DEPARTMENT OF JUSTICE
AUG 13 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
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| 4 UNITED STATES OF AMERICA | ) | |
| 5 Plaintiff, | ) | |
| 6 vs. | ) | CIV 98-1232(TPJ) |
| 7 MICROSOFT CORPORATION, | ) | |
| 8 Defendant. | ) | |
| 9 STATE OF NEW YORK | ) | |
| 10 Plaintiff, | ) | |
| 11 vs. | ) | CIV 98-1233(TPJ) |
| 12 MICROSOFT CORPORATION, | ) | |
| 13 Defendant. | ) | |

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15 (HIGHLY CONFIDENTIAL TRANSCRIPT)

16 DEPOSITION OF WAYNE M. BERGLAND, a
17 witness herein, taken on behalf of Plaintiff United
18 States of America at 10:00 a.m., Tuesday, August 11th,
19 1998, at 450 Golden Gate Avenue, Suite 10-0101,
20 San Francisco, California 94102, before VEENA MARIE
21 PUCCINELLI, CSR, pursuant to Subpoena.
22
23
24 REPORTED BY:
Veena M. Puccinelli
CSR No. 7652
25 Our File No. 3-48599

1 Q. As you sit here today, is it possible
2 for you to give a rough breakdown as to the percentage
3 of SCO operating system products that are distributed
4 to OEMs for the purpose of being customized as opposed
5 to being not modified?
6 A. Yes.
7 MR. LACOVARA: Object to the form.
8 Q. (By Mr. Holtzman:) Do you understand
9 the question?
10 A. I sure do. From a unit standpoint, I
11 don't know the answer. But from a revenue standpoint,
12 I would say it's probably 35, 40 percent is modified
13 code in one way or another.
14 Q. And the reminder is licensed under
15 what mechanism?
16 A. It would be a Standard OEM Agreement,
17 giving the OEM distribution rights for the standard
18 product, the shrink-wrapped product.
19 Q. And that is for OEMs that simply don't
20 want to modify --
21 A. That's correct.
22 Q. -- the existing product?
23 A. That's correct.
24 And we will have some OEMs that have
25 the interest to do both, so they will have multiple

1 license agreements.

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10 Q. Okay. And similarly in providing the
11 ability for an OEM or an end user, as the case may be,
12 to not preinstall Navigator, does SCO have any
13 concerns about ensuring a consistent user experience
14 with UnixWare 7?
15 A. We really don't. Because it's used in
16 such a variety of ways. Again, as long as you are
17 reporting and paying us properly, we really don't
18 care.
19 Q. And, similarly, in providing a choice
20 not to preinstall Navigator, as far as you know, does
21 SCO have any concerns about problems that may cause
22 your application vendors with UnixWare 7?
23 A. I don't believe there is any problems
24 with that.
25 Q. Why not.

1 A. Well, a browser is -- I'm not an
2 engineer, software engineer, but my understanding of a
3 browser -- access to the Internet.
4 And it does not affect applications
5 per se that run on your operating system. They can
6 still run with or without a browser.
7 Q. All right. Now, going back to your
8 time as the Director of Strategic Sales.
9 A. Right.
10 Q. During that period of time, or let's
11 say at the end of that time, who are, say, the five
12 largest OEM licensees of the variety of SCO operating
13 systems you have described?
14 A. Siemens, Compaq, Lucent, NCR, and
15 Unisys are probably the top five. Siemens, I would
16 say, is number one. Unisys, Compaq, somewhere in the
17 middle. And NCR may be on the bottom.
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10 And, similarly, if Unisys, for a
11 particular customer or for a group of customers, wants
12 to not install Netscape Navigator, in the course of
13 preinstalling UnixWare 7, and if we have to go back
14 and see whether that is licensed under this agreement,
15 we can, does this license agreement allow Unisys to do
16 that?
17 A. I think at configuration time,
18 installation time, they have those options.
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15 Q. Okay. Of those, of the five OEMs,
16 speaking collectively -- and do you recall the five
17 that we have been talking about?
18 A. Yes.
19 Q. Of those five OEMs, collectively, what
20 percentage of the revenue that SCO derives, from the
21 licenses of those five, concerns or is related to
22 UnixWare that is shipped on a desktop system?
23 A. We primarily are server-based; I mean,
24 a server company. We did compete in a desktop arena
25 some time ago unsuccessfully. We still ship some

1 desktops, but I think it's a very small percentage.
2 The majority of our systems today are servers.
3 Q. So, is it a fair statement that the
4 questions Mr. Holtzman was asking you before with
5 regard to these five OEMs concerned, at least in
6 preponderant majority, non-desktop shipments?
7 A. They are servers.
8 The OEMs also ship desktop machines
9 with our agreements.
10 What percentage of what the totals are
11 in terms of units, I don't know. But, yes, those were
12 server-based companies.
13 Q. Now, let's talk just a few moments
14 about each one.
15 Unisys, you say they were -- Exhibit
16 12, which you may want to have in front of you, you
17 said was close to the Standard OEM Agreement.
18 Was that a fair characterization of
19 your testimony?
20 A. Yes. From what -- I looked at it, and
21 the time when it was signed, and the products that are
22 here.
23 Q. Okay. On what products did Unisys
24 ship whatever version of UnixWare they licensed from
25 SCO?

1 A. What products of theirs?
2 Q. Yes.
3 A. They have a whole variety of them.
4 ClearPath. They have a number of servers; Aquanta
5 systems. They have names for their different models.
6 Q. Did they ship, to your knowledge, any
7 UnixWare in any desktop systems that they make?
8 A. I think that they did, but again
9 probably a very small number.
10 Q. The same question as to Siemens. You
11 mentioned they were involved in telephony products,
12 server products, et cetera. Do they ship any desktop
13 systems with SCO?
14 A. I believe they don't today, but they
15 have in the past.
16 Q. And how recently have they?
17 A. They got out of the desktop business a
18 couple of years ago.
19 Q. Okay. And at the time that they
20 were -- at the last moment you recall that they were
21 shipping desktops, were they shipping a version of
22 UnixWare at that point?
23 A. I believe it was. An older version of
24 UnixWare.
25 Q. Do you know whether that was shipped

1 pursuant to what you would call the Standard OEM
2 Agreement, or some special agreement?
3 A. I know Siemens Europe had a package
4 product agreement, very similar to the standard
5 agreement; but I know the other divisions, especially
6 the telephony groups, had to have some type of special
7 OEM agreement.
8 Q. Okay.
9 A. SPOEM agreement.
10 Q. With regard to Lucent, you testified
11 that they use SCO's product in the telephone
12 switching --
13 A. That's correct.
14 Q. -- equipment they manufacture.
15 Is it fair to say that that is not
16 desktops?
17 A. That's definitely not desktops. It's
18 telephone switching.
19 Q. And there is no reason to have a user
20 interface in a telephone switch; is that correct?
21 A. That's correct; it's completely
22 embedded.
23 Q. Okay. NCR, what products of NCR -- on
24 what products of NCR is UnixWare shipped?
25 A. I don't know. I don't know the

1 specific names of the product lines. But they ship
2 again, servers and desktops. The majority of them
3 were servers, because that is our strength.
4 Q. And to the extent they ship UnixWare,
5 or some version of UnixWare, on desktops, do you know
6 whether NCR does it pursuant to the standard
7 agreement, or to some modified special agreement or
8 other form of license?
9 A. Well, I only know that they license
10 pieces of our code; and they build their proprietary
11 operating system.
12 And, you know, to be honest with you,
13 I don't know specifically what browser they use or
14 what choices they give their customers.
15 Q. So NCR does not really license
16 UnixWare as UnixWare. They license pieces of UnixWare
17 code?
18 A. That's correct.
19 Q. Is that a fair statement?
20 A. Yes.
21 Q. Okay. And finally with regard to
22 Compaq, I think you testified that Compaq actually
23 ships UnixWare via their reseller network; is that
24 correct?
25 A. That's correct.

1 Q. So is it fair statement that UnixWare
2 does not come preinstalled by Compaq out of the
3 factory on any Compaq machines?
4 A. I believe the resellers do it, using
5 the SmartStart installation kit.
6 Q. But, that's -- a VAR would do that.
7 A. That's correct. A reseller of the
8 Var.
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