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2 Q. BY MR. HOUCK: I'll ask you to take a

3 look, sir, at page 8 of ~~Exhibit 347.~~ GOV. EX. 679

4 And before you do so; let me ask you

5 this. Do you recall attending this Financial

6 ~~Analysts Day~~ Executive Q & A session?

7 A. Yes.

8 Q. And what is that exactly?

9 A. It's a chance for people to ask

10 questions.

11 Q. And who attends?

12 A. Some people from the press, some people

13 from various financial firms or investment firms.

14 Q. On page 8 appears the following

15 question: "Bill and Steve, you both referred to the

16 importance of building browser share over the coming

17 year. Can you be more explicit about why browser

18 share is important to various aspects of your

19 business and maybe talk about some of the initiatives

20 you're going to be undertaking to increase it?"

21 And then Mr. Ballmer gives a response,

22 the last paragraph of which is as follows: "There

23 are a lot of things we're investing in over the

24 course of the next year in marketing. Of course, the

25 new browser is the key thing - IE 4.0. But if you

1 take a look at the initiatives, the content
2 partnership that Paul's teams have formed, the things
3 that we're doing with ISP, the work we're doing with
4 large accounts on digital nervous systems, where the
5 IE browser -- IE 3 today, IE 4 tomorrow -- is fairly
6 fundamental to what we're doing on browser share, the
7 way we're trying to get large accounts, and large and
8 small accounts to author their content to use our
9 dynamic HTML stuff; all of those actions should help,
10 I think, drive up our browser share."
11 And you're quoted as saying, "Yeah,
12 along with the integration."
13 Do you recall that question and your
14 giving an answer, Mr. Gates?
15 A. No.
16 Q. Do you have any reason to doubt the
17 accuracy of this transcript?
18 A. Well, in general, transcripts like this
19 which come off an audio tape are somewhat unreliable,
20 but I don't have a specific recollection about that
21 specific question and answer.
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3 Q. the term browser is a term

4 that is widely used within Microsoft, or at least was

5 until this year; correct, sir?

6 MR. HEINER: Objection.

7 THE WITNESS: We use the term browser,

8 yes.

9 Q. BY MR. BOIES: And you personally used

10 the term browser, did you not, sir?

11 A. Yes, that term is used in quite a

12 variety of ways.

13 Q. Including by you; correct, sir?

14 A. Yes.

15 Q. You've written e-mails about browsers;

16 correct, sir?

17 A. I've written e-mails where the term

18 browser was used. I wouldn't say it was necessarily

19 an e-mail about browsers.

20 Q. Have you ever written an e-mail that

21 you considered to be about browsers, sir?

22 A. I'll bet there's e-mail where the

23 primary subject relates to browsers. I don't

24 remember a specific piece of e-mail.

25 Q. And when you wrote e-mails using the

1 term browsers, you believed that people would
2 understand what you meant by browsers; correct, sir?
3 A. I'm sure there was enough context in
4 the e-mail that I felt I could communicate something
5 of meaning.
6 Q. And you've used the term browser in
7 dealing with people outside of Microsoft, have you
8 not, sir?
9 A. Yes. It's a term that I've used both
10 internally and externally.
11 Q. And there are a lot of people outside
12 Microsoft that have written articles about browsers;
13 correct, sir?
14 A. There's been articles about browsing
15 and the technology people use for browsing and
16 comparing the different -- how different companies do
17 that, and they used the term browser.
18 Q. Yes. The industry and Microsoft tracks
19 what is referred to as browser market share; correct,
20 sir?
21 A. No.
22 Q. No? Does Microsoft track browser
23 market share?
24 A. I've seen usage share.
25 Q. You've seen usage share?

1 A. Uh-huh. But not -- market share
2 usually refers to something related to -- not to
3 usage. And with browsers, I've seen mostly usage.
4 Now, some people might refer to that as a market
5 share, but it's not a market share.
6 Q. What is a market share?
7 A. Well, when I think of a market share, I
8 think of where you're comparing the revenue of one
9 company to the revenue of another company.
10 Q. The total revenue of a company?
11 A. No, the revenue related to one
12 company's product to the revenue of another company's
13 product.
14 Q. And that's what you think of when you
15 use the term market share; is that your testimony?
16 A. Usually.
17 Q. Are you aware of documents within
18 Microsoft that describe browser share as the
19 company's number one goal?
20 A. No. I'm aware of documents within Paul
21 Maritz's group that may have stated that.
22 Q. Is Paul Maritz's group within
23 Microsoft?
24 A. Yes, but his -- he doesn't set the
25 company-wide goals.

1 Q. Mr. Maritz you identified last week as
2 being a group vice-president; is that correct?
3 A. Uh-huh. Several times.
4 Q. And he is the group vice-president with
5 responsibility for Windows; is that correct?
6 A. That's among his responsibilities.
7 Q. And included in his responsibilities
8 was Internet Explorer; is that correct?
9 A. Our browsing technology was part of
10 that group.
11 Q. Was Internet Explorer part of that
12 group?
13 A. Yes.
14 Q. Now, did you ever tell Mr. Maritz that
15 browser share was not the company's number one goal?
16 A. No.
17 Q. You knew Mr. Maritz was telling people
18 that browser share was the company's number one goal,
19 did you not, sir?
20 A. I knew that Mr. Maritz was saying to
21 people that the -- that a top goal and perhaps number
22 one goal for his roup was browser usa e share.
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25 Q. Interpreting what Mr. Maritz has

1 communicated in light of that, do you know how
2 Mr. Maritz came to the view that browser share was
3 the number one goal?
4 A. Well, I think he was aware of the
5 increasing popularity of the Internet and the growing
6 usage of the Internet and felt that all the many many
7 innovations we were doing in Windows, that a
8 particular focus had to be doing the best job on the
9 Internet and Internet browsing features of the
10 operating system and seeing if we could innovate
11 enough to make people prefer to use that technology
12 from us
13 Q. Mr. Gates, isn't it the case that you
14 told Mr. Maritz that browser share was a very very
15 important goal and that's why he believed it?
16 A. I guess now we're delving into the
17 inner workings of Paul Maritz's mind and how he comes
18 to conclusions?
19 Q. Well, let me try to ask you a question
20 that won't require you to delve into anybody else's
21 mind.
22 Did you tell Mr. Maritz that browser
23 share was a very very important goal?
24 A. I know we talked about browser share
25 being important.

1 Q. I'm not asking you what he said to you.
2 I'm not asking what topic you talked about. I'm
3 asking you whether you told Mr. Maritz that browser
4 share was a very very important goal?
5 A. I remember that we agreed that it was
6 an important goal. I'm not sure which one of us
7 reached that feeling before the other.
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4 Did you write ~~Exhibit 358~~ Gov. Ex. 295, Mr. Gates,

5 on or about January 5, 1996?

6 A. I don't remember doing so specifically,

7 but it appears that I did.

8 Q. And the first line of this is, "Winning

9 Internet browser share is a very very important goal

10 for us."

11 Do you see that?

12 A. I do.

13 Q. Do you remember writing that, sir?

14 A. Not specifically.

15 Q. Now, when you were referring there to

16 Internet browser share, what were the companies who

17 were included in that?

18 A. There's no companies included in that.

19 Q. Well, if you're winning browser share,

20 that must mean that some other company is producing

21 browsers and you're comparing your share of browsers

22 with somebody else's share of browsers; is that not

23 so, sir?

24 A. You asked me if there are any companies

25 included in that and now -- I'm very confused about

1 what you're asking.

2 Q. All right, sir, let me see if I can try

3 to clarify. You say here "Winning Internet browser

4 share is a very very important goal for us." What

5 companies were supplying browsers whose share you

6 were talking about?

7 A. It doesn't appear I'm talking about any

8 other companies in that sentence.

9 Q. Well, sir, is a market share something

10 that is compiled only for one company? I understand

11 if a company has a monopoly, that may be so, but in a

12 usual situation where a company does not have a

13 monopoly, share ordinarily implies comparing how much

14 of a product one company has with how much of a

15 product another company has; correct?

16 A. Yes.

17 Q. Now, when you were talking about

18 Internet browser share here, what companies were you

19 talking about?

20 A. You're trying -- you seem to be

21 suggesting that just because share involves comparing

22 multiple companies, that when I wrote that sentence,

23 I was talking about other companies. It doesn't

24 appear that I'm talking about other companies in that

25 sentence. I've really read it very carefully and I

1 don't notice any other companies in there.
2 Q. Oh, you mean you don't see any other
3 company mentioned in that sentence; is that what
4 you're saying?
5 A. The sentence doesn't appear to directly
6 or indirectly refer to any other companies.
7 Q. When you refer to an Internet browser
8 share here, sir, what is the share of?
9 A. Browser usage.
10 Q. Of course, you don't say "browser
11 usage" here, do you, sir?
12 A. No, it says "share."
13 Q. Now, let's say that you meant browser
14 usage because that's what your testimony is. What
15 browser usage were you talking about in terms of what
16 your share of browser usage was? What browsers?
17 A. I'm not getting your question. Are you
18 trying to ask what I was thinking when I wrote this
19 sentence?
20 Q. Let me begin with that. What were you
21 thinking when you --
22 A. I don't remember specifically writing
23 this sentence.
24 Q. Does that mean you can't answer what
25 you were thinking when you wrote the sentence?

1 A. That's correct.
2 Q. So since you don't have an answer to
3 that question, let me put a different question.
4 A. I have an answer. The answer is I
5 don't remember.
6 Q. You don't remember what you meant. Let
7 me try to ask you --
8 A. I don't remember what I was thinking.
9 Q. Is there a difference between
10 remembering what you were thinking and remembering
11 what you meant?
12 A. If the question is what I meant when I
13 wrote it, no.
14 Q. So you don't remember what you were
15 thinking when you wrote it and you don't remember
16 what you meant when you wrote it; is that fair?
17 A. As well as not remember writing it.
18 Q. Okay. Now, let me go on to another
19 paragraph and see whether you remember writing that
20 or not. And that is the second paragraph, which
21 reads, "Apparently a lot of OEMs are bundling
22 non-Microsoft browsers and coming up with offerings
23 together with Internet Service providers that get
24 displayed on their machines in a FAR" -- and you've
25 capitalized each of the letters in far -- "more

1 prominent way than MSN or our Internet browser."
2 Do you see that?
3 A. Uh-huh.
4 Q. Did you write that sentence, Mr. Gates?
5 A. I don't remember, but I have no reason
6 to doubt that I did.
7 Q. Do you remember what you were thinking
8 when you wrote that sentence or what you meant when
9 you wrote that sentence?
10 A. No.
11 Q. Do you remember that in January, 1996,
12 a lot of OEMs were bundling non-Microsoft browsers?
13 A. I'm not sure.
14 Q. What were the non-Microsoft browsers
15 that you were concerned about in January of 1996?
16 A. What's the question? You're trying to
17 get me to recall what other browsers I was thinking
18 about when I wrote that sentence?
19 Q. No, because you've told me that you
20 don't know what you were thinking about when you
21 wrote that sentence.
22 A. Right.
23 Q. What I'm trying to do is get you to
24 tell me what non-Microsoft browsers you were
25 concerned about in January of 1996.

1 A. If it had been only one, I probably
2 would have used the name of it. Instead I seem to be
3 using the term non-Microsoft browsers.
4 Q. My question is what non-Microsoft
5 browsers were you concerned about in January of 1996?
6 A. I'm sure -- what's the question? Is
7 it -- are you asking me about when I wrote this
8 e-mail or what are you asking me about?
9 Q. I'm asking you about January of 1996.
10 A. That month?
11 Q. Yes, sir.
12 A. And what about it?
13 Q. What non-Microsoft browsers were you
14 concerned about in January of 1996?
15 A. I don't know what you mean "concerned."
16 Q. What is it about the word "concerned"
17 that you don't understand?
18 A. I'm not sure what you mean by it.
19 Q. Is --
20 A. Is there a document where I use that
21 term?
22 Q. Is the term "concerned" a term that
23 you're familiar with in the English language?
24 A. Yes.
25 Q. Does it have a meaning that you're

1 familiar with?

2 A. Yes

3 Q. Using the word "concerned" consistent

4 with the normal meaning that it has in the English

5 language, what Microsoft -- or what non-Microsoft

6 browsers were you concerned about in January of 1996?

7 A. Well, I think I would have been

8 concerned about Internet Explorer, what was going on

9 with it. We would have been looking at other

10 browsers that were in use at the time. Certainly

11 Navigator was one of those. And I don't know which

12 browser AOL was using at the time, but it was another

13 browser.

14 Q. What I'm asking, Mr. Gates, is what

15 other browsers or what non-Microsoft browsers were

16 you concerned about in January of 1996? I'm not

17 asking what you were looking at, although that may be

18 part of the answer, and I don't mean to exclude it,

19 but what non-Microsoft browsers were you concerned

20 about in January of 1996?

21 A. Well, our concern was to provide the

22 best Internet support, among other things, in

23 Windows. And in dealing with that concern, I'm sure

24 we looked at competitive products, including the ones

25 I mentioned.

1 Q. Let me try to use your words and see if
2 we can move this along. What competitive products
3 did you look at in January of 1996 in terms of
4 browsers?
5 A. I don't remember looking at any
6 specific products during that month.
7 Q. Were there specific competitive
8 products that in January of 1996 you wanted to
9 increase Microsoft's share with respect to those
10 products?
11 MR. HEINER: Objection.
12 Q. BY MR. BOIES: Do you understand the
13 question, Mr. Gates?
14 A. I'm pausing to see if I can understand
15 it.
16 Q. If you don't understand it, I'd be
17 happy to rephrase it.
18 A. Go ahead and rephrase it. I probably
19 could have understood it if I thought about it, but
20 go ahead.
21 Q. In January, 1996, you were aware that
22 there were non-Microsoft browsers that were being
23 marketed; is that correct?
24 A. I can't really confine it to that
25 month, but I'm sure in that time period I was aware

1 of other browsers being out.

2 Q. And were those non-Microsoft browsers,

3 or at least some of them, being marketed in

4 competition with Microsoft's browser?

5 A. Users were making choices about which

6 browser to select.

7 Q. Is the term "competition" a term that

8 you're familiar with, Mr. Gates?

9 A. Yes.

10 Q. And does it have a meaning in the

11 English language that you're familiar with?

12 A. Any lack of understanding of the

13 question doesn't stem from the use of that word.

14 Q. And you understand what is meant by

15 non-Microsoft browsers, do you not, sir?

16 A. No.

17 Q. You don't? Is that what you're telling

18 me? You don't understand what that means?

19 A. You'll have to be more specific.

20 What --

21 Q. Do you understand what is meant by

22 non-Microsoft browsers?

23 A. In the right context, I'd understand

24 that.

25 Q. Is the term non-Microsoft browser a

1 term that you think has a reasonably common and
2 understandable meaning in the industry?
3 A. Yes. It's only the scope of what you'd
4 include in it that would vary according to the
5 context.
6 Q. Okay. That is, in some contexts you'd
7 include more and in some contexts you'd include less?
8 A. That's right.
9 Q. When you refer to non-Microsoft
10 browsers generally, are there particular browsers
11 that you have in mind?
12 A. There are many that I would include in
13 that. And as I said, it would be broader depending
14 on the context.
15 Q. Do all of the non-Microsoft browsers
16 that you're aware of compete with Internet Explorer?
17 A. In the sense that users select which
18 browsers they want to use, yes.
19 Q. Let's focus on January of 1996. What
20 were the non-Microsoft browsers that, in your view,
21 were competing with Internet Explorer in January of
22 1996?
23 A. Well, users could choose from a number
24 of browsers, including the original Mosaic browser,
25 the Netscape Navigator, and I don't know what version

1 they had out at the time. The AOL browser. And some
2 others that were in the market.
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18 Q. What I want to do is I want to focus on
19 competition the way you use it in the ordinary
20 operation of your business.
21 A. And one of the senses is whether people
22 choose to use our way of providing a feature or if
23 they choose to get additional software to provide
24 them with that feature.
25 Q. And was that the choice that users were

1 making between Internet Explorer and the AOL browser
2 in January of 1996, Mr. Gates?
3 A. Users can choose between those two.
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2 Q. And what you've testified is that when

3 you use browser share, you meant usage share;

4 correct?

5 A. That's right.

6 Q. So that as you use the term browser

7 share, it is your testimony that in January of 1996

8 Microsoft was competing for browser share with

9 Mosaic, Navigator and AOL's browser; correct?

10 A. In the sense that users would choose to

11 use one of those in varying degrees, yes.

12 Q. But in terms of what you meant by

13 browser share, that was what you considered to be

14 competition in January of 1996; correct?

15 A. That we were competing to see who could

16 make the better browser that users would choose to

17 take advantage of, yes.

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2 Q. Let me try to go back now to the first

3 sentence in your memo of ~~January 5, 1996~~ Gov't Ex 295 that has

4 been marked as Exhibit 358 where it says, "Winning

5 Internet browser share is a very very important goal

6 for us." Does the prior discussion ~~that we've~~ just

7 had refresh your recollection that you would have

8 been referring primarily there to the goal of gaining

9 market share versus Netscape?

10 A. You keep trying to read Netscape into

11 that sentence and I don't see how you can do that.

12 Q. I just really want to get your

13 testimony, Mr. Gates.

14 A. Okay.

15 Q. And that is, when you wrote, "Winning

16 Internet browser share is a very very important goal

17 for us," in January, 1996, were you referring

18 primarily to gaining market share compared to

19 Netscape?

20 A. I've testified I don't remember what I

21 was thinking when I wrote that sentence.

22 Q. If you can't remember what you meant

23 when you wrote that sentence, do you at least

24 remember that in January, 1996, winning Internet

25 browser share was an important goal for Microsoft?

1 A. Yes.
2 Q. And with respect to the goal of winning
3 Internet browser share in 1996, was that goal
4 primarily to gain share compared to Netscape?
5 A. Not necessarily.
6 Q. When you talk about winning browser
7 share, not necessarily just in this document but
8 generally, you're referring to gaining market share
9 compared to other competitors; correct?
10 A. Or any new products that come along.
11 Q. That are competitive; correct?
12 A. That people use for that function.
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13 Q. Let me ask you to look at a document
14 that we will mark as ~~Exhibit 381~~ Gov. Ex. 297. The third item on
15 the first page is an e-mail from Paul Maritz to you
16 dated January 16, 1996. It is to you and a number of
17 other people, but you are the first there. Do you
18 see that?
19 A. Yes.
20 (The document referred to was marked
21 by the court reporter as ~~Government Exhibit 381~~ Gov. Trial Ex. 297 for
22 identification and is attached hereto.)
23 Q. BY MR. BOIES: Did you receive this
24 e-mail in January, 1996?
25 A. I don't remember receiving it, but I

1 have no reason to doubt that I did.

2 Q. The second sentence of Mr. Maritz's

3 e-mail to you says, "We need to look carefully at any

4 significant opportunity to gain share versus

5 Netscape." Do you see that?

6 A. That's part of the sentence that I see.

7 Q. The rest of the sentence says, "and

8 think carefully before AOL goes off and partners with

9 Netscape." Do you see that?

10 A. Yes.

11 Q. That's the rest of the sentence; right?

12 A. Right.

13 Q. Even though you don't recall receiving

14 this particular e-mail, do you recall Mr. Maritz

15 telling you in or about January of 1996 that he

16 believed that Microsoft had to look carefully at any

17 significant opportunity to gain share versus

18 Netscape?

19 A. No.

20 Q. Do you recall Mr. Maritz telling you in

21 or about January of 1996 that there was a possibility

22 that AOL was going to go off and partner with

23 Netscape?

24 A. I don't know the time frame, but I know

25 there was -- there came a time where AOL was

1 considering whether to keep doing their own browser
2 technology or work with someone else on that.
3 Q. And is that your understanding of what
4 Mr. Maritz was referring to when he talks about AOL
5 going off and partnering with Netscape?
6 A. -- It appears to be a mail about -- let me
7 take a look at it.
8 It appears to be a mail about OEMs
9 prominently featuring the AOL client in such a strong
10 way that anything we would do for AOL in that regard
11 would be of no impact and, therefore, that maybe we
12 should work with AOL on the browser.
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17 Q. Let me show you a document that has
18 been marked as ~~Exhibit 397~~ Gov. Ex. 478. This purports to be a
19 message to you and others from Brad Chase dated
20 March 13, 1997.
21 Did you receive this message in or
22 about March of 1997?
23 A. I don't remember receiving it. In
24 fact, it's very strange that the e-mail names aren't
25 expanded. But I probably received it.

1 (The document referred to was marked
2 by the court reporter as ~~Government Exhibit 397~~ Gov. Trial Ex. 478 for
3 identification and is attached hereto.)
4 Q. BY MR. BOIES: Let me go down to the
5 third paragraph of the document and the fifth
6 sentence ~~that~~ says "Browser share needs to remain a
7 key priority for our field and marketing efforts."
8 Do you see that?
9 A. In the third paragraph?
10 Q. Yes.
11 A. Okay, the third sentence, the third
12 paragraph. Yeah.
13 Q. Were you told in or about March of 1997
14 that people within Microsoft believed that browser
15 share needed to remain a key priority for your field
16 and marketing efforts?
17 A. I don't remember being told that, but I
18 wouldn't be surprised to hear that people were saying
19 that.
20 Q. Immediately before that sentence there
21 is a statement that Microsoft needs to continue its
22 jihad next year. Do you see that?
23 A. No.
24 Q. The sentence that says "Browser share
25 needs to remain a key priority for our field and

1 marketing efforts," the sentence right before that
2 says "we need to continue our jihad next year."
3 That's the way it ends. Do you see that?
4 A. Now I see -- it doesn't say Microsoft.
5 Q. Well, when it says "we" there, do you
6 understand that means something other than Microsoft,
7 sir?
8 A. It could mean Brad Chase's group.
9 Q. Well, this is a message from Brad Chase
10 to you, Brad Silverberg, Paul Maritz and Steve
11 Ballmer; correct?
12 A. As I say, it's strange that this -- if
13 this was a normal piece of e-mail, it wouldn't print
14 like that. I'm not aware of any way -- maybe there
15 is some way -- that e-mail ends up looking like this
16 when you print it out.
17 Q. I wasn't the one that was asserting it
18 was an e-mail. I don't know whether it is an e-mail
19 or memo or what it is. All I know is it was produced
20 to us by Microsoft. And the first line of it says
21 "To" and the first name there is "Bradsi." Do you
22 see that?
23 A. Uh-huh.
24 Q. Does that refer to Brad Silverberg?
25 A. Usually you can use that shorthand in

1 typing in someone's name, but when you print out
2 e-mail, it doesn't come out that way.
3 Q. Do you believe that the reference here
4 to "Bradsi" is a reference to Brad Silverberg, sir?
5 A. Yes.
6 Q. The next addressee is "Paulma." Do you
7 believe that that is Paul Maritz?
8 A. Yes.
9 Q. And the next addressee is "Steveb". Do
10 you believe that that is Steve Ballmer?
11 A. Yes.
12 Q. The next addressee is "Billg" and do
13 you believe that that is yourself?
14 A. Yes.
15 Q. And it says it's from "Bradc" and do
16 you believe that is Brad Chase?
17 A. Yes.
18 Q. Now, when Brad Chase writes to you and
19 the others "we need to continue our jihad next year,"
20 do you understand that he is referring to Microsoft
21 when he uses the word "we"?
22 A. No.
23 Q. What do you think he means when he uses
24 the word "we"?
25 A. I'm not sure.

1 Q. Do you know what he means by jihad?
2 A. I think he is referring to our vigorous
3 efforts to make a superior product and to market that
4 product.
5 Q. Now, what he says in the next sentence
6 is, "Browser share needs to remain a key priority for
7 our field and marketing efforts;" is that correct?
8 A. Yes.
9 Q. The field and marketing efforts were
10 not involved in product design or making an improved
11 browser, were they, sir?
12 A. No.
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