

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

STATE OF NEW YORK, ex rel.
Attorney General ELIOT SPITZER,
et al.,

Plaintiffs and
Counterclaim-Defendants,

v.

MICROSOFT CORPORATION,

Defendant and
Counterclaim-Plaintiff.

Civil Action No. 98-1233 (TPJ)

DECLARATION OF ERNEST VON SIMSON

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I, ERNEST VON SIMSON declare

- 1. In October 1999, I joined Ostriker, von Simson Inc. and its operating arm Cassius Advisors, a consultancy assisting large global enterprises in e-commerce related activities. I also serve on the boards of directors and advisors of several web product and service providers.**
- 2. For the previous 25 years, I was senior partner and co-founder of the Research Board, a private sector think tank and forum, serving top Chief Information Officers of over 100 of the largest firms in North America and Europe. There I directed research on a variety of areas including IT best practices, advanced technologies and the ever-evolving business models of suppliers large and small in the computing and communications sectors. The Research Board's widely acknowledged prestige and influence resulted from the caliber of the membership, the scale of enterprises represented and the quality and objectivity of the research. (As one measure of this objectivity, we accepted no revenues from companies in the computing and communications sectors.) As a consequence, the Research Board's regular meetings and research processes received very high levels of cooperation from the CEOs and other top executives of all the major computing companies including Microsoft as well as Apple, Compaq, Dell, Hewlett-Packard, IBM, Oracle, SAP, Sun and many others.**
- 3. I have examined the remedies proposed by the plaintiffs in the Microsoft case in the context of my experience. And provided my personal view of their likely impact on large corporate information technology customers based on two criteria:**
 - a. That the remedies will foster competition and greater innovation in the technology sector. Such increases in competition and innovation will have broad benefits for large enterprises.**
 - b. That the remedies cause no significant harm or inconvenience to large business enterprises.**

4. The structural separation of Microsoft into an operating system company and an applications/internet company would meet both criteria.
 - a. It would increase competition and innovation. As one example, I would expect the applications/internet company to make widely used Microsoft applications like Office available to the users of non-Microsoft operating systems. The importance of this availability cannot be overstated as Office components like Word have become de facto document exchange standards for many very large businesses. The costs of switching to another set of office products would be unacceptably high for most enterprises. And so the unavailability of Office on other operating systems has doubtless retarded the acceptance of those operating systems in the some important business markets.
 - b. Equally, I would expect the Microsoft operating system company to work actively to attract and assist the suppliers of all applications including those in competition with the Microsoft applications/internet company. The innovation brought through increased competition can only benefit businesses large and small.
 - c. This separation would not cause significant inconvenience to large enterprises, including those that already buy non-Microsoft products on a routine basis.
 - d. In my view, this separation is much preferable to any other separation or conduct remedy suggested by the press and elsewhere. Specifically, the separation of Microsoft into several operating system companies would cause significant disruption to large enterprises, in my view. The proposed separation will not do that. And it is clearly less intrusive and bureaucratic than conduct remedies that require perpetual monitoring and market interference.

5. Most of the proposed conduct remedies would provide interim impetus to competition.
- a. The legal requirements for interfaces that are both open and fully disclosed, and for restrictions against discriminatory practices with OEMs would simply match practices followed voluntarily to some degree by most of the computer industry for many years. By ensuring open and complete access to all information necessary to interoperate with the Microsoft operating systems, they would assist independent software developers in bringing innovative products to market on a much more timely and efficient basis. Thus they would support not harm the interests of large enterprises.
 - b. Other pro-competition provisions may be less helpful to some large enterprises in the near term (though they could be desirable in other markets). But fortunately, the proposed remedies leave large enterprises the choice of either taking the new options or acquiring a complete Microsoft solution as they do today. In this realm, are the provisions allowing OEMs to delete Microsoft icons while substituting their own icons and products; or the provisions allowing OEMs to introduce their own opening screens. Some large enterprises will opt not to take advantage of these provisions for a variety of sound business reasons. But other types of corporate customers or end-user consumers might choose differently. The proposed remedies permit all a choice which is not available today.

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Jose, CA on April 27, 2000



Ernest von Simson

Curriculum Vitae

Ernest von Simson is a Senior Partner of Cassius Advisors, a trans Atlantic consultancy he co-founded with facilities in New York, London and Muenster, Germany. The firm assists the largest worldwide enterprises deploy non-financial resources and knowledge assets to become the partners of choice to select e-commerce providers. Clients include British Petroleum, Daimler-Chrysler, Dow Chemical, Fedex and JP Morgan.

Mr. von Simson was also the co-founder and senior partner of the Research Board, a private sector think tank sponsored by the top IT executives from financial services, retail, transportation and manufacturing. A sampling of service sector members included ABM/AMRO, Allianz, American Airlines, American Express, AXA, Bechtel, British Airways, Cigna, Citicorp, Dresdner Bank, Home Depot, NationsBank, Natwest, Prudential, Schwab, USAA, Wal-mart and Zurich Insurance.

Mr. von Simson had full responsibility for the research staff and all aspects of assessing the practical economics of current and upcoming information technologies. The firm was also expert on the business models and strategies of technology companies from Microsoft, Sun, Oracle and IBM to the newest group of B2B e-commerce providers.

Previously, he was Director of Research at the Diebold Group and systems executive for a large insurance company. He holds a BA from Brown University and a MBA from New York University. He is on the Boards of Directors of Asera, Icarian, LinuxCare and Spotwired, and chairs the advisory board of E.piphany. His articles have been published by Harvard Business Review, Fortune, Leaders, Computerworld and other publications.