IBM CONFIDENTIAL

General Manager
Power Personal Systems

August 14, 1995

MEMORANDUM TO: Mr. G. R. Thomas

SUBJECT: Microsoft Meeting - August 9, 1995

On Wednesday, August 9, I met with Joachim Kempin and Mark Baber of Microsoft regarding the status of the PC Company Windows 95 contract. The summary of the meeting is as follows:

Microsoft Open Items

1. 12 D Immunity
2. Recovery Disk Program
3. Reporting and Payment Frequency
4. OPK Tool (preload tool)
5. End User License Agreement
6. LAN Manager, Win 3.X and OS/2 Audits

Resolved Issues

1. 12 D Immunity:

   I told Microsoft that this would be the final issue closed. Once other items were agreed to, IBM would agree to current working of this provision.

2. Recovery Disk:

   Agreed to current wording per David Walsh.

3. Reporting & Payment Frequency:

   Agreed to change the designation of royalty to a per system default. Our process to manage the current per copy default is cumbersome, and it seems to be causing most of the Windows 3.X discrepancies.

   We are the only OEM using the per copy default.

   Microsoft agreed to allow a period (through year-end 1995) to resolve our administrative issues on payments. In the interim, IBM will make estimated monthly payments including an overpayment. Overpayment will be carried forward by Microsoft monthly and applied to the next month's outstanding royalty.

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GOVERNMENT EXHIBIT 2195

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4. OPK Tool:

Agreed to current working given we could use knowledge gained from using the tool and can be transferred to the loading of other non-Microsoft software.

5. End User License Agreement:

Agreed to include Microsoft T's & C's in our agreement.

6. Audits:

Microsoft is concerned on the potential magnitude of IBM's underpayment. Joachim suggested they may want to go back to 1987 and audit all years.

Microsoft estimates $50-$100M in underpayments based upon past experience with IBM. Example quoted: in the fourth quarter, IBM is quoted in the press as selling 800K to 1M OS/2 Warp licenses; Microsoft was only paid for 35K.

We believe that these estimates are overstated. IBM estimates are being worked.

Joachim offered to accept a single payment and close all outstanding audits.

Joachim also suggested this payment may be reduced through an offer of good faith from IBM...something he could show Gates.

He suggested IBM not bundle Lotus SmartSuite on our systems for a minimum of six months to one year. He is concerned on the impact to Microsoft profit from Office if they begin offering to OEM's as a preload. They view the "threat of bundling" as a "core issue" in the relationship. I told him that this was not an option.

I suggested a broadening of the role of the Kirkland Porting Center to include NT on Intel. This is intended to provide world-class customer support for those customers who have made an NT client decision. I told him that this would have to be reviewed with Rick Thomas.

Open Items

1. Resolution of Overpayment Methodology
2. Proposed Audit Flat Payment
3. Good Faith Offer - Expanded NT Support
4. Gerstner Meeting with Gates on strategic issues for the industry, proceeded by sessions with J. N. Thompson, N. M. Donofrio and G. R. Thomas.

While these issues are being worked, Microsoft will work on completing the final version of the Win 95 contracts with plans to close the issues by the end of the week.

Other Issues

While the meeting with Joachim and Mark Saber was cordial, the overall relationship is rocky and needs to improve.

We discussed the role of Jim Miller - suggested that he be removed from his current role with Microsoft.

Saber said the reason the Win 95 contract was being tied to audits was that Jim Miller suggested if the audits could not be resolved, IBM would be unwilling to sign the Win 95 agreement.

Summary

IBM's management of the OS/2 contract and subsequent audit has raised the tension between our companies.

Joachim wants to close contractual issues on Win 95 before August 24.

Top level meetings which lead to a Gerstner meeting with Gates will go a long way to repairing the relationship.

Tony

A. E. Santelli

/ps

cc: Mr. B. L. Claflin
Mr. E. M. Linsen
Mr. J. B. York