Examples of Key Facts Showing that Microsoft has Engaged in Anticompetitive Conduct to Maintain its Monopoly Power with respect to Personal Computer Operating Systems

1. Microsoft entered into contracts with ISPs (one of the two most important distribution channels for browsers) that required ISPs accounting for 80-95% of ISP subscribers to promote Microsoft's browser and to limit their promotion of alternative browsers -- with the purpose and effect of limiting competitor browser usage and raising browser rivals' costs.

2. Microsoft entered into contracts with OEMs (the other one of the two most important distribution channels for browsers) that prohibited OEMs accounting for 90-100% of PC sales from removing Microsoft's browser -- with the purpose and effect of limiting competitive browser usage and raising browser rivals' costs.

3. Microsoft conditioned OEMs' licensing of Windows on OEMs' licensing, distributing, and promoting Microsoft's browser.

4. Microsoft has refused to offer its monopoly operating system separate from its browser even though there is sufficient demand for the two products separately to make it efficient to do so.

5. Microsoft welded its browser to Windows 98 to prevent OEMs or end users from removing the browser (or even from turning it off), without any efficiency justification that could not have been achieved if Windows 98 and the browser were also offered separately (or if OEMs and end users were given the ready ability to turn the browsers off).

6. Microsoft tied its browser to its operating system even though

PENGAD-Bayonne, N. J.
GOVERNMENT EXHIBIT
2101

doing so was unnecessary to preserve ISVs' incentives to develop complements for Windows.

7. Microsoft invested hundreds of millions of dollars in developing, promoting, and distributing its browser even though it planned that the browser would be "forever free" and a "no revenue product".

8. Microsoft gave its browser away for free even where (as with Apple and AOL) the recipient would capture ancillary revenues.

9. Microsoft (directly and through valuable concessions) paid ISPs, ICPs, and OEMs to promote and distribute Microsoft's browser and to limit their promotion and distribution of competitive browsers -- with the purpose and effect of limiting competitive browser usage and raising browser rivals' costs.

10. Microsoft acted with the purpose and effect of limiting the distribution and success of competitive browsers even though such browsers were complements to Windows (which meant that such browsers' distribution and success would expand Windows' sales).

11. Microsoft invested in developing a browser for the Apple system (and in inducing Apple to distribute and promote it) even though Apple was a competitor to Microsoft and even though the browser was a "no revenue product" -- with the purpose and effect of limiting competitive browser usage and raising browser rivals' costs.

12. Microsoft required OEMs to agree to screen restrictions that

imposed significant costs on OEMs and limited the OEMs' prior practices of promoting competitive browsers more prominently than IE as a condition for licensing Microsoft's monopoly operating system.

13. Microsoft used its monopoly power with respect to operating systems to penalize OEMs and others who promoted competitive browsers and other products that could facilitate competition with Windows.

14. Microsoft set out to eliminate cross-platform Java, which threatened to facilitate operating system competition by weakening the applications programming barrier to entry.

15. Microsoft used its operating system monopoly to require the distribution of its Windows specific version of Java, and to restrict the distribution of cross-platform Java.

16. Microsoft welded its Windows-specific JVM to Windows and misled developers into writing to it, rather than to cross-platform Java.

17. Microsoft used its operating system monopoly to induce and pressure Intel (and other firms) to agree to abandon or limit support for software that would facilitate operating system competition.

18. Microsoft attempted to eliminate the browser threat to its operating system monopoly by seeking to induce Netscape to agree to limit its marketing of a browser that threatened to facilitate platform competition to Windows.