vote $10,000.00 New York Senate 2000 $40,000.00

Cantwell 2000 $30,150.00 NWLeadership PAC (Gorton) $17,000.00

Citizens for Rick Larsen $35,600.00 Republican Party $1,691,090.50

DASHPAC $10,000.00 Republican Campaign Committee of New Mexico $33,492.48

Democratic Party $1,300,892.00 Republican Majority Fund (Don Nickles) $15,000.00

Democratic Party of Georgia $20,000.00 Republican Party of Virginia $12,000.00

Dooley for Congress $10,500.00 Republican Senate Council $15,000.00

EMILY's List $176,600.00 Santorum 2000 $11,000.00

Ensign for Senate $10,000.00 Senn 2000 $45,651.00

Feinstein 2000 $12,000.00 Snowe for Senate $10,000.00

Friends for Slade Gorton $131,160.00 TechNet $10,000.00

Friends of Conrad Bums $15,250.00 Utah Republican Party $29,383.00

Friends of Heidi $16,300.00 Washington State Democratic Central Committee $30,387.00

Friends of Jennifer Dunn $14,700.00 Washington State Republican Party $104,150.00

Gore for President $28,000.00 Washington Victory Committee 1999 $35,500.00

Inslee for Congress $126,850.00 Washington Victory Fund $55,000.00

Jim Davis for Congress $17,250.00 Washington Women Vote $11,000.00

Jon Kyl for Senate $11,000.00 Western Republican PAC $10,000.00

Kennedy for Senate $12,000.00 Women Vote 2000 $100,000.00

B. ''Strategic'' Philanthropy

38. Microsoft has also contributed money to the causes of politicians as yet another method to use donations, political in nature, to gamer support and ultimately influence the outcome of the trial.

39. According to USA Today, Microsoft and the philanthropic arm of its founder and chairman, the Bill and Melinda Gates Foundation, ''donate millions of dollars to causes and projects that are dear to the hearts of government policymakers, such as a $50,000 gift to the Congressional Black Caucus Foundation.'' [14] Shortly after the donation to the CBC, according to Business Week, Microsoft gained an unlikely ally in the Caucus chairman, Representative James E. Clyburn (D- SC), ''who represents one of the least technology-rich districts in the country.'' [15] In addition, a timely $10 million gift to the U.S. Capitol Visitor's Center further endeared Microsoft to many Members of Congress.

40. Yet the strategic philanthropy began long before the 2000 election cycle. According to the Gates Foundation web site, there was a three-year hiatus in philanthropic giving between 1995 and 1998. Curiously, the last donation in 1995 occurred just prior to the signing of the 1995 consent decree and the first donation in 1998 occurred the day prior to the Department of Justice filing its antitrust suit against Microsoft.

c. Lobbying

41. In addition to the millions Microsoft spent on campaign contributions, the company spent millions more lobbying Congress, the Administration and state officials to influence the outcome of the antitrust trial. Much like its campaign contributions, the company's lobbying presence in

Washington has grown significantly in the last few years, its growth accelerating rapidly at the outset of the antitrust trial. Once just Jack Krumholtz, the company's lobbying group now employs

40 people in Redmond and Washington. The company has hired a dozen lobbying firms and counts among its consultants and lobbyists some of the most prominent figures in politics. A company with 30,000 employees, Microsoft has more lobbyists on retainer than the handful of U.S. companies with more than 300,000 employees. According to USA Today, ''in 1996, the company spent $1.2 million on its Washington lobbying operations. [In 1999], that figure topped $4.6 million.'' According to Business Week in reference to the company's political spending, ''These days, Microsoft money flows like champagne at a wedding.'' [16] Some of the biggest names in Washington going back 30 years represent Microsoft—many are former bosses of the people they lobby. There are more than a half-dozen former Members of Congress, four former White House Chief Counsels, countless dozens of former senior aides from the Congress, Justice Department and elsewhere throughout the highest levels of government.

i. Lobbying the Administration

42. Since the inauguration of George W, Bush in January 2001, Microsoft has made a concerted effort to strengthen its ties to the Administration. The Administration's decision to agree to a settlement widely accepted to be ineffective calls into question the nature of such ties.

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[14] USA Today, May 30, 2000, Drinkard, Ullman

[15] BusinessWeek, May 15, 2000, Carney, Borrus, Greene

[16] 16 ibid.

43. Prior to the announcement of the settlement, for example, it has been reported there was an inappropriate, if not illegal, discussion between a senior aide to Attorney General John Ashcroft and a lobbyist for AOL-Time Warner.

44. According to the account in the New York Times, the senior aide to General Ashcroft is David Israelite. Israelite was the political director of the Republican National Committee which received more than a million dollars from Microsoft during the 2000 presidential campaign.

In that role, Mr. Israelite directed fundraising operations and coordinated campaign activities between entities like Microsoft and the national party apparatus. Now General Ashcroft's deputy chief of staff in the Office of the Attorney General, Mr. Israelite recused himself from the case as a result of his ownership of 100 shares of Microsoft stock.

45. The Times wrote, ''According to the notes of a person briefed about the conversation on Oct. 9, the day it is said to have occurred, Mr. Israelite called [AOL lobbyist] Mr. [Wayne] Berman. ''Are you guys behind this business of the states hiring their own lawyers in the Microsoft case?'' Mr. Israelite asked Mr. Berman in the predawn conversation, according to the notes. 'Tell your clients we wouldn't be too happy about that.''

46. Israelite allegedly said on that call that the Supreme Court was soon to deny Microsoft's appeal, which would prompt the Department of Justice to seek a settlement. He was reported to have complained that AOL was ''radicalizing'' the states. [17] While the conversation was confirmed, the participants denied the content of the conversation. Still, it was enough to provoke angry responses from the technology industry and an accusation of ''inappropriate and possibly illegal'' conduct from a key House Democrat, Congressman John Conyers, Ranking Democratic Member of the House Judiciary Committee. In a letter to Attorney General Ashcroft, Rep. Conyers asked for more information about Israelite's alleged contacts with Berman, specifically asking for a list of contacts between Israelite and AOL officials. ''If the allegations reported by the media are true, such active involvement by a recused public official could violate federal conflict of interest laws,'' Conyers wrote. [18]

ii. Lobbying on the Campaign Trail

47. Mirroring its political giving strategy, Microsoft's lobbying strategy has focused mainly on Republicans, while hedging its bets and simultaneously courting Democrats to a slightly lesser extent. 48. During the campaign, Microsoft Chairman Bill Gates was asked if a Republican administration would be a positive development for the company. It would ''help,'' he said. [19] After all, before Judge Jackson ruled against Microsoft, then Governor Bush was quoted as saying that he stood ''on the side of innovation, not litigation.''

49. In fact, according to Newsweek Magazine, Bill Gates's visit to then Governor Bush in Austin was ''part of a delicate political dance between the software giant and the Republican Party .... Dollar signs in their eyes, GOP leaders covet big political contributions from Microsoft's coffers. In turn, Microsoft executives, plagued by the Clinton Justice Department's lawsuit, hope that a Republican president and Congress might shut down the efforts to punish the company.'' 50. A number of other Microsoft executives, lobbyists and other paid counsel lead back to the Bush camp. The company's Chief Operating Officer, Steve Ballmer, served then Governor Bush as a technology adviser. Tony Feather, former Bush political director, is a partner with a Republican consulting firm Microsoft hired to manage grassroots lobbying efforts. And Microsoft has paid lobbyist and former head of the Republican Party Haley Barbour hundreds of thousands of dollars to assist the company in Washington. The company has also hired Vin Weber, a former Republican Congressman, and Michael Deaver, the former White House chief of staff and trusted adviser credited with crafting President Ronald Reagan's image and campaign advertisements in the 1980s. 51. In addition, Microsoft retained the services of Ralph Reed's Century Strategies ''for the stated purpose of improving the company's public image.'' [20] Reed's firm—a paid consultant to the Bush campaign—aimed itself at mobilizing Bush supporters to express to the candidate their dissatisfaction with the antitrust trial. Once it was reported in the New York Times, the firm issued an apology. The Wall Street Journal later reported more on Ralph Reed's lobbying efforts on Microsoft's behalf:

''BOUNTY PAYMENTS are offered for pro-Microsoft letters and calls. Republican Ralph Reed's lobbying firm coordinates a network of public-relations and lobbying partners that generates grass-roots comments for cash. Payments are for letters, calls and visits to lawmakers and policy makers. An e-mail offers sample letters opposing a Microsoft breakup. A letter to a member of Congress from a mayor or local Republican Party official is worth $200, the guidelines say. A ''premier'' letter or visit by a fund-raiser known to the lawmaker or a family member can be worth up to $450 apiece. An op-ed piece in local papers fetches $500.'' [21]

52. Microsoft was lobbying the Democratic side as well. Like its team of Republican all-stars, Microsoft's team of Democrats had very close ties to its party as well. The team included ''super lobbyist'' Tommy Boggs, a top Washington insider with deep Democratic ties, Tom Downey, a former Democratic Congressman with close ties to former Vice President Al Gore, and Craig Smith, former campaign manager for Gore and board member of the Microsoft front group, Americans for Technology Leadership. As a board member of the ATL, Smith wrote to the Democratic National Committee urging his fellow party members to abandon support for the antitrust case, citing that support ''would make us vulnerable to attack in the general election.'' [22]

53. The company also hired Ginny Terzano, former Gore press secretary, and tobacco industry ad man Carter Eskew, a former Gore adviser-cum-Microsoft image consultant who helped craft the company's 1999 advertising campaign aimed at bolstering its reputation as a ''good corporate citizen.'' Also retained by Microsoft was super-lobbyist Jack Quinn, former Chief of Staff to Vice President Al Gore and White House Counsel.

iii. Lobbying Capitol Hill

54. But Microsoft did not focus solely on lobbying those who would soon be in control of the Department of Justice. Microsoft also waged a massive lobbying campaign aimed at Congress.

55. Alongside its Administration-oriented team, Microsoft recruited more lobbyists and consultants with ties to Members of Congress on both sides of the aisle. Republican hires included Allison McSlarrow, former deputy chief of staff to Senate Majority Leader Trent Lott, Ed Kutler, former assistant to then Speaker of the House Newt Gingrich, Mitch Bainwol, former chief of staff to the Senate Republican Caucus and the Republcian National Committee, Kerry Knott, former chief of staff to House Majority Leader Richard Armey, Ed Gillespie, former Armey and Republican National Committee communications director, and Mimi Simoneaux, former legislative director to House Commerce Committee Chairman Billy Tauzin, who was then-chairman of the House subcommittee with jurisdiction over the technology industry.

56. Among the Democrats lobbying on behalf of Microsoft were Jamie Houton, former associate director of the Senate Democratic Steering Committee, former Democratic Representative Vic Fazio, the third-highest ranking House Democrat, and his former top staffer Tom Jurkovich.

57. Despite Microsoft's assertion in its mere three-page Tunney Act disclosure filing, the company has incessantly used its tremendous resources to contact and influence Members of Congress. Over the course of a 16-month period beginning in 1999, Microsoft flew at least 130 Members of Congress or their staff to the company's headquarters in Redmond, Washington to lobby on a number of issues, including the antitrust case.

58. Perhaps the most egregious example of its heavy-handed largesse came in late 1999, when Microsoft lobbied Congress to cut $9 million from the budget for the Department of Justice's Antitrust Division, the very body that was leading the prosecution against Microsoft. Pilloried industries like the gun and tobacco had considered and rejected the strategy as overly bold.

59. According to the Washington Post, ''Nonprofit organizations that receive financial support from [Microsoft] have also urged key congressional appropriators to limit spending for the division .... The non profits made their request in a letter last month after an all-expenses-paid trip to Microsoft headquarters in Redmond, Washington, where they were entertained and briefed on an array of issues facing the company.'' Further discussion follows in the next section entitled ''Front Groups.''

[17] 17 New York Times, Nov. 2, 2001

[18] The Kansas City Star, Nov. 8, 2000, Kraske

[19] Common Cause, ''The Microsoft Playbook''

[20] 20 ibid.

[21] WSJ, Oct. 20, 2000

[22] Common Cause, ''The Microsoft Playbook''

60. After the previously secret letters from these non-profit groups were exposed, news of the attempts received widespread bipartisan criticism from media and politicians alike. House Judiciary Committee Chairman Henry Hyde (R-IL), called the division ''one of the best-run departments in the government.'' Senator Herb Kohl, a Democrat on the Senate Judiciary Committee's antitrust subcommittee, said ''it would set [a] terrible precedent to alter the division's budget based on one case alone.'' ''It's like the Mafia trying to defund the FBI,'' said a prominent member of the Washington antitrust bar. [23] According to Jan McDavid, a lawyer with the Washington firm of Hogan & Hartson and chairperson of the American Bar Association's antitrust section, the section's policy states that it ''opposes the use of the congressional budget and appropriations process to intervene in or influence ongoing antitrust enforcement matters.'' [24]One congressional GOP staffer went as far as to say that Microsoft's lobbying had ''the odor of obstruction.'' [25]

61. Not surprisingly, Senator Slade Gorton, a Republican from Microsoft's home state of Washington, was adamantly supportive of the idea. Between 1997 and 1999, he received more than $50,000 from Microsoft and its employees. During the 2000 election cycle, Gorton's PAC received $17,000 while the Washington State Republican Party received more than $100,000.

iv. Lobbying the States

62. Because 19 state attorneys general initiated the antitrust case alongside the Department of Justice, Microsoft initiated a state lobbying campaign aimed at influencing those attorneys general to back away from the case. Microsoft even hired former Iowa House Speaker Donald Avenson to lobby the state's Attorney General, who was leading the group of states prosecuting the company. While Microsoft has retained professional ''grassroots consultants'' and others in many states, according to published reports, it is their efforts in the 19 states with Attorneys General who brought suit against them where the real pressure has occurred. In those states they have retained former lawmakers, law partners of the Attorneys General, their predecessors in that same office, business associates, and their own trusted political consultants. Microsoft has also hired those on whom the AGs are often most politically dependent, such as union leaders and activists in states with Democratic Attorneys General, and fiscally conservative activists in state with Republican AGs.

63. Perhaps the company's most successful effort to influence the state attorneys general came in 1998, when, three days after a $25,000 contribution to the South Carolina Republican Party, the state's Attorney General, Charles Condon, announced that he would withdraw from the case.

64. Yet, a few of its grassroots efforts targeted at the states have done more harm than good. Because of the unprecedented size, scope and cost of Microsoft's campaign, a number of high profile gaffes have exhibited the true nature of Microsoft's ''public support'' and the depths to which the company will go to influence the outcome of the trial.

65. In August 2001, the Los Angeles Times reported that two letters received by the Utah Attorney General's office, one of the prosecuting states, were sent by dead men. The campaign was funded by Craig Smith's Americans for Technology Leadership. Despite its claims to represent ''thousands of small and mid-sized technology companies,'' news reports have repeatedly characterized ATL and its counterpart, the Association for Competitive Technology (ACT) as essentially wholly- owned subsidiaries of Microsoft Corp., whose funding launched and sustains both groups. [26] Other characteristics of the letter writing campaign to the Attorneys General included similar phrases popping up again and again, invalid return addresses, and even masses of identical letters with different signatories.

66. In one news story, Jim Prendergast, director of ATL, initially admitted only to providing letter writers with ''message points.'' ''We gave them a few bullet points, but that's about the extent of it,'' he said. When asked why identical phrases were popping up again and again, he confessed that sometimes ATL did indeed provide whole letters for the citizens to sign and send. ''We'd write the letter and then send it to them,'' he admitted.

67. According to the same article, other states, like Minnesota and Iowa, were subjected to Microsoft's full-press grassroots lobbying campaign. Both states are participants in the antitrust case. In the case of Iowa, Attorney General Tom Miller received more than 50 letters in a month's time calling on him to drop the case. While none of the letters were identical, several phrases were similar. In four of the letters, for example, the following sentence appeared: ''Strong competition and innovation have been the twin hallmarks of the technology industry.'' Three others contained this sentence: ''If the future is going to be as successful as the recent past, the technology sector must remain free from excess regulation.'' [27]

68. Minnesota Attorney General Michael Hatch, who received 300 identical letters, characterized the campaign as ''sleazy.'' Many of the letter writers were misled by Microsoft and one even wrote by hand to Attorney General Hatch to say so and to apologize for his previous letter. ''I sure was misled,'' he wrote. ''It's time for you to get out there and kick butt.'' [28]

vi. Tying Up the Lobbyists and Lawyers

69. A frequently employed tactic of Microsoft is to retain all major lobbying firms in key states so that its opposition cannot. Similarly, the company has hired many Washington, DC-based law firms with antitrust expertise to work on issues not related to the antitrust case. ''They've got the whole town conflicted out,'' said one attorney. ''They've sucked out all the oxygen.'' [29]

D. Front Groups 70. Supporting its political contributions and lobbying campaign, Microsoft undertook an aggressive public relations campaign aimed at ''creating the appearance of a groundswell of public support for the company.'' [30]

71. In April 1998, a reporter for the Los Angeles Times received a package of confidential materials created by Edelman Public Relations for its client, Microsoft. Among the documents was a media relations strategy for a ''multi-million dollar'' campaign aimed at stemming the rash of antitrust investigations being undertaken by a number of states in conjunction with the federal government's investigation. According to the reporters, Greg Miller and Leslie Helm, ''the elaborate plan ... hinges on a number of unusual—and some say unethical—tactics, including the planting of articles, letters to the editor and opinion pieces to be commissioned by Microsoft's top media handlers but presented by local firms as spontaneous testimonials.'' [31] While Microsoft contends that this strategy was never implemented, a number of the company's activities since the outset of the trial clearly indicate that most of the elements have been employed, at times repeatedly.

72. Throughout the antitrust trial, Microsoft relied heavily on many ''independent'' groups to support the company and to oppose the suit publicly. Some groups they created themselves out of whole cloth during the trial. Others sullied their long, distinguished backgrounds by trading hard cash for the use of their good names. Many denied any involvement with Microsoft, claiming that their passion came from concern for the economy or ''innovation''—only to later be unmasked by the news media when evidence of their financial dealings with Microsoft came to light. One account suggests Microsoft has harnessed at least 15 advocacy groups and think tanks that use Microsoft donations to spread the company's message through polls, news conferences, Web sites, letters to the editor, research papers, opinion pieces and letter-writing campaigns aimed at lawmakers. [32]

73. Groups with names like Americans for Technology Leadership and the Association for Competitive Technology had the veneer of genuine independence, but were actually founded by Microsoft, launched with Microsoft dollars, and work on few other issues than the defense of Microsoft in its antitrust trial.

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[23] 23 Reuters, Oct. 17, 1999, Lawsky

[24] ibid.

[25] WS J, Oct. 15, 1999

[26] ''Microsoft's All-Out Counterattack.'' Dan Carney, with Amy Borrus. BusinessWeek May 15, 2000; ''Microsoft's Lobbying Largess Pays Off; Back-Channel Effort Wins Support for Case.'' James V. Grimaldi. Washington Post May 17, 2000; ''Microsoft leans creatively on levers of political power as breakup decision looms, 'stealth'' lobbying efforts aim for survival.'' Jim Drinkard and Owen Ullmann. USA Today May 30, 2000

[27] Los Angeles Times, August 23,2001

[28] 28 Los Angeles Times, August 23, 2001

[29] Business Week, May 15, 2000, Borrus, Carney, Greene

[30] ''Trust Us, We're Experts'' Sheldon Rampton and John Stauber, p. 8

[31] ibid.

[32] 32 USA TODAY, ''Microsoft leans creatively on levers of political power as breakup decision looms, 'stealth'' lobbying efforts aim for survival'' by Jim Drinkard and Owen Ullmann, May 30, 2000

74. Even well known Washington, DC organizations with strong ties to the Administration and to Congress were well funded by Microsoft—respected fiscally conservative groups like Grover Norquist's Americans for Tax Reform, former White House Counsel C. Boyden Grey's Citizens for a Sound Economy, the National Taxpayers Union and Citizens Against Government Waste. But upon closer scrutiny, the true ties of these groups to Microsoft became apparent. By paying for pro-Microsoft advertisements, by sponsoring publications, by donating money outright, Microsoft both ensured and devalued their support.

75. According to Business Week, Microsoft ''secretly funds those that do its public-relations work and pulls funding from those that dare question its positions.'' [33] On one such occasion, Microsoft pulled funding from the American Enterprise Institute once one of its fellows, Robert Bork, came out in favor of the antitrust trial even though the institute itself has no position on the trial and many of its technical and antitrust experts have expressed their opposition to the case. In another case, they quit a technology industry trade group, the Software and Information Industry Association, because a majority of its members supported the antitrust case.

i. Independent Institute

76. In one instance, Microsoft paid for the placement of newspaper advertisements by the California-based Independent Institute. Published in June 1999 in the New York Times and the Washington Post, the full-page ads featured a pro-Microsoft letter signed by 240 academics. Nothing in the ad's copy indicated to readers who—other than the Institute itself- was paying for the ads. Apparently, no one at the Independent Institute indicated to the letter's 240 signatories who was paying for the ad either. One signatory, Professor Simon Hakim of Temple University, stated that he would not have signed on to the advertisement had he known who was behind it. [34]

77. At a Washington, DC press conference unveiling the ads, Independent Institute president David Theroux answered a reporter's specific question about whether Microsoft had anything to do with the ads, including paying for them, with a resounding ''no.'' When questioned months later by the New York Times, Theroux again denied that Microsoft paid for the ads. He said, instead, that the ads ''were paid for out of our general funds.'' He also said the ''implication that Microsoft had any influence is ridiculous.'' [35] But, according to a front-page article later written in the New York Times, ''among the institute's internal documents is a bill from Mr. Theroux sent to John A. C. Kelly of Microsoft for the full costs of the ads, plus his travel expenses from San Francisco to Washington for the news conference, totaling $153,868.67. Included was a $5,966 bill for airline tickets for himself (Theroux) and a colleague. Unfortunately, he wrote Mr. Kelly, 'the airlines were heavily booked'' and 'we had to fly first class to DC and business class on the return.''' Furthermore, despite additional statements from its president that it ''adheres to the highest standards of independent scholarly inquiry,'' internal institute documents have shown that, having contributed more than $200,000, or 20% of the institute's total outside contributions, Microsoft ''secretly served as the institute's largest outside benefactor [in 1999].'' [36] It wasn't until September that the institute finally admitted the extent of Microsoft's support.

78. In these instances, as in others, Microsoft's behavior outside the courtroom had a direct impact on the proceedings inside the courtroom. According to the New York Times, the ads prompted not only more news stories but also courtroom discussion. [37] Microsoft also covered the costs of the publication of the institute's book, ''Winners, Losers and Microsoft: Competition and Antitrust in High Technology,'' which Microsoft's economic witness in the trial then used to support his own testimony.

ii. Biased Polling

79. According to Business Week, Microsoft has also commissioned polls to help foster an image of great public support for the company. At the outset of the 2000 presidential campaign, around the time of the Iowa caucus and the New Hampshire primary, Microsoft funded polls aimed at demonstrating the public's opposition to the antitrust case. Once the results were in, Microsoft distributed the results to the media in order to compel the candidates to incorporate their opposition to the case into their platform.

80. In addition, while the state Attorneys General were working through the spring on formulating a remedy, Microsoft front group Americans for Technology Leadership conducted and issued the results of a poll, which concluded that the public wanted the Attorneys General to focus their time and energy on other issues. In this case, Microsoft failed to disclose the nature of its relationship with ATL and the source of funding for the poll.

iii. Targeting the Antitrust Division of the Department of Justice

81. As stated above, one of Microsoft's most egregious attempts to use lobbying to influence the outcome of the antitrust trial came when the company lobbied to cut funding for the Antitrust Division of the Department of Justice. Microsoft funded a host of third parties to push forth its agenda.

82. In September 1999, the company flew representatives from about 15 major Washington, DC- based think tanks to Microsoft's Redmond, Washington headquarters ''for three days of briefings that included tickets to a Seattle Mariners game and dinner and entertainment at Seattle's Teatro ZinZani, according to an itinerary.'' [38]Among the groups were Citizens for a Sound Economy, the National Taxpayers Union and Americans for Tax Reform, whose president, Grover Norquist, received $40,000 in lobbying payments from Microsoft during the second half of 1998.

83. Two days after returning from the trip, those three groups and three others secretly sent a letter to House appropriators urging that the Antitrust Division receive the lowest amount of funding proposed. In a coordinated effort, on the same day one of Microsoft's own lobbyists, Kerry Knott, met with Rep. Dan Miller of Florida to urge him to grant the Antitrust Division the lower amount of funds. That meeting prompted Rep. Miller to write to the chairman of the House Appropriations Commerce, Justice, State and Judiciary Subcommittee that ''it would be a devastating blow to the high-tech industry and to our overall economy if the federal government succeeds in its efforts to regulate this industry through litigation.'' According to the Washington Post, ''Miller said that while he objects to the funding on fiscal grounds, he had not focused on it until Knott and Citizens for a Sound Economy spokeswoman Christin Tinsworth, a former Miller staffer, made their pitch just off the House floor.'' [39]

84. A Washington Post editorial summarized the propriety of the incident this way: ''[T]he fact that Microsoft has the right to lobby ... doesn't make the lobbying any less unseemly. If Microsoft has a gripe, it should make its complaint to the court hearing its case.'' [40]

III. CONCLUSIONS

85. The end result of Microsoft's unprecedented political campaign seems to have been rewarded by the weak settlement presented by the Department of Justice.

Respectfully Submitted,

Edward Roeder

January 28, 2002

APPENDIX A: Selected Tables

Table 1. Rapid Rises in Corporate PAC Fundraising, 1979–2002

(After Raising More than $50,000)

Microsoft Corporation, Formed: 1987–88, Total Raised, 1995–96: $59,750, Total Raised, 1997–98: $599,568, Difference: $539,818 = 903.46% Rank: 1

American Telephone & Telegraph Co., Formed: 1983–84, Total Raised, 1983–84: $215,423, Total Raised, 1985–86: $1,820,621, Difference: $1,605,198 = 745.14% Rank: 2

Drexel Burnham Lambert Group, Inc. Formed: 1981–82, Total Raised, 1983–84: $66,844, Total Raised, 1985–86: $446,279, Difference: $379,435 = 567.64% Rank: 3

Safari Club International Formed: 1979–80, Total Raised, 1993=94: $94,149, Total Raised, 1995–96: $545,915, Difference: $451,766 = 479.84% Rank: 4

Fluor Corporation Formed: 1979–80, Total Raised, 1987–88: $87,236, Total Raised,

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[33] Business Week, May 15, 2000, Carney, Borrus, Greene

[34]

I am aware there have been allegations that material relating to the Independent Institute was uncovered by Investigative Group International (IGI), allegedly retained by Oracle Corporation. My understanding of the circumstances indicates that employees of IGI's were terminated as a result of their actions. I have not reviewed those allegations specifically, since the subject of my review was defendant, Microsoft Corporation. Regardless, neither the Independent Institute nor Microsoft ever denied the validity of the claims after they were exposed.

[35] Associated Press, September 18, 1999

[36] New York Times, Sept. 19, 1999

[37] New York Times, Sept. 19, 1999

[38] The Washington Post, Oct. 15, 1999, Morgan, Eilperin

[39] ibid.

[40] Washington Post, Oct. 24, 1999

1989–90: $494,417, Difference: $407,181 = 466.76% Rank: 5

Dow Chemical, USA—HQ Formed: 1979–80, Total Raised, 1995–96: $60,290, Total Raised, 1997–98: $331,286, Difference: $270,996 = 449.49% Rank: 6

Lucent Technologies, Inc. Formed: 1995–96, Total Raised, 1995–96: $87,568, Total Raised, 1997–98: $464,592, Difference: $377,024 = 430.55% Rank: 7

Nat'l Star Route Mail Contractors Ass'n Formed: 1981–82, Total Raised, 1995–96: $63,512, Total Raised, 1983–84: $313,609, Difference: $250,097 = 393.78% Rank: 8

Eastern Airlines, Inc. Formed: 1979–80, Total Raised, 1985–86: $53,309, Total Raised, 1987–88: $243,529, Difference: $190,220 = 356.83% Rank: 9

Pacific Telesis Group Formed: 1979–80, Total Raised, 1981–82: $65,538, Total Raised, 1983–84: $280,183, Difference: $214,645 = 327.51% Rank: 10

Henley Group/Wheelabrator Technologies, Inc. Formed: 1979–80, Total Raised, 1985–86: $89,255, Total Raised, 1987–88: $380,102, Difference: $290,847 = 325.86% Rank: 11

Firstar (First Wisconsin) Corp. Formed: 1979–80, Total Raised, 1997–98: $113,743, Total Raised, 1999–00: $480,239, Difference: $366,496 = 322.21% Rank: 12

U.S. West, Inc. Formed: 1983–84, Total Raised, 1987–88: $123,767, Total Raised, 1989–90: $521,886, Difference: $398,119 = 321.67% Rank: 13

CSX Corp.—Jeffboat Formed: 1981–82, Total Raised, 1997–98: $74,125, Total Raised, 1999–00: $303,763, Difference: $229,638 = 309.80% Rank: 14

J. P. Morgan & Company, Inc. Formed: 1979–80, Total Raised, 1983–84: $68,569, Total Raised, 1985–86: $274,515, Difference: $205,946 = 300.35% Rank: 15

Source: Computer analysis by Sunshine Press Services of Federal

Election Commission data, Jan. 1, 1979 through Dec. 31, 2000.

Table 2. Continued Rises in Corporate PAC Fundraising, 1979–2002

Following Rapid Rise of More than 300% from a base of $50,000+ (Ranked by Percentage Rise in Next Election Cycle)

Microsoft Corporation Formed: 1987–88, Total Raised, 1995–96: $59,750, Total Raised, 1997–98: $599,568, Difference: $539,818 = 903.46% Next Cycle: 1999–00, Total Raised: $1,589,684, Difference: $990,116 = 165.14% Rank: 1

J. P. Morgan & Company, Inc. Formed: 1979–80, Total Raised, 1983–84: $68,569, Total Raised, 1985–86: $274,515, Difference: $205,946 = 300.35% Next Cycle: 1987–88, Total Raised: $514,285, Difference: $239,770 = 87.34% Rank: 2

American Telephone & Telegraph Co. Formed: 1983–84, Total Raised, 1983–84: $215,423, Total Raised, 1985–86: $1,820,621, Difference: $1,605,198 = 745.14% Next Cycle: 1987–88, Total Raised: $3,043,510, Difference: $1,222,889 = 67.17% Rank: 3

U.S. West, Inc. Formed: 1983–84, Total Raised, 1987–88: $123,767, Total Raised, 1989–90: $521,886, Difference: $398,119 = 321.67% Next Cycle: 1991–92, Total Raised: $734,130, Difference: $212,244 = 40.67% Rank: 4

Pacific Telesis Group Formed: 1979–80, Total Raised, 1981–82: $65,538, Total Raised, 1983–84: $280,183, Difference: $214,645 = 327.51% Next Cycle: 1985–86, Total Raised: $364,113, Difference: $83,930 = 29.96% Rank: 5

Fluor Corporation Formed: 1979–80, Total Raised, 1987–88: $87,236, Total Raised, 1989–90: $494,417, Difference: $407,181 = 466.76% Next Cycle: 1991–92, Total Raised: $610,142, Difference: $115,725 = 23.41% Rank: 6

Nat'l Star Route Mail Contractors Ass'n Formed: 1981–82, Total Raised, 1995–96: $63,512, Total Raised, 1983–84: $313,609, Difference: $250,097 = 393.78% Next Cycle: 1985–86, Total Raised: $43,468, Difference: $2,269 = 5.51% Rank: 7

Firstar (First Wisconsin) Corp. Formed: 1979–80, Total Raised, 1997–98: $113,743, Total Raised, 1999–00: $480,239, Difference: $366,496 = 322.21% Next Cycle: (data incomplete, cycle now in progress)

CSX Corp.—Jeffboat Formed: 1981–82, Total Raised, 1997–98: $74,125, Total Raised, 1999–00: $303,763, Difference: $229,638 = 309.80% Next Cycle: (data incomplete, cycle now in progress)

Dow Chemical, USA—HQ Formed: 1979–80, Total Raised, 1995–96: $60,290, Total Raised, 1997–98: $331,286, Difference: $270,996 = 449.49% Next Cycle: 1999–00, Total Raised: $279,618, Difference: $-51,668 = -15.60% Rank: 10

Lucent Technologies, Inc. Formed: 1995–96, Total Raised, 1995–96: $87,568, Total Raised, 1997–98: $464,592, Difference: $377,024 = 430.55% Next Cycle: 1999–00, Total Raised: $343,462, Difference: $-121,130 = -26.07% Rank: 11

Drexel Burnham Lambert Group, Inc. Formed: 1981–82, Total Raised, 1983–84: $66,844, Total Raised, 1985–86: $446,279, 27

MTC–00028684—0173 Difference: $379,435 = 567.64% Next Cycle: 1987–88, Total Raised: $310,188, Difference: $-136,091 = -30.49% Rank: 12

Safari Club International Formed: 1979–80, Total Raised, 1993=94: $94,149, Total Raised, 1995–96: $545,915, Difference: $451,766 = 479.84% Next Cycle: 1997–98, Total Raised: $378,078, Difference: $-167,837 = -30.74% Rank: 13

Eastern Airlines, Inc. Formed: 1979–80, Total Raised, 1985–86: $53,309, Total Raised, 1987–88: $243,529, Difference: $190,220 = 356.83% Next Cycle: 1989–90, Total Raised: $105,734, Difference: $-137,795 = -56.58% Rank: 14

Henley Group/Wheelabrator Technologies, Formed: 1979–80, Total Raised, 1985–86: $89,255, Total Raised, 1987–88: $380,102, Difference: $290,847 = 325.86% Next Cycle: 1989–90, Total Raised: $141,072, Difference: $-239,030 = -62.89% Rank: 15

Source: Computer analysis by Sunshine Press Services of Federal

Election Commission data, Jan. 1, 1979 through Dec. 31, 2000.

TABLE 3.—LARGEST CASH BALANCES AT END OF 1999–2000 ELECTION CYCLE

American Corporate PACs

Rank	PAC Sponsor	Cash on Hand
1	Microsoft Corporation.	$712,874
2	Southern Bell Telephone & Telegraph Co..	617,922
3	Crawford Group / Enterprise Leasing.	611,442
4	Southwestern Bell Corporation.	550,841
5	Chrysler / Gulfstream Aerospace Corp..	481,068
6	Federal Express Corporation.	424,739
7	NationsBank	413,663
8	First Union Corporation.	410,242
9	First Bank System, Inc..	405,187
10	Stone Container Corporation.	368,973
11	General Electric Company.	359,469
12	National Health Corporation.	340,205
13	Exxon Corporation	328,559
14	Outback Steakhouse, Inc..	325,977
15	Columbia / HCA Healthcare.	284,827
16	American Family Corporation.	283,963
17	Cooper Industries, Inc..	281,054
18	Suntrust Banks, Inc.	275,779
19	Winn-Dixie Stores, Inc..	273,232
20	Jacobs Engineering Group, Inc..	272,982
21	Ford Motor Company	264,914
22	U.S. West, Inc.	261,289
23	Compass Bancshares, Inc..	253,625

Source: Computer analysis by Sunshine Press Services of Federal
Election Commission data.

Table 4. Largest Percentage Increases in Receipts Over Two

Election Cycles

American Corporate PACs With More Than $50,000

Microsoft Corporation Formed:1987–88, Total Raised, 1995–96: $59,750, Total Raised, 1999–00: $1,589,684, Difference: $1,529,934 = 2,560.56% Rank: 1

American Telephone & Telegraph Co. Formed:1983–84, Total Raised, 1983–84: $215,423, Total Raised, 1987–88: $3,043,510, Difference: $2,828,087 = 1,312.81% Rank: 2

Firstar (First Wisconsin) Corp. Formed:1979–80, Total Raised, 1995–96: $59,437, Total Raised, 1999–00: $480,239, Difference: $420,802 = 707.98% Rank: 3

J. P. Morgan & Company, Inc. Formed:1979–80, Total Raised, 1983–84: $68,569, Total Raised, 1987–88: $514,285, Difference: $445,716 = 650.03% Rank: 4

U.S. West, Inc. Formed:1983–84, Total Raised, 1985–86: $69,588, Total Raised, 1989–90: $521,886, Difference: $452,298 = 649.97% Rank: 5

Bell Atlantic Corp. Formed:1983–84, Total Raised, 1993=94: $146,949, Total Raised, 1997–98: $1,046,617, Difference: $899, 668 = 612.23% Rank: 6

Fluor Corporation Formed:1979–80, Total Raised, 1987–88: $87,236, Total Raised, 1991–92: $610,142, Difference: $522,906 = 599.42% Rank: 7

Dow Chemical, USA—HQ Formed:1979–80, Total Raised, 1993=94: $53,297, Total Raised, 1997–98: $331,286, Difference: $277,989 = 521.58% Rank: 8

GA Technologies, Inc. Formed:1987–88, Total Raised, 1987–88: $51,702, Total Raised, 1991–92: $320,081, Difference: $268,379 = 519.09% Rank: 9

U.S. West, Inc. Formed:1983–84, Total Raised, 1987–88: $123,767, Total Raised, 1991–92: $734,130, Difference: $610,363 = 493.15% Rank: 10

American Information Technologies Corp. Formed:1983–84, Total Raised, 1989–90: $233,266, Total Raised, 1993=94: $1,370,945, Difference: $1,137,679 = 487.72% Rank: 11

Allied-Signal, Inc. Formed:1979–80, Total Raised, 1981–82: $65,703, Total Raised, 1985–86: $384,530, Difference: $318,827 = 485.25% Rank: 12

Glaxo, Inc. Formed:1985–86, Total Raised, 1989–90: $106,192, Total Raised, 1993=94: $607,224, Difference: $501,032 = 471.82% Rank: 13

Nynex Corporation Formed:1983–84, Total Raised, 1991–92: $62,304, Total Raised, 1995–96: $346,809, Difference: $284,505 = 456.64% Rank: 14

Pacific Telesis Group Formed:1979–80, Total Raised, 1981–82: $65,538, Total Raised, 1985–86: $364,113, Difference: $298,575 = 455.58% Rank: 15

Philip Morris, Inc. Formed:1979–80, Total Raised, 1979–80: $93,291, Total Raised, 1983–84: $499,938, Difference: $406,647 = 435.89% Rank: 16

American Electric Power Company, Inc. Formed:1979–80, Total Raised, 1995–96: $106,155, Total Raised, 1999–00: $545,295, Difference: $439,140 = 413.68% Rank: 17

Waste Management, Inc. Formed:1979–80, Total Raised, 1981–82: $76,738, Total Raised, 1985–86: $391,637, Difference: $314,899 = 410.36% Rank: 18

Cigna Corporation Formed:1979–80, Total Raised, 1979–80: $56,174, Total Raised, 1985–86: $286,319, Difference: $230,145 = 409.70% Rank: 19

LDDS Communications, Inc. Formed:1987–88, Total Raised, 1993=94: $63,542, Total Raised, 1997–98: $323,680, Difference: $260,138 = 409.40% Rank: 20

Safari Club International Formed:1979–80, Total Raised, 1991–92: $107,314, Total Raised, 1995–96: $545,915, Difference: $438,601 = 408.71% Rank: 21

Michigan Bell Telephone Company Formed:1979–80, Total Raised, 1983–84: $53,326, Total Raised, 1987–88: $266,944, Difference: $213,618 = 400.59% Rank: 22

E1 Paso Company Formed:1979–80, Total Raised, 1995–96: $75,920, Total Raised, 1999–00: $379,370, Difference: $303,450 = 399.70% Rank: 23

Merrill Lynch & Company, Inc. Formed:1979–80, Total Raised, 1979–80: $56,895, Total Raised, 1983–84: $282,297, Difference: $225,402 = 396.17% Rank: 24

Federal Express Corporation Formed:1983–84, Total Raised, 1983–84: $230,478, Total Raised, 1987–88: $1,139,978, Difference: $909,500 = 394.61% Rank: 25

MBNA Corporation Formed:1991–92, Total Raised, 1991–92: $184,764, Total Raised, 1995–96: $903,599, Difference: $718,835 = 389.06% Rank: 26

MCI Telecommunications Corporation Formed:1983–84, Total Raised, 1993=94: $104,688, Total Raised, 1997–98: $510,195, Difference: $405,507 = 387.35% Rank: 27

Smith Barney & Company Formed:1979–80, Total Raised, 1995–96: $128,843, Total Raised, 1999–00: $627,332, Difference: $498,489 = 386.90% Rank: 28

Chrysler / Gulfstream Aerospace Corp. Formed:1979–80, Total Raised, 1981–82: $77,152, Total Raised, 1985–86: $373,792, Difference: $296,640 = 384.49% Rank: 29

American Information Technologies Corp. Formed:1983–84, Total Raised, 1987–88: $105,465, Total Raised, 1991–92: $501,210, Difference: $395,745 = 375.24% Rank: 30

Waste Management, Inc. Formed:1979–80, Total Raised, 1983–84: $138,076, Total Raised, 1987–88: $653,361, Difference: $515,285 = 373.19% Rank: 31

Texas Air Corp. Formed:1979–80, Total Raised, 1981–82: $53,560, Total Raised, 1985–86: $252,847, Difference: $199,287 = 372.08% Rank: 32

Federal Express Corporation Formed:1983–84, Total Raised, 1985–86: $334,334, Total Raised, 1989–90: $1,561,744, Difference: $1,227,410 = 367.12% Rank: 33

Drexel Burnham Lambert Group, Inc. Formed:1981–82, Total Raised, 1983–84: $66,844, Total Raised, 1987–88: $310,188, Difference: $243,344 = 364.05% Rank: 34

Dow Chemical, USA—HQ Formed:1979–80, Total Raised, 1995–96: $60,290, Total Raised, 1999–00: $279,618, Difference: $219,328 = 363.79% Rank: 35

General Telephone & Electronics Corp. Formed:1979–80, Total Raised, 1987–88: $169,871, Total Raised, 1991–92: $779,782, Difference: $609,911 = 359.04% Rank: 36

NationsBank Formed:1979–80, Total Raised, 1987–88: $238,405, Total Raised, 1991–92: $1,094,012, Difference: $855,607 = 358.89% Rank: 37

CSX Corp.—Jeffboat Formed:1981–82, Total Raised, 1995–96: $66,789, Total Raised, 1999–00: $303,763, Difference: $236,974 = 354.81% Rank: 38

Sears Roebuck & Co. (Allstate) Formed:1979–80, Total Raised, 1981–82: $50,277, Total Raised, 1985–86: $223,313, Difference: $173,036 = 344.17% Rank: 39

First Union Corporation Formed:1983–84, Total Raised, 1995–96: $119,980, Total Raised, 1999–00: $525,262, Difference: $405,282 = 337.79% Rank: 40

Brown & Williamson Tobacco Corp. Formed:1979–80, Total Raised, 1991–92: $117,271, Total Raised, 1995–96: $512,562, Difference: $395,291 = 337.07% Rank: 41

Coca-Cola Enterprises, Inc. Formed:1991–92, Total Raised, 1993=94: $54,312, Total Raised, 1997–98: $232,861, Difference: $178,549 = 328.75% Rank: 42

Mutual of Omaha Insurance Company Formed:1979–80, Total Raised, 1989–90: $74,612, Total Raised, 1993=94: $319,846, Difference: $245,234 = 328.68% Rank: 43

Chase Manhattan Bank Formed:1979–80, Total Raised, 1983–84: $64,813, Total Raised, 1987–88: $274,828, Difference: $210,015 = 324.03% Rank: 44

Raytheon Company Formed:1979–80, Total Raised, 1979–80: $54,158, Total Raised, 1983–84: $228,899, Difference: $174,741 = 322 65% Rank: 45

Manufacturers Hanover Corporation Formed:1979–80, Total Raised, 1979–80: $69,178, Total Raised, 1983–84: $291,068, Difference: $221,890 = 320.75% Rank: 46

Tenneco, Inc. Formed:1979–80, Total Raised, 1991–92: $208,019, Total Raised, 1995–96: $866,590, Difference: $658,571 = 316.59% Rank: 47

Loral Systems Group Formed:1985–86, Total Raised, 1989–90: $86,215, Total Raised, 1993=94: $358,895, Difference: $272,680 = 316.28% Rank: 48

Koch Industries, Inc. Formed:1989–90, Total Raised, 1993=94: $202,392, Total Raised, 1997–98: $831,184, Difference: $628,792 = 310.68% Rank: 49

Koch Industries, Inc. Formed:1989–90, Total Raised, 1991–92: $104,401, Total Raised, 1995–96: $428,074, Difference: $323,673 = 310.03% Rank: 50

Bellsouth Corporation Formed:1983–84, Total Raised, 1985–86: $70,383, Total Raised, 1989–90: $287,836, Difference: $217,453 = 308.96% Rank: 51

Rockwell International Corporation Formed:1979–80, Total Raised, 1979–80: $123,700, Total Raised, 1983–84: $497,473, Difference: $373,773 = 302.16% Rank: 52

Safari Club International Formed:1979–80, Total Raised, 1993=94: $94,149, Total Raised, 1997–98: $378,078, Difference: $283,929 = 301.57% Rank: 53

RJR Nabisco, Inc. Formed:1979–80, Total Raised, 1981–82: $64,199, Total Raised, 1985–86: $256,498, Difference: $192,299 = 299.54% Rank: 54

American Information Technologies Corp. Formed:1983–84, Total Raised, 1985–86: $58,487, Total Raised, 1989–90: $233,266, Difference: $174,779 = 298.83% Rank: 55

Southern Company Formed:1981–82, Total Raised, 1995–96: $125,656, Total Raised, 1999–00: $497,118, Difference: $371,462 = 295.62% Rank: 56

Lucent Technologies, Inc. Formed:1995–96, Total Raised, 1995–96: $87,568, Total Raised, 1999–00: $343,462, Difference: $255,894 = 292.22% Rank: 57

Fluor Corporation Formed:1979–80, Total Raised, 1985–86: $126,081, Total Raised, 1989–90: $494,417, Difference: $368,336 = 292.14% Rank: 58

Central & South West Services, Inc. Formed:1979–80, Total Raised, 1993=94: $57,841, Total Raised, 1997–98: $226,201, Difference: $168,360 = 291.07% Rank: 59

HSBC Americas / Marine Midland Banks Formed:1981–82, Total Raised, 1983–84: $52,071, Total Raised, 1987–88: $200,106, Difference: $148,035 = 284.29% Rank: 60

Jacobs Engineering Group, Inc. Formed:1981–82, Total Raised, 1995–96: $127,472, Total Raised, 1999–00: $488,875, Difference: $361,403 = 283.52% Rank: 61

Banc One Corporation Formed:1979–80, Total Raised, 1989–90: $270,704, Total Raised, 1993=94: $1,037,361, Difference: $766,657 = 283.21% Rank: 62
Archer-Daniels-Midland Company Formed:1979–80, Total Raised, 1979–80: $50,369, Total Raised, 1983–84: $192,426, Difference: $142,057 = 282.03% Rank: 63
Aetna Life and Casualty Company Formed:1983–84, Total Raised, 1983–84: $88,329, Total Raised, 1987–88: $333,008, Difference: $244,679 = 277.01% Rank: 64
Outback Steakhouse, Inc. Formed:1991–92, Total Raised, 1993=94: $230,022, Total Raised, 1997–98: $865,042, Difference: $635,020 = 276.07% Rank: 65
Lockheed Corporation Formed:1979–80, Total Raised, 1979–80: $136,127, Total Raised, 1983–84: $511,131, Difference: $375,004 = 275.48% Rank: 66
Duke Power Company Formed:1979–80, Total Raised, 1995–96: $69,970, Total Raised, 1999–00: $261,562, Difference: $191,592 = 273.82% Rank: 67
TRW, Inc. Formed:1979–80, Total Raised, 1979–80: $69,121,
Total Raised, 1983–84: $256,296
Difference: $187,175 = 270.79% Rank: 68
United Telecommunications, Inc. Formed:1979–80
Total Raised, 1983–84: $66,922
Total Raised, 1987–88: $247,495
Difference: $180,573 = 269.83% Rank: 69
Loral Systems Group Formed:1985–86
Total Raised, 1987–88: $55,311
Total Raised, 1991–92: $202,887
Difference: $147,576 = 266.81% Rank: 70
American General Corporation Formed:1979–80
Total Raised, 1995–96: $182,254
Total Raised, 1999–00: $668,062
Difference: $485,808 = 266.56% Rank: 71
Phillips Petroleum Company Formed:1979–80
Total Raised, 1983–84: $99,365
Total Raised, 1987–88: $364,141
Difference: $264,776 = 266.47% Rank: 72
Entergy Operations, Inc. Formed:1989–90
Total Raised, 1993=94: $64,650
Total Raised, 1997–98: $236,109
Difference: $171,459 = 265.21% Rank: 73
American Information Technologies Corporation Formed:1979–80
Total Raised, 1983–84: $68,916
Total Raised, 1987–88: $249,574
Difference: $180,658 = 262.14% Rank: 74
Sea-Land Corporation Formed:1979–80
Total Raised, 1987–88: $52,291
Total Raised, 1991–92: $189,284
Difference: $136,993 = 261.98% Rank: 75
First City Bancorporation of Texas, Inc. Formed:1979–80
Total Raised, 1979–80: $85,372
Total Raised, 1983–84: $307,649
Difference: $222,277 = 260.36% Rank: 76
Banc One Corporation Formed:1979–80
Total Raised, 1987–88: $173,949
Total Raised, 1991–92: $622,458
Difference: $448,509 = 257.84% Rank: 77
E1 Paso Company Formed:1979–80
Total Raised, 1993=94: $74,169
Total Raised, 1997–98: $264,338
Difference: $190,169 = 256.40% Rank: 78
Dow Chemical, USA Formed:1979–80
Total Raised, 1985–86: $77,017
Total Raised, 1989–90: $274,424
Difference: $197,407 = 256.32% Rank: 79
Timken Company Formed:1995–96
Total Raised, 1995–96: $79,717
Total Raised, 1999–00: $277,044
Difference: $197,327 = 247.53% Rank: 80
Southern Bell Telephone & Telegraph Co. Formed:1979–80
Total Raised, 1981–82: $54,650
Total Raised, 1985–86: $189,822
Difference: $135,172 = 247.34% Rank: 81
National City Corporation Formed:1981–82
Total Raised, 1983–84: $59,921
Total Raised, 1987–88: $207,361
Difference: $147,440 = 246.06% Rank: 82
Wal-Mart Stores, Inc. Formed:1979–80
Total Raised, 1989–90: $56,535
Total Raised, 1993=94: $195,579
Difference: $139,044 = 245.94% Rank: 83
Eastern Airlines, Inc. Formed:1979–80
Total Raised, 1983–84: $70,676
Total Raised, 1987–88: $243,529
Difference: $172,853 = 244.57% Rank: 84
Heublein, Inc. Formed:1979–80
Total Raised, 1985–86: $52,292
Total Raised, 1989–90: $178,944
Difference: $126,652 = 242.20% Rank: 85
Salomon Brothers, Inc. Formed:1981–82
Total Raised, 1981–82: $106,250
Total Raised, 1985–86: $363,500
Difference: $257,250 = 242.12% Rank: 86
First Bank System, Inc. Formed:1979–80
Total Raised, 1995–96: $85,349
Total Raised, 1999–00: $290,311
Difference: $204,962 = 240.15% Rank: 87
Goodyear Tire & Rubber Company Formed:1979–80
Total Raised, 1993=94: $54,504
Total Raised, 1997–98: $185,093
Difference: $130,589 = 239.60% Rank: 88
North Carolina National Bank Corp. Formed:1979–80
Total Raised, 1979–80: $79,627
Total Raised, 1983–84: $269,718
Difference: $190,091 = 238.73% Rank: 89
Caterpillar Tractor Company Formed:1981–82
Total Raised, 1985–86: $65,232
Total Raised, 1989–90: $219,844
Difference: $154,612 = 237.02% Rank: 90
Lehman Brothers Kuhn Loec, Inc. Formed:1979–80
Total Raised, 1979–80: $51,400
Total Raised, 1983–84: $171,973
Difference: $120,573 = 234.58% Rank: 91
Northrop Corporation Formed:1979–80
Total Raised, 1979–80: $86,250
Total Raised, 1983–84: $288,361
Difference: $202,111 = 234.33% Rank: 92
GMC Electronic Data Systems Corporation Formed:1979–80
Total Raised, 1987–88: $116,315
Total Raised, 1991–92: $388,257
Difference: $271,942 = 233.80% Rank: 93
Textron, Inc. Formed:1979–80
Total Raised, 1981–82: $116,552
Total Raised, 1985–86: $388,852
Difference: $272,300 = 233.63% Rank: 94
Southern Bell Telephone & Telegraph Co. Formed:1979–80
Total Raised, 1987–88: $203,554
Total Raised, 1991–92: $678,024
Difference: $474,470 = 233.09% Rank: 95
United Parcel Service of America, Inc. Formed:1979–80
Total Raised, 1983–84: $272,659
Total Raised, 1987–88: $905,482
Difference: $632,823 = 232.09% Rank: 96
Gun Owners of America (gun control foes) Formed:1991–92
Total Raised, 1995–96: $93,086
Total Raised, 1999–00: $309,050
Difference: $215,964 = 232.00% Rank: 97
Dun & Bradstreet Corporation Formed:1979–80
Total Raised, 1981–82: $51,577
Total Raised, 1985–86: $169,954
Difference: $118,377 = 229.52% Rank: 98
J. C. Penney Company, Inc. Formed:1979–80
Total Raised, 1981–82: $91,484
Total Raised, 1985–86: $301,185
Difference: $209,701 = 229.22% Rank: 99
United Parcel Service of America, Inc. Formed:1979–80
Total Raised, 1985–86: $567,328
Total Raised, 1989–90: $1,865,785
Difference: $1,298,457 = 228.87% Rank: 100

Source: Computer analysis by Sunshine Press Services of Federal Election Commission data, Jan. 1, 1979 through Dec. 31, 2000.

Table 5. Rapid Rises in Corporate PAC Spending, 1979–2002

(After Spending More than $250,000)

Microsoft Corporation Formed: 1987–88
Total Spent, 1997–98: $267,500
Total Spent, 1999–00: $1,221,730
Difference: $954,230 = 356.72% Rank: 1
Federal Express Corporation Formed: 1983–84
Total Spent, 1985–86: $392,441
Total Spent, 1987–88: $1,093,998
Difference: $701,557 = 178.77% Rank: 2
Compass Bancshares, Inc. Formed: 1983–84
Total Spent, 1991–92: $363,617
Total Spent, 1993=94: $974,893
Difference: $611,276 = 168.11% Rank: 3
Metropolitan Life Insurance Company Formed: 1979–80
Total Spent, 1997–98: $310,633
Total Spent, 1999–00: $815,624
Difference: $504,991 = 162.57% Rank: 4
Bell Atlantic Corp. Formed: 1983–84
Total Spent, 1995–96: $388,073
Total Spent, 1997–98: $1,006,783
Difference: $618,710 = 159.43% Rank: 5
Planned Parenthood Action Fund, Inc. Formed: 1995–96
Total Spent, 1997–98: $359,408
Total Spent, 1999–00: $914,501
Difference: $555,093 = 154.45% Rank: 6
RJR Nabisco, Inc. Formed: 1979–80
Total Spent, 1987–88: $348,897
Total Spent, 1989–90: $872,626
Difference: $523,729 = 150.11% Rank: 7
Southern Bell Telephone & Telegraph Co. Formed: 1979–80
Total Spent, 1989–90: $265,096
Total Spent, 1991–92: $650,905
Difference: $385,809 = 145.54% Rank: 8
American Information Technologies Corp. Formed: 1983–84
Total Spent, 1991–92: $518,442
Total Spent, 1993=94: $1,207,881
Difference: $689,439 = 132.98% Rank: 9
Tenneco, Inc. Formed: 1979–80
Total Spent, 1993=94: $380,688
Total Spent, 1995–96: $860,515
Difference: $479,827 = 126.04% Rank: 10
Banc One Corporation Formed: 1979–80

Total Spent, 1991–92: $421,467
Total Spent, 1993=94: $934,434
Difference: $512,967 = 121.71% Rank: 11
American General Corporation Formed: 1979–80
Total Spent, 1997–98: $291,488
Total Spent, 1999–00: $634,510
Difference: $343,022 = 117.68% Rank: 12
Boeing Company Formed: 1981–82
Total Spent, 1995–96: $370,105
Total Spent, 1997–98: $759,495
Difference: $389,390 = 105.21% Rank: 13
MBNA Corporation Formed: 1991–92
Total Spent, 1993=94: $403,796
Total Spent, 1995–96: $825,974
Difference: $422,178 = 104.55% Rank: 14
Compass Bancshares, Inc. Formed: 1983–84
Total Spent, 1995–96: $729,612
Total Spent, 1997–98: $1,468,094
Difference: $738,482 = 101.22% Rank: 15
Southtrust Corporation Formed: 1979–80
Total Spent, 1995–96: $266,593
Total Spent, 1997–98: $530,794
Difference: $264,201 = 99.10% Rank: 16
FirstEnergy Corp. (Ohio Edison) Formed: 1981–82
Total Spent, 1997–98: $253,675
Total Spent, 1999–00: $502,890
Difference: $249,215 = 98.24% Rank: 17
Koch Industries, Inc. Formed: 1989–90
Total Spent, 1995–96: $428,664
Total Spent, 1997–98: $807,318
Difference: $378,654 = 88.33% Rank: 18
Northrop Corporation Formed: 1979–80
Total Spent, 1993=94: $422,969
Total Spent, 1995–96: $794,880
Difference: $371,911 = 87.93% Rank: 19
J.P. Morgan & Company, Inc. Formed: 1979–80
Total Spent, 1985–86: $262,250
Total Spent, 1987–88: $492,681
Difference: $230,431 = 87.87% Rank: 20
Philip Morris, Inc. Formed: 1979–80
Total Spent, 1983–84: $403,699
Total Spent, 1985–86: $754,949
Difference: $351,250 = 87.01% Rank: 21
Eli Lilly & Company Formed: 1979–80
Total Spent, 1995–96: $375,583
Total Spent, 1997–98: $700,580
Difference: $324,997 = 86.53% Rank: 22
Southwestern Bell Corporation Formed: 1979–80
Total Spent, 1993=94: $365,700
Total Spent, 1995–96: $674,857
Difference: $309,157 = 84.54% Rank: 23
Rockwell International Corporation Formed: 1979–80
Total Spent, 1981–82: $266,688
Total Spent, 1983–84: $490,541
Difference: $223,853 = 83.94% Rank: 24
United Parcel Service of America, Inc. Formed: 1979–80
Total Spent, 1991–92: $1,835,231
Total Spent, 1993=94: $3,350,884
Difference: $1,515,653 = 82.59% Rank: 25
General Telephone & Electronics Corp. Formed: 1979–80
Total Spent, 1989–90: $420,131
Total Spent, 1991–92: $765,805
Difference: $345,674 = 82.28% Rank: 26
United Parcel Service of America, Inc. Formed: 1979–80
Total Spent, 1985–86: $522,514
Total Spent, 1987–88: $943,815
Difference: $421,301 = 80.63% Rank: 27
Waste Management, Inc. Formed: 1979–80
Total Spent, 1985–86: $341,975
Total Spent, 1987–88: $615,059
Difference: $273,084 = 79.85% Rank: 28
Houston Industries, Inc. Formed: 1979–80
Total Spent, 1983–84: $256,353
Total Spent, 1985–86: $460,684
Difference: $204,331 = 79.71% Rank: 29
Cigna Corporation Formed: 1979–80
Total Spent, 1997–98: $352,512
Total Spent, 1999–00: $624,736
Difference: $272,224 = 77.22% Rank: 30
United Parcel Service of America, Inc. Formed: 1979–80
Total Spent, 1987–88: $943,815
Total Spent, 1989–90: $1,658,366
Difference: $714,551 = 75.71% Rank: 31
Black America's PAC Formed: 1995–96
Total Spent, 1995–96: $1,899,486
Total Spent, 1997–98: $3,337,602
Difference: $1,438,116 = 75.71% Rank: 32
Chase Manhattan Corporation Formed: 1979–80
Total Spent, 1989–90: $274,760
Total Spent, 1991–92: $481,894
Difference: $207,134 = 75.39% Rank: 33
Barnett Banks of Florida, Inc. Formed: 1979–80
Total Spent, 1985–86: $304,230
Total Spent, 1987–88: $532,509
Difference: $228,279 = 75.04% Rank: 34
Bankamerica Corporation Formed: 1981–82
Total Spent, 1993=94: $311,633
Total Spent, 1995–96: $535,516
Difference: $223,883 = 71.84% Rank: 35
NationsBank Formed: 1979–80
Total Spent, 1997–98: $607,578
Total Spent, 1999–00: $1,041,837
Difference: $434,259 = 71.47% Rank: 36
United Technologies Corporation Formed: 1979–80
Total Spent, 1993=94: $263,300
Total Spent, 1995–96: $450,078
Difference: $186,778 = 70.94% Rank: 37
Southwestern Bell Corporation Formed: 1979–80
Total Spent, 1997–98: $961,990
Total Spent, 1999–00: $1,642,657
Difference: $680,667 = 70.76% Rank: 38
Lockheed Corporation Formed: 1979–80
Total Spent, 1991–92: $422,512
Total Spent, 1993=94: $708,346
Difference: $285,834 = 67.65% Rank: 39
Union Pacific Corporation Formed: 1979–80
Total Spent, 1985–86: $296,938
Total Spent, 1987–88: $495,482
Difference: $198,544 = 66.86% Rank: 40
Household Finance Corporation Formed: 1979–80
Total Spent, 1989–90: $270,795
Total Spent, 1991–92: $444,889
Difference: $174,094 = 64.29% Rank: 41
Sierra Club (environmentalist) Formed: 1979–80
Total Spent, 1997–98: $441,208
Total Spent, 1999–00: $721,429
Difference: $280,221 = 63.51% Rank: 42
Westinghouse Electric Corp. Formed: 1979–80
Total Spent, 1987–88: $264,890
Total Spent, 1989–90: $431,697
Difference: $166,807 = 62.97% Rank: 43
American Telephone & Telegraph Co. Formed: 1983–84
Total Spent, 1985–86: $1,744,301
Total Spent, 1987–88: $2,841,464
Difference: $1,097,163 = 62.90% Rank: 44
General Motors Corporation Formed: 1979–80
Total Spent, 1993=94: $477,782
Total Spent, 1995–96: $777,521
Difference: $299,739 = 62.74% Rank: 45
Keycorp Formed: 1979–80
Total Spent, 1995–96: $376,200
Total Spent, 1997–98: $611,975
Difference: $235,775 = 62.67% Rank: 46
Union Pacific Corporation Formed: 1979–80
Total Spent, 1989–90: $731,974
Total Spent, 1991–92: $1,188,407
Difference: $456,433 = 62.36% Rank: 47
Sierra Club (environmentalist) Formed: 1979–80
Total Spent, 1987–88: $299,891
Total Spent, 1989–90: $486,795
Difference: $186,904 = 62.32% Rank: 48
Chrysler / Gulfstream Aerospace Corp. Formed: 1979–80
Total Spent, 1993=94: $417,015
Total Spent, 1995–96: $659,369
Difference: $242,354 = 58.12% Rank: 49
Pfizer, Inc. Formed: 1979–80
Total Spent, 1997–98: $536,471
Total Spent, 1999–00: $844,132
Difference: $307,661 = 57.35% Rank: 50
Chase Manhattan Bank Formed: 1979–80
Total Spent, 1989–90: $269,299
Total Spent, 1991–92: $423,632
Difference: $154,333 = 57.31% Rank: 51
Sierra Club (environmentalist) Formed: 1979–80
Total Spent, 1993=94: $431,725
Total Spent, 1995–96: $677,883
Difference: $246,158 = 57.02% Rank: 52
Banc One Corporation Formed: 1979–80
Total Spent, 1989–90: $269,833
Total Spent, 1991–92: $421,467
Difference: $151,634 = 56.20% Rank: 53
Raytheon Company Formed: 1979–80
Total Spent, 1995–96: $385,863
Total Spent, 1997–98: $601,994
Difference: $216,131 = 56.01% Rank: 54
Eli Lilly & Company Formed: 1979–80
Total Spent, 1997–98: $700,580
Total Spent, 1999–00: $1,089,599
Difference: $389,019 = 55.53% Rank: 55
Chrysler / Gulfstream Aerospace Corp. Formed: 1979–80
Total Spent, 1995–96: $659,369
Total Spent, 1997–98: $1,021,714
Difference: $362,345 = 54.95% Rank: 56
Amsouth Bancorporation Formed: 1983–84
Total Spent, 1997–98: $304,524
Total Spent, 1999–00: $470,782
Difference: $166,258 = 54.60% Rank: 57
Glaxo, Inc. Formed: 1985–86
Total Spent, 1997–98: $716,634
Total Spent, 1999–00: $1,104,801
Difference: $388,167 = 54.17% Rank: 58
Crawford Group / Enterprise Leasing Formed: 1987–88
Total Spent, 1993=94: $253,769
Total Spent, 1995–96: $391,094
Difference: $137,325 = 54.11% Rank: 59
Associates Corp. (Ford Motor Co.) Formed: 1989–90
Total Spent, 1995–96: $342,269
Total Spent, 1997–98: $526,937
Difference: $184,668 = 53.95% Rank: 60
Morgan Stanley & Company, Inc. Formed: 1979–80

Total Spent, 1985–86: $303,919
Total Spent, 1987–88: $465,992
Difference: $162,073 = 53.33% Rank: 61
Houston Industries, Inc. Formed: 1979–80
Total Spent, 1995–96: $470,646
Total Spent, 1997–98: $720,544
Difference: $249,898 = 53.10% Rank: 62
Outback Steakhouse, Inc. Formed: 1991–92
Total Spent, 1997–98: $636,741
Total Spent, 1999–00: $974,275 Difference: $337,534 = 53.01% Rank: 63
Household Finance Corporation Formed: 1979–80
Total Spent, 1997–98: $512,016
Total Spent, 1999–00: $782,819
Difference: $270,803 = 52.89% Rank: 64
General Motors Corp. / Hughes Aircraft Formed: 1979–80
Total Spent, 1985–86: $271,290
Total Spent, 1987–88: $412,181
Difference: $140,891 = 51.93% Rank: 65
American Airlines Formed: 1979–80
Total Spent, 1991–92: $282,647
Total Spent, 1993=94: $426,852
Difference: $144,205 = 51.02% Rank: 66
Cooper Industries, Inc. Formed: 1979–80
Total Spent, 1989–90: $264,213
Total Spent, 1991–92: $397,960
Difference: $133,747 = 50.62% Rank: 67
Flowers Industries, Inc. Formed: 1979–80
Total Spent, 1993=94: $254,819
Total Spent, 1995–96: $383,269
Difference: $128,450 = 50.41% Rank: 68
Source: Computer analysis by Sunshine Press Services of Federal
Election Commission data, Jan. 1, 1979 through Dec. 31,2000.
APPENDIX B: Publication List
The news organizations listed below have published news reports or commentary by Edward Roeder
Daily Newspapers
Albuquerque Journal
Arizona Republic
Arkansas Gazette-Democrat
Atlanta Constitution *
Austin American-Statesman
Baltimore Sun *
Boston Globe *
Chicago Sun-Times *
Chicago Tribune *
Cleveland Plain Dealer
Dallas Morning News
Denver Post
Deseret News
Detroit Free Press*
Detroit News *
Florida Today
Fort Lauderdale News & Sun-Sentinel *
Greensboro News & Record *
Kansas City Star
Los Angeles Times
Louisville Courier-Journal *
Miami Herald *
Nashville Tennessean
New Orleans Times-Picayune
New York Daily News
New York Newsday
New York Times *
Orlando Sentinel *
Philadelphia Inquirer *
Portland Oregonian
Providence Journal
Richmond Times-Dispatch
Sacramento Bee *
San Jose Mercury News
Seattle Post-Intelligencer
Seattle Times *
St. Louis Post-Dispatch *
St. Petersburg Times *
Tampa Tribune
USA Today
Washington Post *
Washington Times
Articles ran on page 1 or led Sunday section
Periodicals
American Banker *
Capital Style
Conservative Digest *
Free Inquiry *
Monthly Business Review *
MS. *
New Republic *
New Times *
Newsweek
Playboy *
Politics Today *
Rolling Stone *
Saturday Review *
Sierra *
Space Business International *
The Nation *
Time
Village Voice *
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Nightline (ABC News- TV) *
NBC News (TV & Radio)
20–20 (ABC News- TV)
WBAL-TV (Baltimore, MD)
WDIV-TV (Detroit, Mich.) *
WJLA-TV (Washington, DC) *
WJXT-TV (Jacksonville, Fla.) *
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MTC–00028685

From: David Robinson
To: Microsoft ATR
Date: 1/28/02 4:55pm
Subject: Microsoft Settlement
I disagree with the PFJ because it does not end Microsoft's monopoly but may allow MS to extend and expand its monopoly! Enforcement of the PFJ appears nearly impossible to enforce.
Thank you for considering my opinions.
Dave Robinson
407–843–3294, ext 227

MTC–00028686

From: Brooke Emmerick
To: 'microsoft.atr(a)usdoj.gov''
Date: 1/28/02 4'58pm
Subject: Microsoft Settlement
BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES OF AMERICA, Plaintiff,
v.
Civil Action No. 98–1232 (CKK)
MICROSOFT CORPORATION, Defendant.
STATE OF NEW YORK ex rel.
Attorney General Eliot Spitzer, et al., Plaintiffs,
v
. Civil Action No. 98–1233 (CKK)
MICROSOFT CORPORATION Defendant.
Comments of The Progress & Freedom Foundation on the Revised Proposed Final Judgment and the Competitive Impact Statement
Jeffery A. Eisenach, Ph.D.
President
Thomas M. Lenard, Ph.D.
Vice President for Research
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Washington, DC 20005
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Table of Contents

I. Introduction
These comments on the Proposed Final Judgment [1] (''PFJ'') and the Competitive Impact Statement [2] (''CIS'') in the Microsoft case are submitted to provide the Department of Justice (''DOJ'') and the Court with information and analysis based on nearly five years of research by the authors on the legal, policy and economic implications of this landmark proceeding. Based on that research, it is our assessment that (a) the PFJ fails to address meaningfully the violations of law found by this court and upheld by the U.S. Court of Appeals and its entry by the court manifestly is not in the public interest; (b) the CIS fails to meet the standard of analysis demanded by the law and occasioned by the magnitude of the issues involved; and (c) the public interest will best be served through imposition of a ''hybrid'' structural remedy or, if the court chooses not to impose a structural remedy, a conduct remedy modeled after the proposals of the remaining litigating states.
A. The Authors
Dr. Eisenach is President and Senior Fellow at The Progress & Freedom

[1] United States v. Microsoft Corp., Stipulation and Revised Proposed Final Judgement (November 6, 2001) (hereafter ''PFJ'').

[2] United States v. Microsoft Corp., Competitive Impact Statement (November 15, 2001) (hereafter ''CIS'').

Foundation,[3] a non-profit research and educational institution dedicated to analyzing the impact of the digital revolution and its implications for public policy, and an Adjunct Professor at George Mason University Law School. As a professional economist, he has been actively engaged in the analysis of competition and regulatory policy issues for more than 20 years, and has served in senior positions at the Office of Management and Budget and the U.S. Federal Trade Commission and as a consultant to the U.S. Sentencing Commission on criminal sentencing guidelines for corporations. He has also served on the faculties of Harvard University's Kennedy School of Government, the University of Virginia and Virginia Polytechnic Institute and State University.

Dr. Lenard is Vice President and Senior Fellow at The Progress & Freedom Foundation and a professional economist with 30 years of experience in academia, government, private consulting and the non-profit sector. He has worked on a wide range of regulatory and antitrust issues covering a broad span of industries, and has consulted on antitrust cases for both private firms and the Federal Trade Commission. In government, he has held senior economic positions at the Council on Wage and Price Stability, the Office of Management and Budget and the Federal Trade Commission. A principal focus of his research has been the benefits and costs of regulatory interventions into the economy and the analytical underpinnings needed to make informed decisions about government interventions. Both Drs. Eisenach and Lenard have done extensive work on the economics of high-tech markets in general, and the Microsoft case in particular. They are co-authors of the annual Digital Economy Fact Book,[4] co-editors of Competition, Innovation and the Microsoft Monopoly: Antitrust in the Digital Marketplace and authors of numerous other papers on these and related topics.[5]

B. Summary of Comments

The PFJ is intended to settle the government's antitrust case against Microsoft and was agreed to by the United States, 9 of the 18 states that were also party to suit, and by Microsoft. The nine remaining states and the District of Columbia (the ''Litigating States'') have not agreed to the PFJ and are pursuing more stringent relief through a remedy hearing at the District Court.[6] The DOJ is required by the Antitrust Procedures and Penalty Act (''APPA'')[7] to prepare a CIS, which is intended to analyze the competitive implications of the PFJ and any alternatives to it.

The PFJ does not serve the public interest and will not achieve the government's objective that it ''halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals and restore competitive conditions to the market.''[8] Indeed, much of the behavior found by the Court of Appeals to be anticompetitive would be permitted under the PFJ. Further, even if the PFJ did preclude such behavior it would fail to restore competitive conditions because it fails to affect the behavior of participants in the marketplace.

The CIS does not satisfy the government's obligation to provide the District Court with an analytical basis for determining whether the PFJ is in the public interest. The APPA clearly requires, and good public policy demands, an ''evaluation'' of the proposed remedy and major alternatives to it. The CIS does not present such an evaluation. It does not explain why the PFJ will achieve the intended results, but merely asserts that it will do so. It also does not explain why the DOJ concluded that the PFJ will better serve the public interest than major alternatives, but merely states that ''[t]he United States ultimately concluded that the requirements and prohibitions set forth in the Proposed Final Judgment provided the most effective and certain relief in the most timely manner.''[9] The DOJ has produced no real analysis of the relative merits for Operating Systems: Alternative Structural Remedies in the Microsoft Case,'' George Mason Law Review, Vol., 9, Spring 2001, 803–841. of alternative forms of relief to guide the District Court in deciding whether to approve the PFJ. Indeed, the CIS fails by a wide margin to meet the standards required of analyses of regulatory proposals routinely promulgated by government agencies.

Accordingly, the District Court should not accept the PFJ, but should, instead, expand its hearing on the Litigating States Proposal (''LS Proposal'') to include the full range of major alternatives. This would permit the District Court to gather the information needed to make an informed judgment concerning which of the remedy proposals will best serve the public interest. The alternatives that should be considered include:

u The PFJ.

u The proposals of the Litigating States.

u Major structural remedies, including the vertical-divestiture remedy initially adopted by the District Court and the ''hybrid'' remedy proposed by Dr. Lenard and others.

Among these remedies, the ''hybrid'' structural approach would best serve the public interest and maximize net economic benefits to consumers.

In the sections that follow, we provide, first, a brief restatement of the facts and legal background in this case, including a brief discussion of what we believe to be the appropriate standards by which remedial action should be judged. Next we discuss the shortcomings in the PFJ and the CIS, explaining why the PFJ will not achieve the government's objectives or serve the public interest and demonstrating that the CIS falls far short of the analytical standard that should be demanded by the court. Finally, we turn to an evaluation of the remedial alternatives and explain why we believe that (a) a ''hybrid'' structural remedy would best serve consumers and competition and (b) that if the court chooses not to impose a structural remedy, the LS Proposal is superior to the PFJ.

II. Background: The Facts, the Law and the Remedy

The U.S. District Court[10] found, and the U.S. Court of Appeals[11] affirmed, a pattern of Sherman Act violations by Microsoft that had the effect of foreclosing competition in the market for personal computer operating systems. The District Court ordered a structural remedy, which was overturned by the Appeals Court, which remanded the remedy issue back to this court. The Appeals Court did not prescribe or prohibit adoption of any particular remedial actions by this court.

A. The Illegal Conduct and Its Effects

The Appeals Court unanimously affirmed the core of the government's case against Microsoft, finding that the company had undertaken a broad array of anticompetitive practices to maintain its monopoly in personal computer operating systems, in violation of Section 2 of the Sherman Act.[12] Microsoft's strategy was to use its monopoly power to prevent the emergence of any new technology that might compete with Windows. Microsoft's anticompetitive activities were particularly directed against two products—the Netscape browser and Sun's Java programming language—that could support operating-system-neutral computing and thereby erode Microsoft's market position. In summary, the District Court found, and the Appeals Court affirmed, that:

Microsoft has monopoly power in the market for Intel-compatible PC operating systems, with a market share of greater than 95 percent. Microsoft's market is protected by a substantial barber to entry—the ''applications barrier to entry''—that discourages software developers from writing applications for operating systems that do not already have an established base of users.

u Microsoft effectively excluded rival browsers from the two most efficient means of distribution—pre-installation by Original Equipment Manufacturers (OEMs) and distribution by Internet Access Providers (IAPs).

u Microsoft imposed restrictions on its Windows licenses that effectively prevented OEMs from pre-installing any browser other than Internet Explorer (IE).

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[3] These comments reflect the views of the authors and do not represent the views of The Progress & Freedom Foundation, its officers or board of directors.

[4] See Jeffrey A. Eisenach, Thomas M. Lenard and Stephen McGonegal, The Digital Economy Fact Book 2001 (Washington: The Progress & Freedom Foundation, 2001).

[5] See Jeffrey A. Eisenach and Thomas M. Lenard, eds., Competition, Innovation and the Microsoft Monopoly: Antitrust in the Digital Marketplace, Kluwer Academic Publishers, 1999; Thomas M. Lenard, Creating Competition in the Market for Operating Systems: A Structural Remedy for Microsoft, (Washington: The Progress & Freedom Foundation, 2000), http://www.pff.org/remedies/htm; and Thomas M. Lenard, ''Creating Competition in the Market

[6] United States v. Microsoft Corp., Plaintiff Litigating States'' Remedial Proposals, (December 7, 2001) (hereafter ''LS Proposal'').

[7] 15 USCS 16 (b-h).

[8] CIS at 2.

[9] 9 CIS at 63.

[10] United States v. Microsoft Corp., 84 F. Supp. 2d 9 (DCCirc 1999) (''Findings of Fact'');United States v. Microsoft Corp., 87 F. Supp. 2d 30 (DC Circ. 2000) (''Conclusions of Law'').

[11] United States v. Microsoft Corp., 253 F 3d, at 6 (DC Circ. 2001).

[12]

u Microsoft's technological binding of IE to Windows deterred OEMs from pre-installing rival browsers and consumers from using them.

u Microsoft's contracts with IAPs—for example, agreeing to give AOL preferential placement on the Windows desktop in exchange for AOL's agreement not to distribute any non-Microsoft browser to more than 15 percent of its subscribers and to do so only at the customer's explicit request—blocked the distribution of a rival browser.

u Microsoft's deals with Independent Software Vendors (ISVs)—for example, giving preferential support to ISVs that used IE as the default browser in software they develop—and Apple—prohibiting Apple from pre-installing any non-Microsoft browser—were similarly exclusionary.

u Microsoft's agreements with ISVs that made receipt of Windows technical information conditional on the ISVs'' agreement to use Microsoft's version of the Java Virtual Machine (JVM) exclusively were anticompetitive. Microsoft also deceived Java developers into believing that its tools were not Windows-specific and were consistent with Sun's objective of developing cross-platform applications.

u Microsoft's pressuring of Intel to stop supporting cross-platform Java—by threatening to support an Intel competitor's development efforts—was exclusionary.

Microsoft was clearly successful in its efforts to eliminate threats to its desktop monopoly. Through its anticompetitive activities, Microsoft achieved dominance in the browser market and forestalled the development of such cross-platform technologies as the Netscape browser and Java that could have eroded the applications barrier to entry. The promise of operating-system-neutral computing was that it would inject competition into the market for operating systems, which would foster innovation throughout the industry. By preventing the development of competition, Microsoft's illegal conduct thwarted innovation and harmed consumers.

B. Appropriate Criteria for a Remedial Action

The Supreme Court has stated that the purpose of remedial action in an antitrust case is to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation and ensure that there remain no practices likely to result in monopolization.''[13] In other words, a remedy must be effective in the present (terminating the monopoly), the past (expropriating ill-gotten gains), and the future (preventing similar conduct going forward).

As professional economists, we suggest it is especially important to look to the future, where economic actors will make decisions based on the incentives inherent in whatever remedy the court imposes. The remedy should not only address the illegal practices Microsoft already has employed to maintain its operating system monopoly, it should also as the Supreme Court has said—address practices that Microsoft might employ in the future to erect barriers to operating system competition or to use anticompetitive practices to leverage its monopoly beyond the desktop into new phases of computing. In a business that moves as rapidly as the software marketplace (and other information technology and communications markets Microsoft is now entering or is likely to enter soon) it is particularly important that the remedy be forward looking.

The DOJ claims that the PFJ meets these standards, and ''will eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings.''[14] For masons discussed at length below, we disagree. Here, we address two issues relating to the standard by which any remedy should be judged.

First, it is noteworthy that the DOJ does not claim the PFJ achieves the goal of denying Microsoft the fruits of its violations, and clearly it will not. Such restitution is important not only to ''make whole'' the victims of Microsoft's illegal activity (e.g., the United States), but also to establish appropriate incentives on a going forward basis. In general, allowing violators to retain the fruits of their illegal conduct deprives the antitrust laws of much of their force, because it sends a signal to violators that the returns to their behavior are positive—even when they are caught. With $42 billion in the bank, one wonders how Microsoft's senior management could read the proposed PFJ any other way.

Second, and relatedly, DOJ's stated goal of restoring ''the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings'' is not the appropriate objective, and certainly is not equivalent to the Supreme Court's standard of ''terminat[ing] the illegal monopoly.'' The competitive threat posed by the Netscape browser and Java was quantitatively relatively small at the time that Microsoft's illegal campaign against them was undertaken. But it was clear, certainly to Microsoft, that their competitive potential in the dynamic software marketplace was very significant. Had Microsoft not engaged in illegal activities, the competitive significance of these products would be much greater today than it was at the time.

There is a useful analogy here to simple commercial damage cases. If, for example, an individual or a company incurs monetary damages from actions in the past, compensation is generally based on the present value of those damages, typically calculated by bringing the damage amount forward (from the time of the damage to the present) at a normal rate of return. That would be the only way for the damaged party to be made whole. Similarly, society has been damaged by Microsoft's actions. For society to be made whole, competition should, to the extent possible, be restored to what it would be today in the absence of Microsoft's illegal conduct,[15] Equally important on a going forward basis, however, Microsoft should not be permitted to earn continuing returns based upon its illegally enhanced monopoly position. To do so would be to allow the company not only to retain the fruits of its illegal conduct in the past but to continue harvesting those fruits indefinitely.

III. The CIS and the PFJ: Flawed Analysis of a Flawed Remedy

DOJ and Microsoft prefer a PFJ which contains a number of restrictions on Microsoft's conduct on a going forward basis. The questions before the court are whether entry of the PFJ is consistent with the purpose and intent of the Sherman Act and, in addition, whether, under the APPA, it is consistent with the public interest. To facilitate the court's deliberations on the latter issue, the APPA requires the DOJ to submit a CIS.[16] However, the CIS submitted in this proceeding contains virtually no analysis of either the PFJ or alternative remedies. It represents nothing more than a set of unsupported assertions, and accordingly should be given little deference by the court.

In this section, we briefly describe the main provisions of the PFJ. Next, we explain why the CIS fails to meet a reasonable standard of substantive analysis. Third, we provide some examples of shortcomings in the PFJ which would have been obvious had DOJ performed a more complete analysis in the CIS.

A. Major Provisions of the PFJ

As described in the CIS, the proposed PFJ contains seven major provisions. In brief summary, they are:

. OEMs would have the freedom to support and distribute non-Microsoft middleware products or operating systems without fear of retaliation by Microsoft.

. To help ensure against retaliation, Microsoft would be required to provide uniform licensing terms to the 20 largest computer manufacturers.

. Computer manufacturers would have the freedom to feature and promote non-Microsoft middleware and customize their computers to use non-Microsoft middleware as the default.

. Microsoft would be required to disclose the interfaces and technical information that its own middleware uses, so that ISVs can develop competitive middleware products.

. Microsoft would be required to disclose communications protocols necessary for server and Windows desktop operating system software to interoperate with each other.

. Microsoft would be prohibited from retaliating against ISVs or IHVs that develop or distribute software that competes with Microsoft middleware or operating system software.

. Microsoft would be prohibited from entering into exclusive contracts concerning its middleware or operating system products.

The CIS claims that these provisions, and the supporting provisions pertaining to enforcement, ''will eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful

[13] 253 F 3d at 99–100, quoting (United States v. United Shoe Mach. Corp), 391 U.S. 244, 250 (1968).

[14] CIS at 3.

[15] To truly be made whole in addition need to be compensated for the benefits it lost due to the absence of competition in the itnervening years, which is proably not possible.

[16] CIS at 3–4.

undertakings.'' But the CIS presents virtually no analysis to support this claim.

B. The Competitive Impact Statement

The CIS does not meet the standards established by the APPA and does not provide sufficient analysis for this court to make an informed decision on whether the PFJ is in the public interest.

Section 16(b)(3) of the APPA requires that the CIS include ''an explanation o* the proposal ... and the anticipated effects on competition of such relief.'' (Emphasis added.) Section 16(b)(6) further requires ''a description and evaluation of alternatives to such proposal actually considered by the United States.'' (Emphasis added). Under Section 16(e), the District Court is required to determine that the consent judgment is in the public interest and in making that determination ''may consider...anticipated effects of alternative remedies ....'' Taken together, these provisions make clear that the CIS was intended by Congress to serve as a guide to the court in evaluating the proposed relief relative to other alternatives which might better serve the public interest, not simply as a pro forma set of claims and assertions. Yet the CIS in this case fails even to fully ''explain,'' and certainly cannot be said to ''evaluate,'' either the likely effects of either the PFJ or the available alternatives. Such an analysis would seem especially important in a fully-litigated Tunney Act case such as this one, where a prior finding of liability suggests a lower degree of deference to the PFJ than would otherwise be appropriate, and thus a higher burden on the court to evaluate alternatives.

How should the court evaluate the adequacy of the CIS? Three sets of criteria present themselves. First, does the CIS satisfy the plain language of the statute? Second, how does it compare with previous CIS's in similarly significant cases? Third, how does it compare with the standards of analysis that are required to be performed in similar situations, such as agency rulemakings? This CIS fails all three standards.

First, does the CIS satisfy the plain language of the statute? It depends on how the words ''explain,'' and ''evaluate'' are defined. To defend successfully the plain-language adequacy of the CIS, the DOJ would have to adopt a very narrow interpretation of both words.

Granted, the CIS devotes 43 pages [17] to reciting and, DOJ presumably would argue, ''explaining'' the provisions of the PFJ. What the CIS does not do at any point, however, is explain ''the anticipated effects [of the PFJ] on competition.''

The semantic sleight of hand upon which DOJ relies to avoid this obligation is found on page 24 of the CIS. There, DOJ reminds us that ''Restoring competition is the 'key to the whole question of an antitrust remedy,'' du Pont, 366 U.S. at 326.'' Then it continues with a clever subterfuge: ''Competition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry .... Thus, the key to the proper remedy in this case is to end Microsoft's restrictions on potentially threatening middleware....'' [18] (Emphasis added.)

There, in the word ''thus,'' lies the sum and the entirety of the CIS's explanation of the connection between the PFJ and its anticipated effects on competition. For as explained in more detail below, it is hardly obvious, indeed, it is highly unlikely, that simply ending Microsoft's illegal restrictions on middleware would have any significant effect on competition on a going forward basis. Even in these semantically troubled times, we submit, the word ''thus'' cannot be taken as the ''explanation'' the law requires.

But the CIS's discussion of the PFJ must be counted an analytical masterpiece when compared with its treatment of alternative remedies. In contrast to the lengthy, if failed, treatment accorded the PFJ, the CIS attempts its ''evaluation of alternatives'' in three pages. Not surprisingly, given its brevity, the analysis is limited in how much light it can shed on the DOJ's decisionmaking process or the relative merits of the alternatives before the court. With respect to structural remedies, for example, the evaluation consists of 49 words: ''After remand to the District Court, the United States informed the court and Microsoft that it had decided, in light of the Court of Appeals opinion and the need to obtain prompt, certain and effective relief, that it would not further seek a breakup of Microsoft into two businesses.'' [19] Receiving even less attention are six other remedy alternatives, which are summarily dismissed in a single paragraph, and an unknown number of ''others received or conceived'' which, in apparent direct violation of the APPA, are not even described.[20] There simply is no semantic standard by which this treatment of the alternative remedies can possibly be considered ''an evaluation.''

In summary, the CIS submitted by the DOJ in this case fails the first test the court should apply: It does not fulfill the plain language requirements of either Section 16(b)(3) or Section 16(b)(6) of the APPA.

Any effort the DOJ may make to defend the CIS would be on firmer ground if it could argue it is simply following past practice. While we believe, as suggested above, that the CIS in this case should be held to a higher standard than in cases where the issues have not been fully litigated and a finding of liability has not been entered, at least the DOJ could claim it was adhering to precedent. Even by the standards of past cases, however, this CIS falls far short.

Of course, Tunney Act cases vary in significance and complexity. The best standard for comparison for this case would appear to be the CIS filed in the AT&T case in 1982.[21] In that case as in this one, DOJ was tasked with explaining and evaluating a Proposed Final Judgment aimed at resolving a continuing series of complex antitrust actions affecting one of the most important sectors, and companies, in the U.S. economy.

The AT&T CIS differs markedly from the CIS in this proceeding both in its explanation of the competitive effects and in its evaluation of alternative remedies. Section III of the AT&T CIS [22] presents a comprehensive explanation of the proposed remedy and its anticipated effects on competition. Indeed, in stark contrast to the CIS in this case, the AT&T CIS contains, in Section III.E, an extensive discussion specifically detailing ''The Competitive Impact of the Proposed Modification.'' The section is a lengthy one, explaining in detail how each provision of the proposed remedy is expected to affect competition on a going forward basis, beginning as follows:

Put in simplest terms, the functional divestiture contemplated by the proposed modification will remove from AT&T the power to employ local exchange services in ways that impede competition in interdependent markets, and will remove from the Bell Operating Companies (''BOCs''), which will retain such power, any incentive to exercise it. The United States believes, therefore, that the modification's divestiture requirement, and its complementary injunctive provisions, will substantially accelerate the development of competitive markets for interexchange services, customer premises equipment, and telecommunications equipment generally.[23]

The ensuing pages present a careful analysis of why the government believes this to be the case and what the precise impacts on competition are likely to be. The proposed remedy will ''accelerate the emergence of competition in interexchange services,'' [24]''prevent the reemergence of the ... incentive and ability to leverage regulated monopoly power into the customer premises equipment market,'' [25] make AT&T ''subject to competition in all of its services,'' [26] ''remove the source of AT&T's monopoly power and its ability to leverage monopoly power into related markets,'' [27] and ''prevent the creation anew of incentives and abilities in the BOCs to use their monopoly power to undercut rivals in competitive markets.''[28] ''There is every reason to believe that, divested of the BOCs, AT&T will be a procompetitive force in the markets that it enters. As a result of the modification, it is likely that AT&T will expand not only its product lines, but also the areas in which it sells telecommunications equipment.''[29]

The authors have searched in vain, as will the court, for any similar explanation in the Microsoft CIS. As a procedural matter, the absence of such explanations flies in the face of the APPA. As a substantive one, it strongly suggests such statements are lacking for the simple reason that they are not justified by the remedy Microsoft and the DOJ are asking the court to adopt.

[17] CIS, 17–60.

[18] CIS at 24.

[19] CIS at 61.

[20] CIS at 63.

[21] United States v. Western Electric Company, Inc. and American Telephone & Telegraph Company, Competitive Impact Statement (February 17, 1982), 47 FR 7170–01. (Hereafter AT&T CIS). Of course, unlike this case, the PFJ in the AT&T case was entered prior to any finding of liability.

[22] AT&T CIS at 7173–7180.

[23] 23 AT&T CIS at 7178.

[24] AT&T CIS at 7178.

[24] AT&T CIS at 7179.

[24] AT&T CIS at 7179.

[24] AT&T CIS at 7179.

[24] AT&T CIS at 7179.

[24] AT&T CIS at 7179.

The AT&T CIS also differs from the one in this case in its treatment of alternative remedies.[30] The AT&T CIS appears to meet the requirements of the APPA by describing in some detail the alternative remedies considered and evaluating their likely impacts on competition relative to those expected from the one proposed. ''The United States believes,'' it concludes, ''that the [main alternative] did not approach even remotely the effectiveness of the proposed modification in achieving conditions that would assure full competition in the telecommunications industry.'' [31] Again, such evaluative language is simply absent from the CIS in this case. And again, one cannot help but conclude that, had today's DOJ conducted the same careful analysis as that conducted 20 years ago, it might well have reached different conclusions in the current case.

In summary, then, the CIS not only fails the satisfy the plain language of the APPA, but also fails to meet the standard established by DOJ for a CIS in the most directly analogous case.

The third criteria by which the court should evaluate the sufficiency of the CIS is whether it meets the standards of analysis that are required to be performed in similar situations, the most obvious of which is agency rulemakings.

For at least the last 20 years, agencies have been required to undertake a detailed regulatory impact analysis when they propose major regulatory actions. Under E.O. 12291 (in effect during the Reagan and Bush Administrations), and E.O. 12866 (issued by President Clinton and still in effect), government agencies have been expected to prepare a detailed analysis of the expected benefits and costs of major regulatory proposals and alternatives to them.[32] While the PFJ is technically not a regulation that would fall under E.O. 12866, the magnitude of its impact far exceeds the $100 million threshold that defines a ''major rule'' and thus triggers the requirement for a detailed analysis.

The analysis of regulatory interventions in the economy, which is what the PFJ in this case is, is not a black art. Increasingly, and on the basis of more than two decades of performing such analyses of all major rules, regulatory analysis has become a scientific process comprised of distinct steps and containing specific elements. E.O. 12866, for example, lays out specific criteria such analyses should meet, including: ''(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets ....) together with, to the extent feasible, a quantification of those benefits; (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action ... together with, to the extent feasible, a quantification of those costs; and (iii) An assessment, including the underlying analysis, of the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation ....''

The specific analytical techniques to be used in such evaluations are further described in guidance from the Office of Management and Budget issued January 11, 1996,[33] and reiterated most recently by OMB on June 19, 2001.[34] These guidelines require agencies, before issuing any major regulation, to take into account such issues as whether more ''performance oriented'' approaches are possible, the impact of alternative levels of stringency and effective dates, and alternative methods of ensuring compliance, and to perform evaluations that take into account ''discounting,'' ''risk and uncertainty,'' and ''non-monetized benefits and costs.'' Each analysis, the guidance demands, must ''provide information allowing decisionmakers to determine that: There is adequate information indicating the need for and consequences of the proposed action; The potential benefits to society justify the potential costs ...; The proposed action will maximize the net benefits to society...; [and] .... Agency decisions are based on the best reasonably available scientific, technical, economic, and other information.''

To repeat what we asserted at the outset of this section, the court might evaluate the CIS in this case by three standards: First, does the CIS satisfy the plain language of the statute? Second, how does it compare with previous CIS's in similarly significant cases? Third, how does it compare with the standards of analysis that are required to be performed in similar situations, such as agency rulemakings? This CIS fails all three standards.

C. The PFJ Will Not Have Its Claimed Effect, Nor Any Pro-Competitive Effect

In fact, a close reading of the language of the PFJ indicates that it will not do what the DOJ claims. Moreover, even if DOJ's claims are taken at face value, the PFJ will not have its intended effect because of the realities of the marketplace. Indeed, this is the only conclusion that can be reached based upon a real analysis of the ''competitive impact'' of the PFJ, which is to say an analysis of how, if at all, the provisions of the PFJ will change the behavior of participants in the marketplace.

Other commentators will undoubtedly thoroughly catalogue the loopholes in the PFJ, of which there are many, and it is not our intention to do so here. It is, however, illustrative of the defects of the PFJ to analyze it through the lens of the Netscape browser experience, since so much of Microsoft's liability concerns its actions toward the Netscape browser. Accordingly, much of the PFJ is directed at precluding the type of anticompetitive acts that Microsoft undertook against Netscape (even though the browser war is over and the industry has now moved on to a different stage). But, the PFJ does not even succeed in this minimal goal—of creating the conditions under which the Netscape browser could have competed without being subject to Microsoft's exclusionary practices. Indeed, the PFJ specifically permits many of the exclusionary practices in which Microsoft engaged:

. Section III.A of the PFJ is supposed to protect OEMs from retaliation by Microsoft if they distribute non-Microsoft products. However, the language of Section III.A prohibits Microsoft from retaliating against an OEM for ''developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware.'' (Emphasis added). (Microsoft Platform Software is defined as including (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.) While the Netscape browser was a potential competitor for the Microsoft operating system, it never became an actual competitor. Moreover, at the time Netscape introduced its browser, Microsoft did not have a comparable Middleware Product. Thus, the language of III.A would have permitted Microsoft to retaliate against OEMs for distributing the Netscape browser at the time it was introduced.

. Similarly, Section III.F. 1 prohibits Microsoft from retaliating against any ISV or IHV for ''developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software ....''(Emphasis added). The prohibitions in Section III.F.2 on Microsoft's relations with ISVs are also triggered by software that ''competes with Microsoft Platform Software'', which the Netscape browser did not initially do.

. Section III.G.2 is intended to prevent similar exclusionary behavior with respect to IAPs and ICPs, by prohibiting Microsoft from entering into any agreement with ''any IAP or ICP that grants placement on the desktop or elsewhere ... on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.'' (Emphasis added). Again, Netscape's browser was a new product that did not compete with any Microsoft product at the time it was introduced.

. Section III.C is intended to prevent restrictive agreements with OEMs by, for

[30] 30 AT&T CIS at 7181.

[31] AT&T CIS at 7181.

[32] 32 See E.O. 12291 (February 17, 1981) and E.O. 12866 (September 30, 1993).

[33] Office of Management and Budget, Economic Analysis of Federal Regulations Under Executive Order 12866 (January 11, 1996)(available at www.whitehouse.gov/omb/inforeg/riaguide.html).

[34] Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies: Improving Regulatory Impact Analyses (June 19, 2001)(available at www.whitehouse.gov.omb/memoranda/m01-23.html)

respect to Competitive Impact Statements are, of course, far less specific than those listed above. But the purpose of the APPA in requiring a CIS is presumably similar to the purpose of regulatory analyses: To allow decisionmakers, in this case the court, to understand the ramifications of their actions relative to alternative choices. By the standards of modem policy analysis, DOJ's CIS fails to perform this function at the level the court should expect, especially in a case of this magnitude. Office of Management and Budget, Memorandum for the Heads of Executive Departments and Agencies: Improving Regulatory Impact Analyses (June 19, 2001)(available at www.whitehouse.gov.omb/memoranda/m01-23.html)

example, preventing Microsoft from restricting the ability of its OEM licensees from ''[l]aunching automatically ...any Non-Microsoft Middleware if a Microsoft Middleware Product that provides similar functionality would otherwise be launched ....'' (See Section III.C.3, emphasis added). Under this language, Microsoft can preclude its OEM licensees from permitting the automatic launch of a new product if Microsoft does not have a similar product or if the Microsoft product does not have ''similar functionality'' (obviously, a term open to interpretation). Again, when the Netscape browser was launched, Microsoft did not have a similar product.

. Section III.D is intended to preclude Microsoft from excluding rival products by denying them the technical information they need to interoperate with the Windows operating systems. It requires Microsoft to ''disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product ... the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product.'' (Emphasis added). If, however, Microsoft does not produce an analogous product, it might not use the APIs needed for a new application, such as the Netscape browser, to get started.

. Section III.H contains a variety of provisions designed to enable choice of Non-Microsoft Middleware Products on the part of users and OEMs. The PFJ explicitly states, however, that ''Microsoft's obligations under this Section III.H as to any new Windows Operating System Product shall be determined based on the Microsoft Middleware Products which exist seven months prior to the last beta test version (i.e., the one immediately preceding the first release candidate) of that Windows Operating System Product.'' At the time the Netscape browser was introduced, there was no comparable Microsoft Middleware Product.

. Finally, Non-Microsoft Middleware Products are defined to include products ''of which at least one million copies were distributed in the United States within the previous year.'' (Section VI.N). Thus, regardless of any of the other provisions, the PFJ permits exclusionary behavior against new products that are trying to get established.

In sum, under the provisions of the PFJ Microsoft would have been permitted to engage in anticompetitive practices against the Netscape browser because the browser did not compete against the Windows operating system and because Microsoft did not at the outset have a comparable product. Moreover, at least in the early stages, the Netscape browser would not have been covered because a million copies had not been distributed in a single year. The DOJ obviously feels that the fabled entrepreneurs of Silicon Valley, working in their garages, are not worthy of protection against Microsoft under the PFJ. It is especially ironic that Microsoft, which has dedicated so much rhetoric to persuading the courts and the public that its monopoly could be overturned at any moment by the proverbial entrepreneur working out of her garage, should seek to preserve the right to squash precisely such competitive threats. More broadly, the requirement that Microsoft have a comparable product in order to trigger some of the PFJ's provisions creates perverse incentives. It may discourage Microsoft from introducing its own product, because to do so triggers provisions restricting its ability to exclude a potential competitor. The result could be that consumers would be deprived entirely of a useful middleware product that might potentially compete with the Windows operating system, because Microsoft is able to engage in exclusionary practices against another firm and does not find it in its interest to introduce its own product.

But the PFJ is flawed at an even deeper level: Even if it did what DOJ and Microsoft say it would, its effect on firms that operate in Microsoft's markets and its ability to restore competition in those markets would be minimal at most. Most of the PFJ is intended to prevent Microsoft from retaliating against OEMs, ISVs, IAPs and others that distribute, develop or otherwise support software that competes with Microsoft middleware. Under the terms of the PFJ, however, these entities would have little incentive to promote competitive middleware.

This is principally because, despite the Appeals Court ruling that Microsoft's integration of the browser and the operating system was anticompetitive, the PFJ would allow Microsoft to continue to bundle its middleware (and other) products with its operating system. Indeed, Microsoft's new XP software incorporates new functionality into the Windows operating system as never before. It includes, among other things, the IE browser, Microsoft's instant messaging and email software, Windows Media Player and the Microsoft Passport digital authentication software. All of these functions are bundled together and the combined package is sold at a fixed price.

Thus, OEMs have virtually no incentive to customize their offerings with non-Microsoft software. To do so involves an additional cost for the non-Microsoft software when compariable functionality is provided by Microsoft at no additional cost. An OEM that did this would have to pass these added costs on to its customers and would likely lose sales to other OEMs. Obviously, if OEMs don't have the incentive to install non-Microsoft software, ISVs won't have the incentive to develop it and IAPs won't have the incentive to distribute it.

As a result, the PFJ will not have any significant pro-competitive impact in the markets for either middleware or PC operating systems. Nor, for the same reasons, is it likely to have any significant pro-competitive impact on newly emerging markets, such as voice-over-IP instant messaging, game boxes, e-commerce technologies (e.g., ''Passport'') or digital rights management technologies. Indeed, the inability to make any plausible claims for such pro- competitive effects is the most likely explanation for the fact that, in contrast to the AT&T CIS, the CIS in this case doesn't make any.

IV. The Remedy Alternatives

There are two general classes of remedies that can be employed to remedy Microsoft's antitrust violations—conduct remedies and structural remedies. Conduct remedies leave Microsoft intact and attempt to constrain its anticompetitive behavior by imposing a set of behavioral requirements—essentially, a regulatory regime tailor-made for one firm. Microsoft's structure—and, importantly, its incentives—remain largely the same.[35] The challenge is to develop rules that effectively deter anticompetitive behavior, given that such behavior might continue to be in Microsoft's interest. The PFJ, which relies on conduct remedies, will not be effective in deterring anticompetitive behavior on the part of Microsoft.

Structural relief takes a different approach. Structural relief, as the name implies, involves restructuring the firm so as to change its incentives and ability to act anticompetitively. As DOJ explained eloquently in the AT&T CIS, if a restructuring is successful in achieving those goals, behavioral restrictions are largely unnecessary. The Appeals Court noted that structural relief is a common form of relief in antitrust cases and is ''the most important of antitrust remedies.'' [36]

In this section, we describe the alternative structural remedies available to the court. Then we offer an evaluation of the proposals offered by the remaining litigating states.

A. Alternative Structural Remedies

At the government's urging, the District Court initially adopted a structural remedy, supplemented by interim conduct relief. [37] The Appeals Court vacated the District Court's remedy, partly because it modified the District Court's liability finding and partly because the District Court had failed to hold an evidentiary hearing. [38] The Appeals Court did not, however, rule out a structural solution to this case. The Court directed that ''the District Court also should consider whether plaintiffs have established a sufficient causal connection between Microsoft's anticompetitive conduct and its dominant position in the OS market.'' [39] It continued, ''[i]f the court on remand is unconvinced of the causal connection between Microsoft's exclusionary conduct and the company's position in the OS market, it may well conclude that divestiture is not an appropriate remedy.'' [40]* This is an issue that should be explored in an evidentiary hearing.

While it is difficult to predict exactly how the industry would have developed in the absence of Microsoft's anticompetitive behavior, it is likely that an alternative to Microsoft's operating- system platform would have emerged and it is a virtual certainty that Microsoft's position would be far less dominant than it is today. Clearly, Microsoft thought that was a distinct possibility.

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[35] 35 Microsoft's incentives would be modified to the extent it faces legal penalties, but those penalties would have to be very large to have a significant effect on Microsoft's incentives.

[36] 253 F 3d at 103, quoting United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 331 (1961).

[37] United States v. Microsoft Corp., 97 F Supp-2d. (DCCirc. 2000) ''Final Judgement''.

[38] 253 F 3d at 6.

[39] 253 F 3d at 105.

[40]

The causation between Microsoft's anticompetitive practices and its operating system monopoly runs both ways. Without its monopoly, Microsoft would have been unable to engage in the exclusionary practices documented by the District Court and affirmed by the Appeals Court. Moreover, because of the wide array of business practices at issue and the complexity of the industry, it is very difficult to fashion a conduct relief regime that will be effective if Microsoft retains its dominant market position. This is why the Department of Justice (initially) and others (including ourselves) favor a structural solution. Two different forms of structural solution have been proposed, which we review in turn.

The DOJ initially proposed, and the District Court initially ordered, a vertical divestiture, which would divide Microsoft along product lines, into an operating systems company and an applications company.[41] The DOJ argued that this remedy would create two powerful companies that would have the incentive to compete with each other, diminishing the market power of both. According to Timothy Bresnahan, Chief Economist at the Antitrust Division at the time, ''divestiture of the company into an applications and an operating system company restores competitive conditions very like those destroyed by the anticompetitive acts. Absent the anticompetitive acts, Microsoft would have lost the browser war, and other finns would have commercialized useful technologies now controlled by Microsoft. Divided technical leadership, which could be accomplished by having an independent browser company in the late 1990s or an applications company now, lowers barriers to entry and competition in many markets. It was exactly this route to an increase in competition that Microsoft avoided by its anticompetitive acts. Second, ending Microsoft's unique position in the industry offers innovative new technologies the choice of two mass-market distribution partners, either Appsco [the applications company] or OSCo [the operating system company]. The divestiture will do much to reduce the motive to violate and also to reduce the effectiveness of future anticompetitive acts. It restores conditions for competitive innovation at a moment in technology history [i.e., when the Internet is starting to be commercialized] when having a single firm set the direction of innovation in PC and end-user oriented internet markets is most unwise.'' [42]

Similarly, the Department of Justice, in initially proposing this remedy, argued that separating the operating system from the applications company would ''reduce the entry barriers that Microsoft's illegal conduct erected and make it less likely that Microsoft [would] have the incentive or ability to increase them in the future.'' [43] An independent applications company would have every incentive to support competitors to Windows rather than make decisions based on the level of threat those competitors pose to Microsoft.[44] A separate applications company would have appropriate incentives to port its products to competing operating systems, such as Linux, thereby lowering the applications barrier to entry that potential competitors face. Currently, Microsoft has an incentive to strategically withhold applications from actual or potential competitors, even if providing them would otherwise be economically justified. In addition, the applications company would have the incentive to make its tools available to Independent Software Vendors (ISVs) that cooperate with competing operating system providers.

Separate operating system and applications companies would make it possible for middleware technologies in the applications company to be competitive with Windows. When applications are written to middleware technologies, like the Netscape browser, which operate between the applications software and the operating system, they become operating system neutral,[45] reducing the applications barrier to entry and facilitating competition with Windows. There are several desktop applications, including Microsoft Office, that expose APIs and could become important middleware technologies.

Of course, a vertical divesture now would have a somewhat different effect than when it was first adopted by the District Court, because Microsoft has bundled many more applications into its new XP operating system. If the District Court again decided to adopt this remedy, it would also have to decide whether to require Microsoft to remove some applications functionality from its XP operating system or permit it to remain as is. If the XP operating system were allowed to remain as is, applications that would previously have been part of the applications company would be part of the operating system company. However, significant applications—principally, Microsoft Office—still remain separate from the operating system.

The alternative to a vertical approach is what we term a ''hybrid'' structural remedy, which combines both vertical and horizontal elements. A purely horizontal divestiture would divide Microsoft into several vertically integrated companies, each with full rights to Microsoft's intellectual property, creating several sellers of Windows as well as Microsoft's other software products. This remedy arguably goes beyond what is necessary or could be justified as matter of law, since it divides up products that were not the subject of the case.

A number of commentators, including Dr. Lenard, have proposed a ''hybrid'' remedy, which has elements of both vertical and horizontal divestiture.[46] It goes a step beyond the vertical divestiture remedy that the District Court adopted by first separating the operating systems company from the applications company and then creating three equivalent operating system companies.

Microsoft's bundling of more applications functionality into the new XP operating system strengthens the arguments for the hybrid remedy relative to other remedies. The PFJ (as discussed above) does not contain any restrictions on bundling, which will hinder its effectiveness dramatically. In addition, as more applications are moved into the operating system, the vertical divestiture becomes less able to restore the competitive balance, because the newly formed applications company would be a less powerful competitor.

By creating competing Windows companies, the hybrid remedy directly addresses the monopoly problem, which is the source of Microsoft's anticompetitive behavior. As indicated above, without the monopoly, Microsoft would never have been able to exclude the Netscape browser from the most effective means of distribution—OEMs and IAPs. It would not, for example, have been able to get the OEMs to refrain from pre-installing the Netscape browser as a condition for receiving a Windows license. Similarly, Microsoft would not have been able to extinguish the market for a competing browser by bundling the Windows operating system with IE. Microsoft would not have been able to do these things—which are at the core of the Appeals Court's liability finding—because the OEMs and the IAPs would have had competitive alternatives to which they could turn.

The hybrid remedy would eliminate the applications barrier to entry for the new Windows companies and deprive Microsoft of its ability to leverage its desktop monopoly into new markets. Because it really does restore competition, extensive behavioral restrictions are not required, making this the least regulatory of the available alternatives.

The hybrid remedy is to a significant extent an ''intellectual property'' remedy, requiring Microsoft to grant full intellectual property rights to its Windows Operating System to two new companies. This type of remedy is particularly suited to ''new-economy'' companies like Microsoft, whose assets consist primarily of informational capital, which can easily be replicated.[47] The rationale for going further and dividing up employees is that much of the intellectual property is embodied in the employees.[48] In contrast to traditional ''old-economy''

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[41] 41 Final Judgement at 2.

[42] Timonthy F. Bresnahan, ''The Right Remedy,'' at 1, (available at www.stanford.edu/tbres/microsoft/The Right Remedy.pdf).

[43] Plantiffs'' Memorandom in support of Proposed Final Judgement at 30–43, Microsoft (No. 98–1232), available at http://www.usdoj.gov/atr/cases/f4600/4640.htm.

[44] United States v. Microsoft Corp., 147 F 3d 935 (DCCirc. 1998) Romer Declaration # 4, (hereafter Romer).

[45] 45 Romer at 13.

[46] See Thomas M. Lenard, Creating Competition in the Market for Operating Systems: A Structural Remedy for Microsoft, (Washington: Progress & Freedom Foundation, 2000) http://www.pff, org/remedies/htm; Remedies Brief of Amici Curiae Robert E. Litan et al., 2000; Thomas M. Lenard, ''Creating Competition in the Market for Operating Systems: Alternative Structural Remedies in the Microsoft Case,'' George Mason Law Review, Vol. 9., Spring 2001.

[47] Remedies Brief of Amici Curiae Robert E. Litan et al., 2000.

[48] Thomas M. Lenard, Creating Competition in the Market for Operating Systems: A Structural Remedy for Microsoft,(Washington,: Progress & Freedom Foundation, 2000) http://www.pff.org/remedies/htm.

companies, however, there is very little physical capital to be divided up.

This factor should alleviate some of the concerns expressed in the Appeals Court opinion about the use of a structural remedy in the case of a ''unitary company''—i.e., a company not formed by mergers and acquisitions.[49] Such concerns have more validity in the case of old- economy companies, because of the difficulty of dividing up physical capital. What is being proposed in the hybrid remedy is much closer to a reproduction than it is to a division of the company's assets. When those assets consist primarily of information, they can be reproduced at very low cost.

B. The Litigating States Proposal

We believe a structural remedy continues to offer the best hope of deterring Microsoft's anticompetitive behavior in a way that is not overly regulatory. If, however, a structural remedy is off the table, the conduct remedy proposed by the Litigating States (LS) is far better than the PFJ. The LS Proposal does not contain the obvious loopholes and exceptions that are pervasive in the PFJ. Moreover, the LS Proposal includes a number of provisions that can partially restore competition to what it might have been absent the anticompetitive behavior. Because it will change the behavior of the participants in the market, the LS Proposal provides a serious remedy to Microsoft's offenses. Some of the attractive features of the LS proposal are as follows:

ù In contrast to the PFJ, the LS Proposal contains prohibitions on exclusionary and retaliatory behavior that are clear and unambiguous and mean what they purport to mean. In general, they provide meaningful protection against retaliation for the development and distribution of non-Microsoft software.

The LS Proposal would require Microsoft to license an unbundled version of its software. As discussed above, the bundling of applications together with the monopoly operating system makes it uneconomic in most cases to develop and distribute software that competes with Microsoft. This requirement would address that problem and create an environment in which rival software can be developed.

ù The LS Proposal would require Microsoft to license its software to third parties (not just OEMs) who could produce a customized product that would enlarge the range of consumer choice and provide competition for Microsoft.

ù The proposal also would require Microsoft to continue to license predecessor versions of Windows. This would permit OEMs to expand the range of consumer choice by providing a lower-priced operating-system product that might be perfectly satisfactory for a large number of users. In addition, it would permit OEMs and third parties to continue to develop a differentiated product that might be competitive with Microsoft.

ùThe LS Proposal would require Microsoft to make IE available on an open-source basis, and would require Microsoft to distribute Java, thereby partially reversing some of the effects of Microsoft's illegal activities

ù Finally, the LS Proposal would require Microsoft ''to auction to a third party the right to port Microsoft Office to competing operating systems.'' This would reduce the applications barrier to entry for a competing operating system, such as Linux. All of these aspects of the LS Proposal would add significantly to the probability that the remedy in this case would actually have the desired effect of increasing competition in one or more of the relevant product markets.

V. Conclusion

The PFJ is not an adequate remedy and its adoption is not in the public interest. It will not deter Microsoft from engaging in anticompetitive activities and it will not restore competition in this extremely important sector of the economy. Moreover, the CIS that the government has prepared does not provide the information necessary for the District Court to determine that the PFJ is in the public interest.

In order to generate the necessary information for such a determination, the District Court should hold an evidentiary hearing in which the competitive impacts, benefits and costs of all the available remedies are closely evaluated. In addition to the PFJ, the Court should consider structural remedies—which appear to be justified under the criteria established by the Court of Appeals—as well as the LS Proposal. We believe that at the end of this process, the court will agree that the PFJ is not in the public interest and that the ''hybrid'' structural remedy we recommend best meets all the of the criteria governing the court's deliberations in this matter.

MTC–00028687

From: Albert Delgado
To: Microsoft ATR
Date: 1/28/02 5:01pm
Subject: Microsoft Settlement

Microsoft should be punished to the fullest extent of the law. The government should understand that Microsoft has been found guilty and should make restitution and change its predatory practices. Microsoft does not innovate, but makes shoddy software that many hackers attack at will. At Chicago public schools, the network administrators now prefer Linux and OSX from Apple since they are stable platforms.

Albert Delgado
Chicago Public Schools.

MTC–00028688

From: Ron Ohlander
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/28/02 4:57pm
Subject: FW: Microsoft Settlement

To whom it may concern:

I am a computer scientist (Ph.D Carnegie-Mellon University) who has worked in the field for over 25 years. I have been a close observer of Microsoft's behavior since its inception. I believe that the proposed Microsoft settlement is a farce.

Microsoft has exhibited rapacious behavior since its start. The courts have found them to be a monopoly and guilty of monopolistic practices, which only attests to what most professionals in the field have known for a long time. Even as the case has been progressing through the courts, Microsoft has continued its aggressive tactics. The recent allegation that they lobbied congressional members in defiance of the Tunney act once again bears out my belief that they think they are above the law.

The government has a duty to pursue a course of action that will effectively remedy the situation. This has not been achieved. The proposed settlement terms are extremely weak. They will have virtually no effect in curbing Microsoft's behavior. On the contrary, they seem to be an endorsement of Microsoft's tactics. How can anyone who has any knowledge of the matter imagine that the playing field has been leveled, or that Microsoft will modify its monopolistic practices on the basis of said terms? In addition, where is the penalty for their past actions? The government is about to fail very badly in its duty to protect the American public.

If Microsoft continues to dominate through monopolistic practices, it will significantly affect the technology available to consumers, and what they pay for it. Microsoft has always rushed to market with shoddy software, expecting users to exercise and test it. Large numbers of bug fixes are generally required to any given product, but the products themselves never stabilize because Microsoft releases the next version with more bells and whistles and even more bugs. This process explains why their operating systems are so vulnerable to security attacks, i.e., as the systems have become larger and more complex, adequate security, which has never been very good in any of their products, becomes more tenuous. A lack of real competition exacerbates this kind of result. Businesses and individuals who use Microsoft products and suffer the consequences of viruses, worms, etc. pay an enormous cost. In a competitive market, consumers could make other choices unless the problems were fixed.

Finally, I don't understand how anyone can support Microsoft's argument that the consumer has benefited in the form of low-cost software. One doesn't buy such a product and have done with further expense. Rather, it is a case of buying on the installment plan, as one pays again and again for each new release that is made, along with the need to pay separately for user manuals. If the average person were to calculate the outlay for software over a reasonable time period, it would be shown that the cost is far from the bargain Microsoft portrays.

In conclusion, the government must find a way to curb Microsoft's behavior. The currently proposed settlement signally fails to do that.

Sincerely,
Ronald B. Ohlander

MTC–00028689

From: bugbee
To: Microsoft ATR
Date: 1/28/02 4:59pm
Subject: Comments on MS / DoJ Settlement

Your Honor,

To be especially brief, I'll be politically incorrect. (You have a lot to read.)

It sucks.

Why? For all intents and purposes, there is 1) no penalty for past illegal acts, and 2) no

[49] 49 253 F 3d at 103.

teeth in the agreement to insure it won't happen again.

A structural change in the way Microsoft does business is what's needed. Promising to be good has not worked before, and future monitoring is both ineffectual and pointless. I could elaborate, but I'd be taking your valuable time and I'm sure you've heard it all before.

Please do what you can to SOLVE this problem. ...a structural change.

Thanks for listening,

Larry Bugbee

Kent, Washington

MTC–00028690

From: Russell Pavlicek
To: Microsoft ATR
Date: 1/28/02 4:56pm
Subject: Microsoft Settlement

To whom it may concern,

This settlement is an extremely bad idea. It will not adequately curtail Microsoft's abuse of monopoly power.

Sincerely,

Russell Pavlicek

MTC–00028691

From: Robert McConnell
To: Microsoft ATR
Date: 1/28/02 4:58pm
Subject: Microsoft Settlement.

In response to the government's request for comments on the proposed Microsoft Settlement:

As a computer professional with over three decades of experience writing software for a variety of operating systems including Windows, and as one-time fan of Microsoft, I would like to make two points. The first is to suggest one route which in the absence of a breakup I expect Microsoft to continue to exploit to maintain it's monopoly. The second point is to call attention to a related danger from Microsoft's monopoly which I believe is accelerating the flight of manufacturing from the US to foreign countries.

First the monopoly preservation strategy:

Most competent computer programmers can, if they wish, write and document functioning code which is virtually incomprehensible to any other competent programmer (including the author him/herself). Moreover said author can almost certainly (disingenuously but successfully) argue in a court comprised of non-experts that the code is straightforward, well-documented and easy to understand.

What does this have to do with Microsoft maintaining and extending their monopoly? Everything. Whether hardware or software, it is in the interests of the creator of any product to facilitate use by the consumer while hiding as much of the internal workings as possible to discourage competition. Microsoft's strategy has been to continuously expand the boundaries of it's ''operating system'' (more properly now an operating environment) enveloping or attempting to envelope entire classes of applications, office, networking, on-line shopping, manufacturing etc... within the boundaries of the ''operating system''. This can be done explicitly as in the case of Internet Explorer, or implicitly by simply making it difficult and or prohibitively expensive for outsiders, to access, or even know about operating system, or hardware features which may be important for fields Microsoft dominates, or wishes to dominate. The ''browser wars'' were about exposing the inner workings of Microsoft's operating system so others might use them.

Because of the ease of writing and defending impenetrable code Microsoft already has an almost unlimited ability to restrict access to the core of the operating system and to the hardware beyond, whether or not a court orders it to provide access. Microsoft sells just enough tools to access selected parts its operating environment to be able to provide lip-service to openness. Generally speaking the products are scaled in such a way that only those who have made a large commitment, financial or ''sweat equity'' which will tend to lock in their allegiance to Microsoft are allowed access to the more powerful tools.

Because of the high barrier created by the impenetrability of the Microsoft code, it is hard to imagine any remedy short of a breakup will be able to curtail Microsoft's illegal monopolistic practices. The second comment, related to manufacturing flight, is contained in a letter I sent to the Attorney General general of Massachusetts several months ago. The text follows:

Dear Mr. Attorney General,

I must congratulate you and your staff on the stand you have taken against the proposed Microsoft settlement.

I am a software developer who has long been appalled by the relentless manner in which the American public interest continues to be steamrolled by the Microsoft juggernaut. Therefore I was shocked by the decision by the Justice Department to take the breakup option off the table. It is my opinion that this option offered the only chance to restore competition to the software marketplace. Needless to say, I was further dismayed by the terms of the proposed settlement.

As you are obviously well aware, under the guise of ''innovation'' Microsoft has succeeded in stifling true innovation in many ways. Much of the damage done by Microsoft is not as a result of overt actions towards the ''victim'' whether an individual or a company. Rather it is in creating an environment in which the fate of others who have tried to innovate in the face of Microsoft serves as a deterrent to further innovation. Of course this type of deterrence by example does not carry the connotation of physical danger as might be expected from similar threats by organized crime or terrorists. Nevertheless it is quite effective. This is an environment in which:

1. Intelligent software developers know that they have little chance of being successful unless they join the Microsoft camp. Once in that camp more of a developer's time will be likely spent keeping up with Microsoft's complexity-increasing-whims than improving their product.

2. Intelligent funding institutions know from history that there is no point in developing a product in a market in which Microsoft is known or believed to have interest. The best one can hope for in the case of a very successful product is the opportunity to sell the product to Microsoft at a price determined only by the latter.

3. The required ''operating system'' (now more properly an operating environment) is so complex as to create a huge barrier between the creative idea of a researcher, developer, or engineer and its implementation into a useful product.

I'm reminded of a university researcher's website I saw several years ago. The researcher noted that he was using older, and by then outdated, analysis software for his research. Although he had written the original software himself, he believed that the new requirement of interfacing with Windows had introduced such complexities that he could not afford either the time to update the software himself, or the money to to hire a Windows specialist to update it for him. Whether or not the researcher's assumption was actually true, Microsoft literature and promotions (the so-called FUD factor) would certainly lead him to this conclusion. Hence his further research in this field was stymied.

4. Similarly the Microsoft ''one size fits all'' operating system and tools, interposed between America's manufacturing engineers and the computer, hamper their creative efforts. Modern Windows software effectively prevents these engineers from writing high speed one-of-a-kind applications necessary for the most efficient manufacturing. Ten years ago the same engineer would have had no trouble writing this type of software. As a Senior Member and member of the Peer Review Committee of the Machine Vision Association of the Society of Manufacturing Engineers I became personally concerned about this issue several years ago. I was particularly worried that is resulting in substantial advantages for manufacturing facilities in foreign countries and earlier this year prepared the attached document.

I'm not sure any of this will be of any help in the successful resolution of the Microsoft situation, However I thought it might be helpful in explaining why at least one of us is behind you.

Again, congratulations and good luck on your stand!

Sincerely,

Robert McConnell

MTC–00028692

From: Stephen Hopkins
To: Microsoft ATR
Date: 1/28/02 7:04pm Subject'' Microsoft Settlement

Conceptual Computing, Incorporated
i
9315 Locarno Drive, Dallas, TX 75243–7217

January 28, 2002

Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

Most individuals and companies affiliated with computer software products are very excited about the recent antitrust settlement between Microsoft Corp. and the U.S. Justice Department. The lawsuit has significantly dampened technological innovation as well

as investment. Continuing the lawsuit would only make matters worse; therefore, the settlement should be accepted and finalized as soon as possible as it is fair and reasonable.

For example, it has agreed to disclose its internal interfaces for Windows to its competitors. It also agreed not to retaliate against computer makers who ship software that competes with anything in its Windows operating system. Last, and perhaps most important, Microsoft has to design future versions of Windows to provide a mechanism to make it easy for computer makers, consumers and software developers to promote non-Microsoft software within Windows.

I sincerely hope the settlement is allowed to take hold as soon as the public comment period concludes and that those who may attempt to derail it are not successful in their attempts.

Sincerely,
Stephen Hopkins
President
CC: Representative Richard Armey

MTC–00028693

From: wt.catch1
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Yvonne Keenoy
46225 Verba Santa
#11
Palm Desert, CA 92260

MTC–00028694

From: Neil Kohl
To: Microsoft ATR
Date: 1/28/02 5:05pm
Subject: Microsoft Settlement

To whom it may concern:

I am writing in opposition to the Proposed Final Judgment (PFJ) in the case of United States v. Microsoft.

I am a programmer with over 20 years experience, and I currently work as a web site administrator for a large medical association.

I agree wholeheartedly with the Open Letter created by Dan Kegel and signed by over 2000 people (http://www.kegel.com/remedy/letter.html). I would like to single out two points which deserve special attention.

As stated in the Findings of Fact, Microsoft enjoys a monopoly in the operating systems market (section 33–44). According to the Court of Appeals ruling, ''a remedies decree in an antitrust case must seek to ''unfetter a market from anticompetitive conduct'', to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future'' (section V.D., p. 99).

First, to meet these standards the Windows API—almost all of them, not just ''Microsoft Middleware'' as narrowly defined in the PFJ—must be completely open and documented in such a manner that third-party developers can create an environment that can run Windows applications. An example of such an environment is the WINE (WINdows Emulator) middleware that is available for the Linux operating system.

Second, the enforcement mechanism must be nimble. The original suit which led to the PFJ was filed in 1995. Since then, Microsoft has released three new versions of the operating system (Windows 98, ME, XP) and is positioning itself to be the middleman in Internet transactions via the .Net initiative. If the courts are used as an enforcement mechanism then Microsoft is guaranteed several more years without serious competition in the operating systems market.

Best regards,
Neil Kohl
Manager, ACP-ASIM Online
American College of Physicians—American Society of Internal Medicine nkohl @mail.acponline.org 215.351.2638, 800.523.1546 x2638

MTC–00028695

From: Sara Yurman
To: Microsoft ATR
Date: 1/28/02 4:59pm
Subject: Please reject this settlement.

Thank you for the opportunity to comment on this ruling. I am sure than many people have offered excellent technical reasons for rejecting this extraordinarily weak settlement. I have two reasons that I hope the court will consider:

1) I am a small business person. At the moment I can operate on Linux, and not be hampered by some of the Microsoft-specific formats that I receive. This, however, is tenuous and getting more so. As Microsoft extends its reach into the internet, and continues to keep its formats closed my ability to communicate without Microsoft is somewhat serendipitous. Operating with Microsoft products is not an option for us. We are a distributed company and cannot afford the expense and security problems inherent in those products. A virus could be fatal to our small firm.

2) It appears that Microsoft's monopoly power is having a corrosive affect on our political system. I wrote my U.S. Senators (Zell Miller and Max Cleland), urging them to support Senator Schumer's call to block the distribution of the XP operating system. Senator Miller never answered. The following was included in Senator Cleland's response:

>Despite Judge Jackson's ruling last June, Microsoft remains the single most >dominant technology firm in the world. Microsoft's core businesses, its Windows >operating system and Office software, are certainly under legal challenges on >several fronts, but at the moment they are still generating tremendous revenues >and profits for the company. In addition, Microsoft plans to jump-start its >Internet access operation, MSN, which is also unlikely to be affected by Judge >Jackson's verdict. >

Why is it more important to the Senator from Georgia that Microsoft generate profits than have conditions favorable to small businesses in his district? I never got a response, despite phone calls and emails to the Senator's office. This is the ultimate aim of monopoly power, and Microsoft has achieved it. Please stop them. I'd like to have my government back.

Respectfully submitted,
Sara Yurman

MTC–00028696

From: Jerry
To: Microsoft ATR
Date: 1/28/02 4:59pm Subject'' Comments regarding Proposed Settlement

Attached is a PDF document with my comments regarding the Proposed Settlement of US v. Microsoft

Thank you for your attention in this matter.

January 25,2002
To:
Renata B. Hesse
Antiturst Division
U.S Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–001
Subject: Microsoft Settlement

The following are my comments regarding the proposed settlement of the United States vs. Microsoft antitrust case.

Personal Background

I am Information Technology specialist who works primarily in Systems architecture, design, and development. Over the past ten years I have specialized in Information Security. I have been a user of Microsoft products (for both consumers and developers) since the early 1980s.

United States v. Microsoft Background

The District Court and the Court of Appeals concluded that Microsoft had ''unlawfully maintained its monopoly power by suppressing emerging technologies that threatened to undermine its monopoly control of the personal computer operating system market.''

The Court of Appeals held ''a remedies decree in an antitrust case must seek to ''unfetter a market from anticompetitive conduct,'' to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

Comments

Scope of Protection is Too Limited

Microsoft's competition in the Operating system area varies greatly in type and size. This competion includes:

. direct competitors, organizations creating different Operating systems (e.g. Linux)

. organizations that build applications and middleware that run ''on top'' of an operating system (e.g. Java and Netscape Communicator)

.* organizations that customize operating systems for their clients (hardware OEMs)

.* organizations that provide software equivalence of the services of one operating system on a different system or environment.

The proposed restrictions on Microsoft business conduct will provide protection to a subset of these Microsoft competitors. The majority of the Proposed Settlement focuses on providing relief for

1) organizations that provide middleware that run exclusively on Microsoft Windows products, and hardware OEM vendors. There are only minimal changes in the Microsoft conduct to protect vendors of competing operating systems.

Only Large Competitors Are Protected

The size of organizations that develop software varies greatly. Even Microsoft started as a small number of people. Unlike many other businesses, there is not a requirement for a large capital investment to start developing software.

The restrictions on Microsoft conduct apply only to large organizations (both OEM and software developers). Not only does this not work to terminate the monopoly it creates new exclusionary and discriminatory practices which did not previously exist.

Scope of Interfaces to be Disclosed is too Narrow

The Proposed Settlement requires that Microsoft disclose the APIs for its middleware. However, in the Proposed Settlement the definition of Middleware is so limited that it excludes many of the interfaces required by competitors. The Interfaces to be disclosed need to include not just Application Programming Interfaces (APIs) but all other data structures and protocols extemalized by Microsoft software components. The Department of Justice chose not to pursue issues related to the comigling of software and yet the Proposed Settlement assumes to have sufficient knowledge of the separate pieces (middleware vs. operating system) to provide a working definition in the Proposed Settlement.

As long as the definition of the Windows Operating Systems is outside the scope of the Proposed Settlement Microsoft will maintain the control over which interfaces must be disclosed. It would be more appropriate to require Microsoft to disclose ALL interfaces between all components of their products.

Not All Middleware Components are Identified.

Given that some of the Microsoft Middleware components that are subject to this settlement are mentioned in the Proposed Settlement, the ''.net'' interfaces, as the Microsoft followon to Java should be included. Given the complexity of the definition of Middleware provided in the Proposed Settlement, it would be desireable to include the complete list of all Microsoft Middleware. This list should be publicly available for the time period that the Settlement is enforced.

Not All Current Versions of Windows are Covered in the Settlement

All current versions of Windows that are based on Win-32 should be covered by the Settlement. This should at least include Windows CE and Windows XP Tablet Edition. Too Many Restrictions on Disclosure of Security Interfaces The Proposed Settlement places restrictions on the disclosure of Microsoft security interfaces in the name of National Security. I would suggest that the reverse is true. In the current environment it is important to nurture the development of security functionality. All Microsoft security programmable interfaces, protocols, and data structures should be fully disclosed. The only restriction should be that the content of some specific data elements may not be disclosed (private keys, etc.)

Limits on Which Organizations can Seek Disclosure of Interfaces

The proposed Settlement places restrictions on which competitors Microsoft must disclose their APIs. The competitors must be of sufficient size and have a valid business case. This allows Microsoft to chose which organizations they wish to compete. Even Microsoft in its earliest years would have failed these requirements. Given that in the current environment one of Microsoft's strongest competitors is primarily a volunteer organization (Lunix) it seems likely that Microsoft would not disclose any APIs to ''Free'' Software development organizations.

Poor Enforcement Mechanisms

A good settlement should include enforcement that is easily understood, quantifiable, and verifiable. There should be metrics that can be used over a period of time to evaluate the success of the Settlement. A good enforcement needs to provide quick resolution of issues related the Settlement for the business needs of both any plaintiff as well as Microsoft. Finally, there needs to be a sufficient motivation to insure Microsoft will not violate the Settlement.

The Proposed Settlement provides almost none of the above. There is technical review by a three person team but all of their work will be confidential and not subject to review. There is no public or judicial review of the progress of the Settlement. The only option for handling misconduct, outside of the technical team, is to go back to court—one of the slowest ways to resolve any violations. Finally, given that there is no financial incentive required in this Settlement and that Microsoft earns billions of dollars using their current business conduct it is hard to see why Microsoft will be motivated to make any changes in their conduct.

Conclusion

The Proposed Settlement does not provide adequate changes in business conduct of Microsoft to provide a remedy that meet the requirements of the Court of Appeals mandate. In some cases the Proposed Settlement adds new barriers to the competition to Microsoft Operating Systems and Middleware. Thus, the Proposed Settlement does not serve in the public interest. I recommend that the Proposed Settlement be rejected.

Sincerely,
Jerry L. Hadsell
2800 Wood??ey Road NW
Washington DC, 20008

MTC–00028697

From: Ken Brown
To: Microsoft ATR
Date: 1/28/02 4:59pm Subject'' Tunney Act Comments

Thanks for reviewing our comments.

Ken Brown
January 28,2002
Renata Hesse
Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, NW Suite 1200
Washington, DC 20530
e-mail: microsoft.atr @ usdoij.gov
Re: AdTI Tunney Act Comments

The Alexis de Tocqueville Institution submits these comments under the Tunney Act.

The Alexis de Tocqueville Institution is an independent non-profit education and research organization described in detail at www.adti.net. The mission of AdTI is to provide helpful policy analysis to advance the ideas of democracy and freedom around the world.

Sincerely,
Kenneth Brown
President
Telephone Number(s)- office 202–548–0006, cell 703–608–4222

ALEXIS de TOCQUEVILLE
Why the Microsoft Case Should Be Settled
Alexis de Tocqueville Institution
Washington, DC
January 22, 2002

The Hard Truth About Invention in the U.S. Marketplace

Two courts have reaffirmed that Netscape nor its browser were shut out of the marketplace. The browser wars produced a winner and a loser; and Netscape was the loser. However, within thousands of briefs and legal arguments criticizing the U.S. vs. Microsoft settlement is the repeated concern about the future of new Netscape's in the technology sector. Almost every other issue is tangential, and we must differentiate the arguments properly.

We see an interchanging of terms being used, specifically, ''....the settlement should make the marketplace safe for firms to compete with Microsoft...'' vs. ''...the settlement should be safe for firms to introduce new products...ie, like Netscape Navigator...'' The Department of Justice has proposed a settlement that properly speaks to its duty—to introduce a remedy which allows firms to safely introduce new products. Microsoft has agreed to the rules; which include a mandate that Microsoft disclose any information necessary for rival firms to produce fully interoperable products with Windows for competing software and servers.

The reason why critics want a settlement which goes further is because they want Microsoft completely out of the way. The case is merely obfuscation. With billions of dollars in resources, Microsoft's competitors want every advantage because 1) the marketplace for new technology is overwhelming and having a chief competitor eliminated makes things a little easier and 2) the competitors lobbying for a far-reaching settlement are among the most aggressive and fierce technologists in the world.

The reality is that the marketplace, particularly the marketplace for new

technology has never been safe from a competitor. What Microsoft's competitors want is an oxymoron because no technology product is ever ''competition-free'' or guaranteed success in the marketplace. This benefits consumers, the country and ironically inventors themselves, which makes it relevant to observe the reality of the marketplace (beyond the courtroom) for a moment.

Great Inventors Must Be Fierce Strategists

Every inventor and innovator small and large must face the formidable odds to succeed in the marketplace for new technology. Since the day the first idea was registered in the U.S. patent office, countless inventions and innovations have become cinders in the furnace of competition. Relentless markets in America only sustain the fiercest competitors, without exception. Technologists rewarded with fabulous wealth and fame did so at the expense of employing hard-hitting, merciless strategies. Regardless of ingenuity, technologists without the ability to navigate in the marketplace were failures; and lucky to even receive credit as creators of their own inventions.

The marketplace for food, furniture and other goods each have their challenges. But, the technology marketplace is unique because it demands both inventive genius and keen business savvy. The combination of the two is rare in individuals and corporations, and particularly scarce among pure inventors such as physicists, mathematicians or engineers. From the light bulb to the PC operating system, every innovator that history has been kind to, had the indomitable capability to merge intellectual power with commercial insight. In the end, technologists with these qualities became far more successful than their counterparts with better inventions or greater talent.

Competitive Inventors Preserve U.S. Leadership

However, America's owes its technological leadership in the world to its competitive battleground. Although education, vigorous intellectual property rights and democracy are also credit to American invention, its ability to surface inventors with commercial savvy, make it a source of the most competitive innovations in the world.

In the end, the U.S. is a leader in world-changing innovations, at the expense of sustaining a ''bare-knuckled'' marketplace.

After an excruciating and lengthy examination by the court system, the federal government and 9 states (actually 41 when you consider the states that never filed suit) agree on the U.S. vs. Microsoft settlement. Regardless of the differences among the parties, we can't expect any ruling to settle the differences between Microsoft and its competitors. However, this dissatisfaction is in the best interest of our country and will only spawn better ideas and products that will propel the U.S. to new heights. U.S. technological leadership depends on the undying will of its innovators to be no. 1.

The ''Electric'' War Between Edison and Tesla The debate over Windows is similar to many stories about wars between rival innovators throughout history, particularly aspects of the Thomas Edison story. Although the Edison-Tesla rivalry did not involve anti-trust law, the contest details the reality of the ''invention business'' in the most competitive capitalist society in the world.

Contrary to popular belief, the idea of electric lighting was not Edison's. A number of individuals had developed forms of electric lighting, but none had developed a system that was practical for home use. Using lower current, a small carbonized filament, and an improved vacuum inside the bulb, Edison was able to produce a reliable, long-lasting source of light. Thomas Edison didn't ''invent'' the light bulb, but became a legend for making a 50-year-old idea a fantastic commercial success.

Edison's fiercest rival, was an ex-employee named Nikola Tesla from Smijlan, Croatia. Tesla was a genius who invented the fluorescent bulb in his lab forty years before industry ''invented'' them. At World's Fairs and similar exhibitions, he demonstrated the world's first neon signs. Perhaps Tesla's greatest invention was the AC (alternating current) system we use in our homes today. DC (direct current), an inferior system, ironically, was designed by Thomas Edison. After years of fierce wars and debate between the Tesla and Edison teams, AC became the accepted system of transporting electricity. In fact, Edison later admitted that AC was the better system.

While both men were geniuses ahead of their time, the biggest difference between Edison and Tesla was their perspective and approach to invention. Edison had a keen understanding of capital markets and the strategies necessary to finance, promote and commercialize his inventions. Tesla was a great theoretician who worked perpetually to finance experiments.

Edison held a world record 1,093 patents and died a wealthy, famous man. Tesla received over 800 patents, died penniless and was literally erased from the history books. In fact, Tesla was poor the last thirty years of his life and arguably would have eclipsed Edison's patent record if he had the capital. Remembered for many things, Edison was known for saying, ''1 have more respect for the fellow with a single idea who gets there than for the fellow with a thousand ideas who does nothing.'' Edison's vision reflects the view of anti-trust law, that the greater value is in a stable marketplace, not the resurrection of competing ideas.

The Other Truth about Netscape

The Appeals Court ruling reflects another hard truth—Netscape fell, because it did. The DC Circuit rejected the course-of-conduct theory, under which Microsoft's specific practices could be viewed as part of a ''broad monopolistic scheme.'' This obviously has made anyone that viewed Microsoft as an evil-doer exponentially dissatisfied with DOJ's settlement. But again, is the responsibility of the DOJ to make the world safe from Microsoft?

Netscape maintained its Internet dominance until 1997, when Internet Explorer's fourth version was able to lap Netscape. Netscape Navigator never regained its prominence. In addition, by that time, the Netscape product was slow, outdated, and unstable, falling to a swifter surging Internet Explorer.

But perhaps the most unmentioned reality regarding Netscape's fall was their announcement to all (Microsoft included) that their strategy was to be the middleware that would be the ''new'' Windows, removing Microsoft's flagship product from dominance. Hindsight is 20/20 but when you consider how far ahead Netscape was in front of Microsoft, there are infinite what if's'' to consider if it had been mum about its strategy to take on Redmond. Microsoft had all but ignored the Internet and it is very questionable if they would have been able to play catch-up to a well-funded and branded Netscape team. The outcome of this possibility almost completely counters any damage claims in their civil suit recently announced. After all, Netscape's grand plan was never realized, thus the future is incalculable especially when taking into consideration the hubris of Netscape.

Innovators are the Lifeblood of U.S.

Today, new technology firms use every means available to compete including spending billions of dollars on research and development. Sun Microsystems, IBM and AOL and Microsoft combine to spend over $100 billion annually just on research and development. Firms spend exorbitant amounts of money to create and protect to new products. But again, this competition is to the benefit of inventors and the U.S. marketplace. 1Recently, the United States Patent Office released its annual list of the top ten private sector patent recipients. It reported that for the ninth consecutive year, IBM received more patents than any other organization in the world. ''1 am proud that American corporations are leaders among U.S. patent holders,'' said James E. Rogan, Undersecretary of Commerce for Intellectual Property. ''Patents promote technological progress and are a potent source for competitive free enterprise.''

USPTO's comments echo the importance of preserving the status quo of the U.S. marketplace.

In the end, it is in the interest of innovation that we close the chapter on U.S. vs. Microsoft. The judicial process has sorted through the facts and come to judgment. Those dissatisfied with the settlement should be reminded by W. M. Deming's famous quip, ''Learning is not essential, survival is not mandatory.'' Deming's point speaks not only to the Microsoft case; but the hard truth about invention and success in the technology business. The court system has done its job, and enough precious time has been dedicated to legal jurisprudence. It is now the time for Microsoft and its opponents to tuck in their chin, learn from their mistakes and return to the marketplace.

*U.S. PATENT AND TRADEMARK OFFICE (USPTO) LIST OF TOP 10 PATENT RECIPIENTS

Preliminary Rank In 2001	Preliminary # of Patents in 2001	Organization	Final Rank in 2000	Final Number of Patents in 2000
1	3,411	International Business Machines (IBM)	1	2,886
2	1,953	NEC Corporation	2	2,021
3	1,877	Canon Kabushiki Kaisha	3	1,890
4	1,6543	Micron Technology	7	1,304
5	1,450	Samsung Electronics Co., Ltd.	4	1,441
6	1,440	Matsushita Electrical Industrial Co., Ltd.	11	1,137
7	1,363	Sony Corporation	6	1,385
8	1,271	Hitachi, Ltd	13	1,036
9	1,184	Mitsbushi, Denki Kabushiki Kaisha	14	1,010
10	1,166	Fujitsu Limited	10	1,147

*Source: USPTO, January 10, 2002. The listed patent counts are preliminary counts, which are subject to correction. The final listing of patent counts for the top patent organizations in 2001 should be available by early April 2002. Patent information reflects patent ownership at patent grant and does not include any changes That occur after the

MTC–00028698

From: Helen Gamsey
To: Microsoft ATR
Date: 1/28/02 5:02pm
Subject'' Microsoft settlement
Helen B. Gamsey
6006 S River Road
Norfolk, VA 23505–4711January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950
Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am writing you today to voice my opinion in regards to the Microsoft settlement issue. I feel that this debate has gone on long enough and that it is time to end this litigation. After three years of litigation, it is time to focus on more pressing issues. In my opinion, this lawsuit should never have occurred in the first place. Nonetheless, this settlement is the perfect means to end this dispute. Microsoft will remain together and continue designing and marketing their innovative software, while fostering competition and making it easier for other companies to compete. Microsoft has pledged to share more information about Windows operating system products and has agreed to be monitored for compliance. During these difficult times, it is vital to do all we can to boost our economy. Restricting Microsoft will not accomplish this. This country is at war with a world wide network of Islamic extremists intent on destroying us. The Department of Justice needs to focus on ''fixing'' the FBI and improving the security of our nation and protecting American citizens against more terrorist attacks. Has this short passage of time since September 11 dulled memories so quickly that we are back to the old games of using lawyers and politicians and the Department of Justice to squash competitors? Are things really back to normal? I don't think so...until the next terrorist attack... Antitrust laws are not meant to protect competitors against their inability to compete in the marketplace due to their own incompetence...Look who is suing? AOL, Sun Microsystems, Oracle, IBM are multibillion corporations.., not mom and pop outfits threatened by a bully...The antitrust laws were meant to protect consumers and to allow fair competition.

Consumers are not complaining. However antitrust laws are now being used to protect competitors, and to make trial lawyers even richer,,,at the expense of consumers and the economy. How many companies have been forced into bankruptcy now by trial lawyers over asbestos? 20? 30? 50?

AOL, Time Warner, IBM, Sun Microsystems, Oracle, etc have contributed heavily to politicians for years...long before Microsoft was forced to play this game, as a result of their persistent efforts to prosecute and persecute Microsoft.

Should the DOJ continue to ''work'' on behalf of Attorney Generals who are receiving large contributions and specific instructions from Microsoft's competitors via ProComp and other such organizations? After all, it was Sun Microsystems'' financing of ''Project Sherman'' which assembled of panel of so called antitrust experts to testify before the DOJ. This panel had worked secretly for months, to ''produce'' antitrust charges which would appear credible to the DOJ. Unknowing to the DOJ, these ''experts'' were being paid $600 to $700 an hour by Microsoft's competitors. Reputable antitrust experts like Carlson produced novel antitrust theories of harm from incomplete foreclosure of market share that even bamboozled the Appeals Court judges; their decision relied on this ''novel'' theory...and most of their findings of antitrust violations were based on Carlson's novel'' theories. Project Sherman, which cost Sun $3 million, initially convinced the Department of Justice to take this case..

I would think that the Enron scandal would make politicians and regulators more wary of the dangers involved from large contributors... I was surprised to learn the extent of Enron's contributions. They gave $50,000 to Paul Krugman, from the New York Times, who writes about economic matters, and not too surprisingly, Krugman apparently wrote positive articles in the past about Enron ....

I think it was American competitors of GE and Honeywell who gave secret testimony to the EU commission that lead the EU to disallow the GE-Honeywell merger, ge with Honeywell... It was a complaint from Sun Microsystems that lead the European Union to launch an antitrust case against Microsoft by the EU. There is something about certain American companies that borders on treason, in my opinion...when they resort to getting the European Union to crush their competition ..if they can't get the DOJ or FTC to do it... It is telling that Sun Microsystems has 200 lawyers in their legal department, more than many large firms, even in Washington. I think their shareholders might prefer they spent more on improving their products and competing...as their stock continues to decline. It's the old familiar story as Glassman says. ''Pick an unsympathetic target with deep pockets. Generate lots of publicity.

Change the laws, if need be.'' ''Then get the company to capitulate.'' Gee, Jesse Jackson is so good at these tactics of file:///C√/win/temp/tmp. getting large corporations to donate to his ''charities; it is not surprising he was involved with the class action lawsuits in California claiming Microsoft discriminated against blacks and then women too. Microsoft was consistently been rated one of the top corporations ''to work for and one of the most admired companies by Fortune until the trial lawyers and AG and MSFT's competitors started their hatchet jobs and made Microsoft into an ''unsympathetic target.'' http://www.techcentralstation.com/1051/techwrapper.jsp?PID=1051–250&CID=1051–012901A The Appeals Court judges in Microsoft's appeal were astonished to learn that 160 million copies of Netscape browsers were distributed overall, and that their user base doubled to 33 million ..... in 1998 ..... when Microsoft's competitors were accusing Microsoft of foreclosing competion. They claimed that Microsoft ''threatened to cut off Netscapes air supply,'' a statement MSFT never made.

Microsoft's competitors lobbied politicians for years before Microsoft was finally forced to join their game and forced to pay this'' protection money. '' For about 20 years Gates and his colleagues just sat out there in ''the other Washington,'' creating and selling. As the company got bigger, Washington, DC, politicians and journalists began sneering at Microsoft's political innocence. A congressional aide told the press, ''They don't want to play the DC game, that's clear, and they've gotten away with it so far. The problem is, in the long run they won't be able to.'' Politicians told Bill Gates, ''Nice little company ya got there. Shame if anything

happened to it.'' And Microsoft got the message: If you want to produce something in America, you'd better play the game. In 1995, after repeated assaults by the Federal Trade Commission and the Justice Department, Microsoft broke down and started playing the Washington game. It hired lobbyists and Washington PR firms. Its executives made political contributions. And every other high-tech company is getting the message, too, which is great news for lobbyists and fundraisers.'' (but not for consumers or innovators or successful companies..) From ''The Theft of Microsoft'' by David Boaz. http://www.cato.org/dailys/07–27–00.html

''What lesson should they draw? The antitrust laws are fatally flawed. When our antitrust laws are used by competitors to harm successful companies, when our most innovative companies are under assault from the federal government, when lawyers and politicians decide to restructure the software, credit-card and airline industries, it's time to repeal the antitrust laws and let firms compete in a free marketplace.''

''Our tobacco, gun and antitrust laws have essentially been rewritten by state AGs and their trial-lawyer allies. The result, as former Labor Secretary Robert Reich wrote in USA Today, has been ''regulation by litigation'' - a sorry state of affairs that has cut elected representatives out of the system.''

''Political science quiz: Today's category is decision making at the Federal Trade Commission and the Department of Justice.''

''Which is more important in the merger approval process?

1) a sophisticated economic study prepared by staff economists, complete with extensive industry data, statistical analysis, and tight reasoning,

2) a scratchy, three-minute cell-phone call from the secretary of commerce?'' ANSWER: 2) a scratchy, three-minute cell-phone call from the secretary of commerce?'' ''In 1991, the Time Warner buyout of Turner Broadcasting zipped past the FTC, despite a staff report branding the merger as anti-competitive. After Ted Turner and Gerald Levin, the two CEOs involved, visited top officials in Washington, the commissioners tossed the staff work out the window.'' From: ''Texas Swing:

The not-so-shocking reason the Lone Star state chose not to sue Microsoft.'' By Thomas W. Hazlett REASON August/September 1998 http://reason.com/9808/col.hazlett.html

''Did they disagree with the competitive analysis? Was it a difference of opinion as to the cross-elasticity of demand? Or were the politically appointed regulators moved by a higher voice? It would be nice if the pundits who explained our politics to us could see where the politics goes. ''That's what ''access,'' and the campaign contributions used to purchase it, are all about.'' Somehow this case reminds me of what terrorists living in the US are doing so well.

There are many front groups for violent terrorist groups like Hamas and Islamic Jihad residing in the US, claiming to be think tanks or charitable groups. Organizations like C.A.I.R. or the Council on''American Islamic Relations, masquerade as mainstream public affairs organizations. CAIR has taken the lead in trying to mislead the public about the terrorist underpinnings of militant Islamic movements, in particular Hamas. ''http://www.geocities.com/CollegePark/6453/emerson.html

CAIR and other such organizations have lobbied to change our US laws, like the use of secret evidence, to make it harder to deport them or to prosecute them; under the guise of protecting our freedom of speech.

These terrorists posing as phony charitable groups or think tanks also contribute to politicians and lobbyists and use the media to advance ''their cause. CAIR has routinely exaggerated or fabricated ''hate crimes'' against Muslims. Just one example:

''CAIR's 1997 report on ''hate crimes'' labeled the death of Ahmed Abdel Hameed Hamida as a ''hate crime.'' Hamida drove his car into a crowd of Israelis at a Jerusalem bus stop on February 26, 1996, killing one woman and injuring twenty-three other Israelis. He attempted to escape on foot but was shot to death by Israeli civilians. He shouted ''Allahu Akbar,'' (God is Great!) as his car struck the crowd. He had made statements previously affirming his intent to kill Jews.

Hamida was a terroris, yet CAIR classified his death as a ''hate crime.''

Why is this relevant to Microsoft's antitrust case? Microsoft's competitors and these phony front groups are using their influence over the media, and their power from contributions to politicians to give the appearance that they are concerned with civil rights or consumers, when they are only advancing their own agenda, which is harmful to most of us. Microsoft's competitors claim to have the interest of consumers at heart, when in reality their own incompetence lead to their loss of market share. AOL 5 was such a terrible product that even computer experts could not deal with the changes it made to the computer. It changed your default settings and took over. Mossberg from the Wall Street Journal, who has never been a fan of Microsoft, acknowledged this at the time and there were lawsuits over this which somehow failed to make the news.. Anyone who has ever used AOL knows about their inferior products and their poor customer service.

''In 1975 Microsoft had 3 employees and revenues of $16,000. Over the next 25 years they grew to 36,000 employees and revenues of $20 billion by obsessively figuring out what computer users needed and delivering it to them.'' ''Over the years Gates and his colleagues made a lot of people mad, especially their competitors. Some of those competitors delivered a 222-page white paper in 1996 to Joel Klein, head of the Justice Department's antitrust division, and urged him to do to Microsoft in court what they couldn't do in the marketplace. (Susan Creighton wrote that White Paper).

Justice worked closely with the competitors for four years, often showing them sentences or paragraphs in drafts of the department's plans and soliciting their approval. The politics of the case is a far cry from the Platonic ideal of rigorous economists devising the best possible antitrust rules and wise, disinterested judges carefully weighing the evidence.''

Microsoft's competitors have used the Department of Justice to try to take not just their money but their intellectual property as well.

From ''The Theft of Microsoft'' by David Boaz. http://www.cato.org/dailys/07–27–00.html ''In antitrust circles, Creighton is a card-carrying anti-Microsoft agitator. Creighton is now the deputy director for the FTC.

I hope she has recused herself from any involvement in this case.'' Five years ago—while her then-partner Gary Reback played a more public role—Creighton penned the infamous white paper commissioned by Netscape.'' Susan Creighton, and her partner Gary Reback, from Silicon Valley's Wilson Sonsini Goodrich & Rosati. Creighton ''helped ignite the government's landmark case against the monopolist from Redmond, Wash.

''Microsoft's Captain Ahab'' by Krysten Crawford, from The American Lawyer August 22, 2001from http://www.law.com ''Bill Gates draws praise from the cultural elite when he gives away his money—and he has given away more than $20 billion; the Bill and Melissa Gates foundation has given more than any other philanthropist foundation. Yet those contributions pale when compared to the g Microsoft's great contributions to the technological and economic advances of the last decade. It would be a shame to see Microsoft's assets and intellectual property distributed to greedy conniving corporations and lawyers and publicity seeking Attorney Generals trying to further their careers.

Mr. Tunney is now complaining about the way Microsoft has reported their political contribution. I doubt he is really impartial. Robert Bork was a prominent foe of antitrust law in the 1970's, and a colleague of Judge Posner. Bork though as ''changed'' sides and became very ''pro-antitrust'' when hired by Microsoft's competitors.

I sincerely hope the Department of Justice accepts this settlement and puts an end to this mess and turns their attention to real threats to the Nation- the terrorists who want to destroy the West. Caving into Microsoft's major competitors who are behind the Attorney Generals hurt consumers and the economy further. Let them innovate like Microsoft does, rather than litigate.

Thank you for your attention.
Sincerely,
Helen B. Gamsey
757–440–5910
Sincerely,
Helen Gamsey

MTC–00028699

From: Bartucz, Tanya Y.
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 5:02pm
Subject: Tunney Act comments

Attached please find the Tunney Act comments on the Microsoft settlement of Griffin B. Bell, Edwin Meese III, and C. Boyden Gray. A paper copy will be submitted by fax.

Tanya Bartucz
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005

(202) 736–8067
Fax (202) 736–8711

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If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

MTC–00028700

From: John D. Mitchell
To: Microsoft ATR
Date: 1/28/02 5'03pm
Subject: Microsoft Settlement

John D. Mitchell
2129 Ascot Drive q
Moraga, CA 94556
2002.01.28
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
microsoft.atrusdoj.gov
Subject: Microsoft Settlement
SUMMARY

The currently proposed settlement with Microsoft woefully fails to address the critically important need of restoring hope to all of the parties afflicted by the Microsoft's abuse of monopolistic power.

Restoring of hope is a critical criteria by which any and all proposed solutions to the Microsoft monopoly problem must be judged. Moving forward, a just and fair solution to the Microsoft monopoly can only be created through a combination of structural and behavioral remedies.

AXIOMS

(Rule of) Law

At the surface, (the rule of) law is the complex, accretive, disjointly semi-hierarchical, codification of the conglomeration of (the processes of) (dealing with) (quasi-) behaviors.

At the heart, (the rule of) law is a simple belief system.

Fundamentally, (the rule of) law is about hope.

Anti-Trust Law

At the surface, anti-trust laws are primarily about dealing with things like the (private sector) abuse of monopoly power to harm consumers. At the heart, anti-trust laws are about dealing with entities which unduly restrict free-market competition.

Fundamentally, anti-trust laws are about dealing with entities which eliminate hope.

MICROSOFT ANTI-TRUST CASE

Background

The facts are simple and clear:

* Microsoft has systematically and aggressively pursued monopolistic goals since its formation.

* Microsoft's behavioral outrageousness stems directly from the corporate, ''Cult of Bill'' culture [ala ''Cult of Personality] that has been created and fostered by all of the senior management of the company including Bill Gates himself.

* Microsoft has been very successful at gaining monopolistic power in many critical areas of the computer (software) business.

* Microsoft has repeatedly, aggressively, and unapologetically abused its monopolistic power to the detriment of the marketplace.

* Microsoft has clearly shown its obstinate incapability to adhere to behavioral restraints.

Lack of Hope

The settlement and (behavioral) remedies proposed by the US DoJ vs Microsoft anti-trust action are not only worthless to the marketplace but are outright detrimental. Why is that so clearly the case? Simple... The proposed settlement does absolutely nothing to address the fundamental abuse of Microsoft: the severe curtailing and, often, outright elimination of hope. For example:

* The hope of major (software) competitors has been mostly devastated over the years by e.g., Microsoft's abuse of its monopolistic power to exclude the competition from pre-built computers containing Microsoft operating systems (which increasingly forcing the ''up selling'', if not outright inclusion of more and more Microsoft products and services).

* The hope of computer vendors to sell whatever (software) it is that they want and are able to with their computers to satisfy their customers.

* The hope of upstart, would-be (software) competitors. It's a well known truism that a great many startup companies work so as to *not* attract the notice of Microsoft for as long as possible. It's incalculable how many companies (and projects within existing companies) have been canceled due to fear of Microsoft's (re)action.

* The hope of consumers for a fair price based on a fair, open market.

* The hope of (ignorant, inexperienced, etc.) consumers for computer systems that actually work (reliably, robustly, inexpensively, securely, etc.).

* The hope of (informed, experienced) consumers for computers and software that can (reliably, effectively, inexpensively, securely, etc.) inter-operate between all consumers (that don't explicitly choose to isolate themselves) without being, a priori, forced into using Microsoft products (due to such forces as the so called ''network externalities'' effects which reinforce monopolistic power).

* The hope of investors for a market which is unskewed by the insidious abuses of monopolistic power.

* The hope of citizens that the rule of law (still) has meaning and that breaking the law has serious, effective, and efficient consequences upon the violators, inhibitive effects upon would be violators, and some restitution for the violated. By neglecting dealing with hope, the proposed settlement precludes the reconstitution of a fair and open market, allows a vicious predator to continue their predations, and weakens the rule of law.

Therefore, any proposed settlement remedies must be judged in their effectiveness and efficiency at restoring hope.

Side-note on Consumer Pricing

I have heard many arguments, both pro and con, from various people using (''guesstimates'') of the effects of Microsoft's monopolistic abuses on the prices that consumers have paid for various products. I have found all of those such arguments that I have heard to be severely lacking directly in proportion to their failure to address the fundamental hopes and expectations of consumers.

For example, of what import is the fact that Microsoft may or may not have ''over-charged'' some customers for some of their products if there was no hope of having a fair and open market to determine the true pricing? The very fact that there was not (any hope of) a fair and open market meant that there was absolutely no possibility whatsoever that anyone could have paid a fair price for any product or service from Microsoft nor for any product or service impacted by the monopolistic effects of the so skewed marketplace.

Behavioral Remedies are Insufficient Given the facts of the case, it is crystal clear that the current proposed settlement's reliance upon strictly behavioral remedies is insufficient to effectively and efficiently restore any hope.

My analogy is that of modifying the behavior of children... It is clear that while an appropriate corrective action (e.g., a slap on the wrist) by a reasonable, supervising guardian may well affect a change of behavior (for the better) in an otherwise normal, well-behaved child; such a remedy does, at best, nothing to positively change the behavior of a willfully recalcitrant teenager (and, at worst, merely incenses and incents them to be more clever in their abuses). At least, Microsoft must be treated as such a willful violator.

Many others have gone through and picked apart each and every one of the behavioral remedies in the proposed settlement. I won't go further into analyzing them here due to my contention that those remedies are, by themselves, so clearly insufficient. That said, I have co-signed Dan Kegel's open letter—http://www.kegel.com/remedy/letter.html.

Structural Remedies are Necessary

Structural remedies are necessary to any proposed resolution to the Microsoft monopoly. Only by incontrovertibly dispersing and otherwise separating each of the major constituents can there be any hope of significantly and effectively modifying the behavior of Microsoft and its monopolistic effects.

Structural remedies are necessary so that each of the resulting entities can be effectively constrained from (attempting to) reconstitute the original company. In addition, the resulting entities must be sufficiently isolated in terms of its market power by having to stand and compete in a fair and open market without being able to rely on the direct and synergistic power effects that Microsoft currently abuses. Structural and Behavioral Remedies are Necessary and Sufficient I hope that it's clear from the preceding that the only ways to curtail the continued devastation of all of our collective hopes by Microsoft is to imposed significant structural remedies along with broad behavioral remedies.

I will leave it to another missive to go into details and rationale of my proposed remedies but the broad strokes are:

* Divest the current assets of Microsoft into three (4) new entities. One entity for creating operating systems for devices (PCs, handhelds, etc.). One entity for the end-user applications such as Microsoft Office suite of

applications. One entity for the development tools and libraries. And finally, one for end-user services such as MSN. Appropriate, suitably related portions of each of the general facets such as customer service & support and Microsoft Research would be dispersed to each of the new entities.

* Require that the (major) shareholders, the board members, and at least top three levels of executive management can only have anything whatsoever to do with at most one of the created entities. Also, inhibit their ability to switch between the created entities.

* Enjoin the resulting entities from colluding with any of the entities on any products or services to the exclusion of any other companies in any respective market. In conclusion:

* The currently proposed settlement fails completely to provide any hope for anyone, except those who gain by Microsoft continuing to abuse its monopoly, that anything will change for the better.

* Judging any proposed solution to Microsoft's monopoly must incorporate and account for the effects hope.

* Based on my experience and analysis, the only possible solutions necessarily must be based a combination of both structural and behavioral remedies.

Sincerely,
John D. Mitchell
Moraga, CA
2002.01.28

MTC–00028701

From: Devin (038) Marilee
To: Microsoft ATR
Date: 1/28/02 5:04pm
Subject: Microsoft Settlement

ATTN: U.S. Department of Justice Antitrust Division

In my opinion, the terms of the Microsoft Settlement are reasonable and fair to all parties involved. It is time to move Microsoft and the industry forward. The terms of this agreement are in the public interest and should be accepted.

Thank You—
Marilee Sauer
8618 Henrietta Avenue
St. Louis, MO 63144

MTC–00028702

From: Bill Whitlock
To: Microsoft ATR
Date: 1/28/02 5:04pm
Subject: Microsoft antitrust case —

I would like to say get this case over with and let Microsoft get on with business. Do not let the states do separate settlements. Because it will just turn into a money grab. How dose consumer protection benefit from fifty one separate legal cases? The only people that profit are the lawyers and state attorneys looking to make a name for themselves.

Making the source codes available will give new products an ability to integrate with microsoft. Will you require apple to do the same? The U.S. economy is in the toilet. Tens of thousands of jobs have been lost. Excess beating up on Microsoft will not help this situation. Dragging this issue out any longer will not help U.S. consumers.

I am writing this on a Mac G4. I have both Apple and Microsoft operating systems. I also have Netscape and Internet explorer on my home PC.

P.S. The U.S. lost a unfair trade case in the world court. Is this one of those cases where we are suppose to do what you say not as you do?

MTC–00028703

From: Alex Lazutin
To: Microsoft ATR
Date: 1/28/02 4:53pm
Subject: Microsoft Rulings

To whom it may concern:

In my opinion, the Microsoft settlement was just and fair to all parties.

I believe Microsoft should be exempt from any future litigation.

Taking into consideration all the wonderful things Microsoft does for children and its employees, why should the company be put though any future expense.

Sincerely,
Paula Lazutin

MTC–00028704

From: cplp31@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I find it amazing that the Federal Govt would go through such extrodianry lengths to prosecute Bill GAtes and Microsoft. I cant speak on the legal technacalities of the lawsuit but the Microsoft s impact on the United States is clear. Over the past 10 years computers the internet and technology have been made more available to households and schools across the country. I find it odd that this can be considered some sort of monoply that is harming our nation. Microsoft has done wonders for our scociety making computers cheaper easier to use and more avialable. Thank You for your time.

Marc T Povondra
MIDN USN

MTC–00028705

From: reg@elvis.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I think that Microsoft should be taken to task for their illegal and bullying ways to crush any competition in the O/S and browser market. They (M$) develop lousy software and through their business methods keep competitors from delivering better software.

REG

MTC–00028706

From: marske@ec.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I think the government should not continue a lawsuit again Microsoft. I think there should be a settlement so Microsoft can get on with its business. There was no good reason to sue Microsoft in the first place. Just government at its worst going after someone just because it was successful.

MTC–00028707

From: marske@ec.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I think that the suit against Microsoft was a waste of taxpayers money. They were being sued simply because they were successful.

MTC–00028708

From: bobguth@fidnet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

The Department of Justice Settlement is a total non-settlement which deserves investigation in it own right. I feel that the anti-competitive practices are being actively encouraged by the Bush Administration settlement allowing Microsoft to increase its stranglehold on operating systems. Please do not sell out the intrests to future generations allowing greed collusion to dictate to future generations what our public officials do not have the courage to do. Do not accept the Department of Justice Settlement.

Maintain the future health of competitors such as Apple and the open systems such as Linux. We as consumers deserve a choice. Have the courage to stop the arrogance of Microsoft please rule against the proposed settlement.

MTC–00028709

From: spirit@hevanet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I believe the settelment is in the best intrest of all concerned. lets stop the antics of aol and other companys and individuals who have a hidden agenda what have there contributions been to all compared to microsoft.

MTC–00028710

From: 78455@attbi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

As I can see that the U.S.Attorney for the Department of justice is looking out for the right of the Computer would and that no one should be ably to hold the computer world down and that mead Mictosoft

MTC–00028711

From: HatfieldCC@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

At a meeting of the Executive Board of The Hatfield Chamber of Commerce today the Board voted unanimously to voice their support of the Proposed Microsoft/Department of Justice Antitrust Settlement.

It is our belief that this settlement is a tough fair and reasonable compromise that is in the best interest of everyone—the technology industry the economy and especially consumers. Thank you.

Hatfield
Chamber of Commerce P.O. Box 445
Hatfield PA 19440

MTC–00028712

From: jreece@northstate.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

If there has ever been any doubt that AOL does not want a fair and expedient solution to it s legal challenge to Microsoft then it s latest legal action should remove a all doubt. The irony of all their actions is that there has never been a ground swell of consumer complaints stating that the consumer has been hurt by Microsoft business practices. It is obvious that AOL Time Warner is trying to use the courts for it s own competitive purposes. It is also time to challenge whether AOL is monopolistic in it s own business as the largest internet provider. If AOL should in fact buy the Linux operating system I suppose we will see yet another challenge to Microsoft in the courts. For the sake of the technology industry the nation s economy and America s consumers let s get these issues out of the courts and into the competetive marketplace where they should be.

Jack D. Reece
419 Chesterwoods Court
High Point
NC 27262 336–841–7810

MTC–00028714

From: noone@nowhere.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

Microsoft is making a mockery of the DOJ. Who is getting paid off? All your excuses are lame this is an embarrassment.

MTC–00028715

From: ess777@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I believe that the proposed DOJ settlement offer is fair. I hope that this matter can be resolved and that this great company can get on by the business of innovation. Thank you

Eva Stubits

MTC–00028716

From: bobguth@fidnet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

The Department of Justice Settlement is a total non-settlement which deserves investigation in it own right. I feel that the anti-competitive practices are being actively encouraged by the Bush Administration settlement allowing Microsoft to increase its stranglehold on operating systems. Please do not sell out the intrests to future generations allowing greed collusion to dictate to future generations what our public officials do not have the courage to do. Do not accept the Department of Justice Settlement.

Maintain the future health of competitors such as Apple and the open systems such as Linux. We as consumers deserve a choice. Have the courage to stop the arrogance of Microsoft please rule against the proposed settlement.

MTC–00028717

From: mikeoc@digitalexp.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I can not see where Microsoft has hurt anyone except for their feelings. The Government settlement is more than fair.It is time for the cry babies to go home!

MTC–00028718

From: Chris Carman
To: Microsoft ATR
Date: 1/28/02 5:06pm
Subject: reasons against the settlement

I know I might be sending this a bit late, but I just found out about the open comment period and I'd like to say a couple things from an educator's point of view.

I teach two computer classes—one in web site design and programming, the other in computer & network support (aimed at CompTIA's A+ and Network+ tests). Our high school uses Windows PC's almost exclusively because of a directive from our school board that has more or less banned Macs due to their lack of presence in most businesses. I primarily use Macs at home, but I also have 3 PC's and am very comfortable with the Windows and Linux operating systems (I'm A+, Network+ and Linux+ certified).

The settlement is bad for consumers, educators, students and the country as a whole for two major reasons.

The first reason is that educators and students would have very little say in what products are chosen to be placed in their classrooms. Deep discounts from Microsoft and used PC heardware not only limits choices, but also increases tech support costs for the school. I did an observation at an inner-city high school in Cincinnati when I was in college, and five brand-new PC's sat in a corner because kids had stolen the balls from inside the mice and they were rendered useless. Of course, a $2 mouse ball would have fixed this, but with very little tech support in that district, the technology is wasted. If you want to do anything with schools, give them some money for equipment but give a lot more money for tech support training and increased salaries for tech coordinators to attract more qualified individuals.

The second, and most important reason, is that the settlement does absolutely nothing to curb Microsoft's future domineering behavior. In fact, they come out looking like the good guys by donating to impoverished schools while increasing their installed user base! This sort of thing cannot be allowed to happen.

The Windows APIs that allow programs to run inside the Windows Operating System should be opened up for everyone to download, use, interpret, and include in another OS. For example, if Mac OS X could run Windows programs natively, it would be a dramatic improvement for the computer industry as a whole because it would provide some serious competition for Microsoft. If you look back to the beginning of the computer industry, IBM was very slow to improve its original 8086 and 80286 computers until competition (in the form of Compaq clones) came along. The same thing happened with Intel, which rested on its laurels until AMD released a chip (the Athlon) that was faster and cheaper than their Pentium 3.

Competition is good for the industry. Please don't allow Microsoft to get away with this sort of bribery.

Chris Carman
Hamilton, Ohio

MTC–00028719

From: guilmette@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

On belief of the Tech World further delays of the D. of J. in the decision re: MICROSOFT are simply causing greater expenditures of the tax payers money. Furthermore the remedy that was proposed by Microsoft was ideal because it would make available for the most under-priveledged children a technology that now is almost uniform in our country. Further delays will simply compound the problem in teaching.

MTC–00028720

From: gdfox@foxinternet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

As a user of the Microsoft Operating System and bundled software I have appreciated the ease of having it all in one package. I believe that most individual consumers would agree. The government broke up Ma Bell and now there are many larger businesses. All it did was to make prices rise. To those of us who are retired and hold stock in these companies such as Microsoft the ongoing dispute over who is right has only served to hurt the stockholders.

Gordon Fox

MTC–00028721

From: monkeyjr@purdue.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

I use Microsoft products and they are pretty average. I believe they would be better if there was improved and fair competition in the market place. I strongly believe this site is a pawn in Microsofts plans to monopolize information technology. To improve all of out futures rethink your policies and realize that what Microsoft is doing is wrong.

MTC–00028722

From: baan@starpower.net@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

Please bring an end to the Microsft suit. The economy has suffered long enough.

Wes Vernon

MTC–00028723

From: cbearden@mail.state.mo.us@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm
Subject: Microsoft Settlement

The settlement terms are fair to all concerned and should be implemented without delay. Carl Bearden

State Representative District 16

MTC–00028724

From: Everett—Langford@huntsman.com@inetgw
To: Microsoft ATR
Date: 1/28/02 4:57pm

Subject: Microsoft Settlement

Microsoft creates software they do it better than anybody else. If there is a better operating system possible the developers can become the next Microsoft. It is time to stop punishing success in this country. Microsoft should be praised not hounded. Just leave them alone. The settlement should just say: Microsoft did it better. They did nothing wrong. All charges dropped!

MTC–00028725

From: Ken Brown
To: Microsoft ATR
Date: 1/28/02 5:05pm
Subject: Tunney Act Comments

Just to make sure you received our fax, we are sending it one more time. If there are any problems with the submission you can call me 703–608–4222.

Ken Brown

MTC–00028726

From: LLiebeler@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:08pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D. Street, NW
Suite 1200
Washington, DC 20530–0001
RE: Microsoft Settlement

Dear Ms. Hesse:

Please find attached the Tunney Act comments of the Computing Technology Industry Association (CompTIA) relating to Microsoft settlement.

The attached file is formated in Word Perfect 9. Please let me know if you have any difficulties downloading and/or formatting this file and I will be happy to provide it to you in a different format.

Thank you for the opportunity to submit these comments. I would appreciate your acknowledgment of receipt of these comments. Thank you.

Lars H. Liebeler
Thaler Liebeler LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
Direct: (202) 828–9867
Main: (202) 466–4110
Fax: (202) 466–2693
4350 North Fairfax Drive, Suite 440
Arlington, VA 22203–1624
Tel (703) 812–1333
Fax (703) 812–1337
publicpolicy@comptia.org
QQQ
CompTIA

Comments of the Computing Technology Industry Association on the Revised Proposed Final Judgment in United States v. Microsoft

Submitted to the United States Department of Justice pursuant to the Tunney Act, 15 U.S.C. u 16

January 28, 2002

I. EXECUTIVE SUMMARY

CompTIA supports the Revised Proposed Final Judgment (RPFJ) entered into between the United States Department of Justice, nine states, and Microsoft on November 6, 2001. The RPFJ represents a reasonable compromise of the parties' respective positions in this case. The benchmark under which the settlement must be judged is whether it is consistent with the United States Court of Appeals June 28, 2001 opinion. The Court of Appeals found that Microsoft took actions to unlawfully maintain its monopoly in the operating system market, but also ruled that Microsoft had not attempted to unlawfully monopolize the Internet browser market nor did it unlawfully tie its Internet Explorer to the Windows operating system. The RPFJ represents a reasonable balance of the Court of Appeals split decision by imposing obligations upon Microsoft in the areas where it was found liable, and avoiding obligations in areas where Microsoft's conduct was not found to be unlawful. As such, the RPFJ is narrowly tailored to fit the violations and will likely avoid collateral damages to the marketplace. After the November 6, 2001 Proposed Final Judgment was announced many of Microsoft's competitors complained that the settlement was too lenient. The antitrust laws, however, make clear that the settlement should not be designed as a wish list for Microsoft's competitors. The settlement should fairly address the areas of liability found by the Court of Appeals. Anything less would encourage Microsoft and other companies to engage in anti-competitive conduct in the future; anything more would inappropriately imperil the technology marketplace and cause harm to consumers.

The terms of the RPFJ insure that the technology sector will continue to expand and innovate. The settlement places strong and appropriate checks on Microsoft in areas where such checks are needed, but is designed in such a way that Microsoft will be able to compete fairly and aggressively in all markets. CompTIA urges the United States District Court to approve the settlement and reject the non-settling states more extensive remedy proposal as that would erode intellectual property protection, harm competition, and stall growth in the industry.

The only significant reservation regarding the RPFJ that CompTIA holds is that the settlement obligates Microsoft to disclose an abundance of intellectual property to the Plaintiffs and the Technical Committee. While this technical information is to be used for the purpose of achieving the interoperability goals specifically identified in the RPFJ, CompTIA is concerned that the precedent established by these disclosure provisions will be harmful to the technology sector in the long run. Innovation and growth in the IT industry are fostered by strong protection of intellectual property rights. If every antitrust violation is remedied by a wholesale forfeiture of valuable proprietary information by the defendant, intellectual property rights will suffer a significant blow. And, justifying the forced disclosure of a company's valuable technical information on the ground that it will be used for interoperability purposes only is not a sufficient protection. Because there is no bright line as to what constitutes interoperability information and what does not, the chance of valuable intellectual property being compromised is high.

CompTIA's reservation notwithstanding, we believe the settlement will benefit the industry as a whole and we respectfully urge the District Court to approve the RPFJ.

II.COMPTIA'S INTEREST IN THIS MATTER

The Computing Technology Industry Association (CompTIA) is the world's largest trade association in the information technology and communications sector. CompTIA represents over 8,000 hardware and software manufacturers, distributors, retailers, Internet, telecommunications, IT training and other service companies in over 50 countries. The overwhelming majority of CompTIA members are resellers companies that resell software and hardware to consumers, businesses, or other resellers. These resellers are vendor-neutral and their objective is to be able to sell whatever products their customers wish to buy. In that sense they believe that antitrust laws should focus primarily on consumer impact rather than competitor impact. Microsoft is a member of CompTIA as are many of Microsoft's competitors. In 1998, CompTIA's Board of Directors adopted a formal policy statement on antitrust.

That statement supports sensible antitrust enforcement that is based on demonstrable economic effects in the marketplace. CompTIA believes that market forces typically correct any temporary market imperfections and that government regulators should only intervene in the technology marketplace when there is overwhelming evidence of a substantial and pervasive market failure. Pursuant to its policy statement, CompTIA has written and spoken frequently on antitrust issues of relevance to the technology sector. In June 1998, CompTIA filed an amicus brief in the Intel v. Intergraph litigation in the U.S. Court of Appeals for the Federal Circuit. In that case

CompTIA urged the court to reject a lower court's finding that antitrust allegations could be a basis for ordering a company to disclose its valuable intellectual property. CompTIA co-authored an amicus brief in the United States Court of Appeals for the District of Columbia Circuit in the United States v. Microsoft case in November 2000. The amicus brief urged the Court of Appeals to reverse the District Court's order breaking Microsoft into two separate companies and further discussed the negative industry-wide ramifications of the District Court's liability findings were they all permitted to stand. The basis for CompTIA's participation as amicus and submission of these Comments is its interest in the overall health and prosperity of the technology sector.

III. THE CONSENT JUDGMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED BY THE COURT

A. Standards Under Which the RPFJ Should Be Judged

Under the Tunney Act, 15 U.S.C. u 16, the consent judgment should be approved if it is in the ''public interest.'' The public interest analysis must be measured by the objectives of the antitrust laws; public interest concerns that are not within the purview of the antitrust laws are irrelevant. U.S. v. AT&T, 552 F. Supp 131 (D.DC 1982), affirmed, 103 S.Ct. 1240 (1983).

Nor is their a requirement that the settlement be, in the eyes of the District Court, ''the best possible settlement that could have been obtained;'' the settlement must simply be within the reaches of the public interest. U.S. v. Agri-Mark, Inc., 512 F. Supp 737 (D. Vt. 1981). In short the District Court should not reject the consent judgment
merely because [s]he believe[s] other remedies [are] preferable. United States v. Microsoft, 56 F.3d 1448, 1460 (DC Cir. 1995).

The language of the Tunney Act sets forth specific areas of inquiry relating to the public interest:

For the purpose of such determination, the court may consider—(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. u 16(e). Focusing on selected areas identified within the Tunney Act, CompTIA sets forth its analysis of the RPFJ below.

B. The Competitive Impact of Such Judgment

1. Termination of Violations

The RPFJ closely tracks the liability findings from the Court of Appeals opinion. First, the settlement prohibits Microsoft from retaliating against any OEM (original equipment manufacturer) because of an OEM's participation in promoting or developing non-Microsoft middleware or a non-Microsoft operating system. This provision takes the club out of Microsoft's hand and prevents the company from using anticompetitive means to discourage OEM's from promoting or preventing rival software from being developed or installed on the Windows desktop.

The anti-retaliation provisions of the RPFJ even go so far as to prohibit Microsoft from altering its license with an OEM even if the OEM offers users the option of launching other Operating Systems from the Basic Input/Output System or a non-Microsoft boot-loader or similar program that launches prior to the start of the Windows Operating System Product.

RPFJ at u III.C.4 (emphasis added). Thus, an OEM has the full ability to make decisions based on price, features and performance with respect to whether an alternative operating system will be loaded on its computers; and that operating system product may appear to the user before Windows does. This flexibility will insure that operating systems that compete with Windows will have a full opportunity to reach the consumer. Once there, the decision about whether they succeed or fail is in the hands of consumers. These anti-retaliation provisions deal head on with the bulk of the conduct the Court of Appeals found to be illegal in the monopoly maintenance section of its June 28, 2001 opinion.

Second, Microsoft is obligated to adhere to one uniform license agreement for Windows with the top twenty OEM's and the royalty for the license shall be made publically available on a web site accessible by all OEM's. The price schedule may vary for volume discounts and for those OEM's who are eligible for market development allowances in connection with Windows products. This allows Microsoft to continue to compete in all software markets with other software manufacturers and this competition will continue to benefit consumers.

Third, OEM's are permitted to alter the appearance of the Windows desktop to add icons, shortcuts and menu items for non-Microsoft middleware, and they may establish non- Microsoft programs as default programs in Windows. Consumers also have the option of removing the interface with any Microsoft middleware product.

Fourth, Microsoft must reveal the API's used by Microsoft middleware to interoperate with the Windows operating system. Microsoft must also offer to license its intellectual property rights to any entity who has need for the intellectual property to insure that their products will interoperate with the Windows operating system.

These central features of the settlement insure that other companies have the ability to challenge Microsoft products, both in the operating system and middleware/ applications markets, and are not unfairly shut out of those markets as a result of Microsoft's operating system monopoly. Consumers and OEM's have far greater freedom to install and use non- Microsoft products, Microsoft is prohibited from retaliating against any entity who promotes non-Microsoft programs, and all companies have equal access to Microsoft API's and technical information so that non-Microsoft middleware has the same opportunity to perform as well as Microsoft middleware. At the same time the RPFJ does not prevent Microsoft from integrating new technology into the Windows operating system and does not prohibit Microsoft from competing in any market that it chooses to enter. Such restrictions would have harmed consumers and been antithetical to the goals of the antitrust laws.

Because the RPFJ adheres closely and effectively addresses the liability findings of the Court of Appeals, it is a reasonable settlement and therefore in the public interest. Finally, the Court of Appeals directed the District Court to consider whether there is a causal connection between Microsoft's anticompetitive conduct and its dominant position in the OS market. United States v. Microsoft, 253 F.3d 34, 106 (DC Cir.), cert. denied, 122 S.Ct. 350 (2001). And while this direction was made in the context of whether structural relief is appropriate, it is logical to conclude that the foundation of that inquiry remains highly relevant even though structural relief is no longer at issue in this case. In the absence of evidence that the marketplace would have looked any differently absent Microsoft's anticompetitive behavior, the RPFJ provisions that enjoin the conduct found unlawful by the Court of Appeals are appropriate and in the public interest. Any remedy that extends beyond the monopoly maintenance findings by the Court of Appeals would not be in the public interest absent a finding of causal connection showing actual harm in the marketplace, and clear evidence of how the remedy would obviate the harm, while avoiding collateral damage to the marketplace.

2. Commingling of Software Code

Bundling can also capitalize on certain economies of scope. A possible example is the ''shared'' library [1] files that perform OS and browser functions with the very same lines of code and thus may save drive space from the clutter of redundant routines and memory when consumers use both the OS and browser simultaneously.

Some may criticize the settlement because the RPFJ does not address the issue of Microsoft's commingling of operating system code and Internet Explorer code which was found to be unlawful. See United States v. Microsoft, 253 F.3d 34, 66 (DC Cir. 2001). The Court of Appeals concluded that Microsoft's commingling of code
deters OEMs [original equipment manufacturers] from pre-installing rival browsers, thereby reducing the rivals'' usage share and, hence, developers'' interest in rivals'' APIs as an alternative to the API set exposed by Microsoft's operating system. Id.

While Microsoft vigorously contested this finding of fact, and the Court of Appeals elsewhere acknowledged potential efficiencies from commingling of code, the Court denied1 Microsoft's petition for rehearing on this issue. In denying Microsoft's petition, however, the Court of Appeals expressly noted that [n]othing in the Court's opinion is intended to preclude the District Court's consideration of remedy issues. Order, August 2, 2001. Thus, the Court of Appeals signaled that its finding that Microsoft unlawfully commingled code does not necessarily mandate a remedial order requiring Microsoft to separate the code. Given the variety of other provisions in the RPFJ that encourage OEMs to place non-Microsoft middleware on the desktop, the consent judgment does not fail for the fact that it does not require Microsoft to separate the code. In the overall totality of circumstances, it is reasonable to conclude that the public interest would be better served by avoiding an order that would require Microsoft to engage in a fundamental redesign of its operating system. The object of such a remedy is effectively addressed through other provisions that do not harm consumers.

3. There are no Loopholes in the RPFJ

Some critics of the settlement have opined that the RPFJ contains loopholes in the language that requires Microsoft to disclose APIs (application programming interfaces) to software developers. See Washington Post, Wording of Microsoft Deal Too Loose, Analyses Say, January 18, 2002, E01. The settlement requires Microsoft to make such disclosures with respect to its browser, Internet Explorer, and other software such as Windows Media Player so that software developers may create competing software that interoperates with the Windows operating system. The allegation that the

[1] Id. at 87.

settlement has loopholes in this regard, however, is based on a faulty interpretation of the plain language of the settlement agreement. Section III.D of the RPFJ requires Microsoft to make available the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. The term Microsoft Middleware is defined as software code that is contained within the operating system, but for which updates are distributed separately. The definition also requires, inter alia, that the software code be trademarked. The two programs cited by critics of the settlement as possibly excluded from disclosure requirements, Internet Explorer and Windows Media Player, are, however, clearly within the definition. Both are included within the Windows operating system as an initial matter and updates to both are distributed

A comprehensive list of downloadable updates to software that is contained within the Microsoft operating system is located at the following url: Updates to Internet Explorer and Windows Media Player are distributed on this site.

Publically available trademark information indicates that Internet Explorer is trademarked under serial Nos. 75663324 and 75340051 (assigned from Synet Inc.) and Windows Media, including descriptions of Windows Media Player are trademarked under serial Nos. 75663200, 75517785, and 75517786. separately. Moreover, both the logos and the words covering Internet Explorer and Windows2 Media Player are trademarked.3

A natural reading of the RPFJ demonstrates that there are no loopholes that would frustrate the overall intent of the document. The definitions are constructed in such a way to give meaning to certain terms, including middleware, that otherwise would be susceptible to a wide variance of interpretation. While some who are critical of the settlement may prefer broader definitions of certain terms, the danger in over-expansive definitions is that they exclude nothing and thus become unworkably vague.

4. Provisions for Enforcement and Modification CompTIA has carefully analyzed the enforcement provisions of the RPFJ and concludes that the enforcement provisions are stringent, thorough, comprehensive, and are carefully designed to insure that Microsoft comply with the substantive terms of the settlement agreement.

In addition, the terms are creative in that they include provisions that are likely to speed the resolution of consumer and competitor disputes, rather than result in additional lengthy litigation over the terms of the settlement. In sum, CompTIA finds little support for the characterization of the enforcement provisions as weak, and instead believes that the enforcement mechanisms are strong, effective, and will likely provide quick and effective resolution of any disputes under the agreement.

Plaintiff's Powers to Enforce: The RPFJ specifically provides that the United States or any of the individual states involved in the case have responsibility for enforcing the Final Judgment. To facilitate this enforcement, the Plaintiffs have the right to:

! inspect all books, records, ledgers, or any document within the control of Microsoft;

! inspect all source code for any Microsoft program;

! interview any Microsoft employee, and record such interview;

! order Microsoft to prepare any report under oath regarding any matter in the Final Judgment.

These access provisions give the Plaintiffs essentially unfettered ability to obtain any piece of information that they seek with respect to Microsoft's compliance with the Final Judgment. There is no loophole or exception that would prevent the Plaintiffs from acquiring information relating to Microsoft's compliance with the settlement. Further, any information obtained by the Plaintiff's may be presented directly to the Court in order to secure Microsoft's compliance.

The Technical Committee: In addition to the wide latitude given to the Plaintiffs to inspect Microsoft documents, code, and personnel, the settlement agreement also establishes an independent three person Technical Committee (TC). This TC will be made up of experts in software design and programming and shall establish permanent offices at Microsoft's Redmond campus. The expense of the TC shall be paid by Microsoft and the TC shall have the power to hire any consultants necessary to assist them in their duties.

The TC's sole function is to monitor Microsoft's compliance with its obligations under the Final Judgment. Thus, the TC has complete access to all Microsoft documents, computer programs, personnel, equipment, and physical facilities. The TC members may direct Microsoft to prepare reports of any information and in any format the TC desires.

Most significantly, the TC will have complete access to the confidential source code of Microsoft's programs. The TC may study the code, interrogate the code, and interact with the code in order to insure that Microsoft is complying fully with the Final Judgment. The TC may interview any Microsoft employee regarding the source code and its operation. Again, there is no loophole or exclusion that would prevent the TC from obtaining any piece of information in any way related to Microsoft's compliance with the agreement.

And, any information obtained by the TC may be shared with the Plaintiffs and the Court. Indeed, the TC has an obligation to report its activities to the Plaintiff at regular six- month intervals. If, however, the TC has reason to believe that a violation of the agreement has occurred, it is obligated to report that fact immediately to the Plaintiffs and provide a written summary of the nature of the violation. The Plaintiffs may then immediately initiate a contempt proceeding against Microsoft in the U.S. District Court as that Court has ongoing jurisdiction to enforce the terms of the Final Judgment.

Microsoft's Internal Compliance Officer: Another important aspect of the RPFJ is a provision requiring Microsoft to appoint an internal compliance officer. This person has the responsibility to administer the company's compliance with the settlement agreement. The officer must circulate a copy of the Final Judgment to all officers and directors of the company and brief those people on the meaning of the Final Judgment and the requirements of the U.S. antitrust laws. The compliance officer is responsible for securing the written certification from each and every officer and director in the company that they understand the terms of the Final Judgment, agree to comply with its terms, and that they understand that failure to comply may result in a finding of contempt of court.

Dispute Resolution: Any person may submit complaints concerning Microsoft's compliance with the Final Judgment to either the Justice Department, the States, the Technical Committee, or the Compliance Officer. Upon receipt of a complaint from any person the Plaintiffs may initiate an enforcement proceeding with the Court and seek to hold Microsoft in criminal or civil contempt. The Court has wide latitude to interpret the agreement, order compliance with the agreement, and/or impose fines or other sanctions upon the company.

Notwithstanding the Plaintiffs' ability to immediately seek Court intervention to resolve compliance issues, other dispute resolution mechanisms are available under the agreement. These less formal procedures allow complainants to quickly resolve compliance issues with the assistance of the independent Technical Committees's extensive knowledge of the Company's activities. Any person may submit a compliance issue to the Technical Committee for investigation. The TC shall investigate complaints, bring them to the attention of the Microsoft Compliance Officer and advise Microsoft of its conclusions and proposal for cure. The identity of any complainant may be kept from Microsoft to insure that no retaliation could possibly occur.

The only limitation placed on the TC's work is that its findings or recommendations in a informal dispute proceeding may not be admitted as evidence in Court, nor may the TC members be called to testify. This restriction does not interfere with the TC's responsibility to inform the Plaintiffs of any violation, explain the details of that violation, and provide supporting evidence to the Plaintiffs. Similarly, the restriction does not impede the Plaintiffs' ability to obtain and present all information obtained from Microsoft to the Court in support of the alleged violation. Instead, it permits the TC to actively and aggressively use every method possible to quickly negotiate the resolution of disputes between complainants and Microsoft without having the work-product of that negotiation process made public. Protecting the TC members from having to testify is consistent with the rules of every mediation session undertaken within the U.S. legal system. It encourages the parties to be fully candid and forthcoming before the TC in attempting to resolve disputes under the settlement agreement.

In sum, the extensive power and access that the TC has under the settlement agreement insures that the informal complaint procedure will not be a dead letter. Because the TC has full access to every book, record, person, and program at Microsoft, and has the ability to order

Microsoft to prepare any report it wishes, the TC can make life very difficult for Microsoft. Indeed, Microsoft has great incentive to satisfy the TC and avoid compliance issues altogether. The TC will provide an effective procedure for quick resolution of complaints against Microsoft typically far quicker than if a contempt proceeding were initiated.

The enforcement provisions of the RPFJ grant extremely broad powers of access to both the Plaintiffs and to the independent Technical Committee. Both entities have the power to present the information they obtain from Microsoft to the Court to insure Microsoft's compliance with the settlement agreement. The Court has wide discretion in punishing Microsoft for violations of the Final Judgment and the RPFJ specifically provides that the terms of the agreement may be extended for an additional two years if Microsoft has engaged in a pattern of willful violation. The RPFJ also includes a wide array of formal and informal dispute resolution mechanisms that give a complainant maximum ability to resolve disputes quickly and fairly. Charles James, head of the DOJ's Antitrust Division, testified that [t]he proposed decree contains some of the most stringent enforcement provisions ever contained in any modern consent decree. CompTIA's review of the enforcement procedures supports Mr. James' conclusions. The establishment of an exceptionally powerful Technical Committee as a permanent fixture on Microsoft's campus is unprecedented. The Technical Committee's investigatory duties and duties to report directly to the Plaintiffs insures that the enforcement provisions have the power necessary to force Microsoft to comply with the substantive terms of the Revised Proposed Final Judgment.

C. Anticipated Effects of Alternative Remedies Actually Considered

While the November 6, 2001 Revised Proposed Final Judgment goes beyond the liability found by the Court of Appeals in some areas (i.e., by requiring Microsoft to disclose its confidential technical information relating to servers), the non-settling States' proposal filed on December 7, 2001 goes so far beyond the judgment as to bear little relationship to the Court of Appeals decision.

The centerpiece of the states'' remedy demand is that Microsoft be compelled to create and market a stripped down version of its Windows operating system that would not include many of the features that current versions of Windows do include. Since consumers can now easily remove Microsoft features from their desktop and OEM's are free to place non-Microsoft programs on the desktop, it is difficult to see how this requirement would benefit consumers.

Instead of giving consumers more choices of software products, this unwarranted intrusion into marketing and design decision by the non-settling States would cause further delays in the development of software created to run on XP, with developers waiting to see which version would become the standard. Such delays would further postpone the salutary effects of XP on the computer market. It would also hamper programmers'' ability to take full advantage of technological improvements in Windows, creating a marketplace in which the same software applications would not necessarily have the same functionality. This remedy would balkanize the computing industry and would undermine the benefits consumers obtain from a standardized operating platform.

In addition to the stripped down version of Windows, the December 7, 2001 proposal would also require Microsoft to continue licensing and supporting prior versions of Windows for five years after the introduction of a new version of Windows. The primary effect of this requirement is to impose unnecessary costs upon Microsoft (that would likely be passed on to consumers) and reduce the incentives for Microsoft to improve the operating system. This disincentive to Microsoft to make technological advances would ripple throughout the software industry as applications developers would not have an advancing platform to write software to.

The non-settling States remedy proposal also includes a variety of restrictions that will have little if any quantifiable benefit to consumers but which will simply advance the interests of Microsoft competitors. Consumers and OEM's currently have full ability and freedom to include Java software on their computers; the States' requirement that Microsoft carry Java on all copies of Windows does not provide consumers or OEM's with any more choice than they already have. Similarly, the requirement that Microsoft continue to produce an Office Suite for Macintosh interferes with natural market forces that direct resources to the best use and may actually preclude the success of competing applications software. Directing Microsoft to produce and support any software without regard for market forces is likely to harm consumers, not help them. Moreover, the November 6 Proposed Judgment fully addresses and prevents Microsoft from retaliating or taking any anticompetitive actions against Apple.

Advances in technology are frequently made as a result of joint ventures between competitors. The Department of Justice and the Federal Trade Commission have recently released guidelines for the formation of such joint ventures. Notwithstanding the recognition by these enforcement agencies that most joint ventures are pro-competitive, the non-settling States seek to restrict Microsoft from entering into joint ventures whereby the parties to the joint venture agree not to compete with the product that is the subject of the joint venture. This restriction will chill innovation and prohibit countless consumer welfare enhancing arrangements.

Further, this proposal flatly ignores the fact that the Court of Appeals found in Microsoft's favor on the issue of the alleged illegality of its joint venture proposal to Netscape. The most harmful of the remaining remedy proposals include those that require the extensive and mandatory sharing of Microsoft's source code, without compensation to Microsoft.

The non-settling States proposals in this regard go well beyond those in the November 6 Proposed Final Judgment and appear to be aimed at benefitting Microsoft's competitors rather than insuring a level playing field for all participants in the software industry. In the absence of compelling justification for wholesale and forced disclosure of a company's intellectual property, the harm caused by such disclosure is unwarranted and harmful to the entire technology marketplace. The vigorous protection of intellectual property has fueled the rapid and dynamic growth of the technology industry. Actions that erode protections for intellectual property should be viewed with great trepidation.

The long term effects of the conduct restrictions proposed by the non-settling States encourage continued litigation, rather than competition in the marketplace.

IV. CONCLUSION

The RPFJ will never be and cannot be all things to all people. But, in the end, it is a reasonable result given the respective positions of the both sides in this litigation. In assessing the effectiveness of the current settlement, the Court should recognize that the marketplace is far different than it was at the time the case was originally brought in May 1998. The Court of Appeals spoke to this very issue:

[J]ust over six years have passed since Microsoft engaged in the first conduct plaintiffs allege to be anticompetitive. As the record in this case indicates, six years seems like an eternity in the computer industry. By the time a court can assess liability, firms, products, and the marketplace are likely to have changed dramatically. This, in turn, threatens enormous practical difficulties for courts considering the appropriate measure of relief in equitable enforcement actions, both in crafting injunctive remedies in the first instance and reviewing those remedies in the second. Conduct remedies may be unavailing in such cases, because innovation to a large degree has already rendered the anticompetitive conduct obsolete (although by no means harmless). United States v. Microsoft, 253 F.3d 34, 49 (DC Cir. 2001).

CompTIA does not interpret the Court of Appeals' language to support the proposition that minimal or no remedies should be imposed upon Microsoft because advancing technology has made the browser wars or other issues in the 1998 lawsuit irrelevant at this point in time. However, it appears that those who now seek to impose more far-reaching remedies against Microsoft are excessively focused on the marketplace as it was in 1998, ignoring its state in 2002. The advances in server technology, wireless and handheld devices, and web based applications all diminish the overall competitive significance of the Windows desktop. Thus, for example, the goal of attempting to inject more competition into the browser market at this time has little competitive significance to the overall technology marketplace.

The goal of the settlement in this case should not be to penalize Microsoft for past behavior, nor should it be to benefit Microsoft's competitors by forcing Microsoft to license its source code against its will. The settlement should insure that Microsoft does not engage in the actions found unlawful by the Court of Appeals. This consent judgment does just that and therefore it should be approved.

Respectfully Submitted,
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Thaler Liebeler LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
CompTIA Antitrust Counsel
(202) 828–9867

MTC–00028727

From: retredmed@cchat.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:07pm
Subject: Microsoft

To Whom It May Concern:

I would like to express my opinion on the Microsoft settlement:

1- There should never have been a need. If microsoft competetors can't handle the competition, then its time for them to get out of the business (just as anyone else in business would).

2- Since there seems to be a need for a settlement, I think microsoft has offered one that is more than adequate.

3- Get the government out of the way of progress.

Thanks for this opportunity.

R.E. Lee

MTC–00028728

From: bruce.granger@verizon.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:08pm
Subject: Microsoft Settlement

I think the facts, as well as the opinions, are in and it is time for the Department of Justice to act firmly against Microsoft. It has long been know that Microsoft has used it position to squelch competition and stifle creativity. Microsoft has used its position to deliver products that were full of flaws and demand premium prices. This, in light of their predatory practices, should not be tolerated.

Please take this opportunity to open up this monopoly to other players and get the economy back on track.

Verizon Communications
Bruce T. Granger, M.I.S.
Enterprise Solutions Group
Manager—Network Integration
Senior Network Integration Engineer—CCNA, CCNP
Work—972.718.3174
Fax—972.718.3336
Mobile—214.789.4630

MTC–00028729

From: Robert McConnell
To: Microsoft ATR
Date: 1/28/02 5:08pm
Subject: Microsoft Settlement

In response to the government's request for comments on the proposed Microsoft Settlement:

As a computer professional with over three decades of experience writing software for a variety of operating systems including Windows, and as one-time fan of Microsoft, I would like to make two points. The first is to suggest one route which in the absence of a breakup I expect Microsoft to continue to exploit to maintain it's monopoly. The second point is to call attention to a related danger from Microsoft's monopoly which I believe is accelerating the flight of manufacturing from the US to foreign countries.

First the monopoly preservation strategy:

Most competent computer programmers can, if they wish, write and document functioning code which is virtually incomprehensible to any other competent programmer (including the author him/herself). Moreover said author can almost certainly (disingenuously but successfully) argue in a court comprised of non-experts that the code is straightforward, well-documented and easy to understand.

What does this have to do with Microsoft maintaining and extending their monopoly? Everything. Whether hardware or software, it is in the interests of the creator of any product to facilitate use by the consumer while hiding as much of the internal workings as possible to discourage competition. Microsoft's strategy has been to continuously expand the boundaries of it's ''operating system'' (more properly now an operating environment) enveloping or attempting to envelope entire classes of applications, office, networking, on-line shopping, manufacturing etc... within the boundaries of the ''operating system''. This can be done explicitly as in the case of Internet Explorer, or implicitly by simply making it difficult and or prohibitively expensive for outsiders to access, or even know about, operating system or hardware features which may be important for fields Microsoft dominates, or wishes to dominate. The ''browser wars'' were about exposing the inner workings of Microsoft's operating system so others might use them.

Because of the ease of writing and defending impenetrable code Microsoft already has an almost unlimited ability to restrict access to the core of the operating system and to the hardware beyond, whether or not a court orders it to provide access. Microsoft sells just enough tools to access selected parts its operating environment to be able to provide lip-service to openness. Generally speaking the products are scaled in such a way that only those who have made a large commitment, financial or ''sweat equity'' which will tend to lock in their allegiance to Microsoft are allowed access to the more powerful tools.

Because of the high barrier created by the impenetrability of the Microsoft code, it is hard to imagine any remedy short of a breakup will be able to curtail Microsoft's illegal monopolistic practices.

The second comment, related to manufacturing flight, is contained in a letter I sent to the Attorney General general of Massachusetts several months ago. The text follows:

Dear Mr. Attorney General,

I must congratulate you and your staff on the stand you have taken against the proposed Microsoft settlement.

I am a software developer who has long been appalled by the relentless manner in which the American public interest continues to be steamrolled by the Microsoft juggernaut. Therefore I was shocked by the decision by the Justice Department to take the breakup option off the table. It is my opinion that this option offered the only chance to restore competition to the software marketplace. Needless to say, I was further dismayed by the terms of the proposed settlement.

As you are obviously well aware, under the guise of ''innovation'' Microsoft has succeeded in stifling true innovation in many ways. Much of the damage done by Microsoft is not as a result of overt actions towards the ''victim'' whether an individual or a company. Rather it is in creating an environment in which the fate of others who have tried to innovate in the face of Microsoft serves as a deterrent to further innovation. Of course this type of deterrence by example does not carry the connotation of physical danger as might be expected from similar threats by organized crime or terrorists.

Nevertheless it is quite effective. This is an environment in which:

1. Intelligent software developers know that they have little chance of being successful unless they join the Microsoft camp. Once in that camp more of a developer's time will be likely spent keeping up with Microsoft's complexity-increasing-whims than improving their product.

2. Intelligent funding institutions know from history that there is no point in developing a product in a market in which Microsoft is known or believed to have interest. The best one can hope for in the case of a very successful product is the opportunity to sell the product to Microsoft at a price determined only by the latter.

3. The required ''operating system'' (now more properly an operating environment) is so complex as to create a huge barrier between the creative idea of a researcher, developer, or engineer and its implementation into a useful product.

I'm reminded of a university researcher's website I saw several years ago. The researcher noted that he was using older, and by then outdated, analysis software for his research. Although he had written the original software himself, he believed that the new requirement of interfacing with Windows had introduced such complexities that he could not afford either the time to update the software himself, or the money to to hire a Windows specialist to update it for him. Whether or not the researcher's assumption was actually true, Microsoft literature and promotions (the so-called FUD factor) would certainly lead him to this conclusion. Hence his further research in this field was stymied.

4. Similarly the Microsoft ''one size fits all'' operating system and tools, interposed between America's manufacturing engineers and the computer, hamper their creative efforts. Modern Windows software effectively prevents these engineers from writing high speed one-of-a-kind applications necessary for the most efficient manufacturing. Ten years ago the same engineer would have had no trouble writing this type of software.

As a Senior Member and member of the Peer Review Committee of the Machine Vision Association of the Society of Manufacturing Engineers I became personally concerned about this issue several years ago. I was particularly worried that is resulting in substantial advantages for manufacturing facilities in foreign countries and earlier this year prepared the attached document.

I'm not sure any of this will be of any help in the successful resolution of the Microsoft situation, However I thought it might be helpful in explaining why at least one of us is behind you.

Again, congratulations and good luck on your stand!

Sincerely,

Robert McConnell

CC:Attorney General Tom Reilly

MTC–00028730

From: Jim D. Kirby
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 5:09pm
Subject: Microsoft Settlement

They say hindsight is 20–20. Sometimes we get the benefit of hindsight prior to the fact. In this case, the emerging Enron scandal shows us exactly what the Bush administration was attempting in their settlement with Microsoft: corporate capitulation.

The proposed settlement between Microsoft and the Federal government reeks of nepotism, favoritism and backroom shenanigans. Enron has shown us how our executive branch operates; please do not let similar actions favoring Microsoft provide yet more fodder for our growing recession.

Jim Kirby

Senior Network Engineer/Architect

Wells'' Dairy, Inc.

Main: 712–546–4000 Direct: 712–548–2919 Fax:

712–548–3106

mailto:jdkirby@bluebunny.com http://bluebunny.com

MTC–00028731

From: adam@tameware.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:01pm
Subject: Microsoft Settlement

I am dismayed by the DOJ action against Microsoft. It makes me ashamed to be an American. I urge the court to dismiss the suit entirely, or, failing that, to impose the mildest sanctions possible.

I use Microsoft's software on a regular basis—it's certainly improved my life. While I prefer using Macintosh computers to PCs running Windows, I have nothing but admiration for Microsoft's accomplishments. Claiming there are no alternatives to Microsoft products is laughable. Not only are there a host of alternatives, but if Microsoft were ever to attempt to charge exorbitant rates for its wares I and a host of others would rush in to compete.

To say that Microsoft has a monopoly for PC operating systems is meaningless. What makes an ''industry standard'' PC standard is precisely the fact that it runs Windows. Microsoft has a monopoly in the same sense that Tom Clancy has a monopoly on ''The Hunt for Red October''. This monopoly is the right of a producer to his product— it is guaranteed by Section 8 of the U.S. Constitution.

Microsoft has never harmed me, nor do I ever expect it to. How could it? My transactions with Microsoft are voluntary. This court, however, can harm me and every American. By restricting Microsoft's freedom everyone's freedom is restricted. This would be too big a price even if there were a public interest to be served by such a restriction. In fact there is none. It is Microsoft who has been serving the public, as evidenced daily by those who voluntarily purchase Microsoft's products. Whether or not they realize it, even Microsoft's competitors benefit from Microsoft's presence, which spurs them to added effort and ever-higher levels of quality. Were it not for Microsoft many of them would not exist! Without Microsoft most computers might still be running CP/M—that would be a sad state of affairs.

Adam Wildavsky

President

Tameware, LLC

33–39 80th St. No. 32

Jackson Heights, NY 11372

adam@tameware.com http://www.tameware.com

MTC–00028732

From: Chris Carman
To: Microsoft ATR
Date: 1/28/02 5:10pm
Subject: one more comment

I wrote an earlier comment against the settlement, but I wanted to add one last thing—Microsoft should not be allowed to engage in any ''exclusive contracts'' (ie, a computer that is shippsed booting Windows is only allowed to boot Windows and cannot boot or include another operating system like Linux or BeOS—this is why Dell, IBM, etc. won't sell PC's that have both Windows and Linux) for at least the next ten years. This would be roughly in line with how long Windows has been around. Just a thought. Thanks!

Chris Carman

Hamilton, Ohio

MTC–00028733

From: George Van Treeck
To: Microsoft ATR
Date: 1/28/02 5:10pm
Subject: Microsoft Settlement

I would like to comment on section III.J.1 and III.J.2 of the proposed settlement. I worked at company last year that asked for information on a network communication protocol so that we could make our product work their products. Microsoft didnt refuse, they repeatedly failed to respond to the requests in any way. And sections III.J.1 and III.J.2 are so ambiguous in interpretation that there they could use it as an excuse to provide information, effectively squashing small companies who cant afford the legal warfare to compel a disclosure.

An example of how section III.J.1 and 2 could be used a smoke screen by Microsoft to deny access to communication protocols and APIs for security reasons: Virtually all security systems software is designed in such a way that even if you do know how the software works, it is virtually impossible to break it. For example, the software for the PGP encryption algorithm is public knowledge and used by a large number of people, because knowledge of how the encryption works does not help in breaking the code. In fact, public knowledge helps people identify potential problems early before the there is wide adoption. Microsoft can claim a large portion of their product falls under section III.J.1 and 2, when in fact, knowing the details does not lessen security in any measurable way. Small companies would not have the resources to contest this.

As a software engineer, I found most of Microsofts arguments about the need to inextricably bind their browser to the operating system very odd.

Fact #1: Microsofts Internet Explorer browser runs on Apples operating system and a UNIX version also existed. Further, their first versions of Microsoft IE ran without tight integration into its own operating system. So, the claim about it needing to be inextricably bound to the operating system to ''provide a better experience'' is without any merit.

Fact #2: Every competent software engineer will tell you that reliable and maintainable software is designed in pieces with very clearly defined interfaces that encapsulate and hide internal details of each piece. This makes it possible to keep defects in one piece from breaking things inside other pieces. Further, this encapsulation with well-defined interfaces makes it easy to pull out one piece and replace it with a better piece in the future, without breaking all the other pieces (makes future enhancements easier). This is analogous to replacing the incandescent light bulb in your lamp with a more energy efficient light bulb both bulbs use the same screw-in interface to your lamp).

Are we really to believe that all those top talent engineers at Microsoft are NOT using basic design principals of encapsulation and well-defined APIs, that would allow them to easily pull out a current version of their Internet Explorer and with a future enhanced version (and therefore also allow a third party browser to also use that same well defined interface to plug their browser in)?

Microsoft cant have it both ways: They're a competent software company who can speak with authority in court (design code that encapsulates internals with well-defined APIs) or the browser is so inextricably tied that another browser can not easily replace it (and thus can't believe what they say because they're incompetent).

I know Microsoft has some of the sharpest software engineers around. I know they write some pretty good software. So, this means their executive's excuses for Microsoft's behavior are not credible.

So, what does this indicate about Microsoft executives attitude and how they are likely to interpret an ambiguous settlement agreement? Will appointing a review committee that is not highly technical in specialized areas of software (e.g., specialied security) interpret this agreement in the public interest?

MTC–00028734

From: Sean Ryan
To: Microsoft ATR
Date: 1/28/02 5:11pm
Subject: Microsoft Settlement

Your Honor,

I am writing to voice my displeasure with the Proposed Final Judgment in the Microsoft Anti-Trust Case. The PFJ has three major flaws.

1. It does not terminate Microsoft's illegal monopoly

2. The penalty for past illegal behavior is not a disincentive and will actually give Microsoft an advantage in another market segment.

3. The Department of Justice must pledge to prevent any future anti-competitive activity by Microsoft by maintaining a close watch of the companies activities.

Illegal monopolies hurt the consumer, inhibit innovation, and encourage future illegal activity if they are not handled in a manner far more aggressive than that in the Proposed Final Judgment. I urge you to reject the PFJ.

Thank You,
Sean Ryan
(707) 438–7326

MTC–00028735

From: Othniel Graichen
To: Microsoft ATR
Date: 1/28/02 5'10pm
Subject: Microsoft Settlement

In the western system of capitalism, consumers do not usually buy directly from producers. In our economy, multiple levels of middlemen exist to satisfy the demand for finished goods. This results in healthy competition, reasonable profits and an increased tax base. The established Microsoft monopoly on technology (like AT&T's monopoly on communications before it) has not been used toward the public's good and the company's business practices illegally extend this monopoly by tying inferior products to its established ones slowing the rate of technology advancement. This substantially reduces the opportunities for competing technology producers and has resulted in decreased tax revenues which can be collected from the offending multinational corporation. Furthermore by refusing to support the Linux platform, Microsoft management reduces its value to shareholders. My explanation follows:

Microsoft does not just have a monopoly on PC operating systems. In the minds of middle management in the Western world, a new technology is not ready for deployment until a Microsoft product includes it. The successful managers have witnessed where business needs existed for a given technology, early adopters (using non-Microsoft tools) were burned by incompatibilities with key Microsoft software components or unavailability of updates to products such as Excel, Word, DOS, Windows, Internet Explorer and Media Player to name a few.

After slaying Goliath, Microsoft now holds hostage an even larger customer base than IBM did before it changed it business practices to remedy an earlier DOJ suit. Microsoft has not cooperated with the will of the people as pursued by the USDOJ and attorneys general of the 19 states. Unlike IBM, Microsoft cannot see the error of its ways. Its no longer just about profits ? instead it's about the power to be above the law. The ''software tax'' that it collects on all PCs sold planet-wide by leveraging US political and military influence makes Microsoft (and by extension the US) a target of foreign nationalistic pride/prejudice. Wars in the coming centuries will be fought over control of Information. Microsoft's way has not produced the technologically superior or secure operating system platform needed by the marketplace because they have not had to innovate as they hold a monopoly and successfully prevent competition into that space. The computer scientists that have built Linux allow for commercial proprietary software to run on this more reliable platform. They only want the operating system not the applications which run on it to be free/open and beyond subversion. They have produced a system which is more secure and reliable than Microsoft's operating systems. Businesses that have seen how often the Microsoft sands shift have chosen not build on the Microsoft choices of foundation.

The free operating system Linux was given as an example to the court as a serious threat to Microsoft's monopoly, but that argument should be discounted as that Operating System is totally free ? meaning no license cost per machine. So it does not compete with Microsoft. There is no company called Linux. No one company controls the direction Linux will take. The reason Linux? open source API can compete with Microsoft's Monopoly OS is because the companies that use it are guaranteed of a truly level operating system playing field. Linux is to operating system technology what free markets are to economic systems. Requiring Microsoft to support the Linux platform as a tier 1 operating system for all their application software is not taking money out of Microsoft's hand and putting it in the hand of some other company. If Microsoft's management doesn't respond to the viability of Linux, Microsoft's shareholders will be hurt on the order of what happened to Enron. That is not in the interest of middle America. What is in America's best interests is not a powerful Microsoft, but a software platform where no company has control over hardware or processor, but one where all businesses (and governments) can compete based on innovation, quality and their ability to meet customer requirements. Microsoft needs to become a technology producer instead of controlling technology deployment. Microsoft unfairly changes the operating system platform whenever a competitor has found a niche which Microsoft wants to occupy. Only when Microsoft agrees to support the Linux Operating system with their application software will competition in the business and office technology sector flourish to the benefit of all.

Microsoft is a grand marketing organization but they do not stimulate our economy to build (and profit from building) new technological advances. Business plans that would go head-to-head with Microsoft are rejected. Instead of hiring and training more computer scientists, software developers and programmers, our country has changed immigration laws to allow 500 thousand more H1-B Visas thereby increasing the unemployment of working class Americans. Furthermore, Microsoft is not pushing the envelope of technology. It recoups its investment on technology many fold more than necessary before developing new products. This is not good for consumers and has transformed

Microsoft into more of a marketing company than a purveyor of technology. It specifically breaks the law regarding the tying of a new product to a monopoly product by combining bug fixes (a warranty service) into product upgrades (for a fee) and by not making them available separately but combining fixes with new code (and a new set of bugs). While the argument has been made regarding Microsoft's Internet Explorer browser being part of the Microsoft Operating System instead of application software, two facts belie that claim. One, Internet Explorer is available for the Macintosh, Solaris and HP-Unix—platforms that are obviously not Microsoft operating systems. So tying Internet Explorer to the correct operation of the Windows Operating System was a deliberate attempt to sabotage competition in the browser space resulting in the demise and purchase of Netscape instead of more competition. Second, Microsoft's claim that Internet Explorer is free—just like Netscape Communicator is bogus. IE is only free to Microsoft customers. Internet Explorer is specifically not available on Linux (proving that it is not free) and because the API (operating system interface) which it uses is purposely obfuscated. Netscape Navigator and Communicator are free and are available on Linux along with the next generation Mozilla open source browser.

Artificially high operating system prices combined with fewer OS technological advances cause fewer computers to be sold by market forces due to customers learning to be disappointed in what their computers can do. More competition would increase the value of the computing infrastructure and motivate companies to invest in more computers. This was the expectation 20 years ago. All that money went to Microsoft. What do we have to show for all that investment? Some improvement but a lot of broken promises. Open Source Software delivers on that promise and the Linux operating system is the standards based vendor neutral mechanism to remedy the difficult situation the court finds itself needing to resolve.

I look to the court to render a decision which will increase employment of software developers in this country, increase the diversity of IT sector businesses, and punish the company which brazenly ignored anti-trust law, threat, and actual suit. Do not forget how the courts were unmistakably lied to. Now that Microsoft has been found guilty of being a monopolist, do not take the teeth out of enforcement by accepting the weak Proposed Final Judgement. Microsoft has injured the Information Technology sector and with remedies you can drive a truck through and will continue to do so for the next 5 to 7 years. The DOJ position has changed since the beginning of this trial with Joel Klein. Despite all the pressure to join the US DOJ, many of the state attorneys general could not in good conscience join the Revised Proposed Final Judgement. Do your job to ensure that America begins the 21st century by accelerating the deployment of technology rather than allowing business as usual at Microsoft to continue.

Nor is breaking up Microsoft the only solution! That is a simpleton's way to elicit the desired behavior, which won?t work because there will be uncontrollable collusion between the two subentities.

Releasing the source code for Internet Explorer would be in line with Microsoft's claim that Internet Explorer is free. Its? interconnection with Outlook (the Email client) is responsible for most of the virus vulnerabilities. The inevitable improvements in security once the source code is released would benefit the public. Getting Microsoft to drop the suit against Lindows.com ? a potential operating system competitor ? would also be proof that they will permit competition. The most important goal is to convince Microsoft that selling its Office Suite on Linux is good for Microsoft. The RPFJ does not accomplish that. That is one reason why all the state's attorneys general did not support it.

Microsoft writes good application software, but they have made operating systems which are not secure from viruses. Actually Java was designed from the start to be a more secure middleware platform, yet Microsoft quickly pushed its own alternative technology which has since been successfully targeted by virus writers. Why? Not to support the public good, but to retain control of their market.

There is no money in selling operating systems, yet the foundation of all applications is operating system support. Since the beginning, OSes have always been given away with the computer. The Microsoft licensing agreement must be changed to not require that Microsoft application software be used only with or on a Microsoft Operating System license. What Microsoft has done is that they have sold all the computer manufacturers on the idea of paying them to preload computers with their operating system. Thus the price of the operating system is inseparable from the hardware. Microsoft gets their ''tax'' whether you use their software or not. This lack of consumer choice in operating system middleware must end. As long as Microsoft products are only licensed for Microsoft operating systems, consumers will be tied to that platform and technology sector businesses will be unable to innovate and compete with Microsoft.

Lastly, market (business) and government (military) forces are finally responding to the fact that only open source software systems are secure. Your judgement should promote this trend without being legislative. Microsoft should be prevented by decree from developing a version of their operating systems which are incompatible with VMware or preventing their application software from running under WINE in Linux. Such measures are simply exclusionary. Only at this point in history will you be able to extract such willingness to compete from an avowed monopolist. They need to be taught that limits exist on acceptable business practices.

Othniel Graichen
Senior Software Engineer
107 Nobhill
San Antonio, TX 78228

MTC–00028736

From: bfindley@brigham.net@inetgw
To: Microsoft ATR
Date: 1/28/02 5'' 12pm
Subject: Letter
437 Highland Boulevard
Brigham City, UT 84302
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am very much in favor of the right of consumers to choose the configuration of the system they work in. I am, therefore, in favor of the settlement reached between Microsoft and the Department of Justice. There is no doubt in my mind that Microsoft was behaving monopolistically, but the corporation produces good software, and I do not believe that so much fuss should have been made about actions that were not, in effect, harming the public.

The settlement allows for a return of fair competition in the technology industry. Microsoft has, for example, agreed to reformat future versions of Windows so that computer makers as well as users will be free to reconfigure Windows using both Microsoft and non-Microsoft software to suit their specific needs. The settlement also requires that Microsoft's actions be monitored by a three-person technical committee consisting of software engineers who will resolve disputes and make sure Microsoft complies with the settlement. I think Microsoft deserves a chance to prove its ability to adhere to the settlement. It will cost more in the long run to continue litigation against Microsoft. The technology industry, the economy, and the American people have all felt the repercussions of this case. It is time to settle. I urge you to support the agreement and move on.

Sincerely,
Barbara Findley

MTC–00028737

From:retredmed@cchat.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:12pm
Subject: Copy of my letter
To Whom It May Concern:

I would like to express my opinion on the Microsoft settlement:

1- There should never have been a need. If microsoft competetors can't handle the competition, then its time for them to get out of the business (just as anyone else in business would).

2- Since there seems to be a need for a settlement, I think microsoft has offered one that is more than adequate.

3- Get the government out of the way of progress.

Thanks for this opportunity.
R.E. Lee

MTC–00028738

From: Eddie Schwartz
To: Microsoft ATR
Date: 1/28/02 5:14pm
Subject: Microsoft Settlement
Eddie Schwartz
4625 Tara Drive
Nashville, TN 37215
Fax:
January 22, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

The Department of Justice and Microsoft have finally reached a settlement to the three-year antitrust dispute, and I am writing to champion that settlement and ask that it be approved as soon as possible. I am in favor of any agreement that will end litigation against Microsoft and that will help America.

Microsoft has agreed not to enter into any contractual obligations with third-party companies that mandate that they strictly use or promote Microsoft products. They have also agreed not to retaliate against computer companies that make or promote software that competes with Windows.

Believe it nor not, they will share source code and other data that is critical to the design and implementation of Windows. This allows the competition to make products that are compatible with Windows. This will improve the IT industry and the economy.

I fully support this settlement, and hope it is approves with haste. Thank you.

Sincerely,
Eddie Schwartz

MTC–00028739

From: Bernard R Buchta
To: Microsoft ATR
Date: 1/28/02 5:15pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

As a six-year teacher of PCs and the Windows operating system, I would like to voice my strong support for settling the pending Microsoft case. My experience as a PC instructor and my 26-year's as a military logistics officer has taught me the great value of standardization. Standardization buys everyone a lot. And, after standardization is achieved, ''the payback is forever.'' Witness: When we go to war, we want our bullets to fit into our allies'' guns and rifles, and want theirs to fit into ours. We want to be able to share, substitute and interchange their artillery rounds, fuel, and rations, etc., with ours. It's called being ''Interoperable.'' It's a great force-multiplier and keeps costs down.

Standardization, by definition, creates efficiency. It also makes for convenience and ease of use. Now, today, we need standardization and efficiency more than ever. Therefore, the proposed solution seems like a fair compromise that will provide the most effective long-term results for consumers. As seen with the International Standards Organization, the uniformity of Windows(R) and its supporting products is an asset to all computer users. This includes business and industry, schools, home users, . . . just everyone!

Technology is complicated enough for the average person, so the advantages Microsoft provides with the scope of their software presence is immeasurable in the form of America's almost seamless transition into the information age with young and old alike. Though I did not respect the government's case, the restrictions imposed with this deal

are far more favorable than the possibility of a corporate break up and chaos within the computer world. Based on the new, more even-handed approach of Microsoft toward competitors, and those who do business with competitors, plus the implementation of an objective technical committee of experts to ensure compliance, it seem to me it would be in the best interest of all parties involved to proceed with this agreement. This will save the consumer a great deal of heartache. It will also permit continued interoperability in future systems and software programs.

Thank you very much for your consideration.

Sincerely,
Bernard R. Buchta
Bernard R Buchta, in Troy, MI
LTC, OrdC, US Army (Retired)
P.S.

You're doing a great job in the War on Terror.

Don't let them grind you down!

MTC–00028740

From: Daniel Sells
To: Microsoft ATR
Date: 1/28/02 5:15pm
Subject: No winners, just more wasted money.

How many new schools could we build with the money that is being wasted on this case? Better yet, how many people could be feed? What's more important, People or what kind OS/browser they use to access the internet?

Stop Wasting MY Tax Money!!!!!

This lawsuit is a huge waste of tax payer money. The federal government should use MY tax money to provide valued services to me and all Americans. WHAT DOES ANYONE STAND TO GAIN BY SUEING MICROSOFT? Know one is forced to buy the Windows operating system, browser or any other Microsoft product. Apple Macintosh has been around for years and is a very viable alternative to the Windows platform for all who chose such. Linux is growing in popularity as another choice. I don't understand why your DOJ is pursuing this. If other companies want to sue Microsoft, they have the courts to do so. Let AOL, IBM or whoever sue them WITHOUT USING MY TAX DOLLARS! The DOJ should step down and let the other companies battle this out as long as their willing to pay.

D.M. Sells

MTC–00028741

From: Lynn Walker
To: Microsoft ATR
Date: 1/28/02 5'09pm
Subject: MICROSOFT SETTLEMENT
967 Artman-Gibson Road Colville, WA 99114
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Thank you for your efforts to settle the Microsoft antitrust case. Concluding this litigation will be beneficial for the tech industry, as well as the economy.

The settlement agreement adequately addresses concerns about any predatory business practices on Microsoft's part. Upon approval of the agreement, Microsoft will refrain from taking retaliatory action against those who sell, promote, or develop software that competes with Windows. Another step Microsoft is taking is making it easier for consumers to remove features of Windows so they may replace these features with Microsoft's competitor's software programs. In my view, Microsoft has made adequate concessions to resolve this case. No further action should be taken by the Department of Justice against Microsoft.

Thank you for your consideration of my comments on this issue.

Sincerely,
Lynn Walker

MTC–00028742

From: LM14056@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:15pm
Subject: Microsoft Settlement
203 Hazelton Court
Mullica Hill, NJ 08062–9350
January 14, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

The Microsoft antitrust case settlement agreement should be approved as soon as possible. We will all be better off. This lawsuit demonstrates that Microsoft's competitors, like Sun, are merely envious of Microsoft's success. Their failure to develop products of the same caliber, as Windows does not mean Microsoft engaged in anticompetitive behavior.

The terms of the settlement agreement are fair. There should be no hesitation in the settlement's approval. The agreement provides for such things as a technical oversight committee, which will monitor Microsoft's business, practices. Additionally, Microsoft has agreed to disclose to its competitors proprietary information, like interfaces that are internal to the Windows operating system. Given these types of concessions, no further action should be taken against Microsoft.

Thank you for your intelligent attention.

Sincere regards,
Linda Maher

MTC–00028743

From: Tom Daly
To: Microsoft ATR
Date: 1/28/02 5:15pm
Subject: Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

I have been following the Microsoft case for many months and I believe that the proposed resolution of the case is clearly not in the interest of the American consumer and not good for the economy.

Microsoft will still be a monopoly for all intents and purposes and will continue to use their power to limit competition. The new regulations have far too many loop holes and with Microsoft's record there is no reason to believe they will change the way they do business. Microsoft must be held accountable and forced to allow applications that run on their system to be used anywhere. And they must be required to make their products compatible with competitive products.

To make this process fair to all, we need to hear from public consumer groups and from state governments not just Microsoft and their competitors. This is a right given by the Tunney act and must be preserved. It is my sincere hope that you will consider these points before going forward. The American people deserve and have a right to choose the products that serve them best, the proposed settlement is unfair and unjust. Please allow the people a voice.

Thank you,
Thomas B. Daly, Ph.D.
303–530–3337
PO Box 17341
Boulder, CO 80301

MTC–00028744

From: Vicinanza, Gregg
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 5:16pm
Subject: Microsoft Settlement

Please accept this comment regarding the Microsoft settlement on behalf of Sony.

Gregg H. Vicinanza
O'Melveny & Myers LLP
555 13th Street, NW
Washington, DC 20004
voice (202)383–5235
fax (202)383–5414
e-mail gvicinanza@omm.com
internet www.omm.com

MTC–00028745

From: William Wallace
To: Microsoft ATR
Date: 1/28/02 5:16pm
Subject: Microsoft settlement

Shame! Microsoft is being rewarded, not penalized for illegal monopoly practices and restraint of trade. Is this administration merely pro-business, or really for a FREE market system?

William Wallace

MTC–00028746

From: Michael T Vilas
To: Microsoft ATR
Date: 1/28/02 5:16pm
Subject: Microsoft Settlement

Dear Sir:

It is time to end the costly litigation against Microsoft. I urge you to stop all that is continuing the delays is the settlement.

Thank You:
M Vilas

MTC–00028747

From: Thomas Treder
To: Microsoft ATR
Date: 1/28/02 5:16pm
Subject: I oppose the Department of Justice's proposed

I oppose the Department of Justice's proposed settlement with Microsoft. None of the proposed actions appear adequate to prevent Microsoft from entering any new market it chooses, then utilizing a

combination of exclusionary licensing, predatory pricing, and all but unlimited marketing capital to force the incumbents into extinction.

Microsoft continues to employ the tactics with which it decimated Netscape. Against RealPlayer, Microsoft has integrated Windows Media Player. To drive a wedge into the game console market, XBox is sold below cost.

While the short-term benefit to the consumer is reduced cost of the individual commodity, the overall cost to the consumer and to society is huge; Operating System (Windows) and Applications (Office) priced far higher than any hopeful rival of equal or greater quality (Linux/StarOffice); reluctance of new players to enter the market; laughable security (ILoveYou, Nimda, Code Red), and ultimately a hegemony imposed with Microsoft the gatekeeper of all society's information flow and transactions (pending success of ''.Net'').

Even Judge Jackson's rememdies seemed no guarantee that Microsoft couldn't find a circumvention; however, that the current Department of Justice has volunteered a remedy weaker than one to which Microsoft had already acquiesed is at best difficult to understand, and at worst smells of malfeasance. Judge Jackson's remedies should be imposed upon Microsoft without delay.

MTC–00028748

From: Larry Blunk
To: Microsoft ATR
Date: 1/28/02 5:16pm
Subject: Microsoft Settlement

I wish to stress my opposition to current United States vs. Microsoft proposed Settlement Agreement. The numerous loopholes and lack of consequences for violation of the agreement will result in little or no change in Microsoft's anti-competitive behaviour.

Perhaps most unsettling is the area of DRM and authentication systems, and audio/video codecs. Microsoft is attempting and dominate these fields through it's .Net and Windows Media services initiatives. There is no mention at all of compulsory licensing of audio/video codecs in the settlement. If Microsoft is able to monopolize these standards, they will extend their control beyond just PC hardware OEM's to all manner of audio/video playback devices. These include pocket audio players, personal video recorders, component audio receivers, DVD players, and handheld organizer (such as the Palm Organizer). All these device makers and will need to license the audio/video codecs on Microsoft's terms. These terms will likely forbid the use of competitive operating systems such as Palm OS and Linux on these devices. It will also require the use of Windows backend server operating systems rather than competing operating systems such as Unix.

Closely related to the audio/video codecs are Microsoft DRM systems which are used to wrap and ''secure'' the codecs. DRM services are specifically excluded from compulsory licensing. The rationale is that licsensing them would somehow undermine their effectiveness. However, there is no reason these systems could not be licensed under a standard non-disclosure agreement (NDA). The same type of agreement could be used for authentication systems. I also note that there is a major flaw in the Department's understanding of authentication and cryptographic systems. A basic tenet in cryptography is that in order to be trusted, a cryptographic system should be subjected to extensive public peer review. Rather than relying on secrecy for security, authentication systems rely on the strength of their cryptographic algorithms. Even though the algorithms are widely published, they remain secure because of the mathematical complexities in defeating them. It should be noted that the standard for securing transactions on the Web today (such as credit card purchases) is the openly specified SSL standard. SSL employs only publicly documented and reviewed cryptographic mechanisms. There is even an open source implementation known as OpenSSL which is used extensively to secure transactions on the Internet. This is a difficult concept for the layman to understand, but it is critical to an open and competetive environment on the Internet.

-Larry J. Blunk
Saline, Michigan USA

MTC–00028749

From: Sawley
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: AOL Suit

The AOL lawsuit against Microsoft is a pathetic attempt to try to gain public sympathy in court against a competitor that they can't compete against in the public market.....

Lewis W. Sawley

MTC–00028750

From: BANKSMKT@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:18pm
Subject: Microsoft settlement

It is my opinion as a citizen of the United States that the creation of a product using the gifts of intelligence and foresight should not be punished. We have encouraged within our nation the free enterprise system. Microsoft, through superior development and insight into consumer needs, has produced a superior product. This in no way deserves punishment, due to the jealousy of competitors. I believe that this company deserves the freedom to continue producing products that benefit the consumers who purchase them.

Thank you for considering my opinion.
Sincerely,
Debra L. Banks
2035 Oneida Valley Rd.
Karns City, PA 16041

MTC–00028751

From: Stephanie Jayne Sailor
To: Microsoft ATR
Date: 1/28/02 5:20pm
Subject: Public comment—Microsoft

Department of Justice:

The lawsuit against Microsoft is supposed to be for the good of the people. Instead, it's for the good of Netscape, who failed to compete. Microsoft didn't hurt consumers. They helped consumers. If you truly want to put an end to a monopoly, why don't you start with The U.S. Postal Service? That's a Government-created monopoly, which has thrived since the 1840s. It has been against the law for anyone to compete with the U.S. Postal Service by carrying first-class mail. That's a monopoly that you should stop.

I beg of you, Department of Justice, end the Microsoft case now. Do not stifle innovation. Do not require Government permission for companies to improve their products. Such intervention only benefits companies who are lethargic to compete. In the end, that hurts taxpayers, consumers, the economy, and future of technology.

Do not meddle with Microsoft—or any other company's—future product design decisions. Leave that to software executives, not judges and bureaucrats. Keep America free, allowing Microsoft to continue to develop affordable products, create jobs, and please customers. This isn't about Microsoft. It's about the freedom of every American company to improve their products. Most importantly, it's about allowing consumers the freedom to pass judgment with their pocketbooks, by personal choice.

=Stephanie Sailor=
118 Mendham Rd.
Bernardsville, NJ 07924
908.766.0990
Steph@StephanieSailor.com
http://www.StephanieSailor.com
CC:msfin@microsoft.com@inetgw

MTC–00028753

From: Spencer Black
To: Microsoft ATR
Date: 1/28/02 5'19pm
Subject: Microsoft Settlement

Spencer Black
Artist
Microsoft Games Studios
801–275–6393
Scblack@microsoft.com
<mailto:Scblack@microsoft.com>
January 21, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

Three years ago, Microsoft was found to be in violation of established antitrust laws and was brought to trial in the federal courts. The Department of Justice and Microsoft, after six months of negotiations last year, managed in November to reach an agreement with which both parties are satisfied. Now, we find out that it will be determined whether it is in the best public interest to settle. The alternative is to reopen the case, and spend an indeterminate amount of time trying to reach a better settlement. Meanwhile, Microsoft's competitors and those who wish to gain from further litigation, including nine plaintiff states, are attempting to undermine the settlement during its review period. I do not believe that continued litigation would serve the public at all. The economy and the technology industry have suffered while this case has dragged on, and no good can come of extended suit. The settlement is fair, and, if finalized it will allow things to finally return to normal.

Microsoft has agreed to a variety of restrictions and obligations under the settlement, all of which would restore a fair competitive atmosphere within the technology market. For example, Microsoft has agreed not to take retaliatory action against any software producer or computer maker that introduces software into the market that competes with Microsoft.

I do not believe that it is in the best public interest to continue litigation. I urge you to support the settlement as it now stands.

Sincerely,

Spencer Black

MTC–00028754

From: Little Hen
To: Microsoft ATR
Date: 1/28/02 5:22pm
Subject: Microsoft Settlement
Becky Garrett
11050 North Highway 59
Gravette, AR 72736
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft: My name is Becky Garrett. I am a resident of Gravette, Arkansas writing in support of the settlement recently reached between the federal government and Microsoft. The public interest will not be served by reopening litigation against Microsoft. Given all of the changes in direction the case has taken to date, the outcome of additional litigation is far from certain. You have a settlement agreement on the table at this time that not only provides certainty in the outcome of the case, but also provides increased opportunities for competition in the industry.

Microsoft has agreed to either modify or eliminate allegedly anticompetitive business practices in the areas of pricing, distribution contracts, relations with software developers, and systems configuration. If the agreement is implemented, these concessions will lead to great growth in the software and computer industries. I hope you decide to go forward with the settlement. It is in the best interests of all involved.

Yours truly,

Becky Garrett

cc: Representative Bob Stump

MTC–00028755

From: Bhanu Patel
To: Microsoft ATR
Date: 1/28/02 5:22pm
Subject: microsoft settlement
5201 Meadowview Avenue
North Bergen, NJ 07047
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my interest on the recent antitrust settlement between Microsoft and the US department of Justice. The lawsuit has gone on long enough and should be finalized. All that is happening now is taxpayer dollars are being wasted and other companies are being given the chance to tack on their own lawsuits. Microsoft has done wonderful things for our country including creating jobs, wealth, and making technological breakthroughs.

They shouldn't be forced to disclose interfaces that are internal to Windows operating system products. They have spent huge amounts of money and resources developing these secrets. They should also not be prohibited from entering into agreements that obligate third parties to exclusively distribute Microsoft products. This inhibits their ability to gain market share.

Nevertheless, the settlement should be implemented so that our IT sector can rebound. Our nation needs to pull out of recession and cannot afford to have the government interfering with the most successful businesses. Make the right choice and do what is best for the public. End the dispute.

Sincerely,

MTC–00028756

From: Derik Stenerson
To: Microsoft ATR
Date: 1/28/02 5:23pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I would like to voice my position of support for concluding the litigation against Microsoft by approving the proposed settlement with the Justice Department. This case has proved not to be the best use of the government's resources, as the break-up attempt has only led to protracted dispute with no resolution. Consequently, it seems that accepting this current plan would be the best course of action for both sides at this point. The terms will be very favorable to Microsoft's opponents without causing severe disruption to its business model. Computer makers will have more flexibility to choose software programs for the Windows operating system, and even to manage specific features, like the supposedly controversial bundling options. Software developers will have unprecedented access to Windows internal interfaces and server protocols, as well as the ability to license its intellectual property. A non-partisan group of software experts will then monitor the process to ensure ongoing compliance. Based on these actions and measures, it seems that Microsoft is reaching out to the software community in a significant way to allow more competition in the marketplace. It should be in the best interest of all parties to take this opportunity and run with it, rather than delay further the possibility of a mutual solution. I look forward to your finalization of this agreement at your earliest convenience.

Thank you very much.

Sincerely,

Derik Stenerson

7845 235th PL NE

Redmond, WA 98053Get more from the Web. FREE MSN Explorer download : http://explorer.msn.com

MTC–00028758

From: john w orlandella
To: Microsoft ATR
Date: 1/28/02 5:24pm
Subject: Microsoft settlement

I see no reason for the government to continue the case against Microsoft. The only ones who can possibly gain are the attorneys. Please go with the current settlement and lets get this economy going again.

John and Jacqueline Orlandella

Redington Shores, Fl 33708 registered independents

MTC–00028759

From: Dean Royalty
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: settlement

To whom it my concern:

It is my opinion that the proposed Microsoft settlement should be finalized as written. We, the public, need this enacted to help our economy to move forward, and help all who access the internet. As a senior,

I say it is now time to settle this matter in this fair and equitable way.

Respectfully, Dean Royalty

CC:Winnie R. Hanna,Shirley M. Trigg,sandra murphy,PAT...

MTC–00028760

From: Linda Jo Hamlin
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: Microsoft Settlement

Dear Antitrust Division,

I cannot even guess at what is fair or correct according to the law's eyes to levy upon Microsoft, but I do want to comment regarding this issue. I have always used an apple computer (for many reasons) but I have to use some Microsoft software (Word) to process documents into booklets and layouts. This software often causes crashes as it tries to install over my operating system. The entire screen will freeze and go into a loop. When I reboot my computer, it alerts me that something has tried to rewrite my software. That is just a wrong thing to have happen. It is installed, I bought it, paid Microsoft for it and that should be enough for Microsoft. The rest is nefarious intervention by software written with a company's agenda. Please reprimand this company fittingly. Today the world of competition and deregulation is being swallowed up by profiteering. How can the little guy protect himself from huge, powerful and rich entities if there is no substantial result from proven misdeeds? It must have consequence when actions are done that are not for the good of the economic system we have here in the United States and the consequences should be a deterrent in the future to dissuade others from the same type of actions.

Thank you for your time reading this. I appreciate it.

Sincerely,

Linda Jo Hamlin, one of the little guys.

MTC–00028761

From: Harlan Wilkerson
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: Proposed Settlement

I feel that adoption of the proposed settlement is not in the public interest.

The Appeals Court ordered the District Court to craft a remedy that would ''unfetter [the] market from anticompetitive conduct,'' to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

Windows has gained it's market position not by consumer demand, but by Microsoft's almost total control of production. In the past, Microsoft has used exclusive OEM licensing and —marketing incentives to pass along the so-called ''Microsoft tax'' to every PC consumer. Most of the top 20 OEMs simply don't offer PC systems without the Windows operating system pre-installed. Microsoft has urged (and rewarded) the 0EMs to ''just say no'' to buyers who request a so called ''naked PC'' (a PC with no pre-installed software). This is ironic since the OEM's associated support costs should actually be reduced. The OEMs that do offer alternatives to Microsoft's Windows charge essentially the same price for non-Windows models. This is true even for those with pre-installied versions of absolutely free operating systems e.g. Linux, or the BSDs. These operating systems can be freely downloaded and installed on all of a consumers PCs without any licensing fee whatsoever. Consumers who have opted to install these free operating systems (on their own) are usually frustrated in any attempt to obtain refunds from the OEMs for their unused Windows licenses. This despite provisions for a refund from the OEM that are contained in the Microsoft Windows EULA. It's no accident that consumers can't determine the fair price of a PC under these circumstances. This was highlighted during the trial by a grass roots movement that culminated in a ''Windows Refund Day''. Consumers who purchase Microsoft Windows through an OEM usually have no standing in class action suits brought against Microsoft.

Nothing in the proposed settlement prohibits Microsoft from continuing to offer OEMs existing forms of advertising or marketing incentives (on an equitable basis) to include Windows on every machine, or to decline to sell ''naked PCs''. We currently are in the worst economic recession in at least a decade. It's doubtful that some of todays OEMs will even survive. Nonetheless, many of these same ''equipment manufacturers'' won't sell their equipment at any price without pre-installed software from Microsoft. This is hardly the behavior of an unfettered market.

Microsoft should be required to post the costs of it's OEM products on a public web site, and they should be precluded from offerring any incentives to OEMs to curtail the sales of ''naked PCs''

To paraphrase the Appeals Court by the time this case is resolved the facts will be ancient history, but the effects of the illegal acts will have caused harm nonetheless. The proposed remedy does nothing to ''deny to the defendant the fruits of its statutory violation''. Microsoft staunchly denies any wrong doing in it's public statements, retains billions in capital, and isn't even held liable for the people's costs in prosecuting the case.

In crafting a remedy that terminates the illegal monopoly or eliminates practices likely to result in monopolization in the future it is important that hearings be held to investigate how we got here in the first place. The Federal Trade Commision and DOJ took up Microsoft's trade practices involving OEM per-machine-licensing of MSDOS. During this case a private antitrust suit was brought against Microsoft by Caldera. That suit was settled but provided no relief for the millions of consumers who purchased Digital Research's Disk Operating System. Digital publicly complained that they had sufferred from Microsoft's anticompetitive per-machine-licensing scheme and were wrongly excluded from the Windows 3.1 beta testing program—even though they were participants in beta testing earlier versions of Windows. Digital's Operating system didn't compete with Windows, but did compete with MSDOS. At the time these were seperate Microsoft retail products. The respected magazine and online publication Dr Dobbs Journal revealed that the Windows 3.1 beta contained code that was only useful for detecting Digital Research DOS. This code gave the user error messages or simply halted a users machine whenever Digital Research DOS was detected. Windows version 4 and MSDOS version 7 were eventually bundled into Windows 95 which carried exclusive OEM license agreements that didn't permit OEMs to use or dual boot other operating systems like Digital's DOS. For example, some Hitachi PCs had a hidden copy of the BeOS that consumers could only discover and activate using instructions on Hitachi's web site. Digital, Hitachi and BeOS have since exited the PC OEM and PC Operating system business. For it's part the DOJ has complained publicly that Microsoft violated the first consent agreement. The practice of monopolies denying companies that compete in any software catagory timely access to APIs, and the practice of bundling seperate retail products for anticompetitive reasons, and/or using exclusive licensing agreements to harm competitors is a common and recurring theme. The judge was correct in denying Microsoft's request to limit the scope of the remedies without an evidentiary hearing, and the DOJ was premature in dropping their case in-main on product bundling. Microsoft is engaged in world-wide trade and the DOJ and European antitrust regulators seem uncoordinated and out of step. The European regulators have taken up complaints that Microsoft has withheld access to Windows server software API's that are necessary for interoperability with other network operating systems, and the bundling of Windows Media Player in Windows XP. Microsoft is not so quietly announcing it's plans for a single Internet logon authentication service it's calling ''.NET''.

The stated objective of this initiative is to leverage the Windows monoply in order to create a new (Internet) monopoly. While these practices may or may not be lawful, it's doubtful that all of the practices likely to result in monopolization in the future have been eliminated without a single hearing on the issues here in our courts. Most non-Microsoft operating systems provide a boot manager that allows consumers to use several operating systems. In fact, Microsoft includes a boot manager that allows consumers to use multiple (older) versions of Windows e.g. Windows 2000 and Windows 98. The act of installing a Microsoft operating system doesn't invalidate a consumers licences for a competitors products. Yet installing (or reinstalling) Microsoft Windows will always result in a consumers other operating systems becoming inaccessable. This is anticompetitive behavior. Microsoft should be required to automatically add other operating systems to it's boot manager in the same manner that it adds it's own products.

The DOJ and Microsoft appear to have forgotten that this case is about—Personal Computers— if a consumer shops for a PC, and makes a purchase based on the software selection, it makes no sense to provide Microsoft the arbitrary right within fourteen days to delete icons or programs and substitute their own because they have judged the competitors product lacking in some quality or state they deem essential.

Microsoft has stated that their power to innovate or bundle applications into Windows XP is essential to the economic recovery of the PC industry. The PC OEMs have testified that there is no viable alternative to Windows. In the past year alone private business LANs and Internet companies have suffered billions of dollars in damages caused by trojan or virus programs that specifically targeted Windows PCs. The Executive and Legislative branches of the Federal Government have recognized the Internet as a vital piece of our national and international infrastructure. They have established agencies tasked with it's protection. Indeed one reason for pursuing the proposed settlement after September 11 was ''the national interest''. It's hard to understand why much of Microsoft's ill gotten monopoly shouldn't be considered an essential public facility. Certainly consumers have a right to migrate their own IP out of proprietary Microsoft file formats. Microsoft should be required to publish the file format information needed for other applications to interoperate with files created by MS Office. This is certainly the case with regard to Apple Computer users who have already been threatened with the cancellation of the Apple version of MS Office.

In conclusion, the court combined the individual State and DOJ cases. A settlement that doesn't include half the plantiffs is at best not a settlement.

Sincerely,
Harlan L. Wilkerson
Hutchinson, KS. 67501

MTC–00028762

From: Kevin McCoy
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: Microsoft Settlement

I strongly disagree with the proposed settlement. It does not go nearly far enough to restore competition and deny Microsoft the fruits of their illegally obtained market advantage. In particular the Office suite monopoly is devastating to competitors and consumers through lack of choice. I think the

nine states that are still pursuing litigation are much closer to purposing a remedy that is in agreement with the appeals courts findings.

Sincerely,
Kevin D. McCoy
Orem, Utah

MTC–00028763

From: W. Curtiss Priest
To: Microsoft ATR
Date: 1/28/02 5:26pm
Subject: Proposed Microsoft settlement: woefully insufficient

Dear Justice Department,

As a software innovator and holder of several software patents, I have first hand knowledge of how extremely brutal, unfair and bullying Microsoft is to others in the industry. I was involved for five years in negotiation, arbitration and potential legal action against Microsoft which only caused Microsoft to spend incredible resources to deny me and Humanic Systems any just and due compensation for our innovative work.

In my opinion, as President of Humanic Systems, a company that was (above) abused by Microsoft regarding our intellectual property for significant components of Microsoft Outlook, the proposed remedy is extremely inadequate:

1. It does not provide substantial redress for the prior losses caused by MS on others

2. Secrecy provisions undermind the ability to obtain API information and will systematically be used by MS, in my opinion, to continue its monopoly stranglehold

3. There are no structural remedies, and, without those, the ''fascist'' mindset of Ballmer and Gates will continue to dominate the thinking of each and every employee

4. Microsoft's stated opinions about various forms of open software, being a ''cancer'' undermines the ability for consumers to get the maximum benefit for the least cost

This position, alone, demonstrates that they want ''all the marbles'' and it is a ''winner take all'' game

Consider, for example, a PBS documentary about extreme competition as taught within the Gates family as Mr. Gates grew up

This person does not know the word cooperation, and, without extremely directive measures, will never show cooperation to the rest of the software industry that is slowly dying under his ruthless hand.

Very truly yours,
Dr. W. Curtiss Priest
President, Humanic Systems
Director, Center for Information, Technology & Society
Member, American Economics Association
Prior, Principal Research Associate, MIT
Author,—Technological Innovation for a Dynamic Economy—, 1980 (Pergamon Press)
—Risks, Concerns and Social Legislation—, 1988 (Westview Press)
W. Curtiss Priest, Director, CITS
Center for Information, Technology & Society
466 Pleasant St., Melrose, MA 02176
Voice: 781–662–4044 BMSLIB@MIT.EDU
Fax: 781–662–6882 WWW: http://Cybertrails.org

MTC–00028764

From: koufos@pacbell.net@inetgw
To: Microsoft ATR
Date: 1/28/02 5:25pm
Subject: Microsoft Settlement
To: Department of Justice
Re: Microsoft Settlement

Incredibly, the foremost innovative and economy enhancing company of the past fifty years has faced and continues to face an onslaught of legal challenges because of its superior and highly successful business model. This is happening through the combined conspiratorial actions of past federal and present state governments allied with certain business companies, i.e., Sun Microsytems, Oracle, AOL, et al. What these companies could not achieve in the ultimate test—the marketplace—they seek to gain via the use of Machiavellian chicanery and political cronyism; particularly a number of State Attorneys General and the foul, disgraced Clinton Justice Department.

There is no harm here to the American or Foreign consumer. To the contrary, Microsoft has made sense of the Internet and has provided commonality and standardization and thus ease of use to the consumer, not obscurantism and confusion such as that which existed prior to the advent of Microsoft's operating systems.

If there is any illegality being practiced relative to the issues at hand concerning Microsoft, it is the conspiracy of Government operating hand in hand with some of the slimiest, slipperiest billionaire business operatives, and their surrogates, in existence in the world today.

The Government must reward business excellence and innovativeness; Government must recognize and commend those enterprises that enhance economic activity; the Government and the Courts must not penalize achievement and success to satisfy the politically connected obstructionist losers.

MTC–00028765

From: Sam Axton
To: Microsoft ATR
Date: 1/28/02 5:24pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division, U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001

or to whom it may concern,

I am opposed, in principle, to any penalty meted to Microsoft for anti-trust reasons. I use Microsoft products voluntarily which is the only way one can use their products. Any claim to the contrary is simply wrong.

The free market will punish anyone who mistreats their customers. Microsoft has been nothing short of wonderful to the success of my business and personal life. They deserve their success and must be left unhindered to continue their efforts for my best interests. I do not want you to presume to tell me what software configuration I want in my computer nor what any company can bundle to meet my needs. I will decide whether Microsoft or any other company is a success for me or not.

The idea that another company cannot compete with Microsoft is every indication that it does not have what I nor others want. I and every person and/or company must be free to create and sell their property to any other willing person and it is your job to protect that most fundamental right not to undermine and punish it.

Sincerely,
Sam Axton
Reward is commensurate with effort.

MTC–00028766

From: David Rahrer
To: Microsoft ATR
Date: 1/28/02 6:25pm
Subject: Microsoft Settlement

To Whom It May Concern:

It would be difficult in the time I have available to describe the transparent and political nature this case has taken. I will, however, do my best to summarize some of my thoughts for the record, as I believe I represent the majority of working America who simply don't have the time to make their opinions formally known. It is these people who some parties continue to claim have been so desparately harmed by Microsoft. I don't think this is so.

It is clear that MS was extremely aggressive and, in some instances, outside the law in its persuit of the browser market. In the media at the time were boastings by Netscape that they would destroy windows, creating their own desktop environment. They were quite serious and I think MS realized that. I would also like you to recognize that NS browsers were freely downloadable at the time and find it hard to believe that sales to average consumers were a significant source of revenue. It was the corporate sales that drove their engine so please keep in perspective that the majority of consumers were not paying for the endless revisions of the NS Browser, they simply downloaded and installed it.

When MS came out with IE, it was not very good and most people continued using NS, even though IE came with Windows 95. What difference does it make which ''comes with'' the OS. Do the complaintants believe the public is so stupid that they just take what is put before them? It was because IE became so much better than NS that NS failed. They had geared themselves towoard owning the market—their own ''monopoly''—and then beyond to the desktop. It didn't happen, in large part because MS created a much better browser and, forseeing that the Internet would be an extension of the desktop environment, included it as standard equipment with Windows. To this day one can install any browser one chooses—even pay for Opera. Or, one has the choice of using what comes with the Windows OS. Those 12% of users who purchase Apple systems, also have a built-in browser but can install any they like. For those of us that have been using computers for a long time, it is quite obvious that MS has done the unimaginable—converted a world of fragmented systems and hardware to the interchangable, useful, indespensible marvels of today. It had to happen that someone would do this, and I think it is the picture of an American success story that they did. We should not be continually beating on a company that is in reality the crown jewel of

American enterprise. What better example can you offer? And all this because it's fashionable to hate the big guy, and also that some people would rather blame their own business model failures on MS instead of finding ways to innovate.

To be perfectly blunt, as a middleclass, average American, I have been quite disgusted during most of this process. MS doesn't produce tobacco , they aren't the enemy. They deserve to be fined and put on notice about the laws they did in fact violate—not to have a state by state feeding frenzy on the most viable corporation in our country—all fueled by none other than. . . Competitors. It's not moral, should not be legal and the rest of the world is laughing the hidious way we have allowed it to happen.

It is unfortunate, but I believe much of the correspondance you receive will be from those with an axe to grind or who followed the directions on a form letter with hopes of collecting an offered prize. You probably won't hear from the majority, those who are simply working and enjoying the bright, boundless world open to them through the Internet and their computer. Not only would they not be enjoying this as easily or as cheaply if MS had not been sucessful, but they might not be enjoying it at all. These are the people who are collectively thrown around in discussions by politicians and sour CEO's hoping to score points or money by attacking MS while it's fashionable.

I emplore you to settle this trial as swiftly and as close to the current framework as possible. It has run on far too long as it is and we have far, far, more important things to work on. Thank you for your time.

David Rahrer

MTC–00028767

From: bobalexander
To: Microsoft ATR
Date: 1/28/02 5:26pm
Subject: microsoft settlement

please approve settlement as is. it is both fair and reasonable.

MTC–00028768

From: welter@lanset.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:26pm
Subject: Microsoft action
To: DOJ <microsoft.atr@usdoj.gov>
From: Lee Welter <welter@computer.org>
Subject: Microsoft action
Date: 28 January 2002

Greetings:

Please give the DOJ settlement with Microsoft a chance to work in its current form.

I believe in free-market competition on a level playing field: however, weakening a strong competitor is not a substitute.

Cordially,
Lee

MTC–00028769

From: Alex Lazutin
To: Microsoft ATR
Date: 1/28/02 5:14pm
Subject: USAGLazutin—Paula—1011—0122 (1).doc

25814 S Greencastle Drive
Sun Lakes, AZ 85248–6816
January 24, 2002

Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between Microsoft and the US Department of Justice.

Although the lawsuit was lengthy and costly for taxpayers, I am happy that Microsoft will not be broken up. The terms of the settlement seem fair.

Under the terms of the settlement Microsoft has agreed to improve its relations with computer makers and software developers. It has also agreed to design future Windows versions so that competitors can more easily promote their own products. These concessions and more make up the basis for a settlement that is aimed at protecting consumer rights.

While it is not perfect, it is the best thing that could happen. Our nation needs Microsoft back in action and innovating like they have been for over 10 years. Hopefully, your office can overcome any opposition there may be in the federal government to the settlement, and bring a swift end to this already tiresome case. Thank you.

Sincerely,
Paula Lazutin
President of Alco Marketing and Sales
Microsoft shareholder

MTC–00028770

From: Andrew Neely
To: Microsoft ATR
Date: 1/28/02 5:22pm
Subject: Microsoft Settlement

As a longtime computer user, and recent professional who uses both Windows and Macintosh both at work and at home, I feel that without a doubt, Microsoft is a predatory monopoly. I have used many different software products, and it has only been in the last three years or so, during the intense pressure that the DOJ initially brought to bear with it's antitrust lawsuit that I've even seen anything in the way of alternate OS offerings making their way onto store shelves and into OEM computers.

Microsoft has not only dominated the OS market to the detriment of its competition, but to that of its end users as well. That blackhat hackers have been able to repeatedly exploit the same set of vulnerabilities in the close relationship between recent versions of Windows and their mail clients, Outlook and Outlook Express, is inexplicable. Simply changing either piece of software, or both, would close a major security opening in it's products. However, not only has Microsoft failed to address this in a meaningful way, it has managed to avoid all liability to what for all intents and may be thought of as a design flaw. Had a car company's mistakes cost the same amount of lost man hours and money as Microsoft's oversights have, year after year, I doubt that they would even continue to operate as a company, much less as the most powerful one in its industry.

As a United States citizen I ask that my opinion be firmly registered that Microsoft can only be brought to heel as a good corporate citizen by direct oversight and measures designed to cripple the leverage that its Windows brand of operating systems software gives it over competitors. Simply allowing this company to give away so many billion dollars worth of retail software is ineffective. This will not only not cost the company anything like the sticker price of the donations, but in fact allow it to more firmly entrench itself into area it already has inroads into. Monetary damages should be settled in CASH, and the company should be subjected to direct oversight of its activities for at least five years. This seems to be the outside amount of time for it to develop a generation of products all the way across the board, and tying its hands for this length of time will help other companies to get a foothold they badly need to compete.

Sincerely,
Andrew Neely

MTC–00028771

From: RGP9134@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:27pm
Subject: (no subject)
Renata B. Hesse
Antitrust Division
U.S.Department of Justice
Washington DC 20530–000i

I'm writing to you in the hope that you will move forward in settling the complaints against Microsoft as the agreement that your office has recommended.

As a faithful taxpayer and retirees, my wife and I rely on the economy being strong. Microsoft is a present and future major player to that end.

Thankyou.
Sincerely,
Ron and MaryLou Pettengill
84 Westover Drive
Webster, NY 14580
CC:fin@mobilizationoffice.com@inetgw

MTC–00028772

From: Gil Friend
To: Microsoft ATR
Date: 1/28/02 5:27pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

I am writing to comment on the proposed Microsoft/DOJ anti-trust settlement. As a business executive at a company both highly dependent on computing technology and specifically involved in software development, I've come to the conclusion that this settlement is not in the public interest, and fails to remedies the problems that provoked the action in the first place.

The settlement leaves the Microsoft monopoly intact, with numerous opportunities to the company to effectively exempt itself from crucial provisions. The recently proposed ''donation'' to schools is just one example of how Microsoft can turn matters to their own advantage (in this case by decimating Apple's position in the education market).

In addition, the proposed settlement fails to address the critical ''barrier to entry''

problem, enabling Microsoft to maintain an effective ''lock'' on the applications market.

In addition, the proposed settlement fails to address the critical ''applications barrier to entry'' associated with the installed base of 70,000 Windows applications, enabling Microsoft to maintain an effective ''lock'' on the operating systems market by denying competitors with other operating systems the information needed to run these other applications on other operating systems. Any settlement must make it easier—not harder—for competitors to run the Windows applications.

Consumers, not Microsoft, should decide what products are on their computers. The settlement must eliminate Microsoft's various barriers—business and technical—to allowing combinations of non-Microsoft operating systems, applications, and software components to run properly with Microsoft products.

The remedies proposed by the Plaintiff Litigating States are in the public interest and absolutely necessary, but they are not sufficient without these remedies.

The Tunney Act provides for the Court to hold public proceedings, with citizens and consumer groups afforded an equal opportunity to participate, along with Microsoft's competitors and customers. I hope you will encourage those proceedings, and consider carefully how to proceed in this matter. Your decisions have great significance for the health of the US economy's most vital industries, by eliminating Microsoft's ability to illegal constrain markets and innovation.

Thank you for the opportunity to comment on this important matter.

Sincerely yours,
Gil Friend
President & CEO
Natural Logic, Inc.
PO Box 119
Berkeley CA 94701
Natural Logic, Inc.
More value. Less stuff.[tm]
Tel: 1–877–NatLogic
http://www.NatLogic.com

MTC–00028773

From: Bill Foerster
To: Microsoft ATR
Date: 1/28/02 5:31 pm
Subject: Microsoft Settlement

US DOJ:

Attached is a letter expressing my support for the proposed settlement with Microsoft.

Regards,
Bill
William M. Foerster
Foerster Bhupathi International, LLC
8111 Preston Road, Suite 600
Dallas, Texas 75225
1.214.369.3242 (business)
1.214.369.5363 (fax)
1.214.244.9400 (cell)
bill.foerster@fbillc.com
www.fbillc.com
William Foerster
8111 Preston Road
Suite 610
Dallas, TX 75218
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I want to take a moment to express my support for the settlement reached in November between Microsoft and the Department of Justice. I believe the settlement is fair to both sides and represents an opportunity for everyone to move forward.

The terms of the settlement are very strict and mandate a number of concessions from Microsoft. Among the terms of the settlement, Microsoft has agreed to license its Windows operating system products to the twenty largest computer makers on identical terms and conditions, including price.

There should be no question as to Microsoft's compliance with the terms of the settlement. It calls for a technical committee to monitor Microsoft's business practices in the future.

I hope that your continued support for finalizing the settlement will convince those states who are moving forward in their litigation to amend their positions.

It is well past the point for the federal and state governments to focus their resources on more urgent matters, like stimulating our economy.

Sincerely,
William Foerster

MTC–00028774

From: Ernest Kahn
To: Microsoft ATR
Date: 1/28/02 5:29pm
Subject: Microsoft Settlement

BlankTo whom it may concern

In my experience Microsoft has turned out good products a fair prices, It seems that their products where simply better than others and they facilitated communications.

Ernest J. Kahn
Sharon, MA

MTC–00028775

From: Jim
To: Microsoft ATR
Date: 1/28/02 5:29pm
Subject: anti trust

I think America has forgotten that Bill Gates has brought this country to where it is. Any attack against him is from greed and jelousy. He has created more jobs than any one else in the area of free interprise. I personally am ashamed my country would do this to him.

James Payne

MTC–00028776

From: Carola291@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:30pm
Subject: Microsoft Settlement

Please see attachment
28 Suncrest Terrace
Oneonta, NY 13820
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Today is the last day that I can contact you regarding the finalization of the Microsoft antitrust settlement. I would like to share my view that as the settlement is written, it appears fair to all parties. Apparently, Microsoft has made numerous changes to satisfy this agreement, including agreeing to work with a Technical Committee that will serve as a watchdog of its activities and practices. It seems to me that Microsoft and the government, possibly no lover of the company, have hammered out an agreement that each party can live with. Since this is the case, there should be no reason to alter the agreement...I have become increasingly cynical, believing that additional requirements are wanted by competitors to satisfy their interests, certainly NOT the ''public's''.

My life, and my business'' life, have been improved and made easier by Microsoft. The adage ''crying over sprit milk'' has been a tactic for decades. It is time for competitors to step up their efforts to compete: to innovate, improve and participate in the technology revolution that just won't quit. I also support the philanthropic works of the Gates family and feel certain they will continue to lead the US in discovering and pursuing worthwhile projects, some that the United States has ignored or underfunded for decades. Let Microsoft's competitors follow in its footsteps and show the world that the corporate world can think beyond the ''bottom line'' and lead with generosity. Thank you for calling for comments, and for your attention.

Sincerely,
Carola Lewis

MTC–00028777

From: Edward Becerra
To: Microsoft ATR
Date: 1/28/02 5:40pm
Subject: Microsoft Settlement

I am opposed to tentative settlement of the United States vs. Microsoft antitrust lawsuit.

Edward Becerra
Haxtun, Colorado 80731

MTC–00028778

From: DSchen2835@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:31pm
Subject: Microsoft Settlement

Dear Attorney General John Ashcroft;

Now is the time to drop the charges against Microsoft and get on with the real business at hand, the Enron mess!! Microsoft has not caused thousands of people to loose their jobs, caused millions of people to loose much of their life savings, and to be so closely tied to the Bush administration, that it causes concern among voters. Microsoft is just doing a better job than the rest and should be allowed to continue it's leadership role. We all benefit from their expertice.

Dale Schendel,
Bloomington, Mn

MTC–00028779

From: WWPEARL@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:32pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
US Dept. of Justice (Legal)

The settlement is more then generous. I do not, and did not agree with the government

action. It is not the justice departments job to aid and abet competitors who cannot make it on their own.

As an example, I cannot buy a Chrysler auto frame, and a General Motors Body and a Ford Transmission, yet that is what you have asked Microsoft to do with it's software. To force a company to design product so that others made add on to it is nut justice. It maybe legal, but not justice. Were we the public to start to buy all Fords, would you take action against Ford to force them to redesign there product so that Chrysler can put its motor in? I think not.

ACCEPT THE SETTLEMENT AND GET OUT OF THE CASE NOW.

CC:fin@mobilizationoffice.com@inetgw

MTC–00028780

From: Trstuelp@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:32pm
Subject: Microsoft settlement

I am responding to the U.S. goverment's challenge to Microsoft regarding their conduct in the competitive marketplace. I am speaking from the position of a retired CEO for one of Howard Hughes'' companies.

I see a great parallel between the Microsoft case and the lawsuit against Hughes by TWA. After years of legal actions it finally reached the Supreme Court. In short order it was thrown out. Hughes won. The reason was logic. Hughes owned 70 percent of the TWA stock when he was challenged with mismanagement! The Supreme Court recognized the obvious. He had the legal right to make the decisions involved.

The Microsoft case is different in detail, but identical in concept. The actions each were (are) are charged with represent normal, legal and proper competitive practice. Both Hughes and Microsoft had the right to optimize their hard won positions just as every other company does in the worldwide marketplace. A point missed by the Monday morning, arm-chair critics is that competition is based on survival. The professional football team doesn't let up on the opposing team because it might lose the game in the process. The competitors in the Microsoft case know this is the way competition works. They operate this way too! In fact their present legal action is just another weapon they chose to use. And the state attourney generals who are fighting Microsoft see profit for their state or political advantage.

My plea is not to let them get away with it!! There is no end to this sort of challenge to the healthy capitalist system where innovation is the engine. My suggestion is to review the TWA versus Hughes Tool Company decision by the

U.S. Supreme Court as a reference.

Tom Stuelpnagel
Stuelp@AOL.com
(805) 595 2771

MTC–00028781

From: Stan Smith
To: Microsoft ATR
Date: 1/28/02 5:30pm
Subject: Microsoft Settlement
To: Department of Justice
From: Stanford L. Smith (User of Windows)

Please do whatever you can to bring this whole Microsoft action to a close. It appears that the only thing keeping it going is the strong ''Litigation and Lobby'' being financed by Microsoft competitors who are able to keep the pressure on the nine states that won't buy in to your settlement. At least the DOJ settlement seems to have us (consumers) in mind rather than the welfare of the Microsoft competitors.

The sooner we can get back to letting these companies spend their money on R & D rather than lawyers, the better off we will all be.

Thanks for listening.

MTC–00028782

From: Timothy Buckley
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 5:32pm
Subject: Microsoft Settlement

I believe this case is a deliberate attempt by companies such as Netscape to use legal methods to help level the playing field instead of innovating and creating a better product. I urge the court to accept the proposed remedies, and let this case be done and over with. Any further remedies will only serve to help Microsoft's competitors, not Microsoft's consumers.

Thank you,
Tim Buckley
Lead Credit Coordinator
(425) 889–3930

MTC–00028783

From: Allan Engle/wellness/stusvc/Okstate
To: Microsoft ATR
Date: 1/28/02 5:34pm
Subject: Microsoft Settlement

To whom it may concern:

In regard to Microsoft's long history of noncompliance, and their more recent delay and defer strategies, I would strongly urge that you scrap the proposed settlement in favor of a penalty that is more self-enforcing. Breakup of the company would meet this criteria. If you give them the leeway contained in the proposed settlement, they will attempt to circumvent it at every opportunity.

Sincerely,
Allan Engle
Allan Engle, Ph.D.
Certified Novell Administrator
Oklahoma State University
Seretean Wellness Center
405–744–6838

MTC–00028784

From: Ruffin Bailey
To: Microsoft ATR
Date: 1/28/02 5:34pm
Subject: Microsoft Settlement

Under the Tunney Act, I would like to comment on the proposed Microsoft settlement.

I find the punishments levied for a company that ?engaged in a variety of exclusionary acts designed to protect its operating system monopoly? are wholly inadequate, amounting to little more than a slap on the wrist. I would like the settlement to have more teeth that would serve to officially level the playing field in the personal computer operating system market without hurting the people at Microsoft that have put in countless hours to create what is a useful product. Splitting Microsoft into a number of companies that all have rights to sell and develop newly forked versions of the operating system would be a great first step. But if this cannot be accomplished, there are still several things that the Department of Justice can do to help with the state of Microsoft's monopoly.

There should be no monetary penalties from Microsoft for original equipment manufacturers (OEMs) that sell computers bundled with Microsoft's operating systems for the inclusion of any software, whether Sun's Java Virtual Machine, Netscape/AOL's Netscape browser, free alternatives to Microsoft Office, or the ability to ?dual-boot? into other alternative operating systems preinstalled on the machine, like Linux or FreeBSD. For every pre-packaged solution offered by Microsoft, whether its Internet Explorer, MediaPlayer, or what-have-you, there should be another, out of the box alternative for computer users ready for use like Mozilla or Real's

RealPlayer or Apple's QuickTime. These should not be secondary products, but true alternatives that users can choose upon first booting their new computers, and should also be alternatives that can be accessed at a future date.

Simply put, not enough has been done to level the playing field. Microsoft's aggressive tendencies can be counterbalanced by providing a level playing field for OEM's to sell their hardware of choice with software of choice without punishing those who have put in hard work at Microsoft unduly as well.

Please reconsider your original, relatively light sentencing.

Wm. Ruffin Bailey
Turben Place
Mount Pleasant, SC 29466

MTC–00028785

From: Michael Crozier
To: Microsoft ATR
Date: 1/28/02 5:33pm
Subject: Comments on the PFJ for USA vs MS

I am fully in agreement to the criticisms of the PFJ that Dan Kegal has collected at http://www.kegel.com/remedy/remedy2.html.

In particular, I am concerned with the licencing practices that Microsoft uses with OEM's and end user software.

Michael Crozier
834 NE Shaver ST
Portland OR 97212

MTC–00028786

From: Vicky Francis
To: Microsoft ATR
Date: 1/28/02 5:37pm
Subject: Microsoft Settlement

January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am in favor of the settlement of the Microsoft antitrust case. In a perfect world, I would like to see the case dropped in its entirety.

However, I recognize that the likelihood of this happening is slim, so I support the steps Microsoft is taking to bring this case to a conclusion. The terms of the settlement

agreement are more than fair. In fact, I think they are entirely too harsh. For example, Microsoft has agreed to the creation of a technical oversight committee that will monitor the way they conduct their business. In our free enterprise system, this seems especially restrictive. They have also agreed to not retaliate against those who compete against them, or those who promote Microsoft's competitors. Our free market does not appear to be so free after all.

While I think the agreement really goes much farther than it should, I fully support Microsoft's decision to do what is best for consumers, the economy, and the IT industry as a whole—and that is to move on.

Thank you.

Sincerely,

Vicky Francis

MTC–00028787

From: Morton M Vogel
To: Microsoft ATR
Date: 1/28/02 5:37pm
Subject: microsoft settlement

It is time to bring the above matter to finalization. The time, effort and money being expended on this extended litagation is wrong. At this time we should be expending our efforts to enhance and develope the best in the computer world, both hardware and sfotware and not be bogged down in non productive situations. Reach a settlement now, so that we can all move forward. Litigation does not produce progress- only additional income for the legal profession.

Morton M. Vogel
e-mail Mortlee@ Juno.com
CC:fin@mobilizationoffice.com@inetgw

MTC–00028788

From: pour@mieterra.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:37pm
Subject: Microsoft Settlement

Please find attached the objections to the settlement proposal. The original format is .sxw (OpenOffice), and I apologize in advance for any problems in converting it to MS Word, RTF and HTML formats, which I also attach. I will fax a copy in short order so you may see the original.

Unfortunately some time commitments have prevented me from fully addressing all the issues. Within the next week or two a more complete draft will be available. I pray you will still consider it that time- given the utmost importance of this settlement on the future of our society and the freedoms which we enjoy.

Best regards,
Andreas Pour
Chairman
KDE League, Inc.

Antitrust Division U.S. Department of Justice
601 D Street NW Suite 1200
Washington, DC 20530–0001
The Honorable Colleen Kollar-Kotelly
United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
Re: US v. Microsoft, Civil Action No. 98–1232: Revised Proposed Final Judgment

The Honorable Judge Kollar-Kotelly and the US Department of Justice: Please find attached the firm objections of the KDE League, Inc. to the above- referenced proposed final judgment (the ''Proposal''). The KDE League is a group of industry leaders and KDE developers focused on facilitating the promotion, distribution, and development of KDE. KDE is a contemporary, free ''Open Source'' desktop environment.

In many ways, KDE is the functional equivalent of Windows. It consists of a modern, elegant, intuitive desktop environment, including a modern browser, accompanied by a host of easy-to-use and easy-to-learn applications, including the productivity/office suite KOffice. In addition, KDE provides a broad array of intuitive graphical configuration tools. In fact, APPS.KDE.com (a KDE/Qt application website) lists over 1,250 publicly-available KDE applications (it should be noted that someone using KDE can also run a number of non-KDE applications, such as GNOME, Motif, wxWindows, X, etc. applications).

The comprehensive set of tools available to KDE users combine to make system administration substantially easier than the standard command-line-driven UNIX/Linux administration, and hence make Linux and other UNIXes more competitive with Microsoft not only in the desktop markets but also in the server operating system markets.

While KDE is most commonly used in conjunction with Linux, it is extremely portable and versatile, and does not depend on any particular operating system. For example, it also runs successfully on many other systems (such as Sun's Solaris, Compaq's Tru64, IBM's AIX, HP's HP-UX, and other UNIXes).

Moreover, since KDE is based on an outstanding graphical toolkit called Qt, and since Qt is also available for Windows, the new Mac OS X, as well as embedded devices (such as Sharp's new Zaurus), KDE has the potential to become a familiar environment deployed in a broad array of heterogeneous environments.

As you are undoubtedly aware, Microsoft has often been noted, during the trial and particularly in recent months, as viewing Open Source as the only significant challenge to its reign. So far, Open Source—particularly Linux—has been largely limited to server systems. But in recent months the defendant has been paying increasing attention to KDE, and at this juncture KDE is the major direct competitor with Microsoft Windows desktop operating system products and Microsoft middleware and productivity applications and, through its capacity to simplify installation, usage and administration, a major indirect competitor with the defendant in the server operating system market.

In recognition of the strength and power of KDE as a desktop environment, an ever-growing body of companies and governments have started the switch to KDE, including the Korean government, which is migrating 120,000 office workers to KDE from Windows, and other companies and governments are seriously contemplating the switch, including the government of Germany. Due to its maturity, low cost, features and active developer community, as well as due to the freedoms KDE grants its users, KDE constitutes the most viable competitor to Microsoft Windows in the desktop operating system market and the strongest factor in the expansion of UNIX-based operating systems in the server market.

The defendant has now clearly observed that in fact KDE is ready and able to expand the role of Open Source as well as proprietary UNIXes on the office, school and home desktop, as well as on TV settop boxes, webpads, handheld- devices and other computing platforms.

The KDE League strongly feels that the proposed settlement does not adequately protect KDE from the defendant's monopoly power, and hence leaves the defendant free to attempt to crush its strongest potential competitor in an anticompetitive manner. In fact, we anticipate that if the Proposal is approved, the defendant may feel even less tethered than it has during the course of this seven-plus-year proceeding to use unlawful practices to attempt to derail KDE from widespread acceptance. The fact that the government has refused my requests for meetings to discuss how the Proposal might be reworded to provide some comfort that the defendant will be unable to use unlawful practices to crushing its strongest competitor adds little solace to a weakly-worded document.

At this juncture I would like to disclose that, from the time of commencement of this case until approximately June 1999, I was employed as an attorney by counsel for the defendant in this matter. However, I was exclusively involved in representing other clients in unrelated matters. I never performed any legal services for the defendant, nor was ! ever exposed to any non-public information about the defendant, whether relating to this litigation or otherwise.

I would also like to point out that the views and opinions in this memorandum express the views of the KDE League, and may not necessarily express the views of its members.

Best regards,
Andreas Pour
Chairman
KDE League, Inc.

Introduction

The KDE League opposes the above-referenced proposed final judgment (the ''Proposal''). Specifically, the Proposal lacks adequate enforcement provisions, is too limited in scope, and fails to address issues of restitution. Our objections will focus on the specific problems faced by an Open Source project such as KDE/Linux, though many will apply more broadly as well.

In conducting its review, the Court should bear in mind the applicable provisions of 15 U.S.C. Sec. 16(e):

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies

actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

As the Supreme Court wrote in U.S. v. Grinnell Corp., 384 U.S. 563 (1966): We start from the premise that adequate relief in a monopolization case should put an end to the combination and deprive the defendants of any of the benefits of the illegal conduct, and break up or render impotent the monopoly power found to be in violation of the Act. That is the teaching of our cases, notably Schine Theatres v. United States, 334 U.S. 110, 128 -129.

As a result of its limited, if not negligible, scope, the absence of any enforcement provisions for private litigants who have shouldered the expense of the trial already and who have been financially injured by the defendant, and the absence of any restitution to the victims of the defendants'' unlawful conduct, the Proposal is at best palpably without, if not directly against, the public interest. As has been said by industry analyst Robert X. Cringely, ''If this deal goes through as it is written, Microsoft will emerge from the case not just unscathed, but stronger than before''.

Unenforceable.

The Proposal makes enforcement of its minimal restrictions by parties actually harmed by the defendant's violation of its provisions practically impossible. In particular, should the defendant use unlawful and anti-competitive practices against KDE, neither the KDE developers nor the KDE League will be likely to obtain redress for such violations. This failure may ultimately deny consumers the choice to forgo the use of some or all of defendants'' products.

To ensure private litigants, who, as the courts so far have agreed, have been financially injured by the defendant, have a remedy for the defendant's unlawful conduct, and so that the defendant's competitors, such as KDE, can have the hope to obtain justice should the defendant continues its pattern of unlawful practices, the Government should require that Microsoft admit to its standing as a monopolist and the violations of the Sherman Act affirmed by the court of appeals, together with any additional violations this Court may find upon remand of, and consistent with, the appellate court's order.

[pour [1]]

The proposed remedies are inadequate for private litigants for the following reasons. First, the Final Judgment provides that it ''does not constitute any admission by any party regarding any issue of fact or law''.[2] The clearest implication of this provision is that the defendant is not legally determined to be a ''monopoly'' in this case for purposes of res judicata or collateral estoppel. Microsoft has proven in this case that, for all practical resources, it has infinite resources, time, tenacity and patience to fight any potential litigants. In fact, recent SEC filings indicate that the defendant is sitting on a $36 billion cash horde. Even the government, with all its resource, has fought for almost seven- and-a-half years, only to end up with a Proposal which only the defendant's stockholders could cheer about. How is a free, open project like KDE to obtain redress against such a tenacious and resourceful opponent?

Though the conclusion was obvious to all judges engaged in this matter, both at trial and on appeal, the fact is that virtually no private plaintiff will be able to afford to prove that Microsoft is a monopoly, a necessary first step in obtaining relief against the defendant should it continue to abuse its monopoly position

Second, the enforcement provisions of the Proposal are weak enough to amount to nothing but a ruse. For example, the ''Technical Committee'' which is charged with the duty to ''assist in enforcement of and compliance with th[e] Final'' Judgment, are (1) picked by MS (though one is picked by MS and one by Justice and the third by the first two, in light of how this Proposal signals the government'' practical abandonment of prosecution of this matter, and in light of the defendant's tenacity, it is likely in our opinion that the third person will favor the defendant); (2) sworn to secrecy; (3) paid by MS; (4) required to work on MS's ''campus''; and (5) unable to speak with any MS employee without an MS lawyer present. See Proposal, Section IV.B. The Proposal reads in relevant part:

B. Appointment of a Technical Committee

1. Within 30 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a three-person Technical Committee (''TC'') to assist in enforcement of and compliance with this Final Judgment.

2. The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

3. Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

a. As soon as practicable after submission of this Final Judgment to the Court, the Plaintiffs as a group and Microsoft shall each identify to the other the individual it proposes to select as its designee to the TC. The Plaintiffs and Microsoft shall not object to each other's selection on any ground other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of selection.

b. The Plaintiffs shall apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to Section IV.B.3.a above. Any objections to the eligibility of a selected person that the parties have failed to resolve between themselves shall be decided by the Court based solely on the requirements stated in Section IV.B.2 above.

c. As soon as practical after their appointment by the Court, the two members of the TC selected by the Plaintiffs and Microsoft (the ''Standing Committee Members'') shall identify to the Plaintiffs and Microsoft the person that they in turn propose to select as the third member of the TC. The Plaintiffs and Microsoft shall not object to this selection on any grounds other than failure to satisfy the requirements of Section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of the selection and shall be served on the other party as well as on the Standing Committee Members.

d. The Plaintiffs shall apply to the Court for appointment of the person selected by the Standing Committee Members. If the Standing Committee Members cannot agree on a third member of the TC, the third member shall be appointed by the Court. Any objection by Microsoft or the Plaintiffs to the eligibility of the person selected by the Standing Committee Members which the parties have failed to resolve among themselves shall also be decided by the Court based on the requirements stated in Section W.B.2 above.

4. Each TC member shall serve for an initial term of 30 months. At the end of a TC member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the TC member in the same manner as provided for in Section IV.B.3.a above. In the case of the third member of the TC, that member shall be re-appointed or replaced in the manner provided in Section W.B.3.c above.

5. If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a

[1] See Robert X. Cringely, He's Not in It for the Profit (Dec. 6, 2001, PBS Presents).

[2] See Proposal, Preamble. The Proposal reads in relevant part: AND WHEREAS, this Final Judgment does not constitute any admission by any party regarding any issue of fact or law; and thwart competition in its markets. The Government, having fought its battle in what in technological terms is a generation, cannot really take seriously its reference to remedies under Section 4 of the Clayton Act in Article VI of its Competitive Impact Statement (doc. 9549).

replacement member in the same manner as provided for in Section IV.B.3.

6. Promptly after appointment of the TC by the Court, the United States shall enter into a Technical Committee services agreement (''TC Services Agreement'') with each TC member that grants the rights, powers and authorities necessary to permit the TC to perform its duties under this Final Judgment. Microsoft shall indemnify each TC member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the TC's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the TC member. The TC Services Agreements shall include the following.

a. The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The TC Services Agreement shall provide that each member of the TC shall comply with the limitations provided for in Section IV.B.2 above.

7. Microsoft shall provide the TC with a permanent office, telephone, and other office support facilities at Microsoft's corporate campus in Redmond, Washington. Microsoft shall also, upon reasonable advance notice from the TC, provide the TC with reasonable access to available office space, telephone, and other office support facilities at any other Microsoft facility identified by the TC.

8. The TC shall have the following powers and duties:

a. The TC shall have the power and authority to monitor Microsoft's compliance with its obligations under this final judgment.

b. The TC may, on reasonable notice to Microsoft:

i. interview, either informally or on the record, any Microsoft personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Microsoft;

ii. inspect and copy any document in the possession, custody or control of Microsoft personnel;

iii.. obtain reasonable access to any systems or equipment to which Microsoft personnel have access;

iv. obtain access to, and inspect, any physical facility, building or other premises to which Microsoft personnel have access; and

v. require Microsoft personnel to provide compilations of documents, data and other information, and to submit reports to the TC containing such material, in such form as the TC may reasonably direct.

c. The TC shall have access to Microsoft's source code, subject to the terms of Microsoft's standard source code Confidentiality Agreement, as approved by the Plaintiffs and to be agreed to by the TC members pursuant to Section IV.B.9 below, and by any staff or consultants who may have access to the source code. The TC may study, interrogate and interact with the source code in order to perform its functions and duties, including the handling of complaints and other inquiries from non-parties.

d. The TC shall receive complaints from the Compliance Officer, third parties or the Plaintiffs and handle them in the manner specified in Section IV.D below.

e. The TC shall report in writing to the Plaintiffs every six months until expiration of this Final Judgment the actions it has undertaken in performing its duties pursuant to this Final Judgment, including the identification of each business practice reviewed and any recommendations made by the TC.

f. Regardless of when reports are due, when the TC has reason to believe that there may have been a failure by Microsoft to comply with any term of this Final Judgment, the TC shall immediately notify the Plaintiffs in writing setting forth the relevant details.

g. TC members may communicate with non-parties about how their complaints or inquiries might be resolved with Microsoft, so long as the confidentiality of information obtained from Microsoft is maintained.

h. The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must meet the qualifications of Section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

i. The TC shall account for all reasonable expenses incurred, including agreed upon fees for the TC members'' services, subject to the approval of the Plaintiffs. Microsoft may, on application to the Court, object to the reasonableness of any such fees or other expenses. On any such application: a) the burden shall be on Microsoft to demonstrate unreasonableness; and (b) the TC member(s) shall be entitled to recover all costs incurred on such application (including reasonable attorneys'' fees and costs), regardless of the Court's disposition of such application, unless the Court shall expressly find that the TC's opposition to the application was without substantial justification.

9. Each TC member, and any consultants or staff hired by the TC, shall sign a confidentiality agreement prohibiting disclosure of any information obtained in the course of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court. All information gathered by the TC in connection with this Final Judgment and any report and recommendations prepared by the TC shall be treated as Highly Confidential under the Protective Order in this case, and shall not be disclosed to any person other than Microsoft and the Plaintiffs except as allowed by the Protective Order entered in the Action or by further order of this Court.

10. No member of the TC shall make any public statements relating to the TC's activities.

Appointment of a Microsoft Internal Compliance Officer

1. Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

2. The Compliance Officer shall supervise the review of Microsoft's activities to ensure that they comply with this Final Judgment. He or she may be assisted by other employees of Microsoft.

3. The Compliance Officer shall be responsible for performing the following activities:

a. within 30 days after entry of this Final Judgment, distributing a copy of the Final Judgment to all officers and directors of Microsoft;

b. promptly distributing a copy of this Final Judgment to any person who succeeds to a position described in Section IV.C.3.a above;

c. ensuring that those persons designated in Section W.C.3.a above are annually briefed on the meaning and requirements of this Final Judgment and the U.S. antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with this Final Judgment or under the U.S. antitrust laws;

d. obtaining from each person designated in Section IV.C.3.a above an annual written certification that he or she: (i) has read and agrees to abide by the terms of this Final Judgment; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment may result in a finding of contempt of court;

e. maintaining a record of all persons to whom a copy of this Final Judgment has been distributed and from whom the certification described in Section IV.C.3.d above has been obtained;

f. establishing and maintaining the website provided for in Section IV.D.3.b below.

g. receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in Section IV.D below; and

h. maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.

Voluntary Dispute Resolution

1. Third parties may submit complaints concerning Microsoft's compliance with this Final Judgment to the Plaintiffs, the TC or the Compliance Officer.

2. In order to enhance the ability of the Plaintiffs to enforce compliance with this Final Judgment, and to advance the parties'' joint interest and the public interest in prompt resolution of issues and disputes, the parties have agreed that the TC and the Compliance Officer shall have the following additional responsibilities.

3. Submissions to the Compliance Officer.

a. Third parties, the TC, or the Plaintiffs in their discretion may

Third, making matters worse are the Proposal's ''No Third Party Rights''

provisions.[4] The absence of third party rights is, in fact, explicitly stated twice in the Proposal: first in Section III.I (last paragraph) and again in Section VIII). Thus if a private party has been harmed by the defendant's violation of the Final Judgment, that person's sole recourse is to approach the Justice Department or a State to request enforcement of the Proposal. Given the fact that the Justice Department has not even responded to the KDE League's request for a hearing regarding the settlement, it seems that the likelihood that the Justice Department acting on behalf of any Open Source project or other small company is marginal at best. In addition, many Open Source developers live in other countries, making it extremely difficult for them to obtain any redress through the courts. (Here it is important to bear in mind that while these developers live in other countries, their software is freely available to American consumers, and hence submit to the Compliance Officer any complaints concerning Microsoft's compliance with this Final Judgment. Without in any way limiting its authority to take any other action to enforce this Final Judgment, the Plaintiffs may submit complaints related to Sections III.C, III.D, III.E and III.H to the Compliance Officer whenever doing so would be consistent with the public interest.

b. To facilitate the communication of complaints and inquiries by third parties, the Compliance Officer shall place on Microsoft's Internet website, in a manner acceptable to the Plaintiffs, the procedures for submitting complaints. To encourage whenever possible the informal resolution of complaints and inquiries, the website shall provide a mechanism for communicating complaints and inquiries to the Compliance Officer.

c. Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC of the nature of the complaint and its disposition.

4. Submissions to the TC.

a. The Compliance Officer, third parties or the Plaintiffs in their discretion may submit to the TC any complaints concerning Microsoft's compliance with this Final Judgment.

b. The TC shall investigate complaints received and will consult with the Plaintiffs regarding its investigation. At least once during its investigation, and more often when it may help resolve complaints informally, the TC shall meet with the Compliance Officer to allow Microsoft to respond to the substance of the complaint and to determine whether the complaint can be resolved without further proceedings.

c. If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.

d. No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.

e. The TC may preserve the anonymity of any third party complainant where it deems it appropriate to do so upon the request of the Plaintiffs or the third party, or in its discretion. any harm visited upon these international developers results in direct harm to the American consumers which the Antitrust Laws are designed to protect.) This limitation should be particularly borne in mind when reading the entire Proposal, such as the supposed ''abandonment'' of certain trademark rights in Section VI.T.

Fourth, the term of the agreement is extremely short—only five years.[5] Even if the government proves to the court ''a pattern of willful and systematic violations'', the Proposal may only be extended once for a maximum of two years.[6] Thus, given the defendant's dilatory legal maneuverings, it is easily possible that the defendant can blatantly violate the Proposal from the get-go and have the Proposal expire before proceedings can adjudge it guilty of any violations.

Of course there is also a ''Voluntary Dispute Resolution'' provision, where essentially a victim of the defendant's monopoly abuses would have the opportunity to submit a grievance through a web form.[7] Insofar as the defendant adamantly denies any wrongdoing in the face of a lawsuit by the federal government and numerous States, and in the face of every judge to have reviewed the matter and disagreed with them, it strikes us as extremely unlikely that any aggrieved party would obtain resolution using this method. Under the Proposal, the defendant then has 30 days to decide, in effect, to ignore the request (it is possible the defendant might redress a grievance, of course, but since the defendant continues to assert it is not a monopoly and not guilty of any wrongdoing, it is totally unreasonable for the government to rely on this in its evaluation of the Proposal).[8]

Alternatively, a complaint may be submitted to the Technical Committee, which in turn may review a complaint (it is notable in this regard that though the Proposal speaks of ''shall investigate'', as there are no third party rights under the Proposal, a third party has no remedy in the event the Technical Committee fails to take such action).[9] In the event the Technical Committee agrees with the person filing a grievance, that person is barred from every presenting any evidence in court about the findings of the Technical Committee.[10] In the final analysis this situation probably does not have a great practical effect, as the person filing the grievance does not have any rights under the Proposal anyway.

However, it does highlight in how many ways the defendant has been able to insulate itself from any responsibility for actual wrongdoing it engages in, and how the Technical Committee is a veritable mirage with respect to any party having a legitimate grievance against the defendant. OS Only The restrictions imposed on the defendant in the Proposal are inadequate to prevent the defendant from further engaging in reasonably predictable unlawful behavior. Moreover, the restrictions are inadequate to protect our democracy from the overconcentration of power left in the defendant's hands. The restrictions of the Proposal have the following principal shortcomings:

First, Microsoft's office, multimedia, Internet and other products, although many of which from all appearances each constitutes a monopoly onto themselves, are not even addressed by the Proposal. Instead, only the ''OS'' is covered. Viewed in light of the defendant's .NET strategy for the future, this limitation all but renders the Proposal's prohibitions vacuous.

Although it is a fact proven in this case that the defendant used its OS as a basis to abuse its monopoly position and compete unfairly, the essence of the violations related to the incorporation by the defendant of additional technologies into its ''OS''. This inclusion repeatedly encompassed items, such as a browser or multimedia player that, in reality, do not form part of the OS but rather are separate applications as they do not have any responsibility for allocating limited resources, such as memory, disk space, screen space, etc., among competing applications, but rather themselves are applications competing for these limited resources).

Under the Proposal, the OS is, at least to some minimal extent (presumably far less than the defendant could have hoped when it formulated its current NET strategy), subject to restrictions. Accordingly, one can reasonably anticipate that the defendant's new strategy will be to extract functionality from the OS. Instead, these applications could be provided separately, either as ''free'' downloads from the Internet (of course if, as may be expected, they won't work without the defendant's OS they are not ''free'') or as network services provided over the Internet or a local network, providing a credible justification for reclassifying as an application what was before (at least according to the defendant) part of the OS.

Specifically, the defendant has ''bet the company'' on its .NET platform. The .NET strategy means any device which has one application (for simplicity, something equivalent to Java) can access a great multitude of services, whether provided by MS or its allies. The OS itself can be restored to what traditionally has been considered an OS, to wit, a system for allocating shared resources (such as access to memory, disk space, the screen, etc.) amongst competing applications, such as multimedia players, browsers, etc., rather that artificially defined to include those applications itself. Such an approach can be seen with some of the defendant's recent home products.

In other words, the last decade has witnessed MS simply ''integrating'' applications into the OS to ensure control over more applications and expand its OS monopoly (for example, when MS integrated its Internet browser into the OS, Netscape's Navigator was doomed). With the OS under

[4] See Proposal, Section III.I (last paragraph) and Section VIII.

[5] See Proposal, Section V.A.

[6] See Proposal, Section V.B.

[7] See Proposal, Section IV.D.

[8] See Proposal, Section W.D(3).

[9] See Proposal, Section W.D(4).

[10] See Proposal, Section IV.D(4)(d).

attack and possibly subject to regulation, the defendant has begun taking the direct opposite tack, undermining the importance of the OS and extracting and separating the core functionality provided by its applications. Of course, from the user's perspective, nothing will have visibly changed.

Second, by reserving to the defendant the right to determine ''in its sole discretion'' the software code which comprises a ''Windows Operating System Product'', the Proposal grants the defendant the uncurtailed freedom to redefine the term ''OS''.[11] Notably, the definition of ''Microsoft Middleware Product'' is limited to products which are ''in a Windows Operating System Product'')[12] Hence, if the OS is reduced in significance, and the Middleware Products are either bundled separately (as a group of add-ons, similar to how currently MS Office is an add-on, possibly available for free download or use to anyone with a registered MS Operating System) or provided as a service via the Internet or some other computer network, such products (though essentially the same) would not be covered by the Proposal either.

Thus, the minimal restrictions included in the Proposal relate to something about which the defendant may reasonably foreseeably no longer care. Having abused its monopoly in the desktop to gain a monopoly in applications (including certain middleware), the defendant can/likely will simply switch to abusing its monopoly in applications, and nothing in the Proposal places any restrictions on that foreseeable tactic.

Third, another extremely important inadequacy of the Proposal is the complete omission of the defendant's office/productivity applications (''Productivity Products''). It seems clear that the defendant enjoys a monopoly in at least the office productivity market (Word, Excel, Powerpoint, FrontPage, etc.) commensurate with (or perhaps even more so) its OS monopoly.

Thus, for example, the provisions of Section II.E of the Proposal, which (to some very limited extent) require the defendant to share ''Communication Protocols'' with third parties to enable them to interoperate with Windows Operating System Products, do not extent to Productivity Products. In particular, the definition of ''Communications Protocol'' is limited to tasks involving a ''Windows Operating Systems Product'', which as noted does not include Productivity Products) [13]

In addition, the principal way in which the defendant maintains its monopoly in Productivity Applications is through the use of file formats which are extremely - if not unnaturally—difficult for competitors to decipher. Without access to the details of such file formats (the standards published on the defendant's website are totally inadequate), competing developers cannot create adequate filters so that their projects can interoperate with the defendant's Productivity Products. As the vast majority of the human knowledge base has been ''locked'' into these decidedly proprietary formats, the absence of an open standard limits consumer choice and may even prevents consumers from switching to another operating system.

One obvious manner in which the lack of attention to Productivy Products comes into play is in the ''restrictions'' of Section III.A. These do not prevent the defendant from retaliating against an OEM for the ''protected'' conduct in the pricing of such additional software, as well as other popular software distributed by the defendant (such as its web server or database products). Similarly, the provisions of the Proposal which to some limited if not negligible extent require the defendant to permit others to learn the defendant's secret protocols do not even pretend to extend to the format of its information encryption, encoding and other obfuscation. Volumous Exceptions

What few requirements are imposed on the defendant are largely undone by the breadth of the qualifications in III.J of the Proposal, particularly subsection 2. Provision (a) thereof essentially disqualified all corporations (including the defendant itself), as it is impossible not to have a ''history'' of violation of intellectual property rights presumably even making an unpermitted backup copy would satisfy this broad provision). Provision (b) requires demonstration of a ''reasonable business'' need (as opposed to reasonable technical need) for a ''planned or shipping product''. The provision would essentially require a competitor to disclose to the defendant its non-public, planned products, without any confidentiality, non-competition or other assurance that the defendant will not use this information to benefit itself or harm the supplier. Provision (c) entitles the defendant to establish ''reasonable, objective standards ... for certifying the authenticity and viability of its business'', which standards for some unknown reason the defendant is not now able to articulate, leading to a very low expectation as to the reasonableness and objectiveness of the eventual standards.

Undoubtedly provisions (b) and (c) are intended to prevent Open Source projects, which to date form the sole serious competitor to the defendant over its range of products, from claiming any rights specified in the Proposal. Generally Open Source developers program for the challenge and joy of expression, rather than as part of a ''viable business''. As Open Source software is free, the defendant could quite rightfully argue that the developers do not have a ''viable business''. Yet from the perspective of a software user, it hardly matters what the developers'' motivation is; in fact a user might prefer software that is developed under the Open Source model rather than for profit.

Finally, provision (d) permits the defendant to deny any request unless the party making the request in essence submits all its trade secrets and intellectual property to a ''third party''. Since this ''third party'' (not to be confused with ''independent party'') is selected in the defendant's sole discretion, and since there is no provision assuring the confidentiality of any data submitted or that any party reviewing the information—including this ''third party''—itself satisfies the criteria of Section III.J, any requester will have to assume that all the submitted information will be carefully reviewed by the defendant.

No Protection to Consumers

The Proposal also does not provide any protection to consumers. While some indirect protection is provided via the limited protections afforded to OEMs, large consumers (such as Fortune 1000 companies) receive no protection. For example, nothing in the Proposal appears to prevent the defendant from raising prices on software to, for example, General Electric if General Electric elects to deploy KDE in its offices. In effect, the defendant is free to retaliate freely against large companies, governments, universities, and other institutions which elect to employ competing products in some but not all of their computer systems. No Protection for ISVs/Developers on other Platforms As recognized by the trial court, both by the defendant and the plaintiff, Open Source clearly represents the most viable competitive threat to defendant's monopoly. Nevertheless, the Proposal does not provide any means for this competition to compete fairly with the defendant.

For example, the defendant's obligation to release Documentation and APIs under Section III.D does not extend to document formats (such as MS Office formats or video/audio ''codecs'' used in multimedia applications) or network protocols used by the defendant to maintain its monopoly, nor does it prevent the defendant from pursuing patents or other exclusive legal rights on such formats and protocols solely or substantially for the purpose of preventing competition from software vendors/developers on other platforms. In addition, as noted above, it is far from clear that any of the limited and unenforceable restrictions in the Proposal apply to Open Source businesses and developers at all.

Proposal Language

Much of the language of the Proposal appears to be drafted to permit easy circumvention. This point will be made with a handful of examples, although many more can be identified in the Proposal. For example, Section III.A uses the term ''known to Microsoft'', as opposed to something less stringent (knowledge being very difficult to prove), such as leaving out the language ''it is known to Microsoft that'' altogether or by using the substitute phrase ''it is or should be known to or suspected by Microsoft that''. In addition, provision III.A.2 does not provide protection to OEMs who ship Personal Computers that boots only into a competing operating system. As another example, Section III.C.4 prohibits the defendant from entering into any agreement with an OEM which restricts the ability of the user to launch another operating system from the boot prompt. However, the provision does not restrict the defendant from causing its operating system to delete any boot loader which might provide the user a choice of which operating system to launch. In fact, the defendant's operating systems are well known to so interfere with the operation of other operating systems. In addition, the provision fails to provide that the defendant is barred from requiring OEMs to install a Windows Operating System on all

[11] See Proposal, Section VI.U.

[12] See Proposal, Section VI.K.

[13] See Proposal, Section VI.B.

its products, which has been the case in the past and which forces consumers to pay for a product they either do not want or need and makes alternative operating systems unable to compete with the defendant on the basis of price.

The provisions of Section III.E similarly fall short of the goal of permitting competition with the defendant. In particular, the disclosure of Communication Protocols is limited by Section III.J.1, which broadly exempts any information ''which would compromise the security of a particular installation or group of installations''. While superficially this sounds reasonable, the gaping hole is created by reference to ''any portion[] or layer[] of Communication Protocols''. Of course, it would be difficult to imagine that knowledge of a communication protocol layer could compromise security, and hence the addition of such language by the defendant would strongly indicate its intention to create such layers in order to prevent competitors from interoperating with its products. It is worth noting at this juncture that all the major authentication, security and encryption schemes rely on completely open protocols and that security is afforded solely through an unknown key, token or similar access control mechanism rather than through any portion of the protocol itself. This is true because it is generally considered insecure to rely on aspects of a protocol for security or authentication as they are quite easy to reverse engineer, i.e. defeat, by anyone not concerned with compliance with the law.

Section III.J.2 requires the defendant to permit competition only when a ''Windows Operating System Product'' (which, as noted more below, is a definition entirely within the control of the defendant) launches a ''Microsoft Middleware Product'' (essentially a browser, Java, a media player, a chat client, a mail client or a calendar client), but only if (a) the product is opened in a ''Top- Level Window'', and b) either (i) all of the user interface elements are displayed, or ii) the Trademark of the Microsoft Middleware Product is displayed. Thus, if the product is not opened in a ''Top-Level Window'', the defendant can prevent the consumer from using a competitor's product. Why, might one reasonably ask, would whether or not a media player has a separate ''move'' and ''resize'' button affect whether or not the user should have a choice over the media player? In fact, the definition of ''Top-Level Window'' is entirely obtuse. Technically, any ''window'' can contain ''sub-windows''—even a simple dialog box is composed of many sub-windows (e.g., each text item, each checkbox, each text edit box, etc. is a ''window''). Since this is a requirement, one must assume it means something more. Hence the requirement leaves a tremendous amount of wiggle room for the defendant.

Similarly, clause (c) of the definition of ''Top-Level Window'' permits ample room for manipulation. The defendant can simply ensure that at least the ''user interface elements'', as opposed to the actual functioning of the program, is not under the control of an ''independent process''. It is important to note here that use of the term ''separate process'' would have been much broader; by specifying ''independent process'', the defendant has made it trivially easy to make any top- level window not fall within the definition of ''Top-Level Window'' simply by starting the middleware product as a ''child'' process.

The second requirement also leaves huge amounts of room for avoidance of any requirement to permit users access to competitor products. One easy way to circumvent the requirement is to add a single user interface element which is available when the product is launched from the Start menu, but not when it is launched from the Microsoft Middleware Product. This element could be an element entirely inconsequential to the operation of the Microsoft Middleware Product, such as a trivial status bar, an extra line of text somewhere, an extra menu element, an extra toolbar or toolbar icon, etc.; in fact it could be a single user interface element added solely to the version launched from the ''Start'' menu for the purpose of making it different than the one launched from the Microsoft Middleware Product (and of course this element could be added after the functional and user interface design of the product has otherwise been totally completed).

Of course, it is also trivially easy for the defendant to avoid being caught in subsection (ii) of Section III.J.2. In particular, the definition of the term ''Trademarked'' specifies that:

We start from the premise that adequate relief in a monopolization case should put an end to the combination and deprive the defendants of any of the benefits of the illegal conduct, and break up or render impotent the monopoly power found to be in violation of the Act. That is the teaching of our cases, notably Schine Theatres v. United States, 334 U.S. 110, 128–129.

Any product distributed under descriptive or generic terms or a name comprised of the Microsoft?? or Windows?? trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Accordingly, the defendant could describe its media player as the ''Microsoft Media Player'', or its messenger as the ''Microsoft Messenger'', or its calendar as the ''Microsoft Calendar'', without being caught in subsection (ii). Obviously, no competitor can similarly name its product, so to say such names are not Trademarked defies all reason. In any event, the essence of the argument is that, if the defendant expends just a little bit of effort and (possibly) imagination, Section III.J.2 will not curtail the defendant from eliminating user choice as to the Middleware Product launched by any Microsoft Operating System Product. Similarly, Section III.J.3 does not specify that the user's consent be voluntary (e.g., the consent may be provided as part of a larger question), that the presentation of the request for the consent be non-discriminatory and fair to all products, or that the defendant may only request a switch once, so that it cannot prevail over its competitors by virtue of sheer harassment (such as popping up a dialog every time a Middleware Product is launched or even every time a feature of a Middleware Product is used). Even the time language in provision b) of that Section is a huge loophole, as it is commonplace for OEMs to do the ''initial boot up'' before shipping a PC and hence the 14-day period could have largely or completely expired by the time a user boots up the PC for the first time.

Another example of loophole language from the definitions relates to the term ''ISV''. The term is defined in terms of an ''entity'', rather than the traditional ''person'' or ''person or entity'', thereby preventing Open Source developers from falling within the protections afforded to ISVs. From a competitive standpoint, there is no reason for the government to favor an incorporeal entity over a human developer, and accordingly this definition is unreasonable and against the public interest. No Restitution or Penalties The evidence, upon which the defendant was adjudged guilty of essentially felonious conduct, was mainly based on events of the mid-late 1990%. Since the commencement of this litigation, the defendant's behavior has in the KDE League's opinion become substantially more unlawful and egregious, the whole time right under the government's nose.

Under the Proposal, the punishment for conduct which all judges to hear evidence have uniformly ruled is unlawful appears to be absolutely nothing; even the most generous read of the Proposal would have to conclude that at most it aims to prevent the defendant from engaging in (some) further unlawful conduct.

In fact, no restitution or compensation to the corporate, developer or consumer victims of its legion abuses is contemplated. Not even an injunction against the defendant's recent announcement that it will stop providing security patches for older versions of its product line (which would be similar to a car manufacturer not fixing a serious safety violation and an act which a non-monopolist could hardly get away with), forcing everybody to ''upgrade'' to the much-more-expensive but in many cases much-less-desirable Windows XP/2000 series. Apparently, the government is quite content that the defendant keep the billions in profit it unlawfully bilked from American consumers and businesses.

Moreover, the government's failure to address the defendant's ever-more- egregious conduct provides the public with no confidence that the government would act to enforce the ''slap-on-the-wrist'' restrictions contained in the Proposal. Accordingly, it is imperative for the public interest that any settlement provide remedies for private litigants to enforce their rights under the federal antitrust laws without having to mount a full attack and prevail over the defendant on the core issues of monopolization and abuse of monopoly power.

Patent Abuse

The threat of the defendant using patents to destroy Open Source interoperability with the defendant's technologies is a major obstacle to consumer choice and a competitive marketplace. The defendant is building up a large reservoir of patents, assisted by the USPTO's abysmal software patent review strategy. Even a patent which might be obviously invalid, for lack of

novelty or otherwise, would be extremely difficult for an Open Source project to overcome, as the defendant has a huge hoard of resources to throw at Open Source developers who would in almost all cases lack the resources to respond, let alone prevail.

Just to pick one example of an absurdly broad patent which the defendant could use as a sword to maintain its monopoly was recently issued. See United States Patent 6,330,670 (Dec. 11, 2001). Claim 1 of this patent is for: A computerized method for a digital rights management operating system comprising: assuming a trusted identity; executing a trusted application; loading rights-managed data into memory for access by the trusted application; and protecting the rights-managed data from access by an untrusted program while the trusted application is executing.

This really is something that must be extremely obvious to even a non-computer scientist. It's the equivalent to getting a patent on the following ''process'', employed by a security guard at a top-secret facility: A method for workplace security comprising: assuming a trusted employer; relying on trusted equipment; permitting the protected employee onto the premises; and protecting the premises from access by an untrusted person while the trusted person is working.

While this sounds like a joke, it is actually more sophisticated than this most obvious ''patent'' the defendant has obtained. Unfortunately, an Open Source project like KDE would find it veritably impossible to have such a patent overturned in court should the defendant elect to try to enforce it. Even more unfortunately, the Proposal does not place any restrictions or circumstances on the defendant—such as its status as an abusive monopolist— which might assist its competitors fight such an attack in a legal forum.

Conclusion

In conclusion, the KDE League would like to reiterate its firm opposition to the Proposal. The Proposal does nothing to assist a great many competitors in competing with the defendant, even in markets which the defendant has demonstrably conquered using unlawful methods. And it does nothing to prevent the defendant from unlawfully abusing its most viable competitors, not even a small leg up in pursuing justice in a court of law.

MTC–00028789

From: Brian Gault
To: Microsoft ATR
Date: 1/28/02 5:43pm
Subject: Microsoft Settlement

Judge Kollar-Kotally:

Not that I am aware of all the issues of law involved here, but it seems to me that Microsoft is in violation of our country's anti-trust laws. As a citizen of this country, I urge you to find against Microsoft in this case.

Brian C. Gault
507 Lindale Drive
Clinton, MS 39056
601–925–0212

MTC–00028790

From: Michael Foley
To: Microsoft ATR
Date: 1/28/02 5:44pm
Subject: Microsoft Settlement

Dear Sir or Madam:

It is my belief that the antitrust suit against Microsoft Corporation is the height of government abuse of a great company. It is the direct result of requests by Microsoft's competitors and their political connections (i.e. Novell and Senator Orin Hatch) to level the playing field.

Microsoft is a great company. I have been using their products since the late seventies and I have always received value for my money. Sure, some of their software has a few bugs, but it's still the best available. Microsoft will work on a product until it is the very best available. They created the microcomputer revolution when they introduced Windows 3.0 in the early 90?s. The interface was easy to use and understand, and helped computers to become common fixtures in American homes and small businesses.

Microsoft increased the size of the American economic pie for all of us. Bill Clinton didn't create the robust economy of the 1990's, Microsoft, Intel, Cisco, and other aggressive and innovative companies did. How does the American judicial system repay the genius and hard work provided by Microsoft over the last 25 or so years. It attempts to break-up one of the most successful companies in American history.

Who was damaged other than Microsoft? Did any consumers complain about the products they purchased? Why were the states allowed to join the suite—-— just how were the states damaged. It all appears to be one big illegal feeding frenzy similar to the tobacco suits. It is shameful.

I strongly believe that this suite against Microsoft ignited the collapse of tech markets in late 1999 and 2000 which sucked billions of dollars of wealth out of the American economy. I think the Clinton Justice Department and Judge P. Jackson should be fined and/or jailed over this extreme abuse of judicial power.

This judgment was bought and paid for by Microsoft's competitors!

Very truly yours,
Michael E. Foley
2320 State Route 73 West
Wilmington, Ohio 45177

MTC–00028791

From: sharonhr@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:38pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Sharon Rondeau
388 Spring Street
Manchester, CT 06040–6738

MTC–00028792

From: moore@cs.utk.edu@inetgw
To: Microsoft ATR
Date: 1/28/02 5:41pm
Subject: Microsoft Settlement
CC: moore@cs.utk.edu@inetgw

This letter is intended as public comment, as provided for by the Tunney Act, on the proposed settlement in United States vs. Microsoft. The proposed settlement should not be accepted for the following reasons:

—The proposed settlement does not provide an adequate remedy for Microsoft's abuses of its monopoly position.

—Rather than increasing competition, the proposed settlement appears to be specifically tailored to discourage certain kinds of competition against Microsoft

—The proposed settlement fails to redress the harm done by Microsoft's illegal abuses of its monopoly position.

—The proposed settlement is likely to strengthen Microsoft's position in the marketplace, thereby worsening the situation for consumers caused by a lack of competition.

—The proposed settlement encourages Microsoft to use its monopoly position in the desktop market to obtain monopolies or drastically increase its market share in other markets.

1. The proposed settlement does not provide an adequate remedy for Microsoft's abuses of its monopoly position.

The proposed settlement specifies several prohibitions and limitations on Microsoft's future behavior. However for the most part these limitations are narrowly tailored to provide remedies for specific features of the Government's complaint of May 1998. Market conditions have changed drastically since that time, due in large part to illegal anticompetitive practices by Microsoft.. There are no longer any credible competitors to Microsoft in the market for desktop operating systems for Intel-compatible personal computers. Microsoft's Internet Explorer has largely succeeded in displacing Netscape's web browser and other web browsers. And while Java has proven to be a very useful programming language in many respects, Java's run-time environment has not become a ''virtual operating system'' which could support the same applications on a variety of computing platforms, and which could thereby threaten its monopoly on the desktop. These developments were significantly furthered by Microsoft's anticompetitive actions both before and after the government's complaint was filed.

Conditions in these markets change so quickly that the problems caused by Microsoft's monopoly simply cannot be

addressed after-the-fact, or by specific prohibitions on Microsoft's future behavior that are narrowly tailored to constrain its previous behavior. Furthermore, previous settlements of this type have proven to be ineffective at curbing Microsoft's abusive practices.

2. Rather than increasing competition, the proposed settlement appears to be specifically tailored to discourage certain kinds of competition against Microsoft

The proposed settlement is also inadequate because it appears to be specifically tailored to discourage certain kinds of competition—in particular, efforts by both commercial and noncommercial parties to make alternatives to Microsoft's products freely available to the public. For instance:

—The settlement prohibits Microsoft from retaliating against OEMs for shipping a personal computer which includes both a Microsoft operating system and a non-Microsoft operating system, but it does not prohibit retaliating against an OEM for shipping a personal computer which does not include an operating system, or which includes only a competing operating system.

Computer purchasers who intend to use alternative operating systems (which are often superior to Microsoft's products for certain purposes as well as being available at no cost) are often forced to purchase a copy of a Microsoft operating system, which they never use, with each new computer purchase. Microsoft has effectively managed to impose a ''tax'' on the sale of most new personal computer systems (particularly ''laptop'' computer systems). The proposed settlement does nothing to redress that problem.

—The provision of the settlement requiring Microsoft to disclose APIs and related documentation, presumably via the Microsoft Developer Network (MSDN), allows Microsoft to impose nearly arbitrary conditions on the use of that information, to prevent potential competitors from using that information to produce products that compete with Microsoft operating systems and middleware.

In addition, in the past such documentation as has been provided by Microsoft via MSDN has often proven insufficiently detailed to allow other parties to write equivalent interfaces.

Finally, nothing in this proposed settlement prevents Microsoft from shipping APIs which provide undocumented features, and documenting and using those features at a later time. This would make its competitors'' deployed operating system and middleware products incompatible with programs written to the latter API specification.

Because of these flaws, this provision is unlikely to be effective at furthering competition.

The provision which requires Microsoft to document communications protocols applies to ''client computer[s]'' only. Presumably this requires only that Microsoft document the ''client'' side of such protocols, allowing Microsoft to hold more closely the documentation of the ''server'' side of a protocol, and allowing Microsoft a competitive advantage over providers of servers which communicate with those clients—particularly those using ''open source'' server platforms such as Linux which have provided significant competition to Microsoft products in the server market.

The provision which allows Microsoft to use Microsoft middleware in preference to a competitor's middleware when the competitor's middleware ''fails to implement a reasonable technical requirement (e.g. the requirement to be able to host a particular ActiveX control)'' effectively gives Microsoft license to bypass competitors'' middleware at will, by declaring as part of the settlement that addition of any ActiveX control to a middleware interface is inherently a reasonable technical requirement. For the settlement to be effective, Microsoft cannot be allowed to change its programming interfaces at will.

The requirement to Microsoft to license intellectual property rights ''on reasonable and nondiscriminatory terms'' that are needed to exercise options under the agreement, because of presumptions on what is ''reasonable'', effectively allows Microsoft to set the bar on access to such information high enough to exclude ''open source'' and noncommercial competitors.

—Similarly, the provision which allows Microsoft to require that the licensee of any of its intellectual property have a ''reasonable business need'' would likely allow Microsoft to exclude noncommercial competitors. The fact that the only significant competition to Microsoft in many markets comes from noncommercial parties makes a presumed requirement of ''reasonable business need'' for access to such information inherently favorable to Microsoft and unreasonable as part of a remedy.

2. The proposed settlement fails to redress the harm done by Microsoft's illegal abuses of its monopoly position.

Due in large part to Microsoft's illegal anticompetitive practices, Microsoft has obtained a monopoly in several markets, including desktop operating systems, web browsers, and office productivity software. The harm done is a considerably more than to limit consumer choice, stifle innovation, and artificially inflate prices.

Microsoft's monopoly has also forced consumers to accept operating system and networking software which are dangerously insecure and have been compromised on numerous occasions by computer viruses. Many of these vulnerabilities are a direct result of Microsoft decisions to:

Disregard Internet standards for the labeling of content transmitted over the network, thereby bypassing the requirement for security review that was designed into that mechanism. This was done in order to allow arbitrary content to be interpreted by applications on Microsoft operating systems, and to provide Microsoft with an advantage over competitors'' operating systems that used other means to label content.

Provide a means for their document formats to contain executable content with the ability to perform any function available to any application on the host computer—including the ability to delete and alter arbitrary files and the ability to send network traffic impersonating the computer's owner—in order to give Microsoft applications an advantage over competitors'' products.

—Impose weak means of authenticating users over a network, for the sake of backward compatibility with Microsoft products.

Even if a settlement provided an effective curb on Microsoft's future behavior, to be acceptable it would also need to redress the considerable harm done by past abuses. Injured parties include not only purchasers of Microsoft software (and computers which were supplied with Microsoft software) but also the numerous institutions who have suffered damage due to such vulnerabilities, and operators of public and private Internet networks whose operations have been harmed by the traffic generated by viruses transmitted by Microsoft software.

To be effective, a remedy would need to redress these injuries without further strengthening Microsoft's position in the market.

3. The proposed settlement is likely to strengthen Microsoft's position in the marketplace, thereby worsening the situation for consumers caused by a lack of competition.

By imposing essentially no penalties on Microsoft and few limitations on its behavior, the proposed settlement would signal to Microsoft and its competitors that anticompetitive behavior is largely ''safe''. The proposed settlement would also provide Microsoft with the means to discourage certain kinds of competition, particularly ''open source'' or noncommercial products, allowing it to further limit consumer choice.

4. The proposed settlement encourages Microsoft to use its monopoly position in the desktop market to obtain monopolies or drastically increase its market share in other markets.

By focusing largely on the desktop or client market, the settlement ignores Microsoft's ongoing efforts to leverage its existing monopolies to obtain monopolies in other markets. Furthermore, because different kinds of computers communicate with one another over a network, Microsoft's monopoly on desktop operating system software can be a powerful coercive force over other markets—for instance, media players and mechanisms for protecting intellectual property transmitted over a network.

There is no significant difference between the tactics that Microsoft used to take over the operating system, web browser, and office productivity software markets, and the tactics that Microsoft is currently using to attempt to establish control over other markets.

Any remedy which allows Microsoft to use its control over the desktop to favor its own solutions in any way cannot be considered adequate. For the reasons stated above, I recommend that the Court reject the proposed settlement.

An effective remedy would require

—Microsoft to be pro-actively prevented from future abuse,

Competition to be re-introduced in the markets in which Microsoft has a monopoly and which it has shown abusive behavior,

—Compensation for injuries caused by Microsoft's anticompetitive behavior It is

difficult to understand how such a remedy could be effected without either:

—Active government regulation of Microsoft's behavior, and in particular affirmative prior approval of all new and revised Microsoft products prior to release, and approval of contracts between Microsoft and other parties before they become effective, or

—Structural reorganization of Microsoft into two or more competing entities and without significant financial compensation to injured parties.

Keith Moore

MTC–00028793

From: Steve Bonfoey
To: Microsoft ATR
Date: 1/28/02 6:09pm
Subject: Microsoft Settlement

Gentlemen:

Microsoft has done nothing but benefit consumers. State attorney generals pursuing politics-as-usual and Microsoft's competitors have used the law to punish a good competitor. Microsoft deserves to win this case. If their competitors and the politicians win it will forever damage the economy of the United States.

Steve Bonfoey
4620 W. Hetherwood
Peoria, Illinois 61615
309–692–6272

MTC–00028794

From: Dave
To: Microsoft ATR
Date: 1/28/02 5:37pm
Subject: Settlement

If Microsoft get off with a slap on the wrist as it look like they will it proves that money talks and B—S—Walks.

MTC–00028795

From: Angela McQuillen
To: Microsoft ATR
Date: 1/28/02 5:42pm
file:///C√/win/temp/tmp.l.
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft: I have always been proud to be an American, not just because this is the place of my birth, but because I have always known that this nation was unlike any other in the world. We are blessed to be citizens of a country where we have the privilege to live life the way we choose. This is the legacy that was left to us by our forefathers, and this is what we should pass on to our children. I believe the antitrust suit against Microsoft, and other cases like it, compromises the very foundation upon which this nation was built. If litigation like this is continued, this nation will become a shell of its former self, and the glory that is America will be nothing but a memory.

This suit was nothing more than an attempt by the Clinton administration to socialize American business. Our forefathers did not build a nation on the ideals of Socialism. This nation did not become the sole world superpower in a mere 200 years of existence because we allowed socialism to thrive in America; rather we are a nation built upon and made strong by our capitalist roots and our belief in free enterprise. It is the dream of every American to exceed the success of their father and grandfather, to go from rags to riches with nothing more than hard work, perseverance, and an unshakeable belief in America. This suit flies in the face of this dream.

Microsoft is the very embodiment of the American dream. This company started in a garage and twenty years later it is one of America's greatest corporate assets. This litigation sends the message to all future American entrepreneurs that it is okay to become successful, but only to a point, because too much success is forbidden. I am in favor of the settlement that was reached in this case in early November, not because it is a fair settlement, but because it will finally bring an end to this protracted litigation.

The issue in this case is no longer whether Microsoft committed antitrust violations. I personally believe that it did. If that were the issue, they would have been reprimanded and sent on their way a better, more responsible business leader. The issue of this case is whether or not we, as Americans, have the right to engage in free trade, and whether or not capitalism has a place in the twenty-first century. I say that without this right the future of America is bleak. This is probably one of the most important decisions that has ever faced this nation, and it rests on your shoulders, so you had better choose wisely. Thank you for your time and consideration of this issue. I trust you will make the right choice.

Sincerely,

Angie McQuillen MSN Photos is the easiest way to share and print your photos: Click Here

Angie McQuillen

MTC–00028796

From: Tom Wolf
To: Microsoft ATR
Date: 1/28/02 5:43pm
Subject: Microsoft Settlement

To whom it may concern,

I want to voice my objections to the announced settlement between the US and Microsoft. It seems to be lost on those involved on the US side that Microsoft broke a consent decree on browsers to get in this mess in the first place. This company has demonstrated contempt for honesty and for the American business community, not to mention the legal process. In short they cannot be trusted to hold up their end of this extremely weak and ineffectual settlement. This settlement is bad for consumers and US business in general. The settlement is transparently politically motivated and completely undermines any credibility the Bush administration had. I urge you to reject the settlement and vigorously pursue the just prosecution of the case to save countless US businesses and preserve innovation in the market.

Regards, Tom Wolf, President,
Ascend Public Relations
206–903–1730
206–903–1732 fax
206–850–3095 cell
866–903–1730 toll free
twolf@ascendpr.com

MTC–00028797

From: Brian Seguin
To: Microsoft ATR
Date: 1/28/02 5:43pm
Subject: Microsoft Lawsuit
Renata B. Hesse
Antitrust Division
U.S. Department of Justice

I believe that the lawsuit against Microsoft by Joel Klein and the Clinton Administration has been a complete waste of time and taxpayers money. Microsoft made computing possible for the individual and small businesses at a reasonable cost. The consumer has benefited from Microsoft products. Attached is my letter to Mr. Ashcroft requesting that this lawsuit be settled under the terms agreed on between the Department of Justice and Microsoft.

Brian P. Seguin, P.E., P.L.S.
Project Engineer
Reid Middleton Inc.
Phone: (425) 741–3800
Fax: (425) 741–3900
bseguin@reidmidd.com
3622 99th Street Southeast
Everett, WA 98208
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The antitrust lawsuit brought against Microsoft was unjustified and flawed. The dispute in my opinion arose due to competitors'' envy for their own lack of innovation and creativity. Microsoft has been the leading innovator of technology for over a decade. In the 80's when we lagged behind Japan in many industries, Microsoft developed a product that streamlined and made more effective many of our businesses. The company I worked for is a perfect example as it was able to use Microsoft software for its businesses.

The terms of the settlement are harsh and seem to reflect the intense lobbying of Microsoft's competitors. Forcing Microsoft to give up internal interfaces and protocols, making them agree not to retaliate against other vendors, stipulating that they must grant computer makers broad new rights to configure Windows so as to make it easier for non-Microsoft products to be prompted, the settlement also reflects lawmakers and politicians lack of concern for the public. This settlement only aims at giving competition an edge they did not have and could not attain on their own.

Even though I think the settlement is unfair, I must support it because the alternative of further litigation would be too much for our weak economy. I urge your office to take a firm stance against the opposition and stop any further disputes.

Thank you.
Sincerely,
Brian P. Seguin
Professional Land Surveyor
Professional Engineer

MTC–00028798

From: Ernest Paul Webber

To: Microsoft ATR
Date: 1/28/02 5:43pm
Subject: Microsoft Settlement

Dear Sirs:

As I see it, you have established as a finding of fact that Microsoft has broken the law. Microsoft is quite apparently lacking in repentance and assured that it can evade justice. Your responsibility is to insure that Microsoft —cannot— continue to break the law. Microsoft has made it clear that it does not understand the crimes it is guilty of, nor does it intend to learn how or why it should change its own behavior, other than as a response to your judgment, and its desire to avoid substantial pain suffered as a result. Please do whatever it takes to stop these guys!

Sincerely,
Ernest Paul Webber
1808 Anacortes Ave NE
Renton, WA 98059

MTC–00028799

From: jjoseph
To: Microsoft ATR
Date: 1/28/02 5:45pm
Subject: Microsoft Agreement

Dear Attorney General Ashcroft:

Attached please find my letter in favor of the Microsoft Antitrust Agreement.

Thank you.

Sincerely,
John E. Joseph
6618 Manila Road
Goshen, OH 45122–9403
513–625–1745
CC: fin@mobilizationoffice.com@inetgw
6618 Manila Road
Goshen, OH 45122–9403
(513) 625–1745
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
January 26, 2002

Dear Mr. Ashcroft:

The Tunney Act mandates that there be a 60-day public comment period that follows a settlement to an antitrust case when the Department of Justice is involved. The final decision on the proposed settlement is made after this period of review. I would like to go on record as supporting the settlement that was made between Microsoft and the Department of Justice.

I feel that Microsoft is actually being punished for being good at what they do. There is no reason why the federal government had to get involved in this issue in the first place, but since they did, I am glad to see that the dispute has finally been resolved. Microsoft actually has to concede more than they would have liked, but since the lawsuit is over and the economy needs all the help it can get, they agreed to the terms. One of the terms, which seem ridiculous, is the disclosure of Windows'' internal interfaces and other operating technology that Microsoft worked long and hard to develop.

This seems to violate intellectual property rights.

I enjoy the fact that my opinion will go on record, and again, I support the settlement reached between Microsoft and the Department of Justice.

Sincerely,
John Joseph

MTC–00028800

From: The Babcock Design Studios
To: Microsoft ATR
Date: 1/28/02 5:45pm
Subject: Microsoft Settlement

Honorable Judge Coleen Kollar-Kotelly, In December of 2001 I have purchased new computer with Microsoft XP, Home Edition program installed. I wanted to upgrade the program to Microsoft XP Professional version. There was no upgrade available. I had to purchase new Microsoft XP Professional version at full price ($300). In above mentioned case I do not consider Microsoft policy either competative or fair.

Sincerely,
Dushan D. Hrovat —

MTC–00028801

From: Dr. W. Curtiss Priest
To: Microsoft ATR,W. Curtiss Priest
Date: 1/28/02 5:44pm
Subject: Proposed Microsoft settlement: woefully insufficient

Dear Justice Department,

As a software innovator and holder of several software patents, I have first hand knowledge of how extremely brutal, unfair and bullying Microsoft is to others in the industry. I was involved for five years in negotiation, arbitration and potential legal action against Microsoft which only caused Microsoft to spend incredible resources to deny me and Humanic Systems any just and due compensation for our innovative work.

In my opinion, as President of Humanic Systems, a company that was (above) abused by Microsoft regarding our intellectual property for significant components of Microsoft Outlook, the proposed remedy is extremely inadequate:

1. It does not provide substantial redress for the prior losses caused by MS on others

2. Secrecy provisions undermind the ability to obtain API information and will systematically be used by MS, in my opinion, to continue its monopoly stranglehold

3. There are no structural remedies, and, without those, the ''fascist'' mindset of Ballmer and Gates will continue to dominate the thinking of each and every employee

4. Microsoft's stated opinions about various forms of open software, being a ''cancer'' undermines the ability for consumers to get the maximum benefit for the least cost This position, alone, demonstrates that they want ''all the marbles'' and it is a ''winner take all'' game Consider, for example, a PBS documentary about extreme competition as taught within the Gates family as Mr. Gates grew up This person does not know the word cooperation, and, without extremely directive measures, will never show cooperation to the rest of the software industry that is slowly dying under his ruthless hand.

Very truly yours,
Dr. W. Curtiss Priest
President, Humanic Systems
Director, Center for Information, Technology & Society
Member, American Economics Association
Prior, Principal Research Associate, MIT
Author,_Technological Innovation for a Dynamic Economy_,1980 (Pergamon Press)
Risks, Concerns and Social Legislation,1988 (Westview Press)
W. Curtiss Priest, Director, CITS
Center for Information, Technology & Society
466 Pleasant St., Melrose, MA 02176
Voice: 617–662–4044
BMSLIB@MITVMA.MIT.EDU
Fax: 617–662–6882 WWW: http://www.eff.org/pub/Groups/CITS

MTC–00028802

From: Chuck Peper
To: Microsoft ATR
Date: 1/28/02 5:45pm
Subject: Microsoft Settlement

As a professional software developer, I find the governments proposed settlement with MS a joke. MS was clearly found to be a monopoly and anti competitive but the government has essentially taken no punitive action. What is even more disquieting is MS continues its illegal activity on a daily basis. It's new products and development languages (.Net) are anti competitive to other database manufacturers. They are using the same tactics over and over.

Splitting MS into OS and application companies is the only solution.

MTC–00028803

From: Michael Sharp
To: Microsoft ATR
Date: 1/28/02 5:47pm
Subject: Microsoft Settlement

Please find attached my comments with regards to the Microsoft Settlement

<<USAGSharp—Michael—1028—0124.doc>>

Regards
Michael Sharp
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

The purpose of this letter is to express my support of the Microsoft settlement in the federal antitrust case. As a Microsoft supporter, I have followed the case against Microsoft with much interest. I do not believe that the federal case is justified in the first place, yet I welcome any resolution that the enactment of this settlement will bring. Thus, I urge the Department of Justice to enact the settlement at the end of January.

In addition, the concessions made by Microsoft through this mediation process are extensive. Microsoft will now license Windows at the same rate to all computer makers, disclose the internal protocols of Windows to competitors, and redesign Windows XP to provide for easy replacement of parts of it by competing software. Enough is enough. I do not believe that Microsoft could do much more in this dispute, and has been punished enough through the concessions it has already made.

Please enact the settlement reached in November and end this issue once and for all.

Sincerely,
Michael Sharp

MTC–00028803_0002

MTC–00028804

From: BRice10273@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:49pm
Subject: Microsoft Settlement

I feel the Court should approve the proposed settllement in the Microsoft antitrust case. I think the complaints against Microsoft have been more than adequately addressed by the proposed settlement agreement and I support the recent efforts to bring this case to a rapid conclusion. Thank you for your attention to this important matter. Larry Neustadt

MTC–00028806

From: Damon Miller
To: Microsoft ATR
Date: 1/28/02 5:49pm
Subject: Microsoft Settlement

http://www.kegel.com/remedy/remedy2.html

This sums it up quite nicely. Please release humanity from the stifling monarchy that Microsoft has created. ''Freedom to Innovate''? Not quite, Bill; ''Freedom to desecrate'' is closer to the truth, but still not quite there.

The effect Microsoft has had on the computer industry is disgusting. Bill Gates and his money have systematically destroyed everything the industry stood for, and all of the individuals on whose shoulders it stands. Bush sold millions of peoples'' ideals right down the river on this one, and something needs to be done. Please be strong enough to stand up to Microsoft, finally ending their blatant laughter in the face of human liberties everywhere. Too dramatic, you say? Think again. Take a look at what this company has truly done TO humanity, and ask yourself if that statement is untrue.

Sincerely,
Damon Miller
(An individual trying to breathe under Microsoft's despotic tyranny)

MTC–00028807

From: Bill Humke
To: Microsoft ATR
Date: 1/28/02 5:53pm
Subject: Microsoft Settlement

I urge you to settle this case on what is now before the Court. Too much time and money have been spent upon this case to date. Let's get it behind us so this Company can get onto productive activates, and thus produce profits and positive cash flows so that additional technical developments and innovations can be advanced. This will then aid all of us in increasing our productivity, thus producing additional profits upon which we will have to pay additional taxes—again help all.

Respectfully,
Bill Humke
bhumke@ksni.net

MTC–00028808

From: Ann smith
To: Microsoft ATR
Date: 1/28/02 5:49pm
Subject: Fw: microsoft settlement

————- Forwarded message ————
From: Ann smith <panna3@juno.com>
To: microsoft.atr@usdoj.gov
Cc: u.s.atty.generaljohnashcroft@usdoj.gov
Date: Mon, 28 Jan 2002 16:29:19 -0500
Subject: microsoft settlement

Message-ID: <20020128.162921.-217919.0.panna3@juno.com> states sueing microsoft as well as aol using netscape to get money from microsoft thru the courts is wrong. microsoft is being bullied by the goverment and stockholders have lost money because of this court action. it also does not let microsoft give all the attention it needs to fight the hackers and make the internet safe for all users including aol.

The reason we are so interested in Microsoft Programs is that children all over the world are benefiting by Microsoft products,games and all sorts of programs as an educational tool. I'm so pleased when I see my 4 year old granddaughter open the computer and do what she wants to do. She spends hours doing games and playing her videos, instead of watching T.V all the time. We have eight babies we encourage to learn all they can by buying programs for them at Birthdays and just for fun.

We the elderly have fun also and we invest money into the future of Microsoft and other companies for the future.

CC:microsoft.atr@usdoj.gov/renatahesse@inetgw

MTC–00028809

From: Robert Smith
To: Microsoft ATR
Date: 1/28/02 5:50pm
Subject: Microsoft

Please see the attached letter.
Thank you!
Robert R. Smith
Smith-Krenning Enterprises, LLC
smithrr@smith-krenning.com
CC:gephardt@mail.house.gov@inetgw

MTC–00028810

From: madak@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:51pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Fax: 1–202–307–1454 or 1–202–616–9937
Email: microsoft.atr@usdoj.gov

It is time to close the doors on the Microsoft antitrust case. We (USA) must think of the globe market place. Microsoft produces products that all sold worldwide. We should let Microsoft get back 100% to their real business. I think we should allow the company to go back and work 100% of their time and money on producing new and improved products.

Mary Ann Dieckman
P.O. Box 210113
Auke Bay, AK 99821
Occupation Transportation Planner,

MTC–00028811

From: mitch@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 5:51pm
Subject: Microsoft Settlement

I oppose the Microsoft settlement. It is bad for the computing profession and bad for long term economic development. I have been a software professional since 1973, and in my personal experience the dominance of Microsoft has had a negative impact on quality and innovation in the software industry. The settlement does not address the practices that have kept Microsoft in power. A continuation of the Microsoft monopoly will only reduce the growth and future utility of the software industry, and keep the general public from reaping the rewards of continued innovation in this relatively young field.

Mitch Wade

MTC–00028812

From: Alyne
To: Microsoft ATR
Date: 1/28/02 5:52pm
Subject: Microsoft Settlement
CC:
January 28,2002
Attorney General John Ashcroft US
Department of Justice
950 Pennsylvania A venue, NW Washington, DC 20530

Dear Mr. Ashcroft:

Over the past three years I have watched the Department of Justices'' aggressive attack on Microsoft. I am so pleased to see that this unwarranted and unsubstantiated antitrust assault on Microsoft coming to close, provided that the government has the foresight to see the beneficial impact from Microsoft's settlement.

The settlement allows for new Windows configurations, giving computer makes and developers greater flexibility in offering non-Microsoft software programs. This will provide consumers with the option to remove and/or reconfigure any part of Windows. This gives the consumer the decision of what they like to use, and don't want to keep. Consumers drive the markets; they decide what it is that makes a company fail or succeed.

Microsoft has successfully proven, time after time, by creating and updating their innovative products, where nothing else compares. This settlement is the right thing to do, for Microsoft, the public interest, the tech industry, the economy, and all of which is vested in consumer purchasing. Keeping Microsoft out of more entangled legal matters, will definitively promote more responsible business decisions from Microsoft right down the line to the customer. Please don't continue this absurd mess of litigious behavior with Microsoft. It is a waste of time and does not serve the best interest of the public good.

MTC–00028813

From: harry emlet
To: Microsoft ATR
Date: 1/28/02 5:52pm
Subject: Microsoft Settlement

The Department of Justice should hold to the revised proposed Final Judgment to which Microsoft has tentatively agreed and reject the requests for other and further remedies requested by the states continuing to oppose the judgment.

I am dismayed at the persistence intemperate misrepresentations by those

several key industry leaders who so ardently seek to diminish the dominant role of Microsoft and if possible replace it. They piously attribute their efforts to their interest in the welfare of the consumer, when in fact it is the average consumer, individual and corporate, who would suffer most should Microsoft be greatly diminished or (in the inevitably lengthy interim) should Microsoft be eventually replaced. They also claim that Microsoft makes it more difficult for entrepreneurs to develop and market innovative products when in fact the opposite is true and their real problem is that they seek the dominance that Microsoft now has and cannot keep up with the innovative pace of Microsoft's continuing evolution of its products. The challengers make these representations directly and through the Attorney Generals of selected states.

The claim of harm to Netscape, for example, is particularly false. Netscape deliberately configured its browser so that when it was used within Windows as part of non-Microsoft application software it would immediately take over all web browser functions. (I personally was so irritated by repeatedly having to counter this latter tactic that I finally gave up in disgust and removed Netscape from my system along with the application that required it.) The position of those pretending that Microsoft was the culprit in the demise of Netscape blissfully ignores both the technological character of the industry, the needs of the average individual and corporate user, and the specific technical issues that are relevant to the case and the remedy.

If the continued challenges to Microsoft prevail it will seriously harm the consumer, will undermine the lead role which the United States now holds throughout the world as a result of the proliferation of Microsoft products worldwide, and will thereby decrease the present ease of communication internationally made possible by the software commonality that is a direct result of the widespread proliferation of Microsoft products. The mantra that increased competition at any cost is always better in the long run is a na<ve article of faith that simply does not apply in this particular case where what the challengers are in effect demanding is to cripple Microsoft's ability to innovate in order that they, the challengers, can gain entrepreneurial advantage. They are opposing rather than advocating a level playing field. While I am fully convinced that, in general, greater competition is by far the lesser of two evils, there are clear exceptions and this is one of them. The average individual and corporate user does not want to have to deal with multiple incompatible operating systems and wishes to have basic applications integrated as fully as possible with that operating system. Nor do most of the application developers want to have to deal with the increased costs and complexities introduced by a multiple operating system environment. There is nothing now that prevents a truly innovative developer from designing and marketing an alternative operating system and supporting applications. However, in order for to be successful in the market place the design must be one that will make switching by the consumer cost effective. For that to happen the alternative offered will have to stand out head and shoulders above Microsoft's product so that the considerable costs of the conversion will be justified. So far the alternatives offered have had only modest advantages coupled with distinct disadvantages. This is likely to continue to be the case as long as Microsoft continues to advance at the same rapid pace the technological and functional character of its product. Unable to outrun Microsoft, its would-be competitors seek to hamstring Microsoft in ways that will slow its progress to where it can be overtaken. Microsoft has provided in its operating system a continually evolving, backward compatible, software standard that has been a crucial factor in facilitating the adoption by both businesses and individuals of computing that permits near universal and highly efficient interaction among all participants at steadily reducing costs in user time and money.

I began my career in 1955 as a programmer on the very first of the large electronic computers introduced by IBM. I have worked with computers in one capacity or another (as an analyst, manager, and corporate executive) ever since in the areas of both national defense systems in support of the Air Force and other Department of Defense agencies and in health systems in support of the Centers for Disease Control, the National Institutes of Health, and other health agencies. As a retired professional I work with five desktop computers in my home. What I and many others, whether independent or corporate users, want in our computers is commonality of software among our own computers and those with whom we correspond electronically. We greatly prefer integrated systems from a single source that keeps to a minimum the investment of our time in resolving conflicts between operating systems and applications. Microsoft through constant innovation has done a superb job of meeting that need. It is obviously not perfect but it demonstrated a wiliness to respond to the needs of its users.

The innovative pace that Microsoft has maintained in the incredibly rapidly evolving technological environment could be achieved by another organization only if that organization could displace Microsoft and then become as dominant as Microsoft is now. That dominance is essential if the ordinary user and the average business user are not to be subject to great losses in productivity and efficiency in dealing with multiple operating systems none of which achieves dominance. And even if in time another organization was eventually to succeed in achieving a dominant position, the transition burden and costs, both real and opportunity costs, to users would be enormous.

The loss of compatibility between computer systems, the heart of which is the operating system, is devastating for the small operator and can be incredibly expensive for the average large corporate operator. The idea that seriously shackling Microsoft is going to make things easier and less costly for the consumer is na<ve in the extreme. It will inevitably do the opposite. There are enormous opportunities for innovative software designers to develop programs that work within the dominant Microsoft operating system as is well demonstrated by the proliferation of such ad hoc software. The very fact that the Microsoft operating system is dominant greatly facilitates continuation of such proliferation.

The Department of Justice needs to continue to keep clearly in focus what is in the best short and long term interests of the consumer rather than what will promote the private agendas of the industry warlords, present or aspiring, in their relentless search for greater power and fortune.

Let stand the revised proposed Final Judgment. Terminate these endless challenges, promptly implement the remedies, let the developers and entrepreneurs move on with their evolution of better and better systems within the Microsoft environment, and let us users continue to move ahead with confidence in the continued forward and backward compatibility of what we produce within the present and future computing environment.

Very much needed as a follow-up, is a thorough reassessment of the antitrust laws in the light of the present very different and rapidly evolving technological environment, the critically related pace of innovation, and the character of the related industries and its users

Harry Emlet
3302 Clearwood Court
Falls Church, VA 22042
righhtnow@msn.com

MTC–00028814

From: Ronnie n/a
To: Microsoft ATR
Date: 1/28/02 5:54pm
Subject: microsoft settlement

This letter boasts my personal opinion in every way and I appreciate microsoft for having contacted me with this letter.
5000 SE 83rd Place
Oklahoma City, OK 73135
January25,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my opinion of the recent settlement between the US department of Justice and Microsoft. I think the lawsuit has gone on too long and has been a waste of taxpayer dollars. Our government should stay clear of free enterprise and allow companies like Microsoft to innovate.

The terms of the settlement violate Microsoft's intellectual property rights, as they will be forced to disclose interfaces that are internal to Windows operating system products. They also have to grant computer makes broad new rights to configure Windows so that competitors can more easily promote their own products. Microsoft spends vast resources developing their products and services and competitors should not be rewarded for being second place.

I urge your office to uphold American principles and finalize the settlement because that is in the best interests of the

American public. It might be flawed, but further litigation would be far worse. I hope you take the right direction and side with American people.

Sincerely,

cc: Senator Don Nickles

Ronnie Higgins

MTC–00028815

From: Gunnar G Pedersen
To: Microsoft ATR
Date: 1/28/02 5:54pm
Subject: Microsoft Settlement

As it has been pointed out by senior citizens groups, the Microsoft settlement seems to be a fair and equitable action and should not be allowed to drag on any longer. I wish to add my voice to this cause. Gunnar Pedersen, Clifton Park, NY

MTC–00028817

From: GGillette@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 5:55pm
Subject: Letter to Hon. Colleen Kollar-Kotelly

Please see attached.

Thanks,

Graham Gillette

515–244–1900

GILLETTE

STRATEGIC

RESOURCES

Wednesday, January 23, 2002
Hon. Colleen Kollar-Kotelly
U.S. District Court, District of Columbia
c/o Renata B. Hesse
U.S. Department of Justice, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Judge Kollar-Kotelly:

The proposed settlement between the Department of Justice and Microsoft in U.S. v. Microsoft is not good enough.

I am a member of the Des Moines School Board, a small businessman and a political activist. In each of these roles, I am concerned about protecting competition in the marketplace. This agreement does not adequately protect the free market and innovation, and does not go far enough to address consumer choice.

The settlement does nothing to deal with the effects on consumers and businesses of technologies such as Microsoft's Passport. Passport has been the subject of numerous privacy and security complaints by national consumer organizations. However, corporations and governments that place a high value on system security will be unable to benefit from competitive security technologies, even if those technologies are superior to Microsoft's. Why? Microsoft controls their choices through its monopolies and dominant market share, and still is able to dictate what technologies it will include.

Enforcing federal antitrust laws against monopolies is not new or novel. Antitrust law has protected free markets and enhanced consumer welfare in this country for more than a century. The Microsoft case does not represent a novel application of the law, but is the kind of standard antitrust enforcement action necessary to insure vigorous competition in all sectors of today's economy.

The proposed settlement allows Microsoft to preserve and reinforce its monopoly, while also freeing Microsoft to use anticompetitive tactics to spread its dominance into other markets. After more than 11 years of litigation and investigation against Microsoft, surely we can—and we must— do much better than this flawed proposed settlement between the company and the Department of Justice.

Thank you for your time.

President

CC: Iowa Attorney General Tom Miller

505 Fifth Avenue, Suite 920 ?Des Moines, Iowa 50309 * (515) 244–1900 * (515) 2444425 Fax www.gillettestrategies.com .info @gillettestrategies.com

MTC–00028818

From: Neele Johnston
To: Microsoft ATR
Date: 1/28/02 5:57pm
Subject: Re: U.S. v. Microsoft: Settlement Information
Date: January 28, 2002
From: Neele T. Johnston, President
Intelligenesis, Inc.
25 Froude Circle
Cabin John, MD 20818
(301) 263–0248
email: NeeleJohnston@usa.net
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
email: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

To whom it may concern,

I am writing to encourage you, in the strongest terms, to reject the settlement of United States v. Microsoft, that has been proposed by the Department of Justice and Microsoft Corporation. The proposed settlement is not in the public interest and will only serve to give Microsoft Corporation the green light to inflict further harm on consumers, businesses, and the competitive landscape of the Information Technology industry.

Now is the time for our federal government to step up it's efforts to rein in Microsoft and control it's abusive practices. Having rightly found Microsoft guilty of illegally extending their monopoly in personal computer operating systems to other areas of the software industry, the judicial system has an obligation to impose a penalty on Microsoft that is commensurate with the harm they have caused and that will serve to partially restore competition where the defendant's predatory business practices have destroyed it. This is not the time to go easy on them. This is not the time to tire of the fight for increased competition in the software industry.

In spite of what the government and Microsoft now contend, resolution of this case has nothing whatsoever to do with patriotism, ''freedom to innovate,'' or maintaining America's leadership in a flagship industry. On the contrary, leaving Microsoft intact and unshackled will leave a very serious threat to our national security unresolved. The proposed settlement does far too little to restore competition in the key areas of the software industry where Microsoft has eliminated it. In particular, the settlement seems to validate Microsoft's present monopoly in personal computer operating systems. It is this monopoly, which Microsoft maintains by anti-competitive business practices, which has severely compromised the security of the nation's computing infrastructure, which is the very foundation of modern commerce.

Some argue that the personal computer operating system is an example of a ''natural'' monopoly and that the software industry benefits from Microsoft's role in setting de-facto standards. First of all, this argument ignores the observation that the Internet, which throughout most of its formative phase grew up outside Microsoft's sphere of influence and in spite of Microsoft's determined attempts to undermine it, has been the single greatest source of innovation in technology for a generation. Some might say the only source. More importantly, the argument ignores the significant national security and business risks that we are now subjected to as a result of Microsoft's monopoly in operating systems that are used in defense, government and business. Operating systems are the most critical piece of infrastructure which either keep commercial transactions and command and control functions safe and secure, or leave them vulnerable to malicious disruption, theft, and falsification. These vulnerabilities become increasingly clear with each passing week; one need only make a cursory examination of IT industry news to be keenly aware of the risks and costs associated with them.

If we are inclined to be kind to Microsoft we could argue that the risks are inherent in a monopolized market segment, due to the issue of homogeneity. The differences that exist in naturally varying systems mean that only a minority of the population tends to be susceptible to any particular threat. This is borne out by observing the Apple Macintosh community, which is less than five percent of the personal computer population and enjoys essentially all the same capabilities as Microsoft Windows users. While the ninety-five percent of personal computer users with Microsoft Windows have been subjected to over a dozen well-publicized attacks in the form of Internet email worms, Macintosh users (as well as Linux users, who make up an even smaller percentage), have been invulnerable to virtually all these attacks. This proves, on the face of it, that no one besides Microsoft benefits from Microsoft's monopoly.

Furthermore, if we are inclined to be more realistic and less kind to Microsoft, it is easy to establish that Microsoft's chronic lack of emphasis on quality, reliability or security in the Windows operating system has greatly exacerbated the vulnerability that we are now faced with. Microsoft has now, belatedly, admitted this is an issue and pledged to make security their main focus in the future. This is just marketing hype designed to distract us from the magnitude of the risk we are living under. Only the advent of true competition in the operating systems market segment will ever cure this vulnerability.

Microsoft's performance in reference to the Y2K bug proved that they cannot be trusted

to act in the best interests of their customers. Throughout the course of this trial many of Microsoft's defenders have argued that consumers were never harmed in the browser war. This is patently false. Microsoft openly and publicly committed all of their attention and resources to defeating Netscape and embracing (belatedly) the Internet. One need only note the timing of these events to realize that Microsoft was busy fighting the browser war at the precise time that their customers were demanding Y2K fixes, and not getting them. This lack of responsiveness to customer requirements cost American businesses and consumers many billions of dollars, if not more.

During the time of the browser war, I was a director of Information Technology at Fannie Mae, a Fortune 50 company with an IT budget well over $50 million. I had first-hand knowledge of what Y2K abatement cost my company and it was clear that a considerable portion of it, easily several million dollars, was due solely to Microsoft's tardiness in addressing the Y2K issues in their software, many of which were not solved until well past the eleventh hour, well after the date we had targeted to be fully compliant. I am sure that nearly every other American business faced similar issues and the resulting, unnecessary costs they bore are truly staggering. Anyone who believes this was inevitable or even excusable need only note the fact that the Apple Macintosh operating system was never susceptible to any of the Y2K problems that businesses waited until after the eleventh hour for solutions for from Microsoft. Could this possibly be because Apple has never had the luxury of a monopoly position for its products, but has had to compete on their merits? Had Microsoft targeted reliability and quality as major product goals and had they made a reasonable effort at Y2K abatement at the time they began the browser war, I firmly believe (based on first-hand experience in my company) that the price tag that consumers and businesses would have paid for Y2K compliance would have been 30% to 50% less than it was.

I have over twenty years of professional experience in systems integration and IT management. I have carefully observed Microsoft's rise from the start. My seven years at Fannie Mae convinced me that Microsoft's heavy-handed control over my industry is very harmful to corporate IT and to the industry in general. I could go on for many pages to explain to you, with hard evidence, why this is so. However, I believe that has already been established in court. What this industry desperately needs is competition in the segments Microsoft controls, such as desktop operating systems.

Any settlement of this case must not only be fair to Microsoft and to the industry they have harmed, it must be seen to be fair by the public and must be seen as a punishment, if a light one, for the misdeeds that have already been established. This proposed settlement is widely viewed as a stunning victory for Microsoft, witness the majority of reports in the press over the past two months, and that alone is reason enough not to proceed with it. It is not a punishment. It neither guarantees competition nor significantly penalizes Microsoft. The current environment in which Microsoft is seen by most as getting away with murder as a result of their own might and cleverness, and often being lionized for it, is not healthy for the Judicial System or for America, to say nothing of industry.

Microsoft claims that they have a right to compete as vigorously as possible and that they are simply better at it than other companies. However, Microsoft has no awareness of what honorable or gentlemanly competition is all about. In most arenas we do not allow competitors to openly cheat, especially if they are prodigious and unrepentant about it. If we will not allow such behavior in the Olympics, how can we feel comfortable allowing it to continue in Information Technology? The winner must bear a special burden of scrutiny. In addition to numerous abuses that they have not yet been tried for, or are perhaps not technically criminal, Microsoft has been tried and found guilty, upheld on appeal, of severe criminal misconduct. Over the course of this trial, their entire executive staff engaged in numerous, obvious acts of perjury, demonstrating that it is their usual way of doing business. No one seriously believes that they can be trusted to honor the terms of a consent decree.

Given the remarkably high profile of the company, the citizens of this country cannot allow this state of affairs to continue. I want to urge my government, in the strongest terms, to withdraw it's support for the settlement that is on the table. It does not go nearly far enough to serve the public's interests. It is riddled with loopholes, which Microsoft has proven for nearly a decade that they will exploit to the fullest. It sends the wrong messages to the public, to Microsoft, and to whatever would-be innovators may be thinking of trying to compete against Microsoft. It sends a signal to terrorists that we are sanguine about the fact that they have only a single target to concentrate on to take out the infrastructure of America's economy. It gives Microsoft the government's implicit blessing in their continued effort to undermine the free software and open source movements, which represent the only real hope for competition in operating systems and infrastructure technologies.

Please give some consideration to adopting the proposal of remedies put forth by the nine dissenting states. Their proposal, while still inadequate to fully address the threat, is at least a significant improvement over the settlement proposed by the Justice Department.

Yours very truly,
Neele T. Johnston
Intelligenesis, Inc.
25 Froude Circle
Cabin John, MD 20818
301–263–0248
neelejohnston@usa.net

MTC–00028819

From: Smith, Bob
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 5:57pm
Subject: Microsoft

Please see the attached message concerning the litigation against Microsoft.

Robert R. Smith
MPIC-MGTS
(314) 827–3584
Robert. Smith@Maritz.com

MTC–00028819 0001

Robert R. Smith
Smith-Krenning Enterprises, LLC
10784 Stroup Road
Festus, MO 63028
January 28, 2002
Department of Justice
Attorney General John Ashcroft
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

While I believe that the recently negotiated settlement between Microsoft and the Department of Justice has gone too far, I also think that this suit is better settled. It is important for the IT community to move forward again. It is equally important for the IT community to trust that the government would allow the owners their right to enjoy the benefits that our wonderful country was built on, allowing each of us to exercise our skills and make money.

However, some of the terms of the settlement are a bit troublesome. Microsoft should not be forced to release some of its source code to third-party software developers. Doing so is no guarantee that this source code will not be used to develop some sort of Windows-type clone. My company writes applications that work on the Microsoft Windows platform, and we do so without any code from Microsoft that isn't already published. I don't need Microsoft's insight to their operating systems any more than the next developer. If we start demanding code from Microsoft, then Microsoft should be able to demand code from us, and I'm not willing to share mine either.

While innovation is the hallmark of the IT community, simply cloning software that does not carry with it the full expertise that the original software has is dangerous. There are issues like product confusion, reliability and support that may end up causing more confusion in the consumer's mind than did this lawsuit.

The very least that can be said, however, is that the litigation is apparently over, and this is a good thing. I am hoping that there will be no further federal action against Microsoft or any other IT company.

Sincerely,
cc: Representative Richard A. Gephardt
Robert Smith
Co-Owner

MTC–00028820

From: cparrish1
To: Microsoft ATR
Date: 1/28/02 5:59pm
Subject: microsoft settlement

I strongly believe you should back off and let entrepreneurship alone.

Sincerely,
Charles M. Parrish

MTC–00028821

From: Fil Alleva
To: Microsoft ATR
Date: 1/28/02 5:59pm
Subject: Microsoft Settlement

MTC–00028821—0001

??e:///c√/win/temp/tmp.

To US Federal District Court and US DO J,

I am writing to express my support of the settlement reached by Microsoft and the DOJ. I believe that the settlement will allow all of the parties involved to move on to more productive endeavors. Microsoft has been incredibly successful because it has created products that consumers and businesses find useful. Arguably many Microsoft's competitors that decry its behavior would not even exist today had it not been for Microsoft's tireless efforts on behalf of the personal computing industry.

Fil Alleva

Stockholder and Employee of Microsoft

Redmond, Washington.

MTC–00028822

From: kayandmitch
To: Microsoft ATR
Date: 1/28/02 5:59pm
Subject: Microsoft settlement

As a retired citizen of Washington state, I encourage you to accept the proposed settlement in the anti-trust case involving Microsoft. I am neither an employee nor a stockholder in this firm.

This settlement is appropriate and reflects a triumph of the rule of law. Many critics, all with an axe to grind, i.e. competitors and state attorneys-general, call for extreme, stringent restrictions that are totally inappropriate.

These objections ignore the decision of the Appeals Court that reversed much of Judge Jackson's original findings. Objectors not only misstate facts, but deliberately misinterpret the Appeals Courts'' key findings.

In my view there can be no valid objection to this settlement since every major finding of the Appeals Court is stringently addressed with a targeted remedy that specifically prohibits and prevents the conduct in question.

Acceptance of the proposed settlement will send a signal to American industry managements and all thinking citizens that the rule of law is still being enforced appropriately. Any- -thing beyond this settlement would be a victory for those who seek damage and destruction rather than a remedy;. for competitors, litigation rather than innovative, honest competition.

Every person with the most rudimentary understanding of free markets wants the law to protect the markets'' smooth functioning. Can we depend on the fair application of the laws that all participants in the U.S. economy rely on ? I hope your answer is a resounding ''yes''.

Thank you for your consideration.

Harold G. Mitchell

1800 Skyline Way

Anacortes, WA 98221

MTC–00028823

From: Walden3ALR@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:00pm
Subject: Microsoft
325 North Broadway
Wind Gap, PA 18091–1214
January 28, 2002

Attorney General John Ashcroft
United States Department of Justice
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I am writing you let you know that I am a staunch supporter of Microsoft and I believe that the current lawsuit against the company instigated by the federal government is wrong and perhaps even counter-productive. Nevertheless, after three long, long years of legal wrestling, the settlement reached in November should provide the opportunity to put an end to this issue once and for all. For that reason I urge that you work towards implementing this settlement as soon as possible.

Under this settlement, Microsoft has agreed to design future versions of the Windows operating system to provide a mechanism for users, computer manufacturers and software developers to promote non-Microsoft software applications. Additionally source codes and interfaces internal to the Windows operating system and its products will be freely available to Microsoft's competitors. This is only the tip of the iceberg. As such, this settlement should more than satisfy the Department of Justice, as well as competing companies.

It is time that we concentrate on more important matters facing America. I ask that you work towards putting the November settlement into action as soon as possible and without any more litigation. Thank you.

Sincerely,

Dennis Cassidy

cc: Senator Rick Santorum

MTC–00028824

From: Mick McQuaid
To: Microsoft ATR
Date: 1/28/02 6:00pm
Subject: Public Comment on Microsoft Settlement

I am a university-based research scientist developing software to reduce information overload. My sponsors include the US Army Research Lab, which hopes my software will reduce information overload for tactical commanders in battle, and the Ford Foundation's Community Development Program, which hopes my software will do the same for overworked, underpaid community development workers.

In my research, I am a consumer of computer hardware and software, as are my sponsors, their customers, and the students who work in my lab. In my view, we are all harmed by Microsoft's monopoly, and this harm is not addressed by the proposed settlement.

As a public university, and with government agencies and charitable community foundations as our sponsors, we are acutely aware of the need to save money. One way we believe we could accomplish this is by using free operating systems such as Linux or FreeBSD instead of Windows. We have been stymied in our efforts to purchase computers with free operating systems or no operating systems.

We found that purchasing a computer from a vendor, Gateway, with no operating system cost just as much as to purchase it with Windows and also led to a warranty problem where the computer was not warranted to operate with any particular operating system. We were warned by our vendor, Gateway, that we should have purchased our computer with Windows, then installed a free operating system to coexist with it. For any remedy to be effective, Windows should be an extra-cost add-on to a basic Gateway computer that we purchase or recommend to the military commanders and community development workers who'll use our software.

A second source of harm to me as a consumer comes from Microsoft's secret file formats. The only way my software can reduce information overload for military commanders and community development workers is if my software can read and write the file formats for information with which these workers are inundated. Other vendors and researchers publish their file formats. Microsoft does not. I can not avoid using Microsoft file formats and must spend extra money to try to keep up with changes to them. Through a model called ''embrace and extend,'' Microsoft is able to use its monopoly position to change file formats such as Rich Text Format over time to reduce interoperability among customers and competitors. Only a remedy that forces Microsoft to publish file formats so that they cease to be a monopoly-strengthening tool can provide effective relief for me as a consumer.

A third source of harm to me as a consumer concerns my ability to use the World Wide Web without the requirement that I use Microsoft products. I can not browse certain web pages nor conduct transactions on certain websites because the authors of a free operating system running on my computer do not have access to Microsoft networking protocols. Fortunately, not every web site is forbidden because I have chosen a free operating system, but more sites are denied me every day. Two years ago, I believed that free operating systems like Linux were the wave of the future. In the past year, I have come to realize that Microsoft is working actively to shut down free operating systems by making access to the Internet more difficult for those who fail to access using current Microsoft products. Only a remedy that forces Microsoft to publicly reveal networking protocols such that users of free operating systems have a chance to rewrite their software to visit websites and conduct transactions.

To summarize, I have been harmed as a consumer by Microsoft's monopoly. The proposed settlement does not offer me any relief from that harm and I suggest in this message three requirements that would have to be met to provide that relief: (1) make Microsoft operating systems an extra-cost add-on to computers, (2) compell Microsoft to publish file formats it uses to maintain and extend its monopoly to the desktop, and (3) compell Microsoft to publish networking standards it uses to maintain and extend its monopoly to the Internet.

I have never written to comment on any such settlement before, in part because I never been persuaded of the gravity of such a situation. The proposed settlement shocks me as a consumer and I can only explain it by taking into account the profound effect

that recent events have had on the DOJ mindset about what constitutes the national interest. Possibly DOJ has become less aggressive toward violators during a period of national mourning. Now it is time for cooler heads to prevail and to demonstrate to the public that our government considers the national interest to include what is best for consumers, not merely what is best for corporations. —

Mick McQuaid, mcquaid@u.arizona.edu
2721 East Fort Lowell Road
Tucson, AZ 85716
520–975–5157

MTC–00028825

From: Tommy Goddard
To: Microsoft ATR
Date: 1/28/02 5:56pm
Subject: Microsoft Settlement

Do you plan on dropping the millions of customers? What do plan on doing about the fact that 99% of the government's computers are run by MS? Now that AT&T is a government controlled company their service sucks. I can see how making MS a government entity would create so many issues for consumers and hurt our economy worse.. Anything federally regulated and funded sucks. Have you ever had a speeding ticket or tried to get a different phone company? MS actually provides good support.

Tommy
Internet √ Developer
Sportwave, Inc. & Championship Tennistours, Inc.
''It's Tennis on the Net!''
EMail: <mailto:tommy@sportwave.com> tommy@sportwave.com

MTC–00028826

From: Keith Kemp
To: Microsoft ATR
Date: 1/28/02 6:01pm
Subject: Microsoft Settlement.

I think the deal that MS has offered is more than fair. Just get off their back so that they can continue to be innovators instead of being regulated allowing someone else to take their position as the leader.

Keith

MTC–00028827

From: LRogers67@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:02pm
Subject: Settlement
17311 87th Avenue Court E
Puyallup, WA 98375
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am submitting the following comments for your review as regards the Microsoft antitrust lawsuit. I am in favor of seeing this case settled. From the lawsuit's inception, I have been frustrated by the fact that Microsoft is being punished merely because it has produced an outstanding operating system.

Despite my disagreement with the wisdom behind filing this suit, in my opinion, the terms of the settlement agreement are fair. In response to the allegation that Microsoft has engaged in unfair business practices, Microsoft has agreed to give up many things. Microsoft has agreed to disclose portions of its code to their competitors. They have also submitted to making it easier for consumers to change the configuration of Windows. This will allow consumers to run programs made by Microsoft's competitors, while using Windows. Additionally, Microsoft has agreed not to take retaliatory actions against those who distribute or promote software that competes with Windows. Fair competition will be restored as a result of the concessions Microsoft has made. Nothing else should be required of Microsoft beyond the terms of the settlement agreement.

Thank you.
Sincerely,
Linda Rogers
CC:fin@mobilizationoffice.com@inetgw

MTC–00028828

From: kwhite
To: Microsoft ATR
Date: 1/28/02 6:02pm
Subject: Microsoft Settlement

The courts are punishing Microsoft, a winner and rewarding the losers who have inferior products in my estimation. What is wrong with winning? I don't see Be on every desktop and Oracle is so expensive and cumbersome that only foolish bureaucracies run this software. There are no gains for the general population which this lawsuit pretends to ''protect''. Very clearly the courts are protecting a very few major corporations and their interests, not us little guys. And guess what ? should anyone be surprised—There are several technical references about computer systems and software that are grievously incorrect in the court documents.

Since when does any company have to get approval from the courts to bring a product to market? Courts have to get out of the market place. Let winners win, and losers lose. Get Bin Laden and others like him. Get bad guys not a company like Microsoft whom we all should be proud of. We should put a statue of Bill Gates right next to the Abe Lincoln monument.

Our future is in our children. Any court settlement (not), if there has to be one should benefit our kids.

Ken White
kwwhite@erols.com
CC:kwwhite@erols.com@inetgw

MTC–00028829

From: Jack Burlingame
To: Microsoft ATR
Date: 1/28/02 6:03pm
Subject: Microsoft Settlement

To Whom It May Concern:

Please register my opposition to the proposed government settlement with Microsoft. Despite the fact that I am a Microsoft shareholder, I believe the company needs to be restrained in its anti-competitive practices.

The case, in my opinion, goes well beyond the so-called ''browser wars.'' The list of companies that Microsoft has harmed as it incorporates additional functions into its operating system software is lengthy. To name just a few: Eudora—email program Adobe—imaging program Symantec—utilities programs Ipswitch—FTP program Real Networks—multimedia programs It is reasonable to ask what the ability to edit photographs, for example, has to do with a computer operating system. The only purpose for including such programs in Windows at no charge is to drive competitors out of business. This represents classic anti-competitive behavior that must be curtailed.

Sincerely,
Jack Burlingame
28–B Old County Road
Hingham MA 02043

MTC–00028830

From: Leonard Shackelford
To: Microsoft ATR
Date: 1/28/02 6:02pm
Subject: Microsoft Settlement

I support any decision which will allow Microsoft to continue business without any government intervention. Please leave Microsoft alone!

Sincerely,
Leonard Shackelford
Leonard@tmgcorp.net

MTC–00028831

From: Gordie (038) Barbara Rydberg
To: Microsoft ATR
Date: 1/28/02 6:03pm
Subject: Microsoft Settlment

Attorney General John Aahcroft I encourage the United States Justice Department to accept the recent anti-trust settlement it reached with Microsoft. I'm for anything that will get the matter behind us so Microsoft can get back to the business of making good software. To open up the market and make it more competitive, Microsoft has agreed to grant computer makers the right to change Windows so that Microsoft product can be removed and competing, non-Microsoft produts can be installed. This will allow small developing software companies to get their feet in the door and compete on an even level. This will also create a competitive environment that will encourage all parties to improve their produts and services. Microsoft has further agreed to not take any action that could be perceived as retaliatory against those computer makers who choose to do this, nor will Microsoft retaliate against computer makers who develop or ship operating systems that compete with Windows. A Technical Coommittee made up of three software experts will be overseeing compliance and assisting in any dispute resolution. Based on these facts, I encourage you to support this good settlement that will benefit Microsoft, competitors, and most iimportantly, consumers who buy these products.

Gordon Rydberg
318 Nelson Lane
Lopez Island, Washington 98261.

MTC–00028832

From: Carl Hekkert
To: Microsoft ATR
Date: 1/28/02 6:05pm
Subject: Microsoft

Your Honor,

As a Silicon Valley resident, I must voice my objection to the proposed settlement in

the Microsoft case. As a beneficiary of years of anti-trust violations, Microsoft is now being allowed to retain many billions of dollars of illegal profits. Furthermore, this proposed settlement does nothing to limit Microsoft's power and ability to continue its anti-competitive behavior. I feel we are being sold short by this proposed final judgment, and Microsoft emerges as the winner.

Respectfully,
Carl Hekkert
408–245–7266

MTC–00028833

From: Nicholas P. Provenzo
To: Microsoft ATR
Date: 1/28/02 6:02pm
Subject: Microsoft Settlement
Please see the attached document for the Center's comments on the proposed Microsoft Settlement.
The Center for the Moral Defense of Capitalism
<http://www.moraldefense.com/> http://www.moraldefense.com
VOX: (703) 625–3296
FAX: (815) 327–8852
THE CENTER FOR THE MORAL DEFENSE OF CAPITALISM
January 28,2002
From: Nicholas Provenzo
Chairman
Center for the Moral Defense of Capitalism
To: Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Re: Microsoft Settlement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Center for the Moral Defense of Capitalism respectfully submits its evaluation of the proposed Final Judgment resolving U.S. v. Microsoft Corporation (Civil Action No. 98–1232) and State of New York ex. rel Attorney General Eliot Spitzer, et al., v. Microsoft Corporation (Civil Action No. 98–1233).

The mission of the Center for the Moral Defense of Capitalism is to promote the social welfare of the nation by presenting to the public a moral foundation for individualism and economic freedom based on a philosophical analysis of humanity and human nature. Specifically, we seek to apply Ayn Rand's philosophy of Objectivism to the understanding of human action and human relationships.

As the cornerstone of a free, capitalist system, we argue that human life requires thought and effort and that the free market springs from the trade of one's thoughts and efforts with others. We make the argument that human minds and bodies must be left free of coercion, that all human interaction must be voluntary and that the initiation of physical force must be banished from human relationships. We see a proper government as the agent of its citizens, charged with one mission: the use of retaliatory physical force in defense against the initiation of physical force.

Our organization has followed the Microsoft antitrust case from its initial filing—we have opposed the case from the outset, seeing it as an abridgement of the freedom of production and trade and an interference with the right to acquire and possess property. We disagree with the essential factual component of this case that Microsoft's integration of its Internet Explorer Web browser with its Windows operating system was a coercive act against Microsoft's competitors and customers. Instead, we see a company that according it its evaluation of the marketplace saw the commercial value of product integration and acted accordingly. In exercise of Microsoft's right to control its property, the firm set terms for the sale of that property that it believed was in its own self-interest. Microsoft's subsequent commercial success after this integration affirms the wisdom of Microsoft's actions—Microsoft's customers themselves chose to reward the firm with increased sales and increased market share. Rather than serve an impediment to the free market, Microsoft's actions personified them.

The Center for the Moral Defense of Capitalism
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E-mail: info@moraldefense.com

Yet, obviously, Microsoft's success has made it into the target of the government's wrath via the current antitrust case. Our organization closely followed the District Court case, writing several published evaluations of the case and its subsequent rulings (see Appendix 1 & 2). Our organization also participated in the US Court of Appeals for the District of Columbia Circuit appeals proceedings as an amicus curie. Our amicus brief relied on two major arguments in opposing the government's case: 1.) that the antitrust laws are unconstitutional laws that fail to provide with clear and concise guidance necessary to avoid sanctions under the law; and 2.) that the antitrust laws are unconstitutional laws because they require the government to initiate force against innocent citizens.

Today, our view of the Microsoft antitrust case and its proposed settlement is as follows: While we respect the desire of the parties to seek a resolution to this case, particularly that of Microsoft, which has had to endure a 3 1/2 year crusade against its property rights and its right to conduct its business in a profitable manner, we are wary of any settlement that legitimizes any aspect of this unjust assault against a successful, innovative business. We consider the case against Microsoft to have been defective at every level, from the fundamental claim that the entrepreneurial actions of a successful business are a threat against others, to the claim that a monopoly can exist where there is no legal barrier to entering a market, to the claim that the citizens of the United States are too ignorant or incompetent to exercise their individual power of choice when in the marketplace and therefore require the government to make their personal choices for them. We consider it a failure that the court saw no distinction between the earned success of a business in the free market and the coercive power of a government favorite and we consider it a failure that the court did not ultimately throw out the case against Microsoft.

Considering that this case was initial brought not at the insistence of individual consumers or with Microsoft's business partners, but at the insistence of Microsoft's unsuccessful competitors, this entire case reeks of business failures asking the government to step in and give them the commercial success they could not achieve in the marketplace. Failed businesses must not be allowed to set the rules for the markets in which they failed. In evaluating the proposed settlement, we find that it specifically threatens the right to private property. A key component of the proposed remedy is a requirement that Microsoft make its source codes available to a government-sanctioned oversight committee, which in turn is supposed to ensure these same source codes are made available to non-Microsoft ''middleware'' producers, so that these companies can create products to compete with Microsoft. Since under the proposed judgment, the United States would retain the right to determine and enforce the scope to which these source codes are to be made available, the final judgment constitutes a de facto seizure of private property—the source codes—and its subsequent conversion to a public good. Such a taking is wholly incompatible with the Constitution of the United States. Accordingly, we reject the notion that this settlement serves the public interest, or that any punishment of Microsoft for its business practices will be of benefit to any consumer. Eroding Microsoft's property rights serves no one. We hold that no antitrust case, including the Microsoft case can withstand rational scrutiny, and we ask that no sanction be placed on Microsoft as a result of its antitrust conviction.

Appendix 1:
Judge Jackson's Findings of Fiction
By Dr. Edwin A. Locke, Ph.D.
Senior Policy Analyst
The Center for the Moral Defense of Capitalism

Judge Thomas Penfield Jackson has released his ''findings of fact'' in the Microsoft antitrust case. While his report did contain some correct information—such as the truism that a successful company tries to defeat its rivals—the central claims of his report are blatant falsehoods. Let us examine five of these fictions.

Fiction #1: Microsoft is a ''monopoly.'' There is no such thing as a private monopoly. Only the government can forcibly prevent competitors from entering a market. Microsoft has attained dominance in the software industry, but dominance is not monopoly. Market dominance has to be earned through a long struggle, by providing better products and better prices than anyone else. Dominant companies who falter (as did Xerox, IBM, General Motors and Kodak) will find their market share eroded, sometimes very quickly. There is no threat from these dominant players so long as their competitors are legally permitted to enter the field, invent new products, and combine with each other to gain the needed market power.

In a free market, a dominant position can only be sustained by continually providing new products and services that are better than other firms'' products. Paradoxically, Judge Jackson recognizes this fact but

condemns it. Microsoft's innovation, its continual product upgrades, its millions spent on research and development, are cited by Jackson, not as evidence that Microsoft has earned its position, but only as evidence of a conspiracy to ''stifle'' its competitors.

Fiction #2: Microsoft's ''monopoly power'' allows it to ''coerce'' its customers. A private company has no power to force consumers to do anything. Did Judge Jackson find that Microsoft threatened to beat people up or throw their bodies into the East River if they bought the wrong Web browser? Of course not. The only ''leverage'' Microsoft has is the leverage it has earned by producing a product that people want to buy.

This economic power, the power of voluntary trade, is fundamentally different from political power, the power of the gun. Yet Judge Jackson is eager to erase this distinction. Thus, such actions as upgrading a product to match the features offered by a competitor, distributing a product for free, or negotiating favorable terms with business partners—all of them normal and beneficial business practices—are presented by Judge Jackson as if they are a nefarious, mafia- like conspiracy to oppress the public.

Fiction #3: Microsoft harmed consumers. This is certainly news to the millions of people worldwide who value Microsoft products enough to make the company and its founders rich.

Most bizarre is Judge Jackson's claim that Microsoft harmed consumers by giving away its Web browser, making it unprofitable for other firms to sell their browsers. Any sane consumer would be delighted to get a product for free rather than paying money for it. To speak of receiving free software as a ''harm'' is Orwellian doublespeak.

Fiction #4: Microsoft is a threat to consumers because it ''could'' raise its prices. Under this criterion, anyone could be prosecuted for anything. Do you own a kitchen knife? Then you might stab somebody—so should the government put you in jail?

Microsoft has the right to sell its product for any price it chooses—but anyone familiar with the history of business and with Economics 101 knows that market leaders have a selfish interest in keeping their prices low. Why? Because they make a lot more money by creating a mass market than by creating a product only the rich can buy. Henry Ford understood this. So did Bill Gates. Clearly, Judge Jackson does not.

The only basis for his conclusion is the caricature of the successful corporation as a vicious ''Robber Baron'' which, even if it is not ''exploiting'' consumer now, is merely waiting for the opportunity to do so. Fiction #5: Blocking Microsoft's ability to compete will foster greater industry innovation. A private company, with no power over consumers but the power conferred by offering a useful product, is branded by Judge Jackson as dangerous. But far-reaching government intervention in the software industry, including the massive use of force to shatter Microsoft and control its business practices, is presented as an attempt to spur innovation. Only those who believe AI Gore invented the Internet could take this argument seriously.

What Judge Jackson really objects to is the fact that Microsoft defeated its competitors, i.e., that it was successful. The real meaning of his ''findings of fact'' is that the best brains must be crippled, so that lesser brains will not have such a hard time succeeding. He and the government prosecutors whose arguments he is echoing do not want to foster innovation; they want to sacrifice the best and the brightest in the name of egalitarianism. They want the playing field leveled by coercion so that no one can rise to the top.

What consumers need is an antidote to the fictions peddled by Judge Jackson: the recognition that businessmen have a right to succeed by trading their products in a free market. Dr. Edwin A. Locke is Dean's Professor of Motivation and Leadership at the Robert H. Smith School of Business at the University of Maryland and is affiliated with UMD's Department of Psychology. An internationally renowned behavioral scientist, Locke's work is included in leading textbooks and acknowledged in books on the history of management.

THE CENTER FOR THE MORAL DEFENSE OF CAPITALISM

Appendix 2:

Altruism in Action: An Analysis of Judge Jackson's Finding of Fact and the Antitrust Assault on Microsoft

by Adam Mossoff

Policy Analyst

The Center for the Moral Defense of Capitalism

United States District Court Judge Thomas P. Jackson is crystal clear in his recent ''findings of fact'': Microsoft is marked for destruction. But why does Judge Jackson want to punish one of the most successful corporations in American history? Because Bill Gates proclaimed that he wanted ''to prove that a successful company can renew itself and stay in the forefront'' i—and he proceeded to do just that.

By the early 90s, Microsoft had gained a dominant position in the software industry by creating Windows, the first commercially viable graphical operating system that could be used on PCs. But in the mid-90s, Gates realized that the Internet represented the next step in the ongoing computer revolution; thus, he created a business plan to ''stay in the forefront'' of this revolution. In so doing, he set into motion the same technological and commercial innovation that had led to Microsoft's leading market position in the first place.

Microsoft began by investing a staggering $100 million each year in Internet research and development, and in four years the company expanded its Internet division from only six people to more than one thousand. These investments, in the words of Judge Jackson, paid ''technological dividends.'' ii (Paragraph 135) Microsoft developed a Web browser called Internet Explorer, and ''after the arrival of Internet Explorer 4.0 in late 1997, the number of reviewers who regarded it as the superior product was roughly equal to those who preferred [Netscape's] Navigator.'' (Paragraph 135)

But Gates took Microsoft even farther. He integrated Internet Explorer into Microsoft's Windows operating system so that it would be easier to incorporate the fast-growing Internet into all aspects of personal computing. In fact, Judge Jackson partly acknowledges the groundbreaking work performed by Microsoft in this regard:

The inclusion of Internet Explorer with Windows at no separate charge increased general familiarity with the Internet and reduced the cost to the public of gaining access to it, at least in part because it compelled Netscape to stop charging for Navigator. These actions thus contributed to improving the quality of Web browsing software, lowering its cost, and increasing its availability, thereby benefiting consumers. (Paragraph 408) Concurrent with its technological innovation, Microsoft put into practice novel business services and licensing arrangements. Just one of many examples addressed by Judge Jackson is the Internet Explorer Access Kit (IEAK), a service that permits an Internet access provider (IAP), such as America Online or Earthlink, to accept a license agreement on the Web and then download and customize Microsoft's Internet software. When Microsoft began offering this service in September, 1996, it was the first time an Internet access provider could create a distinctive identity for its service in as little as a few hours by customizing the title bar, icon, start and search pages, and ''favorites'' in Internet Explorer. The IEAK also made the installation process easy for IAPs. With the IEAK, IAPs could avoid piecemeal installation of various programs and instead create an automated, comprehensive installation package in which all settings and options were pre-configured. (Paragraph 249)

More than 2,500 access providers—representing more than 95% of the Internet subscriber market in the US—used Microsoft's IEAK service. (Paragraph 251) Notably, Netscape did not create a similar service until nine months after Microsoft introduced IEAK, and Netscape charged almost $2,000 for something Microsoft offered for free. (Paragraph 250)

Microsoft blended technological innovation with business acumen and thus offered its business partners an integrated package of new technology and new business opportunities. In exploiting these opportunities, Microsoft often offered ''valuable consideration''—such as special discounts— to companies like Compaq, IBM, and Intel as an incentive to adopt its Internet Explorer and other Microsoft technology. In fact, Judge Jackson uses the term ''valuable consideration'' eight times to describe Microsoft's business agreements with other companies—leaving the honest reader to conclude that Microsoft's dealings were not some form of coercion but rather value-for-value trades.

For instance, Microsoft beat Netscape in developing a special type of browser that America Online (AOL) required for its Internet service. As a result, the two companies entered into several agreements in 1996. In exchange for AOL's commitment to use Microsoft's Internet software, Microsoft promised to provide AOL with unprecedented access to Internet Explorer source code, extensive technical assistance, ''free world-wide distribution rights to

Internet Explorer,'' an assurance ''that future versions of its Web browsing software would possess the latest available Internet-related technology features, capabilities, and standards,'' and the placement of an AOL icon in a special folder on the Windows desktop. (Paragraph 288)

This relationship has been advantageous to both parties. Overall usage of Internet Explorer has risen dramatically, and as a result of this agreement AOL registered almost one million new users in a single year—11% of its total membership—through its icon on the Windows desktop. This fact alone prompted AOL to state in 1998 that its business arrangement with Microsoft was an ''important, valued source of new customers for us.'' (Paragraph 302) Microsoft's achievements should be held up as a model of how to create and maintain a highly productive, innovative company. Yet Judge Jackson is unable to view any of these facts in a positive light. While Judge Jackson recognizes many of the concrete facts that demonstrate Microsoft's productive achievement, he is incapable of praising the innovation and business acumen that led to Microsoft's success.

Instead, his descriptions are clouded by slanted, inflammatory terms that attribute vicious motives to Gates and his company. When Microsoft created new technology to compete with its rivals, Judge Jackson describes the company's motivation as ''fear'' and ''alarm.'' When Microsoft offered incentives to its business partners, Judge Jackson decries this as the ''quashing'' and ''stifling'' of rivals. When Microsoft licensed its products only under conditions favorable to its long-term success, Judge Jackson describes these actions as ''threats'' and ''force.'' (Judge Jackson uses variations of ''threat'' no fewer than twenty times and of ''force'' no fewer than sixteen times to describe Microsoft's actions.) When Microsoft refused to support its competition, Judge Jackson calls this ''punishment.'' When Microsoft ingeniously melded technological and business strategies to convince consumers that its products were the best, Judge Jackson sees the company as ''seizing control'' and trying to ''capture'' the market.

Even worse than his slanted terminology are his substantive arguments, in which he sets up impossible standards according to which no successful business could escape prosecution. For example, Judge Jackson writes early in his ruling that:

It is not possible with the available data to determine with any level of confidence whether the price that a profit-maximizing firm with monopoly power would charge for Windows 98 comports with the price that Microsoft actually charges. Even if it could be determined that Microsoft charges less than the profit-maximizing monopoly price, though, that would not be probative of a lack of monopoly power, for Microsoft could be charging what seems like a low short-term price in order to maximize its profits in the future for reasons unrelated to underselling any incipient competitors. (Paragraph 65) (Emphasis added.)

Judge Jackson admits that it is not possible to tell whether Microsoft is in fact charging a monopoly price. Yet he dismisses this lack of evidence as irrelevant because Microsoft could simply be using low prices today in order to ''capture'' the market and charge exorbitant prices at some future date. In other words, Microsoft is a monopolist if it charges prices that are deemed ''too high''—but it is also a monopolist if it charges prices that are too low. By virtue of its dominant position in the industry—that is, by virtue of its success—Microsoft is damned if it does and damned if it doesn't.

Judge Jackson's visceral antagonism to business is also revealed by his condemnation of Microsoft for winning the browser battle against Netscape when ''superior quality was not responsible for the dramatic rise [in] Internet Explorer's usage share.'' (Paragraph 375) Note the implicit premise in this condemnation: If Microsoft hasn't produced a product that is technologically superior, then only commerce can explain its success. Jackson is repulsed by the notion that successful computer companies require both technological savvy and business skills; in his ideal world, Silicon Valley would be populated solely by computer scientists with nary an ''alarming'' venture capitalist or ''threatening'' businessman in sight. Judge Jackson's praise for innovation, however, might seem to contradict his overall attack on successful businesses. Technological innovation is a source of business success, is it not? Although Judge Jackson recognizes that technological innovation causes businesses to succeed, he believes that this innovation has another, more legitimate, function. He writes:

In many cases, one of the early entrants into a new software category quickly captures a lion's share of the sales .... What eventually displaces the leader is often not competition from another product within the same software category, but rather a technological advance that renders the boundaries defining the category obsolete. These events, in which categories are redefined and leaders are superseded in the process, are spoken of as ''inflection points.'' (Paragraph 59) (Emphasis added.)

Innovation appeals to Judge Jackson not because it leads to the creation of wealth, but rather because it tends to tear down the market leader. He argues that the emergence of the Internet in the mid-90s was one such ''inflection point.'' (Paragraph 60) Thus, the nature of his support for innovation explains his disgust with Microsoft's defeat of Netscape: By introducing its browser product sooner, Netscape should have replaced Microsoft—if only Microsoft had not engaged in the ''vicious'' commercial competition that ensured its continued leadership in the computer industry.

These beliefs ultimately lead Judge Jackson to conclude that Microsoft's ''monopoly power'' has ''harmed consumers in ways that are immediate and easily discernible.'' (Paragraph 409) What are these alleged harms? Judge Jackson claims (wrongly) that the integration of Windows 98 and Internet Explorer does not allow employers to block employees from surfing the Web. He asserts that vast ''confusion'' reigns among consumers—but beyond one or two offhand references throughout the ruling, he never explains this vague allegation. Moreover, he claims, the integration of Windows and Internet Explorer has created slower computers with more bugs—as if computers are slower and less dependable than they were two years ago! One might regard such mythical ''harms'' as the laughable allegations of a Luddite—if they did not come from a judge who wields the coercive power of the federal government.

Regardless of how trivial these alleged harms may be, Judge Jackson seems sincerely to believe that Microsoft is acting as a vicious monopolist. Why? He answers this question in the last few sentences of his ruling: ''Microsoft's past success in hurting such companies and stifling innovation ... occur for the sole reason that [other companies and their innovations] do not coincide with Microsoft's self-interest.'' (Paragraph 412) (Emphasis added.)

It takes Judge Jackson more than 200 pages, but in the end he names the essence of his disgust for Microsoft—and the essence of the antitrust laws. In so doing, Judge Jackson exposes the fundamental moral premise dictating his factual distortions, his fallacy-ridden arguments, and his illogical conclusions: a hatred for any form of self-interest.

The morality of altruism or self-sacrifice is often presented as a form of benevolence, as if it simply means being nice to other people. But the actual meaning of this philosophy is a hatred of success. Under this morality, anyone who achieves some extraordinary wealth or distinction owes it to his fellow men to sacrifice what he has earned—including giving away his whole fortune, as and when it is demanded by others. (This is essentially what has been demanded of Bill Gates.) But what about those who have not achieved anything? They are entitled to welfare programs, private charities, protective legislation, and a host of other unearned benefits to be paid for by those who have succeeded. In this system, anyone who earns success through his own effort is to be punished, while anyone who hasn't exerted any effort and hasn't attained any success is to be rewarded.

Far from standing for benevolence or good will, such a moral outlook stands for destruction. This code of sacrifice demands an assault on a Microsoft or a Bill Gates. By amassing so much money and achieving so much success, they must be shirking their duty to sacrifice to others. But it does not demand the destruction of the Netscapes of the world because, by* virtue of having faltered, they are the ''have-nots'' who are entitled to benefit from the sacrifice of their more-successful competitors.

Note that the ultimate standard of this moral outlook is not the well-being of the poor, the weak, the downtrodden; has the welfare state ever achieved these aims? Instead, the goal is the sacrifice of the rich, the strong, and the powerful—not to achieve any positive aim, but simply to punish them because they are rich, strong, and powerful.

The altruist connection to antitrust is evident in the mere fact that Judge Jackson could have applied the antitrust laws against Microsoft without finding any harm at all. Although the ostensible purpose of antitrust

is to ''protect consumers'' from alleged ''monopolists,'' court decisions consistently belie this fiction. In one of the first cases defining the doctrine of antitrust, a large railroad trust defended itself against prosecution by arguing that its price-fixing plan resulted in lower prices for consumers. Since the stated purpose of the 1890 Sherman Antitrust Act was to protect consumers, and since consumers actually benefited in this case, the defendant logically concluded that the antitrust laws should not apply to its practices. The Supreme Court rejected this argument and ruled that the railroad trust was guilty. In an illuminating statement, Justice Peckham declared: ''In this light it is not material that the price of an article may be lowered. It is in the power of the [monopolist] to raise it.'' iii

(Interestingly, Justice Peckham was an ardent conservative who was one of the principal advocates of ''freedom of contract'' in the 19th century—just as Judge Jackson was a Reagan appointee. This proves once again that conservatives are not reliable friends of freedom.) Continuing to apply the underlying anti-success principle of antitrust, the Supreme Court ruled in 1968 that a newspaper company violated the Sherman Antitrust Act when it fired a distributor for charging rates above an allowable maximum price. The Court found that the newspaper ''would not tolerate over-charging'' of its customers, and that it even agreed to rehire the distributor if he ''discontinued his pricing practice''—-that is, if he charged lower prices. Nonetheless, the Court held that the benefit to consumers was irrelevant in finding that the newspaper company acted in ''conspiracy'' with its other distributors to set prices—thus its actions were ''an illegal restraint of trade under Section 1 of the Sherman Act?

Harm to consumers has nothing to do with the purpose of antitrust. The antitrust laws are intended only to punish ''power''—but since economic power is earned on the free market, this means that the purpose of antitrust is to punish successful business practices. Antitrust case law is replete with examples of companies being punished, not for any alleged harm, but simply for having the acumen to remain successful in their industries. A ski resort in Aspen, Colorado, was not only found guilty in 1985 of violating the antitrust laws because it successfully competed against its only rival; it was also held to a ''duty under antitrust law to help a competitor.'' v In the famous case against ALCOA in 1945, Judge Hand declared that ''the successful competitor, having been urged to compete, must not be turned upon when he wins.''

But he contradicted himself in the very next paragraph, concluding that ALCOA insists that it never excluded competitors; but we can think of no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections, and the elite of personnel. vi

ALCOA's ability and success, by Hand's reasoning, was the deciding factor for finding it guilty of violating the antitrust laws.

Given this legal context, Microsoft was doomed before it even set foot in the courtroom. The media, in an anti-Microsoft feeding frenzy, often highlighted mistakes made by Microsoft's counsel during the lengthy (and ongoing) trial. Yet Microsoft's attorneys could have performed flawlessly, and Judge Jackson would still have produced the same ruling.

The reason is that Microsoft is an extremely successful company; Gates is a unique combination of technological genius and businessman, reminiscent of earlier American giants like Thomas Edison. Thus, it was irrelevant how hard Microsoft's attorneys worked, or how much intellectual vigor they brought to their legal briefs and courtroom arguments. These things were irrelevant because no army of lawyers could hide a single, essential fact—the only fact necessary for applying the antitrust laws: Microsoft succeeds at what it does.

The punishment doled out for success is paralysis. Judge Jackson makes it clear that Microsoft must not be permitted to capitalize upon its well-earned success. Because it has created values, it must now relinquish them. Does it matter that Microsoft has earned its success by producing a better product, by offering better incentives to its business partners, and by providing better service to software developers and Internet access providers? No.

Such facts do not matter to a man who believes that a successful company has a moral duty to sacrifice to its lesser rivals—-especially when that man has the legal power to coerce the company to obey its alleged duty. With every slanted term and with every absurd conclusion, Judge Jackson practically screams his unstated moral premise: Since Microsoft is a leader in the computer industry, it must sacrifice the values it has created because it has created them.

In his ruling, Judge Jackson claims to set out the objective facts underlying his impending application of the antitrust laws to Microsoft. But the only thing he manages to establish is his own animosity towards commercial success. What drives this animosity is the underlying moral justification for antitrust: altruism's hatred of success.

The basis for Judge Jackson's ruling is not any ''monopoly'' allegedly controlled by Microsoft; it is the monopoly commanded by the morality of altruism over our culture. That monopoly can be seen, unfortunately, in Bill Gates's sanction of his own destruction in a comment immediately after the ruling, in which he declares that ''because of our success, we understand that Microsoft is held to a higher standard, and we accept that responsibility.'' vii As long as this moral monopoly remains unchallenged, legal doctrines such as antitrust will continue to punish successful businesses.

i Bill Gates, The Road Ahead 64 (1995)

ii US v. Microsoft, No. 98–1233 (TPJ) (D.DC Nov. 5, 1999) (findings of fact). All references to the findings of fact hereafter will refer only to the paragraph number.

iii United States v. Trans-Missouri Freight Association, 166 US 290, 324 (1897), emphasis added.

iv Albrecht v. Herald Co., 390 US 145, 153 (1968).

v Olympia Equipment Leasing Co. v. Western Union Telegraph Co., 797 F.2d 370, 377 (7th Cir. 1986), citing Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 US 585 (1985) (holding that a monopolist has a duty to help a competitor).

vi US v. Aluminum Co. of America, 148 F.2d 416, 431 (2d Cir. 1945).

vii ''Statement by Bill Gates on the Findings of Fact,'' www.microsoft.com/presspass/ofnote/11- 09wsj.asp, visited Nov. 11,1999.

MTC–00028834

From: kayandmitch
To: Microsoft ATR,info@effwa.org@inetgw
Date: 1/28/02 6:06pm
Subject: Microsoft settlement

As a retired citizen of Washington state, I encourage you to accept the proposed settlement in the anti-trust case involving Microsoft. I am neither an employee nor a stockholder in this firm.

This settlement is appropriate and reflects a triumph of the rule of law. Many critics, all with an axe to grind, i.e. compeitors and state attorneys-general, call for extreme, stringent restrictions that are totally inappropriate.

These objections ignore the decision of the Appeals Court that reversed much of Judge Jackson's original findings. Objectors not only misstate facts, but deliberately misinterpret the Appeals Courts'' key findings.

In my view there can be no valid objection to this settlement since every major finding of the Appeals Court is stringently addressed with a targeted remedy that specifically prohibits and prevents the conduct in question.

Acceptance of the proposed settlement will send a signal to American industry managements and all thinking citizens that the rule of law is still being enforced appropriately. Anything beyond this settlement would be a victory for those who seek damage and destruction rather than a remedy;. for competitors, litigation rather than innovative, honest competition.

Every person with the most rudimentary understanding of free markets wants the law to protect the markets'' smooth functioning. Can we depend on the fair application of the laws that all participants in the U.S. economy rely on? I hope your answer is a resounding ''yes''.

Thank you for your consideration.

Harold G. Mitchell
1800 Skyline Way
Anacortes, WA 98221

MTC–00028835

From: Lisa Kianoff
To: Microsoft ATR
Date: 1/28/02 6:06pm
Subject: Microsoft Settlement

Dear Attorney General Ashcroft.

Please see the attached word document regarding my support for the Microsoft settlement. Please contact me if you have any problem reading the document.

cc: Spencer Bauchus

Regards,

Lisa Kianoff, CITP.CPA

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MTC–00028835—0001

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Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I cannot help but think that this settlement recently reached between the Department of Justice and Microsoft is a good thing. Since the court case was as contentious as it was, there was very little progress being made.

The terms of this settlement, however, accomplishes a great deal without all the controversy. Most consumers will immediately benefit by being able to choose different software combinations without fear of compromising their installed operating systems, and most computer makers will benefit by being able to offer a wider variety of options to their customers.

All in all, this settlement is a great benefit to all and I am writing to express my support for it. Thank you for the hard work you put in to reach this settlement, and your continued support.

Sincerely,
Lisa Klanoff
President
Cc: Representative Spencer Bachus
L. Kianoff
Associates, Inc.
Computerized Accounting Solutions
1128 22nd Street South
Birmingham, AL 35205
205–592–9990 * FAX 205–592–9991
e-mail: lisa@kianoff.com

MTC–00028836

From: Maureen Baskin
To: Microsoft ATR
Date: 1/28/02 6:07pm
Subject: Microsoft Settlement

I apologize for sending this via email, I've tried several times to FAX this to you today from a local office store, but the line has been busy each time.

Respectfully,
Maureen J. Baskin
January 24, 2002

Dear Attorney General John Ashcroft,

Please consider my request for an immediate approval of the pending settlement between Microsoft, the Department of Justice and nine states. I worked for Microsoft from 1989 to 1996 in sales. Prior to Microsoft I worked for small and large corporations, including Bank of America and Dun and Bradstreet. I have never worked for a company where the employees were so bright, motivated, and empowered. There are so many strengths I would like to share, but in the interest of brevity I will highlight Microsoft's generosity to employees, customers, community and charities.

There were less than 5,000 employees working at Microsoft when I began work there. Excel had less than 11% of the spreadsheet marketplace and Windows was not yet graphical. Through the careful design by management, programmers, marketing, usability testing and sales people, Microsoft went from a company I had rarely heard mentioned from ''84 to ''89 (while teaching PC classes on the East Coast) to a household name today.

I encourage you to settle this case and commend Microsoft for going beyond the requirements stated by the Court of Appeals ruling. The products Microsoft offers have enriched the lives of so many.

I remember reading an article about Bill Gates'' Mother one time and I've never forgotten it. She was calling for him (perhaps it was to dinner), over and over again, but there was no response. Finally when she asked what he was doing, he said, ''I'm thinking!'' I'm glad he couldn't see the negative in the future, for he may have stopped in his tracks before starting Microsoft.

Let us highlight bright companies and businesses that stretch their imaginations and build superior products. Microsoft was not always such a big company, thousands have worked very hard to bring about it's success. They have worked consistently for developers, resellers, consumers and corporate customers, to build products needed in their world. Please do not allow jealous competitors to side track the industry, government and the economy on this matter any longer. Thank you for your time and consideration,

Respectfully,
Maureen J. Baskin
502 8th Ave. West, Kirkland, WA 98033
CC: Maureen Baskin

MTC–00028837

From: Benjamin B. Thomas
To: Microsoft ATR
Date: 1/28/02 6:08pm
Subject: Microsoft Settlement
Benjamin B. Thomas
1975 Cahaba Valley Road
Indian Springs, AL 35124
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

United States Department of Justice:

I am writing to oppose the proposed settlement with Microsoft. I have read the original complaint of United States and the several States, the proposed settlement, the Competitive Impact Statement at, in addition to many other sources including the findings of fact. I feel that the proposed settlement falls far short of rectifying the damage which has been done to myself and other consumer by Microsoft through years of abuse of their monopoly, and that the enforcement provisions do little to dissuade Microsoft from continuing such practices in the future.

While some of the settlement provisions are a good start, there are many loop holes, and several places where it falls short. The trial should be allowed to proceed, so that a stronger remedy without loop holes, and with stricter enforcement and actual punishment for past wrongs can be enacted. I will leave some of the other problem topics to others, but wish to address a limited set here.

The stipulated parties who are protected from anti-competitive acts are ISVs, IHVs, IAPs, ICPs, and OEMs. This list is much too exclusive. The general public and especially Open Source software developers must also be protected. In the recent past, one of the only viable responses to Microsoft's hegemony has been Open Source software developers. These people have *donated* millions of hours of their time to produce a software platform—a feat which would not have been possible if they were a strictly commercial entity in competition with Microsoft. These people must have the same access to information as commercial entities, or one of the few viable responses to the Microsoft monopoly will be stymied by the settlement.

All of the API, format, and protocol standards which Microsoft uses to propagate its monopoly should be opened. Microsoft has repeatedly leveraged its monopoly position along with rapidly changing or secret formats to lock competitors out of their market. Due to the substantial network effects involved in computer software, it is very hard to function when using alternative software since users will be unable to interact with others as soon as Microsoft releases the next revision of a product.

The central reason that Microsoft has maintained and extended its monopoly is not due to the superiority of its product, but through ''lock-in.'' Once one's data and software on secreted away within the Microsoft platform, it is extremely painful to switch to a superior platform. This not only directly hurts consumers, but stifles innovation in the computer industry. The provisions in the settlement do not do enough to make Microsoft open these standards to all parties interested in being compatible and do little to dissuade foot-dragging on Microsoft's part. Microsoft's APIs, file formats, and protocols should be fully standardized, documented, publicly published, and an accessible compatibility laboratory formed. This allow other software vendors to compete on a more fair playing field. This would be a start, but as others will surely describe in other comments, a fair distribution channel, free from punishing bundling agreements must be enforced.

I ask the DOJ to reconsider the decision to settle and to continue with the matter at trial. Microsoft has repeatedly show a willingness to flout the law. The remedies do not go far enough in punishing past illegal behavior or dissuading similar new behavior. The proposed mechanism of enforcement does not seem to have teeth, and Microsoft will likely attempt to break it soon after enactment. There is little deterrent to their doing so.

Sincerely,
Benjamin Thomas, Voter

MTC–00028838

From: John Spear
To: Microsoft ATR
Date: 1/28/02 6:09pm
Subject: For the proposed settlement

Hi!

While you may discount this, I would like to state my opinion that the proposed settlement in the Microsoft Anti-trust case is both a valuable and useful resolution to this court battle that continues unwarrantedly.

While it is unfathomable to me how the United States government, along with several State governments can conceive of punishing a successful company for being successful, I can see how some of the stated actions attributed to Microsoft could be considered inappropriate for an open marketplace. I do agree that many of the settlement terms implement procedures that Microsoft should have (and sometimes did) put into place many years ago. As such, I believe this settlement should go through substantially as proposed.

I also would like to see our court system spend time and money on anti-trust issues that have actual, demonstrated customer harm at their core, rather than the supposed harm to competitors that tripped up in the course of their own business and have failed to produce products that customers would continue to use over the course of years.

TTFN

John Spear

MTC–00028839

From: Cbethre@ao1.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:08pm
Subject: Letter for Microsoft

Dear Sir or Madam,

This a copy of my letter to support the efforts of the MA Attorney general, Tom Reilly regarding the Microsoft settlement. I will be following up with a signed copy via fax.

Thank you very much,

Colleen Reilly, MA

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
via email: microsoft.atr@usdoj.gov

Re: The Microsoft Settlement

I am writing to you about the proposed Microsoft settlement as both a private consumer as well as a human resources professional. I am very concerned as a consumer that I continue to have a choice in the software I purchase without having to be concerned with interoperability issues.

As a human resources professional and personal user of Microsoft, I want to maintain open computer systems that will facilitate communication and training materials.

Openness is paramount to maintaining competition, but openness is not what Microsoft wants. And it is not what this settlement, as it is currently written will guarantee.

I support including additional remedies as proposed by the dissenting Attorneys General, including the AG form my own state, Tom Reilly (no relation). Those remedies would ensure consumer choice, competition and interoperability of software. Specifically, I support the following: .

Microsoft should offer an alternative, basic version of Windows to personal computer manufacturers. This alternative version would have no Microsoft ''add-ons'', such as Internet access software, media players, or email applications, included.

2. Microsoft should provide the software code for Internet Explorer to competing software developers so that Microsoft cannot monopolize the Internet access or browser markets.

3. Microsoft should develop some mechanism to allow competitors to produce non-Windows based versions of the Office software suite.

Sincerely,

Colleen Reilly

MTC–00028840

From: Jmcjimmy@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:09pm
Subject: Microsoft Settlement

Microsoft believes the terms-which have met or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. This settlement represents the best opportunity for Microsoft and the industry to move forward.

I ALSO AGREE WITH MICROSOFT

(This ruling will unnecessarily keep Microsoft from reaching the public with improvements for the computer industry)

Jimmy McCoy

<A HREF=''http://youens.com/mccoy/ ''>http://youens.com/mccoy/</A>

MTC–00028841

From: Elliott Mitchell
To: Microsoft ATR
Date: 1/28/02 6:10pm
Subject: Microsoft Settlement

The settlement is flawed. It will not foster competition in any way. In fact by requiring Microsoft to donate their software to schools will have very much the opposite effect, helping the Microsoft monopoly to weaken Apple, the sole remaining competitor in making Operating Systems.

I sincerely hope that the settlement will be completly rejected, thereby restoring the hope that the rest of the computer industry will florish once again.

MTC–00028842

From: Joangeri@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:11pm
Subject: Microsoft Settlement

1085 Warburton Avenue Apt. 324
Yonkers, NY 10701
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am in support of the settlement proposed in the antitrust case between the Department of Justice and Microsoft. The settlement offers terms that I feel are beneficial to technology users and sufficient enough to end all of this litigation.

I think that the internal interface disclosure, licensing of Windows products, and technical committee in the settlement all open the doors for increased competitive behavior. If the government alleges that Microsoft was involved with anticompetitive behavior, then the problem is rectified.

We need an end to drawn out legal proceedings. It is time to allow Microsoft to get out of court and get back to business. Support the antitrust settlement.

Sincerely,

Joan Stupler

MTC–00028843

From: Bpcgraphics@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:11pm
Subject: Microsoft settlement

I believe that the microsoft settlement is bad for american business. I have seen the future of Microsoft operating system software in XP and I do not want it. It is horrid to use. I went out and got a older version of win 98 to replace it.

If Microsoft maintains its freedom to abuse its consumers, my business will suffer. The only real punishment is to break up the company or to require much of the secret stuff in Windows to become public so that the market can punish Microsoft for writing bad, crash prone, stupidly functioning, software. Under the current government proposal, this will not happen.

Daniel Winter, President
Brookline Print Center
370 Boylston Street
Brookline MA 02445

MTC–00028844

From: Seth Mearig
To: Microsoft ATR
Date: 1/28/02 6:13pm
Subject: microsoft settlement

Dear Judge,

I am not always entirely in favor of heavy-handed government influences, but I do believe that Microsoft has gone too far in some of its business practices. I do not think the Proposed Final Judgement goes far enough to sanction a company that has proved itself capable of willfully violating laws and engaging in monopolistic practices. Please look again at the PFJ and give Americans some freedom in the area of operating systems, web browsers, and other software programs. If something is not done to check Microsoft now, it may be too late in the future.

Sincerely,
Seth Mearig
3025 Royal Street
Los Angeles, CA 90007

CC:microsoftcomments@doj.ca.gov@ inetgw,dkleinkn@yahoo...

MTC–00028845

From: Jana Marie Goodwin (TASCA)
To: Microsoft ATR
Date: 1/28/02 6:13pm
Subject: MICROSOFT SETTLEMENT

As a Microsoft consumer, employee and shareholder, I felt it my obligation to write on behalf of Microsoft corporation. Our government has spent more time, money and resources fighting Microsoft Corporation than Terrorism! And all based upon allegations

from our competitors and their political supporters. As a tax payer, I question this, as being the best use of tax dollars and government resources and the best place for efforts to be invested.

Microsoft has a passion for the customer and it's products and technology. I've been proud to represent them as an employee and to help our customers succeed and grow their businesses with Microsoft technologies and products. I have over the years, continually had happy customers who felt Microsoft contributed greatly to their success and the growth of the industry and was a true partner in their businesses.

Microsoft is not Big Tobacco, it is not misleading, deceiving or intentionally hurting consumers, which makes the allegations and continued lawsuits increasingly more difficult to rationalize. Why should competitors reap the benefits of this suit?

If consumers and the general public are being hurt, why won't the additional 9 states accept the settlement that proposes to help the consumer and benefit and educate the general public and make technology accessible and available to those who would not have exposure otherwise ?

What I fear, is that the focus has moved away from what is best for consumers, partners, customers and the industry, (not to mention our Nation's economy) by the efforts of competitors and competitive interests, and is aimed at taking down a ''powerhouse'' or ''the richest man in the world''. Is this really as objective a process as it should be?

What is good for ''competitors'' may not be what's good and healthy for innovation and the industry.

Punishing successful companies and entrepreneurs, is creating an environment that destroys the motivation to innovate and improve and invest in new and improved technologies in all facets of our economy. The value placed on Intellectual Property can not be negotiated away. Will you next have COKE, give PEPSI, their recipe? Or throw patents out the window in an effort to level the playing field and stifle innovation all together? There is a difference between Open standards and giving away intellectual property to competitors, then the consumer loses.

And would our competitors willingly give us their source code and intellectual property? If we are leveling the playing field then shouldn't everyone comply?

Based upon the state of our economy, and the recent ENRON scandal, I fear Microsoft is headed in the same direction and thus not hurting the ''Richest Man in the world'' or this big, bad, bully of a company as it is portrayed, but the average American worker and investor in Microsoft in any fund or pension plan nation wide. My pension and retirement funds have plummeted over the last 2 years as this lawsuit ensues and continues. I fear I will end up like the ENRON employees as I watch my 401 K value fall as a result of this lawsuit and the impact it has had on the economy as a whole and the entire tech sector. Over the years, Microsoft has committed to changing it's business and licensing practices multiple times to comply and paid over $600M last quarter relating to the lawsuit. At what point can we all resume business and our competitors and special interests be silenced?

Why are other States, not accepting the proposed settlement and accepting the terms of the settlement , whatever happened to torte reform?

Can't this battle be fought in the market place and not in the court room?

Thank you,
Jana Marie Goodwin
OEM Business Development Manager
Microsoft Press
CDDG
mspress.microsoft.com

MTC–00028846

From: Orpheus Colin Vazquez
To: Microsoft ATR
Date: 1/28/02 6:15pm
Subject: Microsoft Settlement

The current settlement made by the DOJ, failed to meet the changes hoped for by myself, and I'm sure many others. A quick settlement was reached, but no real punishment was delivered to the company, and it seemed as if the DOJ quickly gave up. Hopefully a better agreement can be reached in the future with the last states that have kept their claim against mircosoft, and I hope futhermore that this case if ever brought before a judge in the future by the DOJ, I hope they can further persue their goals in the case, and not give up so quickly. Microsoft continues to show practices which prevent competition. They continue to dominate areas of markets without it seems any hope for future competition with the settlement that has been reached. Hopefully something can and will be done about this one day.

Orpheus Vazquez

MTC–00028847

From: Joanna
To: Microsoft ATR
Date: 1/28/02 6:20pm
Subject: Microsoft Settlement

January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am acutely dismayed that our government has decided to insert itself into the affairs of private businesses. I do not believe it is the responsibility of the government to regulate business. The Microsoft antitrust case is just another example of the state pandering to petulance. Companies can and should have the ability to stand on then own feet. I am disgusted that every time a conflict arises in business, it is acceptable to run to the government for protection instead of toughening up. This whole suit has been a colossal waste of time and money not only on the part of the government, but on Microsoft's part as well. They should have been putting their resources towards innovation, not litigation. I believe the government should back off in this case. There is absolutely no need to federalize what is simply the inability of companies to take their licks and keep moving in a fiercely competitive atmosphere.

I do not claim that Bill Gates is a saint. He is a tough competitor, and I understand how companies can feel daunted by Microsoft's prowess in the market. But I believe consumers are able to judge for themselves what is good and what is not, and are capable of regulating big business through purchase and support of products. The government has no fight to take that privilege away from consumers. The settlement requires Microsoft to disclose source code from its Windows operating system, allowing competitors the ability to work within Microsoft's operating system instead of having to develop a quality operating system on their own. It also requires Microsoft to refrain from retaliation when software is put on the market that directly competes with Microsoft software, but this just makes companies weaker by reducing the severity of competition in the market. Restrictions breed contempt, and contempt is not productive. F.A. Harper* wrote, ''Human goodness can only grow in a climate of liberty.'' If liberty is removed from the technology market, the government cannot expect goodness to remain.

The companies and states who are continuing to pursue litigation are opportunists. They are the result of an education system that has indoctrinated them to believe that it is acceptable to steal from one's neighbor as long as one has the government do it for them. They take privileges for granted and claim them as rights. It is nothing but political whoring. It is wrong. The litigation needs to stop now, before this kind of behavior is reinforced any longer. It is a total waste of creative and productive energy—and of the resources that would otherwise support these essential elements of a health economy and prosperous society.

Sincerely,
Joanna Parker

F.A. Harper was a revered scholar and founder of the Institute of Humane Studies, which still continues at George Mason University in Fairfax, Virginia.

MTC–00028848

From: H Pittell
To: Microsoft ATR
Date: 1/28/02 6:16pm
Subject: Microsoft Settlement

I am writing to give my support to Microsoft in the recent Department of Justice v. Microsoft antitrust case, and ask that you approve this settlement. I have Microsoft products and approve and agree with what Mr. Bill Gates has been trying to do—and has succeeded—in doing so by making softwear available to the average person, of which I am one, and at an affordable price. Just what is it that he has done that is contrary to law? I have always thought that by making a superior product with a reduction in price you would be serving the public. Personally, I think it is ''sour grapes'' on the part of the competitors of Microsoft who run crying to the government that what he has succeeded in doing, and doing so well, comes under antitrust. Also the attorneys-general who have refused to enter into a settielement always have been able to appoint ''high powered'' law firms to represent their state which, of course, calls for huge fees—not

fees, as far as I am concerned, but ''pay offs.'' I do not know the technicalities of the settlement nor would I be able to understand the testimony in the actual trial.

I am merely an average citizen, with an average education with a family to support who is interested in justice for the average person and want to pay a fair price for a product which, to me, is outstanding.

What is it that Shakespeare said about lawyers?

Harold Pittell

MTC–00028849

From: John A. Hossack
To: Microsoft ATR
Date: 1/28/02 6:14pm
Subject: MS Settlement

[Text body exceeds maximum size of message body (8192 bytes). It has been converted to attachment.]

Microsoft Settlement
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
From: John Hossack
617 Davis Ave
Charlottesville
VA 22901

I wish to comment on the proposed Microsoft settlement. The Court of Appeals affirmed that Microsoft (MS) has a monopoly on Intel-compatible PC operating systems, and that the company's market position is protected by a substantial barrier to entry, and that Microsoft is liable under Sherman Act 2 for illegally maintaining its monopoly. According to the Court of Appeals ruling, ''a remedies decree in an antitrust case must seek to ''unfetter a market from anticompetitive conduct'', to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future''.

Like all those found guilty of a crime, Microsoft need to be punished for their actions—ideally in a way that attempts to restore competition and undoes the damage inflicted on the consumer by their anticompetitive behaviour. MS has profitted greatly from their behaviour, and the fruits of their illegal actions must be denied to them.

Previous court ordered remedies have shown that Microsoft willfully ignores and attempts to circumvent any restrictions placed on them by careful selection of the language used in these remedies, and stalling with continued appeals such that by the time a resolution occurs, there is no surviving competition. Microsoft show no signs of remorse or attempts to change their pattern of behaviour. Indeed, while conceding certain points on existing Operating Systems (OS), they are careful to ensure that applications (such as Microsoft Office Suite) and future products such as .NET are excluded from any restrictions. It is clear from their pattern of behaviour that they will attempt to monopolise these markets, and that nothing but the most severe restrictions on their behaviour will have any effect.

Since many of the companies adversely affected by Microsoft are no longer operating due to the illegal monopoly, it is hard to make reparation to them. Rather, the remedy must seek to redress the harm done to the consumer, and to prevent Microsoft continuing to use its illegaly gained market dominance to monopolise new markets. It is apparent that Microsoft traditionally gains dominance in a new market buy tying sales of one product to sales of another— for example, the bundling of Microsoft Office with Windows, and the intimidation of Original Equipment Manufacturers (OEMs) to ensure that this continues to the exclusion of competitors. Their willful circumvention of previous court restrictions, which violate the spirit if not the exact letter of the agreements, indicate that MS must be given no latitude in which to avoid punishment. The only option remaining if this is true, is a structural remedy.

Structural Remedy:

The existing MS corporation must be split into at least 5 separate companies, each of which is barred from operating in the other 4 areas or joining with one of the other compnaies for a period of not less than 10 years. The company should be split along the following lines:- Operating Systems, Computer Programming Languages (must include .NET and C#), Applications (such as MS Office), Hardware (including XBox), and Internet Services (MSN etc).

Microsoft continually use their monopoly position in each of these sections to dominate others—and must be denied the opportunity to do so in the only method it appears that will work. It is imperative that the .NET be split from all other services, since it is clear MS intends to use this to tie in future applications and services and ''lock out'' competing products. Previous anti-trust cases which have resulted in large corporations being split extensively detail prohibitions on these individual companies.

It is clear that despite all evidence pointing to a structural remedy as being the only solution, the courts are unlikely to impose such a remedy. Whether or not this is implemented, the following aspects of MS illegal behaviour must be addressed.

Consumers Overcharged and Require Compensation:

In addition to monopolising markets, the consumer has been harmed by Microsoft products being overpriced than would have occurred had competition been available. Once again, Microsoft must be denied any profits from their illegal activities. The consumer must be recompensed for this, and so a substantial cash fine should be levied against MS, which would then be divided amongst all registered users of Microsoft products. This fine should be no less than 1 billion US dollars—note that MS currently have cash reserves of over $35 billion and this is increasing rapidly—it is a small fine to MS.

Should this not prove to be practical, then MS should still be fined, but with the money going to the purchase of computer and computer related hardware for schools, colleges and charity groups. MS should not be allowed to provide software for these systems, and alternatives such as Apple computers or free software such as Linux must be used instead. This will not only return some benefit to the consumer, but prevent further harm done to MS Competitors.

Applications Barrier to Entry:

Significant barriers exist to competing products in the marketplace due to Microsofts illegal monopoly. These must be eroded and removed in the following ways:

By forbidding retaliation against OEMs, Internet Access Providers (IAPs), Independent Software Vendors (ISVs), and Independant Hardware Vendors (IHVs) who support or develop alternatives to Windows.

All APIs and file formats (MS Word, MS Excel, MS Access, MS Powerpoint, MS Outlook and Outlook Express, WMP—the Microsoft Middleware Products) should be available to ISVs and HSVs. File formats should be open and available for public viewing at no cost. Any changes made to APIs and file formats must be announced and specified a period of time must have passed before these changes are implemented (e.g. 180 days for APIs and 90 days for file formats). Current definitions of APIs allow MS to avoid releasing documentation on many important interfaces. File formats, while an important barrier to entry, are currently not included in the proposed settlement and must be publicly disclosed.

Wording of the licence agreement for ISVs accessing APIs and documentation shall state that it will solely be for the purpose of interoperating with a Windows Operating System Product or with application software written for Windows. Current phrasing limits this to OS only.

Definitions of requirements for companies or individuals to access APIs should be publicly available and independently enforced—MS should have no say in this part of the decision process.

All patents covering the Windows APIs must be disclosed. Currently those ISVs producing Windows-compatible operating systems are uncertain if they are infringing on Microsoft software patents.

Wording of the current proposed final judgement should not prevent ISVs using released APIs to make alternative OSs compatible with Windows based OSs. Forced Upgrades Must be Stopped:

MS abuses its monopoly postion by forcing consumers to upgrade from older products to newer ones, at substantial cost. Since there is now no effective competition due to the illegal actions, the consumer has no alternative but to go with MS products. By altering file formats in latest releases that are incompatible with older versions, and by removing older products from sale, MS force the consumer to upgrade.

To prevent this, file formats for all Office Applications and WMP must be publicly available at no cost to allow alternatives to be developed. This is mentioned in detail above.

To prevent the removal of older products that are still viable applications, Microsoft must continue to support older products for at least 15 years after their introduction. MS may choose not to support the software during this time citing that it is not a useful product, in which case it is allowed to do so but must make the entire MS source code to

the application publicly and freely available. Under these circumstances, users may maintain and compile the software themselves. This will apply to operating systems as well as middleware and applications.

Prohibiting practices towards OEMs:

In addition to current restrictions in the Proprosed Final Judgement (PFJ), Microsoft must be restricted against reprisals for OEMs that sell PCs with a competing OS but no Microsoft OS.

The PFJ requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs if they offer competing products. There should be selected ''groups'' of OEMs of varying sizes, for example OEMs 1–20, 21–100, 101–1000, 1001+, and in those bands prices must be uniform and published on all MS OS, Applications, and Middleware products. Market Development Allowances (discounts) to OEMs must be fully disclosed in public. Discounts may not be given in one product (e.g. Office Applications) due to sales in another product (e.g. OS). This will prevent MS using its OS dominance to move its monopoly into other areas.

Enforcement:

MS will attempt to circumvent all remedies to the best of their ability. Strong, independent and effective supervision of MS is necessary, and a panel of several industry experts (chosen by the courts and complainants, with minimal input by MS) must be allowed full and unfettered access to MS documents. They will be provided with support staff, and be paid for by MS at competitive rates given their experience. This panel should have the ability to force release of MS documentation and source code, and delay the release of products until compliance is complete. Any undisclosed APIs discovered should result in a large cash fine. Current proposed enforcement allows no incentive for MS to comply with the remedy.

Some of the above stated remedies may seem extreme, but given the magnitude of the MS corporation and the extend to which it has broken the law, the remedies must be of a similar magnitude. As stated in the first few paragraphs, the intent of any remedy is to restore competition, terminate the monopoly, deny the benefits of the illegal actions, and prevent such abuses from ocurring in the future. Due to the uncooperative nature of MS, the remedy must be decisive and strongly enforced.

While MS has already done considerable harm to the consumer by its illegal actions, there are many future markets in which MS can gain a further monopoly—and exacerbate the problem. They must be prevented from doing so. If an individual commits a crime where the public have been illegaly overcharged that individual will be fined, and perhaps imprisoned—and certainly would be if he was a repeat offender shown to ignore previous court orders. Microsoft must be no different, or justice will not be done, and will not be seen to be done.

John Hossack

MTC–00028850

From: Mike (038) Barb Stineman
To: Microsoft ATR
Date: 1/28/02 6:40pm
Renata Hesse January 28, 2002
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

One thing that sets America apart from almost every other country is our free market system. Recently, however, this system has been in jeopardy. What I have witnessed over past few years between Microsoft and the United States government is infuriating. You would think that the federal government would have learned from the IBM case—that the high-tech industry moves at a pace far greater than that of the federal government bureaucracy.

This case has become a political football and as a result the Nasdaq has plummeted, America's international technology leadership has been compromised, and taxpayers'' time and money has been wasted.

The fact is, no consumer harm by Microsoft was proven in this case—which was the basis for the suit in the beginning. Therefore, Microsoft has been persecuted for making a better product and using aggressive marketing to promote it better than its competitors.

The settlement that is before Judge Kollar Kotelly would do what should have been done long ago: end the federal case against Microsoft. The settlement, in my mind, is more than fair to the government— keeping Microsoft under review for a period of time and making it tougher for them to compete. I support the proposal for the simple reason that it will bring closure to the case.

I hope that you will keep my comments in mind as you review your position on the settlement to the Microsoft case.

Sincerely,
Michael J. Stineman, President
Citation Homes, Inc.
PO Box AF
Spirit Lake, IA 51360
Ph 712–336–2156

MTC–00028851

From: Robert Arango
To: Microsoft ATR
Date: 1/28/02 6:16pm
Subject: Microsoft Settlement

Please refer to the attached letter. I fully support the Microsoft settlement. Let's get off the dime on this.

Thank you
Ann Arango
+Pu .... +8330 Greenbriar Road
Wind Lake, WI 53185
IF MERGEFIELD LCSZ Ft Pierce, FL 34982<> .....

January 21, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

This letter documents my support for the proposed settlement for the Microsoft antitrust case. This case has been active for over three years. I would like to see this case finalized as soon as possible. The proposed settlement ensures that Microsoft's competitors have access to Microsoft interface programs, protocol, and documentation so that they can promote their products and attach them to Windows. Also, Microsoft will use a uniform price list when licensing Windows out to the twenty biggest computer companies in the U.S. Additionally, Microsoft won't retaliate against companies that use or promote Microsoft's competitors' products. Clearly, the terms of this settlement are not too easy on Microsoft.

IF MERGEFIELD PARA2 But clever people like me who talk loudly in restaurants, see this as a deliberate ambiguity. A plea for justice in a mechanized society.<> ..... This settlement should be adopted at the earliest opportunity. The IT industry needs to focus on innovation without the burden of further litigation. Thank you. IF MERGEFIELD PARA4 Ecce homo ergo elk. La Fontaine knew his sister, and knew her bloody well.<> IF MERGEFIELD PARA5 But is suspense, as Hitchcock states, in the box. No, there isn't room, the ambiguity's put on weight.<>

Sincerely,
Ann Mango

MTC–00028852

From: Claude Holland
To: Microsoft ATR
Date: 1/28/02 6:19pm
Subject: Microsoft Settlement
3824 Williamsburg Circle
Birmingham, AL 35243
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I appreciate the opportunity to comment on the proposed settlement between Microsoft and the federal government in the antitrust case.

I believe it is in the public interest to end the case and accept the settlement that is on the table. The case has been pending for three years, and if you go back to Court now it might take at least that much time to reach an outcome. The settlement agreement negotiated by your Department with Microsoft, with the help of a court-appointed mediator, offers the opportunity to end the case now and help the economy.

Microsoft has made a number of concessions, but its primary concession, once implemented, will offer immediate opportunities for growth in the software industry. Under the settlement, Microsoft has agreed to allow competition within its Windows operating systems from non-Microsoft software programs upon finalization of the settlement. This will provide non-Microsoft software designers and manufacturers the chance to step up and compete within a very short period.

I hope you see the wisdom of accepting this agreement rather than continuing in Court. Thank you for allowing me the chance to offer my point of view.

Sincerely,
Claude Holland

cc: Representative Spencer Bachus

MTC–00028853

From: Daniel Clifton
To: Microsoft Settlement
Date: 1/28/02 6:12pm
Subject: Microsoft Settlement
Daniel Clifton
3 Avon Road
Edison, NJ 08817
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies. Thank you for this opportunity to share my views.

Sincerely,
Daniel Clifton

MTC–00028854

From: Bruce Umbaugh
To: Microsoft ATR
Date: 1/28/02 6:18pm
Subject: Microsoft Settlement.

I wish to comment on the proposed settlement of anti-trust litigation United States of America versus Microsoft.

First, I am surprised that the government would agree to terms that do not penalize Microsoft for its past conduct. Having been found in violation of federal law, with a record of apparent disdain for proceedings against it, and as I understand the facts manifestly having violated the strictures of previous such agreements, I would think that Microsoft would be expected to pay some penalty for its corporate misdeeds. Not to penalize Microsoft for its conduct seems unjust, unfair, and I am sure quite unlike the results individual citizens would expect if found similarly to have violated federal law.

Moreover, I believe that this result undercuts respect for law generally in the popluation (''it only matters how much money you have,'' people will say) and undercuts respect for anti-trust law in the corporate world in particular. I think that Microsoft should have to pay a penalty for its years of misconduct and apparent bad faith in dealings with the government, with manufacturers, competitors and those who license Microsoft products, and with consumers and citizens.

Third, in addition to the need for a penalty, I see a need for some structural remedy, not just an agreement about future conduct. Given the particulars of this agreement, as I understand it, Microsoft has far too much latitude to avoid doing the right thing while still arguably conforming to the consent agreement. Microsoft is at liberty, largely at its own discretion, to withhold information crucial to interoperability from competitors it deems ''inauthentic.'' Microsoft can, as I understand the agreement proposed, withhold information from those working to make software available under the GPL as threatening Microsoft's intellectual property. What little oversight is called for is to happen largely in secret, at places of Microsoft's choosing, under terms Microsoft sets, and conducted in part by parties appointed by Microsoft. With what I understand about Microsoft's past record in these matters, it is hard to expect that Microsoft will be a ''good citizen'' in its future dealings and behavior. To my mind, this makes structural rather than conduct remedies necessary.

Finally, if this agreement is settled largely as proposed, and if the state attorneys general fail to sustain their action against Microsoft—one of the richest corporations we might ever know, able to carry on litigation indefinitely far into the future—what might we reasonably expect? If the future is like the past, we should expect Microsoft to try to leverage its desktop-operating-system monopoly into a server operating system monopoly, to try to disenfranchise on the Net content providers not partnering with or otherwise paying tribute to Microsoft through its .Net and Hailstorm undertakings, to try to stigmatize competitors in the media display space by limiting interoperability and exploiting its exisiting monopolies and choke points. Some action on integration of Windows Media Player would help here. Action on browser technology would help here. Any plausible action on ''middleware'' would benefit consumers and benefit competition. Without such remedies—ones that do not require continual maintenance and political will on the part of overseers and that do not require the goodness and ongoing acquiescence of Microsoft—there is every reason to think that the result will be something like an Internet controlled by Microsoft.

An Internet world controlled by Microsoft—or any similar entity—is a frightening prospect. The Internet became so amazingly valuable because it has been, in the words of the Court of Appeals in the Communications Decency Act decision, ''the most democratic medium the world has known.'' The ''gift economy'' that drove the development of the Internet, and in which the real value of the Net still resides for many users (whether they know it or not), would be badly threatened if Microsoft could extend its monopoly to control media distribution, for example, or to control authentication and personal identification through its new Passports strategy.

I wrote about these issues for a popular audience when this antitrust litigation was at an early stage: ''So it's up to consumers like us, and the government that represents us. It's up to us to prevent what has been history's most democratic medium from being trivialized and demeaned. It's up to us to keep the Web from going down the same path as TV itself.'' (''Tailoring the Web for Profit,'' St. Louis Post-Dispatch, June 15, 1998, and Computer underground Digest, June 1998. http://www.webster.edu/bumbaugh/net/tailorweb.html)

I hope that my government will do better than has been proposed. I hope for a good outcome in this case, for justice that punishes the evildoer and takes away its ill-gotten gains, for remedies that will send the right message to individuals and corporations considering misconduct, and for remedies that will benefit all of us today and future generations.

Thank you for the opportunity to comment.

Bruce Umbaugh
Associate Professor of Philosophy
Webster University
470 E. Lockwood Ave.
St. Louis, MO 63119
Bruce Umbaugh
Humanize the Internet:
Assoc. Prof. (Philosophy)
Ethernet the Arts faculty.
Webster University
—Peter Danielson
St. Louis, MO 63119 USA
http://XRayNet.editthispage.com
bumbaugh@webster.edu/bumbaugh@well.com
CC:bumbaugh@webster.edu@inetgw

MTC–00028855

From: William McKenna
To: Microsoft ATR
Date: 1/28/02 6:18pm
Subject: Microsoft Settlement

I have been a resident of the United States since birth and a user of Microsoft products for some twelve years.

I believe that you should withdraw your consent to the revised proposed Final Judgment settlement.

This settlement will not provide a sufficient influence on Microsoft to abandon its monopolistic practices.

Microsoft should NOT be allowed to use its popularity to limit choice among computer manufacturers and therefore, computer users across the world. Here's why:

There are several good operating systems out there today. Each has its own strengths and its own weaknesses. None of them are the perfect solution to every problem. I believe that we all do ourselves a great disservice by forcing users to grow accustomed to the fact that Microsoft (and maybe Apple) is all that there is. Manufacturers should be allowed to provide, NAY! encouraged to promote, side-by-side operating system comparisons on the same machine. For better or worse, let the people decide!

So again, please rescind your agreement. Make Microsoft act properly.

Besides, I doubt that it's going to break them!

Sincerely,

William McKenna
407 West 18th #207
Austin, TX 78701
512.478.9617

MTC–00028856

From: Satish—Channa@notes.amdahl.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:18pm
Subject: Microsoft Settlement

I really don't understand the settlement that the 9 states made with Microsoft and DOJ. Looks like, it is just a slap on wrist. What ever monitory damages DOJ is assessing against Microsoft, Microsoft can get that money from the consumers by just raising the price of Windows $2–5. Here are my arguments and suggestions.

. We all know now that Microsoft is a monopoly. One of the main reasons is that there is no competing windows operating system. Just like AT&T was broken into pieces and every piece was able to deliver similar services, you are not going to solve the problems. I think, the company should be broken down into 4 main companies—

. Divide it into 2 competing Windows companies, one may sell NT type operating system and the other selling for homes. Let them compete and bring the price of windows down. If you look at the price of Windows product, it has kept on going up through out the decade. They don't even provide any books or training material with it. Again, they provide only 60 days guarantee and that is nothing.

. 3rd part of the company should be Application systems and other software, like office, mapping, etc. Now, if this was an independent company, they will provide software for other platforms to compete with other companies. Also, this company will not get any privileged information any time sooner than the other competing companies.

. 4th part of the comany should be hardware, gaming area.

. Force Microsoft to reduce the price of the operating system every year for the next decade.

.Force them to give 1–2 year warantee.

.Operating system should include only the functionality needed for the operating system. It should not include all type of other packages like Internet explorer, Video player, etc. Every time, Microsoft cannot compete against a company, they start bundling the software. They don't lose any money. They just increase the price of Windows. Also, if you look at the history of TCP/IP products offered by 3rd party companies like NetManage/Chameleon, they were were superior products.

When Microsoft bundled it in Windows 95, not only they made the whole connection as a rigid environment but also they caused problems for the other comanies. Other companies could not offer the same flexibility they were able to offer even in Windows for work groups.

. All government contracts should be bid with 2 vendors with compatible products, so that the government can compare them easily from the initial cost, maintenance (which has been a nightmare with Microsoft software), compatibility, upgrades, etc. If these kinds of guide lines are there,

MTC–00028857

From: J Wilson
To: Microsoft ATR
Date: 1/28/02 6:19pm
Subject: Microsoft Settlement

To whom it may concern,

The settlement of the Microsoft antitrust trial is entirely inadequate, clearly favoring Microsoft.

It is difficult to enforce and easily evaded. I do not believe the DOJ's settlement offer is a serious attempt to fairly resolve this major antitrust issue.

Jim Warhol
Berkeley, California

MTC–00028859

From: YARCOBR64@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:21pm
Subject: ANTI TRUST SETTLEMENT

DEAR SIR,

I URGE YOU TO SUPPORT THE ANTI TRUST SETTLEMENT BETWEEN THE DEPT. OF JUSTICE AND MICROSOFT. IT IS FAIR AND JUST TO ALL PARTIES CONCERNED. SIGNED

MAX FINESMITH 2ND LT. US AIR FORCE
WWII
EX POW GERMANY

MTC–00028860

From: JenDuck@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:21pm
Subject: Microsoft
2227 Huron Street
Bellingham WA 98226
January 24, 2002

I am writing you today to encourage you and the Department of Justice to accept the Microsoft antitrust settlement. The issue has been dragged out for over three years and it is time to put an end to it. A settlement is available and the terms are fair. I would like to see the government accept it.

In order to reach a settlement, Microsoft has made many concessions. They have agreed to give computer makers the flexibility to install and promote any software that they see fit. Microsoft has also agreed not to enter into any agreement that would require any computer maker to use a fixed percentage of Microsoft software. Also, Microsoft has agreed to license its software at a uniform price to computer makers no matter how much they use it. Microsoft and the industry need to be able to move on. The longer that this suit goes on, the worse it will be for everyone. Microsoft has agreed to many terms to reach a settlement. The settlement is fair and should be accepted. Please accept the Microsoft antitrust settlement.

Sincerely,
DOLORES HANSON

MTC–00028862

From: john waszewski
To: Microsoft Settlement
Date: 1/28/02 6:15pm
Subject: Microsoft Settlement
john waszewski
214 south johnson blvd.
gloucester, nj 08030
January 28, 2002

Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
john waszewski

MTC–00028863

From: mitchellrodney@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:21pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Rodney Mitchell
P. O. BOX 3361
Boulder, CO 80307–3361

MTC–00028864

From: Kirby Thornton
To: Microsoft ATR
Date: 1/28/02 6:24pm
Subject: Microsoft Settlement.

TO: Renata B. Hesse

This is a letter I sent to the various State Atty Generals not wishing to concur on this matter under the current settlement proposal. I agree with their efforts; it was suggested that I forward my letter to you for your review and so that is now done.

Thanks you for your attention to this issue,
Kirby Thornton
PO BOX 100
Haymarket, VA 20168

———— Forwarded message ————
Date: Tue, 22 Jan 2002 11:24:46 -0500
From: Richard Blumenthal <attorney.general@po.state.ct.us>
To: Kirby Thornton <rocket@cpcug.org>
Subject: Re: Please, Don't Settle with Microsoft.

Dear Attorney General,

Thank you for not just giving the Microsoft settlement a ''rubber stamping'' of approval. I do not believe the Federal Government's proposed settlement with Microsoft, in its current form, is adequate and that stricter measures must be imposed on the company to prohibit such anti-competitive tactic from being used in the future.

As a programmer and a system administrator, I have used a wide variety of hardware and software over the last dozen years including MVS, OS/2, many flavors of DOS, several versions on UNIX and even some Windows machines too. It saddens me when an individual with whom I have a kindred sprit goes astray... hell, just goes bad. It was unnecessary for Microsoft to engage in the practices it did but that does not mean it should not suffer as a result of its actions.

And their ways continue. Select your favorite HTTP browser and search engine and look for the phrase ''Microsoft outlaws Perl'' from the July 2001 timeframe. Also, you may find this an interesting read: http://www.zdnet.com/intweek/stories/news/0,4164,2781638,00.html.

Contrary to arguments by Microsoft that their products encourage competition, I believe the opposite is true; that Microsoft's marketing strategies actually discourages competition and stunts technological growth.

I applaud your efforts to seek stricter measures and encourage you to stand your ground.

Regards,
Kirby Thornton
PO BOX 100
Haymarket, VA 20168

Quote of the Year, 2001:

''If they are really worried about ''potentially viral software'', what about Visual Basic for Applications?''

>From a USENIX note posted by ''Terry Branaman'' <tbranam@firstworld.net>
Date: Fri, 6 Jul 2001 15:06:53 -0600
NOTE: Most recent malicious computer code that damages Microsoft systems is written in Visual Basic.

MTC–00028865

From: Roger Sherron
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 6:20pm
Subject: Microsoft Settlement

U.S. Department of Justice,

After all this work, you are going to let them get off with just a slap on the wrist? For shame!

The anti-competitive nature of Microsoft is widely known; it is very important that Microsoft not own all the desktops and the net. —Roger Sherron

Gluon Networks
Email: roger.sherron@gluonnetworks.com
Phone: (707) 285–1499
Fax: (707) 794–9651

MTC–00028866

From: Timothy R. Chilson
To: Microsoft ATR
Date: 1/28/02 6:25pm
Subject: Microsoft Settlement

Timothy R. Chilson
P.O. Box 7125
Mount Jewett, PA 16740
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

As a Microsoft shareholder and user, I am writing to express my opinion about the recent antitrust settlement between Microsoft and the US department of Justice. While I am glad to see that Microsoft will not be broken up, I feel strongly that the penalties are still too harsh.

I am a firm believer in private enterprise being unconstrained by government agendas. And in this particular case state governments have no right to be continuing on with litigation. Microsoft has developed new products and services more rapidly than its competitors and it has been a pillar of strength for our economy during the recession.

I hope sincerely that your office urges the nine states withholding to discontinue their actions and let Microsoft begin focusing on what it does best. This is what is in the best interest of the American public, and what is good for the economy.

Sincerely,
Timothy R. Chilson
cc: Senator Rick Santorum

MTC–00028867

From: mschweis(a)ucsd.edu
To: Microsoft ATR
Date: 1/28/02 6:26pm
Subject: I am extremely opposed to the Microsoft Settlement

Hello.

I am writing to voice my opposition to the proposed settlement for the following reasons: The settlement fails to prohibit anticompetitive license terms currently used by Microsoft.

The settlement fails to prohibit intentional incompatibilities historically Used by Microsoft to prevent fair competition.

The settlement contains misleading and overly narrow definitions and Provisions.

The settlement doesn't take into account Windows-compatible competing operating systems.

The settlement fails to prohibit anticompetitive practices towards distributors.

Please do not accept this settlement as just, because it is not. It is a gift to Microsoft and will do little or nothing to tackle the problems that necessitated its creation.

Thank you
Melissa Schweisguth
San Francisco, CA

MTC–00028868

From: william—mcqueen@apl.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:23pm
Subject: Microsoft Settlement

In paragraph 4 of the complaint, you should have mentioned that the reason there is no potential threat to Microsoft's operating system monopoly from direct competition by existing operating systems is that Microsoft has already eliminated any competing operating systems on the Intel platform from the market by it's anti-competitive practices. Check and see if you have any comments from Gary Kildall formerly of Digital Research.

Time does not permit me to present a detailed history of the events, but a short history shows that Microsoft has been engaged in business practices of questionable ethics since the early 1980s.

When the group at IBM who designed the original IBM PC was looking for an operating system, they were in talks with Gary Kildall of Digital Research to port his CP/M (Control Program for Microprocessors) from the Intel 8080 and Zilog Z80 platform to the Intel 8086/8088 platform for the IBM PC. One version has it that they were in final negotiations with DR when Gary Kildall left for a skiing vacation with the understanding that things would be finalized at a meeting the following Monday. The folks at IBM called to get in touch with Gary over the weekend and couldn't get a hold of him. Bill Gates found out about this because IBM was negotiating with him for a version of his MBasic to use as a basic interpreter in their system ROM. IBM told them of their problems with getting in touch with Gary Kildall that weekend. Bill Gates told them he had an alternative O/S waiting in the wings. This was not, in fact, the case; but he knew that a small company called Seattle Computer had already ported CP/M to the 8086 so that they could have an O/S for their computer. The story goes that Bill Gates bought Seattle Computer for $10,000 or $15,000 and sold the O/S called SC/DOS to IBM as MS/DOS and entered into a license agreement with IBM that allowed Microsoft to sell the O/S as MS/DOS while IBM sold the O/S as IBM/DOS. When Gary Kildall arrived in his office the following Monday, he called IBM only to find that they had already licensed the rights to modify and use MS/DOS from Microsoft. Digital Research marketed CP/M86 and C/Basic86 for use as an alternative O/S for the IBM/PC but it never got very much market share because IBM/DOS was part of the bundle shipped with every PC and a version of MS Basic was burned into every system ROM.

Later, about the time that Microsoft was shipping MS/DOS version 5, Digital Research released a competing product called DR/DOS 7. At the time, Lotus, Intel and Microsoft had published a memory specification called LIM/EMS which allowed Lotus 123 to use more than the 640 megabytes of main system memory on an IBM PC or clone to store data. A little company called Quarterdeck had

figured out a way of intercepting LIM/EMS system calls to use the Extended Memory available on a 80186 or 80286 system as LIM/EMS memory. At the time, Microsoft did not worry much about Quarterdeck shipping a memory manager as an add-on to MS/DOS but when Digital Research figured out how to incorporate those features (and others) into DR/DOS 7 something had to be done. Microsoft entered into agreements with companies like Compaq Computer that they would ship MS/DOS exclusively with their products. If Microsoft found that any vendor was shipping products with any competing O/S then Microsoft would charge them the retail rate for every copy of MS/DOS that the company shipped with their computers. DR/DOS enjoyed a strong after-market with hobbyists and systems integrators who wanted a superior Operating System but it wasn't enough to sustain their business in the face of the competition from Microsoft's exclusive agreements with the hardware vendors. Now, I think you will find that both Quarterdeck and Digital Research are not much more than footnotes in the history of the Personal Computer.

Another Digital Research product, Gem, was a Graphical User Interface (GUI) that was once used by one of the two leading Desktop Publisher software packages as the user interface. I don't remember the details of this case, but this software vendor was convinced that they would have greater market share if they converted their package to work with Microsoft Windows 2.0. After that, Gem was no longer bundled with the Desktop Publishing software and Gem dropped out of site.

One can only speculate on what the state-of-the-art for personal computing devices would be now if Microsoft had not created this monopoly market for it's operating system products. We are only now beginning to see enhancements such as voice and handwriting recognition technology. These are just two examples of technology that would have been in widespread use years ago if Microsoft had had competition in it's markets. I believe that every consumer of electronic devices such as telephones, personal computers and other consumer electronic devices has been harmed by the lack of choices and innovation in the markets of Operating Systems and productivity software over the last two decades. To give Microsoft significant market share in one of the few areas they have not been able to gain market share on their own, the educational market, is not a fair settlement.

Also, if you look at where Microsoft has focused it's strategy since they were brought to trial, you will see that they have shifted their restrictive licensing policies from the manufacturers to the end-users. The press is filled with many examples of complaints from Corporate IT executives about the restrictive enterprise licensing agreements that Microsoft is forcing them into. Microsoft has also designed their latest Operating System, Windows XP, so that you must supply them with a hardware ''signature'' in order to continue using that software beyond the introductory period. This feature also restricts you from installing this software on more than one computer. Microsoft is also engaging in litigation to prevent a competing O/S said to be capable of running some software designed for older versions of Microsoft Windows from ever coming to market. There seems to be very little in the settlement to prevent Microsoft from continuing these anti-competitive practices that have stifled the market.

Again, I wish that I had more time to substantiate some of the history that I have recalled or to suggest areas where the settlement could be improved but I work in a corporate IT department supporting Microsoft's products. The complex, buggy nature of these products takes up so much of my time that I have not had time to make a better comment before today's deadline. You may find that there are many other people in corporate IT that wish Microsoft didn't have the monopoly in the markets they do have so that they could choose better software for their companies.

Sincerely,
William A. McQueen
william—mcqueen@apl.com
wmcqueen@netzero.net
CC:wmcqueen@netzero.net@inetgw

MTC–00028870

From: Marc Schuette
To: Microsoft ATR
Date: 1/28/02 6:28pm
Subject: Microsoft Settlement

Dear Sir/Madem:

I would like to exercise my right to comment on the proposed Microsoft settlement. I have been involved with the deployment of technology in private businesses for the last seven years and have been involved in the technology industry for the last 15 years. I am currently a Network

Administrator at a private company involved in the wholesale plumbing industry. During my career I have come across situations where system incompatibilities causes by what I feel is poor quality programming on the part of Microsoft. When I searched fro answers to these problems more often than not I came across comments that basically said ''Microsoft believes it should be that way so that the way it is and because they control the operating system it cannot be changed''. Open standards such as JAVA which Microsoft ''broke'' and then when caught in a lawsuit with Sun Microsystems simply refused to include in future versions of the Windows operating system even though the JAVA language held a good chance of easing the burden of portable of software across different platforms (operating systems). Also Microsoft has continually ''tinkered'' with the SMB protocol causing headaches and downtime for any company or person running the open source program SAMBA which allows a company to implement a robust and heterogeneous network. Under Windows 2000 Microsoft modified a version of Kerberos and then called it Microsoft Authorization Data Specification v. 1.0 and required strict disclosure agreement to see the format of the version they had released which had broken networking features that had previously worked.

Programmers were caught between a rock and a hard place because how could they repair the damage if they were not allowed to use the information Microsoft was asking them NOT to disclose?

By ''breaking'' or ''extending'' these current standards Microsoft makes it difficult if not impossible for new entrants and innovators to truly compete in the marketplace. Microsoft has too great of a hold on our desktop operating systems at the current time. The world has seen time and time again that because of the homogeneity of these networks a single virus can move through and cause huge amounts of damage. So why can't network operators move to a more heterogeneous network? The main reason is the limited compatibility between Microsoft and other vendors.

One might say well Microsoft just puts out a better product and the others cannot keep up so don't penalize Microsoft. That statement though could not be farther from the truth. How can anyone compete with a monopoly? If Microsoft can't compete then it simply tweaks the operating system and now a competing vendors product seems to perform far worse than a similar Microsoft product. Isn't it the place of the government to facilitate the marketplace? If so then how can the government or court overseeing this case accept this settlement and believe that acceptable public good was done? Please reject the current settlement and place much tougher restrictions or concessions on Microsoft that open the marketplace to the true innovators and loosen the grip of the incumbent, proprietary solution provider. I could go on and on and on but I think the message I wanted to get across has been made—don't approve the current Microsoft settlement and don't approve any settlement that falls short of facilitating the marketplace. Thank you for your time and consideration on this matter.

Marc Schuette—Consolidated Supply Co.
Voice (503) 684.5904 ext.125
Fax (503) 598.1086
Email schmar@consolidatedsupply.com

MTC–00028872

From: Margaret Crighton
To: Microsoft ATR
Date: 1/28/02 6:28pm
Subject: Microsoft Settlement

YOur Honor,

I am a doctoral student in nursing, writing to express my disagreement with the current microsoft settlement. Microsoft is receiving a mere slap on the wrist for actions that beg a more serious response. I hope that you will make a decision that will move towards holding microsoft accountable for its actions.

Thank you for your considerations,
Margaret H. Crighton,
2224 Kater Street
Philadelphia, PA 19146
215 546 5854

MTC–00028873

From: JOsbo27609@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:29pm
Subject: Microsoft Settlement

Dear Sirs;

As a very satisfied user of Microsoft software, I want to strongly urge you to accept the proposed settlement. This

company is a national treasure and any perceived illegal business practices that it has supposedly been involved in, have been addressed and resolved in this agreement.

Yours truly,''
Mrs. Janice Osborne
8508 Caldbeck Drive,
Raleigh, North Carolina 27615

MTC–00028874

From: Vinson, Danny
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 6:34pm
Subject: Regarding the dispensation of justice

Although no lives were lost in the actions of the Microsoft corporation, I feel that they have flown in the face of legality, ethical business behavior, and quality of workmanship for far too long.

Allowing this company to continue to control how the people in our market, and in the greater world, access information is dangerous, both for the immediate business environment and the longer term information economy. We are still dealing with the decisions made ages ago, when Roman engineers build roads to accommodate two horses pulling a two-wheeled chariot, in the sizes of our cars and space shuttle booster motors (which must be transported by rail, which is based on those same measurements).

The stage is set for us to establish an open environment, where ideas and information can flow free from corporate control—this is the fertile environment from which innovation comes, not from the domination of a single corporate entity.

Please don't allow this settlement to take place with only a token nod that Microsoft has strayed from the path of ethical behavior. Definitely don't allow them to propagate uncontrollably by giving schools their over-valued software and hardware resources—that will only breed a higher degree of market domination, no matter how nice it may seem that they would give things to children. Hold to the intention of this legal action, and remove their ability to subjugate smaller companies to their clearly greedy intentions.

Thank you for your time.
-Danny Vinson
Director, Software Quality Assurance
Xperts, Inc.

MTC–00028876

From: Rick Sanders
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 6:30pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
Fax: 1–202–307–1454 or 1–202–616–9937
Email: microsoft.atr@usdoj.gov

It is time to move on. This settlement represents the best opportunity for Microsoft and the industry to move forward. At this point the settlement benefits the industry and the nation.

Sincerely,
Richard H. Sanders
Technical Services Manager
ITG
4795 Emerald
Boise, ID 83706
208–344–5545

MTC–00028877

From: Alan Wunschel
To: Microsoft Settlement
Date: 1/28/02 6:27pm
Subject: Microsoft Settlement
Alan Wunschel
130 ELLEN CT
OREGON, wi 53575
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
ALAN WUNSCHEL

MTC–00028878

From: Bobbi Cady
To: Microsoft Settlement
Date: 1/28/02 6:28pm
Subject: Microsoft Settlement
Bobbi Cady
1865 N Raymond St.
Boise, ID 83704
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Bobbi Cady

MTC–00028879

From: Kevin A Faaborg
To: Microsoft ATR
Date: 1/28/02 6:35pm
Subject: Microsoft Settlement
January 7, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Being in the data processing industry and witnessing first hand the valuable addition Microsoft has made to the industry, I am writing to support the November antitrust settlement between Microsoft and the US department of Justice.

The settlement is fair, as it requires Microsoft to make concessions that will facilitate competition within the industry without breaking the company up. I am glad to see that Microsoft will be able continue to do business as usual and grow at a rate consistent with its past performance. It is ironic that the states filing suit are dependent on Microsoft's technology.

Microsoft's innovation has set the standard for my industry and I look forward to seeing the settlement finalized so Microsoft can once again lead our nation's IT sector to its position of dominance in the global technology market.

Sincerely,
Kevin Faaborg
5112 Towers Terrace
Pittsburgh, PA 15229

MTC–00028880

From: rgirdner
To: Microsoft ATR
Date: 1/28/02 6:36pm
Subject: microsoft

Dear sirs,

I would like to voice my opinion on the Justice Department case against Microsoft. Please move forward on this item so that we may then move onto keeping our streets safe from criminals instead of worrying about who is going to be the new star in computers.

Rick Girdner
CC:Microsoft's Freedom To Innovate Network

MTC–00028881

From: Raj6953
To: Microsoft ATR

Date: 1/28/02 6:37pm
Subject: Microsoft Settlement
To: Judge Kollar-Kotally,

I am Phil Miller with an MBA. This is to request you to file my objection to the proposed settlement before the court in Microsoft vs. US.

As a daily user of Microsoft's products, I would like to have more options from its competitors. The Proposed Final Judgment allows a government sanctioned monopoly which is bad for all computer users and American business. The proposed agreement violates the three required standards from the courts, and is not even enforceable. It threatens all Microsoft competitors, and I object to this special treatment.

appreciate your your kind consideration.

Repectfully

Phil Miller

CC:Gregory Slayton

MTC–00028882

From: James Monsees
To: Microsoft Settlement
Date: 1/28/02 6:34pm
Subject: Microsoft Settlement
James Monsees
11116 Lakeridge Run
Oklahoma City, OK 73170
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

James M. Monsees

MTC–00028883

From: David Emmick
To: Microsoft ATR
Date: 1/28/02 6:40pm
Subject: microsoft trial

Microsoft is certainly not harming the consumer. I am a consumer and I love their products and the decent prices.

Many of these states and companies which are suing Microsoft are not doing it to benefit the consumers, but to get as much as they can. I attended a Jesuit University, Gonzaga U in Spokane. I find the people intent on getting money from Microsoft are just out to get their hands on some dough. Surely the justice department has more important things to concern itself with. Please, let's move on.

Mary Emmick

Issaquah, WA

MTC–00028884

From: Heidi Michaelian
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 6:39pm
Subject: Microsoft Settlement

I don't think it's wise for our nation to let Microsoft monopolize the computer market in this way. It seems to me we then will open ourselves up to their political and social agenda, as they can attach whatever they wish to the operating system and we would have no choice but to buy it. I don't like the possibilities.

Sincerely,

Heidi Michaelian

213–748–8141

CC:'microsoftcomments(a)doj.ca.gov''

MTC–00028885

From: Erik Kennedy
To: Microsoft ATR
Date: 1/28/02 6:42pm
Subject: Microsoft Settlement

I am not in favor of the proposed settlement.

MTC–00028886

From: Billy Miller
To: Microsoft Settlement
Date: 1/28/02 6:36pm
Subject: Microsoft Settlement
Billy Miller
4486 Oriole Street
Columbus, Ga 31907–5056
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Billy Miller

MTC–00028887

From: Tom Tisch
To: Microsoft ATR
Date: 1/28/02 6:44pm
Subject: Microsoft anti-competitive history

The US Department of Justice must not settle with Microsoft on the proposed basis. I have spent 20 years in the venture capital and computer industry during which time I have personally observed Microsoft steal secrets, be duplicitous in its dealings, and through its dominance of the operating system force acceptance of other Microsoft products.

At least two companies of which I have been an investor and a director have directly been harmed by Microsoft monopoly practices. One (Stac) won a $100 Million judgment against Microsoft for stealing patented information. The judgment was no more than a slap on the wrist of the economic juggernaut. The other saw its premier product line integrated into Microsoft products and effectively given away contributing significantly to the company ultimately withering away..

As a personal user, I have wasted hours, even days, of my time dealing with dysfunctional Microsoft products, products that in a more competitive environment would have been driven from the marketplace or forced to upgrade in quality.

What other company can delay, or miss a promised introduction date for a new product by 6 or more months and not suffer competitive penalties? None other but Microsoft. Not General Motors, not General Electric, not United Airlines, not IBM, not ATT.

The time is here when the Federal Government, for which you have some responsibility, can be severely crippled by Microsoft business decisions and for which the Federal Government—along with the rest of us—can find no relief in competitive products or services.

The proposed remedies for the Microsoft antitrust case are a sham and sellout on behalf of the American people and hundreds of thousands of workers in the computer industry. Core ethical values are at stake in this matter.

Thank you.

Tom Tisch

15040 Encina Court

Saratoga, CA 95070

ttisch@mindspring.com

Tel. 415.990.0102

MTC–00028888

From: Michael May
To: Microsoft ATR
Date: 1/28/02 6:37pm
Subject: Public comment
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW

Suite 1200
Washington, DC 20530–0001

It is my opinion that the November 6 revised proposed Final Judgment is an insufficient remedy and does not adequately serve the public interest.

Sincerely,
Michael May
1718 Hillcrest Road
San Pablo, CA 94806

MTC–00028889

From: Blblikken@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:43pm
Subject: Microsoft

Microsoft's problems with the nine states still holding out for a settlement are not justified. As a Microsoft shareholder and a tax payer I want this case settled. This case is no longer a matter of what is good for the consumer but only what effects the competition. Free enterprise is what America is all about.

Lee & Betty West
2119 SW 306th Place
Federal Way, WA 98023

MTC–00028890

From: jrs@gte.net@inetgw
To: Microsoft ATR
Date: 1/28/02 6:45pm
Subject: Microsoft Settlement

The settlement terms as they are now do nothing of substance *except* to give Federal approval for MicroSoft's illegal behavior by stipulation! Microsoft ends up with a ''Get Out of Jail Free card''.

The pressure to cave in from the White House, Microsoft and Microsoft's friends must have been tremendous. It is the belief of the people that if any branch of the Federal government will stand fast against backroom dealing, it is the Justice department.

The same belief must have been held at DoJ, and perhaps still is, but has been and is being crushed by the sheer weight of Microsoft. Microsoft's contempt for the law and the judiciary is public knowledge, but it is as much or more the sheer size of it that threatens the very economy of which it is an important component.

This size will stifle innovation and cheat the American people out of the best that they might have in the future. But most important is that Microsoft's success in the settlement marks the end of the government's ability to create and maintain a true free marketplace. Other corporations will follow the precedent. And that will be the end of our economy as we know it. Please, please, do what you can to resist this behemoth.

jrs

MTC–00028891

From: Marc Bizer
To: Microsoft ATR
Date: 1/28/02 6:45pm
Subject: Microsoft Settlement

To whom it may concern: I feel that the settlement failed to improve competition and will not deter Microsoft from future illegal acts.

Sincerely,
Marc Bizer
Associate Professor of French Literature
Department of French and Italian
University of Texas at Austin
Austin, TX 78712–1197
office (512) 471–5531
fax (209) 821–9058
<http://xerxes.frit.utexas.edu>

MTC–00028892

From: Rodney Petersen
To: Microsoft ATR
Date: 1/28/02 6:47pm
Subject: Microsoft Settlement

I feel that any judgment against Microsoft is unfair and bias. I have been using Microsoft products for the past twelve years. I have tried other computer products such as Netscape and Wordperfect. These products do not even match the quality of Microsoft Internet Explorer or Word. The CEO's of Netscape and Wordperfect enticed the government to try and destroy the best Computer Program Company and destroy the quality of Computer Programming. Microsoft has raised the level of Computer Programs and their technical service that other companies do not want to raise their companies to that level. Other companies want to send out products that do not meet the expectations of the buyer and user.

If the government wants to penalize Microsoft for excellence in the field of Computer Programming than they should do the same to IBM, which has been fighting Microsoft for their Operating System for decades. The other companies that should be penalized is Ford, GM, and any other Car Manufacturer and electronics company.

When something that works so well the government wants to destroy it, why? Or, limit or lower the quality of the products that Microsoft produces that the rest of the industry does not want to rise to.

Sincerely,
Rodney J. Petersen
ps I have never worked for Microsoft

MTC–00028893

From: Dirck
To: Microsoft ATR
Date: 1/28/02 6:54pm
Subject: Microsoft Settlement

Please accept the attached public comments in the case of United States of America vs. Microsoft Corporation.

Dirck A. Hargraves, Esq.
Counsel
TRAC
P.O. Box 27279
Washington, DC 20005
202.263.2950(v) 202.263.2962(fax)
email:dirck@trac.org
internet: http://www.trac.org

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff, MICROSOFT CORPORATION,
Defendant.
Civil Action No. 98–1232 (CKK)

MICROSOFT SETTLEMENT COMMENTS SUBMITTED BY

The Telecommunications Research & Action Center
National Black Chamber of Commerce
National Native American Chamber of Commerce

January 28, 2002

TABLE OF CONTENTS

I. INTRODUCTION

The Tunney Act (Antitrust Procedures and Penalties Act, 15 U.S.C. * 16) requires the United States District Court for the District of Columbia (Court) to hear comments to determine whether or not an antitrust settlement was reached in the public interest. In the case of the United States of America v. Microsoft Corporation (Microsoft), the undersigned individuals and organizations all agree that without significant modification, the Microsoft-U.S. Department of Justice settlement (proposed Final Judgement, November 6, 2001) is far too weak to restore competition to the software industry and, thereby, bring the benefits of such competition to consumers. Therefore, without additional provisions, such as those proposed by the nine state Attorneys'' General and Corporation Counsel who are pursuing further litigation, the settlement is decidedly not in the public interest.

II. STATEMENTS OF INTEREST

The Telecommunications Research & Action Center, is a non-profit, tax-exempt, membership organization based in Washington, DC Its primary goal is to promote the interests of residential telecommunications customers by helping them make informed decisions regarding telephone services. However, given the recent convergence of telecommunications, Internet, and other high technology products and services, TRAC is also concerned with consumers'' welfare as it is affected by applications, including computer software, which will shape communications in the 21st Century. TRAC is governed by a Board of Directors. Its funding is primarily (95%) from member contributions and the sales of its publications. TRAC is not affiliated with any corporation and does not accept revenues, other than from the sale of its publications, from industry sources.

A nonprofit, nonpartisan, nonsectarian organization, the National Black Chamber of Commerce (NBCC) is dedicated to economically empowering and sustaining African American communities through entrepreneurship and capitalistic activity within the United States and via interaction with the Black Diaspora. The NBCC

represents 64,000 Black owned businesses and provides an advocacy that reaches all 640,000 Black owned businesses. The businesses that the NBCC represents are both consumers of computer software and competitors in a market that has been shaped and dominated by the Microsoft Corporation. The NBCC joins these comments today in an effort to restore competition to this vital economic sector.

The National Native American Chamber of Commerce (NNACC) is organized to provide a coordinating forum to service Native American business, government, and civic organizations for community development. The efforts of the Chamber are also to provide services and benefits to Native Americans to assist them in competing in business and in government. The nationwide businesses that are members of the NNACC already face enormous challenges in competing in the New Economy. Monopolistic players such as Microsoft, who also engage in illegal business practices, make these efforts at competition nearly impossible. Accordingly, we join in offering these comments to the Court.

III. SUMMARY OF ARGUMENT

The proposed U.S. Department of Justice settlement contains inadequate enforcement provisions to protect consumers from Microsoft's monopolistic overpricing in the software market. Accordingly, the Court should adopt the more stringent settlements as proposed by the nine states Attorneys'' General and Corporation Counsel from the District of Columbia.

A. Microsoft as Monopoly

As a monopoly in the software market, Microsoft produces more than 90% of all of the software operating systems in personal computers (PCs) and approximately 90% of all of the software suites (including Internet browsers, word processing, spreadsheet, and presentation programs) used with those operating systems. From the beginning of this case, the Court has rejected Microsoft's defense that the nature of the software market in which it competes naturally leads to the dominance of one player. As one consumer advocate has noted, ''If a monopoly were really the natural state of affairs in this market, then Microsoft would not have had to engage in so many unnatural acts to preserve it.'' 1

The unanimous decision of the United States Court of Appeals for the District of Columbia affirmed that Microsoft has used its leverage to repeatedly engage in anticompetitive behavior and, in the process, has committed numerous violations of antitrust law. According to the Competitive Impact Statement issued by the U.S. Department of Justice, the Court of Appeals found that Microsoft:

(1) undertook a variety of restrictions on personal computer Original Equipment Manufacturers ''OEMs''); (2) integrated its Web browser into Windows in a non-removable way while excluding rivals; (3) engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors and Apple Computer; and (4) attempted to mislead and threaten software developers in order to contain and subvert Java middleware technologies that threatened Microsoft's operating system monopoly.

As a result of Microsoft's actions, not only have consumers suffered from the immediate effects of higher prices for the company's software products and the continuous cycle of upgrades i Statement of Dr. Mark N. Cooper on ''The Microsoft Settlement: A Look to the Future,'' Before the Committee on the Judiciary, United States Senate, December 12, 2001.

required for their systems to function properly, they have also been adversely affected by the decline of choice, quality and innovation in the marketplace.

1. The Damage to Consumers

An amicus brief filed with the Court in 1999 estimated that monopoly overpricing by Microsoft has cost consumers an estimated $25 to $30 billion. 2 Other estimates put this figure at $10 to $20 billion. 3 In either case, the high and steadily increasing prices of Microsoft's products stand in stark contrast to those of personal computer systems and hardware, which as a result of fierce competition have plummeted in recent years. To some extent, Microsoft's strategy of bundling its products and the overall reduction in new computer system prices have also hidden these high prices from consumers.

The full cost of Microsoft's anti-competitive actions in squeezing out competing operating systems, Internet browsers, word processing, spreadsheet, and presentation applications from the marketplace is difficult to quantify. It is impossible to calculate how, without Microsoft's illegal business practices, competing products might have forced down software prices or brought new innovations to consumers. Such applications might have offered consumers additional choice on how they wished to equip and configure their computers. This de facto homogenization of the PC by Microsoft has led to other problems such as the acceleration of the spreading of viruses. For example, if one computer becomes infected, many become infected, as they share the same programming code with identical loopholes. 2 Remedies Brief of Amici Curiae, United States v. Microsoft, 84 F. Supp. 2d 9 (D.DC 1999)

(Nos. CIV. A. 98–1232, 98–1233). 3 Mark Cooper, ''Antitrust as Consumer Protection in the New Economy: Lessons from the Microsoft Case,'' pp. 847–851, Cooper Hastings Law Review, 200106, November 27, 2001.

Microsoft is now pursuing online applications in banking, news, travel, advertising and other areas. Of paramount concern is the fear that Microsoft will use its Internet browser and these applications to dominate the online business world in the same manner as it leveraged its operating system to control the PC desktop. This cannot be allowed to happen. The success of the Internet and those who do business on it depends largely upon freedom of access through a multitude of competitive applications. Such a vision would not likely be realized were Microsoft to become the Internet's sole gatekeeper.

B. An Inadequate Settlement

In their Proposed Final Judgement, the Court of Appeals recognized Microsoft's culpability and rightly called for ''prompt, certain and effective'' remedies for consumers. The Court is specific in describing these provisions. Among them are requirements that computer manufacturers have the freedom to make ''middleware'' decisions regarding what software they choose to offer to consumers as standard on their machines. Manufacturers are to be able to sell and promote Microsoft and non-Microsoft products equally, and customize their systems and software as they choose, with licensing agreements to reflect this and without fear of retaliation. The Proposed Final Judgement also frees other software and hardware developers to work on applications for the Windows platform, and requires Microsoft to disclose the technical information needed for them to do so.

Consumers would no doubt benefit from the decrease in price and increase in choice in the software market if the U.S. Department of Justice settlement with Microsoft supported, and made enforceable, all of the Judgement's provisions. Unfortunately, the settlement falls short of this goal, as it contains many loopholes. For example, while Microsoft is required to share technical information to ensure compatibility with other companies'' software, it has no obligation to do so if Microsoft determines that the disclosure would compromise security or damage licensing agreements. Microsoft, alone, should not be given the right to make this determination.

The Court of Appeals found Microsoft's ''commingling of code,'' the process by which Microsoft inextricably links the programming of its other applications to Windows and effectively ''locks out'' competitors, to be illegal. Yet, the proposed settlement conspicuously omits mention of an enforceable remedy. The settlement also gives Microsoft the power to unilaterally determine what is defined as a ''Window Operating System product.'' Based on its previous behavior, Microsoft is likely to have an inclusive definition. The company now dominates the Internet browser market, as its Internet Explorer application has become an integral part of the Microsoft operating system.

In yet another example of how consumers gain little from the settlement, Microsoft is also granted a loophole through which it can continue to pay other vendors when ''reasonably necessary'' not to develop or distribute competing products. As a result, innovation will continue to be stifled and consumers will not see or be able to choose products that Microsoft has paid to keep off of store shelves. Rather than fostering an environment that encourages entrepreneurship, growth and healthy business competition, the settlement will reinforce Microsoft's dominant role in the industry.

C. Additional Remedies Needed

In an attempt to address the settlement's shortcomings, nine states and the District of Columbia have offered remedial proposals. These proposals are now consumers'' last

chance at true reform in this case. Unlike those included in the settlement, the proposals will, if enacted, contribute to reduced software prices and ensure that consumers are at minimum given the option of making choices when equipping their computers. Specific proposed remedies would require Microsoft to:

Offer a stripped-down, unbundled version of Windows. Without built-in software such as the Internet browser, media player, or email applications, consumers will be able to better custom order PCs with only the installed applications which they choose to purchase. Share its code for its Internet browser with other software developers, thereby allowing for new products with new innovations and ensuring that consumers do not rely on Microsoft as the predominant way to the Internet.

Auction the right to create different versions of its Office software suite for use on other operating systems, such as Linux. Again, this provision eliminates Microsoft's application barrier to entry and gives more choice to consumers.

Include ''middleware'' software in Microsoft's latest operation system, Windows XP. This will enable software applications to universally, across non-Microsoft platforms, expanding interoperability of products and consumer options.

Consumers also support the nine Attorneys'' General and Corporation Counsel's efforts to advocate for a court-appointed master with real enforcement abilities. The U.S. Department of Justice settlement proposed a three-person technical committee to oversee Microsoft's compliance with the settlement. The findings of this committee would neither be made public nor revealed to the Court. In contrast, a court-appointed master would be able to more effectively respond if Microsoft violates the terms of the settlement.

Finally, the settlement offers no effective punishment to deter Microsoft from acting in bad faith. As it stands, the penalty for non-compliance with the agreement is only an extension of the monitoring period. The litigating states have proposed an alternative punishment with far greater consequences: the revealing of Windows'' source code.

Together, these steps are needed to effectively oversee and enforce any agreement with Microsoft, a company that has leveraged its dominance in the market to get what it wants at the expense of its competitors and consumers.

V. CONCLUSION

The proposed U.S. Department of Justice settlement alone does not remedy or address the finding of the Court of Appeals. It is not complete in its breadth, nor does it contain adequate enforcement provisions. For millions of consumers who rely upon a personal computer in so many facets of their lives, this agreement, as it stands, is decidedly not in the public interest. It will not make Microsoft's products more affordable or reliable. It will not give consumers greater choice of what software they wish to run or flexibility as to how they wish to configure it. It will not encourage innovation and competition in the software industry and allow consumers to reap the benefits.

Many on both sides of this case have complained about the length of the trial and the settlement process. An effective solution now appears to be within reach. We urge the Court not to allow a settlement that does not live up to the Judgment of the Court of Appeals and settle for settlement's sake. We urge that the Court consider and adopt the proposals put forth by the litigating states and the District of Columbia as a much more thorough and enforceable solution, one that will bring all of the above benefits to consumers who represent the public interest.

Respectfully Submitted,
Dirck A. Hargraves
Counsel
Telecommunications Research and Action Center
Post Office Box 27279
Washington, DC 20005
Harry C. Alford
President & CEO
The National Black Chamber of Commerce
1350 Connecticut Ave. NW Suite 825
Washington, DC 20036
Joe Byrd
President
The National Native American Chamber of Commerce
Post Office Box 663
Okmulgee, OK 74447

MTC–00028894

From: Ray Whitmer
To: Microsoft ATR
Date: 1/28/02 6:49pm
Subject: Microsoft Settlement

To whom it may concern, regarding the proposed settlement of the microsoft case.

I am not a lawyer, and have no sound legal advise to offer, and the time has past for that. I have been an employee of a number of companies who have found it impossible to compete with Microsoft because competing with them had little to do with quality of product and everything to do with control.

You do not have to look far at all for many overt acts that I think any reasonable person would call criminal. This is because of the high- pressure eminating from the top of the company, to win at any costs.

In my 20 years developing products across many operating systems and corporate structures, I have worked for WordPerfect corporation, Novell, and Corel, among others, and it has become increasingly obvious that quality has nothing to do with winning in the marketplace.

It is all about who controls the information patterns of the masses, whether it be Movies, Software, News, or Advertising.

This is not a new phenomenon. Once the Catholic Church controlled these things quite effectively with systems that greatly resembled the ever-expanding copyrights and patents on things today. Today, Martin Luther, sneaking out of the Vatican with his biblical transcripts would be hunted down as the latest Napster-ite, who thinks that works which interweave themselves so deeply into the roots of a population should not be controlled by a power-hungry entity such as a Church or a Mega-corporation. This does not mean that those who produce them do not deserve profit, but see what the billions paid for Windows every year buys us: In significant cases, less than what the remaining competition now gives away for free, because Microsoft has such a lock on the market. The profits are squandered every year on power.

There are dozens of competing products that could have easily taken that position had they controlled the power they had in their times as unscrupulously as Microsoft does. Corporate survival and hunger for power and profits are the reason we have antitrust laws. In this case, the public shame is greater, because it is the Copyright laws—an artificially- granted government monopoly—that establishes the Microsoft Monopoly.

If it were possible to still compete in this market against that Corporation, you would clearly be seeing much lower prices—the Microsoft take increases, but somehow the economies of scale in software production never lowers the price of the software, and there is never even consideration that you paid for dozens of versions you can no longer use because Microsoft has made them incompatible.

Microsoft is not an indispensible part of the market. If they vanished, within 5 years, there would be no trace left, and there would be competition for a little while until another corporation showed that it was the most vicious of those remaining and consolidated power.

I and thousands of people like me have started writing new software that is not susceptible to this overbearing corporate eternal ownership—which I have to believe is extremely different from what the framers of the Constitution thought they were doing in granting limited copyright and patents.

We have the technology to design around the original intent of these laws, and it is time that you look at seriously reigning in the moster that has evolved. Law of the mega-corporation, by the mega-corporation, and for the mega-corporation is not in anyone's best interest long-term, even if the mega-corporate advertising of today has the same persuasive power as the mega-Churches of old over the masses, tribunals, and courts of law.

The case against Microsoft was poorly made, and hardly justified, not that there wasn't a huge case to be made. But your remedies are worse than ineffective. They will do more harm than good. You have overturned the breakup, which might have had some effect, but likewise didn't get at the root of the problems, which I have tried to describe here. It is not Microsoft that is wrong but <insert any company> which succeeded by such viciousness would be just as bad, and I would be just as sorry to see Sun, Oracle, or even my own company AOL Time Warner be in such an abusive position.

I think that when a company abuses the public trust of its granted monopolies as badly as Microsoft has, the appropriate and natural action is to revoke their monopoly, which in this case is their copyright. With that arrow in your quiver, it would not be difficult to convince companies in the future to act more in the public interest. Short of that, please abandon your current pursuits and admit honestly that the corporation has won and the country has lost. It is really

rubbing salt in our wounds to offer something that hurts more than it helps and claim you have acted in our behalf.

Human rights are more important than copyrights or corporate rights. Many technology companies go under every year. It would be better, though if there was a better connection between profits and service. If you do not, the next revolution is on the horizon. You cannot lock up everyone for violations of intellectual ''property'' any more than the Church could, however much the corporations want to control everything. And corporations do not need an absolute eternal copyright as much as they might claim.

And America will become the ''old world'' while other countries such as Russia have their patriots thrown in prison in America for crimes of conscience by the dozens of new FBI/DOJ departments created for this new opression — certainly not for any overt act depriving a corporation of it's profit in the recent Sklyarov case. Do you really want to be the ''Department of Justice'' which presided over such a debacle? Where is justice for we, the people?

Ray Whitmer
ray@xmission.com

MTC–00028895

From: Gene Merritt
To: Microsoft ATR
Date: 1/28/02 6:49pm
Subject: Microsoft settlement

Spending any amount of time on an computer one cane encounter MANY areas of UNDUE influence by Microsoft.

This now even extends to websites such as STARBUCKS. I had an account with them until they formed a partnership with Microsoft and redesigned their (Starbucks') website based on Microsoft Passport! My old account is no longer valid.

And, even more, one cannot even approach or get onto or even contact the Starbucks site unless one accepts Microsoft Passport cookies! Not even being allowed on the site without Microsoft's surveillance! I consider this WAY TOO MUCH POWER AND INFLUENCE! And this is only one example!

I've sent several emails to Starbucks * * * finally got to them through Planetfeedback* * * and still no getting near the site.

Microsoft is extending it's web of power and influence AND CONTROL into so many areas of public and private communication. MSNBC. Newsweek. Just to name a few. This may, now, look rather harmless, but* * * they what about the future. One company should not have so much control over so many facets of our daily lives. And the government, in this matter, doesn't look to clean in this case, either. I remember seeing news footage of Gates in Washington set to meet with government officials WHILE MICROSOFT'S CASE WAS BEING HANDLED BY THE GOVERNMENT! I the, immediately, thought about CONFLICT OF INTEREST! Talk about impropriety!!!

Microsoft seems to have no qualms whatsoever about tossing around their incredible weight and thumbing their nose in the air at us regular Americans* * * and for that matter, the laws of this great country!

There's no remorse. No head bowed seeking the government's forgiveness. Does this tell you anything!

It's in your court now! Don't shame the rest of us HONEST Americans by holding Microsoft and it's bullying practices up to a different standard of law than the rest of us!

Thanx for listening!

Gene E. Merritt
Brimfield, Ma.

MTC–00028896

From: Vicky Stables
To: Microsoft ATR
Date: 1/28/02 1:58pm
Subject: Microsoft Settlement

I think the settlement proposal is a bad idea. Please find a better solution that provides better protection to consumers and the software industry.

Vicky
Vicky Stables, CPA
Anacortes, Washington, USA

MTC–00028897

From: Lydia G. Rich
To: Microsoft ATR
Date: 1/28/02 6:50pm
Subject: USAGRich—Lydia—1068—0108 (1)
35 Hyatt Drive
Warren, PA 16365–3527
January 10, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am writing to express my support in the recent settlement between Microsoft and the federal government. It is with sincere hope that this is the end of any litigation on the federal level. Considering the terms of the agreement, Microsoft did not get off easy at all. In fact, due to this agreement, Microsoft has to make several important changes to the way that they handle their business.

For example, Microsoft has agreed to disclose and document for use by its competitors various interfaces that are internal to Windows'' operating system products. This alone is a first in an antitrust settlement.

Microsoft has also agreed to make available to its competitors, any protocols implemented in Windows'' operating system products that are used to interoperate natively with any Microsoft server operating system.

With the many terms of the agreement, I see no reason for the government to pursue further litigation on any level against Microsoft. Not only would it be a waste of time, but a waste of money as well. I fully trust that you would agree. Thank you.

Sincerely,
Lydia Rich
cc: Senator Rick Santorum

MTC–00028898

From: Viki Williams
To: Microsoft Settlement
Date: 1/28/02 6:46pm
Subject: Microsoft Settlement
Viki Williams
11522 Small Dr.
Mesquite, TX 75180
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies. Thank you for this opportunity to share my views.

Sincerely,
Viki L. Williams

MTC–00028899

From: Andrew
To: Microsoft ATR
Date: 1/28/02 2:10pm
Subject: Microsoft Settlement

To the Department of Justice:

I am writing to express to you my horror (and I use that word deliberately) at the proposed settlement to the current Microsoft antitrust case. I believe the proposed remedies are in no way commensurate with the crimes of which Microsoft has been found guilty.

Almost all of the subsections under the Prohibited Conduct section contain gaping loopholes. For instance, one subsection provides for the removal of references (on the Desktop and in menus) to Microsoft applications, but in no way provides for the removal of the application itself. Such an application could still be activated by other means, and, by its presence on the system, could interfere with the proper operation of non-Microsoft applications. Microsoft has already proven itself to be very adept at exploiting such loopholes and a truly fair and effective Final Judgement must seek to close them.

At —best—, the remedies in the PFJ will help to slow the growth of Microsoft's monopoly, but will do nothing to diminish it. At worst, such a Final Judgement would actually help to protect Microsoft from further legal action if they continue their anticompetitive practices. And it would be foolish to believe that they would not do so.

In our society, criminals theoretically are supposed to serve jail time and/or compensate their victims for their suffering. This settlement requires neither of Microsoft.

Microsoft has over the years repeatedly raped OEMs, ISVs, consumers, and others, all the while thumbing its nose at America's laws and system of justice. Now it is time for Microsoft and its corporate officers to pay the price. I am counting on the Department of Justice to see to it that the American people are properly protected and compensated.

Andrew T. Smith
Computer Science major
1127 Humboldt St., Apt. C
Santa Rosa, CA 95404
Phone: 707–546–6120

MTC–00028900

From: Steinsaz@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:51pm
Subject: Microsoft Settlement

I believe that the AOL suit against Microsoft is not warranted and is doing Microsoft an injustice by prolonging this litigation. I could very well use Netscape as my browser, but prefer Internet Explorer which is an excellent product. AOL and the other companies that are seeking this suit know that Microsoft has cash and are just trying to get some of it into their own pockets. It would be better if they stopped this nonsense. They should get down to the business of running their own companies better and using innovations of their own to produce better software and not trying to blame Microsoft for their own mistakes and problems

Judy Stein

MTC–00028901

From: Mary—Paul—Stewart@berlex.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:52pm

Your Honor,

I know there is a deadline for comments and I am not the most eloquent arguer on short notice, but here are some of the reasons I feel Microsoft must be severely punished.

Microsoft is not a company we can trust with our technological future. They have a history of ''thumbing their nose'' at the legal system through an expert legal team of ''loophole finders.''

Netscape was only one in a long line of Microsoft casualties. Remember when Lotus 1–2–3 and Word Perfect were king?

What Microsoft is good, perhaps even ''innovative'' at: bundling their products for competitive advantage, giving them away, either for free or a ridiculously low price, then once the competition is gone, and/or their stranglehold on the market is secure, they charge customers hideous prices for marginal upgrades. (Mostly over-rated ''bug fixes''.) Several years back, Microsoft shrewdly invited everyone with pirated copies of their various office product to become ''legal'' though a free registration. The amnesty plan worked, and the now legal owners, feeling they had ''one up on Microsoft'' happily paid for the never-ending upgrades.

In general however, Microsoft is most definitely NOT a technologically innovative company. With few exceptions, (the ''talking paper clip'' for one) their announced ''innovations'' are directly copied from others. For specific examples, see http://www.vcnet.com/bms/departments/innovation.shtml . Bill Gates, often cited as some ''genius'' rather than the megalomaniac that he is, did not even see the relevance of the internet until he saw Netscape's market penetration.

I personally recall purchasing a Netscape browser upgrade several years ago. (My first copy was in my starter kit when I joined Earthlink—and I assume Earthlink paid a license for the privilege of distributing the browser, as it was not free at the time.) Once Microsoft ''woke up and smelled the internet'' they began giving Internet Explorer away to eat away at Netscape's market share. The effect was immediate, and Netscape had no choice but to follow suit. I would also add that at the time Microsoft began giving away their browser, Netscape had the technologically superior product, which had already incorporated the ability to handle javascripts. At the time Microsoft made their infamous deal with AOL, Internet Explorer still did not handle javascripts, which is one of the reasons people used to hate browsing through AOL. I also recall how I complained to AOL about their tactics—they would ''nag'' me at log-on and log-off to download the IE browser—obviously part of the contract.

But that wasn't enough for Microsoft. Their version of innovation was to force Netscape and every other browser into obsolescence by ''welding'' Internet Explorer into the Windows operating system so that it cannot be deleted. While I'm sure that there are many in the pro-Microsoft camp that will give very impressive reasons for why this is necessary and innovative—I don't believe a single one. I consider myself to be a fairly savvy computer user, versed in both PC and Mac platforms, but I have yet to find a single benefit to the consumer that was created by tying these two products together. To be specific, I cannot see any difference in functionality between the bundled Internet Explorer on the Windows computer I use at work versus running Internet Explorer on the Mac I use at work for graphic development. Both programs work as they are supposed to, opening HTML pages and connecting me to the internet. There is only one reason that Microsoft bundled these products* * * to wipe out Netscape and dominate the internet.

And what will Microsoft gain? Well, look at where they are focusing their energy today. Now they are forcing anyone who buys their recent upgrade packages to apply for their internet ''Passport'' account. $400 Rebates/incentives are driving consumers to sign up for MSN as Microsoft takes aim at AOL's market domination. Microsoft has one aim, to control every exchange of personal, consumer, and financial information. Since I have watched a never-ending stream of examples of unethical and anticompetitive behavior from this company, I can say this without reservation: This is not the company I want peeking into my wallet and tracking my visits on the internet. This company is Big Brother incarnate.

Respectfully yours,
Mary L. Paul Stewart

MTC–00028902

From: David Medin
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 6:52pm
Subject: Microsoft Settlement

I, as a member of the computing and electronics industries for more than 20 years, am completely opposed to the proposed Microsoft settlement, which will do nothing, in my opinion, to open the marketplace to competition nor innovation.

My definition to a satisfactory settlement will be the lowering of market prices for Microsoft operating systems and associated applications to ''reasonable'' levels for businesses and consumers. $450 for a word processing package, per computer, which a consumer has to buy to maintain interoperability with professional standards? $350 for an Operating System?

This pricing level is ridiculous, and Microsoft's margins reflect this! They can only command this price because of monopoly. Microsoft's margins are not a reflection of their innovation—Microsoft software quality and security is known to be among the worst ever in the marketplace and they've only ''innovated'' when forced—but of their sheer market saturation and the need for people to have compatible products in order to exchange information successfully.

The dynamic of the software marketplace is much different from, let's say, automobiles, as the key for marketability is interoperability. If you cannot exchange information in standard formats, such as between word processors of different authors, the application is useless. Microsoft has obtained a monopoly on many aspects of operating systems and applications through brute force and interoperability with Windows features, which they control.

The settlement does not address two key areas neccessary for success—splitting of the Microsoft OS and Applications divisions, and complete opening of internal OS APIs such that compatible and interoperable applications AND operating systems can be easily built. The dynamics of launching a competitor to Microsoft applications like Office would be formidable without drastic measures to equalize the marketplace, so unless those measures are taken, we will continue to be held hostage to Microsoft's monopoly. All the other measures of the settlement, such as educational software donation, are completely self-serving to Microsoft, which wants to overcome Apple's penetration in education anyway. Someone in Redmond will be congratulating themselves if this settlement is adopted. The rest of us lose* * *

Sincerely,
Dave Medin
1305 Brockman Ave.
Marion, Iowa 52302

MTC–00028903

From: Mark Pruner
To: Microsoft ATR
Date: 1/28/02 6:52pm
Subject: Web Counsel comments

Ms. Hesse''

Attached as a WordPerfect file is our comments on the proposed DOJ/Microsoft settlement. Please confirm receipt at your earliest convenience.

Mark Pruner

MTC–00028903—0001

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
UNITED STATES OF AMERICA,
Plaintiff,
VS.
MICROSOFT CORPORATION,
Defendant.
STATE OF NEW YORK ex rel.
Attorney General ELIOT SPITZER, et al.,
Plaintiffs,
VS.
MICROSOFT CORPORATION,
Defendant.
Civil Action No. 98–1232
Civil Action No. 98–1233
WEB COUNSEL, LLC'S
COMMENTS ON DOJ'S REVISED PROPOSED FINAL JUDGMENT

Web Counsel, LLC is an interactive marketing company that will be harmed if the Proposed Final Judgement agreed to by the Department of Justice and Microsoft Corporation is approved. We believe that the proposed judgement is not in the public interest, and while not perfect, the dissenting states proposal is much closer to the remedy that the U.S. Supreme Court has required to ''unfetter a market from anticompetitive conduct,'' to terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

We fully support the remedies proposed by California, Connecticut and the other dissenting. Their comments are incorporated herein by reference and the material set forth below is meant to complement and extend the remedies proposed by the dissenting states. WE THEREFORE, submit these comments as allowed by the Tunney Act.

Microsoft will push the limits of any judgement and will not be cooperative with any voluntary enforcement mechanism.

Microsoft has shown a history of not living up to the spirit of their prior settlements and agreements. As examples:

1. Microsoft's first settlement with the Justice Department included a two word phrase that Microsoft used as a loophole to totally gut the settlement's effect in the marketplace. The proposed DOJ/Microsoft settlement is replete with phrases such as ''provided that'', ''except that'', ''so long as'' etc. Microsoft will certainly use these phrases to thwart the few significant restrictions in the proposed settlement.

2. The Tunney Act provides that Microsoft is to report all contacts with government officials. Microsoft as usual has taken a very narrow reading of this requirement and not reported many contacts, particularly with legislative branch official.

3. Bill Gates'' was very uncooperative in his deposition. What should have taken a day stretched to 3 days. He did his best to avoid answering questions, by arguing such things as the definition of the word ''is''.

4. Microsoft fabricated or was grossly negligent in presenting their evidence. At several times in the trial, they had to retract testimony after DOJ's counsel was able to show that the facts did not comport with the Microsoft witness'' testimony.

5. Microsoft's first browser was not created by Microsoft, but rather licensed from Spyglass, a small innovative software company. The license required Microsoft to make licensing payments to Spyglass, but Microsoft held up these payments, which were vital to Spyglass to continue developing its browser. Only when Spyglass made it clear that it would no longer actively develop its browser did Microsoft make the payment it was contractually required to make.

II. Web innovation has stalled since Microsoft got a monopoly in web browsers

Prior to Microsoft entering the market for web browsers Netscape and many other companies, such as Spyglass, were developing innovate new features and services in their browsers. The first casualty of the Microsoft monopolist entering the browser battle was not Netscape, but the many smaller innovators, that had been pushing Netscape to make its product better.

Microsoft created a concept called ''embrace and extend'', which should be more properly called ''copy and crush''. Microsoft at its option will copy another company's software, buy the company or license the software. It then adds a few features and uses its monopoly profits and tie-ins with its other monopoly products to crush the competitor. The result of this process is that the monopolist dives the small innovators out of the market. As a result innovation is stifled.

The Microsoft browser illustrates the monopolist's lack of innovation. Anyone who uses Microsoft's Internet Explorer software will find dozens of things that need improvement or that would normally motivate a user to switch to a competitor, but there are no viable alternatives. To illustrate some of the many areas in which Microsoft has failed to innovate set forth below are only some of the problems with the Microsoft browser. IE is unreliable and insecure. IE crashes more often than any other software on our computer. The lost work and wasted time costs the U.S. billions of dollars. IE is unreliable, because Microsoft as a monopolist does not have abide by industry standards. It creates its own standards and changes them, regardless of the costs imposed on third parties. The browser is also very insecure and is constantly having to be patched. Were Microsoft not a monopolist of the OS, the browser and the office suite, many organizations would have rejected it for these reasons. This lack of security has now risen to the level of a national security issue. Hackers, terrorists and foreign governments can exploit this insecure product to the detriment of the U.S. government, its economy and its citizens.

Micropayments—Micropayments are crucial for websites that sell information, both text and images. People will pay from 10 cents to $2.00 to read an article or look at an image or chart, but there is no widespread payment system to make these small payments. The Microsoft payment systems is clunky and invades a user's privacy, as a result, few people use it and even fewer buy articles. Because, Microsoft has kept third parties from accessing the necessary APIs and other parts of the system, the Microsoft monopoly has a has put thousands of web content providers out of business. These content providers can not sell their valuable material, because Microsoft wants to control any micro-payment system. As a result web content providers could only rely on advertising revenue, even though they could sell millions of articles and graphic images with a proper micropayment system. The necessary APIs have to be made public and barriers to the use of non-Microsoft payment systems with Microsoft software have to be removed at both the browser level and the O/S level.

Page editing is difficult—Billions of additional dollars are wasted every month, because web pages are so difficult to create. The difficulty of creating pages for the IE browser increases sales of Microsoft's page editing program, Frontpage. Typical of Microsoft's efforts to exclude competitors, Frontpage is designed to write proprietary codes that can't be read by other browsers or that causes these browsers to crash.

Bookmarks work poorly—The IE browser bookmark feature (called ''Favorites'' by Microsoft) is cumbersome, requiring a multi-step process. Bookmarks can only be to a file, not a spot in a file, so finding information in very long files can be very time consuming. Others have better bookmark systems, but MS has no incentive to incorporate them or improve its bookmarks. While a minor point, this functionality, like other cumbersome features in IF.. is used billions of times each day world-wide, so even a small improvement would huge amounts of time when added together.

Integration of the browser with other functions & with XML—Microsoft has discouraged efforts to easily move information, between web pages and other applications, except where Microsoft products are involved. Extensible Mark-Up Language (XML) has been around for several years, but since Microsoft has a monopoly in browsers they need not worry about a competitor developing this technology, due to the barriers to the entry found by the trial court. At the present time, browsers can display text and graphics, but humans have to organize the information displayed. XML is like the West Key System organizing information into categories for easy retrieval and use. MS is trying to monopolize this standard also and with their three monopolies is likely to succeed.

Browsers on non-PCs—Microsoft has tried to force variations of IF. browser onto personal digital assistants (e.g. Palms) and cell phones, even though they are not suited for these devices. As a monopolist Microsoft has no incentive to develop a different type of browser for non-personal computers. If a company does develop such a non-PC system, Microsoft can move quickly to stop them, as they did with Web TV. Because of its huge monopoly profits, Microsoft was able to pay an extremely high price for this system that displayed website on TV. Once it controlled this potential competitor, Microsoft efforts to further develop this system fell short of the level expected when a non-monopolist invests that amount of money.

Printing sophisticated pages—Printed web pages and web pages on computer screens do not look the same. This causes tremendous

difficulties for Web Counsel and other web developers. Web developers are restricted to basic layouts, even when there would be significant advantages to a more sophisticated layout. The primary solution in this area is a non-Microsoft solution, Adobe Acrobat .pdf files. Microsoft does not see this system as a threat, because .pdf files are very difficult to create and use. Microsoft efforts to make printing web pages is minimal.

Customizing feature—Microsoft makes adjusting and customizing the Internet Explorer browser very difficult. If a company creates a browser based service that needs a customized browser, they must hire expensive programs and even then, customization is very limited. MS restricts API information, uses restrictive licensing and insists on maintaining IE's appearance.

From the individual's user perspective, finding the places and understanding obscured references such as ''Use TLS 1.0'' or ''Show Friendly URLs'' means that most people will have to use their browsers the way Microsoft wants them to use it.

Microsoft, like all monopolists, does not innovate, because they have no economic incentive to do so. Microsoft used to add innovative features to its browsers, albeit mostly copied from other companies, principally Netscape. Microsoft stopped making significant improvements once Netscape stopped innovating. Netscape stopped innovating, because Microsoft had used its monopoly to make sure that there was no money to be made in browsers.

Microsoft already owns the browser market, why should they try to do something innovative, when their market share is much more likely to go down, than up.

Ill. Microsoft's monopolies prevent fair competition and must controlled

Microsoft has monopolies in not only the OS and the browser, but also in the Office Suite software. (This claim was originally made in the state's complaint, but later dropped to harmonize its complaint with the DOJ complaint.) These inter-locking monopolies give Microsoft even greater power than a normal monopolist.

Microsoft's confidence in the power of their monopoly can be seen from their bail-outs of their competitors. Microsoft invested millions of dollars in Apple, the only significant operating system alternative, (although Apple's OS won't run on Intel processors.) Microsoft claimed it was an investment to support Apple, whose users bought Microsoft Office suite software for their Apple Macintoshes. While unlikely, Microsoft's true motivation became evident when they tried to prop-up Corel's WordPerfect office suite. Microsoft's effort to co-opt this competitor was so blatant, that regulators opposed Microsoft's investment and Microsoft withdrew there offer.

Microsoft's competitors know that the Microsoft's monopolies have created a $36 billion treasure chest of monopoly profits. They also know that Microsoft will use these funds and the unlawful tactics outlined by the trial court to oppose anyone that should try to compete with them in their monopoly areas. These funds and Microsoft's hardball tactics scare away potential competitors and innovators. If the DOJ/Microsoft proposed settlement is accepted the perverse result will be that potential competitors will be even more discouraged, because they will see that Microsoft got no monetary penalty and was rewarded with a monopoly for using unlawful tactics. Even now venture capitalists reject out of hand any business plan that Microsoft might see as competing against their core monopolies.

Since Microsoft has 3 inter-locking monopolies, the remedies must be more comprehensive and certain, particularly, since Microsoft has shown that they will not live up to the spirit of the settlement language and are likely to violate the actual letter of the settlement. While I support all of the relief requested by the nine dissenting states, I believe that Microsoft should also be subject to a substantial fine so that they do not benefit from, nor use their ill- gotten gains to unlawfully further their monopolies.

IV. Enforcement

The proposed Microsoft/DOJ enforcement procedure will do little to prevent improper actions by Microsoft. The voluntary dispute resolution procedure will not work. Microsoft will either not volunteer to be punished or more likely they will drag out such procedures and Microsoft will win because of the delay.

Microsoft traditionally comes out with a major new OS about every three years (e.g. Windows 95, Windows 98, Windows XP [2001]). The success of these systems are determined in the first year, so as we have seen Microsoft has tried to constantly delay the present litigation and it has succeeded. The original complaint was filed by DOJ in May of 1998. In the meantime, Microsoft has come out with the minor OS upgrades Windows ME and Windows 2000 and the major new OS, Windows XP. None of these OS's have been restricted, by the DOJ and during this time Microsoft has continued to make extraordinary profits even during the recent down economy.

The new Windows XP has several features that continue to unlawfully leverage Microsoft monopolies, e.g. the Passport system. While it is theoretically possible to run Windows XP without the Passport system, the average user will not be able to figure this out and the software repeatedly demands that the user sign-up for the Passport system and provide their private information to be put under Microsoft's control.

If the court wants to do justice now, the final settlement must have a quick and certain arbitration procedure. Failure to include such a provision will result in Microsoft complying with the orders, but only after they are irrelevant. A clear example of this is the ''concessions'' that Microsoft has made as to the web browser in the proposed DOJ/Microsoft settlement. Microsoft made the concessions because, its unlawful acts have won the browser battle. Microsoft is happy to concede, here and in other areas of the proposed settlement, points that don't restrict what it actually wants to do or that are irrelevant in the marketplace.

Not only is speed essential, but the enforcement procedures must provide a way to expose Microsoft's efforts to intimidate third parties. Microsoft is notorious for threatening not only its competitors, but its customers, something that only a monopolist can do (e.g. threat to Compaq to cut off sales of Microsoft operating systems, see trial courts finding of facts.) Enforcement must include an anonymous reporting feature and substantial penalties swiftly enforced, otherwise Microsoft will continue its intimidation and accept its conduct penalty, if any, many years later after it is irrelevant.

V. The DOJ/Microsoft proposal will only lead to more litigation

Microsoft and its abuse of its monopoly have injured many parties, and regardless of how you rule, there will be substantial litigation as evidenced by the recent action brought by AOL/Time Warner against Microsoft. The AOL suit, however, also illustrates what will happen if the court adopts the proposed DOJ/Microsoft proposed settlement. Litigants, as has AOL, will move to further restrict the monopolist's actions; litigants will bring actions in the courts instead of through arbitration and Microsoft will delay this litigation for years. The resulting uncertainty will hurt the United States leadership in software at all levels.

The software industry is not prone to litigation, but companies will be left with no options to protect themselves, if this court does not provide an adequate enforcement mechanism and fair settlement, that is perceived to be fair.

VI. Java should be required

The public interest and competitive fairness require that Microsoft provide a quality Java interpreter with every copy of their web browser. Much of the functionality, that we and other web developers have built into their websites is based on the Java language. If Microsoft gets away with not providing Java support in their browser, as they have already done with Windows

XP, the results with not be in the public interest: tens of billions of dollars that have gone into programming sites in Java will be wasted tens of thousands of website will lose some or all of their functionality, and Microsoft will have another monopoly, this time in web languages. If nothing else, the DOJ/Microsoft proposed settlement, must be amended to require Java support.

WE, THEREFORE request that you reject the revised proposed final judgment by the U.S. Department of Justice and Microsoft Corporation, and that you adopt the proposed judgement by California, Connecticut and the other dissenting states, that you impose a substantial monetary penalty on Microsoft for their unlawful acts, and that you grant such other relief as is requested herein and you may determine to be in the public interest.

DATED this 28th day of January, 2002

Mark Pruner
President
Web Counsel, LLC
Stamford E-Center
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Our latest site http://www.gibbonslaw.com

MTC–00028904

From: rclay773281
To: Microsoft ATR
Date: 1/28/02 6:52pm
Subject: microsoft settlement
Robert Clayton
14085 Olympic View Road
Silverdale WA 98383
1/28/02
To Attorney General John Ashcroft
US Dept. of Justice
950 Pennsylvania Ave. NW
Washington D.C. 20530

Dear Mr. Ashcroft

I am writing you today to express my opinion in regards to the microsoft antitrust dispute.l am a microsoft supporter ,an d l would like to see this costly litigation ended against Microsoft.lt will serve in the best public interest to permanently resolve this issue.This settlement was reached after extensive negotiations with a court appointed mediator.Microsoft has agreed to all terms and conditions of this agreement .Under this agreement ,microsoft m,ust document its envied interfaces so other companies can use them to develop more sophisticated soft ware. Microsoft has also agreed to grant computer makers broad new rights to configure windows so that other companies can promote their products while windows boots up. Microsoft is more than willing to follow these procedures so they can get back to work.This settlement will serve in the best public interest.Our resources and time should be devoted to more pressing issues

Thank you for your support.l might add that l have much more confidence in your ability than your predecessor

Sincerely
Robert Clayton
rclay773281@msn.com

MTC–00028905

From: Mike Searcy
To: Microsoft ATR
Date: 1/28/02 6:54pm
Subject: Microsoft Settlement

Microsoft has lost focus on the best interests of consumers. The company now places its own ends above those of the consumer. With some companies, this is often understandable and acceptable. However, Microsoft, as ruled by the court, monopolizes an integral component of the computing industry, an industry that has become a primary driving force in the national economy. Consequently, until Microsoft's monopoly is either no longer in place or is no longer viable, the interests of the consumer public must take precedent, and it is up to the government, as representatives of the people, to ensure that the best interests of consumers are pursued. And, while the current settlement agreement between the Department of Justice, nine state Attorneys General, and the Microsoft Corporation, does take some significant strides, it contains multiple loopholes that would cause little to no adjustment in the tactics of Microsoft, a company that has been proven to abuse the monopoly it holds and has been seen to exploit such ambiguities often with brazen disregard for the intent of the agreement in which they reside. One significant loophole, the failure to adequately define what is and what is not an operating system, is the focus of this letter.

Computing and Commodities

Commodities. They are the foundation of the computing industry. However, based on context, they can often go by other names such as objects, standards, and libraries. Simply put, commodoties create an environment in which something can be reused multiple times and interchanged easily. They are the cornerstone of the success of the IBM PC, the World Wide Web, object-oriented programming, and grid computing. They enable competition and promote innovation, often at amazing speed. They form the basis for the goal of permitting any device to work with any data at any time at any location and the hope of writing a program one time and have it run anywhere and on any device.

When an individual goes out to purchase a personal computer, that person can choose from multiple PC vendors including Dell, Compaq, IBM, Hewlett-Packard, and Sony, to name a representative few. More often than not, he or she does not have to worry about whether or not the printer they purchased or the scanner they already own will work with the new PC in which they are investing. That is because the PCs from all of these manufacturers are based on a common, open architecture. The open architecture of these machines ''commodotizes'' the machine itself, allowing them to be interchanged easily. This allows for a large degree of competition between the vendors, lowered prices for consumers, and expedited innovation. In fact, according to the Department of Commercel, PC prices fell 26 percent per year between 1995 and 1999 due to this rampant competition. When that individual is examining those PCs, they can choose between processors from both Intel and AMD. Generally speaking, he or she does not have to worry about whether or not the spreadsheet program they purchased or the service provider they are using to access the Internet supports the processor they are examining, as long as the Windows operating system supports it. In this case, the Windows operating system ''commodotizes'' the processor. Once again, the consumer benefits from intense competition between the processor companies yielding lower prices and greater innovation. Processors run faster and cheaper now than ever before, and the bar seems to be raised by this competition on almost a weekly basis.

When most people think of the Internet, they are actually thinking about only one component of the Internet, the World Wide Web. The success of the web is based on universal standards for the delivery and access of information. These standards ''commodotize'' the sender and receiver of that information. If the standards are followed, the end user, the consumer, does not have to worry if the server he or she is accessing is running Microsoft Internet Information Server (IIS), Netscape Enterprise Server, Lotus Domino, IBM WebSphere, or Apache. The standards ''commodotize'' the web server. This enables significant competition in the web server space, allowing the buyer, the presenter of the data, to choose from any number of servers. And, thanks to this ''commodotization'', the growth of the Internet, in terms of individuals accessing it since the inception of the web, has increased faster than any other medium preceding it, truly yielding immense consumer benefit.

The PC Operating System Commodity

Following the same logic, there is no reason that consumers cannot realize the same degree of consumer benefit and innovation from competition in the PC operating system market. The PC OS can be ''commodotized'' in the same way as the open PC hardware architecture, the PC processors, and the web servers mentioned above, yielding the same benefit to consumers and accelerating innovation. The methodology for sending data to and from a PC OS can be standardized following the same patterns as those detailed in the examples. When a consumer wants to run an application such as a word processor, speadsheet, or personal finance manager, he or she should not need to be concerned about the underlying operating system any more than he or she is concerned about the brand of the underlying PC or processor. It is an unnecessary level of complexity. This approach does not preclude competition in the PC OS space any more than it does in the PC, processor, and web server markets mentioned in the examples. In fact, it promotes it.

However, while such ''commodotization'' of the PC OS yields the greatest consumer benefit in lowered prices, increased competition, and accelerated innovation, it does not allow Microsoft to retain the monopoly grasp on that market that it currently holds and the resultant high profit margins. Consequently, rather than working in pursuit of this goal on behalf of consumers, Microsoft continually works in opposition of it actually working to undermine it, leveraging its monopoly and using tactics such as ''application integration'' to thwart this goal resulting in reduced consumer benefit, slowed innovation, and maintainence of artificially high prices.

Achieving PC OS ''commodization'' is pursued in two different ways: (1) the development of middleware and (2) the restriction of what is and what is not a component of the operating system. Middleware is software that sits between the application and the operting system. Software developers write their applications to the middleware rather than to a particular OS. This allows an application to be written a single time and run on any operating system supported by the middleware. However, as the advantage of middleware is to allow portability of applications across operating systems, it is imperative that the middleware be separate from the OS. Examples of middleware are Java and the Internet browser. Applications written in Java or to the browser, should be accessible on multiple operating systems without needing rewrites. However, as mentioned, such an approach, while benefiting consumers and application developers, does not benefit Microsoft. Consequently, Microsoft has strived to undermine the former and control the latter. Bill Gates,

himself, realizes the benefits of middleware and articulates the intent of Microsoft to undermine it when he states in an email in January 1997, the following in regards to Java support in Windows. ''To avoid middleware taking over an operating system you have to make sure the integrated services are different from the middleware—otherwise the middleware approach has no disadvantages and it wins. I think the path we were going down of building on [Java's Abstract Window Toolkit (AWT)] was a sure disaster—it was creating a situation where pure 100% Java applications would look just as good as pure Windows applications which we have to avoid.'' So, while pure Java applications looking as good as pure Windows applications would be a boon to consumers, it was undermined by Microsoft to protect its monopoly. An internet browser that could run on any operating system would present a universal platform for application development and a universal ''client'' for the consumer. However, such a universal client would undermine the Windows monopoly. Whereas Microsoft could have adjusted the OS to utilize the universal client, maintaining a separate browser client that could be ported to multiple operating systems, Microsoft chose instead to modify the browser client to accomodate the OS, thus eliminating the universal promise of the browser and destroying the resultant consumer benefit it would bring. These tactics could only be successful in an environment where there is no competition for the OS. Otherwise, consumers would flock to the OS that benefits them the most. In today's environment, Microsoft decides what is and what is not beneficial to the consumer. The consumer has no choice.

Inter Alia, Among Other Things

The current settlement agreement concentrates on addressing the middleware issue. However, it avoids addressing the second requirement of reaching the ''commoditized'' OS, a situation that is exploited by Microsoft in an increasingly frequent manner showing no indication of abating. To reach the goal of the ''commoditized'' 0S, a strict definition is needed of what is and what is not part of the operating system. Without such a definition, with its monopoly in place, Microsoft can continually ''integrate'' what is generally deemed as application software into the operating system in the same manner they have done with the browser. Two words in the text of the settlement agreement permit this tactic of Microsoft to continue unabated to the detriment of consumers. ''Inter Alia''. They are found in the definitions section of the agreement within the definition of an ''Operating System'' (Section VI, Paragraph P.). With these two words in place, Microsoft can ''integrate'' anything and everything it sees fit into the operating system. This is easily seen in the latest iteration of its Windows operating system, Windows XP, where Microsoft has ''integrated'' its version of media ''application'' software into the OS. While there are benefits of integration, they are shortsighted and self-serving and do not present the greatest benefit to consumers. For instance, a manufacturer could produce a part that works specifically on a 2002 Ford Thunderbird. The benefit is that the part works wonderfully on that one car, as it is custom-made for that vehicle. However, how much better off is the consumer if the part is made to work on 50 different vehicles as opposed to the one? Immensely. Integrating application code into the OS is no different and yields the same results. Consumers benefit only in the short term and only as long as they continue to use the one OS to which the application code has been welded. Is the integration necessary? Not at all. Is it self-serving to the OS owner? Most definitely. Is it in the best interests of consumers? Not a chance.

Not only is the integration unwise from a usability perspective, it also leads to higher prices. How much cheaper can a single part be mass-produced for 50 different vehicles as opposed to a custom part for each one? The custom, integrated part is always more expensive. However, in this case, the consumer is blissfully ignorant of these unnecessarily higher prices for no other reason than we are all driving Thunderbirds, and the excessively high price of the part is ''integrated'' in the cost of the overall car. To date, the measuring stick for allowing Microsoft to integrate code into its OS is whether or not the integration benefits consumers. This is the wrong approach. As we have seen, there will always be an argument for how the integration benefits the consumer. However, the question should be, ''Of all of the options available, does the integration option present the best option for consumers?'' Using this question as a guide, forced integration into an OS will rarely, if ever, be the best option for consumers.

With the above in mind, a specific definition of a PC operating system is necessary. I am not presumptuous enough to believe that I am capable of providing such a definition. However, I would envision that a group of experts taken from multiple areas of the industry could generate such a definition given the task. Undoubtedly, such a definition would require modifications to Microsoft's existing operating systems or could be enforced for all future versions. However, having such a definition in place, along with the allowance of middleware, could open the door wide for true competition in the PC OS space while setting the foundation for immense, long-term consumer benefit, benefits that will easily fall by the wayside without it.

Regards,
Michael P. Searcy
Tampa, FL

MTC–00028906

From: Harry Yamamoto
To: Microsoft ATR
Date: 1/28/02 6:47pm
Subject: Microsoft Settlement

To Whom It May Concern,

The remedies for the Microsoft Settlement must be fair but not so disruptive that competitive innovations would have no platform to work from. If the government kills off Microsoft the cost will be tremendous for everyone to switch to ????? The ''unfair competition'' seems inherently a part of the nature of these relatively new technologies. If there were not basic uniform operating systems the information technology business would not exist. If Microsoft was more aggressive and kept a ''closed system'' similar to Apple Computer where would competition be? Apple has a significant share of the PC market. Where are the others? If Microsoft were not innovative and added features we could still using Visacalc and be playing Pong.

Many of the software companies calling foul should have approached this business problem with a different tact. Their efforts to tag along behind the leaders will always be a disadvantage. The government must not punish the leaders of an industry just to help the weak companies that are just along for the ride. In the beginning I was a very strong Apple supporter, but I needed integrated products that could be used economically so I switched to PCs and Microsoft software. The need for uniformity and connectiveness breeds the necessity to be able to work across different platforms. Users need products that work and are also convenient. (To save time and expense.)

Harry Yamamoto
5573 Road U SE
Warden, WA 98857
Phone (509) 349–2435

MTC–00028907

From: Neal Stobaugh
To: Microsoft ATR
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement
4030 148th Avenue NE
Redmond, WA 98052
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my full support of the recent settlement between Microsoft and the US Department of Justice. I am glad to see they had reached a settlement and that Microsoft will be allowed to start focusing on business, not politics.

I do believe that the terms of the settlement are fair and will ultimately have a positive effect on the consumer and small businessperson. Microsoft's concessions, such as agreeing not to retaliate against computer makers and software developers who develop or promote products that compete with Microsoft, or granting computer makers broad new rights to configure Windows so that non-Microsoft products can be promoted more easily, should appease all the competitors.

I urge your office to do what is right for the American public. Implement the settlement. Thank you.

Sincerely,
Neal Stobaugh

MTC–00028908

From: Lynnie D. Velarde
To: Microsoft ATR
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement

Dear Attorney General: Attached is my letter of opinion for the settlement between the Department of Justice and Microsoft.

Sincerely,
Manuel B. Velarde

Manuel B. Velarde
8902 Leemore Court
Louisville, KY 40241
January 23, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to show my support for the settlement in the Microsoft antitrust case. Your efforts in supporting the settlement I gratefully welcome. Microsoft has basically agreed to what was asked of it, as well as agreed to some terms that were not even addresses in the original complaints. Now is the time to move on toward renewed innovation and improvement in the American computer technology industry.

The settlement will lead to Microsoft working more closely with its partners in the software industry than it already does. Microsoft will document and disclose the internal code for the interfaces of its Windows programs some other industry companies can make their programs work more efficiently with Windows. Microsoft will provide computer makers a list of established, uniform terms and prices so everyone will know what the deal is, rather than negotiate privately. A technical committee of software experts will monitor Microsoft to ensure that the terms of the settlement are met. These are big concessions and compromises of Microsoft's legal rights to cooperate with its industry and resolve the court case.

I appreciate, and thank you for, your efforts to see that this beneficial settlement is approved. Your leadership is appreciated.

Sincerely,
Dr. Manuel B. Velarde

MTC–00028909

From: John A. Beatson III
To: Microsoft ATR
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement

Thank you for this opprotunity to voice my opinion.

The Microsoft settlement solution offered by the Justice Department is a sham, window dressing to cover a decision to back out of the whole enterprise. The settlement is so weak as to be meaningless. Remeadiation to those who were harmed virtualy non-existant. Enforcement mechanizms are flimsey and will be ineffectual.

The Justice Department tried to enforce an agreement with Microsoft with a weak settlement in the past. They failed because the enforcement mechanizms relied on good faith by Microsoft instead of effective rules and procedures. The result was a further solidification of the Microsoft monopoly, companies and products driven from the market place, and an outrage from the government that was embarassing given that a blind man could have seen it coming.

Don't repeat history. The only effective settlement is one where the remedy fixes the problem and the required remedial actions can be enforced. Enforcement can not rely on good faith by Microsoft, not then, not now, not ever.

MTC–00028910

From: KFred87529@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:56pm
Subject: Microsoft Settlement

I urge you to accept this settlement.

MTC–00028911

From: thowe@mmcable.com@inetgw
To: Microsoft ATR
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Tom Howe
1033 NW 9th
Moore, OK 73160–1811

MTC–00028912

From: Frank Murphree
To: Microsoft ATR
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement
828 Cooke Street
West Helena, AR 72390–1409
January 14, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am happy to hear the Microsoft case has settled. I urge the Judge reviewing the case to approve the settlement so all parties may focus on more important matters.

While I do not agree with the government's taking action against Microsoft in the first place, I am in favor of the settlement. Its terms are reasonable, and are in the public interest. Consumers will benefit from the settlement, as Microsoft will be free to go about its business producing quality software. Microsoft's competitors will clearly benefit from the agreement. They will be made privy to Microsoft's otherwise confidential operating information. They will also benefit from Microsoft's agreement to make it easier for computer manufacturers to install other company's software on their computers.

The settlement will also provide much needed certainty to the tech industry. This can only help our American economy, especially in a time of recession. I am hopeful this matter will come to a speedy resolution. Thank you.

Sincerely,
Frank Murphree

MTC–00028913

From: John Brugger
To: Microsoft ATR
Date: 1/28/02 6:59pm
Subject: microsoft settlement

it is my opinion that the settlement proposed by the company is ultimately the best solution for all concerned.

MTC–00028914

From: Lydia G. Rich
To: Microsoft ATR
Date: 1/28/02 7:01pm
Subject: Microsoft Settlement
35 Hyatt Drive
Warren, PA 16365–3527
January 10, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to express my support in the recent settlement between Microsoft and the federal government. It is with sincere hope that this is the end of any litigation on the federal level. Considering the terms of the agreement, Microsoft did not get off easy at all. In fact, due to this agreement, Microsoft has to make several important changes to the way that they handle their business.

For example, Microsoft has agreed to disclose and document for use by its competitors various interfaces that are internal to Windows'' operating system products. This alone is a first in an antitrust settlement. Microsoft has also agreed to make available to its competitors, any protocols implemented in Windows'' operating system products that are used to interoperate natively with any Microsoft server operating system.

With the many terms of the agreement, I see no reason for the government to pursue further litigation on any level against Microsoft. Not only would it be a waste of time, but a waste of money as well. I fully trust that you would agree. Thank you.

Sincerely,
Lydia Rich
cc: Senator Rick Santorum

MTC–00028915

From: Jmcjimmy@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:00pm
Subject: MICROSOFT SETTLEMENT
James W. McCoy
RR 3 Box 3412
Naples, TX 75568
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I write to you today to express my support of the recent settlement reached between the Department of Justice and Microsoft. It is my understanding that at the end of January the Attorney General will decide whether or not to enact the terms of the settlement. This is

a very important decision. I believe that enacting the settlement would be the most beneficial course for our country, economy, and technology industry.

The terms of the settlement call for the creation of a technical review committee. This committee will have the job of overseeing Microsoft's action. They will ensure that Microsoft complies with the terms of the settlement agreement. This should ease those who fear Microsoft's compliance.

I hope that the Department of Justice enacts this settlement quickly.

Sincerely

James McCoy

MTC–00028916

From: Harlan Wilkerson
To: Microsoft ATR, dennispowell@earthlink.net@inetgw
Date: 1/28/02 7:02pm
Subject: Proposed Settlement (with corrections)

I feel that adoption of the proposed settlement is not in the public interest.

The Appeals Court ordered the District Court to craft a remedy that would ''unfetter [the] market from anticompetitive conduct,'' to ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

Windows has gained it's market position not by consumer demand, but by Microsoft's almost total control of production. In the past, Microsoft has used exclusive OEM licensing and marketing incentives to pass along the so-called ''Microsoft tax'' to every PC consumer. Most of the top 20 OEMs simply don't offer PC systems without the Windows operating system pre-installed. Microsoft has urged (and rewarded) the OEMs to ''just say no'' to buyers who request a so called ''naked PC'' (a PC with no pre-installed software). This is ironic since the OEM's associated support costs should actually be reduced. The OEMs that do offer alternatives to Microsoft's Windows charge essentially the same price for non-Windows models. This is true even for those with pre-installied versions of absolutely free operating systems e.g. Linux, or the BSDs. These operating systems can be freely downloaded and installed on all of a consumers PCs without any licensing fee whatsoever. Consumers who have opted to install these free operating systems (on their own) are usually frustrated in any attempt to obtain refunds from the OEMs for their unused Windows licenses. This despite provisions for a refund from the OEM that are contained in the Microsoft Windows EULA. It's no accident that consumers can't determine the fair price of a PC under these circumstances. This was highlighted during the trial by a grass roots movement that culminated in a ''Windows Refund Day''. Consumers who purchase Microsoft Windows through an OEM usually have no standing in class action suits brought against Microsoft.

Nothing in the proposed settlement prohibits Microsoft from continuing to offer OEMs existing forms of advertising or marketing incentives (on an equitable basis) to include Windows on every machine, or to decline to sell ''naked PCs''. We currently are in the worst economic recession in at least a decade. It's doubtful that some of todays OEMs will even survive. Nonetheless, many of these same ''equipment manufacturers'' won't sell their equipment at any price without pre-installed software from Microsoft. This is hardly the behavior of an unfettered market. Microsoft should be required to post the costs of it's OEM products on a public web site, and they should be precluded from offerring any incentives to OEMs to curtail the sales of ''naked PCs''.

To paraphrase the Appeals Court by the time this case is resolved the facts will be ancient history, but the effects of the illegal acts will have caused harm nonetheless. The proposed remedy does nothing to ''deny to the defendant the fruits of its statutory violation''. Microsoft staunchly denies any wrong doing in it's public statements, retains billions in capital, and isn't even held liable for the people's costs in prosecuting the case.

In crafting a remedy that terminates the illegal monopoly or eliminates practices likely to result in monopolization in the future it is important that hearings be held to investigate how we got here in the first place. The Federal Trade Commission and DOJ took up Microsoft's trade practices involving OEM per-machine-licensing of MSDOS. During this case a private antitrust suit was brought against Microsoft by Caldera. That suit was settled but provided no relief for the millions of consumers who purchased Digital Research's Disk Operating System. Digital publicly complained that they had sufferred from Microsoft's anticompetitive per-machine-licensing scheme and were wrongly excluded from the Windows 3.1 beta testing program—even though they were participants in beta testing earlier versions of Windows. Digitat's Operating system didn't compete with Windows, but did compete with MSDOS. At the time these were separate Microsoft retail products. The respected magazine and online publication Dr Dobbs Journal revealed that the Windows 3.1 beta contained code that was only useful for detecting Digital Research DOS. This code gave the user error messages or simply halted a users machine whenever Digital Research DOS was detected. Windows version 4 and MSDOS version 7 were eventually bundled into Windows 95 which carried exclusive OEM license agreements that didn't permit OEMs to use or dual boot other operating systems like Digital's DOS. For example, some Hitachi PCs had a hidden copy of the BeOS that consumers could only discover and activate using instructions on Hitachi's web site. Digital, Hitachi and BeOS have since exited the PC OEM and PC Operating system business. For it's part the DOJ has complained publicly that Microsoft violated the first consent agreement. The practice of monopolies denying companies that compete in any software category timely access to APIs, and the practice of bundling separate retail products for anticompetitive reasons, and/or using exclusive licensing agreements to harm competitors is a common and recurring theme. The judge was correct in denying Microsoft's request to limit the scope of the remedies without an evidentiary hearing, and the DOJ was premature in dropping their case in-main on product bundling. Microsoft is engaged in world-wide trade and the DOJ and European antitrust regulators seem uncoordinated and out of step. The European regulators have taken up complaints that Microsoft has withheld access to Windows server software API's that are necessary for interoperability with other network operating systems, and the bundling of Windows Media Player in Windows XP. Microsoft is not so quietly announcing it's plans for a single Internet logon authentication service it's calling ''.NET''. The stated objective of this initiative is to leverage the Windows monoply in order to create a new (Internet) monopoly. While these practices may or may not be lawful, it's doubtful that all of the practices likely to result in monopolization in the future have been eliminated without a single hearing on the issues here in our courts. Most non-Microsoft operating systems provide a boot manager that allows consumers to use several operating systems. In fact, Microsoft includes a boot manager that allows consumers to use multiple (older) versions of Windows e.g. Windows 2000 and Windows 98. The act of installing a Microsoft operating system doesn't invalidate a consumers licenses for a competitors products. Yet installing (or reinstalling) Microsoft Windows will always result in a consumers other operating systems becoming inaccessible. This is anticompetitive behavior. Microsoft should be required to automatically add other operating systems to it's boot manager in the same manner that it adds it's own products.

The DOJ and Microsoft appear to have forgotten that this case is about Personal Computers if a consumer shops for a PC, and makes a purchase based on the software selection, it makes no sense to provide Microsoft the arbitrary right within fourteen days (or some other later date) to delete icons or programs and substitute their own because they have judged the competitors product lacking in some quality or state they deem essential.

Microsoft has stated that their power to innovate or bundle applications into Windows XP is essential to the economic recovery of the PC industry. The PC OEMs have testified that there is no viable alternative to Windows. In the past year alone private business LANs and Internet companies have suffered billions of dollars in damages caused by trojan or virus programs that specifically targeted Windows PCs. The Executive and Legislative branches of the Federal Government have recognized the Internet as a vital piece of our national and international infrastructure. They have established agencies tasked with it's protection. Indeed one reason for pursuing the proposed settlement after September 11 was ''the national interest'' It's hard to understand why much of Microsoft's ill gotten monopoly shouldn't be considered an essential public facility. Certainly consumers have a right to migrate their own itellectual property out of proprietary Microsoft file formats. Microsoft should be required to publish the file format information needed

for other applications to interoperate with files created by MS Office. This is certainly the case with regard to Apple Computer users who have already been threatened with the cancellation of the Apple version of MS Office. In conclusion, the court combined the individual State and DOJ cases. A settlement that doesn't include half the plaintiffs is at best not a settlement.

Sincerely,
Harlan L. Wilkerson
Hutchinson, KS. 67501

MTC–00028917

From: Peggy Broyles
To: Microsoft ATR
Date: 1/28/02 7:00pm
Subject: MICROSOFT SETTLEMENT

Dear Mr. ASHCROFT;

It is good to see the Justice Department has ended its long and very costly antitrust lawsuit against Microsoft. Microsoft has produced wonderful software for the world. They should be allowed to continue.

No more action should be taken at the federal level against Miicrosoft.

Thank you ,
Arthur & Peggy Broyles

MTC–00028918

From: Howard Griffen
To: Microsoft Settlement
Date: 1/28/02 6:55pm
Subject: Microsoft Settlement
Howard Griffen
1436 Baytowne Circle E
Destin, FL 32550
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Howard Griffen

MTC–00028919

From: mbreivik@att.net@inetgw
To: Microsoft ATR
Date: 1/28/02 7:03pm
Subject: Microsoft Settlement
Mary Breivik
25010–38th Avenue South
Kent, WA 98032
January 28, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am in favor of Microsoft and the Department of Justice settling in the case. The settlement agreement the two sides reached in November adequately addresses the concerns raised by the case's plaintiffs. There is really no need to spend any more money on litigating this case.

I really appreciate the way Microsoft has handled itself throughout the case. It has answered the allegations of unfair business tactics by making fundamental changes to key aspects of its operations. It will license Windows to the 20 largest computer-manufacturing companies at the same price and on the same terms. Additionally, Microsoft agreed to grant computer manufacturers the right to change the configuration of Windows. This will allow the manufacturers to replace features of Windows with software programs designed by Microsoft's competitors, which will give consumers a greater choice of products.

The settlement agreement is the appropriate remedy to the complaints lodged against Microsoft, and, in fact, it goes beyond the scope of the original suit. Microsoft has demonstrated good faith in agreeing to the settlement terms. Nothing more will be gained by dragging this case back to the courts.

Thank you for your attention.

Sincerely,
Mary Breivik

MTC–00028920

From: Spacey@attbi.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:03pm
Subject: Microsoft Settlement

Dear Sirs:

As an IT (Information Technology) professional for 35 years, I offer the following opinion.

Microsoft has never been an innovator, but always an imitator who targets successful technologies developed by others and then competes with them on the heavily skewed playing field of Microsoft's monopoly control of the PC operating system.

Because of the explosive rate of change in IT hardware so far, there has always been room for innovation by outsiders despite attempts by any entity to control or monopolize any technology. This has created an unprecedented climate of innovation and competition in most IT areas, empowering users with the tools to maximize their output.

However, in the specific field of PC operating systems, this has not happened. Most users have been hobbled with operating systems from Microsoft which are far behind other systems available in ease of use, ease of maintenance, portability, stability, transparency, security, efficiency, etc. This has been possible because of the abuse of the monopoly position that Microsoft has in the PC operating system arena.

If very strong corrective measures are not implemented in the very near future, Microsoft will have achieved a monopoly position over all software used by most PC, Internet, and Communications Device users with the result that competition and thus innovation will be extremely limited, and costs and capabilities will be determined solely by Microsoft instead of the free market.

The current settlement proposal by the USDOJ is not adequate, and should be enhanced to include the original demands made by the prosecutors of this suit.

MTC–00028921

From: hap
To: Microsoft ATR
Date: 1/28/02 7:03pm
Subject: Microsoft settlement
109 Hosmer Street
Hudson, MA 01749–3246
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Attorney General Ashcroft:

I am wish to express my support for the settlement reached in the government's case against Microsoft. It's time to end this this. I want the government to stop hounding Microsoft so they can continue to innovate, create more jobs, provide more innovative products, and otherwise help our economy recover just like President Bush wants us to.

Before Microsoft created the Windows product only the technically adept were able to use a computer not to mention the internet. Lets be fair but let's not overly punish a company for being aggressive and competitive. I urge that the government accept the settlement as it has been drafted. Let's get on with business we certainly have many other important challenges to tackle. Let's work together to improve our economy and keep the United States free of terrorism.

Please help us
Sincerely,
Richard Lefebvre
email copy: Representative Marty Meehan

MTC–00028922

From: Mumsy37@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:04pm
Subject: Microsoft Settlement

Dear Department of Justice:

Please accept the settlement of the Microsoft case. This country has been through enough distractions. Let's see if Microsoft can use their engery to create software to help in this war on terrorism. I bet they will be on the cutting edge of this fight on terrorism and military deployment logistics, etc.

They do not need any more time and money spent in court to defend their company.

Thank you and God Bless America.
Carl Munson,
CEO Bay Coffee Service,
Corpus Christi, Texas

MTC–00028923

From: Carl Schnurr
To: Microsoft ATR
Date: 1/28/02 7:04pm
Subject: Microsoft Settlement

Enclosed please find my comments on the ongoing MS litigation.

Carl

Carl Schnurr
Group Program Manager, Microsoft
Salt Lake Games
8071 S 865 E
Sandy, UT 84094–0697
January 24,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I find it hard to believe that the state of Utah has the time or the money to pursue litigation against Microsoft. Our projected deficit for this year is nearly two hundred million dollars, and no good can come of further time in the federal courts. My state, along with eight more of the eighteen plaintiff states in the Microsoft antitrust case, are currently seeking to overturn a perfectly reasonable settlement in the hopes of making more of a profit for themselves. I am writing to express my dismay, not only that the suit has gone on this long, but also that there is the possibility that it may drag out even longer. Microsoft, the Justice Department, and the plaintiff states are not the only parties that have felt the negative effects of this suit—the economy has declined even further, the consumer has suffered, and progress within certain aspects of the technology industry has lagged. I do not believe that the pursuit of further litigation is in anyone's best interest.

The settlement that Microsoft and the Justice Department have managed to reach is fair and reasonable. Microsoft has agreed, for example, to reformat future versions of Windows so that non-Microsoft software will be supported within the Windows operating system. Moreover, Microsoft plans to document and disclose various source code, interfaces, and protocols integral and native to the Windows operating system to facilitate customizability within Windows and to allow non-Microsoft servers to interoperate natively with Microsoft servers. Microsoft's competitors will be able not only to use Windows as a platform to market their own software, they will also have the opportunity to reconfigure Windows so as to promote their own programs. I believe the settlement is just. I see no need to pursue additional litigation on the federal level. This has gone on far too long already. I urge you to support the settlement and finalize it as soon as possible.

Sincerely,
Carl Schnurr

MTC–00028924

From: Donald Delahaut
To: Microsoft ATR
Date: 1/28/02 7:04pm
Subject: Microsoft Settlement

The attachment was faxed to Mr. Ashcroft on 1/27/02 about 9:30pm.
Donald Delahaut
260 Fernledge Drive
New Kensington, PA 15068–4614
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settler member of the technology industry, I warn to see Microsoft and the industry to move on The suit on for over three years and has caused great damage [o the. entire industry. Some say that Microsoft is being treated leniently In fact the agreement is quite tough Microsoft document and disclose, for use by its competitors, various interfaces flint are internal to Windows'' system products. Microsoft is virtually handing over their company secrets to their competitors, getting off easy in order to move forward Microsoft b giving in to a lot The terms of the settlement are fair and t. accepted.

CC Senator Rick Santorum, Representative Melissa A. Hart

MTC–00028925

From: John Heine
To: Microsoft ATR
Date: 1/28/02 7:04pm
Subject: Microsoft Settlement
John J. Heine
751 Emerald Drive
Lancaster, PA 17603
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am e-mailing to you today to express my support of the recent settlement between Microsoft and the Department of Justice. After three long years, the settlement is long overdue. As a corporation, Microsoft made concessions above and beyond what was necessary. Although litigation was unnecessary in the first place, it is best to let the issue rest with this settlement.

Again, the settlement sets terms that are beyond the scope of the original litigation. The disclosure of internal interfaces is an example of the generous nature of this settlement on behalf of Microsoft. Under this provision, Microsoft is documenting all of the internal interfaces on the Windows'' operating system products. These documents are being forwarded to competitors of Microsoft for their review. This is unprecedented in any type of antitrust legislation. Further, it is proof of Microsoft's desire to settle the issue. This haste is imperative.

Letting the settlement stand will enable Microsoft, the technology industry, and our economy to recover. In this time of economic unrest, this should be the focus of our government's efforts. I trust that no more action against Microsoft should be taken at the federal level.

Sincerely,
John J Heine
cc: Senator Rick Santorum

MTC–00028926

From: Robert Habas
To: Microsoft ATR
Date: 1/28/02 7:04pm
Subject: Antitrust Settlement with Microsoft

The government antitrust settlement with Microsoft lacks effective enforcement and it fails to prohibit a number of anticompetitive licensing practices. It's taking away the chance for real competition in the operating system market.

MTC–00028927

From: saeed bhatti
To: Microsoft ATR
Date: 1/28/02 7:05pm
Subject: Microsoft settlement

Judge Kollar-Kotally,

My name is Saeed Bhatti and am resident of New Jersey. I came to know through a very close friend about some of the aspects of the Proposed Settlement made by the Justice Department with Microsoft, and I am very unhappy. Firstly, how could the Justice Department grant Microsoft a government-mandated monopoly of the software industry and even worse—other technology markets? Definitely such decision would seriously jeopardize all serious competitors—both now and in the future. We're living in a free and open market society, and one of the advantages of having such a system is that people have the right to choose from among several brands of one single item, and in this case, software. I would want to see a healthy competition of several software companies, in order to make prices competitive as well. Secondly, how could the Justice Department condone Microsoft for violating the antitrust law and even for its illegal conduct e.g. bribing other competitors in order to stop their operation. What is the Justice Department's motive behind this action?

Your Honor, I would want Microsoft be brought to justice upholding to democratic values. Sadly to say that monoplies are the trade mark of monarchs and communist governments.

Very Truly,
Saeed Bhatti

MTC–00028928

From: ruthweeb
To: Microsoft ATR
Date: 1/28/02 7:05pm
Subject: Microsoft Settlement
January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington DC 20530–0001

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between the US Department of Justice and Microsoft in the antitrust case. I feel this case has gone far too long and I can hardly believe what we as taxpayers have paid to have this continued. I believe the terms of the settlement is very fair and certainly does not let Micro- soft off easy. They stipulate that Microsoft will have to disclose interfaces and protocols that are internal to Windows operating system products. They also will be granting computer makers broad new rights to configure Windows so that non- Microsoft products can be promoted more easily.

The nine states that want to continue litigation should be reprimanded and the settlement should be implemented as soon as possible. Please do what is best for the American public by ending this dispute. Thank you.

Sincerely,
Ruth I. Weeber
3557 Sunridge Drive South
Salem, Oregon 97302
ruthweeb@msn.com

MTC–00028929

From: Renate Wilford
To: Microsoft Settlement
Date: 1/28/02 7:01pm
Subject: Microsoft Settlement
Renate Wilford
3548 Florian Terrace
Palm Harbor, FL 34685–2663
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Renate Wilford

MTC–00028930

From: ALINEAZ@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:05pm
Subject: Microsoft Settlement

I feel the provisions of the agreement are fair. The case should be settled and let Microsoft go about their business—which is one of the most successful businesses in the United States. Get off their back.

Aline Gregory
6451 E. Sugarloaf St.
Mesa, AZ 85215

MTC–00028931

From: RRingg2161@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:06pm
Subject: Microsoft antitrust deal
To: Renata Hese

I'm writitng this letter in response to the microsoft anti trust case that is still pending. I have to say as a consumer there's no question that Microsoft still has a monopoly on the personal computer and the verdict's established by the DOJ did little to stop microsoft from controlling the OS system market. I really think the DOJ should of done more to protect the consumer from falling into the hands of microsoft's control. My solution to this problem is that law's should be set on how pc computers are sold and what applications can be preloaded so that consumers can have more choice. If you go into a store to buy a pc obviously you going to have to buy MS windows O/S whether you like it or not. Because Microsoft control's the operating system they control the software market. Laws should be set that computers have to be sold with out the Windows system installed so that consumers can purchase the windows software they wan't not what comes on the computer. In the software market if you don't get your product's pre-installed on computers you can't compete in a fair open market. This to me is the solution to the problem and everybody want's to compete in a fair market. I hope this brings some closure to this case and everybody can win from it.

Thank You for your time.

Roy Ringgenberg

MTC–00028932

From: Charles Dorian
To: Microsoft ATR
Date: 1/28/02 7:06pm
Subject: Microsoft Settlement
Charles Dorian
3521 255th Lane SE #19
Issaquah, WA 98029
January 28, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I support the Department of Justice's recent efforts to settle the Microsoft antitrust lawsuit. Continued litigation of this case is not in anyone's best interest. I urge you to take steps to ensure an expedient resolution of this lawsuit.

The terms of the settlement agreement are fair and reasonable. Microsoft has agreed to a wide range of restrictions on the way it conducts business. They have agreed not to retaliate against those who promote software that competes with Windows. They have also agreed to implement a uniform price list for the licensing of Windows and to be monitored by a technical review committee that will ensure Microsoft's compliance with the settlement agreement. The settlement agreement accomplishes the goal of increasing competition. Pursuing this case through more trial will not produce a better result. Accordingly, it is strongly recommended that the Department of Justice approve the settlement agreement.

I am a computer owner for more than twenty years who has used many companies programs in my business and personal activities. I am knowledgeable of the issues involved in this case.

Thank you for considering my comments on this matter.

Sincerely,
Charles Dorian

MTC–00028933

From: JACK MILLS
To: Microsoft ATR
Date: 1/28/02 7:08pm
Subject: Microsoft Settlement

PLEASE ACCEPT THE ATTACHMENT IN SUPPORT OF THE MICROSOFT SETTLEMENT.

REGARDS,
JACK MILLS

MTC–00028934

From: C. Dean Larsen
To: Microsoft ATR
Date: 1/28/02 7:06pm
Subject: Microsoft Settlement

I don't think the federal government and some of the other states which are included should settle with Microsoft under the current proposed terms. Microsoft has been a market predator! It has and continues to use its vastly superior position to unfairly dominate and illegally disadvantage small software companies. Microsoft will continue to do so after the current proposed settlement just as the tobacco industry has done. Fortunately, there are still many states unwilling to settle under the current proposed terms.

Sincerely yours,
Dean Larsen

MTC–00028935

From: Floyd, Terry (DHS)
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 7:07pm
Subject: Microsoft Settlement

I am a Microsoft Certified Systems Engineer whose livelihood depends on the continuing success of the company. As such, you'd think I'd be one of the people cheering most loudly for Microsoft to prevail in this long and difficult antitrust case. My own self-interest aside, however, I truly believe that Microsoft has done a great deal of harm to their competitors and the information technology industry as a whole through their insidious behavior. Beyond that, the more I learn about Microsoft's products, the less impressed I am with the quality of their technology. Just because they are the most successful software company in the world does not mean they make the best products. In many cases, their competitors have superior products, but they have so little power in the marketplace that they are struggling to survive in the current economic climate.

It has been proven beyond doubt that Microsoft violated the law with many of their business practices. Many other questionable practices that I have seen them implement over the past five to ten years were not even addressed during the antitrust trial. Microsoft is even now trying to prevent a competing product named Lindows from ever coming to market. Lindows is a new distribution of the open source Linux operating system that will have embedded WINE capabilty, allowing it to run Windows applications in a Linux environment. This is a truly innovative product with the potential to be quite

successful. But Microsoft has filed a lawsuit against the small company that is developing Lindows, claiming that the very name of the product infringes upon their trademarked Windows operating system. Personally, I can see no way this suit can succeed, and I hope the judge who hears the case throws it out as being without merit, but Microsoft has the power and the resources to crush any and all of their competitors. Lindows is a small start-up company with a great idea, but few resources. Microsoft could use its legal warchest consisting of almost limitless money and attorneys to keep the product from ever being available to customers. So much for our freedom of choice.

Moreover, I believe Microsoft has violated other provisions of the Tunney act to lobby the government on its behalf. Last week, I received in the mail a brochure from a group named ''Americans for Technology Leadership'' which urged me to send an email to microsoft.atr@usdoj.gov to support Microsoft against attacks by their competitors. I normally throw these kinds of junk mail brochures in the garbage, but later that same day, I received a telephone call from someone at Americans for Technology Leadership who also urged me to send an email to voice my support for Microsoft and its struggle to ''innovate.'' Now, being a curious fellow, I decided to visit the website of Americans for Technology Leadership at http://www.techleadership.org. I guess I shouldn't have been surprised that the site was cluttered with Microsoft advertisements. This group, a supposedly ''independent'' organization of companies and individuals dedicated to limiting government regulation of technology, is actually funded primarily by Microsoft. I have a feeling that ATL had access to the names, addresses and phone numbers of all Microsoft Certified Professionals and was calling us to rally our support behind the company.

I don't really know whether or not this activity violates any laws, but I resent being used as a pawn in this legal circus. I urge you to take strong action against Microsoft to prevent them from using their monopoly power to prevent other companies from developing and marketing products and services that compete with their offerings. I believe in free minds and free markets and in the long run, I do believe the best products will prevail. If these products happen to come from Microsoft, then they deserve to succeed. But if such products come from Novell, or Red Hat, Caldera, or Sun, or Oracle or even Lindows, then these products at least deserve an equal chance to succeed.

I for one, will be one of the first in line to purchase Lindows if Microsoft will ever allow it to reach the marketplace.

Terry Floyd, MCSE, MCDBA, CNA
Associate Information Systems Analyst
California Department of Health Services
Division of Communicable Disease Control
Information Technology Unit
Phone: (510) 540–2866
Pager: (510) 382–4814

MTC–00028936

From: dunmu ji
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 7:12pm
Subject: Microsoft Settlement

Microsoft is a company who is doing business and has people's trust. Making Microsoft uglier and pay to competitor will not save the economy that has been not good for two years. Should dotcoms or any ''bubble'' company sue Microsoft for their lose since anybody was/is using computer software? Many bad news from big companies have already been damaged people's confident about the economy. Get the Microsoft case to be settled as soon as possible.

We need go on.
Xiaoping Ji

MTC–00028937

From: Chris Maynard
To: Microsoft ATR
Date: 1/28/02 7:09pm
Subject: Microsoft Settlement

Good Evening,

I am writing to comment on the Microsoft trial. While I had planned to send my own comments, I found them already written at the website below. http://www.kegel.com/remedy/remedy2.html In short, I do not believe that the proposed settlement will be successful in stopping Microsoft from enjoying and profiting from their monopoly.

Thank you,
Chris Maynard
Systems Admin Flippin,
Densmore, Morse, & Jessee
maynard@flippindensmore.com

MTC–00028938

From: Robert Habas
To: Microsoft ATR
Date: 1/28/02 7:08pm
Subject: Antitrust Settlement with Microsoft

The government antitrust settlement with Microsoft lacks effective enforcement and it fails to prohibit a number of anticompetitive licensing practices. It's taking away the chance for real competition in the operating system market.

Robert Habas
Computer Connections
St. Helens, Oregon
(503) 397–6726 habas@columbiapc.com
http://www.columbiapc.com

MTC–00028939

From: Rodney Snow
To: Microsoft Settlement
Date: 1/28/02 7:04pm
Subject: Microsoft Settlement
Rodney Snow
81 Lemon Grove
Irvine, Ca 92618–4510
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Rodney Snow

MTC–00028940

From: ''SSISA'' Daniel Garber
To: Microsoft ATR
Date: 1/28/02 7:09pm
Subject: Microsoft Settlement

In my judgment, free choice of the best software product has been hindered.

I have not had the benefit of free choice of all of the alternatives in the market.

I want to be able to choose a product other than Microsoft, if I should decide to do so.

Daniel Garber
Surgical Services Information Systems Administrator (SSISA)
Harborview Medical Center Operating Room
325 9th Avenue, Box #359890
Seattle, WA 98104 USA
206–731–4520 voice
206–731–6577 fax
206–986–7505 pager

MTC–00028941

From: Donald Loptien
To: Microsoft Settlement
Date: 1/28/02 7:03pm
Subject: Microsoft Settlement
Donald Loptien
7450 Deerfield Rd
Longmont, CO 80503–8788
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Donald Loptien

MTC–00028942

From: Spencer, Pamela S
To: 'microsoft.atr(a)usdoj.gov'
Date: 1/28/02 7:11pm
Subject: Microsoft Settlement
January 28, 2001
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

As a fellow Republican in Rep. Tom Delay's district I wish to express my support of the settlement reached last November between the Department of Justice and the Microsoft Corporation. It has now been 3 years since the Justice Department began the litigation process against Microsoft. During this time countless dollars have gone to court mediators who endlessly debated the merits of this case. In times where budgetary resources are becoming increasingly scarce this action is increasingly appalling. Three years has been too long. I cannot imagine there is anything more to discuss.

Once more, the settlement that was reached contains many concessions on behalf of Microsoft. in an attempt to settle the dispute Microsoft has been willing to agree to these terms despite their lack of guilt in the case. Microsoft has agreed to design Windows XP with a particular mechanism that will allow users to add competing software into the system. This will revolutionize the way our operating systems are configured.

I believe that if Microsoft is willing to make these changes, the settlement should be enacted. I strongly support the settlement and look forward to the end of this case.

Sincerely,

Pamela Spencer

3006 Oakland Dr.

Sugar Land , TX 77479–2451

cc: Representative Tom DeLay

MTC–00028943

From: Greg Brockway
To: Microsoft ATR
Date: 1/28/02 7:12pm
Subject: Microsoft Settlement

Leave Microsoft alone. We are a lot better off with them than without them. Maybe they should move to Canada and give them the taxes.

Greg A. Brockway

MTC–00028944

From: Harry Dullys
To: Microsoft ATR
Date: 1/28/02 7:13pm
Subject: MICROSOFT Settlement
Harry Dullys
722 Valley Street
Orange, NJ 07050
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Microsoft has been involved for more than three years in the resolution of its antitrust case. I believe that the time has come to put this matter behind us. I also believe that the current terms serve the best interests of the public. As the settlement agreement stands, the company will be more competitive in the marketplace, and as a result, consumers worldwide will benefit.

It is my understanding that Microsoft has consented to design future versions of Windows that make it easier for software developers to install non-Microsoft programs in the operating system—among many other concessions. Surely this indicates the corporation's commitment to comply with the law and the general needs of consumers and those in the IT field.

I hope that the Department of Justice will see fit to ensure that the agreement remains in its current form, lest three additional years of negotiations become necessary. Thank you for your attention.

Sincerely,

Harry Dullys

MTC–00028945

From: Bob (038) Adie Santore
To: Microsoft ATR
Date: 1/28/02 7:13pm
Subject: Microsoft Settlement
TO : Renata B. Hesse,
Antitrust Division,
US Department of Justice
FROM : Robert Santore, Concerned Citizen

I believe America needs closure on this matter once and for all. How long has it been, how much money will it take...and how long will it continue to be?

The Federal Government must state it's case, derive it's penalties, seek resolution, and end it's relentless efforts to drag this matter on any further—perhaps into the next administration. They need to set a time limit. The longer the Justice Department takes to administer it's justice, the public will be thoroughly disgusted, and America once again will receive her enormous share of worldwide ridicule.

This action is a waiste of precious taxpayer resources, and most of us believe the action by the previous administration was politically motivated, fueled by Microsoft's competiton. No one has yet to prove that the American citizen or the software industry has been hurt by the alligations of anti-competive behavior. Is it worth the cost? And, while the Government continues it's aggressive pursuits, we have real serious problems to contend with...such as the Enron case, where thousands of employees and investors were sucker-punched, collapse of a major corporation, lost employment and retirements. That's the real crime. And that's precisely where the Justice Department should be spending it's efforts. The continuous and incessent attacks against Microsoft

MTC–00028946

From: Jr. Christopher Horton
To: Microsoft ATR
Date: 1/28/02 7:15pm
Subject: Microsoft Settlement

I am a Win98 user who is ''fed up'' with Microsoft's bullying behavior. Linux and other operating systems wouldn't be so popular if Microsoft actully ''listened'' to their customers for once. I am all in favor of restoring consumer choice to the computer market. Customers should be allowed to choose what operating system they want on their PCs, not the ''big box'' computer stores, and certainly ''not'' Microsoft!

Jr. Christopher Horton

bigcatman@mindspring.com

MTC–00028947

From: deanwal@bellsouth.net@inetgw
To: Microsoft ATR
Date: 1/28/02 7:17pm
Subject: Microsoft Settlement

I strongly urge the Department of Justice to accept the proposed settlement as outlined by the appeals court. This litigation should never have been brought in the first place. I use Microsoft products daily and in no way do I feel they have taken unfair advantage in their business practices. I also use Netscape as my internet browser so I know there is a choice. Please accept the agreement so the country and Microsoft can move on.

Dean Waldenberger

MTC–00028948

From: Hathai Sangsupan
To: Microsoft ATR
Date: 1/28/02 7:16pm
Subject: Microsoft Settlement

I just wanted you to know that I feel strongly that the proposed Microsoft Settlement is a TERRIBLE IDEA!

MTC–00028949

From: Joe R. Wood, Jr
To: Microsoft Settlement
Date: 1/28/02 7:08pm
Subject: Microsoft Settlement
Joe R. Wood, Jr
607 Ridgeview Cir
Rocklin, CA 95677
January 28, 2002
Microsoft Settlement
U.S. Department of Justice-Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers’ dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better

products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Joe R. Wood, Jr.

MTC–00028950

From: brian215@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 7:18pm
Subject: Microsoft Settlement

The proposed settlement, while appearing to address the anticompetitive behaviour identified in the 1998 complaint, is deficient in several ways.

First and foremost, the complaint itself was, it may be inferred, limited in scope, for the purposes of greater probability of gaining a conviction or settlement, and for the purposes of shortening the proceedings.

As such, there is much, reasonably well documented and widely known in the industry, past behavior of an anticompetitive nature on Microsofts part, which was not included in the complaint. This behavior continues, and should be addressed in any settlement or imposed finding by the court.

Specific activity, which is ongoing, was not identified, and which must be stopped, includes the purchasing of software companies dominant in their specific niche markets and providing multi-platform software; purchasing the companies or ''poaching'' critical assets (eg employees) of companies making development software (eg the Borland, past developers of ''C'' compiler which competed with Microsoft's product, whose entire development staff was hired by MS, effectively crushing Borland); and the contractual tying of distribution rights for Explorer, to the use of Microsoft Software on portal internet sites (among ISPs who operate servers and also supply browser software to customers, effectively falsely boosting server market share as well as extortionary pricing).

Another impact, not addressed, is the potential employment market for software developers. By establishing, through its predatory practices, an unnatural market with uncompetitive salaries, Microsoft effectively established a salary cap in the software industry, which has directly affected every single software developer, as well as limiting the potential market for developers, by establishing a closed market in many software solution areas, as well as ''closed shop'' sectors in further areas and placing high barriers to entry to competitors who might have opened these sectors with enabling software (OS's, languages, middle-ware, and open standards in the Open Source Software areas).

In addition to its bad corporate practices, Microsoft has: established its own bad development practices (via its Certification programs); broken the pre-existing ''mentor'' practice for software development (by hiring, exclusively, college graduates or college students) thus circumventing ''best practices'' indoctrination in the industry; demolished pre-existing ''competitive but cooperative'' market practice among competing products (eg ability to import/export among differing word processing packages); and established ''anti-marketing'', the practice now coined ''Fear Uncertainty and Doubt'' (FUD), synonomous with Microsoft but used in other business sectors. Additionally, the failure to adequately address many aspects of what an operating system is itself designed to handle, such as networking, security, file names, memory protection, etc, have been dismal failures or ignored completely—things which in a truly competitive market would have spelled the end of a company failing at such a basic level. All of these behaviors are anti-competitive. All are harmful to consumers. All have had the effect of reducing competition, raising prices, and limiting or eliminating development of new features. All of these need to be addressed, effectively, in any settlement or consent decree, or other court action against Microsoft.

If the court were to see fit to also impose minimum standards on any software deemed an effective monopoly, be it the operating system, browser, complier, network stack, or similar, the protection of consumer interests and businesses alike would be well serverd.

I hope these comments are useful in the settlement process.

Sincerely,
Brian Dickson
Arlington, VA
703–564–7246

MTC–00028951

From: DanLucky(a)MediaOne
To: Microsoft ATR
Date: 1/28/02 7:16pm
Subject: Microsoft
Dan Lucky
2455 S Ponte Vedra Boulevard
Ponte Vedra Beach, FL 32082
904–827–0098
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing on the occasion of the Justice Department's public comment period on the Microsoft settlement. As an objective member of the technology industry with 35 years of experience, working with a competitive platform vendor (IBM) to the Windows operating system, it seems that this case developed as a naive attempt of politicians to placate the complaints of businesses (Sun, Oracle, Apple, etc.) in their districts that have failed to gain their desired market share in the software industry. The ensuing attempt at a break-up was a punch in the face to free enterprise by a government interfering where it doesn't belong, so I believe accepting this compromise would be a major step forward for getting this economy back on track and moving on from this horrible legal charade instigated by envious ''losers''. I have seen this ''looser'' attitude over and over in this industry. Microsoft has set a standard that most competitors don't like to compete against. Though their rivals have mostly been victims of bad marketing strategies and/or mediocre products, Microsoft is planning to take several steps to level the playing field further. I believe they will offer the top 20 computer manufacturers with equal pricing for licenses of the Windows operating system without adding any restrictions on the distribution or promotion of competitive products, while allowing broad capabilities to arrange its platform with a custom combination of Microsoft and non-Microsoft software. They will also provide disclosure of their internal interfaces and server protocols to assist software developers in the design process. As you can see with the above examples, Microsoft is making serious efforts to appease the rest of the marketplace. This is a company that has helped move our economy forward by helping hundreds of millions of consumers join the information age, and that should be respected with a measured judgment. Any further action would be unwarranted and more costly and difficult to implement, so please proceed with this very fair solution. Thank you.

Sincerely,
Dan Lucky
CC:Microsoft's Freedom To Innovate Network

MTC–00028952

From: Campbellcou@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:21pm
Subject: Microsoft Settlement

Dear Judge,

I am a student at the University of Southern California, and use computers as one of the primary tools for education and learning. I do not feel that allowing microsoft to abuse the anti trust laws is allowing me to gain all of the possible learning tools for my major. If they have a monopoly over software, I am limited to make my own decisions in applications. PFJ is not enough. Thank you for taking the time to read this.

God Bless,
Campbell Coulter
1247 W 30th St. #110
Los Angeles, CA. 90007
CC:microsoftcomments@doj.ca.gov @inetgw,dkleinkn@yahoo.

MTC–00028953

From: Rosemary Motisi
To: Microsoft ATR
Date: 1/28/02 7:20pm
Subject: Microsoft Settlement

To Whom It May Concern:

I came across today's deadline to comment on the Microsoft settlement quite by accident. I have not been following the case closely and consider myself no expert in these affairs. However, when I did work in the software industry some years ago, Microsoft was well-known for taking the spirit of competition too far. Amusing pranks—such as programmers on loan to competing software developers—purposely embedding errors into software to cause distruption in the competing product's

release. If true, and these stories were widespread, Microsoft has lacked a measure of integrity for a long time. The fact that the company is offering chances at a ''prize'' for writing letters in support of Microsoft and not seeing that in any fashion as a ''bribe'' is typical.

I hope in our efforts to ''promote business'' we do not overlook integrity and honesty and fair dealing.

What's good for Microsoft is not necessarily what's best for America.

Thank you—

Rosemary Motisi

MTC–00028954

From: The Okumuras
To: Microsoft ATR
Date: 1/28/02 7:23pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am a concerned citizen writing to you about the Microsoft settlement. I ask that you ensure that the punishment is commensurate with the criminal offenses of which Microsoft has been convicted. Consider the amount of money they made in dealing unfairly and brutally with other industry members in the pursuit of profit. Does the current settlement penalize them to the degree of the profit they reaped? I do not think so.

The current penalty does not seem to have any way of changing the way this company operates. Any corporation that has used unfair sales practices to gain an advantage cannot be trusted to police itself. They have lost the right to be self-regulating by the gross offenses of which a court has found them guilty. Any penalty that does not change the way they do business is nothing more than a 21st century version of jury nullification. Doesn't our pledge of allegiance end with ''liberty and justice for ALL?'' Justice should be executed upon all lawbreakers regardless of how much money they have or even the impact it might have on the economy—as bizarre as that may sound. My fear is that when such crimes go relatively unpunished, it sends the message that there is no justice. Our economy will recover but our values and morals—the bedrock of society—will not recover if the courts refuse to uphold the law. In fact, without commensurate penalty, you are creating the very environment that allows companies like Microsoft to continue breaking the law.

As a judge, you have an obligation to uphold the law. I urge you to do so. Do not nullify the judgment of guilt by meaningless penalties that neither right past wrongs nor ensure future wrongs will not be committed.

Sincerely,
Kirk Okumura
130 Ashbrooke Ln
Aston, PA 19014–1003
610.358.3337

MTC–00028955

From: Angnemesis@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:24pm
Subject: Is it fair?
Judge Kollar-Kotally

My name is Asmat Khan and I live in New Jersey. I heard about the some aspect of the Proposed settlement made by Justice Department in Microsoft case and I am not satisfied with this proposed settlement. It is not fair to give one company the rights of software monopoly. We are living in a free country and I think same rules applies to the software companies. I believe in the free market where I can choose the product I want offered by different and a competitive price. And it is fair with the software industry.

Your honor, I would want Microsoft be brought to justice upholding to democratic values. Sadly to say that monopolies are the trade mark of monarchs and communist governments.

Asmat Khan.
CC:raj6953@hotmail.com@inetgw

MTC–00028956

From: khudson@mail3.centurytel.net@inetgw
To: Microsoft.atr(a)usdoj.gov
Date: 1/28/02 7:24pm
Subject: Microsoft Settlement

To whom it may concern.

As a Certified IT professional with 19 years experience in Unix Systems administration, I would offer my comments on the Proposed Final Judgment in the case of the US vs. Microsoft.

First I would like to applaud the DOJ on it's finding Microsoft as a monopoly who has used illegal and unethical practices in order to maintain and increase it's monopoly power. If Microsoft is allow to continue it's current criminal behavior, it will extend it's monopoly into yet other markets. Broadcast communications, Internet broad band services and Personal game consoles are already on the Microsoft monopoly radar. I have read the proposal. I will say it is a good start with a couple of glaring exceptions.

As a Unix systems administrator, I have frequently used an ''Open Source'' application called SAMBA to provide file system sharing services between Unix and Windows machine. This software is written in large by volunteers around the world. Submissions are excepted by a central committee on merit of the submitted code alone. The code is checked for any obvious malicious code. But the backgrounds of the individuals submitting the code is never investigated to see if they have a ''history of software counterfeiting or piracy or willful violations of intellectual property rights.''

A volunteer group of coders does not have the resources to provide such a guaranty. But Microsoft, with a legendary legal department of at least 600 lawyers does. Microsoft would use this as a reason to keep this vital documentation from the only real competition remaining in the Windows File and print services space. And, since the SAMBA group is have to figure out much of the undocumented SMB API's (Much of it is documented, but many key aspects are undocumented), Microsoft could declare that the SAMBA team as a whole are, ''counterfeiting, ...intellectual property''

Another group to which these exceptions apply is the ''WINE'' group. These volunteers are trying to port the Windows win32 API to the Linux and other Unix platforms to enable application written for Windows to run on Linux and other Unix computers. Also, there is nothing in the proposal to hinder Microsoft from extending their monopoly into other areas, for instance Personal Gaming Consoles (X-Box), Set top video digital recorders (Ultimate TV) and Broad band access (see http://news.com.com/2100–1033–277203.html?legacy=cnet)

To this end, I would like to add the following commentary to my own. http://www.kegel.com/remedy/remedy2.html In conclusion, while the DOJ proposal is what I would deem a good first rough draft, there are some issues with it as it stands. It keeps key technologies from the only group of programmers who can currently and readily benefit from them, then return these benefits back to the consumer in the shortest amount of time. And it does go far enough to curtail Microsoft's incursion into other markets. With a $35 billion ''War Chest'' whatever technology they can not Co-opt by anti competitive practices, they will simply buy. As last example I would like to offer the following piece. This has just happened within the last several weeks. This is after the DOJ had made the current proposal. http://www.theregister.co.uk/content/54/23708.html

Very Sincerely,
Kevin Hudson
706 Oakley Dr. Lake
Dallas, TX 75065
Ph. (940) 498–0284
E-Mail: mailto:klhudson@bigfoot.com

PS. To the Bush administration: For whom I did vote. If you are really serious about eliminating terrorism where ever it occurs, here is you chance to prove to the world that this isn't just just words to justify revenge against under armed third world countries. Exact judgement against a well known corporate terroirst bred right here on American soil. Bring these terroirst AKA Microsoft to justice. Real justice not just a petty slap on the rest.

MTC–00028957

From: Kathryn Irene Capps
To: Microsoft ATR
Date: 1/28/02 7:26pm
Subject: Conerns about Microsoft monopoly

I am a software engineer working in Silicon Valley. Over the last 10 years I have worked for 4 start up companies. I'm writing to express my concern about Microsoft and the monopoly it holds in the OS market. In particular, I'm very concerned about the chill Microsoft's monopoly has placed on PC application development. I believe that this market has been stagnant for some time, because investors will not put money into a venture that might compete with Microsoft. Microsoft has squashed competitors to Word, Excel, Powerpoint, etc. Microsoft's products have been sometimes better, sometimes worse, and sometimes equivalent. The point is that they did not win the market and kill all competition in these categories because they were better, they won the market because they bundled the applications with the OS that has a monopoly over the market. I see this as a clear abuse of that monopoly. Why try to create an improved spreadsheet if you can't charge a reasonable price? Why create a new application at all if you know that Microsoft can and will enter the market and undercut your price, forcing users to purchase their product when they purchase

the OS? I've seen folks pitch ideas to venture capitalists and be cut down because they might compete with Microsoft. Please consider this issue carefully! Please think through the long term costs of letting Microsoft be the *only* company developing PC applications.

Katie Capps
Software Engineer
January 28, 2002

MTC–00028958

From: Jean Lauver
To: Microsoft Settlement
Date: 1/28/02 7:22pm
Subject: Microsoft Settlement
Jean Lauver
1061 Stonehenge Drive
Hanahan, SC 29406–2416
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Jean Lauver

MTC–00028959

From: Perman, Tim
To: ''Microsoft.atr(a)usdoj.gov''
Date: 1/28/02 7:25pm
Subject: Free markets—pretty simple concept
Resource allocation set by producers and buyers

The letter writer who argued for government action as the only method of preserving capitalism by regulating Microsoft sounds like Joel Klein and Judge Thomas Penfield Jackson—misinformed. The Austrian school of economics points out that the allocation of resources in a market economy is determined by the actions of millions of producers and buyers. For any judge or attorney to question this is ludicrous.

Understanding the above, you will also be able to understand that the only monopolies that can possibly exist are government-granted monopolies. The U.S. Postal Service may be the most anti-consumer company in America. Rising costs, slower delivery—that is a monopoly. In this state you need only visit a liquor store (with perhaps inconvenient hours and most likely out-of-the-way locations) to understand how a monopoly can treat consumers. Klein says that he ''will debate any Libertarian, anywhere, anytime'' on the subject of monopolies. As a member of the Libertarian Party, I am proud to say that I share Klein's disdain for monopolies. As the person who is forced to pay both Klein and Jackson, I am outraged that they do not understand simple free-market economics. As a Microsoft shareholder, I hope that the company defends capitalistic freedom with the determination that the Founding Fathers of this country did.

Thomas Hobbes wrote, ''There are few so foolish that they had not rather govern themselves than be governed by others.'' True capitalism can exist only without fools in power. If Klein wants to debate this, bring the fool on.

Tim Perman
Redmond

MTC–00028960

From: Jason Bishop
To: Microsoft ATR
Date: 1/28/02 12:35pm
Subject: Microsoft Settlement

I would like to relate a story that a friend told me a year or so ago. I believe that the setting for this story was ''97 +/- 1 year. At the time, he was working for Intel in a fledgling group for intel's first foray into consumer 3D graphics. At the time, there was really only one 3D graphics standard, SGI's OpenGL.

This story became especially fascinating, because at this same time, SGI independently was interested in extending the reach of OpenGL to the consumer PC. They contributed the software source code for the rendering engine and all library routines that make up OpenGL to Microsoft in the hopes that there might be a place for OpenGL in the desktop operating system.

At this same time, it appears that Microsoft was starting to notice that 3D graphics was becoming an ''interesting market''. I'm not going to second-guess Microsoft thinking, but I will relate the results. OpenGL source code was modified (40 lines) and renamed to Direct3D and then DirectX. Microsoft now had an API for the 3D gaming market, which of course, was incompatible with any other API, including OpenGL. This would not normally be a wise business decision, but this is Microsoft. Since they had a monopoly on the desktop, having a 3D gaming API which was incompatible with any other would turn out to be beneficial. Read on for gory details...

By this time, Intel's 3D chipset for the consumer market was almost ready. All that separated them from a shippable product was Microsoft certification. So Intel takes the new hardware to microsoft, where they learned that it failed certification. Upon inquiry, it was learned that Microsoft had changed the rules for hardware certification, namely that DirectX must be supported and not OpenGL. What makes this especially diabolical is one of the changes made to turn OpenGL into DirectX was a change to the algorithm which determines if a pixel is turned on. This routine is implemented in hardware. The result is that it is impossible to pass the hardware certification with hardware designed for OpenGL. Intel would have to redo their hardware, including producing the chips all over again. Intel would also have to support the new microsoft DirectX API if they wanted to be granted hardware compatability status. So why does Intel care if they receive hardware compatibility status? Easy, because microsoft requires all PC manufactures to only include microsoft certified hardware in PC's they sell. In this way, Microsoft can control hardware companies. Of course, the reverse is true.

Normal rules don't seem to apply to microsoft, and the settlement should reflect this in my opinion.

Jason Bishop
Union City, CA

MTC–00028961

From: Sawley
To: Microsoft ATR
Date: 1/28/02 7:30pm
Subject: Microsoft Settlement

The AOL lawsuit against Microsoft is a pathetic attempt to try to gain public sympathy in court against a competitor that they can't compete against in the public market

Lewis W. Sawley
(my previous email may have been addressed improperly)

MTC–00028962

From: Ray Whitmer
To: Microsoft ATR
Date: 1/28/02 7:31pm
Subject: Microsoft Settlement.

I am adding my full address and other info, which I forgot when I first sent this message:

Ray Whitmer
ray@xmission.com
575 E. Center Street
Orem, Utah 840975603
801–225–3488

Forwarded message
Date: Mon, 28 Jan 2002 16:49:39 -0700 (MST)
From: Ray Whitmer <ray@xmission.xmission.com>
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement. To whom it may concern, regarding the proposed settlement of the microsoft case.

I am not a lawyer, and have no sound legal advise to offer, and the time has past for that. I have been an employee of a number of companies who have found it impossible to compete with Microsoft because competing with them had little to do with quality of product and everything to do with control. You do not have to look far at all for many overt acts that I think any reasonable person would call criminal. This is because of the high- pressure eminating from the top of the company, to win at any costs. In my 20 years developing products across many operating

systems and corporate structures, I have worked for WordPerfect corporation, Novell, and Corel, among others, and it has become increasingly obvious that quality has nothing to do with winning in the marketplace. It is all about who controls the information patterns of the masses, whether it be Movies, Software, News, or Advertising. This is not a new phenomenon. Once the Catholic Church controlled these things quite effectively with systems that greatly resembled the ever-expanding copyrights and patents on things today. Today, Martin Luther, sneaking out of the Vatican with his biblical transcripts would be hunted down as the latest Napster-ite, who thinks that works which interweave themselves so deeply into the roots of a population should not be controlled by a power-hungry entity such as a Church or a Mega-corporation. This does not mean that those who produce them do not deserve profit, but see what the billions paid for Windows every year buys us: In significant cases, less than what the remaining competition now gives away for free, because Microsoft has such a lock on the market. The profits are squandered every year on power. There are dozens of competing products that could have easily taken that position had they controlled the power they had in their times as unscrupulously as Microsoft does. Corporate survival and hunger for power and profits are the reason we have antitrust laws. In this case, the public shame is greater, because it is the Copyright laws—an artificially- granted government monopoly—that establishes the Microsoft Monopoly. If it were possible to still compete in this market against that Corporation, you would clearly be seeing much lower prices—the Microsoft take increases, but somehow the economies of scale in software production never lowers the price of the software, and there is never even consideration that you paid for dozens of versions you can no longer use because Microsoft has made them incompatible.

Microsoft is not an indispensible part of the market. If they vanished, within 5 years, there would be no trace left, and there would be competition for a little while until another corporation showed that it was the most vicious of those remaining and consolidated power.

I and thousands of people like me have started writing new software that is not susceptible to this overbearing corporate eternal ownership—which I have to believe is extremely different from what the framers of the Constitution thought they were doing in granting limited copyright and patents. We have the technology to design around the original intent of these laws, and it is time that you look at seriously reigning in the moster that has evolved. Law of the mega-corporation, by the mega-corporation, and for the mega-corporation is not in anyone's best interest long-term, even if the mega-corporate advertising of today has the same persuasive power as the mega-Churches of old over the masses, tribunals, and courts of law. The case against Microsoft was poorly made, and hardly justified, not that there wasn't a huge case to be made. But your remedies are worse than ineffective. They will do more harm than good. You have overturned the breakup, which might have had some effect, but likewise didn't get at the root of the problems, which I have tried to describe here. It is not Microsoft that is wrong but <insert any company> which succeeded by such viciousness would be just as bad, and I would be just as sorry to see Sun, Oracle, or even my own company AOL Time Warner be in such an abusive position.

I think that when a company abuses the public trust of its granted monopolies as badly as Microsoft has, the appropriate and natural action is to revoke their monopoly, which in this case is their copyright. With that arrow in your quiver, it would not be difficult to convince companies in the future to act more in the public interest. Short of that, please abandon your current pursuits and admit honestly that the corporation has won and the country has lost. It is really rubbing salt in our wounds to offer something that hurts more than it helps and claim you have acted in our behalf. Human rights are more important than copyrights or corporate rights. Many technology companies go under every year. It would be better, though if there was a better connection between profits and service. If you do not, the next revolution is on the horizon. You cannot lock up everyone for violations of intellectual ''property'' any more than the Church could, however much the corporations want to control everything. And corporations do not need an absolute eternal copyright as much as they might claim. And America will become the ''old world'' while other countries such as Russia have their patriots thrown in prison in America for crimes of conscience by the dozens of new FBI/DOJ departments created for this new opression — certainly not for any overt act depriving a corporation of it's profit in the recent Sklyarov case. Do you really want to be the ''Department of Justice'' which presided over such a debacle? Where is justice for we, the people?

Ray Whitmer
ray@xmission.com

MTC–00028963

From: Ray Leach
To: Microsoft Settlement
Date: 1/28/02 7:25pm
Subject: Microsoft Settlement
Ray Leach
1913 Bay Oaks Court
Fort Worth, TX 76112–4503
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Ray D. Leach, Colonel USAF (Ret)

MTC–00028964

From: ANDREW SHINER
To: Microsoft ATR
Date: 1/28/02 7:32pm
Subject: MICROSOFT

PLEASE BE ADVISED THAT I AM A MICROSOFT USER AND HAVE BEEN SINCE 1982. I THINK MICROSOFT HAS REDUCED THE COST OF INFORMATION OVER THAT PERIOD. PLEASE LET MICROSOFT DO WHAT IS DOES WELL . LETS KEEP GOVERNMENT OUT OF BUSINESS. THE LAST TIME THE GOVERNMENT HELPED ME WAS THE AT&T SPLIT UP. LETS LEARN FROM THE PAST. THANK YOU
ANDREW SHINER P. O. BOX 187
FREELAND, PA 18224

MTC–00028965

From: Donna Fox
To: Microsoft Settlement
Date: 1/28/02 7:27pm
Subject: Microsoft Settlement
Donna Fox
8123 Cesperdes Ave.
Jacksonville, FL 32217–4068
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Donna J. Fox

MTC–00028966

From: Bettye Bailey
To: Microsoft ATR
Date: 1/28/02 7:33pm
Subject: microsoft settlement

It is time to leave Microsoft alone. There are many things more important than bedeviling a company so important to our economy. Please allow them to get back to work. I have a M.A. in Economics from Stanford and do know I speak from experience.

Get to the things that really need doing.

Bettye Bailey

MTC–00028967

From: Stanley‘ Curtis
To: Microsoft Settlement
Date: 1/28/02 7:26pm
Subject: Microsoft Settlement
Stanley‘ Curtis
207 Falcon Crest
Warner Robins, Ga 31088
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Stanley T. Curtis

MTC–00028968

From: Marylynne Kirkland
To: Microsoft Settlement
Date: 1/28/02 7:27pm
Subject: Microsoft Settlement
Marylynne Kirkland
P.O. Box 755
Panguitch, UT 84759–0755
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Marylynne Wagner Kirkland

MTC–00028969

From: ccoulter
To: Microsoft ATR
Date: 1/28/02 7:32pm
Subject: Microsoft Settlement

Dear Judge,

If we want to preserve the right to have a free choice on products, goods, and a freedom to makre our own choices, the the Proposed Final Judgement is not enough. I hope that you will see that Microsoft has been controlling us and has controlled the technology world. Please consider a harsher punishment to stop thier control over a free market.

Sincerely,

Coulter Campbell
Coulter Campbell
910 Knob Hill Ave
Redondo Beach, CA. 90277

MTC–00028970

From: PolPrncsVel@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:32pm
Subject: Microsoft Settlement
2859 Hearthstone Way
Rockford, Illinois 61114
January 12, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I think the lawsuits against Microsoft have gone on way too long. I am glad to see that Microsoft is not being broken up, but I thoroughly believe that this suit has been a personal vendetta from the first place and has been extremely unfair to Bill Gates.

The terms of the settlement do not let Microsoft off easy. Microsoft has to disclose internal interfaces, design future version of Windows so that competitors can promote their own products, and improve their relations with computer makers and software developers regardless of their competitors'' practices, efficiencies, or strategies. These restrictions go against free market economy principles to choose your partners, vendors, and consumers.

At any rate, I think it is in the best interest of the American public to end this lawsuit and finalize the settlement as soon as possible. Our tech sector needs to the brilliant innovation of Microsoft and their workers to jumpstart the industry and help out our ailing economy.

Sincerely,

Velora Upstone

MTC–00028971

From: John Wilson
To: Microsoft ATR
Date: 1/28/02 7:33pm
Subject: Microsoft Settlement

I do not agree with the settlement terms as they exist at this point. I appreciate with Microsoft's contention that they should be free to innovate, but they should be forced to compete with the rest of the industry on a level playing field through the quality of their products, rather than by flexing their monopolistic muscles. Windows XP is a clear indication that they have no intentions of playing by the rules, even after all they have been through. Windows XP is just as unstable as Win2K (both are far more stable than the Win95/98 series), and they have once again bundled their ''cornerstone'' software in such a way that it becomes impossible to separate. You cannot shut down Messenger when MS Office is running, for example. The error message states that ''There are other applications currently using features provided by Windows Messenger.These applications may include Outlook, Outlook Express, MSN Explorer and Internet Explorer''. This is precisely the same thing they did when making IE part of the OS. Clearly they haven't learned their lesson, which means the current settlement terms do not go nearly far enough.

Please make them play fair. That is your job. You are not helping the industry by making it easy on Microsoft, you are hurting it.

MTC–00028972

From: brian215@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 7:35pm
Subject: Microsoft Settlement

An important understanding of *modern* economic models would help in crafting a suitable remedy.

The best lay-persons explanation of what kind of competitive behavior should be encouraged, can be seen in the current movie ''A Beautiful Mind''.

In a bar, John Nash explains to his fellow students the impact of Adam Smith style economics, versus his new model, where it concerns competing for limited resources.

Watch the movie, and apply the concept to any proposed remedy. If there is not more than one happy party, the result is bad for everyone. If both sides (and all parties with a direct interest, including AOL Time Warner, Sun, Oracle, etc, as well as Microsoft) do not praise the result, it is practically by definition, bad for consumers, bad for business, and bad for America and the entire western world.

The current proposed settlement, by this reasoning, is *very* *very* bad.

Sincerely,
Brian Dickson
Arlington, VA

MTC–00028973

From: Debra J. McDonald
To: Microsoft ATR
Date: 1/28/02 7:34pm
Subject: Microsoft Settlement

Although I firmly believe that the microsoft anti-trust suit was a misuse of our hard earned tax dollars, I believe the proposed settlement (under the circumstances) is reasonable and we should move in a more positive direction. Finish the deal and gag all other parties who have personal separate agends.

MTC–00028974

From: joe chensky
To: Microsoft ATR
Date: 1/28/02 7:35pm
Subject: microsoft settlement

Sirs; bring this to closure. the states are not interested in finality, they are concerned about power and notoriety. it is time to go on with business and free enterprise. Sincerly Joseph L Chensky. a concerned citizen

MTC–00028976

From: maxineatrobydr@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:33pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
maxine pollard
132 No. Roby Dr.
Anderson, IN 46012

MTC–00028977

From: Melissa
To: Microsoft ATR
Date: 1/28/02 7:36pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to give my thoughts on the settlement between the US Department of Justice and Microsoft Corporation. I want you to know that I support the settlement that was reached back in November. It is in the best interests of the government to accept the settlement, and move onto more pressing matters. I believe we have wasted far too much taxpayer money and government time as it is, to pursue an issue that never was in the consumers best interest.

The terms of this settlement are reasonable, and were reached after a great deal of effort with the help of a court appointed mediator. Microsoft is not getting off easy like it's opponents might lead you to believe. The company has agreed to make a number of specific changes to its business practices that will prevent future antitrust violations. For example, Microsoft has agreed to document and disclose various interfaces that are internal to Windows'' operating system products for use by its competitors.

Also, a technical committee comprised of three software engineering experts will monitor Microsoft's compliance with the settlement, and assist with dispute resolution.

Sincerely,
Melissa Melvin
11001 Dogleg Trace
Tega Cay, SC 29708
cc: Senator Strom Thurmond
CC:senator@thurmond.senate.gov@inetgw

MTC–00028978

From: Tim Schulteis
To: Microsoft ATR
Date: 1/28/02 7:37pm
Subject: Microsoft Settlement

Judge Kollar-Kotally,

The U.S. is giving away the store in the proposed U.S. vs. Microsoft final judgment, and the settlement should be rejected. The proposed settlement has serious flaws. The courts have convicted Microsoft of many anti-trust violations resulting in many billions of dollars of profits, yet the proposed solution would allow the company to keep almost all of that money and would provide no protection against future abuse of Microsoft's power.

Forcing Microsoft to give away software (and even hardware) to schools is barely a punishment, either, as it allows Microsoft to further expand its dominance into perhaps the one market it doesn't yet fully control-the education market. And setting up a structure whereby Microsoft would essentially police itself is entirely the wrong approach to protecting us.

I ask you to reject the proposed final judgment on these grounds.

Sincerely,
Tim Schulteis
3229 Azalea Circle
Lynn Haven, FL 32444
850–747–0336

MTC–00028979

From: Feathersandink@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:39pm
Subject: Microsoft Settlement
406 Winston Avenue
Baltimore, MD 21212
January 25, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

It is sad that Microsoft has had to spend three years in court in the antitrust case. This is a great American company that contributed so much to our recent economic growth, and could help us get out of this current recession.

That is why I was very happy to learn that a settlement was reached in this case. Microsoft has paid its dues and agreed to a good settlement. The settlement will give non-Microsoft firms access to Microsoft code. With this information, non-Microsoft firms will be able to build better software.

Unfortunately, some with animosity toward Microsoft opposes this settlement, and they should be ignored. It is time Microsoft is released from federal court.

Sincerely,
Merle Sturm
CC:Feathersandink@aol.com@inetgw

MTC–00028980

From: Walter & Janice Schneider
To: Microsoft Settlement
Date: 1/28/02 7:34pm
Subject: Microsoft Settlement
Walter & Janice Schneider
1603 Riverdale Ave
Sheboygan, WI 53081
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Janice and Walter Schneider

MTC–00028981

From: David Mott
To: Microsoft ATR
Date: 1/28/02 7:40pm
Subject: Microsoft Settlement

The proposed DOJ settlement with Microsoft IS A BAD IDEA! In order to have a chance of restoring competition in the Operating System market for PCs, the restrictions must be much stronger.

Restrictions proposed by the 9 ''rogue'' states are more reasonable.

MTC–00028982

From: Ardy Forouhar
To: Microsoft ATR
Date: 1/28/02 7:42pm
Subject: Microsoft Settlement

Dear Judge Kollar-Kotally,

I am a concerned citizen and software industry employee. I wanted to take this opportunity to let you know that as a silicon valley professional, I don't think the judgement goes far enough in addressing Microsoft's past wrong doings.

I realize that I'm a small voice among large companies and powerful representatives. I am a staffing professional hired full-time by companies to help assist in staffing their organizations on a short and long term basis. As someone working closely with start-ups, I've come to learn that bullying tactics from the industry leader in software technology is not healthy for the diversity of skill set among industry professionals on a domestic and global basis.

Also, the proposed settlement would allow the company to retain almost all of the profits earned from dominant tactics.

There are no guarantees that Microsoft won't continue to break anti-trust laws by bullying competitors as it always has.

Microsoft is left to police itself under the proposed final judgment (conflict of interest by definition).

The proposed settlement would amount to a government endorsement of Microsoft's monopoly. They could carry on as before.

Please do your very best to ensure that future jobs of entrepeneurs within the area are not further affected through industry monopolization and that the high tech industry can be revived and not crushed when the economy makes an eventual turn around.

Regards,

Ardy Forouhar
143 Monte Villa Ct.
Campbell, Ca 95008
Tel: 408–626–9517

MTC–00028983

From: Peter Liesenfelt
To: Microsoft ATR
Date: 1/28/02 7:42pm
Subject: Microsoft Settlment

The proposed settlement between the DOJ and Microsoft is grossly insufficient in either penalizing Microsoft for the antitrust issues they have been found guilty of or to provide sufficient protection against further actions by Microsoft. As I understand it (not being an expert in anti-trust litigation) precedents have been established that have identified the standards for monopoly remedies to be of the nature of denying the defendant gains from their illegal acts, protecting against abuses in the future or eliminate the monopoly. The proposed settlement by the DOJ does none of these three things.

As a citizen of the United States I have seen the following occur to my ''practical freedom of choice': My options for a personal computer operating systems has been reduced to one, Microsoft Windows. My options for application software (word processing and spreadsheets) have been reduced to Microsoft Word and Microsoft Excel. My option for Internet browsing is practically eliminated to one, Microsoft Explorer. I DO NOT want to have my choices of Internet hosts to be reduced to one, an Internet connection to one, an Internet media provider to one or an Internet news service to one. This is the path that Microsoft is going toward, to monopolize computing. See Microsoft for what it is, based on their previous actions as to where they are going.

Recently, when Microsoft was planning the release of the Windows XP operating system decided to leave out a function to Explorer that was called ''smart tags''. This function would have allowed Microsoft to essentially ''override'' the content of internet pages and supplement the content with content that Microsoft desired, essentially censoring internet content. Do we want a company that has demonstrated that it abuses its monopoly position in personal computer operating systems to have this amount of power? Do we trust that they will not abuse this type of power? I think not, I hope not, I hope the United States aggressive sees to it that it will not occur. Recently I had a problem with my Windows 2000 Professional system and had to use a backup (much older) pc to try to access Microsoft's Internet site to help determine the problem. But I found out that since it was a machine that had Netscape as a browser that Microsoft prevented me from viewing the information. This is only one example of where Microsoft dictates terms to its customers something that you would expect it would want to serve. Any justifications to such actions is only to further their goals to maintain or increase their monopoly, not to serve their users, not to serve the public's best interest. As an extremely knowledgeable computer user I find Microsoft's tactics to not be in the user's interest, only in their corporate interest. I am not against corporate America, in fact I am a strong proponent of it, but monopolies that abuse their power must be held accountable.

I could, if need be, help architect a remedy to this case. Do I think Microsoft has to be broken up? No. I believe that Microsoft will never agree to a remedy that addresses the precedents that have been established for antitrust remedies. I strongly urge Judge Kollar-Kotelly to not accept the proposed settlement. I fear that the DOJ under the Bush administration will not seek remedies that are sufficient in depth or breath to prevent future abuses by Microsoft and that Judge Kollar-Kotelly will need to independently determine a course of remedies that will.

Peter Liesenfelt
119 Gladys Avenue
Mountain View, CA 94043

MTC–00028984

From: Michael Jaehrling
To: Microsoft ATR
Date: 1/28/02 7:42pm
Subject: Microsoft Settlement

To whom it may concern:

Yesterday I sent you a brief message stating my opinion regarding the Microsoft case. Today I would like to give you more reasons to leave Microsoft in peace: I use Microsoft products, and appreciate them enormously. I resent the government's stance on the basis that it presumes I am not fit to make decisions about which software I buy, and why. If Microsoft is punished, that means they have been found a threat—how can a succssful company's products be a threat to anyone other than it's competitors. And if the latter is the problem, then the USA cannot claim to be a free market or a free country.

Please bear in mind that consumers did not complain about microsoft, nor any community groups. Its competitors (unsuccssful ones), rather than competing fairly, resorted to seeking government favor to help them. You cannot allow failed companies to set terms that will throttle a competitor just because the former was unable to match up.

Governments should not protect some business at the expense of others. As someone once said—''when politicians determine what gets bought and sold, the first thing to get bought and sold is politicians''. Success, self-made and honest entrepreneurship such as that displayed by Bill Gates, should not be punished, but embraced and ecouraged. Imagine how successful America would be if we had more men like him.... If all of the above is not enough, then look to your constitution. A company, like an individual, has the right to its property. This right is inviolable. Please, for all our sakes, uphold Microsoft's right to compete freely and as it sees fit—do not penalize the good for being good.

Sincerely,

Michael Jaehrling
General Manager
Hyatt Regency Cheju
3039–1 Saekdal-dong
Seogwipo-si
Cheju-do
Korea
Tel: 82 64 733–1234
Fax: 82 64 738–0900
www.hyatt.com

MTC–00028985

From: James R Bain
To: Microsoft ATR
Date: 1/28/02 7:42pm
Subject: Microsoft Settlement

I think it is time to end this costly and damaging litigation against Microsoft. Dragging out this legal battle, in which only the lawyers will benefit serves no useful purpose. The proposed settlement is equitable and should end this legal battle as soon as possible.

James R Bain

MTC–00028986

From: Bruce Miller

To: microsoft.atr(a)usdoj.gov
Date: 1/28/02 7:43pm
Subject: JUDGE KOLLAR-KOTELLY: AVOID THE CURRENT MICROSOFT SETTLEMENT PROPOSAL
Bruce Miller
Box 31134
Seattle, WA 98103
28 January 2002
U.S. District Judge Colleen Kollar- Kotelly
Renata Hesse, trial attorney,
Antitrust Division,
U.S. Department of Justice

Dear Honorable Judge Kollar-Kotelly:

I have comments about the proposed settlement terms with Microsoft. I think the proposed settlement is very flawed and must be re-written to ensure the public and other companies are not harmed further by the Microsoft's monopoly. The proposed settlement only serves the interests of Microsoft.

Microsoft's unfair business practices must be addressed to protect all Americans and all computer users.

1. Microsoft must be prohibited from giving unfair preference and position for its own products when bundled with its operating system products, especially in deals with PC companies.

2. Microsoft must be prohibited from being able to bundle whatever they want to include as part of their operating system, because current separately sold software products could be bundled with Windows in the future and thus, undercut and eliminate many other technology companies.

3. Because Microsoft is a monopoly, Microsoft must publicly disclose their Windows source code in order to level the playfield for all American consumers and businesses.

Please adopt these 3 proposed terms into the currently proposed settlement terms with Microsoft. My proposed terms are fair, unburdensome to Microsoft and the U.S. Federal and State governments and American public, and will be very effective to correct and reverse the wrongs Microsoft has committed.

Sincerely,
Bruce Miller

MTC–00028987

From: sam perelli
To: Microsoft Settlement
Date: 1/28/02 7:35pm
Subject: Microsoft Settlement
sam perelli
po 103
cedar grove, nj 07009
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
sam perelli

MTC–00028988

From: Cynthia Haven
To: Microsoft ATR
Date: 1/28/02 7:43pm
Subject: Microsoft settlement
28 January 2002
Subject: Microsoft Settlement

To whom it may concern,

I cannot let the opportunity to pass for comment on the settlement with the Microsoft company pass without taking my opportunity to make some public comment. There are many out there who think this suit against Microsoft (aka Microshaft) is simply the vendetta of some bitter competitors. But the immoral, illegal, and greedy acts of Microsoft over the years have come at the cost to consumers of choice, innovation, and affordable software. They decided long ago that if they can't beat their competitors with better quality they would cheat them or beat them into submission.

There should not be an expiration date to this settlement, unless it is more than 30 years. Microsoft management has proven that they don't care about the rules and would be anxiously waiting in the wings for the next attack. They need to be punished for the wrong they have done to the American consumer. If they claim they have not stifled competition, why does Microsoft Office cost $500 dollars. That is NOT a competitive price. I can buy the same functions in ''Apple Works'' for $80. And why is it still so hard to get rid of Internet Explorer as your default browser? At work, I have to get technical assistance to change it. And why, as I just found out, that the default search engine for IE is MSN (as in Microsoft Network). Try seeing how intuitive it is is to pick another search engine, like Google, which is much better. Fortunately, at home, I have chosen to use non-Microsoft products, even if it costs me money. This is, however, something Microsoft presumes most people won't do, and they are usually right.

Microsoft is not a group of school boys to be slapped on the hand with a promise not to misbehave again. They are corrupt, greedy, selfish jerks with nobody's interest but their own here. The public is not passive about this situation. We want fair play and true competition based on market rules and true innovation. Not marketing gimmicks and coercion. I applaud the Justice Department in their efforts to resolve this situation, but Microsoft should have no mechanisms to revive their evil ways. The settlement should be strict and long lasting, not 5 years, or we will be in this same situation again.

Sincerely,
Cynthia P. Haven
Houston, TX
cphaven@earthlink.net

MTC–00028989

From: Garthbob@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:43pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice

Dear Mr. Ashcroft:

I am writing to express my opinion about the recent settlement between Microsoft and the US Department of Justice. I think the lawsuit has dragged on long enough and should have by this time covered all the bases necessary. Our government needs to be facing other more pertinent issues than trying to break up a company that creates jobs and wealth.

The terms of the settlement are more than fair and should appease all competition since they stipulate that competitors will be given interfaces and protocols that are internal to Windows operating system products. They also will be given broad new rights to confiqure Windows so that non-Microsoft products can be promoted more easily.

I urge your office to do what is best for the American public, IT sector, and national economy and implement the settlement. I would also request that no further state or federal action is taken unless there is a major violation on Microsoft's behalf.

Thank you for your time.

Sincerely,
Bob Strong

MTC–00028990

From: Kim Coker
To: Microsoft Settlement
Date: 1/28/02 7:35pm
Subject: Microsoft Settlement
Kim Coker
2251 Leon Road
Jacksonville, FL 32246
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

I have to agree with and concur with the following: The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into

the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Kim Coker

MTC–00028991

From: Terry Frost
To: Microsoft ATR
Date: 1/28/02 7:48pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft:

I am writing you to express my concern over the extended delay in the settlement of the Microsoft antitrust case. I see no justifiable reason to prolong this case. The major parties have reached an agreement on both the nature of the matters at issue and the future remedial steps Microsoft will take to remedy past perceptions of wrongs and alter its present monopolistic-like advantages. I see no reason to prolong this litigation. The computer field has new innovations occurring frequently and rapidly.

Microsoft has agreed not only to forego any future anti-competitive practices but also to actively work to reduce its dominance in its field. For example, Microsoft will now configure its Windows systems in a manner that will allow its competitors to readily use and even exploit its platforms. Microsoft will alter its licensing practices with computer manufacturers so as to encourage the use of non-Microsoft software. Microsoft will submit now to an ongoing review of its practices by a new federal oversight committee. The company has agreed to embrace competition for the benefit of the entire industry.

Please work toward an acceptance of this plan and a cessation of this litigation.

Sincerely,
Terrance J Frost

MTC–00028992

From: Susan Gilvary
To: Microsoft ATR
Date: 1/28/02 7:43pm
Subject: Microsoft Settlement

The proposed settlement with Microsoft does the citizens of the United States a grave disservice by failing to protect our rights as consumers. Microsoft has accumulated and abused monopoly power, stifling competition and reducing our choices. The Justice Department should withdraw this proposed settlement. The citizens and businesses of this country deserve an open market, not a market dominated by an unresponsive, self protecting monopoly.

Susan Gilvary

MTC–00028993

From: L. E. JOHNSON, JR.
To: Microsoft Settlement
Date: 1/28/02 7:38pm
Subject: Microsoft Settlement
L. E. JOHNSON, JR.
401 Green T Lake Blvd W
Hernando, MS 38632
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
L. E. JOHNSON, JR.

MTC–00028994

From: Joel Hodgell
To: Microsoft ATR
Date: 1/28/02 7:46pm
Subject: COMMENTS ABOUT THE CURRENT MICROSOFT SETTLEMENT PROPOSAL; MY PROPOSED CHANGES TO IT
Joel Hodgell
12712 Lake City Way NE 3
Seattle, WA 98125
28 January 2002
U.S. District Judge Colleen Kollar- Kotelly
Renata Hesse, trial attorney,
Antitrust Division,
U.S. Department of Justice

Dear Honorable Judge Kollar-Kotelly:

I am writing to you to comment on the proposed settlement terms with Microsoft.

As is, I think the proposed settlement is very fatally flawed and must be written to ensure the public and other companies are not further harmed by the monopolistic practices of Microsoft. The current proposed settlement terms only serve the interests of Microsoft and related special interest groups that gave substantial campaign contributions to the Bush campaign and the GOP party.

Even though I live in Seattle, I believe the unfair monopolistic business practices of Microsoft must be punished and adequately addressed in order to protect all Americans and the U.S. and world economy.

1. Microsoft must be prohibited from giving unfair preference and position for its own products when bundled with its operating system products, especially in deals with PC companies.

2. Microsoft must be prohibited from being able to bundle whatever they want to include as part of their operating system, because current separately sold software products could be bundled with Windows in the future and thus, undercut and eliminate many other technology companies.

3. Since Microsoft is a monopoly, Microsoft must publicly disclose their Windows source code in order to level the playing field for all American consumers and businesses.

Please adopt these 3 proposed terms into the currently proposed settlement terms with Microsoft. My proposed terms are fair, un-burdensome to Microsoft and the U.S. Federal and State governments and American public, and will be very effective to correct and reverse the wrongs Microsoft has committed.

Sincerely,
Joel Hodgell

MTC–00028995

From: Paul Speranza
To: Microsoft ATR
Date: 1/28/02 7:45pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing in response to the public comment period for the Microsoft antitrust trial. I would like to urge you to please end this lawsuit as soon as possible

The settlement will definitely promote competition in the technology industry, if not hindering Microsoft's own competitive abilities. Microsoft will divulge their interfaces and protocols, and will share it with competitors., and consumers will be given more choices when using the Windows operating system.

This witch-hunt needs to be ended, and our computer industry needs to be restored. Please uphold this settlement.

Attached please find an email that I originally sent to my state attorney general, Mr. Richard Blumenthal, who never even saw to it that I at least received an acknowledgment.

Sincerely,
Paul Speranza
Vice President
All Systems Go, Inc.
CC:fin@mobilizationoffice.com@inetgw

Mr. Blumenthal,

I would like to comment on some of the proposed remedies that you and the other eight states have suggested in the Microsoft anti-trust case. Please bear in mind that I am referring to an Infoworld.com article for the points that I am addressing.

1) Allowing other companies to port Office to other platforms. This is no small feat. That is probably why Microsoft has a separate

Macintosh team that develops Office for the Mac. They have to do this because code running on Windows will not run on the Macintosh or any other platform. Did you know that the Mac version is always months behind the newest Windows version? Since the Mac is a completely different operating system that means that the developers get no help from the core Windows developers (The Chinese Wall?). Here Microsoft has succeeded only because they have the best product of its type on the Mac. There is no way to stop anyone from cloning Office. Good luck to anyone that tries. The product is so massive you would need a small army of developers to do it. There is a clone of Outlook for the Linux operating system from Ximian (http://www.ximian.com). Microsoft has not stopped them from doing so. By the way, this company is cloning Microsoft's new .Net Framework for Linux, and as far as I know Microsoft is somehow lending support.

Why would you want to allow someone to clone software from other companies? Where is there innovation in that? Sun Microsystems offers Star Office for free, developed by open source developers. It is compatible with the Office file formats which Microsoft publishes. Why aren?t companies dumping Office for Star Office in droves when Microsoft charges several hundred dollars? It's because over the years programs like Word have evolved to be much more than a word processor. The programs in Office work together to build entire applications based on all of the pieces. You can open up a Word document and in it could be an Excel spreadsheet that you can update without ever knowing you were using Excel. This has evolved over the years and is by no means trivial to do.

As far as the logic that it is too expensive for companies to change to a free product because of training costs, I?m not buying that. Is that supposed to be Microsoft's fault? In a recent interview, Scott McNealy from Sun Microsystems said that large corporations aren?t using Star Office mainly because it is free and the customers didn?t think Sun would be committed to supporting a free product. So now Sun is contemplating charging for it.

2) Allow for a stripped down version of Windows at a cheaper price. What for? Microsoft spends a lot of R&D time and money developing the extras that they give you for free. So if you got a version without the freebies does this mean Microsoft has to pay for not putting in programs that they are giving away? Here is the problem with including only products from other companies? Microsoft's updates to IE, Media Player, etc. are always free for the downloading. RealPlayer, for example, offers a functional yet hobbled version of their software and then gets you to pay for upgrades and newer versions. So does Opera with their web browser. So where is the consumer winning here? With MS I get the feature complete versions of a browser and Media Player for free, with the competitors what initially is free may not be over time if I want versions with more features.

I think what Microsoft did with the PC manufacturers was a great idea: Include all of their products but put whatever competitor's products you want in also.

3) Make IE an open source product. Why? That browser is still the best browser out there. Mozilla is open source and is free. Why aren't people downloading that in droves?

Here is a little software history for you.

Wordstar was the leading word processor. They got fat and happy with their product and did not update it. Along comes Word Perfect with many new features. Bye, bye Wordstar.

Microsoft releases Windows 3.1. Word Perfect does not create a windows version. Microsoft releases Word for Windows and it is a hit. Word Perfect releases a Windows version 2 years later full of bugs. Bye, bye Word Perfect. Corel owns Word Perfect now. They tried to create a Java version of it so it would run on any computer. You know what they found? Although Java is great for backroom systems, the front end interface that a user sees is way to slow to be usable. Sun Microsystems? Star Office, which works on any computer, still needs to have direct ties to the platform it is running on to be usable. Shame on Microsoft for writing great software that runs on Windows.

Microsoft releases Windows 3.1. Lotus, after being begged by Microsoft to do a Windows version to prove the value of Windows, does not. Microsoft releases Excel for Windows, which was already on the Macintosh for years, and it is a hit. Lotus releases a Windows version 2 years later full of bugs. Bye, bye Lotus 123. Ashton Tare had a program called dbase III Plus. They got fat and happy with their product and did not update it. Along comes Foxpro from Fox software and Clipper from Nantucket software. Bye, bye dbase. Microsoft did buy Fox many years later. Computer Associates bought Clipper. Borland bought dbase, released a lousy version 4, tried to release version 5.

See the pattern yet? Stay with me now.

Netscape releases Navigator, a web browser and sells millions at 50 bucks a pop, gets fat and happy with their product and did not update it. Microsoft releases a better browser called IE 4. Netscape, still fat and happy with their product, does not update it. AOL builds their client software around IE. Microsoft releases IE 5 with excellent functionality and great hooks for developers trying to build browser applications. Netscape, still fat and happy with their product, does not update it but decides to give it away. Netscape gets bought by AOL. Microsoft releases IE 5.5 with even better features and developer hooks. AOL releases another version of their client using IE, not their own. Netscape/AOL releases version 6. Full of bugs and slow as hell. A year later Netscape/AOL releases 6.1, slightly better. AOL client 7.0 released, still using IE I think. Netscape/AOL releases 6.2, finally acceptable.

Oh, and before I forget. Because Netscape 4.x was such a lousy browser, companies waste millions in development costs trying to keep websites and web applications compatible with it and the newer browsers. As for the innovative features and improvements that Microsoft put into their browser, most have been adapted by the W3C standards body. All of the newest browsers support those features. As a matter of fact, the new Netscape boasts that they are 100% standards compliant, but they have implemented a few non standard Microsoft features that they feel are very useful.

Why should they release an open source version of it? Did you know that under Windows developers can build IE right into their applications? That means a developer can use Microsoft's product to enhance their own. Not one of the other browsers does that! You see, where Netscape targeted the consumer, Microsoft targeted the consumer as well as the developer that has to create the applications the consumer uses.

So what has Microsoft done wrong here? Oh, yeah, they gave us a free browser with Windows.

So in closing I would like to say that I think the nine states are really going radical here, and I now think it is a witch hunt. I almost want to compare it to what happened with the tobacco companies. Microsoft is sitting there with 30 billion dollars in the bank and people want some of it. To me the feds have gotten about all that is worth getting. I could go on and on but I won?t. I hope that you will at least consider my comments. In case you didn?t notice, I am a software developer. My experience is mostly with Microsoft products, but I have done development using Sun and Netscape products also. I would appreciate a confirmation that you have received this email. If you would like to contact me please feel free to do so.

Paul Speranza
Vice President
All Systems Go, Inc
(203)469–2315

MTC–00028996

From: Randy Pipal
To: Microsoft ATR
Date: 1/28/02 7:45pm
Subject: Microsoft
Randall M. Pipal
2350 E. Apricot Dr.
Meridian, ID 83642
January 27, 2002
Attorney General John Ashcroft
US Department of Justice, 950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As a businessman, I don't understand why the government needed to interfere with the business practices of Microsoft. After all, Microsoft is a solid company that puts out a good product, is vital to the economy, and is vital to the tech industry. If Microsoft is not allowed to stand strong, I am afraid for what effect it could have on the economy.

Microsoft has been more than willing to come to an agreement in order to facilitate this suit. It seems their efforts are futile since no one seems to want to end this case. Not only did Microsoft agree to the establishment of a technical committee that will monitor Microsoft's compliance with the settlement and assist with any disputes, they also agreed that if a third party's exercise of any options in the settlement would infringe on any of Microsoft's intellectual property rights, Microsoft would provide them with a license

to the necessary intellectual property on non-discriminatory terms. That seems more than fair to me.

Let's move on. The economy needs it. Thanks.

cc: Senator Larry Craig

Sincerely,

Randall Pipal

CC:senator@craig.senate.gov@inetgw

MTC–00028997

From: Sightsaver@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:47pm
Subject: microsoft settlement

This case should be settled immediately before any further damage is done to the economy.

MTC–00028998

From: Jeff Beitzel
To: Microsoft ATR
Date: 1/28/02 7:47pm
Subject: Microsoft Settlement

As a programmer and system administrator, the Microsoft judgement will impact me greatly. I have been working with both Microsoft and non-Microsoft products for over 5 years, and in that time I have seen a trend in the software being used. As a system administrator, the integration that Microsoft offers makes my administrative tasks easier. Setup, as well as maintenance, is easier in Microsoft products than in some of competitors, like Oracle, Sun, Netscape, and Linux. The time savings I gain make me more productive. As a programmer, Microsoft products show a tremendous amount of innovation not seen elsewhere. Microsoft has often been accused of breaking standards, but it should be noted that they typically embrace and extend. They take off where standards fall short, they allow the products I write to be better. To me, that innovation they provide is of utmost importance. Also, when doing web-development, Netscape is a horrendous product to work with. Microsoft didn't kill Netscape, Netscape committed suicide by refusing to improve its product and listen to its customers. On a more personal side, I am often recruited to help out non-computer literate friends and family, they need the ease of use, and pricing of Micorosft. Without Microsoft PCs would not be commonplace, but relegated to the hobbists and professionals. Microsoft has made this a connected world because they have given us what we want.

This whole anti-trust situation that has me greatly troubled, as a consumer, person, and somone who creates. It is that the government has abandoned its duty to protect successful people and their property, and chosen to persecute them. The fact is Microsoft, by its own blood, sweat, and tears created its products, and by right has sole ability to decide what to do with its property. The government has proceeded on a witch hunt led by Microsoft's failed competitors under the guise of ''protecting the consumer'', the only people trying to be protected are lacking competitors who would rather pull success down than actually work for success. I resent the implication made by those arguing against Microsoft that I am a helpless victim incapable of making decisions for myself. I use Microsoft products because they are the best available to me. If Netscape, Oracle, or Linux met my needs I'd use them; but they don't. Microsoft is a company that should be commended for its success and supported by the government, not beaten down by it.

It is because of the above I say, ''Leave Microsoft Alone.'' and do not place regulations or restrictions upon them. They are a company that has made my life better, not worse. The likes of Oracle, Sun, Netscape, Linux, and the other whiners would do well to take a lesson from Microsoft's playbook: Innovate, the consumer appreciates that. America needs that.

Sincerly,

Jeff Beitzel (Concerned American and Consumer)

CC:activism@moraldefense.com@inetgw

MTC–00028999

From: Anthony Mangan
To: Microsoft Settlement
Date: 1/28/02 7:43pm
Subject: Microsoft Settlement
Anthony Mangan
155 Quail Hollow Drive
San Jose, Ca 95128–4544
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Anthony Mangan

MTC–00029000

From: Charles Buzbee
To: Microsoft Settlement
Date: 1/28/02 7:43pm
Subject: Microsoft Settlement
Charles Buzbee
2188 SW 55th. St.
Redmond, OR 97756
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Charles L. Buzbee

MTC–00029001

From: Nancy Ward
To: Microsoft ATR
Date: 1/28/02 7:50pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

I write, as a private citizen, to oppose the Justice Department's proposed Microsoft Settlement, currently under review.. I believe that Microsoft has a history of stifling innovation in computer technology, thus harming individual consumers and the national economy. An atmospher in which witnesses of Microsoft's violations are afraid to inform law enforcement officials of their knowledge, which has existed in this country, is harmful to the computer tecchnological industry, as well as law enforcement and belief in the efficacy of the justice system in our country.

Since the settlement does virtually nothing to protect computer manufacturers and others from Microsoft's retaliation, those who defy Microsoft's behavior and views of the technological world are left to become martyrs to what the legislation prohibiting monopolies was designed to prevent.

Remedies proposed by the nine state attorney generals who are still plaintiffs would genuinely constrain Microsoft from its unfair business practices and liberate the technological industry from Microsoft's shadow of fear. Left unchecked that shadow will grow and expand into other areas—why wouldn't it, if there's nothing to stop it, nothing to challenge the unfair and illegal behavior? The existence of such a monopolistic entity is a threat to the well-

being of all who challenge it in the future, and all who would strive for a different and better industry.

Send a message, that justice in the USA is not dead, a commodity sold to the highest bidder, or a kickback to the highest political contributor. Help us be free of this monstrous, harmful entity. Let innovation flourish in this once dynamic field. By freeing the development and exchange of ideas in the technological field, you will help us all to flourish.

Thank you for the opportunity to present my comments.

Nancy Ward
9802 SE Dundee Drive
Portland, OR 97266
email: themerryheart@attbi.com

From: J Surlow
To: Microsoft ATR
Date: 1/28/02 7:50pm
Subject: Microsoft Settlement

Jan 28, 2002

To Whom It May Concern,

The Microsoft settlement does nothing to end the monopoly that they are. If nothing is done about that now, will anything ever be done? Can anything stop the predatory practices of this monopoly?

James D. Surlow
Broomfield, CO 80020

MTC–00029003

From: Joseph W Pfahnl
To: Microsoft Settlement
Date: 1/28/02 7:44pm
Subject: Microsoft Settlement
Joseph W Pfahnl
2197 Glenkirk Dr
San Jose, CA 95124
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Joseph W Pfahnl

MTC–00029004

From: Brian Trotter
To: Microsoft Settlement
Date: 1/28/02 7:46pm
Subject: Microsoft Settlement
Brian Trotter
304 Chambers Rd.
Arab, AL 35016
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Brian Trotter

MTC–00029005

From: Don Alvarez
To: Microsoft Settlement
Date: 1/28/02 7:46pm
Subject: Microsoft Settlement
Don Alvarez
7640 N. Quail Ridge Dr.
Tucson, AZ 85743
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

A Very Concerned American!!
Don Alvarez

MTC–00029006

From: Allen L Plitt
To: Microsoft ATR
Date: 1/28/02 7:53pm
Subject: microsoft settlement

Dear Sirs:

Please end all litigation quickly. The longer this goes on, the more rediculous it gets. We are now asking a company's competitors what punishment they desire levied because they cannot produce a better product. What good is that?

MTC–00029007

FROM: Richard Duncan
TO: MS ATR
DATE: 1/28/02 7:53pm
SUBJECT: Microsoft Settlement
Richard J. Duncan
9302 red-Wood Road, A-304
Redmond, WA 98052
425–830–2202
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am in favor of the Microsoft antitrust settlement agreement. the terms of the settlement agreement are reasonable, and will appropriately address the concerns raised about anticompetitive business practices. Continued litigation will not produce a better result. Addressing the allegation that they have acted in a predatory manner, Microsoft has agreed not to enter into contracts that will obligate third parties to exclusively distribute Windows. They have also agreed not to take retaliatory action against those who promote software that competes with Windows. The net result of the settlement agreement will be a more level playing field for Microsoft's competitirs. additionally, a technical committee will be established to monitor Microsoft's compliance wit the settlement agreement. any party who believes Microsoft has violated the terms of the settlement agreement may lodge a complaint with the technical committee. These types of safety mechanisms will ensure no further violations of antitrust laws occur.

Given the vast array of concessions that have been made by Microsoft, no further litigation is warranted. I am hopeful the Department of Justice will remain committed to settling this case.

Thank you for your time and attention.

Sincerely,
Richard Duncan

MTC–00029008

From: David Horrocks
To: Microsoft ATR
Date: 1/28/02 7:54pm
Subject: Microsoft Settlement
To: Judge Kollar-Kotally
Re:Microsoft remedy

As an IT professional I am writing to express my concern about the proposed Microsoft settlement. I work extensively with Microsoft at the local level in Philadelphia, and have given considerable thought to their market position. We depend on their products, and to some extent their good graces, for consulting revenue.

I offer these thoughts:

As an MBA student, I have analyzed Microsoft's channel strategy (document attached). It is clear that market dominance (i.e. monopoly) has led to changes in Microsoft's approach to the channel. The changes are generally not good for those of us on the receiving end. I don?t suggest that this is illegal, but offer it as evidence of the effects of monopoly.

I believe an OS is a natural monopoly ? and product with a decreasing marginal cost of production would be expected to be, and software's marginal cost of production is pennies per copy. So Microsoft's current monopoly position is not necessarily the result of illegal activity. In fact, I would argue that their product positioning, marketing decisions, and coding talent have been the primary source of their success. Those are all admirable traits.

Because the OS is a monopoly I would disagree strongly with Microsoft's critics would argue for a breakup. That would not serve the market or the consumers, and would only postpone the natural monopolistic state. One of the split up firms would win eventually.

But, other natural monopolies are more heavily regulated, such as power delivery. Microsoft should be thoughtfully regulated.

The proposed settlement is very minimal regulation, and not enough to protect the legitimate competitors Microsoft can, by virtue of its OS position, crush at will.

I would hope that regulatory oversight would focus on protecting competitors from bundling that leverages the OS position. Force them to sell products rather than bundle them. Clearly bundling is just a means to defending market power.

Examples of products that could be integrated but ought to be regulated include: terminal services (Citrix), media services (Real Player), offline storage, virus protection, systems management, and others.

Thank you for your consideration of these issues,

David Horrocks
1010 Windsor Ave
Dresher, PA 19025
Mobile: (215)–353–1531

MTC–00029009

From: David Bowman
To: Microsoft ATR
Date: 1/28/02 7:55pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft:

I am writing during the public comment period in support of the settlement reached in the Microsoft antitrust case.

The options for you are, as I understand them, to accept the settlement agreement reached or to return to Court for further litigation. In light of the state of our economy, continued litigation makes little sense. We cannot afford to keep Microsoft on the sidelines.

Microsoft has agreed to make changes in the way it conducts business, which will be conducive to increased competition within the software industry and to economic growth. Microsoft's agreeing to allow computer makers the right to reconfigure Windows operating systems so as to promote non-Microsoft software should prove to be of immediate benefit to the economy.

Please go forward with the settlement as soon as possible. It is in the public's best interest.

Sincerely,
David Bowman

MTC–00029010

From: russell a cox
To: Microsoft ATR
Date: 1/28/02 7:55pm
Subject: Microsoft settlement

Please accept the settlement offer that has been presented. It is time to move forward, not backwords.

Thankyou
MJCox

MTC–00029012

From: Ron Wike
To: Microsoft ATR
Date: 1/28/02 7:56pm
Subject: Just a few comments about the Microsoft situation

1. If you remove the deterrent from a crime, you might as well declare open-season on that same crime.

2. It is a sad day for the United States of America when, on the day after a Christmas when almost every PC given as a present, is running software that has essentially been declared ''broken'' by the Federal Bureau of Investigation of the United States of America.

3. Let us not forget who ultimately picks up the tab every time one of our major corporations, including the Pentagon of the United States of America and Microsoft itself, is at the mercy of anyone who is willing to take the time to read a book.

4. Isn't it time to do something about this problem when the worldwide monetary damages caused by the vulnerabilities of Microsoft's software exceeds the total population of the world by several billion?

5. Do we really want the future leaders of our country, who are currently coming up through the grades of our educational system, to be using software that has been declared a threat to the infrastructure of our own country by the National Infrastructure Protection Center of the United States of America?

6. Microsoft marketed their latest ''innovated'' product known as Windows XP as the most secure operating system ever. It should be quite evident to you by this time that this is not the case. In fact, this situation is much the same as the proverbial used car salesman who insists that the speedometer has not been turned back. However, the final liability of Microsoft's behavior is yet to be known.

URL's to substantiate the above points provided upon request. Since this is a matter of justice, and the ''J'' in DOJ stands for justice, I find it necessary to remind you that Abraham Lincoln declared that ''All men are created equal'' and that we have a pledge of allegiance to our flag which, although altered a few times over the past several decades, still ends with the phrase ''With liberty and justice for ALL''! Therefore, I encourage you to do your job and enforce the laws of the United States of America with equality and due justice. (Long overdue justice in my opinion). And, unlikely as it might be, it would sure be nice to require the company responsible for all the damage to pay for it (retroactive). If Mr. Gates/Microsoft think they are stimulating a faltering economy, then perhaps their vision is only short-term. In any case, isn't it a great way to erode consumer confidence? What difference is there between capitalism and communism when you are down to only one product and that product is not only seriously flawed, but also a threat to your own national security?

Regards,
Ronald E. Wike

MTC–00029013

From: Forest, Carl
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 7:56pm
Subject: Microsoft Settlement

Dear Sirs and Madams:

I used WordPerfect from 1987 through 2001 because it was by far the best word processing software available. Beginning sometime in the early to mid-90's, each time I bought a new computer, it came with Microsoft Word. Each time I bought a new computer, I asked if the vendor would send me the computer without Word and give me a small decrease in price. The sales people always said they could not do this. So, I got a computer with Word, and bought WordPerfect to put on it. Even though I tried Microsoft Word each time I bought a new computer, since the computer always had Word installed, I never used it because it was obviously inferior to WordPerfect. However, most other people, particularly corporations who watched their budgets, use the ''free'' Word program. Eventually, because it was ''free'', Word became the dominant word processing software. Then Microsoft began charging for it.

Last year my company was purchased by a company that insisted that everyone use the same word processing software. As a result, I now accomplish about 20% less on the average when using word processing because Word is not capable of easily doing what WordPerfect can do seamlessly. Examples: 1. When you copy something from one Word document in say, Arial font, into another Word document with Arial Font, Word will change the font on you. You then have to highlight and change the font back to what it should be. 2. Paragraph numbering and bullets are so erratic in Word, that no one uses these functions—with word, we regress

back to the 80's for automatic paragraph numbering. For example, when you insert a section in front of a newly numbered paragraph with nothing next to it, Word will attach it to the previous paragraph. When you save a document and reopen it, Word will often renumber the paragraphs in some bizarre way. 3. Word has many automatic functions that change things in the text, without your asking, and these are nearly impossible to turn off. 4. Word has inferior lists of symbols.

The above are just a few of the problems with Word. Yet it is the dominant Word processor, not because it is better, but because of clear anti-trust activity.

I believe that if the Government would do something so WordPerfect or some other word processor could really compete fairly against Microsoft, the productivity of this country would increase about 10%.

Carl A. Forest

Partner and Regional Manager, Boulder Office

Patton Boggs LLP

867 Coal Creek Circle, Suite 200

Louisville, CO 80027

Tel: (303) 379–1114

Fax: (303) 379–1155

MTC–00029014

From: Bill & Sue Morgan
To: Microsoft Settlement
Date: 1/28/02 7:47pm
Subject: Microsoft Settlement
Bill & Sue Morgan
4391 Nelson Siding Road
Cle Elum, WA 98922
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Sue & Bill Morgan

MTC–00029015

From: William Lang
To: Microsoft Settlement
Date: 1/28/02 7:51pm
Subject: Microsoft Settlement
William Lang
976 Ferngate Drive
Franklin Square, NY 11010–1804
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

William E.Lang

MTC–00029016

From: Larry See
To: Microsoft Settlement
Date: 1/28/02 7:50pm
Subject: Microsoft Settlement
Larry See
3770 Presidential Corridor West
Caldwell, Tx 77836
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Larry See

MTC–00029017

From: Morton Abramson
To: Microsoft ATR
Date: 1/28/02 8:01pm
Subject: MICROSOFT SETTLEMENT

My wife and I feel that it was a disgraceful waste of taxpayer money to initiate an antitrust suit against Microsoft three years ago.

However, since a settlement exists that will finally end this case, we ask that you continue to support this settlement after the Tunney comment period.

Some competitors and a few in the government are trying to have this settlement withdrawn and Microsoft brought back to court until a finish to this case that satisfies them is reached. Those opposed to the settlement contend the settlement is not harsh enough against Microsoft. However, this settlement will cause Microsoft to disclose more formerly secret design code information than any computer company has ever disclosed to others.

Why, other than for selfish reasons, do opponents of the settlement think that this is inadequate? Why do they want to harm Microsoft? Punishment of success is not the American way! We urge you to ignore the anti-settlement argument.

Three years and millions of dollars later, this case should end now at the federal level.

America has suffered enough embarrassment over this politically-motivated case.

Sincerely,

Morton & Marlene Abramson

426 Green T Lake Blvd. West

Hernando, MS 38632

Phone 662–429–9488

MTC–00029018

From: Mark Mindenhall
To: Microsoft ATR
Date: 1/28/02 7:58pm
Subject: Microsoft Settlement

I urge the court to reject the proposed settlement reached between Microsoft and the DOJ, and instead proceed with the settlement proposed by the nine states which did not join the DOJ settlement.

I believe the nine states'' proposal constitutes a most reasonable remedy which will dramatically reduce Microsoft's monopoly power and dramatically enhance competition. Personally, I am more concerned about Microsoft's desktop monopoly (Win95, Win98, WinME, Win2000 Prof, WinXP Prof, WinXP Home, etc.) and office productivity monopoly (Microsoft

Office) than the strength of their server operating systems. These two monopolies are tightly coupled, and each helps to preserve the other. Office is so strong that its file formats (.doc, .xls, .ppt primarily) have become de facto standards for exchange of complex information between individuals and businesses. Any company wanting to compete with Office needs to fully support reading, editing, and writing documents using these file formats. However, Microsoft provides little documentation of these file formats, which results in competitors having to ''reverse engineer'' the files to understand how the information is stored.

By simultaneously forcing Microsoft to reveal the details of their file formats, while also making Office available on competing platforms such as Linux and varieties of Unix, I think the states'' proposal would dramatically increase competition in the desktop OS market. Also, other applications would be able to ensure 100% compatibility with Office documents, which would create viable alternatives for creating and exchanging documents using the de facto standard Microsoft file formats.

Mark Mindenhall

MTC–00029019

From: Merton Singer
To: Microsoft ATR
Date: 1/28/02 7:51pm
Subject: Microsoft Settlement
TO: Department of Justice
RE: Microsoft Settlement

In my opinion, the settlement proposed for Microsoft is sufficient. In fact, it is already overkill. It must be kept in mind that the changes in our legal system have not, and cannot keep pace with the rapidly evolving changes in high technology. Microsoft might have somehow been in technical violation of our ''traditional'' anti-trust laws. I'll admit that.

However, had Microsoft been forced throughout its history to restrain itself in a literal sense to these laws, it undoubtedly would have never created all the outstanding computer systems and concepts, which most homes, businesses, medical facilities, schools, etc., in America can now afford.

To punish Microsoft more severally than outlined in the present settlement proposal is analogous to rewarding other companies for their lack of vision, mediocrity, and/or lack of means or desire to compete in an extremely intangible, and risky market. Microsoft is too important an entity to be shackled because others cannot, for whatever reason, keep pace.

Sincerely,
Steve Singer
105 Biltmore Drive #203
San Antonio, TX 78213

MTC–00029020

From: Gilbert Andreen
To: Microsoft Settlement
Date: 1/28/02 7:55pm
Subject: Microsoft Settlement
Gilbert Andreen
235 Rockhill Drive
San Antonio, TX 78209
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
G. M. Andreen

MTC–00029021

From: Greg Piper
To: Microsoft ATR
Date: 1/28/02 8:00pm
Subject: Microsoft Settlement

To the Honorable Judge Kollar-Kotelly:

The Discovery Institute would like to affirm to the court its support for the proposed Microsoft antitrust settlement. Our mission is to ''make a positive vision of the future practical,'' and we believe that while any settlement is far from perfect, this particular settlement is very practical and will contribute positively to economic stabilization and growth in America as well as to technological innovation in the public interest—causes we have advocated from the Institute1s debut 12 years ago.

Microsoft is the leading player in the software industry, and its actions as well as actions against the company will have a substantial ripple effect throughout the technology sector and economy at large. Its success has led the way in a growing and stable market for software products that has carried through the collapse of most dot-com enterprises and contributed to record government surpluses until now. Microsoft1s competitors have the right to challenge its market supremacy with their own products and innovations, but in recent years the nature of their competition has largely revolved around government intervention initiated and prodded on by the competitors. AOL Time Warner lately has invested at least as much time and energy in lobbying Washington as in developing attractive and useful products. It purchased Microsoft1s rival Netscape, which makes a browser that is more expensive than and inarguably inferior to Microsoft1s. It didn1t bother to promote the acquisition to its massive AOL audience, preferring to blame its ineptitude on a rival. This reflects a strategy used by the fallen Enron Corp., which extolled the virtues of a deregulated energy market while lobbying government for legal restrictions on its market rivals. Enron1s demise has yet to show serious economic damage. But the assault against Microsoft, in our judgment, has contributed to the current technology sector depression and to recession in the economy as a whole. It is time to call it off.

Economic success rests not only on prudential government regulation, but on a company1s motivation to continually improve its products and make innovations that will attract more consumers. Software users, whether individuals or business, have gradually been leaving the tech market for the past few years because a lack of innovation has decreased any incentive to upgrade their equipment. Massive discounts on computers and accessories can stem the technology exodus for only so long.

The proposed settlement has been careful to limit the damage to Microsoft while redressing its legal breaches in software design and marketing, and any further litigation is likely to devolve into jockeying for advantage between rival corporations, absent of any public interest. For the sake of both the tech sector and the economy that responds so sensitively to its sways, this practical and evenhanded settlement should be enacted expeditiously.

Bruce Chapman, President
Greg Piper, Director of Communications

MTC–00029022

From: Robert L. Brown
To: Microsoft ATR,Ford James F.
Date: 1/28/02 8:01pm
Subject: Microsoft Settlement

The settlement is, in itself, a reward for Microsoft's anti competitive activities. I hope the court holds Microsoft to a trial to hear the evidence of Damages. The company is unbelievable, as the evidence showed during the trial. If the company can not be broken up it should be punished so severely, based upon it's assets, that no other company will consider doing the same as Microsoft in its aggressive anti competitive actions.

This is just my opinion based upon the many pages of material I read about the trial and my own thoughts as to why some programs like WordPerfect were caused problems by the Operating System while ''Word'' was not.

Robert L. Brown
attybrown@missourilaw.net
P. O. Box 358
Arnold, MO 63010
636–296–8260
FAX 636–296–0925

MTC–00029023

From: yurczyks@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 7:58pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Roger Yurczyk
23033 164th SE
Kent, WA 98042

MTC–00029024

From: SBaldlyn@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:02pm
Subject: Microsoft Settlement
Marilyn Baldwin
19 Seaview Avenue
Cranston, RI 02905
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW Washington, DC 20530

Dear Mr. Ashcroft:

The case against Microsoft has been controversial. As a concerned citizen, I have followed the case against Microsoft with much interest. While I use Microsoft products, I do believe that at its pinnacle Microsoft may have engaged in anticompetitive practices. The settlement agreement reached last November is equitable indeed, and if enacted, will have many benefits for the technology sector. Thus, I urge the Justice Department to enact the settlement at the end of January.

To expand, the terms of the settlement will benefit consumers, developers, and manufacturers in the technology industries. With the interim release of Windows XP, users of the operating system will be able to reconfigure their desktop according to their own needs. Thus, users will be able to delete Microsoft software from Windows and add competing software at their own discretion. In addition, developers will benefit from the information disclosure of the protocols and interfaces internal to Windows. This information enables developers to produce software that is more compatible with the Windows operating system. Further, PC manufacturers will be given broad new rights to market competing software without fear of Microsoft retaliation.

Much, then, will change with the implementation of the settlement. Given the decline in the technology markets in recent years, I believe that this settlement will encourage confidence in the markets once more. Again, I urge the Justice Department to enact the settlement. Thank you for your time regarding this issue.

Sincerely,
Marilyn Baldwin

MTC–00029025

From: Rody P. Cox
To: Microsoft Settlement
Date: 1/28/02 7:56pm
Subject: Microsoft Settlement
Rody P. Cox
#5 Connaught Ct.
Dallas, Tx 75225
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Dr. and Mrs. Rody P. Cox

MTC–00029026

From: DiMaioWood@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:07pm
Subject: microsft settlement

I do not believe there is anything wrong with Micrsofts approach to the market, infact I think Microsoft's is extremely customer oriented & offers valuble products to all of us that use computers & the internet.

MTC–00029027

From: dcfisherod@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:03pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Dr. David Fisher
12921 Dale St #82
Garden Grove, CA 92841–5034

MTC–00029028

From: jws1mcp@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:06pm
Subject: Microsoft Settlement

Why does a Microsoft Certified Professional oppose the proposed Microsoft-DOJ settlement?

[1] Because Microsoft is an unabashed monopolist that squelches competition—and innovation—in a field that I chose to enter back in the ''DOS Days''; when I (still) aspired to be affiliated with a company that ''demystified'' personal computers, and helped to bring them into small companies and people's homes at an affordable price. Sadly, those days are long gone...

[2] I could write a LONG list of the companies and products that died in the Microsoft stranglehold, but I believe DOJ already has that information in hand from the legal proceedings.

[3] I urge DOJ to force Microsoft to make all of it's API and related code information for Windows 98 / Me / 2000 / XP open to developers; or, those code and ''hidden'' API's in the Office 2000 / XP suite that prevent seamless integration with other suites (Corel, Lotus, Star, etc.).

(As an aside, I am so outraged by Microsoft's behavior that I have become a very vocal advocate for open source operating systems and office automation applications, and I run these on every machine that I can. But even the Linux zealots can't overcome the Microsoft ''machine''!)

Jeffrey W. Stewart, MCP (#2110349)
jws1mcp@juno.com
Montgomery, AL
[BBsPC/PII266]

MTC–00029029

From: Shiven Malhotra
To: Microsoft ATR
Date: 1/28/02 8:08pm
Subject: Microsoft's Monopoly

To Whom It May Concern:

I have been a Microsoft user since I was ten years old. For th longest time I believed that computers were meant to be used only by those who can understand, or know how to use them. But as I grew older I realised that technology has no place in our world unless it can be applied to our everyday lives and to do that technology has to be accessable to those who don't want to understand how the technology achieves the outcome.

I switched to the Macintosh Operating System once I reached college. I realised that Microsoft has never been an innovator in

computer technology but it has always known how to market its products well. But marketing an inferior product is not illelage PREVENTING COMPETITION IS!!

Innovation comes form those how feel that the status quo is not meeting the needs of the common man. Innovators give us a brand new way at looking at ideas and concepts. When a company comes uo with an idea that threatenes the status quo, the status quo tries to prevent the spread of the idea. Microsoft achieves this by crushing the competition, or just making the competitive product incompatible with the Microsoft Operating System.

In Saudi Arabia a years ago WordPerfect was going to release an arabic version of its word processor that was far superior to Microsoft Word. Microsoft decided to preempt WordPerfect by releasing its version of Word in Arabic first. The only problem was that though the box of the software was in arabic, inside THE VERSION WAS IN ENGLISH. Microsoft provided a slip for a free version of the arabic software once it had completed it. BUT it took nearly 3 years for the Arabic version to come out!!! People bought the software believing that the software inside was in their native language but were deceived!!

In Bill Gates book, ''The Road Ahead'', in the original version he believed that the Internet was insignificant!! Yet when Netscape posed a real challange to Microsoft, Mr. Gates went on the offensive by making the Netscape browser less compatible with the Microsoft Operating System, while its browser was brought to the market.

Mr. Gates says that WindowsXP is the ''most secure Operating System'' that Microsoft has ever built, yet hackers have proven him wrong at every turn. Hackers even hacked into Microsoft's ow website. The FBI issued a statement that the Microsoft Operating System was not to be used, because of security concerns.

Competition breeds quality in products deliverd and services rendered. I am originally from India. I have been witness to the changes in the quality of products and services in my country. The lack of competition had made our companies compalicent. The level of services the monopoly companies provided was the only level of service the consumer experienced. There is no surprise that the consumer believed that the level of service was good. After all SOME SERVICE IS BETTER THAN NO SERVICE!!!

Today competition is starting to flourish in India. This has woken up these sleeping giants. They now have to compete with the innovators and new entrants into the market, or become part of history. The consumer, once given a choice will go to the supplier he or she feels best meets their needs. But they will not have this option if they cannot see past the one supplier market!!

Microsoft's main aim is to sheild the consumers from ever seeing any other possibilities in the market, and from preventing these possibilities from ever materialising.

This brings to mind a picture of a dragon protecting a bridge. One one side are the innovators and the competition and the other side are the consumers. To get to the consumers the innovators and competitors have to survive the dragon's displeasure. Even if they manage to get past the dragon, the state in which they get past no longer makes them viable competitors who can make a material difference in the the market.

Microsoft is an innovator is an OXYMORON!!

Throughout history people in power have been scared by new ideas. They have tried to discredit the idea or discredit the person with the idea. Gallalio discovered that the Earth goes around the Sun. He was burned at the stake for sticking to the truth.

PLEASE DON'T LET MICROSOFT PREVENT REAL CHANGE FROM COMING THE INDUSTRY!! THEY HAVE FINANCIAL POWER, DON'T BACK THEM UP WITH LEGAL FREEDOM!!

''Nothing in this world is so powerful as an idea whose time has come''—Victor Hugo

It's time we let Microsoft know that their Monopolistic Strategies will not be tolerated by the United States!!

Thank You,

Shiven Malhotra

MTC–00029030

From: Paul Holwadel
To: Microsoft Settlement
Date: 1/28/02 8:01pm
Subject: Microsoft Settlement
Paul Holwadel
1391 S.O. Blvd.
Pompano Bch. , Fl 33062
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Dr. Paul Holwadel

MTC–00029031

From: Louie Swalby
To: Microsoft ATR
Date: 1/28/02 8:08pm
Subject: Comment on MS Antitrust case

The Honorable US District Judge Colleen Kollar-Kotelly,

I wish to express my concern over Microsoft's initial proposal to satisfy its antitrust penalty by providing second hand computer hardware in schools and then its own operating system and associated software applications.

This is pathetic of them to believe that the judicial system as well as the public would believe that this is fair. Rather, it only furthers their monopoly both in the schools and the future job market, where these ''Microsoft schooled'' students will know of no other choices.

Let Microsoft provide hardware (either PCs, or MACs), and let them provide the hardware for providing networking to the schools. Let the schools choose the operating system (MAC, Linux, or Microsoft). I encourage you to seriously consider the offer by Red Hat's president to provide the free Linux OS to all schools.

The United States is synonymous with the idea of choices, a democracy provides for choices.

Microsoft has one choice: theirs. I urge you to reject the proposal put forward by Microsoft in this antitrust settlement.

Respectfully,

MTC–00029032

From: W R Jackson, Jr.
To: Microsoft Settlement
Date: 1/28/02 8:03pm
Subject: Microsoft Settlement
W R Jackson, Jr.
55 Burbank Lane
Yarmouth, ME 04096
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

W R Jackson Jr

MTC–00029033

From: James Wyatt
To: Microsoft Settlement
Date: 1/28/02 8:03pm
Subject: Microsoft Settlement
James Wyatt
7563 Wesselman Road
Cleves, Oh 45002–8604
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

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Thank you for this opportunity to share my views.

Sincerely,

James A Wyatt

MTC–00029034

From: Michael Robertson
To: Microsoft ATR
Date: 1/28/02 8:08pm
Subject: Microsoft Settlement
Statement of Michael Robertson, CEO,
Lindows.com, Inc.

1. I am the Chairman and Chief Executive Officer of Lindows.com, Inc. (''Lindows.com'') and have been employed in that capacity since the company's inception in 2001. I have previously served as founder, CEO and Chairman of MP3.com, an Internet-based digital music storage, management, delivery and promotion company MP3.com, since March of 1998. MP3.com was sold to Viviendi/Universal on August 29, 2001. I have personal knowledge of the facts set forth herein and, if called as witness, I could and would competently testify thereto.

2. Lindows.com, Inc. is a software company currently developing a new personal computer operating system (''OS''), called LindowsOS, that has the ability to run applications written for both the Linux and Microsoft Windows operating systems. Before LindowsOS, a Linux application would run only on a Linux-based operating system, and a Microsoft Windows-based application would run only on a Microsoft Windows operating system.

3. In cooperation with the many open source community programmers, Lindows.com's software engineers have developed a Linux-based operating system with over ten million lines of code, which will incorporate the performance, stability, and secuirty of Linux while being able to run popular Microsoft Windows-compatible applications, as well as all Linux applications. LindowsOS is the commercial culmination of years of computer science research by Lindows.com and other software companies, seeking to harmonize use of the two most common, but incompatible, computer operating systems.

4. Computer and electronics hardware and software cannot function as standalone products. They are integral pieces of a complex environment that businesses and consumers use to be productive, connected, or entertained. Each piece is required to interoperate with the other to be useful to a computer user. Microsoft's software dominance over the last ten years has taken what was once a rich ecosystem of software and hardware innovation and homogenized it as competitors have been legally and illegally put out of business. This ''ethnic cleansing'' of computer software has left Microsoft and its Win-32 based language, the universal operating system to which any company hoping to penetrate computing OS markets must conform. In other words, for a software company to compete they must speak ''Microsoft'' If steps are not put into place now to allow others to obtain a dictionary of the language AND be able to speak it without suffering repercussions, there will be no competition to Microsoft for the foreseeable future. If companies other than Microsoft are allowed to speak this language, there will be a resurgence of competition and innovation in computer and electronic software and hardware.

5. This ''dictionary'' which Microsoft maintains is not the source code to its operating system or middleware, but rather the blueprint for communicating with those products—the APIs. Microsoft's knowledge and control unpublished APIs has allowed it to exert enormous control over how well applications running on a Windows-based platform work. For instance, Microsoft's ''Word'' word processing program now dominates the word processor market simply because Microsoft itself had nearly exclusive access to its own APIs for years, giving it an advantage in designing its products to perform well with its operating system. It has exercised this same ''API control'' strategey with many other applications, dominating, for instance, the spreadsheet (Excel) Internet browser (Explorer), presentations (PowerPoint), and media player (Media Player) applications.

6. Even though Microsoft today publishes a tiny number of APIs, it continues to maintain an advantage over competing operating system manufacturers such as Lindows.com and software developers because it fails to disclose information sufficient to allow competitors to design software which fully supports the APIs of the application software, disk formats and file formats. As a result, competing operating system software manufacturers are forced to engage in an expensive process of blindly attempting to decipher Microsoft's APIs through trial and error. Most companies abandon the process after costly investments and the few that have produced products are very limited in their functionality.

7. Microsoft also exerts enormous anti-competitive influence over OEM hardware manufacturers'' configurations of their own hard drives which are controlled by Microsoft's operating system. Since the vast majority of computers shipped over the last 10 years have Microsoft Windows operating system preinstalled, the accompanying hard disks are configured with either vfat or NTFS configurations. The specifications for NTFS and vfat are not published and known only by Microsoft. As with the APIs, because only Microsoft has access to and dictates the specifications for controlling the hard drives installed in these computers, competing operating systems are effectively blocked from information critical to designing effective and stable systems.

8. To restore competition, the ''Microsoft dictionary'' should be made public. If the language is secret, potential competitors will not be able to speak the common language used by computer hardware and software, and Microsoft alone will continue to exert enormous influence by selecting who can (and can't) know this language. Microsoft must not be able to gain advantage by delaying publication of the common language, so that competitors will have fair opportunity to meet Microsoft to market with products. Full disclosure of all current and future proposed file formats (including VBA scripting language for full PowerPoint compatibility), as well as future updates in advance of commercial releases are necessary to restore balance.

9. Requiring Microsoft to share the language its interfaces use does not dilute the value of what Microsoft creates, as Microsoft is allowed to maintain the proprietary nature of the code for its various programs. Requiring Microsoft to disclose the common language its programs use to interact with other programs and with computer hardware permits independent companies to use this common language to create innovative applications which can fairly compete with Microsoft in the open marketplace, avoiding excessive government monitoring and entanglement.

10. While Microsoft argues that it is continuing to innovate, the fact is that all operating systems vendors are innovating, but because Microsoft controls 95% of the market already, and has been held to have consistently abused that market power to maintain its monopoly, Microsoft is the de facto standard regardless of the comparative benefits of its product. Indeed, recent lapses in the security of Microsoft's XP products have spotlighted just one of the many

comparative deficiencies of Microsoft's operating system. Yet, despite the fact that Linux-based operating systems are more secure, more stable, and more affordable for many applications, Microsoft's system continues to dominate. This can only be due to the absence of fair market conditions.

11. Ultimately consumers will benefit as they see enjoy more product choices, which will control pricing through natural market forces. The open source community developing applications for the Linux operating system is a prime example of the myriad of programs and applications which interface sharing can inspire. Thousands of programs currently exist in this environment, created by individuals and major corporations alike, all of which are designed to enhance the functionality of computing.

12. I strongly urge that Microsoft required to publish the specifications for file formats, hard disk formats and programming APIs. With advance and complete disclosure of the Microsoft programming APIs, file formats and disk formats, and with the requisite protection to implement them in the course of building a business, it is possible to restore competition to the computing environment.

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Diego, California, this 28th day of January, 2002.

MTC–00029035

From: Steve Riddle
To: Microsoft Settlement
Date: 1/28/02 8:04pm
Subject: Microsoft Settlement
Steve Riddle
8608 Twilight Drive West
Ft. Worth, TX 76116–7661
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Steve Riddle

MTC–00029036

From: Harry Alford
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 8:03pm
Subject: Microsoft filing Kansas from
National Black Chamber of Commerce
1350 Connecticut Ave NW Suite 825
Washington, DC 20036
202–466–6888 202–466–4918 fax
January 28, 2002
Email Address: <mailto:Microsoft.atr@usdoj.gov> microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

The National Black Chamber of Commerce (NBCC) promotes the interests of the more than 64,000 Black-owned businesses in the United States. We have 201 affiliated chapters located in 40 states, including Kansas, and eight countries.

Although NBCC generally supports allowing the market to sort out competitive issues between corporations, we believe that in this case it is simply too late for self-regulation. Microsoft has stifled competition at every turn in its history. It is time for a change. Unfortunately, the proposed settlement between Microsoft and the Department of Justice will not effect this change. It is far too weak ? its requirements are not expansive enough and its enforcement mechanism is not strict enough.

We agree with Attorney General Carla J. Stovall's position that more must be done to rein in Microsoft's anti-competitive behavior. Specifically, to promote competition and innovation, and provide alternatives to consumers, Microsoft should be required to:

* Offer competing developers a stand-alone, unbundled version of Windows without built-in software

* Share the code for its Internet browser, Internet Explorer, with other software developers.

* Auction to potential competitors the right to create the Office software suite to operate on different operating system platforms.

* Include Sun Microsystems? version of Java software in its latest operation system, Windows XP.

Finally, we believe that the court should implement an effective means of imposing punishment in the event of noncompliance and that empower a court-appointed master to oversee the settlement. As it stands now, there is not only no effective punishment mechanism, there is no one even there to enforce the settlement!

In closing, I would just like to reiterate our support for these additional measures to be included in the final settlement.

Sincerely,
Harry C. Alford
Harry C. Alford
President & CEO

MTC–00029037

From: Ken Demark
To: Microsoft ATR
Date: 1/28/02 8:09pm
Subject: Microsoft

Stop harrassing Microsoft, let the current judgment stand.

Ken Demark
CEO
BOLD Technologies, Inc.

MTC–00029038

From: bjohnson11@austin.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement

To Judge Kollar-Kotelly and whom it may concern,

I have been Microsoft Certified Professional since 1993. I've used many Microsoft products in that time. I will continue to do so; either by personal choice or corporate mandate. I'm finding that my non-Microsoft choices are less and less each year.

I work for a Fortune 500 company, using Microsoft's Outlook email client, the number one propagator of modern computer worms, viral or not. I am forced to use the very product that causes myself and my company's resources so much energy to clean up after, time and time again. Although Outlook Express is included on my personal system, I have no such worries about email worms at home as I choose to use a non-Microsoft mail package outside of work.

The proposed settlement does nothing to curb Microsoft's future actions, certainly does nothing to reprimand past actions, and the proof of both is that even in light of Judge Jackson's findings, and the proposed settlement, it hasn't changed any of it's illegal monopolistic leveraging. That alone should be proof that the proposed settlement is entirely un-enforceable, and in-effectual. Without stronger measures Microsoft will continue down the course they've successfully navigated in the past, namely; Embrace, Extend, and Extinguish. Another concern I have with the PFJ is language which addresses competing ''commercial'' vendors. The fear of many is that this language fails to protect not-for-profit software projects from anti-competitive behavior. As not-for-profit computing has been equally harmed by Microsoft's anti-competitive practices, the PFS must explicitly grant not-for-profits equal remedy and protection.

Regards,
Robert Johnson
RJohnson@webside.com

MTC–00029039

From: Dale Snelling
To: Microsoft ATR
Date: 1/28/02 8:05pm
Subject: Microsoft Settlement

FOR—you're killing the economy.

MTC–00029040

From: William Aldridge
To: Microsoft Settlement
Date: 1/28/02 8:05pm
Subject: Microsoft Settlement
William Aldridge
6424 Brookshire St.
Fayetteville, NC 28314
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

William Aldridge

MTC–00029041

From: Robert Mellor
To: Microsoft ATR
Date: 1/28/02 8:10pm
Subject: Microsoft Settlement

Your Honor,

As a computer fanatic, student, and professional, I have watched Microsoft's practices with interest over the years. In 1995, Netscape was the superior browser and held the lion's share of the browser market. I feel that it is still the superior browser, but do to some shady tricks and arm-twisting by Microsoft, the market share has been reversed. As the complaint states, this is because Netscape and its support for applications that are not OS (operating system) dependant could threaten Microsoft's monopoly hold on the operating systems market. Operating systems like Linux Red Hat and Apple could actually gain a respectable share of the market, if not an even one.

I actually like a lot of the products that Microsoft puts out. But I have watched other products that I like as well become victims of (what I believe to be) illegal contractual arm-twisting to prevent manufacturers of hardware from offering any ''rival'' software. I hope that you will be able to do something about this injustice, as this country became great on the concept of competition. The industry as a whole would progress at a substantially increased rate, and consumers would also benefit from competitive pricing and an increased number of choices. I hope that you can reach a decision that will strengthen this country's historical commitment to fair and open market competition, something that this proposed settlement does not accomplish.

Thank you for this opportunity to express my opinion,

Robert H. Mellor, II
Information System Support Coordinator
CHEP
Computer Network Systems Technology Student at ITT Technical Institute
Graduating June, 2002

MTC–00029042

From: CAHT99@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:12pm
Subject: Microsoft settlement

As chairman of Citizens Against Higher Taxes, a Pennsylvania public-interest group, I'd like to offer a brief comment on the proposed Microsoft settlement. I am a long-time user of Word Perfect and despise Microsoft Word; it really gripes me that Word has run rings around Word Perfect in the marketplace. I'm sure millions of other users of non-Microsoft products feel as I do. But we lost, fair and square, in the marketplace of consumer choice. Just because Microsoft is a successful company and produces an operating system and software that most people want to buy, is no reason to punish that success and hurt consumers.

I have looked over the proposed settlement terms and it certainly seems to me that they clearly meet any reasonable standard of curbing potential anti-competitive actions while still preserving relatively free consumer choice.

I would hope that the settlement is upheld, so an innovative and successful company can go about the business of providing ever-newer and better products that appeal to many people (though not especially to me).

James H. Broussard, Chairman
Citizens Against Higher Taxes

MTC–00029043

From: FrancisAClark@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement
10 Red Oak Court
Voorhees, NJ 08043
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the Microsoft antitrust dispute. I support Microsoft in this dispute, and I feel that the litigation that has gone on for three years is expensive and will negatively impact consumers. I support the settlement that was reached in November as a means to end this dispute.

This settlement will serve in the best public interest. Microsoft has agreed to all terms of this agreement, including: sharing information with competitors regarding certain internal interfaces included within Windows and any protocols implemented in Windows. Microsoft has also agreed to design future versions of Windows to make it easier to install non-Microsoft software. This settlement will benefit the entire technology industry.

During these difficult times, one of our highest priorities should be to boost our lagging economy. Restricting Microsoft will not accomplish this end. Please support this settlement so we can focus on more important issues. Thank you for your time.

Sincerely,

Francis Clark

MTC–00029044

From: Joan Eslinger
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement

I am writing to express my opposition to the proposed settlement to the ongoing antitrust case between Microsoft and the U.S. Government. I obtained a B.S. in engineering from the University of Illinois in 1981. I've worked in the computer industry in Illinois and California for most of the time since then, with experience in operating systems, networking, security, applications, and standards compliance. I'm currently employed by Silicon Graphics (SGI) as a software engineer. I have also followed this antitrust case with great interest, reading the various documents made available to the public including the findings of fact and findings of law, because I have observed Microsoft's effect on the computing landscape for the past several years.

I believe the proposed settlement will do nothing to deter Microsoft from any of its business practices which have already been proven to be predatory and to maintain and extend their monopoly. I can't imagine what possessed the USDOJ to agree to such a thing.

The settlement does not address the most important point for the survival of other operating systems: interoperability. One key way Microsoft maintains and extends their monopoly is related to the file formats produced by Microsoft's Word and Excel applications. Almost every business in this country has found itself forced to use these applications (and others) to interact with other businesses. (I understand there are also government agencies contributing to the monopoly by requiring documents be submitted in these formats, and by disseminating information in these formats). And Microsoft makes deliberate changes to the applications and their file formats periodically, often disabling backward compatibility ''accidentally'', to drive widespread upgrades. The best way to defeat this monopoly-maintenance mechanism would be to require Microsoft to publish these file formats so that other companies can write applications that will correctly read and write Microsoft Office documents. This does not mean Microsoft has to expose any of their source code. I know many people have called out to require Microsoft to make their source code available. I don't believe that is a useful remedy, and Microsoft has made clear they would never agree to such a thing. Publishing file formats is nothing like opening up source code. The TCP/IP protocols that the Internet is built on are described in plain English (with some specialized jargon), and many companies have used that English description to write networking code that works with everyone else's networking code. I believe the government could make a big difference in the world of document exchange merely by specifying that all correspondence be done in

openly-documented file formats. I believe this is one of the most important requirements the goverment could insist on in this case.

The second most important problem is the secret and not-so-secret deals Microsoft makes with hardware manufacturers to ensure Microsoft products (and only Microsoft products) are available to consumers by default. One way this comes about is that almost every contract Microsoft signs with another company contains a non-disclosure clause. Microsoft uses Operating System pricing as the key in such contracts. If a company agrees to lock-out Microsoft competitors, Microsoft will lower their cost to purchase Windows. The uniform licensing terms of the proposed final judgement are a good start, but do not go far enough. There is nothing to prohibit Microsoft from making other deals that lead to a vendor receiving cash or goods or services from Microsoft if it just happens that the vendor does not offer any products from Microsoft's competitors. I'm not an accountant, but I expect it would require analysis of not just Microsoft's accounting records, but also those of the vendor's to detect such a scheme. Frankly, I don't think anything will ensure uniform pricing other than having the hardware vendors publish the cost of Microsoft's software as a line item visible to the consumer, in addition to giving the consumer the right to request a machine with no Microsoft software for the cost of the machine without that line item. Vendors will be less likely to lie about the cost of Microsoft software if they know a consumer can knock that full amount off the price when buying a machine with no OS.

There are many, many loopholes in the agreement that I'm sure other people are writing in about, so I won't go into them in detail. The DOJ should know, however, that Microsoft is famous in the industry for writing contracts they can wriggle out of.

One such loophole I haven't seen discussed concerns the three-person Technical Committee. The committee members are required to be ''experts in software design and programming.'' They are not required to know anything about accounting, business practices, contract law, or criminal investigation. They are permitted to hire staff members, but they also must be software experts. Several sections of the final judgement have nothing to do with software but with contracts and business relationships. Why are there no lawyers or accountants on this committee?

Here's just a short list of some of the problems I've seen in the settlement:

Microsoft is allowed to retaliate against vendors who ship a Personal Computer with no Microsoft software.

Microsoft is allowed to make extra payments to vendors who comply with any unofficial rules they may have (III.A.), as long as it takes the form of a payment for positive action (promotion) rather than a negative action (withholding marketing funds). Intel and Microsoft have both used the marketing funds budget over the years to promote their monopolies. The current form of the Technical Committee is unlikely to be able to police this effectively.

Why are vendors not allowed to advertise non-Microsoft Middleware more prominently than Microsoft Middleware (III.C.3.)? Vendors should be free to configure the systems they sell any way they wish. III.F.2. is worthless. Most companies that work with Microsoft are at a severe competitve disadvantage if they don't sign up for co-marketing agreements. The co-marketing agreements will effectively cancel this provision.

Microsoft should not be permitted to poison existing and future standards. Microsoft is currently investing a lot of money in network protocol design. The obvious inference is that they plan to replace the open protocols of the Internet with their own proprietary ones.

III.H. gives Microsoft permission to pre-empt non-Microsoft middleware if there is a feature missing. Microsoft can always arrange for Microsoft Middleware to have new features not available in competitor's products (and some features, like ActiveX, deliberately avoided by other products due to security problems). By the time an ISV could add support for the new feature, the damage would already be done. This clause will not change anything. Microsoft can always refuse to document an API by claiming it is security-related. By the time a Technical Committee member is able to view the related code, Microsoft can change the API so that it actually does implement some security function. The free operating systems Linux and BSD, currently Microsoft's competition, will not be able to license such code.

The definitions of ''Microsoft Middleware'' and ''Microsoft Middleware Product'' are such that Microsoft can easily work around any restrictions on them. In three years the problems will not center around ''Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors'' or ''Internet browsers, email client software, networked audio/video client software, instant messaging software''; they will center around elements of .Net and new applications.

With the new subscription software model, the definitions of OS revisions, upgrades, alpha and beta periods, and distribution will change radically, to the extent that parts of the proposed final judgement will not make any sense (and will no longer apply to anything).

I hope you will take these comments under consideration when evaluating the appropriateness of the proposed settlement. I do not believe this settlement to be in the best interests of consumers or the future of computing.

Joan Eslinger
wombat@sgi.com

MTC–00029045

From: cubsandy2@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:12pm
Subject: ''Microsoft Settlement.'' Fax: 1–202–307–1454 or 1–202–616–9937

The Seniors strongly believes that the proposed settlement offers a reasonable compromise that will enhance the ability of seniors and all Americans to access the internet and use innovative software products to make their computer experience easier and more enjoyable. The settlement itself is tough on Microsoft, but is a fair outcome for all parties—particularly senior consumers. Most important, this settlement will have a very positive impact on the American economy and will help pull us from the recession we have experienced over the past year.

Sincerely Forrest C. Milligan

MTC–00029046

From: Bob (038) Adie Santore
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement
TO : Renata B. Hesse, Antitrust Division, US Department of Justice
FROM : Robert Santore, Concerned Citizen

Please disregard my previous letter, as that was a draft and not ready to be sent. I accidentally pressed the wrong button. So here are my thoughts: I believe the Justice Department and America needs closure on this (Microsoft) matter once and for all. How long has it been, how much money will it take...and how long will it continue on?

The Federal Government must state it's case, derive it's penalties, seek resolution, and end it's relentless efforts to drag this matter any further, perhaps into the next administration. The Government needs to set a time limit. The longer the Justice Department takes to administer it's justice, the public will be thoroughly disgusted, and America once again will receive her enormous share of worldwide ridicule.

This action is a waste of precious taxpayer resources, and most of us believe the action by the previous administration was politically motivated, fueled by Microsoft's competitors. No one has yet to prove that the American citizen, or the software industry has been hurt by the allegations of anti-competitive behavior. Is it worth the cost? And, while the Government continues it's aggressive pursuits, we have real serious problems to contend with, such as the Enron case, where thousands of employees and investors were sucker-punched....collapse of a major corporation, lost employment and retirements. That's the real crime. And that's precisely where the Justice Department should be spending it's efforts. The contentious and incessant attacks against Microsoft must stop.

Remember that old saying, ''it's the economy.....''? I believe the actions of President Clinton and his administration, the Democratic Congress, the raising of interest rates by the Federal Reserve, the Justice Department versus Microsoft, the collapse of Enron (and other big business), the lack of security in the airlines and the attacks of 9/11 are the result of America being diverted from really serious issues. ''It's the Government.....!!!''

It's the Government which is creating an unhealthy economic environment. It's the Government that knew our airlines and airports were vulnerable. And it's the Government which will ultimately drag the country into a deepening recession. Let's end this obsession with Microsoft, let the Government fuel the market and get this economy going again. Let's rock.....

Sincerely;
Robert J. Santore

MTC–00029047

From: Richard H Carlson
To: Microsoft ATR
Date: 1/28/02 8:13pm
Subject: Microsoft Settlement
I believe that you should accept the settlement and cease the litigation.
Sincerely,
Richard Carlson

MTC–00029049

From: LESTER (038) PAM TAYLOR
To: Microsoft ATR
Date: 1/28/02 8:14pm
Subject: Microsoft Settlement
Ir–A YJ OR AWGUS R–AWCH .Lester
andTam Tayfor HC 89,BOX 225
Nt. Pteasant, AR 72561
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
RE: Microsoft Settlement
Dear Mr. Ashcroft:
We understand that the public comment period on the proposed settlement agreement between the Department of Justice and Microsoft closes today, January 28, 2002. We are writing to cast our votes in favor of settlement. Given the record of accomplishment so far in this case, it makes no sense to continue litigation when you have the chance to conclude the case in a manner beneficial to the economy. The primary complaint against Microsoft was that consumers who chose to use Windows operating systems for their computers were precluded from utilizing non- Microsoft software programs for such services as Internet browsers and messaging services within Windows. Microsoft has agreed to end this practice, and open its Windows systems to such competition. With the major complaint answered, there is no need to further litigate. Please end this case, and put Microsoft back to work. The country needs to heal. Thank you for your kind consideration in this matter.
Sincerely,
114-&A 0. Lester A. Taylor Cpa''@
a. Pamela 3. Taylor

MTC–00029050

From: Joe De Fazio
To: Microsoft Settlement
Date: 1/28/02 8:09pm
Subject: Microsoft Settlement
Joe De Fazio
6805 Douglas Blvd. #43
Granite Bay, Ca 95746
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.
Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.
Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.
Thank you for this opportunity to share my views.
Sincerely,
Joe De Fazio

MTC–00029051

From: Ernesto Starri
To: Microsoft Settlement
Date: 1/28/02 8:09pm
Subject: Microsoft Settlement
Ernesto Starri
P.O. Box 1934
Corona, CA 92878
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.
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Thank you for this opportunity to share my views.
Sincerely,
Ernesto Starri

MTC–00029052

From: Brandon Wright
To: Microsoft ATR
Date: 1/28/02 8:15pm
Subject: Microsoft Settlement
√√5012 West Little Water
Peak Drive
Riverton, Utah 84065
January 17,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:
I think the anti-trust lawsuit filed against Microsoft Corporation should finally be closed and satisfied. The suit charged Microsoft with unfair business practices that limit competition, but really the issues were new ground. The technology industry is continually producing new products and procedures that challenge the rest of the world to keep up, including legislation.
Moving forward, Microsoft has agreed to change their policies and procedures to conform to the agreed terms of the settlement of the lawsuit. They have actually agreed to more conditions than were at issue in the lawsuit, and they did so to get the lawsuit behind them and to resume business.
I think Microsoft has shown their intent to conform to the ruling and the terms of the settlement. No further court action should be taken against Microsoft Corporation.
Sincerely,
Brandon Wright

MTC–00029053

From: Tweetsy
To: Microsoft ATR
Date: 1/28/02 8:17pm
Subject: Microsoft Settlement
Dear Attorney General Ashcroft and his Colleagues,
How do you do? My name is Carina Flores*, and I would like to present MY Views on the Microsoft Settlement:
1. Microsoft has SIGNIFICANTLY contributed to the Gross National Product of this Country and to the direct and indirect Livelihood of MILLIONS of people even beyond these patriotic shores;
2. Microsoft has GENEROUSLY contributed to MANY Charitable and Educational Agencies dedicated to uplifting the lives of MILLIONS of people in this country AND in this planet;
3. Microsoft has dramatically ALTERED the landscape of Democracy by making it possible for information technology to be more accessible to a greater number of people and helping us make MORE informed Decisions in the process;
4. Microsoft KNOWS how to keep its Employees happy, productive and instrumental in FUELLING the Economy of this Society, and Microsoft, don't you ever doubt, is in it FOR THE LONG HAUL;
5. Mr Bill Gates of Microsoft IS one of the most ADMIRED people in this Country and in the World, and he and his Colleagues HAVE set NUMEROUS, fine examples of Ingenuity, Wealth-building AND Wealth-Creation for the Youths of Today, and the MANY more Generations to come;
6. This beloved country of ours is admittedly FOUNDED on upholding the Law and discouraging unethical AND illegal behaviour, but NOT —- repeat —- NOT on

punishing Success, which is what Microsoft's Detractors WOULD like to happen because they are counting on you NOT to make that Distinction.

7. This Country and the World IS, by far, BETTER OFF, because Microsoft exists today. Thank you, and may right be done.

Sincerely
Carina F Flores
Box 19780
Stanford, California
94309

* I'm a FORMER Microsoft Contractor who left Microsoft with a great deal of respect AND Admiration.

It is not enough to conquer, one must know how to seduce.—- Voltaire

MTC–00029054

From: John Dunn
To: Microsoft ATR
Date: 1/28/02 8:17pm
Subject: MICROSOFT SETTLEMENT

MS has done complied with everything that the DoJ has asked. AOL is just looking for a free ride.

Finalize the decree and let's MS spend their dollars on productive efforts.

John Dunn

MTC–00029055

From: Hisflyingtune@hotmail.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:15pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Stephen Bogdan
307 Ashmead Rd.
Cheltenham, PA 19012–1506

MTC–00029056

From: Pease
To: Microsoft ATR
Date: 1/28/02 8:19pm
Subject: MicroSoft Settlement

Dear Sirs:

I fully support the proposed settlement of the Microsoft antitrust action. Microsoft, for all its faults, continues to be the one standardizing force in a market that easily fragments into many special segments serving only cognoscenti of that segment. Microsoft is aggressive and competitive and deserves the restraints imposed by the settlement, e.g., I should be able to by a computer from anyone without an operating system if I want it.

Please bring an end to the hectoring of one of two or three great U.S. companies providing inexpensive computing to virtually anyone with a job.

Sincerely,
George and Valerie Pease

MTC–00029057

From: William Tedrow
To: Microsoft Settlement
Date: 1/28/02 8:12pm
Subject: Microsoft Settlement
William Tedrow
hcr 32 box 399
moyie springs, idaho, ID 83845
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
WilliamA. Tedrow

MTC–00029058

From: Robert Stafford
To: Microsoft Settlement
Date: 1/28/02 8:12pm
Subject: Microsoft Settlement
Robert Stafford
5062–B Foothills Dr.
Lake Oswego, Or 97034
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Robert Stafford

MTC–00029059

From: Albert Briggs
To: Microsoft ATR
Date: 1/28/02 8:18pm
Subject: Microsoft Settlement
P≤Albert Briggs
7571 Links Court
Sarasota, FL 34243
January 28, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

It is unfortunate that some states wish to push for further litigation against Microsoft. In my estimation, the states'' representatives on this case are spending more time listening to money-hungry Microsoft opponents than looking closely at the factors in the case. I have never supported Microsoft to the exclusion of competition. They have in no way done anything that has negatively affected me professionally or personally. I have worked in the computer industry for over thirty years, and Microsoft is a true leader. I currently am a satisfied user of AOL/Time Warner's ?Roadrunner? cable service to the exclusion of MSN. I did choose Microsoft's ?Internet Explorer? product after a disappointing experience with ?Netscape?. Microsoft's support and development programs get my vote, However, one does not need to be an expert in the computer field to see all that Microsoft has done for the computer industry. Another factor that proves Microsoft's high caliber has been their willingness to cooperate throughout this lawsuit and to comply with the terms of the proposed settlement. They have agreed to give their competitors access to Microsoft codes and protocols in order to facilitate competitiveness. In addition, Microsoft has agreed to have their compliance to terms of the settlement monitored by a technical committee. Any person who has a dispute with Microsoft may make their complaints known to this committee.

I am truly hopeful that your office will remain determined to resolve this matter. I thank you for all the work you have done

thus far and for keeping the public's interest at heart.

Sincerely,

Albert Briggs

MTC–00029060

From: David Beck
To: Microsoft ATR
Date: 1/28/02 8:19pm
Subject: pro comp and the trial

I think when all is said and done the boys of procomp and the companies whose product they represent will go down in history as the equal of enron and Anderson. I hope you suffer as big a loss as the rest of us trying to just get by.

MTC–00029061

From: Sheevaun O'Connor
To: Microsoft ATR
Date: 1/28/02 8:20pm
Subject: Microsoft settlement

Dear DOJ Group

Thank you for this opportunity to share some thoughts about this settlement. It is not often that we are asked or have opportunities such as this.

As far as the details of the settlement I cannot be specific but in summary I would say that this particular solution is allowing one conglomerate to sidestep the law. Not only sidestep the law but to impinge on fair trade for other systems. If a company has a superior product that product should not be sabbotoged just because the larger more well funded company wants that market share.

Let's be realistic for a moment in a fair trade arrangement, meaning all companies have equal opprotunities, there would be a better competitive market. Just look at what the IBM suit brought about, PC's on every desk and much more.

I've began my teen life as a programmer at the age of 14 and though that is not my vocation today I have always felt that there were better systems out there. Allowing one company to monopolize one or more markets is certainly not giving the public the tech growth opportunities that are truly out there.

Think for a moment how the FDA handles products that are ingested by humans. Why is it so difficult to see that we are stunting the growth of other products by allowing MicroSoft such an easy out.

Sincerely,

Sheevaun Moran

MTC–00029062

From: Seann Maxwell
To: Microsoft Settlement
Date: 1/28/02 8:15pm
Subject: Microsoft Settlement
Seann Maxwell
4324 Ridgemoor Drive N.
Palm Harbor, FL 34685–3171
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Seann Maxwell

MTC–00029063

From: Robert Smith
To: Microsoft Settlement
Date: 1/28/02 8:14pm
Subject: Microsoft Settlement
Robert Smith
1715 Chip n Dale
Arlington, TX 76012
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Robert W Smith

MTC–00029064

From: Lois Amacher
To: Microsoft Settlement
Date: 1/28/02 8:16pm
Subject: Microsoft Settlement
Lois Amacher
4800 Marconi Avenue #128
Carmichael, CA 95608
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Lois Amacher

MTC–00029065

From: Nick Parlante
To: Microsoft ATR
Date: 1/28/02 8:22pm
Subject: need for competition

I'm writing to express my concern that Microsoft's current position is a frightful drag on innovation and investment in computer science, and that the proposed remedy falls far short of fixing the situation. The obvious concern is that Microsoft can use the market power of its monopoly operating system to achieve dominance in other domains—such as with the Netscape browser, or the Real and Quicktime media formats. Obviously, we want microsoft to compete on price and features in those new domains, rather than leveraging its existing dominance.

Rather than repeat those arguments, I would like to come at the point from a new direction.

What is the most exciting and valuable technology to come about in computer science in the last 10 years? The Internet! At the time the Internet burst on the scene, roughly 90% of the world's computers were using Microsoft operating systems to run Microsoft applications to produce and exchange microsoft formatted files. If Microsoft controlled the operating systems and the applications and the document formats, why did the Internet not develop as a Microsoft feature? Why did the measly other 10% come up with the best technology

of the last decade? There are two answers to this question:

1. Microsoft position has created, inevitably, an atmosphere of complacency. The result has been a series of overpriced, insecure, and just generally crummy products with high prices. It always stuns me how breathless the marketing prose is for these things when they are patently so lame. Or rather, how low our standards have become for the price/performance of software. We have become accustomed to lack of competition. Look at PowerPoint today vs. 5 years ago. Compare that to a domain where there is competition, such as hard drives, or databases.

The rest of computer science proceeds through ruthless competition, and the contrast to the Microsoft products without competition is stunning. With competition, PowerPoint would be far cheaper now than it was 5 or 10 years ago. The atmosphere of complacency inhibits something as useful as the Internet from being developed inside of Microsoft—it threatens the status quo.

2. Microsoft develops products to strengthen its monopoly—each product tries to tie in to the other Microsoft products. Using such ties, both technical and marketing, the Microsoft products lock into each other to protect the franchise from a product that might compete in a single domain. From a technical point of view, the practice enables some neat features, but also a series of disastrous security holes. From a marketing point of view, it has been entirely effective. For example, PowerPoint could never stand on its own in the market with its price/performance ($314 street price, Jan 2002), however bundled with Word and Excel it does ok.

Besides all that, the habit of linking products together exactly prevented Microsoft from developing the Internet. The Internet is all about any-any connections. This works by having a freely available standard, such as TCP/IP or HTTP, and having all systems implement the standard in a non-discriminatory way. So A PC can make a web (HTTP) connection to a Unix machine, or a Macintosh, or whatever. In the early 90's, Microsoft created technology for PC-to-PC networking, but it goes against the Microsoft linking strategy to create good PC-Unix, PC-Mac etc. versions.

The Internet is the philosophical opposite of Microsoft's ''linkage'' strategy. Because Internet connections are based on standards, they lead to —competition—. If you don't like the brand X HTTP server, you can swap in the brand Y HTTP server and it still works since the two are following the HTTP standard. Looking back at the development of the Internet, one of the key technical themes is: standards promote competition which leads to continuous improvement in price/performance. The emergence of the Internet is exactly a peek at what the world would look like without Microsoft domination. The Microsoft domain is so leaden, so stationary, that the tiny, non-profit driven standards projects, such as TCP/IP or HTTP or HTML, created whole new domains while Microsoft stood still. This reflects both the great dynamism that competition creates as well as the sodden rule of a monopolist. (That Microsoft would like to bring these new domains under its control is, of course, the topic of the trial.) The point I would like to emphasize, is how vibrant, how amazingly innovative and valuable computer science can be when prompted with a competition. We are so accustomed to the Microsoft hegemony, that we think of it as high tech and innovative, whereas the Internet showed us that the Microsoft domain is stationary compared to a real competitive domain. Computer science has so much potential to create value when pressed with competition. I fear that Microsoft's monopoly will weight down that potential to look more like the pathetic history of PowerPoint.

I would recommend that Microsoft be divided into three parts: Operating systems, applications, and internet applications. Each part should have to compete in its domain on its merits, without technical, financial, or marketing ties to influence the competition in the other two domains. Disclaimer: I own Microsoft stock. I think if forced to compete, they would do fine on their merits.

Regards,
Nick Parlante
Lecturer in Computer Science
Stanford University
(650) 725–4727
CC:nick@cs.Stanford.EDU@inetgw

MTC–00029066

From: BLUSTM@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:23pm
Subject: Microsoft Settlement

I have reviewed the provisions of the agreement between the Justice Department and Microsoft Corp. I believe the provisions are reasonably fair and that Microsoft is giving adequate accommodations to their competitors. It is my opinion this case has been carried on long enough and should be settled, in order that all parties involved can move on with their respective programs. It is also my opinion that a final settlement would be and is in the absolute best interest of the entire country.

Thank you for the opportunity to comment on the settlement of this case.

Sincerely,
Louis L. Studer
CC:fin@mobilizationoffice.com@inetgw

MTC–00029067

From: Stephen McDaniel
To: Microsoft ATR
Date: 1/28/02 8:22pm
Subject: Microsoft Settlement

The settlement is a joke.

Microsoft is bad for business (except for MS business) and , most importantly, they are bad for a world gone wired. They write bloated buggy software and force you into their upgrade scheme in much the same fashion that they screwed computer makers with their fascistic licensing practices. Everything they do runs counter to the ethics of good coders.

Split em up. And let real programmers have a shot at the title.

Thank you.
Stephen G. McDaniel
angstboy@grandecom.net

MTC–00029068

From: Bethany Hanson
To: Microsoft ATR
Date: 1/28/02 8:24pm
Subject: Microsoft Settlement

Microsoft has had a stranglehold on our operating system market for too long. The settlement proposed goes way too easy on them.

Please reconsider.
bjh

MTC–00029069

From: Tmjmslaw@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:25pm
Subject: Microsoft Settlement
January 28, 2002
Ms. Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse:

As a consumer advocate and consumer, myself, of computer products, I am compelled to file my comments concerning the proposed settlement agreement in the Microsoft case. This case, which as taken years of government resources and much of the public's attention, is at its most important juncture. It is in the public interest for the Department of Justice, Antitrust Division, to uphold the spirit of competition by requiring changes in Microsoft's business conduct. These requirements should be swift and specific, ensuring free competition in the computer sector, not creating further outlets for Microsoft's anti-competitive behavior. I believe that sustaining a company like Microsoft in the current economic climate is useful for empowering the American economy and foreign economies to which the company is attached. However, there must be a reasonable approach to the problem of its monopolistic behavior.

The proposed settlement appears to ignore the barriers to entry issue that was at the heart of the entire investigation and resulting lawsuit. To eliminate or minimize the barriers to market which Microsoft is guilty of would provide more freedom of choice for consumers and would open competition for other manufacturers to provide ways to run existing Windows applications on different operating systems. Creating a way to allow other manufacturers to develop new products will have a profound and lasting effect on the US economy, as they compete to produce better products with the consumer in mind, and then in turn, distribute them through the chain of distribution of their choosing. This will further affect the economy as new businesses spring up to handle the increase and variety of new products.

Furthermore, requiring that Microsoft share its technology with industry participants will give the power of choice to consumers and remove Microsoft from single-handedly dictating use of information technologies. The handling of Microsoft can have implications in many areas of our way of life, such as allowing for the expansion of markets and promoting consumer choice, two things that consumers like me look to the Department of Justice to ensure.

Sincerely,
Jaylene Sarracino
Attorney (DC & MD)
11160 Veirs Mill Rd. L–15, Suite 201
Wheaton, MD 20902

MTC–00029070

From: Billie Staib
To: Microsoft ATR
Date: 1/28/02 8:26pm
Subject: microsoft
86 Waterdale Road
Williamsport, Pennsylvania 17702
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Let me start off by saying that the government had no business bringing a case against Microsoft in the first place. That having been said, I appreciate everything that has been done to end this case quickly and get on with business as usual. The settlement is fair; Microsoft will take steps to increase competition in the marketplace by allowing its competitors to place their own programs on the Windows operating system.

Now, more than ever, we need companies like Microsoft back at full strength, helping the economy. Stop punishing them and let them help get us out of this recession. I'm sure that there are more important things for the Justice Department to be worrying about right now as well.

Thank you for taking the time to listen to my opinion on this and I hope it will have some effect.

Sincerely,
Billie Staib
cc: Senator Rick Santorum
CC:mailto:fin@mobilizationoffice.com@inetgw

MTC–00029071

From: karen.pd@home.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:24pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Karen Duffy
194 Carnavon Pky
Nashville, TN 37205

MTC–00029072

From: Joyce Kelly
To: Microsoft Settlement
Date: 1/28/02 8:21pm
Subject: Microsoft Settlement
Joyce Kelly
216 Tom Bell Rd. 153
Murphys, CA 95247
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Joyce M. Kelly

MTC–00029073

From: Scott Brennan
To: Microsoft ATR
Date: 1/28/02 8:28pm
Subject: MicroSoft Settlement
Scott Brennan
2473 Tonquin Street
East Meadow, NY 11554–5331
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Microsoft and the Department of Justice have come to an agreement ending the three-year-long antitrust case against Microsoft. This came after round-the-clock negotiations ordered by a U.S. District Judge. I feel this agreement should be honored. The two parties agreed to this settlement, the federal judge accepted this decision, so why should there be any further discussion? I do not think it is in the best interests of our country to endlessly review these decisions. Why do we have courts, after all?

Further, Microsoft has been more than fair in its settlement. Microsoft has agreed to design future versions of Windows with a mechanism to make it easier for computer makers to promote non-Microsoft software; Microsoft has agreed to release important internal information about Windows so that developers can more easily write competing products. Enough is enough.

I ask that you approve this settlement and let our country get back to business.

Sincerely,
Scott Brennan

MTC–00029074

From: David Goldschmidt
To: Microsoft ATR
Date: 1/28/02 8:29pm
Subject: Microsoft Settlement

Gentlemen:

I strongly object to the proposed settlement with Microsoft. It's less than a rap on the knuckles to the company which has been completely stifling competition in user software for over a decade.

Microsoft's anti-competitive approach to its business is most clearly shown by it's abhorence of internet standards. The company line is that they are ''improving the standard and making the products better for consumers.'' This is total nonsense. They know that open standards promote competition and make for a more level playing field. This is anathema, of course. What they want, and have so far been able to achieve for the most part, is to make all common data formats Microsoft proprietary. The way to do this is to make their internal data formats as complicated and difficult to understand as possible. This makes it more difficult for potential competitors to make their products compatible with Microsoft products.

One technique in particular which they use to obfuscate very effectively is executable content. Like all their other so-called ''innovations'', this is yet another attempt to prevent other software developers from marketing compatible products. It has also turned out to be a security nightmare for the internet. This detestable policy of purposefully over-complicating data formats by including executable code is by far the single most significant security problem on the internet. It has enabled worms and viruses to proliferate ad nauseum. It has cost business and industry billions of dollars.

The latest strategy is to try to dominate the web by inducing developers to use Microsoft web development tools which, of course, generate web pages which only work with Internet Explorer. This simultaneously puts the other browsers out of business and forces the remaining developers to pay big bucks for the Microsoft development tools.

There is zero benefit to consumers in all of this, Microsoft's pious claims to the contrary notwithstanding. The company must be broken up and its monopoly power eliminated once and for all.

Very truly yours,
David M. Goldschmidt

MTC–00029075

From: Larry Seel
To: Microsoft ATR
Date: 1/28/02 8:30pm
Subject: Microsoft Settlement
Larry M. Seel
1444 North High Street

Apartment B9
Columbus, Ohio 43201
January 5, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

As someone who works in and is extremely familiar with the computer industry, I am writing you to express my opinion on the Microsoft settlement issue. I believe that this settlement is long overdue, and I am relieved to see this dispute resolved.

With the economy faltering and the IT industry in retreat on many fields, I feel it is best to allow Microsoft to devote its resources to designing innovative software. This settlement allows all of us in the industry to get on with the business designing and providing IT services. Even with the heavy sanctions this settlement places on Microsoft, sharing of technical information, government review committee, etc., Microsoft will still be able to be the leading force in the technology sector.

Thank you for settling with Microsoft. I believe we should devote our time and energy to more pressing issues at hand.

Sincerely,
Larry Seel

MTC–00029077

From: Scott Brennan
To: Microsoft ATR
Date: 1/28/02 8:30pm
Subject: MicroSoft Settlement

fyi: i just e-mailed my letter...hope it helps, & wasn't to late.

sb
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street, NW
Suite 1200
Washington, DC 20530–0001

To Whom It May Concern:

It is my hope that the Department of Justice will reconsider the decision to settle the Microsoft antitrust lawsuit and follow the lead of the nine state attorneys general who have rejected the decision to let Microsoft off with a slap on the wrist. I am proud that my state's Attorney General, Tom Miller, rejected this Microsoft agreement. I believe that he and the other eight state attorneys general recognize the many problems with this agreement.

The decision to prematurely end litigation against Microsoft is a real error in judgment. A real opportunity exists for the Department of Justice to take a stand and protect our free market society and its consumers. Further litigation could effect real change. Please continue to pursue Microsoft.

Sincerely,
Scott Brennan
#813940

MTC–00029078

From: Ted Fronefield
To: Microsoft ATR
Date: 1/28/02 8:32pm
Subject: Microsoft Settlement

I oppose the currently proposed Microsoft settlement as being one that does not further the ordinary citizen's future interest in having the best computer software available at the best price. If the Microsoft settlement allows the installation of used and refurbished computers with Microsoft operating systems into schools it will provide Microsoft with an otherwise unavailable market destination for disposing of old PC equipment and a monopoly for Microsoft to provide technical support and operating system software.

Further it will enhance Microsoft's ability to require the use of computers using the Microsoft operating system by children at an early age based on a forced environment rather than based on a selection of systems having the best overall value.

Ted

MTC–00029079

From: Bruce Bernott
To: Microsoft ATR
Date: 1/28/02 8:33pm
Subject: help consumers, stop persecuting a productive US company

Dear Sirs:

I am writing in support of the Microsoft positions in the Justice Department lawsuits.

I have been a professional programmer for 37 years. Microsoft has done the most of any software provider to lower the costs of useful software for consumers. There is just no honest refutation of this fact.

I have personally seen $12,000 price tags on developer's toolsets for Sun Microsystems Solaris operating systems, at the same time as Microsoft charged less than $2,000 for a toolset that included not only a comparable developer's tool, but also a complete database system.

I urge the Justice Department to settle or drop its suits against Microsoft as soon as possible, for the benefit of us consumers. Antitrust laws written to stop abuse of fixed land-based distribution of commodities like power, telephone service, and fuel just do not make sense for software which is easily distributed.

Regards,
Bruce A. Bernott
CC:Faye Bourret

MTC–00029080

From: DFisc@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:33pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

As a small business owner, I strive everyday to accomplish what Microsoft has in the past fifteen years. I have never agreed with the government's pursuit of Microsoft for its successes. I am satisfied that this settlement will bring the lawsuit to an end.

This settlement, and its several provisions satisfy Microsoft's, the American IT industry's, the government's and most importantly, the American public's interest in this matter. The agreement creates a non-hostile competitive environment for other companies besides Microsoft and fosters innovation by requiring Microsoft to make available its intellectual property and source code on reasonable, non-discriminatory terms.

This agreement is the product of three years and three months of a judicial debacle and this should be the end of it. I strongly urge your office to accept this settlement and take no further federal action.

Thank you.
Sincerely,
Danny Fischer
608 Barrington Place
Matthews, NC 28105

MTC–00029081

From: Don G. Primeau
To: Microsoft Settlement
Date: 1/28/02 8:26pm
Subject: Microsoft Settlement
Don G. Primeau
8200 Greeley Blvd
Springfield, VA 22152–3043
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Don G. Primeau

MTC–00029082

From: gfda ghgf
To: Microsoft ATR
Date: 1/28/02 8:35pm
Subject: Microsoft settlement

Dear DOJ,

I am a retired accountant that has consulted with over a hundred companies in my carrier. I have set up computer systems for a majority of these companies working with all the different platforms of their day. To make this brief I believe that Microsoft has its market share not by a monopoly but because they are the best. ANY restrictions

on them would only be used by the competition to make our computer world move to mediocrity. I would encourage you for the sake of this Great Nation to end this nonsense as soon as possible.

Keith Vrede

MTC–00029083

From: Dr. Andrew E. Mossberg
To: Microsoft ATR
Date: 1/28/02 9:36pm
Subject: Microsoft Settlement
Reply requested by 9/24/01
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Ms. Hesse,

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement. I agree with the problems identified in Dan Kegel's analysis (on the Web at http://www.kegel.com/remedy/remedy2.html), namely:

1. The PFJ doesn't take into account Windows-compatible competing operating systems

2. The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

3. The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

4. The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

5. The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs system.

6. The PFJ as currently written appears to lack an effective enforcement mechanism.

I also agree with the conclusion reached by that document, namely that the Proposed Final Judgment, as written, allows and encourages significant anticompetitive practices to continue, would delay the emergence of competing Windows-compatible operating systems, and is therefore not in the public interest. It should not be adopted without substantial revision to address these problems.

Sincerely,
Dr. Andrew E. Mossberg,
President, Inicom, Inc.
CTO, Asoki Corporation
CIO, CruisExcursions.Com, Inc
Director, Institute of Maya Studies, Inc.
Dr. Andrew Mossberg
Inicom, Inc.—www.inicom.com
cell: (305) 724–5675

MTC–00029084

From: Helen Lydic
To: Microsoft Settlement
Date: 1/28/02 8:31pm
Subject: Microsoft Settlement
Helen Lydic
264 Haskell Rd.
Coudersport, PA 16915–7945
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Helen F. Lydic

MTC–00029085

From: Mfcnice@cs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:35pm
Subject: Microsoft Settlement

Please settle Microsoft suit.

Robert A Childs at mfcnice@cs.com
CC:fin@mobilizationoffice.com@inetgw

MTC–00029087

From: Maynard Sipe
To: Microsoft ATR
Date: 1/28/02 8:37pm
Subject: Microsoft Settlement

The Microsoft settlement proposed by the Dept. of Justice is totally unacceptable and should be rejected by the court. It does not go far enough in any of its provisions. It allows Microsoft too much room for self-determination over whether it is meeting terms of the agreement, it fails to sever the link between pre-market loading of Microsoft's OS and it's Internet Explorer web-browser, and it does not take any affirmative-action type steps to reestablish some competitiveness in the marketplace which is essential.

It is clear that innovative companies with products far superior to Microsoft's have been driven out of business or had their share of the market reduced significantly by Microsoft's uncompetitive practices. The obvious example is Netscape. Because Microsoft could spend almost limitless funds developing Internet Explorer and then induce PC manufacturers to carry Internet Explorer, they were able to practically destroy Netscapes market share. This would not have been possible without the use of unfair and anti-competitive business practices.

Another example is Be. The BeOS was superior in almost every way to Windows, but Microsoft used their market strength to effectively prohibit PC manufacturers from even offering BeOS as an option.

Worse yet, Microsoft is continually attempting to further its monopolistic position by asserting dominance over the internet by using standards in its software not compatible with open standards (HTML, SHTML, Java, etc. Web sites must support the Microsoft applications. Since other companies do not presently have the means to compete with Microsoft, allowing Microsoft to continue to do this threatens to give undue control over the internet to Microsoft. This is extremely serious for the nation's welfare and that of almost all private businesses and industries.

The fact that Microsoft acts in violation of anti-monopoly laws has been established. The proposed settlement etween the Dept. of Justice and Microsoft is patently against the public interest and should not be accepted by the court. No settlement will be effective unless it completely severs any link whatsoever between packaging and distribution of Windows OS and Internet Browser; requires dual-boot OS on ALL pcs marketed with Microsoft OS; and applies affirmative obligations on Microsoft to remedy its past actions. (Such as requiring Microsoft to make the necessary proprietary codes fully available to competitors such as Netscape).

The best remedy would be a break-up of Microsoft into three separate companies. Failing that, any remedy should have proactive measures to restore competitive balance in software markets, particularly for web-browsers (such as requiring dual-boot on all pcs marketing with Microsoft OS); bar Microsoft from packaging its web-browser with its OS; and provide for continued oversight by the Dept. of Justice or better yet, the court.

Thank you for considering my comments,
- Maynard Sipe

MTC–00029088

From: arosenbach@inter-linc.net@inetgw
To: Microsoft ATR
Date: 1/28/02 8:36pm
Subject: Microsoft Settlement
January 24,2002
Attorney General John Ashcroft
US Dept of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530–000l

Dear Mr. Ashcroft,

I am writing to you in support of Microsoft and the settlement recently reached in the anti-trust case.

With microsoft agreeing to allow competition from both computer makers and software developers, there is no further reason to pursue legal action against them.

If the lawsuit is allowed to continue, despite the concessions granted by Microsoft, then it shall prove that the lawsuit had more to do with jealousy than justice.

I support Microsoft and do not wish to see the company divided into separate companies (Baby Softs?)

Sincerely,
Carole Rosenbach

MTC–00029089

From: Lee Berger

To: Microsoft ATR
Date: 1/28/02 8:39pm
Subject: Microsoft Settlement

I wish to express my support for Microsoft and my disgust and disappointment in a government that seeks to punish a successful business for its very success.

Microsoft undertook to make the benefits of the computer and internet available to the average citizen. This was good for the buyer, who 10 years before could not have afforded to own such a system, and it was good for Microsoft, who generated a larger customer base. Historically, this is the way the world has benefited from new inventions and novel applications (the Model T Ford, for example). Someone finds a way to make the new invention inexpensive enough for the average man, who snaps it up eagerly.

The excitement when Windows 95 was launched demonstrated this eagerness to enhances one's life. Windows has streamlined and enriched my own life immeasurably. I freely made this choice and will continue to control what I put on my computer. Microsoft (or any other company) has the right to offer its wares and the rest of us, to purchase them or not.

There has been no damage to consumers. We have received a boon! We each freely chose to buy these products for our own reasons. In a free society, the sight of one person's success should inspire a redoubling of effort on the part of every other worker, not envy and a wish to destroy the innovator. Our Constitution guarantees protection of our property rights. Where is the protection for Microsoft? Can any of us feel confidence in our government in the face of such a blatant misuse of power? I do not wish to live in a country that penalizes our best minds. It is time for us to wake up and recognize the uniqueness of our Constitution and the superb moral mechanism of the free market system.

Leora K. Berger
2014 Browning Avenue South
Salem, Oregon 97302

MTC–00029090

From: ebryan@lumenet.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:40pm
Subject: Microsoft Settlement

I only wanted to add one wee voice to the heavyweight voices already writing you. Please work to have the Windows Operating System separated from the applications side. I don't need Office ported to Linux or any such silliness but having the operating system so strongly biased toward in-house applications seems to be the root of the many problems. It is unfathomable to me that I had to give up using Netscape (which I was more familiar with and preferred) because the owner of the OS wants me to use Internet Explorer. I am only an average PC user but I can remove most programs from my computer without mishap except Outlook Express or Internet Explorer. Removing either of these causes the machine to develop serious operating problems. This is wrong. Where will it end? By having Windows will I eventually be required to discard other programs when Microsoft decides to enter a new market?

I personally really like the idea of separating into two companies—OS and applications. It seems there is enough demand to keep two companies healthy and thriving. I believe that we would even see real advances in OS rather than the superficial changes brought about by many ''new'' versions of Windows. If the OS company were truly separated we wouldn't see programs like Outlook having freedom to couple so closely; hence, some of the horrendous security problems would be overcome. Applications like IE, Outlook and Office should need to work with the operating system through the same interface as non-Microsoft programs.

I know you must get tons of email so let me boil it down to ''No favoritism for in-house products''.

Thank you for your time.

Earlene Bryan

MTC–00029091

From: Jerry D. Snead
To: Microsoft ATR
Date: 1/28/02 8:39pm
Subject: Microsoft Settlement

Sirs:

Please allow the proposed settlement reached by the Justice Department and Microsoft to be the final act of this farcical suit. The Attorneys General of these states that wish to continue the harassment of Microsoft for their small groups of constituents should not be afforded any more time or monies. Stop these proceedings NOW!

Microsoft has brought a tolerable environment to personal computing, one that did not exist until there was a market force as large as Microsoft to enforce de facto standards. Without these standards, personal computing would be only a small fraction of the pervasiveness it enjoys today. Get off Microsoft's back, and let the consumers reap the benefits of stable, standardized computing environments. Perhaps then the technical sectors of our economy will return to their previous stature.

Thank you for considering this opinion.

Jerry Snead

MTC–00029092

From: Billy Parker
To: Microsoft Settlement
Date: 1/28/02 8:37pm
Subject: Microsoft Settlement
Billy Parker
39542 Chappellet Cir.
Murrieta, CA 92563–4853
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Billy M. Parker

MTC–00029093

From: schinnell1 password
To: Microsoft ATR
Date: 1/28/02 8:43pm
Subject: USAGSchinnell—Debbie—1048—0108
Debbie Schinnell
117 Northridge Drive
Centralia, WA 98531
January 11, 2002
Attorney General John Ashcroft
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing you today to voice my opinion in regards to the Microsoft settlement that was reached in November. This issue has worn out its welcome, and it is time to resolve this issue permanently. The settlement is a decent and realistic alternative to another three years of litigation, and it provides the benefits that Microsoft's competitors feel they need to compete. That is why I support this settlement, and I sincerely hope there will be no further action against Microsoft at the federal level.

Among other things, the settlement gives software companies like Sun the protocols and interfaces to redesign their products to run more efficiently on the Windows operating system. Microsoft is literally giving away the sorts of codes that made them known all over the world. Moreover, hardware companies will be able to reconfigure Windows after they receive their licensing agreements, and Microsoft cannot prevent them from changing the ''desktop'' software or cannot take any retaliatory action, so consumers will ultimately dictate what sort of software they will want on their computers before the computer is sent. This settlement does something for everybody interested.

Microsoft is a company that has done so much to impact our society and the technology industry. Microsoft has made it easier for the average consumer to afford and use software, which in turn has made it easier to conduct business. This company should not be stifled or restricted for following the American Dream. Please support this settlement and work in the best interest of the public.

Sincerely,
Debbie Schinnell

MTC–00029094

From: Fr. Ray Ryland
To: Microsoft ATR
Date: 1/28/02 8:43pm
Subject: Microsoft Settlement

I urge the Department of Justice to proceed with its projected settlement with Microsoft in the anti-trust action brought agaisnt Microsoft. It's high time to let Microsoft get back to its business of serving the world with its outstanding products.

Ray Ryland
900 Granard Parkway
Steubenville, OH 43952
(740) 282–3009

MTC–00029095

From: Marcia Jones
To: Microsoft Settlement
Date: 1/28/02 8:36pm
Subject: Microsoft Settlement
Marcia Jones
125 Hildreth Rd
Hot Springs, AR 71913
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayer's dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Marcia Jones

MTC–00029096

From: L. A.
To: Microsoft ATR
Date: 1/28/02 8:42pm
Subject: Microsoft Trials
Renata Hesse, Trial Attorney
1/28/02
Suite 1200, Antitrust Division
Department of Justice
601 D Street NW
Washington, DC 20530

Dear Renata Hesse,

Fearing my letter might not reach you in time I decided it might be wise to send an email.

I appreciate this opportunity to speak out, regarding Microsoft. For me, the domination of Microsoft in the software industry has been a disaster. I consider myself an above average computer user, and yet I could not sufficiently combat the tide of instability caused by the poorly written software developed by Microsoft. I have lost countless hours to troubleshooting crashes caused by the companys products. Worst of this breed of overwrought catastrophes is Internet Explorer. Not a day would go by without this application bringing my entire system to a screeching halt. I often wonder what the face of the industry would be had the company not been able to use their monopoly power on the OEMs to muscle Netscape and other competitors out of the picture. A bully is still a bully, at any age. I shudder to think of the consequences of raising a new generations of kids to rely on inferior tools in their own schools, thanks to the marketshare being handed to Microsoft by their own proposed Seattlement. There is just too much complacency, too much power, and too little brains going into the products at Microsoft for the company to justify the monopoly its established by its frequent use of political leverage and scare tactics. But beyond my own animosity for the company, there is a genuine and immediate need for changes in the balance of power in the technology industry. In my opinion, the answerthe only answeris intervention on the part of a higher authority to remove the advantage that has trapped the computing populous in a seemingly endless cycle of unintended brand loyalty.

Thank you for taking the time to read this.

Sincerely.
Laura A. Caigoy
6439 Valmont Street
Tujunga, CA 91042
email: macunochi@yahoo.com

MTC–00029097

From: Bill Seward
To: Microsoft ATR
Date: 1/28/02 8:44pm
Subject: proposed Microsoft settlement

Dear Sir or Madame:

I would like to request that you revisit your proposed settlement with Micrsoft on the question of penalties for their behavior. Recent actions by Microsoft (their new licensing ''agreement'' and their Product Activation) seem to be more of the ''same old, same old''.

While I do not think a breakup of the corporation is called for, I do beleive that it will require far more stringent measures to reform Microsoft. Their well-document corportate culture is one of ''win at all costs'', and part of the cost has been a marketplace with true alternatives to their products. While there are Unix, the Apple Macintosh and the Open Source movement groups, the fact is that Microsoft operating systems are on over 50% of the servers and over 90% of the desktops in the US. Their browser and various office automation products control similarly extreme shares. While I am a free market supporter to the point of Libertarianism, this is not the sign of a healthy market. It is the sign of a market that has been skewed by the power and money that Microsoft controls. From my point of view as a network administrator and IT manager, Microsoft is the embodiment of the old ''800 pound gorilla'' joke.

Please come up with a settlement with some teeth, or we will be doomed to travel this same road again in the future.

Bill Seward

MTC–00029098

From: Joyce Smith
To: Microsoft ATR
Date: 1/28/02 8:45pm
Subject: Microsoft settlement

Dear Mr. Ashcroft:

With a potential settlement in the Microsoft case, I wanted to voice my position of support on ending further litigation by completing the deal. The antitrust lawsuit was misguided from the start,caused by rivals who only have themselves to blame for their lack of headway in the industry. The growing pattern of government intervention in the business community was evident with the tobacco lawsuit, where states joined a giant money-grab because they dont like the results of people's individual choices. This time, people have made the choice of Microsoft as their preferred software maker and delivered them with a dominant market share, so the government sees an opportunity to make money by punishing a company in the name of competition. The deal offers computer makers oopen access to selecting the software providers of their choice and will be constantly monitored by a group of experts, so Microsoft's rivals should declare this a victory and start creating products that consumers want.

I ask that you go ahead with this proposal and let Microsoft continue to be a strong advocate for innovation in the PC industry, as our economy and financial markets coujld definitely use the boost. It is time to leave government on the sideline and let the litigation be ended. Thank you for hearing my feedback.

Sincerely.
Joyce Smith

MTC–00029099

From: gerry162002@yahoo.com@inetgw
To: Microsoft ATR
Date: 1/28/02 8:45pm
Subject: ZMM: Fwd: Attorney General John Ashcroft Letter

MTC–00029100

From: Raymond Best
To: Microsoft Settlement
Date: 1/28/02 8:40pm
Subject: Microsoft Settlement
Raymond Best
2364 W. Charteroak Dr.
Prescott, AZ 86305

January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Raymond Best

MTC–00029101

From: Kim (038) Jay
To: Microsoft ATR
Date: 1/28/02 8:45pm
Subject: Microsoft Settlement
Kim Ogden
12884 Hamilton Place Drive
Fort Mill, South Carolina 29708
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you in support of Microsoft's antitrust settlement with the federal government. They have spared us the taxpayer of a lengthy and costly legal battle.

This settlement is very reasonable. Microsoft agreed that if any third party's exercise of any options provided for by the settlement would infringe any Microsoft intellectual property right, Microsoft will provide the third party with a license to the necessary intellectual property on reasonable terms. Also, the settlement establishes an oversight committee to monitor its compliance with the settlement and assist with dispute resolution. Additionally, Microsoft has agreed not to retaliate against software and hardware developers who develop or promote software that competes with Windows or that runs on software that competes with Windows.

Microsoft has and will continue to be a good corporate citizen. I think this settlement shows that the consumer interest has been addressed. I urge you to approve this settlement, so Microsoft can get back to work.

Sincerely,

Kim E. Ogden

cc: Senator Strom Thurmond CC:senator@thurmond.senate.gov@inetgw

MTC–00029102

From: Austin Gonyou
To: Microsoft ATR
Date: 1/28/02 8:47pm
Subject: Please be more stringent on Microsoft.

Please be more stringent on Microsoft. They need to inter-operate with the rest of the world, not vice versa. Any judgement which is passed that, in any way, allows Microsoft to expand it's grasp of the desktop, server, embedded, or other markets, I would consider a mis-carriage of the law.

The main reason I'd feel that way is because Microsoft has been anti-competitive for far too long. They have stifled the creativity of individuals, development communities, and other corporations. That in itself, since they have been found guilty of in fact being anti-competitive —and— being a monopoly, warrants harsh punishment that should reflect in the following ways:

1. Monetarily—Micorosft Corp.'s bottom line.

2. Opened Sources without fear of:

a. forced compensation to MS under penalty of law.

b. lack of future products not being inter-operable with older products, from MS, after sources have been opened.

3. Shame—MS has no shame, and they should. Imagine the following:

a. If your car broke down as often as windows, you'd be upset.

b. If an airplane ran on ''Windows(tm)'' alone.

c. If you woke up and everything you owned was in fact owned, operated, and distributed by a single company.

4. Not only Opened Sources, but licensing which accepts liability, and possibly damages, for the company's lack of integrity due to it's poorly designed software and practices.

Thank you for your time.

Austin Gonyou
Systems Architect, CCNA
Coremetrics, Inc.
Phone: 512–698–7250
email: austin@coremetrics.com

MTC–00029103

From: marcia cooperman
To: Microsoft Settlement
Date: 1/28/02 8:43pm
Subject: Microsoft Settlement
marcia cooperman
1563 se bidwell
portland, or 97202
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Marcia A. Cooperman

MTC–00029104

From: Carol Olyer
To: Microsoft Settlement
Date: 1/28/02 8:42pm
Subject: Microsoft Settlement
Carol Olyer
2814 Brookwood Rd.
Orange Park, Fl 32073
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayer's dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Carol W Olyer

MTC–00029105

From: Ed Smith
To: Microsoft Settlement
Date: 1/28/02 8:43pm
Subject: Microsoft Settlement
Ed Smith
130 Somerset Drive
Brooklyn, MI 49230

January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Ed Smith

MTC–00029106

From: Floura, Ranvir
To: Microsoft ATR
Date: 1/28/02 4:35pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to voice my opinion on the settlement between Microsoft and the Department of Justice. I don't see how this case has benefited anyone. Microsoft has run a successful business and contributed a great deal to our society. Why is the government wasting our money punishing a company for fulfilling the American dream?

I am a Network Engineer and use a variety of software products in my job. I obviously use Microsoft, but I also use their competitors'' products and have never had any problems in doing so. It is not Microsoft's fault that their competitors couldn't create products that were equal or better. There is a reason that consumers have repeatedly chosen Microsoft's products over other companies''.

Nonetheless, the proposed settlement is a very reasonable agreement that could end this pointless lawsuit. Although Microsoft is giving up way more than should be expected, the settlement would certainly bring on stronger competition in the computer industry. Microsoft is giving away their source codes and server protocols that are integral to the technology they've taken years to create. This will make it easier for competition server systems to interoperate with the Windows operating systems and Microsoft server systems.

Please accept this settlement for the benefit of our struggling economy. The computer industry contributes so much to the economy. Upholding this settlement will strengthen the entire computer industry and will be a benefit to consumers.

Sincerely,
Ranvir Floura

MTC–00029107

From: fremontsmith
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 8:51pm
Subject: Microsoft Settlement

I believe the settlement proposed by the DOJ has more the feel of a Microsoft promotional document than a serious attempt to prevent Microsoft from further abusing its monopoly. I feel it is completely inadequate to protect other markets from the same abuse that Microsoft placed upon the web browsers. I feel it does little or nothing to keep Microsoft from continuing to enjoy the benefits of past abuses. I cannot believe that the very limited enforcement possibilities included in this agreement will have any hope of materially changing the behavior of Microsoft. Microsoft has ignored or broken many agreements in the past. I would fully expect Microsoft to interpret this agreement as allowing them to do practically anything they wanted to do. I am particularly dismayed by the inclusion of clauses that would allow Microsoft to use security as a pretext to withhold API information, or to prevent OEM's from unbundling Microsoft middleware. I certainly do not feel accepting this agreement would be in the best interest of the general public.

Sincerely,
Fremont Smith
Software Engineer

MTC–00029108

From: Christina Weiss
To: Microsoft Settlement
Date: 1/28/02 8:48pm
Subject: Microsoft Settlement
Christina Weiss
1648 Brentwood CT
Plainfield, IN 46168
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Christina Weiss

MTC–00029109

From: Dora Ratliff
To: Microsoft Settlement
Date: 1/28/02 8:48pm
Subject: Microsoft Settlement
Dora Ratliff
663 N Cherry St
Germantown, OH 45327
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Dora Ratliff

MTC–00029110

From: Cecil THREADGILL
To: Microsoft Settlement
Date: 1/28/02 8:49pm
Subject: Microsoft Settlement
Cecil THREADGILL
P. O. BoX 1236, 308 E. Main
Pilot Point, TX 76258
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division

950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Cecil R. THREADGILL

MTC–00029111

From: Arnold Mead
To: Microsoft Settlement
Date: 1/28/02 8:49pm
Subject: Microsoft Settlement
Arnold Mead
R. R. # 5 Box 5449—C
Moscow, PA 18444
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Arnold Mead

MTC–00029112

From: Joy Hiner
To: Microsoft Settlement
Date: 1/28/02 8:47pm
Subject: Microsoft Settlement
Joy Hiner
365 Roxbury Park
Goshen, IN 46526
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Joy Hiner

MTC–00029113

From: Warren Smith
To: Microsoft Settlement
Date: 1/28/02 8:47pm
Subject: Microsoft Settlement
Warren Smith
164 Harvard Rd
Watervliet, NY 12189
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Warren L. Smith

MTC–00029114

From: John Spilker
To: Microsoft ATR
Date: 1/28/02 8:56pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Now that the economy is in a recession, with massive layoffs all over the US, and the NASDAQ is way down with no relief in sight, why pursue additional litigation with Microsoft? Let the settlement stand the way it is. It is more than fair for the competition.

Microsoft went out of its way to reach an agreement, beyond what would be expected in any antitrust case. They agreed to everything from disclosing various internal interfaces to making it easier for computer companies, consumers and software developers to promote their software within Windows. I do not know a lot of software companies that would risk their proprietary information and their business, unless they really wanted to settle their antitrust court cases.

Let's get our economy back in shape and quit running after Microsoft.

Thanks for your attention to this matter.

Sincerely,
John Spilker

MTC–00029115

From: Jim/Marcia Bennett
To: Microsoft ATR
Date: 1/28/02 8:57pm
Subject: Microsoft Settlement

I am writing to express my opposition to the proposed settlement between the U.S. Department of Justice and Microsoft. This arrangement would, I firmly believe, let Microsoft off much too easy. The seriousness of the violations of law, and the clear anti-competitive effect of Microsoft's practices warrant a correspondingly severe set of penalties. If the Department of Justice lacks the will to perservere in reaching a truly just solution, then I look to the judge who has jurisdiction to make a properly effective ruling.

I am writing as a concerned citizen and consumer, who looks forward to a future where competing technologies can have a chance to contend on a level playing field, which has not been the case in some of the markets dominated by or targeted by Microsoft.

Thank you for your consideration.

Sincerely,

James A. Bennett

608 Barret Ave.

Louisville, KY 40204

CC:President@whitehouse.gov@inetgw

MTC–00029116

From: Richard Brandon
To: Microsoft Settlement
Date: 1/28/02 8:51pm
Subject: Microsoft Settlement
Richard Brandon
8393 W Cloverleaf
Hayden, ID 83835–7200
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Richard P. Brandon

MTC–00029117

From: Robert Hepburn II
To: Microsoft Settlement
Date: 1/28/02 8:52pm
Subject: Microsoft Settlement
Robert Hepburn II
305 Brookmeade Dr.
Gretna, La 70056
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Robert J. Hepburn II

MTC–00029118

From: DAVID FEARIS III
To: Microsoft Settlement
Date: 1/28/02 8:51pm
Subject: Microsoft Settlement
DAVID FEARIS III
401 CLARK LANE
WAXAHACHIE, TX 75165
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

DAVID P. FEARIS III, M.D.

MTC–00029119

From: Clif / Helen Shumate
To: Microsoft ATR
Date: 1/28/02 8:58pm
Subject: Microsoft Settlement
2201 Ventnor Court
Arlington, TX 76011
January 14, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

It is with great pleasure that I write to you today regarding the Microsoft antitrust settlement. After three years of litigation, the case is finally closed against Microsoft. I believe that the case was unwarranted to begin with, yet I am pleased to see its end.

Microsoft has made many concessions throughout the process. Microsoft has agreed to disclose the internal interface designs of Windows. It has also agreed to license Microsoft at a uniform price to computer manufacturers. These developments come at great cost to the Microsoft Corporation. Why is Microsoft willing to do so? Because it is in everyone's best interest that this matter be resolved.

Sincerely,

MTC–00029120

From: Shannon Casteel
To: Microsoft Settlement
Date: 1/28/02 8:54pm
Subject: Microsoft Settlement
Shannon Casteel
1902 E.Calle De Arcos
Tempe, Az 85284–3474
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Shannon Casteel

MTC–00029121

From: Jay

To: Microsoft ATR
Date: 1/28/02 9:00pm
Subject: Microsoft Settlement

It is time for this to end. I am not a politician, lawyer, lobbyist, employee of Microsoft, etc. I am just a computer user and systems engineer who has been involved with the computer industry for over 30 years and the micro-computer phase since its beginning. In all those years I have used many varieties of software products, both Microsoft and non-Microsoft. I was never met by armed Microsoft police preventing me from purchasing ANY and ALL pieces of software that I wanted at the time. Through the years, Microsoft has tamed the wild west that micro-computer systems had become and gave us a STANDARD that made a significant increase in the productivity of computer users world wide in general and the United States in particular. The nine states (plus AOL, ORACLE, SUN, and other envious competitors of Microsoft) that reject the DOJ—Microsoft proposed settlement are creating an unnecessary burden on computer users and the economy. In my opinion, bring this to an end.

Jay Zittle

MTC–00029122

From: GildaOMoore@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:01pm
Subject: microsoft settlement

The Microsoft settlement should remain in place. One of the most successful and prosperous businesses in the US should now be permitted to continue to prosper and innovate for the millions of consumers that owe their new knowledge and way of living to this great American corporation.The settlement is faair for all parties. It is not the consumer who is instigating further litigation. Look to the lawyers and conpeting corporaitions wanting to increase their own fortunes with less effort or innovation.

Hope you take this small voice into consideration.

MTC–00029123

From: David Thum
To: Microsoft ATR
Date: 1/28/02 9:02pm
Subject: Microsoft

I am writing to express my utter feelings of shame at the way our government has gone after Microsoft. In times where it seems capitalism are under attack, it is imperative that it is understood that the very freedoms we enjoy in this country are what are responsible for the success companies like Microsoft, J&J, the big three, Pfizer, McDonald's, and even Flowers.com. I mention varying types of companies because all had the freedom to dream, to plan for the dream and to follow through.

Microsoft was the victim of a government body gone mad over the American dream. Microsoft has no monopoly. If they had a monopoly, there would be no other way to run a computer than with Microsoft software. Any body else can develop their own software and market it. If they succeed, great as that is the American way. If they fail, it is either through poor design, marketing or product support, which, in a way, is also the American way. From a government that has gone mad over tobacco, it is clear that what speaks is the almighty dollar. If tobacco were so bad, make it illegal. The government will not do that because there is too much money in it. Microsoft is being penalized for being successful. Period.

I am ashamed of the Reno DOJ and the Clinton administration for their shameful attacks of Microsoft and the way it continues. If somebody can build a better mousetrap than Microsoft let them. Where is the incentive to try to build a product people want only to have it all destroyed because of success? That is NOT the American way.

I implore this entire mess to be dropped, not only for the continued success of Microsoft (in which I have NO financial interest, other than possibly a mutual fund which I've not checked), but also for the future Microsofts of America on the horizon.

David Thum
Avon Lake, OH

MTC–00029124

From: Carol Enright
To: Microsoft Settlement
Date: 1/28/02 8:57pm
Subject: Microsoft Settlement
Carol Enright
837 12th ave
Port Arthur, Tx 77642
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Carol Enright

MTC–00029125

From: Lance Robertson
To: Microsoft Settlement
Date: 1/28/02 8:58pm
Subject: Microsoft Settlement
Lance Robertson
626 Springfield Circle
Roseville, CA 95678
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief. Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Lance Robertson

MTC–00029126

From: Neal Dalton
To: Microsoft ATR
Date: 1/28/02 9:05pm
Subject: Microsoft Settlement

I do not feel the settlement UNITED STATES OF AMERICA vs. MICROSOFT CORPORATION is a fair one. Over the year Microsoft has settle their disputes only to begin encroaching on the same area there agreed not to do. Even now Microsoft is eating up parts of the market, muscling out the competition by the market power they have as the provider of the OS. Other parts allow for access to Microsoft internal, but only for those who won't disclose them. The open source world (their primary competitor) would not benefit from this agreement. They would have no access to the internal, because the writing of their application to interoperate with Microsoft code would be a violation. So to would people who derive their income from supporting open source be crippled by this ruling.

I would like to see Microsoft force to publish the APIs/internal, so that they can not restrict their competition. I believe also that Microsoft's power as a OS and application leader (which they gained illegally) is too great a power for a company that has a history and continues to use strong arm tactics to crush their completion. Thus putting small businesses and other completion at risk.

Neal

MTC–00029127

From: SaraConrad
To: Microsoft ATR
Date: 1/28/02 9:04pm
Subject: Attn: Renata Hesse—Trial Attorney

ATTENTION—THE FOLLOWING EMAIL IS FROM A SOCCER MOM WHO VOTES!!! micro$oft is a monopoly—plain and simple. When you go to buy a computer you have no choice what operating system you get on your computer even though there are others (that work better) Linux, Solaris.

You have no choice but to use microsoft products, internet exploder, they have pretty much wiped netscape out. And the scary, scary thing is the future. People who are as technically savvy as I are going to be registering with microsoft and their ''passport'' program. This will track everything this unsuspecting people do on the web. And as far as microsoft saying they will donate stuff to schools, that is just another way for them to hook kids! My children use Apples, Unix and windows.. Unix is not platform specific. They use shared code. All games, all software should be able to be used on any computer regardless of the operating system. Micro$oft doesn't allow this. They say—use us or don't use the others. This is wrong, wrong, wrong. You people have a very important decision in front of you. Do the research, don't rely on what microsoft tells you (even if they offer to pay you), find out what it is like with Solaris, Apple X, Red hat... don't let microsoft own everything. Let the people have a choice, even if they don't know the difference between a keyboard and a mouse...This country is about choice and right now, we don't have one as far as Operating Systems are concerned. Check into the claims that microsoft is tracking peoples'' usage. It is a well known fact in the IT business that they keep tabs on who is running their software, what they do online and where they go. Can you say, ''invasion of privacy''???

Don't take my word for it...and don't roll over for them. Thank you for doing the right thing.

Sincerely,
Sara D. Conrad
2310 Glenwood Drive
Boulder, CO 80304
303–444–5357
saraconrd@pcisys.net
Technical support engineer/girrrl geek

MTC–00029128

From: Don Wegeng
To: Microsoft ATR
Date: 1/28/02 9:05pm
Subject: Microsoft Settlement Comment

I appreciate the opportunity to comment on the proposed settlement. I oppose the proposed settlement for two reasons:

1) It provides no controls that will prevent Microsoft from engaging in illegal business practices in areas that are beyond the original charges. The computer software and Internet industries have changes quite a bit since the original antitrust case was filed, and Microsoft is clearly changing it's business plans to engage these new business opportunities. Will the proposed settlement provide any means to control Microsoft's business practices in these new areas? No. This is a major flaw in the proposed settlement.

2) The proposed settlement assumes a business model where all of Microsoft's ''competition'' comes from for-profit businesses. However, in reality Microsoft is being threatened by the developers of the Linux operating system and other open source programs. The proposed settlement does not recognize these open source projects as competitors, and provides no requirement for Microsoft to disclose technical information to the developers of these open source projects. This, again, is a major flaw in the proposed settlement.

I appreciate your consideration of these comments.

Donald L. Wegeng
Fairport, NY

MTC–00029129

From: bjidzik@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 9:05pm
Subject: Microsoft Settlement

I would like to go on record as stating that I believe Microsoft should be severely punished for its anti-competitive activities. A break up of the company into separate groups seemed most appropriate. The remedy worked out between MS & DOJ is totally inadequate, and in fact rewards MS by allowing them to write off hardware & software ''donated'' to schools as a remedy. Most elementary schools use Apples or Macintosh products. Rather than eliminating monopolistic behavior, it will literally put Apple out of business in favor of ''free'' PCs & Microsoft software.

Further, schools that receive this ''gift'' will end up paying exorbitant amounts on subscription and maintenance fees after the ''remedy'' period is over. This is a travesty. The company has not changed. It's licensing costs are sky-rocketing, and customers have lost any ability to retrieve any damages due to defective software released by MS. I have used their products for almost 20 years now. In my opinion, they are out of control, and only the strongest of remedies, i.e. breakup of the firm, will stop their deceitful, predatory business practices.

MTC–00029130

From: Irene DeMpss
To: Microsoft Settlement
Date: 1/28/02 8:59pm
Subject: Microsoft Settlement
Irene DeMpss
3320 Parksie Drive
San Bernardino, Ca 92404–2408
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Irene DeMpss

MTC–00029131

From: Americo A. Fusco
To: Microsoft Settlement
Date: 1/28/02 8:59pm
Subject: Microsoft Settlement
Americo A. Fusco
39535 Hood Street
Sandy, OR 97055–8403
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Mr. & Mrs. Americo A. Fusco

MTC–00029132

From: Bruce Radebaugh
To: Microsoft Settlement
Date: 1/28/02 9:00pm
Subject: Microsoft Settlement
Bruce Radebaugh

178 Fern Avenue
Collingswood, NJ 08108–1938
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Bruce R. Radebaugh

MTC–00029133

From: Roy Simmons
To: Microsoft Settlement
Date: 1/28/02 8:59pm
Subject: Microsoft Settlement
Roy Simmons
17647 Inwood Lane
Neosho , Mo 64850
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief. Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Roy Simmons

MTC–00029135

From: MSJC
To: Microsoft ATR
Date: 1/28/02 9:08pm
Subject: Microsoft Settlement

Renata B. Hesse,

The Microsoft settlement should be completed. The government had no business in trying to break up Microsoft in the first place. Our entire capitalistic system is supposed to reward those that come up with a better mouse trap, and if they do, they should reap the rewards for their hard work and creative ideas.

Regards,
Mark E. Sitterle

MTC–00029136

From: bfriedman(a)excite. co m
To: Microsoft ATR
Date: 1/28/02 9:07pm
Subject: MICROSOFT SETTLEMENT

I am a computer programmer and instructor at a community college.

I resent the way that Microsoft has conducted itself with regard to the antitrust settlement. This company continues to disregard this country's laws, and should receive appropriate penalties.

Their ''settlement proposal'' to donate software to schools is ludicrous. A piece of software with a retail price of $600 or more costs about $10 in packaging and materials. Microsoft proposes to spend a few million dollars (in real cost), donate this to schools, and then not support the hardware or software in the future. (Thus creating future licensing fees for itself in the future from the same schools.)

The computer industry in general has shown much more good will to the US than many others. In the past, many computer scientists shared information, algorithms, etc., in the hope of advancing the art and technology. Microsoft has dominated an industry, and uses that position as a bully pulpit. They are destroying the previous trends of goodwill within the computing industry.

I do not think that the people in Redmond should be let off with a slap on the wrist. As a corporation, Microsoft should be penalized for their monopolistic and illegal practices. And personally, I do not feel that their proposed gift to schools comes close to being an appropriate punishment for misconduct.

Sincerely,
Brent A. Friedman
P O Box 13145
Minneapolis, MN 55414
of I
01/30/2002 2:38 I
7

MTC–00029137

From: Joseph Minnie
To: Microsoft ATR
Date: 1/28/02 9:07pm
Subject: Microsoft Settlement
Joseph S. Minnie
P.O. Box 642
Brooksville, Fl. 34605
January 19, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am greatly pleased to hear that a proposed settlement has been reached in the Microsoft antitrust case.

This case has endured for over three years and should be brought to quick finalization. Microsoft has agreed to all terms of this proposed settlement and they have agreed to design future versions of Windows to allow competitors to easily attach their software products. Additionally, Microsoft will use a uniform pricing list when licensing Windows out to the twenty largest computer companies in the United States. Microsoft has also agreed to allow their progress toward compliance with all provisions to be monitored.

As the terms of this agreement far exceed the issues originally raised in the suit over three years ago, I feel the case should be closed soon. Thank you.

Sincerely,
Joseph S. Minnie
Joseph Minnie

MTC–00029138

From: Donald Cross
To: Microsoft Settlement
Date: 1/28/02 9:04pm
Subject: Microsoft Settlement
Donald Cross
1239 San Pedro St.
Pittsburgh, PA 15212–1564
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief. Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies. Thank you for this opportunity to share my views.

Sincerely,
Don Cross

MTC–00029139

From: Robert McArtor
To: Microsoft Settlement
Date: 1/28/02 9:04pm
Subject: Microsoft Settlement
Robert McArtor
6430 Princeton Drive
Alexandria, VA 22307–1347
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
Please allow the Microsoft settlement to stand so we may return to those days when we truly encouraged enterprise. We have squandered enough time and money discoraging free enterprise. Thank you
Sincerely,
Robert C. McArtor

MTC–00029140

From: Shams Kairys
To: Microsoft ATR
Date: 1/28/02 9:11pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
US Dept of Justice
601 D St NW
Suite 1200
Washington, D. C. 20530–0001
Dear Ms. Hesse,
I am quite concerned that the Department of Justice (DOJ) has moved to settle with Microsoft (MS) in a manner that leaves consumers inadequately protected. I have found MS information technology (IT) stifles outside innovation and inter-operability, and hope you will provide a resolution of the MS case that maximizes competition and consumer in the best public interest.
Minimally, I believe that Windows applications should run on other operating systems without modification; should be transparent to other software, so that it would be able to exchange files, data, and services with any MS product; should be able to run properly on computers with different microprocessors. Otherwise, consumers will continue to face unnecessary costs, limited choices, operational complexity, and reliability problems. Enforcement provisions in the proposed settlement are also inadequate and could very well allow MS to continue to stifle competition, creativity, and cost-effectiveness. I urge the DOJ to announce public proceedings at the earliest opportunity as provided by the Tunney Act so that concerned consumers can speak to these issues.
Sincerely,
Shams Kairys
Executive Director, Berkeley EcoHouse
507 Cornell Ave.
Albany, CA 94706
510–525–1465

MTC–00029141

From: DRhoads
To: Microsoft ATR
Date: 1/28/02 9:11pm
Subject: Microsoft Settlement
Final Judgment for a variety of reasons. I shall briefly expound on but a few of them:
1) The potential breakup of Microsoft should be maintained as a future remedy to insure Microsoft's compliance.
2) Lack of punitive damages. Lacking provisions for an evolving industry, the Proposal seems focused on limited measures for a future that is only a simple extrapolation of yesterday's market. There are no penalties for Microsoft's outrageous conduct in the marketplace and before the Court. This sends the wrong message to anyone considering similar behaviour.
3) The Termination of the Decree should NOT occur before ten (10) years from date of entry. Further, the length of any extension should be five (5) years, rather than two. Given that the present proceedings before the Court have consumed almost four (4) years with no action, it is not inconceivable that Microsoft could similarly delay and obstruct a three person panel for the proposed five (5) years.
4) The construction of the Technical Committee (hereafter, TC) is faulty. Potentially, two of the three members of the TC will be answerable only to Microsoft and not to the Plaintiffs. This provides a majority which could veto any action or decision of the TC. The TC should consist of a minimum of five (5) persons, none of whom is appointed by Microsoft. The Defendant's interests could be represented by a non-voting, non-directing liaison to the TC. Also, the TC should be composed of persons with significant experience as auditors or inspectors general, who will be assisted by software experts.
5) MOST IMPORTANT. According to Section IV.D.4.d of the Stipulation, no member of the TC may direct any findings to any other tribunal. This is UNACCEPTABLE! The Congress, other Courts and other States cannot be constrained by this Proposal in any of their future proceedings. In particular, this Section would disallow a member of the TC from informing authorities of a violation of law, including, but not limited to, the Sherman Act.
The Proposed Final Judgment is seriously flawed and should be withdrawn from consideration. DOJ should rejoin with Utah, et al and use their proposals as a starting point for further negotiations.
Sincerely,
David Rhoads
Fort Washington, Maryland

MTC–00029142

From: dmose2@netscape.net@inetgw
To: Microsoft ATR
Date: 1/28/02 9:11pm
Subject: proposed monopoly settlement inadequate
The current proposed Microsoft monopoly settle does a completely inadequate job of protecting consumers from future abuses by Microsoft. In particular,
* Open source and free software concerns are ignored; which will allow MS to tighten its software monopoly by licensing it to public institutions.
* Microsoft is not required to open up the details of its file formats, which harms interoperability with other software and thus prevents competitors from getting a toehold into markets that Microsoft already monopolizes.
* Nothing prevents Microsoft from retaliating against OEMs that ship PCs with a competing OS (but not Windows). Please do not accept the existing settlement proposal.
Thanks,
Dan Mosedale

MTC–00029143

From: Stephen Patterson
To: Microsoft Settlement
Date: 1/28/02 9:05pm
Subject: Microsoft Settlement
Stephen Patterson
21959 C. R. 254
West Lafayette, Oh 43845
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.
Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.
Thank you for this opportunity to share my views.
Sincerely,
Stephen L. Patterson

MTC–00029144

From: cyberkristie
To: Microsoft ATR
Date: 1/28/02 9:13pm
Subject: Microsoft Settlement
Ok, enough is enough, let's move on and accept the settlement with Microsoft. Then go after someone that is really in total control and unfairly taking advantage of the consumers. The Cable companies! It's just plain usury what the cable companies charge for what they provide and now they are doing the same with the cable internet access. If it weren't for Bill Gates and Microsoft we wouldn't be communicating by email because most of us couldn't afford to own a computer much less have the software to use it to it's full advantage. I've been

around since mainframes were the only thing and pc's weren't even in the realm of home use. Gates made it all affordable and even today his software is affordable and the best to be had. Dragging this thing on just hurts our economy more that it is already hurting. So put it to rest and look into why the money from the tobacco companies settlements isn't going to where it was meant to go. Get involved with issues that really effect the population.

Kristie Ghioni
3012 W Viewmont Way W
Seattle, WA 98199
206–283–3504

MTC–00029145

From: Ludwik Kozlowski SR., M.D.
To: Microsoft Settlement
Date: 1/28/02 9:09pm
Subject: Microsoft Settlement
Ludwik Kozlowski SR., M.D.
7608 Geronimo Circle
N. Little Rock, Arkansas 72116
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Ludwik J. Kozlowski SR., M.D.

MTC–00029146

From: Billy Long
To: Microsoft Settlement
Date: 1/28/02 9:10pm
Subject: Microsoft Settlement
Billy Long
1021 Wales Dr
La Plata, MD 20646
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Charles and Barbara Martin

MTC–00029147

From: Charles and Barbara Martin
To: Microsoft Settlement
Date: 1/28/02 9:10pm
Subject: Microsoft Settlement
Charles and Barbara Martin
503 51 Ave W
Bradenton, Fl 34207
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Charles and Barbara Martin

MTC–00029148

From: Don Young
To: Microsoft Settlement
Date: 1/28/02 9:10pm
Subject: Microsoft Settlement
Don Young
Rt. 1 Box 282 A-10
Scroggins, TX 75480
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Don E. Young

MTC–00029149

From: John Russell
To: Microsoft ATR
Date: 1/28/02 9:14pm
Subject: Microsoft Settlement
John Russell
14763 West Trevino Drive
Goodyear, AZ 85338
January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

I am writing to express my opposition to the antitrust lawsuit against Microsoft. Although I realize that the lawsuit is no longer an issue, what is before your department is the court mediated settlement that can end this debacle. Millions of taxpayer dollars have been used in what essentially is a needless persecution of a competitive company. What is before your department is an exhaustive settlement that has terms that extend well beyond the products and procedures that were originally at issue in the litigation. Microsoft has agreed to these terms in the interest of servicing the

public good and allowing for a fair, agreeable end to this process.

This settlement, which has been reached by the Department of Justice, and approved by nine of the participating states, contains several provisions that extend significant restrictions and changes to how Microsoft does business. The settlement requires Microsoft to improve its relationship with computer and software manufacturers, by ensuring that Microsoft will not retaliate against manufacturers who ship non-Microsoft products and to create uniform pricing, allowing consumers to get the best price for the product. Additionally, the agreement allows any of Microsoft's competitors to file a claim against Microsoft in federal court if they believe that any part of the settlement has been violated, thereby forcing Microsoft to be in contempt of court.

I strongly urge the Department of Justice to view this settlement as having served the public interest and to end this litigation. Nine states have approved this, and with the federal government's leadership, this process may finally be over. In the overall public interest, please cease any further action at the federal level on this matter.

Sincerely,

John Russell

MTC–00029150

From: Tyson Murray
To: Microsoft ATR
Date: 1/28/02 9:15pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The three-year lawsuit against Microsoft has been continuing for too long. I am amazed and appalled that the Government would attempt to bring litigation against its strongest asset in the tech sector. Microsoft creates jobs and wealth for our nation and does not deserve to be a victim of federal and state litigation.

The terms of the settlement do little to protect consumer rights. In fact, they just give Microsoft's competitors an edge that they could not attain through innovation. Of particular interest to me are the terms by which Microsoft has agreed to disclose interfaces that are internal to Windows operating system products. This is a first in an antitrust settlement and a violation of Microsoft's intellectual property rights. Although flawed and unjustified, I urge your office to finalize the settlement because it is in the best interest of our economy and technology industry to end this dispute.

Sincerely,

Tyson Murray

MTC–00029151

From: Lovella S Richardson
To: Microsoft ATR
Date: 1/28/02 9:15pm
Subject: Re: Microsoft Settlement

The judge's recent decision settling the Microsoft lawsuti seems fair to all to me. I appreciate having a good browser that I don't have to pay extra for. I feel that Microsoft has been a great benefactor to the U. S. economy and technology in general.

Please let this settlement rest!

Lovella Richardson,

7706 Hodges Ferry Road, Knoxville, TN 37920

MTC–00029152

From: Lucas Rockwell
To: Microsoft ATR
Date: 1/28/02 9:17pm
Subject: Renata B. Hesse
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Renata B. Hesse,

I am writing to register my opposition to the proposed Microsoft Settlement with the Department of Justice. My reasons for this are many, but I will list just one for the purposes of this letter. Microsoft is a convicted monopolist and allowing them to donate $1 billion worth of software to schools is ''not'' a punishment. First, $1 billion to Micrsoft is not a lot of money. Recently, Microsoft had $30 billion in cash on hand. Second, Microsoft will experience years of benefits in sales from this deal as schools will seek to upgrade their aging ''free'' MS products. Also, when children learn software in school, parents have a compelling reason to purchase the same software at home. This settlement is a dream come true for Microsoft.

Please, reject this settlement offer.

I thank you very much in advance for your time.

-lucas

Lucas Rockwell
UAS Systems Group
510.642.6465
lr@socrates.berkeley.edu

MTC–00029153

From: The—Neumanns
To: Microsoft ATR
Date: 1/28/02 9:17pm
Subject: Microsoft Settlement

To whomever it may concern,

I am aware of the settlement agreement for Microsoft and agree that the settlement is fair for all parties involved. To assume that all end users are so uneducated that can not make an educated decision for themselves is disturbing in the first place. Even a teenager knows that if he purchases a car and does not like the speaker system that comes preinstalled on the vehicle that they can purchase a new speaker system from a variety of vendors. But then perhaps the older you get the less aware you are... This settlement has more than enough covenants in it. Let's not go overboard on the restrictions.

We live in an age where the computer industry is a thriving industry. More people than ever are using computers on a daily basis. People know that Netscape is out there. I have IE and Netscape on my PC and use them interchangeably. So, where have my choices been limited? Nowhere! This topic really makes me mad.

Microsoft is a good company. I do not understand why people feel like they should go after a company that is turning around and contributing so much to our society. Mr. Gates distributes his wealth to a multitude of charities. People like that are very hard to find. Thank God for someone who is doing something to help people that truly need it in our troubled society.

Sincerely,

Erika Neumann

CC:fin@mobilizationoffice.com@inetgw

MTC–00029154

From: Gregg Bair
To: Microsoft ATR
Date: 1/28/02 9:15pm
Subject: Microsoft

Please leave the decesion whether Microsoft illegally snuffed the COMPETITION where it belongs. With the consumer/ we will decide who has the better product. I have been screwed by Microsoft's competition many times. I would not buy anything else. They have made the computer age affordable , away from the monopolies of Apple and IBM.

In my opinion the legal system in this country should be investigated for the damage it has caused the consumer. The attorneys have raped this country and conned many people into believing they are victims. I ask you this question, how many times does your apple lock-up or what does it cost to fix the Apple? I applauded Microsoft and Bill Gates.

Gregg Bair

I HOPE MY VOTE COUNTS. BECAUSE IT WILL CERTAINLY COUNT IN THE NEXT POLITICAL ELECTION

MTC–00029156

From: MarieHolla@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:17pm
Subject: Microsoft Settlement
164 Chesapeake Estate #64
Thomasville, PA 17364–9661
January 10, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to you today to express my support of the recent settlement reached between the Department of Justice and Microsoft. After three years of litigation, the settlement marks an overdue end to the litigation battle.

While the antitrust dispute was unnecessary in the first place, it is great to see this period come to an end. It is time for Microsoft, the IT industry, and the American economy to focus on productivity again.

The settlement reached is more than equitable for Microsoft competitors. Microsoft has been more than generous throughout this process.

Most important among these concessions is Microsoft allowing for the establishment of a regulatory committee. The technical oversight committee, which will be run by three people, assures that the stipulations mandated in the settlement are carried out. This shows Microsoft's willingness to appease its competitors in their commitment to put this issue at bay.

Thus, it is important that this settlement stands. It is time for Microsoft and the larger IT industry to return to business as usual.

Sincerely,
Marie Hollabaugh
CC:fin@mobilizationoffice.com@inetgw

MTC–00029157

From: JFedor3703@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:18pm
Subject: Microsoft Settlement
14202 W Via Manana
Sun City West, AZ 85375
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I think the antitrust case filed against Microsoft should finally be settled.

I wonder why this case is being dragged on. Not only has Microsoft made bold concessions in order to get back to business, they have also promoted a more unified IT sector along the way. This settlement clearly promotes a technology industry that works together which will allow the US to maintain our position in the global market.

Microsoft has made many concessions within the settlement that include changes in product design, licensing and marketing. The terms are meant to open competition to non-Microsoft software while still allowing Microsoft to prosper. The settlement promotes a teamwork environment in the technology industry and allows all to prosper in the process. Microsoft's efforts to end the litigation should be applauded.

I strongly urge that you close this case. The longer we wait for a settlement, the longer we stray from focusing on innovation.

Sincerely,
Joan Fedor
CC:fin@mobilizationoffice.com@inetgw

MTC–00029158

From: Juan E. Ramirez
To: Microsoft ATR
Date: 1/28/02 9:19pm
Subject: Microsoft Settlement

Microsoft is the 800 lb. Gorilla. They control OS software on 95% of all PCs sold in this country. If this is not a ''monopoly'' then the following companies were not:

US Steel
AT&T
Thanks,
Juan E. Ramirez
jr7138@swbell.net

MTC–00029159

From: Shirley R Mundinger
To: Microsoft ATR
Date: 1/28/02 9:18pm
Subject: Microsoft settlement

I hope you will close this long period of bickering among some of the Microsoft competitors and allegations against Microsoft. They, Microsoft, have offered much to the public to make computer use faster and more useable. Please let those fighting them, know that nothing more can be accomplished by dragging this on through the courts. Let them get on with their work and those that are complaining get busy developing their own products to better serve our nation.

This long battle is consuming to much money and time and is unproductive and to our economy and our reputation as a nation. We need to develop more integrity in the business world.

Yours truly,
Shirley Mundinger

MTC–00029160

From: Bob Essman
To: Microsoft ATR
Date: 1/28/02 9:18pm
Subject: Microsoft
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Renata B. Hesse,

I do not believe that the so called ''Antitrust'' laws are constitutional except, perhaps under the constitution of the now defunct U.S.S.R. or The Talibans of Afghanistan.

Although I do not believe that Microsoft is clean of all possible charges, the process followed under this law is and should be unproductive and futile. I've niether seen nor heard of any real evidence. I've only heard accusations.

If Microsoft has broken a law, it should be charged with fruad or theft or some real crime and not for persuing it1s inalienable right to persue commerce and make money. Doing business better than your competetors is a pure American ideal and should be encouraged instead of picked at like a bunch of spoiled children fighting over candy.

Get on with the real work that the taxpayers pay you to do and get to Enron and/or Anderson where the evidence of wrongdoing is apparent.

Sincerely,
Bob Essman

MTC–00029161

From: BARGONN@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:20pm
Subject: Microsoft Settlement

As a consumer and individual investor who owns stock in many Tech. companies, including Microsoft, AOL Time Warner, Sun microsystems, etc., I have followed the developments of the government's case against Microsoft, and the complaints filed by individual States and Microsoft's competitors. I continue to believe the settlement already reached between Microsoft, the Justice Dept., and several States Should be the final judgement on the matter. No one, especially Microsoft's competitors, has yet demonstrated any injury to consumers by Microsoft's business practices. Although Microsoft successfully won away customers from AOL's Netscape by giving their Web Browser away for free, one can hardly say this ''injured'' consumers. Getting a superior product for free is not what I would call being abused, nor is this an example of being deprived of choice. There was a choice, and consumers took the superior choice. Most savvy computer professionals agree that Internet Explorer is far better than the Netscape browser, and the Netscape browser cost money, it was not offered free. Also, Microsoft has always striven to establish standards in its software which would ensure its interoperability with many different applications and prevailing programs. Netscape's product could not boast the same attributes.

Also, today, as in the past, there is ample competition for Microsoft, in operating systems such as Unix, Linux, Java, etc., and in internet applications and access providers such as AOL time Warner, Earthlink, and many others. Microsoft is not a monopoly in my view, it is instead a great American success story which has driven the local and national economy, provided thousands of high-paying jobs, and has given much back to the community in raised living standards and charitible donations.

Please bring this legal challenge to a close, as it is not helping to protect consumers, it is not helping our economy to rebound, and it is not justified by the sour grapes failures of Microsoft's inadequate competitorswho seek the government's aid in doing what they were unable to do in fair business competition.

Sincerely,
Baron Borrelli
Bellevue, WA.

MTC–00029162

From: Zoe Alvarez
To: Microsoft Settlement
Date: 1/28/02 9:14pm
Subject: Microsoft Settlement
Zoe Alvarez
1432 NW 26 Avenue
Miami, FL 33125–2130
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies. Thank you for this opportunity to share my views.

Sincerely,
Zoe Alvarez

MTC–00029163

From: Brad Chapman
To: Microsoft Settlement
Date: 1/28/02 9:14pm
Subject: Microsoft Settlement
Brad Chapman
4963 S 4055 W
SLC, UT 84118–4044
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Brad Chapman

MTC–00029164

From: Sallie Landry
To: Microsoft Settlement
Date: 1/28/02 9:14pm
Subject: Microsoft Settlement
Sallie Landry
7414 Tanager
Houston, TX 77074
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Sallie Landry

MTC–00029165

From: Dona Sheets
To: Microsoft Settlement
Date: 1/28/02 9:14pm
Subject: Microsoft Settlement
Dona Sheets
3 Pichini Trace
Cherokee Village, AR 72529
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Dona Sheets

MTC–00029166

From: Ellen Green
To: Microsoft Settlement
Date: 1/28/02 9:17pm
Subject: Microsoft Settlement
Ellen Green PO
Box 747 York, AL 36925
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Get off of Microsoft's back. Settle this case!

Sincerely,
Ellen Green

MTC–00029167

From: TomasHol@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:24pm
Subject: (no subject)
164 ChesapeakeEstate #64
Thomasville,PA 17364–9661
January 10, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing to you today to express my support of the recent settlement reached between the Department of Justice and Microsoft. After three years of litigation, the settlement marks an overdue end to the litigation battle. While the antitrust dispute was unnecessary in the first place, it is great to see this period come to an end. It is time for Microsoft, the IT industry, and the American economy to focus on productivity again. The settlement reached is more than equitable for Microsoft competitors. Microsoft has been more than generous throughout this process. Most important among these concessions is Microsoft allowing for the establishment of a regulatory committee. The technical oversight committee, which will be run by three people, assures that the stipulations mandated in the settlement are carried out. This shows Microsoft's willingness to

appease its competitors in their commitment to put this issue at bay. Thus, it is important that this settlement stands. It is time for Microsoft and the larger IT industry to return to business as usual.

Sincerely,
Thomas A. Hollabaugh
CC:fin@mobilizationoffice.com@inetgw

MTC–00029168

From: Zerbin Belles
To: Microsoft Settlement
Date: 1/28/02 9:18pm
Subject: Microsoft Settlement
Zerbin Belles
106 Brown Lane
Lexington, SC 29073–8302
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Zerbin D. Belles

MTC–00029169

From: Austin Gonyou
To: Microsoft ATR
Date: 1/28/02 9:24pm
Subject: One last thing.
http://linuxtoday.com/news—
story.php3?ltsn=2002–01–29–008–20-
NW-MS —
Austin Gonyou
Systems Architect, CCNA
Coremetrics, Inc.
Phone: 512–698–7250
email: austin;@coremetrics.com

''It is the part of a good shepherd to shear his flock, not to skin it.''
Latin Proverb

MTC–00029170

From: TranD97@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:25pm
Subject: Microsoft Settlement
January 28, 2002
Attn: Renata B. Hesse
Antitrust Division
U. S. Department of Justice
601 D. Street NW, Suite 1200
Washington, DC 20530–0001
To Whom It May Concern:

I would like to make known to the Attorney General my comments concerning the Microsoft settlement. I believe that the Court of Appeals ruling is reasonable and fair to all parties involved. I would like my voice to be heard and that is why I am writing this letter. I think that it would be very unfair to Microsoft if this settlement is rejected.

Yours truly,
Debra K. Trantham

MTC–00029171

From: Gary Oja
To: Microsoft ATR
Date: 1/28/02 9:24pm
Subject: Microsoft Settlement

Dear DOJ,

With billions of dollars at its disposal, a fine would be insignificant to Microsoft (although highly recommended). Any settlement which includes the distribution of Microsoft products would just worsen their monopoly. Please open up the arena to allow other vendors software programs (applications and operating system utlities, including Web browsers) to be substituted for Microsoft products and force Microsoft to unbundle their software to permit equal access. This would allow fair competition in the marketplace and benefit all consumers.

Thank you.
Gary Oja
Principal Software Engineer
Worcester MA
goja@ultranet.com

MTC–00029172

From: Mark Donohoe
To: Microsoft ATR
Date: 1/28/02 9:25pm
Subject: Microsoft Settlement

To whom it may concern,

I am writting this e-mail to let you know that as a consumer I feel frustrated, boxed in and limited by Microsofts monopoly. I have little or no choices when it comes to operating systems or applications to use on my home PC. This lack of choices limits my use of the PC and causes daily productivity loss.

In the application area, there are few if any choices in word processors, speadsheets or other applications. This is simply not right in our competitive and free society we claim to have in the U.S.A. I was hoping the goverment would do something but feel less so in light of the recent actions by the goverment. The doj could help by imposing the following on Microsoft.

1. Force them to publish and keep current the api's to their applications and file formats for those applications. With the published API's, others could write competing applications that could convert existing microsoft files into the format used by the competing application. Today this is not possible or is twarted by MS.

2. Stop microsoft from further integrating features like browsers, media players and the like into the operating system. I use windows 98 now, and don't use IE, except when I have to. BUT, I can't really remove it from my system without permantly damaging the operating system.

3. Stop Microsoft from pointing me to microsoft companies. When I got my pc, it insisted on bootup, that I either cancel the window or login to the microsoft network. This was not only annoying, but unless I sat and watched the machine boot and closed the window, the machine would not complete booting. It took my quite a while, and with some risk, to get this feature disabled.

4. All of the above would not be so bad, if it all worked, but it doesn't! I must reboot my home machine very often, and must reboot my system at work at least once a week to keep things functioning. This is not to mention all the e-mail viruses and the like that plague MS software.

Thank you for your time. Please help us consumers get this monopolist out of our hair and allow real innovation in the computing world.

Mark Donohoe
1012 Hewitt Dr.
San Carlos, Ca. 94070
(4donohoes@attbi.com)
CC:4donohoes@attbi.hp.com@inetgw

MTC–00029173

From: Sandra Bottorff
To: Microsoft Settlement
Date: 1/28/02 9:18pm
Subject: Microsoft Settlement
Sandra Bottorff
12750 170th Avenue
LeRoy, MI 49655
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Sandra J. Bottorff

MTC–00029174

From: Dave Garman
To: Microsoft ATR
Date: 1/28/02 9:26pm
Subject: microsoft settlement
Judge Kollar-Kotally-

I am a scientist at a small biotechnology company involved in developing therapeutics to help people. I am writing this letter in protest of the proposed Microsoft settlement. We use Microsoft products because we are forced to. For the research we do, computer applications are often only generated for the Windows platform because no other operating system has enough market share to justify development. In itself, this is not a significant problem. However, there are so many problems and issues with the Windows operating system and Microsoft Office that we have been forced to hire a full time Information Technology employee for a staff of only 15 people. This expense, in conjunction with software and hardware costs forced by Microsoft compatability issues, costs us more than $200,000 dollars a year. This is a huge expense for a small business.

The proposed settlement seems like a government endorsement of the Microsoft monoplay. This will only make our situation worse, with no competition to control inflation of prices. I hope you will reconsider and take a tougher stance against Microsoft.

Sincerely,
Dave Garman, Ph.D.
Scientist
5084 McCoy Ave
San Jose, CA 95130
(408) 364–1984

MTC–00029175

From: Galvin, Rob
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 9:25pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division U.S. Department of Justice
601 D Street NW Suite 1200
Washington, DC 20530–0001
Ms. Hesse,

Attached are the Comments to the Revised Proposed Final Judgment in United States v. Microsoft Corporation, No. 98–1232, submitted on behalf of Sun Microsystems, Inc. Copies of the comments are submitted in both Word and .pdf formats. In addition, we have sent a copy via facsimile. Please call if you have any difficulties opening or processing these attachments.

Robert Galvin
Day Casebeer Madrid & Batchelder LLP
20300 Stevens Creek Blvd., Suite 400
Cupertino, CA 95014
(408) 342–4578

Comments to the Revised Proposed Final Judgment in United States v. Microsoft Corporation, No. 98–1232

State of New York, et al. v. Microsoft Corporation, No. 98–1233

Submitted By
Sun Microsystems, Inc.

Pursuant to the Tunney Act, 15 U.S.C. § 16

Lloyd R. Day, Jr.
Robert M. Galvin
Renee DuBord
DAY CASEBEER MADRID & BATCHELDER LLP 20300
Stevens Creek Blvd. Suite 400
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901 San Antonio Road
Palo Alto, CA 94303
(650) 960–1300

Introduction

Microsoft illegally maintained its monopoly over Intel-compatible personal computer ''PC'') operating systems by acting to undermine the distribution and commercial appeal of alternative computing platforms like Netscape Corporation's Navigator browser and Sun Microsystems, Inc.'s JavaTM technology.[1] By eliminating the ability of alternative platforms to compete with Windows, Microsoft has not only maintained its monopoly over PC operating systems, it also has dramatically increased the economic power that it derives from that monopoly, such that Microsoft now has the power to control competition in a number of adjacent and downstream markets as well. In the emerging world of networked devices and services, the commercial appeal and success of adjacent or downstream devices and services such as servers, personal digital assistants (''PDAs''), telephones, video game systems, television set-top boxes, and web-based services are in very large measure dependent on their ability to interoperate with PCs via the Internet or other networks. Microsoft's expanded monopoly power over PC operating systems and web browsers affords it the power to deny competing devices and services the same ability to interoperate fully and completely with PCs as Microsoft's networked devices and services enjoy. Microsoft is in fact exercising the power it derives from its PC monopoly in just this way to exclude competition in each of these adjacent markets. Unless and until that power is effectively checked and ultimately eliminated, Microsoft's past practices and insatiable ambition demonstrate that it will continue to destroy competition in each of these enormously important markets.

Unfortunately, the Revised Proposed Final Judgment (''RPFJ'') does little or nothing to eliminate the unlawful monopoly maintained by Microsoft over PC operating systems. Nor does it redress the harm that Microsoft's illegal acts have caused to competition in that market. And while the RPFJ apparently recognizes the threat to competition posed by Microsoft's exclusionary behavior in adjacent and downstream markets, the remedies it proposes to redress this threat are plagued with so many loopholes and ambiguities that there can be no assurance that Microsoft's anticompetitive conduct will stop. A. Competition in the market for PC operating systems must be restored

The adjudicated facts establish that Microsoft illegally maintained a monopoly over the market for PC operating systems by undermining the ability of rival software platforms to compete in that or closely related markets. By offering consumers the ability to run compelling applications on operating systems other than Microsoft's Windows operating system, the Navigator browser and Java platform threatened to reduce or eliminate the applications barrier to competition that sustains Microsoft's monopoly.[2] Microsoft fully recognized the threat these middleware platforms posed to its continued monopoly over PC operating systems and contrived to maintain that monopoly by restricting consumer access to these and any other non-Microsoft middleware platforms.

The commercial appeal of any computing platform is dependent in very large measure on the numbers of consumers who own or use the platform. The greater the number of users, the greater the demand for applications capable of running on that platform. The greater the demand for applications, the greater the number and variety of applications developed for the platform.

And the greater the number and variety of applications developed for a platform, the greater the consumer demand for a given computing platform.[3] Once started, this ''feedback'' effect can and will sustain the adoption and commercial success of platform software, such as Microsoft's Windows operating system, Netscape's Navigator browser or Sun's Java platform. The key to successful competition in platform software is thus distribution.[4] Unless a platform enjoys widespread and sustained distribution, such that large numbers of computer users have the platform installed and available for use on their computer systems, the feedback cycle of application development and platform adoption will not take effect.

As the District Court found, and the Court of Appeals affirmed, Microsoft engaged in a series of illegal acts to choke off the distribution channels for the Navigator and Java platforms.[5] By restricting and disrupting the distribution of the Navigator browser and the Java platform, Microsoft sought to limit the numbers of computer users with access to these alternative platforms and thereby also limit the demand for, and economic incentives supporting, application development on the Navigator and Java platforms. By decreasing the distribution of non- Microsoft platforms, such as the

[1] United States v. Microsoft Corp., 253 F.3d 34, 46 (DC Cir. 2001) (''Microsoft III'').

[2] United States v. Microsoft Corp., 84 F. Supp. 2d 9, § 68 (D.DC 2000) (''Findings of Fact'') (explaining how middleware technologies such as the Navigator browser and the Java platform have the ability to weaken the applications barrier to entry).

[3] See Findings of Fact, 84F. Supp. 2d. at §§ 39–40.

[4] See Microsoft III, 253 F.3d at 55–60, 60–61, 70–71; findings of fact, 84 F. Supp. 2d at §§ 36–52, 143–144.

[5] See Microsft III, 253 F.3d at 61, 72, 75–76; Findings of Facts, 84F. supp. 2d at §§ 357, 395–402.

Navigator browser and the Java platform, Microsoft knew that it could also decrease the number and variety of applications developed for such platforms, and thus their relative commercial appeal to consumers.

But for Microsoft's unlawful attack on the distribution of the Navigator and Java platforms, the installed base of these alternative platforms would have been very different today. So too would the economic incentives and choices of consumers and software developers.

Consumers would have had the opportunity to choose among a variety of competing platforms— not just Microsoft's Windows platform—based upon performance, cost or personal preference.

Developers too would have had the opportunity to choose among a variety of competing platforms on which to develop applications with the features, performance and cost that consumers demand.

Indeed, because the Navigator and Java platforms were ''cross-platform''—that is, ran on top of a variety of operating systems, not just Microsoft's Windows operating system—consumers would have had the ability to run applications written for the Navigator browser and Java platform on anyoperating system, not just Microsoft's Windows operating system. By dramatically lowering the cost to switch applications from one operating system to another, the Navigator and Java platforms directly attacked the applications barrier to competition that protects Microsoft's monopoly over PC operating systems, and greatly reduced the cost to consumers and developers alike of switching away from Microsoft's monopoly platform. In short, but for Microsoft's anticompetitive conduct, consumers today would have enjoyed far greater freedom, at far less cost, to choose among competing operating systems based on their comparative features, performance, and price, rather than simply the number of applications they support. B. Microsoft's unlawful power to exclude competition in adjacent and downstream markets must be stopped and eventually dissipated

By disrupting and eliminating the distribution of competing platforms, Microsoft has not only maintained its monopoly over PC operating systems, it also has increased the economic power that it derives from that monopoly. By secretly manipulating the interfaces and protocols needed to interoperate with Windows, Microsoft can control which products and services in adjacent or downstream markets are capable of interoperating with PCs. Not only does this permit Microsoft to enhance the relative appeal and functionality of its products and services at the expense of its competitors, it denies consumers the benefits of competition. Instead of choosing a server, telephone, application, or web service based solely on its competitive merits, Microsoft is increasingly forcing consumers to purchase such products and services based upon their ability to interoperate with its unlawfully monopolized platforms.

Microsoft is now abusing the power it has over PC operating systems and web browsers by seeking to extend its control to embrace any device, application, or web service that seeks to interoperate with Microsoft's monopolized PC operating systems or browsers. Microsoft's unbridled monopoly over a critical node on the digital network—PCs—provides it the power to allow only such servers, PDAs, telephones, television set-top boxes, videogame systems, or web services that implement Microsoft's proprietary interfaces and protocols to interoperate effectively with Microsoft's monopoly products. By illegally exploiting its PC operating system monopoly to acquire and utilize a chokehold over networked connections to PCs, Microsoft is dramatically expanding its power to deny consumers the benefits of choice and competition in adjacent and downstream markets as well.

C. The RPFJ fails to remedy the monopoly illegally maintained by Microsoft

In the face of this record, the law requires that any remedial decree ''terminate'' the monopoly, ''unfetter'' the market from anticompetitive conduct, ''deny to the defendant the fruits'' of its illegal acts, and ''ensure'' no repetition of such abuse in the future.[6] Measured against this standard, the proposed settlement between the United States and Microsoft reflected in the RPFJ falls far short.

Rather than act directly to restore competition to the market for PC operating systems, and redress the harm to competition inflicted by Microsoft's past misconduct in that and adjacent markets, the RPFJ actually accedes to Microsoft's monopoly, and does little or nothing to eliminate or check the enormous power it provides. Incredibly, the RPFJ barely proscribes behavior already held to be unlawful without remedying the far-reaching and continuing anticompetitive effects that have been caused by that behavior.[7] Even though Microsoft effectively destroyed competition for web browsers and blocked the distribution of upgraded, compatible versions of the Java platform for the PC, the RPFJ fails to remedy directly these anticompetitive acts or disgorge Microsoft of the power it now enjoys as a result of those acts.

Instead, the RPFJ relies on Microsoft's partners—PC manufacturers—to indirectly undermine Microsoft's monopoly by distributing non-Microsoft middleware. Relying on Microsoft's distributors to achieve the Department's goals is fundamentally flawed, since the PC manufacturers have little or no economic incentive or ability to work with Microsoft's competitors, absent fundamental changes to the competitive landscape in the PC operating system market, which the RPFJ fails to seek.[8] At best, the RPFJ will marginally increase the opportunity, but not the ability, of competitors to compete at some future date with Microsoft's middleware products. It does nothing directly to dislodge Microsoft's PC operating system monopoly or to restore the market for PC operating systems to the competitive dynamics the market would have possessed ''but for'' Microsoft's illegal conduct.

While promising in principle, the disclosure remedies in the RPFJ (Sections III.D. and III.E) are likely to fail in practice to achieve the procompetitive objectives identified by the United States Justice Department (the ''Department'') in its Competitive Impact Statement. Key provisions in the RPFJ contain critical loopholes and glaring ambiguities. Given Microsoft's past disdain for compliance with the strictures of its prior antitrust consent decree with the Department, these ambiguities will likely lead to future litigation, particularly since Microsoft has repeatedly refused to answer any questions regarding whether it agrees or disagrees with the interpretations of the RPFJ proposed by the Department in the Competitive Impact Statement. Instead, it is clear that Microsoft's strategy is to say as little as possible about the meaning or application of the RPFJ prior to entry of judgment, hoping that any ambiguities in the language will ultimately be interpreted in its favor. In order to protect the public and ensure that the Department has actually secured a settlement that is consistent with its representations to the Court, the Department must force Microsoft to identify any disagreements that it has with the Department's interpretations prior to entry of the judgment. Unless such minimal steps are taken, the RPFJ will certainly fail to secure even the modest objectives it seeks to attain.

The RPFJ is further flawed because it allows Microsoft to profit from its illegal acts by exacting royalties as a condition for making interoperability disclosures. Moreover, it gives Microsoft far too much discretion about how it will ''comply'' with the RPFJ. Given its past record of anticompetitive conduct, a remedial scheme which relies on Microsoft acting ''reasonably'' is doomed to fail. After having successfully prosecuted its case against Microsoft, that there exists no commercially viable alternative to which they could switch in response to a substantial and sustained price increase or its equivalent by Microsoft.'').It would be tragic for the Department to shirk its duty under the law, and through entry of the RPFJ, allow Microsoft to maintain and expand its monopoly power. II. Sun Microsystems'' Interest Regarding the Terms of the RPFJ''

Since its founding in 1982, Sun has been propelled by an innovative vision—''The Network Is The Computer.'' TM Sun is a leader in the design, manufacture, and sale of computer hardware, software, and services. Sun directly competes with Microsoft across a wide variety of markets including operating systems, ''middleware'' platforms, software development tools, office productivity suites, directory services, and enterprise software.

Sun's experience and expertise place it in a unique position to assess the true

[6] 6 Microsoft III, 253 F.3d at 103.

[7] See Schine Chain Theatres, Inc. v. United States, 334 U.S. 110, 128 (1948) (concluding that injunctive relief which merely ''forbid[s] a repetition of the illegal conduct'' is legally insufficient because defendants would ''retain the full dividends of their monopolistic practices and profit from the unlawful restraints of trade which they inflicted on competitors'').

[8] Findings of Fact, 84 F. Supp. 2d at § 54 (stating that ''[w]ithout significant exception, all OEMs pre-install Windows on the vast majority of PCs that they sell, and they uniformly are of a mind. loopholes in the RPFJ must be eliminated and its important ambiguities clarified

competitive impact of the RPFJ. As one of Microsoft's leading competitors and as the creator and licensor of the Java platform, Sun was a prime target of the anticompetitive conduct at issue in United States v. Microsoft. In addition, because Sun designs, manufactures, and sells a wide variety of products and services that must interoperate with Microsoft's products and services, Sun's real- world experience regarding the difficulties and barriers to effective interoperability with Microsoft's products affords Sun unique insights into whether the various technical disclosures and licensing practices mandated under the RPFJ will actually achieve the results intended by the Department.

Sun's comments on the RPFJ are not intended to be exhaustive. Instead, the comments focus on key shortcomings or problems with the RPFJ, which most directly impact Sun, its distributors, developers, and customers. Others, including trade organizations of which Sun is a member, are likely to raise additional problems with the RPFJ, which should be addressed prior to entry of the judgment. By omitting such subjects from its submission, Sun does not wish to convey to the Department the impression that it believes the remainder of the RPFJ is satisfactory to Sun. Rather, Sun has merely focused its comments to highlight particular areas of concern.

III. The RPFJ Fails To Remedy the Continuing Harm to Competition Caused By Microsoft's Illegal Acts

A. The RPFJ fails to dissipate Microsoft's monopoly power in the market for PC operating systems

A remedies decree in an antitrust case ''must seek to unfetter a market from anticompetitive conduct, to terminate the illegal monopoly, deny the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''[9] The market over which Microsoft has unlawfully maintained its monopoly power is the market for PC operating systems. It is that market—the market for PC operating systems— that must be restored to competition, and in which Microsoft's power must be eliminated.

The RPFJ, however, fails to serve this fundamental objective. The first and most important flaw in the RPFJ lies in its failure to do anything to restore competition in the market for PC operating systems. But for Microsoft's anticompetitive conduct, the market would today provide consumers and software developers with the benefits of competitive choice among at least three alternative computing platforms for desktop computers: the Windows operating system, the Navigator browser, and the Java platform. As a direct result of Microsoft's anticompetitive conduct, consumers and developers today effectively enjoy no such choice. Rather than restore the market to the state it would have enjoyed but for Microsoft's illegal conduct, or even attempt to dissipate Microsoft's illegally maintained power over that market,the RPFJ accedes to and accepts Microsoft's monopoly over PC operating systems, and does nothing to directly and immediately restore that market to competition.

Indeed, the RPFJ does not even focus its principal remedies on the relevant market: the market for PC operating systems. Instead, it focuses its principal remedies on entirely different markets: the market for distribution of Microsoft operating systems and the market for middleware. In light of the record established and affirmed in this case, the Department's reliance on Microsoft's own distributors -entities whose commercial viability is dependent on and inextricably tied to Microsoft's success—to promote non-Microsoft middleware products capable of threatening Microsoft's monopoly position is misplaced at best, and foolhardy at worst.

1. The Department previously acknowledged that an effective remedy had to eliminate the applications barrier protecting Microsoft's monopoly In recognition of the Department's obligations under the law and the extent of Microsoft's misconduct, the Department originally set its remedial objectives much higher than those proposed in the RPFJ. In fact, both the Department and the District Court concluded that a combination of structural relief and conduct remedies was necessary to lower the applications barrier to entry and to restore competition in the market for PC operating systems.[10] As the Department itself acknowledged, conduct remedies, by themselves, are likely to be insufficient in this case to remedy the past harm to competition:

[C]onduct remedies can do little to rectify the harm done to competition by Microsoft's illegal conduct in the past. For example, the evidence shows and the Court found that Microsoft's illegal conduct prevented Navigator and Java from eroding the applications barrier to entry ''for several years, and perhaps permanently'' because they could not facilitate entry unless they became almost ubiquitous and thus became attractive platforms for ISVs. A conduct remedy cannot undo the demise of Navigator and the concomitant rise of Internet Explorer, nor can it ensure that there will be other middleware threats comparable to Navigator in the future.[11] According to the Department, ''[c]ompetition was injured in this case principally because Microsoft's illegal conduct raised entry barriers to the PC operating system market by destroying developments that would have made it more likely that competing operating systems would gain access to applications and other needed complements.'' [12] Thus, ''the key to a remedy in this case is to reduce Microsoft's ability to erect or maintain entry barriers.'' [13] To achieve this objective, the Department originally sought to divide Microsoft into an Applications Business and an Operating Systems Business in order to ''create incentives for Microsoft's Office and its other uniquely valuable applications to be made available to competing operating systems when that is efficient and profitable—in other words, in response to ordinary market forces—instead of being withheld strategically, at the sacrifice of profits and to the detriment of consumers—in order to protect the Windows operating system monopoly.'' [14]

But now that the Department has reversed its prior position and seeks to rely solely on conduct remedies, the remedies it has proposed are even less likely to rectify the harm done to competition than the interim conduct remedies previously adopted by the District Court. The conduct remedies of the RPFJ are simply not tailored to rectify the continuing harm or lower the barriers to competition for competing operating system vendors. For example, the RPFJ does not even attempt to redress the competitive harm caused by Microsoft's interference and disruption of the distribution channels for the Navigator browser or the Java platform, even though Microsoft correctly perceived that widespread distribution of these platforms would lower the barriers to competition protecting its monopoly. Nor does the RPFJ take any direct steps to loosen Microsoft's chokehold on the PC operating system market and facilitate the development of applications from both Microsoft and others that could run on competing operating systems. If, as the Department previously contended, the ''key to a remedy'' in this case is to reduce or eliminate Microsoft's ability to create and maintain barriers to competition, the RPFJ does not attempt to serve, much less achieve, that remedial objective.

Although the Court of Appeals vacated and remanded the District Court's divestiture order, it affirmed the central liability findings against Microsoft. Rejecting Microsoft's numerous challenges, the Court of Appeals concluded that Microsoft had monopoly power over the PC operating system market, that Microsoft's monopoly was protected by an applications barrier to entry, and that Microsoft engaged in a panoply of illegal acts to maintain that monopoly in light of the competitive threat posed by the Navigator browser and the Java platform? Furthermore, it set forth the legal standard against which any remedy for such violations should be measured.[16]

While the Department certainly had discretion to choose not to pursue a divestiture remedy on remand, the Court of Appeals' affirmance of the core liability findings against Microsoft provided no excuse for seeking watered-down conduct remedies that are likely to be even less effective than the interim conduct remedies previously ordered by the Court. This is not a case where the Department entered into a

[9] Microsoft III, 253 F.3d at 103 (internal quotations and citations omitted). Although the Department acknowledges the required remedial objectives under the law, it fails to achieve them in practice. See Competitive Impact Statement (''CIS'') at 24 (''Appropriate injunctive relief in an antitrust case should: (1) end the unlawful conduct; (2) ''avoid a recurrence of the violation'' and others like it; and (3) undo its anticompetitive consequences.'').

[10] United States v. Microsoft Corp., 97 F. Supp. 2d 59 (D.DC 2000), aff'd in part, rev'd in part, and remanded, 253 F.3d 34 (DC Cir. 2001).

[11] 11 4/28/00 Plaintiffs'' Memo. in Support of Proposed Final Judgment at 7–8 (citations omitted).

[12] id. at 30.

[13] Id.

[14] Id.

[16] Id. at 103.

settlement with a defendant in lieu of trial. Here, the District Court held, and the Court of Appeals affirmed, that Microsoft violated the antirust laws. By failing to remedy the effects of Microsoft's illegal acts, disgorge Microsoft's ill-gotten gains, and attack the barriers to competition protecting Microsoft's monopoly, the Department has shirked its duty under the law.

2. The RPFJ fails to address the effects of Microsoft's distribution power

Any remedy designed to restore competition in the PC operating system market must account for the economic realities of software platform development. Distribution is the key to competitive viability in the market for PC platform software? The applications barrier to entry which forms a ''positive feedback loop'' for Microsoft and a ''vicious cycle'' for Microsoft's competitors was a centerpiece of the Department's case: the number of installed units of a platform determines its commercial appeal to applications developers; the number and variety of applications available for a platform determines its commercial appeal to consumers; and the commercial appeal of the platform to consumers in turn drives its installed base and market share.[18] As the Court of Appeals concluded, ''[b]ecause the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft power to stave off even superior new rivals.'' [19] In large measure, the Navigator browser and the Java platform threatened Microsoft's monopoly because they had achieved widespread distribution on both Windows and non-Windows platforms, thereby becoming a potentially more attractive platform for application development than Windows. If developers increasingly chose to develop their applications to the Navigator and Java platforms, rather than the Windows platform, consumers would have greater freedom to switch away from the Windows operating system because they would still be able to run the applications that they desire using competing operating systems.

To restore competition in the PC operating system market, an appropriate remedy should attempt to place the market back in the position it would have been ''but for'' Microsoft's illegal conduct. In other words, an appropriate remedy would ensure, to the extent possible, that alternative platforms achieve the distribution that they would have received ''but for'' Microsoft's illegal conduct. Moreover, an appropriate remedy also would seek to open up Microsoft's distribution channels to expand consumer choice by ensuring that alternative platforms could compete on the merits with Microsoft's products, rather than having Microsoft's illegally maintained distribution powers effectively foreclose such choices.

To evaluate the potential efficacy of the RPFJ, one must compare the competitive landscape before and after Microsoft's illegal acts. Prior to Microsoft's acts, the marketplace was undergoing dramatic changes as a result of the nearly simultaneous emergence of both the Navigator browser and the Java platform. By easily connecting consumers to resources across the Internet and providing a new platform for software development, these new, widely- distributed platforms threatened Microsoft's monopoly power because they afforded consumers the ability to run applications on many different operating systems, not just Windows. Customers could chose between different browsers as well as different implementations of the Java platform. They were not reliant on a single vendor for their platform software. At this inflection point in the market, the barriers to competition protecting Microsoft's monopoly looked increasingly precarious.

Microsoft's internal documents demonstrate how serious that threat really was. Despite its dominant market position, Microsoft believed it was necessary to engage in a campaign of illegal conduct to crush this competition. As a result of that conduct, consumers no longer have any real competitive choices for browsers for PCs, other than Microsoft's Internet Explorer. As a practical matter, PC consumers also have been denied access to the latest, compatible versions of the Java platform as a result of Microsoft's conduct. Instead, Microsoft first offered an incompatible version of the Java platform, and now seeks to roll-out their ''knock-off'' middleware runtime, the .NET Framework/Common Language Runtime, that copies many of the features of the Java platform with one critical difference—it runs only on Windows.

The question that should be asked regarding the RPFJ is whether it will disgorge from Microsoft the fruits of its illegal acts and restore a competitive marketplace where consumers will have the ability to choose their platform software from an array of competitive choices. A critical review of the RPFJ makes plain it does not. 3. The RPFJ does little more than attempt to enjoin Microsoft from continuing to engage in the conduct already found to be unlawful

Rather than attempting to undo the damage to competition resulting from Microsoft's actions and pry open the PC operating system market to competition, the RPFJ is purely forward- looking, focusing primarily on the precise Microsoft conduct already found to be unlawful.

Injunctive relief which simply ''forbid[s] a repetition of the illegal conduct'' is insufficient under Section 2 because it would allow Microsoft to ''retain the full dividends of [its] monopolistic practices and profit from the unlawful restraint of trade which [it] had inflicted on competitors.''[20] As the Supreme Court has made plain, an antitrust remedy ''does not end with enjoining continuance of the unlawful restraints'' but must also seek to undo the effects of the illegal acts and ensure that they do not reoccur. [21]

Most of the RPFJ is oriented towards prohibiting a narrow set of future illegal conduct by Microsoft. For example, the RPFJ contains provisions which would prohibit Microsoft from:

* retaliating against distributors of or developers for Non-Microsoft Operating Systems and Non-Microsoft Middleware (Sections III.A and III.F);

* entering into certain restrictive agreements relating to the distribution of or development for Non-Microsoft Operating Systems and Non-Microsoft Middleware (Sections III.C, III.F.2, III.G); or

* preventing end-users and OEMs from enabling non-Microsoft Middleware Products over Microsoft Middleware Products (Section III.H). Although such provisions are certainly appropriate in light of Microsoft's past conduct, they merely enjoin Microsoft from continuing to break the law in the future, and do nothing to repair the damage to competition caused by Microsoft's past acts.

4. The RPFJ assumes that Microsoft's Windows distributors will promote competitive middleware products

Sun questions whether the Department's reliance upon Microsoft's primary distributors, PC manufacturers, to re-start competition in the PC operating system market is fundamentally misplaced. In its Competitive Impact Statement, the Department contends that the RPFJ will ''restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings.'' [22] The Department's assumption seems to be that by giving PC manufacturers greater contractual freedom to distribute non-Microsoft Middleware Products, a rich market of competing middleware products will arise that could eventually give rise to alternative computing platforms capable of undermining Microsoft's application barrier to entry.

The RPFJ, however, does nothing to ensure that such alternative platforms are actually distributed to consumers. If PC manufacturers choose not to distribute such software, consumers will never have the choice that they had, prior to Microsoft's illegal acts, when alternative platforms like the Navigator browser or the Java platform were ubiquitously distributed. The key question then is whether PC manufacturers will aggressively distribute non-Microsoft platforms. Unfortunately, the Department's Competitive Impact Statement offers no explanation or empirical evidence to support this critical assumption.

Given the limited nature of the relief proposed in the RPFJ, Sun is not as sanguine as the Department about such prospects.

First, despite the retaliation restrictions contained in the RPFJ, because Microsoft's market power is left largely untouched and PC manufacturers remain dependent solely on Microsoft for a critical component for their products, it is very likely that, in practice, many PC manufacturers will remain reluctant to risk incurring Microsoft's wrath by supporting competing platforms. Microsoft simply retains too many formal and informal tactics to reward its ''friends,'' and punish its ''enemies.'' One need only look at PC manufacturers'' treatment of Microsoft's Internet Explorer for guidance on how the terms of the RPFJ are likely to be applied in practice. In July 2001, Microsoft announced that PC manufacturers, for the

[18] Findings of Fact, 84 F. Supp. 2d at §§ 39–40.

[19] Microsoft III, 253 F.3d at 55–56.

[20] Schine, 334 U.S. at 128.

[21] See United States v. Paramount Pictures, 334 U.S. 131,171 (1948).

[22] CIS at 3.

first time, would be free to remove access to Internet Explorer. Since that time, not one PC manufacturer has removed the Internet Explorer icon from retail PCs.

Second, under the terms of the RPFJ, competing middleware vendors are at such a competitive disadvantage to Microsoft that it will remain extremely difficult to secure distribution of these competing products through PC manufacturers. Under the RPFJ, Microsoft's ability to bundle middleware products into its Windows operating system would remain essentially unfettered. PC manufacturers would have the legal right to remove or disable certain Microsoft middleware products, but what commercial incentive will the PC manufacturers have to remove or disable the Microsoft products if they have already paid for such products in order to license the Windows operating system? Moreover, while Microsoft retains the ability to bundle its middleware product (e.g., a browser, media player, etc.) into every copy of Windows (absent an affirmative act by a PC manufacturer to exclude such product), a competitor would have to individually approach scores, if not hundreds, of different PC manufacturers around the world and negotiate a separate agreement with each to achieve a comparable degree of distribution. In addition, because the marginal cost to the PC manufacturer for the bundled Microsoft middleware product is effectively zero, PC manufacturers may be reluctant to pay non-Microsoft middleware vendors a sufficient price to recoup the costs such middleware vendors would incur to make and sell competing products.

Finally, since the vast majority of PC manufacturers are in the business of selling Windows PCs, some manufacturers might believe it is against their own commercial interests to support alternative middleware platforms. For example, if a middleware platform (e.g., the Java platform) truly lowers barriers to entry and allows consumers to run applications on any operating system (e.g., Apple Mac operating system, etc.) that supports that middleware platform, consumers eventually might chose to purchase their computers from vendors other than Windows PC vendors. Thus, the RPFJ fails to account for the fact that many PC manufacturers may derive substantial benefit from maintaining the applications barrier to entry protecting Microsoft's Windows monopoly. B. The RPFJ does not remedy the continuing competitive harm to web browsers

Prior to Microsoft's illegal campaign, Netscape's Navigator browser was the market leading web browser by a wide margin.[23] Today, Microsoft's Internet Explorer browser dominates the market, accounting for over 87% of all users. [24]To achieve this dramatic turn of events, the District Court found, and the Court of Appeals affirmed, that Microsoft engaged in a series of unlawful, anticompetitive acts:

* Exclusionary contracts with OEMs,[25] IAPs,[26] and ISVs;[27]

* Commingling of software code to make it technologically difficult to remove, Internet Explorer from Windows; [28]

* Anticompetitive deals with Apple Computer.[29]

Not only did Microsoft effectively destroy Navigator as a viable alternative platform, by seizing control over the web browser, Microsoft greatly expanded its market power. By dominating web browsers and effectively excluding all competitors, Microsoft secured the power to set and control the protocols and interfaces used for connecting with and communicating over the Internet.

Imagine, for example, that a single company monopolized the manufacture and supply of telephones, such that it supplied 95% of the world's telephones. If that company were permitted to change the dial tone on its phones, or the keypad, in ways that permitted only phones made by it to call and interact with its installed base of telephones, the telephones made and sold by its competitors would have very little or no value, since they could no longer interoperate effectively with 95% of all telephones. And if that company also altered the telephones it made so that they worked best—or indeed only—with the telephone switches and answering machines that the monopoly telephone company also made, then that company would quickly obtain a monopoly over the telephone switch and answering machine markets as well.

Microsoft's control over the browser and PC operating system provides Microsoft with just such unbridled power to dictate unilaterally the interfaces and protocols by which other devices and applications can interoperate with Microsoft's products and services over the Internet. The role played by the browser in communicating with devices, applications, and web services over the Internet is directly analogous to the role played by the consumer telephone in the telephone network.

As a result of Microsoft's illegal acts, Microsoft can now exclude competing products and services from being able to communicate over the Internet with Microsoft's browser, or Microsoft can mandate interfaces and protocols which favor its products over competitors'' products. Thus, by virtue of its anticompetitive conduct, Microsoft has secured the power to potentially appropriate a public asset of immeasurable value—the Internet—through use of proprietary interfaces and protocols.

Control of the browser also was essential to protecting Microsoft's PC operating system monopoly. By controlling this ''killer application,'' Microsoft can determine which competing operating systems, if any, will be able to run Internet Explorer. Without first-rate browser support capable of communicating with the content available across the Internet, competing PC operating systems simply will not be able to attract consumers away from Microsoft's monopoly operating system.

Finally, control of the browser was important in order for Microsoft to be able to control a key distribution channel for middleware that potentially threatened Microsoft's monopoly. Browsers have been a vital distribution channel for a variety of middleware products, including the Java platform, media players, instant messaging products, etc. If Microsoft did not control this distribution channel, competitors could have continued to use competing browsers as a vehicle for distributing non-Microsoft middleware.

Consequently, the continuing competitive harm flowing from Microsoft's unlawful conduct is substantial. The RPFJ, however, does nothing directly to address it. Instead, it leaves Microsoft to enjoy the spoils of its illegal conduct. At best, the RPFJ attempts to make it easier for PC manufacturers to now distribute competing browsers. But given the dominant position that Internet Explorer has now achieved, who will develop and market a competing browser? Because Microsoft bundles Internet Explorer with its monopoly operating system, a competitor would have to compete against a product with a marginal cost to PC manufacturers and consumers of essentially zero, since Microsoft can recoup its costs from its monopoly products. Even if the competing browser were technically superior, Microsoft can regularly introduce new interfaces and protocols to interfere with the competing browser's ability to compete, forcing the competitor to chase each new proprietary standard Microsoft announces.

Unless Microsoft is first stripped of the fruits of its illegal conduct, real competition in the browser market is unlikely to occur. Absent such remedial relief, it is akin to holding a 100-yard dash in which Microsoft has an 87-yard lead after jumping the gun and intentionally tripping all of its competitors. Consumers are directly harmed as a result. Instead of a marketplace offering many different browser choices, consumers are increasingly faced with only one choice -Microsoft's browser. C. The RPFJ does not remedy the substantial harm to competition caused by Microsoft's illegal acts against the Java platform

The District Court found, and the Court of Appeals affirmed, that Microsoft engaged in numerous anticompetitive acts directed against the Java platform:

* Exclusionary ISV deals;[30]

* Anticompetitive threats to Intel to stop Java platform development;[31]

* Deceiving developers into using Microsoft's incompatible implementation of the Java platform;[32 33 34]

* Blocking distribution of Netscape Navigator—a prime distribution channel for the Java platform to PCs?

Prior to Microsoft's anticompetitive acts, Sun had secured two major distribution channels for delivering the Java platform to PCs—Netscape's Navigator browser and Microsoft's Internet Explorer browser and

[23] See Findings of Fact, 84 F. Supp. 2d at § 360.

[24] 2/21/01 StatMarket Report Regarding Global Browser Usage Share.

[25] See Microsoft III, 253 F.3d at 64.

[26] See id. at 71.

[27] See id. at 72.

[30] See id. at 76.

[31] See id. at 78.

[32] See id. at 77.

[33] See Findings of Fact, 84 F. Supp. 2d at § 397 (explaining how Microsoft used some of its ''surplus monopoly power'' to suppress distribution of Netscape Navigator and inflict further competitive damage on the distribution of the Java platform).

[34] See United States v. Microsoft Corp., 980 F. Supp. 537, 539 (D.DC 1997).

Windows operating system. By its illegal acts, Microsoft effectively blocked the distribution of compatible, upgraded versions of the Java platform through both channels, and substantially slowed the development of desktop applications written to the Java platform.

First, by blocking distribution of Netscape Navigator and dramatically reducing its market share, Microsoft effectively closed this alternative channel for distributing compatible versions of the Java platform to PCs. Second, by developing and distributing its own incompatible version of the Java platform which was tied to Windows, Microsoft fragmented the Java platform in order to re-create its applications barrier to entry, ensuring that PC consumers only had Microsoft's version of the Java platform. By refusing to distribute compatible upgrades of the Java platform, Microsoft effectively froze desktop development for the Java platform by continuing to distribute an ''old'' version of the technology, which did not have the richer set of functionality available in later versions. Finally, by means of exclusionary deals, threats, and incompatible developer tools, Microsoft attempted to either deceive or coerce developers away from developing compatible applications written to the Java platform that could run on operating systems other than Windows.

Since the trial, Microsoft has continued to attack the Java platform to the detriment of consumers. In its most recent version of Windows, Windows XP, Microsoft no longer included even the old version of the Java platform which it previously had been shipping as part of Windows in accordance with the terms of a settlement agreement with Sun. As a result, millions of consumers purchasing Windows XP will no longer be able to access web pages that contain applications written to the Java platform unless they engage in a time-consuming download of the entire Java platform.

In addition, Microsoft recently unveiled its own competing middleware runtime—the .NET Framework—as part of its .NET initiative. During the time that Microsoft effectively halted the development and distribution of the Java platform for the PC for several years, it simultaneously was busy developing its own middleware runtime that copied the design and architecture of the Java platform with one glaring difference—the .NET Framework runs only on Windows. Thus, not only did Microsoft's illegal conduct allow it to blunt the competitive threat which the Java platform posed to Microsoft's Windows monopoly, it also allowed Microsoft the time to try and catch up with many of the compelling features that, at the time, only the Java platform offered.

The RPFJ, however, does not seek to remedy the continuing competitive harm caused by Microsoft's actions. For example, the RPFJ does nothing to attempt to put the marketplace in the position it would have been ''but for'' Microsoft's conduct—ubiquitous distribution of an upgraded, compatible Java platform on top of every Windows operating system as an available, alternative platform for software applications. Nor does it account for the time-to-market advantage that the Java platform lost as a result of Microsoft's conduct, particularly now that Microsoft will attempt to compete against the Java platform with its .NET Framework.

Instead of attempting to undo this damage to competition, the RPFJ would allow Microsoft to bundle its competing .NET Framework with Windows, while forcing Sun and its licensees to try and re-create the distribution channels that Microsoft unlawfully destroyed.

Absent real remedial relief, Microsoft will continue to reap the benefits of its unlawful conduct, and consumers will have no meaningful alternative computing platform available on PCs that is not controlled by Microsoft. IV. Critical Terms In The RPFJ Are Undefined or Ambiguous A. Significant ambiguities in the RPFJ must be cured to avoid further litigation

The dispute between Microsoft and the Department regarding the prior consent decree demonstrates the need to carefully define technical terms to avoid future litigation and ensure the parties agree with respect to Microsoft's obligations. As the Department is well aware, the 1995 consent decree with Microsoft prevented Microsoft from requiring PC manufacturers to license other products as a condition of licensing the Windows operating system? However, the consent decree specified that this obligation did not ''prohibit Microsoft from developing integrated products,'' though the term ''integrated products'' was left undefined?

In 1997, the Department asked the District Court to find Microsoft in contempt for requiring PC manufacturers who licensed the Windows operating system to also license Internet Explorer. Although the District Court found that the Department's proposed definition was probably correct, the court declined to find Microsoft in contempt because Microsoft offered a ''plausible interpretation,'' and any ambiguities had to be resolved in Microsoft's favor?

Given that any ambiguities are likely to be resolved in Microsoft's favor in any future enforcement proceeding, Sun believes it is essential that any and all material ambiguities be clarified prior to the entry of the RPFJ.

Although the Department offers its own interpretation of some of the RPFJ's ambiguous terms in the Competitive Impact Statement, Microsoft has repeatedly refused to reveal whether it disagrees with those interpretations. For example, following recent testimony by Microsoft's counsel, Charles Rule, before the Senate Judiciary Committee, members of the Committee posed a series of questions to Mr. Rule regarding whether Microsoft agreed with the Department's interpretation of the RPFJ as set forth in the Competitive Impact Statement. Mr. Rule's responses were telling. When asked a series of questions directed to whether ''Microsoft disagree[d] with anything stated in the Department's Competitive Impact Statement concerning the meaning and scope of the proposed Final Judgment,'' Mr. Rule refused to answer the questions directly, instead repeatedly referring to the same ''non-answer'':

Microsoft did not participate in the preparation of the Competitive Impact Statement. The language of the Revised Proposed Final Judgment was carefully negotiated and means what it says. The Department's Competitive Impact Statement has the same legal force and effect in this case as in any other. Beyond that I cannot go in light of the facts that the Tunney Act proceeding is currently under way before Judge Kollar-Kotelly and that the non-settling states are attempting to raise various issues concerning the Competitive Impact Statement as part of the ongoing ''remedies'' litigation also before Judge Kollar-Kotelly. Once that litigation is completed, I may be in a better position to discuss these issues with the Committee.

Microsoft's clear strategy is to refuse to reveal anything about its interpretations of the RPFJ prior to the Court's entry of the judgment, lest it become clear to both the Department and the public that Microsoft's understanding of its potential obligations under the RPFJ is substantially different from the Department's. Then, when disputes with the Department about the scope of its obligations arise, as they inevitably will, Microsoft will be free to argue that the RPFJ is ambiguous, and therefore must be construed, as a matter of law, in Microsoft's favor?

While it certainly is in Microsoft's interest to pursue such a strategy, the Department should not risk being complicit in a scheme that would effectively mislead the Court and the public about the true nature and impact of the RPFJ. The Department should insist that Microsoft identify any and all disagreements that it has with the interpretations offered by the Department in the Competitive Impact Statement prior to entry of the RPFJ. Absent such an inquiry and a record of Microsoft's position, the District Court, Sun, and the public at large have no assurances that the terms of the RPFJ will actually be construed in the manner proposed by the Department in its Competitive Impact Statement. B. ''Interoperate'' and ''interoperating'' must be defined

The key disclosure provisions contained in the RPFJ rely on the terms ''interoperate'' and ''interoperating'' to define the scope of Microsoft's obligations, but these critical terms are not expressly defined.

Section III.D of the RPFJ would require Microsoft to disclose ''for the sole purpose of interoperating with a Windows Operating System Product... the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product.'' (emphasis added).

Section III.E would require Microsoft to: make available for use by third parties, for the sole purpose of interoperating with a Windows Operating System Product, on reasonable and non-discriminatory terms .... any Communication Protocol that is... (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate natively (i.e., without the addition of software code to the client operating system

product) with a Microsoft server operating system product. (emphasis added).[35] [36] [37] [38] [39]

Depending on the definition of these terms, the scope of Microsoft's obligations under these provisions could vary dramatically. Therefore, in order to avoid a reprise of the litigation surrounding the 1995 consent decree with Microsoft, the Department should clarify the meaning of these terms in the text of the RPFJ, particularly since any ambiguity is likely to be construed in Microsoft's favor in any enforcement action brought by the Department.

An explicit definition of these terms is essential because Sun believes the Department and Microsoft likely attach very different meaning to these terms.

For example, in the Competitive Impact Statement, the Department offers a number of broad characterizations regarding the scope of these interoperability disclosures:

* ''[I]f a Windows Operating System Product is using all the Communications Protocols that it contains to communicate with two servers, one of which is a Microsoft server and one of which is a competing server that has licensed and fully implemented all the Communications Protocols, the Windows Operating System Product should behave identically in its interaction with both the Microsoft and non-Microsoft servers.'' [40]

* ''Section III.E. will permit seamless interoperability between Windows Operating System Products and non-Microsoft servers on a network. For example, the provision requires the licensing of all Communications Protocols necessary for non-Microsoft servers to interoperate with the Windows Operating System Products'' implementation of the Kerberos security standard in the same manner as do Microsoft servers, including the exchange of Privilege Access Certificates. Microsoft must license for use by non-Microsoft server operating system products the Communications Protocols that Windows Operating System Products use to enable network services through mechanisms such as Windows server message block protocol/common Internet file system protocol communications, as well as Microsoft remote procedure calls between the client and server operating systems.'' [41]

* ''Section III.D of the proposed Final Judgment requires Microsoft to disclose to ISVs, IHVs, IAPs, ICPs and OEMs all of the interfaces and related technical information that Microsoft Middleware uses to interoperate with any Windows Operating System Product .... Microsoft will not be able to hamper the development or operation of potentially threatening software by withholding interface information or permitting its own products to use hidden or undisclosed interfaces.'' [42]

In light of these comments, the Department appears to be interpreting ''interoperate'' to mean the ability of two different products to access, utilize, and support the full features and functionality of one another. Under the Department's interpretation, the disclosures would be of sufficient detail to allow a non-Microsoft server operating system to implement the Microsoft Communication Protocols in a manner such that the non-Microsoft server operating system could be substituted for a Microsoft server operating system without any disruption, degradation, or impairment of all the features, functionality, and services of any Microsoft PC operating system connected to such non-Microsoft server operating system.

By contrast, in proceedings before the European Commission, Microsoft has asserted a much narrower interpretation of ''interoperate'' than the Department's interpretation. In that forum, Microsoft has maintained it already discloses all information necessary to achieve interoperability between Microsoft's PC operating system and non-Microsoft server operating systems. Since Microsoft contends that they already disclose all of the information necessary to satisfy this narrow definition of ''interoperate,'' if this definition were to prevail, Microsoft will disclose nothing new. Its conduct will remain unchanged.

Under Microsoft's narrow definition, interoperability is a one-way street that is satisfied if all of the functionality of a non-Microsoft server operating system can be accessed from a Windows PC operating system. In contrast to the Department's position, Microsoft has repeatedly taken the position that interoperability does not require a disclosure sufficient to allow a Windows PC operating system to behave identically when connected to both Microsoft and non-Microsoft server operating systems. Moreover, Microsoft has previously claimed that ''interoperability'' relates only to those protocols and interfaces which Microsoft has chosen to document and make available to third parties, and should not include protocols and interfaces that Microsoft reserves for itself to use to connect its PC and server operating system products. Absent an explicit definition of this critical term in the RPFJ, Sun believes the disclosure provisions of the RPFJ are doomed to fail. To avoid future disputes over the meaning of this term and to ensure that the public actually receives a remedy that is consistent with the Department's representations in the Competitive Impact Statement, Sun proposes that the RPFJ should be amended to include the following definition:

''Interoperate'' or ''Interoperating'' means the ability of two different products to access, utilize and/or support the full features and functionality of one another in all of the ways they are intended to function. For example, a non- Microsoft operating system installed on a server computer ''Interoperates'' with a Windows Operating System Product installed on a Personal Computer if such non-Microsoft server operating system can (a) be substituted for a Microsoft operating system running on a server computer connected to a Personal Computer running a Windows Operating System Product, and (b) provide the user of the non-Microsoft server operating system the ability to access, utilize and/or support the full services, features and functionality of the Windows Operating System Product that are accessed, utilized and/or supported by such Microsoft server operating system without any disruption, degradation or impairment in such services, features and functions. C. The scope of Microsoft's ''Communication Protocols'' disclosure should be clarified and exemplified

As a vendor of server operating systems that must connect and communicate with Microsoft's monopoly PC operating system, the disclosure and licensing provisions in Section III.E relating to Microsoft's Communications Protocols are especially important to Sun's business. Although the term Communications Protocols is expressly defined, the RPFJ lacks any explicit examples regarding which Microsoft technologies would currently be required to be disclosed or what the extent of such disclosure would be in practice. While the terms of the RPFJ must be written to anticipate Microsoft's future conduct, there is no excuse for misunderstandings regarding Microsoft's obligations with respect to known, existing interoperability barriers. Because the technical terms surrounding this provision are potentially subject to varying interpretations, the RPFJ would be substantially improved if it gave better guidance on how these provisions would actually be applied in practice.

For example, in its Competitive Impact Statement, the Department identifies some of the specific protocols it believes Microsoft will be required to disclose under Section III.E to the extent such protocols are implemented in Microsoft's PC operating system products, including: protocols relating to Microsoft's Internet Information Services (''IIS'') web server and Active Directory, Microsoft's implementation of the Kerberos security standard (including the exchange of Privilege Access Certificates), the Windows server message block protocol, the Windows common Internet file system protocol, Microsoft remote procedure calls between the client and server operating systems, and protocols that permit a runtime environment (e.g., the Common Language Runtime) to receive and execute code from a server.[43]

Microsoft, however, has refused to say whether it agrees with the Department's interpretation. To avoid future disputes and ensure that the parties agree on the kinds of protocols that will fall within the scope of the term ''Communications Protocols,'' the RPFJ should be amended to identify

[35] Id. at 539–40 (emphasis added).

[36] Id. at 541–42.

[37] Responses of Charles F. Rule to Judiciary Committee Questions at 13.

[38] See Microsoft, 980 F. Supp. at 541 (''The Court must resolve any ambiguities in the terms of the Final Judgment in favor of Microsoft, the party charged with contempt.''); see also Cause v. Nuclear Regulatory Comm'n, 674 F.2d 921,927–28 (DC Cir. 1982).

[39] See also Section III.H (providing that a Windows Operating System Product may invoke a Microsoft Middleware Product in any instance in which ''that Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing)'').

[40] CIS at 38.

[41] CIS at 38–39.

[42] CIS at 33.

[43] CIS at 37–39.

particular examples of protocols that Microsoft would be required to disclose. Furthermore, in advance of entry of the RPFJ, Microsoft should be required to fully detail what it will disclose with regard to existing Communications Protocols that pose a barrier to interoperability. At a minimum, the Department should require Microsoft to identify any disagreements Microsoft has with the Department's interpretation of this provision prior to entry of the RPFJ. Unless the Department and Microsoft go through the exercise of attempting to apply this provision in practice, the public cannot be assured that there truly has been a ''meeting of the minds'' regarding the scope and meaning of this important provision.

Not only should the Department clarify the RPFJ with examples of particular protocols that Microsoft currently would be required to disclose, the Department also should clarify the kinds of information Microsoft will be required to disclose regarding its Communications Protocols. Although the term Communications Protocols appears to be defined broadly in Section VI.B of the RPFJ, in practice, the actual application of these provisions is likely to give rise to many potential questions and disputes. For example,

* Is everything that is shipped with Microsoft Windows server operating system products (e.g., Windows 2000 Server, Windows 2000 Advanced Server, etc.), including Microsoft's Active Directory or IIS, part of the ''server operating system,'' and therefore potentially the subject of disclosure to the extent it comprises a ''Communications Protocol''?

* Are Active Directory, Kerberos security protocol, COM+, Dfs, DLT, CIFS extensions, RPC, the Win 32 APIs, or Passport examples of ''Communications Protocols'' that must be disclosed and licensed pursuant to Section III.E of the RPFJ?

* Where Microsoft has extended an industry standard like Kerberos, will Microsoft be required to disclose both the standard portion of its implementation and its proprietary extensions?

* Will Microsoft be required to disclose the details regarding its proprietary implementation of the Kerberos security protocol in Windows 2000 and Windows XP Professional, including the information necessary for a non-Microsoft server to be able to generate, exchange, and process the authentication and authorization data in Privilege Access Certificates?

* What does ''make available for use by third parties'' mean in practice in the context of Section III.E? Will Microsoft be required to just disclose fields, formats, etc., or will it be required to disclose sufficient information to allow a competitor to create its own implementation of the Communications Protocol that will allow a competitor's server operating system to seamlessly interoperate with the Windows PC operating system in the same manner as a Microsoft server operating system?

Unless such questions are resolved and clarified in advance of entry of the RPFJ, the disclosure and licensing obligations of Section III.E will not provide any meaningful relief. D. The scope of the ''carve-out'' provisions of Section III.J should be clarified

Particularly troubling to Sun is the possibility that the ''carve-out'' provisions of Section III.J might be broadly construed by Microsoft to exclude many of the kinds of disclosures that would otherwise fall within the scope of Sections III.D and III.E. Section III. J. 1 provides that no provision of the Final Judgment shall: [r]equire Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital fights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria .... (emphasis added).

In the Competitive Impact Statement, the Department characterizes this exception as a ''narrow one, limited to specific end-user implementations of security items such as actual keys, authorization tokens or enforcement criteria, the disclosure of which would compromise the security of ''a particular installation or group of installations'' of the listed security features.''[44] But nowhere in the RPFJ is the term ''compromise the security of a particular installation or group of installations'' defined. What will this provision mean in practice? With respect to known interoperability problems relating to Active Directory, Microsoft's Kerberos security model, Windows Media Player, or the Passport authentication/authorization service, what portions of those protocols and interfaces can Microsoft refuse to disclose pursuant to this provision? If Microsoft refuses to disclose such information, will competitors be able to fully interoperate with all of the features and functionality of the Windows operating system, or will the value of the disclosure provisions be effectively eviscerated? What steps has the Department taken to ensure that, in practice, this exception will not swallow the intended effect of the disclosure provisions?

Again, unless such questions are clarified in advance of entry of the RPFJ, Microsoft is likely to use this purportedly narrow exception to eviscerate its disclosure and licensing obligations under the RPFJ. E. The definition of ''Microsoft Middleware Product'' should be amended

The definition of ''Microsoft Middleware Product''[45] in the RPFJ is fundamentally flawed because it grants Microsoft discretion to limit its obligations merely based on the way it chooses to trademark its products. For middleware functionality that is distributed after entry of the Final Judgment, except for a small, specified class of middleware applications (e.g., Internet browsers, email client software, etc.), Microsoft's obligations under the RPFJ are not triggered unless it chooses to distribute the middleware product under a trademark other than ''Microsoft??'' or Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

''Windows??.''[46] In other words, after entry of the RPFJ, if Microsoft bundles its new middleware runtime alternative to the Java platform, the .NET Framework (also known as the Common Language Runtime) with Windows, it only would have to make disclosures about the APIs used by the .NET Framework or allow OEMs and consumers to remove access to it, if it chose to distribute the .NET Framework under the trademarked name ''.NET Framework.'' If it simply distributed the product under the name ''Microsoft* .NET Framework,'' its activities would appear to be unconstrained by the RPFJ. To allow Microsoft to evade its obligations under the RPFJ based on arbitrary trademarking practices is absurd.

To avoid this result, the definition of ''Microsoft Middleware Product'' should be amended as follows: the ''Trademarked'' requirement of Section VI.K.2.b.iii should be stricken; the terms ''.NET Framework'' and ''Common Language Runtime'' should be added to Section VI.K.1; and the term ''middleware runtime environment'' should be added to Section VI.K.2.a.

V. Section III.I's Licensing Provisions Allow Microsoft to Profit from Its Unlawful Acts

A. Microsoft should not be allowed to demand royalties as a condition for making interoperability disclosures

The licensing provisions of the RPFJ are fundamentally flawed because they would require the public to pay royalties to Microsoft in order to interoperate with Microsoft's illegally maintained monopoly products. If Microsoft had not engaged in its pattern of illegal conduct, its monopoly would have begun to dissipate, and it would have been unable to collect this ''interoperability'' tax. As the Department itself previously recognized, ''[i]f Microsoft were in a competitive market, it would disclose its confidential interface information to other server software developers so that their complementary software would work optimally with, and thereby enhance the value of, Microsoft's PC operating systems.''[47] It is only because Microsoft has illegally maintained its PC operating system

[44] CIS at 39.

[45] The RPFJ defines ''Microsoft Middleware Product'' as follows: 1. the functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and 2. for any functionality that is first licensed, distributed or sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product a. Internet browsers, email client software, networked audio/video client software, instant messaging software or b. functionality provided by Microsoft software that—i is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product; ii. is similar to the functionality provided by a Non-Microsoft Middleware Product; and iii. is Trademarked.

[46] See RPFJ, Sections VI.K and VI.T.

[47] 4/28/00 Plaintiffs'' Memo. in Support of Proposed Final Judgment at 28.

monopoly and wishes to expand its monopoly to server operating systems that Microsoft has an incentive to withhold information from competitors regarding complementary software. Thus, the RPFJ, in effect, authorizes Microsoft to collect a portion of its monopoly rents through this licensing regime.

Furthermore, not only is Microsoft authorized to collect royalties for the ''privilege'' of interoperating with its illegal monopoly, the RPFJ places no limits on how high a royalty Microsoft can demand, other than the royalty must be reasonable. However, since competitors'' products must be able to interoperate with Microsoft's monopoly PC operating systems, they may be constrained to essentially pay whatever Microsoft demands.

To ensure Microsoft does not continue to enjoy the fruits of its illegal conduct, Section III.I of the RPFJ should be amended to require Microsoft to grant any licenses required under the RPFJ on a royalty-free basis.

B. Microsoft has too much discretion over licensing terms under the RPFJ Although Section III.I of the RPFJ places some limitations on the terms under which Microsoft must license its technology to facilitate the disclosure obligations of the RPFJ, Microsoft retains broad discretion, which it is likely to exploit.

For example, Section III.I. 1 requires that all license terms be ''reasonable.''

A reasonableness standard, however, provides little practical guidance, and is a particularly poor choice in the case of a monopolist like Microsoft who has repeatedly broken the law to secure commercial advantages over its competitors. Similarly, the fact that licenses must be ''non- discriminatory'' could actually be exploited by Microsoft to ensure that its strongest competitors are denied access to Microsoft's disclosures. For instance, a small start-up company with no revenues and no existing intellectual property rights might be willing to agree to terms that would be commercially unacceptable to significant Microsoft competitors like Sun, IBM, or Novell.

The terms of the RPFJ also allow Microsoft the ability to substantially delay making any interoperability disclosures. Under Section III.E, Microsoft does not even need to make its Communications Protocols available until nine months after submission of the RPFJ. But since Microsoft can insist that third parties enter into a license agreement before they receive any disclosures, Microsoft can continue to delay making disclosures to key competitors by dragging out negotiations and insisting on commercially unacceptable terms.

Does the Department intend to review ongoing negotiations to ensure Microsoft is taking reasonable positions in the negotiations? How will the Department ensure that Microsoft does not exploit the negotiating process to facilitate delay and disadvantage key competitors? Will Microsoft's competitors be forced to sign license agreements before they know the scope of information that Microsoft will or will not disclose? Does the Department expect that the proposed Technical Committee will be involved in resolving such disputes? If so, will Technical Committee members have the requisite licensing and legal experience to assess whether Microsoft is insisting upon commercially unreasonable terms?

To ensure Microsoft cannot circumvent the intent of the RPFJ, Sun proposes that the RPFJ be amended to include a publicly available template identifying the terms under which Microsoft will license its technology pursuant to the RPFJ. In principle, this approach is analogous to Section III.B which requires Microsoft to have uniform license agreements with OEMs in accordance with published, uniform royalty rates. Requiring Microsoft to identify this license template in advance would serve two important objectives. First, it would help limit Microsoft's ability to evade the intent of the RPFJ through negotiation tactics. Second, it would allow the public to understand the true costs and conditions of licensing under the RPFJ in advance of entry of the RPFJ. Unless the material licensing terms are specified in advance, neither the Department nor the public can accurately assess the actual commercial significance of the proposed disclosure obligations.

C. Microsoft should not be allowed to force third parties to forfeit their intellectual property claims against Microsoft

Section 111.1.5 provides that third parties ''may be required to grant to Microsoft on reasonable and nondiscriminatory terms a license to any intellectual property rights it may have relating to the exercise of their options or alternatives provided by this Final Judgment.'' In other words, Microsoft would be free to infringe a third party's patents or copyrights, or steal its trade secrets, and then by virtue of its monopoly position, force such third party to grant Microsoft a license to do so as the price that third party must pay in order to interoperate with Microsoft's monopoly product. If Microsoft wished to obtain rights to practice or use a competitor's intellectual property, it could do so simply by incorporating that technology into Windows, then insisting on both a royalty and a grant-back license as the consideration that competitor must provide in order to enable its products to interoperate with Microsoft's monopolized PCs.

Indeed, Microsoft's competitors would have to license Microsoft the right to whatever intellectual property Microsoft may have incorporated into Windows even before they know what intellectual property Microsoft has stolen or infringed. No other company has such power, let alone governmental blessing and endorsement, to extort such concessions.

Sun therefore proposes that the RPFJ be amended to strike Section 111.I.5 in its entirety.

VI. Conclusion

The RPFJ fails to remedy the continuing competitive harm resulting from Microsoft's actions, and instead improperly accedes to Microsoft's illegally maintained and expanded monopoly power. The Department should withdraw its support for the RPFJ, and instead pursue remedies that will restore competition to the PC operating system market, prevent Microsoft from expanding its monopoly in that market into adjacent and downstream markets, and redress the harm to competition caused by Microsoft's illegal acts. At a minimum, the Department should seek to remedy directly the specific harm to competition caused by Microsoft's illegal acts against the Navigator browser and the Java platform, which formed the very heart of the Department's case against Microsoft.

Because critical terms in the RPFJ are undefined or ambiguous, the Department also should assure the public that Microsoft is bound by the interpretation of the RPFJ set forth in the Department's Competitive Impact Statement.

Finally, the Department should delay seeking entry of the RPFJ until the completion of trial on the remedies sought by the Department's co-plaintiffs, the Litigating States. Sun believes that the evidentiary record from that trial is likely to demonstrate the substantial flaws and inadequacies of the RPFJ and cause the Department to seriously re-consider whether its support for the RPFJ is in the public interest.

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MTC–00029176

From: Eric Harden
To: Microsoft Settlement
Date: 1/28/02 9:21pm
Subject: Microsoft Settlement
Eric Harden
105 LaFavers Road
Russell Springs, KY 42642
January 28, 2002
Microsoft Settlement
U S Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry

It is high time for this trial, and the wasteful spending accompanying it, to be over Consumers will indeed see competition in the marketplace, rather than the courtroom And the investors who propel our economy can finally breathe a sigh of relief

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation

Competition means creating better goods and offering superior services to consumers With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies

Thank you for this opportunity to share my views

Sincerely,
Eric Harden

MTC–00029177

From: Tom Burke
To: Microsoft ATR
Date: 1/28/02 9:28pm
Subject: Microsoft Settlement

I have been associated with the computer revolution since the early 1960's I have seen the growth and witnessed through my work on the Space Program the tremendous things that can be done with the computer Attached is a letter expressing my sincere thoughts that the current Microsoft Settlement is fir and should be implemented without futher delay

Please feel free to contact me if needed
Thomas A Burke
Phone: 321–259–2284
E-Mail: tburk6@cfl rr com
Melbourne, Florida 32935
28 January 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr Ashcroft:

I have been associated with the computer revolution since the early 196's I have seen the growth and witnessed through my work on the Space Program the tremendous things that can be done with the computer My graduate work dealt with many papers, which visualized the many possibilities that computers offered to civilization Re-reading these notes today I see that I did not come close to understanding what the computer revolution held for our society Thank God for visionaries associated with Microsoft who have taken conceptual ideas not dreamed of in the early days of computers and made them into today/Es standards Looking ahead for the next forty years I firmly believe that we will see that we have only begun to scratch the surface of what technology and social development driven by computers can achieve Most of the growth of this revolution has occurred during the past 10 years when Microsoft released the power of the computer and the Internet through the introduction of the Windows operating System pIt would be a crime of the greatest magnitude to stymie this innovation because competitors lack the vision to move with the concepts being developed for our future The government rather than holding back these ideas should recognize that this technology has reached this pinnacle without major government intervention Why start now?

Microsoft is a good company and I was very glad when the antitrust lawsuit filed against them was finally settled There is no need for further litigation in this issue I truly believe that the resolution is both fair and in the interest of the people of this country

The provisions of this settlement are unique to this type of lawsuit This is the first lawsuit ever that requires a company to disclose internal information about its interfacing new software with its current systems The Microsoft settlement also includes provisions that restrict Microsoft from entering into any kind of agreements that would limit competition among software companies This settlement truly addresses all the concerns of the people, and keeps competition viable within this market

But clever people like me who talk loudly in restaurants, see this as a deliberate ambiguity A plea for justice in a mechanized society.

I see no need for further litigation Vast amounts time and resources have already been spent on pursuing Microsoft and I think it's time that no more be used The resolution now on the table is a fine one I urge you to support it and let it stand as is I thank you for your time and I am sure that you will do what you feel is best for people and economy of this country

But is suspense, as Hitchcock states, in the box No, there isn't room, the ambiguity's put on weight.

Sincerely,
Thomas Burke

MTC–00029179

From: Joyce Greer
To: Microsoft Settlement
Date: 1/28/02 9:21pm
Subject: Microsoft Settlement
Joyce Greer
45 Northridge Dr.
Cody, Wy 82414
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Joyce Greer

MTC–00029180

From: James B. Rassi
To: Microsoft Settlement
Date: 1/28/02 9:22pm
Subject: Microsoft Settlement
James B. Rassi
111 Schramm Drive
Pekin, IL 61554–2539
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

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Competions means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

James B. Rassi

MTC–00029181

From: BALZERIII@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:29pm
Subject: Microsoft settlement

Let them off the hook. They and their stock holders have suffered enough. Let the lawyers seek new bait.

Ed Brant

MTC–00029182

From: Gil Friend
To: Microsoft ATR
Date: 1/28/02 9:27pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
United States Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

I am writing to comment on the proposed Microsoft/DOJ anti-trust settlement. As a business executive at a company both highly dependent on computing technology and specifically involved in software development, I've come to the conclusion that this settlement is not in the public interest, and fails to remedies the problems that provoked the action in the first place.

The settlement leaves the Microsoft monopoly intact, with numerous opportunities to the company to effectively exempt itself from crucial provisions. The recently proposed ''donation'' to schools is just one example of how Microsoft can turn matters to their own advantage (in this case by decimating Apple's position in the education market).

In addition, the proposed settlement fails to address the critical ''applications barrier to entry'' associated with the installed base of 70,000 Windows applications, enabling Microsoft to maintain an effective ''lock'' on the operating systems market by denying competitors with other operating systems the information needed to run these other applications on other operating systems. Any settlement must make it easier—not harder—for competitors to run the Windows applications.

Consumers, not Microsoft, should decide what products are on their computers. The settlement must eliminate Microsoft's various barriers—business and technical—to allowing combinations of non-Microsoft operating systems, applications, and software components to run properly with Microsoft products.

The remedies proposed by the Plaintiff Litigating States are in the public interest and absolutely necessary, but they are not sufficient without these remedies.

The Tunney Act provides for the Court to hold public proceedings, with citizens and consumer groups afforded an equal opportunity to participate, along with Microsoft's competitors and customers. I hope you will encourage those proceedings, and consider carefully how to proceed in this matter. Your decisions have great significance for the health of the US economy's most vital industries, by eliminating Microsoft's ability to illegal constrain markets and innovation.

Thank you for the opportunity to comment on this important matter.

Sincerely yours,

Gil Friend
President & CEO
Natural Logic, Inc.
PO Box 119
Berkeley CA 94701

MTC–00029183

From: Steve Mueller
To: Microsoft ATR
Date: 1/28/02 9:28pm
Subject: Microsoft Settlement

Hi:

I'm writing about the proposed settlement between Microsoft and the U.S. government (and some of the states). I am a professional software developer with BS and MS degrees in Computer Science from the University of Michigan, Ann Arbor. My last four jobs over six years have been writing programs for Microsoft's Windows operating system. I am not affiliated with Microsoft or any companies lobbying for responses. I hope it isn't too late to consider my comments; it is still Monday here on the West Coast.

I feel the settlement is inadequate. Microsoft's anti-competitive behavior has been proven in court and upheld on appeal. Microsoft had previously entered into a consent decree with the government in the mid-90s (I believe), and still was found to be anti-competitive. Clearly, this is a company that doesn't learn and doesn't care.

As a professional software developer, I know what an operating system is supposed to do. It is supposed to manage low-level computer resources (memory, files, peripherals, networking, etc.), and it is to provide a platform on which applications can be written. It does *not* contain applications itself, although I have no problems with the inclusion of simple applications to allow the operating system to be useful (such as Notepad, Write, Calculator and Solitaire in Windows).

Microsoft contends, for example, that the Internet Explorer Web browser is a basic part of the operating system. If it is, that is *only* because Microsoft forced it to be. There is no intrinsic reason for the browser to be included as part of the operating system. As a software developer, though, I could easily combine any two functions that are normally not related into one file and then claim that I could not remove one piece without damaging the other, and so Microsoft's protestations to that effect seem disingenuous at best.

In fact, when Windows 95 was first released, Internet Explorer was not part of the operating system, but was included in the Windows 95 Plus Pack, so at one time the separation was possible. If it is not now possible, it is only because the program was intentionally written to make it difficult to remove.

Microsoft could include the low-level functions (the API) to support Web browsing in the operating system without including

the Internet Explorer browser itself as an application. Microsoft is shading the truth if they claim the API and low-level support and the browser application and user interface are one and the same.

Furthermore, not only does Microsoft have a proven monopoly in the operating system area, but they also have a de facto monopoly in office software. Note that even though office software is just as important as Web browsing, Microsoft does not include its Office suite of products in Windows 9x/ME/XP. Why not? Because Office already has a clear market lead and is extremely profitable, so there's no need to bundle it with Windows.

Internet Explorer was a distant second to Netscape at one time, so Microsoft started including it in the operating system, not even in a Plus Pack. This resulted in Netscape losing market share as Internet Explorer was a browser that was good enough for most people.

Also note that Microsoft's Office suite had an example of bundling. At one point, Microsoft PowerPoint was not the leading presentation package (Lotus and Harvard Graphics had superior solutions), so Microsoft bundled it into Office. While you can buy the Office applications separately, it is not economical to do so.

Finally, let me focus on one more anti-competitive move Microsoft— the removal of Java from Windows XP. Java had been included in previous versions of Windows, but has been removed from Windows XP. Doesn't it seem odd that Microsoft can so easily remove Java from Windows XP, but claims that Internet Explorer can't be removed?

This removal has little to do with Java not being useful—many Web sites use Java. It is more likely a combination of Microsoft trying to get back at Sun for losing when Sun sued Microsoft for incorporating non-standard Java features in Microsoft's implementation of Java (contrary to their agreement), and a way to promote using Microsoft technologies for improved browser experiences (ActiveX controls or C#, for example).

Microsoft's Passport and .NET services will rely on C# (and, in fact, I've read that Passport is now bundled in Windows XP, providing yet another source of monopolistic concerns for identity validation on the Internet).

Therefore, given that Microsoft has engaged in anti-competitive practices in the past, continued to do so after a consent decree, and (in my opinion) is still doing so, I believe that Microsoft needs to be punished severely and quickly. I suggest breaking Microsoft into two or three companies—one dealing with the Windows operating system; one dealing with applications, including Office; and possibly one dealing with Internet software and technologies, like Internet Explorer, Passport, WebTV and MSN.

If such a break up is not considered appropriate, the dissenting states'' plan sounds like a reasonable second alternative, although I would add the requirement that the Internet Explorer browser (the application and user interface parts, not the low-level networking and browsing APIs) be removed from all base versions of Windows (Microsoft would be free to sell a ''premium'' version that included Internet Explorer, much like they have Windows XP Home and Professional editions).

Thank you for taking the time to read these comments,

Steve Mueller

Monday, 1/28/2002, 6:09 PM PST

MTC–00029184

From: Rick Zahn
To: Microsoft ATR
Date: 1/28/02 9:28pm
Subject: Opinion

I believe the only real ''crime'' Microsoft has committed is producing a product that it is at the same time superior and cheaper than the products offered by their competitors. By punishing Microsoft, we are, in essence, sending the message that it is better to produce an inferior product and then hire a lawyer to force people to buy.

Frederick Zahn

MTC–00029185

From: Robert Wigger
To: Microsoft ATR
Date: 1/28/02 9:28pm
Subject: Microsoft Settlement

I am writing this note to ask that you would support the Microsoft Settlement.

Thank you,

Robert Wigger

MTC–00029186

From: gegco
To: Microsoft ATR
Date: 1/28/02 9:29pm
Subject: In Support of Microsoft
5217 Starwind Point
Hermitage, TN 37076
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The purpose of this letter is to voice my support of the Microsoft settlement. As a concerned citizen, I watched the case against Microsoft with great interest. Three years have now passed since the inception of this case. During this time, I have been increasingly annoyed by the amount of money wasted in disputing this issue. The court mediated settlement agreement reached last November is very equitable. I would hope that the Justice Department recognizes this and enacts the settlement at the end of January. Further, I believe that the terms of the settlement will provide for great change in the tech industry. Under the stipulations of the agreement, Microsoft will disclose the protocols and interfaces of the Windows system. The result of this action will be to enable software and hardware developers to design new software that assimilates into the Windows operating system. This should increase productivity in the sector.

Finally, I would hope that the federal government decides to enact the settlement reached in November.

Thank you.

Sincerely,

Gayle E. Gotshall

Gayle Gotshall

MTC–00029187

From: Grace Fortuna
To: Microsoft Settlement
Date: 1/28/02 9:23pm
Subject: Microsoft Settlement
Grace Fortuna
20820 Persimmon Place
Estero, FL 33928
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Grace Fortuna

MTC–00029188

From: Dave Zapple
To: Microsoft ATR
Date: 1/28/02 9:30pm
Subject: Microsoft Settlement
Date: January 28, 2002
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

To Whom it may concern,

I have worked in the information technology industry for 18+ years. Currently, I'm a senior systems analyst with Georgetown University. I disagree with the settlement that the Department of Justice has brokered with microsoft and feel that it does NOT addresscompletely/ restrict the anti competitive practices that microsoft has made extensive use in the past or today.

The fact that the settlement does not remove ANY of the monies or competitive edges that microsoft gained by using anti competitive/illegal practices should be enough to not allow this settlement to happen in its current form.

I believe in free enterprise and competition dearly, which is why I can not agree with this

settlement. Where was the freedom to compete when microsoft used illegal practices to crush young company's that did in fact have innovative products? Where is/was the justice for these former companies and technologies?

There are a number of very serious issues involved with microsofts illegal practices that can not be allowed to continue if America is going to continue to be a/the technology leader in the future.

Please do allow this settlement to stand in the form it is in currently, it will prove devastating to the computing industry in this country in the future I am sure. If you would like more information from me, or if I need to be more specific please let me know and I will be more than happy to.

Sincerely,
Dave Zapple
David Zapple
214 Manassas Drive
Manassas Park, VA. 20111
zappled@georgetown.edu
H 703–369–0358
W 202–687–2958
C 703–898–1958
Dave Zapple
Senior Systems Analyst
Advanced Research Computing (ARC)
Office of Information Services
Georgetown University
PreClinical Science Bulding, LB-1
3900 Reservoir Road, NW
Washington, DC. 20007
Voice : 202–687–2958
FAX : 202–687–2585
E-Mail: zappled@georgetown.edu

MTC–00029189

From: Faye Bourret
To: Microsoft ATR
Date: 1/28/02 9:32pm
Subject: Microsoft Settlement
Tunney Act review

Please accept the following comments in your review:

As a consumer of computer products, I ask that the Court accept the settlement terms as currently presented by the Department of Justice, the states Attorneys General, and Microsoft. Microsoft has provided me, the consumer, with software products that are integrated. This is what I want as a consumer because the alternative, a number of products upon which I would need to do the integration, is not a product I want to buy.

Microsoft has led the drop in prices of consumer software products over the past 10 years. It's competitors have been compelled to follow. This leadership by Microsoft has been an advantage to the consumers. An example most recently is the action which Sun took to drop the prices of its servers to a price point that would allow it to compete with comparable Microsoft products. The consumer is and has been the winner when Microsoft has competed vigorously.

Sincerely,
Faye Bourret

MTC–00029190

From: Dan Eisenberg
To: Microsoft Settlement
Date: 1/28/02 9:28pm
Subject: Microsoft Settlement

Dan Eisenberg
1465 Morning Crescent St
Henderson, NV 89052–4040
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Dan Eisenberg MD

MTC–00029191

From: Doug Needham
To: Microsoft ATR
Date: 1/28/02 10:44pm
Subject: Microsoft Settlement

To Whom it May Concern

Pursuant to the Tunney Act, I am writing to comment on the proposed settlement of the United States vs. Microsoft antitrust case. My Background is in software development. I have been a software developer since I ended my enlistment in the Marine Corps. One of the things that disturbs me about the proposed settlement is that it does very little to actually stop Microsoft from continuing to do the things that they have done. I remember a time when it was possible for a person with a good Idea and some programming ability to create something new and begin to package and sell a unique software product . It is still possible to do this so long as you pledge allegiance to Microsoft and pay them exporbitant fees as the price of entry into the professional development communtiy. The productst they make are not the best, they are the only thing out there because so many businesses refuse to build any software product on a non-Microsoft solution. Where are the compilers for Windows applications? They do not exist because software projects that attempted to produce a competing product where cut off by Microsofts changing or not fully documenting their Application Programming Interface (API). Microsoft has repeatedly and unashamedly refused to obey orders given to them by the DOJ. They laugh at the governments power to stop them. They do not respect lawful authority and fair competition. This has got to be stopped. Please count this as a no vote on the proposed settlement and a yes vote to the independent software developers who will be allowed to develop unique non-Microsoft solutions to business problems, and then actually have an opportunity to sell their solutions to corporate America without fear of incompatibilities.

Sincerely,
Doug Needham
Independent Software Consultant.

MTC–00029192

From: VANGUM5@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:34pm
Subject: Microsoft Settlement

The Attorney General

From everything I have read on this subject Microsoft has gone beyond the findings of the Court of Appeals ruling,it is fair to all involed. I also beleive it is in the public interest for a settlement at this time.

Oliver Gumley
Anna Gumley

MTC–00029193

From: John Trueblood
To: Microsoft Settlement
Date: 1/28/02 9:26pm
Subject: Microsoft Settlement
John Trueblood
8916 196 th. Street
McAlpin, Fl 32062
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
John Trueblood

MTC–00029194

From: John G. Williams
To: Microsoft Settlement
Date: 1/28/02 9:26pm
Subject: Microsoft Settlement
John G. Williams
407 Diamond Oaks Dr.
Vacaville, CA 95688–1039
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
John & Faye Williams

MTC–00029195

From: dennis huard
To: Microsoft ATR
Date: 1/28/02 9:33pm
Subject: settlement Gentlemen,

This case is about money. Make no bones about it. (I only wish I had some of it- the money not the bones.) If there were utopia, we would all be in heaven and not have to lift a finger. Apple, Sun and several others wish they had something they dont- a bigger piece of the pie.

However, since we live in a real world of World Trade Center bombers, I can only say that we can not all start from ground zero and build over again. I think it would be self destructing to believe that we could knock down one of he the biggest symbols of American business like there was nothing to it and not feel some remorse.

I am one for competition and fair play. This has been the cornerstone of the American way of life since before the time I participated in Little League. There were many times that I wished that I had been better than the person that won out at my position. I would have given anything to be as good. However, I found plenty to do and feel good about my place in society wtihout having to be the top dog at what I do (although I still try).

In all due respects to the participants including Big M, life (including business) is complex. To the best interests of this country and the long term picture of mutual cooperation, we should try to meet a level of mutual understanding. However, I don't think that this includes giving everthing away that one has worked so hard for. In some unkown situatons, it may jeopardize one's own existence. After all, today's hot technology is tomorrow's burnt toast (and it doesn't take much).

All do respects and your humble servent,
Browd Owner of a Mac

MTC–00029196

From: Joseph Schwartz
To: Microsoft ATR
Date: 1/28/02 9:35pm
Subject: Microsoft Settlement
1/28/2002
Joseph L. Schwartz
2116 Lombard St.
Phila, PA 19146
215–985–1047
Joseph.L.Schwartz@verizon.net
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW Suite 1200
Washington, DC 20530–0001
microsoft.atr@usdoj.gov

I want to register my comments on the Microsoft Antitrust Case.

I believe the agreement is reasonable and fair to all parties involved. The settlement is in the best interest of everyone and allows the industry to move forward. I urge the Justice Department to settle this case.

Sincerely yours,
Joseph L. Schwartz

MTC–00029197

From: JIMCAL80@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:36pm
Subject: Microsoft Settlement
From: James B. Callahan, Orlando, FL (407) 234–3744

I am a Microsoft Certified Systems Engineer in Orlando, Florida. I looked into the possibility of our local school system, Orange County Public Schools (OCPS) receiving software in schools where 70% or more of the students participate in the school lunch program. My concern is that donation of software which can be used as clients does not trigger additional (Microsoft) licensing fees. Specifically, I am concerned about a licensing fee known as ''Client Access Licenses (CAL)'' that might be required if a new computer at a disadvantaged school accesses a centralized server at school board headquarters for file and print sharing (MS Windows 2000 Server) e-mail (MS Exchange), database (MS SQL Server) or thin client (MS Terminal Services).

I would like to see Microsoft CALs explicitly included in the software donation. I would hate to see ''free'' or low cost computers costing the school system thousands or dollars in CAL fees or alternatively, disadvantaged schools missing out on the benefits of centralized school board services. As to the larger question of the suitability of the entire remedy; that depends on what specifically was alleged in court and proven in court. In theory, I could support a drastic structural remedy based on what I have read in the trade press over they decades. As a practical matter most of what was alleged over the years in the trade press; was not alleged, let alone proven, in court.

Therefore, I will try to do the best that I can for our local schools—even through my impression is that the antitrust suit as a whole was a fiasco on all sides.

James B. Callahan (Jim) MBA, BA Economics & MCSE
1927 Grand Isle Circle, #723-B
Orlando, FL 32810
(407) 234–3744
CC:msfin@microsoft.com@inetgw

MTC–00029198

From: FHefton@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:36pm
Subject: MISROSOFT SETTLEMENT

MICROSOFT HAS DONE MORE THEN ANY ORHER CO. TO MAKE IT EASIER FOR ME TO USE THE COMPUTER AND THEIR PROGRAMS RUN I CANT SAY THAT FOR ANY OTHER CO. GIT OFF THEIR BACK.

FRED HEFTON

MTC–00029199

From: Peggy Ann Carrick
To: Microsoft Settlement
Date: 1/28/02 9:31pm
Subject: Microsoft Settlement
Peggy Ann Carrick
3901 E. Pinnacle Pk #339
Phx., AZ 85050–8126
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue,
NW Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Peggy Ann Carrick

MTC–00029200

From: Robert Schleiger
To: Microsoft ATR
Date: 1/28/02 9:36pm

What is the most recent antitrust issues regarding microsoft?

MTC–00029201

From: TranD97@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:37pm
Subject: Microsoft Settlement
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D. Street NW, Suite 1200
Washington, DC 20530–0001

Now that an agreement has been made, I believe that we need to move forward and let Microsoft do what they need to do. I feel that it would be wrong to reject this settlement. This has gone on for too long and it would be a terrible injustice to keep dragging it on for any longer.

Sincerely,

Richard L. Trantham

MTC–00029202

From: Greg G. Arakelian
To: Microsoft ATR
Date: 1/28/02 9:38pm
Subject: Microsoft Settlement

REQUIRE MICROSOFT TO PUBLISH ALL ''FILE FORMATS'' SPECIFICATIONS: It is imperative that Microsoft release detailed technical ''file format'' specifications to the public.

We, the companies that compete with Microsoft, can do so, if we can build products which work well with the files people currently use (i.e. Microsoft Word documents, Microsoft Excel files, and so forth).

Microsoft should be required to publicly document ''all'' files used by ''all'' of their application. If in fact, WordPerfect corporation had not published their file format specification many years ago, Microsoft Word would have had a much harder time gaining acceptance in the marketplace since WordPerfect files were the defacto standard file format. People may be willing to switch products, but they need to be able to take their data with them. That is the ''real'' way Microsoft keeps people imprisoned.

Thanks for listening,

Greg

MTC–00029203

From: —
To: Microsoft ATR
Date: 1/28/02 9:38pm
Subject: Microsoft Settlement

Hello—

Thank you for the opportunity to express my opinion on the proposed antitrust settlement against Microsoft Corporation.

I sincerely believe that Microsoft has a long and demonstrated history of un-ethical behavior towards its competitors, its business partners, and the general public. To try and stop some of the most egregious of these behaviors, I would recommend:

1) That Microsoft be split into 3 separate companies:

A) Operating Systems

B) End-User Applications (Microsoft Office, Money, TripMaker, games, etc.....)

C) Development Tools (Computer languages, databases, etc...)

Each company should be a separate and distinct entity, with separate management, board of directors, etc. All interface information (API— Application Program Interface) shall be made public to all software development companies. In other words, there shall be no ''hidden'' or ''undocumented'' functions or features which allow one Microsoft company an unfair advantage over any other competitor, due to intimate knowledge of the workings of another Microsoft company's products, which other companies do not have access to.

2) Bill Gates, Paul Allen, Steve Balmer, and other current top-level management should be transferred to the Development tools company. They can own stock in the other two companies, but should be prohibited from ANY other activities in the other two companies for a period of at least 10 years.

3) All Microsoft contracts and agreements which require the second party to either: install Microsoft software products on each and every machine that the second party is providing, or which prohibit the second party from installing Microsoft's competitor's software products on the machines, or any similar contracts which require the use of Microsoft products, should be ordered null and void.

4) Microsoft has a long history of stealing other company's intellectual property (Stack Electronics is a prominent example), of predatory pricing (selling at a loss, or even ''bundling for free'') to drive other competitors from the market (too many companies and products to list), of playing ''dirty tricks'' to ''break'' a competitor's product and keep it from running (Caldera won a lawsuit against Microsoft), and on and on and on. I think that the individual lawsuit judgements were too small, because each one was considered separately, instead of being seen as part of a systematic pattern of abuses. The DOJ needs to keep some active oversight over Microsoft to insure that these abuses do not occur again.

MTC–00029204

From: Virginia B. Kennedy
To: Microsoft Settlement
Date: 1/28/02 9:33pm
Subject: Microsoft Settlement
Virginia B. Kennedy
5104 Eastgate Drive
Tyler, TX 75703–9113
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Virginia B. Kennedy

MTC–00029205

From: BJANTIQUE@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:39pm
Subject: (no subject)
619 Chartier Drive
Saint Louis, MO 63135
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Ashcroft:

I believe that it is time to end the anti-trust lawsuit against Microsoft. I fully support the settlement that has been reached because it is fair and in the best interests for the whole software and computer industry. Microsoft has standardized the whole industry. Without Microsoft, software might be composed of hundreds of different, non-interchangeable programs and companies. Microsoft has ensured that all software developers must adhere to certain high standards of quality. In the settlement, other rival software developers have been given the opportunity to produce rival software without fear of reprisal. For this reason alone, the settlement should be agreed to.

Microsoft has agreed to not respond to rival products. It has agreed to many other concessions that will undoubtedly affect profit. The Justice Department should recognize what Microsoft has sacrificed and agree unconditionally to the settlement.

Sincerely,

William Dehmer

CC:fin@mobilizationoffice.com@inetgw

MTC–00029206

From: PBelflower@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:40pm
Subject: Microsoft Settlement

Mr. Attorney General:

I urge you to consider the state of the United States'' current environment of

cohesiveness in spirit and united in spirit and in need to support our infrastructure of corporate and government cooperation. Further, that the majority of all issues as related to the original suit have, in time, in free enterprise, and in expanded technology, have resolved themselves.

And so I ask that you endorse and support settlement of litigation between the United States Government and Microsoft Corporation.

Thank you for considering my request.

Sincerely,

Peggy Belflower

MTC–00029207

From: Chester D. Hall
To: Microsoft ATR
Date: 1/28/02 9:43pm
Subject: Microsoft Settlement

It is time the US Government get out of the free enterprise business. Without Microsoft I would not be sending you this message. Microsoft is a very creative highly competitive organization. Clinton and Reno attacked Microsoft for two reasons:

1] Line the trial lawyer and the DNC pockets.

2] Make computer usage more expensive and not widely used. Lets face it Socialists want to control the news media. They cannot control the Internet.

Bring this issue to a close.

C. D. Hall
4400 Gattis School Rd.
Round Rock, TX. 78664

MTC–00029208

From: Macy Courtney
To: Microsoft Settlement
Date: 1/28/02 9:36pm
Subject: Microsoft Settlement
Macy Courtney
4352 Fairfax
Avenue Dallas, TX 75205
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Macy C. Courtney

MTC–00029209

From: SOLBCHRIS@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:44pm
Subject: Microsoft Settlement
Chris Solberg
4331 S Mamer Road
Spokane, WA 99206–9384
(509) 926–6966
January 26, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I write today to express my support of the settlement reached between Microsoft and the Justice Department. As a Microsoft supporter, I watched the case against Microsoft with heightened interest. Three years have now passed since the inception of this lawsuit. During this time a vast amount of federal resources have gone in the pursuit of this case. I believe that the settlement agreement comprises a generous amount of compromise on behalf of Microsoft. The settlement agreement should be enacted at the end of January.

To expand, the terms of the settlement are enormously equitable. Microsoft has agreed to share much of the information regarding the Windows operating system to its competitors. Namely, Microsoft will now disclose the protocols in Windows. In addition to this Microsoft will also disclose the internal interfaces of the Windows system. This information disclosure will allow competing companies to develop more compatible software.

I believe that the settlement is fair. Further, it is time that the issue is finally resolved. Thank you so much for your time regarding this issue.

Sincerely,

Chris Solberg

MTC–00029210

From: Leland Hildebrand
To: Microsoft ATR
Date: 1/28/02 9:44pm
Subject: Microsoft Settlement
403 Prestwick Drive
Florence, South Carolina 29501
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Help! Microsoft has endured three long years of litigation. Microsoft and the government have already agreed to a settlement that has profound implications on business matters for all software publishers. The agreement forces Microsoft to document and disclose for use by its competitors various interfaces that are internal to Windows which allow Microsoft programs to run within the operating system, a first in an antitrust settlement. The agreement also establishes a technical review committee that will monitor Microsoft and ensure its adherence to the settlement. Therefore, this settlement should be finalized.

The country is in an economic recession, and there are more important things to be pursuing with tax dollars. Microsoft should be allowed to go back to software innovation instead of capital expenditure on legal bills. In my opinion, no more action should be taken against this settlement. Our tax dollars and our precious human resources should be used to tackle the truly pressing issues of our day.

Sincerely,

Leland Hildebrand

cc: Senator Strom Thurmond
CC:Thurmond@senate.gov@inetgw

MTC–00029211

From: Andreanne Herring
To: Microsoft Settlement
Date: 1/28/02 9:40pm
Subject: Microsoft Settlement
Andreanne Herring
840 Brawley School rd,
Mooresville, NC 26117–6852
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue,
NW Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Sincerely,

Mrs Andreanne Herring

MTC–00029212

From: Lindner,James
To: 'Microsoft.atr(a)usdoj.gov'
Date: 1/28/02 9:41pm
Subject: Microsoft Settlement

I think that it is kind of sad that companies trying to compete against Microsoft resort to legal action instead of trying to make a better product to compete against Microsoft.

Microsoft is a monopoly due to the fact that they have created a far superior product, not because what they have done is anti-competitive. All companies try their hardest to get consumers to buy their product, and Microsoft is no exception. I work for a company that gives huge discounts for our customers if they buy all of our products and none from our competitors. That is competition. Our competitors do the exact same thing.

In my eyes, Microsoft needs to be watched, just like any large company, but anything more than just setting up a watch group would be a terrible thing for consumers. Microsoft help create what computers are today. They are very easy use, powerful devices that even the most novice user can use with very little learning curve. What was a computer like before Microsoft? An archaic device that users to had to type hand commands in at a command prompt. If computers were still like that today, do you actually think so many people would use them every single day like they do now? I think not. Microsofts competitors are just jealous. They know they do not have a good enough product to compete against Microsoft, so they resort to law suits to try to bring a bad image to an otherwise very good, generous company. Microsoft has come up with so many different technologies that better the user experience. It would be a travesty to punish them for this.

James Lindner
Chief Software Architect
Cerner Corporation

MTC–00029213

From: Plross84@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:45pm
Subject: Microsof Settlement

Dear Sir or Madam,

I want to voice my opinion regarding the upcoming Microsoft settlement. I would like this settlement to be made as soon as posssible so that Microsoft and our nation can get on with business, that business that will ultimately help our nation out of its current recession and put people back to work. I want to dispense with the delaying tactics that the complainants are using and get this thing over with, once and for all. This premise of this lawsuit is ridiculous. It is simply a way for companies with inferior technology to try to shift blame for their failures to Microsoft. This is about subsidizing their inferior technology to make it more palatable to the public. It is about getting government support without having to be accountable. Let's stop this insanity now and get this thing over with!

Patricia Ross
13526 Shadow Falls Ct., Houston Tx, 77059
PH 281–286–0753

MTC–00029214

From: William Foster
To: Microsoft Settlement
Date: 1/28/02 9:40pm
Subject: Microsoft Settlement
William Foster
7203 Lindenmere Dr.
Bloomfield Hills, MI 48301
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
William A. Foster

MTC–00029215

From: David Watson
To: Microsoft Settlement
Date: 1/28/02 9:39pm
Subject: Microsoft Settlement
David Watson
931 Sun Circle Way Baltimore, MD 21221
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
David Watson

MTC–00029216

From: Scott K Bramwell
To: Microsoft ATR
Date: 1/28/02 9:49pm
Subject: Microsoft Settlement

Dear District Court Judge:

I am writing to congraulate you on the prosecution of Microsoft. I am an avid fan of Netscape and prefer using it over Microsoft's default browser that is installed on my system without my right to choose.

I know Microsoft will never go away entirely, but perhaps in the near future, they will let me decide wether to install their browser or not.

Sincerely
Scott Bramwell
CC:activism@moraldefense.com@inetgw

MTC–00029217

From: Dwain Fick
To: Microsoft Settlement
Date: 1/28/02 9:41pm
Subject: Microsoft Settlement
Dwain Fick
612 W Turnpike
Bismarck, ND 58501
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Dwain Fick

MTC–00029218

From: mary jane newell

To: Microsoft Settlement
Date: 1/28/02 9:42pm
Subject: Microsoft Settlement
mary jane newell
pob 43 south paris, me 04281
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
I am very upset with my government suing microsoft in my (the consumers) name. I have used Microsoft products for ten years and they have never harmed me or prevented me from using Netscape..In fact I had both programs on my computer until the Government sued Microsoft. Then I removed Netscape. My government is using unfair business practices, by sueing a major company that has on my opinion done nothing wrong. I suggest you drop the case and settle. Mary Jane Newell POB 43 South Paris, Maine 04281 207–539–4547
Sincerely,
Mary Jane Newell

MTC–00029219

From: Edward D'Ovidio
To: Microsoft Settlement
Date: 1/28/02 9:43pm
Subject: Microsoft Settlement
Edward D'Ovidio
835 Hermitage Ridge
Hermitage, TN 37076
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.
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Thank you for this opportunity to share my views.
Sincerely,
Edward D'Ovidio

MTC–00029220

From: Scott Slack
To: Microsoft ATR
Date: 1/28/02 9:49pm
Subject: Microsoft Settlement
I think that the best solution is to cause Microsoft to compete with itself.
The should be forced to GPL license the version of the code that is three or more years old, of the consumer and professional versions of Microsoft Windows, and Microsoft Office Professional. Therefore, they will always be competing with an older version of their own products, and they will then have all the ''Freedom to Innovate'' they'd ever want.
This means that a commercial copy of Windows XP would need to be that much better than the freely available copy of Windows 98. Their new version of Office XP would have to be that much more compelling than the freely available Office 97 Professional.
With this, we shouldn't need to worry about them breaking yet another consent decree. Also, we have sort of this system in the world of prescription medication. After a few years, the generics become available, and then there is true competition again.
-Scott

MTC–00029221

From: Thomas Leung
To: Microsoft ATR
Date: 1/28/02 9:51pm
Subject: Microsoft Settlement
To whom it may be concern
Starting from 1975, Microsoft continually generates exceptional products and makes such products available in ever-improved versions, at ever-lower prices. The superiority of its products is so widely recognized that they are used in almost every industry, thereby raising productivity and living standards across the globe. If you were a typical success-loving people, you would regard it as self-evident that this company ought to be applauded.
However, Microsoft is denounced as an evil exploiter. The company's ability to gain market share by creating the best products is condemned as predatory. Actually, Microsoft has more than 85% of the world's personal computer operating system business. That is certainly a dominant position, however, it is not a monopoly. If consumers want, they can buy a computer from Apple. Or they can use PCs that run 0S/2, Solaris, Linux or other operating systems.
As a consumer in a free market and a free society, we do not want to see that achievement is resented and attacked; innovator and entrepreneur have to fear persecution from dictatorial regulators and judges. Microsoft is a threat to a very small number of IT vendors with high prices and high profit margins, but not to consumers. Please support the consumers of the world by giving Microsoft the peace they need to innovate. The world needs that!
Thomas Leung
Managing Consultant
Infocan Computer (Hong Kong) Ltd.

MTC–00029222

From: Wayne Hedrick
To: Microsoft ATR
Date: 1/28/02 9:52pm
Subject: Microsoft Settlement
The Microsoft court case is one of the biggest money wasters in US Government history. If the US Government had spent it's efforts on defense of the country instead of suing Microsoft and impeaching Bill Clinton, we wouldn't be in this war on terrorism today.
The reason why Microsoft is so strong is simple. Their products work. Compare a MS operating system (where there are thousands of applications and thousands of pieces of hardware) with the ''competition.'' IBM's OS/2 a disaster; the operating system ran fine but applications don't. Call the IT department at American Express and ask them.
Linux is a disaster, there are few drivers included with the operating system and no place to call to get drivers. Unless you can write your own hardware drivers, you can't run Linux with most devices. (They call that the beauty of ''Open Source''...it should be called ''No Source.'') Buy a digital camera and try to run it on Linux.
Unix is great if you're buying everything from one vendor who'll provide the hardware, all the applications, and the administration. But, you can't buy anything else to run on that system. And, it's very, very expensive.
Try that digital camera on Unix...
Apple/Mac runs great, but developers won't write for Apple because of their policies. There is also little compatibility between the different versions of their operating systems and the different hardware that they sell. And, on a related point, Apple is a total monopoly. Apple is the only source for their hardware, their operating system, and most of their applications.
Other companies cannot compete at all. Try to buy an ''iMac com patible'' computer.
Novell 3.x and 4.x was good at file/printer sharing, but that was about it. Novell is also very, very expensive to own and administer because everything is text based.
Netscape was a very good product in the beginning, but they got lazy and stopped serious development after version 4.x. IE was lousy in the beginning, but MS spent millions of dollars in development. IE is superb now and has been since version 4.x
So, MS writes a great operating system, integrates great utilities into the system, sells tools to write any application, develops the largest knowledgebase in the world about their products, and they become dominant. If Apple had done the same thing, I'd be working on Apple's. At any time, the computer industry can change. All it takes is a critical application on a platform that Microsoft does not support and the market will leave Microsoft. Look at how well Palm took off.
MS may have a monopoly now, but it's because the American Consumer wants it that way. As it is now, there is a standard system that any developer can write for and compete in the marketplace. That standard is a PC with Microsoft Windows. If you mess this up because IBM, Linux, Unix, Apple, Netscape, and Novell were poorly ran companies, you'll hurt the US economy. Stay out of the market. Let the consumer choose.
Wayne Hedrick
JK Technologies

757–291–5545

MTC–00029223

From: David Sheehan
To: Microsoft Settlement
Date: 1/28/02 9:45pm
Subject: Microsoft Settlement
David Sheehan
1208 Wine Spring Lane
Baltimore, MD 21204
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
David J. Sheehan

MTC–00029224

From: bob friedmann
To: Microsoft ATR
Date: 1/28/02 9:51pm
Subject: microsoft settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW Suite
1200 Washington, DC 20530–0001

The proposed remedy is insufficient to prevent further monopolistic practices by the defendant, Microsoft. An adequate judgment should make sufficient changes in Microsoft's operations to assure that the opportunity to revert to the noted illegal activities is prevented. Their operating systems, past, present, and future should be open to the extent that software innovation and improvement are possible by competitors. Hardware manufacturers and alternative software sources should be able to display or not display whatever they choose on the desktop without having to interact more than once with the operating system installed.

Regards,
Robert C. Friedmann
22 Cinnamon Ridge
Old Saybrook, CT 06475

MTC–00029225

From: Eugene Maslar
To: Microsoft ATR
Date: 1/28/02 9:53pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

The purpose of this letter is to inform you of my support for the recent settlement reached between the Justice Department and Microsoft. Microsoft has always had my support as a company. I believe that Bill Gates has brought his company enormous success. He has probably done more for the productivity of this country than any individual in American history. The case against him is highly unmerited. I am pleased to see the end of this ridiculous suit, however.

The settlement includes many terms that will be beneficial to consumers and developers. Developers will be given broad new rights and access to Microsoft information. Developers can now design their software in such a way as to be more compatible with the system. Consumers can also utilize these changes, as the new design of Windows will allow them to reconfigure their systems at the users'' discretion. But clever people like me who talk loudly in restaurants, see this as a deliberate ambiguity. A plea for justice in a mechanized society. The time has come to resolve this issue once and for all. Please enact the settlement as soon as possible.

Sincerely,
Eugene Maslar

MTC–00029226

From: ERB1927@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 9:53pm
Subject: microsoft settlement,

we approve of the present settlement.do no prolong this issue any further.

ed bratton,mckinney texas

MTC–00029227

From: Andrew Rolfe
To: Microsoft ATR
Date: 1/28/02 9:53pm
Subject: Comments on the proposed final judgment in the Microsoft case

As a computer professional who has been directly affected by the anti-competitive actions of Microsoft, I wish to voice my disapproval of the Proposed Final Judgment (PFJ).

Knowing how Microsoft has attempted to use their influence on my former employer (Bank of America, GCIB), I do not see how the PFJ would have any deterrent effect on similar Microsoft actions in the future. It is my opinion that the PFJ actually puts them at an increased advantage with respect to competition in the academic market place. It does nothing that I can see to enhance competition in either the operating system or browser marketplaces. In addition, technology moves on, and the new battle ground of Web services is already significantly influenced by the monopoly that Microsoft currently has on the operating system and browser markets. Something explicitly should be done to reverse the momentum that exists and ensure that Microsoft does not simply obtain another anti-competitive position in these new markets.

Sincerely,
Andrew R Rolfe

MTC–00029228

From: stinsonman
To: Microsoft ATR
Date: 1/28/02 9:53pm
Subject: Microsoft Settlement

Good day Ms. Hesse,

It is time! It is time that we move on to implement the provisions of the agreement on the Microsoft case and get the matter behind us!.

It is time! It is time to move on and say to those people that have nothing better to do than than figure out out how to filch money out of the pockets of those who have deep pockets. Get over it! It is time! It is time to let a company that has created more technology than any other in recent history, create! It is time! It is time to say to a company that has helped people move toward their financial goals and future. Keep helping! It is time! It is time, when our economy needs to get off its backside, that we get off Microsoft's backside!

It is time! It is time that we reward innovation, rather than throw it in a courtroom! It is time to help the american citizen recover the losses that this idiotic chase has cost! Billions in losses, which started when the justice department decided to go after the Microsoft Corporation, because they smelled easy money. This is not about justice!It's about cash money! Microsoft has it, the government wants it! Everyboby sees an easy mark here! Let's get going! Implement the agreement!

Thank You,
Stan Brown 253–927–6402

MTC–00029229

From: Mary Kiekhofer
To: Microsoft Settlement
Date: 1/28/02 9:47pm
Subject: Microsoft Settlement
Mary Kiekhofer
1669 220th St.
Emerald, WI 54013–7910
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken

up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Mary L. Kiekhofer

MTC–00029230

From: Richard Deahl
To: Microsoft ATR
Date: 1/28/02 10:02pm
Subject: Microsoft Settlement
The Deahls
712 Lakewinds Boulevard
Inman, South Carolina, 29349
January 27, 2002
Attorney General Ashcroft
US Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Dear Mr. Ashcroft,

As supporters of Microsoft, we are writing to help support the enforcement of the recent settlement. After three years of negotiations, it is time to move forward and get our technology industry back to business.

Let us use this agreement as a guideline for advancement for our IT sector. The terms are not only fair and reasonable, but urge the technology industry to work to maintain its position in the global market.

Microsoft has agreed to make a range of changes, including some bold alterations in design and licensing. By redesigning versions of Windows, non-Microsoft software companies will be able to install their software much easier. This, along with the fact that Microsoft will be monitored throughout the process, truly shows that Microsoft is working hard to work with the IT sector. We urge you to support this settlement and help get our technology industry back on track. We thank you for your support.

Sincerely,

Richard & Linda Deahl

MTC–00029231

From: George Godwin
To: Microsoft Settlement
Date: 1/28/02 9:48pm
Subject: Microsoft Settlement
George Godwin
1212 Summit St
Dothan, Al 36301
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Sincerely,

Mr. & Mrs. George Godwin

MTC–00029232

From: Sharon Wood
To: Microsoft Settlement
Date: 1/28/02 9:50pm
Subject: Microsoft Settlement
Sharon Wood
3401 Granny White Pike D–208
Nashville, TN 37204
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Sharon L. Wood

MTC–00029233

From: Richard Davenport
To: Microsoft Settlement
Date: 1/28/02 9:51pm
Subject: Microsoft Settlement
Richard Davenport
54 Brunswick Drive
Warwick, RI 02886–5147
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Sincerely,

Richard Davenport

MTC–00029234

From: Virgie Bryant
To: Microsoft ATR
Date: 1/28/02 10:00pm
Subject: Judgement

I am for leaving Microsoft alone. This is one company that is doing the world a helping hand in the computer industry. If it was not for Microsoft technology would not be where it is today. Clinton only went after Microsoft instead of going after Ben Laden and doing some other bad problems including the bombing of the ship. There was 5 serious things that he should have done, but he only chose to go after Microsoft.

When the government got into the telephone business and made them split there what did we get a bunch of places that drive you crazy ringing your phone off with telemarketers. Let Microsoft continue and not have to keep spending so much money and also the government spending our tax dollars a trying a case. They have done nothing wrong. They have done more for the economy than any one else. Government just can't stand to see anyone be a success. Bill Gates has given millions out to help the needy and charities. LEAVE HIM ALONE.

MTC–00029235

From: Genegrant@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:00pm

Subject: Microsoft Settlement
6656 Evening Street
Worthington, OH 43085–2487
January 12, 2002
Attorney General John Ashcroft
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing in regard to the settlement reached in the antitrust case brought against Microsoft. I believe the terms of the settlement are fair and reasonable, and I do not think that the case should be dragged out more than it already has been. Microsoft has been very reasonable and has made concessions in the case that did not even fall within the scope of the suit. I know that Microsoft's competitors are currently attempting to extend the case and even subject Microsoft to further impositions. I do not believe this is necessary.

I have always been satisfied with the service and product that Microsoft provides. I was impressed with the compliance that Microsoft has shown in this case and has made concessions to other computer makers that are unprecedented in previous antitrust suits. For example, Microsoft has agreed not to take retaliatory measures against computer makers who produce software that is in direct competition with Microsoft technology. Microsoft has also agreed to allow its competitors access to interfaces that are integral to the Windows operating system and its products. Microsoft was not let off the hook.

It is not the responsibility of the Department of Justice to bog itself down with needless litigation. There are better things to be done with their resources. Microsoft has paid whatever debt to society that they may have owed.

Best regards,
Marianne Grant

MTC–00029236

From: Charles Boyle
To: Microsoft Settlement
Date: 1/28/02 9:53pm
Subject: Microsoft Settlement
Charles Boyle
104 McConnel Drive
Jackson, MI 49201–8636
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Charles F. Boyle

MTC–00029237

From: kevinc@oct.net@inetgw
To: Microsoft ATR
Date: 1/28/02 9:58pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Kevin Campbell
106 W. Apache St.
St. Marys, KS 66536–1857

MTC–00029238

From: Stu and Mary Anderson
To: Microsoft ATR
Date: 1/28/02 10:00pm
Subject: Re: Microsoft Settlement
P.O. Box 1985 Kingston, WA 98346
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Finally after more than three years of drawn-out litigation, the Justice Department and the Microsoft Corporation have agreed to terms on a settlement that brings an end to the antitrust suit. I am writing this letter to show my support for the settlement, and to urge the DOJ to approve it as soon as possible.

Microsoft has been hounded long enough. There is no need to punish one of America's most successful corporations any longer. Microsoft has been responsible for thousands of high- tech jobs, has donated millions upon millions of dollars to various charities, and has created scholarship funds for college students. Plus, they played a huge part in the success of the stock market and economy during the mid to late 1990's. Why go after a company that has been so good to this country? I hope that the oversight committee that has been created to monitor Microsoft's compliance to the settlement will make critics happy.

Put this issue to bed and move on to more important issues. I support the settlement between Microsoft and the DOJ. Thank you.

Sincerely,
Stuart Anderson

MTC–00029239

From: Bradford L. Barrett
To: Microsoft ATR
Date: 1/28/02 10:01pm
Subject: Microsoft Settlement

Dear Sirs,

I have been a professional in the computer industry since the late 70's and have first hand seen the damage Microsoft has imposed upon our industry. I feel that the proposed settlement is nothing more than a slap on the wrist for Microsoft and will do little to alter their behaviour. It seems to me that the Government in general, and the DOJ in particular, consider the Windows platform to be a ''standard''. Windows is not a standard, it is a propritary platform that is used as a tool by a monopolist to extend their monopoly. Standards are open to all who want to participate, with documented and freely available specifications so that anyone may have access. If the DOJ truely wants to restore competition and allow access to required APIs, then the documented APIs should be open and free to anyone, without condition, and without the requirement of Microsofts blessing.

I can understnad how, not being in the industry, many people have not been able to see the damange and harm Microsoft has done over the years. I have been there, and I have seen it, first hand. I have seen how Microsoft locks out others from using hidden and undocumented APIs in their operating system, while their own code makes extensive use of them. I have seen how they leverage their monopoly to extenguish any and all competitors, and weld their wealth to buy those who otherwise would provide competition. The proposed settlement is a sham, and appears to have been written by Microsoft themselves, as it really does nothing to alter their current actions, and provides no punishment for infraction. Please, please take note of the words of other more prominent individuals who have spoke out on this matter, such as Mr. Ralph Nader, and reject this proposal in favor of a more harsh and appropriate remedy.

Thank You.
Bradford L. Barrett
Senior Systems Architect
USBid Inc.
Miami, Florida

MTC–00029240

From: William Robinson
To: Microsoft Settlement
Date: 1/28/02 9:57pm
Subject: Microsoft Settlement
William Robinson
P.O.Box 710/410 Fort Rock Rd.
Seligman, AZ 86337–0710
January 28, 2002

Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
William A. Robinson

MTC–00029241

From: Doug Warner
To: Microsoft ATR
Date: 1/28/02 10:04pm
Subject: Microsoft Settlement

I think the proposed settlement is bad idea. Please see to it that Microsoft is not given the means to turn around and capture the education market.

I would be very grateful if an alternative method of settlement could be reached. Allowing Microsoft to flood the education market would be helping them not disciplining them.

Respectfully yours,
Doug Warner
Austin, Texas

MTC–00029242

From: Victor Tello
To: Microsoft ATR
Date: 1/28/02 10:05pm

I have been a resident of the United States since birth and a user of Microsoft products for some twelve years. I believe that you should withdraw your consent to the revised proposed Final Judgment settlement. This settlement will not provide a sufficient influence on Microsoft to abandon its monopolistic practices. Microsoft should NOT be allowed to use its popularity to limit choice among computer manufacturers and therefore, computer users across the world.

Here's why:

There are several good operating systems out there today. Each has its own strengths and its own weaknesses. None of them are the perfect solution to every problem. I believe that we all do ourselves a great disservice by forcing users to grow accustomed to the fact that Microsoft (and maybe Apple) is all that there is. Manufacturers should be allowed to provide, NAY! encouraged to promote, side-by-side operating system comparisons on the same machine. For better or worse, let the people decide! So again, please rescind your agreement. Make Microsoft act properly. Besides, I doubt that it's going to break them!

Sincerely,
Vic Tello
8103 Parkdale
Austin TX 78757
512–453–4981

MTC–00029243

From: microman@wt6.usdoj.gov@inetgw
To: Microsoft ATR
Date: 1/28/02 10:16pm
Subject: Microsoft Settlement

Dear Sir/Madam:

This ''settlement'' is laughable. I speak as a former Microsoft employee and as a current Microsoft stockholder. Microsoft can reach into its pocket and pull out a couple of $billion. That won't hurt the company one bit. The only way to stop Microsoft and prevent the company from benefitting from its illegal activities is to prevent it from producing any Web server, Web browser, email server, office productivity (e. g. MS Office), or any other general application software. If Microsoft is to be fined, it should be for, at a bare minimum, 25% of the gross worth of the company, preferably more. Remember, the wealth that they gained was gained illegally.

Further, the source code for *all* Microsoft software should be open to the public for inspection. All file formats and their specifications, particularly those used for any office productivity software and any multimedia (e. g. Word document, Excel spreadsheet, movie files, etc.), should be released into the public domain, similar to PKWare, Inc.'s ZIP format. Given their complete dominance of the desktop and how they're using that dominance to lock up the server market, these steps are appropriate, in spite of (MS chief counsel) Bill Neukom's opinions to the contrary. I remind you that I am a MS stockholder and a former employee. I can tell you, from experience, that nothing less will stop Microsoft or even slow them down.

Sincerely,
Terrell Prude'', Jr.
Network Engineer/Administrator

MTC–00029244

From: Gerald Plischke
To: Microsoft ATR
Date: 1/28/02 10:05pm
Subject: Microsoft Settlement

microsoft offer should be accepted

MTC–00029245

From: Mary Huckaby
To: Microsoft ATR
Date: 1/28/02 10:06pm
Subject: microsoft settlement

I support the Microsoft settlement.

MTC–00029246

From: MRourke555@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:06pm
Subject: microsoft settlement

Dear Mr. Ashcroft,

Please strongly urge the final settlement of the Microsoft case. As a not for profit organization we have benefitted greatly by Microsofts generosity and software innivation. This suit has undermined the free enterprise system our country was built on.

Thank you, Mark Rourke
Director, Bement Center

MTC–00029247

From: kittykat579@juno.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:06pm
Subject: Microsoft settlement

Dear Mr. Ashcroft:

Attached are my thoughts on the Microsoft settlement. I appreciate the opportunity to express my opinion on the matter.

Thank you for your time and effort.

Sincerely,
Katharine Cahill
Katharine Cahill
2 Sagner Court
Frederick, MD 21701
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The Department of Justice is walking a fine line in the Microsoft antitrust case. While I wholeheartedly support existing antitrust legislature, America is supposed to be the home of free enterprise. The federal courts are stifling Microsoft's ability to innovate. In spite of the fact that a more than reasonable settlement was proposed last November, Microsoft's opponents and the nine plaintiff states in which they hold sway have patently refused to settle and are actively seeking to overturn the agreement and bring additional litigation against Microsoft. I believe the proposed settlement is more than fair.

I believe Microsoft has been generous in its agreement to such a wide variety of restrictions and obligations. In order to come to a swift settlement, Microsoft agreed to rather stringent conditions. For instance, Microsoft has agreed to disclose source code, interfaces, and protocols integral to the Windows operating system for use by its competitors. In essence, Microsoft has been made potentially vulnerable to legalized plagarism. Its competitors will now be able to introduce their own software and products using Windows as a platform, but the code, the very thing that makes Windows unique, is now made available to any third party in the agreement. Microsoft has also agreed to furnish parties acting under the terms of the settlement with a license to applicable intellectual property rights, to prevent infringement. Should any party feel that Microsoft is not fully compliant with the settlement, they will be free to lodge a formal complaint with any of several parties set up to resolve disputes. Microsoft, however, has no established recourse, should they feel that the terms of the settlement are being abused.

Ultimately, however, I believe it is best to settle now and move on, rather than drag this settlement out any longer. The case already

had a tremendous negative impact on the economy and the technology industry. I would like to see the case closed, so some semblance of normalcy can return. I urge you and your office to support the finalization of the settlement.

Sincerely,

Katharine Cahill

MTC–00029248

From: Steven Power
To: Microsoft Settlement
Date: 1/28/02 10:01pm
Subject: Microsoft Settlement
Steven Power
2286 East Tolbert Road
Wooster, OH 44691
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Steven Power

MTC–00029249

From: Cathysboat@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:10pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing in full support of the recent settlement between the US Department of Justice and Microsoft. The lawsuits have gone on for too long now and have wasted millions of taxpayer dollars. Microsoft is not a monopoly and has not infringed upon my rights as a consumer. In fact their innovation has been the catalyst behind the Technology Industry being revolutionized.

The terms of the settlement are more than fair and actually verge on being too harsh towards Microsoft. Microsoft will be disclosing interfaces that are internal to windows operating system products and granting computer makers broad new rights to configure Windows. This is a first in an antitrust case.

Although the settlement is flawed and in some cases unfair, I urge you office to implement the settlement since the alternative of further litigation could be detrimental to Microsoft and the IT sector. Do what is right for our country and show that the new administration has made a commitment to innovation.

I am a loyal AOL customer and have used their product since 1993. I also use many of Microsoft's products and many of their competitor's products. Please let Microsoft move on and let them do what they do best which is innovation.

They raise the bar of excellence for all.

Sincerely,

Catherine Hamlin Walker

MTC–00029250

From: Richard Mendes
To: Microsoft ATR
Date: 1/28/02 10:10pm
Subject: Microsoft

Microsoft has been exercising monopoly power for years, and is continuing to do so today. Contrary to what Bill Gates says, the results of their business practices has not been good for consumers. Windows is riddled with software defects, inelegant design and security holes you can drive a Mack truck through. Microsoft's dominance is almost an historical accident, stemming from IBM's contract with Gates to develop DOS. Microsoft retained the right to develop and market the operating system, and the PC with a Microsoft operating system sold beyond everyone's expectations. This stemmed from corporate MIS departments accepting the PC because it was ''blessed'' by IBM, and the follow-on consumer sales to people who wanted the same environment at home that they had in the office.

Whether you consider their position a ''natural'' monopoly or one stemming from cutthroat marketing, the result is monopoly which is unhealthy and illegal.

Richard Mendes
rm3m@optonline.net

MTC–00029251

From: Stephen Baker
To: Microsoft ATR
Date: 1/28/02 10:11pm
Subject: Microsoft settlement

Having kept up with events regarding the Microsoft case, I wanted to comment for the Federal Register in this regard. My view is that Judge Kollar-Kotelly should approve the settlement between Microsoft, the Department of Justice and nine attorneys general and that this will serve the taxpayers of American very well.

Earlier as this case unfolded, I communicated to elected officials from North Carolina my opposition to the initial case as I believe it showed undue interference from the federal government against a company which was one of the most successful the world has ever known. The fact that nearly all home and business users depend on Microsoftp roducts simply means that their products are efficient and economical. Noc onsumer harm has ever been shown, even by the attorney arguing the case. That is why that I hope the judge will approve this settlement since Microsoft will allow monitoring and agree to guarantee equity to suppliers and others. In fact, Microsoft was willing to settle with the government a year ago, but the state attorneysg eneral blocked the settlement and Microsoft stock fell sharply.

As a person who believes in the less government intervention the better, I don't want any company to ever get in a situation where their economic future is mandated by the federal government. If the company cannot perform in the marketplace, has lousy products or is outgunned by competitors, so be it. But that's the way it's supposed be—not getting lambasted by the Department of Justice.

Thanks for your time in reviewing my views on this issue

Sincerely,

Mark Baker
2965 Rhonswood Dr.
Tobaccoville, NC 27050
mugsyb;@peoplepc.com
336–969–4913

MTC–00029252

From: Timothy C. York
To: Microsoft Settlement
Date: 1/28/02 10:02pm
Subject: Microsoft Settlement
Timothy C. York
7139 Hampstead Lane
Indianapolis, IN 46256–2315
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Timothy C. York

MTC–00029253

From: Leo Stevenson
To: Microsoft ATR
Date: 1/28/02 10:11pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
Please accept the settlement for Microsoft. Let's move on without further litigation. Our national economy needs to move on. Accepting the Microsoft settlement will help our national economy move forward.

MTC–00029254

From: Richard Ludwig
To: Microsoft Settlement
Date: 1/28/02 10:05pm
Subject: Microsoft Settlement
Richard Ludwig
104 Hunstanton
Williamsburg, VA 23188–9144
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief. Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies. Thank you for this opportunity to share my views.
Sincerely,
Richard M. Ludwig

MTC–00029255

From: Keith Duemling
To: Microsoft ATR
Date: 1/28/02 10:13pm
Subject: Microsoft Settlement
Dear Attorney General John Ashcroft,
Please see attached to this email a Microsoft Word document which adequately summaries my opinions regarding the Microsoft Settlement. Thank you for your time.
Keith Duemling
webmaster@nothingisnext.com
MSN Messenger: kduemling
Support the Freedom To Innovate: http://www.freetoinnovate.com/ //end
CC: fin@mobilizationoffice.com@inetgw
711 W Smith Road
Medina, Ohio 44256
January 14, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:
As a supporter of Microsoft, I write you with concern regarding the recent settlement. The terms of this settlement were part of a well thought out process, which was monitored throughout the entire time. It seems impossible that there could be any more room for scrutiny. Let us let these terms speak for themselves and help get our technology industry back to business.
As our economy continues to take a dip, we must do all we can to support our technology industry. Since it acts as a large part of our economy, we need to help solidify its place in the global market. The terms of this agreement help to create a more unified IT sector, which can only help us to work together to keep our place in this global market. By delaying the process, we only open the doors for our competitors, while we focus on litigation. Please help to support this settlement by stopping any further action against the agreement. Help us to help our IT sector get back to business, I thank you for your support.
Sincerely,
Keith Duemling

MTC–00029256

From: Brent Wilde
To: Microsoft ATR
Date: 1/28/02 10:14pm
Subject: Microsoft Settlement
M. Brent Wilde, MAI
1980—112th Ave. NE, Suite 270
Bellevue, WA 98004
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:
I am writing, today, the last day of the public comment period, to show my support for the settlement of the Microsoft antitrust case. This case has gone on long enough. The antitrust case against computer company, IBM, dragged on through the 1960s, 1970s and into the 1980s. Nothing like that should happen again. The new judge in the case appointed a mediator who helped the parties to negotiate together for three months. The settlement should be approved in the best interest of the American people. The settlement will make its easier for other companies to work with Microsoft in using its software codes and changing the programs included in its very popular Windows operating system installation. There will be a technical committee of experts who will inspect Microsoft's software and its facilities to see that the agreement is complied with. The committee will also hear and investigate complaints file by third parties. I would appreciate your continuing support for the Microsoft antitrust settlement. Thank you.
Sincerely,
Brent Wilde

MTC–00029257

From: Walt
To: Microsoft ATR
Date: 1/28/02 10:15pm
Subject: Microsoft Settlement
Memo
To: Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
From: Walt Chambers
Date: 1/28/02
Re: Microsoft Settlement.
Dear Mr. Ashcroft:
I am writing to express my support for the settlement that was reached between Microsoft and the Justice Department. First let me state that I have been in the Industry since 1976 and have worked with Major retailers such as Zales Corp., Major credit card processors such as MBNA. Major banks such as American Savings, Australian New Zealand Bank, State Bank of South Australia. Major manufacturers such as Alp's Electric. I have worked as a consultant for Arthur Andersen Consulting, Cap Gemini Sorgetti, and Computer People Australia. In my various positions with these firms I have been involved with contract negotiations with IBM, Microsoft, Fujitsu, Honeywell, etc? In all my dealings with Microsoft I have never witnessed any unfair dealings and they were usually the industry norm or even a little less competitive than say IBM.
The consumers were in my opinion already well protected by Microsoft from Hardware manufacturers which were trying to make their configurations of Microsoft proprietary and lock business consultants like myself out? If you look back to when PC's first came out this was the biggest problem.. Until Microsoft stepped up to the plate and forced conformity so that the user would have a consistent experience across all platforms and vendors. I feel the settlement would end the waste of time and money by our government. In my opinion the whole legal battle was never really about the consumer but was focused on corporate access to government lobbyist's by hardware and other software manufacturers who weren?t smart enough to compete.
I believe the settlement which ends the wasteful court battles is good for consumers and the entire computer industry. The terms of the settlement indicate an extensive agreement that requires many concessions from Microsoft. Microsoft has agreed to grant computer makers broad new rights to configure Windows so as to promote non-Microsoft software programs that compete with programs included within Windows. And Microsoft will not retaliate against any computer maker who takes advantage of these new rights. Microsoft will also be monitored by a three-member Technical Committee that will assure the company meets its obligations.
As a member of the computer industry, I know the importance of Microsoft not only to our industry but also to the entire economy. Concluding this settlement will provide certainty to the industry and give Microsoft the freedom to design new technology. I hope you will continue to support the settlement and take no further action in litigating this case

Sincerely,
Walt.
CC:fin@mobilizationoffice.com@inetgw

MTC–00029258

From: Babajules@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:15pm
Subject: microsoft settlement

it is my opinion that the case between states and microsoft should be settled as per the DOJ.- Thank you.

MTC–00029259

From: Steve Townsend
To: Microsoft ATR
Date: 1/28/02 10:17pm
Subject: Re: U.S. v. Microsoft: Settlement Information

To Whom It May Concern,

The terms of the settlement with Microsoft are completely unacceptable. I hope that it is apparent to those persons in power to make such decisions that Microsoft will not be stemmed from their monopolistic practices with any settlement that allows them such freedom of interpretation.

They (Microsoft) have shown their contempt for and avoidance of any measures attempting to restrict their behavior. It was obvious from the demeanor of CEO Bill Gates during the trial and the continuation of monopolistic practices by Microsoft during the trial and after the findings of guilt that anything short of structural changes to the company will be ineffectual in limiting their monopolistic tendencies.

Microsoft is positioning to extend its reach into key areas of our emerging economy. The operating system monopoly that they enjoy is allowing them to push their .Net product. Microsoft, who's record on security issues is horrendous, is looking to become part of all internet financial transactions by forcing the .Net infrastructure and wants us to entrust them with our sensitive data. Their browser monopoly will insure that the interface for virtually all internet shoppers will be controlled by Microsoft. Their monopolistic might is forcing restrictive marketing of the MSN network product.

Microsoft has a history of pushing ahead with it's own ''standards'' circumventing the international standards committees that help to provide a secure and level playing field. The fact that 99.99% of all viruses and data security threats that exist thrive on Microsoft technology. The holes in Microsoft programs that are left to provide businesses easy marketing opportunities are included at the expense of public privacy and security concerns.

In a marketplace free of the heavy handed monopolist NO customer would opt to expose themselves to the additional risk involved in using Microsoft internet products. Whatever the final solution, it must prevent the continued free reign by this megalomaniacal corporation.

Sincerely,
Stephen J. Townsend
Cottage Grove, MN

MTC–00029260

From: Sandra Helmich
To: Microsoft ATR
Date: 1/28/02 10:17pm
Subject: Microsoft settlement
Attorney General John Ashcroft
US Dept. of Justice
c/o email microsoft.atr@usdoj.gov

Dear Sir Ashcroft:

I am a Microsoft user. I want to say I fully support the recent Microsoft-Department of Justice settlement. It's great Microsoft will not be broken up. However, the lawsuit was too costly and long. The terms agreed upon seem to violate Microsoft's intellectual property rights, by being forced to disclose internal info about the Windows operating system and requiring future design versions making it easier for competitors to promote their products within Windows. Our economic future depends on intellectual innovation and it is to be protected to insure future incentive and financial success. I strongly urge your office to imlement the settlement, as the alternative ..more litigation, will only impact our tech economy and stifle our markets.

Respectfully submitted,
Sandra M. Helmich/signature
cc: Rep. Jeff Flake

MTC–00029261

From: Jerry Schultz
To: Microsoft Settlement
Date: 1/28/02 10:09pm
Subject: Microsoft Settlement
Jerry Schultz
7007 L.5 Lane
Escanaba, MI 49829
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Jerry L. Schultz

MTC–00029262

From: Ryan Bender
To: Microsoft Settlement
Date: 1/28/02 10:10pm
Subject: Microsoft Settlement
Ryan Bender
P.O. box 774
Topeka, IN 46571
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Ryan Bender

MTC–00029263

From: Sarah Carroll
To: Microsoft Settlement
Date: 1/28/02 10:09pm
Subject: Microsoft Settlement
Sarah Carroll
P.O. Box 490
Valders, WI 54245
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Sarah L. Carroll

MTC–00029264

From: Mark MacNeil
To: Microsoft ATR
Date: 1/28/02 10:11pm
Subject: Microsoft Case Comment

DOJ,

I think your case against Microsoft Corp. was a disgrace to the American Legal System. It seems you allowed a group of businessmen from the likes of Sun Microsystems and AOL, who couldn't compete with Microsoft on the field of software design and customer service, and allowed them a chance in a courtroom to do what they could never have done through any work of their own. I use all Microsoft products because of their good design and customer service. I think you should point your legal gun somewhere else...and perhaps you should read Greenspan's work entitled: AntiTrust. Found in Ayn Rands collection of works ''For the New Intellectual''.

Mark MacNeil

MTC–00029265

From: RWB
To: Microsoft ATR
Date: 1/28/02 10:15pm
Subject: Microsoft Settlement

The proposed settlement does not begin to address the market arrogance and bullying behavior which characterized Microsoft's marketing over the past decade. The public destruction of Netscape by giving away it's browser for free and then simply including it in the operating system are just one of many acts which the company has taken to reduce or destroy competition. The beginnings of a sufficient remedy would include requiring Microsoft to cease to offer a browser at all and to agree to never sell a product at less then a competitive product even if they have a minority market share. The agreement not to sell must be adjusted for the effects of ''bundling'' which Microsoft has used not only against Netscape but also WordPerfect and many others.

Rodger Barkus

(formerly Software Association of Oregon board member and the COO of a software company.)

MTC–00029266

From: Diane Collins
To: Microsoft Settlement
Date: 1/28/02 10:09pm
Subject: Microsoft Settlement
Diane Collins
944 Ark 175
Hardy, Ar 72542
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Diane Collins

MTC–00029267

From: Bernard Katz
To: Microsoft Settlement
Date: 1/28/02 10:08pm
Subject: Microsoft Settlement
Bernard Katz
17 Riesling Ct.
Commack, NY 11725–1735
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Bernard Katz

MTC–00029268

From: George Lawrence Storm
To: Microsoft ATR
Date: 1/28/02 10:20pm
Subject: Microsoft Settlement

I am opposed to the Microsoft settlement. If accepted it would penalize those schools involved, greatly reward the monopolistic practices of Microsoft and highly penalize the only creative computer developer left in the US.

As the current settlement stands Microsoft will pay virtually nothing by donating obsolete equipment which has already been written off and donating software that they never would have sold. This settlement places a significant financial penalty on those schools that would be foolish enough to accept this farce. It is a fact that support costs for the windows platform are on the order of ten to one. If we were to accept the notion that this ''donation'' was one billion dollars the schools involved would need to raise ten billion dollars to support the hardware, software and training needed to support it during the very short life remaining in it.

If however a cash fine of one billion was made with that cash going to the purchase of new Macintosh hardware and software those same schools would only need to raise three billion, six hundred million, a bit more than a third the support cost. Additionally the life of the equipment would offer more than twice the longevity of Microsoft's proposed donation. This would further reduce the strain on school budgets by extending the support costs over a five year verses a two-year period of time.

(The factors of 10 and 3.6 are a few years old and need to be researched to see if they have changed recently.) If we are to teach our children the values of honesty and integrity it should be that these values are important. Letting the proposed settlement stand only teaches them that success is based on lies and theft.

If you want to teach justice the only way is to impose the severest of penalties which must include significant jail time for all those involved. Anything less is to reward the criminals involved.

Sincerely,
George Lawrence Storm
George Lawrence Storm
1916 Pike Place / Suite 12 / #441
Seattle, Washington 98101
Telephone: (206) 334—7236
E-mail: keencoyote@earthlink.net

MTC–00029269

From: Wayne Borean
To: Microsoft ATR
Date: 1/28/02 10:20pm
Subject: Microsoft Settlement

The Proposed settlement will have virtually no effect on Microsoft. The settlement is deeply flawed, and needs to be totally recast to have any real and lasting effect on the monopolistic practises of Microsoft Corporation.

Wayne Borean
President
forkliftguy.com

MTC–00029270

From: Sirena Lau
To: Microsoft ATR
Date: 1/28/02 10:22pm
Subject: microsoft settlement
Stella L. Lau
1139 Bacon Street
San Francisco, CA 94134
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The purpose of this letter is for me to go on record as favoring the settlement agreed to by Microsoft and the Justice Department. It is about time that the two sides came to an agreement, and I only hope that this settlement is approved without any delay. Competition in the computer industry is going to benefit greatly from this decision. Microsoft will be producing future versions of Windows that will allow other computer makers and software developers to add their own versions of software that compete with programs included within Windows. They will also be able to remove easily Windows'' software. Companies will now be free to compete with one another, and the quality of software will rise as a result.

This settlement is just what is needed, and I stand behind it 100%.

Sincerely,
Stella Lau

MTC–00029271

From: Patricia Deibler
To: Microsoft Settlement
Date: 1/28/02 10:15pm
Subject: Microsoft Settlement
Patricia Deibler
25742 Cervantes
Mission Viejo, CA 92691–5604
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Patricia Deibler

MTC–00029272

From: Jeff Clearwater
To: Microsoft ATR
Date: 1/28/02 10:22pm
Subject: Microsoft Settlement

Your Honor, Colleen Kollar-Kotelly,

Please do what you can to stop this juggernaut from doing more damage to an already over monopolized industry!

I agree totally with the filing by ProComp regarding the Microsoft ''settlement''. This is a travesty of justice. Microsoft clearly has grossly violated antitrust legislation and has monopolized the market in ways that clearly suppresses innovation and competition in the operating system, browser, and scripting software industries. The filing by Procom says it the best. I reproduce an article with the specifics below.

''This proposed decree is so ineffective that it would not have prevented Microsoft from destroying Netscape and Java, the very acts that gave rise to this lawsuit,'' said Judge Robert H. Bork. ''It is so ineffective in controlling Microsoft that it might as well have been written by Microsoft itself.''

The ProComp filing explained that Judge Kollar-Kotelly must make a truly independent determination of whether the proposed settlement is in the public interest, with the public interest standard defined by the Court of Appeals ruling in this case.

Sincerely,
Jeff Clearwater

Reference Article:

Judge Bork and Judge Kenneth W. Starr were among those signing a Tunney Act filing on the settlement submitted today by the Project to Promote Competition and Innovation in the Digital Age (ProComp), a leading opponent of the settlement.

The ProComp filing also included an affidavit critical of the proposed settlement from Nobel Prize-winning economist Kenneth J. Arrow, a professor at Stanford University, who had supported the 1995 consent decree between the federal government and Microsoft.

The ProComp filing explained that Judge Kollar-Kotelly must make a truly independent determination of whether the proposed settlement is in the public interest, with the public interest standard defined by the Court of Appeals ruling in this case.

''Because this proposed settlement does not follow the mandates of the Court of Appeals judgment, it must be rejected. Neither the Department of Justice or the District Court have the constitutional authority that does not satisfy the Court of Appeals ruling,'' Starr explained. ''This proposed settlement not only fails to meet the Court of Appeals standard, it doesn't even purport to do so. It is simply based on an inappropriate legal standard, and we don't believe it satisfies even this modest standard.''

In his affidavit, Professor Arrow said the new proposed settlement between Microsoft and the Department of Justice fails to eliminate the benefits to Microsoft of its illegal conduct, fails to restore competition in the market, and fails to strengthen the possibilities of competition and deter the exercise of monopoly power now and in the future.

Arrow noted that the Court of Appeals ruled that Microsoft violated federal antitrust law by impermissibly maintaining its monopoly through anticompetitive actions against Netscape and Java. ''Given that finding, the remedies in this case should eliminate the benefits to Microsoft of its illegal conduct; should restore, if possible, the possibility of competition in operating systems; and should not allow Microsoft to protect its illegally maintained monopoly from current and future competition in related markets, such as server operating systems and Web services,'' Arrow said in his affidavit. ''In my opinion, the PFJ (proposed final judgment) fails to accomplish these objectives.''

Arrow said the market position that Microsoft has today—with 92 percent of the PC operating systems market and 91 percent of the browser market—''makes it difficult for any set of conduct remedies to lead to significant middleware competition. Neither the PFJ nor any other set of conduct remedies can re-create the technological disruption or competitive head start that existed before Microsoft acted illegally.''

ProComp's Tunney Act filing also notes that the proposed settlement fails to adequately deal with competitive issues that will determine the future of the software industry, and does not contain the safeguards needed to prevent Microsoft from extending its monopoly into more markets.

''The proposed decree hardly deals at all with Microsoft's likely future anticompetitive conduct. Microsoft's prodigious market power is now directed at the next threat to the Windows platform— applications and services provided via the Internet and other networks—not the Netscape/Java threat of 1995–99,'' according to the ProComp filing, which was signed by Bork, Starr, ProComp President Mike Pettit and others. ''Microsoft has destroyed those revolutionary technologies that are a source of operating systems competition and has moved on to other areas that the proposed decree all but ignores.''

The ProComp Tunney Act filing notes that the proposed settlement's strong-sounding provisions are often undercut by other sections that give Microsoft broad discretion in interpreting the agreement. For example, the proposed settlement permits Microsoft to design and bundle its products in different ways to evade the disclosure requirements by giving Microsoft ''sole discretion'' to decide what software is part of a ''Windows Operating System Product.''

''The API disclosure provisions are riddled with numerous deficiencies that render them ineffective in promoting competition,'' the ProComp filing said. ''These are not loopholes, but triumphal arches that allow Microsoft to proceed uninhibited by the antitrust laws.'' Judges Bork and Starr and the others supporting the ProComp filing urged Judge Kollar-Kotelly to defer a decision

on the proposed decree until after the hearing on the stronger remedies proposed by the nine states which have objected to the proposed settlement.

''The proposed decree supported by Microsoft and the Department of Justice is hopelessly vague and inherently unenforceable,'' Starr said. ''We believe that divestiture remains the preferable and most effective remedy for Microsoft's antitrust violations.''

Jeff Clearwater
Ecovillage Design Associates
2525 Arapahoe Ave, Suite E4, #280
Boulder, CO 80302
303–546–0460,
clrwater@earthlink.net
jeffc@ic.org

MTC–00029273

From: Marilyn Laurie
To: Microsoft Settlement
Date: 1/28/02 10:15pm
Subject: Microsoft Settlement
Marilyn Laurie
6520 Walden Pond Ln. SE
Southport, NC 28461
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Marilyn K. Laurie

MTC–00029274

From: John G. Ata
To: Microsoft ATR
Date: 1/28/02 10:24pm
Subject: Microsoft Settlement

This letter is written to urge the acceptance and adoption of the proposed settlement between the Department of Justice, Microsoft and nine states. This agreement addresses perceived concerns of ''monopolistic practices'' while allowing Microsoft to continue to developing software that is useful. The fact that the Department of Justice and 9 states have signed on shows that it has merit. No alternative has been shown to be better in the long run. Those pushing for such alternatives are those who truly wish to put Microsoft out of business which is not the best course of action for either the industry or our country in the long run. Hopefully, cool heads will prevail and the rhetoric of those who wish for harsher sanctions can be seen for what they are.

Sincerely,
John G. Ata

MTC–00029275

From: rbput.co@netzero.net@inetgw
To: Microsoft ATR
Date: 1/28/02 10:21pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen. Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Raymond L. Put
10845 Link Rd.
Fountain, CO 80817–3380

MTC–00029276

From: CHRISTOPHER A PETERS
To: Microsoft ATR
Date: 1/28/02 10:24pm
Subject: Microsoft Settlement

Dear Sirs,

I am writing to express my belief that the proposed settlement of the Microsoft anti-trust case is too weak and should be rejected by the Court. The remedies proposed would not, in my opinion, go nearly far enough to restrain the company from it's proven monopolistic behaviour. I write this as an IT professional with over 10 years of experience in the field.

I am also a conservative who believes in limited government regulation. However, in this case, I believe that it is in the best interest of the U.S. taxpayers that harsher penalties be handed down to Microsoft. By leveraging its'' near-monopoly on desktop operating systems, Microsoft has damaged competition and reduced consumer choice.

In my opinion, the settlement announced in October by the nine states and the Dept. of Justice with Microsoft would be nothing more than a slap on the wrist. A proper remedy would begin with requiring that Microsoft ''unbundle'' its'' Web browser from the underlying operating system and force the company to release the source code for versions of its'' popular Office suite of programs to the general public. Such a remedy would begin to allow more competition in the marketplace.

I do not, however, believe that the company should be broken up.

Sincerely,
Christopher A. Peters
(Microsoft Certified System Engineer)

MTC–00029277

From: Shannon Littlefield
To: Microsoft Settlement
Date: 1/28/02 10:21pm
Subject: Microsoft Settlement
Shannon Littlefield
202 W Lockesburg Street
Nashville, AR 71852
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Shannon Littlefield

MTC–00029278

From: David Rose
To: Microsoft Settlement
Date: 1/28/02 10:17pm
Subject: Microsoft Settlement
David Rose
2721 NW Cascade
East Wenatchee, Wa 98802
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a

serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

David M. Rose

MTC–00029279

From: Jeffrey Horn
To: Microsoft ATR
Date: 1/28/02 10:26pm
Subject: Microsoft Settlement

United States Justice Department:

As an assistant professor of Computer Science, with a Ph.D. in Computer Science and four years of industry experience as a computer networking consultant, it is my opinion that the currently proposed settlement between Microsoft and the US Justice Department is fundamentally flawed. As a researcher and developer in the field of computers, I have seen first hand, time and again, how Microsoft has used its monopoly status to stifle competition and innovation. It is clear to me that Microsoft, in its corporate philosophy, is not interested in innovating, but rather it seeks power and control (and profit). I won't bother with the details of examples, as they have been well-documented, but I will simply list some examples: the elimination of the browser as an alternative desktop, the attempt to eliminate the platform-independent programming language Java (which supports OS independent processing), the attack on the open-source model of software development, etc.

It is my considered opinion that without Microsoft, or at least without its monopolistic influence, the computer industry, the user-computer interface, and indeed our entire understanding of the how computers can help people, would have progressed much further than we actually have so far. I strongly recommend a restructuring of the corporation, and not simply punitive measures. Microsoft has demonstrated repeatedly that it cannot change its corporate culture. Instead, the operating system itself must be made open to support of third-party products, to include new paradigms of computation. Microsoft must not be allowed to keep the entire software ''pie'' to itself, as it cannot be trusted to do anything beneficial with it.

Thank you for your attention.

Jeffrey Horn, Ph.D.
Assistant Professor of Computer Science
Department of Mathematics and Computer Science
Northern Michigan University
Marquette, Michigan 49855
CC:jhorn@nmu.edu@inetgw

MTC–00029280

From: Alix Barstow
To: Microsoft ATR
Date: 1/28/02 10:24pm
Subject: Microsoft Settlement

1) Thank you for bringing this suit on my behalf as an American!

2) I am very concerned that the final settlement be effective, not just in punishing Microsoft for past wrongs, but in creating an environment that hinders future wrongdoing by truly enabling vigorous competition in the middleware as well as operating systems markets. Microsoft has a near monopoly with its Microsoft Office suite and I would like to see stronger competition for these programs in particular.

MTC–00029281

From: Matt Gainer
To: Microsoft ATR
Date: 1/28/02 10:26pm
Subject: Microsoft Settlement

To whom it may concern,

First, even as I type this e-mail in Microsoft Entourage I want to thank you for pursuing an aggressive action against the Microsoft corporation. There is no disputing the quality of Microsoft's products, and the extent that we have come to depend on them; but how Microsoft positioned itself as a leader is definitely worthy of debate, and hopefully critical action as well.

Thank you for the opportunity to share the following brief story with you: In 1997 I finished Graduate school in Los Angeles and accepted my first part time teaching job at a small, private two-year catholic college located in Palos Verdes, California.

I was the first lecturer hired to teach Digital Imaging in the school's new computer lab. From what I understand, the main computer lab, along with the college's central server were at least partially (perhaps completely) funded by Microsoft...with the agreement that non-microsoft software was not allowed on any of the machines if a microsoft brand software existed for a particular task. For instance, I was not allowed to install netscape on any of the machines since Internet Explorer could perform the same tasks.

Other teachers complained that they were also forced to use microsoft products when there were better alternatives available. The issue was not money...since some of the software, like netscape, were available as free downloads. The reason that we were not allowed to use non microsoft product to teach with was because microsoft had defined the parameters of what could be done in the lab when they donated the equipment.

I'm not sure if the agreement with microsoft was legal or not, but it made for an extremely frustrating teaching experience, and severely limited the ways in which we could use the computers in our lab.

Thanks for listening,

Matt
Matt Gainer
(323)660–2846

MTC–00029282

From: hmastran@neo.rr.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:27pm
Subject: Microsoft Settlement

Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Henry Mastran
400 Mark Drive
Tallmadge, OH 44278

MTC–00029283

From: Susan Dillard
To: Microsoft ATR
Date: 1/28/02 10:30pm
Subject: Microsoft Settlement

11720 81st Avenue NE
Marysville, WA 98271
January 23, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 205301

Dear Mr. Ashcroft:

Although not a member of technology industry, I would like to voice my thoughts on finalizing the Microsoft anti-trust case. To claim that Microsoft is operating as a monopoly, with apparently so many competitors available that they can bring on this lawsuit, comes off as an overblown attack on a company that has succeeded through consumer support, not monopolistic practices.

As I've seen in the telephone industry, there are many more monopolies causing much more harm to the consumer than Microsoft has ever done. Now that a settlement has been reached, the conditions seem highly favorable to the Justice Department, even surpassing some of the initial complaints. So, with so many other distractions of greater importance on the government's plate, it would seem time to finally end this process.

With regular oversight of a technical committee to ensure compliance, Microsoft

will provide ample opportunities for their rivals to succeed with this deal, including more flexible configuration of the Windows platform, access to its internal source code and licensing of its intellectual property.

Please move forward with this process and allow these companies to go compete in this new environment without further intervention.

Sincerely,
Susan Dillard
CC:fin@mobilizationoffice.com@inetgw

MTC–00029284

From: CHARLES DELANEY
To: Microsoft Settlement
Date: 1/28/02 10:20pm
Subject: Microsoft Settlement
CHARLES DELANEY
1219 GLENRIDGE LANE
ELKHORN, WI 53121
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
CHARLES R. DELANEY

MTC–00029285

From: Tanuj T
To: Microsoft ATR
Date: 1/28/02 10:30pm
Subject: Microsft Settlement

This is too easy a way out for Microsoft, predominantly because Microsoft has so much money, the charges Microsoft need to pay to settle its monopoly won't even scratch the company. This is meaningless because large companies will continue to get monopolies and pay them off without any problems. The settlement needs to go farther than that, to prevent large companies from getting away with monopolies easily. Just like Carnegie's vertical monopoly on steel, he had made so much money, he still had his monopoly on steel.

What should be done is Microsoft should break up into two competing companies. Thus they will not be able to form trusts more overtly than what they're doing now. Another solution would be to force Microsoft to have two versions of Windows available; one with all the features and software it has now, and one with just the operating system itself. However, I believe this aspect is not an issue because Microsoft just has a better product. The Operating System doesn't prevent one from installing Netscape or anything of that nature, it's equal opportunity for all ventures.

In addition to it being too easy for large companies to get away with monopolies, other companies also bundle up their software, such as Apple. So in reality they are also cutting off the market because Apple requires you to purchase their software and hardware because it won't work any other way.

For example, the Mac Operating System obliges you to also buy a Mac printer, Mac compatible word processors, Mac games, Mac compatible browsers, etc.. They are cutting off the market from Microsoft and other companies, who can't put too much software on it because it's not compatible or else pay Apple to get it on. Because Microsoft doesn't want to waste their money, they just place it on their own OS. It's exactly the same idea: Microsoft bundles up Office and IE, just the same way Apple bundles up their software. However, if Apple receives the lawsuit, they will suffer a lot more than Microsoft, who won't get affected by the lawsuit because they have so much money.

MTC–00029286

From: ALEXANDER R KOBIEC
To: Microsoft ATR
Date: 1/28/02 10:20pm
Subject: microsoft settlement

REQUEST THAT MICROSOFT SUIT BE SETTLED IN A TIMELY AND FAVORABLE OUTCOME IN MICROSOFT'S FAVOR.

I AM A MICROSOFT USER AND FEEL THAT THEIR PRODUCTS ARE FAIR AND REASONABLE. TO RULE AGAINST THEM WOULD STIFLE INNOVATION. I FEEL VERY STRONGLY IN MICROSOFT'S FAVOR.

SINCERELY,
ALEXANDER R. KOBIEC

MTC–00029287

From: Donald Kochanek
To: Microsoft Settlement
Date: 1/28/02 10:25pm
Subject: Microsoft Settlement
Donald Kochanek
757 W. 406 S.
Marion, IN 46953
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Donald R. Kochanek

MTC–00029288

From: Janet Gillette
To: Microsoft Settlement
Date: 1/28/02 10:24pm
Subject: Microsoft Settlement
Janet Gillette
3419 El Serrito Dr
Salt Lake City, UT 84109
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Janet W. Gillette

MTC–00029289

From: Dora Cividino
To: Microsoft Settlement
Date: 1/28/02 10:24pm
Subject: Microsoft Settlement
Dora Cividino
14457 Indian Springs Road
Penn Valley, CA 95946
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

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Thank you for this opportunity to share my views.

Sincerely,
Dora Cividino

MTC–00029290

From: Aleks Totic
To: Microsoft ATR
Date: 1/28/02 10:32pm
Subject: Microsoft Settlement
To: The Antitrust Division

My name is Aleksandar Totic. I am writing to comment on the proposed Microsoft settlement, and document anti-competitive MS behavior that occurred in October 2001. I believe that the behavior I've documented clearly demonstrates that MS will inconveniences the consumer if it helps to protect its monopoly.

In ''Competitive Impact Statement'', you claim that the settlement will ''restore the competitive threat that middleware products posed''. I do not believe that the settlement will achieve this goal. This is because:

A)

There are many exceptions in the settlement that Microsoft can use to hinder competition:

Section III.D

Why make interoperating with Windows the sole purpose of the disclosure? MS could use this to deny Linux developers access to the APIs. The APIs should be public, without any strings attached. Section III.H.2 (Windows may invoke MS Middleware) I bet that the line ''designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement'' can be used to disqualify any middleware MS disagrees with.

B)

The only real threat to MS was that the web would make OS irrelevant. This can only happen if there is browser competition. With IE, MS will make sure that surfing the web on Windows is the only good web experience.

That's all as far as my complaint about the settlement goes. Now here is my documentation of Microsoft continuing to clean up any remaining competition in browser wars in October 2001.

DOCUMENTATION OF ANTI-COMPETITIVE BEHAVIOR, OCTOBER 2001

I was one of the founding engineers of Netscape, employee #11, followed Marc from Illinois. I was one of the authors of the Plugin API for Netscape, back in 95.

Microsoft cloned our API right away in IE, and then removed in October of 2001 as a part of Service Pack 2 for IE5.5/IE6. This caused all Plugin API plugins to stop working, including QuickTime. Some of the Apple's engineers spent a few sleepless nights, frantically rewriting the Quicktime plugin to support ActiveX.

To understand how sinister this move was, you need to know a bit about the Plugin API. It is a standard by which 3rd party developers can extend browser functionality, allowing movies, complex animations to be played in web pages. Flash, RealPlayer, and Quicktime are examples of plugins. The Plugin API was cross-platform, and was widely used, implemented in other browsers, such as Opera.

Microsoft cloned Netscape's Plugin API under competitive pressure in IE 2, and also created a competing standard called ActiveX. ActiveX of course was available only on Windows, and no other browsers ever supported it.

ActiveX and Plugin API were competing standards. Despite MS much more extensive support for ActiveX, Plugin API was widely used, because it was simpler to use, and cross-platform.

When MS removed it, movies stopped playing for millions of movie watching consumers that relied on Quicktime. In one stroke, MS killed PluginAPI, and hurt Quicktime, a competitor of Movie Player. The move inconvenienced the consumers, who had to go to Quicktime site to upgrade or start using Microsoft movie, developers. The only benefit was to Microsoft, to lock people into using IE. And this occurred in October 2001, after they were found guilty.

Microsoft statement about removing the API can be found at: ''Netscape-Style Plug-ins Do Not Work After Upgrading Internet Explorer'' http://support.microsoft.com/support/kb/articles/q303/4/01.asp The list of plugins supporting the Plugin API: http://browserwatch.internet.com/plug-in/plug-in-big-ah.html

Later, they also decided not to ship Java, further destroying the cross-platform promise of the web.

As one of the original visionaries of the web that transcends Operating Systems, this makes me very mad. I applaud Microsoft winning through quality and innovation, but they keep pursuing API lock-in and monopoly as their favorite means of competition.

If you need any further help, I'd be happy to fly out to Washington, testify, do more competitive analysis, code review, etc.

Thank you for your time,
Aleksandar Totic
2023 Pacific Avenue
San Francisco, CA 94109

MTC–00029291

From: Susancrawford@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:33pm
Subject: Microsoft Settlement

As a user of Microsoft's products, I object to the company being punished for its success. The suit was brought by Microsoft's competitors, who were not able to produce a product as good as Microsoft's. Business must be allowed to function in a free society, and to function competitively.

The consumer always has the choice to buy from Microsoft, or not. Noone is being cooerced. I stand for Microsoft's right to produce the best product it can. And it's right to own that which it produces.

Susan Crawford
Silver Spring, Md.

MTC–00029292

From: Ronald Hall
To: Microsoft Settlement
Date: 1/28/02 10:29pm
Subject: Microsoft Settlement
Ronald Hall
PO Box 2020
Hew Hartford, NY 13413
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Ronald D. Hall

MTC–00029293

From: Lester Hixson
To: Microsoft Settlement
Date: 1/28/02 10:27pm
Subject: Microsoft Settlement
Lester Hixson
173 San Marcos Dr
Lodi, CA 95240
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Lester N Hixson

MTC–00029294

From: Frank West
To: Microsoft ATR
Date: 1/28/02 10:37pm
Subject: Microsoft Settlement

Just a short comment.

Why pick on Microsoft when the real ''monopolies'' consist of Big Government's overstuffed ''Bureaucracies''! Of course, all the shysters in congress need something to turn the attention away from themselves since ''statesmanship'' is so lacking in this modern age.

F T West
Elyria, OH

MTC–00029296

From: brad
To: Microsoft ATR
Date: 1/28/02 10:35pm
Subject: Microsoft Settlement
Brad Smith
5011 Dixie Highway NE, Suite A-308
Palm Bay, Florida 32905
January 21, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I want to take a moment to express my support for the settlement reached between Microsoft and the Department of Justice in November. I believe the settlement is reasonable and fair to all sides involved in this case.

The agreement requires significant changes in Microsoft's practices. For example, Microsoft will have to design future versions of Windows that provides a mechanism to make it easy for computer makers, consumers and software developers to promote non-Microsoft software within Windows. This will give consumers who do not like Microsoft products the freedom to change their configuration at any time.

And to assure compliance with the agreement, Microsoft has agreed to be monitored by a Technical Committee formed by the Justice Department.

As a frequent user of Microsoft products, I know firsthand of the innovation Microsoft has brought to consumers over the years. This settlement allows Microsoft to shift their focus back to innovation and away from litigation. This alone makes the settlement definitely in the public interest.

Thank you for the opportunity to give my public comment on this matter. Hopefully with your office's continued support of this settlement, a final conclusion can be reached in the near future.

Sincerely,
Brad Smith

MTC–00029297

From: warren (038) florence schreiner
To: Microsoft ATR
Date: 1/28/02 10:37pm
Subject: Microsoft settlement

I am a relatively newcomer to the PC scene (about five years) and have followed the judicial proceedings re the charges involving monopolistic practices on the part of Microsoft. As a user of windows 95, 98 and soon XP Home Edition I have only the highest admiration for the products Microsoft has put out and cannot believe the country would benefit from the Draconian measures some have called for. The settlement now proposed between the US government and Microsoft seems to me to be entirely reasonable from my standing as a consumer. When I had some dissatisfaction with the browser and email programs bundled with W 95 I switched to the Navigator software. Anyone was and is free to do the same. The sane was true of the McAfee virus protection software from which I switched to Symantec's. Since then Microsoft has improved its products and in XP I'll rely on Explorer and Contact Express. Microsoft maintains an upgrading system and is responsive to complaints about bugs in its product by providing free patches. I urge you to proceed and finalize the settlement along the lines as I understand them from media reports.

Respectfully yours,
Warren C. Schreiner
2351 Stag Run Blvd
Clearwater, FL 33765
727 791 1179

MTC–00029299

From: Vincent Papa
To: Microsoft Settlement
Date: 1/28/02 10:32pm
Subject: Microsoft Settlement
Vincent Papa
1313 Mockingbird Ln.
Mineola, ny 11501
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Vincent Papa

MTC–00029300

From: Huland B. Gardner
To: Microsoft Settlement
Date: 1/28/02 10:33pm
Subject: Microsoft Settlement
Huland B. Gardner
4300 Tartt ''s Mill Rd
Wilson, NC 27893–7927
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views. Let this stand!!! Enough is ENOUGH !!!

Sincerely,

Huland B Gardner

MTC–00029301

From: Larry Young
To: Microsoft ATR
Date: 1/28/02 10:40pm
Subject: Microsoft Settlement

Please settle the Microsoft case based on the terms agreed between the Justice Department and Microsoft.

I believe this case has always been about Oracle, Sun and AOL not wanting to compete in the marketplace. These companies would rather stifle competition by wasting court time. For sure there are some actions on Microsoft's part that can be altered, such as publishing all of the API's to the development community. Making sure Microsoft treats all companies the same and not withholding information to competitors, another issue that should be addressed and is addressed in the Government agreement with Microsoft. However many of the same policies and procedures are practiced by the companies that initially brought attention to Microsoft. Oracle is now bundling their software and is attempting to prevent the Oracle user from installing products not sold by Oracle. Sun wants to tie all of its products to Java. AOL refuses to open their Instant Messenger software to other companies. How can AOL accuse Microsoft an antitrust violator when AOL may also be an antitrust violator? Now AOL wants all of its users to stay on servers owned and maintained by AOL instead of having them surf the Internet.

While Microsoft is attempting to promote sites that have a relationship with Microsoft they are also big defenders and promoters of the Internet. If AOL has its way the Net will die on the vine the way Main Street withers when a Wal-Mart comes to town. Please allow Microsoft to remain strong to prevent AOL from destroying the open commerce that is thriving today on the Net. Oracle, Sun and AOL are laughing while the courts enhance their self interest by at best stifling and at worse destroying a competitor they wish not to compete with in the open market place.

Palm

Palm believes Microsoft is destroying their business. Consider that initially 3Com refused to create a separate company thereby forcing the hand of the original developers to leave the company. After the original developers left and started Handspring, 3Com created the separate company. Now with the loss of prime talent, Palm has languished. By all accounts it has been the misdirection and lack of creativity of the Palm management that has allowed Microsoft to take some market share and create a viable product. Why should Palm be allowed to be the only product in the market? If this economy can support more than one automobile company, it can have the Pocket PC alongside the Palm.

Netscape

Netscape lost the browser war because they did not have the better product. It doesn't get any simpler than that and now AOL wants treble damages for making a product that could not compete and was allowed to languish for years without any effort directed at fixing the product. Where is the justice?

FTP Software

If any company should have brought Microsoft to court it is this one. When Microsoft bundled TCP/IP software in the operating system this company could not survive. Today it is unthinkable to consider that an operating system can exist with out TCP/IP services. In fact the UNIX operating systems had this before Microsoft, suggesting that this was indeed a service that belonged in the operating system. In the early years Microsoft didn't even have memory management. That also was provided by a third party. In this case Norton, now owned by Symantec, has been able to morph into other areas. Symantec is a company that knows how to create software the market needs without running to the courts. The point I am trying to make is that government and the courts should not micromanage the bundling of products in the operating system. If it was done years ago then memory management and TCP/IP services would not have become a part of the operating system. This would have been an incredible injustice to Microsoft and the consumer. If we cannot see into the future or look at the present to determine if the customer is damaged then we should look at the past. Companies like Symantec would not have become a strong competitor. The operating system capable of supporting consumers and the business community would not exist. The computer would still be behind glass walls, out of reach of the consumer. I only suggest that Microsoft be required to either sell a feature as a standalone product or be aloud to include the feature in the operating system.

The number of software companies that have formed and flourished because of Microsoft is probably greater than any other company. The number of Microsoft managers and developers that have left to form their own companies is greater than any other company. Microsoft has not only brought computing to the masses but enabled an industry to become world class. These actions have enabled consumers to realize a marketplace rich in products and services that would not have happened if Microsoft did not exist. All Sun and Oracle want to do is sell expensive products that only companies can afford. Sun, Oracle and AOL do not want to compete fairly in the marketplace. AOL won't open their messenger product. Oracle bundles and is creating an operating system under their products. How can Oracle justify that type of bundling? All these companies want to do is overcharge the consumer and create products that have no competition. How does wounding Microsoft help the customer under these circumstances?

I am not an Attorney and therefore I can not even consider the possibility of forming my thoughts into a cohesive legal brief. I therefore appreciate the chance to express my feelings about the case rather than crafting a legal argument.

Thank you.

Larry Young

MTC–00029302

From: Myron Schreiner
To: Microsoft Settlement
Date: 1/28/02 10:36pm
Subject: Microsoft Settlement
Myron Schreiner
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Myron M Schreiner

MTC–00029304

From: Ron Peterson
To: Microsoft ATR
Date: 1/28/02 10:42pm
Subject: Microsoft Settlement

As Microsoft has already been found guilty of abusing it's monopoly power, I shall confine my comments to the remedy phase of the trial. At minimum, I hope the court can restore competition to those markets where Microsoft's abuse of their operating system monopoly has given them unfair advantage. This would be a minimal remedy, in the sense that it restores things to the way they should be, without imposing any punitive damages for Microsoft's illegal conduct. Speaking as a career systems manager, I live by a commonplace aphorism: ''Buy computers for the applications''. Not for the packaging. Not for the fancy hardware. No,

not for the operating system. For the ways they extend people's capabilities. For the applications.

These days, that doesn't leave me much choice. Like Microsoft, I value the ''freedom to innovate''. I also believe this freedom should extend to everyone, not just Microsoft. I don't have that freedom. Microsoft's competitors don't have that freedom either.

I buy computers that will most cost effectively run Microsoft operating systems and Microsoft applications, because I must. If I do not, the people I serve will not be able to effectively communicate with collegues, clients, patrons, vendors, friends, and family. Microsoft's dominance in the applications arena hinges on its proprietary data formats. I cannot reasonably ask my patrons to run applications that cannot faithfully, reliably, and consistently both read and write Microsoft documents. However, applications that meet these criteria do not exist, because Microsoft controls the format, but does not divulge the operational details. If a competitor comprehends the format, Microsoft changes it. Microsoft gets an upgrade fee; the competitor starts over.

There is only one way to restore competition to the market for computer applications. Microsoft *must* be compelled to divulge its applications'' file formats. Without this restriction, Microsoft will continue to monopolize the market for computer applications indefinitely. Considering that these applications intrude into almost all aspects of our daily lives—even, as I'm sure you are aware, into the very operation of government—this situation *must* end.

Additionally, Microsoft must be compelled to divulge the format of its network protocols. Microsoft understands full well that compatibility is the key to the kingdom. If they control proprietary de-facto standards for file formats and networking protocols, they control everything. Please don't be mislead by so-called ''compromise'' positions advanced by Microsoft that would open their ''API's'' or Application Programming Interfaces. This position is simply a ruse to promote further adoption of Microsoft applications.

If you compell Microsoft to open their file formats and their networking protocols, you will invigorate the marketplace. You will compell competition on the merits, rather than binary compatibility. You will restore the market to where it should have always been. And you will establish a worthy precedent for how to deal with similar future abuses of monopoly power in the software marketplace.

Best wishes
Ron Peterson
Network & Systems Manager
Mount Holyoke College
http://www.mtholyoke.edu/rpeterso

MTC–00029305

From: Dave Stewart
To: Microsoft ATR
Date: 1/28/02 10:43pm
Subject: Microsoft Settlement

Attached please find the comments of RealNetworks, Inc. addressing the Revised Proposed Final Judgment filed by Microsoft, the Department of Justice and certain plaintiff states.

In the event you have any questions or problems relating to the transmission of this document, please call Dave Stewart at (206) 892–6122.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff, v. Civil Action No. 98–1232 (CKK)

MICROSOFT CORPORATION,

Defendant.

STATE OF NEW YORK, et al.,)

Plaintiffs, v. Civil Action No. 98–1233 (CKK)

MICROSOFT CORPORATION,

Defendant.

COMMENTS OF REALNETWORKS, INC. ON THE REVISED, PROPOSED FINAL JUDGMENT SUBMITTED BY MICROSOFT CORP., THE U.S. DEPARTMENT OF JUSTICE AND CERTAIN PLAINTIFF STATES DATED: JANUARY 28, 2002

I. INTRODUCTION

The United States Court of Appeals for the District of Columbia Circuit has held that, over the last seven years, Microsoft has engaged in a broad range of anticompetitive conduct seeking to stifle the development and distribution of innovative middleware technologies. Microsoft's actions have been directed at entrepreneurial competitors that have, through innovation and ground-breaking competition, invented new products, such as internet browsers, electronic mail, instant messaging, digital imaging, digital media and voice recognition, that have given rise to entirely new industries and new sources of consumer welfare. By imposing an effective remedy to curb Microsoft's anticompetitive abuses, this Court can help ensure that the varied markets for innovative middleware products remain fertile ground for competition and innovation.

Driven by a desire to maintain the dominance of its operating system monopoly, Microsoft has, as the trial court's factual findings and the Court of Appeals' opinion demonstrate, consistently used its monopoly power in a manner that harms consumers and competition. By manipulating the design of its operating system and its own middleware products, Microsoft has effectively denied personal computer manufacturers (''OEMs'') the ability to choose whether or not they want to include Microsoft middleware products on the computers they sell and similarly denied consumers the ability to remove such software from the computers they buy. By imposing broad, exclusionary licensing restrictions by fiat, Microsoft has denied OEMs the opportunity to configure their personal computers in the way they choose, being required instead to favor Microsoft's middleware products over those offered by competitors. By entering into exclusive contracts with a broad range of parties, such as Internet Access Providers (DIAPsÑ), Internet Content Providers (DICPsÑ), Independent Software Vendors (DISVsÑ) and Independent Hardware Vendors (DIHVsÑ), Microsoft has to a significant extent foreclosed the distribution of competing middleware products. At every step of this process, Microsoft has wielded its monopoly power to threaten, coerce and retaliate against parties that resist its demands.

As a result, Microsoft has effectively denied consumers the choice of buying a personal computer that is not laden with Microsoft middleware products. This harms not only today's computer users, but tomorrow's purchasers of personal computers, cellular telephones, personal digital assistants, digital home entertainment centers, set-top boxes, and game consoles, all of whom may have their choices substantially limited if Microsoft's anticompetitive curbs on innovation are not constrained today. It is long settled that such broad findings of liability demand even broader, forward-looking remedies designed to prohibit Microsoft from continuing its anticompetitive acts and finding new ways to hinder the growth of other innovative middleware products. The failure of the last consent decree agreed to between Microsoft and the Department of Justice (DDOJÑ) in 1995 serves as a stark reminder of the waste of judicial resources and harm to competition that results from a narrow, backward-looking remedy. Neither consumers nor competition will be served through imposition of yet another flawed, ineffective remedy that will make the next antitrust suit a foregone conclusion.

Unfortunately, the Revised Proposed Final Judgment offered by Microsoft, the DOJ and certain states (''RPFJ'') fails to heed the all-too-recent lessons of history. As discussed herein, the contours of the RPFJ reflect the concessions required to gain Microsoft's agreement rather than the safeguards required to constrain Microsoft's anticompetitive conduct. The loophole-laden RPFJ is full of exceptions and ambiguities that will not only fail to terminate Microsoft's anticompetitive conduct, but will ensure that extended judicial proceedings will be required to clarify, if not enforce, its provisions.

For the reasons set forth below, RealNetworks respectfully submits that entry of the RPFJ would not be in the public interest.

II. REALNETWORKS AND THE DIGITAL MEDIA MARKET

RealNetworks, which was founded in Seattle, Washington in 1994,[1] is a pioneer in the development of digital media technology and services that enable people to create, deliver, discover, and play digital audio and video content over the Internet and other networks, both through downloading and through a method RealNetworks developed called ''streaming.'' Streaming allows digital media files to be compressed and broken into packets, then delivered and decompressed seriatim, so that consumers can enjoy uninterrupted, real-time broadcasts over the Internet. For example, following the events of September 11, 2001, CNN streamed its newscast via the Internet 24 hours a day to

[1] RealNetworks was originally named Progressive Networks. It changed its name to RealNetworks in September 1997.

provide people with immediate access to the breaking news from their desktops. Innovation in the market for media players has consistently been driven, not through integration of functionality into operating systems, but by independent developers creating a new market for sophisticated digital media technologies with robust and integrated features and functions. RealNetworks developed the first streaming media player and the first streaming media server in 1995. Since then, RealNetworks has continued to lead innovation in the digital media delivery market, consistently bringing industry-leading innovations—such as a built-in radio tuner, delivery of stereo audio at 28.8 kbps modem speeds, bookmarking of favorite streams, links to media programming, support for animation, and automatic updating and just-in-time installation of codecs—to consumers ahead of Microsoft. Rather than being a source of innovation, Microsoft's commingling of its media player into its operating system has constituted a means by which it has sought to suppress, rather than spur, innovation and competition. RealNetworks' technology falls squarely within the Court of Appeals' definition of middleware as ''software products that expose their own APIs,'' or Application Programming Interfaces.[2]

RealNetworks makes available software development kits to enable software developers to build applications and extensions using RealNetworks' technologies to create, deliver and playback digital media. Over 500 ISVs are developing applications using RealNetworks SDKs and websites that provide access to content in RealNetworks' RealAudio and RealVideo formats utilize RealNetworks' middleware. Microsoft competes with RealNetworks in seeking to convince software developers and content providers to build applications using their respective technologies. Applications created using RealNetworks' technology include news broadcasts, distance learning, financial reporting, security for streamed and downloaded content, radio broadcast services, music subscription services, video-on-demand services, web conferencing, e-commerce services and more. One need only look as far as the extensive use of RealNetworks' technology in the pervasive Internet coverage of the events of September 11th to see how important and pervasive such technologies are becoming.

alNetworks offers a universal platform designed to provide the highest quality digital media creation, delivery, playback and security experience across multiple operating systems, transport technologies, media formats and digital devices. This RealSystem technology works on over 20 different operating systems (e.g., Unix, Linux, Windows, Solaris, AIX, HP/UX, Symbian), delivers and plays over 50 different formats or datatypes (e.g., MP3, MPEG-1, MPEG-2, MPEG-4, Quicktime, Macromedia Flash, RealAudio, RealVideo), and works with a wide variety of digital devices (e.g., personal computers, Sony PlayStation2, Hewlett Packard's Digital Entertainment Center, Nokia cell phones, portable music players and personal digital assistants). Applications built using RealNetworks' technology are operating system independent, so that consumers, content providers, businesses, network operators, and others using such applications do not need to install Windows operating systems on either their personal computers or on the servers that deliver media.

The opportunities for digital media are enormous. The current U.S. market for audio and visual media amounts to over $200 billion per year.[3]

Current estimates for spending in the streaming digital media sector alone exceed $10 billion by 2010.[4]

The pace of innovation and adoption of digital media is rapidly increasing as more content is digitized, more consumer electronics equipment supports digital formats and broadband growth continues to accelerate. By 2007, there will be an estimated 120 million streaming media users in the U.S. alone.[5]

There are over 10 million broadband customers in the U.S., a number expected to grow to over 35 million by 2006.[6]

Broadband use is important because it greatly improves and facilitates streaming media resulting in significantly higher streaming media usage rates.[7]

III. THE COURT HAS BROAD AUTHORITY TO ENSURE THAT THE REMEDY IMPOSED PROHIBITS MICROSOFT FROM AGAIN LIMITING THE DEVELOPMENT OF MIDDLEWARE IN AN ILLEGAL MANNER.

In affirming the trial court's holding that Microsoft illegally maintained its operating system monopoly, the Court of Appeals broadly condemned a wide range of actions through which Microsoft attempted to reduce usage of competing middleware products.[8]

Under the reasoning of the Court of Appeals' decision, actions taken by Microsoft that have the effect of hindering competing middleware developers from gaining the critical mass of users necessary to attract developer attention away from Windows as the platform for software development—other than Microsoft's efforts to improve the quality of its own products violate Section 2 of the Sherman Act.[9]

Among other things, the court condemned Microsoft's conduct that falls within the following four broad categories: (1) licensing restrictions limiting the ability of personal computer original equipment manufacturers (OEMs) to configure their personal computers in the manner they determine to be appropriate;[10]

(2) Microsoft's design of the Windows operating systems and Microsoft Middleware in a manner that limits the ability of OEMs and consumers to remove Middleware code from the operating system; [11]

(3) Microsoft's entry into exclusive contracts designed to limit usage of competing middleware products [12] and (4) Microsoft's threats and intimidation designed to limit the development and distribution of middleware.[13]

In condemning Microsoft's actions, the Court of Appeals rejected Microsoft's assertions that integrating Middleware into the operating system or otherwise attempting to keep developers focused upon its APIs somehow provides any procompetitive justification for Microsoft's actions.[14]

A. The Breadth Of The Court Of Appeals' Liability Holding Demands Imposition Of Broad Remedies

The guiding principles underlying our antitrust laws make clear that the broad grounds of liability affirmed by the Court of Appeals demand imposition of an even broader range of remedies. The Supreme Court has repeatedly held that, in enacting the Sherman Act, Congress sought to ''preserv[e] free and unfettered competition as the rule of trade.'' [15]

This need to safeguard free competition is a direct result of the fundamental premise of our economic system that unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.[16]

This policy is embodied in two types of legal standards—those applied to the liability phase of antitrust cases and those governing the relief phase. As the Supreme Court has observed, the formulation of adequate remedies is the most significant phase of the

[2] United States v. Microsoft Corp., 253 F.3d 34, 53 (DC Cir. 2001), cert. denied, 151 L. Ed. 2d 264, 122 S. Ct. 350, 70 U.S.L.W. 3267 (2001). APIs are interfaces exposed by operating systems and middleware that support the functions of software programs, called ''applications,'' that perform specific user-oriented tasks. APIs ''are synapses at which the developer of an application can connect to invoke pre-fabricated blocks of code in the operating system. These block of code in turn blocks of code in the operating system. These blocks of code in turn perform crucial tasks, such as displaying text on the computer screen.'' United States v. Microsoft Corp., 84 F. Supp. 2d 9, N 2 (D.DC 1999), aff'd, 253 F.3d 34 (DC Cir. 2001), cert. denied, 151 L. Ed. 2d 264, 122 S. Ct. 350, 70 U.S.L.W. 3267 (2001).

[3] See ''Market Opportunity'' Adapted from source: Kagan World Media estimates 2001.

[4] See ''Streaming Media Market Growth,'' Source: Paul Kagan Associates Streaming Media Investor.

[5] See ''Total Active Streaming Media Users,'' Source: Kagan World Media, June 2001.

[6] See ''Consumer Broadband Adoption Blooms over the Next Five Years,'' Source: Jupiter MMXI.

[7] See ''Percent of U.S. home Internet users accessing streaming media,'' Source: Nielsen/NetRatings, July 2001.

[8] See Microsoft, 253 F.3d at 60. Assistant Attorney General Charles A. James acknowledged that this
was a middleware case, a middleware case, a middleware case. Mark Wigfield, Antitrust Chief Defends Government's Settlement with Microsoft, DOW JONES NEWSWIRES, Nov. 16, 2001.

[9] Id. at 60, 62.

[10] Id. at 59–64.

[11] Id. at 64–67.

[12] Id. at 70–73, 75–76.

[13] Id. at 77–78.

[14] See id. at 71.

[15] Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1958). See also National Society of Professional Engineers v. United States, 435 U.S. 679, 692 (1978); United States v. Crescent Amusement Co., 323 U.S. 173, 187 (1944).

[16] Northern Pacific Railway, 356 U.S. at 4. See also National Society of Professional Engineers, 435 U.S. at 695.

case.[17] Courts have broad discretion during the relief phase to ensure that the antitrust remedies imposed ''effectively pry open to competition a market that has been closed by defendants'' illegal restraints.'' [18]

An antitrust decree must ''break up or render impotent the monopoly power found to be in violation of the Act.'' [19]

In other words, the decree must leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place.[20]

For these reasons, the decree should not be limited to past violations; it must also effectively foreclose the possibility that similar antitrust violations will occur or recur. As the Court noted in International Salt, it is not necessary that all of the untraveled roads to [anticompetitive conduct] be left open and that only the worn one be closed. The usual ways to the prohibited goals may be blocked against the proven transgressor.[21]

In evaluating the adequacy of an antitrust remedy, the court's inquiry necessarily looks forward, considering evidence that was not necessarily placed in the trial record and, indeed, may not have even been in existence at the time of trial.[22]

It is long settled that the Court may at the relief stage prohibit practices that have not been found unlawful if such a prohibition is necessary to avoid the recurrence of monopolization.[23]

In addition, restraints may be imposed upon the defendant that are designed to allow the development of nascent competition within the relevant market.[24]

Such a remedy is critical here, given the Court of Appeals' explicit conclusions regarding the nascent potential of middleware to erode the applications barrier to entry that protects Microsoft's operating system monopoly.[25]

B.The Antitrust Procedures And Penalties Act Authorizes The Court To Engage In A Broad Inquiry To Determine The Adequacy Of The Proposed Decree

Congress has directed the Court here to determine whether entry of the RPFJ is in the public interest. In making that determination, the Antitrust Procedures and Penalties Act authorizes the Court to undertake a wide-ranging inquiry into two broad areas of evaluation. First, the Court is to consider the competitive impact of the proposed consent decree, including whether the proposed decree would actually terminate the defendant's violations and whether the proposed decree's enforcement provisions are adequate. In making this determination, the statute expressly authorizes the court to consider the anticipated effectiveness of alternative remedies, as well as any other considerations bearing upon the adequacy of such judgment.[26]

Second, the statute authorizes the court to consider the impact of the proposed decree on the public generally and on those individuals harmed by Microsoft's violations of the Sherman Act.[27] Highly relevant to both of these areas of inquiry is the clarity ofthe proposed decree. As the Court of Appeals has recognized, the district judge who must preside over the implementation of the decree is certainly entitled to insist on that degree of precision concerning the resolution of known issues as to make [her] task, in resolving subsequent disputes, reasonably manageable.[28]

In this way, Congress intends the courts to be an ''independent force'' in reviewing the adequacy of proposed consent decrees.[29] As broad as this language is, it is clear that the statute which references alleged violations rather than violations proven at trial, as well as benefits to be derived from a determination of the issues at trial [30]

—primarily contemplates review of consent decrees settling claims that have not yet been adjudicated. Where, as here, federal and state antitrust enforcers have actually proven during the course of a 76-day bench trial that Microsoft illegally maintained its operating system monopoly in violation of the Sherman Act, and that holding has been affirmed on appeal, the court's powers of review are at their maximum level. Unlike Judge Sporkin's review of the DOJ's previous, ill-fated consent decree with Microsoft, which settled claims that had not been proven, this is not a case in which the court's review will implicate the DOJ's prosecutorial discretion in framing the complaint and in appraising whether to pursue its claims through trial, nor does it raise the constitutional concerns of impinging upon the prosecutorial discretion of the executive branch.[31]

Because the Court's determination here is concerned solely with the proper extent of the remedies to be imposed to redress proven violations of the Sherman Act, the Court's evaluation of this proposed decree should be guided by the well-settled principles governing the adequacy of antitrust remedies. As set forth below, careful review of the proposed consent decree demonstrates that it falls woefully short of meeting these standards, which were reflected in the Court of Appeals' admonition that the remedy for Microsoft's illegal acts must seek to unfetter [the] market from anti-competitive conduct, to terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation,[32]

IV. THE RPFJ NEITHER FREES THE MARKET FROM MICROSOFT'S ANTICOMPETITIVE CONDUCT NOR DENIES MICROSOFT THE FRUITS OF ITS ILLEGAL CONDUCT.

The RPFJ fails to satisfy the Court's clear and simple standard. The RPFJ neither terminates Microsoft's illegal monopoly nor denies it the fruits of its statutory violations. It fails to ensure that no practices remain that are likely to result in future monopolization. Certainly, Microsoft's current dominance in the browser market for personal computers is a fruit of its illegal conduct. The RPFJ reads like a tacit approval of Microsoft's newly imposed browser monopoly; indeed, it is not even mentioned in the DOJ's Competitive Impact Statement (CIS). Nor does the CIS address how the RPFJ is designed to terminate the illegal monopoly or restore JAVA to the position it would have held absent the illegal conduct. The CIS is silent regarding the market conditions that would currently exist were it not for Microsoft's anticompetitive acts market conditions that should be restored as part of any adequate remedy. The RPFJ fails to understand and address the long-term impact of Microsoft's conduct.

Moreover, the RPFJ's provisions are vague, internally inconsistent and replete with exceptions and loopholes that will allow a determined and proven illegal monopolist to delay and even avoid the remedies. Indeed, the many instances in which the CIS reads into the RPFJ substantial additional terms/restrictions necessary to create a reasonable interpretation of the provisions foreshadows the difficulty of enforcing the RPFJ. Disagreements at this stage between the parties to the RPFJ will pale in comparison to the disagreements that will arise between Microsoft on the one hand and antitrust regulators and impacted parties on the other hand as the Court seeks to enforce the RPFJ. Because it provides insufficient remedies relating to middleware, OEM/ISV flexibility, information disclosure and enforcement, it is likely that Microsoft will be able to continue with many of its current anticompetitive practices virtually unchanged. In addition, it in effect imposes upon Microsoft's competitors several restrictions and conditions on doing business and innovating that do not exist today. This following discussion outlines only some of the deficiencies in the RPFJ. It is not intended to

[17] United States v. Glaxo Group, Ltd., 410 U.S. 52, 64 (1973).

[18] *International Salt Co.* v. *United States,* 332 U.S. 392, 401 (1947). See also 2 P.A REEDA & H. H OVENKAMP, A NTITRUST LAW 325 (2000) [hereinafter A REEDA.

[19] *United States* v. *Grinnell Corp.,* 384 U.S. 563, 577 (1966). See also *United States* v. *United Shoe Machinery Corp.,* 391 U.S. 244, 251 (1968); *Schine Chain Theatres, Inc.* v. *United States,* 334 U.S. 110, 128–29 (1948).

[20] United States v. AT&T, 552 F. Supp. 131, 151 (D.DC 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

[21] International Salt, 332 U.S. at 400. See also National Society of Professional Engineers, 435 U.S. at 697–98; United States v. United States Gypsum Co., 340 U.S. 76, 88 (1950); Associated Press v. United States, 326 U.S. 1, 22 (1945); Crescent Amusement, 323 U.S. at 188; United States v. United Shoe Machinery Corp., 110 F. Supp. at 346–47.

[22] 2 A REEDA at 325c.

[23] United States v. United Shoe Machinery Corp., 110 F. Supp. 295, 346–47 (D. Mass. 1953), aff'd, 347 U.S. 521 (1954). See also Hartford-Empire Co. v. United States, 323 U.S. 386, 409 (1945).

[24] Ford Motor Co. v. United States, 405 U.S. 562, 575, 578 (1972).

[25] 253 F.3d at 53–55.

[26] 15 U.S.C. 16(e)(1).

[27] Id. at 16(e)(2).

[28] United States v. Microsoft Corp., 56 F.3d 1448, 1461–62 (DC Cir. 1995).

[29] Antitrust Procedures and Penalties Act: Hearings on S. 782 and S.1088 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. On the Judiciary, 93rd Cong., 1st Sess. 1 (1973) (statement of Sen. Tunney).

[30] See id. at 16(e)(1–2).

[31] See United States v. Microsoft Corp., 56 F.3d at 1455, 1457–59. and ensure that there remain no practices likely to result in monopolization in the future.

[32] 253 F.3d at 103 (quoting Ford Motor, 405 U.S. at 577, and United Shoe Machinery, 391 U.S. at 250).

be an exhaustive review of the deficiencies and implications of the proposed settlement.

A. The RPFJ's Definitions Are Confusing, Inadequate And Create

Loopholes And Exceptions To The Actual Remedial Provisions.

Unfortunately, the definitions set forth in the RPFJ severely undermine the RPFJ's proposed remedies by offering a number of significant loopholes and exceptions to the application of the remedial provisions. By contrast, the Litigating States have proposed a set of definitions that do not allow Microsoft to avoid application of the remedial provisions and that are designed to create a more certain and fair remedial framework. A sample of some of the more obvious definitional problems are addressed below.

1. Incredibly, the definition of ''Windows Operating System Product'' states that: The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion. This provision appears to allow Microsoft to avoid any future claim for illegally tying applications to the operating system, which clearly could not have been the DOJ's intent nor would this be consistent with established legal doctrine concerning illegal tying. However, as written, Microsoft could declare that Microsoft Office, including Word and Excel, is part of the operating system with apparent impunity. This provision also allows Microsoft to gerrymander whether a given set of functions will be placed in the operating system, middleware or an application depending on whether Microsoft is attempting to avoid the requirements of the remedies. For example, because Microsoft need only disclose APIs relating to Microsoft Middleware, Microsoft could declare that applications that would otherwise qualify as Microsoft Middleware are instead part of the operating system. This provision creates a serious loophole in the RPFJ and also conflicts with the definitions for middleware contained in the RPFJ.

There is no indication in the CIS as to how these issues would be addressed under the RPFJ. 2. The definition of Timely Manner leaves it to Microsoft to decide when it will disclose APIs. Because it is triggered by the date Microsoft first releases a beta version of its operating system to more than 150,000 testers, Microsoft can simply limit the number of testers to 149,999 and thereby avoid disclosing APIs until it is too late for competing ISVs to make effective use of the information. This is strikingly easy to manipulate. By contrast, the Litigating States have proposed a reasonable solution that generally requires Microsoft to disclose information to third parties at the same time it makes the information available to its own developers or to any third party, reflecting the importance of early access to APIs to foster fair competition.

3. The definition of Microsoft Middleware, upon which the application of Sections III.D (Information Disclosure) and III.G.2 (Exclusive Dealing) depend, is designed to exclude a large body of Microsoft middleware. Moreover, there is a confusingly similar, though subtly different, definition for Microsoft Middleware Product. Incredibly, under the definition of Microsoft Middleware, Microsoft may even argue that the Windows Media Player 8.0 does not constitute Microsoft Middleware, despite the trial court's recognition that media players are middleware,[33] because it is no longer distributed separately from the operating system.[34]

The consequence of this provision is that Microsoft would not have to disclose any APIs relating to any middleware that is not Microsoft Middleware. Moreover, Microsoft could freely engage in exclusive dealing with IAPs and ICPs with respect to such middleware under Section III.G.2 because that provision relates only to Microsoft Middleware. Microsoft should be required to clearly state its position in this regard before the efficacy of the remedy can be judged.

4. The definition of Microsoft Middleware Product, which is pivotal to a number of provisions relating to middleware relief (e.g., III.C, III.G., III.H, definition of Microsoft Platform Software), contains substantial loopholes and exceptions. For example, Microsoft Middleware Products must be Trademarked or they are free of the RPFJs remedial provisions. The definition of Trademarked is itself problematic, as described below. Any product using a generic or descriptive word with the trademarks Microsoft and/or Windows would not be a Microsoft Middleware Product. There is no valid, pro-competitive reason to apply a remedy according to how Microsoft chooses to name its middleware. In addition, the Microsoft Middleware Product is limited to Microsoft middleware that was distributed separately in the past year and is similar in functionality to other middleware on the market. Thus, if Microsoft's middleware is first to market, it could be argued that it is not a Microsoft Middleware Product. This creates unnecessary ambiguity, and the rationale for this loophole is unclear. It is also unclear why the definition of Microsoft Middleware Product is limited to functionality provided by certain products, rather than the products themselves. Microsoft can use this subtlety to further limit the application of the RPFJ's remedial provisions.

5. The definition for Non-Microsoft Middleware Product is unreasonably limited to products of which more than one million copies were distributed in the prior year. This is a huge number of copies (and affected consumers) that will take a great deal of time, money and resources for most middleware companies to reach. This will allow Microsoft to engage in its anticompetitive acts against small middleware providers during their most vulnerable beginnings. Moreover, if a middleware distributor delivered 900,000 copies year after year to new customers, they would never be protected under the settlement despite the fact that they may have millions of customers. This provision is distinctly anti-innovation, because it allows Microsoft to deny technology access to small, entrepreneurial companies with innovative new technologies—just the type of company Microsoft was in its earliest days. Finally, the RPFJ does not 14 address how new versions of existing middleware products will be counted. Must they accumulate one million distributions of each new version before they are protected? This type of unanswered question creates substantial ambiguity and room for disagreement going forward.

6. The definition of Top-Level Window is limited to windows that have their own window controls, like move and resize, enable sub-windows, and contain user interface elements under the control of at least one independent process. This definition is critical because it determines whether middleware is entitled to certain remedial provisions pursuant to Section III.H of the RPFJ. This loophole allows Microsoft substantial control over whether competing middleware will get the benefit of the remedies. Microsoft could engineer its middleware to launch without using all of the Top-Level Window components and argue that competing middleware cannot avail itself of the remedy. Whether or not Microsoft's middleware enables sub-windows certainly should not be the determining factor as to whether competing middleware is entitled to a remedy.

7. The definition of Trademarked does not include [a]ny product distributed under descriptive or generic terms or a name comprised of the Microsoft and/or Windows trademarks together with descriptive or generic terms. This definition is critically important because whether any Microsoft product can be Microsoft Middleware or a Microsoft Middleware Product inexplicably depends upon whether the product is Trademarked. Under the definition, products named Microsoft Windows Radio, Microsoft Windows TV, Microsoft Windows Theater, Microsoft Windows Music, etc. arguably could not be either Microsoft Middleware or Microsoft Middleware Products, regardless of functionality because they would not be Trademarked. The inclusion of the requirement that any Microsoft Middleware or Microsoft Middleware Product be Trademarked before it is included in the definition provides Microsoft a handy loophole to avoid the RPFJ's remedial provisions. The Litigating States have not allowed this type of loophole in their remedy proposal.

8. The definition of API is unduly narrow and limited to Microsoft Middleware rather than including Microsoft Middleware Products and other Microsoft applications that call on functionality included in, or bundled with, the operating system. The definition is circular in that, rather than requiring Microsoft to disclose to competing middleware developers the same interfaces and related information that it discloses to its own application developers, it allows Microsoft to manipulate the interfaces that it will define in an API and thereby limit all related information. In addition, the related term, Documentation, is also unduly limited to only the documentation that Microsoft currently makes available on its Microsoft Developer Network (MSDN) network.

[33] 84 F. Supp. 2d at 78, 104–114.

[34] Although previous versions of the Windows Media Player are distributed separately from the Windows operating systems, Microsoft now requires consumers to purchase Windows XP to acquire Windows Media Player 8.0.

Competing middleware providers should be entitled to all of the documentation and information available to Microsoft's application developers and in no event less than that typically made available on MSDN.
B.The RPFJ Does Not Effectively Prevent Microsoft From Using Anticompetitive Tactics Against Competing Middleware. The Court of Appeals held that Microsoft's restrictions limiting the ability of OEMs to configure their personal computers in a manner that promotes the use of non-Microsoft middleware violates the Sherman Act.[35]

In any effective remedy, OEMs, ISVs and others must be free to bundle, distribute and promote non-Microsoft middleware applications with their products and completely remove Microsoft middleware. They, and end users, must be free to automatically launch competing middleware at any time and must be free to set that middleware as the default applications under any circumstances, irrespective of what Microsoft's middleware does or does not do. Microsoft should not be able to use its operating system monopoly to override the considered decisions of consumers, OEMs and ISVs without explicit consumer consent, or to automatically prompt consumers override such choices. Whether Microsoft has competing middleware is utterly irrelevant to the threat posed to Microsoft's monopoly operating system by middleware and should not form the basis for the many exclusions provided in the proposed Settlement. The Litigating States have in fact suggested remedies that accomplish these goals without providing Microsoft a litany of loopholes. Section III.H purports to provide some limited additional freedom to allow OEMs and third parties to use competing middleware. Unfortunately, the provision is undermined by exceptions and limitations that fail to comply with the Court of Appeals' admonitions regarding OEM freedom and protection for competing middleware. Section III.H.3 limits Microsoft's ability to use its Windows Operating System Product to override the freedoms granted to OEMs, but that limitation only lasts for fourteen days, after which Microsoft is completely free to use its commingled and bundled middleware to override the OEM configurations. Microsoft can use this gaping loophole to override OEM/consumer choice instantly, automatically, and without notice to consumers to OEMs as long as Microsoft does so through its commingled middleware, rather than through its operating system. Furthermore, a mere fourteen days after an end user starts using his or her personal computer, Microsoft can use its monopoly operating system to recommend that the user change his or her default settings to favor Microsoft middleware to the exclusion of competing middleware. Thus, on day fifteen we can expect Windows to start a daily process of exhorting the user to reject competing middleware. Windows XP currently uses similar behaviors to consistently attempt to reclaim default status for its favored Microsoft middleware. For example, even after a user has selected competing middleware to play back CDs, Windows XP prompts the user to change to Windows Media Player when a CD is inserted. The prompt includes Windows Media Player as the preselected application at the top of the list.

The exception provided in the last paragraph of Section III.H. limits application of that section to Microsoft Middleware Products that exist more than seven months prior to the last beta test version of the operating system. This loophole allows Microsoft to engineer its releases of new middleware to be less than seven months from the final beta in order to completely avoid the remedial provisions in Section III.H. For instance, because Windows Media Player 8 was released within 7 months of the final beta for Windows XP, Microsoft can be expected to argue that competing middleware would not be entitled to the protections of Section III.H. Certainly, this could not be the intended result of the language and the Court must ensure that the parties to the RPFJ clarify the interpretation of the exception to avoid such unintended results. Oddly, the RPFJ's limitations protect Microsoft's middleware from innovative competitors. For instance, Section III.H.2 allows OEMs to set competing middleware as the default only if Microsoft has a Microsoft Middleware Product that would otherwise launch in its own separate Top-Level Window. There is no legal or procompetitive justification for so limiting OEMs, ISVs or end users based on the existence or performance of Microsoft middleware products. As the Court of Appeals recognized, middleware is important because it has the potential to erode Microsoft's operating system monopoly and the applications barrier to entry that protects it.[36]

Conditioning middleware protections on actions within Microsoft's control obviously presents Microsoft with the ability to manipulate its software design, as it has in the past, in a manner that will further impede the development and distribution of competing middleware products. Whether Microsoft has competing middleware and by extension the performance characteristics of that middleware is irrelevant to the nascent threat that middleware poses to Microsoft's operating system monopoly and ignores its past anticompetitive efforts to harm competing middleware. Third party innovators should not be excluded from the application of the RPFJ until and Microsoft first develops its own competing product. In the CIS, the DOJ states that Microsoft Middleware is the concept that triggers Microsoft's obligations, including those relating to Microsoft's licensing and disclosure obligations without providing any rationale.[37]

The applicability of the remedies set forth in Sections III.C.3, H.1 and H.2 should not depend upon the presence or performance of Microsoft's middleware in any way, nor should any other provision.

Section III.H.1 of the RPFJ allows Microsoft to override OEM configurations and consumer choice for default middleware as long as Microsoft uses one of its own servers to communicate with its own competing middleware. This allows Microsoft to use its Passport, MSN, Dot.net, Hotmail and other servers to avoid and override the explicit choices made by OEMs/ISVs and consumers. Section III.H.1 has no procompetitive justification and once again places competing middleware at an unfair disadvantage. The RPFJ would grant Microsoft the right to require consumers who expressly choose to use Non-Microsoft Middleware to subsequently confirm their choices to Microsoft. Some Non-Microsoft middleware products provide consumers with an opportunity to choose whether to establish the middleware product as the default for certain functions and, if so, to authorize the middleware product to protect against attempts by Microsoft to override the consumer's choice. Rather than requiring Microsoft to honor such consumer choices, Section III.H.2 would allow Microsoft to require the consumer to confirm his or her choice every time Microsoft attacks it.

C. The RPFJ Does Not Provide OEMs With Appropriate Freedom To Choose Competing Middleware, Remove Microsoft Middleware, And Customize The User Interfaces, Menus, Desktop And Other Windows Elements.

The need for an effective remedy that prevents Microsoft from illegally abusing its operating system monopoly to harm competitors is beyond dispute. The undisputed facts, as found by the trial court and affirmed by the Court of Appeals, establish in detail the broad power that Microsoft possesses over OEMs and the broad manner in which it has abused that power to maintain its monopoly in violation of the Sherman Act. As the DOJ and the plaintiff States proved in this litigation, Microsoft's operating system monopoly grants it tremendous sway over OEMs. For example, in June 1996 Compaq executives opined that their firm could not continue in business for long without a license for Windows.[38]

This is consistent with Hewlett Packard's lament to Microsoft in March 1997 that [i]f we had a choice of another supplier, based on your actions in this area, I assure you [that you] would not be our supplier of choice.[39].

Based on such statements, the trial court found that OEMs had no commercially viable alternative to pre-installing the Windows operating system on their personal computers.[40]

Moreover, Microsoft's power has actually increased since the trial court made its findings in 1999: according to the International Data Corporation, from 1999 to 2000 Microsoft's share of the client operating system market, including Apple's Mac OS, increased by 10.6% to 95.4% (when measured by shipment and upgrade revenue) and by 11.1% to 92.6% (when measured by new license shipments).[41] As the trial court

[35] Id. at 59–64.

[36] Id. at 53–55.

[37] Pl. DOJ's Competitive Impact Statement at 17–18 (Nov. 15, 2001) [hereinafter CIS].

[38] 38 84 F. Supp. 2d at 206

[39] Id. at 214 (bracketed text in original).

[40] Id. at 158.

[41] INTERNATIONAL DATA CORPORATION, WORLDWIDE CLIENT AND SERVER OPERATING ENVIRONMENTS MARKET FORECAST AND

Continued

found, Microsoft has used its monopoly power to impose its will on OEMs.[42]

First, Microsoft has used its monopoly power to force OEMs to take its middleware applications with its operating system and, by forbidding them to remove or obscure Microsoft middleware, has ensured ubiquity for its middleware while increasing the costs of competing middleware developers.[43]

Second, Microsoft has used its power to impose restrictions on OEMs that have had the effect of restricting consumer access to competing middleware and increasing the costs that competing middleware developers must incur to promote their products.[44]

Third, Microsoft has used its power to threaten and retaliate against OEMs that did not accede to its wishes.[45]

Finally, Microsoft has offered OEMs valuable consideration, which OEMs must accept in order to remain competitive with other OEMs, as a means of coercion in connection with these efforts.[46]

As the trial court found, the OEMs obeyed [Microsoft's] restrictions because they perceived no alternative to licensing Windows for pre-installation on their PCs.[47]

As a result, the trial court concluded that Microsoft's actions have stifled innovation by OEMs that might have made Windows PC systems easier to use and more attractive to consumers,[48] which is diametrically opposed to Microsoft's legitimate interests as an operating system developer.

Plainly, any effective remedy for Microsoft's anticompetitive conduct must put an end to such practices. The RPFJ, however, falls woefully short of either unfettering OEMs from Microsoft's control or ensuring that Microsoft will not continue to impose restrictions on OEMs that harm the development of competing middleware.

1. The RPFJ does not require Microsoft to allow OEMs to remove its middleware from Windows

The RPFJ does not even allow OEMs and end users to completely uninstall and remove Microsoft's middleware once they have acquired the bundled products. In affirming the trial court's conclusion that Microsoft illegally maintained its operating system monopoly in violation of the Sherman Act, the Court of Appeals twice held that Microsoft's design of Windows in a manner that denied OEMs the ability to remove middleware specifically, Internet Explorer from Windows operating systems is anticompetitive because it deters OEMs from pre-installing rival browsers, thereby reducing the rivals' usage share and, hence, developers' interest in rivals APIs as an alternative to the API set exposed by Microsoft's operating system.[49]

Moreover, the Court explicitly rejected Microsoft's assertions that such integration is highly efficient and provides substantial benefits to customers and developers, concluding instead that See also Order (DC Cir. Aug, 2, 2001)(per curiam)(denying Microsoft's petition for rehearing on the commingling issue). Indeed, in denying Microsoft's petition for rehearing on this issue in the clearest possible terms, the Court pointedly advised the parties that [n]othing in the Court's opinion is intended to preclude the District Court's consideration of remedy issues. Id. Microsoft was simply protect[ing] its operating system monopoly from a middleware threat in violation of Section 2 of the Sherman Act.[50]

Notwithstanding the clarity of the Court's ruling on this issue, the RPFJ would essentially endorse Microsoft's anticompetitive commingling of its own middleware into Windows in a manner that prevents OEMs from removing it from the operating system. This is not an idle concern because Microsoft still prevents OEMs from removing middleware, such as Internet Explorer and the Windows Media Player, from the Windows operating systems. Nor would the deceptively named add/remove remedy enable OEMs or consumers to actually remove Microsoft middleware functionality or even disable the middleware, as it simply hides icons without actually removing the middleware code from the operating system. With the middleware code intact, there are many ways in which Microsoft's middleware can still be launched and take default status for all middleware functions. Without appropriate remedies like those proposed by the Litigating States, Microsoft will leverage its ability to bundle and bind its middleware with every copy of the operating system to attempt to convince developers to write to the Microsoft's middleware APIs rather than competing middleware APIs. Allowing Microsoft to commingle its middleware and refusing to allow OEMs to remove Microsoft middleware flies directly in the face of the Court of Appeals decision. 2. The RPFJ enshrines, rather than prohibits, Microsoft's ability to require OEMs to provide access to Microsoft Middleware while restricting the end-user access that OEMs can provide for Non-Microsoft Middleware The findings of fact in this litigation establish beyond dispute that Microsoft has required OEMs to include certain icons, Start Menu entries and other forms of end-user access for Microsoft middleware products while it has at the same time restricted the ability of OEMs to promote competing middleware products during the Windows operating system boot sequence.[51] Specifically, the trial court found that, in the spring of 1996, Microsoft imposed a series of new operating system licensing restrictions on OEMs explicitly intended to restrict the ability of OEMs to reconfigure the Windows operating system desktop and boot sequence in a manner that would improve usage of non-Microsoft middleware. These restrictions included the following:

First, Microsoft formalized the prohibition against removing any icons, folders, or ''Start'' menu entries that Microsoft itself had placed on the Windows desktop. Second, Microsoft prohibited OEMs from modifying the initial Windows boot sequence. Third, Microsoft prohibited OEMs from installing programs, including alternatives to the Windows desktop user interface, which would launch automatically upon completion of the initial Windows boot sequence. Fourth, Microsoft prohibited OEMs from adding icons or folders to the Windows desktop that were not similar in size and shape to icons supplied by Microsoft.[52]

Indeed, Microsoft went so far as to threaten to terminate Compaq's operating system license based on its removal of such icons for Microsoft's Internet-related middleware products.[53]

The Court of Appeals broadly condemned such actions, which reduce usage of competing middleware products, not by improving [Microsoft's] own product but, rather, by preventing OEMs from taking actions that could increase rivals' share of usage.[54]

Notwithstanding these clear legal findings and conclusions, Section III.C of the RPFJ allows Microsoft to continue to retain considerable control over how and whether OEMs can make competing middleware accessible to consumers of its personal computers through display of icons, menu entries and shortcuts. Section III.C.1 allows Microsoft to set rules restricting the manner in which OEMs display icons, menu entries and shortcuts for non-Microsoft middleware. The discretion afforded to Microsoft provides it with yet another method of limiting the prominence that OEMs can assign to competing middleware on personal computers running Windows operating systems. Section III.C.1 allows Microsoft to dictate which Non-Microsoft middleware can be accessible in which places in the Windows operating systems, without justifying its functionality-based distinctions. There is no valid, pro-competitive reason to take this control away from OEMs. As the trial court found, [s]ince OEMs share Microsoft's interest in ensuring that consumers can easily find the features they want on their Windows PC systems, Microsoft would not have prohibited OEMs from removing icons, folders, or Start' menu entries if its only concern had been consumer satisfaction.[55] Nor does the RPFJ protect the ability of OEMs to choose which middleware products to establish as the default on its personal computers. In light of the trial court's finding that Microsoft reduced the Windows royalty price for certain OEMs, including Gateway, that set Internet Explorer

ANALYSIS SUMMARY 2001–2005 at 11–12 (Aug. 2001).

[42] For example, Microsoft delayed release of Windows 98 so as to miss the holiday shopping season in 1996 contrary to the OEMs' economic interests, as well as Microsoft's own economically rational interests solely to ensure that Internet Explorer 4.0 could be commingled into the operating system, regardless of the economic suffering imposed on OEMs in terms of lost sales. 84 F. Supp. 2d at 167 (Maritz agreed with Allchin's point that synchronizing the release of Windows 98 with Internet Explorer was the only thing that makes sense even if OEMs suffer.'')

[43] Id. at 203–08, 213, 241.

[44] Id. at 241, 240.

[45] Id. at 230, 235–38, 241.

[46] Id. at 213–15, 230–31, 236–37, 241.

[47] 47 Id. at 215.

[48] 48 Id. at 241.

[49] 253 F.3d at 64–66.

[50] 253 F.3d at 66–67.

[51] 84 F. Supp. 2d at 203.

[52] 52 Id. at 213.

[53] Id. at 204–08.

[54] 253 F.3d at 60–64.

[55] 84 F. Supp. 2d at N 222.

as the default browser on their personal computers,[56] such protection is required. The proposed decree, however, safeguards the ability of OEMs to designate competing middleware as the default only in those situations where the Windows operating system would otherwise launch Microsoft's application in a Top-level Window that displays all of the user interface elements.[57] For instance, this significant loophole would allow Microsoft to continue to prevent OEMs from launching competing middleware in a variety of instances in which the middleware is invoked as an embedded component in another application, like Internet Explorer. Similarly, by allowing Microsoft to prevent OEMs from launching any non-Microsoft middleware product that does not display a user interface or that displays a user interface that is similar to or smaller than the user interface of Microsoft's middleware product, Section C.3 of the proposed settlement would hand Microsoft the ability to exercise significant control over the design of middleware products and other software applications. This loophole is particularly unjustifiable given the trial court's finding that Microsoft had previously prohibited OEMs from adding icons or folders to the Windows desktop that were not similar in size and shape to icons supplied by Microsoft.[58]

A proposed remedy that endorses, rather than condemns, anticompetitive conduct is not in the public interest. More generally, there is no procompetitive justification for allowing Microsoft, which maintained its operating system monopoly in violation of U.S. antitrust law, to have a substantial impact on the design decisions of competitors that have been disadvantaged by Microsoft's anticompetitive practices. Because these conditions would restrict the ability of OEMs to increase the usage of middleware products that compete with Microsoft, it is apparent that, were they imposed by Microsoft independently, they would be found to violate the Sherman Act under the reasoning of the Court of Appeals decision.[59]

3. The RPFJ does not prohibit Microsoft from continuing to threaten and retaliate against OEMs that have resisted doing Microsoft's bidding The trial court's findings of fact amply document Microsoft's repeated and brazen efforts to threaten and retaliate against OEMs when they have resisted doing Microsoft's bidding.[60]

For example, the trial court concluded that, as part of its efforts to ostracize Navigator from the vital OEM distribution channel, Microsoft threatened to terminate the Windows license of any OEM that removed Microsoft's chosen icons and program entries from the Windows desktop or the Start' menu. It threatened similar punishment for OEMs who added programs that promoted third-party software to the Windows boot' sequence.[61] Such retaliatory efforts extended so far as threatening to terminate Compaq's license for Windows 95, demonstrating that Microsoft was prepared to go to the brink of losing all Windows sales through its highest-volume OEM partner in pursuit of its anticompetitive ends.[62] Microsoft's operating system monopoly enabled it to take such actions with impunity, indifferent to the fact that such threats soured Microsoft's relations with OEMs and stymied innovation that might have made Windows PC systems more satisfying to users.[63]

In light of this sustained practice of intimidation, the DOJ correctly points out that it is critical that the OEMs, through whom the large majority of copies of Microsoft's Windows Operating System Products reach consumers, are free to choose to distribute and promote middleware without interference from Microsoft.[64]

The RPFJ, however, fails to place any restriction on Microsoft's ability to inflict financial retaliation on OEMs. Indeed, Section III.A. of the proposed decree explicitly limits application of its anti-retaliation provisions to newly introduced forms of non- monetary Consideration. Neither Microsoft nor the DOJ offers any justification for failing to restrict Microsoft from employing financial penalties to threaten or retaliate against recalcitrant OEMs.[65]

Moreover, in the face of the extensive record in this litigation of Microsoft's past course of threats and retaliation, Section III.A does not even prohibit Microsoft from withholding existing forms of non-monetary consideration from OEMs that seek to develop, distribute or use non-Microsoft middleware, distribute competing operating systems, or otherwise seek to exercise their purported rights under the RPFJ. Instead, Section III.A applies only to newly introduced forms of non- monetary consideration. Such gaping loopholes simply cannot be reconciled with the DOJ's assertion that Section III.A ensures that OEMs have the contractual and economic freedom to make decisions about distributing and supporting non-Microsoft software products that have the potential to weaken Microsoft's personal computer operating system monopoly without fear of coercion or retaliation by Microsoft.[66]

4. Similarly, the RPFJ does not prohibit Microsoft from continuing to employ discounts and other financial inducements to accomplish its anticompetitive ends The undisputed factual record in this case similarly documents Microsoft's extensive use of discounts and other financial inducements as a critical component of its anticompetitive conduct. For example, it is no longer disputed that Microsoft offered IBM substantial benefits, including soft dollars and marketing assistance, in return for shipping its systems without any software that competed with Microsoft.[67]

The trial court also found that Microsoft grant[ed] Hewlett-Packard and other OEMs discounts off the royalty price of Windows as compensation for the work required to bring their respective alternative user interfaces into compliance with Microsoft's requirements restricting their ability to reconfigure the desktop and boot sequence in Windows 95 and Windows 98.[68]

Similarly, Microsoft used incentives and threats in an effort to secure the cooperation of individual OEMs to promote the Internet Explorer to the exclusion of Navigator.[69]

Indeed, the court found that Microsoft agreed to give OEMs millions of dollars in co-marketing funds, as well as costly in-kind assistance, in exchange for their carrying out other promotional activities for Internet Explorer.[70]

Consistent with this, Microsoft reduced the Windows royalty price for certain OEMs, including Gateway, that set Internet Explorer as the default browser on their personal computers and that displayed Internet Explorer's logo and links to Microsoft's Internet Explorer update page on their own home pages, and offered to compensate Gateway if it would replace Navigator with Internet Explorer.[71]

The RPFJ, however, would not prevent Microsoft from continuing to use discounts, market development allowances and other such programs as part of its efforts to coerce OEMs into favoring Microsoft's middleware over competing software. Given the loopholes that pervade the proposed decree, Section III.B.3 simply requires that Microsoft identify the criteria on which discounts are based and make them available to all OEMs covered by the decree. While this may somewhat limit Microsoft's ability to discriminate among OEMs, it does not prevent Microsoft from using such inducements to coerce OEMs into discriminating against competing middleware products.

For example, the RPFJ would not prevent Microsoft granting discounts or other financial benefits to all OEMs that ship Microsoft middleware products as the default on their personal computers. This would place any OEM that wanted to establish middleware as the default at a potentially serious disadvantage compared to any competing OEMs that take the Microsoft payoff. Moreover, because Microsoft controls pricing of its monopoly operating system, it could establish the price of versions of Windows without its middleware set as the default at some artificially high price and use the difference between the artificially high price and the actual price Microsoft wanted to receive as a cash incentive to pay OEMs to carry Microsoft's middleware as the

[56] Id. at 231.

[57] See RPFJ at Section III.H.2.

[58] 84 F. Supp. 2d at 213.

[59] See 253 F.3d. at 61–62.

[60] 84 F. Supp. 2d at 230 (Microsoft used incentives and threats in an effort to secure the cooperation of individual OEMs in its efforts to ensure that personal computer users would have ready access to Internet Explorer). See also id. at 235–38 (describing pressure exerted on Gateway and IBM).

[61] Id. at 203.

[62] Id. at 206, 208.

[63] Id. at 203.

[64] 64 CIS at 11.

[65] Indeed, the Competitive Impact Statement is notably bereft of any attempt to justify Section III.A's failure to prohibit financially based threats and retaliation. See id. at 11–12.

[66] Id. at 11.

[67] 84 F. Supp. 2d at 237.

[68] Id. at 215. See also id. at 213–14.

[69] Id. at 230.

[70] Id. at 231.

[71] Id. at 231, 236.

default application. This does not correct the present judicially condemned situation.

D.The RPFJ Contains Insufficient Provisions To Ensure Adequate And Timely Information Disclosure

Microsoft has a history of refusing to disclose APIs, delaying disclosure of APIs, and selectively disclosing APIs to favored ISVs at the expense of disfavored ISVs.[72]

For example, Microsoft has refused to disclose APIs relating to Secure Audio Path (SAP)[73] and has actively used its exclusive access to this technology to market against its competitors beginning at least as far back as October 2000. The RPFJ does not end this type of head start and exclusive access. Microsoft uses its control over Windows interfaces to thwart competition from better, more compelling middleware applications. For instance, Microsoft has refused to disclose critical interface and other technical information used by it in Windows XP relating to a number of functions, including direct access to SAP and to the Play all and Burn CD features in the My Music folder. Access to all of the APIs and technical interfaces available in the monopoly Windows OS is critical to ISVs and should be in Microsoft's best interest given its stated top goal of providing a platform upon which all ISVs can build. Because of Microsoft's past anticompetitive behavior, it is important to have a clear and broad remedy provision requiring full disclosure of any technical interfaces, appropriately defined, between Microsoft's operating system, bundled middleware and any other Microsoft applications. The RPFJ contains several major exceptions and loopholes that allow Microsoft to delay and avoid disclosing the technical information necessary to allow competing middleware providers to fully interoperate with Microsoft's software. Section III.D of the RPFJ only requires Microsoft to disclose APIs relating to Microsoft Middleware a very narrowly defined term that does not include any middleware bundled with the operating system (unless separately distributed as an update). This subtlety in the RPFJ allows Microsoft to easily avoid the information disclosure requirements. As long as Microsoft bundles its middleware with its operating system, rather than distributing it separately, it will no doubt argue that there is no information disclosure requirement, although that would seem contrary to the intent of the RPFJ.

Limiting Section III.D to Microsoft Middleware makes it easy for Microsoft to avoid disclosing APIs for a host of features and functions made available to Microsoft's application developers. This is especially true given the fact that the RPFJ allows Microsoft, in its sole discretion, to decide what is in the operating system and what is not. This provides virtually unlimited opportunity for gerrymandering. There is certainly no procompetitive justification for this restriction. The Litigating States' proposed remedy, on the other hand, requires Microsoft to provide all APIs that are used by Microsoft's own application developers to interoperate with either the operating system or middleware. It does not provide a complex web of limitations and restrictions that are bound to create further unnecessary litigation. The provision regarding server interoperability excludes communications between Microsoft Middleware Products even those that are commingled and bound with the Windows operating system—and Microsoft servers. This is an enormous loophole. As written, Microsoft is likely to argue that the provision does not allow ISVs to obtain any access to Microsoft's communications protocols between Microsoft servers and applications such as Internet Explorer, Windows Media Player and instant messaging. Again, this does not seem consistent with the intent of the RPFJ.

In an amazing reversal of fortune, the RPFJ would actually require law-abiding ISVs to license their technology to Microsoft an illegal monopoly if they want to take advantage of Microsoft's APIs. The fact that an ISV might license and use technology from Microsoft, as allowed under the proposed settlement, should not entitle Microsoft to get a license to the ISV's technology relating to the exercise of their options or alternatives. By ensuring that Microsoft will obtain contractual rights to technologies that it deems to be strategic, the RPFJ provides assistance to Microsoft's continuing anticompetitive efforts to restrict the development and distribution of competing middleware by bundling its own versions of those technologies with its operating system in an attempt to dominate the market to the detriment of its more innovative competitors. Because Microsoft is not doing any development on behalf of the ISVs as part of the RPFJ, it does not need licenses to ISV technology to perform its obligations. This provision in effect operates as a poison pill that presents substantial disincentives for competing middleware developers to qualify for the protection of the very provisions of the RPFJ that are designed to foster competition in these nascent markets.

Microsoft Can Continue Its Anticompetitive Practices For Up To One Year And Intends To Do So.

The RPFJ's time periods for Microsoft's compliance with a variety of provisions, including those related to information disclosure, place competing application developers at a serious disadvantage. Middleware ISVs should have as much time as Microsoft's own application developers to use the APIs and other technical information necessary to access, utilize and support the full features and functionality offered by the Windows operating systems. Indeed, the extended time provided to Microsoft to comply with the RPJF is in direct contradiction of one of the DOJ's stated reasons for entering into the settlement: prompt relief. For example, Microsoft has a full year to comply with the bulk of the information disclosure provisions and other provisions related to middleware in Sections III.D and H. Microsoft essentially has been blessed to continue wield its monopoly power for long periods of time to the detriment of consumers and competition. Instead, relief should be immediately available. If Microsoft does not have the technology ready, it should nevertheless be required to allow others to implement the provisions on their own while Microsoft delays disclosing the APIs. There is no competitive justification for giving Microsoft nine or twelve months to disclose and license interfaces that are readily available to, and now in use by, Microsoft's own application developers. In fact, Microsoft is already relying on the 12 month delay provision to avoid disclosing APIs to SAP. Despite repeated requests, Microsoft has not provided RealNetworks with any information or even confirmation that it would provide access to SAP. In a January 2002 communication to RealNetworks, Microsoft simply pointed to the twelve-month time frame and claimed it was in compliance.

F. The RPFJ Does Not Materially Affect Microsoft's Ability To Engage In Anticompetitive Exclusive Dealing

The RPFJ does not effectively prohibit Microsoft from using deals with an IAP, ICP, ISV, an independent hardware vendor (''IHV''), or OEM to limit competition. Microsoft has long relied on such deals in an attempt to limit the development of competing middleware solutions. For example, Microsoft has entered into agreements specifically limiting or forbidding use of middleware that threatens its operating system monopoly. Microsoft has entered into agreements requiring independent content providers to use technology designed to detect whether the end user has Microsoft middleware installed on his or her computer and then using that technology to the exclusion of competing middleware, even when the consumer had chosen the competing middleware as their default. Such conduct flies in the face of Microsoft's own statements that it is trying to create a platform for ISVs; Microsoft's actions are damaging to any ISV who build competing middleware on Microsoft's platform. Section III.G allows Microsoft to demand parity with any third party product that Microsoft considers to be a competitor to its Platform Software in any deal with an IAP, ICP, ISV, IHV, or OEM that distributes, promotes, uses, or supports the third party product. This provision seems designed to prevent competitors from getting ahead of Microsoft.

In addition, Microsoft is sure to continue to use its investments as a vehicle to demand exclusivity or preference for its products to the detriment of competing middleware. Microsoft can enter into any agreement with an ISV, IHV, IAP, ICP, or OEM provided that each contributes either significant developer or other resources prohibiting the entity from competing with the object of the agreement for a reasonable (undefined) period of time. This would bless and legitimize Microsoft's current anti- competitive behavior through which Microsoft leverages other assets to maintain its illegal monopoly. Moreover, Microsoft can apparently avoid even these

[72] Id. at 90–92.

[73] Secure Audio Path is a technology designed to maintain the security of a file as it moves through the operating system for eventual playback by a sound card. It is designed to prevent interception of secure content along the route to the sound card. Microsoft has been exhorting content providers to use its Windows Media middleware in part because of its exclusive access to Secure Audio Path.

requirements simply by licensing intellectual property as part of the deal (see Section III.G.2). Section G appears to allow Microsoft to license third party intellectual property under whatever scenario it desires. This presents a gaping loophole to the entire section, as does the exception for any joint development or joint services' arrangement. Virtually any technology deal could be styled as such.

The prohibitions of Section III.G.2 are strangely applicable only to contracts with IAPs and ICPs (not IHVs, ISV or OEMs) to obtain placement in Windows. In fact, it should simply prohibit Microsoft from entering any contract conditioned on any third party's agreement to refrain from or limit distribution, promotion or use of competing middleware. As written, the provision would allow Microsoft to require any ISV or IHV to refrain from distributing or promoting competing middleware as a condition for placement in Windows, or for placement on MSN, or for access to Dot.Net or for anything else. Surely, this could not have been the intent of the DOJ, yet it is the result of the language in the RPFJ.

G. The Enforcement Provisions Are Weak And Ineffective

The Court of Appeals conclusively established that Microsoft is an illegal monopolist. Yet, remarkably, Microsoft has not modified its anticompetitive behavior in any meaningful way despite the Court's clear conclusions, just as previously the consent decree entered by the DOJ failed to end Microsoft's anticompetitive conduct. The necessary enforcement mechanisms must reflect the harsh reality that Microsoft has repeatedly shown its complete disrespect for the judicial process and directives of the courts. Unfortunately, the enforcement mechanisms in the RPFJ are completely ineffectual and are destined to fail. Any conduct-based remedies in this complex environment will be effective only to the extent they are capable of prompt, rigorous enforcement.

For instance, the proposed settlement fails to put in place a meaningful mechanism for preventing, identifying and resolving violations of the proposed agreement in an expedited manner. The voluntary dispute resolution mechanism is designed for delay rather than deterrence. It is essential that any decree establish clearly defined procedures, with prompt, prescribed time deadlines, to enable the government and the court to address violations of the decree in a full and expeditious manner. By contrast, the ''voluntary dispute resolution'' provisions of the proposed settlement are as inadequate as the name suggests. The only ''penalty'' for willful and systemic violations of the proposed settlement is a one-time, two-year extension on the already truncated five-year term, much of which does not even become effective for an entire year. The time frames for investigating complaints are loose or non-existent, with no clear or prompt recourse to the court for resolution. Moreover, the ''Technical Committee'' is housed at Microsoft, cannot independently go to the court for redress and cannot present any of its findings or information to the court, which ensures that the substantial time, effort, and expense devoted to the Committee's processes would need to be duplicated in future compliance efforts. Inexplicably, Microsoft is allowed to appoint a member of the Technical Committee, a sort of permanent seat on the security council to oversee its overseers. Rather, the proposed decree needs to establish a Special Master, that can make prompt recommendations directly to the Court. This litigation has been going on for over three years. Microsoft has reaped the rewards of its illegal conduct during that time, and continues to do so. The RPFJ would provide Microsoft with an additional 12 months to comply with several provisions that should require immediate compliance. The proposed time frames greatly overstate the difficulty of providing ISVs with technical information that Microsoft has been using itself to develop Middleware and other applications. Any purported hardship imposed by more appropriate deadlines would certainly by justified by Microsoft's history of illegal conduct. Consumers deserve swift and certain relief.

V.CONCLUSION

As set forth above, entry of the ambiguous and loophole-laden RPFJ would engender significant uncertainty as to its terms and actual effect and would, in many respects, potentially assist Microsoft in its anticompetitive efforts to restrict the development and distribution of competing, innovative middleware. The full anticompetitive harm that would result from a failure to effectively redress the anticompetitive conduct identified by the Court of Appeals cannot, however, be fully understood simply by examining Microsoft's anticompetitive conduct to date, as substantial as that is. As the trial court found in this litigation, the full effects of Microsoft's anticompetitive conduct extend well beyond today's consumers of personal computers to chill tomorrow's innovations and the new products and markets that such innovations will make possible:

Most harmful of all is the message that Microsoft's actions have conveyed to every enterprise with the potential to innovate in the computer industry. . . Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do not coincide with Microsoft's self-interest.[74]

By contrast, the Court has before it an eminently superior remedy proposed by the Litigating States. Bereft of the ambiguity and loopholes that benefit the monopolist they are ostensibly intended to restrain, the States' proposed remedy highlights the extent to which the RPFJ fails to effectively end Microsoft's anticompetitive conduct. Forward- looking in scope and straightforward in application, the States' proposed remedy is appropriately tailored to redress the anticompetitive conduct identified by the Court of Appeals, while preserving Microsoft's ability to compete with other operating systems and other middleware products on the merits.

For the reasons set forth herein, RealNetworks respectfully submits that entry of the RPFJ would not be in the public interest.

[74] 84 F. Supp. 2d at V 412.

MTC–00029306

From: Jessica Hollings
To: Microsoft ATR
Date: 1/28/02 10:44pm
Subject: Microsoft settlement

The proposed settlement is not in my interest.

Signed,
Jessica Hollings
Athens, Ohio

MTC–00029307

From: CHARLES A. CRAWFORD
To: Microsoft ATR
Date: 1/28/02 10:44pm
Subject: microsoft settlement

I ask that the current settlement be followed , and that the dissenters be silenced by the court.

Charles A. Crawford
crwfca@juno.com

MTC–00029308

From: Maggie Hayes
To: Microsoft ATR
Date: 1/28/02 10:49pm
Subject: Microsoft Settlement
Maggie Hayes
13759 Morningbluff Lane
San Antonio, TX 78216
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Thank you for the exceptional service you have provided our country. In the interest of furthering the cause of private enterprise, the foundation upon which our country has been built, I am compelled to speak out on the Microsoft settlement. As both a customer and a stockholder, I hold strong opinions on the outcome of this case.

Microsoft has long been a leader in the technology industry. They have earned their place of leadership in the technology industry through their focus on excellence. Due to this commitment Microsoft has consistently outperformed the competition by providing consumers with user-friendly products. As a believer in free enterprise I was outraged by the case against Microsoft. Nonetheless the resolution of this case is the most important matter at this time.

Enacting the settlement will allow Microsoft to get back to business. In addition the stipulations of the settlement will benefit users as well. With the release of Windows XP, Microsoft will be putting in a new mechanism that will allow users to add and delete programs into the system with greater ease. The settlement goes above and beyond the original scope of the case. The Justice

Department must enact the settlement at the end of
January.
Sincerely,
Maggie Hayes

MTC–00029309

From: J. Daniel Moss
To: Microsoft ATR
Date: 1/28/02 10:46pm
Subject: Microsoft Agreement
To Whom It May Concern,
As a citizen, taxpayer, and shareholder concerned with the element of fairness, I want you to know that I support the settlement agreement worked out between the U.S. Department of Justice and Microsoft. I want to add my name to the support enlisted for the agreement.
Joseph Daniel Moss
500 Fisher Avenue
Catawissa, PA 17820
1–570–356–2138

MTC–00029310

From: Hhall27610@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:46pm
Subject: Microft Settlement
In a message dated 1/28/02 6:45:37 PM Central Standard Time, fin@MobilizationOffice.com writes: << microsoft.atr@usdoj.gov >>
Below is the letter we have drafted for you based on your comments. Please review it and make changes to anything that does not represent what you think. If you received this letter by fax, you can photocopy it onto your business letterhead; if the letter was emailed, just print it out on your letterhead. Then sign and fax it to the Attorney General. We believe that it is essential to let our Attorney General know how important this issue is to their constituents. The public comment period for this issue ends on January 28th. Please send in your letter as soon as is convenient.
When you send out the letter, please do one of the following:
Fax a signed copy of your letter to us at 1–800–641–2255;
Email us at fin@mobilizationoffice.com to confirm that you took action.
If you have any questions, please give us a call at 1–800–965–4376. Thank you for your help in this matter.
The Attorney General's fax and email are noted below. Fax: 1–202–307–1454 or 1–202–616–9937 Email: microsoft.atr@usdoj.gov
In the Subject line of the e-mail, type Microsoft Settlement.
For more information, please visit these websites: www.microsoft.com/freedomtoinnovate/ www.usdoj.gov/atr/cases/ms-settle.htm
8850 McClellan Boulevard
Anniston, AL 36206–7548
January 13, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Attorney General Ashcroft:
I appreciate the Justice Department finally coming to a settlement over the Microsoft issue. The three year long dispute has brought up many issues regarding antitrust laws and the tech industry. The settlement that was reached represents a good compromise. I believe that it should be acceptable to everyone involved.
Now that the Windows'' operating system will be made available to producers at a uniform price, computer makers will not have to gain favor with Microsoft in order to receive discounted prices. This evens the playing field among computer makers. Further the review committee that is to be created will guarantee that everyone plays fair too.
The settlement comes at a good time. It represents both sides of the issue. The government needs to move on to more important matters. Thanks for listening.
Sincerely yours,
Harold Hall

MTC–00029311

From: daRcmaTTeR
To: Microsoft ATR
Date: 1/28/02 11:00pm
Subject: Microsoft Settlement
To whom it may concern,
Please do this country a big favor and split them up, take them apart...do what ever you have to do to make them play by the same rules everyone else has to if you can't put them out of business. We're all so tired of watching and being able to do nothing while MS gets rich over the dead bodies of smaller companies that are just trying to make a living at what they do. MS stinks, their products stink and the way in which they treat the end users by marketing and selling inferior products stinks! Please give this country and the world the Technological enema that it so desperately deserves and needs and stick it to Microsoft. Though it won't even begin to make up for the way they have stuck it to countless others at least it's better then letting them get away with it unpunished.
Mark Weaver
Written from A Microsoft FREE environment

MTC–00029312

From: Allan G. Osborne
To: Microsoft ATR
Date: 1/28/02 10:47pm
Subject: Microsoft Settlement
5829 NE 198th Place
Kenmore, WA 98028
January 28, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:
I encourage you to support the recent antitrust settlement Microsoft has reached with the DOJ. I can only imagine how much this lawsuit has cost the little people in this country—not Bill Gates, but the people throughout the country, especially those who are in pension funds.
Furthermore, I feel this attack on success is forcing Microsoft to agree to terms that go far beyond the original scope of the lawsuit so it can continue to develop software undisturbed by the government.
As an example, Microsoft has agreed to provide the code so competitors can alter Windows to remove Microsoft products and to install competing products. Furthermore, Microsoft has agreed to disclose various interfaces to its competitors—a first in an anti-trust settlement.
Further, Microsoft has agreed to not force third parties to distribute or promote Windows exclusively or as a fixed percentage; nor will Microsoft prevent computer makers or software developers from developing competing operating systems or software that runs on competing operating system.
For these reasons, I encourage you to support this settlement as good for the consumer, and so that Microsoft can return to the business of developing good software.
Sincerely,
Allan Osborne

MTC–00029313

From: Dolores Dembus
To: Microsoft Settlement
Date: 1/28/02 10:41pm
Subject: Microsoft Settlement
Dolores Dembus
3133 Connecticut Ave NW
Washington, DC 20008
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.
Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.
Thank you for this opportunity to share my views.
Sincerely,
Dolores Dembus

MTC–00029314

From: Thomas Leszczynski
To: Microsoft Settlement
Date: 1/28/02 10:41pm
Subject: Microsoft Settlement
Thomas Leszczynski
4539 Greystone Dr
Richfield, WI 53076–9405
January 28, 2002
Microsoft Settlement

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Thomas Leszczynski

MTC–00029315

From: Loyd D. Jacobs
To: Microsoft ATR
Date: 1/28/02 10:48pm
Subject: Micrsoft Antitrust Settlement

I believe the subject settlement is more than fair. Microsoft was largely responsible for the tremendous economic gains of the 1990's. Yet the goose that laid the golden egg is severly attacked. By whom? By a gang of competitors who could not compete in a free market. By a gang of competitors who met together to costruct a case against Microsoft and ask the federal goverment to prosecute it. Collusion?

Yes Microsoft is agressive. In business you do not go far without being agressive. Agressive action and words can stir up emotional responses, but that does not make them illegal?

The general public has not been harmed by Microsoft. To the contrary. Microsoft has made it easy for the novice to use computer systems. They have provided a much needed standard. Compare that to the incompatable wireless telephone systems. My wireless telephone will not work in Europe. Old time computer users complain about Microsoft. They know how to work around computer problems and do for themself. The general public does not. Microsoft provides a standard, a tool the general public can easily use.

Bunding. I want blundling. I do not want to buy my operating software system a piece at a time. Only special applications do I want to buy one piece at a time. I also do not want to make the piece by piece selection of what goes in my basic operating system. I am not smart enough. Microsoft lets me easily buy a complete system that works great.

Cost. Per line of code, there is no maintaied software package that is cheaper.

Do we really want to put overzealious tethers on the company that had a large part in creating the golden egg economic era of the 1990's. I would think twice about that.

Thanks for the opportunity to comment.

Loyd D. Jacobs

P.S. I am a Boeing retiree.

MTC–00029316

From: RAJESH SATPUTE
To: Microsoft ATR
Date: 1/28/02 10:49pm
Subject: Microsoft Settlement

Dear Sir/Madam,

This settlement is in favour of the public. This settlement is good for the industry, economy and above all the nation. As a US Citizen I do agree this steelement.

Regards,
Raj Satpute

MTC–00029317

From: Hugh Inness-Brown
To: Microsoft Settlement
Date: 1/28/02 10:45pm
Subject: Microsoft Settlement
Hugh Inness-Brown
5351 State Hwy 37
Ogdensburg, NY 13669
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

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Thank you for this opportunity to share my views.

Sincerely,
Hugh Inness-Brown

MTC–00029318

From: Swapan Gupta
To: Microsoft ATR
Date: 1/28/02 10:52pm
Subject: Microsoft Settlement

We the undersigned would like to submit our comments on the Microsoft Settlement before the Antitrust Division. We are displeased to note that much effort has been expended by the government to listen to envious competitors, who unable to compete in the open market, attack a productive company so that its innovative ways can be hindered. We have been using Microsoft products for over a decade and have never had any complaints about their performance. Over the years their products have kept improving. We are therefore opposed to any settlement, in which the company which has become successful by dint of innovation, is penalized for being too successful. We would also like to state for the record that as free individuals, participating in the marketplace, we have chosen Microsoft products without coercion. Therefore we think that it is not the duty of the Government do decide or restrict the marketing of Microsoft's products at what ever price the market will bear. Also we think that as free individuals we have an inalienable right to purchase and keep on our computers software of our choice without government interference. In other words, the government should not violate our personal liberties in the realm of what we can buy and keep in our computer. Since the business of Microsoft is producing software, we fail to see how it is a threat to anyone. A free market, in essence requires that a company be productive and offer a better product at the lowest price. Microsoft has been able to do this—- a testament to it's success.

One important point to note here is that Microsoft has been brought to court by its competitors, who when unsuccessful in the open market, sought to use government force to not only shackle but also to set the terms by which businesses in future must compete in the market place. Failed businesses must not be allowed to set the terms of the operation of the market place. Penalizing successful businesses can only have a chilling effect on future iconoclastic businessmen and industrialists from trying to be innovative if they conclude that the price of success is the breakup of a company and suffering long drawn out court battles and fines and unreasonable penalties. The government should foster an environment whereby any American entrepreneur with a new idea can start a business by upsetting (if required, just as Henry Ford upset the horse and buggy industry, or what Edison's invention of the light bulb did to the candle makers) current businesses and starting a new field of production just as the computer industry replaced and automated many labor intensive functions of U. S. industry. After all a business has a right to its own property and it is the constitutional duty of the government is to secure and protect those rights.

CC:activism@moraldefense.com@inetgw

MTC–00029319

From: KISSELL814@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:51pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft:

The free enterprise system in the United States has been the catalyst for making the

United States the greatest country in the world. Within the system, there will be winners and losers. Microsoft is perhaps the biggest winner of all time; they have created and marketed a product that satisfies the needs of an expanding market all over the globe.

The government has no business meddling into the affairs of Microsoft, or any other business. Microsoft used its own ingenuity and market know-how to achieve the level of success it has. The entire lawsuit between Microsoft and the US government has become a forum for Microsoft's competitors to tear a piece of Microsoft's success away.

Microsoft has agreed to permanent government oversight in the form of the three-person ''Technical Committee.'' This in and of itself should silence most any critic of Microsoft, but the settlement also agrees to make trade secrets such as operating system protocols and interfaces available to its competition as well.

I have strong reservations about this settlement, but if this is what Microsoft wants, than I will support the company. Microsoft performed as any company would in the open market, and has been duly rewarded. The federal government needs to end the litigation and let free enterprise and the market determine the final outcome for Microsoft and its competitors.

Sincerely,
Richard Kissell
3903 23rd Ave. W.
Bradenton, FL 34205

MTC–00029320

From: Howard Hall
To: Microsoft Settlement
Date: 1/28/02 10:49pm
Subject: Microsoft Settlement
Howard Hall
9 Josefa Place
Moraga, CA 94556
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Howard Hall

MTC–00029321

From: barbara ward
To: Microsoft Settlement
Date: 1/28/02 10:49pm
Subject: Microsoft Settlement
barbara ward
box 404
carrizozo, NM 88301
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
barbara ward

MTC–00029322

From: NANCY LONG
To: Microsoft Settlement
Date: 1/28/02 10:52pm
Subject: Microsoft Settlement
NANCY LONG
3601 CHADSWORTH WAY
SACRAMNETO, CA 95821
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
NANCY LONG

MTC–00029323

From: Jerome Isham
To: Microsoft ATR
Date: 1/28/02 10:57pm
Subject: USAGIsham—Jerome—1002—0125
10047 Main Street Apt #213
Bellevue, WA 98004
January 26, 2002
Attorney General John Ashcroft, DOJ
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft,

Today I take the time to encourage the Department of Justice to accept the Microsoft antitrust settlement. The DOJ and Microsoft have slugged this battle out for over three years. It is time to put an end to it. A settlement is available and the terms are fair. It is rally about time that the government accepted it. In order to put this issue behind them, Microsoft has agreed to many terms. They have consented to design future versions of Windows to be more compatible with non-Microsoft software, making it so that features like Explorer and Windows Messaging can be replaced by Netscape and IM. They have also agreed to change several aspects in the way they do business with computer makers. Microsoft has given up a lot in order to settle the issue. It is time for the government—and the courts—to accept the settlement and move on. Microsoft and the technology industry need to move forward, and the only way to move forward is to put this issue in the past. Please accept the Microsoft antitrust settlement.

Sincerely,
Jerome Isham

MTC–00029324

From: Dale Boe
To: Microsoft ATR
Date: 1/28/02 10:59pm
Subject: 280 Yew Street Road
280 Yew Street Road
Belingham, WA 98226
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW

Washington, DC 20530

Dear Mr. Ashcroft,

I wanted to take this moment to write you, during the 60-day public comment period, to express my concern on this tedious lawsuit plaguing the Microsoft corporation. For the past three years (in its most recent version, anyway) Microsoft has concentrated its time, energy and money under public and federal scrutiny and it has been the unfair and unjustified bullying of an enterprise that built itself on American ideals, the dreams that all Americans are made of. The current proposed settlement, although harsh on Microsoft, needs to be the ending of this lawsuit once and for all. If the case goes back to the federal court, not only does the fundamental principle of freedom of enterprise fly out this nation's window, but our nation's economy will suffer further from the loss of potential capital. How can our country criminalize a business that brought this world out of the technological ''stone age?'' It is beyond me how people that have prospered from Microsoft's success are also the ones trying to put them out of business. Is this the message we are instilling in our own people that too much success is a crime and can legally be taken away from you?

By accepting the proposed settlement, Microsoft and the American consumer can put this behind them, get back to business as usual, and keep Microsoft as an investment this country needs to stay at the top of the global market.

Your time and consideration in this matter is greatly appreciated and I hope your actions will speak for the American people and not the jealous competitors trying to take ingenuity away from the Microsoft corporation.

Sincerely,

Dale Boe

MTC–00029326

From: BRTSTAR1@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 10:59pm
Subject: Microsoft Settlement

Greetings.

I believe in the free enterprise society. Let the inventors invent. I want Microsoft to give me the best of the best. I want all the components in one pack of software.

Please let Mr. Gates advance our technology. Stop all the legal action against Microsoft.

Regards,
Valerie Rogers
3428 Hillvale Rd
Louisville, Ky 40241
502–423-STAR

MTC–00029327

From: Carol Wray
To: Microsoft Settlement
Date: 1/28/02 10:55pm
Subject: Microsoft Settlement
Carol Wray
10133 Ga.Hwy.42 South
Fort Valley, GA 31030–9313
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Carol Wray

MTC–00029328

From: Dave La Bounty
To: Microsoft ATR
Date: 1/28/02 10:59pm
Subject: Microsoft Settlement

To whom it may concern:

I am very much against the proposed Microsoft Antitrust Settlement ... it doesn't go far enough to level the playing field against Microsoft or in punishing Microsoft. In it's present form, it appears that the DOJ proposed settlement (once again) lets Microsoft off the hook, and lets them continue their rampant / unabaited, unethical, predatory / monopolistic practices ... it's ALL in the details and crafting of the words ... by highly paid Microsoft lawyers ... once again, there is no ''meat'' to it. ''Nothing'' surprises me anymore ... but America and the world deserves better. There IS an alternative ... ALL you have to do is read the incisive, brilliantly presented descriptions of the problems ... and solutions at the following web sites ... to realize how woefully inadequate the DOJ settlement proposals truely are.

http://www.kegel.com/remedy/letter.html,

http://www.kegel.com/remedy/remedy2.html

http://www.codeweavers.com/jwhite/tunney.html

The solutions proposed at these sites have some ''meat'' to them, and should just be a starting point of ''minimum necessary requirements''. These proposed solutions, would finally, at least, force Microsoft to be more forthright and honest. Hire these guys as consultants!!! IF there is ''any justice'', the DOJ verdict and settlement ought to ''punish'' Microsoft ''severely'', with more than just a weak slap on the wrist ... Microsoft should not continue to be ''rewarded'' by the Justice Dept. for their continued ''best business practices'' ... business practices at their worst.

I have been supporting Computer hardware / software for 40 years from mainframes to PCs, including Microsoft products. There is ''no room'' in a democratic society ... for software code (and a company) that wants to ''imbed'' itself ''everywhere'' ... to the ''exclusion'' of ALL others. This fact is even intuitively obvious to the most casual observer ... and also ought to be obvious to a ''US Justice Dept'' as well.

There is no dispute that Microsoft has stifled innovation, creativity and competition ... and in the process ''sucked'' the life out of an Entire industry / culture. For years, Microsoft has ''rushed to market'' buggy / inept, bloated software code / APIs, applications ... Operating systems (OS) ... in order to circumvent previous, WEAK Justice Dept settlements.

Just look at the security flaws in their ''latest & greatest'' XP OS ... rushed to market to ''procreate'' and ''imbed'' itself ... before it works ... and before the ''law'' can catch up with it ... yet one more time. In Windows 9X, Internet Explorer (IE) was blatently imbedded into the Windows OS, with requirements that IE be the ''default'' browser in order for OTHER Microsoft) applications (such as Outlook) to work properly ... to the exclusion of other applications, including Netscape. Microsoft ''is'' the ultimate blood-sucking virus. It's time to get out the RAID ... and a BIG flyswatter ... or gavel!!!

Surprise me ... do something right ... for a change,

Dave La Bounty,
San Jose, Ca,
Computer Engineer / Technologist (40 years)

MTC–00029330

From: lward@infi.net@inetgw
To: Microsoft ATR
Date: 1/28/02 11:01pm
Subject: Microsoft Settlement
Lester Ward
5604 Newman Davis Road
Greensboro, NC 27406
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I have been using computers since 1976. That is about adecade before even the first PCs. (even before DOS). I could use computers even without Microsoft. The question is would I want to do so. Imagine the millions of Americans today that use computers and the Internet without even a clue as to how difficult things once were.

I am writing this letter in hopes of restoring some sense to the current course of affairs. I sold my Microsoft stock shortly after Judge Jackson began to try to write himself into the history books. The reason Microsoft is so successful is because we the consumers want it to be. I do not want to purchase a menagerie of software operating systems and user applications that very likely will not work together. I know this started during the Clinton Administration. I feel that it is time to put a halt to this auto-immune attack

Microsoft is an important part of the U.S. economy. Please let Microsoft get back to software production. In these difficult economic times, we need to move forward. I would find it difficult to do my job without the innovations that Microsoft has provided. I will continue to depend on Microsoft. Microsoft has agreed to a settlement that should provide any necessary compliance to regulations and prevent any further perceived need for anti-trust actions.

I hope that my opinion makes a difference. Thank you for your attention in this matter.

cc: Representative Howard Coble

Sincerely,

Lester Ward

MTC–00029331

From: Kiyoshi Yu
To: Microsoft ATR
Date: 1/28/02 11:01pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street, NW
Suite 1200
Washington, DC 20530–0001
Via email: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

Dear Ms. Hesse:

As a consumer whose activities both at work and at home rely heavily upon the use of personal computer software, I welcome the chance to comment on the proposed settlement between Microsoft and the Department of Justice.

I feel that this agreement, as is, will leave Microsoft to continue in its anticompetitive ways. It will not prevent the monopoly from using strong-arm tactics in licensing deals with computer makers, nor will it stop Microsoft from keeping competitive products from coming to market. As a result, consumers like myself will be forced to continue to pay for Microsoft's expensive operating systems and software suite and the upgrades required to keep them functional. In addition, our choice of software products will continue to be limited and for those of us who do use non-Microsoft operating systems or Internet browsers, compatibility with other Microsoft products will continue to suffer.

The additional proposal put forth by Massachusetts Attorney General Tom Reilly along with eight other states and the District of Columbia is a far better remedy than one proposed by the Department of Justice. This proposal includes key provisions that will put an end to Microsoft's illegal business dealings, help ensure compatibility of software products and bring consumers like myself the benefits of greater choice and lower prices. Moreover, unlike the Department of Justice's settlement, this proposal will provide an enforceable solution with real penalties to guarantee compliance.

Therefore, it is my hope that the Court will find the Department of Justice's settlement with Microsoft not to be in the public interest and rather adopt the proposal of Tom Reilly and the other State Attorney Generals.

Sincerely,

Kiyoshi Yu

388 Ocean Ave.

Revere Beach, MA 02151

MTC–00029333

From: Robert Boyer
To: Microsoft ATR
Date: 1/28/02 11:03pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
Us Dept of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Dear Mr. Ashcroft:

I have been following the Microsoft antitrust case in the papers and media and I think it is time to come to a settlement. Microsoft has met all , and more, of the competitors demands. We should meet the simple request of Microsoft to have the settlement approved, so Microsoft can go back to the business of innovating.

I appreciate your efforts to have the Microsoft approved by the Court as in the best interest of the American public.

Thank you for your attention to this matter.

Billie Jo and Robert Boyer

2126 New Bedford Dr.

Sun City Center, Fl 33573

Phone- 813–634–1181

MTC–00029334

From: Kedar Soman
To: Microsoft ATR
Date: 1/28/02 10:57pm
Subject: Microsoft Settlement

Dear Madam / Sir,

This is in regard to Microsoft antitrust settlement case. I sincerely feel if Microsoft continues to follow the current practices, it will pose a grave challenge to the principle on which the capitalism is based, free and healthy competition.

Simply put, if not curbed right now, following thing will happen. Your children will wake up listening microsoft radio station on microsoft radio. They will wear clothes made by microsoft, travel in microsoft made car to office, where they work on windows and MS OFfice. Later in evening, they will come back and watch Microsoft televison. Before sleeping, they will read microsoft printed Bible. And when they will open microsoft printed dictionery to read the meanings of words freedom and customer choice, they will hate you with their whole heart.

Thanking you,

Kedar Soman

MTC–00029335

From: linda rasband
To: Microsoft Settlement
Date: 1/28/02 10:57pm
Subject: Microsoft Settlement
linda rasband
670 west 91st ave.
anchorage, AK 99515
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers'? dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

linda rasband

MTC–00029336

From: Gretchen Huizinga
To: Microsoft ATR
Date: 1/28/02 10:57pm

Please see attached letter regarding the Microsoft Settlement.

Gretchen Huizinga
Millennium Arts Inc.
18404 148th Avenue NE
Woodinville, WA 98072
January 23, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I would like to take this time to voice my opinion on the Microsoft case. The government had no right to intervene with private business, but now that the case has been allowed to drag on for three years, the American public needs to see that the case is finally ended. Microsoft is a good company; they've provided consumers with superior products and have changed our lives, contributing so much to our nation's economy. I run a production company and use Microsoft's products in my office. I am not forced to do so; I use their products because I prefer to.

The proposed settlement will be more than favorable to Microsoft's competitors and will consequently foster competition. Microsoft has agreed to tone down its supposedly aggressive marketing techniques and will allow their competitors to create and promote non-Microsoft software in Windows. They are also going to give away a lot of their technical secrets to their competitors.

This settlement is more than reasonable and is the right thing to do. Our economy is struggling and our technology industry needs to be restored. Ending this case is a perfect way to do that. Thank you for your time.

Sincerely,

Gretchen Huizinga

MTC–00029337

From: Johannes Garcia

To: Microsoft ATR
Date: 1/28/02 11:04pm
Subject: Microsoft Settlement

Ladies & Gentlemen:

We must continue to promote the best technology and give the opportunity to those who wants the freedom to innovate in all area of business and industries. Lets keep the courts and the politicians out of technology especially in this critical time ''The New World Economic''. If AOL wants to continue to played this role in promoting policy (and politics) over technology especially as they have done in the last three years and contributing in the impeding of new technology. Let us remember man is the maker of his destiny and we are all guilty if allowed it to happen. Why should the American people be punished to pay for the legal cost of this platform?

As we all know AOL has promised to open up their instant messenger as Microsoft has done, so that we all can have a platform to build services for it, but has AOL complied? NO. They say one thing and do another.

Microsoft has done bad things in the past but is not the evil some people make it out to be. If you had studied them in some depth, you'd understand that.

Microsoft has done great things for the United States Economic and World Economic and their contribution to ordinary people is the real story. Let's keep our head over water and we should continue to review all the facts and put every things on the balanced (World Economic) before we make the biggest mistake in this new World Economic.

Johannes Garcia

MTC–00029338

From: Bertram Rogers
To: Microsoft ATR
Date: 1/28/02 10:56pm
Subject: Microsoft settlement

Dear Renata Hesse,

I would like to see the Microsoft litigation settled amicably ASAP. Microsoft is one of only a few US companies that can compete in the world market. I would not like to see it so cripple that it can no longer compete.

Best wishes,

B. H. G. Rogers

MTC–00029340

From: jack eich
To: Microsoft Settlement
Date: 1/28/02 10:59pm
Subject: Microsoft Settlement
jack eich
18763 felton
morrison, IL 61270
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

jack l. eich

MTC–00029341

From: tylerb@mac.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:05pm
Subject: Microsoft Settlement

It is a common misperception that Microsoft built it's monopoly upon the proprietary nature of its Windows operating system. In truth, Microsoft built its monopoly upon the proprietary and secret nature of its communication protocols. One historically important example of a proprietary communication protocol is the secret file format utilized by Microsoft application programs such as Microsoft Word and Microsoft Excel.

Because Microsoft wholly controls its secret communication protocols it has the ability to modify a specific protocol with each upgrade to an application program that uses said protocol. For example, when Microsoft issues an update for an application program such as Microsoft Word it has the ability to modify the file format used to encode Microsoft Word documents. Because Microsoft holds a monopoly within the application space that Microsoft Word competes the change in file format triggers a chain reaction of events. Once a critical mass of users adopts the new application program using the modified communication protocol (in this case the Microsoft word file format) other users are compelled to purchase the new version of the application program because the older version cannot understand and use the new protocol. People who wish to communicate within this particular space but who do not own Microsoft Word are compelled to purchase it, not because because the program offers innovative new features, but simply because the application program uses a proprietary protocol. Microsoft possesses both a monopoly and a secret proprietary protocol in many application spaces. This fact compels users to purchase Microsoft products instead of potentially superior competing products, and it allows Microsoft to set the price for these products at artificially high levels.

This situation amounts to a de facto arbitrary tax on communication imposed by a private entity.

The simplest and fairest solution with the best opportunity for success is to compel Microsoft to publicly document all of its communication protocols, including, but not limited to, all of its file formats. This solution is the fairest because it allows all competitors, including Microsoft, to innovate with respect to application features and performance, letting the market determine the price. It also frees users who wish to communicate within a particular space from the compulsion of purchasing Microsoft products.

The simplest and best method for enforcing this behavior is to require the government to confiscate any and all revenue derived from each and every Microsoft product that directly utilizes, or contains any sub component which utilizes, any communication protocol that is not completely documented, including, but not limited to, file formats.

MTC–00029342

From: James W Duffett
To: Microsoft Settlement
Date: 1/28/02 11:04pm
Subject: Microsoft Settlement
James W Duffett
11690 County Farm Road
Lexington, Mo 64067–7101
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Wayne Duffett

MTC–00029343

From: Janice Johnson
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: Microsoft Settlement

I wrote to Attorney General Ashcroft about my feelings about the settlement. Now, I would like to tell you how I feel.

I hope so much that there will soon be a settlement to this long drawn out affair. The

settlement that was outlined in the newspaper a few weeks ago seems fair and just to me. As a retired educator, I was particularly pleased to see that it involved gifts of materials and software to schools. It seems like a wonderful way to help children who are the consumers of the future. As an ''older'' consumer, I have grave doubts about the fact that this continued bickering has anything to do with the consumer at all. It appears to me to be an unjust form of competition by some rival companies i.e. Sun Microsystems, AOL, Oracle etc. and they are using to court system which I fund as a taxpayer to further their own ends.

Please, make a fair and equitable end to the squabble. Microsoft is a good company who really has done a wonderful job of focusing on the consumer.

Sincerely,
Janice Johnson
9308 190th ST SW
Edmonds, WA 98020

MTC–00029344

From: Scott Dallmeyer
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: Microsoft Settlement

The proposed settlement should not be approved as is. I do not believe that the proposed settlement does anything to rectify the situation created by the found criminal antitrust activities of Microsoft Corporation. The reason for antitrust laws is to maintain healthy competition and markets to promote more and better products. The settlement as proposed only legitimizes the anticompetitive behavior that has killed off so many potential innovators in the software industry.

The proposed settlement is not in the best interests of the consumers of software, in spite of the posturing of Microsoft. Nothing they do or propose can be taken as being in the interests of the consumers. They make so-called ''standards'' and patent them (their message block structure for Windows XP to kill off Samba) and poison emerging standards such as Java all in the interest of Microsoft, not the consumer.

I am totally opposed to this settlement as now structured.

Thank you for the opportunity to comment,
Scott Dallmeyer
Winnetka, IL

MTC–00029345

From: Bob Bezona
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: microsoft settlement
2219 Lummi Shore Road
Bellingham, WA 98226
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I encourage you to accept the recent anti-trust settlement between Microsoft and the United States Justice Department because it's good for Microsoft's competitors and good for those who purchase software.

Microsoft has agreed to make the software market more competitive by providing the necessary information for computer makers to remove Microsoft products from Windows and to install competing products in their places. Further, Microsoft has agreed to not take actions against computer makers who decide to take this route, nor will Microsoft prevent computer makers or software developers from shipping or promoting competing operating systems or software that runs on competing operating systems.

For these reasons, I encourage you to support the recent settlement as good for Microsoft, good for its competitors, and good for the consumers.

Sincerely,
Robert Bezona

MTC–00029346

From: Mike Mammarella
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: Microsoft Settlement

I believe that the terms of the revised proposed final judgement are too ambiguous; there is ample room for loopholes depending on the way Microsoft chooses to define, for instance, ''digital rights management.'' Microsoft has recently received a patent for digital rights management operating systems, which means that it would be not unreasonable to claim that the entire operating system (of some future version of Windows) is a digital rights management system and therefore exempt from API disclosure.

The terms must be more well-defined, but also not so narrowly as to be specific to the technology of today. Microsoft will soon be boasting a new platform called ''.NET'', which could escape the terms of a too-narrowly defined ''operating system'' and therefore also be exempt from many of the terms of the judgement. Furthermore, I believe that simply limiting Microsoft's illegal monopoly abuse is insufficient. Microsoft has been accused of the same practices before, and reprimanded as a result. However, this does not seem to have stopped Microsoft from continuing the abuse of its operating system monopoly. A more drastic measure could be in order; however this measure must be carefully considered. I'd personally love to see Microsoft dissolved entirely for its support of proprietary PC hardware interfaces (see P.S.), but I realize that this is both unrealistic and uncalled for. However, a split between the operating system division and the software (and middleware) divisions would help to prevent future monopoly abuse; both companies would also be well placed in their respective markets from the beginning. There would need to be restrictions on their interaction, in order to prevent what happened to the AT&T fragments (they eventually joined together again) after that famous split.

This is not the only possible solution. Others include requiring the disclosure of some or all of Windows'' source code, or that of Internet Explorer. These solutions could even be combined in full or partial strength.

I am certainly no legal expert, however as a software engineer and system administrator I feel I am qualified to make the statements I have put forth here. I hope that they will be of use and that the eventual decision will be beneficial to all involved, with the possible exception of Microsoft which can only stand to be in some way restrained from previous illegal activity.

Sincerely,
Mike Mammarella

P.S. A note about proprietary hardware interfaces—in the days of DOS, when a hardware manufacturer made a perhipheral device, whether an adaptor card or a printer, they disclosed information needed in order for the operating system or individual programs to communicate and use that device. With the advent of Windows and its driver interfaces, hardware manufacturers stopped releasing this information, claiming its proprietary nature. Technically, this was the decision of hardware vendors, but Microsoft was in the position to encourage them to continue to disclose their protocols and it instead encouraged the opposite. The effect of all this is that other operating systems cannot support these devices unless the manufacturer writes a driver for that operating system as well, which due to Microsoft's monopoly is much less likely. This further increases the barriers for entry into the operating system market.

MTC–00029347

From: Missy Nielsen
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: Microsoft Settlement

I support the Microsoft/DOJ settlement.

I do not agree with the nine holdout states. I believe their uncompetitive constituents are manipulating their AG... I remember how difficult it was to access the internet. I remember how difficult it was to use multiple software applications because none would work with the others.

Microsoft has made my life as a consumer much, much easier and productive. Yes, Microsoft is a monopoly, but they are a monopoly that uses their position to benefit consumers.

Please tell Sun, AOL, Oracle, etc. to spend their money on becoming competitive instead of fighting Microsoft.

Melissa Nielsen

MTC–00029348

From: Myers130@cs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:10pm
Subject: MICROSOFT SETTLEMENT

ATTORNEY GENERAL , SIR

Please be advised as a Microsoft share holder and also user of the products, I am urging the settlement of the law suit. I vote to settle this suit knowing the provisions are tough, reasonable, fair to all parties involved and goes beyond the findings of the Court of Appeals ruling. It is prudent in my opinion to settle this suit now.

Sincerely a shareholder.
Mary Ann Myers
4310 N. Camino de Carrillo
Tucson, Arizona 85750—6305

MTC–00029350

From: Barbara Sanders
To: Microsoft Settlement
Date: 1/28/02 11:06pm
Subject: Microsoft Settlement
Barbara Sanders

RR 1, Box 50A-1
Terra Alta, WV 26764
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Barbara A. Sanders

MTC–00029351

From: Johannes Garcia
To: Microsoft ATR
Date: 1/28/02 11:12pm
Subject: Microsoft Settlement

Ladies & Gentlemen:

We must continue to promote the best technology and give the opportunity to those who wants the freedom to innovate in all area of business and industries. Lets keep the courts and the politicians out of technology especially in this critical time ''The New World Economic''. If AOL wants to continue to played this role in promoting policy (and politics) over technology especially as they have done in the last three years and contributing in the impeding of new technology. Let us remember man is the maker of his destiny and we are all guilty if allowed it to happen. Why should the American people be punished to pay for the legal cost of this platform?

As we all know AOL has promised to open up their instant messenger as Microsoft has done, so that we all can have a platform to build services for it, but has AOL complied? NO. They say one thing and do another.

Microsoft has done bad things in the past but is not the evil some people make it out to be. If you had studied them in some depth, you'd understand that.

Microsoft has done great things for the United States Economic and World Economic and their contribution to ordinary people is the real story. Let's keep our head over water and we should continue to review all the facts and put every things on the balanced (World Economic) before we make the biggest mistake in this new World Economic.

Johannes Garcia

MTC–00029352

From: Carl C. Lochen
To: Microsoft ATR
Date: 1/28/02 11:12pm
Subject: Microsoft Settlement
Carl Lochen
30010 Rancho California Road
Apartment 124
Temecula, CA 92591–2952
January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

As an independent developer and supporter of Microsoft, I write you in regard to the recent Microsoft Settlement. After three years of negotiations, it seems strange that there may even be more delays in the implementation of this plan. The process was extremely well thought out and well monitored throughout. Because of this, the terms that were reached benefit all involved.

As we go through these economically stressful times, it is crucial that we support our technology at all levels. By holding up this settlement, we take a backseat in the global market. Our entire technology industry needs to get back to business, and because of the agreement, we are ready to do so. Let us support our IT sector and allow the terms to speak for themselves, including anti-retribution and retaliation acts, and the sharing of selected intellectual property.

Splitting up Microsoft

Specifically the non-Windows platform community has attacked Microsoft for adding to much functionality to its OS, and therefore stifling competition. They argue splitting up Microsoft, would make it easier to compete with Microsoft. This ignores the large amount of developers and companies that have made available more than 100 000 programs available on the Windows platform. Splitting up Microsoft, will for them mean disrupting the dynamics of developing cutting edge technology for Windows.

Windows Building blocks

Splitting up Microsoft into pieces, will create smaller companies developing solutions/libraries that will not be included in Windows and therefore be keeping secrets from other independent developers who will have to develop their own incompatible solutions. Splitting up Microsoft, destroys Windows's ability to offer solutions for connecting together building blocks with the latest technology. Solutions that are now incorporated in Windows and documented for everyone, will end up as proprietary solutions outside Windows. Making it less feasible for smaller developers to keep up with the latest in technology.

Microsoft is giving us pre-tested building blocks guaranteed to be interchangeable and compatible with each other. Developers using these building blocks for their own designs, know that their programs will be compatible with combinations of future designs trying to link up with or work together with their designs. Think of the many millions of errors windows is getting rid of for current and future developers of software...

Whenever building blocks are rewritten with new interfaces, previous interface(s) are still available to let older designs work as building blocks change. This is true of COM+ and any of the API's that come with Windows. It beats trying to design applications to hook up to zillions of applications not using support from the OS.

The Internet building blocks Internet technology built into Windows, assists applications using various Windows technologies in communicating and sharing data with each other over the Internet. This degree of integration between applications/components is only possible by having these technologies built into the platform they are running on. Internet Explorer built into Windows facilitates in building web browsers. Any developer can build their own Web Browser with their own customized controls. In less than a day they can design their own Web Browser that is equal in power to Internet Explorer. Just download the MFCIE project from Microsoft Developer Network (has been available a couple of years). In less than a day you implement remaining Internet Explorer Functions through the OLE/COM+ interface. In a matter of days any organization can design their own Internet portals that access primarily sites of their own choosing.

Documentation for developing software Microsoft develops the functionality and the building blocks needed for applications and distributed components to interact with each other on the Windows platform. Microsoft also provides Documentation and Developer information for all developers to take advantage of these features. Preventing Microsoft from freely expanding these features to provide the latest technologies, will damage the industry's ability to develop comprehensive integrated software solutions for the Windows platform. Instead you will end up with incompatible proprietary solutions and a less versatile Windows platform.

I urge you to support our economy at this time, and help this settlement go through as it stands. I thank you for your support.

Sincerely,
Carl Lochen
cc: Representative Darrell Issa

MTC–00029353

From: John Cowhig
To: Microsoft ATR
Date: 1/28/02 11:12pm
Subject: Please be fair and don't reward Microsoft for breaking the law.

I believe the proposed settlement is not punitive enough for past behavior nor will it be very effective to deter future strong arm tactics by Microsoft. At this point, the company has assured itself a comfortable distance ahead of all major competitors. However, as the linux and Macintosh OS community continue to try to gain market share, Microsoft has moved onto conquer new frontiers.

It is important for the DOJ to focus on the future. The past damage is done, but Microsoft continues to use tactics which act

against the spirit of the law. The masses will continue to take the route Microsoft and AOL plan for them. However, there are many innovative small companies and grass roots type programmers who would like to continue to innovate. Please don't allow Microsoft to continue to place barriers in their way.

Thank you,
John Cowhig

MTC–00029354

From: Mayer Etkin
To: Microsoft ATR
Date: 1/28/02 11:14pm
Subject: RE: My comments on the settlement.
Please see attached 01–02–062 SEA
Clear Day
Capital Solutions, Inc.
Offices & Affiliates Worldwide
Email capsol@attbi.com
Seattle Office:
6719 Seward Park Avenue South
Seattle, WA. 98118
Tel 206–723–9353
Fax 206–723–9354
January 28th 2002
WPI # CSI APT 001
01–02–062 SEA
Confidential email of 2 pages to Microsoft.atr
@usdoj.gov
Ms. Renata Hesse
Trial Attorney
Antitrust Division
US Department of Justice
RE: Comments on the Microsoft Settlement

Dear Ms. Hesse,

I am writing this email to you in my support of brining an end to this travesty of justice. The United States Department of Justice was suckered into persecuting Microsoft under the guise of an antitrust action.

If I were the Judge and it were up to me, I would make the following ruling.

* The court fines Microsoft the sum of $1.00

* The court specifically precludes any plaintiff from using the case record in support of their civil motions or claims against Microsoft if any.

The purpose of antitrust jurisprudence is not to enable a competitor to gain what they what they otherwise fait to gain in an open and competitive marketplace nor is the purpose to enable the plaintiffs bar to file a bogus class action law suit and legally extort $100 million dollars from a defendant because it's cheaper to settle then to litigate.

* If it were up to me to rescind the conclusions of law and findings of fact in this case, I would do so and dismiss the case.

Finally, I accept and approve of the settlement that the Federal Government and Microsoft have agreed to and I order the states that have not joined in it to accept it and to drop all further litigation against Microsoft.

My reasons for making the above rulings are simple, go into any computer store and there are choices to be made. A consumer has the opportunity to decided for themselves exactly what their choice should be. If Microsoft had not taken the actions that they had, they would have run the risk of becoming an also ran in the software business and their operating system would have become obsolete. What one perceives as product improvement and natural migration in an evolving market may be perceived by a competitor in a different manner. It is up to the consumer to decide which is which and not for the government to interfere and make that determination for them. We are advocates of the law, not software engineers, designers nor marketers. In a dynamic and fluid market as this case has shown, what is being argued about is history not current events nor the current state of the software business.

Let's hope the Judge has the courage to rule as suggested and let companies do their battle with each other in the marketplace free of government and judicial impediments.

Have a great day.
Sincerely yours,
Capital Solutions,Inc.
Mayer Etkin, President

MTC–00029355

From: Dearallie
To: Microsoft ATR
Date: 1/28/02 11:14pm
Subject: Microsoft Settlement
PHYLLIS CONANT
65 Kirkland Avenue Apt. 202
Kirkland, WA 98033–6442 USA
Ph/FAX 425 828–9474
January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Now that the Department of Justice and Microsoft have reached an agreement, why can't we just move on? It doesn't make sense that all of these states and companies are jumping on the bandwagon. I think that they are all liberal opportunists that are looking for a quick buck. What benefit does all of this have on the economy? Zero.

Microsoft has gone out of its way to settle this case, beyond what was required in the suit. They agreed to make available to the competition, protocols implemented from parts of its operating system that are used to operate with their server. Microsoft also agreed to the creation of a technical committee that will monitor Microsoft's compliance with the settlement and assist with any disputes.

Now that Microsoft has agreed to such generous terms, shouldn't we agree to let the settlement stand. Our Government has more pressing issues that they need to focus their attention on. I trust that you will do the right thing.

Thanks for your support in these efforts.
Sincerely,
Phyllis Conant

MTC–00029356

From: Rosemary Brubaker
To: Microsoft ATR
Date: 1/28/02 11:16pm
Subject: Microsoft Settlement

Judge Kollar-Kotally,

As a concerned citizen, I urge you to reject the proposed final judgment in the U.S. vs. Microsoft antitrust case. Microsoft is getting off easy, with most of its many billions in illegal profits going untouched. I'm also worried that Microsoft will continue to harm the high tech industry and the American consumer by using anti-competitive bullying tactics. This convicted monopolist must be dealt stronger punishment for the good of the public.

Sincerely,
Rosemary Brubaker
1502 Esbenshade Road
Lancaster, PA 17601
(408) 295–7374

MTC–00029357

From: glassguy@chouteautel.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:15pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Bruce Davis
R. R. 2, Box 769–2
Locust Grove, OK 74352–9626

MTC–00029358

From: Robert L. Jenkel
To: Microsoft Settlement
Date: 1/28/02 11:14pm
Subject: Microsoft Settlement
Robert L. Jenkel
587 E. Conestoga Circle
Grand Junction, CO 81504–7004
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition

means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Robert L. and Joyce Jenkel

MTC–00029359

From: Chetan Prabhudesai
To: Microsoft ATR
Date: 1/28/02 11:19pm
Subject: Microsoft Settlement

Dear Mr. Ashcroft,

As a user of both Microsoft and Apple computer products, I have to say that I feel Apple Computer has the edge in technology. The fact that Microsoft has a commanding lead over Apple can be attributed to Microsoft's superior marketing. Promoting one's product has never been illegal before, and definitely should not be now.

However, as I write this, I sit surrounded by Microsoft products: Windows, Internet Explorer, MSN Messenger, etc. I am typing this message on MSN Hotmail. Microsoft does have competitors in all of its business segments, but by packaging its inferior products together, it can make its software bundles seem superior to these competitors.

My father owns stock in Microsoft, yet I still do not fully support the company. It may not have committed a physical crime like murder, but it has damaged America's economy by not allowing free trade.

But perhaps economic crimes are not as bad as we think. Most companies recover from recessions, wars, etc.

In my opinion, the only solution to the Microsoft case is to stop it from bundling software. We cannot let Microsoft off too easily, but we should not punish it too hard. Terrorism is a far more important topic for the Supreme Court right now than a company that supposedly stifled innovation.

Sincerely,

Chetan Prabhudesai, 15

MTC–00029360

From: Mamusia@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:21pm
Subject: Microsoft Settlement.

I think the settlement with Microsoft is full and fair. At no time in history have consumers had access to such full-featured software at such low cost. I have reviewed the settlement and it seems to protect the public interest, while limiting Microsoft's actions in the future. It also seems to go beyond the original case, evidencing Microsoft's good faith in the matter.

Rebecca Ward

MTC–00029361

From: Sharon Rutland
To: Microsoft Settlement
Date: 1/28/02 11:17pm
Subject: Microsoft Settlement
Sharon Rutland
1068 Badger Road
North Pole, AK 99705
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Sharon I. Rutland

MTC–00029362

From: Norman Lasko
To: Microsoft Settlement
Date: 1/28/02 11:17pm
Subject: Microsoft Settlement
Norman Lasko
13400 Lakeview Dr. N
Omaha, AR 72662
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Norman E. Lasko

MTC–00029363

From: Leland Younkin
To: Microsoft ATR
Date: 1/28/02 11:22pm
Subject: Microsoft Settlement

Microsoft has developed their products for several years. It has produced programs and systems that has greatly benefited millions of consumers, businesses and governments.Without Microsoft's innovations and market savvy we would still be in the dark ages of the computer world Now comes a horde of lawyers (like vultures) seeking to gain large settlements for their benefit. I am convinced that they are not acting to benefit consumers. Just for their own greed Let us put this whole case to rest and let Microsoft continue to be innovative and produce their superior products for all consumers.

Sincerely;

Leland A. Younkin
335 Glendora Circle
Danville, CA 04526–3912
Email address BEONESEVEN@worldnet.att.net

MTC–00029364

From: DSchum2147@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:23pm
Subject: MICROSOFT JUDGEMENT
SEE ATTACHED
MTC–00029364_0001
2010 Crestwood Drive
Richmond, Texas 77469
January 8, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am happy to hear that the Department of Justice is ending its three-year antitrust lawsuit against Microsoft with a strong and binding agreement. This costly affair should have been ended a long time before this.

Microsoft did not get off easy. The settlement was arrived at after extensive negotiations with a court-appointed mediator. The company agreed to terms that extend well beyond the products and procedures that were actually at issue in the suit- for the sake of wrapping up the suit.

The agreement requires Microsoft to document and disclose, for use by its competitors, various interfaces that are internal to Windows'' operating system products that are used to communicate directly with the basic Windows system. Microsoft has also agreed not to retaliate against software or hardware developers who develop or promote software that competes with Windows or that runs on software that competes with Windows.

Microsoft has been distracted for long enough. This agreement will very much

benefit its competitors. I do not believe any more litigation beyond this settlement is necessary.

Sincerely,

Janey Schumacher

cc: Representative Tom DeLay

MTC–00029365

From: Douglas Schmutz
To: Microsoft Settlement
Date: 1/28/02 11:19pm
Subject: Microsoft Settlement
Douglas Schmutz
9404 Oakland AVe NE
Albuquerque, NM 87122–3806
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

This is just a note to say that I feel the currently contemplated settlement with Microsoft is a miscarriage of justice. The company has been and continues to be guilty of monopolistic business practices and is largely responsible for a great amount of the insecurity of the WEB. The only reason they have a fairly productive office suite is because they had to compete with WordPerfect. They did not innovate, it was WordPerfect that was the innovator, but because Microsoft controlled the operating system and could do it. they kept secrets that allowed them to make their product appear to perform better and made WordPerfect have incompatibility problems. They finally practically ruined WordPerfect by dropping prices and forcing computers to bundle their products instead of WordPerfect. The result is that now, they can (and do) raise the prices and of their products since the competition is almost nonexistent and they ship buggy software, full of security holes. I think it is in the interest of the consumer and the industry to place huge monetary penalties on the company and that money be distributed to software companies that used to compete so they can get back in business. Also they should be banned from producing software applications that run under Windows, so that they would have no interest in undermining the performance of thirdparty vendors.

Sincerely,

Doug Schmutz

MTC–00029366

From: robert shenk
To: Microsoft ATR
Date: 1/28/02 11:23pm
Subject: Microsoft Settlement

Not only does the agreement lack effective enforcement, but it seriously fails to address past, present, and future anticompetetive practices. We should also not reward companies that embrace standards for the purpose of perverting them. The end result is that the settlement preserves Microsoft's status quo. As a Senior Software Engineer I find this rather frightening.

Robert Shenk

MTC–00029367

From: Bill
To: Microsoft ATR
Date: 1/28/02 10:51pm
Subject: Microsoft Settlement

It was unclear whether the deadline for submission was midnight on 27 January or midnight on January 28, so please accept this submission. The following is my opinion and understanding of Microsoft based upon over 20 years of experience with computers and electronics. I am not affiliated with any Microsoft competitor or free competition group. Microsoft has significantly impacted my choices and capabilities in a TREMENDOUSLY negative way. The impact includes monetary, quality of life, and purchasing freedom. Due to their anti-competitive practices, I have been forced into using an inferior, OVERLY EXPENSIVE, and VERY COMPLEX product in my workplace and where unavoidable, at home.

Microsoft via either restrictive licensing and/or their initially ''free'' products coerces enough people using their product that they can later drive the market. People then must either use the Microsoft product or get left out of significant capabilities which Microsoft did not initially create, but which they have since taken over via either driving the real innovator out of business, purchasing the real innovator (or a competitor), or restrictive licensing. They have the money to do any of the three and have clearly done all of them more times than any other company in history. With only a few exceptions, MICROSOFT IS NOT AN INNOVATOR AND NEVER HAS BEEN. n

Here are some (not exhaustive) examples of Microsoft's successes or at least attempts to own or control nearly all aspects of the computer/electronics industry (percentages or rankings are my guess and better numbers should be easily obtained and will likely be large or increasing):

Operating System (have nearly killed Apple) 60%
Word Processing (have nearly killed Wordperfect, killed Wordstar and others) 80%
Spreadsheets (killed Lotus, I7...) 80%
Presentation 80%
Project Management (hurt FastTrack) 80%
DB (measurable impact to Oracle, Sybase) 40%
Browser (have nearly killed Netscape, killed Mosaic) 79%
Audio Player (will hurt RealPlayer, Quicktime) ??%
Movie Editor (intent to hurt iMovie and Final Cut Pro) ??%
Network-MSN (hurt AOL, others) 30%
Information—.NET, Passport ??%
Servers (significant impact to Solaris, IBM, and HP Unix Servers) ??%
PDA Pocket PC OS (significant impact to PalmOS vendors) 45%
Gaming—XBOX (targets are Playstation, Nintendo, others) ??%
Satellite TV—Ultimate TV (target TiVo) ??%
SW Development.—VisualBasic, C++, Classes (one area which they helped originate)??%
Web Development.—Frontpage ??%
PIMs—Entourage (target Now-Up-To-Date and others) ??%
Encyclopedia—Expedia (target Groliers, others) ??%
E-Mail SW—Outlook (killed Quickmail, hurt Lotus) ??%
Design—bought Visio ??%
Java (attempted hijack of the Sun standard) ??%
News—MSNBC (CNN, Fox, others) #3
eGreeting Cards MSN#4
Expedia Travel #2
Webmail Hotmail Tied #1
Finance MSMoney#5
Housing MSN Home Advisor #4
PC Games AgeOfEmpires #2

As one can see, Microsoft has way too much control of too much of our computing/electronics-related way of life. There are also numerous other areas in which Microsoft has a least some interest and which we are not yet even aware of. EVERYONE knows that once Microsoft decides they want to dominate an area, there are few companies IN THE WORLD which will be able to compete with them. This is due to NOT JUST THEIR PRACTICES, but is also due to their ABILITY and willingness to unethically (and illegally) leverage areas which they already have control.

Please break Microsoft's applications development from their operating system development. I believe this is the ONLY thing that can prevent Microsoft from continued restriction of competition. I strongly look forward to purchasing freedom and use of alternate operating systems and applications, both at home and at work.

Thanks,

Bill Eller

Greenville, TX

MTC–00029368

From: DEBORAHBAHARA@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:24pm
Subject: Microsoft Settlement
My comments are attached.
Deborah Gouge
MTC–00029368—0001
522 Woodland Road
Sewickley, Pennsylvania 15143
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

This is in regard to the settlement that has been reached in the government's three- year antitrust case against Microsoft. I want to let you know that I support the settlement that has been reached by the parties involved. The continued pursuit of this case would be a waste of time, money, and human resources. Microsoft will be making a number of specific changes due to the settlement. For instance, Microsoft has agreed to allow computer makers to remove the means by which consumers access various features of Windows, Windows Messenger, Microsoft's Internet Explorer, and Windows Media Player.

Also, the company has agreed to document and disclose various interfaces that are internal to Windows'' operating system products for use by its competitors. I ask that the government accept the settlement, and stop continued litigation against Microsoft.

Sincerely,

Deborah Gouge

cc: Senator Rick Santorum

MTC–00029369

From: Hamachek,Don
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:20pm
Subject: MicroSoft Settlement
12360 Edenwilde Drive
Roswell, GA 30075
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I would like to see the Microsoft settlement agreement finalized. The litigation has dragged on for long enough, to the detriment of the entire technology industry.

I work in the tech industry as a consultant for Cerner Company. I have witnessed firsthand how this case has negatively affected the technology world. Settling the case is in the best interest of everyone.

The terms of the settlement agreement are reasonable. Microsoft has agreed to license Windows to the 20 largest computer companies at the same price. They have also agreed not to retaliate against those who promote or develop software that competes with Windows. These types of concessions will help allay fears of anticompetitive business practices.

I appreciate your efforts at concluding this litigation. Thank you for your consideration of my comments regarding this issue.

Sincerely,
Electronically signed
Donald Hamachek

MTC–00029370

From: Kattner
To: Microsoft ATR
Date: 1/28/02 11:24pm
Subject: Microsoft Settlement

Please accept settlement upon which you have requested public input.

MTC–00029371

From: Abe Lum
To: Microsoft ATR
Date: 1/28/02 11:25pm
Subject: Microsoft Settlement

I was pleased to hear that the Department of Justice and a number of states have made efforts at settlingthe Microsoft antitrust case. I am writing today to urge the court to approve the settlement agreement. Nothing can be gained by continuing litigation in this case. Microsoft has been more than fair in agreeing with changing some of their practices. I hope to see the agreements finalzed in the near future. I thank you for your time and attention.

Abe Lum
5004–29th So.
Seattle Wash 98108

MTC–00029372

From: Thomas Keplar
To: Microsoft Settlement
Date: 1/28/02 11:21pm
Subject: Microsoft Settlement
Thomas Keplar
2710 Emmet Dr.
Logansport, IN 46947
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Thomas Keplar

MTC–00029373

From: Karen Martin
To: Microsoft Settlement
Date: 1/28/02 11:22pm
Subject: Microsoft Settlement
Karen Martin
897 S. Washington PMB 227
Holland, MI 49423
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Karen E. Martin

MTC–00029374

From: Joseph Wojtowicz
To: Microsoft Settlement
Date: 1/28/02 11:22pm
Subject: Microsoft Settlement
Joseph Wojtowicz
1390 Northfield Drive
Mineral Ridge, OH 44440–9420
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Joseph T. Wojtowicz

MTC–00029375

From: Harry Chandler
To: Microsoft Settlement
Date: 1/28/02 11:22pm
Subject: Microsoft Settlement
Harry Chandler
1109 Dixon Dr.
Chula Vista, CA 91911–3304
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the

courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

Harry C. Chandler Jr.

MTC–00029376

From: Albert Bryson
To: Microsoft Settlement
Date: 1/28/02 11:23pm
Subject: Microsoft Settlement
Albert Bryson
P.O. Box 365
Cochranville, PA 19330–0365
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,

AlbertvBryson

MTC–00029377

From: ACalapai@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:27pm
Subject: Fwd: Attorney General John Ashcroft Letter
349 Gardiners Avenue
Levittown, NY 11756–3701
January 26, 2002
Attorney General John Ashcroft
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As a retired accountant who has been following the Microsoft antitrust case, I'm still trying to come to terms with the fact that it was determined that Microsoft was acting as a monopoly. How has the public been hurt by the practices of Microsoft? I remember when the price of computers and software was prohibitive for the consumer. Because of Bill Gates'' technical and business acumen, DOS standardized and unified computer systems, and Windows popularized the graphical user interface, dramatically increasing user-friendliness and computer literacy. Thanks in large part to these developments; computers are now commonplace and cheap, reliable and easy to use, and versatile and useful in all kinds of ways.

Now that a settlement has been reached, there is now the threat of more litigation? It's a desperation move on the part of Microsoft's competition. Since they lack the knowledge and the fortitude to compete in the market, they're suing instead. And the attorney generals of the nine states that want increased litigation are only trying to further their careers by getting more money for their respective states. This is grossly unfair.

Microsoft has gone out of its way to cooperate even beyond what was expected. What other company has agreed to license its operating system to the 20 largest computer companies on identical terms, conditions and price?

Microsoft did. How many companies have agreed to disclose various internal interfaces of their operating system to the competition? Microsoft did. I guess that's not enough?! This lawsuit has got to stop. It has dragged on for over three years and may take another three years to resolve. I'm afraid for what this could do to the economy if it is allowed to continue. More poor people have moved up the ranks toward middle and upper middle class because of Bill Gates. have full faith in Microsoft's ability to come back on top if this litigation ends quickly. Otherwise, if the company is allowed to be destroyed, it will have devastating effects on this already fragile economy.

Sincerely,

Andrew Calapai

MTC–00029378

From: Walt Birdsall
To: Microsoft ATR
Date: 1/28/02 11:29pm
Subject: Microsoft Settlement

From 1979 to 1982, the Federal government squandered millions of taxpayer money trying to destroy one of the finest companies the American industrial genius has ever produced: International Business Machines, commonly known as IBM. With its reputation for boat-anchor reliable hardware and its legendary and meticulous obsession with customer service, IBM was the standard by which all other computer companies were measured.

At the last minute, the Feds broke up the phone company. Today, our computers are world-class and our patchwork quilt phone system is on par with Afghanistan.

The Federal government is now trying to destroy Microsoft, probably using the same legal blunderbusses, the same hapless but deep-pocketed taxpayers, and for the same misguided reasons: it's too big, it's a monopoly, they make too much money, stifle competition... et cetera, et cetera.

Do you folks not learn from past screw-ups?

As a professional software engineer, let me explain Windows to you. Windows is typing. Nothing else is involved. No natural resources were consumed, no wildlife was endangered, no wetlands were compromised, and no child labor laws were violated (although I've known some pretty immature teckkies in my day!) A bunch of ill clad, anti-social, frequently unwashed engineers of dubious morals and execrable personal habits, gather in consort... and they type.

And the public buys it. If you don't like it, don't buy it. Are you with me?

A few years ago, some twit at the Department of Justice crowed about having created a ''level playing field'' with respect to Microsoft. (Sports metaphors are very much in vogue at the DOJ.)

The next day there was great rejoicing in the streets of Bonn, New Delhi, Tokyo, Taipei, and London. They just *love* level playing fields!

It is the nature of the computer business that one company must dominate and set the standards that define the industry. Previously, that company was IBM; today, it is Microsoft. If you damage Microsoft, you will foment an unimaginable Tower of Babel chaos. Do you have any idea of the trillions of dollars of American wealth that have been created and leveraged by Microsoft's craftsmanship? Where would Mike Dell be? Intel? Seagate, Maxtor, and Western Digital, if there were no Windows? How many printers do you think HP would sell if there were no PCs to plug into? The Internet would revert to what it once was: an academic play-toy.

Someday, the natural evolutionary forces of technology will cause Microsoft to be set aside into an honored, hallowed place in industrial fossil history, and to a well-deserved rest. My teckkie brethren and I will then create a new enterprise.

Sadly, no one in government has any understanding in this arena except to meddle and create unimaginable mischief.

Please do us all a favor and just go away.

Walt Birdsall

Retired software engineer

MTC–00029379

From: ALBERT M. JACHENS
To: Microsoft Settlement
Date: 1/28/02 11:25pm
Subject: Microsoft Settlement
ALBERT M. JACHENS
4492 W. SIERRA
FRRESNO, CA 93722–2916
January 28, 2002
Microsoft Settlement

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
ALBERT M. JACHENS

MTC–00029380

From: VMo1830Q@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:29pm
Subject: Microsoft DOJ Settlement
8426 Academy Street
Houston, Texas 77025
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to say that I am pleased that the Justice Department and Microsoft have finally agreed upon a settlement.

Microsoft's philosophy of a computer in every home with everyone having access to the Internet at a reasonable price has made this country the most computer literate in the world. I understand this settlement will force Microsoft to make a number of specific changes to its products and business practices.

I only hope that this ''government'' control will not stifle Microsoft from continuing to develop new products at reasonable prices and advancing computer communication and usage.

Sincerely,
Rex Morris
8426 Academy St.
Houston, Tx 77025
713–592–6549
vmo1830q@aol.com

MTC–00029381

From: Gail Hemmerich
To: Microsoft Settlement
Date: 1/28/02 11:24pm
Subject: Microsoft Settlement
Gail Hemmerich
4464 Mosquito Lake Road
Deming, Wa 98244
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,
Gail Hemmerich

MTC–00029382

From: Jeff Jarrard
To: Microsoft Settlement
Date: 1/28/02 11:25pm
Subject: Microsoft Settlement
Jeff Jarrard
601 S Washington St. Apt. 407
Seattle, WA 98104
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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It should also be noted that the explosive growth in the host count on the Internet, the boom in new technology and innovative new business models (such as the one from which I am sending this message) were made possible by Microsoft's Internet Explorer, not Netscape. The Internet was a fledgling, hard-to-use network closed to the ''average American'' before Microsoft included I.E. in Windows 95. It was nothing more than a hobbyists pastime until then.

Thank you for this opportunity to share my views.

Sincerely,
Jeff Jarrard

MTC–00029383

From: George Gribben
To: Microsoft Settlement
Date: 1/28/02 11:27pm
Subject: Microsoft Settlement
George Gribben
580 Highland Hills Dr.
Howard, OH 43028
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

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Thank you for this opportunity to share my views.

Sincerely,
George A. Gribben, Jr.

MTC–00029384

From: Gayle Drake
To: Microsoft Settlement
Date: 1/28/02 11:26pm
Subject: Microsoft Settlement
Gayle Drake
10211 Old Fort Rd.
Klamath Falls, OR 97601
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

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Thank you for this opportunity to share my views.

Sincerely,
Gayle Drake

MTC–00029385

From: John Hughes
To: Microsoft ATR
Date: 1/28/02 11:32pm
Subject: Microsoft Settlement

I am against the current settlement between the justice department and the nine states with Microsoft. As a consumer of computer products I feel that Microsoft has abused it's monopoly power and will continue to do so. As a consumer I feel that I should be allowed choices of the features that my operating system on my computer should have.

Sincerely,
John Hughes
johnhug@iglou.com

MTC–00029387

From: Wayne Quinton
To: Microsoft ATR
Date: 1/28/02 11:32pm
Subject: Microsoft Settlment
January 23, 2002
Attorney General John Ashcroft
US Department of Justice,
Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am writing to tell you what I think of the Microsoft Case. This case is certainly not serving the public interest; it wasn't even brought on by the public. It was brought on because of their competitors'' influence and is now being paid for with tax money. This case is a ridiculous waste of tax money. People are suing Microsoft because they can't compete. I think there is something wrong when the law allows that.

Microsoft is passing on their technology secrets to their competitors and has even promised not to retaliate when competitors create products from that technology that would compete with Microsoft. If that's not fair, then I don't see what would be. Breaking up the company would be disastrous to our country's economy.

This settlement is long past due and needs to be accepted immediately.

Accepting this settlement is the right way to end this mess.

Thank you for your time.
Sincerely,
Wayne Quinton
The Highlands
Seattle, WA 98177

MTC–00029389

From: Karen Horovitz
To: Microsoft ATR,06karenh@
students.harker.org@inetgw,...
Date: 1/28/02 11:35pm
Karen Horovitz
Period 2
1/28/01

To Whoever it may concern-

I think that the government should accept the settlement from Microsoft. Although Microsoft is a monopoly, in our history there have been many other monopolies. One of them, Rockafeller's oil monopoly, had given him huge profits. Rockafeller had gotten rich on a trust fund. Now the new issue is Netscape vs Internet Explorer.

AOL Time Warner is suing Microsoft because they claim that they have been bundling their software with Internet Explorer browser and that this has reduced the internet market share for Netscape.

Well I don?t think Netscape should be blaming Microsoft when they are actually the ones who are bundling.

They bundle their product with both the hardware and software, making the buyer actually get two things in one.

Not only this, but AOL Time Warner is a huge company. They own many sub-companies. These companies include Warner Bros., AOL, and many other entertainment companies. Because of this, they probably are just suing Microsoft because they want to be the biggest company. Microsoft spokesperson Jim Desler says, ?AOL Time Warner has been using the political and legal systems to compete against Microsoft for years?? This just shows that they sued Microsoft to compete against Microsoft. Microsoft may not be the only ones violating the antitrust act.

MTC–00029390

From: Joseph Beyer
To: Microsoft Settlement
Date: 1/28/02 11:29pm
Subject: Microsoft Settlement
Joseph Beyer
1527 S.E. Schiller St.
Poreland, Or 97202
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Joe Beyer

MTC–00029391

From: HARRYR63@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:34pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

The intention of this letter is so that I may express my feelings about the antitrust suit against Microsoft, and the settlement that was reached last November that ended that suit. The Department of Justice and Microsoft agreed to terms on a proposed settlement, and I support that proposition.

I do believe however, that Microsoft should have been left alone in the first place. There are many other corporations that should have received the attention from the government that Microsoft did. There are terms in the settlement that go a little far, especially the ones that force Microsoft to turn over their intellectual property to competitors. They will be documenting various interfaces and source code that is internal to the Windows'' operating system, and giving that to their competitors. This is a travesty of justice.

The antitrust suit against Microsoft was uncalled for, but I guess that the settlement is the best thing that could have happened. It could have been much worse. I support the

settlement because I do not wish to see any further legal action taken against Microsoft.

This entire law suit was brought about because of sour grapes on the part of a few people, namely Sunmicro system's CEO. With his connections with a few Senators, namely Warren Hatch from Utah. He was able to get a senate hearing, and the rest is history.

Gosh darn it, the Federal Government can do us a great deal more good by going after such corporations as big oil. Look at what they are doing with the price of oil, at this very moment, with market control of prices almost varying by zip code. And they talk of Bill gouging the public for his Windows programs and getting by with it due to a lack of competition— please, give me a break.

Sincerely,
Harry Riddle
P.O. Box 88
No. Lakewood, WA 98259
CC:fin@mobilizationoffice.com@inetgw

MTC–00029392

From: David Little
To: microsoft.atr
Date: 1/28/02 11:34pm
Subject: Microsoft Settlement Comment
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001
28 January 2002

Ms. Hesse,

This letter presents my comments to the Proposed Final Judgment in the Microsoft Settlement. I object to the PFJ on the following grounds:

-It fails to require the release of the Office file formats. As I IT professional I've seen the lack of alternative Offices packages as a key source of the Microsoft's hold on the desktop since the ability in exchange documents in binary form is a key to collaboration both inside and outside the organization.

-It fails to address Enterprise License Agreements. Microsoft's licensing of both the OS's and Office require payment for all computers. As computers are scrapped due to age the licenses can't be moved the newer machines since OEM's require an OS to be installed.

-It fails to provide an effective enforcement mechanism. Microsoft has shown its willingness to circumvent agreements in the past. Without a strong enforcement mechanism I believe they will do so again.

There have been several lists of issues publish but these are the ones I consider the most important.

Thank you for the opportunity to comment.

David H. Little, Jr.
PO Box 90111
Raleigh, NC 27675
dhlittle@mindpring.com

MTC–00029393

From: Virginiastone527@cs.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:34pm
Subject: microsoft
Virginia Stone
215 Shope Creek Road
Asheville, NC 28805–9796
January 23, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft: After three long years, the Department of Justice and Microsoft have reached an agreement ending the antitrust suit brought against Microsoft. I want to give my support to this settlement and ask that you do also.

Microsoft has been more than fair in dealing with this issue. Microsoft has agreed to work with companies to achieve a greater degree of reliability with regard to their networking software; Microsoft has agreed to grant computer makers license to configure Windows so as to promote non-Microsoft software.

The list goes on and on. Microsoft and the Department of Justice obviously want to put this case behind us. Further litigation will only be counterproductive.

Give your support to this agreement. Thank you.

Sincerely,
Virginia Stone

MTC–00029394

From: Sandy Graham
To: Microsoft ATR
Date: 1/28/02 11:36pm
Subject: Microsoft Settlement
January 28, 2002

Dear Mr. Ashcroft:

I am writing to express my support in the recent settlement between Microsoft and the federal government. I sincerely hope that no further litigation is being pursued at the federal level.

It is my opinion that any further action would be completely unnecessary. Saundra Graham grahamws@attbi.com

MTC–00029395

From: female1@iwon.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:34pm
Subject: Microsoft Settlement
Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough.

Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user.

This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Terese Marks
3122 Heritage
Troy, MI 48083–5784

MTC–00029396

From: F. John Leonard
To: Microsoft Settlement
Date: 1/28/02 11:33pm
Subject: Microsoft Settlement
F. John Leonard
69 Farr Lane
Elmira,, NY 14903–7907
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Mr. F. John Leonard

MTC–00029397

From: John Moon
To: Microsoft ATR
Date: 1/28/02 11:38pm
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I recently learned the federal government and Microsoft settled their antitrust lawsuit. As the CTO of a custom software applications firm utilizing Microsoft technology, I would like to express my satisfaction with the settlement of this matter out of court.

Continued litigation on this matter would not be productive and would only serve to make the lawyers rich at the expense of innovation, among other things. That is why Microsoft wants to settle—not to mention it has been forced to spend untold millions on defending itself for the past three years.

Settling this lawsuit will lift the cloud of apprehension and nervousness that has plagued many tech firms since its inception.

The positive affects of settling this matter are quite clear. It will enable my company to continue designing custom applications without the headache of triple-sourcing which is what a Microsoft breakup would have caused. This may sound like a minor thing, however, it is not. It would be an inefficient administrative nightmare that would affect the performance of the company.

It is my hope that the settlement is finalized at the conclusion of the public comment period. It is in everyone's best interest.

—John Moon
moon@digitalbuilders.com
310/300–1701
digital builders, inc.
310/DIGITAL
310/300–1600 fax
www.digitalbuilders.com

MTC–00029398

From: Rolland Brengle Jr
To: Microsoft ATR
Date: 1/28/02 11:38pm
Subject: MICROSOFT SETTLEMENT

I believe the settlement Microsoft offered should be accepted by the DOJ. Consumers are the ones that will benefit from using Microsoft products.

R. M. Brengle, Jr.
3325 Center
Highland MI 48357

MTC–00029399

From: Leland Younkin
To: Microsoft ATR
Date: 1/28/02 11:40pm
Subject: Microsoft Settlement

Microsoft has developed their products for several years. It has produced programs and systems that has greatly benefited millions of consumers, businesses and governments.Without Microsoft's innovations and market savvy we would still be in the dark ages of the computer world

Now comes a horde of lawyers (like vultures) seeking to gain large settlements for their benefit. I am convinced that they are not acting to benefit consumers. Just for their own greed Let us put this whole case to rest and let Microsoft continue to be innovative and produce their superior products for all consumers.

Sincerely;
Leland A. Younkin
335 Glendora Circle
Danville, CA 04526–3912
Email address BEONESEVEN@ worldnet.att.net

MTC–00029400

From: RICHARD SMITH
To: Microsoft ATR
Date: 1/28/02 11:40pm
Subject: Microsoft Settlement
11531 Reltas Ct.
Cincinnati, OH 45249–1707
January 28,2002
The Hon. John Ashcroft;
Attorney General;
U.S. Department of Justice;
950 Pennsylvania Avenue, NW;
Washington, DC 20530–0001

Dear Mr. Attorney General:

The Department of Justice made a good pitch to Americans at the start of the ''U.S. vs. Microsoft'' lawsuit. We were told that the consumer needed government intervention to avoid being injured by Microsoft's unethical business practices. However, three years of litigation have proven enormously expensive for Microsoft and for the federal government. The inevitable result will be that any substantive benefit the settlement brings to the consumer will be balanced or outweighed by the great burden that the suit has been for the IT industry as a whole. Microsoft will have to reveal portions of Windows code to competitors and by being subject to the permanent scrutiny of a three person committee formed to review Microsoft's actions for years to come. This should be considered a fair resolution.

PLEASE—let's stick to the agreement!! Anymore time and resources spent in persuing Microsoft at the federal level can only serve to raise the price of the lawsuit to customers and taxpayers. It is high time to see this matter put behind us. The Department of Justice must end this lawsuit as soon as this period of public comment is concluded.

Very sincerely,
Richard Smith

MTC–00029401

From: James Brubaker
To: Microsoft ATR
Date: 1/28/02 11:41pm
Subject: Concern re the Microsoft Settlement

Honorable Judge,

I'm writing to ask you to reject the proposed final judgment in the U.S. vs. Microsoft case. Microsoft has been found to have violated our nation's antitrust laws, reaping many billions of dollars of profits in the process.

This proposed settlement would allow the company to retain almost all of that. I am also concerned that there are no provisions to protect us from Microsoft's continuing anticompetitive behavior. There is no indication Microsoft will cease its antitrust violations, and the company is left to police itself!

Actually, the proposed final settlement would amount to a government validation of the monopoly. I urge you to reject the proposed final judgment as it is not in the best interest of the public.

Respectfully,
James Brubaker
1502 Esbenshade Rd.
Lancaster, PA 17601–4450
717–295–7374

MTC–00029402

From: Pat Iler
To: Microsoft Settlement
Date: 1/28/02 11:37pm
Subject: Microsoft Settlement
Pat Iler
3510 W. Shady Side Road
Angola, IN 46703
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Pat Ier

MTC–00029403

From: James T Pulaski
To: Microsoft ATR
Date: 1/28/02 11:42pm
Subject: My comments on the MS antitrust settlement

My view is that no one operating system should entirely dominate the market.

Not Windows, Mac OS, OS 2 Warp, Linux, Unix, nor Be OS.

So I think Windows needs to be around, but Microsoft has just gotten to big!

I only want to make a few quick suggestions. These comments should be in addition to other remedies already decided.

Microsoft (MS) should be forced to make a choice between the software business and the operating system (OS) business.

If they want to be in the software business, Windows should be made open source. This would prevent MS from taking over the market by virtue of being first to the OS table. It would foster innovation by making the playing field even.

If they want to be in the operating system business, then all other software divisions should be spun off into separate entities (or one big software entity). This again would take away the incentive for MS tying software inexorably to their operating system.

In addition, I like the idea of giving something to education. I think they should donate $800 million cash to the nations schools to be used for computer training and equipment. The schools would be free to choose what-ever brand of computer and operating system they prefer.

That is my two cents! Good luck!
Jim Pulaski

MTC–00029404

From: Todd Buckley

To: Microsoft ATR
Date: 1/28/02 11:43pm
Subject: Microsoft Settlement

I am writing this letter to voice my concern over the monopoly power that Microsoft Corporation has used in order to retard innovation in the computer industry. I have been a computer user for almost 20 years and I have seen many technologies come and go, but never have I witnessed a company with such zeal and destructive power. I am sure Microsoft truly believes that it is innovating and improving the quality of life for the general computer user, but I find it interesting that the patents held by Microsoft are significantly smaller than patents held by other companies, such as Apple Computers, Inc.

Where has the innovation come from? Microsoft is excellent at copying and mass marketing technology, but they do not innovate for the good of humanity. Quotes like this sum it up, ''Through its conduct toward Netscape, IBM, Compaq, Intel, and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products,'' Jackson wrote in his findings of fact in November 1999.

This is completely true. I have first-hand experience working with Microsoft and it isn1t pleasant. I have watched companies such as Apple Computer, Real Networks, and BE, Inc. create new, beneficial products for the market, but to only get strong armed by Microsoft. And another quote that demonstrates Microsoft1s behavior. ''Many of the tactics Microsoft employed have also harmed consumers indirectly by unjustifiably distorting competition.''

There are numerous things that Microsoft has introduced that have badly hurt the consumer such as Security. Look at how many viruses have been spread. This directly equates to reduced productivity. Where is the innovation? Think about Digital Video. Apple1s Quicktime was the first computer program to use moving images and sound on a broad level for computer users. That was 1990. This lead to Real Networks, or Progressive Networks at the time, which created the ''streaming'' audio and video market over the Internet. It wasn1t until much later that Microsoft finally realized this would be an important part of an end-users experience. Microsoft did not innovate. They used their desktop OS volume to force feed consumers with a second rate technology. After many, seven, development cycles Microsoft has managed to release a good product, but there were good products available before. This behavior does not benefit the end-user.

Apple contracted with a 3rd party to help develop QuickTime for Windows. Unable to countenance Apple's success with a Windows add-on and incapable of developing an equivalent technology within, the Microsoft camp hired the same company to bail out Video for Windows. Lo and behold, Apple programmers discovered amazing similarities in Microsoft's code. Apple filed an injunction and forced Microsoft to rework their code. As part of the recent deal, Microsoft paid Apple 100 million dollars and Apple has agreed to drop such contentious issues and cross license core technologies. Potentially, of course, the market for QuickTime or a Windows equivalent is enormous.

Another example of Microsoft abuse is the user interface. Apple filed patent 5,959,624, in January 1997 which enabled many innovations in the user interface for the desktop computer. Microsoft copied many of these things. Microsoft did not innovate.

There is no justification for Microsoft1s behavior. The massive power and influence of Microsoft has hurt the consumer by limiting innovation. There are numerous more examples I could site, but I want to keep this letter to the point. Microsoft is a monopoly. Microsoft has harmed the consumer directly through its actions. Microsoft has not innovated on the consumers1 behalf. As this settlement continues please, keep these things in mind. Microsoft should not be allowed to continue with ''business as usual'', but they should be punished accordingly. The punishment should not be a simple solution, but a complete solution that will enable an industry to grow and thrive like a balanced eco-system.

Thank you,
Todd Buckley
CC: microsoftcomments@doj.ca.gov@inetgw,attorney.gener...

MTC–00029405

From: Philip Brazil
To: Microsoft Settlement
Date: 1/28/02 11:39pm
Subject: Microsoft Settlement
Philip Brazil
5205 Sabin Ave
Fremont, CA 94536
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Philip E Brazil

MTC–00029406

From: Kevin Schumacher
To: Microsoft ATR
Date: 1/28/02 11:44pm
Subject: Microsoft Settlement

I am a private citizen, not employed by any computer-industry company, organization, or group, writing about my concern the effects of Microsoft's business practices have had on the ''free market''. I have not been asked to write on behalf of anyone, or any company.

Microsoft is a moving target, a company who the courts have recently agreed, has ''won'' by cheating, a company who has a history of using dirty tricks, intimidation, and taking advantage of every possible loophole. They also made a mockery of their last ''agreement'' with the DOJ by violating it at every opportunity, and what has the government learned from these experiences? —Not enough, apparently.

If you will indulge me for a moment, my ''prediction'' for the future is that Microsoft will be spending more & more of their time in courts all over the world, not just in the US. Have you seen Microsoft's FY2001 last quarter's charge of $600,000,000.00 for ''legal expenses''? This trend will be growing —exponentially, and ''rightly'' so. The Chinese, UK, and French governments have realized how firmly they are in Microsoft's grip, and how much of their national wealth is being paid to this (American) gorilla...so much so that the Chinese government's policy is to move to Linux. Others will follow.

I'm quite sure that Sun will continue to develop Star Office. I also think that Apple's Mac OS X will be adopted in more business environments, but only because it does work well in a WinTel-dominated networking world. Apple must improve OS X's interoperability with Windows networking environments to have any real hope of growing their market share. This assumes that Microsoft's moving target strategy, combined with their -embrace, -extend, -extinguish, tactic (''because our customers demand it!''), or the ever-present FUD (Fear, Uncertainty, and Doubt) factor effect, or finally their last big gun, the $36,000,000,000,000 in their savings account, —doesn't slow Apple down so much that it's impossible for them to succeed...a BIG assumption. In the end, even if a few other companies produce a great new product, Microsoft will simply BUY THEM, —if the DOJ allows...just like they bought SGI's intellectual property, i.e. OpenGL...which, by the way, Apple's OS X uses (what a coincidence!), or simply develop a clone and then pollute the original. —Java, anyone? Here's a quote from a very recent article published on the web:

''The second most common critique had to do with my comments about Apple being a niche player. Many readers brought up examples of strong companies that themselves enjoy no more—and sometimes less—than 4.5 percent overall market share. But that reaction is (pardon the expression)

like comparing Apples to oranges. BMW and Ben & Jerry's are viable companies with relatively small market share. But neither of them is competing in a market dominated by one proprietary technology platform. There is no 95 percent gorilla in the jungle of the automobile or ice cream market. But there is one in the personal computer world, and it's called Wintel.'' No, no, no! It's called ''Microsoft'', not ''WinTel''! AMD is a major alternative/competitor, to be fair, and there are several minor players as well, but, —there's only ONE Microsoft. This point is critically important! Microsoft is the world-dominating, company-killing machine; it's Microsoft steering the boat...Intel is a very grateful passenger, trying very hard not to rock the boat (too much). Remember when Intel tried to ''do their own thing'' by developing their own multimedia software, and how Microsoft responded? Nothing happens without Bill's approval, combined with ''plausible deniability''. Sound familiar? Requisite knowledge for CEO's, these days.

Apple has suffered through a decade of negative press, who constantly produce headlines asking the same question, ''Can Apple Survive Another Year? ...why not ask the other, more relevant question, —''How Does Microsoft Constantly Defeat All Other Companies?''...and then ask why consumers, and the US Government, don't seem to care one iota until they find bloody corpses littering corporate America? Netscape, DR-DOS, VisiCalc, Apple (and the innovator, -QuickTime!). Microsoft copies everyone, adds it to their OS, which kills the innovators. ...RealNetworks, and Java, next?

Or, Microsoft ''competes'' with Sony's Playstation by buying up the gaming developers to ensure Xbox-only titles. Sounds a lot like one of the tactics used to ensure the ''success'' of Windows. If Microsoft can't/isn't allowed (anti-trust issues) to buy them up, Intel steps in for the assist; look to the audio & video companies for some recent examples (Terran & Avid). Is this the way companies win? Is this ''competing'' in America?

I have two questions, and I hope you will think about them before coming to a decision regarding an appropriate settlement with Microsoft:

1. (If) I have a great new idea for a piece of software, an idea so good that it is certain to change the way computers are used by everyone...business, consumers, schools, etc... How Likely Is It, That I Could Ever Hope To Bring It To Market Where The 900 Pound Gorilla Rules?

2. Why do the real innovators in today's computing world fare so poorly? How is it possible to have great ideas/products/management/funding, etc...and still fail completely? So completely, that there's room enough only for Microsoft?

Consider that Apple's very future relies on Microsoft continuing to publish MS Office Suite for Macintosh, and that, should Microsoft ever want to put Apple out of business overnight, they could by discontinuing this one product. Think I'm exaggerating?

How is it possible to arrive at a just remedy, without first addressing these issues? As you search for a remedy, consider making —file formats— a ''government & ISO-mandated World Standard''...so that at the very least, Microsoft won't be able to constantly use their embrace/extend/extinguish tactics —''because our customers demand it!''

Consider splitting the company into an Applications Group, and an Operating Systems Group. This is NOT as radical a solution as some have made it out to be.

Consider forcing Microsoft to make Apple (or some other third party company) a licensee of MS Office Suite for Macintosh, to remove the doubt & worry from the marketplace put there by Microsoft, that maybe, one day, we'll stop publishing it for the Mac...then where will all of you poor Mac-users be?

Sincerely,
Kevin Schumacher
771 13 th St
San Diego, CA 92101–7303

MTC–00029407

From: John Thurlow
To: Microsoft ATR
Date: 1/28/02 11:46pm
Subject: Microsoft Settlement

Dear Sirs,

I truly hope this settlement will be accepted so that this whole matter can be put behind us and we can move on. As a consumer I have often felt that some of the more extreme remedies proposed by some of the Attorney's General and Microsoft's opponents amounted to something of a sword hanging over my head a punishment for all those years ago having abandoned the Apple II in favour of a Gateway PC because I could not afford to buy into Apple's Macintosh ''monopoly''. I could see in Microsoft a company which had offered me a way forward when I was stuck on an aging architecture (the Apple II) being carved and quartered in a way that meant the products I currently use and depend on would be negatively impacted. Suffice to say that whilst I believe Microsoft is not totally blameless, I have never bought into the notion that they are a purely malevolent force and the scourge of the industry, the fact is that Microsoft was never handed a ''monopoly'' it had to earn that position of dominance from scratch and the sad truth is that attaining that position had as much to do with their competitors ineptitude and greed as it did with Microsoft's innovation and savvy. I will not dwell on my differences with the monopoly ruling and all that stemmed from that and some of the crass opportunism on the part of Microsoft competitors and lawyers that continues to flow from that decision, but will focus on my two cents worth regarding this settlement.

The proposed settlement offers not only a way to bring this protracted process to a close, but also addresses the concern of choice and flexibility in the market by giving OEM manufacturers a greater choice in how they configure their PC's without the fear of retaliation from Microsoft. Further the agreement promises to bring a level of openness and transparency to Microsoft's dealing with OEM's by having a published schedule which lays down equal terms for them within defined bands based on the volume of licenses they move and not on their software bundling strategies. Indeed OEM's will have much flexibility in what they can do and will only need be mindful of whether these things are actually what consumers want instead of casting eyes warily toward Redmond. The proposed settlement offers similar flexibility to Internet Service Providers.

The proposed settlement also promises something for application developers by mandating full disclosure by Microsoft of the API's in their so called ''middleware'' products whilst at the same time protecting Microsoft's intellectual property rights, after all Microsoft is going to be an important player in the competitive ecosystem, offering the only credible competition to the likes of AOL, Sony and Palm whilst the likes of these companies keep Microsoft on its toes and the only change in play should come from new players rising on their merits and not the stifling of any player through litigation. This proposed settlement also offers to consumers the real prospect of being able to chose if they wish to remove certain components from Windows which are currently mandatory, it also offers protection for Non-Microsoft ''middleware'' and requires the consumers consent before any Microsoft ''middleware'' can remove any Non-Microsoft icons or alter any default associations to Non-Microsoft ''middleware''.

To oversee this proposed settlement it is proposed there be Technical Committee of three persons to keep a vigilante eye and ensure the spirit and the letter of the agreement are being enforced, I think the nature of its composition should also ensure that it does not overly favour one party or another, something the appointment of a special master may run the risk of. It is also good to see that either party can have a recourse should they feel that any of the TC members is not performing as they should and that they are clear procedures defined for their replacement. The proposed settlement also makes provision for a Microsoft Internal Compliance Officer, someone within Microsoft who would have the responsibility for overseeing Microsoft's compliance with the proposed settlement, giving the buck somewhere to stop; we also see where they would be responsible for a web site that would clearly state how third parties can issue complaints to the TC and it also lays out how the TC would deal with and process these complaints. Five years seems like adequate time for this proposed agreement to run its course but should time prove otherwise a two year extension is readily available, during which time any new remedies could be explored if necessary.

Though I support this agreement over continued litigation, I fear the later may prevail as many powerful interests now seem to have a lot vested in the course of litigation and I fear it is us consumers who will end up paying for this tiresome business through having Microsoft continually drawn away from innovation and toward the court and eventually through it having to recover the expenses off this exercise and its penalties through its products and quite possibly our wallets.

On a whole I must say that whilst I view antitrust as well intentioned I feel it is time

we started to put our minds to more creative and dynamic alternatives, I myself intended to post something for discussion on my website once I purchase it and get the software to put it up. On a whole I feel the antitrust process takes far too long and lacks the dynamism of the market and runs the risk of losing its objectivity to political ambition and commercial intrigue, I think we could do much to make the market more self regulating, competitive and innovative if we could address the monopoly created by patent without robbing the inventor of the rewards that often drive his innovation. Such new thinking could address not only cases in the Computer Industry but also Pharmaceuticals and other controversial industries and also allow truly brilliant ideas and concepts to become universal and broadly applied to the benefit of the consumer and the inventor. Unfortunately that is not for this forum at this time, thank you for taking my submission, I hope my support will help put this issue to rest.

Sincerely,

John Thurlow.

MTC–00029408

From: Raul Cayado
To: Microsoft ATR
Date: 1/28/02 11:48pm
Subject: Microsoft Settlement

Dear Sir,

I feel that this matter should be laid to rest. For the good of our Nation and our economy. How long will they maliciously try to extort money from a company that has done so much for our economy. In my opinion Microsoft has already paid and settled.

Sincerely,

Raul A Cayado

MTC–00029409

From: Harold A Harvey
To: Microsoft Settlement
Date: 1/28/02 11:42pm
Subject: Microsoft Settlement
Harold A Harvey
2019 Sage Valley Drive
Richardson, TX 75080–2359
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers, dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Harold A Harvey

MTC–00029410

From: Thomas Dell
To: Microsoft Settlement
Date: 1/28/02 11:44pm
Subject: Microsoft Settlement
Thomas Dell
4902 W 24 Th. Pl.
Kennewick, WA 99338
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers, dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Thomas R. Dell

From: David Barrett
To: Microsoft ATR
Date: 1/28/02 11:49pm
Subject: Comments of SBC Communications Inc. on the Proposed Final Judgment

January 28, 2002
Renata Hesse, Esq.
Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, NW, Suite 1200
Washington, DC 20530
Re: United States v. Microsoft Corp.

Dear Ms. Hesse:

Pursuant to the instructions in the Competitive Impact Statement in United States v. Microsoft Corp., we are submitting to the Department of Justice as an attachment to this e-mail the Comments of SBC Communications Inc. on the Proposed Final Judgment. We would appreciate your sending a reply to this email at your earliest convenience to confirm your receipt of SBC's submission.

In addition, to guard against the risk of a faulty email transmission, we are tonight sending a hard copy of SBC's Comments to you via U.S. Postal Service Express Mail.

Thank you for your consideration.

Very truly yours,

David A. Barrett

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
X
UNITED STATES OF AMERICA, Plaintiff, v.
Civil Action No. 98–1232 (CKK)
MICROSOFT CORPORATION, Defendant.
STATE OF NEW YORK ex. rel.
Attorney General ELIOT SPITZER, et al.,
Plaintiffs, Civil Action No. 98–1233 v.
(CKK)
MICROSOFT CORPORATION, Defendant.
X

COMMENTS OF SBC COMMUNICATIONS INC. ON THE PROPOSED FINAL JUDGMENT

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January 28, 2002

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INDEX OF ABBREVIATIONS USED TO REFER TO COURT DECISIONS AND PLEADINGS IN THIS CASE

CA Decision of the United States Court of Appeals for the District of Columbia Circuit on Microsoft's appeal from the Final Judgment. United States v. Microsoft Corp., 253 F.3d 34 (DC Cir. 2001) (en banc).

CIS Competitive Impact Statement, flied by the Department of Justice in United States v. Microsoft Corp., Nos. 98–1232, 98–1233 (CKK). 66 F.R. 59492 (Nov. 28, 2001).

D.Ct. CL Conclusions of Law entered by the District Court on April 3, 2000. United States v. Microsoft Corp., 87 F. Supp.2d 30 (D.DC 2000).

D.Ct. at Findings of Fact entered by the District Court on November 5, 1999. United States v. Microsoft Corp., 84 F. Supp.2d 9 (D.DC 1999).

Felten Decl. Declaration of Edward Felten in support of Plaintiffs' Memorandum in Support of Proposed Final Judgment, filed in the District Court on April 28, 2000 (corrected May 2, 2000).

Final Judgment Final Judgment, entered by the District Court on June 7. 2000. United States v. Microsoft Corp., 97 F. Supp. 2d 59, 64–74 (D.DC 2000).

Gov't CA Brief Brief for Appellees United States and the State Plaintiffs, filed in the Court of Appeals for the District of Columbia Circuit on February 9, 2001.

Gov't D.Ct. Memo Plaintiffs' Memorandum in Support of Proposed Final Judgment, filed in the District Court on April 28, 2000 (corrected May 2, 2000).

Gov't D.Ct. Reply Memo Plaintiffs' Reply Memorandum in Support of Proposed Final Judgment, filed in the District Court on May 17, 2000.

Gov't D.Ct. Sum. Resp. Plaintiffs' Summary Response to Microsoft's Comments on Revised Proposed Final Judgment, filed in the District Court on June 5, 2000.

Henderson Decl. Declaration of Rebecca Henderson in support of Plaintiffs' Memorandum in Support of Proposed Final Judgment, filed in the District Court on April 28, 2000 (corrected May 2, 2000).

Litigating States' Plaintiff Litigating States' Remedial Proposal, filed in the District Court on December 7, 2001.

Microsoft D.Ct. Com. Defendant Microsoft Corporation's Comments on Plaintiffs' Revised Proposed Final Judgment, filed in the District Court on May 26, 2000.

Romer Decl. Declaration of Paul M. Romer, in support of Plaintiffs' Memorandum in Support of Proposed Final Judgment, filed in the District Court on April 28, 2000 (corrected May 2, 2000).

RPFJ Revised Proposed Final Judgment. The proposed settlement entered into by the government and the Settling States with Microsoft, filed in the District Court on November 15, 2001.

Shapiro Deck Declaration of Carl Shapiro in support of Plaintiffs' Memorandum in Suppert of Proposed Final Judgment, filed in the District Court on April 28, 2000 (corrected May 2, 2000).

INDEX OF ABBREVIATED TERMS USED IN THESE COMMENTS

API Application Programming Interface
HTML Hypertext Markup Language
IAP Internet Access Provider
ICP Internet Content Provider
IE Internet Explorer
ISP Internet Service Provider
ISV Independent Software Vendor
JVM Java Virtual Machine
OEM Original Equipment Manufacturer
OLS Online Service Provider
PC Personal computer
PDA Personal Digital Assistant

SBC Communications Inc. (''SBC'') respectfully submits the following comments pursuant to Sections 2(b) and 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), relating to the revised proposed Final Judgment that was agreed to on November 6, 2001, by the United States and certain state plaintiffs in these actions on the one hand, and defendant Microsoft Corporation (''Microsoft'') on the other (the ''proposed settlement'').

1. INTRODUCTION

The history of Sherman Act enforcement has witnessed few unlawful monopolies as durable, resilient and exclusionary as Microsoft's. This much is clear from the trial record, the District Court's monopoly maintenance findings and the Court of Appeals' affirmance. Far from providing reassurance that changes in technology will end Microsoft's stranglehold over operating system and middleware competition, or that the company's monopoly will be subject to serious competitive pressures when the proposed settlement's five-year term expires, the record demonstrates the exact opposite. Microsoft's continuing ability to commingle its browser and operating system, which the settlement ignores, leaves Microsoft with the incentive and ability not only to destroy traditional middleware threats to its operating system monopoly, but also to exercise anticompetitive control over the Internet, where server networks currently not dependent on Windows pose the greatest threat to the Microsoft monopoly. The consequences of failing to restrain an ever-expanding Microsoft operating system monopoly—now at over 95% market share—do not, however, fall solely upon software producers whose competitive assaults might erode that overwhelming market domination. Nothing in the proposed settlement would stop the threat that Microsoft's adjudicated and unlawfully-maintained monopoly poses to the very heart of consumer choice in the American economy. The settlement ignores Microsoft's ability to effectively destroy free consumer choice among the far greater array of businesses that use electronic means of communication—such as telecommunications services (local, long distance and cellular), Internet access, voice messaging, instant messaging, video and music services, e-commerce, interactive games, to name a few. The settlement would allow Microsoft to abuse its illegally-maintained control of operating systems by becoming the ultimate ''gatekeeper,'' controlling the bottleneck that both gives businesses in these critical related markets (whether established or still emerging) access to potential customers, and gives consumers the means to reach the providers that they choose to deal with.

Just as Microsoft has for years successfully imposed on consumers its own products and services, irrespective of the comparative merits of competing products it has excluded from the market, Microsoft will—without the kind of strong relief required to break its operating system monopoly—be in a position to repeat its anticompetitive strategy in other markets. Unchecked, Microsoft will favor its own and its partners' services, exclude competitors' products and services from access to consumers, and degrade its rivals'' services and raise their costs (by charging a toll, imposing a tee for listing as an available service or creating an interoperability obstacle). Because potential customers will have to pass through a Microsoft operating system (whether embedded in a PC, a cellular

phone, a set-top box or a PDA), Microsoft will retain the ability to exclude or marginalize all manner of telephone services, messaging products, video or music offerings, Internet services, and other ''utilities'' of modem life. In this way, the Microsoft monopoly threatens to destroy the vast panoply of consumer choice among the myriad sources that create and distribute communications and entertainment products and services. The proposed settlement does virtually nothing to lessen Microsoft's ability to maintain its operating system monopoly and to prevent its enhancement by Microsoft's impeding effective competition for all the products and services that will have to be accessed through Microsoft's monopoly platform.

SBC is one of the businesses that will be significantly impacted. Through its affiliates, SBC provides voice and data communications services throughout the United States and internationally. Some of these services are Internet-based; others are not. Some of SBC's services (such as its unified messaging service, discussed below) would erode Microsoft's operating system monopoly; others will not. All, however, are at risk if Microsoft is not prevented from maintaining and expanding its operating system monopoly. Thus, while SBC devotes a significant portion of its comments to explaining why curing the palpable deficiencies in the proposed settlement is essential to protect Internet-based services that could erode the Microsoft monopoly, including SBC's own ventures, those deficiencies are of equal importance to SBC's core communications businesses.

The reason why the effects of the Microsoft monopoly reach so far can be summed up in a single word—''convergence.'' Convergence refers to the development, for home or office use, of devices or platforms that will provide consumers with multiple communications, computing and entertainment products and services. In order to perform these functions, all such devices or platforms—including personal computers, PDAs, wireless phones and set-top boxes—need to utilize operating systems, whether installed in the device itself or residing on Internet servers. By maintaining and expanding its operating system monopoly across platforms, Microsoft can establish its position as ''gatekeeper'' to all such forms of communications, computing and entertainment services. And as gatekeeper, Microsoft will be in a position to direct customers using these platforms toward its services, to degrade or block access to competitors' services, and to impose costs on those competitors it cannot completely eliminate. By controlling all of these communications gateways, Microsoft will not only preserve its operating system monopoly against all serious threats, it will substantially lessen competition in the provision of innovative new ''convergent'' services.

For example, competition is now growing to reach consumers, through ''gateway'' devices such as PCs or television set-top boxes, with broadband communications signals that can carry everything from TV programming to Internet content to telephone conversations. An estimated 10 million American homes may use such devices next year and 25 million by 2006. See Byron Acohido, Challenging Microsoft? It Could Take Moxi, USA Today, Jan. 16, 2002, at B–3. Microsoft has already announced that it is developing an extension to Windows XP that will allow PCs to function in this manner. Id.; Microsoft Unveils New Home PC Experiences with ''Freestyle'' and ''Mira'' (Jan. 7, 2002), at www.Microsoft.com/presspass/Press/2002/Jan02/01. Unfettered by the proposed settlement, Microsoft can thus use its illegal operating system monopoly to become the literal communications gateway into and out of the American home or office. It then will have enormous power over the products and services consumers use to communicate with each other, to do their work and to entertain themselves.

In this memorandum, SBC addresses the numerous ways in which the proposed settlement fails to meet a paramount goal of relief in this case: To ''pry open to competition'' in the PC operating system market that Microsoft has dominated for over a decade by using blatantly exclusionary tactics.

The following facts are now beyond dispute in this proceeding'.

First, Microsoft's monopoly has been extraordinarily durable, having prospered for over a decade (D.Ct. at ¶35), having increased steadily to over a 95% share even during the litigation (CA at 54; D.Ct. at ¶35), and having enjoyed the continuing protection of significant barriers to entry. See CA at 54–56 (''Because the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft power to stave off even superior new rivals''); D.Ct. at ¶¶36–44, 61 (''Microsoft could significantly restrict its investment in innovation and still not face a viable alternative to Windows for several years . . . . '').

Second, Microsoft's monopoly has created not only the power, but also the incentive, to exclude competition: every technological innovation that emerged to challenge Microsoft's dominance was met with a successful strategy of anticompetitive exclusion. Microsoft was able to ''extinguish,'' perhaps permanently, the two greatest innovative threats to its dominance that arose in the 1990's—Netscape and Java. CIS at 16–17; see also CA at 76–80 (''Microsoft's ultimate objective was to thwart Java's [and Netscape's] threat to Microsoft's monopoly;'' it adopted as strategic goals to ''kill cross-platform Java'' and interfere with the ability of Netscape's browser to interoperate with Microsoft products); D.Ct. at ¶¶68–77. So long as Microsoft retains the power and incentive to exclude the competitive threats of the 21st century, economic theory predicts, and history demonstrates, that it will seek to evade any regulatory barriers placed in its path. Thus, the prospect of innovation offers no solace to restoring competition, only a sure target for Microsoft's exclusionary conduct.

Third, Microsoft's incentive to engage in calculated predation is so strong that it readily harms consumers and degrades its own products to achieve anticompetitive exclusion. D.Ct. at ¶174 (finding that by commingling ''Microsoft has unjustifiably jeopardized the stability and security of the operating system''), ¶¶408–12 (highlighting harm inflicted upon consumers); CA at 62, 65 (affirming district court findings of consumer harm). It is also revealed in a ''take no prisoners'' approach in which deception, threats, attempts to conspire and degradation of middleware connections were used to stifle competition. CA at 73, 75–77. Nothing in the foreseeable future, much less in the monopoly maintenance record, suggests that marketplace or technological developments alone will suffice to curb Microsoft's market power, its incentive to exclude and its proven ability and willingness to do so ruthlessly.

Finally, Microsoft's monopoly affects the country's most powerful engine of national economic prosperity and productivity—the processing and communication of information. Where monopolization has injured industries of comparable importance, the future of competition has never before been entrusted to illusory promises by the offending firm or to uncertain marketplace developments, unprotected by judicial supervision from recurrent acts of exclusion. See United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131,215–17 (D.DC 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (''AT&T'') (rejecting proposed consent decree and ordering its modification based, in part, on the ''complexity and magnitude'' of the decree and the decree's effect ''on the largest corporation in the world ... the entire telecommunications industry, the computer industry... and thus the interests of literally millions of individuals'').

That is why in monopolization cases the law demands that relief must decisively end the anticompetitive practices, prevent their recurrence and extension into new markets, and restore competition. ''Antitrust relief should unfetter a market from anticompetitive conduct and 'pry open to competition a market that has been closed by defendants' illegal restraints.'" Ford Motor Co. v. United States, 405 U.S. 562, 577–78 (1972) (citation omitted). If a decree does not effectively pry a market open to competition, ''the Government has won a lawsuit and lost a cause.'' Int'l Salt Co. v. United States, 332 U.S. 392, 401 (1947). To restore competition, therefore, the relief must take account of all the factors relevant to the offense, including in particular the likely duration of the monopoly power, which, of course, is the wellspring of the incentive as well as the ability to exclude. See Ford Motor Co., 405 U.S. at 575 (affirming ten-year ban on Ford's manufacture of spark plugs; prohibition was a ''necessary step toward the restoration of the status quo ante'' in the market). The government has repeatedly embraced the foregoing standards in this case (see, .c.g., Govt. D.Ct. Memo. at 24; CIS at 3), but its proposed settlement fails their purposes. The ,government has abandoned, without explanation, injunctive relief that it urged upon the District Court as essential to curb Microsoft's appetite for anticompetitive conduct and has agreed to a decree filled with loopholes. For example, although the

Court of Appeals found commingling of browser and operating system code to be unlawful acts of monopoly maintenance, and the government advocated that such commingling be prohibited as ''an especially potent competitive weapon for Microsoft... to target competing middleware threats,'' Gov't D.Ct. Reply Memo at 61, the proposed settlement does not prohibit such conduct. Similarly, although the Department of Justice Antitrust Division Manual provides that the government ''should not negotiate any decree of less than ten years' duration'' and the government in this case objected to Microsoft's initial proposal for a four-year decree because ''there is no sound justification for entering a decree of shorter duration,'' the remedies in the proposed settlement are to last only five years.

The government's retreat from established antitrust policy and from its prior opposition to Microsoft's remedial proposals has grave implications for a competitive economy and for SBC. Not only is Microsoft allowed to repeat conduct, previously found anticompetitive, to protect its operating system monopoly from middleware sources of competition, but it is free to do so where the courts have already recognized an even more powerful threat exists, namely from the Internet. D.Ct. at ¶¶56, 59–60 (cited with approval in CA at 79). Since Internet servers can perform computing functions formerly accomplished only by PCs, networks of servers and PCs that freely interoperate (or ''talk'' to each other)—regardless of the type of operating system software that they use—are a platform for applications not dependent on Windows. This means that the combination of inexpensive computers or handheld devices (like a ''dumb'' PC. a cellphone, or a PDA) and smart server networks connected to the Internet can break the monopoly power of Microsoft's PC operating system by offering a server network alternative that will work with any operating system and provide more and better application choices at less cost. D.Ct. at ¶¶22–27 (cited with approval in CA at 52), ¶¶56, 59–60 (''[T]he rise of the Internet... has fueled the growth of server-based computing, middleware, and open-source software development. Working together, these nascent paradigms could oust the PC operating system from its position as the primary platform for applications development and the main interface between users and their computers.'').

Yet nothing in the government's settlement prevents Microsoft from turning an open Internet into a closed Microsoft environment simply by doing two things: (1) commingling its browser, Internet Explorer (''IE''), with its Windows operating system; and (2) changing the protocol its browser uses to ''talk'' to Internet servers to an undisclosed proprietary standard that will only work effectively with Microsoft servers. Because of the dominance of Microsoft's browser (currently 91% of all browser usage), all web servers would then be forced to have a Microsoft server operating system in order for the servers, and the web sites they host, to be accessible to the vast majority of users. In turn, all consumers and businesses that wish to access the Internet will be forced to purchase a Windows operating system in order to utilize Microsoft's browser. Nothing in the decree prevents this scenario, because Microsoft is free to use its illegally maintained monopoly power to force servers to interoperate only with Windows, such that Microsoft becomes the Internet gatekeeper of a once open and competitive system. Microsoft's operating system monopoly would thereby become still more powerful and durable, as another threat to its dominance is destroyed. In this way, the applications barrier to entry that protects the Windows monopoly will extend to the Internet.

The reality of this threat for the future competitiveness of Internet-based businesses has a direct bearing on a wide range of Microsoft's potential and actual competitors, including SBC. Through its affiliates, SBC provides Internet access and Internet services to customers. SBC is currently developing several new Internet-based businesses, most importantly its Unified Messaging Service (''UMS''), which will compete directly with specific Microsoft products and services. UMS will allow retrieval of voice, e-mail and fax messages from anywhere in the world, using any computer or device running on any operating system. The proposed settlement, however, allows Microsoft to make SBC's UMS product significantly less competitive by taking the two simple steps outlined above. In these circumstances, only Microsoft server operating systems would be interoperable with the vast majority of other devices that access the Internet, and Microsoft would be able to use its server control to discriminate against its competitors.

As this example shows, the omissions and loopholes in the proposed settlement are of no small importance; they have drastic consequences for a competitive economy. So too does the decision to limit the settlement to only five years. The trial court recognized in findings sustained by the Court of Appeals that competitive alternatives to the Microsoft operating system, such as web portals, servers and middleware, take years to develop as viable threats, yet the proposed decree ends almost as soon as it starts—in only five years overall, with some provisions in effect for only four years. No sensible competitor would invest in technology improvements to the maximum extent necessary to challenge Microsoft—innovations that require years to succeed absent predation—when the decree is neither strong enough, nor long enough, to protect them. Yet the government breaks with its own policy of requiring decrees with ten-year terms, despite the fact that Microsoft's monopoly has existed for more than a decade and its unlawful conduct has spanned a period nearly as long.

Equally important, there is nothing in the decree to jump start competition, much less to ''pry open'' the monopolized market to give consumers the benefit of competition that would have existed from the likes of Netscape and Java had Microsoft's exclusionary conduct not ''extinguished'' them. See Schine Chain Theaters, Inc. v. United States, 334 U.S. 110, 128 (1948) (an injunction against future violations is inadequate when it allows the monopolist to retain its ''unlawfully built empires''). Under the Tunney Act, the ''public interest,'' see 15 U.S.C. § 16(e), is not served by a settlement that allows a monopolist to pursue conduct already adjudicated illegal, that leaves open easy escape routes from the proposed decree's proscriptions, and that utterly fails to restore competition to the monopolized market.

When, as here, there is an adjudicated record of serious competitive harm (monopolization) and wrongdoing (anticompetitive exclusion), the responsibility to protect the public from an inadequate settlement is high, and a reviewing court has broad power to do so. AT&T, 552 F. Supp. at 151–53. As the District Court has said, ''The Supreme Court has vested this court with large discretion to fashion appropriate restraints both to avoid a recurrence of the violation and to eliminate its consequences.'' United States v. Microsoft Corp., Civ. Nos. 98–1232, 98–1233 (CKK), Transcript of Proceedings at 9 (Sept. 28, 2001).

For the reasons set forth below, approval of the proposed decree cannot be squared with ten years of government litigation that culminated in resounding appellate holdings of major antitrust offenses. The fact that adverse antitrust consequences will result is clear from the face of the proposed settlement, as well as by comparison to the injunctive provisions defended by the government in its earlier proposed litigated judgment. In fact, adoption of this proposed settlement would be worse than no decree at all, for its negotiated omissions and concessions allow conduct found illegal in the past to continue—such as commingling of code—and thus would appear to prevent even the government from attacking such decree-sanctioned behavior during its term. Such ambiguity surrounding the government's enforcement intentions is in itself affirmatively harmful to the public interest.

II. A MONOP0LIZATION REMEDY MUST RE TAILORED TO THE NATURE AND SCOPE OF THE OFFENSE, THE DURABILITY OF THE UNLAWFUL MONOPOLY, THE IMPORTANCE OF RESTORING COMPETITION TO THE AFFECTED MARKET AND THE LIKELIHOOD OF RECURRING ACTS OF MONOPOLIZATION

A. The Court Of Appeals Sustained A Finding Of Successful And Longstanding Monopolization In A Crucial Technology Industry

The proposed settlement in this case must be evaluated in light of the Court of Appeals' affirmance of the District Court's conclusion, supported by an overwhelming factual record, that Microsoft is guilty of a panoply of illegal activities to maintain and extend its monopoly in the market for Intel-compatible PC operating systems. Microsoft's conduct inflicted significant harm on consumers and competition in violation of Section 2 of the Sherman Act. CA at 50–80.

1. Microsoft Has Monopolized A Critical Industry

Microsoft is the world's largest supplier of computer software for PCs and, in particular, dominates the market for Intel-compatible PC

operating systems software world-wide. Although it has the second-largest market capitalization among American companies, Microsoft's importance extends beyond its financial success, because it is a linchpin of the computer industry (including hardware, peripherals, software and data services), and the computer industry is critical to the functioning of a competitive American economy. See, e.g., Henderson Decl. ¶¶87–98; Romer Decl. ¶17.

2. Microsoft's Monopoly Has Endured For More Than A Decade

Microsoft's operating systems monopoly is an enduring one, persisting for over a decade despite what the Court of Appeals has described as a ''technologically dynamic market.'' CA at 49. Over that same period, the government has been forced to spend resources on a continuous basis to investigate, and then to prosecute, Microsoft for its illegal conduct. The FTC began investigating Microsoft's acquisition and maintenance of monopoly power in the operating systems market in 1990, although it did not bring charges against the company. United States v. Microsoft Corp., 56 F.3d at 1448, 1458 (DC Cir. 1995). Using the FTC's extensive investigation file as a starting point, the Antitrust Division of the Justice Department initiated its own investigation, and in July 1994 filed a civil complaint under Sections 1 and 2 of the Sherman Act, charging, inter alia, that Microsoft unlawfully maintained a monopoly of operating systems for Intel-compatible PCs. Id. That case was settled by a consent decree, thereby avoiding trial on the merits.

Three years later, the Justice Department filed a civil contempt action against Microsoft on the ground that it had violated the decree. On appeal from the grant of a preliminary injunction, the Court of Appeals ruled that Microsoft had not violated the relevant provision of the consent decree, but reserved the question of whether the company's bundling of Internet Explorer with the Windows operating system violated the antitrust laws. United States v. Microsoft Corp., 147 F.3d 935,950 n.14 (DC Cir. 1998). The complaint that gives rise to the instant proceeding was filed in May 1998 by the Justice Department and a group of State plaintiffs, again alleging, inter alia, unlawful maintenance of a monopoly in the PC operating system market in violation of Sherman Act ¶2. CA at 47.

The Court of Appeals affirmed the District Court's finding that Microsoft's Windows operating system accounts for over 95% of the Intel-compatible PC operating system market. CA at 54. As the District Court found:

Microsoft possesses a dominant, persistent, and increasing share of the worldwide market for Intel-compatible PC operating systems. Every year for the last decade, Microsoft's share of the market ... has stood above 90 percent. For the last couple of years, the figure has been at least 95 percent, and analysts predict that the share will climb even higher over the next few years. Even if Apple's Mac OS were included in the relevant market, Microsoft's share would still stand well above 80 percent.

D.Ct. at ¶35.[1]

3. Microsoft's Increasing Monopoly Power Is Protected By Significant Barriers To Entry

The Court of Appeals held that not only was Microsoft's operating system monopoly virtually complete as measured by market share, but also that the monopoly's increasing power and scope derives from a structural barrier—the ''applications barrier to entry''—that protects the company's future monopoly position even as against superior rivals. The Court held that this barrier to entry

stems from two characteristics of the software market: (1) most consumers prefer operating systems for which a large number of applications have already been written; and (2) most developers prefer to write for operating systems that already have a substantial consumer base. This ''chicken-and-egg'' situation ensures that applications will continue to be written for the already dominant Windows, which in turn ensures that consumers will continue to prefer it over other operating systems.

CA at 55 (citations omitted). The Court of Appeals went on to hold that even if Windows may have gained its initial dominance through superior foresight or quality, Microsoft had maintained its position through means other than competition on the merits. ''Because the applications barrier to entry protects a dominant operating system irrespective of quality, it gives Microsoft power to stave off even superior new rivals.'' CA at 56.

4. Microsoft's Monopoly Has Self-Perpetuating Incentives

The Court of Appeals affirmed the District Court's findings regarding a variety of anticompetitive acts by Microsoft that were designed to maintain its monopoly by preventing the effective distribution and use of middleware products—including Netscape's ''Navigator'' browser and the Java cross-platform technologies—that might threaten the Windows operating system monopoly. The Court of Appeals noted with approval the District Court's conclusion that Microsoft's monopoly gives the firm incentives to perpetuate the monopoly by a pattern of exclusionary conduct. CA at 58. As the District Court concluded, ''over the past several years, Microsoft has comported itself in a way that could only be consistent with rational behavior for a profit-maximizing firm if the firm knew that it possessed monopoly power, and if it was motivated by a desire to preserve the barrier to entry protecting that power.'' D.Ct. CL at 37.

5. Microsoft Has Shown Itself Able And Willing To Extinguish Competitive Threats As Fast As They Emerge In A Rapidly Changing Technological Environment, And Willing To Harm Consumers And Degrade Its Own Products In Order To Exclude Competitors From The Market

In its successful efforts to thwart Netscape and Java, Microsoft demonstrated its ability to extinguish competitive threats to its monopoly as fast as they emerged in a rapidly changing technological environment. Microsoft's conduct also evidenced a remarkable willingness to hurt consumers and degrade its own products where necessary to accomplish the exclusion of competitive threats to its dominance.

Both Netscape and Java threatened to facilitate competition in operating systems by permitting software applications developers to write programs for the application programming interfaces (APIs) exposed by these middleware products, which in turn were capable of running not only on Windows, but on other operating systems. If such middleware were permitted to thrive, such ''cross-platform'' applications would have the potential to overcome the applications barrier to entry upon which Microsoft's operating system monopoly rests. CA at 53, 60.

The Court of Appeals upheld the District Court's findings and conclusions that Microsoft engaged in the following unlawful conduct in violation of Section 2 of the Sherman Act for the purpose of maintaining its PC operating system monopoly:

a. License Restrictions

Microsoft prevented OEMs from removing visible means of user access to Microsoft's browser, IE, which thwarted the distribution of rival browsers, primarily Netscape Navigator. CA at 59–61.

Microsoft prohibited OEMs from modifying the initial boot sequence, from adding icons or folders different in size or shape from those supplied by Microsoft, and from using the desktop to promote rival products, thereby preventing OEMs from promoting either browsers or Internet access providers that competed with Microsoft's own Internet access service and that often used Navigator rather than IE. Microsoft's anticompetitive conduct reduced consumer choice for the sole purpose of thwarting a middleware threat to Microsoft's monopoly. CA at 61–64.

b. Commingling Source Code

By placing computer code specific to the web browsing function in the same computer program ''files'' as code supplying operating system functions (i.e., by ''commingling'' the computer code), Microsoft ensured that the deletion of files containing browsing-specific routines would also delete vital operating system routines and cripple Windows' performance. By preventing OEMs from deleting IE, Microsoft deterred OEMs from pre-installing a second browser because doing so would increase the OEM's product and support costs. Had removal of IE been an option, OEMs could have decided to pre-install Navigator. CA at 66. This technological binding of IE to Windows not only reduced consumer choice in the browser market, but also forced consumers to buy a ''loaded'' and arguably slower operating system. The Court of Appeals found that this had no purpose other than to maintain Microsoft's monopoly.

When Microsoft modified Windows 95 to produce the Windows 98 operating system, it took IE out of the Add/Remove Programs utility, which prevented the removal of IE from the operating system. This had the effect of further curtailing end-user control

[1] As recently as January 2002, Microsoft controlled over 96% of the entire PC operating system market, and Apple's Macintosh operating system had only a 2% share. Is Apple Out of the Running in the Operating Systems War? (Jan. 8, 2002), at http://www.websidestory.com/cgi-binwss.cgi? corporate &news&press_l_163.

over the desktop, and reducing usage of rival browser products for the protection of its operating system monopoly. CA at 65.

c. Exclusionary Agreements

To extinguish the competitive threat posed to Microsoft's monopoly by Internet, Access Providers (lAPs) and online services—the other major channel through which browsers could be distributed to consumers—Microsoft entered into agreements with 14 of the 15 largest IAPs in North America under which the IAPs offered their subscribers IE as either the default browser or the only browser. CA at 68.

Microsoft agreed with AOL (the largest IAP) to place the AOL icon in the online service folder on the Windows desktop, in return for which AOL was forced to agree not to promote any non-IE browser, or software using a non-IE browser, except at the customer's request, and even then not to supply more than 15% of its subscribers with a browser other than IE. Because AOL accounted for a substantial portion of all existing Internet access subscriptions, these provisions were highly exclusionary. CA at 70–71.

During the period 199%9, Microsoft made dozens of ''First Wave'' agreements with Internet Software Vendors (''ISVs''), giving them free licenses to bundle IE with their software and preferential support in the form of access to technical information and the right to use Microsoft seals of approval. In exchange, the ISVs agreed to use IE as the default browsing software for any software that they developed with a hypertext-based user interface and to use Microsoft's ''HTML Help,'' accessible only with IE, to implement their applications' help systems. The effect of those deals was to ensure that many of the most popular Internet applications relied on browsing technologies found only in Windows, which increased the likelihood that millions of consumers using applications designed by those ISVs would use IE instead of Navigator. The agreements with ISVs further foreclosed rival browser distribution and curtailed the middleware threat to the Windows monopoly. CA at 71–72.

d. Actual And Attempted Coercion And Retaliation To Exclude Competitors

Microsoft coerced Apple to drop Navigator as the standard browser installed on its PCs, and to substitute IE as the default browser on its Macintosh operating system. Microsoft threatened to cut off production of its ''Office'' business productivity software for Apple PCs (90% of Apple Office suite users relied on the Microsoft version of Office designed for the Macintosh operating system), an action that had no purpose but to maintain Microsoft's operating system monopoly while hurting consumers. Apple was forced to agree to bundle the most current version of IE to the Macintosh operating system for as long as Microsoft continued to support Mac Office, and promised not to promote Navigator on its desktop. CA at 72–74.

Microsoft retaliated against Netscape when Netscape refused to capitulate to Microsoft's demands that it forgo development of Navigator technology as a middleware platform. Microsoft sought to convince Netscape to enter into an illegal market division agreement whereby Microsoft would treat Netscape as a ''preferred ISV'' in exchange for Netscape developing Navigator to rely on Microsoft's platform-level Internet technologies. (At the time of Microsoft's proposal, Navigator was the only browser product with a significant share of the market and the potential to weaken the applications barrier to entry.) When Netscape refused this unlawful arrangement, Microsoft punished Netscape by delaying disclosure of the technical information needed to make Navigator interoperable with Windows, which forced Netscape to postpone release of its new browser. As a result, Netscape was excluded from most of the 1995 holiday selling season. D.Ct. at ¶¶79–91.

e. Efforts To Subvert Sun-compliant Java Technologies

Sun Microsystems created Java,[2] a type of middleware that would support all applications regardless of the operating system they were written for. CA at 74. Programs calling upon Java's APIs will run on any computer that itself is configured for Java; thus, Java enabled software developers to write applications programs that could be run on different operating systems with relative ease. In May 1995, Netscape agreed with Sun to distribute Java with every copy of Navigator, which at that time was the dominant browser. Microsoft violated § 2 in three separate ways in a successful effort to extinguish Java as a competing middleware platform:

''First Wave'' Agreements: The First Wave Agreements were contracts between Microsoft and ISVs for the distribution of Microsoft's proprietary version of the Java Virtual Machine (''JVM''). The agreements required developers to make Microsoft's JVM the default in the programs they developed, in exchange for Microsoft's technical support and other inducements. CA at 75–76.

Deception of Java Developers: Microsoft offered software developers various development tools that purportedly would assist ISVs in designing Java applications, but concealed the fact that aspects of the code generated by the design tools could only be executed properly by Microsoft's JVM. The result was that many developers, relying on Microsoft's public commitment to cooperate with Sun, unwittingly used the programming tools to write Java applications that ran only on Windows, and not other platforms. Microsoft maintained this deception in order to ''kill cross-platform Java by grow[ing] the polluted Java market.'' CA at 76–77. This conduct injured consumers by fraudulently inducing development of corrupted versions of otherwise successful cross-platform middleware, for the sole purpose of protecting the Microsoft monopoly. Id.

Microsoft's Threat to Intel: Intel and Sun had entered into an agreement to create a high-performance, Windows-compatible JVM, and by 1996, Intel had developed a JVM that complied with Sun's cross-platform standards. Starting in 1995, Microsoft's senior management repeatedly requested that Intel stop its cooperation with Sun, and ultimately threatened Intel that if it did not abandon its support of Sun- compliant Java, Microsoft would begin supporting Intel competitors and refuse to distribute Intel technologies bundled with Windows. Intel finally capitulated in 1997. CA at 77–78.

B. The Remedy In This Section 2 Case Must Be Broad And Prophylactic, To Prevent Microsoft From Denying Consumers The Benefit Of Competition By Retaining Illegally-Maintained Monopoly Power

1. Purpose Of Relief

As the government acknowledges in the Competitive Impact Statement, appropriate injunctive relief here must accomplish three things: ''(1) end the unlawful conduct; (2) avoid a recurrence of the violation' and others like it; and (3) undo its anticompetitive consequences.'' CIS at 24 (citing Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 697 (1978); United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); Int'l Salt Co., 332 U.S. at 401); CA at 107. See also Gov't D.Ct. Memo at 24 (''Permanent injunctive relief ordered in a Sherman Act case must be both forward-looking and remedial. The decree must (i) end the violation, (ii) 'avoid a recurrence of the violation' and others like it and (iii) restore competition to the market.''). Any remedy must be broad in scope and prophylactic in nature so that competition is restored and Microsoft is effectively precluded from further exercise of its monopoly power, even as new products are developed and circumstances in the market change.

a. End Anticompetitive Practices And Prevent Their Recurrence

Any settlement here must be structured to end anticompetitive practices and not merely to prevent repetition of the same illegal conduct. As the Court of Appeals pointedly instructed:

[A] remedies decree... must seek to ''unfetter a market from anti- competitive conduct .... terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.''

CA at 103 (citations omitted) (quoting Ford Motor Co., 405 U.S. 562; United States v. United Shoe Mach. Corp., 391 U.S. 244 (1968)). In the proceedings on remand, the District Court has already recognized that any remedy, in order to be adequate, must go beyond merely prohibiting the conduct in which Microsoft has previously engaged:

The Supreme Court long ago stated that it's entirely appropriate for a district court to order a remedy which goes beyond a simple prescription against the precise conduct previously pursued .... [T]he remedy may range broadly through the practices connected with the acts actually found to be illegal. The Supreme Court has vested this court with large discretion to fashion appropriate restraints both to avoid a recurrence of the violation and to eliminate its consequences.

Microsoft, Transcript of Proceedings at 9 (paraphrasing Nat'l Soc'y of Prof'l Eng'rs, 435 U.S. at 697; and United States v. U.S. Gypsum Co., 340 U.S. 76, 88–89 (1950)).

[2] When this document refers to ''Java'' without any adjectives or other modifiers, it refers to Sun Microsystems' product.

The public interest is not served merely by eliminating past anticompetitive practices; the remedy must eliminate the future recurrence of illegal conduct:

[T]he end to be served is not punishment of past transgression, nor is it merely to end specific illegal practices. A public interest served by such civil suits is that they effectively pry open to competition a market that has been closed by defendants' illegal restraints. If [the] decree accomplishes less than that, the Government has won a lawsuit and lost a cause.

Int'l Salt Co., 332 U.S. at 401 (emphasis added).

A trial court upon a finding of... a monopoly has the duty to compel action... that will, so far as practicable, cure the ill effects of the illegal conduct, and assure the public freedom from its continuance ....

Acts entirely proper when viewed alone may be prohibited. U.S. Gypsum Co., 340 U.S. at 90 (citations omitted); see also United Shoe Mach. Corp., 391 U.S. at 252 (relief should ''render impotent the monopoly''); Nat'l Soc'y of Prof'l Engn'rs, 435 U.S. at 697 (''the District Court was empowered to fashion appropriate restraints on the Society's future activities to avoid a recurrence of the violation and eliminate its consequences'').

In this case, the government has recognized the need to go beyond enjoining current violations to assure that Microsoft's violations do not recur. See Gov't D.Ct. Memo at 24 (''Forbidding the continuance of the violation—here, for example, the anticompetitive bundling of Internet Explorer with the Windows operating system—is necessary but not sufficient to rectify the harm caused and threatened by Microsoft's illegal conduct.'').

b. Restore Competition (Deny The Fruits Of Wrongdoing)

As the government has acknowledged, ''[r]estoring competition is the 'key to the whole question of an antitrust remedy.''' CIS at 24 (quoting E.I. du Pont de Nemours & Co., 366 U.S. at 697); see also U.S. Gypsum, 340 U.S. at 90 (''The conspirators should, so far as practicable, be denied future benefits from their forbidden conduct.''); United States v. Grinnell Corp., 384 U.S. 563,577 (1966) (''We start from the premise that adequate relief in a monopolization case should... deprive the defendants of any of the benefits of the illegal conduct, and break up or render impotent the monopoly power found to be in violation of the Act.''); CA at 103 (a remedies decree must ''deny to the defendant the fruits of its statutory violation'') (citations omitted). As the Supreme Court put it in a holding that is particularly cogent here:

[A]n injunction against future violations is not adequate to protect the public interest. If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact. They could retain the full dividends of their monopolistic practices and profit from the unlawful restraint of trade which they had inflicted on competitors. Such a course would make enforcement of the Act a futile thing unless, perchance, the United States moved in at the incipient stages of the unlawful project.

Schine Chain Theaters, Inc., 334 U.S. at 128.

2. The Law Requires Effective Measures To Accomplish These Results

a. Relief Must Neutralize Monopoly Power At Its Source And Eliminate The Monopolist's Incentive To Exclude Competitors From The Market

A decree must ''break up or render impotent the monopoly power found to be in violation of the Act.'' Grinnell Corp., 384 U.S. at 577. It must ''leave the defendant without the ability to resume the actions which constituted the antitrust violations in the first place.'' AT&T, 552 F. Supp. at 150.

b. Relief Must Anticipate New Forms Of Exclusion, Commensurate With The Evidence Of Microsoft's Incentive To Exclude And Its Willingness To Do So At The Expense Of Consumers And Its Own Product Quality

Because an antitrust remedy, in order to be adequate, must neutralize the monopolist's power to resume the action constituting the adjudicated violation, any remedy ''must effectively foreclose the possibility that antitrust violations will occur or recur.'' Id. at 150. Again, the Supreme Court has given instruction that is directly relevant here:

When the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed. The usual ways to the prohibited goal may be blocked against the proven transgressor and the burden put upon him to bring any proper claims for relief to the court's attention.

Int'l Salt Co., 332 U.S. at 400. As the District Court has recognized, even practices not found to be unlawful should be prohibited where necessary to avoid recurrence of monopolization. AT&T, 552 F. Supp. at 150 n.80 (citing United States v. United Shoe Mach. Corp., 110 F. Supp. 295,346–47 (D. Mass. 1953), aff'd, 347 U.S. 521 (1954)). Similarly, the court must impose additional restraints to allow development of new competition in the relevant market. Id. (citing Ford Motor Co., 405 U.S. at 575).

Given the record in this case, the remedy must anticipate new forms of exclusion such that, in view of Microsoft's incentive to exclude and demonstrated willingness to do so, the company may not further restrain trade illegally and is prevented from repeating its past unlawful practices in new contexts.

c. Relief Must Prevent Regulatory (Decree) Evasion

Where the monopoly in question is as powerful and persistent as that maintained over the last decade by Microsoft, there is a real danger that the monopolist will evade the particular provisions of any consent decree that is entered. In order to cope with the threat of regulatory evasion, antitrust judgments must contain broad proscriptions of anticompetitive conduct that will, by their generality, cover new forms of exclusion. See, E.I. du Pont, 366, U.S. at 1254 (An ''injunction can hardly be detailed enough to cover in advance all the many fashions in which improper influence may manifest itself.''); AT&T, 552 F. Supp. at 167 (approving consent decree ordering divestiture, preclusion from specific markets, and compulsory, royalty-free licensing) (''it is unlikely that, realistically, an injunction could be drafted that would be both sufficiently detailed to bar specific anticompetitive conduct yet sufficiently broad to prevent the various conceivable kinds of behavior that AT&T might employ in the future''); Zenith Radio Corp. v. Hazeltine Research, Inc. 395 U.S. 100, 132 (1969) (court may exercise its ''broad power to restrain acts which are of the same type or class as the unlawful acts which the court has found to be committed or whose commission in the future, unless enjoined, may fairly be anticipated from the defendant's conduct in the past''); CA at 103 (court must ''ensure that there remain no practices likely to result in monopolization in the future''). The ''broad power'' the Court has to fashion an effective remedy includes the authority to prohibit exploitation of monopoly power in any manner and to order provisions designed to create and foster new competition, including the disclosure of proprietary information, mandatory licensing, exclusive dealing bans and many other remedies. Gov't. D.Ct. Memo at 26 (citing United States v. Crescent Amusement Co., 323 U.S. 173 (1944); Hartford-Empire Co. v. United States, 323 U.S. 386 (1945); United States v. Glaxo Group Ltd., 410 U.S. 52 (1973); Int'l Salt Co., 332 U.S. 392; Ford Motor Co., 405 U.S. at 572).

In order to prevent evasion of antitrust proscriptions put in place by a consent decree, courts routinely retain jurisdiction in order to modify decrees, resolve disputes, and ensure there is a forum for timely adjudicating whether defendants are in compliance. See, e.g., Int'l Salt Co., 332 U.S. at 401–02; Otter Tail Power Co. v. United States, 410 U.S. 366, 381–82 (1973); United Shoe Mach. Corp., 391 U.S. at 251–52; AT&T, 552 F. Supp. at 215–17 (ordering modification of proposed consent decree to include provisions relating to Court's continuing ability to enforce decree).

d. Relief Must Be Of Sufficient Duration To ''Pry Open'' The Monopolized Market By Allowing Competitive Products To Take Root

i. It Takes Years For Competitive Alternatives—Web Portals, Servers And Middleware—To Develop, Even Assuming Lack Of Obstruction

The applications barrier to entry that Microsoft enjoys through its operating system monopoly will, as the District Court found (and the Court of Appeals agreed), make it extraordinarily difficult for a new operating system to attract enough developers and consumers to be a viable alternative to Windows in any reasonable time frame. D.Ct. at ¶¶30–31; D.Ct. CL at 36; CA at 54–56. The overwhelming majority of consumers will only use Windows because there are already a large variety of applications written for that operating system. Given that it is expensive to port applications from one operating system to another, software developers will generally write applications only for the operating system that is used by the dominant share of PC users.

Software developers and ISPs are now forced, given the economics of the industry, to use Windows, an operating system that

they would not necessarily choose, but that is virtually the sole conduit available to deliver their product to the end-user. Given these circumstances, ''it remains to be seen whether server or middleware-based development will flourish at all.'' D.Ct. at ¶32.

In order to allow alternative operating systems to develop, the public interest demands a decree that will ''pry open to competition a market that [is] closed'' by the enormous applications barrier to entry and by Microsoft's continuous course of illegal conduct. See Int'l Salt Co., 332 U.S. at 401. Given the time necessary for a competitive operating system or middleware product to overcome the applications barrier to entry (if it is possible at all), any sustainable decree must assure consumers, programmers and potential competitors of a lengthy time frame in which to develop new products that can compete with Windows. Without an adequate time frame for competing products to take hold, consumers will be unwilling to scrap the investment in applications, training, and hardware that they have already made in Windows.

ii. Software Developers And Other ''Investors'' Need Confidence That The Decree Will Provide Protection Long Enough To Give Their Investments A Fair Chance To Be Viable

Without a decree that is broad enough to ensure that Microsoft does not continue to benefit from its past practices and erect new barriers to market entry, the very purpose of antitrust relief in monopolization cases will be thwarted. Without a strong and long-lasting decree, Microsoft's entrenched dominance and the threat of further exclusionary conduct will preclude entrepreneurs and other innovators from improving products and services. As the government has acknowledged, ''an injunction which simply bars the precise illegal conduct proven at trial would leave the defendant with the full dividends of [its] monopolistic practices and profit from the unlawful restraints of trade which [it] has inflicted on competitors.'' Gov't D.Ct. Reply Memo at 10 (quoting Schine Chain Theaters, 334 U.S. at 128 (internal quotation marks omitted)).

If the decree leaves any room for doubt whether Microsoft will retain its freedom and power to exclude competitors, then software developers will, in their economic self-interest, continue what they have been doing for years—writing applications that operate solely on Microsoft's platform—thereby perpetuating the very monopoly that this case has found to be illegal. Such a result violates the fundamental tenet that an antitrust remedy must effectively ''restore future freedom of trade.'' See U.S. Gypsum, 340 U.S. at 90 (reversing an injunction limited to sale of gypsum board in Eastern United States and directing entry of injunction covering all gypsum products throughout the country because the ''relief, to be effective, must go beyond the narrow limits of the violation''); see also Glaxo Group Ltd., 410 U.S. at 64 (ordering compulsory patent licensing on appeal where necessary to assure ''the public freedom from... continuance of the illegal conduct'').

Rather than being narrowly drawn, the remedy in this case must be broad, prophylactic, flexible and forward-looking in order to provide competition a safe harbor from Microsoft's exclusionary power.

C. The Tunney Act Requires Courts To Reject Seriously Deficient Decrees

Pursuant to the Tunney Act, 15 U.S.C. § 16, in evaluating an antitrust settlement, a court may not ''rubber stamp'' a proposed consent decree, but must instead ''make an independent determination as to whether or not entry of a proposed consent decree [is] in the public interest.'' Microsoft Corp., 56 F.3d at 1458 (quoting S. Rep. No. 298, 93d Cong., 1st Sess. 5 (1973)); accord AT&T, 552 F. Supp. at 149 & n.74.[3]

In determining whether the consent decree is in the public interest, the Court must begin by defining the public interest in accordance with the antitrust laws, AT&T, 552 F. Supp. at 149 (citing S.Rep. No. 93–298 at 3; H.R. Rep. No. 93–1463 11–12), and ensure that the provisions of the decree will ''preserve free and unfettered competition as the rule of trade.'' Id. (citing N. Pac. Ry. v. United States, 365 U.S. 1 (1958)). The consent decree's provisions must ''break up or render impotent the monopoly power found to be in violation of the Act.'' Id. at 150 (quoting Grinnell Corp., 384 U.S. at 577) and ''must leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place,'' id. Not only must the decree remedy past violations, ''it must also effectively foreclose the possibility that antitrust violations will occur or recur.'' Id.; see also id. at 151 (''[I]t does not follow that courts must unquestionably accept a proffered decree as long as it somehow, and however inadequately, deals with the antitrust and other public policy problems implicated in the lawsuit.'').

In its first decision involving Microsoft, the Court of Appeals recognized that a more deferential review standard is appropriate under the Tunney Act in cases where there has been no trial and hence ''there are no findings that the defendant has actually engaged in illegal practices.'' Microsoft Corp., 56 F.3d at 1460–61. It follows, therefore, that where there are express findings based on a full trial record ''that the defendant has actually engaged in illegal practices,'' id., a more intensive Tunney Act review is required. Accord AT&T, 552 F. Supp. at 152. In the instant case, there have been both a lengthy trial on the merits and exhaustive findings of illegal monopoly maintenance by Microsoft—findings that the Court of Appeals expressly affirmed. Thus, unlike in more routine Tunney Act proceedings involving settlements without adjudicated findings of liability, the proposed consent decree in this case is subject to a more searching standard of review by the trial court. See also U.S. Gypsum Co., 340 U.S. at 89 (''[C]ourts should give weight to the fact of conviction as well as the circumstances under which the illegal acts occur. Acts in disregard of law call for repression by sterner measures than where the steps could reasonably have been thought permissible.'').

The AT&T case provides strong support for applying a higher degree of scrutiny in this case than in the typical Tunney Act proceeding. In AT&T, while noting that ordinarily a degree of deference to the Department of Justice's view that a settlement is in the public interest is appropriate, the District Court held that such deference was not warranted where the court had heard ''what probably amounts to well over ninety percent of the parties' evidence both quantitatively and qualitatively, as well as all of [the parties'] legal arguments.'' 552 F. Supp. at 152. The District Court thus concluded that it was ''in a far better position than are the courts in the usual consent decree cases to evaluate the specific details of the settlement.'' Id. The Court of Appeals, in its first Microsoft opinion, embraced this distinction and specifically contrasted the AT&T consent decree proceeding with the first Microsoft decree, which was presented before any evidence had been taken. See Microsoft Corp., 56 F.3d at 1461.

The circumstances now justify a searching and demanding review of whether the decree is in the public interest. The settlement here is not before the Court ''in the first instance,'' or even with ''ninety percent of the parties'' evidence'' presented (as in AT&T,) but rather after a full trial on the merits and multiple findings that Microsoft violated the Sherman Act. The District Court now has before it all of the trial evidence, as well as Findings of Fact and Conclusions of Law, affirmed by the Court of Appeals, regarding the relevant market and Microsoft's illegal, anticompetitive conduct. The Court may therefore make a fully informed and independent determination concerning whether the settlement is truly in the public interest.

As in AT&T, close scrutiny of the settlement is also necessary because of its importance to the national economy. In refusing to narrow the scrutiny given the consent decree, the District Court in AT&T noted that given the ''potential impact of the proposed decree on a vast and crucial sector of the economy and on such general public interest as the cost and availability of local telephone service, the technological development of a vital part of the national economy, national defense, and foreign trade, the Court would be derelict in its duty if it adopted a narrow approach to its public interest review responsibilities.'' AT&T, 552 F. Supp. at 152.

The proposed settlement here is of no less importance. This settlement has broad ramifications for the national economy, especially in technology development, and impacts millions of American consumers—ramifications with little precedent in the

[3] The provisions of the Tunney Act allow the Court to consider a wide variety of factors in determining whether a consent decree is in the public interest, including: (1) the competitive impact of such judgment, including termination of alleged violations, provisions of enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment; (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 15 U.S.C. § 16(e)(1)–(2).

history of antitrust jurisprudence. In such circumstances, the Court's careful, independent review is essential to ensure the decree serves the public interest.

Finally, the proposed settlement also requires heightened scrutiny because half of the States that joined in prosecuting the case do not agree that the settlement would protect the interests of their citizens. The government is now expressing views substantially inconsistent with its expressed positions at earlier stages of the case. Where elected representatives of the public are sharply divided on whether the settlement actually serves the public interest, any questions concerning whether the settlement is fair to the public must be subject to exacting scrutiny. ''None of this means, of course, that the Court would be justified in simply substituting its views for those of the parties. But it does mean that the decree [should] receive closer scrutiny than that which might be appropriate to a decree proposed in a more routine antitrust case.'' AT&T, 522 F. Supp. at 153.

THE PROPOSED SETTLEMENT FAILS IN EVERY MATERIAL RESPECT TO ACHIEVE THE OBJECTIVES OF RELIEF REQUIRED BY THIS CASE AND AFFIRMATIVELY PROVIDES A ''GREEN LIGHT'' AND AN INCENTIVE TO ENGAGE IN EXCLUSIONARY CONDUCT

A. The Government Has Abandoned Its Prior Effort To Use Injunctive Relief To ''Pry Open'' The Monopolized Market, Conceding That Its Purpose Is Now Merely To Protect ''Nascent'' Threats To The Windows Monopoly

The Court of Appeals affirmed findings that Microsoft extinguished all tangible threats to its operating systems monopoly. CA at 79; D.Ct. at ¶¶68–77. The findings also support the conclusion that if Microsoft had pursued competition on the merits rather than anticompetitive conduct, significant erosion of its monopoly would have occurred. See generally CA at 58–79. Certainly, that is what Microsoft's CEO believed when he envisioned the Windows operating system being ''commoditized'' by Netscape. D.Ct. at ¶72. The proposed settlement does nothing to deprive Microsoft of either the ''fruits'' or the source of its successful strategy of extinguishing competition, nor does it restore to consumers the benefits of the choices that they would have had if Microsoft's illegal conduct had never occurred.

At this stage of the proceedings, the government states that its goal is merely to ''restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings.'' CIS at 3. These were, as the government admits, merely ''nascent threats,'' id. at 24, 25, not the fully-developed alternatives that would have existed today but for Microsoft's conduct. The competitive threats to the Microsoft monopoly were stillborn, not as a result of fair competition but, as the government acknowledges, because of Microsoft's predation:

> Through its actions against Navigator and Java, Microsoft retarded, and perhaps extinguished altogether, the process by which these two middleware technologies could have facilitated the introduction of competition into the market for Intel-compatible personal computer operating systems.

CIS at 16–17. Although the CIS acknowledges that merely prohibiting future instances of Microsoft's past exclusionary, monopolistic conduct is not sufficient to restore competition, in reality that is all the proposed settlement attempts to do, and even those minimal efforts are unavailing.

indeed, in the earlier remedy proceedings, the government characterized Microsoft's view of appropriate relief (which the government has now largely adopted) as a ''crabbed view of antitrust remedies:''

> [E]specially in an industry like the software industry, which as Microsoft has repeatedly emphasized is rapidly changing, a remedy limited to barring repetition of the precise acts in the precise contexts that were at issue in the trial could not possibly serve the required purposes of preventing recurrence of the violations and restoring competition.

Gov't D.Ct. Reply Memo at 49. It is therefore ironic that the government now embraces in the proposed settlement many of the same substantive decree provisions it earlier dismissed as woefully inadequate.

Presaging the current dispute over remedies, the government stated in a pleading before the District Court almost two years ago:

> In crafting an effective Sherman Act remedy, a court must use the record of a backward-looking trial to fashion forward-looking relief. Looking forward, the Court must anticipate that Microsoft, unless restrained by appropriate equitable relief, likely will continue to perpetuate its monopoly by the same anticompetitive methods revealed at trial, although directed at whatever new competitive threat arises. Neither the Netscape browser nor Java continues to have the prospect of lowering the applications barrier to entry, and it is not certain where future threats to Microsoft's operating system will arise.

Gov't D.Ct. Memo at 27–28. The government then went on to describe as potential middleware or platform threats to Microsoft's operating system monopoly such products and technologies as Microsoft's own Office suite; applications such as voice recognition software, media streaming technology and email programs; server operating systems (and the need for interoperability between PCs and servers); and non-PC devices such as PDAs and hand-held computers. See id. at 28–29.

A settlement such as this one, which limits itself to protecting the next generation of emerging threats instead of ''prying open'' the monopolized market (thereby effectively blessing the extinction of the first generation and the preservation of Microsoft's monopoly), cannot claim to serve even this minimal goal without anticipating and prohibiting, with both specificity and generality, the many ways in which Microsoft can thwart new forms of competition from novel or different technologies, such as those listed by the government. In this regard, it is noteworthy that the Court of Appeals, like the District Court, found that Microsoft's commingling of its browser and operating system codes constituted illegal monopoly maintenance. CA at 64–67. Yet the settlement would allow such conduct to continue. And as long as such commingling is allowed, Microsoft has the power to prevent the next generation of computing on web and network servers, nascent or otherwise, from overcoming its operating system monopoly. Thus, the decree does not even bar ''repetition of the precise acts in the precise contexts that were at issue in the trial.'' Gov't D.Ct. Reply Memo at 49.

B. The Proposed Settlement Is Riddled With Loopholes That Invite Evasion, Does Not Anticipate And Prohibit New Forms Of Exclusionary Conduct To Protect The Windows Monopoly, And Discourages The Development Of Competition To Windows

1. The Proposed Settlement Provisions To Protect Middleware Do Not Adequately Address Microsoft's Past Illegal Conduct, Much Less Prevent Its Recurrence In The Future

One of the principal threats to the dominance of Microsoft's operating system monopoly was middleware, which refers to ''software products that expose their own APIs.'' CA at 53; D.Ct. ¶¶28, 68. Since middleware exposes APIs for which software developers can write programs, it can provide a less time-consuming and cheaper means of writing applications that can run on various operating systems. Id. Anything that reduces the need to adapt, or ''port,'' an application to competing operating systems threatens to overcome Microsoft's monopoly in the PC operating systems market by eliminating the applications barrier to entry. CA at 54–56; D.Ct. at ¶¶68–78.

Unfortunately, the provisions that address middleware are so limited and rife with exceptions as to be virtually meaningless. Sections III.C and III.H of the proposed settlement are inadequate in at least the following respects: (a) the definitions of key terms invite easy evasion and make Microsoft's compliance virtually discretionary; (b) while the settlement is fairly specific in limiting Microsoft's ability to restrict OEMs from promoting competing software, it is silent on a crucial tactic—technological binding [4]—that Microsoft was proven to have used to the same exclusionary ends; and (c) the settlement undermines its own purported goals by including exceptions to each prohibition that largely negate the relief ordered. In its narrowness, the settlement also ignores new products, the potential for future innovation, and novel methods by which similar anticompetitive results may be achieved. As such, the decree fails either to remedy past effects or prevent future anticompetitive acts from occurring.

a. The Definitions In The Decree Effectively Leave Compliance At Microsoft's Discretion

[4] The terms ''binding'' or ''commingling of code'' refer to including software or a link to web-based software in an operating system product in such a way that either an OEM or end-user cannot readily remove or uninstall the code without degrading the performance or impairing the functionality of the operating system. ''Bundling'' refers to the sale or marketing of different software products in a single package, but without commingling of their codes.

i. The Definitions Of ''Microsoft Middleware'' And ''Microsoft Middleware Product'' Encourage Microsoft To Continue Binding Middleware To Its Monopoly Windows Operating System

The definition of ''Microsoft Middleware'' is of crucial importance because, if a program constitutes ''Microsoft Middleware,'' Microsoft is then subject to requirements that it disclose the programming interfaces and communications protocols by which the middleware interoperates with the Windows operating system. The definition also triggers Microsoft's obligation to allow OEMs to re-configure the PC desktop to give purportedly equal access to competing middleware. See CIS at 17–18; RPFJ §§ III.C, III.D, III.E. As shown below, these disclosures and obligations are not adequate to accomplish their avowed purpose. The government's stated goal is to ensure the viability of the OEM distribution channel for competing middleware products and the ability of those products to achieve ''seamless interoperability'' with the Windows operating system. CIS at 38.

The proposed settlement defines ''Microsoft Middleware'' as software code that: (1) is distributed separately from the Windows Operating System Product; (2) is trademarked; (3) provides functionality similar to a Microsoft Middleware Product; and (4) has the code necessary to be considered a self-contained product. See RPFJ § VI.J. Because each element of this definition is too narrow or too easily evaded by Microsoft, the obligations that are triggered by the definition are largely illusory.

The first part of this definition bears directly upon Microsoft's practice of initially distributing a middleware product separately, then bundling it for sale with Windows, and finally binding it to the operating system. See D.Ct. at ¶¶155–74 (discussing employment of these tactics with IE). Binding, or commingling of source code was held by the Court of Appeals to be illegal conduct used by Microsoft to eliminate the browser threat. See CA at 64–67; D.Ct. at ¶¶159, 170–74. It is unnecessary technically and has no procompetitive justification. Id.

The practical effect of the settlement's definition, however, is to allow Microsoft to achieve the same anticompetitive results merely by omitting the first of the three steps mentioned above. Simply by bundling middleware applications with the operating system from the outset (so that they would not be ''distributed separately''), Microsoft may render any provision regulating its use of ''Middleware'' a nullity. Because the settlement contains no limitations on bundling or commingling of Microsoft middleware with the monopoly operating system, the definition actually encourages Microsoft to engage in anticompetitive practices—i.e., commingling of code—in order to avoid application of the decree.

Second, the definition of ''Microsoft Middleware'' requires that the product must be trademarked. Simply by not seeking a trademark, Microsoft can ensure that its middleware will not be covered by the settlement's provisions.[5] This means that Microsoft can distribute any product that may have other intellectual property protections, such as copyright or patent protection, but that is not trademarked, without the product being considered ''Middleware.'' Of course, if Microsoft chooses to bind a product to the operating system and not distribute it separately, there would be no need to trademark the product.

The third requirement, which refers to the functionality of a ''Microsoft Middleware Product,'' further limits the scope of the ''Microsoft Middleware'' definition. This is because the definition of ''Microsoft Middleware Product'' lists by name several products traditionally considered middleware, including Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express, and their successors in the Windows operating system. See RPFJ § VI.K. But limiting the definition of Microsoft ''Middleware'' only to those products which in the past were distributed as middleware fails to account for future development of new products. In addition, the definition omits important existing products, such as Microsoft Office[6] 6 and Internet telephony products, that perform functions analogous to the listed ''middleware'' products.[7]

The fourth requirement is that the code must be ''self-contained.'' This too encourages commingling of Microsoft middleware with the operating system, because it allows Microsoft to create cross-dependent products solely to avoid complying with the provisions applicable to ''Middleware.'' If Microsoft is allowed to commingle the code for the products in such a way as to create cross-dependencies between the operating system and middleware (as it did illegally for IE), it can avoid compliance with many of the substantive provisions in the decree.[8]

In the CIS, the government explains that the definitions of ''Microsoft Middleware'' and ''Microsoft Middleware Product'' include the ''functionality'' of a number of existing Microsoft middleware products, including IE, Windows Media Player, and Outlook Express. See C1S at 17–20. What is not mentioned, however, is that the government previously advocated a definition of middleware that was truly based on the function of middleware and, as such, there was no need to distinguish between ''Microsoft Middleware'' and ''Non-Microsoft Middleware.'' See Final Judgment § 7(q).[9] Nor does the CIS discuss the fact that in the event that a particular item of software code fails to meet any one of the four definitional requirements in the settlement, it will not be regulated at all by sections III.C, III.D, and III.E of the decree. This is significant, because the definition as it stands now neither comports with the traditional definitions of middleware, nor with the way the courts in this case have used the term. See, e.g., CA at 53.

ii. The Definition Of ''Non-Microsoft Middleware Product'' Is Too Narrow To Protect The Ability Of Products And Competitors To Gain Equal Access To The OEM Distribution Channel

[5] Even the settlement's definition of ''trademark'' is so broad as to further limit the scope of the decree: ''Trademarked'' means distributed in commerce and identified as distributed by a name other than Microsoft(r) or Windows(r) that Microsoft has claimed as a trademark or service mark by (i) marking the name with trademark notices, such as ?? or TM, in connection with a product distributed in the United States; (ii) filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (iii) asserting the name as a trademark in the United States in a demand letter or lawsuit. Any product distributed under descriptive or generic terms or a name comprised of the Microsoft(r) or Windows(r) trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Microsoft hereby disclaims any trademark rights in such descriptive or generic terms apart from the Microsoft(r) or Windows(r) trademarks, and hereby abandons any such rights that it may acquire in the future.'' RPFJ § VI.T. Thus, Microsoft may release a new middleware product entitled WindowsTM Telephone, for example, and because the name is descriptive rather than trademarked, it would not be considered ''Microsoft Middleware'' under the terms of the decree.

[6] Significantly, by omitting Microsoft Office from the list of middleware products, the government has eliminated from the proposed settlement a middleware product that provides Microsoft with a de facto monopoly in the middleware market. As of March 1997, Office's market share had reached 90%, a figure that has likely grown since that point. See Jesse Berst, Office Suites for Free ZDNet AnchorDesk (March 7, 1997), at http://www.zdnet.com/anchordesk/story/story—743.html; see also, Benjamin Woodhead, Microsoft's Australian Monopoly? Let the U.S. Handle It, iTNews (Nov. 17, 1999), at http://www.itnews,com.au/story.cfm?ID=507 (referring to the lack of recent statistics on Office Suite's market share, ''We don't bother to measure that market anymore because Lotus and Corel have been squeezed out of it ... No one will pay for that sort of research because everyone knows what the answer is.'').

[7] Describing the functionality of a product in terms of the categories of applications, rather than the operation of the product, also limits the effectiveness of section III.H of the proposed settlement, which relies heavily upon the definition of ''Microsoft Middleware Product'' to set the parameters of non-Microsoft middleware access to the OEM distribution channel.

[8] An example of cross-dependency is the link between IE and Microsoft Word in the Windows Operating System Product. Even if an end-user has selected Navigator as her default browser, IE may automatically launch if the user clicks on a URL, (i.e., an Internet address) that is contained in a Word document.

[9] The Final Judgment contained the following definition for Middleware, which it applied to both Microsoft and Non-Microsoft Middleware: ''Middleware'' means software that operates, directly or through other software, between an Operating System and another type of software (such as an application, a server Operating System, or a database management system) by offering services via APIs or Communications Interfaces to such other software, and could, if ported to or interoperable with multiple Operating Systems, enable software products written for that Middleware to be run on multiple Operating System Products.

Examples of Middleware within the meaning of this Final Judgment include Internet browsers, e-mail client software, multimedia viewing software, Office, and the Java Virtual Machine. Examples of software that are not Middleware within the meaning of this Final Judgment are disk compression and memory management.

From the outset, the government has supported injunctive relief designed both to give OEMs control over how to configure the PCs they sell and to provide end-users with the ability to remove Microsoft middleware from their computers. See Gov't D.Ct. Reply Memo at 45–47, 60–64. Sections III.C and III.H rely on the definition of ''Non-Microsoft Middleware'' to identify the competing software products that Microsoft must allow OEMs to include on the Windows desktop if they so choose and to distribute to consumers. The intention was to open the OEM channel to distribution of competing software and thereby remove one of the barriers Microsoft had erected to protect its Windows monopoly. Indeed, the definition of ''Non-Microsoft Middleware Product'' encompasses those technologies that Microsoft ''extinguished'' (such as the Netscape browser) as it defines the products entitled to protection. Before a new program receives this protection, however, the settlement's definition of ''Non-Microsoft Middleware Product'' requires that at least one million copies of the product must have been distributed in the previous year. RPFJ § VI.N. This onerous requirement defeats the government's express purpose of giving new products an adequate chance at the OEM distribution channel.

The CIS asserts that this level of distribution is ''minimal'' and ''necessary'' so that Microsoft's affirmative obligations will not be triggered by ''minor'' or ''non-existent'' products. CIS at 20–21. There is no support in the record, however, or in antitrust law generally for the notion that only large competitors deserve protection. ''Minor'' new products, i.e., the nascent competition that the CIS claims will be restored, deserve protection no less than older, more significant ones. One thing that the history of the software industry proves is that some of the most popular products and services were created by the ingenuity of small firms working alone without means of distributing their products. Most, even with the OEM distribution channel opened to them, failed to distribute one million copies the first year on the market, and the CIS cites no evidentiary support for setting the distribution trigger at the extraordinary level of one million copies.

Through this definition, the settlement creates a major obstacle to new products or competitors being able to obtain wide release and distribution of innovative products. Moreover, it has the additional pernicious effect of allowing Microsoft ample time to develop and promote or announce a preemptive offering before the non-Microsoft product reaches the one million distribution mark. Final Judgment § 7(q).

iii. The Definition Of ''Windows Operating System Product'' Grants Microsoft Unfettered Discretion To Decide What Is And What Is Not Part Of Its Operating System

The settlement defines ''Windows Operating System Product'' as a closed universe of past operating system products that is comprised of the software code of Microsoft's currently-distributed versions of its PC operating system, including Windows 2000 Professional and Windows XP Home and Professional, and their successors. RPFJ § VI.U. The definition also leaves in Microsoft's ''sole discretion'' the determination of what software code constitutes future versions of the Windows Operating System Product. Id. The CIS fails to explain why the definition in the proposed settlement does not establish an objective standard, but instead entrusts such determinations to Microsoft's ''sole discretion.'' Additionally, rather than explaining how the definition impacts upon the objectives of the decree and why it was drafted in this way, the CIS merely states that the definition leaves ''packaging'' (read: bundling or binding) decisions in Microsoft's hands. CIS at 23–24.

The government fails to reconcile this definition with the Court of Appeals' finding that Microsoft utilized commingling of code to maintain its monopoly. Nor does it explain how the definition meets the government's avowed goal that the settlement put an end to Microsoft's past monopolistic conduct. The definition gives Microsoft incentives to integrate middleware into its operating system to avoid having middleware products classified as such.

Of particular importance for the future, the definition fails to take into account that Microsoft manufactures non-PC and non-desktop PC operating systems, such as an operating system for personal digital assistants (PDAs) and other handheld devices. These systems include Windows CE 3.0, Windows NT ?? Embedded 4.0, Windows CE for Automotive, Windows 2000 with the Server Appliance Kit, Windows for Smart Cards, Windows CE .NET and Windows XP Embedded. Any settlement that serves the public interest must cover new products that Microsoft can and will use to protect its PC operating system monopoly. There is an extensive set of devices which are the target for these systems beyond PDAs and pocket PCs, including smart phones, smart TVs, gaming devices, web pads, Internet appliances, media appliances, digital cameras, printers, scanners, retail point of sale devices, Windows based thin-client terminals, set-top boxes, residential gateways, automobile computing systems, home servers, industrial control devices and smart cards. In short, the proposed settlement's definition ignores both past and future operating system products. A proper definition of ''Windows Operating System Product'' would both recognize Microsoft's past product releases and include all Microsoft operating systems for any hardware device, including PCs, servers and handheld computing devices.[10]

b. The Settlement Fails To Prohibit Tactics Used By Microsoft To Foreclose OEM Distribution Of Competing Products And Allows That Unlawful Behavior To Continue

The proposed settlement effectively endorses, through its silence, tactics previously employed by Microsoft to prevent OEMs from becoming an effective distribution channel for competing middleware products. Among the deficiencies in section III.C of the settlement are: (i) its failure to prevent Microsoft from binding middleware to its operating system; (ii) its failure to require Microsoft to set meaningful price differentials between ''fully loaded'' and ''stripped down'' (without Microsoft Middleware) versions of the Windows operating system that could ''pry open the market'' for competing bundles of software and middleware offered by OEMs and third-party customizers; and (iii) the inclusion of limitations and loopholes that undermine the purpose of the decree provisions.

i. A Prohibition Against Commingling Of Code Is Necessary To Prevent Microsoft From Continuing To Exclude Competition That Threatens The Windows Monopoly

The Court of Appeals affirmed the District Court's findings that Microsoft's commingling of the code for IE with the code for Windows and its refusal to allow end-users to remove the IE browser from the Windows desktop constituted exclusionary acts in violation of Section 2. See CA at 66–67. Binding the IE middleware product to the Windows operating system injured both Netscape and consumers by degrading the ability of Netscape to effectively interoperate with Windows, thus reducing consumer options in browser choice, and by ensuring that deletion of files containing browser-specific functions would also delete vital operating system routines, thus crippling Windows. CA at 65–66 (citing D.Ct. at ¶164). Microsoft's anticompetitive purpose so dominated its business decisions that it degraded its own products by binding, since commingling of code decreased the security and reliability of Windows. CA at 62, 65; D.Ct. ¶174.[11]

In response to these acts, the government initially advocated a prohibition against the binding of software to the operating system, in order to prevent Microsoft from repeating the illegal conduct that the Court found it undertook with respect to the browser. See, e.g., Findings ¶¶164, 166–74, 176; see also Zenith, 395 U.S. at 132 (a remedy should prevent defendant from repeating the ''same

[10] The definitions of ''Windows Operating System Product'' and ''Personal Computer,'' read together, also create an ambiguity that places in doubt whether future versions of Microsoft's operating system will even qualify as a ''Windows Operating System Product'' under the proposed settlement. Windows XP is Microsoft's first PC operating system designed for shared or multiple person use. Microsoft has promoted XP's ability to facilitate home networks where many people can share devices and Internet connections.

See Experience the Connected Home: Share One or Many Computers (May 9, 2001), at http://www.microsoft.com/windowsxp/home/evaluation/experiences/connectedhome.asp. Because Windows Operating System Product is defined as software ''distributed commercially by Microsoft for use with Personal Computers,'' RPFJ § VI.U, and the definition of ''Personal Computer'' means ''any computer configured so that its primary purpose is for use by one person at a time,'' RPFJ § VI.Q, if XP or its successors are distributed primarily for multiple users or employed for construction of mini-networks or servers, successor products could fail to meet the definitional requirements to be covered under the decree. See RPFJ § VI.Q (expressly excluding servers and other computing devices from the definition of Personal Computer).

[11] ''Binding harmed consumers who did not want Internet Explorer, by causing 'performance degradation, increased risks of incompatibilities, and the introduction of bugs.'' Felton Decl. ¶84 (citing D.Ct. at 173).

type or class'' of unlawful conduct). Forced bundling injures consumers directly and injures competition by increasing the costs rival software vendors must incur to get their products distributed effectively. It is an especially potent competitive weapon for Microsoft because Microsoft is able to target competing middleware threats—like the browser—by bundling its own version with its operating system monopoly, thereby protecting that monopoly.

Gov't D.Ct. Reply Memo at 60–61 (emphasis added). Indeed, the government's chosen remedy on this issue in the Final Judgment not only required abolition of commingling, but required the price of Windows to be reduced in proportion to the amount of unbundled programming that was removed by an OEM:

g. Restriction on Binding Middleware Products to Operating System Products. Microsoft shall not, in any Operating System Product distributed six or more months after the effective date of this Final Judgment, Bind any Middleware Product to a Windows Operating System unless:

Microsoft also offers an otherwise identical version of that Operating System Product in which all means of End-User Access to that Middleware Product can readily be removed (a) by OEMs as part of standard OEM preinstallation kits and (b) by end-users using add-remove utilities readily accessible in the initial boot process and from the Windows desktop; and ii. when an OEM removes End-User Access to a Middleware Product from any Personal Computer on which Windows is preinstalled, the royalty paid by that OEM for that copy of Windows is reduced in an amount not less than the product of the otherwise applicable royalty and the ratio of the number of amount in bytes of binary code of (a) the Middleware Product as distributed separately from a Windows Operating System Product to (b) the applicable version of Windows. See Final Judgment § 3(g). In the CIS, the government acknowledges that the Court of Appeals found that Microsoft unlawfully ''integrated its web browser into Windows in a non-removable way while excluding rivals,'' CIS at 3, but then makes no further mention of the commingling issue.

Notwithstanding the government's stated conviction (backed by the Court of Appeals'' holding) that binding violates Section 2, the proposed settlement gives a green light to Microsoft's continuing to bind middleware products to its operating system. This gap in the settlement's coverage, coupled with the definitions of Microsoft Middleware and Microsoft Middleware Product, not only allows Microsoft to continue its past anticompetitive conduct, but also provides Microsoft with an incentive to use the same techniques to extend its monopoly into other areas.[12]

The settlement's failure in this respect is underscored by Microsoft's recent introduction of Windows XP, which plainly demonstrates its intent to continue defending the Windows monopoly by binding even more applications and services to its new operating systems, notwithstanding the determination that doing so is illegal. Windows XP has more Microsoft middleware products and services bound to or included with the operating system than any previous version of Windows. One of the services integrated into XP is Passport, a web authentication, security and credit card verification service that allows consumers, using a single log-in, to shop on thousands (and ultimately, Microsoft hopes, millions) of websites that accept Passport. Because Microsoft's past unlawful conduct allowed it to maintain a PC operating system monopoly and acquire a de facto monopoly in the browser market (IE is used to access the Internet by approximately 91% of consumers),[13] Microsoft is in a uniquely advantaged position to encourage subscription to Passport whenever a user connects to the Internet from her XP desktop. This is so because XP comes fully loaded with prominently displayed prompts for Passport throughout the program, starting with the initial boot sequence and continuing each time the user logs on to her computer.

As Microsoft succeeds in generating Passport subscriptions through its monopoly distribution of Windows XP, retailers with web portals selling products and services on the Internet will be forced to accept Passport as their authentication system. In this way, Microsoft will be able to nullify threats to the Windows monopoly by precluding other web-based alternatives to Passport. Furthermore, by defending its PC monopoly with Passport, Microsoft will also insert itself on both sides of a web transaction. Because of the ''network effect,'' the final outcome—absent strong and effective injunctive relief—is likely to be that most e-commerce will be conducted with either the consumer or vendor, or both, paying a fee to Microsoft for the use of Passport.

To the extent Passport gains a foothold as an authentication gateway to Internet commerce, this will erect a new barrier to entry for competing operating systems. Consumers will be reluctant to switch to a non-Windows PC operating system, because the personal information stored on Passport is readable only by Microsoft web servers, which in turn can be designed to interact most effectively with the Windows operating system and its embedded middleware, such as IE. At the same time, by erecting a fence (Passport) between PC users and the Internet generally, Microsoft will make it far less likely that a competing middleware platform, such as Netscape's Navigator, will displace user dependence on Windows, because without Passport, Navigator may end up being of little utility for e-commerce.

Nothing in the proposed settlement would prevent this chilling repetition of Microsoft's monopolizing conduct. By failing to adequately address the old tactics used (binding middleware to the operating system) and limiting the scope of the remedy in a manner which excludes new products and services, the proposed settlement fails in a critical way to end Microsoft's monopolizing conduct, let alone to deny Microsoft the fruits of its PC monopoly.[14]

ii. The Proposed Settlement Omits Any Requirement That Microsoft Offer A Stripped-Down Version Of Windows At A Price That Reflects The Value Of The Removed Middleware Products

As the Court of Appeals held, there is an economic disincentive for OEMs to offer, install and service a second middleware product such as a browser. CA at 66. However, nothing in the proposed settlement provides OEMs with an economic incentive to become a viable and effective means of distribution for alternative middleware products. Only by requiring Microsoft to provide OEMs with an economically-viable ''stripped-down'' version of Windows—including the ability to completely remove Microsoft middleware from the operating system, see Final Judgment § 3(g)(i)—will OEMs ever have an incentive to offer users products containing Non-Microsoft middleware alternatives.

Even if Microsoft were required to provide OEMs with an unbundled operating system, it would only be possible for OEMs to offer consumers a choice of an alternative middleware/software package for the PC if Microsoft's price to the OEM were reduced to reflect the lower value of a software package that does not include Microsoft middleware that the OEM wishes to replace with competing products. Put another way, a market for alternative middleware configurations will only arise if such alternatives can be priced competitively with the ''fully loaded'' version of Windows. If the cost of alternative middleware bundles is always higher than that of the Microsoft Windows bundle, the market for non-Microsoft middleware will be limited or nonexistent.

OEMs must have more than the Hobson's choice of either buying Windows XP fully bundled at $200, for example, or paying $199 for a stripped down version of Windows and then incurring the additional capital and labor costs of replacing a Microsoft middleware product with a competing

[12] In addition to the settlement's failure to prohibit commingling of code, the settlement also condones Microsoft's bundling of products with its operating system. Section III.C presents OEMs with a laundry list of options they may adopt in installing, displaying, and distributing Non-Microsoft Middleware, but nothing in the proposed settlement prevents Microsoft from forcing OEMs to accept additional products as part of the Windows Operating System Product that are included with the operating system. As a result, under the proposed settlement, OEMs can be forced to accept a complete package of Microsoft products with each license of the Windows operating system.

[13] Don Clark, AOL Sues Microsoft Over Netscape in Case That Could Seek Billions, Wall Street Journal, Jan. 23, 2002, at B4 (citing Browser Market Shares StatMarket (2002), at www.websidestory.com).

[14] It is noteworthy that the binding of applications is not limited to browsers and internet-related services, but also includes common applications such as word processing. For example, Microsoft has used its operating system monopoly to motivate consumers to use Microsoft Word instead of Corel's Word Perfect. Regardless of the quality or perceived attributes of Word Perfect versus Word, many businesses and individual consumers use Word simply to avoid incurring the additional trouble and expense of licensing a second word processing application when the PC operating system already comes equipped with such a function.

product bought at an additional, separate cost.

Consequently, any remedial proposal that seeks to open the OEM distribution channel to competing middleware must address the pricing of the Windows operating system. The Final Judgment recognized the need for such a pricing mechanism. It required that the price of versions of Windows from which Microsoft middleware functions had been disabled or removed be reduced in proportion to the relative amounts of computer code bytes found in the operating system and middleware products in question. See Final Judgment § 3(g)(ii). Alternative formulations based on the relative product development costs are also available. See Litigating States' § 1.

Connected to the pricing issue is the failure of the proposed settlement to allow any party that is not an OEM (§ III.C) or end-user (§ III.H) to alter the configuration of the Windows platform. This omission has the effect of preventing third parties, who might fill a niche as customizers, to directly offer OEMs or end-users specific software/middleware packages that could be added to a stripped-down Windows operating system. For example, it is likely that absent Microsoft's illegal binding of its middleware to the Windows operating system, an industry of independent bundlers specializing in the sale of customized software packages would have developed. Using the operating system as a platform, these vendors could create customized software/middleware packages based on the need of particular consumer market segments, such as stock market buffs, antiques dealers or mathematicians.[15]

As it stands now, the proposed settlement creates no incentive for OEMs to pursue any of the objectives of section III.C. Yet, if the OEM distribution channel is not reopened, the decree will have no chance to succeed in its most important goal—to restore competition in the monopolized market—as no ISV will have equal access to consumers.

iii. The Provisions In The Proposed Settlement That Purport To Foster OEM Flexibility In Product Configuration And Middleware Choices Contain Fatal Ambiguities And Loopholes

Although the government originally supported straightforward remedy provisions governing OEM flexibility as to what products could be offered with a PC operating system, it now retreats to complicated provisions whose limiting language undercuts the purported relief. Compare Final Judgment § 3(a)(iii) with RPFJ § III.C. When the government initially proposed provisions that would allow OEMs to reconfigure the products they offered to meet consumer demand free from Microsoft's restrictions, it stated:

> Microsoft ... refused to permit OEMs to remove the Internet Explorer icon, even when their customers wanted them to do so. This provision of the Final Judgment thus prohibits Microsoft from preventing OEMs from undertaking competitively valuable alterations to the first screen, bootup sequence, and icon display and will help the OEM channel for distribution of non-Microsoft software, thereby giving consumers greater choices not only in how their computers look, but in what innovative software OEMs can offer them (Shapiro pp. 17–20, 24).
>
> Gov't D.Ct. Memo at 39. In response to Microsoft's objections, the government reiterated that the purpose of the provisions was to prevent Microsoft from restricting OEMs'
>
> ability to customize their PCs in certain ways to promote non-Microsoft software. [It] will simply enable them to configure their systems so that non- Microsoft software can launch automatically, OEMs can offer their own internet access provider or other start-up sequence, and non- Microsoft Middleware can be made the default.
>
> Gov't D.Ct. Reply Memo at 45–46.

Notwithstanding the logic of the government's past proposals, the proposed settlement replaces clarity with ambiguity and loopholes. Section III.C.1 states that ''Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product ... to products that provide particular types of functionality,'' but nowhere defines ''functionality.'' Without such definitions, Microsoft is free to decide what categories of middleware ''functionality'' qualify for display. Thus, nothing prevents Microsoft from excluding non-Microsoft middleware products for which no Microsoft counterpart exists—an obvious deterrent to competing middleware products that are more innovative than Microsoft's own products.

Section III.C.2 ostensibly allows OEMs to distribute and promote non-Microsoft middleware through the display of shortcuts on the Windows desktop, but provides that the provision will apply only ''so long as such shortcuts do not impair the functionality of the user interface.'' However, by never stating who determines when the ''functionality'' of Microsoft's operating system is impaired, the provision gives Microsoft free reign to decide which non-Microsoft products may be promoted by an OEM.

Section III.C.3 permits OEMs to configure competing middleware products to launch automatically at the conclusion of the initial boot sequence or upon connection or disconnection from the Internet. CIS at 31. It also appears to prohibit ISVs and OEMs from palming-off competing products by imitating Microsoft's trade dress. Nonetheless, the ambiguous wording of the provision would let Microsoft decide, in the first instance, which competing products may be displayed and what form the user interfaces (e.g., icons) may take. Moreover, as in § III.C.1, the provision's benefits are tied to a ''functionality'' determination made by Microsoft. The automatic launch of competing Middleware is only assured ''if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time,'' which would again limit the settlement's reach to products with which Microsoft already competes.[16]

Subsection 5 allows OEMs to configure the Windows desktop to promote a non-Microsoft Internet access provider (''IAP'') in the initial boot sequence. The provision is problematic for two reasons. First, it permits Microsoft to require that such offers meet ''reasonable technical specifications established by Microsoft,'' which are never defined.

Second, because it refers only to IAP offers, the proposed settlement prevents OEMs from offering any other type of product or service in the initial boot sequence. In striking contrast, the initial boot sequence for Windows XP offers a wide range of Microsoft products and services, including Passport, Hotmail, Instant Messenger and Internet telephony. Competition cannot be restored unless all competing middleware products, not just IAPs, are put on equal footing with Microsoft products. Because the proposed settlement allows Microsoft to retain the advantages of its operating system monopoly in the boot sequence by having an exclusive chance to promote its products and services, it fails to serve the public interest.

Finally, nothing in the proposed settlement discusses OEMs' ability to offer an alternative desktop. Prior to Microsoft's prohibiting the practice, OEMs would change the appearance of the desktop in ways they found beneficial. D.Ct. at ¶214. Some OEMs replaced the Windows desktop with a user interface of their own design or one that conformed with that of the OEM's selected browser. CA at 62–64. The government previously advocated a provision in the Final Judgment that assured OEMs the ability to offer an alternative to the Windows desktop, subject to the proviso that an OEM may not completely block access to the Windows desktop. See Final Judgment § 3(a)(iii)(3) (OEMs may ''display any user interfaces, provided that an icon is also displayed that allows the user to access the Windows user interface'').[17] In the CIS, however, there is no explanation for the

[15] The proposed settlement contains one exception to its blanket prohibition on third party alterations: it would permit a Non-Microsoft Middleware producer to designate that its product be invoked automatically in place of a Microsoft Middleware Product. However, the mechanism by which the producer may accomplish this is at Microsoft's discretion, and Microsoft may require confirmation from the end-user that he or she would like to accept this option. See RPFJ § III.H.2.

[16] Section III.C.4 allows OEMs to offer alternative operating systems. While seemingly procompetitive, the government fails to acknowledge that there currently is no market for alternative operating systems. See CIS at 32. As the Court of Appeals explained, due in large part to network effects, there is no incentive for consumers to use or for ISVs to write programs for PC operating systems other than Windows. See CA at 49–50, 55. Moreover, it is unclear that it is technologically feasible to include multiple operating systems on the same PC without sacrificing significant amounts of storage capacity or speed. No similar provision appeared in the Final Judgment, a fact which suggests that it is mere window-dressing (no pun intended) and does nothing to eliminate the barriers to competition erected by Microsoft.

[17] The Court of Appeals found no justification for the restrictions on OEM configuration generally, but did hold that ''a shell that automatically prevents the Windows desktop from ever being seen by the user is a drastic alteration of Microsoft's copyrighted work, and outweighs the marginal anticompetitive effect of prohibiting the OEMs from substituting a different interface automatically upon completion of the boot process.'' CA at 63.

omission in the proposed settlement of this and other OEM configuration options that the government strongly advocated before the District Court and on appeal.

c. Provisions That Purport To Allow End-Users And OEMS To Enable Or Remove Middleware Products Are Severely Flawed

Section III.H of the proposed settlement purports to allow end-users the freedom to add and remove middleware as they see fit. In actuality, the provision fails to do so because: (i) Microsoft is never required to permit an end-user or OEM to remove a Microsoft Middleware product from the PC's memory, only to ''disable'' the functionality and ''remove'' the icon or other visual means of access; (ii) Microsoft continues to have full control over whether and when its products may override or launch in place of competing products; and (iii) the timetable for implementation renders the provision almost useless as a means of restoring competition.

i. Inability To Actually Remove Microsoft Products From The Operating System Cripples The Effectiveness Of The Decree

The Court of emsp; Appeals held that Microsoft's removal of IE from the add/remove utility Windows had the effect of reducing usage of rival browser products and violated Section 2. CA at 65. Loading the operating system with Microsoft middleware that cannot be removed imposes greater burdens on OEMs that choose to install competing middleware products? It also prevents consumers from receiving full access to the products and services of their choice. CA at 62, 65; D.Ct. at ¶¶174. Binding middleware products to the operating system also has a significant effect on the ability to remove Microsoft middleware, as it is difficult or impossible to remove the products without degrading Windows. CA at 66–67; D.Ct. at ¶159.

The government recognized that not being able to remove Microsoft middleware had the effect of ''foreclosing customer choice and excluding competition,'' Gov't D.Ct. Memo at 6, and that Microsoft used this as a means of increasing the barriers to entry for middleware. Id. at 42; Shapiro Decl. at 25–26. Consequently, the relief initially requested by the government required that any Microsoft middleware product that was technologically bound to the operating system must be removable to create a ''stripped down'' version of Windows via the add/remove utility. See Final Judgment ¶3(g)(i). No such requirement exists in the current settlement, however. Although the CIS states that section III.H ''ensures that OEMs will be able to choose to offer and promote, and consumers will be able to choose to use, Non-Microsoft Middleware Products,'' CIS at 45, the government now discusses the provision in terms of ''removing access'' to the middleware product without explaining that ''removing access'' does not mean removing the product itself. Id.

[18] OEMs incur increased costs as a result of customer ''hotline'' calls to the OEM. CA at 61. The additional program code also reduces the storage capacity of the computer and the speed of the processor. This is yet another way that Microsoft is able to erode OEM and consumer incentives to use competing middleware products.

Because section III.H of the proposed settlement fails to require Microsoft to enable OEMs and end-users to remove unwanted Microsoft middleware from Windows, it facilitates commingling of code, raises rivals' costs, and renders product substitution illusory.

ii. The Exceptions And Limitations Contained In The End User/OEM Control Provisions Swallow The Relief Provided And Permit Microsoft To Override OEM Or End-User Selections Of Preferred Middleware Products

On the subject of OEM/end-user control, the proposed settlement replaces a provision of less than fifty words in the Final Judgment with a series of interlocking provisions that run over six hundred words. Compare Final Judgment § 3(g)(i) with RPFJ ¶III.H(1–3). None of these limitations and exceptions were present in the interim relief the government advocated before the District Court previously, and the CIS is silent regarding the rationale for the avalanche of restrictions that it now proposes. Nor does the government suggest that the changes are needed in response to any holdings by the Court of Appeals.

What the proposed provisions do is create so many exceptions, limitations, and loopholes as to vitiate the broad pronouncements in the CIS. Two aspects of section III.H exemplify the manner in which the proposed settlement undermines its own efficacy: (a) permitting Windows to automatically ask an end-user if he or she wants to alter the computer's desktop configuration to restore Microsoft middleware that was previously removed by an OEM; and (b) permitting Microsoft virtually unbridled discretion as to when to override an end-user's selection of a default web browser or other middleware.

(a) Microsoft Can Alter End-User/OEM Choices

As discussed above, the proposed settlement does not allow OEMs or end-users to actually remove Microsoft middleware from their computers, instead limiting them to merely deleting icons and menu entries; the middleware itself remains physically in the computer, or in many cases, technologically bound to the Windows operating system. Even a conscious decision by an OEM or end-user to remove Microsoft icons and menu items is subject to interference by Microsoft under the proposed settlement. Section III.H.3(a) allows Microsoft to include in the Windows operating system a prompt that would ask the end-user, fourteen days after the initial boot up of the computer, for permission to automatically erase the OEM's or end-user's configuration of the system and reinstate the Microsoft middleware that was previously deleted. RPFJ ¶III.H.3(b).

This provision is troublesome for a variety of reasons, not least its Orwellian reminder of Microsoft's omnipresence. Most importantly, it allows Microsoft to undermine the configuration choices made by OEMs that may include significant promotion of competing middleware. It allows Microsoft to do this fourteen days after an end-user first boots up the computer, at a time when the end-user may not yet have gained a great deal of familiarity with the computer. Depending on how the question is asked and the user's level of sophistication, the user may not understand that he or she is removing the programs installed by the computer's manufacturer and replacing them with Microsoft products that may not work as well. Furthermore, the prompt is unnecessary, because if a user wanted a different configuration, she would be free to buy the computer from another OEM or purchase additional software on her own.

Nor is any limitation placed on the number of times Microsoft may ''suggest'' that the user alter the configuration. But regardless of how often Microsoft asks—every day, every fourteen days, once a year, or only once—the fact that it can raise the question at all not only undermines the OEM configuration, but also the goal of providing end-users with ''a separate and unbiased choice with regard to each Microsoft Middleware Product or Non-Microsoft Middleware Product.'' RPFJ ¶III.H.1(b) (emphasis added); see also CIS at 48 (purpose of section III.H.3 is to prevent automatic alteration of OEM configuration, such as ''sweeping the unused icons that the OEM has chosen to place on the Windows desktop''). There is no justification for permitting Microsoft to undercut this aspect of relief. Microsoft should be prohibited from ever prompting users to scuttle their OEM selections or desktop choices.

(b) Microsoft Can Override End-User/OEM Middleware Default Choices

Although section III.H.2 of the proposed settlement ostensibly enables end-users and OEMs (and middleware producers themselves) to designate non-Microsoft middleware products (including web browsers) to be invoked automatically in lieu of a Microsoft product, loopholes and conditions destroy this provision's utility as a remedial device.

As an initial matter, the default election procedure is made reciprocal—requiring that identical removal options be afforded Microsoft with respect to non-Microsoft middleware that would otherwise be the default. The government does not explain why such parity is being offered to an antitrust violator at the expense of those who have not violated the law.[19]

More troubling are the ''Notwithstanding'' clauses that follow subsection 3, which directly limit the benefits extended by section III.H.2. Part 1 of the first clause allows Microsoft to invoke a Microsoft Middleware Product if it is necessary for the computer to interoperate with a server maintained by Microsoft. RPFJ § III.H. Because so much middleware—be it a web browser or a Java formulation—now interacts with commercial web servers, which are to a large extent Microsoft web servers, the loophole created by this provision is

[19] Although the Court of Appeals did not affirm the District Court's blanket conclusion that IE's override of competing default browsers was illegal in all circumstances (for example, when accessing Windows ''Help'' resources and updates on the Internet), CA at 65–67, the proposed settlement swings much further in the other direction in permitting Microsoft to write the rules of when such an override of a user's designated default middleware product will be permitted.

enormous. As computing moves off the desktop onto Internet servers, communication with servers is becoming the norm. Moreover, because IE has captured over 90% of the market as a result of Microsoft's illegal conduct, Microsoft is now positioned to dominate the server operating system market by changing the protocols its browser uses to communicate with servers, from the current industry standard to its own proprietary protocols. This will leave those who host web servers with little choice but to use a Windows server operating system. See pp. 70–76 infra. Should this occur, the first ''notwithstanding'' clause of the proposed settlement's section III.H will allow Microsoft to override users' default browser selections in the vast majority of situations. The ultimate outcome will be that the illegal Windows monopoly will again be protected from the threat to its dominance posed by non-Microsoft web-based computing.

The second ''Notwithstanding'' clause in § III.H allows a Microsoft Middleware Product to launch if the designated Non-Microsoft Middleware Product fails to implement a ''reasonable technical requirement (e.g., a requirement to be able to host a particular ActiveX control).'' RPFJ § III.H. Because the proposed settlement leaves it to Microsoft to determine what a ''reasonable technical requirement'' would be, the loophole created by this provision is also enormous. To the extent the clause provides an example of such a failure to meet a technical requirement, the exception is overly broad. ActiveX is a programming environment that allows programs provided by servers to run locally on a PC inside the web browser. Its use replaces in part the cross-platform capabilities of Java and the open standard communication protocols used by most servers. Thus, by determining that the hosting of ActiveX is a ''reasonable technical requirement,'' the proposed settlement ensures that anytime a Microsoft web product or service is launched or any product or service that relies on a Microsoft server is downloaded, Microsoft will be able to override a user's choice of browser. This provision grants Microsoft license to automatically override an end-user's browser choice when that user accesses a program or service that requires interaction with a Microsoft server. Far from restoring competition, this pernicious provision protects Microsoft's ill-gotten operating system monopoly from web-based competition.[20]

iii. The Timing Of Implementation Of Section III.H Allows Microsoft To Reap The Fruits Of Its Past Illegal Conduct Without Adequately Limiting Its Conduct Today Or In The Future

In addition to the foregoing serious deficiencies, the timetable in section III.H for implementation of the substantive provisions by itself renders the provision meaningless as a vehicle for restoring competition. Under the terms of the proposed settlement, section III.H will not be implemented until twelve months after submission of the settlement to the Court or at the release of the first service pack for Windows XP, whichever comes earlier. Because Microsoft is not bound by any of the provisions until that time, it has no incentive to release the first service pack prior to December 2002. The provision is thus rendered meaningless for a fifth of the lifespan of the decree.

Microsoft has no grounds to complain about burdens caused by making section III.H immediately effective. To the contrary, the year delay in implementation would reward Microsoft for its bad faith release of Windows XP, before a settlement was in place, with full knowledge that (notwithstanding the monopoly maintenance holding by the Court of Appeals) XP contains more bundled middleware, more commingled code, and more prompts for Microsoft-related products and services than any prior version of Windows. At the very least, the release of XP violates the spirit of the settlement by which Microsoft claims it is already abiding. No minimally adequate settlement would fail to provide relief to the marketplace as soon as practicable.

The proposed settlement also contains another glaring temporal loophole. The last paragraph of section III.H states that only the Microsoft Middleware Products that existed seven months prior to the last beta test on a new version of Windows will be subject to the requirements of the provision. This means that any new Microsoft product or service, developed six months or less prior to the date of the last beta test[21] of a new Windows operating system release or major upgrade, would not be subject to the requirements that its icon or menu entry be removable from the operating system desktop or the requirement that the automatic launching of the product be disabled in favor of a competing middleware product.

The government offers no justification for a proposed settlement that guts the section III.H ''removal'' provision with myriad and, in some cases themselves anticompetitive, limitations and loopholes, and then delays their implementation for significant portions of settlement's proposed five-year duration.

In contrast to the current settlement's abundant accommodations to Microsoft, two years ago, the government categorically rejected Microsoft's complaints that it would be enable to comply with the ''unbinding'' provisions the government then advocated (i.e., requiring that OEMs and end-users have the ability to engage the Add/Remove utility to delete IE):

Microsoft's assertion that offering an ''unbinding'' option for OEMs and end-users for the few covered middleware products in existing operating systems would take ''far longer than six months, would cost hundreds of millions of dollars,'' and would result in a ''far inferior'' OS cannot be reconciled with the record in this case and the district court's findings.

Gov't CA Brief at 132; Gov't D.Ct. Reply Memo at 63–64 (referring to its expert witness's ability to create a removal program that did not damage or degrade the operating system in a relatively short amount of time and the fact that Microsoft already provided a ready means of removing at least 80 components, many of which it considered ''integrated'' features of Windows). There is no reason, technical or otherwise, why the government should not insist upon timely and effective measures to prevent Microsoft from continuing to commingle its middleware with its operating system in blatant disregard of the Court of Appeals ruling.

2. Provisions Designed To Protect Interoperability Between Microsoft Products And Non-Microsoft Products Are Seriously Flawed

In the earlier remedy proceedings, the government explained the indispensable competitive importance of ''interoperability'':[22]

Microsoft's Operating System monopoly gives it the ability to favor Microsoft products in other markets, by refusing to disclose some of the Interfaces supported by Windows. Such a refusal would allow Microsoft to prevent some products from interoperating fully with Windows. Permitting all products to interoperate fully with Windows is necessary to ensure that that those products realize their full potential in terms of performance and functionality.

Felton Decl. ¶¶51–52 (emphasis added). Indeed, full interoperability has long been recognized by Microsoft, quite correctly, to be a primary threat to its monopoly position in the PC operating system market because it would allow multiple, competing operating system platforms to perform essentially all the functions of a Windows PC. CA at 52–54; D.Ct. ¶¶68–93; Henderson Decl. ¶¶12–18, 29–40; Shapiro Deck at 20–21. Middleware, such as Netscape and Java, posed the initial competitive threat in using interoperability to shift computing away from the Windows PC (the ''middleware threat'').

But, as recognized in District Court findings cited with approval or undisturbed by the Court of Appeals, server-based computing, which would shift many computing tasks from the Windows PC to a server on the Internet, also poses a significant threat to the Microsoft operating system monopoly. D.Ct. at ¶¶24–27 (see CA at 52). By preventing full interoperability, however, Microsoft can neutralize the server threat.

Despite the government's claim that the proposed settlement achieved ''seamless interoperability between Windows Operating System Products and non-Microsoft servers on a network'' (CIS at 38), the proposed settlement would, in reality, enable Microsoft to withhold the disclosures necessary to

[20] The last part of the ''technical requirements'' clause, moreover, puts the onus on ISVs to request the reason for the technical failure. Because ISVs are unlikely to be immediately aware that there is a technical failure on the part of their middleware, the burden must be placed on Microsoft to explain such overrides.

[21] ''Beta test'' refers to the last round of testing for a new software product that is typically performed by sending the software product out to consumers and industry insiders both as a means of ironing out the kinks in the product and obtaining publicity for the impending release. There is no set date within the industry of when these ''tests'' are performed. They can occur months before or immediately proceeding a pending product release date.

[22] As a general matter, interoperability is the ability of different computers, servers or other devices, regardless of whether they use the same software and hardware, to freely transmit and receive information to and from each other.

achieve interoperability and thus defeat this goal. The proposed settlement would do nothing to achieve interoperability between a non-Microsoft server operating system and Windows or IE. Instead, the only disclosure requirements are both ineffectual and too narrow: They apply only to PC middleware and certain client protocols, disclosures which are insufficient, on their own, to create interoperability between a PC and a server or among servers. Thus, instead of preserving threats to the Microsoft monopoly from all sources, the settlement gives Microsoft a free shot at disabling server competition.

a. The Government's Original Remedy Required Broad And Meaningful Interoperability Disclosure By Microsoft

During the initial remedy proceedings before the District Court, the government recognized that new threats were emerging to Microsoft's monopoly in the PC operating system market. Gov't D.Ct. Memo at 29. The government recognized the likelihood that, in the future, most computing will be done through networks and on servers housed at remote locations, with personal computer use diminishing. The government acknowledged that, as a result, software for communicating with servers, operating systems for servers, and middleware designed to function on servers, had become a principal competitive threat to the Microsoft PC operating system monopoly. Id.; see also Henderson Decl. ¶¶13–16; Shapiro Decl. at 20–21.

The ''server threat'' arises from the following circumstances, as the government recognizes. Instead of using an expensive, ''intelligent PC'', which contains a Windows operating system, a substantial hard drive and a powerful microprocessor, consumers increasingly use simpler or smaller, more convenient devices, such as cell phones, PDAs (such as ''Palm'' or ''Blackberry'' devices), TV-set-top boxes, or ''dumb PCs,'' all of which are typically equipped only with more basic (and often non-Microsoft) operating systems, a browser, smaller (if any) hard drives, and a microprocessor. D.Ct. at ¶¶22–27; Henderson Decl. ¶¶13–16, 91–92; Shapiro Decl. at 3–4. The consumer will then use this device's browser to connect to the network of servers on the Internet.

By accessing servers on the Internet, the consumer can perform most of the same computing functions (access/browse the Internet; word processing; e-mail; instant messaging, etc.) that are provided by a Windows PC, but at lower cost and much greater convenience. For example, under the PC computing model, to compose and spell-check a document, the PC's processor is used to process the relevant software program to perform the functions. Under the server-network computing model, however, the same function (compose and spell-check a document) is accomplished through the server, which processes the relevant software program and then transmits the document back to the PC. The PC operating system under this scenario does little more than transmit and receive the data. The actual computing functions are largely performed by the server's operating system and hardware. Similarly, far more complex applications can be offered on the Internet through high-powered servers effectively shared by thousands or millions of consumers.

The government recognized the overriding importance of server software and communications protocols in supporting the original Final Judgment:

As computing continues to move off the desktop and into the internet, middleware threats could develop on servers, in either server operating systems or server applications. Microsoft cannot defeat these threats by bundling its own version of such software into its PC operating systems, but it could use its operating system monopoly in other ways to crush any such middleware threats. For example, Microsoft's new Windows 2000 operating system, to which Microsoft intends to migrate its existing Windows users, is designed with proprietary features and interfaces that enable Microsoft's server operating systems to interoperate with PCs more effectively than other server operating systems. If Microsoft were in a competitive market, it would disclose its confidential interface information to other server software developers so that their complementary software would work optimally with, and thereby enhance the value of, Microsoft's PC operating systems. But, if faced with a middleware threat on the servers, Microsoft is likely to continue to withhold that information from competitors in order to protect its operating system monopoly. Gov't D.Ct. Memo at 29 (emphasis added).

The government's expert in the remedy proceedings underlined the importance of the server-based computing model as a critical emerging threat to Microsoft's PC operating system monopoly. Rebecca Henderson, a professor from MIT with a doctorate in Business Economics from Harvard University, testified:

Server-based computing could reduce the applications barrier to entry in the PC operating system market. If server-based applications are supported in a way that permits end-user access to full-featured application functionality on a truly cross-platform basis, users will be able to access them through any PC operating system they choose. Indeed, server software already acts as cross-platform middleware for a few network-centric applications. Web-based e-mail programs, for example, can be hosted on almost any server operating system and used to send e-mail to and from a wide range of clients, including Windows PCs, handheld computers and wireless phones. As the bandwidth available to PC consumers expands, server software could become an increasingly attractive platform for developers interested in writing full-featured applications for PC owners. For example, an accounting package could be ''hosted'' on a web server. If it were designed to be sufficiently cross-platform, and if technology permits, consumers could access its functionality using either a Windows PC or an alternative device.

Henderson Decl. ¶¶14–15.

Microsoft recognizes the server threat to its PC operating system monopoly. D.Ct. at 60. Its strategy has been to use its monopoly control over the PC's operating system and IE to force websites on the Internet to use Microsoft server operating systems, even if they are otherwise not the most desirable choices. To do this, Microsoft can withhold disclosure of communications interfaces and protocols for IE, at the same time as it changes them from previously disclosed interoperable formulations. The objective is to make IE fully interoperable only with a Microsoft server operating system, and to restrict server-to-server communication only to Microsoft server operating systems. In addition, Microsoft can fail to disclose to competitors the server protocols that facilitate full interoperability between a Windows PC and a Microsoft server operating system, or between servers. As a result, Microsoft's server operating system will always interoperate better with a Windows PC operating system or Microsoft server operating system than any competitors' operating systems. These two actions, taken together, will enable Microsoft server operating systems to dominate the Internet, because website owners will need a server that interoperates with the more than 90% of all Internet users that use IE, while consumers will continue to buy the Windows PC operating system because of the applications barrier to entry. In this manner, Microsoft will easily defeat the threat that web-based computing poses to the PC operating systems monopoly by dominating server operating systems and server applications software. Any ''dumb PC,'' cell phone or handheld device, which relies on a server on the Internet to perform the actual computing functions, will either have to use Microsoft operating system software or face elimination from the marketplace.

During the original remedy proceedings, the government's expert economist, Carl Shapiro, explained the importance of a powerful conduct remedy that would require Microsoft to provide timely disclosure of all APIs, protocols and other technical information necessary to allow all server operating systems to fully interoperate with a Windows PC operating system and Microsoft middleware, particularly IE:

Mandatory disclosure of interface information also will prevent Microsoft from using its Windows monopoly power to gain control of complementary applications and middleware... Two especially important software products today that are complementary to the Windows operating system on personal computers are operating systems on handheld devices and operating systems on servers... Indeed, a good case can be made that the most significant threat to Windows in the next several years will come from client/server architectures. Making sure that Microsoft cannot subvert this threat using undisclosed proprietary interfaces is thus central to an effective remedy in this case.

Shapiro Decl. at 20–21 (emphasis added).

For this reason, the government proposed, and the District Court granted a remedy, requiring disclosure of ''all APIs, technical information and Communications Interfaces'' that enabled:

any Microsoft software installed on one computer (including but not limited to server operating systems and operating system for

handheld devices) to interoperate with a Windows operating system (or middleware distributed with such operating system) installed on a Personal Computer.

Final Judgment § 3(b)(iii).

The effect of this provision was to promote competition in the PC operating system market by using interoperability disclosure to support the server and middleware threats to Microsoft's monopoly. These crucial interoperability disclosure provisions required full disclosure of:

(1) all technical information, including both client protocols and server protocols which allow a Windows PC and a Microsoft server operating system to fully interoperate with each other; and

(2) all technical information that enables Microsoft Middleware, such as IE, to fully interoperate with a Microsoft server operating system.

Microsoft's claim that remedies which affect the PC/server and server/server relationships are outside of the Sherman Act § 2 monopolization claims before the Court is insupportable. Defendant Microsoft Corporation's Remedial Proposal at 6–7 (Dec. 12, 2002) (brief filed in response to the Plaintiff Litigating States'' Remedial Proposals). To the contrary, both sides presented evidence on this issue in the prior proceedings, and both this Court and the Court of Appeals were particularly concerned to ensure that the nascent middleware threats to Microsoft's PC operating system monopoly be protected from further anticompetitive conduct. See, e.g., CA at 79 (''it would be inimical to the purpose of the Sherman Act to allow monopolists free reign to squash nascent, albeit unproven, competitors at will—particularly in industries marked by rapid technological advance and frequent paradigm shifts''); D.Ct. at ¶¶24–27, 56, 60.

Indeed, when Microsoft made the same argument during the original remedy proceedings, the government tersely exposed its fallacy:

Microsoft can hardly argue that client/server interoperability issues are unrelated to the trial. In the first place, its own expert, Dean Schmalensee, testified that control over the browser could enable a firm to ''severely'' affect the functionality of server applications... Second, having argued during the trial that Microsoft lacked monopoly power in the operating-systems market because of the future potential of server-based applications, Microsoft can hardly contend now that it should be free to frustrate the threat to the Windows monopoly posed by such server-based applications by withholding critical information needed for those applications to interoperate with Windows.

Gov't D.Ct. Reply Memo at 49 (internal citations omitted).

b. The Proposed Settlement's Interoperability Disclosure Requirements Are Wholly Inadequate

The interoperability disclosure provision in the proposed settlement is seriously deficient in the following ways: (1) no interoperability disclosure protection is afforded to important competitive threats to Microsoft's PC operating system monopoly, including non-Microsoft operating systems for servers and embedded devices (i.e., cell phones, PDAs, set-top boxes) [23]23; (2) the technical information that is required to be disclosed is too limited to be effective; (3) the timing of required disclosures is either too late or too vague; and (4) the definitions of major terms (API, operating system, middleware) would enable Microsoft to avoid disclosure to competitors, by claiming certain middleware or application products are part of the operating system.

i. Important Areas Of Potential Competition In The Monopolized Market Are Not Included In The Interoperability Disclosure Provision

The proposed settlement fails to provide essential disclosure of technical information necessary to ensure interoperability in at least four critical areas: (a) between Windows PC operating systems and non-Microsoft server operating systems; (b) between Microsoft middleware, particularly IE, and non-Microsoft server operating systems; (c) between Microsoft and non-Microsoft server operating systems; and (d) between Microsoft PC or server operating systems and non-Microsoft embedded devices. The absence of such protection effectively encourages Microsoft to dominate server operating systems and software in order to protect its PC operating system monopoly.

(a) The Proposed Settlement Will Not Achieve Server Interoperability

Although the government continues to espouse the public interest goal of ''seamless interoperability'' for servers, CIS at 38, the proposed settlement does not if fact achieve that result. The failure to ensure this essential remedial goal contrasts sharply with the District Court's findings of fact and conclusion of law, which were entirely affirmed or undisturbed by the Court of Appeals, establishing that Microsoft's conduct, in selectively disclosing or entirely withholding such technical information, plainly violated Sherman Act § 2. CA at 71–73; D.Ct. at ¶¶90–92, 338–40.

As late as November 2, 2001—four days before it reached the present settlement agreement with Microsoft—the government still insisted that server interoperability was essential to any settlement. The government's settlement proposal on that date expressly required server interoperability disclosure:

Microsoft shall make available for use by third parties, for the sole purpose of interoperating with a Windows operating system product ... any communications protocol that is... (i) implemented in the Windows operating system product installed on a client computer, and (ii) used to interoperate natively (i.e., without the addition of software code to the client or server operating system products) with Windows 2000 server products or products marketed as its successors installed on a server computer.

Department of Justice, Proposed Final Judgment, Draft of November 2, 2001 at § III.E. (emphasis supplied)' Pursuant to this provision, Microsoft would have been required to disclose both its client protocols and the server protocols which enable a PC and a server operating system to accept and transmit data to each other? [24]

The proposed settlement, however, deleted the requirement that server protocols be disclosed. This was accomplished by removing the words ''or server'' from the provision quoted above. RPFJ § III (E), November 6, 2001. This directly contradicts the view of the government's technical expert, who testified that if Microsoft were able to withhold from disclosure the server protocols:

[it] would give Microsoft the power to choose which server operating system products could interoperate with Windows .... A customer who felt compelled to buy client Windows Operating System Products would therefore additionally be compelled, due to his desire for interoperability, to buy his server Operating System Products from Microsoft or another vendor to whom Microsoft chose to disclose the new protocol. Microsoft's refusal to disclose the [server protocol] would prevent some competing server Operating System Products from interoperating fully with Windows, and thus would put them at a significant disadvantage.

Felton Decl. 53–57.

By removing the server protocol disclosure requirement, the proposed settlement virtually ensures that non-Microsoft server operating systems will never be viable, competitive alternatives to the Windows PC operating system monopoly. The client protocols that Microsoft is required to disclose will only allow the server to receive data or services from the PC. The other half of the transaction, whereby the server responds and sends data to the PC, cannot be accomplished without the server protocols. As a result, ISVs will not be able, on their own, to develop server operating systems that can fully interoperate with Windows PC. The government's expert has admitted that this eliminates the possibility that non-Microsoft

[23] With regard to server interoperability, the proposed settlement only requires ''client protocols'' to be disclosed. As is fully explained below, to achieve full interoperability between a PC (''client'') and a server, there must be disclosure of both client and server protocols, so that the server can accept and transmit data and services to the PC. By disclosing only the client protocol, only one-half of the transaction (PC to server) is achieved, thus defeating the server's ability to fully interoperate with the PC. See pp. 70–72 infra.

[24] A protocol is a piece of an operating system's software code that allows the operating system to translate, and thus understand, the language of another computer or server that is attempting to transmit data. When a PC (''client'') and a server are transmitting and accepting information or services between each other over the internet, server protocols allow the server operating system to accept and understand the information or services being transmitted from the client. In other words, the server protocols allow the server to transmit information to the PC by converting the information from the server's computer language to the PC's computer language. The client protocols perform the opposite task, allowing the PC to fully interoperate with the server. In order to process information from PC to server, and from server to PC, it is essential that both server and client protocols be provided. Without knowledge of the appropriate server protocols necessary to interoperate with a Windows PC, an ISV cannot design an operating system for a server which will properly interoperate with the Windows PC operating system.

servers would ever become a competitive threat to Microsoft's PC operating system monopoly:

[T]he two provisions relating to the disclosure of APIs, interfaces and technical information ... are exceptionally urgent ... [a]s long as Microsoft retains its monopoly power, the ability to withhold information and to deny interoperability in this way will be a fearsome threat. The development of server-based full-featured PC applications, for example, would be completely crippled if these applications could not be accessed from a Windows PC, or could only be accessed in a disadvantaged way, since no one would be willing to invest in building them. Requiring Microsoft to disclose its interface information... provides a necessary check on Microsoft's ability to exploit its illegally obtained position to exclude competitors.

Henderson Decl. ¶¶115–121 (emphasis added).

Quite simply, because Microsoft will not have to disclose any server protocols, this disclosure provision will not achieve ''seamless interoperability'' between a Windows PC and a non-Microsoft server operating system or aid in restoring even a vestige of competition to the PC operating system market.

(b) The Settlement Fails To Require Disclosure To Enable Interoperability Between Internet Explorer And Non-Microsoft Servers

During the original remedy proceedings the government acknowledged the crucial importance of requiring full disclosure of all technical information relevant to the interoperability between Microsoft's middleware products, particularly IE, and server operating systems.

As explained by a government expert, if Microsoft maintains control over the browser-server interaction (as it would under the proposed settlement), it can maintain its PC operating system monopoly by foreclosing the ability of a web server to interoperate with IE:

Owning the dominant browser gives Microsoft great influence over the evolution of important Internet interfaces. As Paul Maritz recognized, ''By controlling the client, you also control the servers.'' GX 498, at MS980168614. See also GX279 (discussing the role of standards in establishing Internet platform, Maritz explained, ''The key is to win the client (patch up the server later)''). This set of interfaces goes beyond the browser APIs to which developers can directly write applications, to include the set of interfaces that constitute the communications protocols between the browser and the network. For information to be received and viewed in Internet Explorer, the developer has to follow these interfaces.

The ability to influence development of web-based applications is a highly valuable tool for future anticompetitive campaigns should Microsoft choose to mount them. As web-based applications grow in importance, so does Microsoft's ability to steer them towards being IE-centric, and, given its control over the browser-to-operating system interface, Windows-centric as well.

Henderson Decl. 81–86 (internal citations to trial record). The proposed settlement, however, completely abandons the disclosure provision necessary to prevent Microsoft from using its control of IE to eliminate demand for non-Microsoft server operating systems as a competitive alternative to Microsoft's PC operating system monopoly.

Under the proposed settlement, Microsoft has no obligation whatever to disclose any technical information—APIs, communications interfaces or otherwise—that would permit a non-Microsoft server operating system to interoperate with Microsoft's Middleware, including IE. The only disclosure obligation under the proposed settlement involving Microsoft Middleware requires disclosure of APIs relevant to interoperability with a ''Windows Operating System Product,'' a term which is defined to include only ''the software code...distributed commercially by Microsoft for use with a personal computer.'' RPFJ §§ III.D, VI.U (emphasis added). For example, this provision would not require any disclosure for the purpose of allowing competing server operating systems to interoperate with IE, the very product that the Court of Appeals held was used by Microsoft to illegally maintain its monopoly power. CA at 64–68.

As a result, under the proposed settlement, only Microsoft server operating systems will be guaranteed access to the proprietary APIs and communications interfaces necessary for a server to interoperate with IE. If a website owner purchases a non-Microsoft server operating system, the more than 90% of consumers who use IE on their Windows PC would be unable to access that website unless Microsoft had agreed to separately license the technical information required for interoperability.

Of equal significance is Microsoft's recent decision not to distribute Java as part of Windows XP. Java had been included in prior versions of Windows. Java is a software program that is an open industry standard; it allows websites both to operate on numerous non-Microsoft operating systems and to display rich colors and graphics to enhance the website's appearance. CA at 74–75; D.Ct. at ¶¶386–405. Approximately 50% of all websites currently on the Internet, including SBC's website, are Java-compatible. Microsoft dropped distribution of Java in favor of promoting ActiveX, which is Microsoft's proprietary software that competes with Java by allowing a web server to process an Internet-based application in a fashion similar to Java. ActiveX is a proprietary browser interface that is installed as part of the software code for IE. As a result, the only way a non-Microsoft server operating system can obtain the proprietary interfaces for ActiveX (or for Internet Explorer generally) is through a license from Microsoft. If Microsoft chooses to make IE's protocols a completely undisclosed, proprietary standard, which it is free to do under the proposed settlement, Microsoft's PC operating system monopoly will be perpetuated, because the already formidable applications barrier to entry will be increased, and the server threat will be further diminished. This will occur as a result of two interrelated effects. First, website owners will be forced to purchase Microsoft server operating systems to ensure that their website remains fully accessible by the more than 90% of consumers who use IE. Second, for this reason among others, the vast majority of applications that are already written exclusively to interoperate with Windows will be increased, as ISVs' commercial need to write their Internet-based applications to be compatible with IE and ActiveX will increase. As time goes on, the number of servers which interoperate with Java and other browsers will continue to fall. Moreover, consumers who want to browse the Internet, that is, to access what will become the overwhelming majority of websites run on a Microsoft server operating system, will have to use IE and to get it, they will need a Windows PC operating system or another device that runs on Microsoft software. In the end, the prospect of ''dumb PCs,'' cell phones and handheld devices equipped with non-Microsoft operating systems and browsers also will be eliminated.

SBC's own website provides an example of the exclusionary effect this lack of disclosure will have on non-Microsoft server operating system. SBC uses non-Microsoft operating systems on its website servers, and the website is designed to be compatible with Java. Because Windows XP (unlike earlier Windows versions) does not contain Java, when Windows XP users attempt to access SBC's website, they receive a message that ''to display this page correctly, you need to download and install the following components: Java Virtual Machine.'' However, to make this (free) download on a normal dial-up connection will take the consumer over 30 minutes in normal conditions (i.e., low network congestion and latency), and an hour or more during times of peak usage. Thus, by dropping Java from Windows XP and failing to disclose its browser interfaces (which would enable SBC to obtain programs that could achieve ''seamless interoperability'' with Windows XP), Microsoft has compelled the consumer to undertake a confusing and lengthy download process. This creates an anticompetitive barrier to consumers' use of SBC's website and entrenches the Windows monopoly.[25]

(e) The Proposed Settlement Does Not Contain An Interoperabillty Disclosure Provision To Cover Server-To-Server Communications

Another corollary to the potential transition from the PC to a server-based computing environment is the need for a vastly increased volume of server-to-server communication transmissions. The proposed settlement contains no provision requiring disclosure of any technical information whatever to facilitate such communications—''interoperability''—between Microsoft and non-Microsoft server operating systems. The government offers no explanation for its absence, which will have

[25] In October 2001, Microsoft dispelled any doubt whatever that it would use its control of Internet Explorer and Microsoft server operating systems to exclude competing browsers, when it blocked access to its MSN.com server for Netscape's and Opera's competing browsers. See p. 80 infra.

the predictable effect of further diminishing the server threat to Microsoft's PC operating system monopoly, while also restraining competition in the server operating system market itself. All of the same deficiencies in interoperability discussed above with respect to PCs and servers also apply to server-to-server communications as well. For this reason, the same outcome is certain to occur: an overwhelming percentage of servers on the Internet will be forced to use a Microsoft operating system. If Microsoft is not required to disclose any of the technical information necessary interoperate with Microsoft's server operating system, the demand for non-Microsoft server operating systems will be significantly reduced. As a result, the Internet-based threat to Microsoft's PC operating system monopoly will be neutralized.[26]

(d) The Proposed Settlement Does Not Contain Interoperability Disclosure Provisions To Cover ''Embedded Devices''

Like a ''dumb PC,'' an ''embedded device'' (such as a cell phone, PDA or set-top box) also can provide a viable, competitive alternative to a Windows PC. The government once again admitted this in prior remedy proceedings when it included embedded devices in the interoperability disclosure provisions:

It is also possible that some of the middleware now being developed for alternative client devices—such as the handheld computer, the Personal Digital Assistant (PDA), the so-called ''Internet Appliance,'' or the wireless telephone—might one day attract developers in large numbers. If ported to the PC, this middleware could then begin to erode the applications barrier to entry to the PC operating system market.

Henderson Decl. 16. See Final Judgment § (3)(b)(iii) (requiting full disclosure of all technical information relevant to interoperability between operating systems of handheld devices and Windows PCs).

The government's position at the time rested squarely on District Court findings that such devices could present an alternative to a Windows PC in the future. D.Ct. ¶¶at 22–23. Those findings were not disturbed on appeal and remain binding today. CA at 52 (handheld devices could, but do not yet, perform enough functions to be an alternative to a Windows PC.)

In the proposed settlement, this essential salutary provision has been removed without explanation by the government. The result is to eliminate another potential threat to Microsoft's PC operating system monopoly, while also giving Microsoft a significant advantage in the closely connected market for operating systems for such embedded devices.[27]

(e) The Technical Information That Is Required To Be Disclosed Under The Proposed Settlement Is Insufficient To Achieve Interoperability

Even in those situations where the proposed settlement does require Microsoft to disclose certain technical information (interoperability between Microsoft middleware and Windows PC operating system; client protocols), the type and extent of the disclosure is inadequate to promote competition, because it fails to achieve the ''seamless interoperability'' that the government admits is essential to provide an effective remedy for Microsoft's antitrust violations.

While the government now claims to have achieved equal access to the ''same interfaces and related information'' for non-Microsoft and Microsoft middleware developers (CIS at 33), this is not correct. Specifically, the proposed settlement only requires disclosure of ''the APIs and related documentation'' used by Microsoft Middleware to interoperate with a ''Windows Operating System Product.'' RPFJ <§ III.D. This limited disclosure is in stark contrast to the disclosure the government sought, and obtained, in the Final Judgment. Final Judgment § 3(b). At that time, the government required disclosure of ''all APIs, technical information and communications interfaces'' to achieve interoperability. Id. (emphasis added).

For example, by limiting disclosure to APIs, the government has left out important additional technical information that is indispensable for a middleware product to achieve ''seamless interoperability'' with a Windows PC operating system. In addition, the definition of what constitutes an ''API'' is drawn too narrowly in the proposed settlement; it does not include items like registry keys, file formats, communications protocols and other necessary technical information that is critical for an ISV to develop a middleware product that is fully interoperable. See RPFJ § VI.A. This stands in sharp contrast, once again, to what the government advocated in the Final Judgment, when its own expert explained that disclosure of all APIs, communications interfaces and other related technical information was essential to promote full interoperability. Felton Decl. ¶¶15–28. The government offers no explanation for its change of position. See Final Judgment § 7(b); Litigating States' § 22(c).

The same deficient definitions apply to the type of technical information that Microsoft must disclose to promote interoperability between a non-Microsoft server operating system and a Windows PC operating system. RPFJ § III.E. Such disclosure is now limited only to ''client protocols,'' while the Final Judgment required disclosure of ''all APIs, Technical Information and Communications Interfaces'' necessary to achieve full interoperability. Final Judgment § 3(b); Litigating States' § 4. The proposed settlement's limited disclosure obligation has grave negative ramifications for ISVs seeking to achieve full interoperability. First, as stated above, both the client and server protocols are necessary to achieve interoperability between a PC operating system and a server operating system. Moreover, there is substantial additional technical information that far exceeds a ''communications protocol.'' Such additional information includes APIs, software tools, file formats and other technical information without which a non-Microsoft server operating system will never achieve ''seamless interoperability'' with a Windows PC, let alone operate as well as a Microsoft server operating system.

The possibility that Microsoft will maintain its PC monopoly in this manner is not hypothetical. In fact, in the absence of strong remedial provisions, not only is Microsoft certain to use disclosure, or the lack thereof, to create and maintain an advantage over its competitors, but it has already used the very same control over communications protocols and the like to disrupt competing browsers' ability to communicate with its own servers over the Internet. At the time of the release of Windows XP just last October, Microsoft secretly changed the MSN web server program codes to specifically prevent the competing browsers Netscape Navigator and Opera from interoperating with the MSN web server.[28] Browser Bruiser, Chicago Sun Times, October 27, 2001, at 36 (''Microsoft's premiere web portal, MSN.com, denied entry to millions of people who use alternative browser software such as Opera and told them to get Microsoft's products instead.''); MSN Shuts Out Other Browsers, Associated Press, October 28, 2001 (''Microsoft's premiere web portal, MSN.com, denied entry to millions of people who use alternative browser software such as Opera...The blockage coincided with Microsoft's showcase launch of its Windows XP operating system. Instead of getting MSN's news, games and shopping features, Opera users were given links to download Microsoft's browsers.'').

(f) The Timing Of The Required Disclosure Under The Proposed Settlement Will Impede, Not Promote, Competition

To restore competition in the PC operating system market, proper timing is no less important than the substance of the required disclosures. The District Court made multiple findings of fact, affirmed by the Court of Appeals, which established that delayed disclosure of technical information to achieve interoperability effectively nullifies its value. D.Ct. at 338–40; CA at 71–73. The ''time to market'' in developing software is of the utmost importance. Id. The ability of an ISV even to attempt to compete with Microsoft is ''highly dependent'' on Microsoft's release of its technical information relevant to interoperability. Id. Netscape learned this lesson in 1995 when Microsoft, in the face of repeated demands from Netscape for technical information regarding interoperability with Windows 95, withheld this technical information from

[26] The Litigating States' proposal properly requires full disclosure of all technical information necessary to design a non-Microsoft server operating system that would be fully interoperable with a Microsoft server operating system. Litigating States'' § 4.

[27] The Litigating States' proposal justifiably requires full disclosure of all technical information relevant to the interoperability between a Microsoft PC or server operating system and any embedded device. Litigating States'' § 4.

[28] When browsers connect to a web server, they send information identifying specifically which browser it is and the capabilities of that browser. Programmers often code their web servers to be aware of browser differences so that the web server can provide a richer end-user experience. It is unusual, to say the least, to use browser and web server capabilities in this way to deny access.

Netscape for approximately three months. D.Ct. at ¶¶90–92. While Netscape was waiting for this information, Microsoft brought to market its competing product—Internet Explorer. Id. The result of this delay was to destroy any fair competitive challenge Netscape might mount against Internet Explorer. Id.

The government has previously acknowledged that the proper timing of disclosure of technical information related to interoperability is critical to restore competition to the PC operating system market. Gov't D.Ct. Reply Memo at 21–23. As a result, the government sought provisions in the Final Judgment that required the timing of all disclosures to be made when Microsoft disclosed the information to its own developers, and well in advance of when any new Windows product is brought to market. Final Judgment § 3(b).

Having manipulated for its own competitive advantage the timing of interoperability disclosures in the past, it is not surprising that Microsoft demanded very liberal and vague timing in the proposed settlement. The government, however, having litigated and prevailed on the timing issue, now largely gives up. The proposed settlement does not require the disclosure of technical information related to interoperability of Microsoft Middleware products to begin until the ''earlier of the release of Service Pack I for Windows XP or twelve months after the submission of this Final Judgment.'' RPFJ § III.D. If Microsoft intends to introduce a new Middleware Product, it does not have to disclose any technical information related to interoperability until the product's ''last major beta test.'' Id. All other disclosures must be made in a ''Timely Manner,'' which is defined as the ''time Microsoft first releases a beta test ... that is distributed to 150,000 or more beta testers.'' Id. § VI.R.

Similarly, the disclosure of client protocols contained in the Windows PC operating system are not required to begin until nine months after the submission of the final judgment, and all subsequent disclosures are not regulated as to time, and thus left solely within the discretion of Microsoft. RPFJ § III.E.

The inadequacy of these timing requirements is patent. There is no conceivable justification, and none has been offered, for delaying disclosure with respect to Microsoft's current products for nine to twelve months from the date of the settlement. By definition, Microsoft knows, and its programmers have access to, current product information today. The delay built into the settlement simply allows Microsoft time to exploit its proven monopoly for another year so that Microsoft's products will have an even greater advantage when disclosure finally begins.

With respect to new middleware products and others, the timing of disclosure also fails to serve the public interest. Disclosure for a new middleware product is not required until the new product's ''last major beta test'', which is also an undefined term. RPFJ § III.D. As to all other middleware disclosures, Microsoft is free to decide when to conduct the required beta test to 150,000 or more beta testers. RPFJ § III.D. With respect to the disclosure of client protocols, Microsoft is not subject to any time limit whatever. RPFJ § III.E. These provisions effectively immunize continued anticompetitive conduct. Microsoft is essentially given free rein to choose when it will be most advantageous in terms of marketing its products to make the required disclosures; and prior to disclosure it is free to develop and position its products for maximum competitive advantage.

Once again, the CIS provides no explanation why Microsoft's disclosure obligations should not commence immediately, and why at all times thereafter, should not be made as soon as information is available to Microsoft's own programmers. CIS at 34–35. For example, the ''beta test'' standard in the proposed settlement is far too late to be competitively meaningful. A beta test is one of the last steps taken by a software developer before placing a new product on the market. It is often viewed as more of a marketing tool (to create a ''buzz'' among technology writers and other cognoscenti), rather than a true development step. Thus, if Microsoft is allowed to wait until this point, it will be able to do to other software developers exactly what it did to Netscape in 1995—ensure that a competing product is so late to market that it faces an insurmountable barrier to overtake Microsoft's lead. D.Ct. at ¶¶90–92.

The Final Judgment and Litigating States' proposal are much more rational, and likely to lead to meaningful disclosure that would promote interoperability and competition. All disclosures under the Final Judgment and Litigating States' proposal are required to be made in a ''timely manner,'' which is precisely defined as, at a minimum, the earliest of the following times:

(i) When the information is disclosed to Microsoft's own application developers;

(ii) When the information is used by Microsoft's ''own platform software developers in software released by Microsoft in alpha, beta release candidate, final or other form'';

(iii) When the information is disclosed to any third party; or

(iv) Within ninety days of the final release of the Windows operating system product, but ''no less than five days after a material change is made between the most recent beta for release candidate version and the final release.''

Final Judgment § 7(ee); Litigating States' § 22(pp).

(g) Important Terms In The Proposed Settlement Are So Loosely Defined That They Enable Microsoft To Avoid Disclosure

The definitions of important terms relevant to interoperability are so vague that Microsoft can largely avoid its disclosure obligations. Among other things, the proposed settlement's definitions of ''Microsoft Middleware'' and ''Windows Operating System Product'' give Microsoft the ability to completely circumvent even the otherwise paltry disclosure requirements. See pp. 36–40, 42–43 supra. Just as important, the critical term ''interoperability'' is not defined in the proposed settlement. It should be defined as the ability of a system or product to work with other systems or products in such a way as to effectively access, utilize and support the full features and functions of one another. See Litigating States' § 22(q).

In addition, the definition of ''Windows Operating System Product'' provides that ''[t]he software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.'' RPFJ § VI.U (emphasis supplied). Essentially, this provision grants Microsoft the ability to avoid disclosure to competitors of technical information—even that necessary to achieve the government's promised ''seamless interoperability''—merely by embedding a middleware product in the Windows PC operating system code. Microsoft can then argue that the product at issue is not middleware, but rather part of Windows, and thus outside all disclosure obligations.

The definition of ''Microsoft Middleware'' demonstrates the intentional nature of the government's concession on this point and serves no function other than to dilute the effectiveness of the proposed settlement. That definition, which is essentially the flip-side of the ''Operating System'' coin, also allows Microsoft the flexibility to define whatever it wants to as middleware, by either not obtaining a trademark for the product or by simply bundling it with the Windows PC operating system. RPFJ § VI.J. In either instance, the effect is the same: Notwithstanding the conclusion of the District Court and the Court of Appeals that Microsoft bound middleware to its operating system for the purpose of defending its operating system monopoly in violation of § 2, the company will remain free to continue the same conduct.

ii. The Mandatory Licensing Provisions Are Illusory

The proposed settlement provides that Microsoft must license to its competitors the intellectual property fights for any technical information it is required to disclose. The CIS explains that ''[t]he overarching goal of this section is to ensure that Microsoft cannot use its intellectual property fights in such a way that undermines the competitive value of its disclosure obligations.'' CIS at 49. Limitations on Microsoft's licensing obligations, however, make the provision's impact largely illusory. Indeed, they may well benefit Microsoft to the exclusion of its competitors and competition generally in the PC operating system market.

First, Microsoft is permitted to charge a ''reasonable royalty'' to any competitor who requests disclosure related to interoperability. RPFJ § III.I.1. This provision is anticompetitive. On its face, it allows Microsoft to enjoy the fruits (i.e., licensing royalties) of its proven illegal monopoly. Moreover, it gives Microsoft the opportunity to use a ''royalty'' charge to control crucial technical information in a way that restrains its competitors—a practice Microsoft has already shown a willingness to undertake.[29] The government earlier acknowledged that

[29] Under the proposed settlement, there is no practical way for competitors who must pay the fee to challenge its reasonableness.

these dangers can be avoided only by requiring any license to be royalty-free:

The disclosure of APIs, Communications Interfaces and Technical Information required by the Final Judgment will enable third parties to make their products interoperate effectively with Windows, thereby increasing the value of Windows as a platform ..... There is thus no need or justification to charge a royalty for access to the same information about interoperation with Microsoft Platform Software on a Personal Computer that Microsoft's own developers receive.

Gov't D.Ct. Sum. Resp. at 14.

The relevant case law also supports the position that royalty-free licenses are necessary to prospectively remedy Microsoft's illegal monopolization of the PC operating system market. See United States v. General'' Elec. Co., 115 F. Supp. 835,844 (D.N.J. 1953) (royalty-free licenses an essential remedy to prevent a continuance of monopoly). The government made this same legal point when it recognized that the instant case is analogous to United States v. Western Elec. Co., 569 F. Supp. 1057, 1082–1091 (D.DC 1983), aff'd sub nom. California v. United States, 464 U.S. 1013 (1983), where compulsory, royalty-free, sublicensable licenses were required to remedy past anti-competitive conduct. Gov't D.Ct. Reply Memo at 27–29. As the government pointed out, this provision was one of several that insured that ''telecommunications [would] continue to operate in an engineering sense as one national network.'' Id. at 29 (internal quotation marks omitted). The same functional interoperability is necessary to ensure maximum innovation and competition in all aspects of the computer industry.

Moreover, as in the AT&T case, whether royalty-free licenses are necessary is not an issue of remedying a monopolist's past anticompetitive use of its intellectual property per se, but rather a matter of making sure that the relief granted (in this case, disclosure of certain APIs and communications protocols) is not impeded by onerous license terms. Thus, requiring royalty-free licensing is merely in aid of a remedy for antitrust violations that are not directly related to Microsoft's licensing of its intellectual property.

The public interest also is not served by giving Microsoft the tight to condition the grant of any license of its own software upon the licensee's ''cross-licensing'' any intellectual property rights it may have ''that are related to the licensee's exercise of its tights'' under the settlement. RPFJ § III.I.5. It was established long ago that cross-license requirements are inconsistent with restoring competition to a monopolized market:

[A] provision for reciprocal licensing would tend to perpetuate the situation of industry dominance by General Electric which the decree is designed to end... Were General Electric granted the right of reciprocity, since it would be the overwhelmingly largest source from which to demand licenses, once again it would be in a position of being able to channel all development through itself. Therefore the proposal of General Electric for reciprocal licensing will be declined.

General Elec. Co., 115 F. Supp at 847.

The government's present justification, that this provision is necessary to ensure that Microsoft would not be exposed to ''infringement liability'' as a result of the interoperability disclosures, is difficult to understand. CIS at 50. No competitor should be forced to disclose its own proprietary information in order to exercise rights put in place to restore competition in a monopolized market. Again, the government does not explain why it was wrong when it earlier concluded that such a provision has no pro-competitive benefit:

There is no justification for requiting third parties to disclose to Microsoft the APIs' and Communications Interfaces in their products that interoperate with Windows. Microsoft has monopoly power in the market for PC operating systems, and third-party developers of middleware that might challenge that monopoly are thus dependent on access to Windows APIs, Communications Interfaces and Technical Information. Microsoft has previously withheld access to APIs and interfaces to defeat such threats in the past, and the restoration of competition requires that it not be permitted to do so in the future. No comparable concern has been raised in this case about access to information regarding third parties' products. In any event, third parties that get access to APIs, Communications Interfaces, and Technical Information are doing so to create complements to Microsoft's operating system.

Gov't D.Ct. Sum. Resp. at 14–15.

In addition, the disclosures required by cross-licensing would enable Microsoft to get a jump on developing its own product to compete with that which the licensee was forced to disclose. The settlement would thereby further increase Microsoft's timing advantage over its licensee in selling a new product. Nothing requires giving a proven monopolist such a benefit.

iii. The Limitation Upon Disclosure Based On Alleged Security Concerns Is A Massive Loophole

The provision in the proposed settlement that limits Microsoft's interoperability disclosure obligations based on security considerations is another loophole that Microsoft can use to justify withholding crucial technical information. Under this provision, if technical information would ''compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria,'' it is exempt from disclosure. RPFJ § III.J.1. In addition, Microsoft is also given the right to require that the following conditions be met prior to licensing APIs or communications protocols related to the foregoing subjects:

(i) that any licensee never have participated in software counterfeiting or piracy, and never have willfully violated intellectual property rights;

(ii) that the licensee have a ''reasonable business need'' for the technical information, and the need must be related to a product that is currently being planned or shipped;

(iii) that the licensee meet ''reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business''; and

(iv) that the licensee agree to submit any program using the disclosed technical information to a third party, approved by Microsoft, to ''ensure verification and compliance with Microsoft specifications.'' RPFJ § III.J.2.

The government did not permit any such ''security'' exception in its proposals for the Final Judgment. The government now attempts to justify this provision as a ''narrow exception'' that is necessary to maintain the integrity of the security-related features of Windows. CIS at 10. To the contrary, the broad language and significant discretion given to Microsoft create loopholes for Microsoft to withhold information essential to interoperability from disclosure generally or from specific rivals it wishes to prejudice.

First, virtually all APIs, communications interfaces or other technical information that are relevant to interoperability, on some level will perform ''authentication'' or ''encryption'' functions related to the security of an operating system. Accordingly, the allegedly ''narrow'' security exception in reality gives Microsoft a virtual carte blanche to withhold information necessary for interoperability, simply by citing this section and claiming the code at issue provides ''authentication'' or ''encryption'' functions.

The language requiring that a person seeking disclosure must meet ''reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business'' invites abuse by Microsoft. RPFJ § III.J.2.c (emphasis added). For example, Microsoft could exercise its veto power over a disclosure request from an open source developer, on the ground that Microsoft does not consider ''its business'' to be ''authentic'' or ''viable''. The open source community typically operates on a not-for-profit basis, and has long been a competitive adversary of Microsoft. Rebecca Buckman, Microsoft is Suing Linux Start-up Over Lindows Name, Wall Street Journal, December 24, 2001 (Microsoft brings trademark action against open source operating system developer); Lee Gomes, Linux Campaign Is An Uphill Battle For Microsoft, Wall Street Journal, June 14, 2001 (''A Microsoft Corp. effort to vilify Linux and other open-source software appears to be backfiring ... Microsoft Chief Executive Steve Ballmer ... [called] Linux ''a cancer that attaches itself in an intellectual property sense to everything it touches.''); Byron Acohido, Microsoft Memo to Staff: Clobber Linux, USA Today, Jan. 4, 2002 (''Microsoft is escalating its war against Linux.'').

Similarly, the requirement that the prospective licensee have a ''reasonable business need'' for the information also gives Microsoft anticompetitive powers. Microsoft could dispute the asserted ''need'' or use to its own competitive advantage the information that licensees would presumably submit to it to demonstrate their ''need,'' since the provision effectively gives

Microsoft advance notice of its competitors' new products. For this reason, the provision will discourage competitors from even exercising disclosure rights. Finally, Microsoft is given the gratuitous fight to require all competitors' programs that use Microsoft's APIs to be verified by a third party, who is ''approved by Microsoft,'' to ensure compliance with ''Microsoft's specifications for use of the API or interface.'' RPFJ § III.J.2.d.

Microsoft's alleged concern for security is a pretext to create a loophole, as well as to allow Microsoft to obtain an unwarranted advantage by having early access to its competitors' trade secrets, The fact that certain code may provide a security function is not a legitimate reason to withhold disclosure. Although Microsoft has not been required to license this information in the past, its software security record is arguably one of the worst in the industry. See, e.g., Wayne Epperson, NT Insurance at a Premium, HostingTech (August 2001), at www.hostingtech.com/security/01_08_nt. (reporting that insurer J.S. Wurzler Underwriting Managers had discovered ''that clients who used Microsoft Windows NT software in their Internet operations were at a greater risk of loss to computer hackers than were the insured Unix or Linux users .... After 5 months of analysis, Wurzler Underwriting Managers made the decision to charge its NT clients an extra premium for insurance coverage.''). On the other hand, several of the most effective security programs, such as Kerberos and ''Pretty Good Privacy,'' are available on an open-source basis and freely accessible by the public. These examples prove that even full public disclosure is not inimical to security. What disclosure does prevent, however, is the exercise of monopoly power. For purposes of this proceeding, therefore, the ''security'' loopholes are not in the public interest.

3. The Proposed Settlement Fails To Remedy The Proven Pattern Of Unlawful Retaliation, Inducements, And Exclusive Dealing Arrangements Used By Microsoft To Maintain Its Monopoly

As determined by the District Court in findings upheld by the Court of Appeals, Microsoft threatened to and did withhold critical technical information from software developers; Microsoft provided or withheld financial benefits depending on a party's willingness to aid in its anticompetitive campaign; and Microsoft contractually prohibited third parties from distributing competing software. CA at 71–73, 76–77. Yet, the proposed settlement fails in many respects to protect third parties from new versions of such past conduct which may be used by Microsoft to protect its operating system monopoly.

In earlier proceedings, the government recognized that any remedy must be ''directed towards future competition and innovation,'' and that while the remedy was based on historical experience, the analysis was ''done on a forward-looking basis.'' See Shapiro Decl. at 2. The government further acknowledged that in this fast-moving industry, any remedial conduct provisions must ''be broad enough to prevent Microsoft from engaging in a number of categories of anticompetitive tactics in the future, precisely because the specific tactics that Microsoft might employ in the future are hard to predict today in the face of changing products and technology.'' Id. (emphasis in original)

Having recognized these elements as essential to any remedy that would serve the public interest, the government now proposes to settle on terms that do virtually nothing to anticipate and prohibit new forms of exclusion. Indeed, in many instances, the government has given up or severely limited provisions in the original Final Judgment that were fully justified by the Court of Appeals' affirmance. On a number of such issues, the proposed settlement accepts positions that Microsoft sought to include in the Final Judgment, but the government then specifically rejected. The government rejected Microsoft's proposals precisely because they ''consist[ed] largely of changes that would create loopholes and permit Microsoft to continue to engage in anticompetitive practices like those found by the Court or otherwise to frustrate or undermine the purposes of the Final Judgment.'' Gov't D.Ct. Sum. Resp. at 6. However, the recent CIS does not attempt to justify the government's acquiescence in what were once viewed as ''loopholes'' and a license to resume ''anticompetitive practices.''

a. The Government's Settlement Substitutes Weak And Narrow Protections Of Third Parties For The Strong And Broad Provisions Justified By Microsoft's Conduct s

The Court of Appeals held that Microsoft had engaged in exclusionary acts and threats of retaliation in violation of § 2. CA at 73, 77–78. In its efforts to promote IE and restrict the distribution of Navigator, Microsoft successfully made threats against Apple. To halt the development of cross-platform interfaces for Java, Microsoft threatened to retaliate against Intel. Microsoft also made threats and retaliated against others who posed potential threats to its monopoly. D.Ct. at ¶¶83–84, 91, 101, 102.

The government has recognized the established and urgent need to prevent Microsoft from engaging in acts or threats of retaliation. The original Final Judgment prohibited Microsoft from ''tak[ing] or threaten[ing] any action [that] adversely affect[s] any OEM... based directly or indirectly, in whole or in part, on any actual or contemplated action by that OEM to use, distribute, promote, license, develop, produce or sell any product or service that competes with any Microsoft product or service.'' Final Judgment § 3(a)(i). The Final Judgment further prohibited Microsoft from ''tak[ing] or threaten[ing] any action affecting any ISV or IHV... based directly or indirectly, in whole or in part, on any actual or contemplated action by the ISV or IHV to use, distribute, promote or support any Microsoft product or service, or develop, use, distribute, promote, or support any software that runs on non-Microsoft Middleware or a non-Microsoft Operating System or that competes with any Microsoft product or service.'' Final Judgment 21§ 3(d)(i) and 3(d)(ii).

With respect to OEMs, the government recognized that Microsoft's retaliatory actions ''highlight[] the potential for misuse of monopoly power that must be prevented if potential rivals to Windows and new innovations in software can be expected to emerge.'' Gov't D.Ct. Memo at 38. The government specifically admitted that the broad anti-retaliation provision was needed ''both to prevent subtle or varied forms of coercion and to avoid difficulties in determining the scope of the restriction in an enforcement proceeding.'' Id. at 38–39.

With respect to banning retaliation against ISVs and IHVs, the government said it was necessary to ''ensure that Microsoft does not use its operating system monopoly to nip new competitive threats in the bud.'' Gov't D.Ct. Memo at 41. The provision was a ''safeguard to prevent Microsoft's continued use of the wide array of opportunities presented by its monopoly position to bribe and coerce third parties to favor its own products and exclude others.'' Gov't D.Ct. Reply Memo at 55.

Moreover, because Microsoft repeatedly sought anticompetitive agreements, such as its attempted market allocation agreements with Netscape and Intel, the Final Judgment included a provision that flatly prohibited agreements that limit competition (Final Judgment § 3(h)) ''to ensure that the defendant will be unable to repeat its unlawful conduct.'' Gov't D.Ct. Sum. Resp. at 17. ''Prohibiting anticompetitive activity that could stifle the emergence of other forms of middleware as potential platforms is necessary both to prevent recurrence of past misconduct and to restore competitive conditions.'' Gov't D.Ct. Reply Memo at 65.

Even today, the government recognizes the need to prohibit retaliation based on the specific findings of illegal conduct upheld by the Court of Appeals. In its attempts ''to protect the applications barrier to entry, Microsoft embarked on a multifaceted campaign to maximize [IE]'s share of usage and to minimize Navigator's.'' CIS at 13. Not content to merely develop its own browser, ''Microsoft decided to constrict Netscape's access to the two distribution channels that led most efficiently to browser usage; installation by OEMs on new personal computers and distribution by [IAPs].'' Id. ''To ensure that developers would not Comments of SBC Communications Inc. view Navigator as truly cross-platform middleware,'' Microsoft also pressured Apple ''to make Navigator less readily accessible on Apple personal computers.'' CIS at 14.

Additionally, as part of ''its effort to hamper distribution of Navigator and to discourage the development of software that used non-Microsoft technology, Microsoft also targeted [ISVs] by contractually requiring ISVs to use [IE]-specific technologies in return for timely and commercially necessary technical information about Windows, and precluded important ISVs from distributing Navigator with their products.'' CIS at 14–15. Ultimately, ''Microsoft's actions succeeded in eliminating the threat that the Navigator browser posed to Microsoft's operating system monopoly... Navigator lost its ability to become the standard software for browsing the Web because Microsoft had successfully—and illegally—excluded Navigator from that status.'' CIS at 15.

The proposed settlement (RPFJ §§ III.A,F) fails to implement the procompetitive goals that the government has repeatedly expressed, and substitutes weak and narrow protections for broad prohibitions to interdict new forms of exclusionary conduct adopted by Microsoft in response to new forms of competition.

i. The Range Of Parties Protected From ''Retaliation'' Is Too Limited

The settlement would only protect OEMs, ISVs and IHVs against ''retaliation.'' Microsoft's record of retaliatory conduct, however, demonstrates that the ban against retaliation must apply to all third parties.[30] Microsoft has demonstrated that it will take any action necessary against any entity that poses a threat to its monopoly, by making threats, offering inducements, coercing or contractually restricting others. The government offers no justification whatever, let alone any persuasive reason, to limit the types of third-parties against which Microsoft cannot engage in unlawful retaliation. The settlement's failure to ban retaliation broadly is all the more troubling because this provision does not impose any affirmative duties on Microsoft. The only ''burden'' is that Microsoft must refrain from punishing those who might challenge Microsoft's illegal monopoly.

ii. ''Retaliation'' Is Not Defined

The proposed settlement states that Microsoft ''shall not retaliate,'' but never defines ''retaliation.'' Although the government stated that its intention was to ''prevent subtle or varied forms of coercion and to avoid difficulties in determining the scope of the restriction in an enforcement proceeding'' (Gov't D.Ct. Memo at 38–39), the vague language of the settlement fails to meet that goal. Without a definition of ''retaliate,'' such as a prohibition against ''taking or threatening adverse actions'' (see Final Judgment §§ 3(a)(i), 3(d)), Microsoft will be free to argue that no violation has been established on a particular set of facts. Given the extraordinary record of Microsoft's ingenuity in abusing its monopoly power, any definitional doubt must be resolved against the wrongdoer by imposing a broad definition of ''retaliate.''

Moreover, with respect to OEMs, Microsoft is only prohibited from ''retaliating against an OEM by altering Microsoft's commercial relations with that OEM or by withholding newly introduced forms of non-monetary Consideration.'' See RPFJ § III.A (emphasis added). The use of the words ''newly introduced'' is ambiguous in that it suggests that Microsoft is permitted to withhold existing forms of non-monetary compensation. The CIS offers no explanation for this ambiguity concerning whether Microsoft may continue to engage in conduct previously adjudged illegal. CIS at 25–26.

iii.The Party Injured By Retaliation Must Prove Causation

The proposed settlement too narrowly limits the type of conduct by third parties for which Microsoft may not ''retaliate.'' It only prohibits ''retaliation'' that occurs ''because'' of conduct by the OEM, ISV or IHV. By imposing a causation requirement on the injured party, the government again gives a proven wrongdoer the benefit of a doubt to which it is not entitled. The prior Final Judgment struck the correct balance by prohibiting any adverse action by Microsoft based directly or indirectly on any actual or contemplated action by the protected party. Final Judgment §§ 3(a)(i), 3(d); see also Litigating States' § 8.

iv. Retaliation Not Involving Windows Or Middleware Is Allowed

The proposed settlement's ban on ''retaliation'' currently only applies to a protected party where it is developing, distributing, promoting or using products that compete with Microsoft Platform Software or middleware.[31] Given the multitude of ways in which new threats can (and did) develop to contest the Windows operating system, the ban on retaliation will not be truly effective unless it protects any action or contemplated action involving products or services that compete with any Microsoft products or services.

v. Loopholes Vitiate Even The Existing Limitations

The settlement contains broad savings clauses and exceptions that give Microsoft loopholes for abuse and are not justified by the Court of Appeals' findings. The OEM retaliation provision permits Microsoft to provide ''Consideration'' to any OEM with respect to any Microsoft product or service if the ''Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service.'' RPFJ § III.A. Similarly, Microsoft may enter agreements with ISVs limiting their ability to develop, promote or distribute competing software, if the limitations are ''reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or develop software for, or in conjunction with, Microsoft.'' RPFJ § HI F.2.

These vague provisions are an invitation for abuse. Microsoft has repeatedly used these very practices to maintain an illegal monopoly for over a decade. Under these circumstances, a broad prohibition that puts the burden entirely on Microsoft to prove the bona fides of any ''consideration'' or exclusivity is not only appropriate, but essential to revive competition.

vi. Unnecessary And Ambiguous Savings Clauses Undermine The Decree

The retaliation provisions also include broad savings clauses that provide that nothing in the provisions ''prohibit Microsoft from enforcing any provision of any agreement with any [OEM, ISV or IHV] or any intellectual property right, that is not inconsistent'' with the settlement. RPFJ §§ III. A and III. F. 3. Given the ambiguities in the settlement, this loophole, too, will invite aggressive interpretation by Microsoft, and further litigation.

vii. There Is No Prohibition On Agreements Limiting Competition

The provision in the Final Judgment banning agreements to limit competition (Section 3(h)) has been completely eliminated, leaving Microsoft free to seek to enter market allocation agreements such as the ones it proposed to enter with Netscape and Intel. D.Ct. at ¶¶83–84, 97, 101. The proposed settlement (§ III.G) only prohibits Microsoft from entering into agreements with certain entities to use or distribute Microsoft Platform Software exclusively or in fixed percentages. There is no provision that limits Microsoft's ability to enter into agreements with competitors providing that they refrain from developing or distributing products that compete with the Windows operating system or a Microsoft middleware product. This CIS does not explain this glaring omission.

viii. There Is No Protection Against Retaliation For Participating In This Lawsuit

Nothing in the proposed settlement protects individuals or entities from retaliation by Microsoft for participating or cooperating in this litigation. In a letter to the Senate Judiciary Committee, former Solicitor General Robert H. Bork expressed the realistic concern that ''any potential witness with knowledge of anticompetitive conduct in a monopolized market has to weigh the potential benefit of his or her testimony against the likely response of the defendant monopolist. The [government's] proposed meaningless remedy would insure that no witness would ever testify against Microsoft in any future enforcement action.'' See Letter from Robert H. Bork to Senate Judiciary Committee of 12/11/01, at 4. Again, the CIS does not address this issue of obvious concern, given Microsoft's track record of anticompetitive abuse.

b. The Proposed Uniform Licensing To OEMs Is Insufficient

The District Court made findings of fact, which were not questioned by the Court of Appeals, that provide examples of incentives and threats used by Microsoft to induce OEMs to promote IE and not pre-install or promote Navigator. Thus, Microsoft gave reductions in price to OEMs who set IE as the default browser on their PC systems; Microsoft gave further reductions to OEMs who displayed IE logos and links on their home page; and Microsoft gave OEMs millions of dollars in co-marketing funds in exchange for carrying out other promotional activities for IE. D.Ct. at ¶231.

The original Final Judgment contained a strong ban on discriminatory license terms. It compelled Microsoft to license Windows to all covered OEMs on uniform terms and prohibited Microsoft from offering market development allowances or discounts. Final Judgment § 3(a)(ii). Microsoft was further required to give OEMs equal access to, inter alia, licensing terms, discounts, technical and marketing support and product and technical information; and to give written notice and an opportunity to cure before terminating an OEM's license. Id.

[30] The listing of categories of protected parties, instead of applying the ban to all third parties, also presents a significant risk of omitting some competitors (e.g., SBC and Sun Microsystems) from the decree's protection because their businesses do not fit neatly into any standard category.

[31] Microsoft Platform Software is defined as Microsoft Middleware and the Windows Operating System. The limitations of those defined terms which, among other things, exclude applications (including applications on Internet-based servers that would threaten the Windows monopoly), render the ''retaliation'' ban far too narrow. See pp. 36–40, 42–43 infra.

The government recognized the necessity for this provision requiring ''transparent and uniform pricing to the largest OEMs... so that Microsoft cannot retaliate against an OEM for supporting non-Microsoft software.'' Gov't D.Ct. Memo at 39. Uniform terms and pricing were also seen as necessary to ''terminate[] Microsoft's practice of charging substantially different prices for Windows licenses to reward cooperative OEMs, effected in part by its market development allowances, and will thus make it easier for OEMs to promote non-Microsoft products in response to consumer demand.'' Id. The government found that this uniformity was ''necessary to prevent Microsoft from employing the myriad forms of coercion and reward that'' have been held to injure competition. Gov't D.Ct. Reply Memo at 43–44. ''Such coercion is difficult to detect, and the mere threat of its use may be sufficient to accomplish the desired, anticompetitive result.'' Id. at 44.

In the context of the present settlement, the government continues to define as a ''critical'' objective ensuring that OEMs are truly ''free to choose to distribute and promote middleware without interference from Microsoft.'' CIS at 25. It recognizes that Windows'' license royalties and terms are ''inherently complex and easy for Microsoft to use to affect OEMs'' behavior, including what software the OEMs will offer to their customers.'' CIS at 28. By purportedly requiring uniform licensing, the govemment says that the proposed settlement eliminates ''any opportunity for Microsoft to set a particular OEM's royalty or license terms as a way of inducing that OEM to decline to promote non-Microsoft software or retaliating against that OEM for its choices to promote non-Microsoft software.'' CIS at 28. The government's stated goal is ensuring ''that OEMs can make their own independent choices.'' CIS at 28.

Here, as in many other respects, the proposed settlement fails to fulfill the government's stated objectives.

i. Allowing ''Market Development Allowances'' Invites Evasion

Unlike the Final Judgment (§ 3(a)(ii)), which prohibited market development allowances (''MDAs'') outright, the proposed settlement would permit MDAs (RPFJ § III.3.B3), if certain restrictions are met, despite the fact that MDAs have been repeatedly used by Microsoft to induce OEMs to take actions that protect Microsoft's monopoly. As the government earlier acknowledged, making any MDAs permissible creates a loophole that will allow the very discrimination against OEMs that the provision is intended to prevent. See Gov't D.Ct. Sum. Resp. at 10 (the use of undefined and unbounded ''objective'' pricing criteria will permit Microsoft to reward or punish OEMs by charging them different prices).

ii. Microsoft Is Allowed To Keep License Terms Secret

The proposed settlement does not require that Microsoft provide equal access to licensing terms, discounts, technical support, etc. Without this information, OEMs cannot fairly negotiate license terms. In the current market, Microsoft offers significant discounts to OEMs that take the entire Windows package; those discounts enable the OEMs to be competitive with other PC manufacturers. However, if an OEM tries to negotiate anything out of the package, Microsoft significantly increases the price, making the OEM non-competitive. OEMs do not know what terms are negotiable and are afraid to negotiate aggressively out of fear they will be punished by Microsoft.

For this reason, when Microsoft previously requested deletion of the equal access provision, the government rejected the idea because it ''would allow [Microsoft] to reward or punish Covered OEMs with different Windows prices and non-price licensing terms and conditions and thus to evade the purpose of the Final Judgment.'' See Gov't D.Ct. Sum. Resp. at 10. Moreover, the government's view then was that ''the burden should not be on OEMs to know of and affirmatively seek out equal treatment; Microsoft could take advantage of a Covered OEM's ignorance of what has been provided to other Covered OEMs to reward or punish that OEM and thus to evade the purposes of the Final Judgment.'' Id. at 10–11. The government provides no satisfactory rationale for changing that view.

iii. There Is No Independent Verification Of ''Volume'' Discounts

The proposed settlement allows Microsoft to provide reasonable volume discounts based upon the actual volume of licenses. (RPFJ § III.B.2) Unless the provision requires that the volume discounts be based on the independently determined actual number of shipments, however, Microsoft will continue to have the power that it exercised in the past to manipulate discounts.

iv. License Terminations Without Cause Are Allowed

The proposed settlement creates an unnecessary exception to the written notice requirement for termination of OEM licenses. It provides that Microsoft need not provide notice or opportunity to cure if Microsoft has given two prior written notices. This exception invites Microsoft to abuse the notice provision and then arbitrarily revoke an OEM's license. Moreover, Microsoft is not even required to show ''good cause'' for termination. Again, the government provides no rationale why a proven monopolist should be given any such advantages.

c. The Proposed Settlement Fails To Address Exclusive Dealing Adequately

The Court of Appeals held that Microsoft's exclusive contracts with IAPs are exclusionary devices in violation of § 2. CA at 71. By ensuring that the vast majority of IAP subscribers were offered IE as their default browser or as the only browser, Microsoft's deals with IAPs had a significant effect in maintaining its monopoly by keeping usage of Navigator below the critical level necessary for it or any other rival to threaten Microsoft's monopoly. CA at 71.

In addition to the evidence specifically relied on by the Court of Appeals, the District Court made findings, not reversed, of other unlawful exclusive agreements. For example, in exchange for an agreement by IAPs to promote and distribute IE preferentially over Navigator and to convert existing subscribers from Navigator to IE, Microsoft gave fourteen IAPs placement in its Windows Referral Server. D.Ct. at ¶255,256. Microsoft also entered into agreements with AT&T, WorldNet, Prodigy and CompuServe limiting their ability to promote non-Microsoft browsers. D.Ct. at ¶305.

The Court of Appeals also held that Microsoft's illegal agreements with ISVs further foreclosed rival browsers from the market. CA at 72, 76. Microsoft entered dozens of ''First Wave'' agreements with ISVs, promising to give them preferential support in using Windows in exchange for ISVs agreeing to use IE as the default browser in any software they developed. The ''First Wave'' agreements with ISVs also required the ISVs to use Microsoft's JVM rather than Sun's JVM. This directly protected Microsoft's monopoly from the middleware threat. CA at 76.

To redress these exclusionary agreements, the government, earlier in this case, advocated a general and broad prohibition against any and all manner of exclusive dealing by Microsoft. In the Final Judgment, Microsoft was generally prohibited from offering a third party any consideration in exchange for that party's agreement to restrict development, production, distribution, promotion or use of, or payment for, any non-Microsoft Platform Software; distributing, promoting or using any Microsoft Platform Software exclusively; degrading the performance of any non-Microsoft Platform Software; and with respect to IAPs or ICPs, distributing, promoting or using Microsoft software in exchange for placement with respect to any aspect of a Windows Operating System. Final Judgment § 3(e).

The government recognized that such a ban was necessary because Microsoft had ''coerced and bribed'' third parties into becoming, willingly or unwillingly, participants in strengthening the applications barrier to entry. Gov't D.Ct. Memo at 41. The government stated that to prevent recurrence, Microsoft had to be barred from any exclusive dealing or percentage contracts that require a third party to limit its dealings in, or to degrade the performance of, non-Microsoft products, to deal solely in Microsoft software, or, in the case of IAPs or ICPs, to exchange promotion of Microsoft products for placement in the Windows operating system. Id. Significantly, the government advocated a general ban because Microsoft had dealings with a wide range of companies and because ''it is difficult to predict precisely which trading partners Microsoft might otherwise seek to tie up under exclusive arrangements in the next several years.'' Shapiro Decl. at 19. Only a general ban on exclusionary contracts would ''serve to lower entry barriers more effectively than would more limited provisions directed at specific categories of trading partners.'' Id.

In the CIS, the government continues to recognize the necessity of preventing ''Microsoft from using either money or the wide range of commercial blandishments at its disposal.., to hinder the development and adoption of products that, over time, could emerge as potential platform threats to the Windows monopoly.'' CIS at 42. However, the exclusive dealing provision in the proposed settlement (RPFJ § III. G) fails to

meet the goals that the government recognizes are essential. Nor will it prevent Microsoft from engaging in the same types of conduct that were found to be unlawful.

i. The Exclusive Dealing Prohibition Is Limited To Identified Parties Only

The provision is limited to the listed entities (IAP, ICP, ISV, IHV or OEM), but should be extended to all third parties. The government has specifically acknowledged that a ''general ban'' is necessary precisely because it is too difficult to predict which entities Microsoft might seek to tie up under exclusive arrangements in the next several years. Only a general ban may effectively lower entry barriers, as compared to ''more limited provisions directed at specific categories of trading partners.'' Shapiro Decl. at 19.

ii. Paying Third Parties To Refrain From Using Non-Microsoft Products Is Allowed

The proposed settlement only prohibits Microsoft from entering into agreements with certain third parties that grant consideration on the condition that the entity ''distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software.'' RPFJ § III.G.1. The Final Judgment prohibited Microsoft from entering into an agreement with any third party that grants consideration to ''distribute, promote or use any Microsoft Platform Software exclusively'' (Final Judgment § 3(e)(ii) and ''to restrict its development, production, distribution, promotion or use of, or payment for, any non-Microsoft Platform Software'' (Final Judgment § 3(e)(i)). Microsoft attempted to delete the provision that prohibited agreements with a third party to restrict the development, production, distribution, promotion or use of non-Microsoft Platform software, but the government rejected the proposal. See Microsoft D.Ct. Com. at 12.

The proposed settlement does not prohibit Microsoft from granting consideration to a party that agrees to refrain from using or distributing products or services that compete with Microsoft.[321] RPFJ § III.G.1. Microsoft would thus be allowed to grant consideration (in the form of money, technical information or support, or otherwise) in exchange for the party's agreement not to use or distribute a competing product. Such an agreement would be the functional equivalent of the ''First Wave'' agreements with ISVs found to be illegally exclusionary by the Court of Appeals. The CIS does not articulate a satisfactory basis for omitting from the settlement a prohibition on the types of actions that were adjudged illegal.

iii. Microsoft Can Pay Others To Distribute Its Monopoly Software

Under the proposed settlement, Microsoft is permitted to enter into agreements with IAPs and ICPs that condition their placement in Windows on their agreement to distribute or promote Microsoft Platform Software. RPFJ § III.G.2. When Microsoft argued against this provision in the original Final Judgment, the government rejected its proposal because phrasing it the way Microsoft proposed (and as it is now phrased in the proposed settlement) would allow Microsoft to achieve the same anticompetitive purpose, by simply amending its agreements to require distribution of Micr0s0ft's browser instead of limiting distrution of competing browsers. See Gov't D.Ct. Sum. Resp. at 16; Microsoft D.Ct. Com. at 12. The government has not explained why it has now completely reversed its position.

iv. The Exclusive Dealing Provision Is Riddled With Loopholes

The various exceptions built into the exclusive dealing ban render it potentially meaningless. While purportedly prohibiting exclusive or fixed percentage arrangements, such agreements are actually permitted when Microsoft: obtains a representation that it is ''commercially practicable'' for the entity to provide equal or greater distribution of a competing product; if Microsoft enters into any type of loosely defined ''joint venture'' agreement; or if Microsoft licenses in intellectual property from a third party. (RPFJ § III.G). When Microsoft proposed to include a similar joint venture exception in a related provision of the Final Judgment (Final Judgment § 3(h), Ban on Agreements Limiting Competition), the government rejected the proposal as ''unnecessary'' and because it ''would enable Microsoft to enter into anticompetitive market division agreements regarding such products by labeling them, as it attempted to label at trial the June 1995 Netscape meeting, ''joint development agreements'' or ''agreements ancillary to lawful joint ventures.'' Gov't D.Ct. Sum. Resp. at 18. Once again, the government has agreed to a loophole that can only benefit Microsoft by inviting abuse and further litigation.

4. The Term of the Settlement Is Too Short, Even If Its Deficiencies Were Corrected

As demonstrated above, without correction of numerous deficiencies, the proposed settlement will not restore competitive conditions because it largely permits Microsoft to conduct business as usual and it effectively rubberstamps further anticompetitive conduct. Even if all of the other deficiencies were corrected, however, the term of the proposed settlement is too short to restore meaningful competition with the Windows monopoly. Although this Court's finding that Microsoft illegally maintained its decade-long monopoly has now been affirmed by the Court of Appeals, Microsoft has availed itself—up to and including the present—of every opportunity to maintain and extend its monopoly through anticompetitive actions. For example, Windows XP, designed during the height of Microsoft's litigation with the government and released just before the settlement was announced, commingles code in the exact manner found unlawful by the Court of Appeals.

The government now claims that a five-year decree will be sufficient to restore competition. CIS at 60. This assertion is inconsistent with the Department of Justice's own Antitrust Manual, which states that ''the Division's standard decree language requires that the consent decree expire on the tenth anniversary of its entry by the court. [T]he staff should not negotiate any decree of less than 10 years' duration, although decrees of longer than 10 years may be appropriate in certain circumstances.'' Department of Justice, Antitrust Division Manual, ch. IV at 54 (3d ed. 1998) (emphasis added). As the government argued in earlier urging entry of a ten-year decree:

> Ten years is customary in antitrust cases and in any event four years is too short a time for the Final Judgment to remain in effect. Despite [Microsoft's] assertion that ''[t]en years is an extraordinarily long time in the software industry,'' Microsoft has had the dominant position in the operating-systems business for at least a decade (see Findings (¶35), and under the circumstances there is no sound justification for entering a decree of shorter duration.

Gov't D.Ct. Sum. Resp. at 20 (emphasis added).

The government offers no ''sound justification'' for its acceptance of a settlement that would last only five years. RPFJ § V.A. The CIS only states that five years ''provides sufficient time for the conduct remedies contained in the Proposed Final Judgment to take effect in this evolving market and to restore competitive conditions to the greatest extent possible.'' CIS at 60. There is no factual support cited for the ipse dixit that this is ''sufficient time,'' while it is certain that the standard ten-year decree would restore competition to a greater extent. The government's present position also conflicts with other assertions that it previously made in this case. See Gov't D.Ct. Memo at 27 (''Looking forward, the Court must anticipate that Microsoft, unless restrained by appropriate equitable relief, likely will continue to perpetuate its monopoly by the same anticompetitive methods revealed at trial, although directed at whatever new competitive threat arises.'').

Moreover, the government's only recourse under the proposed settlement—the possibility that the proposed decree could be extended ''one time'' for a ''maximum of two years''—is so short as to be virtually meaningless. RPFJ § V.B. And, even to obtain the ''one-time'' two year extension, the government would first have to demonstrate through a complex, lengthy and burdensome enforcement procedure, that Microsoft engaged in ''a pattern of willful and systematic violations'' of the decree. Id. The government should be seeking—as it originally sought—more than just conduct remedies ''tak[ing] effect.'' CIS at 60. It should instead be trying to ensure that, once the remedies ''take effect,'' they remain in effect for a period sufficient to restore competition to the greatest extent possible. As the government told the District Court, ''[t]en years is customary in antitrust cases and in any event fore' years is too short.'' Gov't D.Ct. Sum. Resp. at 20. There is nothing in the Court of Appeals' decision that justifies the government's decision to depart from its own formal policy.

[32] The proposed settlement does purport to limit Microsoft's ability to enter into agreements with ISVs which require the ISV to refrain from ''developing, using, distributing, or promoting any software that competes with Microsoft Platform Software.'' RPFJ § III.F.2. However, as discussed supra at pp. 97–98, that same section creates an exception that permits such agreements with ISVs if they are in relation ''to a bona fide contractual obligation of the ISV.'' Therefore, even as to ISVs, the restriction is rendered potentially meaningless.

As a matter of law, the government's previously stated position was correct. The case law demonstrates that in cases where a monopolist has committed a Section 2 violation, it has been ''customary'' for courts to impose remedial decrees lasting ten years. In over 70 cases since the Department of Justice's Antitrust Manual was adopted in 1978 to change the prior policy of seeking decrees of unlimited length, the government has required consent decrees having a minimum ten year duration. See e.g., United States v. Greyhound, Civ. No. 95–1852 (RCL), 1996 WL 179570 (D.DC Feb. 27, 1996) (bus companies); United States v. Playmobil USA, Inc., Civ. No. 95–0214, 1995 WL 366524 (D.DC May 22, 1995) (toy companies); United States v. Republic Services, Inc., Civ No. 00–2311, 2001 WL 77103 (D.DC Jan. 18, 2001) (waste collection companies). [33] The government also imposed restrictions on broadcasters'' purchase of television program rights for a period of 15 years. See United States v. American Broadcasting Co., Inc., Civ. No. 74–3600 (RJK), 1980 WL 2013 (C.D. Cal. Nov. 14 1980).

In contrast to these settlements, the proposed decree here is to last only five years, although this case has significantly more importance to the national economy. In addition, Microsoft's prior conduct, the importance of this case to the national economy, and the explicit findings, upheld on appeal, of Microsoft's illegal monopolization activities mandate, if anything, that Microsoft's conduct be supervised for a period longer than the standard ten-year term.

At bottom, a five-year injunction is too short to allow meaningful competition to develop in the operating system market. It has been over ten years since the government first began to investigate Microsoft's practices, and it took six years from Microsoft's first anticompetitive act cited by the District Court for this case to reach the appellate level. The effects of Microsoft's past and present anticompetitive actions, which have already continued for over a decade, will likely last much longer. The government itself concedes that Netscape and Java are likely dead and no longer pose credible threats to Microsoft's operating system monopoly. CIS as 16–17. Even if the proposed decree's numerous loopholes were plugged, it will take considerably longer than five years for strong new competitors to emerge. Most important, the ability of those competitors to become viable depends upon the existence of judicial protection. See United States v. GTE Corp., 603 F. Supp. 730, 742–43 (D.DC 1984) (rejecting as too short five-year expiration date for decree provisions in section 2 case).

5. The Proposed Settlement Nullifies Effective Enforcement

The government claims that the various obligations imposed upon Microsoft in the proposed settlement are supported by ''strong enforcement provisions,'' ''including the power to seek criminal and civil contempt sanctions and other relief in the event of a violation.'' CIS at 5. It also states that Plaintiffs' right, under certain circumstances, to request a one-time extension of the final judgment of an additional two years ''is designed to supplement the government's traditional authority to bring contempt actions.'' CIS at 60.

The reality, however, is to the contrary. The compliance and enforcement provisions in the proposed settlement are entirely inadequate to prevent Microsoft from engaging in future anticompetitive conduct. The provisions in the proposed settlement will result in time delays, inefficient administration of the decree, and ultimately give Microsoft the opportunity to continue its anticompetitive acts unabated. The most critical deficiencies include:

a. The Technical Committee Proposal Is Misguided

By agreeing that a ''Technical Committee'' comprised of computer programming and software experts should perform a monitoring role (RPFJ §§ IV.B.1 and IV.B.2), the government seemingly recognizes the difficulty of monitoring and enforcing Microsoft's compliance with the decree. The government also appears to recognize the obvious—that ''Internal Antitrust Compliance'' by Microsoft, though necessary, is insufficient. Unfortunately, the government fails to recognize that its own concessions make the compliance task vastly more difficult.

The Technical Committee contemplated by the settlement is simply not an adequate answer, much less a substitute for self-enforcing prohibitions, The person charged with responsibility for monitoring and enforcing Microsoft's compliance must be an experienced antitrust lawyer or former federal judge. He or she can then hire software and programming experts to render assistance, but the responsibility for determining whether the specific provisions of a complex court order have been violated must be made by an individual with impeccable legal credentials and long experience in antitrust law and decree interpretation. No novel device such as a ''Technical Committee'' is required. The mechanism of a special master under Rule 53, Fed. R.Civ.P., is readily available and entirely appropriate. See United States v. Microsoft Corp., 147 F.3d 935,954 (DC Cir. 1998) (recognizing ''well-established tradition allowing use of special masters to oversee compliance'').

Aside from its dual, repetitive investigative and reporting procedures (Technical Committee to the government, then the government to the Court, see pp. 114–115 infra.) (RFFJ § III.D.4), the proposed settlement is flawed because it imposes substantial constraints upon how the Technical Committee's findings may be used to assure compliance. The settlement prohibits the admission into evidence of the Technical Committee's findings ''in any enforcement proceeding before the Court for any purpose;'' and prohibits any technical committee member from testifying in any proceeding or before any tribunal regarding any matter relating to the Final Judgment. RPFJ § IV.D.4.d. Each of those prohibitions denies the Court information from the independent technical personnel who are uniquely knowledgeable about the nature of the violation. Indeed, although the decree proposal allows Microsoft to offer any evidence it wants, it shuts off from the Court the evidence in the possession of the technical committee members who rejected Microsoft's explanations.

b. All Relevant Employees Should Be Required To Be Trained In The Decree, But Are Not

The proposed settlement only requires that the officers and directors of Microsoft receive copies of the decree and be ''annually briefed on [its] meaning.'' RPFJ § IV.C.3. In order to be effective, however, all managers (not just corporate ''officers'') and all employees who have positions that enable them to initiate or implement anticompetitive conduct must be required to read, understand and comply with the decree. Of the published consent decrees that require employees of the company to certify that they have read, understood, and will comply with the decree, most extend compliance certification beyond officers and directors of the company, to also include other managers and employees who have responsibility for overseeing the business activities of the antitrust violator. See, e.g., United States v. Western Elec., Civ. No. 82–0192 (HHG), 1991 WL 33559, at *5 (D.DC Feb. 15, 1991) (requiring certification of compliance from each officer and management employee); United States v. Delta Dental of R.I., Civ. No. Civ. A. 96–113P, 1997 WL 527669, at *2 (D.R.I. July 2, 1997) (requiring certification of compliance from all officers, directors, and employees who had responsibility for approving, disapproving, monitoring, recommending, or implementing any provisions in agreements with participating dentists); United States v. Business Inv. & Dev. Corp., No. MO-81-CA-20, 1982 WL 1866, at *2 (W.D. Tx. July 16, 1982) (requiring certification of compliance from all officers, directors, employees and franchisees).

Moreover, the Chairman, CE0 or other responsible senior officer of Microsoft should be required to certify periodically to the Court that Microsoft is in compliance with its obligations. The record evidence that Microsoft's highest officials were not only aware of, but actively encouraged, initiated or directed Microsoft's anticompetitive practices, see, e.g., CA at 73, 77; D.Ct. at ¶¶80–87, 100, 108, 112–13,124–29, 340–349, 396, 406–07, makes it all the more necessary to include such certification provisions to ensure that Microsoft takes seriously its responsibilities under any decree to abide by the antitrust laws.

c. The Proposed ''Dispute Resolution'' Mechanism Encourages Delay

Because of the extraordinarily rapid pace of technological and business developments in the computer industry, avoiding delays in compliance is a critical element in effectively eliminating Microsoft's unlawful behavior and restoring competition. Whether the monitoring function is performed by a Technical Committee or Special Master, the monitor should simultaneously report to both

[33] Based on a review of the published cases, every consent decree that the government has entered in a Section 2 case since 1978 has been ten years or longer in duration, with the exception of the first Microsoft decree. That decree was not entered after a full trial on the merits and a finding of unlawful monopoly maintenance.

the Court and the Plaintiffs. In defending its decisions to make numerous substantive concessions to Microsoft during the settlement process, the government has cited the substantial time it might take to litigate this case to conclusion if it held out for stronger relief than Microsoft would accept. CIS at 61. Those same time considerations militate against the time-consuming enforcement process contained in the proposed settlement.

The proposed decree contemplates an elaborate procedure whereby the Technical Committee, after receiving a complaint about Microsoft's conduct, would be required to meet with Microsoft's internal compliance officer, and allow Microsoft to respond to the complaint, before it determines whether the complaint can be resolved informally. RPFJ § III.D.4.b. There are no time limits on most of these procedures. If, after completing that procedure, the Technical Committee believes the dispute cannot be resolved and that Microsoft's conduct violated the decree, the Technical Committee would then report the violation to the government in the first instance. RPFJ § III.D.4.c. It then would be up to the government, in turn, to evaluate Microsoft's conduct and determine whether the violation should be reported to the Court.

This process guarantees that considerable time will lapse between a violation of the decree by Microsoft and the Court's eventual review of the problem. First, the process for ''Voluntary Dispute Resolution'' contemplated by the proposed decree will substantially delay, and, in some circumstances, entirely eliminate, the reporting of violations to the Court. However, effective enforcement requires that any violation of the decree should be reported by the Technical Committee or Special Master immediately and directly to the Court. Action by Microsoft to ''voluntarily'' cease the unlawful conduct may then, along with other factors, be considered by the Court in determining the severity of any sanction imposed.

in sum, for any remedy to be effective in this case, it must be imposed quickly—not after months or years of further ''dispute resolution.'' Under the enforcement scheme contemplated by the proposed settlement, however, that simply cannot happen.

IV. DEFICIENCIES IN THE PROPOSED SETTLEMENT CREATE SIGNIFICANT RISKS FOR SBC'S COMMUNICATIONS AND DATA BUSINESSES, INCLUDING SBC'S INTERNET-RELATED BUSINESSES, WHICH DEPEND UPON OPEN ARCHITECTURE AND COMPETITIVE ALTERNATIVES

SBC is one of the world's leading businesses in the provision of data and voice communications and Internet access. SBC's affiliates serve nearly 60 million telephone access lines nationwide and 21 million wireless customers. SBC and its affiliates are major providers of DSL high-speed and dial-up Internet service, voice messaging services, and if directory advertising and publishing products. SBC, through its affiliates, has committed substantial resources to the development of a host of computer- and Internet-related businesses. These businesses are designed to provide consumers with flexibility, convenience and, most importantly, more choice.

With these initiatives, together with its expanding telephone, wireless and Internet operations, SBC is prepared to compete vigorously during the coming decade as the ''convergence'' of communications and computing technologies continues to accelerate. That highly competitive environment, however, is threatened by Microsoft's ability—unless restrained by a strong and effective decree in this case—to use its Windows operating system monopoly to control the electronic ''gateways'' that link the Internet and its myriad service and content providers to consumers' homes and offices. That control of the gateways, in turn, will enable Microsoft to entrench the Windows monopoly even more firmly.

A. How SBC Competes, Or Will Compete, With Microsoft

SBC currently has, or is developing, several businesses in competition with Microsoft, which, together with other similar businesses, directly or indirectly, threaten or are threatened by the Windows operating system monopoly.

1. Telephone, Cellular And Internet Services

SBC affiliates Southwestern Bell, Ameritech, Pacific Bell, Nevada Bell, and SNET are the Incumbent Local Exchange Carriers that provide telephone service in thirteen states.[34] In addition, SBC owns a sixty percent interest in Cingular Wireless, which provides nationwide cellular telephone and Internet-related services.

Various SBC affiliates, including Prodigy, provide ISP services, as well as dial-up and broadband (via DSL) Internet access services nationwide. SBC recently finalized a joint venture with Yahoo, whereby Yahoo will provide SBC's Internet portal (home page). In addition, SBC owns an ''Internet Data Center'' which rents server usage to businesses and e-commerce clients.

Microsoft is an actual competitor of SBC in all of these businesses, including voice telephony. Microsoft is actively developing its Voice over Internet Protocol (''VoIP'') through its ''Net2Phone'' business. This service is being embedded in Windows XP, with the aim of convincing customers to use the Internet for long distance and local calls. Microsoft also provides an Internet access service, MSN, which takes advantage of Microsoft's operating system monopoly by virtue of its being bundled with Windows. By bundling additional products and services such as its ''.NET'' initiative and its Passport service with Windows XP, Microsoft is also using its monopoly power to give itself an unfair advantage in new markets for Internet and e-commerce business solutions.

Even in businesses in which Microsoft is not now a direct competitor of SBC, however, such as local, long distance and cellular telephone service, Microsoft's operating system monopoly poses grave risks to the competitive marketplace that Congress sought to ensure in the Telecommunications Act of 1996. If Microsoft is permitted by the proposed settlement to maintain and expand its PC operating system monopoly, it will become the gatekeeper for competitors to offer and for consumers to access key communications and entertainment products and services, including telephone, Internet access, voice messaging, instant messaging, music, video services, e-commerce, and interactive games. Without strong remedial measures designed to break its operating system monopoly (which the proposed settlement does not contain), Microsoft will be in a position to favor its own and its partners' communications, entertainment and related services, to exclude competitors'' services from access to consumers, to impose costs on rivals and to degrade their services (whether through a toll, a charge for being listed as an available service or an interoperability obstacle), all with the effect of squelching competition and harming consumers. No provisions in the proposed settlement even address, let alone bar, such anticompetitive conduct.

Just as Microsoft has for years successfully imposed on consumers its own software products and other services, irrespective of the comparative merits of competing products it excluded from the market, Microsoft will be able to repeat its anticompetitive strategy in collateral markets including the key communications and entertainment markets described above. This is not speculation; Microsoft has already announced that it is developing an extension to Windows XP, named Freestyle, that will make its Windows PC the communications gateway to the home. See Byron Acohido, Challenge Microsoft? It Could Take Moxi, USA Today, Jan. 16, 2002, at B-3; Microsoft Unveils New Home PC Experiences with ''Freestyle'' and ''Mira'' (Jan. 7, 2002), at www.Microsoft.com/presspass/Press/2002/Jan02/01.

2. Unified Messaging

SBC's Unified Messaging Service (''UMS'') is a good example of a new business placed at serious risk because of the anticompetitive actions that the proposed settlement Would allow UMS is currently in the final development stages, with a projected market introduction in late 2002. UMS will allow customers to retrieve their voice, e-mail and

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[34] 34 Prior to 1996, SBC was subject to line of business restrictions imposed by the AT&T Consent Decree or Modified Final Judgment (''MFJ''). These prevented SBC's entry into markets such as long distance telephone and imposed numerous affirmative obligations to assist actual and potential competitors. See U.S.v. AT&T, 522 F. Supp. at 186–95 (setting forth line of business restructions); United States v. Western Electric Co., 673 F. Supp. 525 (D.DC 1987) (upholding ''core'' line of business restrictions on local telephone companies), aff'd in part, rev'd on other grounds, 900 F.2d 283 (DC Cir. 1990). These provisions, which were of indefinite duration, were ultimately superseded by the Telecommunications Act of 1996, which replaced the MFJ with detailed regulatory obligations to preserve non-discriminatory access to the local telephone network, to require SBC to share its network elements at regulated prices, and to take affirmative actions to open its local network to competition as the price for entry into the long distance market. See Telecommunications Act of 1996, 42 U.S.C. §§ 251–59, and § 271 et seq. The duration, detail and substantial scope of those affirmative requirements and prohibitions, even when they were embodied in the MFJ, stand in marked contrast to the trivial and temporary prohibitions applied to the Microsoft monopoly.

fax messages from a single ''mailbox'' that will be accessible by phone (wire or wireless) or via the Internet. In the future, SBC plans to add other services to UMS, including instant messaging and video messaging.

UMS is the first in a new generation of services that will create a convergence of all voice, video and data services into one application. Central to UMS is the principle of ''any device, anywhere.'' SBC has designed UMS to be fully accessible through any type of telephone, personal computer, or handheld device. UMS will operate on any software operating system and with any combination of other software applications and services. UMS is also ''agnostic as to provider,'' meaning that it will function regardless of the provider of Internet access, phone or wireless service. For example, consumers can access UMS as easily and effectively through an inexpensive cellular phone that makes no use of Microsoft technology as they call through an expensive Windows PC using Internet Explorer as its browser.

UMS and similar services offered by other companies will compete by giving consumers the ultimate in choice and convenience, enabling them to access all UMS services from virtually any phone or computing device anywhere in the world. UMS will be a direct competitor of Microsoft's e-mail service (Hotmail), and with MS Messenger, a video and instant messaging service, both of which are promoted through integration with Windows.

B. UMS Is An Integral Part Of Movement To Server-Based Computing Model That Will Erode The Applications Barrier To Entry That Currently Shields Microsoft's Monopoly Power

Because UMS will function with any operating system or Internet browser, and will provide a number of the same functions (voice/data messaging, e-mail, instant messaging) that are or will be provided by a Windows PC, UMS presents a significant competitive threat to Microsoft's PC operating system monopoly. UMS is part of the ''movement off the desktop'' taking place in the computer industry, which offers increased flexibility and choice to the consumer.

Central to this innovation is that the vast majority of actual computing functions will be performed away from the consumer's computing devices, on servers connected through the Internet. A consumer will no longer need a Windows PC, containing a large hard drive and powerful microprocessor. Instead a simpler, inexpensive device, such as a cell phone or PDA, with a very basic operating system and an Internet browser, when coupled with products like UMS, will allow the consumer to perform many of the functions of a Windows PC at a significantly reduced price and with much greater flexibility and convenience. D.Ct. at ¶¶22–27, 56, 59–60 (cited with approval in CA at 52, 79).

In order for UMS to function, however, and to present a competitive alternative to the Windows PC operating system monopoly, SBC must have the ability to effectively process voice and data transmissions through a complex network of different servers, each of which performs separate functions and employs different technologies. At a minimum, when a UMS customer seeks to retrieve a message, either by phone or through the Internet, the voice or data transmission will travel between and through several separate SBC servers (gate, mail, LDAP (lightweight directory access protocol), directory and web server). Each of these servers performs independent functions. As a result, it is critical to UMS that any type of PC, Internet browser, cell phone or handheld device be fully interoperable with all of SBC's servers. UMS also has the potential to be used in a home network, thus requiring full interoperability to extend to set-top boxes.

In short, for SBC and other companies to deliver Internet-based services like UMS, they absolutely must have a ''protected chain of interoperability'' extending throughout all computers, servers, and other devices which participate on the Internet—including the Internet browser and PC. If only one link on the chain is not fully interoperable with the entire network, UMS will not be able to process its voice and data transmissions, and thus the convenience and vast array of choices UMS could bring to consumers as an alternative to the Windows PC operating system monopoly will be eliminated.

There is little doubt that Microsoft will continue to recognize the danger that server-based computing, and multi-platform, multi-device products like UMS, pose to the applications barrier to entry. D.Ct. at ¶60 (cited with approval in CA at 79). Such alternative server-based computing pathways on the Internet, which rely on open operation and architecture, like Java, will attract applications used for Internet communications. In the past when such threats to the applications barrier to entry that protects the Microsoft monopoly have emerged, Microsoft has responded with anticompetitive conduct. Indeed, the actions taken by Microsoft to eliminate Netscape and Java, found to be illegally exclusionary by the District Court and the Court of Appeals, had the sole purpose of protecting the applications barrier to entry. As shown below, however, the deficiencies in the proposed settlement are so pervasive that SBC's competitive, Internet-based offering and similar products from other companies are threatened with the same fate as Netscape and Java.

C. The Proposed Settlement Would Allow Microsoft To Render SBC's Internet-Based Businesses Significantly Less Competitive

1. The Proposed Settlement Will Allow Microsoft To Block Consumers' Access To Competing Products And To Impede Their Functionality

Under the proposed settlement, Microsoft could use its monopoly power to (i) prevent UMS and related products from being accessed by anyone using a Windows PC and IE; (ii) degrade or impede the ability of UMS to function on a Windows PC; and/or (iii) deny UMS access to the Windows desktop. Moreover, Microsoft could avoid the requirements of the proposed settlement by simply claiming UMS was a ''service.'' See pp. 46–48 supra. Because the proposed settlement does not require Microsoft to ensure that UMS will function smoothly on Windows, or even have proper access to the Windows desktop, it could significantly harm the ability of UMS to compete with Microsoft products providing similar services. The danger, of course, is not limited just to UMS, but applies equally to related communications and entertainment products and services that are being developed and offered by other companies.

i. Blocking Access to UMS

The inadequate interoperability/disclosure provisions in the proposed settlement would allow Microsoft to completely block all access to a competing product, like UMS, for all users of a Windows PC and IE. Because the proposed settlement does not require any disclosure to ensure interoperability between IE and a non-Microsoft server operating system, Microsoft is able, and indeed encouraged, to change, and then withhold disclosure of, IE's protocols in order to prevent interoperability with those SBC servers that run on non-Microsoft operating systems. In that case, all UMS customers would be unable to access their UMS account from a Windows PC operating system equipped with IE.

Should SBC decide to convert the entire UMS network of servers to Microsoft operating systems, Microsoft would still, under the proposed settlement, be able to block access to UMS for some users. In this event, Microsoft could merely program its server operating system so that it could not interoperate with a non-Microsoft browser. In fact, Microsoft employed this very strategy recently, when it reprogrammed its web servers for the MSN website to block all access by consumers using the competing Netscape and Opera browsers. See p. 80 supra.

ii. Degrading the Performance of UMS

Should Microsoft choose not to completely block access to UMS, the proposed settlement permits Microsoft to substantially degrade UMS' functionality on a Windows PC operating system. The degradation can be accomplished by programming Microsoft's PC operating system in such a way that UMS' functions are purposefully disadvantaged. For instance, by altering the program codes for IE or Microsoft's version of Java, Microsoft can hinder the performance of UMS on a Windows PC operating system, including the speed at which UMS processes requests, its efficiency and the graphical presentation the user sees.

iii. Denying UMS Access to the Windows Desktop

SBC's strategy for UMS is largely dependent on having access to and visibility on the desktop, as well as on OEMs and end-users being able to change default settings in the Windows operating system to select the SBC home page or set the pre-login screen to allow for message notification. Without provisions in the settlement guaranteeing these rights, Microsoft can prevent UMS from having its own icon on the Windows desktop, or being on the Windows start menu. Furthermore, the proposed settlement would allow Microsoft to prevent UMS customers from choosing to set the SBC-Yahoo homepage as their default homepage on IE. Likewise, nothing in the proposed

settlement would stop Microsoft from denying SBC equal access to the pre-login indicators on the desktop for message notification. Only through such notification could UMS compete with Microsoft's Hotmail or Messenger, which have such indicators on both the desktop and the pre-login screen for the purpose of notifying the subscriber that messages are waiting.

2. Microsoft Can Foreclose Competition By Using Its Ability To Raise Its Rivals' Costs

By not requiring ''seamless interoperability,'' the proposed settlement would allow Microsoft to raise substantially the fixed costs associated with a competing product or service, as well as the ultimate cost to the consumer, to the point that such products are unable to compete. The anticompetitive initiatives Microsoft can pursue under the proposed settlement will force Internet-based businesses to move toward using Microsoft server operating systems and software exclusively. At the same time, the settlement will channel consumer access to the Internet through Windows PC operating systems, which consumers will have to purchase in order to obtain IE.

For example, SBC currently uses Microsoft server operating systems for less than 5% of its UMS server network, and anticipates this percentage will approach zero within the next few years—provided there is full interoperability among servers, PCs, PDAs, phones and all other computing devices. If the proposed settlement is approved, however, SBC will probably have no choice but to replace its entire UMS server network at considerable cost with Microsoft server operating systems and software.

Microsoft's server operating systems are currently significantly more expensive than those of its competitors, and this price differential is likely to grow as Microsoft solidifies its position in the server market. Even at current prices, replacing the UMS server network with Microsoft server operating systems would significantly increase SBC's overall costs for UMS (including the cost of hardware, software, maintenance of hardware and software, staff, network management, and disaster recovery). In addition, if SBC were required to replace the hardware in its entire current server network within the next few years, this would dramatically increase costs for UMS during its critical first years on the market. Taken together, these cost increases will make UMS a much less appealing alternative to the Windows PC, as the consumer's cost savings will be much smaller.

UMS is not the only SBC network service to be negatively impacted. SBC's telephone network also utilizes many servers for various functions. For instance, SBC has servers that perform ''operation support systems,'' as well as ''operations administration maintenance and provisioning.'' Like UMS, under the proposed settlement these network support systems would be at risk, and the cost to convert them all to Microsoft server eperating systems would be significant.

3. Consumers Who Want To Access The Internet Will Have To Have A Windows Operating System,Which Will Increase The Cost To The Consumer For UMS

UMS is designed to save consumers money, because they can access the service through a ''dumb PC'' or handheld computing device, equipped only with a few features, like UMS, that will allow the consumer to use the Internet to perform essentially all major computing functions currently offered by a Windows PC at a fraction of the cost.

Assuming full interoperability, a ''dumb PC'' with a browser would be able to access and browse the Internet as well as a Windows PC. Moreover, by purchasing a product like UMS to accompany the ''dumb PC,'' even more of the functions of a Windows PC (voice/data messaging, instant messaging, e-mail), would be available and the total price would remain substantially below a Windows PC. The cost savings to the consumer, when coupled with the other positive attributes of UMS, would make it a very attractive alternative to the comparable Microsoft products the consumer can only obtain by purchasing a Microsoft operating system.

By preventing full interoperability throughout the network of servers (including the browser), however, Microsoft can destroy any cost savings provided by UMS, because the consumer will have to buy a Windows PC or another device with a Microsoft operating system in order to obtain IE. That operating system already will have integrated or bundled Microsoft products that compete with UMS (MS Messenger; Outlook Express, Hotmail) which are included in the cost of the operating system. Thus, to use UMS, the consumer will have to pay an ''add-on'' or double cost in addition to the cost of the Microsoft operating system. The competitive disadvantage, for both SBC and the consumer, is plain.

4. The Proposed Settlement Will Stifle Innovation And Force Competitors To Sacrifice Quality In Certain Critical Markets

SBC, or any Internet-based business, is highly dependent on the quality and speed of technological innovation in markets that supply the hardware and software used in new ventures, such as UMS, or established services. This is particularly true for UMS, which will rely on an extensive network of servers, computers and related devices and technologies to deliver its range of services. SBC's policy is to use a wide variety of suppliers for different products, including software, throughout the UMS networks and its other computer systems. To take full advantage of technological innovation, SBC chooses the ''best in class.'' This term reflects SBC's philosophy to choose the provider for each particular product or service that best performs the specific functions needed by SBC. In this way, SBC can obtain maximum benefit from the speed and diversity of innovation to create the most competitive products possible.

In certain crucial markets, the proposed settlement will convert this world of choice into a world of one choice—Microsoft. In the process, SBC's ability to employ its ''best in class'' strategy would be severely reduced. Indeed, technological innovation itself will be gravely hindered, particularly for server operating systems and server software—two critical product areas for any network. This change will be driven by the proposed settlement's failure to ensure interoperability. As a result, consumers and businesses will be forced to purchase the Windows PC operating system, IE, and Microsoft server operating systems, or at least license Microsoft intellectual property, in order to guarantee full interoperability. The fact that Microsoft server products, especially in relation to the particular needs and functions of SBC, are more costly but by no means superior in quality or functionality, will no longer be determinative.

In the longer term, as competitive choices in these markets are diminished, Microsoft will be able to unilaterally control the pace of innovation. Currently, many different companies are working to innovate and develop different product functions and niche uses. SBC can take advantage of specialized innovations that are essential to supporting or improving its operations. In the world created by the proposed settlement, however, Microsoft will be the sole arbiter of what areas, products or uses should or should not be explored for technological advancement. Microsoft would be free to stifle innovation in a particular area that may be crucial to developing a product or service which competes with Microsoft.

The government made this very point to the District Court through the testimony of one of its expert economists, who stated that Microsoft's exclusionary practices had

> interfered with the process of innovation in three distinct ways. First, consumers did not get the innovative products that the technology being developed by Netscape and Sun might have delivered. Second, Microsoft's predatory acts had a chilling effect on innovative efforts by all people who might have developed other software technologies that Microsoft found threatening. Third, Microsoft harmed the innovative process because it limited competition, and competitive markets are, on balance, the best mechanism for guiding technology down a path that benefits consumers.

Romer Decl. ¶5.

The effect of the proposed settlement on UMS is illustrative. SBC currently uses between 15 and 20 different providers for different products, including software, throughout the UMS network. In the ''Microsoft world'' that would be created by the proposed settlement, SBC expects that it would be limited to a total of 5 to 10 providers. Each of the lost providers will have to be replaced by Microsoft products because of interoperability obstacles created by Microsoft commingling and nondisclosure.

SBC currently uses three separate server operating systems in its UMS operations, based on the particular needs and functions of different servers throughout the network. The three products are a UNIX operating system which is run on servers produced by several companies; Linux operating systems which run on a variety of servers; and, for certain limited functions, Microsoft server operating systems (which are run on less than five percent of the UMS network). In SBC's view, the Microsoft server operating systems are substantially less effective than

competitors'' systems in performing the functions needed by the UMS network. Among other things, Microsoft products have a poor security performance history, see pp. 90–91 supra, and thus it is SBC's policy that no server that faces the Internet is based on a Microsoft server operating system. As a result of the need for interoperability, however, under the proposed settlement, SBC could be forced to use Microsoft server operating systems throughout the UMS network.

SBC's choices will be similarly circumscribed for server software. For its mail server and directory server, SBC currently uses a range of non-Microsoft software products. For the functions needed by the UMS network, these products better meet SBC's requirements, and are less costly than, comparable Microsoft products. For SBC's web server, which is the critical primary link to the Internet and the Internet browsers, SBC uses server software from Apache. The Apache software is also preferable to comparable offerings from Microsoft for this purpose.

Similarly, in the areas of network management and voice over Internet protocol (''VoIP''), SBC could well be forced to switch to Microsoft products under the proposed settlement. Network management products essentially ensure that SBC's telephone network runs effectively and reliably, by monitoring the system for failures, analyzing configuration, and developing utilization statistics. The network management software currently used by SBC is more efficient and less costly than comparable Microsoft products. In the VoIP area, SBC's ''gateway,'' which translates voice conversations into VoIP, uses a non-Microsoft, ITU (''International Telecommunications Union'') H.323-compliant gateway, or translator. If the proposed settlement were approved, nothing would prevent Microsoft, by changing its server or browser programs to a non-compliant format, from forcing SBC to replace this translator with a Microsoft product or a product that incorporates Microsoft-licensed intellectual property to ensure the interoperability required for SBC's telephone network to function.

5. Delayed Disclosure Will Harm Competition

The flexibility provided to Microsoft to delay the disclosure of technical information could also significantly harm the competitive prospects of UMS and related products. As explained above, Microsoft can delay the release of technical information related to interoperability with a new Windows product or a change in an existing Windows product until very close to the time when the new or altered product is placed on the market. See pp. 80–85 supra. SBC, and other competitors, thus face the very real possibility that there will be insufficient time to ensure that a competing product, like UMS, will be fully interoperable when a new or altered Windows product is introduced. If UMS is not fully interoperable, the result would be that certain UMS customers who attempted to access their mailbox from a Windows PC would be ''dropped''—meaning their request for data or voice information would not be processed. Since SBC plans that UMS will have over 5 million customers by 2007, if UMS is not fully interoperable with Windows PCs for even one day, many UMS customers would be ''dropped.'' The negative consequences should customers be unable to access their UMS mailboxes for any period of time are obvious.

By making it impossible for server operating systems which run websites on the Internet to interoperate with non-Windows operating systems, Microsoft will be able to force all businesses and all consumers to conform to the Windows world. With over 90% of the operating system and browser markets, for example, Microsoft can make its Passport product the dominant intermediary between consumers and e-commerce web sites, and can effectively impose a tax or toll on all transactions. If it wishes to, Microsoft will be able to use its browser dominance to ensure that any web portal in which it has a stake receives preferential display. And if it chooses to, Microsoft will be able to use its browser dominance to control the flow of information or content on the Internet by using its Internet gate-keeper position to prefer one type of message over another, for example, blocking access to sites that are critical of Microsoft. In all of these ways, Microsoft can use the developing world of Internet technology to protect and strengthen its PC operating system monopoly.

V. WITHOUT SIGNIFICANT CHANGES, THE PROPOSED SETTLEMENT CANNOT SATISFY THE PUBLIC INTEREST STANDARD

As shown, the proposed settlement allows Microsoft to continue exclusionary practices, like commingling, to easily evade virtually all of the proposed settlement's proscriptions and affirmative obligations, and, by simply doing what the settlement allows, or fails to enjoin, ensuring that the next generation of threats to the operating system monopoly in the form of Internet servers and web-based computing never leaves its crib. By the time the proposed settlement expires, Microsoft middleware will be the firmly entrenched medium of Internet communication, displacing open architecture with a closed proprietary system; all competition will be forced to use Microsoft's proprietary standards instead of the open architecture currently thriving as the medium for program development and communication; and OEMs will be even more beholden to Microsoft's demands. This is the teaching of an exhaustive trial record and a careful appellate review that affirmed the lower court's findings of a decade-long scheme of monopoly maintenance in violation of Section 2 of the Sherman Act.

Under the law of the District of Columbia Circuit, the proposed settlement falls far short of providing any meaningful remedy for this most serious of antitrust violations and for that reason alone does not satisfy the public interest standard. United States v. Microsoft, 56 F.3d 1448, 1458 (DC Cir. 1995) (The Court must ''make an independent determination whether the proposed consent decree [is] in the public interest.''). Worse still, because the proposed settlement operates to perpetuate this unlawful monopoly by permitting the continuation without sanction of conduct previously found to be exclusionary, the proposed settlement in fact injures the public interest. For these reasons, the District Court must reject it.

Indeed, the proposed settlement fails to meet the public interest standard on all of the bases set out in the 1995 Microsoft decision. As discussed above, and in further detail below in the context of recommended changes and additions to the proposed consent decree, the settlement now advanced by the government (1) is ''ambiguous'' in many respects and fiddled with loopholes and exceptions to key provisions; (2) presents numerous ''difficulties in implementation'' that arise because so many provisions leave compliance in Microsoft's sole discretion; (3) has been subject to widespread condemnation by ''third parties [who] contend that they would be positively injured by the decree,'' including SBC; and (4) in view of the remedies the government said were absolutely essential only two years ago—after the District Court's detailed findings as to monopolization were upheld on appeal—but which have now been omitted from the proposed decree, ''on its face and even after government explanation, appears to make a mockery of judicial power.'' Microsoft Corp., 56 F.3d at 1462.

For these reasons, SBC submits that the proposed decree should not be entered. The proposal made by the Litigating States would, if adopted in its entirety, adequately serve the public interest in SBC's view. Alternatively, SBC respectfully offers the following detailed revisions that, if fully incorporated into the proposed settlement, would provide an appropriate remedy for Microsoft's adjudicated wrongdoing:

A. Changes Must Be Made to RPFJ § III.A (OEM and Other Licensee Retaliation)

Sections 8 and 9 of the Litigating States' proposal provide an adequate remedy prohibiting retaliation by Microsoft against others. Alternatively, the following revisions should be made to the proposed settlement:

§ III.A The retaliation provision should not be limited to OEMs, but should also prohibit retaliation against any third party that is a licensee or potential licensee of Microsoft products or services. Given Microsoft's proven propensity to root out and extinguish competition wherever it develops, the risk of retaliation could affect many sources of competitive pressure on Microsoft besides OEMs. One example would be third-party software system integrators, who pull together products from numerous different vendors to give customers a software or total computing package that is tailored to their specific needs.

The term ''retaliation,'' which is not defined in the proposed settlement, must be defined broadly to include ''any threats or any actions that directly or indirectly have an adverse effect'' on OEMs or other licensees. The phrase ''by altering Microsoft's commercial relations, or by withholding newly introduced forms of non-monetary Consideration'' should be eliminated, because it unnecessarily limits the scope of the term retaliation. Microsoft's proven ability to devise new forms of anticompetitive restraints to meet new competitive threats amply justifies this broad definition.

The scope of the conduct by OEMs and other licensees which cannot be subject to retaliation by Microsoft must be broadened. The provision should prohibit adverse action by Microsoft based on the OEM or other licensee undertaking or contemplating ''any business activity that promotes or distributes software, products or services that may be competitive with Microsoft products or services.'' See Final Judgment § 3(a)(i)(1). Again the record of Microsoft's constantly evolving panoply of anticompetitive actions justifies the broad prohibition to ''pry open'' the market to competition. The burden should be on Microsoft, as the convicted lawbreaker, to seek an exception to the decree's prohibitions if it believes there is a reasonable, procompetitive justification for a particular adverse action.

§§ III.A.1, III.A.2 and III.A.3 Each of these subsections should be deleted because they limit the scope of the conduct by OEMs for which Microsoft is prohibited from retaliating.

The provision in the second half of § III.A addressing license termination should require that Microsoft show good cause before terminating the license of an OEM or other licensee, in addition to giving written notice and an opportunity to cure. See Litigating States' § 2(a). The provision should also be changed to give the licensee 60 days' opportunity to cure. Id. The exception allowing Microsoft to terminate an OEM's license if it has previously given two or more written notices should be deleted because it is too easily subject to abuse. All of these changes are necessary to ensure that Microsoft, given its sorry history of abuse, deals fairly with licensees.

The exception in § III.A that permits Microsoft to provide ''consideration to any OEM with respect to any Microsoft product or service where that consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion or licensing of the Microsoft product or service'' should be deleted. It provides Microsoft the opportunity to provide unlawful incentives to licensees based on undefined criteria (''absolute level or amount'') that Microsoft alone determines.

Proposed Additions to Follow RPFJ § III.A

B. A Provision Prohibiting Retaliation By Microsoft Against Any Party Who Participates In The Litigation Must Be Added

A provision, such as Litigating States' proposal 9, should be added following § III.A to specifically prohibit Microsoft from retaliating against any individual or entity who participates or cooperates in any way in any aspect or phase of antitrust litigation involving Microsoft. Such a provision will ensure that Microsoft does not retaliate against any individual or entity that has participated thus far, and will afford protection to any individual or entity that wishes to come forward with complaints against Microsoft based on the consent decree that is ultimately entered. In view of Microsoft's continuing dominant position, its history of retaliation, and the fear it has engendered throughout the marketplace, such a provision is both necessary and reasonable.

C. A Provision Requiring Microsoft To Port ''Office'' To Apple's Operating System Must Be Added

Litigating States' proposal § 14 should be included in the decree to require Microsoft to continue making and updating a version of its ''Office'' business productivity suite that can be ported to the Apple operating system, and to require Microsoft to auction licenses to third parties to facilitate the creation of versions of Office that port to operating systems other than Windows. Such a provision is necessary because the Apple Macintosh operating system at present is the only viable alternative to Windows as an Office platform, but if others develop, they should have access to this widely-used application software. Such a provision is justified by the specific findings, affirmed on appeal, that Microsoft used the threat of dropping support for the Apple version of Office to coerce Apple into using IE as its default browser.

D. Changes Must Be Made To RPFJ § III.B (Uniform Licensing)

The subject of uniform licensing is adequately addressed in ¶2(a) and ¶2(b) of the Litigating States' proposal. Alternatively, the RPFJ should be revised as follows:

§ III.B

For the reasons discussed in connection with RPFJ § III.A., the provision must apply not only to Microsoft's licensing to OEMs, but to all third party licensees. § III.B.2

The proposed decree should allow Microsoft to provide reasonable volume discounts only if they are based upon an independent determination of the actual volume of shipments. See p. 102 supra; Litigating States' § 2(a)(ii). § III.B.3

This provision and its three subsections should be eliminated. Instead, the provision should include an outright prohibition, such as that included in Final Judgment § 3(a)(ii) or Litigating States' § 2(a), against Microsoft's offering market development allowances (''MDAs'') or discounts to OEMs or third party licensees. This loophole allowing MDAs makes it possible, as a practical matter, for Microsoft to engage in the very discrimination that the provision is intended to prevent.

Proposed Additions to Follow RPFJ § III.B

A provision should be added to the proposed decree that would require that Microsoft provide OEMs and other licensees with equal access to ''licensing terms, discounts, technical, marketing and sales support, product and technical information, information about future plans, developer tools or support, hardware certification and permission to display trademarks or logos.'' gee Litigating grates' § 2(b); Final Judgment § 3(a5(ii5. Without this provision, Microsoft will be able to keep such information secret, which will allow Microsoft to continue to take advantage of licensees' ignorance about what terms are available.

F. A Provision Prohibiting Microsoft From Enforcing Agreements That Are Inconsistent With The RPFJ Must Be Added

A provision should be added that prohibits Microsoft from enforcing any contract terms or agreements that are inconsistent with the decree. See Litigating States' 2(a); Final Judgment § 3(a)(ii). This prophylactic measure is justified by Microsoft's proven history of evasion of antitrust regulation and anticompetitive conduct.

G. Changes Must Be Made to RPFJ § III.C (Restrictions on OEM Configuration of PCs)

Section III.C attempts to address Microsoft's past illegal imposition of restrictions on OEM configuration of the desktop. These restfictions closed the OEM distribution channel to non-Microsoft middleware. Because the provision fails to address Microsoft's commingling of code, contains no affirmative requirement to offer a stripped-down version of Windows with a corresponding price reduction, and is fiddled with loopholes and ambiguities that allow Microsoft to override both OEM and end-user choices regarding competing middleware products, section III.C fails to accomplish its goal. To effectively close these loopholes and reopen the OEM distribution channel in an effort to revive middleware competition, SBC recommends the following:

The Litigating States' proposal is adequate to satisfy SBC's concerns regarding the effectiveness of OEM configuration options. SBC recommends that the Litigating States' proposals addressing restrictions on OEM options be adopted to replace section III.C of the proposed settlement. See Litigating States' §§ 1, 2(c), 3, 8, 10. In the alternative, SBC recommends the following modifications to the proposed decree:

§ III.C

Following the words ''OEM licensee'', the phrase ''or Third Parties'' should be added. ''Third Parties'' should be defined as ''any persons offering to purchase from Microsoft at least 10,000 licenses of a product or products offered and licensed to OEMs, including without limitation ISVs, systems integrators, and value-added resellers.'' See Litigating States'' § 22(oo). As described in these comments, this would allow third party software customizers to develop as a competitive force in the industry, as they may well have absent Microsoft's illegal conduct.

Add after the word ''alternatives'' in the first sentence of the provision ''..., which are set forth below, by way of example and not limitation: .... ''This prevents the list of items that follows from becoming an exclusive list of the restrictions Microsoft cannot impose on OEMs. Broad language is necessary so that the remedy can be adapted to technological changes.

Added to the list should be an option that states OEMs are free to display alternative non-Microsoft desktops, provided that an icon or other means of user access is provided to the Microsoft desktop. This allows OEMs the freedom to offer consumers completely separate non-Microsoft interfaces without interfering with, changing the appearance of, or precluding access to, the Microsoft desktop.

§ III.C.1

This subsection is meant to ensure that OEMs are free to install competing middleware products and services and to place icons and shortcuts to those products on the desktop. CIS at 30. To fulfill that purpose:

Eliminate everything after the words ''generally displayed.'' The exception that

follows those words may be misconstrued as providing Microsoft discretion to prohibit OEMs from featuring middleware products as to which Microsoft may not offer a competing product or a product with the same ''functionality.'' The deletion of the language prevents any misunderstanding.

Section III.C. 1 should also make clear that Microsoft may not restrict OEMs from offering an alternative desktop, provided that an icon linking the user to the Windows desktop is also displayed. This would expand options for consumers, while at the same time reducing the burden on OEMs of attempting to conform to Microsoft's desktop requirements.

§ III.C.2

Related to section III.C.1 is subsection 2, which prevents Microsoft from restricting an OEM's ability to distribute and promote non-Microsoft Middleware by displaying shortcuts on the desktop. However, the provision limits this ability to those middleware products that do not impair the ''functionality'' of Windows. At the end of the provision, the following language should be added: ''Whether the functionality is impaired shall be determined by the Technical Committee upon Microsoft's written submission to the Committee as to how the OEM modification impairs the functionality of the Windows Operating System.'' Nowhere in the decree is the term ''functionality'' defined. So as not to leave the determination as to whether a change impairs the ''functionality'' of Windows in Microsoft's discretion, either the term should be defined in the definitions section of the decree, or the aforementioned language should be added.

§ III.C.3

Subsection III.C.3 requires Microsoft to permit OEMs to configure the desktop in a manner that allows non-Microsoft products to launch automatically at the conclusion of the tint or subsequent boot sequences or upon connection or disconnection from the Internet. To accomplish this:

Eliminate everything after ''a user interface'' and replace it with ''that may be seen as attempting to imitate the trade dress of or otherwise appear identical to the corresponding Microsoft Middleware Product.'' While subsection 3 attempts to prevent ISVs from palming-off their products as Microsoft products, as currently written, the provision appears to give Microsoft discretion to decide, in the first instance, which competitors'' icons and interfaces, and in what form, may be displayed. The change clarifies the intent.

As in Section III.C.1 above, this provision contains imprecise language describing when and whether a Non-Microsoft Middleware Product can launch automatically (''if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time'') that can be interpreted as allowing Microsoft to stop OEMs from launching innovative middleware products as to which Microsoft has not developed a competing product. This language should be deleted both to avoid any possibility of such an interpretation and also because Microsoft's business choices should not determine or in any way limit OEMs' decision to launch a non-Microsoft product or service.

The provision should include the phrase ''..., application or service (including any security/authentication service)'' after the first appearance of the term ''Non-Microsoft Middleware''. This would allow ISVs to compete with Microsoft's new products and services such as NET and Passport to which Windows XP contains embedded prompts in the initial boot sequence and on the MSN default homepage.

As now drafted, the provision can be read as limiting competition 0nly to the categories of middleware product that existed when the litigation began, i.e., browsers and media players.

The settlement should require that, as part of ensuring that a Non-Microsoft Middleware Product can launch automatically in place of a Microsoft Middleware Product, the non-Microsoft product will replace the Microsoft product in such cross-dependent scenarios as when clicking on a URL in Microsoft Word. In the past, regardless of a user's selection of default browser, IE would launch in its place when the user attempted to reach the Internet in this fashion. Microsoft should not be permitted to automatically invoke its middleware products despite a contrary choice by a consumer or OEM.

§ III.C.5

In this section concerning an OEM's freedom to promote a competing IAP, the settlement must either identify what a ''reasonable technical specification'' is or otherwise remove that determination from Microsoft's sole discretion. Otherwise, Microsoft will be able to block OEMs from featuring competing IAPs for virtually any reason, or else impose anticompetitive requirements, such as the use of Microsoft's proprietary protocols, before a competing IAP is allowed on the desktop. Proposed Additions to Follow RPFJ

§ III.C

H. A Provision That Prohibits Microsoft From Commingling Must Be Added

A provision that reads similarly to the Litigating States' proposed ¶1 should be adopted to prevent Microsoft from repeating the illegal conduct that the Court of Appeals found it engaged in by commingling the code of its IE browser with the code for its Windows operating system. A restriction on the practice of binding middleware to the operating system is essential to restoring competition by making the OEM distribution channel a viable option once again for software vendors. See Litigating States' 1. Such a provision will have the salutary collateral effect of preventing the exceptions contained in RPFJ § III.H from rendering the substance of sections III.C and III.H meaningless, as well as supporting innovation. See Shapiro Decl. at 23 (stating that an anti-binding provision in the Final Judgment, similar to the one proposed here, ''strikes an excellent balance between the consumer benefits that can arise when Microsoft adds functionality to its operating system and the benefits that consumers enjoy when new and improved software is developed independently of Microsoft, especially if that software may serve a role in eroding Microsoft's monopoly position. By allowing OEMs to choose whether to make Microsoft's Middleware Products or rival software directly available to end-users, OEMs will have the incentive to experiment to best serve consumers' interest.'').

I. A Provision Determining The Relative Prices Of Unbundled Versions of Windows Must Be Added

Either as part of the provision dealing with the binding of middleware or elsewhere in the decree, there must be a provision requiring Microsoft to differentiate its product prices based on an OEM's selection of the Microsoft middleware products, if any, that it chooses to bundle with the Windows operating system. Such a mechanism must ensure that ''stripped-down'' versions of Windows cost less than the fully loaded version in a proportion that properly reflects the value of middleware products not included. Failure to provide a pricing mechanism, such as those contained in States' proposal ¶¶1 and 3(b), removes any incentive OEMs have to create software packages composed of competing middleware products.

Several such mechanisms are possible. The Final Judgment provided that pricing be guided based on bytes of code. See Final Judgment § 3(g)(ii). SBC believes it would be preferable to allocate costs between the operating system and the removed middleware based on measurements of ''function point code.'' The International Function Point Users Group Counting Practices Manual is a generally accepted, objective industry standard for measuring non-multimedia software (which excludes games and training software) and estimating software costs using an existing code base. See T. Capers Jones, Estimating Software Costs Function Point Analysis: Measurement Practices for Successful Software Projects (1998); David Garmus and David Herron, Function Point Analysis: Measurement Practices for Successful Software Projects, 34–61 (2000). Alternatively, SBC supports the use of a pricing mechanism based on the fully allocated product development costs for the operating system product and middleware products in question. See Litigating States' ° 1.

J. A Provision Requiring That Microsoft Continue To Offer Predecessor Versions Of Windows Must Be Added

SBC recommends adoption of Litigating States' proposed ¶3. Section 3 mandates that Microsoft continue to license for 5 years its immediate predecessor version of Windows, at a price no higher than the last price at which the predecessor version was offered. This is a further means of preventing Microsoft from commingling its middleware products with Windows without offering OEMs, end-users and third parties the chance to buy a version of the operating system that is both cheaper and without Microsoft products bound to it. Prior versions of Windows typically have less Microsoft middleware product bundled with or bound to the operating system, and rely more heavily on accepted industry standards. As a result, predecessor versions may be more easily configured to include non-Microsoft middleware products.

K. Changes Must Be Made To RPFJ §§ III.D and III.E (Interoperability Disclosure)

Full interoperability is necessary to prevent Microsoft from perpetuating its monopoly of the PC operating system market by exercising control over server operating systems and software, and Internet browsers, and using that control to eliminate the nascent competitive threats posed by non-Microsoft server operating systems and embedded devices.

Section 4 of the Litigating States' proposal achieves full interoperability between (i) a Windows PC operating system and non-Microsoft Middleware; (ii) a Windows PC operating system and a non-Microsoft server operating system; (iii) Microsoft Middleware, including Internet Explorer, and a non-Microsoft server operating system; and (iv) Microsoft and non-Microsoft server operating systems. Litigating States' § 4.

To achieve full interoperability, the disclosure must include ''all APIs, communications interfaces and other technical information related to interoperability.'' Litigating States' § 4. Only in this way can the ''seamless interoperability,'' recognized by the government in the CIS as the operative goal, be achieved. CIS at 38.

The timing of required disclosure under the proposed settlement is equally deficient, because it provides Microsoft sufficient flexibility to use the timing of a disclosure to gain a competitive advantage for its own software. Microsoft should be required to disclose the technical information related to interoperability in a ''timely manner,'' which should be defined as the earliest of the following: (i) when it is disclosed to Microsoft's applications developers; (ii) when it is used by Microsoft's Platform Software developers; (iii) when it is disclosed to any third party; or (iv) within 90 days of a final release of a new version of Windows, and no less than 5 days after a material change is made by Microsoft after the most recent beta or release candidate version. This is the timing provision employed by both the District Court's Final Judgment and the Litigating States' proposal. Final Judgment ¶3(b); Litigating States' § 22 (pp).

Proposed Additions To Follow RPFJ § III.E

L. A Provision That Requires Mandatory Distribution of Java Must Be Added

The Litigating States' proposal properly requires Microsoft to distribute Java, free of charge, for ten years. Litigating States' § 13. The copy of Java that is distributed must be ''a competitively performing Windows-compatible version of the Java runtime environment (including the Java virtual machine and class libraries) compliant with the latest Sun Microsystems Technology Compatibility Kit.'' Id. The proposed settlement does not require Microsoft to distribute a version of Java that is compliant with the latest technology from Sun Microsystems, and that is fully compatible with the most recent version of Windows. This requirement is critical to ensure full interoperability between IE and all non-Microsoft server operating systems, and will also help to erode the applications barrier to entry that shields Microsoft's monopoly power.

M. A Provision Prohibiting Interference With Or Degradation Of Non-Microsoft Middleware Must Be Added

The government's own expert explained the need for an affirmative prohibition against such interference by Microsoft as necessary to prevent one of the more insidious methods of monopoly maintenance:

> Microsoft has demonstrated its ability and incentive to hinder the adoption of rival middleware through a variety of exclusionary tactics such as it employed against Netscape's browser. Once Microsoft is enjoined from employing the tactics it has already used, Microsoft will have an incentive to switch to new, substitute tactics having the same effect. One such tactic is to intentionally degrade the performance of rival middleware interoperating with Windows.

Shapiro Decl. at 22. The Final Judgment and Litigating States' proposal explicitly prohibit Microsoft from knowingly impeding or degrading the performance of non-Microsoft Middleware on a Windows PC. Final Judgment § 3(c); Litigating States' § 5.

The Litigating States' proposal also properly requires that if Microsoft takes any action that would ''interfere with or degrade the performance of non-Microsoft Middleware,'' it must give 60 days advance notice to the affected ISV. Litigating States' 8 5. The proposed settlement does not contain a knowing interference provision. Since the Court of Appeals specifically affirmed the findings upon which this remedy was based, the decision to delete it is difficult to understand. CA at 65–66. To the contrary, the proposed settlement actually gives Microsoft the incentive to make slight changes to its operating system product, as part of a ''minor upgrade,'' that would have the effect of impeding the interoperability of non-Microsoft middleware with a Windows PC operating system. See RPFJ §§ III(D), VI(J). If the change is a part of a ''minor upgrade,'' Microsoft is not required to disclose the APIs and other technical information required to ensure full interoperability. Id.

N. A Provision Requiring Microsoft to Comply With Industry Standards Must Be Added

To create a level playing field and foster competition, a provision must be added to ensure that open or industry standards continue to be promoted and used by Microsoft as part of the Windows PC operating system environment. An industry standard is any technical standard that has been approved by (or has been submitted to and is under consideration by) any independent, publicly recognized organization or group that sets standards. If Microsoft can replace an open industry standard with its own proprietary codes, it will prevent full interoperability and thus reinforce the applications barrier to entry.

As a result of Microsoft's monopoly power in the PC operating system market, it is able now, and in the foreseeable future, to depart from industry-recognized standards for its own competitive advantage. This is accomplished in two ways. First, Microsoft has in the past made subtle, undisclosed changes to a number of recognized industry standards that are used to execute functions by the Windows operating system. Even a small modification can severely impede the ability of a competing operating system or middleware product from interoperating with a Windows operating system product.[35] Second, any new or modified standards implemented by Microsoft become, as a practical matter, an industry standard within a very short period of time because of the high percentage of Windows users.

Microsoft's Brad Silverberg explained this Microsoft strategy in the context of a previous standards battle with Novell's Netware:

> It seems very clear to me that if you are currently on the losing end of a standard battle, your strategy needs to be: (a) adopt the standard so you don't force customers to choose between you and the standard, (b) bootstrap that so you have a reasonable installed base, (c) begin to change the standard on top of it to get people dependent on ''you.'' Once people are dependent on you .... you ''start to turn the crank.''

Henderson Decl. ¶35 (internal citations omitted).

To ensure that Microsoft's practices are changed and to ensure full interoperability, the settlement must include a provision that requires:

(i) that Microsoft continue to use and promote all open or industry-recognized standards;

(ii) that Microsoft not alter or modify an industry standard in any way, except to the extent that such modification is compliant with, and approved by, an independent, internationally recognized industry standards organization;

(iii) that Microsoft disclose any change it implements to an open or industry-recognized standard, in a ''timely manner,'' as that phrase is defined in the Litigating States' Proposal § 22 (pp);

(iv) that Microsoft assist any other software provider to achieve interoperability with any protocol Microsoft uses in any such situation in which Microsoft is the holder of the reference protocol implementation; and

(v) that Microsoft work with all other holders of reference protocols to achieve and ensure interoperability with any protocol Microsoft uses, in any situation in which Microsoft is not the holder of the reference protocol implementation.

There are over 300 separate standards used by any PC operating system to function within a local area network or on the internet. The following protocol families are among those that are particularly important to Internet-based computing: (1) the TCP/IP protocol family, which is universally used to transmit data and services on the Internet; (2)

[35] For example, if Microsoft made subtle changes to the industry-recognized audio Codec standard, applications that used audio features, such as Real Player, would not be able to interoperate with a Windows PC operating system. If Real Player continued to employ the industry-standard Codec in its program, Windows PC users would be able to download that Codec to their Windows operating system, but would face the very real possibility that the program would not function with their Windows PC operating system as well as the competing Microsoft product, Media Player, which would, of course, be designed to run with Microsoft's modified Codec.

the H.323 protocol family as defined by the ITU, which supports video and voice communications and is often referred to as a Voice over IP (VoIP) protocol; (3) the SIP protocol family, which supports video and voice communications, as well as instant messaging; and (4) the HTML/HTTP protocol family, as defined by the World Wide Web Consortium (W3C), which supports web browser and server protocols.

A Provision Requiring Open-Source Licensing for Internet Explorer Must Be Added

Microsoft's control of IE is an integral part of the anticompetitive conduct that has maintained Microsoft's monopoly over the PC operating system market. As the Litigating States propose, to remedy these anticompetitive acts and prevent recurrence, the source code for IE must be disclosed on a royalty-free and non-discriminatory basis. See Litigating States' § 12.

P. Changes Must Be Made To RPFJ § III.F (Retaliation Against Any Third Party)

Sections 8 and 9 of the Litigating States' proposal adequately address retaliation issues. Alternatively, the following revisions should be made in the RPFJ:

§ III.F.1

The retaliation provision must be revised to prohibit retaliation not only against the limited category of ISVs and IHVs, but against any third party. For the reasons discussed in connection with Section III.A above, the continually evolving nature of computer and software technology and business practices means that, as a practical matter, new threats to Microsoft's operating system monopoly could come from as-yet unidentified entities. In light of Microsoft's record of past retaliatory conduct, and the durability of its monopoly power, such ''nascent'' threats must be protected wherever and however they emerge.

The term ''retaliation'' must to be defined broadly to include ''any threats or any actions that directly or indirectly have an adverse effect'' on third parties. See discussion of RPFJ § III.A supra.

The scope of conduct by third parties for which Microsoft may not retaliate must be broadened. The provision should prohibit adverse action by Microsoft based ''directly or indirectly on any actual or contemplated action'' by the protected party. See discussion of RPFJ III.A supra.

The ban on retaliation should be based on any action or contemplated action by a third party ''to develop, use, distribute, promote, or support any non-Microsoft product or service.'' See Litigating States' § 8. The proposed settlement prohibits retaliation based on a party's ''developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software.'' Based on the inherent problems with the definition of Microsoft Platform Software, this limitation narrows the types of products within its scope. For example, it would be permissible for Microsoft to retaliate for a party's distribution or use of an application that competes with Office, because Office is not ''Microsoft Platform Software.''

§ III.F.2

At a minimum, the exception in this provision must be deleted. It would allow Microsoft to enter agreements that limit an ISV's ability to develop, promote or distribute competing software, ''if those limitations are reasonably necessary and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software.'' RPFJ § III.F.2. This creates a loophole for Microsoft to restrict an ISV's ability to develop products that compete with Microsoft products. Given its proven history of anticompetitive conduct, Microsoft should not be entitled to an automatic opportunity to use its market power to obtain even ''reasonable'' exclusive dealing agreements. If Microsoft and an ISV believe a particular agreement has procompetitive justification, they can seek prior approval from the government. In the alternative, this entire provision may be deleted if a provision as discussed in ¶V.Q below is added. See also Litigating States' § 11; Final Judgment § 3(h).

§ III.F.3

This broad savings clause, which provides that Microsoft is not prohibited from enforcing agreements with any ISV or IHV, or any intellectual property right, that is not inconsistent with the proposed settlement, should be removed. It is unnecessary and vague, and invites further litigation. Given the overwhelming record of Microsoft's anticompetitive conduct, the burden should not be placed on the government or a third party to prove that Microsoft did something ''inconsistent'' with the decree.

Proposed Additions to Follow RPFJ § III.F

Q. A Provision Prohibiting Microsoft From Entering Agreements That Limit Competition Must Be Added

A provision should be added, such as Litigating States' proposal 11, prohibiting Microsoft from offering consideration to any competitor in exchange for the competitor's agreeing to refrain from developing or distributing any product or service that competes with any Windows Operating System or Middleware Product. See also Final Judgment 3(h). Such a provision is necessary to prevent Microsoft from seeking anticompetitive contracts that divide markets or otherwise limit competition, regardless of whether the ''terms'' are reasonable. See discussion of RPFJ § III.F.2 .supra.

R. Changes Must Be Made To RPFJ § III.G (Ban on Exclusive Dealing)

SBC believes that Section 6 of the Litigating States' proposal is consistent with the public interest on the issue of exclusive dealing. Alternatively, the following changes should be made in the RPFJ:

§ III.G.1

The provision governing exclusive dealing must be extended to third parties. See Litigating States' § 6; Final Judgment § 3(e). The government previously acknowledged that a general ban is necessary because it is too difficult to predict which entities Microsoft might seek to tie up in exclusive arrangements over the next several years. See Shapiro Decl. at 19.

Microsoft should be prohibited from granting consideration to any third party that agrees to ''restrict its development, production, distribution, promotion or use of, or payment for, any non-Microsoft product or service; distribute, promote or use any Microsoft product or service exclusively or in a minimum percentage; or interfere or degrade the performance of any non-Microsoft product or service.'' See Litigating States' § 6; Final Judgment § 3(e). The proposed settlement would prohibit only agreements that grant consideration for the entity to agree to distribute, promote or use Microsoft Platform Software exclusively or in a fixed percentage. The settlement terms do not prohibit restricting the development or use of non-Microsoft products or services and interfering or degrading the performance of non-Microsoft products or services. Yet such conduct is blatantly anticompetitive and entirely consistent with Microsoft's record of proven illegal conduct.

The exception allowing exclusive or fixed percentage arrangements if Microsoft obtains a representation that it is ''commercially practicable'' for the entity to provide equal or greater distribution of a competing product, should be eliminated. This loophole permits Microsoft to demand parity with any product that it considers a competitor in an agreement with a third party that promotes or distributes a competing product. As a proven monopolist, Microsoft should not be given what is effectively an affirmative right to demand that others carry its products. The opportunities for coercion are far too great.

§ III.G.2

The proposed settlement must be changed to prohibit Microsoft from entering into agreements with IAPs and ICPs that condition their placement on the Windows desktop on their agreement ''to distribute, promote or use any Microsoft product or service.'' See Litigating States' § 6(e); Final Judgment § 3(e)(iv). The proposed settlement only prohibits agreements that condition placement of the IAP or ICP on the Windows desktop upon the IAP or ICP's refraining from promoting or using software that competes with Microsoft Middleware. This creates a loophole permitting Microsoft to condition desktop placement on the IAP or ICP agreeing to distribute, promote or use other Microsoft products or services exclusively. Given Microsoft's proven history of anticompetitive exclusionary conduct, it should be barred from any kind of exclusive dealing arrangement.

The provision that permits exclusive dealing arrangements for joint ventures, joint developments or joint services arrangements should be deleted. It would permit Microsoft to avoid the general prohibitions on exclusive dealing, which are essential to restoring competition, merely by restructuring prohibited agreements as ''joint ventures.'' Once again, if Microsoft believes it has a legitimate, procompetitive basis to enter into a true joint venture agreement, it can seek authorization to do so.

The provision that excludes licensed-in intellectual property should be deleted. Like the ''joint venture'' loophole, it would allow Microsoft to evade the exclusive dealing ban by including in an agreement, licensed-in intellectual property of nominal value.

g. ChanGes Must Math To RPFJ § III.H (OEM/End User Control the Desktop)

Section III.H focuses on OEMs' ability to offer and promote and end-users' ability to choose competing middleware products. Yet the provision undermines this purpose in several ways, including: (1) preventing either OEMs or end-users from removing Microsoft products from the operating system; (2) permitting Microsoft to override or alter OEM and end-user choices of competing middleware products; and (3) delaying the implementation of the provision to such an extent as to render it meaningless for a fifth of the lifespan of the decree. To remedy these flaws, the following changes are suggested:

§ III.H

The first sentence, which delays the applicability of the section for the earlier of 12 months after submission of the settlement to the Court or the release of the first service pack for Windows XP, should be revised to delete the introductory phrase. Microsoft should be required immediately to implement the changes necessary to comply with the OEM/end-user control provisions. This would also maximize the amount of time the provision is in force before the relief expires.

The last sentence of this section, which follows the ''Notwithstanding'' clause, should also be eliminated. All Microsoft Middleware Products should be required to comply with the substantive provisions of sections III.C and III.H. There is no justification for a temporal cut-off point of any kind (such as seven months prior to the last beta test of an operating system release, contained here) for new products, which should be developed with a focus on meeting, not evading, the requirements of the relief.

§ III.H.1

Subsection 1 allows OEMs and end-users to enable or disable the automatic invocation of a Microsoft middleware product or to remove the icon for that product. A subsection (c) should be added that allows end-users and OEMs to add or remove any Microsoft Middleware Product from the operating system, not just the icon for that product. The additional language will eliminate the problem of automatic invocation of Microsoft middleware under certain circumstances and open up hard drive space to add additional programs. This provision will only be effective, however, if there is a prohibition against the binding of middleware to the operating system.

§ III.H.3

The CIS states that section III.H.3 prevents automatic alteration of an OEM configuration (CIS at 48), but subsection III.H.3(b) undercuts this commitment. It would permit Microsoft to prompt an end-user to ''sweep the desktop'' of all selected icons and middleware choices 14 days after the initial boot-up of the computer and thereafter. Because of the possibility of consumer confusion, this has the potential to undo the very OEM and end-user control Section III.H is intended to allow. Subsection (b) therefore should be eliminated. There is no need for Microsoft ever to seek end-user confirmation that he or she wants to reverse an OEM configuration that includes competing products, or ever to prompt the end-user to ''sweep away'' all previous non-Microsoft product choices.

The ''Notwithstanding'' Clauses In This Provision Must Be Deleted

The ''Notwithstanding'' clauses at the end of section III.H allow Microsoft to disregard OEM and consumer choice whenever Microsoft decides that its products must be invoked to operate with its servers or when the Non-Microsoft Middleware Product fails to implement a ''reasonable technical specification'' (a term that is left to Microsoft to define). The clauses should be eliminated in their entirety. The exceptions contained in these clauses are so broad that they threaten to render the substance of section III.H meaningless by permitting Microsoft to override an OEM's or end-user's middleware default choice at will.

T. Changes Must Be Made To RPFJ § III.I (Mandatory Licensing)

The proposed settlement allows Microsoft to charge a royalty for the required license of technical information concerning interoperability, and to obtain a cross-license to the licensee's technical information used to interoperate with a Windows PC operating system or Microsoft Middleware. As the government recognized in the earlier remedy proceedings, royalty and cross-licensing requirements are anticompetitive. Final Judgment § 3(i); see also Gov't D.Ct. Sum. Resp. at 14. As the Litigating States have proposed, Microsoft should be required to license the necessary technical information on a royalty-free basis, and without the tight to a cross-license from the licensee. Litigating States' ¶15.

U. Changes Must Be Made To RPFJ § III.J (Limitations on Mandatory Licensing)

Section III.J of the proposed settlement is a loophole and must be deleted. All APIs, communications interfaces and technical information that must be disclosed to ensure interoperability serve, at least in part, an authentication or encryption function related to the security of the operating system. Microsoft should not be given an excuse to withhold disclosure of crucial technical information for potentially anticompetitive purposes. Neither the Final Judgment nor the Litigating States' proposal contains a similar provision.

V. Changes Must Be Made To RPFJ §§ IV And V (Compliance And Enforcement)

In contrast to the proposed settlement, certain aspects of the Litigating States' proposal would be far more effective in ensuring that the intent and spirit of the final relief entered in this action be effectively enforced:

As mandated by the Antitrust Division Manual and conceded by the government as being ''customary in antitrust actions'' (Gov't D.Ct. Sum. Resp. at 20), the final decree should remain in effect for ten years, not five, as prescribed by RPFJ § V. See Litigating States' § 21 (b); Final Judgment § 6(c).

Pursuant to Rule 53 of the Federal Rules of Civil Procedure, the Court should appoint a Special Master, who would be in a position to immediately report violations directly to the Court and also periodically report to the Court regarding Microsoft's compliance with its obligations, instead of the Technical Committee prescribed by the proposed decree. See Litigating States' § 18.

Any decree should set forth specific sanctions for different levels of violations and impose a strict, rapid, no-nonsense timetable for the formal resolution of all complaints about Microsoft's conduct. See Litigating States' ¶18(f).

A critical deficiency in the proposed settlement is the lack of a requirement that anyone at Microsoft, including its designated Internal Compliance Officer, certify periodically to the Court that Microsoft is in compliance with its obligations. Indeed, no one is in a better position than Microsoft to know whether it is in compliance. For these reasons, the Court should require that any decree include a self-reporting requirement, providing that a senior executive of Microsoft certify periodically under oath to the Court that Microsoft is in compliance with its obligations, Such a provision would further ensure that Microsoft takes its obligations seriously.

Instead of limiting training in the decree to officers and directors (RPFJ § IV.C.3.a), the provision must require officers, directors and all other employees that are in positions that enable them to initiate or implement anticompetitive conduct to read, understand and comply with the decree, as is customary in antitrust consent decrees. See Litigating States' § 17(c); Final Judgment § 4(e).

W. Changes Must Be Made To RPFJ § VI (Definitions)

The way the proposed settlement defines key terms significantly restricts, and in many instances eliminates, the effect of the proposed settlement's substantive provisions. SBC generally recommends the adoption of the definitions contained in the Litigating States' proposal § 22. Some of the problems posed by the proposed settlement's definitions relating to middleware are as follows:

The definition of''Microsoft Middleware'' in section VI.J must be eliminated. The term is defined in so restrictive a way that it would exclude, among other things, any middleware which is bound to the operating system or as to which Microsoft has not sought trademark protection. It should be replaced with a straightforward definition that applies to middleware irrespective of whether it is Microsoft or non-Microsoft middleware, such as the definition of Middleware contained in the Final Judgment § 7(q). See also Litigating States' § 22(w).

The proposed settlement's definition in section VI.K of ''Microsoft Middleware Product'' limits what are considered Microsoft middleware products to specific categories of products. It should be replaced by Litigating States' proposal § 22(x), which is both a broader and more accurate description of a Microsoft Middleware Product, as it accounts for both middleware products currently in existence and products that will be developed in the future.

Subsection (ii) of the definition of''Non-Microsoft Middleware Product'' requires that one million copies of the product be distributed in the previous year for the product to be considered a competing middleware product. See RPFJ § VI.N. This definitional limitation excludes new competing products from a number of the proposed settlement's protections, including those relating to the important OEM distribution channel.

The last sentence of the definition of ''Windows Operating System Product'' grants Microsoft ''sole discretion'' to determine what constitutes a Windows Operating System Product, and should be deleted. See RPFJ § VI.U. The definition should be objective and should roughly correspond to the definition of ''Operating System Product'' in the Final Judgment § 7(v). The definition of ''Windows Operating System Product'' should also include prior versions of Windows, including Windows 95 and Windows 98, as well as versions of Microsoft's operating system developed for non-PC products, such as Windows CE. See Litigating States' § 22(rr).

VI. CONCLUSION

For the reasons stated herein, the proposed settlement with Microsoft is contrary to the public interest and should be substantially modified or rejected entirely.

January 28, 2002

Respectfully submitted,

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Telephone: (202) 237–2727

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From: Jwoodswce@aol.com@inetgw

To: Microsoft ATR

Date: 1/28/02 11:49pm

Subject: Microsoft settlement

To whom it may concern,

As part of the public comment on the proposed Microsoft settlement, I am objecting to the prosecution of Microsoft by the Department of Justice and the various Attorney Generals' offices. I understand that with a gun to its head Microsoft wants this settlement. However, the settlement is unjust. As a consumer, Microsoft has benefited me. Sometimes I buy Microsoft, but not always. I use operating systems and browsers produced by other companies. However, Microsoft's leadership in creating software that has been selected by the marketplace as the dominant products created a computing revolution that has changed my life through higher income. In contrast, the government's prosecution of Microsoft has harmed me.

The club-fisted actions by the government in this matter have adversely affected the development of products that would have benefited me. First, the government's attack on Microsoft distracted their expansion in the enterprise server software market which is dominated by companies that have supported the government's efforts. Resources Microsoft could have been used to enhance products that would have benefited me professionally were diverted to pay for attorneys instead of programmers. Second, the government's attack on Microsoft caused the high tech meltdown in the economy by depressing the equity markets. Consequently, jobs were lost and innovative products never made it to market.

Because of the coercion used by the government, I have several objections to the proposed settlement.

First, the settlement imposes restrictions on Microsoft's ability to make contracts. This infringement on Microsoft's right to enter contracts on its own terms is akin to the ''badges of slavery'' prohibited by the 13th Amendment. Consequently, while Microsoft retains title to its property, the government is specifying the terms under which it may exercise its own property. Thus, our government is pursuing fascist economic policies that obliterate the rights of private property.

Second, the settlement mandates the disclosure of proprietary information by Microsoft. This attack on intellectual property rights undermines our economy. Further, it contradicts the foreign policy of our government that seeks to protect the intellectual property rights of Americans abroad. Although there is some recourse to prevent the dissemination of information affecting security, the settlement makes no adequate provisions for resolving disputes between Microsoft and the government on these security claims to protect consumers. Therefore, this settlement puts the property and privacy of Microsoft customers in jeopardy.

Third, this settlement infringes constitutional protections Microsoft, and all Americans, have from unreasonable searches. The presence of government agents in the Microsoft facility at the company's expense with unlimited access to confidential Microsoft information is an affront to our sense of ordered liberties. If this settlement were instead a warrant, the court would deny it as overly broad and unreasonable. In addition, the settlement does not specify sanctions against the government for potential violations of the confidentiality agreements.

Finally, if the government was serious about the danger Microsoft pose to consumers, the Justice Department and the state Attorney Generals' offices should have promised to not use Microsoft products during the term of the settlement. That would let the government work in an environment of incompatible software products that the market has freely chosen to avoid. In summary, the government's prosecution of Microsoft and this settlement is a threat to our individual liberty because it permits the government to destroy the wealth created by our citizens arbitrarily.

Jim Woods

21560 Iredell Terr.

Ashburn, VA 20148

From: ram@wt6.usdoj.gov@inetgw

To: Microsoft ATR

Date: 1/28/02 11:49pm

Subject: Microsoft Settlement

January 28, 2002

Renata B. Hesse

Antitrust Division

U.S. Department of Justice

601 D Street NW

Suite 1200

Washington, DC 20530–0001

Dear Ms. Hesse:

Please register my emphatic opposition to the subject Proposed Final Judgement (PFJ) [in re the conjoined Civil Actions No. 98–1232 (CKK) and 98–1233 (CKK), collectively termed the Microsoft Antitrust Case]. My reasons for opposing this PFJ are based upon review and thoughtful consideration of the following:

a) Microsoft's extensive and consistent record of gross anticompetitive abuses in the software industry that gravely harmed competitors, eliminated consumer freedom of choice, and erected illegal barriers to innovation by competitors—abuses for which Microsoft has been adjudicated to be guilty of violations of the Sherman Antitrust Act in this Case—which Microsoft will gladly continue;

b) the provisions of the PFJ, which appear on the surface to offer substantive remedies but in fact, upon careful reading, provide no effective or enforcable restrictions to prevent Microsoft from continuing its anticompetive practices to extend its monopoly illegally - precisely the offense that requires remedy;

c) the glaring omissions of the PFJ, which is blind to current conditions in the software industry and Microsoft's continuing predatory tactics there and in contiguous markets such as Internet enabled ecommerce, mass media delivery and digital rights management, and definition of worldwide network standards, and which further offers no forward looking constraints to prevent Microsoft from proliferating such oppressions of suppliers, customers, competitors, and ultimately consumers and fair markets both within the US and internationally. Microsoft has proven that it is willing to use any means or pretense to avoid or circumvent restrictions on its practices (see the earlier Consent Decree). Microsoft is like a twice-convicted burgler proposing to bargain for parole by promising not to commit burglary again—except if (i) the front door is open, (ii) a window is unlocked, or (iii) the back door can be jimmied open easily. Microsoft can't be trusted to abide by any restrictions on its business acts in good faith. The Judgement of the Court should therefore be in imperative terms without any loopholes Microsoft can use to subvert the Court's intent. Unfortunately, the PFJ is as far from such a clear standard as Microsoft might wish. No wonder Microsoft agreed to this. Far from offering even minimally adequate remedies, the PFJ is a perverse gift to Microsoft in that it would enshrine in a legal settlement the permission to continue, extend, and expand Microsoft's predatory actions and anticompetitive behaviors. For every declaration of prohibited future conduct or requirements to treat other market players and consumers fairly there are entire paragraphs and clauses, definitions and exclusions, which Microsoft can and predictably will employ to subvert both the letter and intent of these supposed remedies.

Furthermore, the face-to-face contact between Steve Ballmer (he is Microsoft's CEO and President) and Dick Cheney (Vice President of the US) as negotiations were ongoing to draft the PFJ but not reported by either party in violation of the Tunney Act,

deserve censure of both sides by the Court, if not appointment of a Special Prosecutor to investigate political and adminstrative corruption.

Don't sell the software industry down the river, allow a monomaniacal company to unfairly wield its monopoly to take over several additional sectors of the economy, destabilize international standards for interoperability in ecommerce and communications, and continue to prey upon businesses, marketplaces, and consumers worldwide. Reject this PFJ. Write a fitting Judgement, with teeth!

Respectfully submitted,
Robert A. Munro
U.S. Citizen

From: Rick Hornbeck
To: Microsoft ATR
Date: 1/28/02 11:50pm
Subject: Microsoft Settlement

To Whom It May Concern:

I have attached three documents that explain my position on the Microsoft Antitrust Case, along with a proposed solution. I also attached a copy of my resume to establish my credibility and to assist you in determining the value that you should place on my recommendations. I do not believe that the Technical Committee will have the necessary access to key Microsoft personnel or the enforcement authority, either directly or indirectly, to make a difference.

Although the Proposed Settlement contains several good measures for curtailing some of Microsoft's anti-competitive actions, it does not go far enough.

I believe that the solution I propose in the first attached document will level the playing field to the degree needed to make a long-term positive impact.

Regards,
Rick Hornbeck
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(cell) + 1 323 363–2151
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January 28, 2002

U.S. Department of Justice
Anti-trust Division
Microsoft.atr@usdoj.gov

To Whom It May Concern:

I am writing to convey my proposed solution to the Microsoft anti-trust case. The dilemma is how to prevent Microsoft from using its monopolistic power in the future, to weaken competition, consumer choice, and innovation. Breakup along product lines is problematic due to Microsoft's successful public relations disinformation campaign Microsoft has astutely intertwined its various products so tightly that any breakup of the corporation is unrealistic, if it occurs along product lines, requiring each new organization to become its own, independent profit center. At least that is what Microsoft would have us believe.

Although such a restructuring is possible, Microsoft's argument would be that it would reduce the value of each product by approximately 30% because it would eliminate the benefits derived from their capability to ''interconnect,'' and exchange data 'seamlessly.'' In my opinion, this interconnectivity argument is flawed, as virtually the same quantity and quality of interconnectivity has existed amongst Microsoft's products for many years. Microsoft is notorious for inflating the value of its product's features in the media, in advertising, and in supposedly objective articles written by shills in technical journals. However, it has failed to introduce significant new interconnectivity feature enhancements over the past few years, and it is unlikely that any new advancements or features in this area are forthcoming.

In addition, the other major vendors in the desktop software market already offer the same level of interconnectivity between their own products and Microsoft's products, in the only area that really matters—cutting-and-pasting between applications. Nevertheless, any government or court-ordered solution must confront Microsoft's strong public relations and marketing machine, which means that the product line-based breakup model is at best a steep, uphill battle.

Proposed alternative solution—impose structural changes to Microsoft's business processes, not its organization.

My recommended solution requires looking at the situation from a different perspective—instead of imposing structural changes on the organization, impose structural changes to Microsoft's business processes.

My recommended solution is as follows:

1. Require Microsoft to develop and support versions of its major office products that are fully functional on other popular, current and future operating systems, such as Linux, Java, and Mac OS;

2. Until item (1) is achieved, impose a moratorium on the development and release of the following:

a. New Microsoft operating systems or significant upgrades to existing operating systems (except for security-related enhancements or upgrades);

b. Internet Explorer browser (except for security-related enhancements or upgrades);

c. Office suite product upgrades (except for security-related enhancements or upgrades).

3. Obviously this approach will impose a significant burden on the court or its designated representative to develop and rigorously apply a method for monitoring Microsoft's development activities, both at its own facilities, and at its subcontractor's facilities. Nevertheless, I believe this approach, although not without its challenges, is reasonable and realistic, and, if properly enforced, through a process or mandatory quarterly reporting to the court, is likely to achieve the desired objective.

Some amount of financial profit from the licensing of its products on alternative operating systems is appropriate, as further encouragement for Microsoft's enthusiastic cooperation.

This letter represents a rough outline of my proposal. If you would like to discuss it further, please feel free to contact me. You are free to use my ideas that I have enclosed in this letter in your prosecution of Microsoft's anti-competitive behavior, or in a related matter.

Regards,
Rick Hornbeck
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(cell) 323–363–2151

THE TROUBLING TRUTH ABOUT ''TRUST'' ON THE INTERNET

An objective survey of the security risks associated with ActiveX and its impact on Microsoft's share of the Web browser market.

(by Rick Hornbeck, M.S., J.D. 1997)*

BACKGROUND

Where did ActiveX Come From and Why Doesn't It Go Away?

By now it is generally accepted that Microsoft and Netscape are engaged in a great World-Wide-Web (WWW) browser war. It is also generally understood that Microsoft's almost limitless revenue from its Windows operating system software and related products will allow it to keep giving it's Internet Explorer browser away free for the next 20 years, while Netscape has to charge customers for it's products. What is less well understood is why ActiveX and the Authenticode securitymodel represent the other two prongs of Microsoft's Internet marketing strategy.

As recently as early 1995 Microsoft was still unsure of the Internet's significance and the role it would play in the PC desktop market. Microsoft believed it could continue its phenomenal year-on-year profit growth relying solely on new sales and paid for upgrades of its existing products. However, these sales must in turn rely on its ability to maintain its grip and influence on the distribution channel, on the corporate purchasers, the original equipment manufacturers (OEMs) and on the standards process. (For example, according to the Microsoft 1996 Annual Report, OEM channel revenues were $1.18 billion in 1994, $1.65 billion in 1995, and $2.50 billion in 1996.)The primary source of OEM revenues is the licensing of desktop operating systems. As such, Microsoft's OEM channel revenues are highly dependent on Windows-compatible PC shipment volume. During 1995 armies of software developers and consumers launched a blitzkrieg against Microsoft's PC desktop dominion, penetrating the Windows defenses everywhere with dynamically distributed Java applets and gaining over 70% of the market for Internet browsers.

Microsoft quickly realized that the confluence of Java with Netscape's browsers had the makings of a platform-independent de-facto industry standard, which would empower users to buy more non-''Wintel'' (Windows operating system on an Intel processor) desktop PCs. The Internet gave Microsoft a vision of it's impending mortality. In response, on Pearl Harbor Day, December 7, 1995, Bill Gates declared war, announcing that ''[t]oday, the Internet is the primary driver of the new work we're doing across our entire product line.''

The Microsoft Web servers took 8,000,000 hits on the first day of their campaign. After his two-hour public presentation Gates told National Public Radio in an interview, ''Well, we've got to make sure that we're leading the

way on the opportunities the Internet represents.'' ''Netscape has two great strengths,'' Gates admitted. ''They've got very high browser market share, and they've got the attention of the world .... It's very important to increase the popularity of our browser.''

Microsoft executive vice president Steve Ballmer put it bluntly when he said, ''[h]ave no confusion in your head: Job one for us right now is the Internet and defeating Netscape.'' Of his Mountain View, Calif., rival in Internet software, Ballmer says, ''They're simply our smartest competitor.''

It was against this backdrop that Microsoft launched its triumvirate Internet marketing strategy, using the parasitic relationship between Authenticode and ActiveX to increase the popularity of Internet Explorer.

INTRODUCTION

ActiveX and Java are ''mini-programs'' that can be downloaded from a Web site and executed directly on a user's PC. Unfortunately ActiveX mini-programs, or ''components'' or ''controls'' can reformat a user's hard drive, or copy personal files to a remote server on the Internet, or do any number of harmful things to a user's PC without the user's authorization or knowledge. A malicious hacker or terrorist could write one of these downloadable and executable programs and the user-victim has no reasonable way of either stopping it's attack once the control has gained access to their PC or reliably preventing it from gaining access in the first place.

The user has several ''unreasonable'' means of minimizing her risk: she can permanently disconnect her PC from the Internet, depriving herself of its benefits. She could browse only those Web sites that she ''knows'' do not contain harmful or malicious controls (''safe zones''), although the possibility of a hacker either spoofing a Web site, or covertly placing harmful controls into a ''known'' Web site exists. She could configure her Internet Explorer browser to prevent all ActiveX controls from downloading to her PC, and hope she does not encounter one that is able to bypass her browser's security configuration, which has been demonstrated in practice. Finally, she could take her chances using Microsoft's ''Authenticode,'' or Netscape's or Sun Microsystems'' ''code-signing'', trust-based security models that use public-key digital signatures and independent third-party Certification Authorities (CAs). Each of these unreasonable alternatives represents a different point on the risk/benefit scale which each user should consider before exploring the WWW.

However, this analysis is only necessary because Microsoft created a previously non-existent security risk by introducing ActiveX. As will be explained below, other software tools exist to provide software developers with the same capabilities as ActiveX, with virtually no security risk. Still, Microsoft has successfully obfuscated the seriousness of these self-created security issues and successfully redirected consumers attention' away from Netscape and Java. In doing so Microsoft has also successfully achieved its goal of creating the perception, in a very short period of time, that it is a player in the Internet game.

Because ActiveX does not contain its own internal security mechanism to restrict the actions of the program, Microsoft was able to introduce the Authenticode trust model as a viable protection solution. Because Authenticode uses public-key digital signatures in combination with trusted third-party Certification Authorities, and only runs on Internet Explorer, Microsoft sought to ''increase the popularity of its browser'' by touting its use of this ''cutting-edge'' technology as evidence of its leadership in the Internet software industry. At the same time it actively castigated Netscape and other browser vendors for allegedly leaving their users vulnerable to the hazards of ActiveX. Unfortunately, the people that suffer from this Machiavellian marketing strategy the most are the innocent netizens who ''reasonably'' allow unproved and potentially dangerous controls to be downloaded to their PCs leaving themselves vulnerable to the vagaries of malicious programmers.

It would be too harsh to accuse Bill Gates of raising Microsoft to is position of dominance through villainy or malice against his customers, given the trends of modern business practices. However, his continued promotion of Authenticode without acknowledging its serious security defects would seem to indicate that its effectiveness in mitigating security risks is subordinated to creating the impression that Microsoft is a leader in the Internet/Electronic Commerce industry. According to Eric Schmidt, Novell CEO, ''if Bill Gates continues with his strategies he could become the most powerful person in the world, and that's not necessarily a good thing.'' Simson Garfinkel wrote recently, ''Microsoft's ActiveX technology is the single greatest technological threat to the future of the World Wide Web. Microsoft's ActiveX promoters are either so blinded by their own rhetoric that they don't see the danger of this new technology, or else they are so cynical that they would destroy the very essence of the Internet rather than compromise their market dominance.''

In a different industry, Microsoft's actions could be analogous to a pharmaceutical/bio-engineering company releasing a virus or disease into the general population so it could profit from the sale of its potential cure. At the same time the pharmaceutical company could also enhance its reputation by advertising that it's anti-virus was created through the use of cutting-edge genetic engineering techniques thereby establishing itself as a leader in this field. However, for this analogy to be consistent the anti-virus must only be effective for a small percentage of the population. The rest of those exposed to the virus would remain susceptible to its deadly effects at any time.

This article will explore the very real damage that can be caused by harmful ActiveX controls, it will explain how Authenticode is supposed to mitigate these security risks, and why it does not. It will also explain why digital signature technology as currently applied under the Authenticode model cannot assist most users in adequately reducing their risk of injury from ActiveX because it does not provide the user with the necessary means of assessing whether or not the software they are considering downloading is ''safe.'' Bill Gates' vision of the future is a seamless integration of the Internet, the World-Wide-Web and the Windows operating system. According to Gates, when someone wants to e-mail a spreadsheet or other file to someone else over the Internet, they are not interested in going out and buying 14 different products to make sure the file will be compatible with the recipient's software. Instead what they want is a desktop environment that can provide spreadsheet and any other kind of robust functionality, without concern for the software or hardware on which it operates.

Most Internet software developers' share this vision however they don't share Gates' vision for implementing it, Microsoft believes this seamless integration should be based on Windows and Microsoft's Internet Explorer (IE) browser whereas the rest of the software industry favors Java because of its true platform-independence. Today Java can run on virtually any hardware or software platform in existence, including such varied platforms as IBM mainframes and Personal Digital Assistants (PDA's).

Yet Microsoft continues increasing the popularity of its proprietary browser by:

Marketing the benefits of ActiveX while simultaneously cross-marketing Internet Explorer (IE) because IE is the only platform capable of directly running ActiveX controls;

Continuing to give its IE browser away for free;

. Failing to live up to its promises made in the fall of 1996, to disclose ActiveX's specifications to an independent standards body, thereby preventing other browser manufacturer's from supporting it in their products;

. Marketing IE as the only means available for user's to purportedly protect themselves from the potential damage threatened by its own hazard, ActiveX, and

. Cross-marketing Authenticode as a general-purpose Internet security solution, thereby further reinforcing the perceived need for IE, because it is the only browser capable of supporting Authenticode.

A BRIEF COMPARISON AND CONTRAST BETWEEN ActiveX, JAVA AND PLUGINS.

(1) Origin of ActiveX

ActiveX adds to the user's Internet Explorer-based Web browsing experience by ''jump-starting'' Web site content, providing a variety of multimedia effects, enhanced page layouts, and executable applications, all of which are downloaded and run in real-time over the Internet. According to Microsoft, over 1,000 ActiveX controls already have been written in C, C++ and other languages for applications such as audio, video and live chat, all of which complement the core technologies of today's Web environment such as HTML, plugins, Java, cgi scripts and more.

According to Fred Langa, writing in Windows Magazine, ActiveX is ''... the fifth and most recent step in a long-developing evolution [by Microsoft Laboratories] of data-sharing and interoperability among applications.'' Essentially it is a trimmed down version of Microsoft's OLE (Object Linking and Embedding) system which a Windows ''power'' user will recall enables

several applications to collaborate on a single ''compound document.'' For example, OLE provides the ''glue'' that allows data to be copied from a WORD document and pasted into a PowerPoint document. The PowerPoint document can then be inserted into an Excel document and later opened as a PowerPoint document from within the Excel document. ActiveX is the next step in the development of this seamless interaction amongst applications. However, where ''Distributed OLE'' only lets the user share data, links and control over a local or wide-are network, ActiveX has taken the technological ''leap'' into Cyberspace by enabling the user to share data, application links and control between a Web page on the Internet and the user's Internet Explorer browser running on his PC. Java has taken the same leap but with much less risk to the user.

ActiveX controls automatically download and install themselves, and they persist (remain available) on a user's system. This feature provides two advantages over other programs: the user doesn't have to download and install software manually, and she only has to download the control once. This is good news to those who don't like waiting for controls to download every time they visit a certain site. However, these controls can be downloaded without user awareness or consent which means the user doesn't know what she is downloading.

(2) JAVA

Java applets can be thought of in the same way but with some important differences. Java applets run either inside the Java Virtual Machine (JVM), a software application that is built into newer browsers, or they can be run separately using the Java Development Kit (JDK). The JDK is a sort of software interpreter that converts Java code into code that is recognizable by the particular platform on which it is running. JDKs are now available for virtually all software and hardware platforms in existence. However, because JDK is another layer of software between Java and the actual operating system, Java tends to run more slowly. ''The major fear is that Java is not going to have the performance it promises, and its going to fade away like a bad TV show.'' Built into both the JVM and the JDK is a set of security controls colloquially called the ''sandbox.'' Java's security model automatically prevents any code from accessing portions of the operating system or the PC hardware that is outside the parameters of the ''sandbox.'' In other words if a Java applet wants to ''play'' on your PC it has to keep its toys inside the sandbox. In contrast, ActiveX controls are not restricted, which means they have direct access to the PC hardware, software and operating system. As a result, ActiveX controls run faster and do more, but at a substantial price in security. Also, because ActiveX controls are distributed in native binary code, separate controls have to be written for each operating system. Java applets, on the other hand are distributed in a one-size-fits-all or ''write once, run anywhere'' fashion meaning that developers only have to produce one version to run on any platform.

(3) Plug-ins

A third means of ''activating'' a Web site is through the use of Netscape ''plugins.'' Both Netscape and Internet Explorer browsers are packaged from the factory with a built-in set of ''standard'' features such as graphics viewers, which a Web site developer can then take advantage by including graphics in his Web site. However, in order for a Netscape browser to take advantage of any non-standard features which the Web site developer has programmed into his Web site, the ''plugin'' version of the entire application that is used to run it must first be downloaded to the user's PC from the developer's Web site and then executed. This is because the application is not embedded with the program, as in the case of ActiveX.

For example, assume that both an ActiveX control and a non-ActiveX program using plugin technology are created to enable users to download and view a short animation sequence from a commercial Web site. The ActiveX developer will include both the animation sequence and the ''viewer'' program in the same control. However, the developer using plugin technology must create a built-in hyperlink in the code to the viewer developer's Web site. When the user clicks on the link on the Web site to view the animation sequence, the code will automatically notify the user that she must go to the vendor's Web site and manually download the entire ''viewer'' software application before she can see the animation. ActiveX components are inherently much smaller because they contain only a limited subset of the entire application needed to perform the function at hand, and therefore can be downloaded more quickly. Once the ActiveX component is resident on the user's PC it can be reused, on-demand precluding future downloads.

According to Microsoft, the excessive amount of time needed by a user to download the actual application ''plugin'' file (.exe) poses a significant deterrent to the use of Netscape's browsers. However, as described in an article in the May 27, 1997 issue of Fortune magazine, Netscape's new Communicator browsers will also automatically install ''plugins.''

ACTIVEX's SECURITY DEFECTS ARE ''GENETICALLY INHERITED''

Because ActiveX is the product of many years of ongoing research and development at Microsoft laboratories it represents the latest in a long line of remarkable software technologies. However its predecessors, OLE and COM, have burdened ActiveX with their ''genetic blueprint,'' legacy code written for earlier generations of software and hardware platforms. In other words this latest progeny is constrained by its ''gene pool'' consisting of thousands of lines of code which have accumulated over the course of years of development and evolution and over which ActiveX is unable to break free. The most significant constraint imposed on ActiveX by this genetic blueprint is a deficient security model. According to Microsoft:

We are doing everything possible to create the technical safeguards that will make software safe. However, in order to remove trust from the equation, we would have to rip away significant amounts of functionality [read: code that could actually be rewritten to more closely fit the needs of the modern Internet environment] that users rely on today. Since the purpose of our industry is to provide more value and power to users, rather than limiting functionality, Microsoft and most other major software manufacturers are advocating a trust-based security model. [read: we could rewrite it if we wanted to but because it doesn't suit our interests we won't]

This ''genetic'' deficiency allows ActiveX controls to interact without constraint with both the operating system and the PC hardware. In a sense, it is as if ActiveX was born without an auto-immune system, making it incapable of combating viruses or malicious programming written by evil programmers that might invade the control and use it to enter and harm an innocent, unsuspecting host.

ActiveX's predecessors did not have to be concerned with such an auto-immune system because they were virtually guaranteed of living out their lives in a ''sterile'' environment. In other words, prior to the advent of the Internet the operating environment in which PC software was executed was always under the complete and exclusive control of the PC user. Each user was able to decide whether they wanted to load a particular program on to their PC, and once loaded whether and when to execute it. This environment remained ''sterile'' regardless of whether or not the PC was a standalone or networked because no external source, including a network operating system could place something onto the users PC without his or his network administrator's permission.

Today, however, through the wonders of downloadable and executable software technologies, a program can automatically download to a user's PC from a Web site or a network server and execute without the user's awareness or consent. Thus, the operating environment in which Microsoft's next generation software tool is living is completely different than the environment of its forefathers. Yet Microsoft has chosen not to take this congenital auto-immune deficiency seriously and has failed to reengineer ActiveX's ''DNA'' to create a reasonable security model thus leaving users vulnerable to exposure to the dangerous code. Such an unprotected and infected control acts like a cyber ''Typhoid Mary'' as it infects everyone it meets with the virus of harmful code. By way of explanation, suppose Mr. And Mrs. Jones owned and lived in a house during the same time the Microsoft software engineers were developing the ancestors of ActiveX. Mr. Jones worked diligently on his house, making improvements and refinements so it would be more comfortable for he and his wife. Now suppose Mr. And Mrs. Jones decide they want to start a family and Mr. Jones asks a contractor for a cost estimate to build a second-story bedroom. The contractor tells the Jones'' that because their house was built using an ''A frame'' design a second story cannot be added. Thus, the Jones'' are constrained from meeting their needs for another bedroom by the limitations of their house's original design, which did not take into consideration the future need for a second story. Similarly, ActiveX is

constrained from incorporating a security model by the limitations imposed on it by the software designs of its predecessors.

However, if Bill Gates were the owner of this ''A frame'' and he wanted to add a second story because he and his wife wanted to start a family, he could easily afford to tear down the existing structure and build whatever design fits his current needs. Similarly, Mr. Gates and Microsoft have the resources to re-write ActiveX or develop a replacement. Indeed, one can only speculate why he has chosen not to develop an Internet software product that fits the current needs of his customers, given that the environment in which his software executes (the Internet) has changed, and is now ''open'' and ''insecure.'' Without providing an answer to this rhetorical question, Jesse Berst also observes in PC Week, ''ActiveX is.. the key to its future. Microsoft will be damned before it acknowledges that ActiveX has a security problem.'' Berst goes on to explain that ''[r]ather than help users understand and minimize the risks [associated with ActiveX], Microsoft contented itself with pointing out that similar problems were theoretically possible with Netscape products.'' Quoting PC Week Editorial Director and former director of PC Week Labs, David Berlind, Berst writes, ''Frankly, I want to puke.'' Microsoft will not give up ActiveX because it is the key to ''Increas(ing) the popularity of its browser.'' Without ActiveX there would be no need for Authenticode, and without Authenticode and ActiveX there would be no way of significantly distinguishing IE from a Netscape browser, except that it is given away at no immediate up-front cost.

THE AUTHENTICODE SOLUTION—Myth and Reality

(1) The Myth

In his article Jesse Berst explains that Authenticode is ''... like requiring people who send mail bombs to put their names on the package.'' Were that approach effective, even the alleged ''Unabomber'' would have been apprehended many years earlier, because according to news reports many of his mail bombs had postmarks from the small town where he lived. Obviously this approach is ineffective because the names would be blown up, just as any evidence of an Authenticode digital certificate could also be destroyed by a malicious ActiveX program after causing other damage to a user's PC. And yet on August 7, 1996 a Verisign Press Release quoted Verisign president and CEO Stratton Sclavos as stating, ''With this service, users can feel confident that the quotes Sclavos as stating that, ''Under the Authenticode program, developers must go through an application and verification process to ensure that certificates are issued only to the appropriate party. This eliminates any worry that developers could be falsely represented by an impostor.''

Microsoft's Authenticode security model requires that all software developers (commercial and independent) must register their ActiveX components with a Certification Authority such as Verisign, before Internet Explorer browsers will allow them to be downloaded to a user's PC from a Web site, if the browser's security setting is on ''High.'' The software developer must ''legally'' affirm that to the best of his knowledge the control is incapable of causing damage to a user's PC. Verisign issues the developer either an electronic ''individual Software Publisher's Certificate'' or an electronic ''Commercial Software Publisher's Certificate'' depending on whether they are registering as an individual or corporate software developer. Different identity verification criteria are used to establish the developer's identity depending on the type of certificate requested.

One way Microsoft successfully propagates the Authenticode myth is through contradictory and vague announcements and bulletins. The following excerpts demonstrate the range of conflicting statements about Authenticode that come from both Verisign and Microsoft management.

The following excerpt from Verisign's Web site explains the service it provides to its customers:

When customers buy software in a store, the source of that software is obvious.

Customers can tell who published the software, and they can see whether the package has been opened. These factors, along with others, enable customers to make judgments about what software to purchase and use, and how much to ''trust'' those products and the companies and individuals who publish them. When customers download software from the Internet, all they see (at most) is a message warning them about the dangers of using the software. The Internet lacks the subtle information provided by packaging, shelf space, shrink wrap, and the like. Without an assurance of the software's integrity, and without knowing who published the software, it's difficult for customers to know how much to trust software. It's difficult to make the choice of downloading the software from the Internet.

Verisign Digital IDs in conjunction with Authenticode (software validation) technology provide customers with the information and assurance they need when downloading software from the Internet. Authenticode communicates to customers the real identity of the publisher and assures them that the product has not been altered or damaged. (emphasis added) Contrast this language with the statement of Cornelius Willis, Microsoft's group product manager-Internet developer marketing, ''Authenticode does not guarantee that users will never download malicious code to their PC .... We don't claim ActiveX is a (a) The Problems of Establishing Identity in Cyberspace The advantage of knowing the publisher's true identity is that if provides the relying party with recourse in the event the software turns out to be ''harmful.'' In the physical world this is generally not a problem, as a purchaser can usually assume that the store's physical location will not change. The benefit of having a physical location to return to serves several purposes. First, the store owner's physical assets can be attached; second, the unsatisfied consumer can create a scene inside the store, or in the community, creating bad publicity for the owner and an incentive for prompt resolution; third, the physical location will be an indicator of the laws that will apply in the particular jurisdiction. Transacting in a physical location has advantages for the seller as well. The merchant can demand physical identification which can usually be verified through on-line databases combined with visual scrutiny of a photo ID, the purchaser's demeanor and dress and other non-verbal cues which can be stored by a video camera for future retrieval and proof of the transaction should the purchaser later attempt to repudiate. Telephone-based sales represents a hybrid marketplace with portions of the physical world and Cyberspace. From the consumer's standpoint, if she dialed an 800 or 888 number she has little assurance of who she was actually calling, where they are located what laws apply, and whether the ''order taker'' works for the company she is purchasing the product from, or an outsourced tele-marketing firm. The risks to the consumer are only that she may be giving her credit card number to someone other than a legitimate merchant who will use it fraudulently. However, her exposure is minimal because most credit card companies limit the consumer's liability to $50, assuming timely, good faith reporting efforts.

The merchant suffers greater risks through telephone-based sales, although the tradeoff is less overhead than a storefront. If the consumer dials an 800 or 888 number, 'caller id'' will notify the merchant of the phone number used by the purchaser to make the call which can be used in connection with reverse phone directories and address cross-checking databases to provide additional identity verification. However, the merchant is unable to demand visual identification, and is legally protected only by on-line credit card clearing services, which can only benefit the merchant after the credit card theft has been discovered and reported. The majority of credit card thieves use the card as quickly as possible after the theft to take advantage of delays in reporting, Because of the limitations on identify verification, and the delays in theft reporting, the likelihood of fraudulent telephone-based transactions increases significantly.

Internet-based sales represent the greatest opportunity for fraud to both parties. The merchant is unable to establish the caller's telephone number and related identifying information. Telephone records cannot provide evidence that the phone call took place because access will be through an independent Internet Service Provider dial-up service. Although Web servers can gather user information through cookies this is not always reliable. The opportunity for using stolen credit cards is at least the same as with telephone sales. (See ''The Essential Role of Trusted Third Parties in Electronic Commerce,'' Michael Froomkin)

Also, it is possible for a Web site to be ''spoofed'' or misrepresented by a hacker, causing the unsuspecting user to enter their credit card and other relevant identifying information on-line. Although a technical discussion of ''Web spoofing'' is beyond the scope of this article, a ''spoofed'' Web site can look exactly like the original to anyone but the most cautious of users. The unsuspecting consumer personal data would be turned over to the thief who would quickly use it.

Because of these and similar identity authentication problems consumers and merchants cannot know with certainty, even with Digital Ids, the actual identity of someone on the Internet. Greater security measures are needed before consumers can reasonably trust the Internet as a medium for safe commerce.

AUTHENTICODE—THE REALITY WHAT IS THE ROLE OF THE CERTIFICATION AUTHORITY?

The purpose of a Certificate Authority is to bind a public key to the common name of the certificate, and thus assure third parties that some measure of care was taken to ensure that this binding is valid. A measure of a Certificate Authority is their ''Policy Statement'' which states what measures they take for each class of certificate they offer to ensure that this binding of identity with public key is valid.

2. WHAT IS THE ROLE OF A DIGITAL ID (PUBLIC KEY CERTIFICATE)?

Although the actual digital signature process will not be covered in detail, the following brief explanation will highlight some of the important points. Traditional encryption for confidentiality uses only a single, ''secret'' key and is called symmetric cryptography. Digital signatures use a mathematically related key pair, (a ''public'' key and a ''private'' key) and employ a technology called asymmetrical cryptography. A mathematical formula or algorithm is used in conjunction with a ''random-number'' generator to create the public and private keys. The design of the encryption algorithm relates the two keys in such a way as to allow either key to decrypt a message encrypted by the other. However, it is ''computationally infeasible'' to determine the value of the private key based on the public key and the digitally signed message. Additional information on digital signature is available at www.rsa.com and www.abanet.org/scitech/ec/isc.

The utility of a digital signature as an authenticating tool is limited by the ability of the recipient to ensure the authenticity of the key used to verify the signature. The following explanation will demonstrate this truth. The traditional labels used to represent the different parties in this sort of discussion are Bob, the sender, and Alice, the recipient. For purposes of this discussion a third party, Mallet, will play the role of evil hacker. If Bob digitally signs a message using his private key and sends it to Alice the only way she has to verify that Bob really sent it is if she knows Bob's public key. However, Alice must be able to retrieve Bob's public key from a source other than Bob's message because if Mallet is forging Bob's message he will send his own public key, claiming that it actually belongs to Bob.

Mallet has the private key corresponding to the public key sent to Alice, her attempt to authenticate the message will result in a positive confirmation even though it was not really from Bob. However, if Alice has access to Bob's real public key from an outside trusted third-party source, and uses it to verify the message signed with Mallet's private key, the verification will fail, revealing the forgery. In short, the Certification Authority (CA) fills the role of an outside source and Bob's public key is transmitted from the CA to Alice in the form of a Digital ID or public-key certificate. In order to ensure the authenticity of the certificate, Bob's Digital ID will be digitally signed by the CA. In order for Alice to establish a ''trusted'' relationship with the CA she must have access to the CA's public-key from another trusted third-party:

In practice, most if not all CAs have chosen to provide their public-key certificates to Netscape or other browser developers, who embed them into their browsers for easy access. In the event Bob has registered his public-key with a new, or unregistered CA, the browser software will notify the user and give him the opportunity to accept the CAs public-key 'on the spot.'' This presents the user with a predicament, and also presents CAs with a strong incentive to pre-register with the Netscape, IE and other browsers.

The fundamental problem comes down to how good a job the CA did in authenticating the subscriber identity. The CA's response will be that it made a good-faith effort consistent with the terms of the agreement or CPS to which both parties are bound. However, close scrutiny of the agreement will reveal that (1) very little detail is provided about the authentication methods used or the reliability of its sources of information, (2) the level of effort invested in the identity verification process is a function of the Level or Class of Digital Id. In other words, a subscriber's Digital Id that costs $20 will not receive as much identify authentication effort as will the subscriber to a $400 Digital Id. The following examples are cited by Verisign as representative of the sorts of transactions that could reasonably be performed using the various Levels of Certificate:

These examples, as well as any attempt to standardize on a generalized template of reasonable reliance is of marginal utility. It quickly breaks down when faced with simple counter-examples such as the following. According to the Verisign Digital Id Certificate model, a Class 1 Digital Id is acceptable for use in confirming the identify of e-mail correspondents and transactions of very low value. Assuming an organization chose to use the Class 1 Id for transactions that are limited to a value of $.01, but the number of these transactions exceeds one million per day. Under these facts the company

3. HOW DOES THE INTERNET EXPLORER BROWSER PROCESS THE DIGITAL ID?

The following step-by-step explanation of what happens when an Internet Explorer browser visits a Web site containing an ActiveX component will provide an overview of the basic steps involved in the public-key digital signature process, as applied in Microsoft's Authenticode model. Additional introductory material on the subject is widely available on the WWW, including the Verisign, RSA, and American Bar Association, Information Security Committee sites.

When the IE browser arrives at a Web site that contains an ActiveX control the browser will first check to see if the component has been digitally signed.

If not, the browser will display a warning message to the user, stating that the component is of unknown origin and may present a security risk, and then allow the user to make the choice whether to allow the component to be downloaded to their PC or not.

If the component has been digitally signed the browser will determine which Certification Authority (CA) authenticated the certificate, and if it doesn't already have a stored copy, it will automatically obtain the software publisher's public key from that CA via the Internet.

The browser will then use the public key to decrypt the ''message digest'' portion of the certificate. The browser will then run the same digital signature ''hashing algorithm'' on the component again and match the resulting message digest against the one in the certificate.

If the component has not been modified, either intentionally or inadvertently since it was signed, the new digest should match the old one. If they don't match, either the code was modified or the public and private keys aren't a matched pair. Either way, the component becomes suspect and the browser notifies the user that it should be discarded.

4. PROCESS WHEREBY SUBSCRIBER CONTRACTS WITH A CERTIFICATION AUTHORITY FOR A DIGITAL ID.

The subscriber must provide the Certification Authority with enough identifying information to satisfy the CA's authentication requirements, depending on the Certificate Class. For example, the following information must be provided to Verisign during the enrollment process, either through their on-line enrollment forms or through regular mail.

Individual Software Publishers (Class 2):

. Individual Publisher's name, address, and e-mail address

. Date of birth

. Social Security Number

. Previous address (if you have moved in the past 2 years)

. Credit card information for billing

Commercial Software Publishers (Class 3):

. Company name, address, e-mail, phone, and fax

. information for a technical contact and an

. organizational contact.

. company's DUNS number, if any.

. Billing information (credit card, P.O. or check), and billing contact information, if any. As of June 1997, pricing for Software Publisher Digital IDs are as follows. Digital Ids for different purposes are also available, at different prices.

Class 2 Digital ID for Validating Software: $20 annually [for Individual Software Publishers)

Class 3 Digital ID for Validating Software: $400 annually [for Commercial Software Publishers, i.e. companies]

The following excerpt from the Verisign Web site explains their procedure for verifying a company or individual identity.

Based on Microsoft code signing program criteria, VeriSign will attempt to verify that your company meets a minimum financial stability level using ratings from Dun & Bradstreet Financial Services, or attempt to verify your personal information through a credit reporting agency such as Equifax for individual software publishers. Your

certificate will indicate if you have met this level. Some software, such as the Microsoft Internet Explorer 3.0, offers end users an option to bypass making an explicit choice to trust code from each new software publisher. If an end user checks an option to trust all software signed by vendors who have met the financial criteria, code signed by these vendors will be run without any user intervention.

5. THE UTILITY OF AN AUTHENTICODE DIGIIAL ID

All properly authenticated digital signatures can demonstrate to a high degree of certainty the following three attributes: Integrity—The component has not be modified since it was signed, either intentionally or inadvertently.

Authentication—The purported identity of the party who registered as the component's author, based on the certificate's level of assurance and Verisign's corresponding identity verification criteria.

Non-repudiation—The component's registered author cannot later repudiate his identify as the component's registered author should it cause damage to a user's PC or other computer-related product (assuming the author registered the component using his own identity).

However, because Authenticode will only work on Microsoft's Internet Explorer, users of any other browser will be unable to gain whatever benefit might be provided by this information. For example, if the ActiveX plugin from NCompass Labs, Inc. is used with a Netscape browser, any ActiveX component encountered on a Web site by the browser will be downloaded without Authenticode's intervention. Netscape's generic software download alarm will probably display a warning, giving the user an option to proceed or quit, but the existence of a Digital ID will not be a factor in the user's decision.

Digital Certificates can only attempt to vouch for the authenticity of someone's identity, not for their good intentions. Neither the digital signature technology nor the Certification Authority (CA) make any warranties as to the safety of the ActiveX component. The Authenticode system merely relies on the assurances made by the component's developer to the CA when they initially apply for a Digital ID subscription. In the patois of logic this appears to be circular reasoning. The party whose trustworthiness is in question is providing the means for assuring the user of his trustworthiness. Furthermore, CA's have neither the mandate, resources, nor the incentive to actively monitor the behavior of millions of its certificate holders. Although they do have a duty to suspend or revoke a subscriber's Digital ID based on reported breaches of a specific set of criteria, they are not obligated to perform an independent monitoring function.

The possibility of undiscovered fraud is significant due to the ubiquity of stolen credit cards and access to personal information on the Internet combined with the limited authentication of the user's identifying information. Authenticode is supposed to provide the means for a user or corporation to ''trust'' the ActiveX components they download from the Internet by ensuring ''accountability.''

The approach here is accountability—to cease having publication of software on the Internet be an anonymous activity. If an organization or individual wants to use the public Internet to publish software, they should be willing to take public responsibility for the code they author and publish. If the code proves to have errors or even malicious faults, these organizations and individuals should be willing to answer for them just as they would take credit for good code. This approach is founded on the idea that accountability is an effective deterrent to the distribution of harmful code. (emphasis added)

The same argument can be made that license plates should act as deterrents to either prevent or curtail the use of cars in the commission of crimes. Because the license plate establishes the owner's identity (with possibly more certainty than a software publisher's certificate) it makes him accountable for his acts using the car and therefore cars will not be used in the commission of crimes. Still, stolen cars are used every day, to smuggle drugs, transport criminals to and from crime scenes, and perform other illegal acts.

Obviously accountability is not an effective deterrent to the use of cars to commit crimes. Likewise, accountability is not an effective deterrent against the malicious use of ActiveX, because stolen credit cards are readily available. What is the solution to this problem? There is probably no single solution short of eliminating ActiveX entirely. However, a number of individual solutions are appearing which, when used in aggregate have the potential to reduce the threat of injury to an acceptable level. Several of these potential solutions are discussed below.

6. DIGITAL AUTHENTICATION FOR WEB SERVERS.

Verisign, Xcert, GTE and other companies are also in the business of selling Digital Ids for Servers. According to Verisign, their product would enable the server owner to establish his authenticity to Web browsers visiting his site. in the marketing literature describing Digital Ids for Servers on its Web site, Verisign explains:

In the virtual world of the Internet, however, the web-site of an unscrupulous con-artist might look just as professional as that of a legitimate business. The low cost-of-entry and the ease with which graphics and text can be copied make it possible for almost anyone to create sites that appear to represent established businesses or organizations. To protect your organization and your customers from such impostors, you need a way to establish you site's authenticity.

Interestingly, in one context Microsoft and Verisign guarantee that users will be able to garner enough information by visiting the developer's Web site to make an informed judgment of both the developer's and his program's trustworthiness. However, in this context Verisign is saying that because almost anyone can create Web sites that appear to represent established businesses or organization that Web site owners should use Digital Id for Servers to establish their site's authenticity to visitors. Later in this same Microsoft document mentioned above, under ''Qualifying for the Individual Software Publishing Certificate'' Microsoft rhetorically asks the question, ''What is the value of the Individual Software Publishing Certificate?'' The document responds:

it would seem that users aren't going to trust individuals they don't know, and businesses aren't going to let code signed by students at a local university into their corporate domain. While this may indeed be the case, the value of this type of certificate is in the information it provides to the user so that he/she can make the decision on how to run the code. Knowing who authored the code, and that the bits have not been altered from the time the code was signed to the present is indeed comforting information. Additionally, the implementation provides links from the user interface (UI) to Web pages so the user can obtain detailed information about the signed code, the author, and the certificate authority. After learning about this code and the author, the user may decide to run the code, and/or all future code signed by this certified individual. (emphasis added).

Leaving aside the remarkable statement that corporations would inevitably not allow software developed by local university students into their domain, Authenticode fails to provide an objective means for users to evaluate this supposedly detailed information about the signed code and its author that is being made available to them. One is left with the gnawing suspicion that Microsoft intends for there to be a direct relationship between a software developer's advertising budget, the purported ''trustworthiness'' of his software, and the frequency with which users will download it over the Internet. In other words the more a developer can achieve brand name and product name recognition amongst Internet users the more frequently his products will be downloaded. Not surprisingly, Microsoft has one of the biggest advertising budgets in the world.

7. PULLING IT ALL TOGETHER WITH SSL. ... ALMOST.

We have seen that browsers can authenticate software publisher Digital Ids and that Web servers can authenticate client browser Digital ??ds, assuming the subscriber's identity is established with reasonable certainty. However, this authentication is only performed once, at the beginning of the transaction. After the initial ''handshaking'' takes place and the browser software is convinced that the other party is who she claims to be, no further checking is performed. This would leave either or both parties vulnerable to eavesdropping, replay and spoofing attacks during the remainder of the communication, if not for SSL.

Secure Sockets Layer (SSL) is an industry standard communications protocol that attempts to remedy these problems by creating unique signature keys that are exchanged throughout the entire communication ''session.'' In other words, after the client is certain the server is not spoofing its identity, the server and client exchange ''session-keys'' that will be used to

sign the data during the data exchange. With SSL 2.0, the same signature keys must also be used for encryption, if confidentiality is needed, however with SSL 3.0 signatures can use different keys than the encryption engine. SSL's main function is to protect users from attack by eavesdroppers or message interceptors. Both the client and the server provide part of the random data used to generate the keys for each connection and that same random data is also used to generate the master secret key associated with that session.

(a) Caching data during secure connections. One important drawback to this SSL scheme is the fact that the Netscape browser can store in local cache on the user's hard disk any data that has been sent by it during the secure connection. Navigator 3.0 has an option to allow caching of data fetched over SSL connections, however the default setting is to not cache data. in Navigator 2.0, documents fetched using SSL were cached in the same way as non-SSL documents. However, the command ''Pragma: no-cache'' in the HTTP header can be used to disable caching for a particular page. Interestingly, in Navigator 1.0 documents fetched with SSL were not cached.

Most importantly the cached data is not encrypted and is available to ''prying eyes'' in cleartext form. As long as the cache remains on the user's hard disk, any information such as credit card numbers or private keys that were sent over the secured SSL connection are ripe for the picking by anyone either physically accessing the PC or using an intermediate agent such as an ActiveX control.

(b) Handling previously unknown certification authorities while Web browsing Whenever a previously unknown CA is encountered by a browser their Root keys for Certificate Authority certificates are loaded through an automatic process using an SSL connection. This means that conceivably a ''rogue'' CA can load its certificate into browsers and begin authenticating harmful ActiveX controls without any restrictions. Netscape states that presumably in the future loading a root certificate through a local process, such as from disk, LDAP, or other out-of-band mechanism, will be a supported addition or in place of the present method of connecting to a trusted server and downloading the certificate chain. This presumption is an acknowledgment of the severe security risks associated with the current approach, and also an acknowledgment of the technological complexity of the more secure approach.

(c) Vendor Incompatibles The successful application of these SSL keying standards is also completely dependent on the capabilities of both the client browser and the Web server. However because different software vendor's products support different implementations and versions of SSL, fundamental barriers still exist to prevent a universally ''secure'' Web browsing experience. Other obstacles to trustworthy applications include the inability for Web servers to automatically check every certificate for currency, either by checking its expiration date, or checking an on-line ''certificate revocation list'' (CRL) to determine whether the certificate has been suspended or revoked for fraudulent or criminal abuse. As this technology evolves, these barriers will be eliminated, bringing us closer to the goal of authenticated, safe communication on the Internet. The problem in the near term however, is that most users are not made aware of the risks associated with these technological shortfalls.

8. CERTIFICATION REVOCATION LISTS (CRLs)

A certificate revocation list (CRL) is a repository of information that presents the current state of any public-key certificate to anyone who accesses it. The CRL can be implemented in different ways but the approach Verisign uses for the Authenticode Digital Ids is to only include those certificates that have a current unrevoked status. In other words, it is possible for a certificate to either be in an active, suspended or revoked state. If the certificate has been revoked it should not be relied on under any circumstances. However, if the certificate is temporarily suspended it is possible that removal of that status is imminent and the potential relying party should contact the Certification Authority directly for further details. Regardless of the unique circumstances it is essential the potential relying party have access to the certificate status or he will be making an uninformed decision regarding reliance. Implementation of the CRL is another contentious subject that again trades off between the development costs to provide customer ease-of-use and informed decision making. Unless the potential relying party knows how to access and use the CRL they are unable to benefit from its contents. However, instructions on its location and use are not conspicuously displayed when the potential relying party is presented with the publisher's Authenticode-based Digital Id. This is generally because this option has only recently been made available to HTML programmers and so a significant retrofitting of all certificates is needed to implement it. When implemented properly a button will appear on the Document Info page for servers whose certificate supports the appropriate extensions or commands. When the button is pressed the CA will be queried via HTTP GET, and will display a dialog to indicate to the user if the certificate is good or not. This button does not appear in the Authenticode Digital Id but instead must be ''manually'' selected from the ''View'' pull-down menu on the browser. If a user attempts to use a client certificate that has expired, a dialog will be displayed warning them that their certificate has expired, and if this extension exists, a button will be on the dialog that will bring up a window displaying the URL. There is no automatic revocation check. As mentioned above, a button allowing manual checks is displayed on the Document Info page. According to Netscape this feature was added because some people needed revocation, but they did not have time to support full CRLs. However, in a future release they will support CRLs, and possibly other forms of revocation technology.

Client authentication as implemented by Microsoft Internet Explorer 3.0 is interoperable with popular Web servers that support secure sockets layer (SSL) 3.0 client authentication. Microsoft is working to extend the complete set of technology components necessary for webmasters to incorporate client authentication in their Web applications. This includes extending Windows NT(r) Server operating system support for challenge and response and the SSL 2.0 protocol used by Microsoft Internet information Server to also ''include support for client authentication through the SSL 3.0 protocol.

7. RELYING PARTY AGREEMENT

The greatest potential victim of any defects in the Authenticode model is arguably the relying party who attempts to verify the Digital ID and make the decision to download. A detailed discussion of the many legal uncertainties surrounding CAs and certificates is beyond the scope of this article. Suffice it to say that a legal outcome will in part depend on the jurisdiction hearing the claim and the ''reasonableness'' of the reliance. Verisign has attempted to address many of these issues in its ''Relying Party Agreement'' which, according to its language, is binding as soon as the third party ''relies,'' either intentionally or otherwise. This reliance is supposed to be triggered automatically when the party inspects a Verisign Certificate Revocation List or accepts a Verisign Digital ID. This agreement also attempts to remove the ''choice of law'' or jurisdiction question by specifying that all parties are bound by California laws. However, a more fundamental question must first be addressed. Under California's Uniform Commercial Code (UCC) statutes however, if a certificate is considered a good rather than a service, any disclaimer of warranties must consist of a conspicuous writing attached to the good being sold. It is difficult to envision how this should be accomplished, yet Verisign's incorporation by reference may not meet the California standard for conspicuousness. Furthermore, the relying party is expected to read this agreement before ''us(ing) or rely(ing) upon any information or services provided by VeriSign's Repository or website '' or ''search(ing) for a certificate, or ( ) verify(ing) a digital signature'' in Verisign's repository and that by doing the verification the user is agreeing to the terms of the agreement, including acknowledging that she has ''access to sufficient information to ensure that [she] can make an informed decision as to the extent to which [she] will chose [sic] to rely on the information in a certificate.''

The relying party is supposedly bound by the agreement which affirms that she has enough information to decide to what extent she will rely on the information in a certificate, and also that she is solely responsible for deciding whether or not to rely on the information in the certificate. In other words Verisign is making no statements about what the information in the certificate represents and instead shifts the burden to the relying party to make the download decision without providing them with the necessary tools and resources.

There are at least two flaws with this approach: (1) It presupposes the relying party can agree that sufficient information will be

on the certificate to make the determination as to whether she will rely on it or not, without having seen the publisher's Web site, and (2) The relying party must be able to receive authentication of a subscriber's public-key from a trusted-third-party (TTP) or the entire model is useless.

8. FACTUAL EXAMPLE OF FLAWS IN THE AUTHENTICODE SOLUTION

(a) Unforeseen Interactions

Consider two ActiveX controls. One provides a control similar to the Win95 ''Start'' button with all the commands on the user's computer presented in a list to choose from. Suppose it keeps these command names in a preferences file such as C:\windows\commands. The file may contain a list such as: Word, Excel, format c:, IE3, etc.

Consider a second ActiveX control that performs certain ''housekeeping'' functions on the PC at regular intervals. It automatically wakes up at a specified time and executes a list of commands such as backup, defrag, etc. Suppose it keeps its list of commands in, for instance C:\windows\commands. At the next scheduled interval the second control dutifully finds the file written by the first one and fires up Word, Excel, and then formats the C drive. Commands after this one are of diminishing consequence. The user's hard disk is wiped clean and so are the ''fingerprints'' for Authenticode. Even if they are somehow located, who should the user point the law enforcement people towards? Both controls did exactly what they were designed to do, exactly what they advertised to do. Who is the user going to sue? Obviously neither ''misbehaved.'' What happened was an unforeseen interaction between the two, and was only possible because ActiveX is given unrestricted access to those system-level tasks. With only a bit of planning it would be possible to come up with a cooperating gang of ActiveX controls to do deliberate theft via collusion where each program is only doing what it's ''supposed'' to, yet the total of their activity is much greater than the sum of the parts. Current methods of tracking events through logfiles are unable to accurately reflect the non-linearity that is clearly at work here in the interaction of the components, the only way to avoid this would be to strictly de-couple the controls, by not allowing any to share information with the other, such as giving each its own private file-space to write in. Although this is the approach used by Java's sandbox, alas it is not possible in the ''security-free'' world of ActiveX.

(b) Proving the Origin of the Malicious Code Can be Almost Impossible

In the event the malicious code does not either reformat the user's hard disk or destroy its digital certificate outright there is still a great deal of uncertainty as to how the particular malicious code at fault can be identified as the cause of any particular harm. Certainly it would be easy if the damage occurred immediately after the ActiveX control was downloaded. But if it does something indirect; or waits until executed the 100th time; or modifies some other program so that it later does something nasty; then tracking down the source of the original corruption will be extremely difficult.

Assume for example that a component is signed by the real author, who was certified by a competent CA to be a reputable software developer. The user reviews the certificate at install time, and accepts it on the basis of the reputation of the developer. The user then forgets about the code for some weeks to come. Later on, he or she visits a page of a hacker, or a page of a web site that has been broken into by a hacker, and the IE browser invokes the code with arguments supplied by the hacker. The code may appear to do what it's supposed to, or appear to do nothing at all while it's erasing the web browser's history file. The user may not even be aware that code is executing. The user goes on to about 50 other Web pages that night, and shuts off their machine with no evidence of a problem. When they reboot they may have a huge problem, depending on what the code was reprogrammed to do. The Authenticode scenario suggests that the user can now call their lawyer to sue someone, but who do they sue? The hacker that the FBI can't track? The well intentioned but pressured software developer who wrote the harmless control that was manipulated by the hacker to cause the damage? The certification authorities like Verisign that have forty page disclaimers of liability? And even if someone could be sued, is this an acceptable remedy for being without their computer system?

(c) No Consideration is Given to the Author's Competence as a Programmer

In cases where a program such as ActiveX has the ability to act on untrusted data, it isn't valid to make a judgment of its security simply on the basis of trusting that the writer of the program is not malicious. Consideration of how competent they are at writing ''safe programs'' is also important. Users of ActiveX are being encouraged to accept or reject controls based on whether they think the signer is trustworthy or not. No consideration is given to the stronger, and more relevant criterion of the author's competence as a programmer.

Because third parties can provide potentially hostile input to Active X controls—at least for those classified as ''safe for initialization''—the ''appropriate diligence'' for such a control is much greater than that required for an ordinary application. Even though a well intentioned author creates a ''safe'' program, unless it has been written using the appropriate security safeguards it can be made to cause damage through the actions of another ActiveX control.

(d) Microsoft Justifies the Inherent Security Risks of ActiveX by Arguing that Users Want and Demand a Rich Computing Experience.

It has been argued that the Java sandbox approach is too restrictive, and that users want and demand a rich computing experience. This may be true, but these same users would prefer to use the name of their favorite movie star or basketball player as a password. It is up to the computer professionals to maintain a balance between adequate security protection and ease of use. Users should be encouraged to take informed risks, but they must be given the guidance and tools to accurately perform the risk/benefit analysis. Authenticode deters users from taking informed risks because it fails to provide them with the information needed to make an informed decision while at the same time assuring them that it is at their disposal.

(e) The Myth That Commercial Software Publishers and Others Will Be Deterred From Writing and Distributing Malicious Software Because of the Polential Risks of Economic Loss and Legal Liability

Historically hefty financial barriers to entry into the software development market using traditional distribution channels have restricted the number of market entrants. However the Internet provides a very low entry-cost distribution mechanism that is not without an increase in associated risks. Lowering the entry cost increases the potential for abuse. Furthermore, automating the process increases the chance that the abuse may go unnoticed. No longer can it be assumed that software developers will not risk loss of their potentially small financial investment by loading malicious controls onto the Web that, if undetected, would serve their ends.

(f) Average User Lacks the Training and Resources Necessary to Make Appropriate Downloading Decision Based on Information Provided by Developer's Web Site

The average user is probably only able to recognize a handful of big name Internet-related software development companies and even fewer companies that develop ActiveX components. And yet users are being asked to decide whether or not they should download a particular company's ActiveX component based on whether they are ''known'' (which, according to Microsoft's definition means ''trustworthy''). Assuming the developer is ''unknown'' to them, the user has no idea what information on the developer's Web site is needed to making this critical decision and yet Microsoft clearly states that the user ''can make the decision on how to run the code'' based on the information provided in the certificate,

Furthermore, the average user will probably be reluctant to spend much time seriously evaluating the trustworthiness of a software developer and will instead base their decision on the site's professional appearance or some other intangible and possibly irrelevant factor. According to Michael Sullivan-Trainor, director of International Data Corp.'s Internet program, ''The problem with the Web is that the sleaziest company in the world can put up a site as slick as the most respected corporation. Shopping [and downloading software] on the Web requires a little more investigation.'' Because a professional appearance can easily be created by the most criminal of software developer's it cannot be used as a measure of the developer's trustworthiness and yet Microsoft provides no guidelines to assist the user in making this analysis. Nevertheless they continue to assert, as stated above, that ''the value of this type of certificate is in the information it provides to the user so that he/she can make the decision on how to run the code'' and that this should be ''comforting information.''

(g) Contrary to Microsoft's Claim, Downloading Software From ''Known'' Software Vendors Does Not Necessarily Eliminate Risk

Implicit in the Authenticode trust model is the belief that all ActiveX components

created by ''known'' software developers will be harmless and can therefore be trusted and downloaded without reservation. The recent track records of several software developers including Microsoft, seriously undermine this notion. According to an article called ''Microsoft Security Flaws Run Deep,'' in the March 6, 1997 issue of CNET's NEWS.COM authors Nick Wingfield and Alex Lash state that ''ActiveX is not the only security headache Microsoft is suffering. There are problems with its Internet Explorer browser.'' The article goes on to explain how earlier that week a group of students (does not specify whether they were students from the local university) found that by planting ''Shortcuts'' on a Web site they could trigger resident Windows 95 and NT programs to delete and manipulate files on a user's computer when browsing the Web site. According to the article Microsoft developers worked around the clock to fix the security hole.

In response to this IE ''Shortcuts'' security hole Stephen Cobb, director of special projects at the National Computer Security Association (NCSA) states, ''1 would say that you have to seriously question the integrity of Internet Explorer at this point because this was such a big hole.'' Cobb goes on to comment that ''Microsoft's statement that they did a lot of testing [on Internet Explorer] is worrying, because if they did a lot of testing and didn't find this problem, their testing is very flawed.'' In all fairness, it must be pointed out that security holes are being found in other software developer's products as well, however the significance of Microsoft's track record in this particular case is that they are the ones that are making the argument that if the software developer is ''known'' then their ActiveX components must be trustworthy, and that the only criteria that is important is whether or not the user recognizes the software developer.

The same CNET article also points out that even if no one's computer is actually damaged by a security hole that is subsequently discovered after the user has downloaded software, individuals and companies still have to spend time and money to install the security patches on their systems. Stephen Cobb concludes that ''[I]t's difficult for Microsoft to weasel its way out with the ''it does no damage'' excuse, because [in the case of the ''Shortcuts'' bug] systems administrators are already looking at a big cost hit,'' There is no empirical evidence to support Microsoft's assertion that downloading software from ''known'' origins is less risky than from ''unknown'' sites. Nor does this assertion take into consideration the possibility of a hacker placing a malicious control on a ''known'' Web site, or the possibility of a hacker ''spoofing'' a ''known '' Web site. Either of these can be done without detection either by the user or by the Authenticode system.

Joel McNamara explores this same issue in the June 1997 issue of Infosecurity News. In an article titled, ''Security-Market Dynamics'' he writes, ''As security professionals, we like to think that security ranks right up there on everyone's most-important list. But when security isn't the primary purpose of the product, security features all too often take a back seat. '' McNamara lists some of the security holes that have been discovered recently in many of Microsoft's products ranging from Windows NT, Windows 95, WORD macro viruses, to Internet Explorer, Authenticode and ActiveX. Joel observes that ''Microsoft's testing methodology appears to be more oriented toward discovering classic, show-stopping bugs rather than searching for more subtle, exploitable security holes.'' He concludes that, ''[i]f people continue to buy products with marginal security, why spend the extra time and money implementing high-end security .... Unfortunately, the marketplace usually needs to yell, scream and ??reaten to walk away before it gets what it wants. So, until then, expect to see security as little more than just another check on a marketing features list.'' A user can be exposed to significant security risks even when downloading software from a ''known'' developer such as Microsoft.

(h) Relevance of Authenticode ''Trust-Model'' for users outside the United States

Software developers located outside the United States but who wish to allow their components to be downloaded in the U.S.

According to the Verisign Web page, ''Digital Ids for Servers: High-level Security at a Low Cost:''

If your company has a Dun & Bradstreet (DUNS) number, you can complete your Digital ID request online. If you do not wish to use a DUNS number, or your company is not in the US, you can complete the enrollment form electronically and fax or mail Verisign any of the following pieces of documentation to establish your company's identity:

. * Articles of Incorporation
. * Partnership Papers
. * Business license
. * Fictitious Business License
. * Federal Tax ID Confirmation

Even assuming, for the sake of discussion, that Verisign's document authenticator's are familiar with the Articles of Incorporation or foreign equivalent for every country, and is able to make a reasonable effort to detect a faxed fraudulent document, how will the user who relies on the Digital ID know whether that foreign country even has any laws that will allow him some measure of recourse in the event that he suffers injury caused by the developer's software?

Software developers located outside the United States but who wish to allow their components to be downloaded both in the U.S. and overseas. Verisign has begun ''franchising'' overseas Certification Authorities who wish to base their practice statements on the Verisign ''Certification Practice Statement'' (CPS). Although several are under development, BelSign (www.belsign.be) is the first franchisee to go productional, , and their stated territory is limited to Belgium and Luxembourg. So far little details are available about identity authentication procedures and other practical considerations and responses to e-mail inquiries have not been forthcoming.

(i) Web sites Can Be Spoofed or Hacked

In December, 1996 the Secure Internet Programming team at Princeton University published a technical report describing an Internet security attack called ''Web spoofing.'' In this scenario, an attacker:

. * Creates a shadow copy of a web page;
. * Then, funnels all access to the web page through the attackers machine;
. * And finally, tricks the unwary consumer into revealing sensitive or private data, such as PIN numbers, credit card numbers or bank account numbers

Web spoofing requires that the attacker be able to interject his machine between the server and client, in a man-in-the-middle attack. Although under some situations certain visual cues may be used to detect the presence of a spoofed Web page, these can be eliminated by the skilled programmer. The only real solution is to check the ''View Source '' option and read the html source code for the Web page the user is currently browsing to know for certain whether their browser is connected to the correct site. Even a server and client using SSL can be spoofed if the hacker is able to intercept the client's initial request for authentication to the server and before a secure link is established. Once the unsuspecting user is connected to the attacker's bogus Web page, all transactions between the user and the certification authority can be intercepted and fraudulently manipulated. Thus, a harmful ActiveX program could easily be made to look as though it came from a ''known'' and trustworthy developer. After the program has downloaded to the user's PC and done its damage there is no way for the user to identify the developer because the program never had a Digital ID in the first place. Furthermore, the knowledgeable hacker will delete or modify the browser's history file so no record would remain of the user's visit to the spoofed Web site. According to Ed Felten, co-founder of the Princeton Internet Programming research team, there have been reports of the FBI investigating false sites and forcing them to shut

(j) Obtaining a Digital ID Through Fraudulent Means

Fred Mclain, software developer, consultant, and author of the now infamous ActiveX ''Exploder'' control (see below), provides the following perspective on the Authenticode ''code signing'' process, from a FAQ on his personal Web site located at www.halcyon.com/mclain/.

Code Signing simply attempts to identify who signed the control. Anyone can go out and get a code signature. It's a pretty much automatic process. You go to a web site, give them a name, address, credit card number and some other stuff (none of which have to be yours), click ''1 Agree'' on a page full of legal jargon, and pretty soon you get an e-mail with the information you need to sign the control in it. Once you have your Digital ID, you can sign any unsigned ActiveX control. Nobody reviews these controls! In other words, a signature doesn't tell you who wrote the control and it doesn't tell you if the control is safe or not. Heck, with the number of hot credit card numbers out on the net, it doesn't even tell you for sure who signed it. A danger is that seeing that a control is signed will give folks a warm fuzzy feeling about the control, and encourage them to run it, even though it does not guarantee their safety!

A recent Associated Press news item from San Francisco dated May 22, 1997

demonstrates the prevalence of credit card theft on the Internet and the accessibility to those stolen numbers. The article reports that according to Bureau spokesman George Grotz, the FBI recently arrested a hacker who used a ''sniffer'' program to eavesdrop on electronic transactions between customers and a dozen companies selling products through a major Internet provider. The sniffer software gathered 100,000 credit card numbers along with enough information to use them. The hacker was arrested for allegedly attempting to sell the information to an undercover FBI agent who saw the hacker's advertisement on a computer bulletin board.

FBI statistics indicate that the majority of computer crimes go undetected, and, until recently, most of the ones that are detected are never reported. Therefore it is safe to assume that there are many other sources of fraudulent credit card information gathered from the Internet that are available to persons registering ActiveX controls. Frequently the credit card owner will not realize their number has been stolen for several weeks or months, depending on the thief's spending patterns. As a result, if a stolen credit card is used to acquire a Digital ID using fake identification, the fraudulent charges will go through undetected and because there is no retroactive follow-up on the part of Verisign or Microsoft, the certificate will remain valid even after the card theft has been discovered and the card invalidated, unless the defrauded consumer makes the effort to contact them which is unlikely.

FACTUAL EXAMPLES OF ACTIVEX-RELATED SECURITY RISKS

(1) InfoSpace Program Compromises Authenticode Security

On September 23, 1996 CNET-Online and other publications reported that Lycos, a WWW Search engine company posted a program on its Web site that would allow downloadable programs with InfoSpace Digital Ids to bypass the Authenticode security controls in Internet Explorer.

Nick Wingfield's article ''Program compromises IE security'' explains that because the program which was created for Lycos by InfoSpace, a startup Internet company, circumvents IE's security warning window, InfoSpace could sneak programs onto a user's personal computer without warning.

InfoSpace executives denied that there was any malice intended in its program, adding that it has provided Lycos with an updated version of the code. Lycos planned to post the new program later that evening, according to InfoSpace. ''It was a bug that got incorporated into the production code,'' InfoSpace CEO Naveen Jain said. Although the InfoSpace program apparently was not created with malicious intent, according to Wingfield ''it underscores the fragility of Internet Explorer's security defenses, as well as broader security issues related to downloading over the Internet.'' ''Code signing is not a guarantee of code quality,'' Charles Fitzgerald, a product manager at Microsoft said. ''It's on accountability trail.''

The InfoSpace ''bug'' modified the Windows 95 Registry configuration setting by simply registering InfoSpace as a ''Trusted Publisher'' thereby allowing all code from InfoSpace to be downloaded automatically without requesting the user's consent. The operation is akin to inviting a guest over to your house for dinner before you leave town for a month-long vacation and having them copy the key to your front door without permission. If the guest enters your house while you're gone and a neighbor questions him about it, the guest only has to show the neighbor the copy of the key as confirmation he has your permission to enter. Whenever the user's browser detects an InfoSpace program it will automatically be downloaded without the user's awareness or consent, because Authenticode has been told to automatically trust all InfoSpace developed programs. ''Clearly their software is doing something a tad aggressive,'' said Rob Price, a group program manager for Internet security at Microsoft.'' (With Authenticode), users are making a one-time trust decision, this is a persistent trust decision.''

(2) Symantec Corporation's Norton Utilities Victimized by Malicious ActiveX Control According to information posted on their Web site (www.symantec.com), on April 7, 1997, Symantec was notified that a malicious Web site had been created that uses an ActiveX control to gain access to a user's PC if they use Norton Utilities 2.0 for Windows95 and get on the World Wide Web. Because a specific component (TUNEOCX.OCX) of the Norton Utilities System Genie is marked as a script file, ActiveX-aware WWW scripts can make use of it as an ActiveX control. The result is that a malicious user could use the script to run any command, such as delete, format or ftp, on the local host. Symantec responded to the news quickly and responsibly, posting a fix for the problem within 24 hours.

(3) ''Exploder'' Control

Software developer and consultant Fred Mclain created a live demonstration of ActiveX's capabilities in late summer of 1996. Mclain created an ActiveX control which he called ''Exploder'' and which he placed on his Web site with the explanation that it would perform an automatic ''graceful'' shutdown of any user's PC running Windows95 who chose to voluntarily click on the control link and automatically download it to their PC. Because the control caused a ''graceful'' shutdown no damage was caused to the user's PC, but the damage to Microsoft's image was immediate and irreversible. As recently as April 1997, Sun Microsystems CEO Scott McNealy was still demonstrating MClain's Exploder control to crowds of Java enthusiasts.

(4) Germany's Chaos Computer Club Live Demonstration To Make Bogus Money Transfers From Intuit's Quicken Online Banking Customers

The Chaos Computer Club (CCC), a German hackers group from Hamburg, demonstrated on national TV in February 1997 that they can use an ActiveX control to steal money from one account and put it into another without the use of a Personal Identification Number (PIN) during an online banking transaction.

CCC showed that once the ActiveX control is downloaded by a user browsing their Web site who uses Intuit's Quicken for electronic banking, the control will add an extra electronic fund transfer command to the pending transfer list. The next time the user does his or her banking online, the bogus transaction will get executed along with the rest without alerting the user.

The Computer Club's stated purpose in holding this public demonstration was to alert people about the risks associated with doing business on the Internet and specifically with ActiveX.

intuit, the company that develops Quicken, responded by recommending that users disable the ActiveX controls in their Internet Explorer browsers or switch to the Netscape Navigator if they are concerned about the safety of ActiveX controls. The company also stated that of the 9 million copies of Quicken currently in use worldwide, the present U.S. version of Quicken can only be used to transfer money from ''pre-authorized'' accounts as approved by the user. A future German version of the software will have encryption features to prevent hackers from breaking in. To its credit, Intuit did an excellent job of public relations ''damage control'' and used wide, the Web, because it is the the situation as an opportunity to educate consumers on how to take proper safeguards to protect themselves on the Internet in general and from similar situations in the future.

RECENT MICROSOFT SECURITY ENHANCEMENTS

(1) Microsoft's Authenticode 2.0—Band-Aid for a severed artery

Microsoft recently announced Authenticode 2.0, a significant upgrade to the initial version which was first released less than one year ago. On the plus side the new upgrade includes a number of features Microsoft says will make downloading code safer, including time-stamping support to ensure that code was signed with a valid digital certificate. Various Microsoft bulletins and announcements inconsistently report that It also supports access to certificate revocation lists (CRLs), a feature that checks in with an online list of revoked certificates before downloading code.

However, on the negative side the logistics of the upgrade are cumbersome, time-consuming and will potentially result in delays while unsuspecting users are forced at the last minute to download either the upgrade. Software publishers who have signed their code prior to June 1997 must re-sign their code by June 30, or before their current Digital ID expires. According to Microsoft, because Authenticode 2.0 checks the revocation list to determine whether the Digital ID is still valid, it will notify a user who wants to download an control that has not been re-signed as either unsafe to download (if their security is set to High), or out-of-date (if their security is set to Medium). Only code that has been re-signed will appear in the revocation list as safe to download.

This upgrade is significant as a validation of Microsoft's willingness to obfuscate the facts and fabricate its own reality, in its single-minded pursuit of market share. Prior to this upgrade a user was expected to navigate the maze of menus and options on

the Verisign Web site to locate CRL information. No explanation or instructions were presented to the user when the subscriber's certificate appeared on their screen, informing him that he must inquire of this proprietary database to find out whether the Id used to sign the certificate he was viewing and potentially relying on was still valid or whether it was suspended or revoked. Also, without the time stamping capability, it was impossible for the user to tell whether the certificate appearing on his screen was signed using an expired Digital Id or not. Although Microsoft and Verisign engineered this upgrade prior to the time most Digital Ids and certificates would have expired, there was no advance acknowledgment of this limitation. One can only hope that other essential attributes of this ostensibly trustworthy Authenticode security model are not still on the drawing board to released later as enhancements.

(2) ''Security Zones''

This new feature will let users or their network administrators arbitrarily divide the Web sites into four predefined zones: intranet, trusted extranet, general Internet and untrusted. Web sites can then be assigned to a particular zone, and be subject to the corresponding level of security protection. For example, ActiveX controls and Java applets coming from the Internet might be assigned to untrusted zones, and the administrator could prevent them from being downloaded by configuring that zones security protection accordingly.

In a sense this is just a ''macro'' version of Java's ''sandbox'' security model. The sandbox prevents Java applets from gaining access to sensitive system functions that are outside its boundaries. IE's security zones can also prevent Java and ActiveX programs from gaining access to sensitive system functions, depending on the way the security protections are configured. However, the user or administrator is Unable to override or misconfigure Java's default sandbox protection, whereas the IE security zone protection can be turned off or improperly configured, leaving the user completely vulnerable.

THE FUTURE OF ACTIVEX AND DOWNLOADABLE AND EXECUTABLE CONTENT—Will it ever be safe to ''trust'' again?

If Microsoft is unwilling, users must organize and develop alternative means of protecting themselves from ActiveX. Some examples of proposed alternatives include:

(1) Web of Distrust

One author is calling for an online, independent watchdog organization that ''provides users with timely alerts on hazardous or questionable software.'' This group would act as a clearinghouse for reports of all harmful or suspicious downloadable and executable content. The information could be distributed by newsletters to subscribers, or available to any user by hyperlink access before they make the ''fateful'' decision to download. Kobielus writes, ''Our best defense against malignant controls is to pool our experiences, expose the offending code-mongers to the entire online ''.... Net community and thereby burn them out of existence.''

Although certain legal issues and standards must be addressed before ''burning'' anyone out of existence, this approach could serve as a model for a more effective means of keeping Cyberspace free from harmful code.

(2) Better-Business-Bureau OnLine (BBBOnLine)

The Council of Better Business Bureaus, best know for their certification of local businesses in the physical world, have developed a new U.S. online service, ''dedicated to helping consumers identify ethical marketers on the Internet and thereby make the Internet a safer, more reliable place to get information and conduct business.'' According to information on their Web site, companies that display an encrypted BBBOnLine CARE seal on their Web pages have demonstrated their commitment to a series of strict business standards for customer service and marketplace ethics. Consumers can hyperlink from the seal to the BBBOnLine home page to get a reliability report on the member company, including their management, time in business, relevant aspects of its goods and services, complaint experience and other evidence of responsible marketplace behavior. Several large corporations involved in Internet-related markets are co-sponsoring this service including, Hewlett-Packard, Xerox, Netscape, AT&T, and GTE....

Some examples of their rigorous Participant Standards include: Provide the BBB with inform ation regarding company location, background, etc. which will be verified by the BBB in a visit to the company's physical premises;

Be in business a minimum of one year (with limited exceptions); Respond promptly to all consumer complaints; Agree to binding arbitration, at the consumer's request, for unresolved disputes involving consumer products or services advertised or promoted online.

(3) PC-based Browser Add-on Security Products

Several vendors including Finjan Inc., and Safe Technologies have recently released products that promise to provide protection against all Internet threats, whether they are hostile ActiveX controls or Java applets, eSafe Protect not only recognizes a set of known security holes and rogue controls, but it also has the ability to run in a learning mode. This allows the program to see where the user's browser and e-mail clients usually read or write data or execute other applications and develop a pattern of acceptable behavior (similar to an ''intelligent'' sandbox model). After the learning period is completed (usually about one day), any activity outside of the normal range will generate an alarm, and require user intervention to proceed. As a result it also provides protection against yet-to-be-discovered security holes in popular Web browsers or other unknown hazards. Independent Software Accrediter is Necessary to Determine Software ''Harmlessness'' Digital signatures can measure the authenticity of a person, but not their intentions or competence. Until software developers see it is in their best interest to invest more resources into writing secure software a separate entity is needed to gather concrete evidence of the software developer's intention and competence in advance. By testing their software against industry benchmarks and providing guidance to the uninformed user interested in ascertaining the safety of the software they want to download this entity will bridge the gap between identity verification and a software publisher's intentions and competence.

The ''Software Accrediter'' will validate that an ActiveX component is both harmless and ''safe'' to operate in an ''open'' environment by testing it against a set of industry-wide programming and Internet security standards. For a control to be ''harmless'', it must be unable to cause damage by itself. For it to be ''safe'' the control must be designed and written with a level of programmer competence that prevents other controls from being able to advantage of programming flaws and force it to cause harm.

The Software Accrediter will take on significance in the use of downloadable and executable content to authenticate its conformity to the norms of programming and Internet security practice. For instance, where a Software Publisher Digital ID is executed and digitally signed by a Certification Authority, the ''Software Accrediter'' will issue a message of accreditation attached to the Digital ID which validates the harmlessness and safety of the program within certain parameters. The validation will identify the level of risk associated with the control and the user can make an informed decision whether or not to download the control, based on the potential injury he could suffer. Neither the mere application of a digital signature, or the restriction to ''safe zones'' satisfies accreditation requirements for these types of dangerous programs. The ''Software Accrediter'' will combine the benefits of digital signatures with industry-accepted software accreditation to provide high quality international control authentication in a measure far exceeding current practices.

Public key cryptography, or digital signatures, can be used to sign application software and certify it as ''safe'' as judged by some certifier, only if the software is held up against a set of industry standards—where one of the ''safety'' properties would be that the application cannot be corrupted by malicious external programs or data. Microsoft offers Authenticode as a way of empowering the user to determine whether individual downloadable executable Web content is safe to use. It purports to provide the user with information which will be ''comforting'' to them in their analysis. Unfortunately, Authenticode simply moves the burden of assurance on to the user, without making the analysis any more tractable. It places an unreasonable burden on users, who must decide which developers are trustworthy based on insufficient data and inadequate tools. Because even major mass market application software (e.g., Quicken) appears susceptible to attacks by malicious controls, it is not clear what this type of certification technique could add.

Netscape's Hybrid ''Code-Signing'' Solution

Netscape has recently released its own implementation of an Authenticode-like Product that has much more robust security protection against harmful downloadable and executable programs. In addition to the generic characteristics of a digital signature; authentication, integrity and non-repudiation, ''code-signing'' also determines what an ActiveX control or Java applet wants to do on the user's machine, Netscape's Communicator checks to see if the software is signed and attempts to verity the signature. If the applet is unsigned or if the signature is unverified the applet is automatically restricted to running inside the ''sandbox.''

When the downloaded program wants to get access to a PCs system resources a dialog box is displayed that shows the user what kind of access it wants, the identity of the signer, and the associated risks. With this information the user then decides to allow or deny the access that the Java applet has requested.

ActiveX controls can be packaged in such a way as to fulfill the Java specifications necessary to allow code-signing. This process is accomplished using the JAR Packager tool which creates an envelope around the control that results in a cross-platform JAR file. The JAR Packager is a tool that allows developers to sign, envelope and compress Java applets, plugins, and any other type of file. The JAR file format was a joint effort between JavaSoft and Netscape.

In the future, an evolving combination of these and other approaches will be used to provide protection. Security guru Gary McGraw believes the long-term solution combines ''code-signing authentication and some sort of security model, like a [Java] Sandbox.'' He believes it will be ''much easier to [add code-signing] to extend Java .... than it will be reverse engineer Sandbox into ActiveX.''

SUMMARY

The general outlook for ActiveX as a computer security problem is unclear. The potential vulnerabilities are legion. Bearing in mind the FBI's computer crime statistics indicate that over 80% of all detected computer crimes go unreported, and many more of them go undetected, during its initial 18 months in existence exploitation of ActiveX has been virtually non-existent. Unfortunately, as the economic incentive for creating malicious ActiveX controls increases, it seems likely that attackers will attempt to exploit its security vulnerabilities.

Given the obvious security risks presented by ActiveX, combined with the absence of broad-based support for Authenticode, the only possible explanation for Microsoft's continued pursuit of this folly is a last-ditch effort to keep its hand in the Internet game and maintain its share of the desktop computing software market. Microsoft is Committed to maintaining its monopolistic hold on the PC and Internet software industry by marketing its auto-immune deficient ActiveX software product, and its parasitic partner Authenticode. Even with the intellectual horsepower at its disposal it appears to be unwilling to develop a secure alternative because then there would be little incentive for users to purchase its internet Explorer Web browser, and there would be little hope for Bill Gates'' vision of a single, seamless Windows-based PC desktop and Internet interface.

CONCLUSION

This article has presented some good points and bad points about ActiveX and Authenticode both of which have only been in existence for less than two years. It is inevitable that both security protection for downloadable and executable programs and Certification Authority policies and practices will evolve gradually. Nevertheless, in the interest of minimizing the risk exposure to the user, it would be prudent for software developers to acknowledge these risks up front and allow users to understand them and begin making informed decisions based on accurate information, or paying customers must demand something better. Risks associated with downloading any software from the Internet are unavoidable, but Microsoft chooses not to explain those risks to users or give them the tools to properly manage those risks. Instead what Microsoft does provide is confusing, contradictory FAQs, bulletins and marketing announcements that even go so far as to state, ''Because Microsoft must respond to changing market conditions, this document should not be interpreted to be a commitment on the part of Microsoft, and Microsoft cannot guarantee the accuracy of any information presented after the date of publication.''

Microsoft understandably wants to be the first to market with each of its latest Internet software products so it can gain whatever advantage it can over its competitors. But they are cutting corners at the customer's expense by leaving necessary security features out and the customer needs to be informed to decide whether it is an acceptable expense. In the wake of Love Canal, Three-Mile Island, Hanford Nuclear Reactor, Rocky Flats and other life-threatening breaches of the public trust we have matured as a nation to the point where even the courts support our right to receive advance notice before toxic chemicals are pumped into our back yards and personal spaces. Yet Microsoft is allowing toxic ActiveX components to be downloaded into our PCs without reasonable notice and disclosure of all the risks by pretending that it's fake security system Authenticode can provide reasonable detection and defense.

The most effective long-term technical solutions appear to require systemic changes in the way computer software is built and the way software standards are developed and enforced. The safest near-term alternatives for the majority of users all involve giving up many of the ''bells and whistles'' that make Web browsing so entertaining by configuring Internet Explorer browsers to restrict all ActiveX controls from being downloaded to the desktop.

Microsoft recently announced on TechNet that, as of the release of XP, the only way that consumers and businesses can make on-line purchases, or submit private data (e.g., on-line banking) through a ''secure'' (SSL-enabled) Web site, is by using new features that are available exclusively on Windows XP, via the Windows Update Web site. Users of Microsoft NT, ME, and WZK may install an ''upgrade patch'' that will allow them to manually download new root certs, and to use a limited subset of the XP-based capability.

To better protect Microsoft customers from security issues related to the use of public key infrastructure (PKI) certificates and enhance the experience for Windows users, Microsoft is moving to standardize and clarify the criteria for root certification authorities in Windows XP. This standard also applies to root certification authorities in Internet Explorer and any other Microsoft product.

(http://www.microsoft.com/technet/security/news/rootcert.asp)

Let me repeat, as of the release of XP next week, the ability for consumers using non-Microsoft operating systems to perform ''secure'' transactions via Internet Explorer (IE) will be severely curtailed, and over the coming months, entirely eliminated.

When a user visits a secure Web site (that is, by using HTTPS), reads a secure e-mail (that is, S/MIME), or downloads an ActiveX control that uses a new root certificate, the Windows XP certificate chain verification software checks the appropriate Windows Update location and downloads the necessary root certificate. To the user, the experience is seamless. The user does not see any security dialog boxes or warnings. The download happens automatically, behind the scenes.

Microsoft has no plans to provide an ''upgrade patch'' for the non-Microsoft versions of IE that it currently supports (e.g., Solaris, Linux, HP-UX, and Mac.). Microsoft properly considers Auto Root Update and Windows Update to be Windows technologies for conveniently keeping users up to date with certificates in the Microsoft Root Program (the user doesn't have to take many steps to install the roots). However, it has no plans to provide these convenience mechanisms for non-Windows platforms at this time.

The result is that the only way that CAs or on-line merchants can get their certificates into the IE browsers of non-Microsoft consumers is by forcing the consumer to manually download and install the certificate directly from a Web site. This eliminates any level of trust assurance that may have resulted from IE's existing root certificate accreditation process.

Under this new regime, when a consumer using IE on a non-Microsoft platform enters a secure Web site to make a secure on-line purchase, he is prompted to download and trust the CA root certificate of any merchant whose root is not already in that browser, The same is true if a Web site wants to download an ActiveX control, which is signed by an unknown and hence ''un-trusted'' Publisher, Eliminating future access to new root certificates in its IE browser will deprive consumers using non-Microsoft platforms from the ability to conveniently and ''securely'' make purchases at a secure Web site (HTTPS), read secure e-mail (S/MIME), or download signed ActiveX controls with the same level of trust assurance that he experienced prior to this new regime.

This change will adversely affect the consumer, the on-line merchant, and the CA,

as each of them has a stake in making the on-line experience as smooth, secure, and convenient as possible. This latest manipulation of the Internet software market by Microsoft will provide consumers with a strong incentive to migrate to a Windows platform, so they can continue to use the Web with the same degree of ease, and sense of security as before.

In addition, some commercial PKI applications and products are designed around consumer access to their root certificates in Microsoft's IE. Eliminating consumer access to their root certificates from IE will force them to restructure their applications, and in some cases their whole product strategy. Of course, Microsoft will argue that these vendors were receiving a ''free ride,'' while it developed the technology to tighten up its PKI solution. However, Microsoft's PKI solution is anything but ''tight,'' and in fact, it is still quite immature. In addition, it will remain so for several years, to the detriment of the consumer, and the industry.

This tactic is virtually identical to the one that Microsoft used to eliminate competition in the browser market. It offered features similar to Netscape's, but at no charge, because it could afford to use its income from OS sales to offset the loss it took on its browser product. Initially, Microsoft's browser was inferior to Netscape. However, over time, as the marketing power of the Windows desktop gradually surmounted Netscape's marketing channels, and as Microsoft commandeered many of the existing Internet browser standards, IE achieved a superior market position. This time Microsoft provided consumers and the industry with ''free'' access to CA root certificates embedded in IE. However, now that it believes it has eliminated any competition for this service, Microsoft intends to force consumers to purchase XP or another Windows platform, so they can continue to enjoy the same convenience and benefits from digital certificates as before.

Although Microsoft will certainly claim otherwise, I believe it is well within its power to continue to support the storage of new root certificates in non-Microsoft versions of IE. However, Microsoft representatives have indicated that they have no plans to do so at this time. As are result, consumer trust in on-line commerce, and the viability of many PKI solution vendors will both suffer in Microsoft's latest grab for another piece of the Internet software market, PKI. Microsoft's PKI solution is inferior to current alternatives, and it will not achieve its promised capabilities for many years, after using the public as its testing ground.

Is Microsoft trying to corner another piece of the Internet software market by illegally leveraging its market powers, as the court agreed that it has done in the past? The pattern is virtually identical.

Rick N. Hornbeck
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Pasadena, CA 91105
Rick_Hornbeck@pacbell.net
(323) 363–2151

PROFESSIONAL EXPERIENCE:

HORNBECK CONSULTING—Pasadena, California 2000—Present.

* Security Policy, Certificate Policy, and Certification Practice Statement consulting and development; Internet and network security policy consulting; PKI legal issue spotting and consulting. Representative topics include privacy; identity authentication; ''qualified'' certificates, security services, jurisdiction, and digital and electronic signatures; and local, national, and international regulations and case law in both civil and common law jurisdictions.

Customers include:

* ENSURELINK CERTIFICATION AUTHORITY—San Diego, California 2000—Present. PKI Consultant—Certificate Policy, Certification Practice Statement, and PKI-related consulting.

* ALPHATRUST CERTIFICATION AUTHORITY-Dallas, Texas 2000. PKI Legal Consultant-Certificate Policy, Certification Practice Statement, and PKI-delated legal consulting.

* EXPERIAN—Orange, California 2000. PKI Legal Consultant—Consulted with in-house legal counsel, defining and documenting application-specific, PKI-related legal issues.

ENTRUST TECHNOLOGIES—Plano, Texas 1999—2000. Senior Security Consultant-Developed Security Policies, Certificate Policies, and Certification Practice Statements for large national, multi-national, and international organizations. Worked directly with senior client management to determine 1heir PKI requirements. Worked with sales force on national opportunities. Worked with consulting partners to out source PKI consulting work during peak periods and on joint projects. Provided on-site classroom training programs lasting 3–4 days for consulting partners and customers on Entrust-specific security and PKI consulting methodology and concepts.

Customers include: Experian, Bell Atlantic, MCI WorldCom, Hoffman-LaRoche, State Farm Insurance, First American Real Estate Information Services (FAREIS), Ernst & Young, Price Waterhouse Coopers, People's Bank of China, Capital One, US Department of Agriculture, Fidelity Investments, Illinois Secretary of State, First Data Corporation ....

OFFICE OF COURT ADMINISTRATION, STATE OF TEXAS—Austin, Texas 1997—1998. Strategic Technology Planner-Responsible for the implementation of a statewide computer and communication network linking all state courts. Developed supporting rules, policies, guidelines, and statutes relating to the electronic filing of court documents. Prepared cost analysis and preliminary design for the Texas Judicial Committee on Information Technology, based on planned technology.

ELECTRONIC COMMERCE SYSTEMS—Los Angeles, CA (1995—96); Austin, TX 1997–1998. Principal-Consulting company provided electronic commerce consulting services with an emphasis on Internet and Web-based security, public-key infrastructure (PKI), digital signatures, electronic filing of court records, and electronic payments.

Customers included:

Wells Fargo Bank—Los Angeles, California, 1996.

Database Developer-Designed and developed MS-ACCESS database integrating First Interstate Bank commercial loan database with Wells Fargo data following bank merger.

Orange County Superior Court ('intern, part-time)—Santa Ana, California, 1996.

—Court Technology Department—Drafted new court rules for electronic filing of pleadings via the Internet for pilot family law electronic filing project.

—Law and Motion Research Department—Reviewed, researched, and summarized legal motions for judge's Law and Motion hearings.

LAX SHUTTLE TRANSPORTATION CONSORTIUM, El Segundo, California 1996. Arbitralion Hearing Officer ('part-time)—Arbitrated appeals from personnel disciplinary actions.

ATTORNEY GENERAL'S OFFICE, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA—Los Angeles, California 1995–96. Legal Intern (part-time)—Wrote briefs, motions, and memos; performed legal research in support of Deputy Attorneys General; assisted in trial preparation.

COMPUTER SCIENCES CORPORATION—El Segundo, California 1993—95. Senior Management Consultant—Developed Information Systems Strategic Plan and Architecture for United States Air Force, Materiel Systems Command, Los Angeles Air Force Base (LAAFB). Delivered an integrated, base-wide strategic plan encompassing reengineered business processes, network operating systems, e-mail, and network security for over 25 unique, on-base Air Force organizations with disparate computer and network platforms.

TRW SPACE & DEFENSE (ELECTRONIC SYSTEMS GROUP), Redondo Beach, CA. 1988–93. Network Systems Engineer-Led team in design, development, and implementation of a reengineered purchase order processing system using state-of-the-art client-server technology linked with the corporate network. Implemented software upgrade for Procurement EDI application .and integrated with batch FTP transfer from mainframe. Responsible for implementation, administration, and security of multiple, inter-connected local area network servers running SCO UNIX, AT&T System V.4, and SUN OS over TCP/IP, and DOS/Windows clients.

PRICE WATERHOUSE, OFFICE OF GOVERNMENT SERVICES, Los Angeles, California 1987. Senior Consultant Created functional model for reengineered application in support of ''Los Angeles Employees Retirement Association'' (LACERA) software development project team.

XEROX CORPORATION, PRINTING SYSTEMS DIVISION, El Segundo, California 1985–87. Senior Analyst/Programmer-Supervised two analyst/programmers and coordinated design, development and implementation of purchase order entry system for Printing Systems Division.

TRANSAMERICA CORPORATION, Los Angeles, California 1983–85. Analyst/Programmer-Assisted in design, development, and implementation of a nation-wide information system enabling insurance agents to submit customer applications for insurance coverage directly

into the mainframe computer in the home office from field offices across the country.

TEACHING EXPERIENCE:

* UNIVERSITY OF PHOENIXON-LINE, 2001

Part-time instructor-Risk Management in a CIS Environment (Computer Security); Contracts, Ethics, and Intellectual Property;

* SANTA MONICA COLLEGE, 2001.

Part-time instructor-introduction to Computer Systems;

* CALIFORNIA STATE UNIVERSITY, LOS ANGELES, 2001.

Part-time insfrucfor-Internet security.

LOYOLA LAW SCHOOL, Los Angeles, California.

Juris Doctor—December 1996.

Dean's List Honors, 1995.

California State Bar Foundation—Public Service Grant 1996.

UNIVERSITY OF SOUTHERN CALIFORNIA, Los Angeles, California.

Master of Science, Information Systems Management—May 1990.

CALIFORNIA STATE UNIVERSITY, LOS ANGELES, California.

Bachelor of Science in Business, Minor in Business Information Systems—June 1983.

Dean's List Honors, 1982.

ADMITTED TO PRACTICE

State Bar of Utah—May 2000, Active Member.

ARTICLES, STANDARDS ACTIVITY, PRESENTATIONS, AND COURSES TAUGHT:

PUBLISHED ARTICLES:

* Electronic Filing of Court Records: Standards and Open Systems (West Group 1998);

* Electronic Court Filings for Attorneys: What, Where, When, Why and How (West Group 1998);

* Into the Breach.'' Understanding Security Issues Involved in Commerce on the Internet—Parts I and II, The DataLaw Report, (Clark, Boardman, and Callaghan 1997);

* The Troubling Truth About ''Trust'' on the Internet, Journal of Electronic Commerce, (EDI Group, Ltd. 1997);

COMPUTER SECURITY, PKI STANDARDS, AND RELATED ACTIVITY:

* Internet Engineering Task Force (IETF) ''RFC 2527,'' Internet X. 509 Public Key Infrastructure Certificate Policy and Certification Practices Framework, attributed contributor (March 1999);

* GUIDES—Guidelines, Methodologies and Standards to set up a CA for Digital Signatures, European

Commission, attributed contributor (June 2000); * American Bar Association (ABA), Information Security Committee, Digital Signature Guidelines, drafter (August 1996).

* High-Technology Crime Investigation Association—Southern California Chapter, Member.

* Internet Corporation for Assigned Names and Numbers (ICANN)—Member At Large.

PRESENTATIONS AND COURSES TAUGHT:

* Risk Management in a CIS Environment, University of Phoenix On-line, July-August 2001.

* Certificate Policies and Certification Practice Statements in a Network Trust Model, The Internet Security Conference (TISC), October 1999 Boston, MA;

* Electronic Filing of Court Records: Standards and Open Systems, American Bar Association Annual Meeting, Presidential CLE 1998.

* Electronic Filing of Court Records: A Conceptual Framework, 1998 ABA TechShow;

* Introduction and Intermediate Public-key Infrastructure (PKI); Digital Signature, and Related Standards at the State, Federal, and International Levels; Certificate Policies and Certification Practice Statements (Entrust) 1999;

* Introduction to UNIX Operating System, San Jacinto Community College, Clear Lake Texas, (NASA) 1997.

FOREIGN LANGUAGES:

French (Fluent), Spanish (Proficient).

MTC–00029415

From: Robert Heath
To: Microsoft ATR
Date: 1/28/02 11:51pm
Subject: Microsoft Settlement

Hello,

I just wanted to share my opinion on the Microsoft Settlement. As it stands, I don1t see how the current proposal of basically flooding the market with Windows-based PCs would create or foster a competitive environment. I truly hope those making the decisions think things through and see this as what seems to be an underhanded and sneaky way to comply with a demand without really complying at all.

Robert P Heath
Panama City, FL

MTC–00029416

From: HGoeppele@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:51pm
Subject: Microsoft Settlement
Mary Ann Goeppele
15943 NE 139th Place
Woodinville, Washington 98072
January 28, 2002
Attorney General
John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today on behalf of my husband and myself in regards to Microsoft. We both support this company whole-heartedly, and we believe this litigation should be ended. During a time when we are facing many pressing national and economic issues, we should not continue to spend precious time and resources concentrating on Microsoft.

In our opinion, the proposed settlement is more than adequate to deal with the issues in this case. Microsoft has pledged to share more information with other companies and be monitored by a technical oversight committee for compliance. Microsoft has also agreed to design future versions of Windows to make it easier to install non-Microsoft software. This settlement is complete and thorough.

We are also concerned about the negative effect the continuation of this litigation will have on the Seattle area economy. As a result of major Boeing lay-offs, Washington State now has one of the highest unemployment rates in the country. Dragging out this issue further will have an even more detrimental effect on the local economy. It is time to end this litigation and focus our energies on more pertinent issues. Thank you for your support.

Sincerely,
MaryAnn Goeppele

MTC–00029417

From: Susan Handy
To: Microsoft Settlement
Date: 1/28/02 11:47pm
Subject: Microsoft Settlement
Susan Handy
4560 Kings Crossing Drive
Kennesaw, GA 30144
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Susan J. Handy

MTC–00029418

From: Michael Hemond
To: Microsoft ATR
Date: 1/28/02 11:52pm
Subject: Microsoft Settlement

To whom it may concern,

I am writing to express my concern with the proposed settlement of United States v. Microsoft Corp., Civil No. 98–1232.

I am a regular user of both Microsoft Windows and a distribution of the operating system known as Linux. I am not a professional software developer, but I have at times written software for both platforms. In essence, my concern is that the proposed remedy for Microsoft's anticompetitive behavior will not restore competition even if its intent is enforced and it is effective in curbing illegal actions.

In my view, a key feature of a competitive operating system market is that users have

the option not to purchase or use any given any given operating system (OS). Specifically, competition in the OS market will be restored only when it is feasible for most users to elect not to purchase Microsoft Windows for a given application.

Unfortunately, a consequence of Microsoft's dominance in many markets is that its ''file formats'' have become de facto standards. (By ''file formats,'' I am referring to the methods used by applications such as Microsoft Word to encode data such as text, document layout, images, etc.) These formats are not publicly available. Attempts at deciphering certain formats have been made by (for example) Sun Microsystems'' StarOffice; however, reverse engineering complete functionality is extremely difficult and has not yet been accomplished successfully for many important formats. Furthermore, changes to such formats are not difficult for Microsoft relative to the burden placed on attempted competitors in deciphering any new changes.

The result of this ''standardization'' of proprietary formats, combined with Microsoft's policy of releasing the applications using these formats only for Windows (although there are exceptions, e.g. Microsoft Word for MacOS), is that potentially competing OS'es cannot run applications that interoperate reliably with these ''standards.'' Thus, anyone wishing to use these ''standard'' formats, even for purposes of e.g. backwards compatibility with existing documents, must purchase not only the relevant Microsoft application but also Microsoft Windows. Such a user may also use other OS'es but is effectively required to purchase Windows. Please note that I do not believe that Microsoft's conduct regarding file formats is illegal, and to my knowledge it has not been found to be so in any court of law. However, I do believe that it will be impossible to restore competition to the OS market unless the issue of file formats is addressed, given the dominant position held by Microsoft. If the fruits of Microsoft's illegal behavior are to be negated successfully, the final remedy must address this issue. An obvious solution would be to require from Microsoft full disclosure of information necessary to flawlessly read and produce files of any Microsoft application. Such a remedy could be similar in spirit to, but more broad than, part III.E of the revised proposed Final Judgement (requiring disclosure of any communications protocols necessary for interoperating with a Microsoft OS).

Thank you for giving me the opportunity for comment. I look forward to a settlement addressing these issues and a more competitive operating system market.

Sincerely,
Michael Hemond

MTC–00029419

From: Michael Greisman
To: Microsoft ATR
Date: 1/28/02 11:55pm
Subject: Microsoft Settlement

To whom it may concern,

My observations of Microsoft's outrageous behaviors in court and in business lead me to believe that nothing short of dismemberment of the corporation will control its behavior.

I disapprove of this settlement, and hope that the Justice Department presses its case once more for a splitting of Microsoft into several completely separate companies.

Nothing I observed over the years of this case indicates that Microsoft ever intends to comply with the intent of a judicial ruling. Even if this settlement succeeded in controlling Microsoft's behavior for a number of years, I am convinced that Microsoft would immediately reknew its anticompetitive actions as soon as its restrictions ended.

Instead, I hope to see Microsoft split into three, four, or more separate and unrelated companies: operating systems (e.g. Windows), software (e.g. Office), hardware (e.g. XBox), and ISP (MSN). Since Microsoft sees fit to attempt to dominate in every popular technology-related market, there may be other divisions to split off, as well. Only then can we hope for Microsoft to cease using its near-monopoly on PC operating systems to leverage its position in every other market.

Thank you for your attention.
Sincerely,
Michael Greisman
Webmaster
Scanalytics, Inc.
703–208–2230
mgreisman@scanalytics.com
Michael Greisman
Applications Scientist Scanalytics, Inc.
mgreisman@scanalytics.com

MTC–00029420

From: Landon Derentz
To: Microsoft ATR
Date: 1/28/02 11:53pm
Subject: Microsoft Setlment

Dear judge,

Microsoft is in my opinion, has broken in the past and will continue to break many anti-trust laws with this back-room deal. The PFJ will not only allow Microsoft to have an unfair advantage on the market, but will also hinder other companies such as Netscape in having a fair chance at this thing called capitalism. Please do not allow this deal to go through. Thank you.

Sincerely,
Landon Derentz
907 West 28th St.
Los Angeles, CA 9007
CC:dkleinkn@yahoo.com@inetgw

MTC–00029421

From: juan alejandro urquizo-Soriano
To: Microsoft ATR
Date: 1/28/02 11:54pm
Subject: Microsoft settlement

Dear Sir:

Microsoft is a real threat,They are the biggest monopoly I have ever seen. Please help the people of the world.

Juan

MTC–00029422

From: David Gallardo
To: Microsoft ATR
Date: 1/28/02 11:54pm
Subject: Microsoft Settlement

I am strongly opposed to the settlement. It is too little, too late.

In the time between the rulings finding Microsoft guilty of violating antitrust laws, Microsoft has increased its dominance of the market even further, by continuing to use the same type of anticompetive business practices.

Punishing Microsoft for its business practices will not quash innovation as they and their supporters claim. On the contrary, by allowing healthy competition to thrive, it will encourage innovation.

Best regards—
David Gallardo

MTC–00029423

From: Bruce C. Pippin
To: Microsoft ATR
Date: 1/28/02 11:55pm
Subject: I am backing Microsoft

Well, I don't know what comment I could make that isn't obvious to at least a large part of the population. I'm not an historian nor am I an attorney. I am but a simple consumer.

There is little doubt in my mind that every man, woman and child on the planet is aware of the case against Microsoft. In at least a general sense, we all know the jest of the case. I think consumers have already responded to the case brought forward by a small handful of attorney's.

Yes, I think we responded well to the needs of a few attorney generals that need to ''protect us'' from ''evil''. Oh yes ... We all know about the righteous.

Before, during, and after this case the general public will continue to appreciate Microsoft innovations. We will continue to purchase their products. I have, over time, used some of Microsoft's competitors products (Netscape for example). I have no doubt that these competitors did not fail due to practices by Microsoft, but by their own hands. Even when given the choice (which we have always had) we have made the choice to pick Microsoft products.

It is sad that only after millions of dollars and several years will we all have the opportunity to reflect on current events and realize what nincompoops these attorney's are for pursuing a case against Microsoft. I back dropping this case against Microsoft without any reservations. One citizen ... And there's my one vote.

No, among other things, I am not an eloquent writer, but I did feel compelled to voice an opinion.

Regards
Bruce C. Pippin

MTC–00029424

From: Brian Fristensky
To: Microsoft ATR
Date: 1/28/02 11:53pm
Subject: Comments on Microsoft Antitrust case

Please see attached HTML file.

Brian Fristensky ... now Microsoft has a new version Department of Plant Science I out, Windows XP, which according to University of Manitoba I everybody is the ''most reliable Winnipeg, MB R3T 2N2 CANADA I Windows ever''. To me, this is frist@cc.umanitoba.ca I like saying that asparagus is Office phone: 204–474–6085 I ''the most articulate vegetable ever.'' FAX: 204–474–7528 http://home.cc.umanitoba.ca/frist—Dave Barry

Comments on Civil Action No. 98–1233 (CKK) United States of America vs. Microsoft Corporation State of New York et al. vs. Microsoft Corporation by

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Judge Colleen Kollar-Kelly
microsoft.atr@usdoj.gov

Dear Judge Kollar-Kelly,

I wish to comment on the Microsoft Antitrust case awaiting judgment in your court. To keep things brief, I shall focus on points that I think have not been adequately brought out in the proceedings of which I am aware.

Point of information:

I am an Associate Professor in the Department of Plant Science at the University of Manitoba in Winnipeg, Canada. I have been doing research in molecular biology for over 20 years. I was also instrumental in the original development of software for DNA sequence analysis, beginning in 1979. I am an active contributor to the field of Bioinformatics, which has gained recognition recently in its role in sequencing the human genome.

Finally, I am an American citizen.

A. The effects of Microsoft's practices, and the indirect effects of its ''de facto standard''

1. The Microsoft culture

It has been well established in court proceedings that Microsoft has a long history of premeditated anti competitive practices. The main point I want to make is that the decision making process at Microsoft is centered around leveraging the existing monopoly to maintain the monopoly. When you have the monopoly advantage, you choose different strategies than a company that uses different premises for decision making, such as ''we need to be competitive'' or ''let's make the best product possible, and then figure out how to best market it.'' Microsoft's decision making, as shown in documents already presented to the court, has become entrenched in the practice of monopoly.

It is this type of mindset that allows Microsoft to treat its customers with contempt. The most glaring example is the Mail and News program, Outlook Express (OE). OE, through its feature of allowing the user to directly click on any icon in an email or news message, resulting in the haunch of an application, is fundamentally insecure. Even after repeated spread of viruses such as the ''Melissa'' virus, each time on a world-wide scale, Microsoft has refused to eliminate this feature from OE. Similarly, the integration of Visual Basic into applications such as MS Word makes it possible for viruses to propagate via text documents. In both cases, Microsoft has completely ignored security experts who advise that these strategies are fundamentally insecure, and remain invitations to an endless stream of viruses. Only a company with an arrogant certainty of market domination could afford to ignore such obvious flaws in its software.

2. The fact of monopoly results in de facto anti competitive effects

a) ''No one was ever fired for buying Microsoft''. In fact, this quote is based on an earlier generation quote ''No one was ever fired for buying IBM''. People make decisions not based upon whether a product is better, but they buy the MS product because it is a safe, defensible decision for which they can't be criticized.

Examples:

i) Long after NCSA Mosaic, and its successor, Netscape were introduced, Microsoft created Internet Explorer (IE). Even though IE was clearly an inferior product for several years, it quickly gained market share. Further leveraging of the Windows platform resulted in the ultimate domination of the browser market, at the expense of Netscape.

ii) RealPlayer and other products from www.real.com virtually created the market for browser-based multimedia. Yet, with the bundling of Windows Media Player (WMP), this established platform is losing ground. Why develop for RealPlayer when you can count on everybody having WMP?

iii) At one time there was a competitive market among word processors, spreadsheets, and drawing/presentation programs. Corel Word Perfect, Quattro Pro, and CorelDraw/ CorelPresents were viable competitors to MS Word, MS Excell, and Powerpoint. Today, the MS products are overwhelmingly the only products in widespread use.

In each case, the Microsoft product took over an already existing market, not by being better, but simply, because it was made by Microsoft. These examples illustrate the point that the de facto aspects of the Microsoft monopoly are far more pernicious than the deliberate anti competitive practices. Put another way, everybody buys Microsoft because everybody has Microsoft. This phenomenon ensures the continuation of the Microsoft monopoly. One might call this the ''market share cycle''.

b) Why develop for other platforms when Windows is the only one that anyone uses. Just about any software developer will tell you that they develop for Windows because it is the dominant desktop platform. Although virtually all computer science professors will teach their students that software development should aim to be platform-independent (for very good reasons), the reality of the marketplace is such that this advice is ignored. Developers, not surprisingly, develop for platforms with a large market share. For most software developers, even developing for the Macintosh platform is not worth their while, because it is such a small percentage of the market share. The net result is that no one chooses which platform to develop for, based on criteria such as quality of the platform, or ease of development. There is no choice at all. They develop for Windows.

Put another way, everybody develops for Windows because everybody develops for Windows. The process is self-perpetuating.

c) The self-perpetuating Microsoft monopoly impedes the evolution of computing There are alternatives to the desktop computing model of MS-Windows. While Macintosh is the most visible competitor, Linux is also a credible contender. As well, server-based solutions such as Sun Microsystem's iPlanet platform (http://www.sun.com/software/sunone/ overview/platform/), make it possible for both novice users and high-tech users to replace the desktop computer entirely with a user-friendly graphic terminal, or to run applications remotely through a browser.

The latter is a viable model as high-speed Internet connections proliferate, especially because they eliminate the need for the user to do any system administration, and insulate the user from the hardware obsolescence, and allow the user to access their computer files and applications from anywhere in the world. Such alternative solutions are in fact used by a very small number of users. They are only slowly gaining ground due to the Microsoft monopoly. The users of these alternative platforms would all argue that they do so because these platforms are superior to the Windows platform. Whether any or all of these alternatives is actually superior is moot. A putatively-superior computing platform simply can not compete with the de facto Microsoft standard.

d) The Microsoft monopoly has a negative effect on the quality of alternative systems. Even those of us who have chosen to use systems other than Microsoft Windows feel the negative impact of the monopoly. In my own case, I have operated my research laboratory, and performed all my teaching duties, almost exclusively on the Sun Unix system. Detailed examples can be found at http://home.cc.umanitoba.ca/psgendb/nc/. At home, my family and I exclusively use Linux.

While the members of my lab group, myself, and my students have often been ahead of the curve in utilizing networked computing resources, there have been a number of stumbling blocks resulting from the Microsoft monopoly. Probably the greatest problem is the fact that the choice of applications available on the Sun Unix system or Linux is much smaller than on Windows, due to the much smaller desktop market share of these systems. Again, developers won't write for these systems because the market share is small, and the market share stays small because the applications aren't available. When new hardware devices are marketed (eg. CD–ROM drives, printers, video cards etc.) the manufacturers seldom write drivers for non-Microsoft platforms. At the same time, they often refuse to make their specifications public, forcing the Linux community to reverse engineer new models in order to write device drivers.

The market share cycle also influences such fundamental things as the ability to purchase alternative systems. All computer stores sell computers with MS Windows preloaded. Only a small number of vendors will sell Linux pre-loaded, even though Linux is freely available. In many cases, a person wishing to run Linux might actually have to buy a Windows machine, thus paying for Windows, and then erase the hard drive and replace it with Linux. This phenomenon is sometimes referred to as the ''Microsoft Tax''. As well, because the user has to take the extra step of installing Linux, Linux is falsely perceived as being less user friendly. This would not be the case if the consumer

had a choice of buying a pre-installed Linux system.

The self-perpetuating Microsoft monopoly therefore results in an arguably flawed operating system maintaining control of the direction of computing, even when better alternatives exist.

B. A behavioral remedy is inadequate because:

* It does not break the market share cycle. As long as Microsoft remains the ''1 stop shopping'' choice for all software needs, no alternative platform, whatever its merits, can compete. Even worse, as the Windows platform continues to scale to midrange servers, that vertical integration will make the Windows platform even harder for IT decision makers to avoid.

* It guarantees endless litigation. MS has managed to make a career out of doing what it wants anyway, while tying up cases in courts for years while competitors flounder.

* It still leaves the MS anti competitive culture intact. The Microsoft corporate culture, as the company is now structured, is oriented toward perpetuating the monopoly. As long as Microsoft remains intact, the culture and attitudes of its employees will be perpetuated.

* One of the recommendations of the joint DO J/Microsoft settlement released in September is that Microsoft should be required to make its software available on other operating systems besides Windows. This might actually result in a further domination of the desktop market, because, due to the ''No one ever got fired for buying Microsoft'' phenomenon. Software that is currently common on non-Windows systems might be pushed out of the market by the perceived ''industry standard'' application. The goal should not be to encourage MS to grab an even larger market share.

Rather, it should be to eliminate the self-propagating domination of the market share that prevents competitors from vying for some of that market share.

C. Microsoft should be broken into several smaller companies

It is my contention that behavioral remedies will not correct the fundamental problems caused by Microsoft's domination of desktop computing. My basic point is that if the settlement is to be truly fair, then Microsoft should be put onto the same level playing field as other companies. It must be forced to make its decisions based on a competitive model, not a domination model.

The structural remedy should be based on the breakup of Microsoft into several companies. There may be many possibilities, and it must be recognized that the breakup should not make it impossible to do business, and should not be structured such that its implementation would be disruptive to the world of computer users, most of whom currently use Windows and MS Office. One such structural remedy would see Microsoft broken into different companies specializing in specific product areas:

1. Operating system

2. Office (current MS-Office: WORD, Powerpoint etc.)

3. Internet and Enterprise services (IIS, Internet Explorer, Outlook Express)

4..NET—API development tools

5. Applications (graphics, multimedia, etc.)

I believe that breakup into even 2 companies does not adequately curb the monopoly effect. It is too easy for two companies to coordinate efforts. It is more difficult for a larger number to coordinate. It also requires a greater effort on the customer's part to end up buying everything from an MS company, rather than buying some from MS, some from IBM, some from Sun, and others from another party.

Other stipulations:

* None of these companies may use the name ''Microsoft'' or ''Windows''. Each company will independently choose new names (eg. Gatesware, Redmond OS, IIS Systems, .NET inc.) This makes it a little more difficult for the ''Microsoft'' product to be automatically recognized and chosen solely for its name. It should be pointed out that MS really can't argue that it will be hurt one bit by a name change. Name changes in very large corporations happen all the time, especially in cases of mergers and acquisitions (eg. Esso to Exxon, AgrEvo to Aventis, Allegheny Airlines to USAir)

The resultant companies are not permitted free access to resources of other former MS companies. They must license use of software, or access to source code, on the same terms as any other OEM, developer, or other partner. That is, if a former MS company licenses something from another former MS company, the same licensing terms must be made available to all interested OEMs or developers.

MS companies are not allowed to dictate terms of inclusion or exclusion of other 3rd party software to any OEM or developer wishing to license products of former MS companies.

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One might argue that a structural remedy is somehow ''unfair'' or overly punitive. However, Microsoft holds no sacrosanct position of privilege. There is no imperative that Microsoft must remain as a pillar of the American way. It is not entrenched in our constitution. It is simply a company that was successful at a certain business strategy, at the expense of the ruin of many other companies.

D. Benefits of a structural remedy

1) It works automatically, and requires less monitoring.

2) It lets smaller companies compete piece by piece with MS, rather than having to compete with the full bundled MS array of products.

Today, an OEM or an IT department really makes few decisions about what to put on their new computers. The choice of OS is a ''no-brainer'', because everybody uses Windows, and most software is developed for Windows. MS-Office is usually bundled with Windows, so there's no choice there. With WindowsXP, a full multimedia package is bundled—again no decision is made. If bundling were eliminated, OEMs and IT departments might return to making decisions about what kind of components best meet their needs, rather than just ''voting the straight ticket'' for Microsoft.

3) Business and home computer users will not be harmed by a Microsoft breakup.

As non-Windows users like myself have demonstrated, one can work just as easily on non-Windows platforms. Especially in the Open Software sector, there are alternatives for most of the main types of applications available on the Windows platform, including applications for office tasks (word processors, spreadsheets, drawing and presentation, calendars), multimedia (MIDI, MP3, video etc.), Internet (web browsers, mailers, FTP, telnet etc.) At the enterprise level, server-oriented tasks such as database management, web serving, application serving and such are strongly represented on alternative platforms such as Unix or IBM's AS400. As well, a Microsoft breakup doesn't mean that Microsoft will go away. It simply means that the consumer will have to explicitly choose Microsoft, rather than having no choice at all.

4) The evolution of computing will not be driven by a single computing platform.

Regardless of whether or not one believes that the Windows platform is good or inferior, the fact remains that it is a monolithic platform. For the average desktop user, Windows is synonymous with computing. The more deeply intertwined the different parts of Windows are allowed to become, the less chance there will be for evolution of ANY part in a way other than that decreed by Microsoft. Microsoft's current strategy is to continue evolving its desktop model of computing to higher levels of computing, such as enterprise file:///C√/win/temp/tristens. computing or supercomputing, where it is a very poor model. Yet, the sheer inertia of Microsoft's market share will drive this system even into places in which it is not an appropriate solution. A set of smaller companies derived from Microsoft would not have the same power over the development of computing, allowing for greater diversity, which is key to any evolutionary process.

E. Closing remarks

Perhaps as good an argument as any from breaking up Microsoft is because computing has become central to almost every aspect of life in the modem world. Computing is unlike, say the oil industry, or the food industry. No car runs on just one brand of gasoline, and people buy a variety of foods because they like variety. When you couple our great dependence on computers in all walks of life, with the monolithic structure nature of desktop computing as controlled by a single company, the result is that the company that dominates that computing infrastructure has some degree of control on most aspects of our modem life. The level of power wielded by Microsoft is frightening. The fact that they had sufficient clout to cause the US Justice Department to reverse its position on a breakup is a chilling example of that power. The fact that Microsoft has maintained its arrogant domination of the computer market, and been allowed to do so with impunity, should be cause for alarm.

It is not unAmerican for any branch of government, executive, legislative or judicial, to limit the power of a private corporation, if that corporation is usurping powers that should rightly be exercised by the government or by the free market. Bill Gates was not elected by voters. The management

of Microsoft is not accountable to the public. The antitrust laws were wisely enacted in recognition of the fact that non-elected entities such as corporations could sometimes wield too much power. It is the job of the judiciary to ensure that they are not allowed to do so.

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It is this type of mindset that allows Microsoft to treat its customers with contempt. The most glaring example is the Mail and News program, Outlook Express (OE). OE, through its feature of allowing the user to directly click on any icon in an email or news message, resulting in the launch of an application, is fundamentally insecure. Even after repeated spread of viruses such as the ''Melissa'' virus, each time on a world-wide scale, Microsoft has refused to eliminate this feature from OE. Similarly, the integration of Visual Basic into applications such as MS Word makes it possible for viruses to propagate via text documents. In both cases, Microsoft has completely ignored security experts who advise that these strategies are fundamentally insecure, and remain invitations to an endless stream of viruses. Only a company with an arrogant certainty of market domination could afford to ignore such obvious flaws in its software.

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MTC–00029426

From: James R. Bergman
To: Microsoft ATR
Date: 1/28/02 11:54pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse:

This is to advise you that I strongly believe that the terms of the proposed settlement—which have met or gone beyond the findings of the Court of Appeals ruling—are reasonable and fair to all parties involved. This settlement represents the best opportunity for Microsoft and the industry to move forward.

I say this with a 30-year successful business career behind me and, hopefully, even greater success ahead. But should this settlement not be finalized and a harsher penalty imposed on Microsoft, I know, not believe, that it will affect my business and most all general, old-economy businesses in a severely negative and expensive way. Similarly, the so-called new economy industries will not benefit though those that are envious of Microsoft's success and those who cannot keep up with Microsoft's efficient execution of its business plan may feel differently.

I strongly request that you support this settlement to the greatest degree possible and do all things available to you to assure its being finalized. As both a business owner and home user who has and does use many software programs as well as spends quite a few hours a week on the Internet, I am grateful for all the many wonderful things that Microsoft has accomplished and have always made available to me at reasonable and fair prices that have aided me in my business and family life. Please feel free to contact me if you wish. Should you be speaking to Joel Klein, please say ''Hi'' from an old fraternity brother (we were in Alpha Epsilon Pi, Class of 1967, Columbia College of Columbia University, NYC).

Sincerely,
James R. Bergman
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Philadelphia, PA 19147–3810
Phone:(215) 922–9145
Fax:(215) 922–4803
Mobile:(215) 284–1676
E-mail:jrb@strikerltd.com

MTC–00029427

From: JVMiller23
To: Microsoft ATR
Date: 1/28/02 11:53pm
Subject: Microsoft Settlement
James V. Miller
P.O.Box 12369
Mill Creek, Wa 98082
January 26, 2002
Attorney General John Ashcroft
Us Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I am writing you today to inform you of my position regarding the Microsoft antitrust dispute. I support Microsoft in this dispute and feel that the litigation that has gone on is costly and a waste of resources. I support the Microsoft settlement reached in November, and I sincerely hope there will be no further action against Microsoft at the federal level.

This settlement was reached after extensive negotiations. Microsoft has agreed to all terms of this agreement, including terms that extend well beyond the original issues of this lawsuit, all for the sake of wrapping it up. Under this agreement, Microsoft has agreed to grant computer makers broad new rights to configure Windows to promote non-Microsoft software programs that compete with programs included within Windows. Microsoft has also agreed to license its Window operating system products to the 20 largest computer makers. This settlement will benefit companies attempting to compete.

Most importantly, this settlement will help boost our lagging economy and will benefit consumers. Microsoft should be allowed to devote its resources and talent to designing innovative products, rather than litigation. Thank you for your support.

Sincerely,

MTC–00029428

From: JSHIPPO@aol.com@inetgw
To: Microsoft ATR
Date: 1/28/02 11:54pm
Subject: MIcrosoft Case
Jasper Shau
Eighth Grade

I think that Microsoft should be allowed to settle. Because Microsoft used itswindows system to distribute Internet explorer, it would a kind of monopoly. However, Microsoft does not make any money off the Internet explorer browser. Netscape is being destroyed because they make their money off their browser. If Microsoft pays enough money, and if the money goes to Netscape, it should be allowed to settle.Microsoft had already made several concessions ???We kept making concessions, and the government kept coming back with unreasonable demands, wanting us toinstall Netscape for them,??? Gates said. ???It was like hearing ???Netscape this, Netscape that,??? all the time.??? Obviously the federal government is pushing Microsoft too hard. Though if Microsoft monopolizes the browser they may charge very high fees for using it,the government would not allow them then. Even so, Microsoft says that theyhave no intention of doing so: ''' Gates says. ''In no way are we eliminating choice.'' He also bristles at the notion that Microsoft wants to turn theInternet into its personal toll road. ''We'll get our revenue from selling great software.'' In the Pac-bell incident, Pac-bell was split because it had amonopoly of basically the entire market. That is one extreme past example.

CC:ASKDOJ

MTC–00029429

From: Mike Edwards
To: Microsoft ATR
Date: 1/28/02 11:55pm
Subject: Microsoft Settlement

Microsoft is a monopoly. That is the only way I can find to describe a company who, for years, has concentrated on squashing competitors rather than improving their shoddy products.

I have used Microsoft products in various capacities for many years—starting with MS-DOS 2.10 on a home PC to Windows NT 4 / Windows 2000 in a work environment (as a system administrator, no less). All versions of Microsoft Windows I have used, starting with 3.0, have experienced severe reliability problems—and these problems have grown over time. The rest of their software seems to follow this model.

In stark contrast, there have been quite a few companies over the years who have tried to improve upon the deficencies in Microsoft's products, only to be bought out or forced out of the market by unsavory business practices (bundling, etc.), thereby leaving the market barren of competetors. Netscape is only the most recent example of predatory practices that Microsoft has been using to boost their position for years.

Microsoft is fond of claiming they ''innovate''. I don't think Microsoft has innovated a single thing in their entire existence, instead choosing to buy or steal technology belonging to others. So much for innovation.

Please, don't let this settlement go through. It will just validate Microsoft's position of providing the worst products possible. Given their history of unreliable software with an amazing number of security holes, I would think that this is the last thing you'd want to do.

Mike Edwards

MTC–00029430

From: Joe Bustamante
To: Microsoft ATR
Date: 1/28/02 11:56pm
Subject: Microsoft Settlement

As I understand the meaning and nature of the Tunney Act statutory process, its principle goal is to ensure that the people who are invariably the principle victims of all antitrust violations, that is to say the general public, have a voice in determining what is and is not in their own best interests. It seems self evident that when deciding how to remedy violations of law which harm the general public, the first principle of guarding the public interest should be to minimize the recurrence of violations by making certain the consequences to the violator always outweigh the rewards. It is unavailing to resolve the case if the violator is allowed to profit from his misdeeds in any fashion, since this only encourages others to show even greater contempt for the law. It is similarly fruitless to go to great expense proving in court the facts of eight such violations and then allow the violator to keep

the rewards of them all, and even continue committing one or more. Such seems to be the case in this matter, the United States v. Microsoft, Civil Action No. 98–1232 (CKK).

After carefully reading and researching the findings of fact and conclusions of law of the District Court, as well as the unanimous opinion of the Circuit Court of Appeals, it is apparent that the United States Department of Justice, assisted by the attorneys general of several of the States, made a very compelling and conclusive case to establish that Microsoft Corporation had engaged in an illegal campaign of antitrust violations in order to strengthen and defend their monopoly in PC operating system software.

The District Court ruled firmly that Microsoft had committed a large number of violations, and the Court of Appeals unanimously upheld eight of those. In order to analyze the effectiveness of the remedy, the first thing we must do is ensure that Microsoft is not allowed to continue or profit from any of the eight distinct violations identified by the appellate court. I will begin this analysis with a list of the nine violations as they were expressed in X sections of the appeals court's opinion, along with a brief quote of the appeals court opinion regarding each distinct violation (I preserve the heading numbers used by the court, omitting those which were overturned or remanded).

1. Licenses Issued to Original Equipment Manufacturers—''In sum, we hold that with the exception of the one restriction prohibiting automatically launched alternative interfaces, all the OEM license restrictions at issue represent uses of Microsoft's market power to protect its monopoly, unredeemed by any legitimate justification. The restrictions therefore violate s 2 of the Sherman Act.

2. Integration of IE and Windows—''Accordingly, we hold that Microsoft's exclusion of IE from the Add/Remove Programs utility and its commingling of browser and operating system code constitute exclusionary conduct, in violation of s 2.''

3. Agreements with Internet Access Providers—''Accordingly, we affirm the District Court's decision holding that Microsoft's exclusive contracts with IAPs are exclusionary devices, in violation of s 2 of the Sherman Act.''

4. Dealings with Internet Content Providers, Independent Software Vendors, and Apple Computer—''Microsoft having offered no procompetitive justification for its exclusive dealing arrangements with the ISVs, we hold that those arrangements violate s 2 of the Sherman Act.''—and—''Accordingly, we hold that the exclusive deal with Apple is exclusionary, in violation of s 2 of the Sherman Act.''

5. Java—''Because the cumulative effect of the deals is anticompetitive and because Microsoft has no procompetitive justification for them, we hold that the provisions in the First Wave Agreements requiring use of Microsoft's JVM as the default are exclusionary, in violation of the Sherman Act.''—and—''Therefore we affirm the conclusion that Microsoft's threats to Intel were exclusionary, in violation of of the Sherman Act.''—''Microsoft's conduct related to its Java developer tools served to protect its monopoly of the operating system in a manner not attributable either to the superiority of the operating system or to the acumen of its makers, and therefore was anticompetitive.

Unsurprisingly, Microsoft offers no procompetitive explanation for its campaign to deceive developers. Accordingly, we conclude this conduct is exclusionary, in violation of s 2 of the Sherman Act.''

Semantically broken, these quotations uphold nine distinct acts as violations of the Sherman Act:

1. OEM license restrictions which prohibited many actions which might promote Netscape software in Microsoft's dominated market, excepting one which prohibited automatically launching alternative interfaces.

2. Exclusion of Internet Explorer from the Add/Remove Programs utility to force users to accept IE willy-nilly.

3. Commingling of brower and operting system code to further force users to accept IE willy-nilly.

4. Microsoft's exclusive contracts with Internet Access Providers to exlude Netscape from those distribution channels.

5. Microsoft's similar (to #4) dealings with ISV and ICPs to exclude Netscape from still other distribution channels.

6. Microsoft's exclusive dealings with Apple Computer to limit Netscape distribution for MacOS.

7. Microsoft's First Wave Agreements requiring the use of Microsoft's JVM.

8. Microsoft's threatening of Intel, which led to Intel abandoning nascent technologies related to Java which they had already invested considerable effort in researching.

9. Microsoft's campaign to deceive their own customers in order to trick them into writing Microsoft dependent applications when they thought they were writing cross platform Java applications.

After studying the Proposed Final Judgement in this case between the United States and Microsoft, I see that points 3 and 9 are completely unaddressed, and indeed in case 3 Microsoft is being given tacit government approval to continue and extend the practice of commingling operating system code with the code of any application they wish to dominate. Indeed Microsoft has already done this to some measure in their latest operating system release, Windows XP. They are not only continuing to commingle browser and operating system to make IE inextricable from Windows, but are extending the practice to now encompass code previously associated with multimedia authoring and editing. How does the Department of Justice explain this apparent endorsement of a practice ruled illegal by a United States Court of Appeals?

As for the other 7 violations, they are only imperfectly addressed. Virtually every restriction is laden with elaborate and ofttimes contradictory exceptions. Overriding all of these is the stipulation that Microsoft has sole authority to define what is and is not the operating system. This is carte blanche for Microsoft to continue their illegal practice of extinguishing nascent technologies through ''integration''. This settlement is going to require constant referral back to the court to re-explain matters which were already clearly stated by the Court of Appeals.

In short, this agreement encourages Microsoft to continue and expand on their illegal practices and encourages others in like circumstances to do the same. It is totally contrary to the public interest, in my opinion.

Jose Bustamante
Austin, TX 78729
joeb@grandecom.net

MTC–00029432

From: Joe Byrd
To: Microsoft ATR
Date: 1/28/02 11:57pm
Subject: Microsoft Filing

The attached document is for the Microsoft case.

If you have any questions, please contact, Joe Byrd at 918–453–8100. Thank you
Email Address: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement.

The National Native American Chamber of Commerce represents Native American and other minority businesses trying to compete in the New Economy. However, with monopolistic players and absurd settlements such as this one, we will continue to be excluded. That is why we are glad to witness that some state Attorneys General, including California's Bill Lockyer, are resisting this regrettable deal and asking the courts to impose a real solution. They deserve our support.

The proposed settlement of the Microsoft antitrust case is little more than a collection of loopholes that amounts to tacit approval for the company's history of mistreating its competitors. What is more, much of the criticism of those opposing the settlement misses three points in particular. First, the proposed settlement does not prohibit Microsoft from bundling its software and tightening its grip on Internet applications—including MSN portal, instant messaging, e-mail, and streaming-media applications. Second, yes, Microsoft must release some programming code to competitors, but only after it has developed its own products. And, third and finally, the independent watchdog group called for in the settlement is all bark and no bite—it has no teeth for enforcement.

We, the taxpayers, suffer in the long run. Other antitrust violators monitoring the outcome of this case will have a blueprint furnished for them detailing a course of action that will allow them to skirt out legal system. It is a pleasure to side with the state attorney general in admonishing what Justice Department attorneys hide behind in this farce, ''the substantial likelihood that Microsoft would avail itself of all opportunities'' to appeal.

Bill Lockyer is right to reject a settlement would essentially allow Microsoft to set its own rules and terms for complying with that settlement. Such an outcome is unacceptable—Microsoft has played ''fast and loose'' with U.S. antitrust law over and over through the years and has been found guilty in a number of jurisdictions of abusing its power.

Sincerely
Robert Ferrell

5230 Pacific Concourse Drive
Suite 20
Los Angeles, CA 90045
Email Address: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement.

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Sincerely
Robert Ferrell
5230 Pacific Concourse Drive
Suite 20
Los Angeles, CA 90045

MTC–00029433

From: Linda Starnes
To: Microsoft ATR
Date: 1/28/02 11:59pm
Subject: Microsoft Settlement
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I wish to express my happiness upon hearing of the Attorney General's decision to end the Justice Department's antitrust lawsuit against Microsoft. However, I am not happy about the fact that it took the government three years to end its costly, taxpayer-funded lawsuit. Under the agreement, computer manufacturers were granted new rights to configure systems with access to various Windows features. Microsoft must design future versions of Windows to make it easier to install non-Microsoft software and to disclose information about certain internal interfaces in Windows.

The company made many more compromises in this agreement. I don't see a need for any future federal litigation against Microsoft beyond this agreement.

Sincerely,
Linda Starnes
33648 7th Place Southwest
Federal Way, WA 98023

MTC–00029434

From: Michael Vengrow
To: Microsoft ATR
Date: 1/29/02 12:00am
Subject: Microsoft Settlement

Dear Sir,

I would like to respectfully submit my comments on the Microsoft Settlement. I believe that the key issue in this case is whether or not it is possible for a company to infringe on the rights of others, e.g., customers, competitors, distributors, etc, simply by offering products or services for sale under certain conditions. Microsoft's competitors have alleged that Microsoft has constrained freedom of trade in the software industry by using ''unfair'' practices, such as obligating distributors of Microsoft programs to include certain features with Windows or to agree to certain licensing arrangements with Microsoft. I submit that offering products under such conditions do not constitute a breach of anyone's rights, neither distributors nor customers, since no one has been forced to deal with Microsoft. The only way to actually infringe on someone's rights are to initiate physical force against them or to commit an act of fraud against them. The fact that Microsoft has outcompeted its competitors, without a single alleged instance of force or fraud, and that its competitors are now crying ''Not fair!!!

Not fair!! Not fair!!!'', is no reason for the government to attack Microsoft with a lawsuit. Please keep in mind that the only way Microsoft has been successful during its entire history is to offer either better products or better services or lower prices. No one has been coerced or defrauded by Microsoft. Ever. On the contrary, the public (myself emphatically included) has enormously benefitted from the tremendous increase in efficiency of daily tasks, in both business and personal life, which Microsoft's products have made possible. Given these facts, I urge the court to not punish Microsoft for doing what the best of America's entrepeneur's have always done—bring to market products and services that improve people's lives.

Thank you for your attention.
Michael Vengrow
San Diego, CA

MTC–00029435

From: Timothy L Smith
To: Microsoft Settlement
Date: 1/28/02 11:54pm
Subject: Microsoft Settlement
Timothy L Smith
1855 Travis Rd.
West Palm Beach, FL 33406–5260
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Timothy L. Smith

MTC–00029436

From: Bryan Hoskins
To: Microsoft ATR
Date: 1/28/02 11:58pm
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

I respectfully submit my opinion on the agreement, the terms of which I believe to be in the best public interest.

While the provisions of the agreement are stringent, I believe the terms-which have met, or gone beyond the findings of the Court of Appeals ruling-are reasonable and fair to all parties involved. This settlement represents the best opportunity for the industry to move forward. Both our nation's government and our nation's business have more important matters at hand.

Sincerely,
William B. Hoskins
Sugar Land, TX

MTC–00029437

From: Ken Wronkiewicz
To: Microsoft ATR
Date: 1/29/02 12:00am
Subject: Microsoft Settlement

I do not support the proposed settlement with Microsoft. It is too loose on Microsoft

and will not ensure a free market. In order to remedy Microsoft's behaviour, it is necessary to change the way that Microsoft does business. In the statements of fact, it is shown that Microsoft has knowingly broken the law repetedly. Stronger measures are necessary.

I support Dan Kegel's open letter, as he is far more elequent than I.

Ken''Wirehead''Wronkiewicz—wh@wirewd.com

http://www.wirewd.com/wh/

MTC–00029438

From: Phil Collins
To: Microsoft ATR
Date: 1/29/02 12:00am
Subject: Settlement—Energy

A commentator on the comuter technoloyg scene, Dave Coursey of http://www.zdnet.com/anchordesk, suggested that in the Microsoft settlement that has been proposed Microsoft should pay a mult-billion dollar fine as part of the settlement.

The condition for approval of the settlement is that it is in the best interests of the public of America. In the private antitrust case before Judge Motz in Baltimore the proposed settlement would have resulted in an estimated $1 billion for poor schools—which was totally unrelated to the alleged wrongs complained against Microsoft, but was presented as in the public interest.

The most pressing need facing America is this cnetury is sustainable energy to replace the oil supplies of America and the world, which are dwindling, and could be substantially depleted if other sources are not used intead. America needs oil for self-defense—planes, tanks and ships travel on fuels derived from oil. As we know too well after the September 11, 2001, attacks, the need of continuing self-defense of America is great. World oil resources are much greater than America's oil, (and I include gas always when I say oil) resourcs.

IF Microsoft is made to pay billions, as Dave Coursey of ZDnet's Anchor Desk suggests, the billions should go to research in sustainable energy, particularly, that using the principles discovery by Einstein, adn for which he was awarded teh Nobel Prize, including solar cells using the photo-electric effects, fusion energy, and improvements in fission energy. This will be in the best interest of America.

MTC–00029439

From: Darrell Clemons
To: Microsoft Settlement
Date: 1/28/02 11:57pm
Subject: Microsoft Settlement
Darrell Clemons
929 cr 4804
Copperas Cove , Tx 76522
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Darrell R Clemons

MTC–00029440

From: Marc McEachern
To: Microsoft Settlement
Date: 1/28/02 11:56pm
Subject: Microsoft Settlement
Marc McEachern
7707 Terry Drive
La Vista, NE 68128
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Marc McEachern

MTC–00029441

From: Richard Barton
To: Microsoft Settlement
Date: 1/28/02 11:56pm
Subject: Microsoft Settlement
Richard Barton
515 Pine St.
Brookings, OR 97415
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

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Thank you for this opportunity to share my views.

Sincerely,
Richard L Barton

MTC–00029442

From: Edward Watson
To: Microsoft Settlement
Date: 1/28/02 11:56pm
Subject: Microsoft Settlement
Edward Watson
7752 E. Camelback Road
Scottsdale, AZ 85251–2228
January 28, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Sincerely,

Edward A. Watson

MTC–00029443

From: Luckypuppy12@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:04am
Subject: Netscape sues Microsoft

Netscape sues Microsoft

Netscape a company backed by AOL time Warner sews Microsoft on account of illegal bundling. AOL is more interested in dominating the communications industry than in Microsoft pay money. If we take a close look at what AOL already owns like HBO, Time, Warner Brothers, New line cinema we notice that they do not dominate in communications, and that all P.C. already come with Microsoft , so really there is no point in using AOL when you already have Microsoft. They plan to sue Microsoft so that bundling will stop and sometime in the future they will have a chance in the software field.

This case is really about AOL securing it???s place in the future. Truth be told no one needs AOL or Netscape. Microsoft is just trying to make Internet use more accessible.

Carnegy and his ability to make steel faster and more accessible to railroads did the same thing that Microsoft has done with the Internet. Rockefeller once said that , ???Much that one man cannot do alone two can do together.??? Windows and Microsoft have done together what one man alone cannot do.

Bundling may be found illegal but Microsoft intentions are just in wanting to make the Internet more accessible to the public.

MTC–00029444

From: paddona
To: Microsoft ATR
Date: 1/29/02 12:03am
Subject: Microsoft Settlement

Dear Sirs:

I'm urging you to accept the settlement.

Thank you

Peter Addona Jr.

MTC–00029445

From: Virginia Gibson
To: Microsoft Settlement
Date: 1/28/02 11:59pm
Subject: Microsoft Settlement

Virginia Gibson
3221 Queensgate Way
Mt. Pleasant, SC 29466
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Virginia P. Gibson

MTC–00029446

From: Allen Kay
To: Microsoft ATR
Date: 1/29/02 12:05am
Subject: Microsoft Settlement

Just want to let you know that I strongly support the Microsoft & DOJ settlement agreement. Continuing this court ordeal is bad for the economy and bad for the continuation of technological revolution.

Furthermore, it is important for US companies to maintain the competitive edge we currently enjoy. US government's resources, made possible by the tax payers, should not be used to punish successful US technology companies. It should instead be used to protect its citizens from likes of Enron debacle. Thanks for taking time reading my input.

MTC–00029448

From: Joyce Korn
To: Microsoft ATR
Date: 1/29/02 12:11am
Subject: Re: Microsoft Settlement
Attention: Renata B./ Hesse, Antitrust Division

Dear Ms. Hesse,

Having reviewed the Microsoft settlement, I feel that it is just and reasonable and should be acceptable to the District Court as stated in the appeal.

Sincerely,

Joyce D.Korn
(Gramkorn@dotstar.net)
CC:fin@mobilizationoffice.com@inetgw

MTC–00029449

From: Jerry Dowdy
To: Microsoft Settlement
Date: 1/29/02 12:04am
Subject: Microsoft Settlement

Jerry Dowdy
204 Rolling Hills Blvd
Florence, MS 39073
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Jerry Dowdy

MTC–00029450

From: J1935WASPM@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:09am
Subject: Microsoft Settlement

O.K. Justice, I believe this Microsoft vendetta has dragged on long enough. Millions of TAXPAYER dollars have been wasted in this Clinton era, baseless and ludicrous action. It is time to uphold the Microsoft settlement and return to some semblance of sanity.

Jim Kenfield

Elizabeth, CO.

MTC–00029451

From: rivers123@juno.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:10am
Subject: microsoft settlement

I have been following the microsoft trials. It surprise me that the justice department gave up without any worthwhile penalties for Microsoft. They should be the lst ones to give up especially after Mircosoft was found guilty of illegat conduct.

I thought after finding Mircosoft quilty that the release of Windows XP should have been stopped. It contains even more bundling of products. Microsoft can afford to put more ''Free'' products out as long as it elimates the competition!

Why should a software developer want to spent the time and energy on a product when Mircosot forces the computer manufactuer to use only their programs. Even if a better product was produced it would never see the light of day, as Microsoft has been given a big head start by their strong arm tatics.

Some people think that getting the bundle programs free is a good thing. This is good only for Microsoft because they just add it to the price of the basic operating system.

Gerald W Bryant
Campbell,Ca.

MTC–00029452

From: Mark Stewart
To: Microsoft ATR
Date: 1/29/02 12:10am
Subject: Microsoft Settlement
3043 Pawlings Ford Road
Lansdale, PA 19446
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am a computer technology manager and obviously, quite familiar with the recent settlement between Microsoft and the Department of Justice. I am writing to ask that you give your approval to this agreement and allow us to move on. This agreement was reached after very arduous negotiations, resulting in what I believe to be a fair and equitable agreement. I firmly believe that the original lawsuit is what precipitated the downfall of the economy, and further litigation will only continue to hamper our economic recovery.

Because I am in the industry, I believe the supposed monopoly of the market by Microsoft will disappear. Microsoft's dominance of the market was with the desktop; but with the appearance of the Internet, Microsoft will have to struggle to maintain its dominance of the market. Further litigation will only hamper any possible innovation by Microsoft, which will not only be Microsoft's loss, but ours as well. Bill Gates, through Microsoft, has taken us much further than we would have gone without him. We are depriving ourselves of a very talented, creative force merely to satisfy the whining of rivals who cannot compete. The market place is its own regulator, particularly in technology as it moves so quickly.

Microsoft has satisfied many of the Department of Justice's demands. Microsoft has agreed to open up to third party developers more of its copyrighted code, to aid in the development of third party programs; Microsoft has agreed to internal interface disclosure; Microsoft has agreed to a uniform price list; Microsoft has agreed to a technical committee to oversee future adherence. This is more than fair.

I urge you to give your approval to this agreement and not give in to the pettiness that is so apparent.

cc: Senator Rick Santorum
Sincerely,
Mark Stewart

MTC–00029453

From: CJ Neil Kvasnak
To: Microsoft ATR
Date: 1/29/02 12:11am
Subject: Microsoft

I trust that you will support this settlement with Microsoft. I am pleased this settlement was reached. Please settle this conflict now. It is not fair to punish Microsoft for it's success

Sincerely,
C.J. Kvasnak,
4802 Otter Creek Lane,
Ponte Vedra Beach, Fl. 32082 .

MTC–00029454

From: DHstn645@aol.comcommat;inetgw
To: Microsoft ATR
Date: 1/29/02 12:11am
Subject: United States Department of Justice antitrust lawsuit against Microsoft Corporat

I support Iowa's Attorney General Tom Miller's work on the Microsoft antitrust case. Along with the majority of voters in our state, I have and will continue to retain his counsel in acting to protect the best interests of consumers of Iowa. Promoting a competitive environment among companies producing software will be of long-term benefit to everyone, and rejecting a settlement agreement that is premature is the right thing to do. Justice will not be the result of a hasty decision in this incredibly complex and high-stakes arena. If the proposed agreement is fair and is in fact in the best solution to the dangers posed by a potentially unfair competition situation, it will stand the test of time and the detailed analysis of Mr. Miller and his associates...which should not be curtailed until their case has been fully developed and considered.

David Huston,
1512 48th Street,
Des Moines, IA 50311
CC:tormistcommat;ag.ia.us@inetgw

MTC–00029455

From: Dave and Betty Dunham
To: Microsoft ATR
Date: 1/29/02 12:13am
Subject: Microsoft Settlement
David & Betty Dunham
2077 Dague Rd
Walla Walla, Wa. 99362
509–525–4076

Dear Mr Ashcroft,

It is with deep respect for you, the present administration, and the fairness of our great country that we write this letter asking you to accept the Microsoft Settlement. We have watched this entire process with great interest and believe strongly that this suit should never have been brought to court.

As small business people we hold dearly our right to keep and maintain personal intellectual innovations and to market those aggressively. Microsoft is a great success story and a testimony to the true spirit of America. Microsoft has done more for the small business owner than any other company in this century, by enabling our employees to work on computers which are affordable and user friendly!!! Instead of suing Microsoft and punishing success, our country ought to be heralding it's success and challenging other companies to strive forward. Through competition such as this comes excellence.

MICROSOFT HAS GIVEN UP MUCH AND WE URGE YOU TO ACCEPT THIS SETTLEMENT.

Thank you for your time and the opportunity to voice our opinion.

Sincerely,
Betty Dunham
David Dunham

MTC–00029456

From: Alan Edmonson
To: Microsoft ATR
Date: 1/29/02 12:13am
Subject: Microsoft Settlement

Please do not let Microsoft continue to run roughshod over competitors and the general public. Make them comply with the anti-trust regulations.

MTC–00029457

From: Charles Boyd
To: Microsoft ATR
Date: 1/29/02 12:16am
Subject: Microsoft Settlement

MTC–00029458

From: dajawhit
To: Microsoft ATR
Date: 1/29/02 12:15am
Subject: Letter

MTC–00029459

From: KKline3523@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:18am
Subject: Microsoft Settlement
Renata B. Hesse
Antitrust Divison
U.S. Department of Justice
601 D Street NW Washington, DC 20530–0001

Dear Ms. Hesse,

It is my opinion that the terms of the Microsoft settlement are fair and just. I very much want to see our Justice System settle this case and let our economy get moving again. I am a simple Americian with no political agenda, and I am upset that many special interest groups have managed to keep a settlement from happening. Let's get our Country back on track and help President Bush with this as part of his stimulus package.

Sincerely,
James C. Kline
Small Business Owner

MTC–00029460

From: Caroline Goodall
To: Microsoft Settlement
Date: 1/29/02 12:12am
Subject: Microsoft Settlement
Caroline Goodall
8112 Bonnafair Dr.
Hermitage, Tn 37076–1033
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

C.I.Goodall

MTC–00029461

From: lhsflys@juno.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:18am
Subject: Law suit

It is time to bring this ridiculous suit to an end and quit making all the attorneys richer.

Lorvey H. Schwinck

MTC–00029462

From: RichardLCa@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:20am
Subject: Microsoft Settlement

Please see attachment. As you see I had it addressed incorrectly.

Thanks

Richard Carlson

Yes, I am a small stockholder of Microsoft as well as other tech stocks but I feel compelled to comment on the Microsoft Settlement. Shame Shame on the Vultures, The go\oemment as well as nine states have already agreed to a settlement. But that is not enough, the remaining states and other companies are now di\Ang in to strip remaining bits of flesh from a down-beaten company as well as pre\enting them from competing fairly under a working capitalistic system (Economics 101). The company that builds the best product should win. The employees and management of Microsoft worked their buts off to be number 1. They did such a good job that e\en other companies and their employees use Microsoft products. The other companies should ''get a life,'' get dd of their high priced ''ambulance chasing'' lawyers and use that money and their own skills to make competing products. Its like forcing J.C. Pennys to remo\oe their buttons from all their shirts and gi\Ang Sears and others the opportunity to offer their buttons or even zippers perhaps. This would then gi\oe other companies an opportunity to compete ''equally'' with Pennys . This so called fairness issue is ridiculous. Lets continue with good healthy competition the old fashioned way.

Thank you \cry much for allowing me to address this issue.

Richard L. Cadson
21026 6th A\e
So Seattle, WA 98198
Monday,January28,2002
AmericaOnfine:RichardLCa Page: I

MTC–00029463

From: Lydia Godinez
To: Microsoft Settlement
Date: 1/29/02 12:15am
Subject: Microsoft Settlement
Lydia Godinez
3833 Peachtree Rd
Atlanta, GA 30319
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Lydia Godinez

MTC–00029464

From: Gregory Lambert
To: Microsoft Settlement
Date: 1/29/02 12:15am
Subject: Microsoft Settlement
Gregory Lambert
3049 E. Enos Ave.
Springfield, IL 62702
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

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Thank you for this opportunity to share my views.

Sincerely,

Gregory L. Lambert

MTC–00029465

From: Helen Gamsey
To: Microsoft ATR
Date: 1/29/02 12:23am
Subject: Microsoft settlement

Dear Mr. Ashcroft,

I hope you accept my response, slightly late, I couldn't get my email to work and had to transfer it to my laptop to send it.

Helen B. Gamsey
6006 S River Road
Norfolk, VA 23505–4711
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am writing you today to voice my opinion in regards to the Microsoft settlement issue. I feel that this debate has gone on long enough and that it is time to end this litigation. After three years of litigation, it is time to focus on more pressing issues. The nation is under attack and may soon be involved in a major war. In my opinion, this lawsuit should never have occurred in the first place. It was orchestrated by Microsoft's competitors like Sun Microsystems, Oracle, AOL, IBM, and others. I have not been a shareholder for almost a year but I am still very concerned about what I feel is gross miscarriage of justice in this case.

Microsoft should be rewarded for all the technological and economic advances their products allowed in the last decade. Instead their persecution, instigated by their competitors persists. I hoped the Appeals Court Judges would vacate Judge Jackson's findings. The Oral arguments certainly indicated this might happen, considering their horror upon discovering Judge Jackson's judicial misconduct, and the way they mocked the government's case. Even though their final decision admitted that ''All indications are that the District Judge violated each of these ethical precepts. The violations were deliberate, repeated, egregious, and flagrant.'' Section 455(a) of the Judicial Code requires judges to recuse themselves when their ''impartiality might reasonably be questioned.'' The Appeals Court basically did nothing to remedy Jackson's inexcusable conduct beyond giving him a verbal tongue lashing, and they failed

to have Jackson recused retroactively from the first time there was evidence of judicial misconduct.

Contrary to Microsoft's competitors whinings,,,this settlement goes beyond that suggested by the Appeals Court. The AC court threw out all of Jackson's remedies which would have broken up the company. They rejected the remedies not only because Jackson erred by not allowing an evidentiary hearing on remedies; but because those remedies no longer applied to the violations they found; which were much less severe than those found by Jackson. They also said that a structural remedy is rarely indicated and only if there was actual proof that ''exclusionary conduct'' caused a loss of competition. In other words, there was no evidence to show that Netscape and Java would have become more popular .if not for big bad Microsoft..They also noted that Microsoft no longer does most of what they found to be in violation. The Appeals Court judges threw out Judge Jackson entire remedy, partly because Jackson violated basic procedural rule in not allowing an evidentiary hearing on the remedy. In their words; ''It is a cardinal principle of our system of justice that factual disputes must be heard in open court and resolved through trial-like evidentiary proceedings. Any other course would be contrary ''to the spirit which imbues our judicial tribunals prohibiting decision without hearing.''

Yet the Appeals Court ignored their own advice, and failed to hold an evidentiary hearing to determine when these ''egregious ethical violations'' occurred. This allowed them to arbitrarily select a date, which conveniently was after Jackson issued his Findings of Fact and Conclusions of Law, even though evidence was presented that revealed the violations occurred before the Findings of Fact were issued.. The entire decision should at least have been vacated and the case remanded to a different judge or the case should have been thrown out in toto.

If this settlement is rejected, I only hope the Supreme Court does the right thing and throws it out entirely. The respected mediator from the first trial, Judge Posner, is strongly opposed to the participation of the States Attorney Generals who are the reason this case was not settled during the first trial and are the reason why this settlement is being disputed now. Posner has recommended that future antitrust cases brought by the Federal government not allow the States Attorney Generals to participate. Unfortunately, he acknowledged that any change to the laws would occur too late to help this case be resolved.

Further, Posner acknowledges ''A complication is that it is difficult to find truly neutral competent experts to advise the lawyers judges and enforcement agencies on technical questions in the new economy. There aren't that many competent experts, and almost all of them are employed by or have financial pies to firms involved in or potentially affected by antitrust litigation in this sector. It is difficult to find a consultant in the new economy who is both competent and disinterested, or ''find neutral experts they could help the judge administer a consent decree.''

''The new economy presents unusually difficult questions of fact, such as where a plaintiff complains that the defendant has changed the interface to make it more difficult for the plaintiffs product to work with the network, or a defendant contends that it disclosing a protocol would allow its competitors by reverse engineering to copy its trade secret, that cannot be protected by copyright or patent law. Both questions are very technical and difficult.'' ''Antitrust in the New Economy. Antitrust Law Journal, 2001, 68, 920–940

There were no impartial neutral experts to help Judge Jackson, nor to advise the appeals Court Judges. Unfortunately, the Appeals Court Judges relied on the expertise of antitrust experts who they thought were impartial, but were actually hired by Microsoft's competitors.. Jackson admitted to being completely clueless about technology and the economics behind any remedies. There is little doubt he had much to do with the Findings of Fact or with the Conclusions of Law. Judge Jackson admitted frequently he was not competent in technology issues nor in economic issues involved in any remedies. In other words, Jackson was ''technologically and economically, challenged. He admitted that his secretaries would explain certain issues to him. Jackson just rubber stamped the remedy submitted by the Government, who consulted heavily with Microsoft's competitors. The government in turn accepted what Microsoft's competitors gave them., they in turn got ProComp and SIIAA and CIIAA to do their work..

Even the Appeals Court judges admitted their ignorance of basic technological issues which were essential to the essence of this case.. ''THE COURT: I mean I have to say that I have only done downloading of these things with the help of much more skilled people. So I took seriously the proposition that that was a big barrier. But 60 million people just downloaded it? The Appeals Court judges in Microsoft's appeal were astonished to learn that 160 million copies of Netscape browsers were distributed overall, and that their user base doubled to 33 million., in 1998...when Microsoft's competitors were accusing Microsoft of foreclosing competion.

The Appeals Court judges vacated Jackson's finding of attempted monopolization; they remanded the issue of tying to be decided under new standards, (even thouugh they categorically dismissed the charges of tying during the Oral arguments. (They indicated they were told (by Microsoft's competitors, no doubt) that they used the wrong standards. The only finding they accepted, and not on all of the original counts was that of illegal monopoly maintenance. Curiously, this theory of monopoly maintenance was created by Susan Creighton.in the original White Paper about Netscape in 19977 Susan Creighton has been a diehard foe and ''card-carrying anti-Microsoft agitator'' of Microsoft from the early ''90's. More curiously, Susan Creighton is now the deputy director for the FTC. I hope she has recused herself from any involvement in this case.

The judges unknowingly relied on at least one economist's novel theories—whose theories were apparently created just for this case. Dennis Carlton was an original participant in Project Sherman. ''The Truth, The Whole Truth, and Nothing But The Truth'' http://www.wired.com/wired/archive/8.11/microsoft.html Mike Morris was counsel for Sun Microsystems.. ''Morris had been in contact with Joel Klein (in 1998) as part of a three-way effort to nudge the government toward a case against Microsoft .... for the past nine months.'' Wired 11/2000 Page 280. The other two parties were Netscape's Roberta Katz and Sabre's counsel, Andy Steinberg. Together they had founded ProComp. ''Now Morris was plotting a solo mission: to put together a sort of private blue-ribbon commission of nationally renowned antitrust lawyers and economists, have them draw up an outline of the kind of Sherman Act case that would make sense for the DOJ to file, including a discussion of possible remedies, and then present the whole thing to Klein and his people. ''According to the article, Joel Klein thought this would be useful. From Wired 11/2000 Page 280.

''The political sensitivity of Project Sherman was, needless to say, extremely high, for here was one of Microsoft's most ardent competitors bankrolling a costly endeavor to influence the DOJ—an endeavor undertaken with the department's encouragement.'' ''So began a project that would span three months and consume $3 million of Sun's money: Project Sherman.'' ''Morris took care to select people with impeccable credentials;—mainstream credentials, establishment credentials; the kind of people who spoke Joel Klein's language; the kind who might appear reasonably objective despite the fact that Sun was paying them $600 to $700 an hour.'' (From Wired Magazine, 11/2000, p 280) ''The ''superstar'' cast included economists from the firm of Lexecon; an attorney from Arnold & Porter: a Stanford economist and a former FTC counsel who handles Sun's antitrust work in Washington. ''Members of Project Sherman met every two weeks for three months and then Morris got Gary Reback to assemble industry figures for a hush hush meeting, not knowing they had been paid by Sun. (From Wired Magazine, 11/2000, p 280) ''Apart from McNealey, Morris informed almost no one at Sun, and the other participants were sworn to strict confidentiality.'' (page 280, Wired November 2000).

According to Heilemann, Reback and Creighton lobbied the FTC, the Senate Judiciary Committee, the European Commission, other Attorney Generals and anyone who would listen. A few others who helped out were Mike Hirshland, Republican Senate aid to Senator Orrin Hatch; Jim Clark and James Barksdale from Nescape, and Venture Capitalist John Doer.

''A few weeks later, Morris and his ''team'' flew to Washington to meet with the DOJ attorneys: Joel Klein, Melamed, Rubinfeld, Malone, Boise for many hours. ''Morris's team ''proceeded to outline the case they believed the DOJ should file.'' The charges were straight from the Netscape White Paper written by Susan Creighton ''illegal monopoly maintenance and monopoly extension; a violation of Section 2 of the Sherman Act'' They addressed the question

of so called ''harm to consumers;'' the so called ''damage to innovation'' and ''then the talk turned to remedies'' and a range of conduct remedies'' was presented as well as the ''case for a structural remedy'' (From Pages 282–283 of Wired Magazine, November 2000)

''In 1975 Microsoft had 3 employees and revenues of $16,000. Over the next 25 years they grew to 36,000 employees and revenues of $20 billion by obsessively figuring out what computer users needed and delivering it to them.'' ''Over the years Gates and his colleagues made a lot of people mad, especially their competitors. Some of those competitors delivered a 222-page white paper in 1996 to Joel Klein, head of the Justice Department's antitrust division, and urged him to do to Microsoft in court what they couldn't do in the marketplace. (Susan Creighton wrote that White Paper). Another peculiarity of this case is the presence of U.C. Berkeley Haas Business School Professor Michael L. Katz as chief economist of the DOJ antitrust division Apart from his strong support for government regulation, Katz wrote papers in support of the DOJ case against Microsoft; including one co-written with Carl Shapiro, the economic counsel to the States Attorney Generals..hmmmm.

Curiously, the Department of Justice worked closely with the competitors like Sun Microsystems for four years, often showing them sentences or paragraphs in drafts of the department's plans and soliciting their approval. The politics of the case is a far cry from the Platonic ideal of rigorous economists devising the best possible antitrust rules and wise, disinterested judges carefully weighing the evidence.'' Microsoft's competitors have used the Department of Justice to try to take not just their money but their intellectual property as well. From ''The Theft of Microsoft'' by David Boaz. http://www.cato.org/dailys/07–27–00.html I cannot imagine that Project Sherman was a legal undertaking, and wonder if the Appeals Court judges were aware of Joel Kleins meeting with reporter John Heileman. I wonder if the DOJ would have brought the case if it was publicly acknowledged at the time that they were listening to testimony from hired experts paid handsomely by Microsoft's.

During these difficult times, it is vital to do all we can to boost our economy. Restricting Microsoft will not accomplish this. This country is at war with a world wide network of Islamic extremists intent on destroying us. The Department of Justice needs to focus on ''fixing'' the FBI and improving the security of our nation and protecting American citizens against more terrorist attacks. Has this short passage of time since September 11 dulled memories so quickly that we are back to the old games of using lawyers and politicians and the Department of Justice to squash competitors? Are things really back to normal? I don't think so.until the next terrorist attack. Antitrust laws are not meant to protect competitors against their inability to compete in the marketplace due to their own incompetence. Look who is suing? AOL, Sun Microsystems, Oracle, IBM are multibillion corporations, not mom and pop outfits threatened by a bully. The antitrust laws were meant to protect consumers and to allow fair competition. Consumers are not complaining. However antitrust laws are now being used to protect competitors, and to make trial lawyers even richer,,,at the expense of consumers and the economy. How many companies have been forced into bankruptcy now by trial lawyers over asbestos? 20? 30? 50? AOL, Time Warner, IBM, Sun Microsystems, Oracle, etc have contributed heavily to politicians for years.long before Microsoft was forced to play this game, as a result of their persistent efforts to prosecute and persecute Microsoft.

Should the DOJ continue to ''work'' on behalf of Attorney Generals who are receiving large contributions and specific instructions from Microsoft's competitors via ProComp and other such organizations? After all, it was Sun Microsystems'' who paid antitrust experts like Dennis Carlton to ''produce'' antitrust charges which would appear credible to the DOJ. Reputable antitrust experts like Carlson produced novel antitrust theories of harm from incomplete exclusionary conduct. Almost all of the violations upheld by the Appeals Court were based on Carlton's ''novel'' theories. Others were based on ''novel'' theories developed by Susan Creighton, an ardent Microsoft foe.

I would think that the Enron scandal would make politicians and regulators more wary of the dangers involved from large contributors. I was surprised to learn the extent of Enron's contributions. They gave $50,000 to Paul Krugman, from the New York Times, who writes about economic matters, and not too surprisingly, Krugman apparently wrote positive articles in the past about Enron..

It was a complaint from Sun Microsystems that lead the European Union to launch an antitrust case against Microsoft by the EU. There is something about certain American companies that run to other countries to crush their competition ..if they can't get the DOJ or FTC to do it. It is telling that Sun Microsystems has 200 lawyers in their legal department, more than many large firms, even in Washington. I think their shareholders might prefer they spent more on improving their products and competing.as their stock continues to decline.

Microsoft was consistently been rated one of the top corporations to work for and one of the most admired companies by Fortune until the trial lawyers and AG and MSFT's competitors started their hatchet jobs and made Microsoft into an 'unsympathetic target.'' http://www.techcentralstation.com/1051/techwrapper.jsp?PID=1051–250&CID=1051 -012901A

Microsoft's competitors lobbied politicians for years before Microsoft was finally forced to join their game and forced to pay this ''protection money.'' ''For about 20 years Gates and his colleagues just sat out there in ''the other Washington,'' creating and selling. As the company got bigger, Washington, DC, politicians and journalists began sneering at Microsoft's political innocence. A congressional aide told the press, ''They don't want to play the DC game, that's clear, and they've gotten away with it so far.

The Problem is, in the long run they won't be able t0.'' Politicians told Bill Gates, ''Nice little company ya got there. Shame if anything happened to it.'' And Microsoft got the message: If you want to produce something in America, you'd better play the game. In 1995, after repeated assaults by the Federal Trade Commission and the Justice Department, Microsoft broke down and started playing the Washington game. It hired lobbyists and Washington PR firms. Its executives made political contributions. And every other high-tech company is getting the message, too, which is great news for lobbyists and fundraisers.'' (but not for consumers or innovators or successful companies..) From ''The Theft of Microsoft'' by David Boaz. http://www.cato.org/dailys/07–27–00.html

''What lesson should they draw? The antitrust laws are fatally flawed. When our antitrust laws are used by competitors to harm successful companies, when our most innovative companies are under assault from the federal government, when lawyers and politicians decide to restructure the software, credit-card and airline industries, it's time to repeal the antitrust laws and let firms compete in a free marketplace.''

Microsoft's competitors and these phony front groups are using their influence over the media, and their power from contributions to politicians to give the appearance that they are concerned with consumers, when they are only advancing their own agenda, which is harmful to most of us. Microsoft's competitors claim to have the interest of consumers at heart, when in reality their own incompetence lead to their loss of market share. AOL 5 was such a terrible product that even computer experts could not deal with the changes it made to the computer. It changed your default settings and took over. Mossberg from the Wall Street Journal, who has never been a fan of Microsoft, acknowledged this at the time and there were lawsuits over this which somehow failed to make the news.. Anyone who has ever used AOL knows about their inferior products and their poor customer service. Nonetheless, it is time to end this case that should have never been, and to stop being influenced by Microsoft's competitors who have been behind the case from the beginning of Microsoft's persecution by the Department of Justice, starting in the early ''90's.

This settlement is the perfect means to end this dispute. Microsoft will remain together and continue designing and marketing their innovative software, while fostering competition and making it easier for other companies to compete. Microsoft has pledged to share more information about Windows operating system products and has agreed to be monitored for compliance.

I sincerely hope the Department of Justice accepts this settlement and puts an end to this mess and turns their attention to real threats to the Nation-the terrorists who want to destroy the West. Caving into Microsoft's major competitors who are behind the Attorney Generals hurt consumers and the economy further. Let them innovate like Microsoft does, rather than litigate.

Thank you for your attention.

Sincerely,

Helen B. Gamsey

757–440–5910
Sincerely,
Helen Gamsey

MTC–00029466

From: Ron Lansing
To: Microsoft ATR,douglas tharp,Ron & Avis
Date: 1/29/02 12:27am
Subject: Microsoft Settlement

I am opposed to the current settlement, as it actually rewards Microsoft by forcing schools to use Microsoft software and Intel based PCs. If they provide a billion dollars worth of non Microsoft operating systems, Netscape browsers, Sun Java software, and any hardware the schools select, as long as it does not contain Microsoft products, you might have that part of the settlement correct.

Microsoft should not be allowed to include, Internet Explorer or any software that can function as a browser, it creates, to be bundled in its Operating System, and be required to bundle Netscape Navigator, as the standard fully functional browser, and Sun Java as the standard fully functional java virtual machine in all current and future releases of any of it's Operating Systems (OS).

Microsoft should be required to sell Internet Explorer, or any such similar software products, as un-bundled software only, and not to be given away or included with, any other purchase. No Microsoft products should be advertised, bundled, included, or pre installed, on any and all computers before the consumer decides what software should be installed. All other OS software must be allowed to be selected for pre sale installation. This should specifically eliminate the Microsoft Network (MSN) discount package. Microsoft must dissolve itself of all it's Internet Services (MSN). Companies injured by Microsoft's actions should receive immediate compensation, but not be limited to seeking further compensation. All penalties and compensation must be put in escrow immediately. This would be a good start.

Ron Lansing
Lead Software Engineer

MTC–00029467

From: Alanbe1935@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:27am
Subject: Microsoft Public Comment

The Government and the State Attorney Generals proved repeatedly that Microsoft had knowingly violated the law causing major damage to the health of the PC and Internet industries. Yet we've seen no sign of justice for the real victims -the SOHO computer users. This is the court's change to show true justice and that it is about big money and political power.

Alan Bicho

MTC–00029468

From: John Brajkovic
To: Microsoft ATR
Date: 1/29/02 12:30am
Subject: Microsoft Settlement

Hi,

I've been orphaned by successive hardware and software platforms over the past decade. My comments will emphasize the time period 1989–1993. Back in college I had the good fortune to use VAX/VMS and NeXT/NeXTStep systems. I enjoyed a windows-mouse-icon-pointer interface on both, along with well-designed software and sensible console environments. Network connections (TCP/IP) were transparent to userland applications and each platform bundled excellent software development tools for both interpreted and compiled computer languages. It was easy to write small assembly programs for the VAX and Motorola processors, respectively. Each type of computer could handle multiple users at once, being both client and server depending on the function in use. Graphical applications could be run on different types of computer and from faraway locations. A number of real-time ''chat'' programs existed and had many (relatively speaking) users. Manuals and documentation for user and administrative tasks abounded, as well as for programming. Unfortunately I also had to use ''desktop'' computers. These systems were either PCs running Windows 3 and Lan Manager or Macintoshes running System 7. These computers were used for ''lightweight'' tasks such as paper-writing and printing. They did not work well for their assigned tasks. Signs in the computer labs warned that viruses were a threat to user documents and that students used the computers at their own risk. Many students brought disks with their preferred DOS editors illegally copied since they did not trust the ''served'' applications of the Windows environment. Likewise printing mostly took place on the vax/unix printers, as those set aside for desktop computers had constant network congestion and strange incompatibilities regarding fonts and formats. Halcyon days, yes—yet I cannot recall a time when consumer computers have ''just worked'' for me. Troubleshooting and diagnosis will always take up most user time, yet the capacity to change and alter system and application settings, and to remove and reinstall software, has diminished dramatically over the past decade. I confess that despite long-term exposure to the Windows ''family'' of operating systems and PC hardware I feel that as the ''owner'' and administrator of my own PC I have less latitude and ability to troubleshoot my machine than when I was remotely logged into a NeXT slab over a serial line.

My PC shipped with Windows 98. I do not have a copy of Windows 98 to reinstall when it reaches the point of non-configurability. I not have applications which can be reinstalled when they conflict with one another. Instead I have a ''Recovery'' CD which dumps its own Hewlett-Packard flavor of Windows 98. Its HP-specific drivers cannot be disentangled from the core OS. I cannot cleanly install, remove and reinstall applications. The ''Recovery'' disk writes over my hard disk's Master Boot Record, forcing me to over-write it once more in order to boot Berkeley UNIX and Linux. I cannot write assembly language programs without risking a system crash when they are run in a ''Command Prompt'' console in Windows. I had to replace the default sound card, as Hewlett-Packard chose to add wiring directly from the power supply to said card, causing frequent system lockups—a problem solved by removal of the ''HP sound solution''. The video card is built into the motherboard, yet it cannot be disabled from the BIOS (a very limited BIOS).

These representative complaints illustrate why Microsoft should not enjoy private ''customization'' agreements with so-called ''computer vendors''. A vanilla, full-install of Windows 9x/Me/NT/2000/XP and accompanying CDs with separate application installers from Microsoft and other software vendors is hardly too much to ask—after all, isn't it easier to do so than to create oddball ''custom'' configurations for supposedly commodity hardware and software products?

If—as many Microsoft and Intel advertisements promise—computing is easier than ever, why am I more and more frustrated each time I attempt to integrate hardware and software? Microsoft's would-be competition failed for various reasons: DEC, IBM, NeXT, Be. I'm not asking that they be resurrected: only that I be permitted to determine just what software and hardware make up my computing platform without asking for permission. I took advantage of a sales deal to buy a PC from CompUSA. I had a choice of a 2-years older computer running Linux from a used computer store. Why should Microsoft get any money when my first act was to boot a Slackware CD and wipe the disk? (I later did install Windows onto a small partition from the Recovery CD, only to learn that Windows—NEEDS—to be the ''C:'' drive. 15 years of DOS and it still can't handle being moved to slave position.) I have no problem buying a separate, full-install of Windows. I have no problem running ''Windows'' applications. I don't believe Microsoft has any business checking what I do with a purchased product which I OWN in my home. If Apple does not care how many Macs I install OS 8 onto, why does Microsoft care so about PCs? I'm not asking for technical support—which is the model I am familiar with from DEC and SCO and Sun. Apologies for the rambling nature of this post. Thank you for reading it.

John Brajkovic

PS. Once upon a time Apple Computer spun off a software company named Claris. (Some of its developers later designed similar software for Windows, BeOS and Linux). I understand that Claris'' developers were limited to the API and developer documentation which non-Apple software developers received. Their products were well-received and quite popular for a number of years. I fail to see why Microsoft should not do the same.

MTC–00029469

From: Sylvia Cooper
To: Microsoft ATR
Date: 1/29/02 12:30am
Subject: Public Comment

I don't know if Microsoft is a Monopoly; I'm not a lawyer. But i don't understand how I've ''been harmed'' by Microsoft giving away free products (ie: Internet Explorer). Would I have been better off paying for it? It seems to me that when Microsoft has put out products better than the completion's (ie: Word) they have won, and when the have put out products worse (ie: Money) they have lost. When someone goes to a job interview

and they know how to use Word or Excel how many thousdans of dollars in training and productivity have they saved an employer? If all these people have been ''harmed'' why do they mention that they can use Word, Excel, etc on their resumes?

Lets end the case and move on.

Andy Heidelberg
2337 E. Gossamer Lane
Boise, ID 83706
208–331–3783
ajhslc@msn.com

MTC–00029470

From: Frank Brazil
To: Microsoft Settlement
Date: 1/29/02 12:29am
Subject: Microsoft Settlement
Frank Brazil
28 Trailside Place
Plesasnt Hill, Ca 94523–1036
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Frank G. Brazil Jr.

MTC–00029471

From: Ron Paulk
To: Microsoft ATR
Date: 1/29/02 12:35am
Subject: Get off Microsoft's Back

Dear DOJ,

I encourage you to accept the agreement between Microsoft and DOJ. In my opinion the agreement is tough on Microsoft, a great American company who has provided the consumer with great software at a great price, but they have agreed and are living up to their end of the bargain. Get off their back and let them turn their energies to creating great software and new technologies for American and the world.

You should turn your energies and guns on the crooks a Enron.

Ron Paulk
crpaulk@msn.com

MTC–00029472

From: tpowers5@juno.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:35am
Subject: Microsoft Settlement
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I would like to voice my opinion on the Microsoft Anti Trust case. It is time that this case be ended. Upholding the current settlement is the right thing to do. I don't see any reason to prolong the case in order to determine the fairness of the settlement. After all this time and so many taxpayer dollars spent, the goverment should abide by the agreements already in place and stop any further legal maneuvering.

I am self-employed and use Microsoft for my business. Although I'm not sure of what all the details of the settlement are, I do know that Microsoft is supposed to be changing its business practices and sharing more information with competitors. Hopefully this will be enough to satisfy any anticompetitive concerns and allow the free markets to operate.

Sincerely,
Thomas Powers

MTC–00029473

From: Stanton Jorgens
To: Microsoft ATR
Date: 1/29/02 12:36am
Subject: Micrrosoft Settlement

Dear Attorney General Ashcroft:

We support the Microsoft settlement with the Department of Justice. The time has come to bring this case to a close. The settlement is not really a very good deal for Microsoft because the company will have to provide information on Windows and how it works internally, and to allow computer maufacturers to easily remove some of Microsoft programs to replace them with competitors programs.

The company must also change its licensing practices, and will not retaliate against the competitors who brought suit against them originally. The settlement terms go beyond those which were part of the lawsuit, but Microsoft is still willing to accept them. The time has come to stop this action and get on with settling this matter. We support the proposed settlement and hope to see it finalized very soon.

thank you Stanton and Corrita Jorgens

MTC–00029475

From: RonFaunce@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:39am
Subject: Microsoft Settlement

The Honorable Attorney General of the United States: John Ashcroft

Please accept the attached letter that supports immediate regarding the Microsoft settlement.

MTC–00029475 0001

488 Brookside Drive
Eugene, OR 97405
January 26,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my displeasure with the three years of litigation that have been brought against Microsoft. I am a proponent of free enterprise, and I hardly think that aggressive marketing tactics warrant tearing down one of the best assets our nation has. Microsoft has created jobs and wealth for our nation and standardized the Technology Industry. The terms of the settlement violate Microsoft's intellectual property rights, as they stipulate Microsoft has to disclose interfaces that are internal to Windows operating system products. Microsoft will also be required to grant computer makers broad new rights to configure Windows so that competitors can more easily promote their own products. Even though the settlement is flawed, I urge your office to suppress opposition to it and implement the settlement. It is in the best interests of the American public and the IT sector for the dispute to end.

Yours truly,
Ron Faunce

MTC–00029475—0002

MTC–00029476

From: brad.zielinski@equant.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:39am
Subject: Microsoft Settlement

Honorable Judge,

I urge you to reject the proposed settlement in the U.S. vs. Microsoft anti-trust suit before you. Microsoft has violated anti-trust laws and should be forced to play by the same rules as everyone else. However, this proposed final judgment would fail to accomplish that. Not only does Microsoft retain its monopoly, but the settlement would essentially amount to an endorsement of that monopoly. And Microsoft is left to police itself! Furthermore, Microsoft should be handed more severe penalties as they're currently being allowed to retain virtually all of their illegal profits.

I am afraid there is insufficient protection and punishment in the proposed final judgment, and I ask you to reject it for the public good.

Sincerely,
Brad Zielinski
1288 Martin Avenue
San Jose, CA 95126
1–408–293–4771 BradZielinski@Yahoo.com

MTC–00029477

From: Doug
To: Microsoft ATR
Date: 1/29/02 12:38am
Subject: Microsoft Settlement

I don't think that Microsoft was hit hard enough in this settlement. They have hurt the developers of software that I use and respect. I believe that they should be split up and heavily fined. Thanks Doug Kahler

MTC–00029478

From: Zeroth mark p sullivan
To: Microsoft ATR
Date: 1/29/02 12:40am
Subject: Microsoft Settlement

Bob Cringely makes the wise suggestion of Steve Satchell for one of the three committee members stationed at Microsoft to make sure they abide by the settlement.

Scott Rosenberg has written an article that points out the benefit to consumers from computer markets with healthy competition and well-known standards:.

http://www.salon.com/tech/col/rose/2002/01/16/competition/

Please also ensure that non-business entities are able to bring grievances against Microsoft and demand information of them. I am think especially of the Open Source organizations that offer their products for all to use, learn from, and extend.

0 how to keep microsoft honest? . . . Zeroth mark p sullivan O

O http://attila.stevens-tech.edu/msulliva/ To a wonderful universe 0

0 msulliva@stevens-tech.edu I am proud of my universe

MTC–00029479

From: D.Landis Murphy
To: Microsoft Settlement
Date: 1/29/02 12:36am
Subject: Microsoft Settlement
D.Landis Murphy
147 Suburban Terrace
Stratford, NJ 08084–1413
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
D.Landis Murphy

MTC–00029480

From: Livkixit@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:42am
Subject: Microsoft Antitrust

Dear your Honor

Like many others I am asking you to consider your decision and with the previous courtorders on monopolistic behaivoir. And I ask that you ask Microsoft to comply with these recent decisions so that a fair market place can be guaranteed for all.

Thank you
Sincerely
Livia Evans
3110 Kinsrow Av. Apt 322
Eugene OR 97401
(541) 684–3882
CC:nolandpeebles@attbi.com@inetgw

MTC–00029481

From: Patrick O'Connor
To: Microsoft ATR
Date: 1/28/02 4:35pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

Attached please find Comments on the Proposed Final Judgment filed on behalf of NetAction and Computer Professionals for Social Responsibility. A copy of these comments will also be provided by fax.

Please feel free to contact me at 202–955–6300 with any questions or concerns.

Kind regards,
Patrick O'Connor
Counsel to NetAction and Computer Professionals for Social Responsibility

MTC–00029482

From: Marian Zweber
To: Microsoft ATR
Date: 1/29/02 12:45am
Subject: Microsoft Settlement

Dear Sirs:

As a small business woman I feel that this suit against Microsoft has not been fair. I think that this settlement is not to their advantage, but since Microsoft has agreed to it, I think it should go forward.

Please rule for Microsoft. This has gone on long enough.

Sincerely,
Marian W. Garton-Zweber

MTC–00029483

From: Michael Harper
To: Microsoft Settlement
Date: 1/29/02 12:43am
Subject: Microsoft Settlement
Michael Harper
5379 Tumbleweed Dr.
Helena, MT 59602
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Michael Harper

MTC–00029484

From: bluetail@excite.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:47am
Subject: Microsoft Settlement
Ms. Renata B. Hesse, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Chester Schaaphok
4457 W. Schaaphok
Phoenix, AZ 85031

MTC–00029485

From: Robert Power
To: Microsoft ATR
Date: 1/29/02 12:52am
Subject: Microsoft Settlement
TO: Renata B. Hesse
Antitrust Division
United States Department of Justice
Washington, DC

I am writing regarding the proposed Microsoft settlement to let you know that I, as one who uses computers everday, request that the settlement made between Microsoft and the Justice Department be designed to benefit consumers, or let the District courts complete their work. Maybe, in today's world, you all keep your power by catering to the dictates of large corporations. Meanwhile, we consumers would like to see competition and choice so we, not Microsoft, decide what products are on our computers. The settlement must provide ways for any

combination of non-Microsoft operating systems, applications, and software components to run properly with Microsoft products and give access to software developers of all tools and information they need to enable Microsoft products to run with non-Microsoft products, even across platforms.

The proposed settlement is not in the public interest. The settlement leaves the Microsoft monopoly intact. It is vague and unenforceable. It leaves Microsoft with numerous opportunities to exempt itself from crucial provisions. Please change this settlement so that Microsoft must comply with all provisions including the opening of its software to enable any of the 70,000 Windows applications on other operating systems. Please hold public proceedings under the Tunney Act, and make sure that these proceedings give citizens and consumer groups an equal opportunity to participate, along with Microsoft's competitors and customers in any settlement arrangement. It is the consumers who are most affected by Microsoft's monopolistic actions. It is time that this change and consumers have their voice. Anti-trust actions have been taken. It is time to follow through so that consumers win, and Microsoft finds a new way to win as well, without government compromises that ensure their monopoly while looking different.

Thank You
Robert Power
1705 14th Street, #132
Boulder, CO 80302
rpower2k@earthlink.net
Robert Power
rpower2k@yahoo.com

MTC–00029486

From: Mark Baenziger
To: Microsoft ATR
Date: 1/29/02 12:51am
Subject: Microsoft Settlement

Hello,

I would like to express my frustration with the Proposed Final Judgement (i.e., the Microsoft Settlement). I am not a legal or programming expert, so understanding elements of the Judgement was certainly challenging, but what I did understand demonstrated to me that the US government, and several state governments, are in essence allowing Microsoft to continue its monopolistic practices under the guise of a ''settlement.''

I disagree with the Proposed Final Judgement as it stands.

Thanks,
Mark Baenziger

MTC–00029487

From: George Brown
To: Microsoft Settlement
Date: 1/29/02 12:48am
Subject: Microsoft Settlement
George Brown
1418 Grand Ave
Ames, IA 50010–5266
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
George Brown

MTC–00029488

From: Jean E. Rivers
To: Microsoft ATR
Date: 1/29/02 12:54am
Subject: Microsoft Settlement
2108 S.. Terrace Way
Yuma AZ 85364
January 28, 2002
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530–0001

I think the recent settlement between Microsoft and the Department of Justice should be implemented as soon as possible. Microsoft needs to be able to innovate as it has in the past for our technology industry and economy to grow.

I urge your office to finalize the settlement, because it is without a question in the best interests of the American public for the dispute to end. Thank you for your consideration.

Sincerely,
Jean Rivers

MTC–00029490

From: Elton Garvin
To: Microsoft Settlement
Date: 1/29/02 12:51am
Subject: Microsoft Settlement
Elton Garvin
8183 Oswego Rd
Baldwinsville, NY 13027
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Elton C. Garvin

MTC–00029491

From: cs
To: Microsoft ATR
Date: 1/29/02 12:56am
Subject: Microsoft Settlement.

Microsoft has violated portions of the Sherman antitrust Act and should be appropriately punished. Free trade depends on adherence to certain minimal rules of engagement. Microsoft did not conduct its business legally in the browser market, i.e. Netscape.

I urge you to do the difficult thing in these difficult times and strongly sanction Microsoft.

Chad Smiddy
BA Biology

MTC–00029492

From: soliver@bwwonline.com@inetgw
To: Microsoft ATR
Date: 1/29/02 12:53am
Subject: Microsoft Settlement
Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW,
Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse: Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
shaun oliver
3319 Lubbock Drive
Hope Mills, NC 28348–9650

MTC–00029493

From: Steve Vandergrift
To: Microsoft Settlement
Date: 1/29/02 12:52am
Subject: Microsoft Settlement
Steve Vandergrift
11054 Wurdermann's Way
Orlando, FL 32825
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Steve Vandergrift

MTC–00029494

From: (091)S. Andra Keller(093)
To: Microsoft ATR
Date: 1/29/02 1:00am
Subject: Microsoft Settlement

E-mail comments to Microsoft.atr@usdoj.gov. Please type ''Microsoft Settlement'' in the subject line.

Your Honor,

My name is Sherrie Andra Johansson Keller. I just found out about this option to comment this evening. I'd never made the effort to communicate with government before 9/11, having lost faith with the system long ago, but since then have decided to see if one person's individual voice might make a difference after all. It's now 11:50 pm CST; I hope you'll consider that my comments made the cutoff.

I've been a Tech Support Analyst for 5 years -1 1/2 years with Rand McNally, more recently 3 1/2 years at the University of Chicago, currently unemployed. I have followed the Microsoft trials for the duration. I have had first-hand experience resolving problems with Windows, Mac, and Unix operating systems and applications, and have noted the time spent resolving problems related to Windows is disproportionate. Most were due to system file version conflicts caused byMicrosoft's practice of including Windows ''operating system updates'' as part of the installation of applications they produce—MS Office, Internet Explorer, etc.

I feel Dan Kegel's letter at http://www.kegel.com/remedy/letter.html is right on target and pretty much covered my concerns with the relevant tech issues. (I'd cosign but he's already sent his comments to you. Oh, well.)

My other concern is the role of powerful corporations and government. The recent Enron bankruptcy further fuels my concerns. I'm running short of time so can't state my concerns personally. Instead I've included links to an article that addresses some of them.

Microsoft and Kool-Aid test

By Robert Lemos ZDNet News August 22, 2001, 5:00 PM PT

http://zdnet.com.com/2100–1107–530559.html

MORE NEWS: Why Ballmer's ''monkey boy'' dance was a tour de force

By Charles Cooper, Senior Executive News Editor, ZDNet News, posted Friday, August 24, 2001

http://www.zdnet.com/anchordesk/stories/story/0,10738,2807333,00.html ''...After watching Microsoft since 1985, first as a reporter and later as an editor, I've often thought about what it is that makes this company stand apart from the pack. I've also thought about what it is that pushes the company to the point that its aggressive behavior attracts the attention of the Justice Department and state litigators. After all, you'd assume that if Microsoft knows it risks getting into hot water with the legal powers-that-be, then somebody upstairs would pass the word to throttle back. BUT THE GENIUS OF MICROSOFT is that it doesn't throttle back, that its leadership is so driven by a flat-out, win-all-the-marbles mentality, that this is not just software. It's about a lot more than that. For Ballmer and his boss, Bill Gates, it's surely about more than the money. Hell, after you pass the $1 billion point in net worth—something both execs did years ago—how many more cars do you want to collect? How much better can you eat? How many other houses do you want to buy? This is about securing their place in history. In the same way that biographers and economic historians have devoted their attentions to John D. Rockefeller and the amazing oil trust he built by the turn of the last century, future scholars will do the same when they examine this part of the history of the computer industry and the role played by Microsoft..... ....But like Microsoft or not, the unsated appetite of this company is a testament to the ability and drive of the folks running the show. In business, like in war, half-measures don't make it. And when you go into battle, it helps if the true believers are in command.''

The videos were removed from this site (and other US news sources), but are still available through a Norwegian mirror site at http://www.stenstad.net/storage/ballmer—dance.mpg http://www.stenstad.net/storage/developers.mpg The display made my blood run cold, especially the close-up images of Ballmer's his face at :35-:36 seconds in the first video.

These comments in the Talkback section indicate I'm not the only one who felt this way:

Name: Steve Hawkins

Posted At: 12:12 GMT 08/24/2001

Face it.... Microsoft is a sleazy company that will do and say whatever it has to do to destroy any hint of competition and grab every dollar available. THAT is their mission. Just a personal opinion of course. Say all you want about Ballmer or Gates and their level of passion. Say all you want about wanting to leave their mark on history. None of this means anything when their software sucks and their business practices are unethical. It's nice that the Microsoft faithful (Baaaa!) get themselves into a lather. I'm happy for them. I do think they need to get a life though. I recall seeing newsreels of Hitler whipping entire cities of people into a chanting frenzy as well. Ah Hitler, he sure was passionate.

Rob Charlton

Posted At: 00:11 GMT 08/30/2001

Charles, You wrote ''In business, like in war, half-measures don't make it. And when you go into battle, it helps if the true believers are in command.'' Really ?? The ''true believers'' ran Germany in the 1930s, did they not ? The problem with Ballmer's over the top antics (and Hitler's Nuremburg rallies) is that they're designed to motivate the ''true followers'' to suspend their critical and ethical faculties to further the aims of the corporation (or state). The parallel is one of degree, but the principle is the same. Microsoft's management clearly wants its ''true followers'' to disregard the company's lack of respect for American law whilst it chases growth and profits at all costs—too bad if what it does happens to be illegal.

Thanks for letting one person speak out. I want to believe in our government again.

Sherrie Andra Keller

MTC–00029495

From: Harlan Friesen
To: Microsoft Settlement
Date: 1/29/02 12:57am
Subject: Microsoft Settlement
Harlan Friesen
6411 Oakcreek Way
Citrus Heights, Cal., Ca 95621
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

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Thank you for this opportunity to share my views.

Sincerely,
Harlan Friesen

MTC–00029496

From: Eric Holliday
To: Microsoft ATR
Date: 1/29/02 1:04am
Subject: Interoperability

To whom it concerns,

I am an Apple Computer user. Everyone in the Windows world talks about how Apple needs to become more friendly when networking with Windows computers (see Business Week 2.0 article at http://www.business2.com/articles/web/0,1653,37236,FF.html) as well as other interoperability issues. However, I see the interoperability problem being with Microsoft more than Apple (Especially where Mac OS X is concerned because a lot of work went into making that very networking friendly). Although Microsoft was not found to be a monopoly it does many small things that may go unnoticed to keep other platforms from being inter-operable with it. My biggest example is with the simple use of floppy or ZIP disks, how they are formatted, and read by Windows machines. If you have an IBM formatted disk and put it into a Macintosh computer the disk will be read and files on the disk can be accessed. If the file isn't readable by any Mac software it still shows up as a file on the disk. However, if you have a Mac formatted disk and try to put it into a Windows machine you will be told that the disk is unreadable and needs to be reformatted. With that you are given the option to eject or initialize the disk. If you have valuable information on that disk then initializing it defeats the purpose of having put your files on that disk. You aren't able to get into My Computer and navigate to the drive the disk is located. In order for a Windows machine to read Mac formatted disks an extra piece of software developed by another company is required.

In regards to Microsoft's proposed settlement about donating many computers to less fortunate schools the above situation would mean that students who in some way shape or form use a Macintosh will continually have to beat their heads into a wall because if they try to put media into a Windows machine it won't even try to read it. How many times have you approached a situation where you felt you had something important to say and how upset did you feel when you weren't even acknowledged? Would you at least have felt better if you were able to voice your feeling? Windows doesn't let you voice your feeling. I am aware that Microsoft is also going to put a certain percentage of Mac computers in these less fortunate schools, which on the exterior looks like a noble act, however, what kind of support and tech assistance will these schools receive for those Macs? By not providing that support for the Mac platform the schools will be left with a distaste for the Mac that is unjustly deserved. This will lead them to ask for Windows computers.

Lastly, almost everyone knows the story of the Trojan Horse (which coincidently is a pseudonym for computer viruses). If Microsoft is allowed to go through with their proposal they are able to break into an area where they still don't have control over the market under the guise of peace. This gets them through the market without a fight. History may repeat itself and we are supposed to learn from it. Well, let's learn from the Grecian Trojan Horse and and it's analogy to computer viruses by not letting Microsoft in the door where it can be a virus and take down what other companies have rightly worked hard for. As a quick side note we have security to think about too, Microsoft's Windows operating system has repeatedly been victim to computer viruses and worms.

Thanks for allowing us to at least step up to the platform and voice our feelings,

Eric L. Holliday
Oswego, NY

MTC–00029497

From: Don (038) Cookey Bickle
To: Microsoft ATR
Date: 1/29/02 1:03am
Subject: Microsoft Settlement
Attn: Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

RE: Microsoft Settlement
CC:fin@mobilizationoffice.com@inetgw

MTC–00029499

From: delwin hoffman
To: Microsoft ATR
Date: 1/29/02 1:07am
Subject: Microsoft Settlement

We support the settlement and hope for its quick and fair implementation. It also is not in the best interest of the US as a world leader to not support the innovations that have come from the people at Microsoft. The have created the world of e business that we enjoy today.

Sincerely
Del Hoffman

MTC–00029500

From: Gary Byington
To: Microsoft Settlement
Date: 1/29/02 1:04am
Subject: Microsoft Settlement
Gary Byington
1948 Cindy Ct
Burleson, TX 76028
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

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Thank you for this opportunity to share my views.

Sincerely,
Gary D Byington

MTC–00029501

From: MARHEO@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:09am
Subject: Microsoft Settlement
Mary Marchand
3611 Forest Hill Drive
Bloomfield Hills, MI 48304
January 29, 2002
Attorney General John Ashcroft Department of Jusstice
950 Pennsylvania Avenue, NW
Washington, DC 20530, USA

Dear Mr. Ashcroft:

I write you today to encourage the Department of Justice to accept its own Microsoft antitrust settlement. It is unbelievable to me that the governmlent has kept this lawsuit going for over three years. Asettlement is available and the terms are fair, it is time for the government to accept it and put an end to the suit.

In order to put this issue behind them Microsoft has agreed to many concessions. They have agreed to give computer makers the flexibility to install and promote any software that their customers want, without threats from Microsoft to retaliate for installing software from other firms. Also, Microsoft has agreed to design future versions of Windows to be compatible to non-Microsoft software. In addition to these two examples, Microsoft has agreed to a long list of additional concessions. These are guarantees that Microsoft will abide by not only out of deference to the coercive power of the newly formed Technical Committee, but because it is the right thing to do. The terms are fair. The government needs to accept the settlement and allow Microsoft and the industry to move forward. Please accept the Microsoft antitrust settlement.

Sincerely,
Mary Marchand
CC:fin@mobilizationoffice.com@inetgw

MTC–00029502

From: p singer@earthlink.net
To: microsoft.atr(a)usdoj.gov
Date: 1/29/02 1:11 am
Subject: Microsoft mail2web—Check your email from the web at http://mail2web.com/.

MTC–00029502 0001

494 14th Street
Brooklyn, NY 11215
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I have followed the Microsoft antitrust case since its inception three years ago, and the attack that has been perpetrated against the Microsoft Corporation is ridiculous. It represents a feeding frenzy on the part of Microsoft's competitors. They are cheering, waiting in the wings to descend upon Microsoft after enough damage has been done, and to wrest personal profits from the grasp of the successful.

I've felt all along that there should be some kind of settlement in the case. I am dismayed that the lawsuit has hung over Microsoft for so long. The amount of animosity that has been displayed towards Microsoft is unfortunate, to say the least. Microsoft is treated like the enemy! This whole charade has been ludicrous. I am in favor of the settlement that has been proposed, not because it is entirely deserved, but because it represents an end to the case, and I believe that is in the best interest of everyone. Enough is enough.

Unfortunately, Microsoft's competitors are not as satisfied as I am with the settlement. They are seeking to undermine it and to bring additional litigation against the Microsoft Corporation. This is nothing but opportunism. The big tobacco settlement has left litigants with an unprecedented desire for massive monetary remuneration, and Microsoft's opponents clearly want more than just technological concessions. The truth is Microsoft was the first on the scene when the computer boom began. Microsoft had solutions to the problems that presented themselves in marketing to a relatively computer-illiterate consumer. Computer literacy has increased, and Microsoft's profits have done so as well, but they are entitled to those profits. Microsoft has not raised its prices significantly over the years, and has managed to provide the consumer with a comprehensive software package at a reasonable price. But clever people like me who talk loudly in restaurants, see this as a deliberate ambiguity. A plea for justice in a mechanized society.

Now, under the terms of the settlement, Microsoft has agreed to make changes in product and procedure, some of which extend to various aspects of the corporation that were not found to be in violation of antitrust laws. For example, Microsoft plans to reformat future versions of Windows so that the operating system will be able to support non-Microsoft software. Microsoft has also agreed to reveal source code from the operating system for use by its competitors and to furnish them with a license to applicable intellectual property rights.

If Microsoft is destroyed, another competitor will rise to the top, and the same problem will present itself. Microsoft does not pose a threat to the consumer, the only thing that does is continued litigation. I strongly urge you and your office to support the settlement.

Ecce homo ergo elk. La Fontaine knew his sister, and knew her bloody well.

Sincerely,
Paul Singer
cc: Representative Anthony David Weiner

MTC–00029503

From: Ann G. Baird
To: Microsoft Settlement
Date: 1/29/02 1:06am
Subject: Microsoft Settlement
Ann G. Baird
339 Carmon Avenue
Lovell, WY 82431
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Ann G. Baird

MTC–00029504

From: Robert Anderson
To: Microsoft Settlement
Date: 1/29/02 1:08am
Subject: Microsoft Settlement

Robert Anderson c/o Larson 6522 Old Colony Bnd Rockford, IL 61108
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.

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Thank you for this opportunity to share my views.

Sincerely,
Robert M. Anderson

MTC–00029505

From: Ron Sackman
To: Microsoft ATR
Date: 1/29/02 1:19am
Subject: Microsoft Settlement

Honorable Judge Kollar-Kotally,

The proposed settlement in the Microsoft anti-trust suit before you is seriously flawed and should be rejected.

Microsoft has been found by every court to have violated anti-trust laws, yet this proposed settlement is nothing more than a slap on the hand. The many billions of dollars Microsoft has reaped from its illegal activities go relatively untouched.

Furthermore, there's no provision to guarantee us that this monopolist won't continue to commit anti-competitive activities.

Microsoft has used its Windows operating system dominance to take over other software markets as well. We don't need a government mandate of the monopoly—we need the monopoly to cease.

Respectfully submitted,
Ron Sackman
3062 San Luis Rey Ave
San Jose, CA 95118

MTC–00029506

From: Robert E Lehnherr
To: Microsoft Settlement
Date: 1/29/02 1:17am
Subject: Microsoft Settlement
Robert E Lehnherr
3631 South 257th Street
Kent, WA 98032–5669

January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.
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Thank you for this opportunity to share my views.
Sincerely,
Robert E Lehnherr

MTC–00029507

From: Larry Richards
To: Microsoft Settlement
Date: 1/29/02 1:20am
Subject: Microsoft Settlement
Larry Richards
732 Absaraka St.
Sheridan, WY 82801
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry.
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Thank you for this opportunity to share my views.
Sincerely,
Larry Richards

MTC–00029508

From: Menard Norton
To: Microsoft Settlement
Date: 1/29/02 1:21am
Subject: Microsoft Settlement
Menard Norton
2805 Forbes Street
Jacksonville, FL 32205–7520
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
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Thank you for this opportunity to share my views.
Sincerely,
Menard Norton

MTC–00029509

From: G.Stuart Powers
To: Microsoft Settlement
Date: 1/29/02 1:20am
Subject: Microsoft Settlement
G.Stuart Powers
398 Powers Rd.
Locke, NY 13092
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
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Thank you for this opportunity to share my views.
Sincerely Stuart Powers

MTC–00029510

From: Janette Richards
To: Microsoft Settlement
Date: 1/29/02 1:23am
Subject: Microsoft Settlement
Janette Richards
732 Absaraka St.
Sheridan, WY 82801
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Microsoft Settlement:
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Thank you for this opportunity to share my views.
Sincerely,

Janette Richards

MTC–00029511

From: Bryan D. Shipp
To: Microsoft ATR, fin@mobilizationoffice.com@inetgw
Date: 1/29/02 1:28am
Subject: Microsoft Settlement
———Original Message———-
From: Microsoft's Freedom To Innovate Network
[mailto:fin@MobilizationOffice.com]
Sent: Wednesday, January 09, 2002 9:57 PM
To: ''bryan_shipp@pittsburghscoop.com''
Subject: Attorney General John Ashcroft Letter

Attached is the letter we have drafted for you based on your comments.

Please review it and make changes to anything that does not represent what you think. If you received this letter by fax, you can photocopy it onto your business letterhead; if the letter was emailed, just print it out on your letterhead. Then sign and fax it to the Attorney General and carbon copy it to your Member of Congress. We believe that it is essential to let our elected officials know how important this issue is to their constituents.

When you send out the letter, please do one of the following:

* Fax a signed copy of your letter to us at 1–800–641–2255;

* Email us at fin@mobilizationoffice.com to confirm that you took action.

If you have any questions, please give us a call at 1–800–965–4376.

Thank you for your help in this matter. The Attorney General's fax and email are noted below.

Fax: 1–202–307–1454 or 1–202–616–9937

Email: microsoft.atr@usdoj.gov

In the Subject line of the e-mail, type Microsoft Settlement.

Carbon Copy:

Sen. Rick Santorum

Fax: 202–224–1229

For more information, please visit these websites:

www.microsoft.com/freedomtoinnovate/

www.usdoj.gov/atr/cases/ms-settle.htm

1420 Centre Avenue, Apt. # 1310
Pittsburgh, Pennsylvania 15219
January 9,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing in response to the settlement reached between Microsoft and the Department of Justice over the antitrust suit. I feel that the settlement is a fair one. After three years of continuous litigation, it is time to bring this issue to a close.

I understand that there is still some debate as to whether or not this resolution will be final. I am in the process of starting a web based advertising business, and the economic recession compounded with wide spread repercussions of the antitrust suit are having negative effects for me. Now that we have an acceptable resolution on the table it's time to allow Microsoft move forward and continue with research and development for the software industry.

Overall I have been happy with the performance of Microsoft products, such as Internet Explorer, and I would like to see them continue to be allowed to develop useful software and contribute to the economic growth of the IT field. For these among other reasons I support the settlement.

Sincerely,

Bryan Shipp

Senator Rick Santorum

MTC–00029512

From: RETIREDE9@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:40am
Subject: Microsoft Settlement
14503 129th Avenue, NE
Kirkland, WA 98034
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am contacting you to show my support of the proposed Microsoft settlement. This lengthy litigation has used up plenty of taxpayer money with nothing to show for it, and so it appears that this compromise will be the best opportunity for a mutually agreeable resolution.

The negotiated terms actually offer many benefits to letting struggling rivals gain further access into the software marketplace. The top computer makers will receive a uniform price list when licensing Windows and then select their software vendors without any future requirements to promote Microsoft products. Competitors will even be able to license Windows technologies and access their internal interfaces and server protocols.

Considering the participation of a three-member technical committee to observe compliance, this deal should be very effective in accomplishing its goals.

Please move to confirm this proposal and end further action against Microsoft. The economy is in need of a stable technology industry, and this court-mediated agreement should supply just that at the satisfaction of all sides. I thank you for your support.

Sincerely,

Clinton Jordan and Vicki Jordan

MTC–00029513

From: MACalmes@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:42am
Subject: Microsoft Settlement

To the Attorney General's Office—

We are admirers of Microsoft in every way, and do not feel that they have done anything wrong. We are completely in favor of all of their procedures. We feel that the Dept. of Justice has been unfair to them, and have made very unfair decisions in relation to them. Hence, we want to register our desire to see this settlement made with Microsoft , and IN MICROSOFT'S FAVOR.

Thank you,

Dr. Robert E. Calmes and Mrs. Robert E. Calmes

5216 Mission Hill Drive,

Tucson, AZ 85718

MTC–00029514

From: Joel West
To: Microsoft ATR
Date: 1/29/02 1:45am
Subject: Microsoft settlement

The district court (upheld by the Court of Appeals) held that Microsoft had violated anti-trust statutes in its aggressive attempts to garner market share.

Normally this would mean that there are two types of remedies:

(1) Ongoing monitoring of compliance with a settlement agreement;

(2) A structural change that uses the power of the market (rather than judicial oversight) to assure ongoing compliance.

Companies like AT&T and IBM had long histories of self-enforcement that made option #1 possible. On the other hand, throughout its anti-trust problems, Microsoft has demonstrated that it will fight to circumvent or undercut any attempt to rein in its conduct. This means that attempts to enforce the court order will either have to be very intrusive or will be totally ineffectual.

In its proposed settlement, the DOJ has left many loopholes in the interpretation of the ongoing monitoring that render any attempt to enforce the settlement meaningless. Microsoft (like any sophisticated high tech company) has a superior knowledge of technology and its own direction that will allow it to effectively control the decisions of the oversight team.

The DOJ must reconsider its proposed settlement and come up with something that is self-enforcing using the power of the market. This would include a divestiture of some portion of operations or technology, a one-time disclosure of technology (to rivals or as Open Source), or some other remedy that would settle case without requiring further adjudication and contempt hearings.

Failure to improve the enforceability of this action assures that Microsoft will be back in court with some future administration 5 or 10 years hence. This creates a powerful uncertainty for the entire U.S. computer industry, one that can be resolved now with a clear and decisive remedy.

Joel West, Ph.D. <joelwest@uci.edu>
Lecturer UC
Irvine Graduate School of Management
http://www.gsm.uci.edu/joelwest

MTC–00029515

From: Mike Siciliano
To: Microsoft ATR
Date: 1/29/02 1:45am
Subject: microsoft settlement

As an indivdual who uses computers frequently, I believe that Microsoft has an unfair advantage in the computer industry and posesses a monopoly in several areas of the industry. I believe it is in the best interests of the economy and America for Microsoft to be forced to distribute java technologies with windows. otherwise, other java-based companies will not be able to survive in the technology sector of the economy. America has always been about free trade and equal opportunity. Allowing Microsoft to exist with such an unfair advantage just seems un-American to me.

Mike Siciliano

411 Hidden Pines Ln

Del Mar, Ca 92014
CC:microsoftcomments@doj.ca.gov@inetgw,dkleinkn@yahoo...

MTC–00029516

From: Rowdybeaver96@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:47am
Subject: Microsoft Antitrust

Her Honor, Judge Colleen Kollar-Kotelly,

Please Judge Kollar-Kotelly make Microsoft comply with all previous court orders and cease monopolistic practices. Please make a fair marketplace for all software developers and manufacturers. Thank you!

Criag Hass
38907 Hendricks Pk Rd
Springfield, OR 97478
541–726–9231
CC:Livkixit@aol.com@inetgw

MTC–00029517

From: Laura Smith
To: Microsoft ATR
Date: 1/29/02 12:32am
Subject: Microsoft Settlement
January 28, 2002 (10:30pm MST)
RE: Microsoft Settlement

To whom it may concern:

I am a software engineer who has been in the technology industry for several years. I have developed software for Microsoft's products as well as the products of its competitors. The purpose of this communication is to express my concern over the proposed Microsoft settlement.

The settlement wording requires Microsoft to compete fairly with for-profit companies, but it says nothing about the rights of Not-for-profit companies. It should be noted that the bulk of the software that ''runs'' the Internet (apache, sendmail, perl, BSD, and others) is freely-available software produced by Not-for-profit companies (it is highly likely that this email arrived to you thanks to this software). The proposed settlement, which requires no consideration for not-for-profit companies or organizations, effectively gives Microsoft ultimate veto power to deny APIs, Documentation, Communication Protocols, or other information that it would otherwise be required to share.

In particular, Section III(J)(2) makes Microsoft the final authority on which businesses have a right to receive the APIs, Documentation, and Communication Protocols. The wording states that Microsoft only has to give the preceding information to a company that ''(b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business''. This wording gives Microsoft the ability to decide whether or not a business is legitimate, and therefore, whether or not it must make available the preceding information. Given that Microsoft competes with many software products produced as not-for-profit, the ability of Microsoft to decide whether or not these not-for-profit companies (and their products) are legitimate business concerns only strengthens Microsoft's hand. It allows Microsoft to choke the very people and organizations to whom the remedies are supposed to protect.

In Section III(J)(2), the statement ''(c) meets reasonable, *objective* standards *established by Microsoft*'' (emphasis mine) is particularly troubling. Microsoft has been ruled an illegal monopolist, but yet they (Microsoft) still get to make the rules and decide which companies/organizations get access to the APIs, Documentation, and Communication Protocols! Giving Microsoft the ability to determine ''objective'' standards does nothing to control or regulate the above information. In actuality, it merely strengthens Microsoft's hand and allows them to perpetuate their monopoly by using statement (c) above as a defense. Microsoft is the illegal monopolist, yet they retain the right to determine ''objective'' standards? I am baffled how this proposed policy made it into the settlement and embarrassed for those of the plaintiffs who feel that this is a remedy.

Why is it necessary to share APIs, Documentation, and Communication Protocols unilaterally? Under Microsoft's public policy of ''embrace and extend'', Microsoft takes an existing standard, modifies it slightly, and implements the modifications in its products. Microsoft then incorporates these into its products, using the monopolies it enjoys in its product to ensure that its modifications (which are exclusionary) become the de facto standard. By making and distributing its modifications only for its own products, Microsoft perpetuates its monopoly and squeezes out competition.

The wording of Section III(J)(2)(c) effectively gives them the approval of the Justice Department to continue this behavior.

Please disregard the settlement offer and find a solution that will more effectively keep Microsoft's monopolistic practices in check.

Sincerely,
Randy Smith
rsmith@occamnetworks.com
Mesa, AZ
CC:smithl@bnswest.net@inetgw,rsmith@occamnetworks.com

MTC–00029518

From: HassGA@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:49am
Subject: Microsoft Antitrust

Her Honor, Judge Colleen Kollar-Kotelly,

Please Judge Kollar-Kotelly make Microsoft comply with all previous court orders and cease monopolistic practices. Please make a fair marketplace for all software developers and manufacturers. Thank you!

Glen Hass
38907 Hendricks Pk Rd
Springfield, OR 97478
541–726–9231
CC:Livkixit@aol.com@inetgw

MTC–00029519

From: Diana Rogers
To: Microsoft ATR
Date: 1/29/02 1:50am
Subject: Public Comment on Microsoft

To US District Judge Colleen Kollar-Kotelly

I am just one of the people over 65 with enjoy my computer and like the way Microsoft makes it easy for me to use the computer. I am very upset that special-interest groups have more say than the individual people who use computers on a regular basis.

Because of what the Special Interest Groups have done to Microsoft (AOL/Sun Micro/ and all the rest of the Jealous companies) the stock market went in the toilet and I have lost of money along with a great many other people in the United States. Everyone say Enron was bad this was worse, but this law suit has caused much more damage in individual investors.

Stop this silly law suit and send all the attorney generals home, as well as all the trial Lawyers.

Microsoft is a good competitor. So let the others companies compete.

I love all my programs in one and don't want separate

Good Luck
Diana Rogers
23221—60th Court So
Kent,WA 98032
253–373–1569
dianamayhew1@msn.com

MTC–00029520

From: Dougcom102@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:53am
Subject: Microsoft Settlement

I do believe the point has been made. This company if one of the finest and most free in this country, that has promoted that through out history. The settlement is good, and supports who we are and profess to be. Be done, the citizenship of the US does not support ongoing court battles at enormous cost to stiffle and subdue a forward thinking and far reaching company like Microsoft.

Douglas Lind
Kent Wa 98032

MTC–00029521

From: JayMay4@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 1:52am
Subject: Microsoft Antitrust

Her Honor, Judge Colleen Kollar-Kotelly,

Please Judge Kollar-Kotelly make Microsoft comply with all previous court orders and cease monopolistic practices. Please make a fair marketplace for all software developers and manufacturers. Thank you!

Janet M. Hass
38907 Hendricks Pk Rd
Springfield, OR 97478
541–726–9231
CC:Livkixit@aol.com@inetgw

MTC–00029522

From: Wade McMullen
To: Microsoft ATR
Date: 1/29/02 1:54am
Subject: Microsoft Settlement

Dear Judge,

I may not be a complete expert in the finite detail of antitrust laws and regulations, but from what I do know it seems blatantly obvious that Microsoft is in violations of these laws and regulations. Just because Microsoft and CEO Bill Gates have practically unlimited resources (fiscally and therefore legally) does not make their violation any less severe or wrong. I love Microsoft, Bill Gates, and everything that they have provided to the public, but they are

hindering one of the most respected aspects of Ameican freedom: capitalism. Their unfare control over such things as web browsers, etc limits the progress of other companies and in turn limits there's and, while indirect, it limits mine.

Respectfully,
Wade McMullen
213–764–1642
Student
CC:microsoftcomments@doj.ca.gov@inetgw,dkleinkn@yahoo

MTC–00029523

From: Brady, Scott W.
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/29/02 1:56am
Subject: Microsoft Settlement

Attached please find Novell Inc's Comment to the Proposed Settlement between Microsoft and the Department of Justice, pursuant to the Tunney Act. Please acknowledge receipt of this comment at your convenience. <<0901266.DOC>>

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA) UNITED STATES OF AMERICA,)) Plaintiff,)) v.)Civil Action No. 98–1232 (CKK)) MICROSOFT CORPORATION,)) Defendant.)))) STATE OF NEW YORK, et al.,)) Plaintiffs,)) v.)Civil Action No. 98–1233 (CKK)) MICROSOFT CORPORATION,)) Defendant.))

COMMENTS OF NOVELL, INC. IN OPPOSITION TO THE REVISED PROPOSED FINAL JUDGMENT

I. Introduction

A. Background

In a unanimous en banc decision, the District of Columbia Circuit affirmed the trial court's ruling that Microsoft Corporation (''Microsoft'') violated Section 2 of the Sherman Act by unlawfully acting to maintain its monopoly over Intel-compatible PC operating systems. See United States v. Microsoft Corp., 253 F.3d 34 (DC Cir. 2001), cert. denied, 122 S.Ct. 350 (2001) (''Microsoft''). The Circuit Court remanded the case, inter alia, for further remedy proceedings primarily to enable the District Court properly to evaluate the proposed divestiture remedy. See id. at 105–07. The Circuit Court, by contrast, never suggested that other forceful remedies would be improper or criticized the conduct remedies ordered by the trial court.

On remand, the U.S. Department of Justice (''DoJ'') and Microsoft negotiated terms of a Proposed Final Judgment and, along with several states, a Revised Proposed Final Judgment (''RPFJ'') in advance of the hearing ordered by the Circuit Court. 66 Fed. Reg. 59,452 (Nov. 28, 2001). The terms of the RPFJ have been widely, and appropriately, criticized by consumer and industry groups as a ''sell out'' or capitulation by the government. See, e.g., James Barksdale, A Monopoly Unbound, Wash. Post, Dec. 4, 2001, at A25; Lawrence Lessig, It's Still a Safe World for Microsoft, N.Y. Times, Nov. 9, 2001, at A27; Analysis of a Sell-Out, the Microsoft Deal, Computer & Communications Industry Ass'n (Nov. 21, 2001), available at http://www.ccianet.org/papers/ms/sellout.php3 (visited Jan. 24, 2001). Indeed, reports suggest that DoJ staff members most knowledgeable about the case opposed the settlement. See Letter from Rep. John Conyers, Jr. to U.S. Att'y Gen. John Ashcroft (Nov. 6, 2001), available at http//:www.house.gov/conyers/pr110601.htm (visited Jan. 24, 2001). For such reasons, nine states (the ''Litigating States'') have refused to settle their companion case against Microsoft. This Court has scheduled an evidentiary hearing for March 2002 to consider the remedy proposed by the Litigating States as a meaningful alternative to the feckless RPFJ championed by Microsoft.

As required by the Tunney Act, 15 U.S.C. 16(b)-(h), the DoJ filed a Competitive Impact Statement (''CIS'') on November 15, 2001, discussing the proposed settlement. 66 Fed. Reg. 59,452, 59,460 (Nov. 28, 2001). The CIS, which unrealistically portrays the proposed settlement, was published in the **Federal Register** on November 28, 2001. The following Comments on the RPFJ are submitted pursuant to 15 U.S.C. 16(d) on behalf of Novell, Inc. (''Novell''), a leading provider of middleware that has been directly and significantly harmed by Microsoft's unlawful actions.

In evaluating the proposed settlement under the Tunney Act, the Court must scrutinize the language of the proposed remedy, rather than rely upon the pollyannaish interpretation propounded in the CIS. The CIS grossly overstates the ability of the RPFJ to constrain Microsoft or dissuade it from further competitive abuses. Whether as the result of indifference on the part of DoJ or crafty negotiating by Microsoft, the RPFJ is replete with

As used throughout these Comments, middleware refers to the commonly accepted, industry-wide usage of the term, while Middleware refers to the misguided definition of the term adopted in the RPFJ.

limitations and loopholes that utterly deprive it of effectiveness. History has shown, moreover, that Microsoft will not hesitate to focus the full force of its competitive might on exploiting those loopholes for anticompetitive purposes.

Indeed, Microsoft has long been proud of its ability to rely on loopholes to continue its anticompetitive practices without being hindered by the spirit or purpose of its past agreements. For example, in 1997, one of Microsoft's lawyers, Charles F. Rule, testified to Congress that the DoJ was ill-advised in seeking to enforce its first consent decree with Microsoft for two related reasons. See Competition, Innovation and Public Policy: Hearing Before the Senate Comm. On the Judiciary, 105 th Cong. (Nov. 4, 1997) (statement of Charles F. Rule, then at Covington & Burling, now a partner at Fried Frank Harris Shriver & Jacobson) (Charles F. Rule Testimony). Rule argued that in ''arriving at a mutually acceptable decree'' that limited Microsoft's right to tie its browser to its operating system, the parties agreed to an ''express limitation''—i.e., a loophole—that permitted Microsoft to develop ''integrated products.'' Id. Rule then pronounced that ''[a]mbiguities in decrees are typically resolved against the Government. In addition, the Government's case must rise or fall on the language of the decree; the Government cannot fall back on some purported 'spirit' or 'purpose' of the decree to justify an interpretation that is not clearly supported by the language.'' Id. (citation omitted). Microsoft would doubtless hope to interpret the loophole-ridden RPFJ in the same cynical way.

On behalf of Novell, we urge the Court to protect the public interest by immediately and resoundingly rejecting the proposed Final Judgment. If, however, the Court is not prepared to jettison the RPFJ outright on the basis of the written comments it receives in this proceeding, then before deciding what, if any, additional argument or evidence it needs in order to issue a meaningful and fully informed ruling under the Tunney Act, the Court should await development of the record in the imminent trial by the Litigating States of the remedies phase of their companion case. Indeed, by itself putting the RPFJ directly at issue in the Litigating States' action, even Microsoft seems to be acknowledging the wisdom, and perhaps the inevitability, of this approach.

Defendant Microsoft Corporation's Remedial Proposal (Dec. 12, 2001), State of New York, ex rel. Spitzer, et al. v. Microsoft Corp., No. 98–1233.

B. Summary

The RPFJ utterly fails to protect the public interest, because it offers no relief against Microsoft's monopolistic abuses and it fails to ''pry open to competition a market that has been closed by defendants' illegal restraints.'' Int'l Salt Co., Inc. v. United States, 332 U.S. 392, 401 (1947). Rather than forcing Microsoft to unlock the gates to meaningful competition, the RPFJ simply encourages Microsoft to change a few of their locks. The failings of the RPFJ are numerous and overlapping. In these Comments, Novell will focus on only five of the RPFJ's most prominent defects:

1. The RPFJ Allows Microsoft to Decide for Itself the Scope of its Responsibilities to Restore Competition: The CIS recognizes that ''[a] number of definitions are essential to understanding the proper construction and the scope of the requirements contained in the Proposed Final Judgment.'' CIS, 66 Fed. Reg. at 59,464. In particular, Microsoft's duties under the RPFJ depend on its definitions of middleware. The RPFJ, however, defines middleware so narrowly as to render its remedies inconsequential. See RPFJ, 66 Fed. Reg. at 59,459. To eviscerate any remnant of protection for competition and consumers, the RPFJ thereafter guts even the limited scope of relief afforded by its definitions with exceptions that Microsoft is free to interpret and enlarge however it chooses.

2. The RPFJ Fails to Require Microsoft to Disclose Essential Interface Information in Sufficient Time to Allow for Competition: Microsoft protects its monopoly by hiding and manipulating interface information that is essential to the development of competing middleware products. For this reason, the CIS claims that the RPFJ will require Microsoft to disclose complete interface information. See CIS, 66 Fed. Reg. at 59,460. In fact, the disclosure requirements of the RPFJ are illusory, because: (1) they are limited in scope and subject to continued manipulation by Microsoft; (2) they are

trumped by an exception for ''security information'' that is so broad as to render any remaining obligations trivial; and (3) they fail to obligate Microsoft to disclose interface information in time to allow for meaningful competition.

3. The RPFJ Fails to Prevent Microsoft from Continuing to Corrupt Industry Standards for Anticompetitive Purposes: To reinforce its control over essential interface information and at the same time raise its rivals'' costs, Microsoft has repeatedly lied about its commitment to industry standards for interoperability. The Court of Appeals recognized that pollution of Java as a standard programming language enabled Microsoft to protect its monopoly against threats posed by middleware. See Microsoft, 253 F.3d at 76–77. Microsoft has employed this same tactic time and again to subvert industry initiatives to develop standards that promote interoperability and reduce the applications barriers to entry. The RPFJ, however, is shockingly silent about such matters.

4. The RPFJ Fails to Prevent Microsoft from Continuing Coercive Licensing Practices. Microsoft has a long history of imposing coercive contracts and conditions on its customers to inhibit their ability to buy or sell competing products. See Microsoft, 253 F.3d at 64. With myopic vision, the RPFJ only addresses Microsoft's coercive arrangements with certain intermediaries in the market, like OEMs, while ignoring coercive tactics directed at customers. See CIS, 66 Fed. Reg. at 59,460, 59,471.

5. The RPFJ Fails To Adopt Effective Enforcement Procedures. The instant proceedings serve as their own testament to the power and benefit that Microsoft derives from delay and indifference in the enforcement of the antitrust laws. Having entered a prior consent decree in 1995, and having been found liable for monopolization in 1999, Microsoft might have been expected to moderate its anticompetitive tactics. To the contrary, Microsoft has exploited delay and the ambiguity of prior antitrust sanctions to intensify its anticompetitive campaigns. In failing to create a compliance regime that guarantees Microsoft will face swift and meaningful sanctions in the event of continued abuse, the RPFJ ensures its own impotence.

Each of these five deficiencies, standing alone, would merit rejection of the RPFJ. Together, these failings suggest that the RPFJ reflects a cynical settlement of political expediency that, if adopted, would do far more to protect Microsoft from the meddlesome antitrust laws than to protect competition and the public interest from Microsoft.

II. The RPFJ Is Contrary to the Public Interest

Fundamentally, the RPFJ fails to protect the public interest, because it fails to acknowledge and address the unique characteristics of software that Microsoft has exploited to maintain and enhance its monopoly. Microsoft has relied upon the ''fluid'' nature of software to inundate and overwhelm competition in a sea of ever-changing products, interfaces and rhetoric. Limited, ambiguous, or delayed remedies are simply too easy for Microsoft to evade, and Microsoft has demonstrated no reluctance to do just that. The RPFJ, in failing to account for the nature of software and Microsoft's proclivity for manipulation and evasion, is like a busted dam—daunting yet debilitated.

A. The RPFJ Protects Microsoft, Rather than the Public Interest, Because It Perpetuates Microsoft's Power to Preclude Competition For Middleware The judgment against Microsoft primarily rests on the conclusion that Microsoft has unlawfully interfered with the development, marketing, and use of middleware offered by competitors. Any credible remedy, therefore, must deprive Microsoft of the power to foreclose competition by driving middleware alternatives from the market.

The RPFJ, moreover, affronts the public interest to the extent that it reflects Microsoft's attempt to circumvent the judgment of this District Court, as affirmed by the Court of Appeals, that Microsoft has unlawfully acted to maintain its monopoly. Microsoft's hope to succeed in negotiation where it failed in court is arrogantly proclaimed in the preamble to the RPFJ, which asserts that this Final Judgment does not constitute any admission by any party regarding any issue of fact or law; and in Paragraph VIII, which proffers that [n]othing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment. RPFJ, 66 Fed. Reg. at 59,453, 59,460. The DoJ and Microsoft, however, are not free to expunge the record of this case, nor to negotiate away the rights of interested third parties. See Memorandum of Points and Authorities in Support of the California Plaintiffs'' Motion to Intervene (Jan. 28, 2002), United States v. Microsoft Corp., No. 98–1232.

But what is middleware? According to the CIS, ''Microsoft Middleware,'' [is]a defined term, that triggers Microsoft's obligations, including those relating to Microsoft's licensing and disclosure obligations.'' CIS, 66 Fed. Reg. at 59,464. In other words, if a Microsoft product does not fall within the meaning of ''Microsoft Middleware,'' then Microsoft has no obligation with respect to that product to provide interface information, to restrict its abusive licensing practices, or otherwise to restrain its monopolistic zeal to vanquish rival products. Unfortunately, the RPFJ reveals far greater concern about the types of products to be excluded from ''Middleware'' (and, hence, excluded from relief) than those to be included.

J. Microsoft Middleware means software code that 1.

Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. is Trademarked;

3. provides the same or substantially similar functionality as a Microsoft Middleware Product; and

4. includes at least the software code that controls most or all of the user interface elements of that Microsoft Middleware. Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of that Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point. K. Microsoft Middleware Product means

1. the functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and

2. for any functionality that is first licensed, distributed or sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product

a. Internet browsers, email client software, networked audio/video client software, instant messaging software or

b. functionality provided by Microsoft software that i. is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product; Continued on following page

Indeed, the RPFJ defines ''Microsoft Middleware'' so narrowly as to render any safeguards for consumers and competition inconsequential. Worse, the RPFJ allows Microsoft—hardly the guardian of the public interest—to decide what future products will, and will not, be considered ''Microsoft Middleware!'' Thus, the RPFJ puts the fox in charge of the hen house.

1. The RPFJ's Vapid Definitions of Middleware As noted above, the scope of protection afforded by the RPFJ depends entirely on its definition of Microsoft Middleware. Rather than defining Microsoft Middleware in a Continued from previous page

ii. is similar to the functionality provided by a Non-Microsoft Middleware Product; and iii. is Trademarked.

Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

L. Microsoft Platform Software means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

M. Non-Microsoft Middleware means a non-Microsoft software product running on a Windows Operating System Product that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System.

N. Non-Microsoft Middleware Product means a non-Microsoft software product running on a Windows Operating System Product: (i) that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made

interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System, and

(ii) of which at least one million copies were distributed in the United States within the previous year. RPFJ, 66 Fed. Reg. at 59,459.

manner that provides a concrete foundation for meaningful relief, the RPFJ offers a convoluted definition that provides a foundation no stronger than the shifting sands. Specifically, the RPFJ defines ''Microsoft Middleware'' as ''software that provides the same or substantially similar functionality as a Microsoft Middleware Product.'' RPFJ, 66 Fed. Reg. at 59,459. In turn, the RPFJ specifies two criteria for ''Microsoft Middleware Products.'' See id. First, the RPFJ simply chooses a few types of software—namely, Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express, and their successors—to be deigned ''Microsoft Middleware Products.'' Id. Second, the RPFJ declares that other types of software may be considered ''Microsoft Middleware Products'' if (and only if) three conditions are met; specifically, if the software:

(i) is, or in the year preceding the commercial release of any new Windows Operating System Product the software was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product;

(ii) has functionality similar to that provided by a Non-Microsoft Middleware Product; and

(iii) is Trademarked. Id.

Together, these definitions of Middleware assure that the protections of the RPFJ will never apply to more than a few forms of middleware and, in particular, to middleware that Microsoft has already crushed by anticompetitive means. Indeed, the inconsequential scope of the RPFJ will embolden Microsoft in its continuing quest to extinguish any new, or competitively significant, middleware offered to consumers. The RPFJ further ensures its own futility by allowing Microsoft to decide when, or if, to trigger any duty to comply. Thus, to qualify as a ''Microsoft Middleware Product or as ''Microsoft Middleware,'' software must at some time be distributed separately by Microsoft from one of its ''Windows Operating System Products.'' Id. Nothing in the RPFJ, however, prohibits Microsoft from rolling all important middleware into its operating system products.

To the contrary, the RPFJ remarkably provides that ''[t]he software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.'' RPFJ, 66 Fed. Reg. at 59,459 (emphasis added). To make its scope even more trivial (if that is possible), the RPFJ further provides that software code will not be considered either ''Microsoft Middleware'' or a ''Microsoft Middleware Product,'' unless it is ''Trademarked'' by Microsoft. See id. at 16. In other words, even if Microsoft finds it necessary, for some reason, to distribute new software separately from a ''Windows Operating System Product,'' such software still will not fall within the remedy, if Microsoft decides in its sole discretion not to seek trademark protection for the product. This is absurd.5

Finally, even assuming the RPFJ retains some sliver of significance despite its slight scope, additional broad and pliable exclusions assure that Microsoft would be well protected against any meaningful duty to comply. For example, the RPFJ provides that any ''Microsoft Middleware'' must ''include at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.'' Id. Thus, Microsoft could avoid any compliance duties simply by breaking up code for middleware into small units of code, none of which ''controls most or all of the user interface elements.''6 Likewise, the RPFJ excludes from The ridiculous implication of this loophole is that there exists some correlation between a decision by Microsoft to assert trademark protection for software and Microsoft's ability to exploit such software for anticompetitive purposes. To the contrary, this limitation on the scope of the RPFJ is simply a ''give away'' that enhances the misdirected protection afforded by the RPFJ to Microsoft.

Notably, the DoJ appears to have misread, or misunderstood, the import of this element of its own definition. The CIS asserts that this last element of the definition is: to ensure that the definition captures situations where Microsoft chooses to divide up the software code...and to distribute that code not in one block but in smaller blocks the fourth requirement sets a minimum functional requirement that in no case (regardless of the size, or manner of, distributing the code) shall the software code constituting Microsoft Middleware be less than that which controls most, or all of, the user interface elements of that Microsoft Middleware.

CIS, 66 Fed. Reg. at 59,464. In fact, the language of the RPFJ has precisely the opposite effect of what DoJ claims. Because the proposed four elements of ''Microsoft Continued on following page the definition of ''Microsoft Middleware'' any ''updates'' to existing ''Microsoft Middleware Products,'' unless Microsoft, in its sole discretion, decides to label the update a ''major version'' of the product. Id. To avoid compliance, therefore, Microsoft need only rely on ''minor'' updates to impede competition, or call every update ''minor,'' regardless of import. In sum, the RPFJ ultimately allows Microsoft to decide for itself the scope of its duties. In view of Microsoft's demonstrated enthusiasm for legal loopholes, it is hard to imagine a remedy proposal of lesser value.

2. The RPFJ's Limited Scope Precludes Protection of the Public Interest The aulty (and nearly non-existent) scope of the RPFJ is made especially clear when it is compared with the broader definition of middleware proposed by the Litigating States in their proposed remedy. In contrast to the RPFJ, the Litigating States define middleware in conformity with the judgment against Microsoft and would not permit Microsoft to continue its abusive practices simply by making discretionary and trivial changes to its own business practices.7 Plaintiff Litigating States' Remedial Proposals at 34–35 (Dec. 7, 2001), United States v. Microsoft Corp., No. 98–1232 (States' Remedy). Continued from previous page Middleware'' are all required, this last element further limits, rather than expands, the scope of relief. 7 The Litigating States would define middleware as follows: w. Middleware means software, whether provided in the form of files installed on a computer or in the form of Web-Based Software, that operates directly or through other software within an Operating System or between an Operating System (whether or not on the same computer) and other software (whether or not on the same computer) by offering services via APIs or Communications Interfaces to such other software, and could, if ported to or made Interoperable with multiple Operating Systems, enable software products written for that Middleware to be run on multiple Operating System Products. Examples of Middleware within the meaning of this Final Judgment include without limitation Internet browsers, network operating systems, e-mail client software, media creation, delivery and playback software, instant messaging software, voice recognition software, digital imaging software, the Java Virtual Machine, calendaring systems, Handheld Computing Device synchronization software, directories, and directory services and management software. Examples of software that are not Continued on following page

Remarkably, the DoJ's own prior submission to the Court belies any arguments that the RPFJ is sufficiently broad in scope to protect the public interest. Although Microsoft hopes to limit any relief to forms of middleware that no longer threaten its monopoly, the DoJ has explained:

In crafting an effective Sherman Act remedy, a court must use the record of a backward-looking trial to fashion forward-looking relief. Looking forward, the Court must anticipate that Microsoft, unless restrained by appropriate equitable relief, likely will continue to perpetuate its monopoly by the same anticompetitive methods revealed at trial, although directed at whatever new competitive threat arises. Neither the Netscape browser nor Java continues to have the prospect of lowering the applications barrier to entry, and it is not certain where future threats to Microsoft's operating system will arise. But there are several possibilities that ought to be taken into account in crafting an appropriate remedy for Microsoft's violations.

Plaintiff's Memorandum in Support of Proposed Final Judgment (''DoJ Mem. In Supp.'') at 27–28, United States v. Microsoft Corp., No. 98–1232 (emphasis added). Elsewhere, the DoJ has admitted that important new middleware technologies that must be protected from Microsoft's tactics may include ''voice recognition software, media streaming technology and e-mail software,'' as well as ''many server-based middleware products Continued from previous page Middleware within the meaning of this Final Judgment are disk compression and memory management software.

x. Microsoft Middleware Product means:

i. Internet browsers, e-mail client software, media creation, delivery and playback software, instant messaging software, voice recognition software, digital imaging software, directories, Exchange, calendaring systems, systems and enterprise management software, Office, Handheld Computing Device synchronization software, directory services and management software, the Common Language Runtime component of the .Net framework, and Compact Framework, whether provided in the form of files installed on a computer or in the form of Web-Based Software, or

ii. Middleware distributed by Microsoft that (1) is, or in the three years preceding this Judgment has been, distributed separately from an Operating System Product, any successors thereto, or (2) provides functionality similar to that provided by Middleware offered by a Microsoft competitor. States' Remedy at 34–35. that have historically been sold or distributed separately by Microsoft or other firms, including a directory service (Active Directory), an application server (Microsoft Transaction Server—MTS), and a web server (Internet Information Server—IIS)''. Id. at 28; Affidavit of Rebecca Henderson, attached as Exhibit to DoJ Mem. Of Supp. (''Henderson Aff.'').

In sum, the RPFJ protects Microsoft, rather than the public, by limiting restrictions on Microsoft monopolistic tactics to forms of middleware that Microsoft has already, and unalterably, made irrelevant. Meanwhile, the RPFJ will only fuel Microsoft's zeal to replicate its unlawful victories over Netscape and Java in its continuing efforts to extinguish other middleware threats to its monopoly.

3. The RPFJ Subverts the Public Interest By Providing Immunity for Microsoft's Unlawful Efforts to Destroy Middleware Alternatives to Active Directory Perhaps the most insidious characteristic of the RPFJ is that it appears specifically written to impart antitrust immunity to Microsoft for using the same unlawful tactics against competition threatened by directory services middleware that it used to destroy competition threatened by Netscape's internet browser. Remarkably, the RPFJ would not require Microsoft to lift a finger to avail itself of such protection. With utter disregard for the public interest, the RPFJ attempts to legitimize conduct that has already been declared unlawful by both the District Court and the Court of Appeals.

Specifically, the RPFJ permits Microsoft to engage in any anticompetitive tactic of choice against middleware threats, so long as Microsoft chooses to bundle, bind, or even just market, competitively critical middleware with its monopoly operating system products. Although memories can be short in the fast-paced technology industry, it defies credulity that the RPFJ ignores six years of antitrust litigation and the Court of Appeals'' judgment against Microsoft, which directly resulted from Microsoft's simple, but unlawful, decision to combine middleware with its monopoly operating systems.

As discussed below, there can be no question that directory services software, such as Novell's ''eDirectory,'' Microsoft's ''Active Directory,'' and iPlanet's ''Directory Server,'' have become competitively critical links between the desktop and network computing that threaten Microsoft's monopoly. For this reason, it is hardly surprising that Microsoft hopes to insulate directory services software from antitrust scrutiny. See Defendant Microsoft Corporation's Remedial Proposal at 9 (Dec. 12, 2001), United States v. Microsoft Corp., No. 98–1232 (arguing that ''directory services and management software are plainly not ''middleware'' within the meaning of the Court of Appeals'' decision''). Yet, Microsoft offers only rhetoric to support its wish for directory services middleware to be excluded from any remedy in this case. Indeed, Microsoft refutes its own claim. Microsoft notes that [a]s the Court of Appeals used the term, middleware' refers to software products that are capable of running on multiple client operating systems and that could provide a general-purpose platform for applications, such that developers might begin to rely upon APIs exposed by the middleware for basic routines rather than relying upon the API set included in Windows' and the middleware could take over some or all of Windows' valuable platform functions.' Id. (citing Microsoft, 253 F.3d at 53). Technology consumers, middleware competitors, and independent experts all agree that directory services software falls squarely within even Microsoft's definition of ''middleware.''

For example, Internet2 is a consortium of technology consumers that includes over 180 universities working in partnership with industry and government on advanced network applications and technologies. Internet2 explains:

[A] key part of [the Internet2] initiative is to promote open standards ''middleware, or ''glue'', [which] is a layer of software between the network and the applications. This software provides services such as identification, authentication, authorization, directories, and security. In today's Internet, applications usually have to provide these services themselves, which leads to competing and incompatible standards. By promoting standardization and interoperability, middleware will make advanced network applications much easier to use.

Likewise, the well-respected Gartner Group, a leading provider of technology research, has emphasized that ''directory services'' are playing an increasingly important role as middleware platforms for integrating diverse applications and other forms of software, including other middleware products and operating systems. See Conference Presentation, Active Directory, Gartner Group at 5, available at http://www.gartnerweb.com/public/static/win2000/actdirect.pdf (visited Jan. 23, 2002). The Gartner Group notes:

[O]ne of the important parts of integration middleware [such as a directory service] is the superservice. A superservice presents to the application program its own superAPI, effectively masking or superseding the API(s) exposed by other software layers. A superservice provides services, such as metadirectory, security and/or transaction management, across two or more OSs [i.e., Operating Systems], ORBs, TP monitors, DBMSs, application servers and/or networking layers. Id.

Thus, directory services fall squarely within Microsoft's admitted definition of middleware. See Microsoft's Remedial Proposal at 9 (citing Microsoft, 253 F.3d at 53).8 Directory services expose APIs as an alternative to Windows APIs, and serve as platforms for diverse applications.

In view of the competitive importance of directory services as middleware, it is hardly surprising that Microsoft has attempted to drive products that compete with its Active Directory software from the market by using the same unlawful tactics that it used against Netscape. For example, Microsoft has commingled code to bind Active Directory to its Windows operating systems. In recent versions of Windows, Microsoft has also manipulated interfaces specifically to prevent users from replacing Active Directory with eDirectory. (Although eDirectory can be used with recent Microsoft operating systems, it can only be used concurrently with Active Directory.) 9 Second, Microsoft has undermined the use of a standard

See also Windows 2000: Blueprint for Domination, Computer & Communications Industry Ass'n at 24 (Apr. 2000), available at http://www.ccianet.org/papers/ ms/blueprint—for—domination.pdf (visited Jan. 24, 2001) (''CCIA White Paper'') (''Active Directory is the integrated directory service for Windows 2000. It is the glue that binds Windows desktops to Windows 2000 Servers. Active Directory is a critical component for any end user, Application Developer, and IT manager that is using, developing, or managing computers and applications in a Microsoft distributed computing environment.'').

In Windows 2000, Microsoft redesigned its authentication system and refused to disclose the APIs necessary for Novell to continue ''redirecting'' Microsoft calls for Active Directory to eDirectory. Novell used a technique called ''redirection'' to allow an earlier version of its directory services software, called NDS, to interoperate effectively with WindowsNT. By moving and encrypting interface information in Windows 2000 and Windows XP, Microsoft has prevented Novell from using redirection and has forced Novell to ''synchronize'' its directory services software, now called eDirectory, with Active Directory. As a result of this tactic, customers may not run eDirectory alone, but can only use it as a supplement to Active Directory. See CCIA White Paper, supra (''The industry protocol in this case Light Directory Access Protocol or LDAP in favor of proprietary protocols that inhibit development of multi-platform (or non-Microsoft) networks.10

Third, Microsoft has employed coercive licenses, called client access licenses or CALs, to discourage users from installing non-Microsoft directory services.11 More than surprising, however, is that the RPFJ will sanction such unlawful conduct for the simple reason that Microsoft has had the foresight (in light of this litigation) to decide against ever distributing Active Directory separately from Windows. Although Microsoft's decision, standing alone and

without regard to any anticompetitive consequences, will exempt Microsoft's conduct relating to Active Directory from antitrust scrutiny under the RPFJ, the notion that such conduct does nothing to entrench Microsoft's monopoly is preposterous.

B. The Proposed Final Judgment Would Have No Effect, Because it Fails to Require Meaningful Disclosures by Microsoft of Interface Information The next extraordinary deficiency of the RPFJ is the manner in which it purports to require Microsoft to disclose critical interface information that would allow for the way Microsoft's Active Directory is implement on the client-side makes it impossible to redirect services to alternative directory service providers such as Novell's NDS. This means Active Directory must be present on a network of Windows 2000 machines and that Novell can no longer compete as a substitute for directory services as they did with Windows NT.''); Active Directory, Gartner Group, supra, at 9 (''With [Windows] NT v.

4, Novell has used a redirection model with its NDS for NT product to provide a solution for managing heterogeneous NDS and NT domain environments. We believe this approach will be difficult, if not impossible, for Novell to implement with Active Directory in Windows 2000.'').

10 See CCIA White Paper, supra (''Active Directory is also used as Microsoft's vehicle for locking customers into a Microsoft proprietary standard. Active Directory supports standard interfaces such as Lightweight Directory Access Protocol (LDAP) and Domain Name Service (DNS). These protocols are subsets of what Active Directory supports, meaning that no other directory services can substitute for Active Directory.'') For a discussion of LDAP, see Novell Technical Information Document:GroupWise and LDAP Whitepaper (Feb. 15, 2000), available at http://support.novell.com/cgi-bin/search/searchtid.cgi?/2955731.htm (visited Jan. 22, 2002). 11 See discussion of CALs, infra at Section II.D.

development and effective implementation of competing middleware products. The disclosure requirement of the RPFJ can be summarized as: (1) too little; (2) too late; and (3) too full of loopholes. In fact, the RPFJ would expressly allow Microsoft to continue the same anticompetitive practices that have already enabled it to buttress its monopoly.

1. Too Little Disclosure: The RPFJ's Inadequate Definitions of Interface Information—The RPFJ defines interface information so narrowly and incompletely that any compliance by Microsoft with its disclosure requirements would have little, if any, effect. The RPFJ includes the following definitions:

A. Application Programming Interfaces (APIs) means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.

B. Communications Protocol means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network. * * *

E. Documentation means all information regarding the identification and means of using APIs that a person of ordinary skill in the art requires to make effective use of those APIs. Such information shall be of the sort and to the level of specificity, precision and detail that Microsoft customarily provides for APIs it documents in the Microsoft Developer Network (MSDN). RPFJ, 66 Fed. Reg. at 59,458.

The first, and most obvious, defect of the proposed disclosures is the scope of Microsoft's duty. Under the definitions of the RPFJ, Microsoft would need only to disclose certain interface information affecting interoperability of ''Microsoft Middleware'' and a ''Windows Operating System Product.'' See id. at 59,459. As discussed above, those terms are defined by the RPFJ to allow Microsoft to avoid compliance altogether, because ''Microsoft Middleware'' is defined absurdly narrowly and ''Windows Operating System Products'' are defined as whatever Microsoft wants them to be. See id. Microsoft's history makes clear that it will simply evade this remedy by declining ever again to offer middleware products separately from its operating systems (or at least it will not assert trademark protection for them). Second, the interface definitions fail to articulate an objective standard for evaluating Microsoft's compliance. To date, Microsoft has never admitted that it has withheld interface information to competitors; instead it points to volumes of information it provides to independent developers through its Microsoft Development Network (MSDN). Meanwhile, it is obvious to competitors and independent observers that while Microsoft has often published interface information that allows competing products to work with Microsoft's operating system products, it frequently refuses to publish information that allows competing products to work well with Microsoft's products or in the same way as Microsoft's products. Indeed, Microsoft has notoriously allowed its own programmers and developers to access and rely upon secret or unpublished APIs, calls, or other interface information to assure full interoperability of its products, while forcing competitors to use only limited sets of information that allow for ''interoperability''—but only in inefficient and constrained ways.12 Nothing in the RPFJ clearly prohibits Microsoft from disclosing selective interface information that provides for limited interoperability. Indeed, paragraph E. of the RPFJ makes clear that Microsoft need not offer any better ''Documentation'' than it does at the present time. See id. at 59,458. For all the foregoing reasons, the information currently available has proven grossly inadequate to allow for meaningful competition. See id.

2. Too Late Disclosure: The RPFJ's Inadequate Definition of Timeliness The RPFJ acknowledges that disclosures of interface information must be sufficiently timely to enable competing providers of middleware to develop alternatives in a commercially reasonable time frame. The CIS explains: Whenever Microsoft develops an updated version of a Windows Operating System Product, it must disclose all relevant APIs and Documentation in a Timely Manner, meaning at the time Microsoft first releases a widespread beta test version of that

12 See, e.g., Jesse Berst, APIs: Microsoft's Hidden Full Nelson, ZDNet (Jun. 28, 2000), available at http://www.zdnet.com/anchordesk/stories/story/0,10738,2595479,00.html (visited Jan. 22, 2002); Sven B. Schreiber, Undocumented Windows 2000 Secrets: A Programmer's Cookbook (2001); Prasad Dabek, Sandeep Phadke & Milind Borate, Undocumented WindowsNT (1999).

Windows Operating System Product (i.e., one made available to 150,000 or more beta testers). If, alternatively, Microsoft develops a new major version of Microsoft Middleware, it must disclose any APIs and Documentation used by that middleware to interoperate with any Windows Operating System Product not later than the release of the last major beta version of that middleware (i.e., the version before the release of any release candidate version of the middleware). This dual-timing trigger mechanism is important to ensure that ISVs and other third parties learn of all relevant APIs and the information needed effectively to use them well in advance of the actual commercial releases of the relevant Microsoft software, so that the third parties can ensure that their own competing products function on and interoperate with Windows. CIS, 66 Fed. Reg. at 59,468 (emphasis in original).13

Notwithstanding the wishful (and unrealistic) analysis of the CIS, the language of the RPFJ fails to offer any meaningful assurance of timeliness. The specified date for release of interface information for new middleware products is the last ''beta'' release, which is typically very shortly before the final version of the software is released to the public. Such beta releases are generally made a year or a year and a half after early code is provided to Microsoft operating systems and applications developers. In effect, under current practices the proposed finding would allow Microsoft to give its own middleware developers a year and one-half head start over competitors.

In fact, the head start the RPFJ affords Microsoft is likely to be far longer (or even infinitely long). By triggering the disclosure obligation on the date of the ''last'' beta release that includes at least 150,000 testers, the RPFJ would, once again, allow Microsoft to decide if and when (if ever) the disclosure obligation would take effect. Nothing in the RPFJ would prevent Microsoft from delaying the ''final'' beta release for more than a year and a half, or even from deciding to test new software exclusively in stages released to groups of less than 150,000 testers.

13 The RPFJ defines ''Timely Manner'' for disclosure of interface information as ''the time Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers.'' RPFJ, 66 Fed. Reg. at 59,459.

3. The RPFJ's Security Loophole Precludes Meaningful Relief The RPFJ has been described as Swiss cheese without the cheese. Of the numerous loopholes and deficiencies of the RPFJ, none is larger than the broad and general exclusion it affords Microsoft for ''security'' information, as follows:

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or RPFJ, 66 Fed. Reg. at 59,455–56.

DoJ attempts to justify this security exception on grounds that ''[it] is a narrow exception, limited to specific end-user implementations of security items such as actual keys, authorization tokens or enforcement criteria, the disclosure of which would compromise the security of ''a particular installation or group of installations'' of the listed security features.'' CIS, 66 Fed. Reg. at 59,472. In fact, this exception is fatal to the efficacy of the RPFJ. Much of what software developers like Novell need in order to develop products that efficiently interoperate with Microsoft Windows products is now being encrypted by Microsoft.

Under the rubric of security, Microsoft harms interoperability by manipulating the encryption, signing or tagging of calls made between its operating systems and middleware. Encrypted or signed calls made by Microsoft's operating systems can be seen by competing middleware, but either cannot be read by them or the calls cannot be executed properly and with full function. Calls made by competing server operating systems are rejected by Microsoft's products because they are not encrypted or signed in the Microsoft way. Microsoft, for example, now encrypts information exchanged between its directory service (Active Directory) and its operating systems. The effect of such ''security'' is to prevent Novell's eDirectory or other directory services from replacing Active Directory in a network. Even if Novell discovers, or is provided with, the interfaces between Active Directory and Windows, Microsoft's encryption of the information exchanges will effectively prevent the use of an alternative directory service. This tactic, moreover, could be replicated wherever middleware exchanges information, or calls, with Windows. Although encryption or signing of calls may, in fact, promote security, there is no legitimate reason for such security methods to harm interoperability. In simplest terms, information security is generally afforded by encrypting or ''locking up'' sensitive information and safeguarding the ''keys'' to those locks. Rather then relying on well established technologies to protect the ''keys'' to sensitive information, Microsoft routinely prevents competitors from using the same types of locks that its uses for its own products. This tactic unnecessarily inhibits interoperability, because information security invariably depends not on the type of lock that is used (since a variety of tamper-proof locks have been developed), but solely on protection of the keys.14 Microsoft routine ignores such distinctions to enable it to harm interoperability under the rubric of security.

In sum, the ''security'' exception to the RPFJ harms, rather than protects, the public interest. As interpreted by Microsoft, the exception will enable it to withhold information that is irrelevant to securing networks from hacking, viruses and the like, but highly relevant to securing networks from meaningful competition.

4. The RPFJ's Inadequate Disclosure Requirements Precludes Protection of the Public Interest

As recognized in the CIS and DC Circuit Court opinion, Microsoft has prevented competitors from offering meaningful Middleware alternatives in three main ways: (1) Microsoft has taken advantage of the fluidity of software to continually reconfigure its products in ways that make it difficult or impossible for even superior middleware offerings of competitors to remain viable; (2) Microsoft has refused to disclose interface information that

One of the most remarkable aspects of modern encryption technology is that it allows for virtually complete security of a ''key'' needed to unlock an encrypted message. In the world of physical locks and keys, a key is never entirely secure (even if it is never shared), because a locksmith can reproduce a key if he or she is given the lock. By contrast, in the world of bits and bytes, modern encryption can prevent a ''key'' from being copied, even if an expert knows how the key was made and is given the locked (i.e., encrypted) message.

would enable competitors to offer middleware products that operate effectively; and (3) Microsoft has engaged in coercive sales and marketing tactics that force distributors and consumers to favor even inferior Microsoft products over those of competitors. See CIS, 66 Fed. Reg. at 59,461.

Microsoft's refusal to disclose meaningful and timely interface information has been especially damaging to competitors, like Novell, who have repeatedly demonstrated their ability to develop superior alternatives to Microsoft products in the increasingly rare instances in which they have been able to obtain, or ascertain on their own, the critical interface information that allows for the effective interoperation of their middleware with Microsoft operating systems. As a result, the public is denied the benefits of innovation and the opportunity to choose among competing alternatives.

The CIS recognizes that meaningful disclosure of interface information by Microsoft is essential to effective relief. The CIS explains: ''[T]he effect of Section III.D [of the RPFJ] is to assure to Non-Microsoft Middleware meaningful access to the same services provided by the operating system as those available to Microsoft Middleware. Microsoft Middleware will not have access to any hidden or proprietary features of Windows Operating System Products that might allow it to operate more effectively.'' Id. at 59,468. Unfortunately, the RPFJ again fails to deliver on DoJ's purported goal.

In contrast to the RPFJ, a meaningful remedy must account for the fact that Microsoft manipulates interface information in a variety of ways to preclude competition. Although too numerous to recount, Microsoft's tactics include: ? ''Secret Interfaces''—Microsoft does not publish all the interfaces it uses and does not publish all the interface information that others need to develop products that interoperate with Microsoft software. ? ''Crippled Interfaces''—For some functions, Microsoft publishes information about an interface that is inferior to the interface that Microsoft itself uses to accomplish a function, or publishes incomplete information about an interface.

''Kick Me Interfaces''—Sometimes, Microsoft publishes information about an interface that Microsoft uses to perform a function, but it ''marks'' non-Microsoft software in a way that assures the interface will operate in an inferior way. Microsoft can ''mark'' competitors software through tagging, signing, encrypted passwords, or by noting the absence of such features. ? Moving Interfaces—If, by some means, a third party has been able to obtain adequate interface information that Microsoft doesn't want it to have, Microsoft will simply move the interface. For example, Novell successfully figured out how to enable its directory services software to interoperate with Windows NT. To counter Novell's success, in Windows 2000 Microsoft broke up and moved the computer files containing the interface information used by Novell and marked, or signed, information required for the interfaces so that Novell could neither use Microsoft's interface information nor replace it.

The typical result of such tactics is that Microsoft makes competing products appear inferior to Microsoft's products. Microsoft's actions may make a competing product appear slower, require more memory, or perform with limited functionality. These tactics also enable Microsoft to persuade customers to buy Microsoft's inferior and/or more expensive products simply to avoid Microsoft's roadblocks.15

15 Perhaps most remarkable, is the arrogance with which Microsoft exploits its anticompetitive efforts to impede interoperability. Microsoft, for example, repeatedly issues marketing materials that criticize products offered by Novell and other competitors for technical problems cause by Microsoft's refusal to allow effective interoperability with Windows.

Thus, in 1998, Microsoft's Website criticized Novell's directory services product, NDS for NT, because ''[i]t is not integrated with the operating system.'' Further, Microsoft proclaimed that Windows NT is ''successful,'' because ''customers have found that Windows NT Server suits most of their needs now and they are confident that Microsoft will deliver on other functionality that they need in the near future. Such is the case with directory services.'' In other words, in 1998, Microsoft admitted that it did not yet offer a competitive directory services

middleware product, but it aggressively discouraged customers from using Novell's product based on interoperability limitations created by Microsoft and its ''promise'' of improving its software sometime in the future. See NDS for NT: Increases Complexity and Cost Without Adding Value, available at Continued on following page

The remedy proposed by the Litigating States, in contrast to the RPFJ, would prevent continued exploitation and manipulation of critical interface information by Microsoft and thereby protect the public interest. First, the Litigating States have proposed definitions of interface information that clearly obligate Microsoft to provide the same interface information that is made available to its own programmers and developers to allow for ''full'' and ''efficient'' interoperability of products. See States' Remedy at 31–32. Further, the Litigating States'' proposal would provide for monitoring and review of Microsoft's disclosure by creating a clean room in which qualified industry representatives could examine and test the underlying computer code. See id. at 11–12. Second, the proposed remedy of the Litigating States, in contrast to the RPFJ, would require disclosures to be sufficiently timely to allow for meaningful competition. The Litigating States define ''Timely Manner'' to mean:

at a minimum, publication on a Web site accessible to ISVs, IHVs, OEMs and Third-Party Licensees at the earliest of the time that such APIs, Technical Information, or Communications Interfaces are (i) disclosed to Microsoft's applications developers, or (ii) used by Microsoft's own Platform Software developers in software released by Microsoft in alpha, beta, release candidate, final or other form, or (iii) disclosed to any third party, or (iv) within 90 days of a final release of a Windows Operating System Product, no less than 5 days after a material change is made between the most recent beta or release candidate version and the final release. Id. at 36–37. Continued from previous page

http://www.strom.com/awards/98a.html (visited Jan. 13, 2002) (republication of paper appearing on Microsoft's website until Jan. 22, 1998). Four years later, Microsoft's Active Directory is still generally regarded as inferior to Novell's eDirectory, yet continues to increase market share at Novell's expense as a result of Microsoft's anticompetitive acts. See, e.g., Products of the Year, Network Magazine (May 7, 2000), available at http://www.networkmagazine.com/article/NMG20010413S0005 (visited Jan. 15, 2002).

Third, the Litigating States would close the gaping ''security'' loophole of the RPFJ by requiring disclosure of information that allows competitors to participate with Microsoft in security mechanisms without compromising security. C. The RPFJ Will Encourage Microsoft To Continue To Corrupt Industry Standards for Anticompetitive Purposes Although the DC Circuit expressly held that Microsoft acted to protect its monopoly through undermining industry standards by deceiving software developers, the RPFJ fails to address this concern at all. Industry standards are often the key to interoperability among products that must communicate with each. Time after time, Microsoft has undermined or corrupted such standards to prevent competing middleware products from interoperating effectively with its dominant operating systems. For example, Kerberos is an industry standard for encryption, in which certain fields are reserved for optional use. Microsoft, however, has used one of those fields to produce its own proprietary version of the standard. In itself, this is unobjectionable. Microsoft, however, has gone one step further: it has manipulated its operating systems and middleware so that they will use and accept only the Microsoft version of the Kerberos standard.16 This is diametrically contrary to the purpose for which standards, even with optional fields, are developed. Optional fields are included in standards to enable firms to add information to a message. Ordinarily, if an optional field is used in creating standard messages, those messages can still be sent and received among all products that comply with the standard. In such cases, the information included in the optional field may simply be ignored. Optional fields are never, however, intended to enable a firm—i.e., Microsoft—to subvert the standard and preclude its widespread usage.

The CCIA explains that ''[w]hile the Kerberos Version 5 Microsoft uses for their security services is a standard, the way they have implemented Kerberos is not a standard and renders it nearly inoperable with any other implementation.'' CCIA White Paper, supra, at 24.

Not content with Microsoft's corruption of the Kerberos standard, Microsoft has filed for a patent on its proprietary version. Consequently, not only will Microsoft products fail to interoperate with non-Microsoft products (because of the modification), but Microsoft will not allow anyone else to use its version unless they purchase a liscense from Microsoft.

Thus, by polluting industry standards, such as Java and Kerberos (among others), Microsoft can further impede the use and development of competing middleware. Any calls encrypted with Kerberos sent by Microsoft Windows can be read only by other Microsoft Middleware and not by Novell's middleware. Similarly, Novell's middleware cannot send calls encrypted with Kerberos (the industry standard), because Windows will reject them. In contrast to the RPFJ, the remedy proposed by the Litigating States addresses the problems created by Microsoft's manipulation of industry standards in two complementary ways. First, by requiring meaningful disclosures of interface information, the Litigating States would effectively impair Microsoft's ability to corrupt third party standards surreptitiously. Second, the Litigating States' proposal would expressly preclude Microsoft from misrepresenting its compliance with industry standards or imposing proprietary (i.e., Microsoft-owned) versions of such standards on the industry. See States' Remedy at 20–21.

D. The RPFJ Will Encourage Microsoft To Continue To Use Coercive Licensing Practices to Exclude Competition As recognized in the RPFJ, Microsoft has a long history of imposing coercive contracts and conditions on its customers to inhibit their ability to buy or sell competing products. See RPFJ, 66 Fed. Reg. at 59,453–55. Once again with myopic vision, the RPFJ ignores the full scope of Microsoft's abusive contracts. Specifically, the RPFJ addresses only Microsoft's arrangements with intermediary technology vendors like OEMs. See id. Microsoft, however, has redirected its muscle at direct purchasers of its software. Microsoft, for example, forces networking customers to purchase Client Access Licenses or ''CALs.'' A CAL is merely one example of coercive licenses directed at users, rather than intermediaries. In connection with Windows 2000, Microsoft began to require customers to purchase a CAL whenever the customer uses a device that authenticates (i.e., identifies) itself and its relation to other elements of the network with Microsoft's Active Directory middleware. In other words, in addition to requiring users to purchase a license for using Windows 2000 on Continued from previous page will not allow anyone else to use its version unless they purchase a license from Microsoft.

server, Microsoft also requires users to purchase enough CALs to cover the maximum level of devices that will have concurrent access to that server. The beauty of a CAL, from Microsoft's standpoint, is that it raises prices for Microsoft software, while at the same time raising the costs to users of using non-Microsoft middleware. The Gartner Group explains: The most significant pricing increase for enterprises using Win2000 will come from Microsoft's licensing change requiring CALs for all authenticated users. This is considerably broader than Microsoft's previous CAL requirement with Windows NT v.4. The most common scenario for increased costs will involve users of Microsoft's Exchange using Novell for NOS [Network Operating System] services. These users will typically see Win2000 server and CAL fees increase five to eight times over their current server and CAL fees. Previously, users of Exchange were not required to Purchase an NT CAL. However, since all versions of Exchange require NT authentication [provided by Active Directory] these users will be required to purchase Win2000 CALs regardless of whether they use another vendor's NOS services. This, in effect, makes the use of Microsoft's NOS services free as compared to other NOSs. The situation is exacerbated by Microsoft's server logo program requirement that certified applications must, at a minimum, support Windows 2000 authentication—a move that increases the number of scenarios in which CALs will be required.

Furthermore, by broadening authentication to include applications ''indirectly'' using Win2000 sign-on services, uses of products that tap into Microsoft's security APIs (e.g., Novell's NDS for NT) must purchase CALs where they were not charged before.

See Win2000 Licensing: Raising Prices, Squeezing Competitors, Gartner Group (Feb. 16, 2000) (italics in original) (boldface added).

Microsoft's CAL licensing policy forecloses competition and reduces consumer choice, because it forces customers to pay Microsoft, even if they prefer to use non-Microsoft

middleware. For example, if a customer has fifty personal computers attached to a network composed of nine Novell servers and one Windows XP server, and the customer uses Microsoft's dominant email software, ''Exchange'' (or any other software that authenticates to Active Directory), then the customer will need to buy fifty CALs from Microsoft—even if the customer would prefer to use Novell's eDirectory for all authentication services.

Why ? Because the customer has no choice: (1) Microsoft bundles Active Directory with Windows 2000 and Windows XP; (2) Microsoft has technologically prevented Novell's eDirectory from replacing Active Directory to provide authentication services for Microsoft products like Exchange; and, therefore (3) virtually all network devices require ''access'' to Active Directory which must be paid for under a Microsoft CAL!

Further, the CAL policy coerces customers into replacing all server software with Microsoft software. Otherwise, the customer will be forced to pay a substantial tax to Microsoft simply to be able to use a competitor's networking software. In the foregoing example, the customer would need to pay for fifty CALs regardless of the number of its ten servers that it converts to Windows XP or Windows 2000. Because Microsoft loads the bulk of pricing into the CALs, rather than into software licenses for its server software, the net effect of this strategy is make it prohibitively expensive for customers to continue to operate servers with non-Microsoft software, such as Novell's NetWare and/or eDirectory, even if they would prefer to do so. In many instances, Microsoft's strategy would effectively force a customer to pay twice for networking software if it had the temerity to rebuff Microsoft by insisting on using a competitor's networking middleware, rather than Windows 2000 or Windows XP (and Active Directory).

The significance of CALs in the overall cost to customers is shown by Microsoft's own estimated retail prices. Microsoft estimates that the Windows 2000 Server license sells at around $799.18 This is also the price of twenty CALs. Thus, using Microsoft's own estimates, as soon as the customer has more than twenty client PCs, the cost of the CALs is greater than the cost of the server license itself. Most enterprises will use far more than twenty client PCs in a network and the greater the number of client PCs, the greater the relative significance of CALs to the customer's overall cost. As a result, customers with large networks are essentially forced to pay for Microsoft's server software, whether or not they prefer that software or even use it. Eventually, however, many customers simply cannot afford to pay the tax imposed by Microsoft for using even superior networking software offered by its competitors.

The server license and five CALs is shown as costing $999 in Windows 2000. See Microsoft Windows 2000 Pricing and Licensing, available at http://www.microsoft.com/ Windows2000/server/howtobuy/pricing/ (visited Jan. 10, 2002). The cost of five CALs is shown separately as $199. Thus the server license is around $799 and each CAL is around $40. This is consistent with the prices shown for the server license and ten CALs ($1,199—$799 plus 10 x $40), for the server license and 25 CALs ($1,799—$799 plus 25 x $40) and for a 20 CAL pack ($799—around 20 x $40).

In sum, Microsoft has repeatedly devised coercive licenses that raise costs to users of non-Microsoft products. The ability of consumers to avoid CALs is ever diminishing as more and more applications that authenticate only to Active Directory are aggressively promoted by Microsoft. By changing the way it charges for CALs in recent versions of Windows, Microsoft assures ''that it makes more money while making it difficult to cost-justify the use of alternative vendors'' products.'' Win2000 Licensing, Gartner Group, supra. Here again, the RPFJ gives Microsoft a mandate to monopolize by limiting one set of coercive licensing practices while condoning another.

E. The RPFJ Would Fail to Protect the Public Interest, Because It Fails To Adopt An Enforcement Regime That Discourages Non-Compliance By Microsoft The RPFJ's enforcement provisions, while elaborate and creative, fail to ensure Microsoft's full and timely compliance with its obligations. The RPFJ fails to impose meaningful time limits on enforcement proceedings, it fails to threaten adequate sanctions to deter Microsoft from ignoring its duties, and it fails to appoint a Special Master to facilitate enforcement. These failings virtually guarantee Microsoft's non-compliance.

In failing to impose time limits on enforcement review and resolution, the RPFJ will allow complaints against Microsoft to languish. Under the RPFJ, a complaint would require an investigation by the DOJ to be followed, to the extent appropriate, by judicial proceedings before this Court. Any enforcement matter before the Court would be complex, even with the able assistance of the Technical Committee. As those investigations crept along, Microsoft would persevere. The history of this action shows that Microsoft sees no reason to take a ''time out'' during periods of antitrust review. Indeed, Microsoft effectively used the time since the entering of the consent decree to complete its annihilation of Netscape's threat to its monopoly.

As in its campaign against Netscape, by the time any sanctions under the RPFJ are imposed, challenged conduct will have long since taken its toll and Microsoft will have already repositioned its monopolistic artillery. Given Microsoft's history of thumbing its nose at the antitrust laws, any remedy must include severe penalties for non-compliance. Absent powerful deterrents, any final judgment in this case will have no more influence over Microsoft than the Treaty of 1839 had over Germany when it decided to invade Belgium in 1914. German Imperial Chancellor Theobald von Bethmann-Hollweg, in an August 4, 1915 conversation with Sir Edward Goschen, British Ambassador to Germany, characterized the Treaty, which guaranteed Belgian neutrality and which had been signed by Germany, as a scrap of paper, at the very time that the Imperial German Army had begun its invasion of Belgium. Sir E. Goschen, Report to Sir Edward Grey, British Foreign Secretary, 1914, available at http://library.byu.edu/rdh/wwi/1914/paperscrap.html (visited Jan. 18, 2002).

The enforcement provisions proposed by the Litigating States are far more likely to disarm Microsoft than the RPFJ. Under the proposal of the Litigating States, a Special Master would be required to conduct prompt investigations of any complaints and to propose resolutions within the short time frame necessary to be meaningful in such a fast-moving market. See States' Remedy at 24. The proposal of the Litigating States contains strict time limits for investigating and resolving any third-party complaints. See id. at 26–27. The Litigating States' enforcement provisions, moreover, would impose severe penalties on Microsoft in the event it perpetuates its monopolist campaign. See id. at 28–29.

III. Legal Standards A. In Evaluating the Proposed Final Judgment and the Public Interest, the Court Must Consider Microsoft's Status as a Defendant That Has Already Been Found to Have Abused its Monopoly Power

The Tunney Act was intended as a safeguard to ensure that antitrust consent decrees were within ''the public interest.'' The Act provides procedural requirements for publication of proposed consent decrees in the **Federal Register** and provides a sixty day comment period during which any person may file written comments to the consent decree. The government is required to respond to any filed comments. Tunney Act, 15 U.S.C. 16(b)-(d). As one commentator has noted, ''[t]hese procedural provisions were designed to satisfy two of the three major criticisms of prior practice by opening up the process to participation by interested third parties and by requiring the government to reveal its justifications for settling the case on the terms provided in the consent decree.'' Lloyd C. Anderson, United States v. Microsoft, Antitrust Consent Decrees, and the Need for A Proper Scope of Judicial Review, 65 Antitrust L.J. 1, 9 (Fall 1996).

The Tunney Act further provides that a district court may only approve a proposed consent decree if it is in ''the public interest.'' The Act lists the following factors which may be considered by a district court: (1) the ''competitive impact'' of the decree; (2) provisions for enforcement and modification of the decree; (3) the duration of the decree; (4) the anticipated effects of alternative remedies; and (5) ''any other considerations bearing upon the adequacy of such judgment,'' as well as ''the impact of the entry of such judgment upon the public generally.'' 15 U.S.C. 16(e).

Since the Tunney Act was enacted in 1974, courts have used varying standards to evaluate consent decrees under the Act based in large part on the posture of the case at the time the consent decree was entered. See, generally, Anderson, supra. In cases in which the consent decree and DoJ complaint were filed simultaneously, and no evidence was introduced concerning the allegations in the complaint, the court's Tunney Act review was extremely limited. See United States v. Microsoft, 159 F.R.D. 318 (Sporkin, J.) (D.DC 1995), rev'd 56 F.3d 1448 (DCCir. 1995) (''Microsoft I'').19 In cases in which

substantial evidence was adduced at trial before the consent decree was entered, the court's ''public interest'' determination 19 In this instance, Microsoft will no doubt argue that this Court has limited authority to review the Proposed Final Judgment based, in large part, on the DC Court of Appeals'' decision overturning Judge Sporkin's ruling which rejected the proposed consent decree entered by DoJ in Microsoft I. Rather than undermining the District Court's authority here, Microsoft I demonstrates the critical importance of a fact-based review of the RPFJ. Although the Court of Appeals rejected Judge Sporkin's decision in Microsoft I, its grounds for reversal are inapplicable here. Further, the Court of Appeals emphasized in Microsoft I that a ''court may (1) insist upon correction of ambiguous provisions, (2) require adequate implementation provisions, (3) consider injury to third parties, and (4) reject decrees that ''make a mockery of judicial power.'' Anderson, supra, at 17; Microsoft I, 56 F.3d 1448, 1461–62.

Judge Sporkin's decision to reject the proposed decree in Microsoft I was overturned, because his decision had no grounding in the record of the case. Rather than consider only the complaint and decree (the only record before him), Judge Sporkin improperly based his decision on facts alleged in a book about Microsoft. Id. at 1453. Neither the book, nor the claims asserted in the book, were properly before the court, and Judge Sporkin's decision to rely on such an extraneous source of information was roundly rejected by the Court of Appeals. In reversing Judge Sporkin's decision, the DC Court of Appeals'' emphasized that Judge Sporkin's reliance on such information amounted to unconstitutional usurpation of the Attorney General's role. Id. See also Anderson, supra, at 34. was significantly more in-depth based largely on the district court's evaluation of the record before it. See, e.g., United States v. A.T.&T, 552 F. Supp. 131 (D.DC 1982) (AT&T).20 Here, in contrast to Microsoft I, there is a robust evidentiary record that must be considered if the Court is even to contemplate accepting or modifying, rather than rejecting outright, the RPFJ. Indeed, the principle reason that the Court of Appeals remanded this case was to assure that the remedy imposed on Microsoft was consistent with the facts established at trial. In the absence of a meaningful review of the facts of this case (including the judgment against Microsoft), and implications of the proposed remedy on the public interest, the Court's proper role under the Tunney Act will not be fulfilled. In fact, this case requires a far more detailed review under the ''public interest'' standard than was undertaken by Judge Greene in the AT&T case.

In that case, the Court, as here, was asked to consider the propriety of a proposed consent decree issued after trial commenced and extensive evidence was presented. Foreshadowing the issue squarely before this Court, Judge Greene explained that evaluation of a settlement prior to a finding of liability is a different analysis than ''fashioning a remedy as it would be upon a finding of liability.'' AT&T, 553 F. Supp. 131, 151 (emphasis added). Judge Greene further stated:

It does not follow from these principles, however, that courts must unquestioningly accept a proffered decree as long as it somehow, and however inadequately, deals with the antitrust and other public policy problems implicated in the lawsuit. To do so would be to revert to the ''rubber stamp'' role which was at the crux of the congressional concerns when the Tunney Act became law. This consideration is especially potent in these cases for several reasons.

Id. at 151.

Judge Greene explained, moreover, that the consent decree in AT&T required ''more than normal scrutiny'' because of the size of AT&T, the complexity of the proposed 20 It is important to note that the DC Court of Appeals in Microsoft I clearly cites to the AT&T case as the most prominent post-Tunney Act case, without ever overruling that case. See Microsoft I, 56 F.3d at 1458, et. seq.

decree, the ''potential for substantial private advantage at the expense of public interest,'' and the ''potential impact of the proposed decree on a vast and crucial sector of the economy.'' Id. at 151–52. Further, Judge Greene noted that although ''courts would generally not be able to render sound judgments on settlements because they would not be aware of the relevant facts . . .,'' that concern was not relevant in the AT&T case because the district court ''already heard what probably amount[ed] to over ninety percent of the parties'' evidence both quantitatively and qualitatively, as well as all of their legal arguments.'' Id. at 152.

Also relevant here, Judge Greene emphasized that greater scrutiny was required because of the ''unfortunate'' history in the prior AT&T actions and settlement: The 1956 Western Electric consent decree that identical settlement, and the identical parties, are now before the Court. Nor can those events simply be dismissed as ancient history, irrelevant to the events of 1981- 82 These circumstances do not foster a sense of confidence that the assessment of the settlement and its implications may be left entirely to AT&T and the Department of Justice.

None of this means, of course, that the Court would be justified in simply substituting its views for those of the parties. But it does mean that the decree will receive closer scrutiny than that which might be appropriate to a decree proposed in a more routine case. Id. at 153.

Based on such concerns, Judge Greene held that the appropriate standard of review under the Tunney Act in such cases is to assure, as a factual matter, that the decree will protect the public interest. He explained: If the decree meets the requirements for an antitrust remedy—that is, if it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon other aspects of the public interest—it will be approved. If the proposed decree does not meet this standard, the Court will follow the practice applied in other Tunney Act cases and, as a prerequisite to its approval, it will require modifications which would bring the decree within the public interest standard as herein defined. AT&T, 553 F. Supp. at 153.

Judge Greene's reasoning in the AT&T case applies with even greater force to the case at hand. Here, as in AT&T, Microsoft and DoJ previously entered into a consent decree (Microsoft I) which was summarily approved and which, in part, enabled Microsoft to engage in the prohibited conduct in violation of the Sherman Act which is at issue in this case. Here, as in AT&T, Microsoft and DoJ conducted a full trial on the merits. Here, as in AT&T, close scrutiny of the decree is imperative, because of the size and strength of Microsoft, the complexity of the remedies at issue in this case, the clear ''potential for substantial private advantage at the expense of public interest,'' and the ''potential impact of the proposed decree on a vast and crucial sector of the economy.'' Id. at 151–52. Unlike the AT&T case, however, here Microsoft has already been adjudged to have abused its monopoly power and it is incumbent upon this Court, in reviewing the RPFJ, to determine whether Microsoft's confirmed antitrust liability is sufficiently addressed to protect the public interest.

In sum, Microsoft, and relief from its pervasive abuse of monopoly power, are far too important to allow this proceeding to serve merely to ''rubber stamp'' a remedy negotiated behind closed doors. To do so, would render the Tunney Act utterly meaningless. Equally important: Microsoft has already been found liable for violating Section 2 of the Sherman Act. The remedies now proposed by DoJ and Microsoft are far less exacting than the remedies initially proposed by either Microsoft or DoJ, are far more lenient than the original remedies fashioned by the district court, and, if adopted would make a ''mockery'' of the legal process. See Microsoft I, 159 F.R.D. at 318.

B.If the Court Does Not Reject the RPFJ Outright, It Should At a Minimum Await the Outcome of the Hearing on the Litigating States' Proposed Remedies Before Ruling on the Adequacy of the RPFJ For all the reasons discussed supra, Novell believes that the RPFJ is so blatantly inadequate and contrary to the public interest that it should immediately be rejected out of hand. Cf., In re Microsoft Corp. Antitrust Litigation, MDL 1332, Slip Op., Motz, D.J. (D.Md. Jan. 11, 2002) (rejecting settlement of class action against Microsoft in the absence of an factual record sufficient for assessment of the public interest). If the Court declines to reject the RPFJ based on the Tunney Act comments alone, then the Court must undertake a rigorous legal and factual analysis to assess how adoption of the RPFJ would affect the public interest.

Under the terms of the Tunney Act, in making such an analysis, a court may:

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate;

(3) authorize full or limited participation in proceedings before the court by interested

persons or agencies, including appearance amicus curiae, intervention as a party pursuant to Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

15 U.S.C. 16(f).

Because of the impending trial on the Litigating States'' proposed remedies, and the fact that Microsoft has chosen to proffer the RPFJ as its own remedies proposal in that Litigating States'' case, the record developed therein is likely to obviate what would otherwise be the clear need for a full evidentiary hearing if the court were even contemplating adoption or modification the RPFJ. Novell respectfully suggests that, in lieu of holding a separate Tunney Act hearing, this Court refrain from ruling on the RPFJ until the conclusion of the hearing in the Litigating States'' case. In that way, the Court will have the opportunity, after a full exposition of the relevant facts, to order a single remedy in the public interest.

IV. Conclusion

To protect the public interest, antitrust relief must look not only backwards at past unlawful conduct, but also forward at foreseeable risks. An antitrust remedy must ''unfetter a market from anticompetitive conduct,'' Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972), and ''terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.'' United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968); see also United States v. Grinnell Corp., 384 U.S. 563, 577 (1966). The RPFJ fails this test. Indeed, the RPFJ even ignores Microsoft's aggressively anticompetitive past.

Microsoft has persistently manipulated interface information to cut lines of mooring between the middleware of its competitors and its own monopoly operating systems and to repel any incursions onto the beachfront of competition. Microsoft moreover, has cynically sought to recast its malevolent monopolization as the harmless development of ''integrated products'' under the ''Windows'' name. In spite of this well-documented history, the RPFJ replenishes Microsoft's arsenal of technological knives and linguistic camouflage and encourages it to develop additional anticompetitive weaponry in its assault on the public interest.

Much has been made of the fact that, at the end of the negotiations that resulted in the Proposed Final Judgment, it was Microsoft's counsel, Charles F. Rule, a former Assistant Attorney General for Antitrust in the second Reagan Administration, and Charles James, the current head of DoJ's Antitrust Division, who hammered out the final provisions of the settlement now before this Court. This was the very same Charles Rule who, testifying before Congress in 1997, reminded the Senate Judiciary Committee that ambiguities in consent decrees are typically resolved against the Government (and, assumedly, against the public interest, which the Government should represent) and that, in interpreting a decree later, the Government cannot fall back on some purported 'spirit' on 'purpose' of the decree to justify an interpretation that is not clearly supported by the language.'' Charles F. Rule Testimony, supra at 3. If this Court does not act to reject this settlement, for Microsoft it will be ''been there, done that;'' for the rest of us, it will be ''dij? vu all over again.'' For the foregoing reasons, Novell respectfully requests that the Court reject the RPFJ as contrary to the public interest.

Respectfully submitted,

—/s/—

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(412) 288–4268
Counsel for Novell, Inc.

Dated: January 28, 2002

MTC–00029524

From: Brian Snider
To: Microsoft ATR
Date: 1/29/02 1:59am
Subject: Microsoft Settlement

I've read the first half of the Complaint <http://www.usdoj.gov/atr/cases/f1700/1763.htm> (5/18/1998), and the latest proposed settlement to remedy the monopolistic behavior of Microsoft. As a professional in the creative field, I will be watching this case with baited breath, hoping to see Microsoft brought to a real, long lasting justice.

Please remedy this matter in a way that seeds new hope for competing software to flourish. Forcing Microsoft to re-introduce Java into it's OS would be a good start, suspending their exclusive relationships with OEM's would go a long way as well. Perhaps forcing them to port their Office suite to the Linux OS would be the ultimate way to shake things up.

I'm no lawyer, and even I can see the loopholes of the current proposal that the remaining nine states are refusing to sign off on. We need something CONCRETE!

Thank You,
Brian Snider
Seattle, WA

MTC–00029525

From: A.C. Ross
To: Microsoft ATR
Date: 1/29/02 2:05am
Subject: Microsoft Settlement

Grossly Inadequate

I would like to add my voice to those calling for a rejection of the currently proposed DOJ settlement with Microsoft. Microsoft has demonstrated time after time both that it is not reluctant to use the monopoly power it was found guilty of wielding and that it is entirely unrepentant since the decision was handed down.

I'm a management consultant in the computer software industry and have been since the mid 1980s. My jobs in that period often included working or negotiating with large and small software companies who treated Microsoft's presence as the first major marketing issue to address. Always, managers explicitly asked the question, ''Can we survive long enough before Microsoft embeds software like ours in Windows or ties Windows to it in some way to squeeze us out of the market.'' Although some companies may have lost their competitions through their own missteps, there are others, going as far back as STAC, that competed well and won their own court cases, only to be steamrolled by Microsoft's market power.

Transcripts from the trial show multiple instances of Microsoft's outright efforts to illegally divide up markets (the conversations over allocating non-Windows platforms to Netscape noted by Marc Andreeson) and to tie access to the Windows operating system to Draconian restrictions on the marketing decisions of hardware platform vendors.

I don't want to reiterate arguments and proofs that have been made in the press. My summary position starts with the fact that Microsoft was found guilty in federal court. The terms of the agreement are so tenuous and the remedies so weak that I have no confidence whatsoever that Microsoft will feel the need to comply with the spirit and will sail as close to the letter of the law as possible. Its conduct will be entirely unchanged. Indeed, it has clearly indicated that it does not agree with the decision, shows no remorse for its actions, and is safely positioned to violate laws until someone large enough has the resources to take them on.

Microsoft was found guilty, and the government is responsible for setting and enforcing remedies. If you want to get Microsoft's attention, you will have to define and enforce remedies that causes them to change their behavior. The current remedies merely enforce the public perception that a large corporation can buy its way out of any legal difficulties. If the monopoly laws are to mean anything in the future, you must enforce them, and you must make an example of the important role the government plays in ensuring compliance. Otherwise, we are not a nation of laws, but a nation for sale to the highest bidder.

A.C. Ross

MTC–00029526

From: pdm@wt6.usdoj.gov@inetgw

To: Microsoft ATR
Date: 1/29/02 2:10am
Subject: Microsoft Settlement

To Whom It May Concern:

I am writing to express my concern over the settlement in the Microsoft antitrust case.

I am a professional software engineer with over 12 years of experience. During my time in industry, I have seen many promising companies and products hindered by Microsoft's monopoly. Microsoft has consistently shown a lack of regard for reliability and security in their products.

I do not feel that the proposed settlement goes far enough. I encourage you to reconsider the option of splitting Microsoft into separate companies. Only then will it be possible for smaller companies to compete.

Sincerely,
Peter DiMarco
Staff Software Engineer
Integrated Flow Systems
250 Technology Circle
Scotts Valley, CA 95066

MTC–00029527

From: Jim Macey
To: Microsoft ATR
Date: 1/29/02 2:09am
Subject: Microsofe Settlement
2603 Louisiana Street
Longview, WA 98632
January 28, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

I wanted to submit this letter to express my approval of the Justice Department's settlement with Microsoft Corporation. I have disagreed with the government's case from the beginning, but I see this agreement as the best solution for all parties to declare victory. Although it is hard to be a real monopoly when you have so much competition trying to push their way into more market share through the tool of litigation, not to mention a constituency of millions of satisfied customers, Microsoft is taking several steps to create a more dynamic software environment with this deal. Hardware developers will have broader rights to configure Windows with software that competes with Microsoft, and will benefit from no contract restrictions on future distribution or promotion of Windows products. The top 20 computer makers will also receive uniform pricing for licensing Windows, to provide further incentives to consider alternative software vendors and truly level the playing field.

As these examples prove, this agreement is quite generous and actually exceeds some of the government's demands. Microsoft is the most dominant software player because they have earned it and deserve to continue without further government interference. Hence, I ask for your support.

Sincerely,
James M. Macey
jimm333@juno.com

MTC–00029528

From: Geoffrey Peck
To: Microsoft ATR
Date: 1/29/02 2:11am
Subject: Microsoft Settlement
January 28, 2002
Renata B. Hesse
microsoft.atr@usdoj.gov
Antitrust Division
U.S. Department of Justice
601 D Street NW Suite 1200
Washington, DC 20530–0001

I am writing to you to suggest a possible set of restrictions on the future conduct of business by Microsoft Corporation that would prevent the company from continuing its aggressive and monopolistic business practices in the rapidly developing computer industry. While these restrictions may seem draconian, I believe that the injury to other parties in the computer software industry has been severe, and that Microsoft has used its dominant position not only to compete unfairly in the marketplace, but also to stifle innovation. I will keep my comments brief for your convenience.

1. Require full disclosure of all interfaces and software elements. It is important that parties other than Microsoft have full access to interfaces and internal characteristics of the monopoly's software products. To make this effective, I propose that Microsoft be required to release full development source code and all internal documentation whenever it releases a product, regardless whether that is a final product or a pre-release (alpha, beta, and release candidate) version. This code shall be made available at a reasonable price, not to exceed the end-user price of one (1) copy of the software. Microsoft may make this source code available under license that restricts the licensee's use of the source code so that the licensee may not directly utilize significant portions of the code to create products that are essentially identical to Microsoft's own products.

Full, commented source code and complete documentation is the only form of full disclosure that will truly enable competitors to produce software that fully integrates with Microsoft's monopoly operating system and desktop program suites.

Releasing specifications of interfaces at a point in time does not affect Microsoft's ability to arbitrarily change these interfaces in ways that make competitive or complementary products noncompetitive or non-interoperable. For example, Microsoft's Common Internet File System (CIFS) was a specification released by Microsoft, but Microsoft has continued to change the messages sent between computers so that maintaining a compatible interface such as Samba is a difficult job, requiring substantial reverse engineering.

Another reason that full disclosure is required is that Microsoft may choose to release only specific, partial information on certain key interfaces. This information would allow a software vendor to produce programs that perform arbitrary, specified functions. A Microsoft version of a similar program might use a ''hidden'' interface that produces better performance, or Microsoft's knowledge of the internal algorithms that underlie an interface might allow it to utilize this supposedly public interface in ways that an external developer could not.

2. Restrict Microsoft's purchase of other technology companies. Microsoft often states that its most sincere desire is to innovate. Unfortunately, the record shows that most of Microsoft's innovation has come in the form of purchasing (or appropriating) technology developed by others, applying its exceptional marketing muscle, and then updating this acquired technology at an often-painfully slow rate once Microsoft has established a comfortable market lead or monopoly position. Examples of this behavior include:

* MS-DOS (acquired by license, Seattle Computer Products)
* Microsoft Windows (copied from Apple's Macintosh, in turn derived from work at SRI and Xerox PARC)
* Microsoft Windows NT OS (and the newer XP OS) (appropriated and then licensed from Digital Equipment Corporation)
* Microsoft Excel (copied from the original spreadsheet, VisiCalc)
* Microsoft Internet Explorer (copied from Netscape Navigator)
* Microsoft FrontPage (company acquired)
* Microsoft PowerPoint (company acquired)
* Microsoft Visio (company acquired)
* Microsoft Hotmail (company acquired)
* Microsoft UltimateTV (company acquired)

To truly encourage innovation and reward that innovation in the market, such acquisitions should be prevented. Microsoft should be prohibited from acquiring more than 40% of any other company, public or private, either directly or via one or more of its major stockholders.

3. Require Microsoft to support at least one additional viable alternative operating system on its desktop applications suite. Many users are forced to purchase Microsoft operating systems because they need to utilize Microsoft's Office Suite or a subset thereof. If offered the choice of running these applications on a different operating system such as Linux, many customers would be delighted to opt for that choice.

Microsoft does offer some, but not all, of the Office applications on the Apple Macintosh; however, given Apple's small market share, the Macintosh Office Suite does not constitute a significant fraction of the market. Microsoft should be required to release a fully comparable version of its Office Suite products (Access, Excel, FrontPage, Outlook, PowerPoint, Publisher, Word, and supporting applications such as Photo Editor) on a widely-used Linux distribution such as Red Hat. The first Linux version of these applications must be made available within 120 days of the conclusion of these proceedings, and subsequent versions must be released at the same time as or before the Microsoft Windows version of these programs. Retail, corporate, and OEM pricing for the Linux version of these programs and packages shall not exceed the prices for the same programs and packages on Microsoft Windows, and all configurations of these programs and packages offered on Microsoft Windows must be offered on Linux. Further, these Linux-based products must be full and complete ports—they cannot use a Windows emulation

library and simply sit on top of Linux with poor interoperability with other Linux tools.

4. Compensate past purchasers of Microsoft software for the overcharging that was made possible by Microsoft's monopoly and tying practices. I believe that direct financial compensation via actual monetary payment (no coupons, no rebates on future purchases) would be the most equitable solution. If a user registered one or more product(s) with Microsoft, those records can be used to make payment to the original purchasers of each product and/or upgrade. If a user did not register, proof of purchase such as original CD-ROMS should be accepted. I believe that the amount of compensation should be selected so that a substantial fraction (more than 50%) of Microsoft's cash on hand is disbursed to consumers. Although these four remedies each may sound quite harsh, I believe that Microsoft's conduct cannot fundamentally be altered without applying all four remedies simultaneously. Ultimately, these remedies will result in the resumption of competition and market-based innovation in many areas of the computer software industry. Without all four remedies, it is quite likely that Microsoft will be able to resume its anticompetitive practices by interpreting the ruling in its own ways.

Thank you for your time.

Geoffrey G. Peck

San Jose, California

Mr. Peck is a computer scientist who has been involved since the late 1960s in designing and a wide variety of computer software ranging from the file system component of operating systems to end-user applications. He graduated from Harvard College in 1978, and obtained his Masters degree in computer science from the University of California, Berkeley in 1982. He is currently Chief Technology Officer of a Silicon Valley start-up. This letter represents Mr. Peck's personal views, and does not necessarily reflect the views of his employer.

MTC–00029529

From: Raymond Borys
To: Microsoft Settlement
Date: 1/29/02 2:09am
Subject: Microsoft Settlement
Raymond Borys
3051 Alexis St.
Portage, IN 46368
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Raymond J. Borys

MTC–00029530

From: Steven Apour
To: Microsoft Settlement
Date: 1/29/02 2:12am
Subject: Microsoft Settlement
Steven Apour
2640 Melendy Drive, Apt. 3
San Carlos, CA 94070
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Steven H. Apour

MTC–00029531

From: esko
To: Microsoft ATR
Date: 1/29/02 3:02am
Subject: Microsoft Settlement

I am a software engineer with 19 years of experience developing software for Apple, Windows, DOS, Unix, and Linux. Having studied the proposed final judgement it is obvious to me that it is not in the public interest. To begin with, there appears to be no provision for enforcement.

Additionally there are so many loopholes in the definitions used that even the little that it attempts to do is virtually guaranteed to fail. There are many anti-competitive practices that the proposed judgement does not address at all.

For a more detailed critique of the settlement that touches on most of the issues I highly recommend checking out Don Kegel's summary of the flaws on the internet. (http://www.kegel.com/remedy/remedy2.html) I agree with each of the points he makes in the essay. It is a good outline of many of the most obvious limitations of this proposed settlement.

Microsoft has been allowed to run roughshod over the computer industry for more than a decade. It has danced around the terms of the ''consent decree'' and completely subverted them. There are many examples in the Findings of Fact illustrating an almost complete lack of ethics and total disregard for the law.

Only a very restrictive, well-defined, comprehensive decree with a real enforcement mechanism has any hope of accomplishing the goals that a remedy decree requires.

The ongoing actions taken by this company while these proceedings take place make it readily apparent to me that Microsoft has no intention of following any court order or honoring any agreement it signs.

I strongly urge you to take the necessary steps to accomplish the goals defined by the appeals court. If you manage to do so, you will help restore the computer industry to the dynamic and creative environment I fell in love with so many years ago.

Sincerely,

Esko Woudenberg

391 Montclair Dr. #46

Big Bear City, CA 92314

Software Developer

MTC–00029532

From: Ronald Fritz
To: Microsoft Settlement
Date: 1/29/02 2:14am
Subject: Microsoft Settlement
Ronald Fritz
317 Heather Dr.
Carmel, IN 46032
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation. Competition means creating better goods and offering superior services to consumers. With

government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,
Ronald E.Fritz

MTC–00029533

From: fondue@best.com@inetgw
To: Microsoft ATR
Date: 1/29/02 2:18am
Subject: Microsoft Settlement
Ms. Renata B. Hesse,
Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Renata Hesse:

Please put a stop to the economically-draining witch-hunt against Microsoft. This has gone on long enough. Microsoft has already agreed to hide its Internet Explorer icon from the desktop; the fact is, this case against Microsoft is little more than ''welfare'' for Netscape and other Microsoft competitors, with not a nickel going to those supposedly harmed by Microsoft: the computer user. This is just another method for states to get free money, and a terrible precedent for the future, not only in terms of computer technology, but all sorts of innovations in the most dynamic industry the world has ever seen.

Please put a stop to this travesty of justice now. Thank you.

Sincerely,
Tracey Cutler
14480 Oak Place
Saratoga, CA 95070

MTC–00029534

From: Marge Evans
To: Microsoft ATR
Date: 1/29/02 2:21am
Subject: AOL/Time Warner/Netscape Suit

It is time for the attacks on Microsoft to end. As a consumer, I now have and have had ample opportunity to choose browsers, internet connectors. The government approved the union of AOL/Time Warner making it a very large media monopoly. AOL has a majority of the online subscriber business for the internet to boot. Having used the Netscape browser years ago I was bombarded with unsolicited e-mail as there was no way to easily get it blocked. AOL is a very aggressive company. I feel that these suits are NOT creating more choice or competition for the industry but rather taking from investors, consumers, the right to improved products. All the money that has been spent on lawsuits, legal costs, trials has taken away from improved products, research, jobs. I feel AOL, Oracle, Netscape and the rest of the companies that have banded together against Microsoft should better spend their time and their investor's monies improving their own products rather than trying to destroy this company. It is difficult to believe that any of those companies is any less aggressive than Microsoft.

When it comes to monopolies, the US Government is the biggest monopoly of all and has, through its inept and unthinking Federal Reserve Bank Policies, with its rate increases, cost hundreds of small companies to go bankrupt. This country needs to stop attacking companies and get its act together to get the economy headed in an upward direction. We are now in the process, because of our policies, of letting China take over Global Crossing, thereby giving up the global fiber optics business to a foreign country. Do we have our heads in the sand?

MTC–00029535

From: Mike Schuh
To: Microsoft ATR
Date: 1/29/02 2:22am
Subject: Microsoft Settlement

Greetings:

I wish to comment on proposed settlement in U.S. et al v. Microsoft. I strongly believe that Microsoft should be penalized for their injurious use of their monopoly in desktop operating systems. However, I do not think that their proposal to give computers and software (theirs, of course) to ''impoverished'' schools is acceptable. It would be like allowing a fox, convicted of raiding a chicken coop, to stand guard over the coop as punishment... One should be cautious of the remedies proposed by those who must fulfill those remedies (''please don't throw me in the brier patch'' comes quickly to mind, albeit in a slightly different context). The basic problem with the proposal is that it helps to perpetuate Microsoft's illegal monopolistic practices! In a few years, when the schools have to upgrade (because Microsoft will have rendered the ''free'' software obsolete), they'll have to buy from Microsoft.

Here's a better idea, and one that I support: http://www.redhat.com/about/presscenter/2001/press—usschools.html Among other things, the ''retail'' value of Microsoft software is, to Microsoft, approximately zero, so the proposal really isn't much of a penalty.

An alternative is for Microsoft to sell off (and forever stay out) their applications software, then reimbursing everyone who has ever purchased software from them with the proceeds (that is, they don't get to keep the proceeds from the sale, that being their penalty). Kind of like a giant class action law suit.

If we don't punish the guilty in a manner that truly is punishing, then there is no disincentive for them (or anyone else) to go and just repeat their behavior. In fact, Microsoft has already done this! Thank you.

Mike Schuh—Seattle, Washington USA
http://www.farmdale.com

MTC–00029536

From: jmetz
To: Microsoft ATR
Date: 1/29/02 2:23am
Subject: microsoft

Sirs

I have only a few thoughts on the matters before the judge. If microsoft is in actuallity a monopoly as most of the tech world belives and it has manipulated the law government and its access to the hardwarre manufacturers there are some very simple solutions that might be implemented.

They need to be punished in a manner that would benefit disadvantaged competitors and the general public as well. So here might be a method that would serve all the injuried parties starting back from 1992 when they virtually drove Geoworks from the office and school suite business.

Geoworks now is under the control of www.breadbox.com had been developed as a complete operating suite and sold recently as NewDealOffice 2000 is a service system that resides on top of any DOS or Win9x NT or linux in a DOSEMU and OS/2 as a cross platform suite

If microsoft were to be forced to release both its win9x as a downloadable and its DOS as downloadable in total with the associated Knowledgebases and source codes this might enable other companies to continue development of those operating systems.

If they were forced to give away mac systems with the associated versions of software to all the schools in need, that would partially aid another company that had been harmed greatly.

If they were to pay for the rehab of older boxes 386 486 and low end pentium units with the addition of the software suggested above for distribution in the 3rd world of central and south americas this would also solve other existing problems. But those are my opinions.

MTC–00029537

From: bill frack
To: Microsoft ATR
Date: 1/29/02 2:23am
Subject: Microsoft Settlement
11143 Philadelphia Road
White Marsh, MD 21162
January 28, 2002
Attorney General John Ashcroft
U.S. Dept. of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am writing to you today to express my support of the settlement reached with Microsoft. The November settlement represents three years of mediation, and given the current state of the economy, I believe enacting it is in the best interests of the country. I urge you to do so.

The settlement contains many concessions on the part of Microsoft. Microsoft has agreed to disclose the internal interface of the Windows system. This information sharing will allow developers to create software that is more compatible with the Windows system. In addition to this, Microsoft users will also have the ability to reconfigure their desktops at their discretion with the new design of Windows XP. Obviously, Microsoft has done its share to end this litigation process; I trust that the Justice Department has the sense to enact the settlement. Thank you for your concern regarding this issue.

Sincerely,
J. W. Frack

MTC–00029538

From: Lewis Zechmeir
To: Microsoft ATR
Date: 1/29/02 2:27am
Subject: MICROSOFT SETTLEMENT

TO WHOM IT MAY CONCERN:

I find the proposed Microsoft settlement odiferous. To allow them to advance their monopoly and call it punishment is ludicrous. The very people who were harmed by their business practices would be harmed by the proposed settlement. I feel that any judgment has to be made to level the playing field.

One alternative would be to have Microsoft donate light wave fibers to local servers and pay to have it laid into rural areas in the various states that are asking for damages. Any company could connect or provide service and customers could choose between them.

This would bring high speed internet into rural areas and bridge the digital gap. The affected states would benefit and it would stimulate the economy fairly.

Respectfully,

Lewis Zechmeir

MTC–00029539

From: Boyd Bronson
To: Microsoft Settlement
Date: 1/29/02 2:27am
Subject: Microsoft Settlement
Boyd Bronson
8915 Somerton Circle
Sandy, UT 84093–7022
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Boyd Bronson

MTC–00029540

From: Masodoi@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 2:31am
Subject: Microsoft andti-trust case.
To Renata Hesse, trial attorney,
Antitrust Divison,
U.S. Deptment of Justice:

No one considered Microsoft a monopoly before it was so designated by Judge Penfold Jackson, who was so prejudiced against Microsoft that a related decision by him was overruled by the appeals court.

Microsoft's tactics to protect its share of the market are common business practice, which is illegal only if performed by a monopoly. So it cannot be punished for violating the Sherman Antitrust Act, before it was legally a monopoly; or it will become an ex post facto case.

Also, the Sherman Antitrust Act outlaws trusts, or combinations of companies, which conspire to restrain trade. Since when has a single company, which won a major share of the market because its service was so superior to its competitors, been prosecuted like Microsoft?

Microsoft founder Gill Gates is giving billions of dollars for worthy causes. By contrast, AOL/Times Warner is lavishing vast sums for politicians and slick lawyers to subvert the law for its own benefit. They are seeking competitive advantages by their list of demands that violate patent laws—not justice!

Hopefully U. S. District Judge Colleen Kollar-Kotelly uses her common sense and not be confused by the countless, questionable details, dredged up by the anti-Microsoft coalition.

Mas Odoi

MTC–00029541

From: Patrick O'Connor
To: Microsoft ATR
Date: 1/28/02 5:31pm
Subject: Microsoft Settlement

Dear Ms. Hesse:

Attached please find Comments of NetAction and Computer Professionals for Social Responsibility on the Proposed Final Judgment in U.S. v. Microsoft. An additional copy has been provided by fax. Please feel free to contact me at 202–955–6300 with any questions or concerns.

Regards,

Patrick O'Connor

Counsel to NetAction and Computer Professionals for Social
Responsibility

MTC–00029542

From: Mark Horton
To: Microsoft Settlement
Date: 1/29/02 2:34am
Subject: Microsoft Settlement
Mark Horton
690 Fort Washington Ave. #2F
New York, NY 10040
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Mark Horton

MTC–00029543

From: ron
To: Microsoft ATR
Date: 1/29/02 2:44am
Subject: Microsoft Settlement
Ron Hardesty
12024 147th St. Ct. E.
Puyallup, WA 98374
January 28, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am in favor of Microsoft and the Department of Justice settling the antitrust case. It is time for the federal government, the plaintiff states, and Microsoft to get back to the things that really matter. There is a multitude of reasons why this case should be settled. To begin with, Microsoft has been unfairly singled out in this case. Several other high-tech, media conglomerations truly are monopolistic. Yet, Microsoft has been the only target of antitrust litigation. Additionally, the suit was brought under the guise that consumers were being harmed by anticompetitive behavior on Microsoft's part. To the contrary, Microsoft helped consumers by producing innovative products at reasonable prices. The lawsuit has driven up prices of Microsoft software. Consumers will clearly benefit from an end to this protracted litigation. The terms of the settlement agreement are more than fair. Microsoft has agreed not to retaliate against those who promote or distribute software that competes with Windows. They also agreed to begin designing Windows in such a way so that it is easier for computer manufacturers, consumers, and software developers to promote non-Microsoft software within Windows. It will be much easier for consumers to change the configuration of their computers. This will result in more choices, and, hopefully, stronger competition.

I hope to see this settlement agreement finalized as soon as possible. Thank you for reviewing my comments.

Sincerely,
Ron Hardesty
(253)229–6186 Cell
12024 147th St. Ct. E.
Puyallup, WA. 98374

MTC–00029544

From: Anonymous
To: Microsoft ATR
Date: 1/29/02 2:52am
Subject: Microsoft Settlement

Introduction

This document is a sparse skeleton, as the author only discovered the ability to file Microsoft final ruling commentary about a day ago. The 1/28/02 deadline is now known and the skeleton commentary is submitted to meet that deadline, on Email date/time.

The author asserts this timely skeleton is sufficient, as he is claiming US legal mandate in a comment to the US DOJ, carrying ''coals to Newcastle'' so to speak. However, the author will continue to make a more detailed argument with references and plans to file that argument as a collateral DOJ complaint in about a week, with disclosure to presumptively interested parties Apple Computer, American Online, and the other non Judgment participating sovereign states. The author presumes the DOJ will disclose that complaint to Judgement interested parties. The author stands by this skeleton, speculates that further argument may be of benefit in the pursuit of justice, plans that further submission within about a week, but has major collateral duty and makes no delivery guarantee.

The major issues, see below, are the Apple QuickTime environment change, the ''server side'' functionality, and the possible secret Microsoft scheme in iterative maneuvers of an unwitting user body into periodic, not one time, computer system licensing fees. This document is written from memory but is believed to be correct. If nothing shows up in two weeks, 2/11/02, the claim of further argument delivery expires.

The author is not computer ''innocent'', speaks from decades of computer operating system development and maintenance experience as well as legal awareness. The author has purchased, installed, and used Microsoft operating system and tool software. The author is neither lawyer nor witness, attributes the entirety of the possible factual issues to media sources, is submitting Federally protected, US Amendment One petition believed to be true, but labeled as speculation and not fact, expects full investigation, and may be entirely wrong. This document is not signed, as the author is not witness and has collateral awareness of retaliation to complaint. However, US Amendment Right of Petition specifies no signature mandate.

Claim

It is possible Microsoft is guilty of bad faith at a minimum, in knowing, pre-judgement violation of Final Judgement III. A. Prohibited Conduct, ''. . . shall not retaliate . . . .'' This retaliation is possibly via the continuing exercise of a scheme or artifice to defraud OEM's and clients with continual, anti-competitive, fraudulent conduct possibly in violation of US Title 18. It is possible that scheme or artifice is a racketeering enterprise run for profit. It is possible there is probable cause for formal investigation of these issues within US Title 18 mandate.

Assertion

Use of the Microsoft Operating System Product (''MOSP''), and / or Internet connectivity use of the MOSP to other sites or to Microsoft sites, is possibly directly linked to the exercise of interstate commerce, interstate wire traffic, and causal or facilitated US Mail, thus making US Title 18 mandates material.

Assertion

Client usage of purchased MOSP tools runs under sovereign state contract law and regulation, thus possibly defining contract and / or property right entitlement(s) covering that MOSP tool exercise. An involved sovereign state who may have sovereign state entitlement change in progress has a right to a hearing on these possibilities.

Assertion

A reasonable person view of MOSP security support, also within full sovereign entitlement, is possibly a further, distinct property right entitlement and / or contract material issue. Assertion A reasonable person view of questionable MOSP operating system maintenance changes, security or otherwise, changes that impact or eliminate legacy services or that suddenly mandate new interfaces, when viewed by that reasonable person in the current ''operating system world'' and / or history, may involve property right entitlement and / or contract breach, on that questionable cause.

Assertion

An undisclosed change to the MOSP that substantively both eliminates a prior OEM function and adds a Microsoft maintenance/ change may be viewed by a reasonable person as an extortionate act. One wants the change and is thus forced to give up the function . . . to get the change. Alternatively, one installs the change with secret OEM function elimination, possibly evolves into substantive value in the effect of that change, suddenly discovers the OEM function elimination, but no longer can simply ''back up'' to the prior maintenance level, because of involvement in MOSP change.

Assertion

It is possible Microsoft made an MOSP maintenance change that, in part, knowingly eliminated the ability of a current Apple QuickTime product to function. It is possible that change was not done for MOSP function enhancement, but was rather done to harm OEM Apple, to reduce competitor product QuickTime usage, to enhance competing product Microsoft Media Player usage, and to enhance Microsoft profit at the expense of client MOSP service and choice. It is possible a harmful act of this type may be a contract breach, an interstate wire received, cause of breach, and / or a property right entitlement denial.

MTC–00029545

From: Anonymous
To: Microsoft ATR
Date: 1/29/02 2:55am
Subject: Microsoft Settlement

Assertion

It is possible Microsoft apparent change focus on ''server side'' MOSP maintenance enhancement control, as distinct from ''client side'' control, breaches a reasonable person view of the contract rights under MOSP purchase, the sovereign property right entitlement(s) associated with that contract, and / or the intangible right to honest services for an interstate wire transaction.

As an example, Norton Systemworks on Windows 98 appears to do maintenance upgrades on the ''client side'', the user tool using Internet in contacting Symantec for current system levels, offering a list of changes for user download and install, then running that user download and install process.

However, Microsoft MOSP maintenance from Microsoft support itself appears to run ''server side'' system level support, not ''client side'' and appears to possibly force security changes in web browser configuration. The server side browser code possibly determines the needed maintenance by examining the client, not the client side code examining the server.

Microsoft develops both the MOSP client and its own server, has the direct choice of client (MOSP) or server (Microsoft server) support, and is possibly doing the reverse of Symantec. It is possible that server/client choice breaches a reasonable person view of rights and / or entitlements, with the author stating he would never choose server side support if given a choice.

It is possible Microsoft in the past and recently made ''server side'' changes in its Windows maintenance update process that forced ''client side'' security changes in order to obtain both maintenance support and merely a list of the ''client side'' system changes possibly needed. Some of these changes may be critical security changes.

Assertion

It is possible Microsoft has a secret scheme or artifice to increasingly disregard ''client side'' functionality choice, choosing to impose ''server side'' functionality, but for no disclosed or apparent MOSP support reason. It is possible that increasing, undisclosed, suspicious change effects, installed by MOSP necessary bug maintenance practice, is in fact a pattern and practice scheme to increasingly foster ''server side'' functionality upon an unwitting user body, until ''server side'' functionality becomes a mandate, not a choice. At that mandate time, it is possible a secret Microsoft plan to now force periodic software licensing fees upon the user body now will become reality, with the user body, after repeated, subtle, concealed change over time, is now dependent on ''server side'' functionality, and is unable to drop Microsoft or Windows because of business or personal need.

Assertion

It is possible Microsoft has not in good faith tried to comply with the intent of the Proposed Final Judgment and the espoused complaint of opposing parties, has not in good faith tried to be consistent with reasonable person expectation of MOSP and computer tool expectation with Proposed Final Judgement III. A. retaliation expectation, but rather is engaging in a secret scheme or artifice to continually engage in

anti-competitive, fraudulent practices in at least three ways:

One, to ''tailor'' MOSP maintenance changes to reduce or eliminate the ability for a possible OEM to offer competing product, such as Apple QuickTime, Microsoft thus acting not to compete and offer MOST client choice, but to defraud and to retaliate.

Two, to use the secret scheme or artifice to later force periodic licensing upon a user body that now requires ''server side'' functionality, on evolving business or personal need, Microsoft using near-monopoly power to secretly—reverse—the possible entire history of computer usage financing.

Three, speculating on the future, to use that periodic licensing scheme as an anti-competitive mechanism, where a user whose computer is old or wears out has minimal choice for competing product, being forced to stay with the now necessary ''server side'' licensing mechanism because of business or personal need of that software. While Microsoft offers presumptively equal software on Macintosh and Windows, after Windows periodic licensing becomes reality, the pretextual, competing Macintosh versions may become obsolete.

Assertion

While a vendor certainly has the right to develop and offer their own delivery of service, a vendor has no right to use the US Mail, interstate wire, or interstate commerce in a pattern and practice to deny honest services, to conceal material fact in a secret scheme for future profit, to scheme in iterative enticement, lure, or extortion of unwitting users into future, periodic licensing.

Rewording, offering a ''server side'', monthly license fee tool is certainly legal. Maintaining and extending an operating system is certainly legal. But maintenance change patterns that have no credible client value, that have a secret Microsoft value, that are part of a likely ''setup scheme'' for the user, are fraud, in the denial of honest contract and wire services.

If questionable change A, precedes B, precedes C, . . . into now necessary ''server side'' functionality ''P'', a functionality that facilitates periodic licensing, then each distinct change, absent credible cause, is falsified cause and fraudulent effect.

Using a near-monopoly customer base to impose secret, subtle maintenance changes for no credible reason, in denying reasonable person expectation of operating system, computer tool, and / or competitive product honest services, or using knowingly false MOSP maintenance changes to impose Microsoft benefit at the expense of reasonable person expectation, is not legal. It is potential fraud and potential racketeering.

Assertion

This is not a single redress against a single Microsoft. It is a possible class action issue for the entirety of Microsoft users of all tools and all products, for the entire world, for all interstate mail, wire, and commerce acts, for all Microsoft support downloads.

MTC–00029546

From: blakem@cobalt.blakem.com@inetgw
To: Microsoft ATR
Date: 1/29/02 2:58am
Subject: Microsoft Settlement

To whom it may concern:

I am writing to express my disappointment over the settlement proposed by the DOJ in US v. Microsoft. As a software engineer, I am well aware of the strangle-hold Microsoft holds over the industry, and the stifling effect it has on innovation.

In 1994–1995 when Netscape and Mosaic were the only browsers around, Microsoft started whispering about entering the browser market. I was in college at the time (University of Pennsylvania) and had seriously considered entering the browser market with several of my peers. As soon as rumors of Microsoft surfaced, those plans were stopped dead in their tracks. Netscape's 100% market share didn't discourage us at all. Microsoft's track record of stomping out rivals—dare say I entire markets—using ill-gotten gains is what sent our creative energies elsewhere. The ensuing 4–5 years were full of ''browser-war'' stories, but the result was a foregone conclusion before Microsoft had released a single product.

The current software landscape is rather bleak. When the bully gets to usurp any and all innovative ideas, people eventually stop being creative. Motivation is tough to come by when you know that the spoils of your labor will eventually be in the war-chest of said bully.

Since the settlement does nothing to fundamentally change this landscape, I can not support it. I don't feel that the DOJ has represented the public's best interests.... they certainly have not done so with mine.

Blake Mills

MTC–00029547

From: Roddybabes@aol.com@inetgw
To: Microsoft ATR,senator—leahy@ leahy.senate.gov@inetg...
Date: 1/29/02 2:59am
Subject: Microsoft Settlement
Mario Rodrigues
1921 North H Street
APT 48
Oxnard
CA 93030
Wednesday, January 23rd, 2001

To whom it may concern,

Having read the testimony of the Senate Committee on the Judiciary, and the Court's Findings of Fact, I for one am against the proposed settlement because it will maintain the status quo. This will mean the continued absence of any compelling competition for software on the desktop. Any one of a neutral disposition, who has read the testimony and the Court's Findings of Fact, can clearly see the lack of justice when viewed against this landmark judgment.

The Supreme Court has explained that a remedies decree in an antitrust case must seek to ???unfetter a market from anticompetitive conduct,'' Ford Motor Co., 405 U.S. at 577, to ???terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future,'' United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968); see also United States v. Grinnell Corp., 384 U.S. 563, 577 (1966).

Where does the proposed settlement, ''terminate the illegal monopoly'' and ''deny the defendant the fruits of its statutory violation?'' From the Court's Findings of Fact, Netscape, Sun, Apple, RealNetworks, IBM, and Intel have all suffered lost business because of Microsoft's anti-competitive behavior. From their standpoint, the proposed settlement must just look like a slap on the face. Where does the proposed settlement ''terminate the illegal monopoly'' and ''deny the defendant the fruits of its statutory violation?'' These two fundamental principles of remedy have not been addressed at all. Microsoft's market position will not change if this settlement is implemented. Remember what happened to AT&T's illegal telephone monopoly, and how that break-up brought to the consumer choice, better service, and lower costs. If this proposal is accepted, those who buy Microsoft's products will continue to pay over the top rates to use them. If implemented, the proposed settlement that the DOJ has succumbed to will not change the industry for the better, but will continue to leave the consumer, government, and business, over a barrel; to suffer Microsoft's continued exploitation, whose ill-gotten gains (profits) continue to line the pockets of those company officers responsible for creating this illegal monopoly. This can only be seen as ''payback'' for breaking the law, and sets a terrible precedent for future antitrust litigation. Let's hope that Judge Kollar-Kotelly has the courage, and the law, to turn payback into blowback. Let's remember that well known and often used adage, once bitten twice shy. Microsoft has chosen, all too often, to stretch forth its hand and eat from the forbidden fruit. It is now time that they were punished and expelled from their Eden of milk and honey. Microsoft has to be penalized with penalties that bite, which go way beyond the kindergarten settlement we have here today. This has to be done for two fundamental reasons. First symbolic. Microsoft has to be seen to be punished, which has to be commensurate in effect to the way it dealt with companies that it illegally competed against. This punishment will then draw a line in the sand, which for the future will bring to remembrance and serious reflection the serious penalties for stepping beyond the law. Second for competition. The market has to be given time to normalize to a competitive environment. Regulation, not another consent decree, will be required until market conditions allow companies of substance to hold their own against a convicted monopolist. Microsoft should not be left in a position where it is able to repeat conduct that an ideologically diverse Court of Appeals unanimously found illegal. I am not a lawyer, but I do feel confident that this settlement will not meet the requirements of the Tunney Act. If by chance, there is a miscarriage of justice, it will not only be very sad day for justice, it will also cloud all future anti-trust litigation. Because of the courts'' inability to punish illegal conduct with justice of equal measure to the crime, it will give a green light for more commerce law breaking. The saying will be, ''if you want to stay in business act like Microsoft,

if you don't, you'll end up a loser, like Netscape.''

If US law should fail to meet out the requisite punishment for Microsoft, antitrust litigation against Microsoft will continue well into the future. AOL filed suit yesterday, the EEC have a case pending, half the State Attorneys don't agree with the settlement case here, and the judge in the private class action lawsuits ruled that settlement anti-competitve. There is no argument against Microsoft's guilt, there is plain disagreement as to what that punishment should be. In his statement to the Senate Committee on the Judiciary, Senator Orrin G. Hatch said, ''The Microsoft case - and its ultimate resolution—present one of the most important developments in antitrust law in recent memory. The proposed settlement does not justify the Senator's statement.

Let's remember Proverbs 29:18, ''Where there is no vision, the people perish.'' I hope that Judge Kollar-Kottely is blessed with the wisdom and vision to ensure that justice meets its obligations. Mario Rodrigues

MTC–00029549

From: MarieL234@aol.com@inetgw
To: Microsoft ATR
Date: 1/29/02 3:01am
Subject: Microsoft Settlement

This country and our economy is highly dependent upon FREE Enterprise and talented companies like Microsoft that have created so many jobs and technology for our betterment. Microsoft must be given the freedom to continue their innovation unhampered by further litigation. Let the cry-babies work a little harder and stop hiding behind their lawyers.

We are weary of all this litigation. Enough!

Sincerely

Marie L. Odenheimer

MTC–00029551

From: Majewski Harry J Jr SSgt 31CS/SCMFG
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/29/02 3:07am
Subject: Microsoft Settlement

I beleive that the current settlement on the books for Microsoft allows for the company to continue to abuse its monopolistic position on the software market. In order for market fairness to be regained, the company should be, at the very least, forced to make it's browser separate from its operating system, and to not allow the company the use of API's or software libraries that would cause another companies competing software to run less efficiently (I.E. Netscape Communcator), and be disallowed from using secret API's to promote the sale of additional software created by them. I also beleive that Microsoft should be forced to compensate for loss of revenue to other companies due to faulty software that they themselves advocated (I.E. advocated the use of their software in a specific situation when a survey was requested by one company or another.) This, in effect, would bring Microsoft in line with every other major production corporation out there. In the late 80's, software was not a critical aspect of our economy/safety, and thus, was afforded a different kind of protection under law. Unfortunately, times have changed, but the law hasn't; Software companies still have almost complete immunity for creating a faulty product. Microsoft software is being placed in a higher, and higher level of trust every day, as more and more of our lives become computerized. This places a responsibility on the software companies to create software that is secure to outside attacks.

If a car maker had a vehicle that was ''fool proof'' and was capable of avoiding *ANY* accident that would be that vehicle owners fault, that would be great. But, if the same car, when involved in an accident caused by someone else, provided no security, or protection for the occupant, that auto manufacturer would find themselve in a very lengthy court battle, and be responsible for injuries to occupants. Microsoft, and other software companies do not face such problems, yet create the very same situation every day. Their software by itself, does not pose a threat, but, they deny responsibility for the actions of others who create havoc with their software.

Thank you.

SSgt Majewski

MTC–00029552

From: Tom DeChaine
To: Microsoft ATR
Date: 1/29/02 3:10am
Subject: Microsoft Settlement
To: Department of Justice District Court Judge

Microsoft is only ''guilty'' of aggressive marketing; what successful company in the US isn't! Our irrational anti-trust regulations are predicated on the notion that too much success is unhealthy for our economy—which is totally false. And they are used merely as a tool by the envious to devour the very strength in our economy. I, and every computer user, is indebted to Microsoft for the software they have provided and their broader contribution to the advancement of computer technology. Our Government—Federal and States—must side with Microsoft in the legal suits against them. This company is not guilty of a legitimate crime (e.g. fraud); it is a positive example of Capitalism at work. It is time for our Government to turn back the clock and defend Capitalism whenever possible: defend the principles upon which this country was based.

Tom DeChaine

Penn Valley, Ca.

MTC–00029553

From: R. Todd Reasonover
To: Microsoft ATR
Date: 1/29/02 3:10am
Subject: Microsoft Settlement

I believe the Justice Department should NOT settle the lawsuit with Microsoft. I personally believe that Microsoft should be broken into pieces. There is virtually no competition in the OS market, browser market, and office suite market to name a few. Microsoft has consistently shown that they won't play fair. All in the name of innovation; as long as it's Microsoft's way.

Thank you.

Todd Reasonover

MTC–00029554

From: Robert Lyle
To: Microsoft Settlement
Date: 1/29/02 3:06am
Subject: Microsoft Settlement
Robert Lyle
3605 Arlington Oaks Dr.
Mobile, AL 36695–8707
January 29, 2002
Microsoft Settlement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Microsoft Settlement:

The Microsoft trial squandered taxpayers' dollars, was a nuisance to consumers, and a serious deterrent to investors in the high-tech industry. It is high time for this trial, and the wasteful spending accompanying it, to be over. Consumers will indeed see competition in the marketplace, rather than the courtroom. And the investors who propel our economy can finally breathe a sigh of relief.

Upwards of 60% of Americans thought the federal government should not have broken up Microsoft. If the case is finally over, companies like Microsoft can get back into the business of innovating and creating better products for consumers, and not wasting valuable resources on litigation.

Competition means creating better goods and offering superior services to consumers. With government out of the business of stifling progress and tying the hands of corporations, consumers—rather than bureaucrats and judges—will once again pick the winners and losers on Wall Street. With the reins off the high-tech industry, more entrepreneurs will be encouraged to create new and competitive products and technologies.

Thank you for this opportunity to share my views.

Sincerely,

Robert E. Lyle

MTC–00029555

Marilyn Ayers
2292 Bitterroot Place—
Littleton, Colorado 80129
January 26, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As an active user of Microsoft software programs since 1989, I want to express my views on the Microsoft settlement: Support. Complete support. Microsoft has standardized the way we use computers.

They continue to give us deals. They provide us with new concepts on how to get the most out of our computers.

Clearly, the Company wants to put this costly legal action behind them and move forward with developing new products. They are certainly not getting off easy with the settlement, and their compliance is guaranteed thanks to the excessive oversight the settlement includes.

Please accept the terms of the settlement Thank you.

Sincerely,

Marilyn Ayers

MTC–00029556

45 Gramercy Park N

New York, NY 10010
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 0530

Dear Mr. Ashcroft:

I support the settlement the Department of Justice and Microsoft agreed to several months ago in their three-year-old antitrust lawsuit. I think Microsoft has gotten a bad rap because of its market dominance, and I believe the case should be concluded without more litigation.

The settlement's terms will allow competitors to better integrate their programs into Windows. Disclosing internal programming language to competitors is a generous move on Microsoft's part, and shows the company's willingness to put the situation behind them. Please support the settlement and allow Microsoft to concentrate on future business endeavo's. They have led the way in technological innovation for two decades now, and should be free to continue doing so.

MTC–00029557

Robert L. Kaufman
34 Jade Lane
Cherry Hill, NJ 08002–1612
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Your strong leadership in working to settle the Microsoft antitrust case is certainly in the best interests of America. Federal Judge Thomas Penfield Jackson showed his disdain for judicial ethics by revealing his biased prejudgment to a member of the press in his own judicial chambers long before he issued his opinion in the case. Whatever happened to judges hearing all the evidence and arguments before deciding the case? Whatever happened to judges who aren't ego-induced publicity hounds? Judge Jackson did damage well beyond the judicial and legal community though. His decision to break up Microsoft into pieces, as though he .saw himself as Julius Caesar dividing Gaul, pulled down the whole stock market, in my opinion. Technology stocks were badly hurt.

Fortunately, the Court of Appeals later overturned Judge Jackson, and Microsoft and your department have reached a settlement that will be good for American business and the American public.

Microsoft will have to show its cards, its hidden poker hand. It will show the industry its internal interface code and server protocol code, and license its other codes to companies on a non-discriminatory basis. It will allow computer makers to sell non-Microsoft operating systems at the same time they sell Windows, and set uniform prices and terms instead of negotiating. This will allow the industry greater flexibility. I don't ''know how good this will be for Microsoft, although Microsoft has agreed to it to settle the case and move on. However, it will be very good for the tech industry.

Thank you again for your support of the settlement. Let's hope the new federal judge on the case approves it. I .just had to add my voice during the public comment period. This settlement is important for America.

Sincerely,
Robert L. Kaufman

MTC–00029558

383 Second Ave
Massapequa Park, NY 11762
Phone: 516 799–8300 -24/7
Fax: 516 799–8350 -24/7
eMail: walts@dorsai.org
Fax:
To: Attorney General John Ashcroft
From: Walter C. Schmidt, CPA
US Department of Justice
Fax: 202–307–1454 or 202–616–9937
Pages: Two including this cover sheet
Phone:
Date: 01/27/2002
Re: Microsoft Settlement CC:
See following...
WALTER C. SCHMIOT, CPA.
Massapequa Park, NY 11762 24/
7:516.799.8300
Fax: 516.799.8350
eMail: walts@dorsai.org
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Fax: 202–307–1454- 202–6169937
—Email: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement.

Dear Mr. Ashcroft:

Microsoft continues in its role as a leader in the Information Technology industry. They do this not by luck, but because they are the best at what they do. Microsoft has given us, the business user, the ability to do things we only dreamt of a decade ago. They have done this efficiently and effectively, while at the same time their products have developed a network of satisfied users. It appears other companies are now trying to take advantage of Microsoft's current situation because they are unable to accomplish on their own what Microsoft has successfully done. To continue litigation, already agreed to by the Department of Justice, nine states and Microsoft, would prove to be a waste of time and money.

As an Information Technologies CPA, I continue to use Microsoft products as part of my day-to-day work routine. I do this after an ever continuing and exhaustive review of available products, and because I feel that they continue to be the best, the market has to offer.

The settlement currently under review is fair. Microsoft has agreed to terms that will allow other companies to be better equipped to compete. So far, the passage of time without litigation resolution has caused little harm. Nevertheless, this issue needs to be resolved before it does do serious harm to either Microsoft, the Information Technologies industry, or our country's economy. I would hope the Justice Department feels the same way, sees that the proffered settlement is indeed in the public interest, and submits its final report, recommending acceptance of the settlement.

Sincerely,
Walter C. Schmidt, CPA

MTC–00029559

4929 Canterwood Drive NW
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

[have personally founded six small businesses, each providing software and related services to companies and consumers. Also, I have worked for five of America's largest businesses, performing turn-around leadership to help restore them to competitive health. I know what it means to compete here in America, where entrepreneurship and a free market economy have historically been protected by our government.

I think it is a shame that the previous administration punished successful entrepreneurship and stifled creativity—and has left your department to bat cleanup. The Microsoft antitrust suit is the perfect example of this. I am appalled that the negotiated settlement has been rejected by half of the plaintiff states—without even giving it a: trial period and thus letting six months of negotiations go to waste. I think before rejection is considered, it is necessary to give the settlement a chance.

It is a disgrace that the settlement should be delayed to give Microsoft's opponents a bigger piece of the pie. I think the. settlement is fair as it stands. Microsoft has agreed not to enter into any contracts that would require a third party to distribute or endorse Microsoft products either exclusively or at a fixed percentage. Microsoft also plans to design future versions of Windows so that the operating system will support non-Microsoft software. I believe that these terms are more than reasonable.

In the long run, I believe the economy and the consumer would benefit from a speedy settlement.

I urge you to give your support to the settlement.

4929 Canterwood Drive NW II
Gig Harbor; WA 98332

MTC–00029560

TO:
FROM:
DATE:
??OTAL PAGE (Including Cover Sheet):
Robert She??s
I605 60th Place W
Muki??eo WA 98275
425–349–1207
January 21, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C, 20530

Dear Mr. Ashcroft

The federal case against Microsoft is definitely without warrant. The Case is largely p??litical and has been up in the court system long enough. I find it appalling to consider the amount of taxpayer dollars that have financed this persecution of Microsoft. Having sated the above, I believe that the settlement that was reached signifies an important resolution of the issue. Throughout this process, Microsoft has made many

compromises. Microsoft agrees under the terms of the, agreement to license Windows at the same rate to the larger manufacturers of PCs. Further, Microsoft will relax contractual restrictions upon PC manufacturers. These reass??ssed relations will definitely change the industry.

But clever people like me who talk loudly in resta??ants, sec this as a de??berate ambiguity. A plea for justice in a mechanized society. To conclude, the case against Microsoft is unfair, yet the settlement should be enacted as soon as possible.

But is suspense, as Hitchcock state''& in the box. No, there isn't room. the ambiguity's put on weight.

Robert Shelts DVM

MTC–00029561

January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NVY
Washington, DC 20530

Dear Mr. Ashcroft:

The antitrust suit against Microsoft has gone on long enough, and I would like to see this whole issue end on a bos??tive note. I feel that the settlement that has been reached between Microsoft and the Department of Justice is as fair as it is going to get, even though the terms go a little far in imposing restrictions and obligations on Microsoft.

What we have had here is the federal government punishing success. Microsoft has agreed to terms that extend beyond what was at issue in the initial settlement, and have done so ?? order to get this over with. They have actually agreed to give their competitors code and design information that composes the Windows operating system. This enables the competition to produce software and install in within Windows, and Microsoft can do nothing about it. Enough is enough.

The settlement is reasonable enough; please approve it as soon as possible. Thank you.

Sincerely,
Igor Alexeff

MTC–00029562

JAN–27–02 SUN 04:2S PM SMITH 8059676721
January 27, 2002
To: Attorney General John Ashcroft
FAX: 202/307–1454
From: Mr. & Mrs. James R. Smith
FAX: 805–957–6721
Re: Microsoft Settlement
Please see attached letter.
JAN–27–02 SUN 04:26 PM SMITH 8059676721
Mr. & Mrs. James R. Smith 340 Princeton Avenue Santa Barbara, CA 93111
January 25, 2002
Attorney General John Ashcroft US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The settlement that has been reached in the United States of America vs. The Microsoft Corporation is fair, and I believe that settling this case is in the best interest of the U.S. economy as well as the American consumer. It is vital that for us to have our best and brightest companies working at full steam in these times of economic uncertainty, and continuing this litigation will not benefit this nation.

The settlement is reas??nable; Microsoft will design future versions of Windows to be compatible with the products of other software companies, the company will also cease any retaliatory action against any of its competitors. A three-person technicla committee will monitor this settlement to ??sure Microsoft's compliance. These terms go above and beyond the original grievances of the suit. It is apparent that the parties who feel that the settlement does not go far enough are not looking for a solution to this case, but rather the perpetuation of their own po??cal motives.

Please continue you support of this settlement, the work that you have done to ensure that there is a place ?? free enterprise in the future of this nation has not gone unnoticed. Thank you. Sincerely,

James R. Smith
Willie Smith

MTC–00029563

Kenway Consultants, Inc.
2715 E Mill Plain Boulevard
Vancouver, WA 98661
(360) 696–2553
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I have followed the antitrust suit against Microsoft for the past three years and feel that it is time this matter was brought to a close. Microsoft has been more than fair with regards to the settlement and I would like to see the Department of Justice finalize it as soon as possible. I am the president of my own company and have faithfully used Microsoft products. I have also used non-Microsoft software and have had no problems running it through the Windows operating system. I understand that one of the terms of the settlement is that Microsoft will have to license the internal codes to Windows that will allow competitors to design software that is compatible to Windows. Obviously there are companies who have accomplished this without going to court because I use non-Microsoft software and it runs fine.

I feel that this issue has turned into more of a political issue than an economic one. The government has wasted millions of tax dollars on this suit when there are more pressing issues at hand. This suit has become a way for other companies such as AOL to use Microsoft as a stepping-stone. They are taking advantage of what Microsoft has done because they were unable to do it themselves.

I have always been under the impression that this country is one who supports free enterprise, yet this suit has not backed that philosophy up. There will soon be a chance for the Justice Department to finalize the settlement that has been reached and I hope they do. Thank-you.

Sincerely,
Kenway Mead
President

MTC–00029564

COVER PAGE
TO:
FAX:
FROM: JERRY&BETTY PURCELL
FAX: 970–181–4009
TEL: 970–484–2345
PAGE [S] TO FOLLOW
COMMENT:

Please, I Ask you To Tell The De?? Jostice That I STRONGLY Support The MicRoSOFT ?? ??'s heave well enough ALONE

MTC–00029565

STATE OF MICHIGAN
SENATE MAJORITY LEADER
State Capitol
Lansing, Michigan 48913
SENATOR DAN L. DEGROW
(517) 373–7708
27th District
FAX (517) 373–1450
TDD (517) 373–0543
January25,2002
Ms. Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW—Suite 1200
Washington, DC 20530–0001
Re: Department of Justice Antitrust Lawsuit Settlement with Microsoft

Dear Ms. Hesse:

I write in support of the Department of Justice (DOJ) proposed settlement that was ordered by the United States District Court. The terms of settlement have been agreed to by Michigan's Attorney General.

It is my understanding that the scope of the settlement addresses not only what the United States Court of Appeals for the District of Columbia Circuit ruled on but also issues beyond their findings. Further, this settlement will be strictly enforced by an independent committee that will assure Microsoft complies with the judgment.

The DOJ settlement will resolve the case and allow the industry to move forward, thus, providing innovation for the industry and greater competition and protection for consumers.

Sincerely,
DAN L. DeGROW Senate Majority Leader
Michigan State Senate
DLD
aj

MTC–00029566

548 Corte Aguacate
Camaril10, CA,,93010
January 26, 2002
Attorney General John Ash croft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Ashcroft:

The Department of Justice and Microsoft leached an agreement in November settling the antitrust suit brought against Microsoft. I am writing to say that I support this agreement, I feel it is fair and reasonable, and has already been approved by nine states. I see no need for further federal action, especially while Microsoft is negotiating with the remaining states to reach an agreement. Although the settlement calls for concessions that make antitrust precedent, Microsoft has

agreed in an effort to end this case sooner rather than later. The longer this debacle ensues, the longer that the IT sector will focus on litigation, rather than innovation.

We must allow the industry and the economy to move forward. I feel that this settlement provides that vehicle. Thank you for your consideration of my opinions.

Sincerely,

Harry P. Lee

cc: Representative Elton Gallegly

MTC–00029567

MARLENE F. PARTYKA
611 Berkshire Lane
Des Plaines, IL 60016–7520
847–298–1594
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

t am taking the time to write you on behalf of myself and thousands of other Americans who I know are behind Microsoft. We support efforts at seeing the Microsoft Corporation freed of further litigation. The past three years have tested Microsoft's ability to produce innovative products, and I expect to see a boost to our economy once the law suit ends. Microsoft has not hurt the consumer.

In view of the fact that our nation prides itself on freedom of enterprise, I have difficulty, understanding why the government initiated this law suit in the first place. We are raised to believe that with hard work and innovation, one can achieve any success, but obviously, this is not true. The price for success is the fear of being criminalized by one's own government. Shameful.

I feel the settlement, proposed and accepted by the U.S. District Court and Microsoft, is the only solution at present to salvage the remaining ingenuity Microsoft has brought to this country and the world. I certainly hope this 60-day public comment period will make a difference in how the case finally ends.

It is time to let Microsoft off the hook and get them back m the field of creating software—if we take that freedom away from them, then what does that say about our country?

Thank you for your time in this matter.

Sincerely,

Marlene F. Partyka

cc: Representative Henry Hyde

MTC–00029568

20319 82nd Avenue SE
Snohomish, WA 98296
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear General Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settlement. The government needs to stay out of private business. The United States is the only country in the world that destroys its own industry. We have destroyed several major companies with our antitrust laws, take a look at Eastman Kodak and AT&T before and since government anti-trust involvement, if you think my position is not tenable. The government has now undertaken an attack on Microsoft. This issue needs to be put to rest. The government needs to get out of private business affairs and allow business to rise or fall in the marketplace. In order to put this issue behind them Microsoft has agreed to many terms. They have agreed to release part of the Windows base code to their competitors which cost them many years and millions of dollars to develop. This is exactly what the government did to Eastman Kodak, in the ''public interest'' with their chemical formulae and Kodak. once a world leader in their field, is now struggling to survive. Where is the public interest in the destruction of successful businesses that provide income and employment to many people and help the balance of payments? Once again, the government is trying to correct a perceived wrong (perceived by unsuccessful competitors and their elected representatives) at the expense of the innovative and successful. Microsoft and the technology industry need to move forward, the only way to move forward is to put this issue in the past. Please accept the Microsoft antitrust settlement and allow them to get on with the development of the best software business m the world.

Sincerely,

MTC–00029568 0001

MTC–00029569

January 2I, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I would like to express my support of the decision by Microsoft and the Department of Justice to settle the antitrust lawsuit that has occupied federal court for three full years. Through the settlement, Microsoft will pay for its misdeeds by opening parts of its code to other software manufacturers so that they may better compete with Microsoft Windows. Microsoft will also have to make itself subject to the constant scrutiny of a technical committee that will oversee the implementation of the various terms of the settlement. The settlement addresses the needs and viewpoints of both the plaintiffs and Microsoft well.

Some of Microsoft's opponents would see the suit continue, this would be a great mistake. Consumers and the IT industry have already suffered too much in the suit. Continuing litigation can only serve to further harm consumers. The Justice Department must see that the proposed settlement becomes formal as soon as this public comment period concludes.

Sincerely,

Bob Moore
7025 116th Avenue SE
Newcastle, WA 98056

* Lets get this lowsuit over with II has cln??gged or too longe other compp??es Are using this lowsuit to Compete.

MTC–00029570

215 S. Stale Street
Appleton, WI 549l 1
(920) 739–1021
Fax # (920) 739–1565
Fax
To: John Ashcroft
From: Jon A G??oves
Fax: 202–297–1454 Pages: 2
Phone:
Date: Jan. 27
Re: microsoft Settlement CC: Rep G??ven
One Odana Court,
Madison, WI 53719,
(608) 274–7744
January 28, 2002
Attorney General John Ashcroft
U.S. Justice Department
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

This letter documents my ,support for the proposed settlement of the Microsoft antitrust case, in accordance with the Tunney Act. This case has been negotiated for over three years under a court-appointed mediator, and it is time to implement the settlement.

There are many terms in the settlement which individually would be enough to make sure that competition is increased; the multitude of them should be a fantasy for Microsoft's competitors Microsoft has sworn to give its competitors access to all necessary Windows interface programs so that they can link with and promote their software products. In addition, Microsoft has agreed to allow the all-new Technical Committee to monitor its progress in complying with all provisions.

This case should be finalized soon. Thank you for your consideration.

Sincerely,

Jon A. Groves

CC: Representative Mark Green

MTC–00029572

January27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The Microsoft antitrust case was unnecessary to begin with,, but the fact that it has dragged out this long is absolutely ridiculous. I do not believe that the push for additional litigation is in the interest of justice; I am of the opinion that the remaining litigants just want what everybody else wants—to get into Microsoft's wallet. A settlement has been proposed that, while it may not be ideal, is acceptable to both Microsoft and the Department of Justice. Next week, the courts will determine whether the settlement is acceptable. I believe it is in the best interest of the consumer to settle now rather than to drag this case on any longer.

Microsoft and the Department of Justice have managed, after half a year of ex??ruciatingly complex negotiations, to reach a settlement that not only satisfies the concerns of both sides, but addresses the issues presented by antitrust laws as well. For example, Microsoft has agreed not to enter into any contract that would require a third party to distribute Microsoft products at a fixed percentage, This would prevent

Microsoft from shutting its competitors out of the market through exclusive contracts. Microsoft has also agreed to disclose source code and interfaces integral to the Windows operating system for use by its competitors.

I do not believe that the settlement is in any way deficient. In fact, I believe it would be best for the economy and the American public to finalize the settlement now. I urge you to take the appropriate action.

MTC–00029573

FROM : JOHN-BURKE
PHONE NO. : 13154514195
Jan. 27 2002 07:55PH P1
5773 Innsbruck Road
East Syracuse, NY 13057
Ph. 315–656–0081
Ms. Renata Hesse
Trial Attorney
Anti-Trust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

This letter is to advocate for a swift settlement of the federal lawsuit against the Microsoft Corporation (U.S. v. Microsoft)

I work for a company that relies on technology for its success. We service major corporate and manufacturing facilities by building and maintaining redundant backup safeguards for their critical energy systems. You could say that our business is to keep others in business.

How sad for this already damaged economy when the federal government jumps in to assist Microsoft's competitors in trying to put one of America's biggest success stories out of business by forcing a breakup. When consumers are damaged by monopolistic activities, that's anti-trust. When Microsoft beats its competitors in the marketplace, that's capitalism.

I have yet to see a situation where software/Internet consumers did not have a choice, and it would appear to me that many of the corporate entities screaming for fairness (Oracle, Sun, Apple, AOL/Time Warner [monopoly- look at my Time Warner cable bill if you want to see monopoly./]) are fully prepared to play hardball and are in no danger of starving anytime soon. Billion dollar companies are tough to view as victims.

We spent eight years under a President who liked to punish business success. Today the President is different, the country is different and the world is different. Let's do the right thing and help business be successful rather than strike them down when they become successful on their own.

Sincerely,

Taxpayer

MTC–00029574

Jan 27 02 06:55p
STAMATS
??
DATE
??
Trial Attorney
Antitrust Division
Department of justice
601 D Street NW, State 12.00
Washington, DC 20530

Dear Ms, Hess,

As part of a company that assists educational institutions with the development of effective student recruitment, medi?? and promotion, and the implementation of institutional enhancement ??es, I have a solid grasp on the importation of public image and public pressure.

When ??sseminating a message to the general public through the media, one key factor to acknowledge is that perception is rea??y Although consumers may or may not have seen the notions of bundling by Microsoft as det?? to the??,. ?? after reading the results of the proceedings many would feel differently.

Thanks to the revolutionary developments by such ??ology ??es as Microsoft and AOL, we have all or the facts and all sides of the story more ??at our fingertips than any generation before us. We are able to access information and communicate via ?? the World Wide web. Through your online sine ?? we are able to ?? the proposed settlement that you face and submit our own personal judgments to you based on our own research.

Upon reviewing this information of the suit and following the proceedings for file few years it has progressed, it is my belief that this is a reason??ble ??fer for a settlement in: the suit: and should be approved.

Sincerely, ??

MTC–00029575

STAMATS
CON?? INC.
Pat Collins
Judge Kolar Ko??ely
c/o Renata Hesse
U.S. Department of Justice
601 D Street, NW, Suite 1200
Washington, DC 20530 ??

Dear Judge Kolar Kottely:

Late last year the U.S. Department of Justice ??ully reached a settlement with the Microsoft Corporation. This settlement is correntlly under your review for acceptance, and I am writing to ??ncourage your support for this agreement.

I work in a compelitive business where my hard work ??as paid ??. My success depends on the superior quality of my product and my ability to sell ??is product to my clients. I have a na??al inclination to admire any individual or company that finds success by working hard and having a good product. Microsoft is a great example of these ideals. Microsoft continues to be an industry leader because ?? provides the consumer with superior products and excellent service.

I have never understood why the government seemed determined to prose??nte a company that provides a reliable product, creates countless jobs, and s??lates both the economy and innovation. By bringing this case the government appeared to be m??ent on nothing more than g??ining ??procedented control over the technology in??ustry.

Now, over two years since the suit was brought, calmet heads now seem to be provailing. The DOJ and Microsoft have fashioned an agreement that represents a true compromise. New reports indicate that Microsoft will be required to share ??tual prop??rty and must guarantee flexibility to comp??ter manufactures that equip their products will Microsoft operating systems.

More importantly though, this settlement represents a vi??tory for the ??omy, entreprencurs, and consumers. This settlement moving forwa?? will once again open the door of inves??ment and innovation.

Thank you.

Pat Collins

MTC–00029576

HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA. MAINE
04333–0002
(207) 287–1400
TTY: (207) 287–4469
Ken Honey
Chapel Street
F.O. Box 6
Roothbay, ME 04537
Telephone: (207) 633–5500
Fax: (207) 633–5092
Renata Hesse
Department of Justice
601 D Strect NW, Suite 1200
Washington. DC 20530

Dear Ms. Hesse,

Please accept my support of the proposed settlement between United States vs. Microsoft Corporation.

Rather than beating Microsoft in the free market, AOL and Sun and others engaged the Justice Department to do it for them. Their true intention has clearly been to deny consumers their market choices and instead force them into paying higher prices for lesser quality products. Competition is the key, not government intrusion.

Without competition, the high technology industry would be completely insignificant. Microsoft, Sun. AOL, Netscape, and others all drive each other to lower prices and better products, all the to benefit of consumers.

The time has come to settle this case. Taking into consideration the poor condition of the economy, the last thing we need is additional inane litigation.

Sincerely,

Ken honey

State Representative

MTC–00029577

FROM: CA
PHONE NO. : 207 848 3685
Jan. 19 2002 09: 35AM P1
HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333–0002
(207) 287–1400
TTY: (207) 287–4469
Donald P. Berry, Sr.
115 Sca??smont Road
Relmont, ME 04952
Telephone: (207) 342–5675
Fax: (207) 342–3045
E-Mail: chema??@northlen??ink.com
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

As a former aducator and current legislator I am writing to express my support for the proposed settlement reached by Microsoft, the Department of Justice and several of the State. In reviewing the points of the settlement I see several benefits perticu??arly for educators and our schools. In accapting

this proposal and ending this costly process for all parties involved we also send a message to the American taxpayers that we are being responsible. First in holding large companies accountable for their actions and secondly in knowing when a point has been reached, after which further expenses in non productive.

I believe that Microsoft has learned, ?? all good companies do, that they needed to change some of their business practices and policies. Secondly, they have r??ched an agreement that appears to be beneficial to many of our nations schools and their students, by providing resources that will help train and prepare them for the future. This appeals to me because it puts the resources to work, rather than a cash settlement that might allow politicians to wind??all that would not be as productively distributed.

I also see it as beneficial to the parties Involved. The point has been made to Microsoft, a fair settlement has been negotiated and I see no further need for added legal expenses to the government or Microsoft. It Is In everyone's beet Interest to move on Thank you for consideration of my comments and for all you do.

Sincerely.
Donald P. Berry,
Sr. State Representative
District 109
Belmont, Lincolnville, Morrill, Searsmont, Searsport,
Swanville and Waldo
Printed on recycled paper

MTC–00029578

HOUSE OF REPRESENTATIVES
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Stavros J. Mendros
135 Hogan Road
Le??? ME 04240
Telephone: (207) 783–6475
E-Mail: ???tav@yahoo.com
January 18, 2002
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

As a businessman involved in the computer field I wish to express my support for the proposed settlement reached by Microsoft, and the Department of Justice. I have reviewed the settlement and find many aspects of it to be unique and beneficial to all Americans, I have come to realize the critical importance of training and ongoing development for our teachers and young people. Our communities will benefit by the opportunities provided by these future leaders properly trained in the latest technology. This is a greater benefit to our soclety and workforce than any other program the government could design using a cash penalty assessed on Microsoft. I also believe Microsoft has and will benefit from this experience. They have learned the need to adjust their policies and procedures; there is no a greater needs to further punish them. It to also, o time to move on from this long drawn-out legal dispute, so the people of this country can see the continued healing their our nation needs, we don't need to see more division, but we do need to see positive resolution and I believe that is what this settlement can Offer.

Thank you for consideration of my comments.

Sincerely,
Stavro?? J. Mendros
State Representative

MTC–00029579

HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA. MAINE 04333–0002
(207) 287–1400
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14 Cry??tal Lane
Cum??land Center, ME 04021
Telephone: (207) $129–5472
Rusiness: (207) 773–8560
Cell phone: 838–9168
E-Mail:: terryrnck@maine.rr..com
January 18, 2002
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

As a businessman and legislator I wish to express my support for the proposed settlement reached by the court appointed negotiator with Microsoft. and the Department of Justice. I have read the settlement and find many parts of it to be a win-win option for all parties, I gee R as a hotter alternative than e cash fine that will disappear into the federal government's coffers. The practical use of technology and the training of our youth is the key to our future. Our communities will benefit by the opportunities provided by these future leaders properly trained in the latest technology. This is a greater benefit to our society and workforce than any other program the government could design.

Microsoft has end will benefit from this experience. They as any smart and successful business will adjust their policies and procedures there is no need to further punish them. or to wreak havoc on the public members who have invested their retirement or children's college savings in Microsoft stock. It is In all Of our interests to resolve this matter and move on in a productive way.

Thank you for consideration of my comments,

Sincerely
Terrence P. McKenney
State Representative

MTC–00029580

JACK GAMBETTA, CFP
Certified Financial Planner
ICFP Registered Practitioner
Registered Investment Advisor
Registered Representative or
Mutual Service Corporation
Member NASD and SIPC
January 27, 2002
Attorney General John Ashcroft:
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I am a financial planner. I have watched the economy go into a tailspin because of the lawsuit brought against Microsoft. This lawsuit put fear throughout not only the tech industry, but also the entire economy itself. We now hear Congress constantly talking about ways to bring the economy back, yet hamstrings the one company that is the major engine of our economy—Microsoft. Microsoft bas been charged with an antitrust suit, the basis of which is abuse of the consumer. Yet, Bill Oates has done nothing more lima help the consumer with the innovations he has created. There is a standardization now of computer software where there was none before More people can use and understand computer programs than before. Prices are lower, Microsoft has contributed so much to our technological expertise; the faro that the company is now being charged with this lawsuit is ridiculous,

Further, I am appalled that the legal system should be brought into what is basically a battle between technological companies, First, what do lawyers know about the computer industry? And how can these self-same people make decisions affecting the use of it? Tilts whole process was a result of Microsoft rivals trying to rein Microsoft in through the legal system; however, the legal system is not just. just legal, influenced more by politics than any real concern over questionable business practices.

Microsoft has agreed to many terms demanded by the Department of Justice that go far beyond the original suit, Microsoft tins agreed to design future versions of Windows with a device to, make it easier to promote non-Microsoft software; Microsoft has agreed to open up to third party developers more of its copyrighted coda to aid in development of third party programs; Microsoft has agreed to a technical committee to oversee compliance. This is more titan a lot of companies would do.

I urge you to gave your approval to this agreement and allow us to move on.

Sincerely.
Jack Gambetta, CFP
email: jagambetta@cs.com
WEB.JACKGAMBETTA.COM
P.O. Box 100,
One Kent Circle,
Terrace Park, OH 45174
Tel/Fax
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Eden Park
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(513) 241–5000

MTC–00029581

FORREST H. MUIRE, JR.
908 PRINCETON MIDLAND, TEXAS 79701–4159
915–682–5087
email, lmuirc@swbell.net
FAX 685–1091
January 23, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20550–0001

Dear Mr. Ashcroft:

Please accept the proposed settlement of the Microsoft anti-trust case. As a long-time user of Microsoft products, I see this agreement as the most practical solution for competitors to thrive, short of a break up that

would risk consumers losing a quality, stable presence in the software industry.

Seemingly inspired by a lack of monetary support from the last administration, this government intervention into the business world has been off base from the start. With this deal, Microsoft's market position is clearly weakened, so any further litigation would be an even more misguided attempt to manipulate the marketplace on behalf of the ''consumer.'' Microsoft will allow computer manufacturers broad freedoms to configure Windows with the software of their choice without preference in future licensing deals and will provide competitors with extensive access to its internal code, among other agreed measures to expand competition.

Considering the constant verification by a committee of experts to monitor the deal, I ask for you to support for this overly fair settlement. The IT industry and the economy will greatly benefit from the return of stability to the software marketplace. Thank you very much for your support.

Sincerely,

Forrest Muire

MTC–00029582

HOUSE OF REPRESENTATIVES
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(207) 287–1400
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Russell P. Treadwell
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Car??el. ME 04419
Telephone: (207) 848–5123
Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington. DC 20530

Dear Ms. Hesse,

I understand we are in a period where you are looking for public comment on the proposed settlement with Microsoft. In light of this I would like to urge you to accept the proposed terms and resolve this mater for the following reasons.

I believe Microsoft has been significantly and negatively impacted by this more than three year suit. True some of their practices may have been heavy handed and even detrimental to competitors, but those same competitors such as AOL, Sun and Oracle have used the weight and resources of the state and federal legal system to attack and distract Microsoft. I say it is time to end this legal attack, and stop the use of taxpayers monies. Microsoft bas agreed to a very reasonable and, fry for the public and our schools, a extre??ly generous and beneficial program to compensate fox any supposed harm that was done.

I strongly encourage you to move forward on resolving this matter and ending the battle that has consumed so much time and resource of the government and associated parties.

Thank you very much for all your efforts on behalf of the American people and for reviewing my comments.

Best Regards,

Russell P. Treadwell

MTC–00029583

THE NICHOLS STREET ASSOCIATION
138 NICHOLS STREET
NORWOOD, MA 02062
Loretta Fehm
January 25, 2001

I am writing to have my thoughts on the proposed settlement between Microsoft and the United St Department of Justice entered into the record in accordance with the Tunny Acts requirement of public Comment on such settlements, I think the settlement plan is a good one, and one that reaches the necessary balance between antitrust enforcement and the need for as competitive a software market as the U.S. economy can have, Consumers benefit from a competitive market in ways that the kind of regulations previously argued in this case would nullify. Whereas a free and competitive market will drive down prices and hasten the pace of innovation, a heavily regulated market, or a software market including a carved-up Microsoft would stow the pace of innovation and allow companies to sit on their hands and let prices gradually rise.

Consumers deserve the best high tech market available to them, and the best high tech market is the one that innovates, The innovations of the last decade were primarily responsible for the creation of jobs, Investment, and wealth at rates never before witnessed In any economy anywhere. The success of the ''New'' Economy In the i990s was not a boomlet, in my view, but a harbinger of things to come In the future, If the government will allow consumers and entrepreneurs to successfully guide the market toward higher levels of competition and innovation.

I hope my thoughts can be entered into the record and also hope the court sees fit to approve the settlement proposal. It is the best way for the economy to start to put. this recession behind it and begin to build for the future.

Sincerely.

Loretta Fehm

MTC–00029584

January 15, 2002
Judge Kolar Kottely
U.S, Department of Justice, Antitrust Division
601 D Street. NW, Suite 1200
Washington, DC 20530

Dear Judge Kottely,

I am writing to express my opinion as a consumer in the case of the U.S. Department of Justice and state attorneys general versus Microsoft.

This case has been loitering and squandering our hard-earned tax funds for long enough, As a consumer of Microsoft products, I do not feel cheated by the company. Even the limited number and size of computer stores here In Des Moines, we nave a choice in brands of spreadsheets, operating systems, and word processors. When setting up Internet access on a new computer, there was always the choice between Notscape Navigator or Internet Explorer as a web browser. This case came about for the protection of consumers. Yet, we as taxpayers are more concerned about spending tax money to pursue this case than we ever were about Microsoft being a monop??y Please give thoughtful consideration to settling this case quickly.

Thank you,

Lore McManus Solo, APR
Public Relations Director
Strategic America

MTC–00029585

Judge Kolar Kottely
Renata Hesse, Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, NW, Suite 1200
Washington, DC 20530

Dear Judge Kolar Kottely:

There is not an American who has not been touched by or seen the impact of the slowing national economy. As the chief executive officer of a strategic marketing and communications firm, I have witnessed first hand what the slowing economy has meant for our clients and our employees. Across ??owa, we have seen many of our most important employers either close their doors or endure severe layoffs in these troubled economic times.

Almost every decision our government makes right now has a direct impact on the health of our national economy, The decision whether to accept the Department of Justice's settlement with Microsoft is no exception.

Microso?? is one of the most successful corporations in the country. The growth of this company has translated into thousands of jobs, new innovation and the creation of still more technology-based companies. Unfortunately, as the economy began to inch toward recession, the government began its legal wrangling with Microsoft. Next came the major decline of technology stocks. The creation of new technology based companies and jobs slowed as well.

Settling the Microsoft case will help give the economy the boost it needs toward recovery. Plus, the conditions of the settlement were fair for all involved. Under this agreement, Microsoft must allow computer makers to remove their software and they will be prevented from punishing companies that promole Windows competing products. A neutral commission will oversee all elements of the settlement.

I respectfully urge you to accept the Department of Justice's settlement with Microsoft.

Sincerely.

Michael R. Schreurs
Chief Executive Officer
Strategic America

MTC–00029586

PAULA ENLOW
702 Laramie Street
Manhattan, KS 66502
January 23, 2002
Ms. Renata Hesse
Trial Attorney
U.S. Department of Justice, Anti-trust Division
601 ''D'' Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse:

I am writing to express my opinion regarding the Microsoft anti-trust case

settlement recently proposed by the Bush administration.

I believe that if the court wishes to act in the best interests of all Americans, it will approve the settlement, end this case and allow Microsoft and the American tech industry to move forward unencumbered by ongoing litigation. Continuing to pursue this matter in court is a waste of precious time and energy and sets a very bad precedent for undue government interference in private business. Even under the terms of the settlement, Microsoft will be operating under a level of scrutiny that I feel is unnecessary given the facts of the case. However, I believe that the Bush settlement offers our best hope for moving onward and upward, and I urge the court to accept that settlement.

Best regards,
Paula Enlow

MTC–00029587

TIM HOLLOWAY
600 N. 12TH STREET
INDEPENDENCE, KS 67301
January 21. 2002
Judge Kolar Kottely
Attention: Renata Hesse
U.S. Department of Justice, Antitrust Division
60t D Street, NW, Suite 1200
Washington, DC 20530

Dear Judge Kolar Kottely,

I've seen firsthand the blows the economy has been dealt in the last year. As an aeronautical technician, I have seen many in our industry lose their jobs due to cutbacks resulting from the precarious state of the economy.

The economy is soft. In addition to layoffs, the public has also seen a decrease in their investment portfolios. The public and our economy need to be reassured. Approving the current Microsoft settlement proposal is a step toward that reassurance. That assurance will restore investor's faith, providing cash flow for innovation and a demand for employment in one of the driving sectors of our economy—high tech. The boom of the 90's and even 2000 was driven by the health of the technology sector. I believe we can help turn our economy around if we help the tech industry get back on its feet. In my opinion, settling the case against Microsoft is the first step in that direction.

I appeal to you and your wisdom to support settlement of the suit, allowing America's economy to rebound at this time when we all could use some encouragement.

Sincerely,
Tim Holloway

MTC–00029588

January 22, 2002
Ms. Renata Hesse
Department of justice Antitrust Division 60I
D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

Last Er??day the drop in the Dew and NASDAQ were the largest since just after the attacks of September 11th The catalysts were cautious forecasts from two technology stock market ??ants IBM and Microsoft.

This sector has see a great deal of change and turmoil over the past several years on both .sides of the pendulum- sky level highs and rock bottom lows. Many peaks and valleys have stemmed from the Microsoft antitrust case Just prior to the case, and even for so. me time into it, many would argue that loch stocks were infla??ed. It was the belief of several financial analysts that the valleys ca??sed by the case were necessary to deliver a reality check to ??ch investors. All of this may in fact be trite.. Today, however, is a different day, a different time, and our nation's economy is facing very different challenges.

Disheartening news continues to surface in the Wall Street Journal during this time of economic downfall—airline difficulty, telecommunication battles, and the technology industry's downturn. Stories like the one on Friday take the market on another sharp decline taking the Dow down 78 points and the Nasdaq down 55.

As part of the investment and insurance sector, these are issues that bit very close to home both for my clients and myself. With the obvious effects this case has had on the market, I believe k is prudent during this time of economic instability to settle this case.

Thank You,
Brian Hewitt
President
Group Benefits, Ltd

MTC–00029589

Thomas & Loft Stambaugh
8501 Bayview Drive
Wildwood Crests NJ 08260
(609) 522–2754
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft,

I am writing you to inform you of my opinion in regards to the Microsoft settlement issue. I support the settlement that was reached in November. This settlement will end three years of costly litigation and will give our economy the boost it needs. Please support this settlement so Microsoft can get back to business.

This settlement contains many provisions that will benefit the technology industry and companies attempting to compete with Microsoft. Under this agreement, Microsoft has agreed to grant computer makers broad new rights to configure Windows to promote non-Microsoft software programs that compete with programs included within Windows. Microsoft has also agreed to share more information with other companies, such as various internal interfaces within Windows and any protocols implemented in Windows. Microsoft is more than willing to carry, out all these provisions if it delivers a resolution to this dispute.

Again, I urge you to support this settlement so our resources can be funneled into more important issues. Thank you for your support.

Sincerely,
Thomas & Lori Stambaugh

MTC–00029590

DOROTHY GRATION
1004 FEARRINGTON POST
PITTSBORO, NC 27312
FAX: 919–542–3090
PHONE: 919–542–1963
FAX TRANSMISSION SHEET
TO:
FAX:
FROM: Dorothy Gration
DATE:
PAGES (including cover sheet):
MESSAGE:
1004 Fearrington Post Pittsboro, NC 27312
January 16, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to express my gratitude that this whole mess involving Microsoft and the federal government looks as though it may finally be coming to an end. I have never agreed with the federal government's pursuit of Microsoft and have long thought of it as a waste of taxpayer money, as well as an attempt to sully the reputation of someone who has lived the American dream. That being said, this settlement offers an opportunity for both parties to walk away satisfied and should be accepted/implemented as soon as possible. The settlement agreement contains provisions that provide for increased competition, the fostering of innovation and greater accountability. The highlight of this agreement is Microsoft's agreement to share its most valued intellectual property in order to advance the industry.

This is a settlement that is three years too late and I strongly urge that it is implemented as soon as possible. Thank you for your efforts in Washington.

Sincerely,
Dorothy Gration

MTC–00029591

January 26, 2002
The Honorable Colleen Kollar-Kotally
U.S. District Court, District of Columbia
c/o: Renata B. Hesse
Antitrust Division, U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Judge Kollar-Kotally:

I write to express my concerns about the proposed settlement of the Microsoft cases. As the executive director of business/trade association, I consider myself to be very pro-business and generally supportive of free enterprise and open competition. However, in order for the free enterprise system to properly work, there must be an opportunity for businesses to actually compete against each other! I respect Microsoft for what they have been able to accomplish, but I believe Microsoft has gone too far in some of its practices. As a result, a competitive market in their sector no longer exists, and businesses and consumers are hindered and frustrated. I understand that a settlement has been proposed that the Department of Justice has found acceptable. I further understand that various attorney generals have also found the proposed settlement acceptable. The Attorney General of the Stare of Utah is not one of them. I support his position and

believe that the term, of the settlement are too lenient on Microsoft. Adoption of the proposed settlement would do nothing but delay the imposition of reasonable sanctions, prohibitions, and conditions on Microsoft until the next government action is taken, if any. In the meantime, Microsoft would essentially walk away with a hand-slap and the ability to continue its anticompetitive behavior. This could also set a precedence that would allow other businesses to take similar control of a market, because they know that they could get away with only lenient punishment, if'' any.

I ask the court to conduct hearings to determine an appropriate remedy that will reasonably penalize Microsoft for past actions and prevent future violations of antitrust laws. Such an action will only be in the best interest of all businesses and consumers.

Sincerely.

Ann Gambr??o, executive director

Utah Hotel & Lodging Association

cc. The Honorable Mark Shurtleff. Utah Attorney General Jonathon Jaffe, The MWW Group

MTC–00029592

January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, N W
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing to your office because I support Microsoft and its desire to settle the antitrust lawsuit that the government brought against them. The case has proven to be very lengthy, and I feel that if the government's case were solid, they would have been able to prove it by now. In the meantime, Microsoft's business has been adversely affected.

The settlement proposed several months ago offers Microsoft's competitors an unparalleled opportunity for market growth. Microsoft is boldly agreeing to broad changes, between disclosing Windows program codes it developed to other companies, as well as enabling computer users and manufacturers to remove Internet Explorer and other Windows-based programs from their PCs.

Most importantly, the settlement does not seek the breakup of Microsoft. The company clearly wants to put this dispute behind them. I hope you agree and will settle the case.

Sincerely,
Nadine Hearth
3426 Whitnor Court
Sacramento, CA 95821
Telephone: 916–483–7723

MTC–00029593

FAX COVER SHEET
Herbert L. Stevenson
602 Fifth Street #1003
Kirkland, WA 98033
Tex 425 828 8575
Fax 425 889 0659
SENO TO Company name Depf. Of Justice
From Herhert L. Stevenson
Attention Ms. Renata B. Hesse Ds?? 1—27—62
Office location Office location
Fax number Phone number
(202) 301–145?? (425) 828—8575
COMMENTS

The Microsoft proposed settlement seems more than fair. The #35 million spent to punish Mirosoft is an excessive amount of taxpayer money; especially since the company has done so much for the U.S. Economy

MTC–00029594

January26,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I support Microsoft and its desire to settle the antitrust lawsuit that the government brought against them, I believe it is in the best interests of our country and the economy. This lawsuit has brought untold damage to the economy and it was one of the factors leading to the recession. I am sure you are aware that Microsoft is a leader in its field and spawned many opportunities for other companies. Our country is presently the leader in the computer field. Don't prolong this any more and allow for the possibility for other countries to take the initiative away from our country. It potentially has security impacts that can only be measured in future developments. I hate to use an old cliche but as Microsoft's business goes so goes America's lead in this field. Don't delay the settlement.

As a graduate of the University of California in electrical and electronic business, I believe that I have an inside view of the problem. While Microsoft is a fierce competitor on one hand, they still allow many opportunities for others to enter and succeed in the business. Further delay in this suit will only cause further erosion of these opportunities. Believe me there are many legitimate actions that Microsoft can exercise that will decrease these opportunities. Like any good management plan, i1 must include protection of the company and its stockholders.

The settlement proposed should be grabbed and taken to the bank.

The most important aspect of the proposal is that it will not break-up Microsoft. I hope you agree and settle this case now.

Sincerely,
Richard Hearth
3426 Whitnor Court
Sacramento, CA 95821
Telephone: 916–483–7723

MTC–00029595

January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The Department of Justice's decision to settle the Microsoft antitrust case is reasonable and should be supported. The case has dragged on for long enough, and has had a very detrimental impact on the tech industry as well as our economy. Further litigation might be good for the litigators of the county, but will do little else other than act to further slow down an already slow business environment.

The terms of the settlement agreement are fair. With the assistance of a mediator, the parties engaged in extensive negotiations. As a result, the remedies provided by the settlement agreement are well thought out and provide adequate solutions to the complaints lodged by the plaintiffs. Upon the approval of the settlement agreement, Microsoft will change many of its business practices in an effort to restore fair competition to the software world. Microsoft has agreed not to enter into any contracts that would require third parties to exclusively promote or distribute Windows. They also agreed not to take any retaliatory action against those who distribute software that competes with Windows.

I see no need for protracted litigation in this case, especially in light of what Microsoft is willing to do to resolve the case.

Thank you for working toward a resolution of this case. It is time to move on.

Sincerely, ??
Glen A. Phillips

MTC–00029596

JACQUELYN R. REESER
5827 Hollyhock Drive
Lakeland, FL 33813
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

With the pending results of the Microsoft settlement, I am pleased with the outcome. This agreement should reestablish Microsoft on one main issue...business development. As a self-employed person I know that your reputation can make or break you. The fact that Microsoft extended restrictions and obligations to products and technologies that were not found to be unlawful by the Court of Appeals, convinced me that they are more interested in new growth and development of their company.

Microsoft will now share technology information with its competitors that will allow them to place their own products on Microsoft's operating system. Additionally, Microsoft will use a uniform pricing list when licensing Windows out to the twenty, largest computer companies in the nation. I give my full support to Microsoft's settlement and wish them the best.

Sincerely, ??
Jacquelyn R. Reeser

MTC–00029597

J. R. Mitchell
10315 159th Avenue SE
Snohomish, WA 98290
January 23, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I think the Microsoft antitrust case was ridiculous to begin with; it was all a matter of Microsoft's bitter competitors trying to retaliate against Microsoft's success and

innovation. As part of free enterprise, their competitors had die opportunity to be just as successful as Microsoft- However, they just weren't as smart and didn't create such exceptional products. That's certainly no fault of Microsoft's. I use Microsoft's products ever3: day in my job as a Computer Specialist. I could give you several reasons why I prefer Microsoft's products to anyone else's.

Microsoft is conceding a great deal in this settlement. It is more than fair to their competitors, if not giving them an unfair advantage that they don't deserve. Microsoft is giving away their technology to their competitors and has agreed not to retaliate against software or hardware developers that come up with competing products. They've also agreed to make their Windows software more cross-platform compatible so that users and OEMs can easily configure Windows with other software.

Please accept this settlement for the good of the country. Microsoft is not harming consumers and this settlement unquestionably does not harm their competitors. Please help put a long-awaited end to this lawsuit.

Sincerely, ??

Jimmy R. Mitchell

MTC–00029598

JOHN EBERT
5910 PROVMENOR GOUNTRY GIUB DRIVE
GHARLOTTE, NORTH GAROLINA ??
January 26, 2002
Attorney General John Ashcroft
United States Department of Justice
950 Pennsylvania Avenue SW
Washington, DC 20530

Dear Mr. Ashcroft,

The current status of the American government's case against Microsoft Corporation concerns American citizens like me. It threatens the principles of free enterprise in our country. Microsoft has been targeted because of its overwhelming success and innovation. Other companies have been saddled with government oversight for the opposite reason. The American people axe happiest when businesses are allowed to do what they do best without outside influence. Government interference is rarely a solution. Continued action by the government against Microsoft will likely have negative effects on the American consumer. This is no time for that. Microsoft has attained its position in industry because it is innovative, not predatory. Microsoft has created jobs without political interference. It is an economic engine without rival.

The settlement at hand is fair and just. It should be embraced so that we an all see Microsoft get back into the business of changing people's lives through innovative software technology. Our country desperately needs engines like Microsoft to bee running at full capacity again. Please consider accepting the present settlement. Everyone will receive considerable benefit. Thank you in advance for your attention to this matter.

Sincerely yours,

John Ebert

MTC–00029599

OUTGOING COMMUNICATION
Raytheon Missile Systems Company
P.O. Box 11337 (Bldg: MO2)
Tucson, Arizona (USA) 85734–1337
Raytheon Missile Systems Company
1511 E. Hermans Road
Tucson, Arizona (USA) 85706
TO: RENATA B. HESSE NO. OF PAGES: 7
(INCLUDES COVER SHE??
TELEPHONE:
FAX: 202–307–1454 DATE: 27 JAN 2002
202–616–9937
FROM: KENNETH J. HENDRICKSON VOICE
TELEPHONE: (520) 7943853
E-MAIL ADDRESS: Kenneth—J—
Hendrickson@west.raytheon.com
ALTERNATE (520) 794–0603 FAX: (520)
794–4860
FAX NUMBERS: (520) 794–9087
CC:

COMMENTS ON PROPOSED MICROSOFT SETTLEMENT
Date: 27 January 2002
To: Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001
From: Kenneth J. Hendrickson
2747 W. Anklam Rd., Apt E.
Tucson, AZ 85745–3705
Dear Renata,

Executive Summary:

I strongly urge the Department of Justice (DoJ) and the Court to modify the Proposed Final Judgment (PFJ) in order to achieve an effective remedy against a continuing Microsoft monopoly, and the harm to consumers that will inevitably continue to result.

The modifications I recommend are:

1 Microsoft must be required to publish COMPLETE and ACCURATE documentation for all Application Programming Interfaces (APIs), protocols, and file formats, for *ALL* Microsoft products. This should include a requirement to publish full and complete source code. However, as the source is likely to be very difficult to understand, Microsoft must also be required to fund an independent documentation effort to study the source code and completely and accurately document it. Such documentation and source code must be made available AT NO CHARGE to anybody who wants it, via an Internet download. In addition, Microsoft must NOT be allowed to require a Non-Disclosure Agreement (NDA) in order to obtain this important information.

2 Security considerations must NOT be an excuse for continuing the harmful practice of closed, hidden, and/or undocumented APIs, protocols, and file formats. All algorithms, APIs, protocols, and file formats, must be COMPLETELY and ACCURATELY documented, *ESPECIALLY* when those algorithms, APIs, protocols, and file formats are needed for security and authentication. Sections III.J1 and III.J2 should be entirely stricken from the PFJ.

3 Microsoft must not be allowed to use its patents offensively. A patent is a government granted monopoly. As Microsoft already has a monopoly (even without government granted patents), and has been convicted of illegally ABUSING that monopoly, the government should not be in the business of granting Microsoft more monopoly power with which to abuse its competitors. The PFJ should be amended to forbid Microsoft from using its patents offensively. Before preparing my comments, I read the following documents in their entirety:

1 Original Complaint
http://www.USDoJ.gov/atr/cases/f1700/1763.htm

2 Findings of Fact
http://www.USDoJ.gov/atr/cases/f3800/msjudgex.htm

3 Stipulation and Revised Proposed Final Judgment
http://www.USDoJ.gov/atr/cases/f9400/9495.htm

4 State's Proposed Final Judgment
http://www.NAAG.org/features/microsoft/ms-remedy—filing.pdf

5 Competitive Impact Statement
http://www.USDoJ.gov/atr/cases/f9500/9549.htm

Justification for my Recommended Modifications:

Full Disclosure of Algorithms, APIs, Protocols, and File Formats:

I was very heartened to note that the PFJ would require that Microsoft must publish details of its APIs (section III.D. and others). However, as published, this provision will be largely ineffective, because it does not include Free Software and Open Software development efforts.

Microsoft's own lawyers indicated in 1999 that Microsoft views Linux and the GNU GPL license as its greatest threat.

http://www.OReillyNet.com/pub/a/mediakit/linux.html

Microsoft produced a white paper on the GNU GPL license, in an effort to dissuade companies from trying and/or using Linux.

http://www.Microsoft.com/business/downloads/licensing/Gp1—faq.doc

Although Linux and the Free Software movement are not yet a true competitor to Microsoft (as stated in the Findings of Fact), Linux offers the best hope for a future competitor to Microsoft. In light of this, the DoJ and the Court should tailor the PFJ such that it does not lock out Free Software and Open Software developers from the fruits of the PFJ.

Free Software and Open Software developers must be granted access to COMPLETE and ACCURATE documentation on *ALL* algorithms, APIs, protocols, and file formats for *ALL* Microsoft products, without any cost, and without any nondisclosure agreement (NDA) requirements.

The most complete and accurate documentation is the actual source code, and so that should be made available. The source code, however, is not enough. It is likely that the source code will be very difficult to understand; therefore Microsoft must also be required to fund an independent documentation effort to study the source code and completely and accurately document it. Such documentation and source code must be made available at no charge to anybody who wants it, via an Internet download, without any requirement for an NDA.

Without this extremely important provision, the most important potential

competitor to Microsoft's monopoly will not be able to compete. In addition, without this important provision, Microsoft will be able to *CONTINUE* using closed and secret APIs, Protocols, and File Formats to extend, enhance, and broaden their existing monopoly. It is absolutely necessary that the PFJ be amended to require that Microsoft COMPLETELY and ACCURATELY document *ALL* of their algorithms, APIs, protocols, and file formats, and provide this information at no charge and without NDA requirements to everybody, via a free Internet download.

Security:

The security technique espoused in the PFJ is ''security through obscurity''. The idea is that if nobody knows how authentication or encryption is accomplished, they will not be able to bypass the authentication routines or break the encryption. There is a significant problem with this idea (and thus with the PFJ): IT IS FALSE! It is widely known and accepted within the security community that ''security through obscurity'' is no security at all.

SECURITY THROUGH OBSCURITY IS NO SECURITY AT ALL.

The following papers detail why ''security through obscurity'' is no security at all:

http://Slashdot.org/features/980720/0819202.shtml

http://www.VnuNet.com/Analysis/1126488

http://www.Wide0pen.com/print/101.html

http://www.NightfallSecurity.com/whitepapers/obscurityeu.html

http://www.Albion.com/security/intro-8.html

http://www.eCommerceTimes.com/perl/printer/11060/

http://Adjacency.org/essays/securitythroughobscurity.html

http://www.Treachery.net/jdyson/toorcon2001/

Many more examples exist; they can be found with a Google search.

http://www.Google.com/search?hl=en&q=%22security+through+obscurity%22&btnG=Google+Search

This is perhaps the most important comment I am making, so I will repeat this important point:

SECURITY THROUGH OBSCURITY IS NO SECURITY AT ALL.

Bruce Schneier and Adam Shostack, two of the world's foremost experts in the area of computer and network security, have given a list of recommendations for Microsoft to follow in order to achieve more secure products, after the recent announcement by Bill Gates that Microsoft will henceforth be concentrating on security.

http://www.SecurityFocus.com/news/315

IT WILL BE NOTED THAT NOWHERE IN THIS LIST OF RECOMMENDATIONS IS THERE ANY NOTION THAT ANYTHING SHOULD BE KEPT SECRET. Instead, the recommendations from Messrs Schneier and Shostack encourage complete openness, full and accurate documentation, and a waiting period before Microsoft's proposed protocols and encryption methods are implemented. This is in order that the security community may examine Microsoft's proposed protocols and encryption methods and algorithms in order to find weaknesses, and repair those weaknesses, *before* they are implemented and insecure systems are built and fielded.

Messrs Schneier and Shostack also encourage Microsoft to publish its entire source code, even though they have no hope that Microsoft will do this. The source code should be published so that the security community can examine Microsoft's *implementations* for flaws and weaknesses, and suggest remedies for those flaws and weaknesses. The most well designed security protocols and encryption algorithms can be made worthless by poor implementation. The only way to check the implementation is to have access to the source code.

It is in the best interests of all those who must use Microsoft products, and all those who use computers on networks that include Microsoft products (which includes the entire Internet), that Messrs Schneier's and Shostack's recommendations are adopted by Microsoft. Paradoxically, it is also in Microsoft's best interests to adopt *ALL* of Messrs Schneier's and Shostack's recommendations!!

If Microsoft is forced to COMPLETELY and ACCURATELY document *ALL* algorithms, APIs, protocols, and file formats—without restriction—and make the documentation and source code available to everybody without charge, and without any NDA requirement, bugs will be found in Microsoft's code and fixes will be suggested, just as they are for other open source OSes such as Linux, FreeBSD, NetBSD, and 0penBSD. Microsoft's products will improve as a result of this process. Microsoft will receive the benefit that all Open Source software receives: bug fixes, increased security, and increased stability, all at no cost to Microsoft.

Microsoft will be opposed to this requirement, arguing that their business will be destroyed by forcing their code open. This is not true! COPYRIGHT LAW AND CONTRACT LAW PROVIDE ALL THE LEGAL PROTECTION THAT MICROSOFT REQUIRES TO MAINTAIN THE VALUE IN THEIR SOURCE CODE. In the end, however, it does not matter if Microsoft benefits from the PFJ. What does matter is that Microsoft's monopoly abusing powers are restricted, and that the DoJ and the Court create the possibility for competitors to Microsoft to arise in the marketplace.

Microsoft has been found guilty of abusing their monopoly. One of the ways that Microsoft has abused their monopoly is by using closed and proprietary algorithms, APIs, protocols, and file formats, and by changing them from time to time in order to create incompatibilities with non-Microsoft products, and with older Microsoft products that Microsoft wishes to make obsolete. Microsoft's *secret* algorithms, APIs, protocols, and file formats are part of the problem that the DoJ and the Court must remedy. Such secrecy cannot be part of the solution, even when it comes to ''anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria''. Furthermore, in light of the fact that SECURITY THROUGH OBSCURITY IS NO SECURITY AT ALL, there is never any justification for any ''governmental agency of competent jurisdiction'' to ''direct Microsoft not to'' COMPLETELY and ACCURATELY document *ALL* algorithms, APIs, protocols, and file formats—without restriction—and make the documentation and source code available to everybody without charge. Therefore, section III.J1 and III.J2 must be entirely stricken from the PFJ. As it is necessary to require Microsoft to COMPLETELY and ACCURATELY document *ALL* algorithms, APIs, protocols, and file formats—without restriction—and make the documentation and source code available to everybody without charge, and without any NDA requirement, it is not reasonable to require ''any of the Plaintiffs to keep secret any information or documents obtained from Microsoft'' as detailed in section IV.A.3 of the PFJ. This section should also be stricken from the PPJ.

Patents

Patents are a government granted monopoly. Microsoft has been judged to have a monopoly, and further, to have illegally abused that monopoly. For this reason, Microsoft should be forbidden from using its patents offensively. The government should not continue to grant a preferential monopoly to a convicted monopoly abuser.

This is especially true in the case of Open Software and Free Software. Those who develop Free and Open Software and give it away to the world for no charge are greatly enhancing the wealth of the entire world. These people CANNOT afford to participate in the patent system. In addition, those who develop Free and Open Software are often philosophically opposed to the patent system, and would not participate even if they could. These people who are greatly increasing the world's wealth, should not have the patent system used against them by a convicted monopoly abuser.

Microsoft has already threatened to use patents as an offensive weapon against Linux, the Free Software Foundation, the GNU Project, and other Free and Open Software producers. Full details can be found in the 2nd Halloween document.

http://www.OpenSource.org/halloween/

In order to protect the Free and Open Software movement from future monopoly abuse, Microsoft must be forbidden from using their patent portfolio offensively. This prohibition should *never* expire. A clause to this effect must be added to the PFJ in order to achieve an effective remedy.

Enforcement

A *very* strong enforcement mechanism needs to be put in place by the DoJ and by the Court. We have arrived at this juncture today because Microsoft failed to abide by previous consent decrees (1994) of the Court. Microsoft has proven themselves to be obstinate and belligerent. They cannot be trusted to obey this PFJ without strong and effective oversight. If by some unfortunate circumstance, the DoJ and the Court decide not to require Microsoft to disclose all source code, then an especially vigorous enforcement mechanism must be put in place to ensure COMPLETE and ACCURATE

documentation of *ALL* algorithms, APIs, protocols, and file formats. I would suggest that the PFJ should include a clause stipulating that if anybody finds any errors or discrepancies in Microsoft's documentation, then at that point the Technical Enforcement Committee shall have the authority to immediately force the disclosure of all relevant source code, in order to force compliance with the COMPLETE and ACCURATE documentation requirement.

Dan Kegel's Comments

I would like to add that I am a co-signer to Dan Kegel's comments.

http://www.Kegel.com/remedy/letter.html

I fully agree with Mr. Kegel's entire letter, including all links therein, and strongly urge that each of the problems noted therein must be remedied in the PFJ before the PFJ is adopted by the DoJ and by the Court.

Thank you,

Kenneth J. Hendrickson

*All web references were current on 26–27 January 2002, during the writing of these comments.

MTC–00029600

GLORIORS EVENTS
January 26, 2002
Attorney General John Ashcroft
United States Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing in support of the Microsoft antitrust settlement agreement. I would appreciate your consideration of the following comments about this issue.

The settlement agreement will dramatically change the way Microsoft conducts its business. Microsoft will license Windows to the main computer manufacturers at the same price, and on the same terms. Microsoft has also agreed not to retaliate against those who distribute or promote software that competes with Windows. These concessions should subdue concerns about any ''predatory'' business practices by Microsoft.

I find it interesting that the stock market took a rum for the worse when this litigation ensued. In the interest of stimulating the economy, doesn't it make sense to put an end to the lawsuit so that Microsoft can focus on its research and development endeavors?

Thank you for your commitment to settle this case.

Sincerely,

Vetra Bilsland

MTC–00029601

294 E Frog Hollow Road
Science Hill, KY 42553
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

Thankfully, an end is in sight for this whole mess. The Settlement reached in November answers all the proble??s that were brought against Microsoft at the beginning of the trial

MTC–00029602

44260 Riverview Ridge Drive
Clinton Township, MI 48038
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I was happy to hear that Microsoft had reached a settlement late last year with the Department of Justice. I believe the settlement will be good for consumers and the entire computer industry. Microsoft has agreed to many concessions in order to wrap up this case and move forward. For example, Microsoft has agreed to document and disclose for use by its competitors various interfaces that are internal to Windows'' operating system products. This type of provision is groundbreaking for an antitrust settlement. Also, Microsoft agreed to the creation of Technical Committee that will be charged with monitoring the company and assuring they meet all their obligations.

I believe the federal government, especially in the current environment, could make better use of their resources than continuing this litigation. I commend you for your efforts to resolve tiffs case and hope you will finalize the settlement soon.

Sincerely,

Andrew Emerson

cc :Representative David E. Bonior

MTC–00029603

January 20, 2002
Attention: Renata Hesse
Judge Kollar Kottely
U.S. Department of Justice, Antitrust Division
601 D Street, NW, Suite 1200
Washington, DC 20530

Dear Judge Kollar Kottely:

I am writing regarding the Microsoft anti-trust case and the lessons we should have learned from past experiences.

As I recall, nearly three decades ago, the government initiated another antitrust lawsuit against a computer industry leader.

Success was not defined by a legal victory in that case, but rather by the enormous business expenses incurred by the defendant. These expenses clearly resulted in allowing its competitors to catch up. After three years of the Microsoft case, it seems we are now at that point. This lawsuit has gone on long enough and any legal victory has lost its relevance because the financial price has been paid.

I urge you to move forward by approving the proposed settlement. This settlement is in the best interest of the industry, the economy, and the consumer. It only makes sense to put an end to it.

Thank you for your efforts on this important case.

Sincerely,

Rachel Maher

Rachel Maher
22939 Bauserman Road
Easton, KS 66020

MTC–00029604

ARTISAN DESIGN, INC.
Computer Aided Design & Manufacturing
January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

After three long years of court rattles, Microsoft and the Department of Justice have reached settlement regarding the antitrust suit. I believe that this settlement will be beneficial to both, the IT industry and the consumers alike It is necessary that those who are involved in the suit put aside their differences and work to put this issue behind us.

Even though the settlement goes farther than what Microsoft would have liked, I believe that settling the case now is the right thing to do help the industry and the economy move forward. This settlement is fair and reasonable and was reached at after extensive negotiations with a court-appointed mediator present.

There has been enough money spent, and the current settlement is perfectly acceptable. I feel it is incumbent upon the government to put a swift end to dais ordeal so that all involved parties can return to work. Thank you.

Sincerely,

Jake Breedveld

35595-F Curtis Blvd, * East??ake; Ohio 44095 * (440) 953–0147 * Fax: (440) 953–0148

MTC–00029605

13537 Glencliff Way
San Diego, CA 92130
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I would like the Justice Department to settle its antitrust lawsuit against Microsoft. I am aware that both sides reached an agreement in November that would end the case, and I support it. I believe if Microsoft appears to take the settlement seriously, and the company is taking steps to move on and to promote competition. Giving users a greater ability to integrate non-Microsoft programs into Windows will be beneficial to consumers and software developers everywhere. Additionally, Microsoft will level the tech playing field by using a uniform price listing when licensing Windows out to the largest computer makers in the nation. Also, Microsoft will not retaliate against companies that use, sell, or promote non-Microsoft products. I believe it is the time to end the case.

Please settle the Microsoft case and allow them to concentrate on further innovating the way man), of us conduct our personal and professional business.

Sincerely,

Walter Liao

MTC–00029606

URGENT
To: John Ashcroft, Esq.,
Voice Number:
Fax Number: 1–202–307–1454
Company: Attorney General USA
From: MORRIS KAY
Company:
Fax Number: 305–792–4243
Voice Number: 305–792–4041

Date: 1/27/2002
Number of Pages: 2
Subject: Settlement of MICROSOFT pending action.
Message:
Honorable Attorney General:

Attached herein please find a letter expressing my sentiments on the matter related above,

Respectfully Yours,

Morris Kay

20185 E Country Club Drive, #1701
Aventura, FL 33180
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing today to express my support for the recent settlement proposed to Microsoft by the DOJ. The truth is that I have a terrible time seeing what continued litigation would accomplish if the last three years were so unproductive. I would really love to see this lawsuit wrapped up so that taxpayers don't have to waste any more money. Additionally, wrapping up this case will help boost the slowing economy and give the IT industry much needed revitalization.

I believe that the settlement is a fair one that encompasses all points of concern. Microsoft's adherence to terms of this contract ensures that future antitrust violations will not occur. Competitors may also put their concerns to rest as a result of several of Microsoft's agreement. Microsoft has agreed to create future versions of Windows that will allow for non-Microsoft products to function therein. Also, Microsoft has agreed to disclose Windows interfaces and Intellectual property.

It is my hope flint Microsoft desire to comply will help to quell the concerns of the dissatisfied states. Please make the necessary decision to wrap this matter up as soon as possible. This will be in the best interest of the IT industry, the economy and consumes.

MTC–00029607

January 25, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I support the settlement reached in the Microsoft antitrust case. The settlement reflects the compromises and concessions of the parties, especially Microsoft, over three months of negotiations with the assistance of a court-appointed mediator. I feel that approval of the settlement by the Federal Court would be in the best public interest of America. The settlement addresses the complaints brought against Microsoft simply for using all its legal rights. Microsoft's legally protected innovations in its software code for its internal interface and server interoperability protocols will be disclosed to the whole industry, while its other copyrighted and patented intellectual property will be licensed on non-discriminatory terms to any company that wants to use it. Computer makers will be given more flexible contracts to work with non-Microsoft companies like AOL Time Warner, RealNetworks, and Symantec. A technical committee will ensure the terms are followed. These terms will provide an opportunity for the American computer industry to make better use of the very widely used Windows operating system, and will allow Microsoft to get the lawsuit, with its distraction and expense, over with.

I appreciate your strong stand in favor of the Microsoft case settlement. Thank you.

Sincerely,

MTC–00029608

01/28/2002 MON 09:05
FAX 914 693 2247
THE REMBAR COMPANY INC 001/001
Michael Misch
39 Chestnut St
Dobbs Ferry, NY 10522
January 27, 2002
Attorney General John Ashcroft
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

The antitrust case between the federal government and Microsoft has been going on for much too long, and I would like to see the settlement that the two sides reached become final so that the matter can be put behind us once and for all. The two sides agreed to a reasonable compromise that will foster competition in the industry, and I see no reason to pursue litigation beyond this point.

The technology industry has struggled as a result of this lawsuit, and the nation's economy has been negatively affected as well. Once this settlement becomes final, consumers will have more choices in the marketplace, and independent companies will have a better chance to compete in the future. Microsoft has agreed to design future versions of the Windows operating system so that computer makers may remove Microsoft software and replace it with that of its competitors. Microsoft has also agreed to license its products to the 20 largest computer makers at uniform prices. These and the many other concessions that Microsoft has made in order to achieve this settlement are certainly enough to stop this litigation.

I realize that this settlement was reached after long and arduous hours of negotiations, and [appreciate your decision not pursue this matter any further. I am hopeful that no more action will be taken against Microsoft in the future.

Sincerely,

MTC–00029609

2401 Zion Hill Road
Weatherford, TX 76088
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I am writing you today to express my opinion in regards to the Microsoft settlement issue. I support the settlement that was reached in November and believe this agreement will serve in the best public interest. I am a Microsoft supporter and feel that this company should not be punished for being successful.

Microsoft has agreed to all terms and conditions of this settlement. Under this agreement, Microsoft must grant computer makers broad new rights to configure Windows so as to promote non- Microsoft software programs that compete with programs included within Windows. Microsoft has also agreed to document and disclose for use by its competitors various interfaces that are internal to Windows'' operating system products.

MTC–00029610

William Young 4142 Dundee Drive
Murrysville, PA 15668–1010
January 21, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As a supporter of Microsoft, I write you in reference to the recent settlement. The settlement is fair and reasonable and should be adopted immediately. After three years of negotiations, further delay would be ridiculous. What more is there to discuss? It is time to get on with business and get our technology industry back to normal.

Not only has Microsoft agreed to make changes in licensing and marketing, but has agreed to design future versions of Windows that will allow for easier installation of non-Microsoft software. Also, in an anti-trust first, Microsoft has agreed to disclose internal information about the Windows operating system. An outside committee will monitor Microsoft's compliance with the agreement.

By stopping any further federal action on this case, we are allowing our technology industry to get back to business. I urge you to help get this agreement moving. I thank you for your help.

Sincerely,

cc: Senator Rick Santorum
Representative Melissa A. Hart

MTC–00029611

Mr. John Martin
3208 SW Sena Drive
Topeka, KS 66604
January 23, 2002
Renata Hesse, Antitrust Division Public Comment
U.S. Department of Justice
6I)1 D Street, NW, Suite 1200
Washington, DC 20530

Dear Renata Hesse,

Thank you for accepting my comments regarding the rod-trust lawsuit against Microsoft. It seems to me that the companies that pushed the suit against Microsoft their competitors: AOL, Oracle, San Micro are about the only ones who don't want to see the case settled. I can understand that as rival high-tech companies, they will do ''whatever it takes'' to compete, but I think this case has gone on long enough.

The DOJ is on the right track to try to settle their case against Microsoft. It is my hope that eventually all of the states involved in the case. will do the same. I hope that the companies that Cave pushed this lawsuit

from the beginning see the writing on the wall and start to worry about competing for customers in fire marketplace rather than the cou??troom.

I strongly urge you to sign off on the settlement terms that have been a agreed to by both sides so that we can at least begin to clean up the mess this case has caused.

Sincerely,

John Martin

MTC–00029612

iNetXperts
January 25,2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

Please make haste to settle the lawsuit in the case of USA vs. Microsoft. I believe that if the terms of the settlement are enforced strictly they are sufficient to prevent Microsoft from engaging in unfair business practices with OEMs and software companies.

It is better for consumers, businesses and the IT industry that this suit is ended.

Sincerely,

Mark Heaney
CTO
iNetXperts Corporation, 113 N.
Washington St. #490, Rockville, MD 20850
tel 202.262.9348
fax 603.947.4732 www.inetxperts.com

MTC–00029613

DATE: January 27, 2002
PHONE:
TO: Renata B. Hesse Department of Justice
FAX: 202–307–1454
FROM: D. Shah
PHONE: 707–538–5900
RE: MICROSOFT SETTLEMENT
FAX: 253–484–2789
Number of pages including cover sheet: 7
Message

Pursuant to the Tunney Act, please find enclosed my comments on the Microsoft settlement.

January 27, 2002
VIA FACSIMILE & EMAIL
Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Sir/Madame.

The Microsoft settlement proposed by the Justice Department should not be. approved by the court. It does not adequately prevent Microsoft from abusing its monopoly powers, It is also a poor solution in that it will be complicated to enforce and Microsoft will have economic incentive to try to circumvent the agreement.

No doubt, there are precise legal standards that the court must follow in reviewing the settlement and making its decision. As a layman, I cannot hope to address the intricate legal issues as to what is explicitly mandated by statute and precedence—I can only speak in broad terms. My background is that of an engineer (M.S. in EECS) with 20 years of experience using PC software at work and at home and that of a founder and officer of a small software development company. I comment mostly from the perspective of an end user of PC software products. As a businessman, I have had substantial, experience negotiating, implementing, and litigating businccss agreements. I have found that the best agreements are those that (1) align the economic interest of the two parties (i.e. there is no economic benefit to either party to try to circumvent the agreement) and (2) are simple. The proposed settlement agreement is neither.

As one example, the language in the agreement requires Microsoft to provide access to certain information only to viable business entities. In paragraph III(J)(2)(c), the proposed settlement states that Microsoft will not be required to provide API's or Documentation to an entity that fails to meet ''reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business.'' Arguably, this language could allow Microsoft to exclude access to small businesses, start-ups, and Linux developers (or other non-profit type software developers) if it was in Microsoft's economic interest to do so.

For a second example, the proposed settlement requires Microsoft not to automatically override OEM settings. Paragraph III(H)(3)(b) says Microsoft must not seek permission from the end user for ''[automatic] alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer.'' What does the agreement mean by initial bootup? Strictly speaking, ''initial bootup'' could be interpreted to mean the first time the unit is turned on by the manufacture or the local retailer (for testing & verification purposes) and not the first time the end user turns on the machine. (As an aside, why does Microsoft need to be able to automatically override any settings? It should be sufficient to notify the user in the manual or on-line help that the user can change his settings by selecting the proper options in his application program or Windows operating system.) If such a simple item is this complicated to interpret and enforce, what does it augur for the rest of the agreement?

While it may not be the perfect solution, separating Microsoft into two independent companies meets the criteria stated above for a good business agreement. One, a breakup is simple, once it is completed, it is done—there is no agreement to interpret. Two, a breakup eliminates any economic incentive for Microsoft to circumvent an agreement because there is no agreement to circumvent once the breakup is completed.

My strong feelings about this case arise because I constantly find I have no real choice in my selection of PC operating systems and applications. As much as Microsoft's legal counsel and economists may argue about the user having choices and being better off, I find from my personal experience, that I am not.

If I am unhappy with my GM car, I can easily switch with my next purchase to a Toyota, Ford, Chrysler, Honda, etc. at zero cost. If I dislike my Sony television, I can buy a Zenith, JVC, Philips, or Panasonic, etc. without constraint. Nowadays, I have the freedom to switch phone service or my television reception from cable to satellite. Even with my PC, I can switch from Dell to IBM, Compaq, HP or others, But, I cannot switch from my use of the Microsoft operating system or Microsoft applications without cost. so substantial as to be prohibitive.

On the surface it may appear that there are alternatives to Microsoft's operating systems and applications. However, there are six barriers which effectively prevent me from using a competitor's product. First, because of Microsoft's market dominance, there is far more support from other vendors for Microsoft's products. For example, an application program or peripheral such as a printer may not be supported under either the Apple or Linux operating systems. Other vendor's import/export utilities, synchronization functions or the like may only support dominant Microsoft applications such as Word or Excel. Similarly, web sites may be designed to function best with Microsoft Internet Explorer as compared to competing products.

As a concrete example, consider my brother's experience with the Apple Imac. My brother's children learned to use the Imac growing up because of its superior user interface as compared to Microsoft Windows, However, my brother is now finding that it is too difficult to support the Imac on his home network and DSL line. Vendors just do not provide the same support for Apple that they do for Windows. Additionally, it is too difficult to maintain both Windows systems (for his use) and Apple systems. Therefore, he is forced to switch the children to using Microsoft Windows.

Second, if I wish to use a non-Microsoft product in an area where Microsoft is entrenched, I will be at a tremendous disadvantage when trying to share information. I will be speaking French when everybody else is speaking English. For example, given that everybody uses Microsoft Excel or Word, what real freedom do I have to select a different word processor or spreadsheet (even if superior) when I will be unable to share files with my clients or vendors.

Third, I have invested substantial time in learning to use and debug my existing Windows and Microsoft application programs. I cannot afford to switch to a competing operating system or application and start at ground zero on the learning curve. The amount of time it takes to learn to use a new application is enormous. It far outweighs the dollar cost of purchasing the product. To become as proficient in another word processor application as I am in Microsoft Word after years of use would take months at the very least. No one can afford that cost. As applications grow larger and more complex, this barrier grows larger and larger in Microsoft's favor.

In an interview, Bill Gates himself points out that Microsoft's biggest competitor (when they release a new operating system) is themselves. Users who have already invested time and money in purchasing and using an older version of Windows are loathe to switch to a new version because of the cost in dollars and time to install, debug, and learn the new version. Imagine then the

barrier posed to a completely new operating system or application.

Fourth, there is risk that if I am using a non-Microsoft product, the vendor will eventually be forced out of business by Microsoft and I will ultimately have to switch to the Microsoft product anyway. This was the case with my Lotus and WordPerfect products. In both case, I was finally forced to switch to Microsoft products when the vendors went out of business. Now, if I need to choose between a Microsoft and competing product, the safe decision is to select Microsoft because it is likely the competitor will be eventually driven out of business.

Fifth, there is a cost to switch to a new application because of prior work (data files) that has been generated by the old application. If I have a substantial amount of prior work saved in data flies produced by my Microsoft applications, switching to a competing application means I lose compatibility with all of my old work. At the very least, I will have to spend time converting the data files with the accompanying risk of losing information or formatting.

Sixth, It is risky to use a non-Microsoft product because Microsoft has the upper hand. in keeping its applications in step with operating system upgrades and taking advantage of new operating system features. Microsoft is in a position to improve its products faster because it is also in charge of the underlying operating system. By the same token, Microsoft applications are least likely to break with operating system upgrades. No competitor has that same advantage. (If Microsoft argues there is no advantage, then it should have no complaint against being separated into two independent companies).

In summary, I do not have the freedom to choose to use Microsoft products because they are superior but am forced to use them because the investment in time and potential risk to use competing products is too high.

There are many examples where Microsoft did not have a superior product (or, initially, even a product), but ultimately succeeded due to its monopoly position. For a non-exhaustive list, consider the products: Word (vs. WordPerfect), Excel (w. Lotus), Internet Explorer (vs. Netscape), Microsoft Project (vs. Symantec's Timeline project management software) and even Windows (vs. the Macintosh). In each of these cases, Microsoft did not have the first product or even the better product. Yet, over time in each case Microsoft has either put the other product out of business or become the clear-cut market leader.

In these cases, Microsoft did not succeed because it was the innovator; but because it had a monopoly in the operating system market. It could use its ownership of the operating system and its monopoly profits to enter new markets and eventually push out the competition. No other company, even dominant ones such as Lotus, WordPerfect, and Novell with all their financial resources, has been able to compete successfully against Microsoft because of the monopoly Microsoft enjoys.

Another example of the monopoly power Microsoft enjoys, is its recent decision not to include JAVA in its latest version of Windows. Given the runaway popularity of JAVA, only a monopoly such as Microsoft could risk making that decision. In a competitive environment, no operating system vendor would decide to exclude JAVA and pursue its own initiative. Microsoft can afford to do that because it wields such absolute control over the operating system market. A consumer has no alternate choice of operating systems so he is forced to accept Microsoft's decision to exclude JAVA from the operating system.

As a final example, consider the operating system called ''OS/2'' developed and marketed by IBM. There can be no question that it was a superior operating system and years ahead of Microsoft Windows. It failed however because of the barrier posed by Microsoft's installed base of users. The fact that even IBM failed to make any headway in the market is further evidence of Microsoft's power as a monopoly.

Microsoft may argue that the reason for its success in all of the above examples is that it had the better product or strategy. This is patently false. Microsoft was not the first one to introduce a windowing operating system, an internet browser, the concept of a spreadsheet, a word processor, etc. Microsoft has only been successful in first copying and then outlasting the competition. Microsoft argues that there is no need to regulate Microsoft as a monopoly because technology and the product landscape change so fast that not even Microsoft can exercise monopoly powers. I think it is just this argument taken in context of Microsoft's success time after time over the last decade that is the smoking gun. No company other than Microsoft has been so successful. It is so unlikely that in an area where the pace of change is this fast, that any one company could be so successful in every endeavor it undertakes, that it must be taken for granted that the company enjoys substantial monopoly power.

Contrast Microsoft's situation to that of microprocessors and Intel. Intel is a dominant market leader but faces fierce competition from AMD, Motorola, and others in the microprocessor market. As a result, we have seen a 100-fold or more increase in price vs. performance (comparing a 33MHz 80386 processor to a 2GHz Pentium II) over perhaps the last 10 years. Imagine a situation where Intel enjoyed the same monopoly position that Microsoft does today. That is to say, there was effectively no competition from AMD, Motorola, or others. Without doubt, we would not have seen the same increase in performance vs. price. Intel would not have been forced It innovate and cut prices at the rate it is forced it do so today in order to maintain its market leadership. This is clearly evident from the reported news where each time AMD releases a microprocessor, Intel responds by cutting prices. Of course, there would still have been improvements in microprocessor performance if Intel was a monopoly, but nowhere near the current pace. Intel would have made slow improvements at its own unhurried pace under little pressure from others.

Microsoft has at times argued that it is not a monopoly because the price of its operating system software (as a percentage of the price of a PC) has come down over the years and this is characteristically untrue of monopoly pricing. Even if the price of software is in fact lower today than 10 years ago, it is a meaningless statistic. The relevant question is what would the price of software be today if Microsoft did not enjoy a monopoly position. As compared to the innovation fostered in the microprocessor arena due to competition, software performance has advanced relatively slowly, [here certainly has not been a 100-fold increase in the performance of Microsoft's software over the last 10 years.

In considering the proposed settlement, the court must balance protecting Microsoft's rights and our system of free enterprise against the damage to society from continued abuse by Microsoft's monopoly position. I think the court must err on the side of the consumer. On a big-picture scale, there is no great damage to Microsoft, its shareholders or the concept of free enterprise by breaking Microsoft into separate operating companies. On the other hand, there is potential for great damage to innovation and free enterprise if Microsoft is free to remain a monopoly and to use its power to stifle new products and block the success of other companies.

In conclusion, the question simply comes down to whether the typical end user is better off because of Microsoft's monopoly. As a typical end user, I am firmly convinced that I am not and hope that the courts will take strict action.

Sincerely,

D. Shah

MTC–00029614

A??ey General John Ashcroft
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 50530

Dear Mr. Ashcroft:

I am retired from a career in engineering. J have used a vatlet3, of computer systems, and I have found computing with Microsoft's Windows software to be easier, more affordable and in many way more productive than other systems. Windows has brought welcome uniformity to the way people work with computers.

It is certainly time to accept the settlement in the Microsoft antitrust case. The lawsuit was, in some ways, a big joke by Microsoft's less successful competitors intended to give Microsoft a raw deal in court. I am glad that you took the lead in directing your department to earnestly work with the mediator appointed by the new judge. The settlement will le?? the American computer industry get back to concentrating on making better, innovative products and maintaining America's leadership in the world of technology.

The anti-Microsoft forces have agreed not to pursue the outrageous and ridiculous demand made by a few of them to ''divide and conquer'' Microsoft. In return, Microsoft has agreed to give up much of its legal rights to its intellectual properly, and business practice. Until now, no company in antitrust litigation has ever had to give its industry the copyrighted software codes to the internal interfaces to its operating system programs. Nonetheless, Microsoft has agreed to license

those codes to any party on reasonable and non-discriminatory terms. Microsoft will release companies that make computers from exclusive marketing agreements, allowing them to mix and match Windows with other operating systems. Also, even the largest equipment builders will be offered a uniform price and term list, instead of individual negotiations. The Windows desktop program included with installation will be made easy to remove and replace with those made by others, such as AOL Time Warner, which owns its own browser and internet messaging software, With government-sponsored engineers who are experts in software monitoring the agreement and investigating and, complaints, the public can be assured of compliance.

Thank you for your support of the settlement. It should be approved, because it is in the best interest of the American public.

Sincerely,
Allan J. Hessel
Hessel Properties Inc.

MTC–00029615

Jo Phylis Esman
3864 NE 167th Street
North Miami Beach, FL 33160
January 25 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

I support your efforts to see that the Federal Court approves the settlement of the Microsoft antitrust case. I believe that approval of the settlement would be in the best interest of the United States. I do not think Microsoft ever had or abused a monopoly. I think Microsoft simply build the best, easiest to use, value-priced software. There have always been software choices to be made in buying computers. Microsoft just won out. However, the settlement is good in that it gets the lawsuit behind Microsoft and opens up the Windows software to the industry.

Just as Microsoft gives up much in the settlement, the computer industry gains much in being better able to integrate its products with Microsoft's Windows operating system, or avoiding Microsoft products. Microsoft will disclose its software code for internal Windows interfaces and license its other software to any company that wants to use it. Computer makers will no longer be required to adhere to exclusive marketing agreements with Microsoft, and will be able to modify Windows to remove Microsoft's program, such as Internet Explorer. So, I do not see what Microsoft's competitors could really still want in a reasonable way. Some competitors, having been ignored by customers, seem to think they can become bigger fish in a smaller pond by seeking to dismember and destroy Microsoft. That would not be good for America and its leading place in the worldwide computer industry.

MTC–00029616

Renata Hesse
Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, IV. W., Suite 1200
Washington, DC 20530

Dear Ms. Hesse:

I understand that you are currently reviewing public comments on the Microsoft settlement and I am pleased to have this chance to participate.

John Ashcroft's team was smart to 9o after a reasonable settlement of this case that has been hanging around since 1998. My only disappointment is that Kansas was not one of the many states that joined this settlement, I do not understand why our Attorney General Carla Stovall has banded together with Microsoft's competitors to pursue breaking up this strong and vibrant company. Ignoring the real benefits of this settlement ignores the needs of the technology industry and the national economy.

I am appalled that private corporations like Oracle and AOL-Time Warner are so committed to continued litigation. Apparently the decision-makers in this company refuse to see the negative effects their actions and this suit have had on the economy as a whole. They, along with the AGs still on the case, also seem to believe that break-up is the only acceptable solution. I believe this shows their true colors.

For those who believe Microsoft was guilty of some wrong doing this agreement provides many solutions. For example, it provides guaranteed flexibility for computer manufacturers, Microsoft must is not allowed to punish manufacturers who do not promote Windows and Microsoft is required to share certain sensitive information that will definitely put their competitors at an advantage. And to top it all of, a Technology Committee that will make sure Microsoft is living up to all aspects of the settlement will guard the integrity of the agreement.

Please accept this settlement.

Sincerely

MTC–00029617

Corrie A. Kangas
I 17.55 W. ?? 12th Street
Overland Park, KS 66210
913–406–3649
January 21, 2002
Renata Hesse
Antitrust; Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

I encourage you to view settlement of the Microsoft antitrust suit as a positive solution designed to benefit all parties involved. The proposed settlement addresses every point of the charges upheld by the court.

It is certainly a step toward rejuvenating our lagging economy and restoring faith and investment in the ever changing, ever lucrative tech sector.

This competitor driven lawsuit, thinly veiled as consumer advocacy, has actually done more to harm the consumer than protect it. To date, more than 30 million dollars of taxpayer money has been spent on this lawsuit that has affected the consumer through little more than financial implications. The lawsuit has dragged the economy down, giving a bearish outlook toward tech investments, thwarting new innovation. The American public is ready for closure. I urge you to review the settlement before you, and to concur it's a suitable conclusion for all.

Sincerely,
Corrie Kangas

MTC–00029618

January 28, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Dear Mr. Ashcroft,

If you build a better mousetrap the world will beat a path to your door. They did, it has.

I write to you today to express my opinion that the Microsoft antitrust case lacks merit, in that, it does not represent the good or the will of the public, it represents only special interest groups who, as they are finally finding some acceptance realize that their own intellectual properties might be challenged by the government. Microsoft created a better product than their competitors. It should not be prosecuted for its success.

Microsoft is not the only operating system. It has many competitors who are rapidly closing ground(unix 1innux ect.) Hampered by greedy litigation, government regulation, and time it may not survive. This company is no Standard Oil or Enron There is only slight evidence of what is known in the parlance of southern lawyers and horse traders as ''sharp practice''. If you buy a Rolls Royce with accessories included, you should not sue the provider because the radio is difficult to remove and the Honda radio you want to install may not fit.

The case against Microsoft should be immediately dismissed. The right to create, incorporate, innovate and merchandise are recognized as free enterprise in this country.

Sincerely,
Will Taylor
2855 Jordan Woods Dr.
Lawrenceville, Georgia 30044

MTC–00029619

Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

Late last year the Justice Department and Microsoft reached a long sought after compromise in the anti-trust case. I understand that in order to comply with the Tunney Act members of the public at= provided with the opportunity to provide comment on the settlement.

There is no doubt that this case against Microsoft has been art interesting one to observe. The issues of this case are fairly simple to grasp, the government is basically contending that Microsoft has violated anti-trust laws through its business practices and has in fact committed consumer harm.

One interesting aspect of this case is that throughout the last four years that we have watched this case unfold and have heard reports of the impending break-up of

Microsoft we have yet to be shown one sliver or'' evidence that demonstrates consumer harm.

Another aspect of this case is not so much interesting as it is painful. In I998 when this case first began, our country was in the midst of a healthy economy. The New Economy was really beginning to look real. However, as this case began to pick up steam and break-up rumors were rampant the tech economy began to drift downward. Americans have experienced the impact of this lawsuit first hand in their investment accounts and lost jobs.

The DOI and Microsoft have deemed this settlement satisfactory. It outlines remedies for Microsoft that appear to he equitable given what has held up in lower courts. The compromise now on the table will bring an end to a suit that has already cause significant damage. I urge you to accept it.

Sincerely,

Sharon Miller

MTC–00029620

Joyce O. Thedy
933 Beverly Garden Dr.
Metairie, La. USA 10002–5001
jothedy@aol.com
January 27,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The settlement agreement reached between the Justice Department and Microsoft was welcome news, and I hope that it is implemented after the close of the public comment period.

The agreement will provide additional opportunities for software companies to compete with Microsoft products. Microsoft has agreed to allow competition from non-Microsoft programs within its Windows operating systems, and it has agreed to allow its distributors and licensees to deal in products other than those produced by Microsoft.

Whether or not these additional opportunities for competition will result in an increase in products and consumer choice remains to be seen. However, the purpose of this case and the settlement are to open avenues of competition, not to guarantee the success of the competitors.

Thank you for the opportunity to voice my opinion.

Sincerely.

Joyce Thedy
933 Beverly Garden Drive
Metairie, LA 70002

MTC–00029622

BONNIE BERGGREN
January 19, 2002
Renata Hesse
Trial Attorney
Antitrust Division
Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

As a political activist in Kansas, I do my best to follow current events and to take seriously my responsibilities as a citizen by exercising my rights and fighting to uphold the liberties I maintain as a citizen of this great nation. This letter is a small way for me to use these values to state the reasons I believe settlement of the Microsoft anti-trust case is overdue and serves the interests of Microsoft, their competitors and the consumers of these products.

Though many are wary of government interference in business, the damage this lawsuit has caused from an economic and developmental standpoint justifies settling under the terms of the current proposal. In an attempt to move on with business, however restricted, Microsoft has offered to be subject to review by an onsite technical committee, having access to all areas at all times—at Microsoft's expense. This provision leaves Microsoft with time and loyalty as the only advantage over their competition.

Now, more than ever, it is imperative that we preserve the freedom to innovate and promote free commerce. Approval of the settlement will allow our industry to move forward, freeing the courts and our nation to focus on some of the more demanding issues of today.

Thank you,

Bonnie Berggren

MTC–00029623

1622 Plum Street
San Diego, CA 92106
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am writing to you on behalf of Microsoft regarding the antitrust suit of the Department of Justice against Microsoft. I personally feel that this litigation is absolutely a waste of time and energy. 1 feel very strongly on this issue and believe that companies that cannot compete in the open free market should not run to the Federal Government for help.

As a physicist I have used computers at home and work. Microsoft has not been my favorite supplier of software (too unstable and crash prone). Only casually have I followed the details of the government's case against Microsoft. However, as a consumer [don't feel that Microsoft has done me any harm. In fact quite the opposite—their bundling of suites of programs with their browser has saved me money, and has furnished the industry with a single standard.

My suggestion is to move on to more pressing matters.

Thank you for your consideration.

Yours truly.

Myer Geller
Tel: 619,223.8425
Fax:619.523,8885
E-Mail: Conny@cox.Net

MTC–00029624

Steve Loney
3032 Aspen Road
Ames Iowa 50014
January 3, 2002
Judge Kollar Kotelly
c/o Renata Hesse, Trial Attorney
Antitrust Division
U.S. Department of Justice
601 D Street, NW, Suite 1200
Washington, DC 20530

Dear Judge Kotelly:

For over a year now our country has been facing serious economic problems. The stock market is weak, the economy is waning, and Americans are losing jobs. There is not one definitive reason why we are facing these economic hard times and our recovery is dependent upon several factors.

It is important that we make smart decisions about everything that may influence our economy. One bright spot on the economic horizon is the proposed settlement between the United States and Microsoft. This proposal is a fair settlement for all involved and will provide benefit to our economy.

While some may argue this settlement is not a good one, a fair review of its provisions demonstrates that it strikes a good compromise. Among other things, Microsoft will be required to share its intellectual property and an independent committee will be established to ensure that Microsoft is following the rules of the agreement.

For over twenty years Microsoft has been a leader of our national economy and its growth. When the government threatened to assert new and excessive regulations on this strong corporation its impact was felt throughout the economy. By allowing this settlement to take place the case will come to a fair conclusion and the best interests of our country will be served.

Thank you for your time.

Sincerely,

Ames, Iowa

MTC–00029625

William Bellamy
3919 Highwiew, Road
Chailotte, ?? 28210
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Washington, DC 20530

Dear Mr. Ashcroft:

The purpose of this letter is to voice my support of the settlement. Microsoft has been at the forefront of the technology industries for years. It is through their dedication to innovation that Microsoft has been able to forge their way in this industry. Microsoft has done more for this country than any other company in technology industry. I believe that raising legal battle in this case is altogether unwarranted. Despite these sentiments, I am pleased that there has finally been resolution in this issue.

The terms of the settlement show Microsoft's further dedication to resolve this issue. One of the most important aspects of this resolution is that Microsoft will now license Windows at the same rate to the twenty biggest computer makers. PC makers will not have to gain favor with Microsoft in order to receive the same rate on the Windows system. This should give PC makers a little more freedom in the negotiations process.

To summarize, I believe that the terms of this agreement are fair and should be enacted

with haste. Thank you for your time regarding this issue.

Sincerely,

William Bellamy

MTC–00029626

January 26, 2002
Sury S Tumuluri
2475 Brookshire Drive # 80–9
Schenectady, NY, 12309
(H) 518–381–1885
(W) 518–385–0581
e- mail: tsnsarma@yahoo.com
To,
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft,

Please permit me to express my opinion of the settlement that was finally reached in the antitrust case against Microsoft. It is my opinion that this settlement is fair and should be accepted by the all parties involved in this case.

The settlement disciplines and restrains Microsoft adequately such that it will not have a monopoly on the Technology and yet leaves it free to continue with its excellent and monumental work. I am among those who felt pleased that Microsoft agreed to design all future versions of Windows to be compatible with the products of its competitors and desist from retaliatory tactics.

We should also note that the settlement would also be ensured by a technical oversight committee that will monitor Microsoft's business practices in future to be sure that they comply with the settlement.

I am writing this letter to request you to support this settlement and ensure that the future of American business in general and IT Industry in particular is not stifled and side tracked.

Thank You,

Sincerely,

(Sury S Tumuluri)

MTC–00029627

Ms. Renata Hesse
U.S. Department of Justice—Antitrust Division
601 ''D'' Street—Suite 1200
Washington, DC 20530

Dear Ms. Hesse:

Thank you for this forum to share my thoughts regarding the continuing case against the Microsoft Corporation.

The Microsoft Corporation is one of country's leading producers and is certainly a worldwide leader in the growing technology market. I believe this company is an excellent model for study of the free enterprise system. We must always remember that Microsoft was not always the giant it is today, instead this company was created from virtually nothing. It was the innovations and business savvy of its founders that have brought it to the pinnacle of success.

It is the nature of the business world that when a company finds success it becomes the target of its adversaries in the business world. This is part of our system. What I do not believe is part of our system is when the government sets its sites on company simply because it is successful.

The success of this company is felt by all of us. Microsoft has provided good products that make all of our lives easier. These products are easy to use and relatively inexpensive. The company has worked hard to get where it is today and I am sure works just as hard to stay there. This is not a crime.

What is disturbing is that the pursuit of Microsoft has also been felt by all of us. We are living in a very strained economy. Prior to the onset of this suit, the computer and information industry was truly booming. Since the suit began, however, this sector of our economy stalled dramatically. The effects of this slow down have been felt throughout the markets and have negatively added to our strained economy.

I can only assume that the agreement is a fair one since both the Justice Department and Microsoft have agreed to its provisions. It is my hope that the court will approve this settlement.

Sincerely,

MTC–00029628

Sornson Masonry Construction, Inc.
7520 Valley St
Dalton Gardens, ID 83815
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

There has recently been a settlement to the antitrust lawsuit between Microsoft and the Department of Justice. While we do not agree with the relentless pursuit of the Microsoft Corporation, we are happy to see that a settlement has been reached. The United States government needs to move on and worry about more important issues.

Microsoft will now be working much closer and communicating much more with their competitors. They will be giving their competitors code and other information that makes-up the Windows operating system. It is also our understanding that they will be allowing their competitors to remove Microsoft-made software from Windows, and replace it with non-Microsoft software. Enough is enough.

Microsoft agreed to terms that extend well beyond what was issue in the initial suit, just for the sake of ending this senselessness. We support this settlement and would like to see it implemented as soon as possible.

Sincerely,

David W. Sornson

Cheryl A. Sornson

MTC–00029629

January 23, 2002
Renata Hesse, Esq.
Trial Attorney
Department of Justice, Antitrust Division
601 D Street NW, Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

Thank you for the opportunity to express my opinion regarding the anti-trust lawsuit against Microsoft.

I was elected to the Kansas State House in 2000 and my experiences since that time has taught me that the actions of government can often have negative effects on the average American. I think this holds true in the government's case against Microsoft.

There is no doubt that this pursuit of Microsoft has negatively affected our economic health. At a time when many states are facing major budget problems, they have also been spending taxpayers'' money to finance this case. In fact, here in Kansas, our budget problems are so bad that some members of the Legislature are supporting an increase in taxes. At the same time, our Attorney General sees fit to continue wasting tax money on this case that the public clearly wants to see brought to an end.

When we look back at the fall of the technology industry and the markets overall, we should not be surprised. Our government was determined to use the courts to break up one of the world's largest companies. Of course the markets are going to feel the effects of this. Of course investors are going to wait on the sidelines. Of course struggling technology companies will declare bankruptcy. And of course the American worker and consumer will feel the pinch.

The settlement currently under consideration addresses this matter fully and fairly. It represents a true compromise. Allowing the proposed settlement to go through is the right thing to do legally. It is also the right thing to do in order to help revitalize our economy and restore faith in the capitalist system we all appreciate.

Thank you.

Rep. Mary Pilcher Cook

MTC–00029630

GENE RASQUEZ
4708 SW TERRACE
AUGUSTA, KS 67010
January 22, 2002
Ms. Renata Hesse
Trial Attorney, Anti-trust Division
U.S. Department of Justice
601 ''D'' Street NW, Suite 1200
Washington, DC 20530

Ms. Hesse:

I always appreciate an opportunity to participate in government matters that affect me directly as an American citizen and I thank you for conducting this comment period regarding the Microsoft anti-trust lawsuit.

I simply wish to voice my full support for the settlement proposed by the President's team. This settlement provides a genuine solution to a costly lawsuit—the merits of which are hotly debated across the nation. There are so many other more critical issues facing our government and your court, especially in light of the September 11 '' attacks, that I cannot see the wisdom in continuing to pursue one of our best and brightest organizations. Microsoft's agreement to operate under the stringent restrictions imposed by the proposed settlement is an indication to me of the company's good faith and the tech market could certainly use the boost of confidence this settlement would provide.

I trust that the court will see the benefits of settling this matter in the manner proposed and move to accept the Bush settlement agreement.

Sincerely,

Gene Basquez

MTC–00029631

Rev David J. Goodrich
P.O. Box 1600
Norwich, VT 05055
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

To provide some personal feedback during this 60-day public comment period, in my opinion it's about time that the government reached a settlement in its case against Microsoft. I feel the legal action should never have begun in the first place, and the Justice Department should stop wasting tax money on this issue.

America was built by people who worked hard to be successful and make money at their businesses, and the government should not try and stop them. Microsoft built themselves from the ground up by making a better product at a fair price, which has left their competitors desperate enough to push for this legal action. By agreeing to several terms to encourage a more dynamic marketplace, Microsoft has surpassed even the government's complaints about their business practices. With an objective group of experts to monitor implementation of the plan, there should no longer be a need to bring this dispute into the legal system.

Our federal and state governments have better things to spend their money on than pursuing this case any further. Please let Microsoft get back to developing great products without distraction and the government to get back to dealing with the real needs of protecting national security.

Thank you for your support.

Please know that I have been a Microsoft user for about 14 years and they have provided a very user friendly product at a reasonable price. Microsoft Word exceeds the competition in quality and price. Please stop this action which will only hurt the consumer. The cost of this case far exceeds the cost of many good projects and is only a punishment for the business community who are the real providers of jobs in America.

Sincerely,
Rev David J. Goodrich
1–802–649–1866
Fax 1–802–649–5601

MTC–00029632

5945 154th Place
Flushing, NY 11355–5508
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

As a computer professional in the technical industry that has been following this Microsoft antitrust case, I think it is grossly unfair that this case was brought about in the first place.

Microsoft has been great for the economy, the technical sector, and the NASDAQ. It is coincidental that all of these sectors are way down now that Microsoft is in the middle of litigation. If we leave the settlement as it stands and not pursue further litigation, it would be of great benefit to us in the end.

Microsoft did not get off as easy as its competitor's would have you think. After intense negotiations and mediation, they agreed to terms well beyond what is expected in any antitrust case. I understand that Microsoft agreed to disclose various internal interfaces in their operating system to competitors. I cannot think of any other software company that would risk their proprietary source code bring exposed to the competition for their use. Apparently, the sacrifice Microsoft is willing to make is not enough. Everyone (the states and the competition) wants more.

Enough is enough. Microsoft should not be penalized because of other companies inability to compete on level ground—Whatever happened to free enterprise? Litigation is bad for the economy. Let us go with the settlement and not pursue any further litigation. In addition, let's focus on rebuilding our economy.

Thank you.

MTC–00029633

1512 N. Elsea Smith Road
Independence, M064056
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I was pleased to learn that the Justice Department has reached a proposed settlement agreement in the Microsoft litigation.

You now have the opportunity to clean up the mess created by your predecessor. Microsoft was the target of this litigation because of its size and because of its great degree of success. Your implementation of this settlement will bring an end to the political witch-hunt.

Microsoft has placed a number of concrete proposals on the table to resolve the case. They have agreed to changes in almost every aspect of their business operations, from pricing, to distribution, to system design. These changes, if implemented, should provide additional competitive opportunities for Microsoft's competitors and more choice for computer users.

Please go forward with the settlement and let Microsoft get back to business.

Sincerely,
Mark Zachgo

MTC–00029634

1512 N. Elsea Smith Road
Independence, MO 64056
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft:

I was pleased to learn that the Justice Department has reached a proposed settlement agreement in the Microsoft litigation.

You now have the opportunity to clean up the mess created by your predecessor. Microsoft was the target of this litigation because of its size and because of its great degree of success. Your implementation of this settlement will bring an end to the political witch-hunt.

Microsoft has placed a number of concrete proposals on the table to resolve the case. They have agreed to changes in almost every aspect of their business operations, from pricing, to distribution, to system design. These changes, if implemented, should provide additional competitive opportunities for Microsoft's competitors and more choice for computer users.

Please go forward with the settlement and let Microsoft get back to business.

Sincerely,
Dawn M. Zachgo

MTC–00029636

Jason t. Rigsbee
9237 Estate Cove Circle
Riverview, Florida 33569–3102 U.S.A.
Home: (813) 740–2979 / Mobile: (813) 787–5961
Facsimile: (630) 214–4890
E-mail: jrigsbee@rigsbee.net
World-Wide-Web: http:llwww.rigsbee.net
To: U.S. Department of Justice (Antitrust Division)
RE: Microsoft Settlement/Future Litigation

I have no problem [along with the majority of all Americans] with what Microsoft has done to better the computer technology of today. Without the innovations and mindset of the president and founder, William Gates, the many luxuries we all enjoy as one world would cease. Microsoft is not an evil empire whose goal is to exploit the people of this country. However, its goal is to enhance and bring computer technology to a newer level that will better aid people throughout their daily activities. Microsoft must be allowed to bring the Internet into its operating system, make set-top boxes for televisions, or create the most dominant product since Windows; otherwise you [the government] have taken away one of the priceless commodities that this great nation was founded upon.

If you are so bent on stopping a company's free will to innovate, you should turn your eyes on America Online. America Online (AOL) planned its big takeover of Netscape and its semi-agreement with Sun Microsystems (by the way...both companies approached the government to pursue a case against Microsoft) at the same time as the Microsoft lawsuits. Isn't this a bit odd? If we are so worried about Microsoft's *LARGE* empire, shouldn't we be stepping on AOL's toes also? If you haven't been keeping up with current affairs...AOL has one goal, and that is to be number one and to destroy Microsoft. There is *NO* monopoly here.

Sun Microsystems, America Online, and Oracle are using you [the government] to get back at Microsoft. They are using you [the government] to build their business and in using you hoping to get one step ahead. If you destroy Microsoft's ability to enhance its products m any way its competition will see the victory...not the American people you are trying to protect.

A company [Microsoft] *MUST* be given the right to enhance its products in any way possible to benefit its customers. The Microsoft cases have gone on too long. I hope that you will favor the Justice Department's recommendation for compromise and disallow all current litigation against Microsoft.

Sincerely,
Jason L. Rigsbee
Romans 10:13 For whosoever shall call upon the name of the Lord shall be saved.

MTC–00029637

ALAN & NANCY STRAND
20100 156TH AVE. N.E
WOODINVILLE, WA 98072.
January 24, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settlement. This issue has been drug out for over three years now and it is time to put it to rest. Microsoft needs the chance to move on and put this government over regulation behind them.

When I buy a Ford it does not come with Chew parts. Chew pans do not fit in Fords and nobody has a problem with that. Now Microsoft creates a product and is being sued because everyone else's products do not work perfectly with their products. Microsoft has agreed to provide their competitors with part of the Windows base code, in order for their competitors to create products that are more compatible with Microsoft's. This has never been done m any other industry and I do not see why it is being demanded from Microsoft.

Microsoft has been harassed for too long. Demands have been made and agreed to that have never been made on any other company. Now it is time to allow Microsoft to move forward. The only way to move forward is to put this issue in the past. Please accept the Microsoft antitrust settlement.

Sincerely,
Alan Strand

MTC–00029638

James Wilkins
1901 Windsor Place
Findlay, OH 45840
January 16, 2002
Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Dear Mr. Ashcroft,

After three long years, the antitrust case against Microsoft has been settled. I applaud this decision. 1 believe the initial lawsuit was wrong. It was, in my opinion, very counter-productive for the economy. Microsoft is one of the engines of our economy; the economic downturn we have experienced can be traced directly to the antitrust case against Microsoft.

But it is time to go forward. Microsoft has agreed to a great number of demands from the Department of Justice; e.g. agreeing to a technical committee to monitor future actions; agreeing to design future versions of Windows with the ability to promote non-Microsoft software; agreeing not to retaliate against computer makers who send software that competes with Windows operating system. Microsoft is apparently trying to settle the case and get back to business. I agree with this. I urge you to give your support to the agreement between Microsoft and the Department of Justice.

Sincerely,
James Wilkins

MTC–00029639

January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania A?? NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

The Department of Justice and Microsoft have ?? three-year-??, I want to ?? my support to ?? measure and ask that you do so also This has become more of a personal battle between Microsoft and its rivals such as ?? Microsystems, and AOL. It should be noted that ?? stock has gone down, while Microsoft's sto??k, despite all the legal problems, has stinted to rise, again. I believe Microsoft was one of the ?? of the ?? the technological world to be embraced by all—providing lens of thousands of high??. It is on ?? part of ?? nature that there are those who do not like the fact that some people are more successful than they, and they try to bring such individuals down.

But ?? has now been ??, and we should let it stand. Mi?? many changes in their operations. Microsoft has agreed to help companies ?? greater degree of reliability with regard to their networking software; M?? agreed to allow computer makers to ship non-Microsoft product to customers; Microsoft has agreed to design future versions of Windows with a device to make it easier to promote non-Microsoft software. Microsoft has even agreed to a technical committee to monitor future settlement adherence. This is more than fair and reasonable. I urge you to give your support to this agreement and allow us to get back to business and Bill G?? to his creativity.

Sincerely,
Paul?? Dreger

MTC–00029640

Donald Delahaut
260 Fernledge Drive
New Kensington, PA 15068–4614
January 27, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

I am writing today to encourage the Department of Justice to accept the Microsoft antitrust settlement. As a member of the technology industry, I want to see Microsoft and the industry to move on. The suit has dragged on for over three years and has caused great damage to the entire industry.

Some say that Microsoft is being treated leniently. In fact is quite tough. Microsoft has agreed to document and disclose, for use by its competitors, various interfaces that are internal to Windows' operating system products. Microsoft is virtually handing over their company secrets to their competitors. That is no getting off easy.

In order to move forward Microsoft is giving in to a lot. The terms, of the settlement are fair and they should be accepted.

MTC–00029641

Louis Theriault
643 Yorkshire Drive
Oviedo, FL 32765–8159
January 26, 2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

Take a moment to reflect on what the breakup of ATT did to the phone industry. It created very poor phone service and drastically reduced innovation. If ATT were still together people would be looking and talking to each other over the connection instead of only talking to each other.

This hindered innovation is a direct result of the breakup of ATT because it caused them to divert their attention from long overdue innovation.

The same is true in Microsoft's case. Though I am glad that there has been no decision to break up Microsoft, the mere thought that this was considered is appalling. The way I see it, if I ran a company that was unable to keep up with my competition then the fault is mine and not my stronger competitor. I should therefore seek to strengthen my stance in the industry rather than seek corporate welfare from the government. Indeed, seeking the government's help to break up a company for your advantage only is a pitiful thing and I think the government should put a stop to it immediately!

Look at all that Microsoft has conceded in this case. They have agreed to grant competitors greater access to Windows by creating new versions. In addition, they have agreed to give computer makers more flexibility to reconfigure Windows for interoperability with non-Microsoft software. In light of all the varied factors of this case and Microsoft's spirit of cooperation, please put an end to litigation in the interest of fairness.

Sincerely,
Louis Theriault

MTC–00029642

James Hahn
440 E 57th Street
New York, NY 10022
January 27, 2002
Attorney General John Ashcroft
US Department of Justice,
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001
Dear Mr. Ashcroft:

Last November, Microsoft and the Department of Justice reached a settlement in the antitrust case. The settlement is currently being reviewed, and soon the courts will have to decide whether or not the settlement is acceptable. Microsoft competitors are touting the agreement as lenient towards Microsoft and harmful to the consumer. They would like nothing better than to see the settlement overturned and litigation against Microsoft continued. I disagree. Continued litigation, not settlement, would do the most damage to the consumer, and the settlement is anything but lenient.

The settlement allows Microsoft to remain intact, but prohibits Microsoft from engaging in behaviors that would prevent other computer makers from having a fair chance to compete. For example, the settlement

requires that Microsoft disclose source code from the Windows operating system to its competitors for their use either in working independently or with Microsoft Microsoft will also furnish third parties acting within the limits of the settlement with a license to applicable intellectual property rights to prevent infringement. I do not think that Microsoft has been treated too mil?? in this case; in fact, in the interest of wrapping up the se??, Microsoft has agreed to a number of terms that extend to aspects of Microsoft not found to be in violation of ?? laws.

The time has come for a decision to be made, whether or not it is in the best interests of the public to allow a ridiculous amount of time and money to be wasted in laughably ?? litigation, or if the technology industry should be permitted to return to normal and the economy to recover. I would like to see the consumer benefit from a return to nor?? in the economy and the computer industry, and I urge you ?? support the settlement. Enough is enough??

Sincerely,

James Hahn

MTC–00029643

January 17, 2002
Attorney General John Ashcroft
U.S. Justice Department
950 Pennsylvania Avenue, NW
Washington, DC 20530–0001

Dear Mr. Ashcroft.

At long last, this debacle of an antitrust trial between the government and Microsoft has sputtered to a settlement. While the settlement is weighed slightly against Microsoft, it at least has the advantage of ending the litigation.

This entire lawsuit was, I believe, grounded in much misinformation and misunderstanding. A company's ''dominance'' in any particular market does not necessarily mean that it has achieved that status through anything other than legal—albeit aggressive—means. I believe this to have always been true of Microsoft. Microsoft never manipulated the marketplace to force anyone to purchase its system. Rather, its pricing policies, its integration, and its reliability attracted most people to its product. This is enviable, not despicable.

When our government engages in a mission to ''level the playing field'' for all, there is the natural side effect of having to ''dumb down'' those that have been successful, and force them to either step aside, or give away their hard-earned successes to those less fortunate souls who are not as creative or as industrious. This attitude is reflected in the settlement. Microsoft is being forced to give up some of its source code to others in order to satisfy the government need to level the IT playing field.

While it is useless to object, I find that the settlement at least has the advantage of ending the contentious nature of the trial. For this reason alone, I find myself supporting it.

Sincerely,
Charles Aunger
Chief Technology Officer
PO BOX 470671,
CELEBRATION, FLORIDA, 34747–0671
www.vhinternet.com.
TEL: 407 709 6559 FAX: 407 650 2703

MTC–00029644

Lesa Stafford
3395 80th Road
Thayer, KS 66776
Renata Hesse
U.S. Department of Justice
601 ''D'' Street NVV Suite 1200
Washington, DC 20530

Dear Ms. Hesse:

I am glad to have this opportunity to express my opinion regarding the Microsoft antitrust case.

I was relieved to learn that the Bush Administration had proposed a settlement that could soon end this costly endeavor. As a taxpaying citizen, I nave been concerned for quite some time over the high cost of continuing to pursue this case in court, From all I have read and experienced as a consumer in the marketplace, I am convinced that Microsoft has created no monopoly—especially since computer products continue to become more affordable and not more expensive

I firmly believe that the funds being spent to litigate this matter in court are desperately needed in other areas such as education and law enforcement, Therefore I urge the court to accept the proposed Microsoft settlement and free up tax dollars for matters that are truly critical to all our futures.

Sincerely.

Lesa Stafford
January 25,2002
Attorney General John Ashcroft
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Ashcroft:

The settlement reached in the Microsoft anti-trust dispute is essential to the continued success of America's technology industry in the world market. Our IT industry has floundered for the past three years since the inauguration of this anti-trust suit against Microsoft three years ago. This settlement is fair and is a prime opportunity to put this litigation behind us.

Under the terms of the agreement, Microsoft has agreed to design all future versions of Windows to be more compatible with the products of its competitors. Microsoft has also agreed not to retaliate against any competitor who produces products that compete with its own. And, finally Microsoft has promised to report to a three person technical committee that will monitor Microsoft's compliance to these terms. I believe that this settlement is reasonable for the simple reason that it will allow Microsoft to get back to business without being pirated and split apart.

Thank you for you help in this issue and for allowing me to express my opinion. Free enterprise is a precious commodity in this nation and it must be protected.

Sincerely,
James Lay
3400 W Bristol Road
Flint, MI 48507

Made Up To a Quality ... Not Down To a Price !

MTC–00029646

January 23, 2002
Renata Hesse
Trial Attorney
Antitrust Division Department of Justice
601 D Street NW. Suite 1200
Washington, DC 20530

Dear Ms. Hesse,

As an employee for a large midwestern hospital. I see first hand the benefits of technology everyday. Whether it is computerized laser surgical tools or sophisticated medical record software packages, my employer relics everyday on constant innovation within the technology field to better serve our patients and community.

The pervasive nature of technology continues to astound me...it seems as if virtually every thing we encounter has some kind of microchip inside. Is it any wonder then, that one of the largest computer companies in the world being involved in a major lawsuit would have an extraordinary impact on virtually every segment of our economy?

As I understand it, there is a settlement before you that could bring closure to this matter very quickly. While I agree it is vitally important to protect consumers, it is also important to do what is prudent to protect our economy and to continue technological innovation. research and investment.

The settlement before you addresses the concerns of the original complaint. All interested parties have approved it. Please give the settlement your final approval and help get the economy moving again.

Sincerely;

Terri Hasselman
Director of Major Gifts
Mercy Foundation
1111 6th Avenue
Des Moines.

MTC–00029647

Alba English
14113 Grant St
Overland Park, KS 66221
January 19. 2002
Ms. Renara B. Hensse
Antitrust Division
U.S. Department of Justice
601 D Street NW, Suite 1200
Washington, DC 20530–0001

Dear Ms. Hesse,

It was music to my ears to learn that there can be a settlement soon in the antitrust case against Microsoft Corporation?

I am confident that this settlement will have a positive impact on the ailing U.S. economy. Many of the investments citizens like my self have are directly related to the high-tech market place.

With less government intrusion into private business and mote good old-fashioned competition in the marketplace, we can look forward to new growth in the U.S. economy. Enough taxpayer dollars have already been spent attempting to fix a problem that never existed.

I appreciate your consideration of my view as you deliberate. It is important for you to support this settlement.

Sincerely,

Alba English