1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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5 UNITED STATES OF AMERICA,)
) No. CIV 98-1232(TPJ)
6 Plaintiff,)
) VOLUME I
7 vs.) (Pages 1 - 290)
)
8 MICROSOFT CORPORATION,)
)
9 Defendant.)
)

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12 DEPOSITION OF BENJAMIN SLIVKA, a

13 witness herein, taken on behalf of the plaintiffs at

14 9:17 a.m., Thursday, September 3, 1998, at One

15 Microsoft Way, Redmond, Washington, before Katherine

16 Gale, CSR, pursuant to Subpoena.

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DEPARTMENT OF JUSTICE
SEP - 9 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

23 REPORTED BY:
Katherine Gale
24 CSR No. 9793
Our File No. 1-49218

25

GOVERNMENT EXHIBIT
1474

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17 ALSO PRESENT:

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20 What I want to understand right now
21 is, in your own words, how is the Web as an
22 application platform, to the extent the browser is
23 part of this application platform, how does that pose
24 a threat to the Windows operating system?
25 A Okay.

1 MR. AESCHBACHER: And you're asking
2 about what was his thinking back in May of '95, this
3 time frame we're in; right?
4 Q BY MR. WILSON: Has it changed at all,
5 first? Has your view changed?
6 A Probably in some subtle ways,
7 certainly.
8 Q But would the concept still be pretty
9 much the same?
10 A Yes.
11 Q If you can explain to us that concept,
12 then we can move forward.
13 MR. AESCHBACHER: Asked and answered.
14 Go ahead.
15 THE WITNESS: Okay. So now I'm going
16 to read this paragraph because these are my words. I
17 think they -- you know, I probably have some
18 copyright privileges to these, so I thought these
19 were very expressive. So let me just do that, and
20 then if some further clarification you need, we can
21 do that.
22 "My nightmare scenario is
23 that the Web grows into a rich
24 application platform in an operating
25 system-neutral way, and then a

1 company like Siemens or Matsushita
2 comes out with a $500," quote,
3 "'WebMachine,'" unquote, "that
4 attaches to a TV. This WebMachine
5 will let the customer do all the cool
6 Internet stuff, plus manage home
7 finances," open paren, "(all the
8 storage is at the server side),"
9 close paren, "and play games. When
10 faced with the choice between a $500
11 box" -- then I have some technical
12 specs about what that is versus a two
13 dollar -- "a $2KPentium/P6 Windows
14 machine, the 2/3rds of homes that
15 don't have a PC may find the $500
16 machine pretty attractive!"
17 Q BY MR. WILSON: Then with respect to
18 what you just read into the record, what you
19 described as growing "into a rich application
20 platform in an operating system-neutral way," the --
21 this "operating system-neutral way" that you
22 described, what does that refer to?
23 A So Windows has become very popular over
24 the years because there are -- for several reasons:
25 There's a variety of very inexpensive hardware that

1 it runs on; there's a growing base of applications
2 that solve customer problems; and Windows itself in
3 terms of how it makes the system easier to manage and
4 configure and use. You know, so all those things
5 have contributed to making Windows, at least today,
6 much more popular than OS/2, than Macintosh, for
7 example.
8 That's not to say that Windows will
9 always be that popular. Windows certainly has lots
10 of problems today in terms of reliability.
11 Configuring Windows machines is hard. We've heard
12 about out videographer's problems with some machines.
13 So Windows still has lots of problems, and there's
14 still a lot of threats to Windows from other
15 operating systems that are either shipping today or
16 maybe there's someone in a garage, you know, building
17 an operating system that will be much better than
18 Windows.
19 So Windows is very popular today. Now,
20 an aspect of that Windows popularity is that there
21 are a broad class of applications available for
22 Windows. And so that makes people, when they go out
23 to choose what machine to buy, what operating system
24 to buy, they don't typically choose it for the
25 purpose of the operating system itself. They're

1 typically choosing, you know, how does this machine
2 solve my problems?
3 So to the extent that the Web grows
4 into a rich application platform that is operating
5 system-neutral, that runs on any operating system,
6 then -- and to the extent that the main reason people
7 are interested in buying computers is for running
8 these Web applications. And my point here in this
9 paragraph was that for many people in homes today
10 computers to write Word documents or compute big
11 spreadsheets or a lot of the other sort of
12 productivity applications that Windows and Macintosh
13 and other systems support today, a lot of people in
14 homes aren't compelled by those applications. They
15 don't care about those.
16 But the Internet with these rich
17 content and service-based applications and including
18 things like e-mail and maybe other kind of
19 collaborative applications, those are things that
20 people at home might be pretty interested in.
21 And so if -- if this Web platform
22 becomes very popular, then sort of Windows doesn't
23 have any kind of distinguishing values anymore. And
24 so it would be less popular.
25 Q So is part of the threat -- does that

1 lie in the ability for a user who wants to access the
2 Internet to use a browser that runs on a non-Windows
3 operating system?
4 A Well, the -- the threat is that you
5 could use -- these Web applications, they don't care
6 about what operating system they're on.
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24 Q BY MR. WILSON: So to the extent that
25 an Internet browser can operate on multiple operating

1 systems, does that contribute to this
2 Web-as-an-application-platform threat to Windows that
3 you described?
4 MR. AESCHBACHER: Vague and ambiguous.
5 Go ahead.
6 THE WITNESS: That -- that -- that
7 would contribute to that t
8 MR. AESCHBACHER: The fact that it was
9 cross-platformed? Is that what -- was that the
10 question?
11 MR. WILSON: No, that was not the
12 question.
13 MR. AESCHBACHER: Okay.
14 MR. WILSON: Just so that we're clear,
15 let's try this again then.
16 THE WITNESS: Yeah.
17 Q BY MR. WILSON: I'll try from a
18 different perspective. The fact that there are
19 browsers that run on more than one operating system
20 platform, does that contribute to this
21 Web-as-an-application-platform threat to Windows that
22 you've described?
23 MR. AESCHBACHER: Vague. Ambiguous.
24 Assumes facts. Are you saying that there's a given
25 browser that runs on more than one or that there's

1 browsers available on different operating systems?
2 Q BY MR. WILSON: There are browsers --
3 is -- okay. Is it correct that there are browsers
4 that are available on more than just the Windows
5 operating system? Is that rephrased?
6 MR. AESCHBACHER: I'm confused, I
7 guess. I don't mean to be causing trouble.
8 MR. WILSON: No. No, actually I
9 appreciate it, if there's any questions.
10 MR. AESCHBACHER: Is the question that
11 there's browsers that exist for a -- for OS/2 and,
12 you know, all these different platforms? Or is your
13 question that a given browser exists that runs on
14 several platforms?
15 MR. WILSON: The former.
16 MR. AESCHBACHER: Okay.
17 Do you understand?
18 MR. WILSON: That there are browsers
19 that exist on mult --
20 THE WITNESS: Okay. But the biggest
21 threat is that applications -- that Web
22 applications -- that compelling Web applications
23 become available and become predominant kind of
24 applications which customers are interested in
25 running and that those things can run on any

1 operating system. That would be the biggest threat
2 to Windows because an advantage Windows has today in
3 the marketplace and why customers prefer Windows
4 today over Macintosh OS or some other operating
5 systems is that there are a large number of
6 applications that customers need today that are
7 available primarily on Windows or have their best
8 expression on Windows. So that's the biggest threat.
9 So now part of that is those other
10 operating systems would need to be able to run those
11 Web applications whether they had a Web browser or
12 some other technology way of doing that, you know,
13 doesn't matter. It's just their ability to run those
14 Web applications.
15 Q BY MR. WILSON: So the -- so the Web
16 itself does not pose a direct threat to Windows -- to
17 the Windows operating system?
18 MR. AESCHBACHER: Objection. Vague and
19 ambiguous. And I think it is in conflict with the
20 testimony he's been giving, but he can answer.
21 THE WITNESS: Well, we're -- we've been
22 talking about the Web as an application platform and,
23 I guess, by that we should be specific. We're
24 talking about technologies like HTTP, NHTML, MIME
25 types, other data types like JPEGs and GIFs and

1 PNGs, various audio streams and video streams,
2 emerging standards like XML. Those technologies
3 together, regardless of who supplies them, provided a
4 platform for -- for application, development, and
5 deployment that -- and, again, sort of -- you know,
6 if you think about Windows as it existed in May of
7 1995, those growing collection of technologies were a
8 threat to the Windows platform.
9 Q BY MR. WILSON: So it -- is it the case
10 that because there are multiple suppliers of this
11 platform, this Web application platform you've
12 described, is it -- does that pose a threat to the
13 Windows operating system?
14 MR. AESCHBACHER: Vague. Ambiguous.
15 THE WITNESS: Not necessarily. And, I
16 mean, I'll be very explicit. If you know
17 Netscape's -- Netscape's browser at one point was
18 very, very popular. And they were -- they were in
19 control of the Web platform in many ways. So we
20 could argue in some ways that that's a bigger threat
21 than -- to the Windows platform than if there had
22 been several competing vendors of Web technology.
23 Q BY MR. WILSON: In the scenario you
24 just described, is it the case that Netscape's
25 browser could replace the Windows operating system?

1 A Well, Marc Andreessen was quoted a
2 number of times as saying that Windows was just a
3 poorly debugged set of device drivers. And so he's
4 on -- he was on record, at least in I think '94 and
5 '95, talking about how the Netscape platform would
6 kill Windows. So he was certainly of that opinion.
7 MR. WILSON: Could we have the question
8 read back?
9 (Question read.)
10 THE WITNESS: And I answered the
11 question with, you know, Netscape's perspective, at
12 least as I understood it from reading the press back
13 in '94 and '95.
14 Q BY MR. WILSON: It might be a matter of
15 public record, we've already taken the deposition of
16 Netscape. And we're here taking the deposition of
17 you today. And so we need to have your testimony.
18 And I'm trying to get an understanding that when you
19 take this position that the Web as an application
20 platform is a threat to the operating system and you
21 describe Netscape's Navigator as an example of this
22 Web as an application platform --
23 A Correct.
24 Q What's the likelihood of Navigator
25 replacing the Windows operating system?

1 MR. AESCHBACHER: Objection. Calls for
2 speculation. Vague. Ambiguous. Incomplete
3 hypothetical. Seeks opinion testimony improperly.
4 THE WITNESS: Wow. I'm not sure if I'm
5 supposed to answer now.
6 Well, you know, if you look back in '94
7 and '95, if Microsoft had done nothing about the
8 Internet and had stuck to, you know, we're not going
9 to build Web browsers, we're not going to do HTML,
10 we're not going to do HTTP, if we had done none of
11 the things that we did in 1994, '95, '96, you know,
12 '97, '98 here, if we had done nothing, I think there
13 was certainly a possibility that Windows would have
14 become irrelevant and that -- you know, the history
15 is littered with companies, technology companies or
16 otherwise, who didn't adapt to shifts in the
17 marketplace and shifts in technology.
18 If you look at, you know, IBM, they had
19 some prominence obviously in their mainframes. And
20 the PCs they really never really embraced as
21 aggressively as they might have. If you look at
22 Digital Equipment Corporation, they were, you know,
23 the highflier among minicomputers. And then when the
24 PC, the microcomputer era came, their chairman Ken
25 Olsen just said, "Ah, nobody wants to buy a personal

1 computer." And that company flailed and lost money
2 and lost employees and eventually got bought by
3 Compaq.
4 If you look at Wang, in the
5 Massachusetts area, and they were a leading supplier
6 of word processing systems that were -- typically
7 involved minicomputers and, you know, probably most
8 lawyers older than a certain age are very familiar
9 with Wang technology. That company is kind of
10 moribund, and they're -- they're not in that business
11 anymore.
12 So I think if Microsoft had done
13 nothing about the Internet and the Web, you know,
14 Windows could be a much less important operating
15 system today than it is.
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17 Is it correct then that what you're
18 describing is the browser is a threat to the
19 operating system because it opens up opportunities
20 for other operating systems to provide this Web
21 application platform?
22 A Well, the -- I mean, we've kind of been
23 over this, but I'll try some other attacks on this.
24 The -- there's some books I could
25 recommend that you could read. One book is called

1 "The Innovator's Dilemma." It was published a year
2 or two ago by a guy at Harvard Business School. He
3 talks about technology changes. You know, who are
4 the market-leading companies? Technology changes
5 came in, where did they originate? Which companies
6 took advantage of it, et cetera. And some of these
7 things are-- can happen in a year or two years or
8 three years. Other of these things can take 25 years
9 to manifest a difference. So -- and I don't think
10 certainly in the, you know, some of the materials
11 you've seen today, I haven't tried to make a -- I
12 didn't try to make an assertion about what the time
13 frame was when -- when, you know, the Web would kill
14 Windows.
15 So the point is not that the little
16 tiny Web browser, you know, whether it was Navigator
17 1 or Navigator 2 or Navigator 3, the point was not
18 that that thing by itself as it stood then would
19 immediately kill Windows. That wasn't the point.
20 The point was that that thing could grow and blossom
21 and provide an application development platform which
22 was more popular than Windows. So let me just take
23 you through the scenario about how this happens.
24 So Microsoft does nothing about the
25 Web, and Netscape has its browser and continues to

1 enhance that and refine that. It gets developers to
2 write tools that target the Netscape platform, both
3 their Web-server products, their commerce-server
4 products, their collaboration products that are
5 client and server.
6 And so in the same way that the
7 Macintosh sort of faded away to irrelevance, in most
8 people's opinion, because developers focused less and
9 less on writing Macintosh applications, developers
10 would focus less and less on writing Windows
11 applications. And they would focus on Netscape
12 applications.
13 And actually it doesn't even have to be
14 cross-platformed. I mean, Netscape could have only
15 provided their browser maybe on Windows or maybe on
16 Macintosh, something else.
17 And so the -- if all the developers
18 were focused on building Netscape applications as
19 opposed to Windows applications, then eventually, you
20 know, Netscape decides, hey, we're going to get in
21 the operating system business. And so they build an
22 operating system, and now that's installed. That can
23 get preinstalled on computers so they can sell it at
24 retail, however they decide to distribute that.
25 And so then eventually just as today

1 Windows is very popular and Macintosh is fairly
2 dormant -- which is not to say that Apple can't
3 suddenly party and add all sorts of cool things to
4 Mac OS and do lots of other stuff. But if Microsoft
5 did not invest in Windows, then eventually the
6 Netscape platform would be the thing that was
7 relevant.
8 Let me give you another example which
9 is -- which is the Java promise and -- or the Java
10 stuff that Sun is doing.
11 Java -- Sun has been very clear about
12 what their strategy is: They want to get this Java
13 platform everywhere, they want to convince all the
14 developers in the world to write Java programs, and
15 then they want to go sell client operating systems
16 and server operating systems and -- and get all that
17 revenue from doing that.
18 So that's another example of -- you
19 know, that's what Sun's trying to do with Java.
20 So that as well is a threat to Windows
21 popularity.
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4 Q BY MR. WILSON: But returning back to
5 the Web as an application platform that you've
6 described and this potential threat to the Windows
7 operating system that you've also described, by
8 controlling the Windows application -- by controlling
9 the Web application platform, does Microsoft then
10 ensure that the Windows operating system continues?
11 MR. AESCHBACHER: Vague. Ambiguous.
12 Calls for speculation. Seeks improper opinion
13 testimony.
14 Go ahead.
15 THE WITNESS: Continues what?
16 Q BY MR. WILSON: To be important.
17 MR. AESCHBACHER: Same objections.
18 THE WITNESS: It certainly doesn't
19 guarantee it.
20 Q BY MR. WILSON: Were you a part of any
21 discussions where the issue of controlling the Web
22 application platform was discussed?
23 MR. AESCHBACHER: Vague and ambiguous.
24 THE WITNESS: What do you mean by
25 "controlling"?

1 Q BY MR. WILSON: That Microsoft would be
2 the supplier of the platform and all the associated
3 protocols that you described that are associated with
4 the Web application platform.
5 MR. AESCHBACHER: Same objections.
6 THE WITNESS: Well, certainly we've
7 been through materials today, and you may have seen
8 other materials at other depositions. Our strategy
9 for the Internet was to embrace and extend. And what
10 we wanted to do was be the best provider of Internet
11 standard technologies as well as enhance those
12 technologies over time to provide an even more
13 compelling application platform so that customers
14 would prefer to use -- you know, to buy our operating
15 systems and developers would continue to prefer to
16 target our operating systems. That was a definite
17 ongoing effort on our part.
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