

**From:** Alex Hochberger  
**To:** 'microsoft.atr(a)usdoj.gov'  
**Date:** 11/17/01 3:21am  
**Subject:** The current settlement fails to address the issues

I am a small business owner that has worked in the computer industry for 5 years, as well an active enthusiast for over 10 years. While I applaud the attempts to negotiate a settlement and remove the uncertainty in the computer industry, I fear that the short-term gain is outweighed by the long-term consequences.

The primary problems that I have with the settlement is that there is nothing in it that punishes Microsoft for their illegal actions, and does nothing to remove the gains that they have made through anti-trust violations over the past 5 years.

As a result of Netscape's experiences, it is impossible to get venture capital or angel funding in any market that Microsoft currently has a presence. The rest of the computer industry is unable to go into business against Microsoft, because of a belief that they will change their APIs or otherwise undermine the validity of your business.

The problem is not that Microsoft is a fierce competitor; the problem is that any software business must reach customers on Microsoft desktop computers. Despite the positions of Apple and Linux in some niche markets, computer software will not work without reaching Microsoft desktops.

Given trends over the past few years of not charging consumers directly (particularly for software), this puts the remainder of the computer industry in a difficult position. As Kodak saw with their printing services being pushed aside by XP's printing services, it doesn't matter if consumers choose to install your software, Microsoft will change their system to force their choices upon the consumer.

I support Microsoft's ability to innovate, but the rest of the industry must be allowed to innovate as well. It is impossible to innovate in an environment where your competitor controls the ground rules of the engagement.

The most interesting effect of a structural remedy would be allowing a Microsoft OS company to continue reaping the monopoly rents for the shareholders, while the applications company would need to compete on equal footing with the rest of the industry because the OS company would have no incentive to provide unique access to the Microsoft applications company.

Without a structural remedy, the agreement must accomplish the goals of allowing open access for all companies to consumers utilizing the Microsoft desktop operating system. Further, Microsoft must be prevented from utilizing its current monopoly to stop competition from Linux and other Open

Source software initiatives.

The provisions allowing Microsoft to disclose their protocols and APIs must be strengthened to prevent the security exemption (which is unnecessary, proper protocol security is not undermined by revealing the source code, protocol security should be mathematically secure, not obscured in the software source code) from shielding the important interoperation protocols. Further, the disclosure should be public disclosure, not limited to people under NDA at a Microsoft facility. Several of Microsoft's new competitors (Red Hat, Suse, Sun Microsystems, etc.) rely upon technology that is build in open source projects under the GNU General Public License. For these companies to compete, people without nondisclosure agreements must be able to access and work with the protocol specifications.

As Microsoft is found to have a monopoly in the desktop operating systems market alone, these restrictions should be limited to the desktop environment.

I propose that all protocols utilized by Microsoft (any exchange of information between software included in any distribution of Microsoft desktop software with another computer) have a detailed specification released into the public domain. If protocols are found that are not documented, Microsoft should be fined severely and the source code to the Windows operating system that communicates with those protocols should also be released into the public domain. Additionally, if specifications are found to be erroneous, the source code should be released into the public domain.

Microsoft should not be able to gain an advantage in any market as a result of their desktop operating system monopoly. Any attempts to do so should result in severe penalties.

Microsoft should be prohibited from providing any services that generate revenue for Microsoft with the operating system. Microsoft should be forced to compete on equal footing with third parties for this business.

Microsoft's MSN service is able to compete with AOL in large part because Microsoft leveraged its desktop monopoly to place MSN in a prominent location, while AOL was forced to reach deals with OEMs.

While Microsoft will maintain an advantage as a result of having a business relationship with the OEMs, they should be forced to compete with third parties. OEMs should be able to bundle commercial services with the computers (including those from Microsoft), but allowing Microsoft to skip this stage allows them to leverage their monopoly.

Microsoft should be able to include any reasonable amount of technology with the operating system. However, if this technology is part of a service, Microsoft should not be able to leverage their position to achieve this goal.

For retail versions of the software, Microsoft should not be allowed to bundle the services. Allow them to sell or give away CDs that provide this software, or allow users to download any service that they want. However, Microsoft should not be able to force the user to have their services accessed (or have the operating system offer to let you download their software).

Microsoft should be forced to fully document their new technology 9 months before the retail version of the software is released. When Microsoft announced that IE was going to be bundled with Windows, Netscape should have had the full documentation for how this occurred. Netscape should have had an opportunity to let users replace the bundled Internet explorer with a fully integrated Netscape system.

I wish to see Microsoft encouraged to innovate in the technology sector without preventing competition by the nature of their desktop monopoly.

Sincerely,  
Alex M. Hochberger

-----  
Alex M. Hochberger, CEO, Chairman  
Feratech, Inc.  
123 Newbury Street, Third Floor  
Boston, MA 02116  
Phone: 617-517-9343  
Cel: 617-821-6015  
Email: alex@feratech.com  
Web: <http://www.feratech.com>