

**From:** cmprice  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

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**CC:** cmprice@gte.net@inetgw

From: Patrick J. Ricevuto  
5129 147th PL. S.E.  
Everett, Washington 98208  
425-337-7398  
November 26, 2001

To whom it may concern,

First, thank you for taking the time to review my comments concerning the U.S vs. Microsoft Antitrust Case's Final Judgment.

Included in the following are my questions, critiques, and comments on specific parts of the Final Judgment. I will start with section VI. Definitions, then will address the remaining sections; III. Prohibited Conduct through V. Termination.

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section VI. Definitions: B:

"Communications Protocol" means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network.

My comment:

?server operating system product? has not been defined anywhere in this document.

My solution:

Specifically define ?server operating system product? as:

Server Operating Systems:

Microsoft(R) Small Business Server 2000  
Microsoft(R) Systems Management Server 2.0  
Microsoft(R) Windows 2000(R) Advanced Server  
Microsoft(R) Windows NT(R) Server 4.0  
Microsoft(R) Windows NT(R) Server, Enterprise Edition  
Microsoft(R) Windows(R) 2000 Server

and any future releases not named specifically, but created within the penalty period.

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section VI. Definitions: U:

"Windows Operating System Product" means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

My comment:

"Windows Operating System Product" definition should include ALL of Microsoft's Operating Systems:

My solution:

Define "Windows Operating System Product" as follows:

Server Operating Systems:

Microsoft(R) Small Business Server 2000

Microsoft(R) Systems Management Server 2.0  
Microsoft(R) Windows 2000(R) Advanced Server  
Microsoft(R) Windows NT(R) Server 4.0  
Microsoft(R) Windows NT(R) Server, Enterprise Edition  
Microsoft(R) Windows(R) 2000 Server

Operating Systems:

Microsoft(R) Windows Services for UNIX  
Microsoft(R) Windows XP Home Edition  
Microsoft(R) Windows XP Professional  
Microsoft(R) Interix 2.2  
Microsoft(R) Small Business Server 2000  
Microsoft(R) Windows Millennium Edition  
Microsoft(R) Windows NT(R) Embedded 4.0  
Microsoft(R) Windows NT(R) Workstation 4.0  
Microsoft(R) Windows(R) 2000 Professional  
Microsoft(R) Windows(R) 95 Version Upgrade  
Microsoft(R) Windows(R) 98 Second Edition  
Microsoft(R) Windows(R) CE  
Microsoft(R) Windows(R) Smart Card Toolkit

and any future releases not named specifically, but created within the penalty period.

Concern#1: By starting with Windows 2000 Professional you have left out about 90% of all the Operating Systems currently in use by the public and that Microsoft is maintaining with continuing Service Packs.

Concern#2: You have not mentioned any of the Server Operating Systems in the definition. The Consumer Operating System's code is just a subset of the Server Operating System code.

Question#1: So all of them are exempt?

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III. Prohibited Conduct. B.2:  
the schedule may specify reasonable volume discounts based upon the actual volume of licenses of any Windows Operating System Product or any group of such products; and

Question#1:  
Who defines reasonable? Microsoft?

Concern#1:  
What if Microsoft determines that a reasonable volume discount is greater for company X than it is for company Y, to punish company Y for something Microsoft didn't like them doing?

My Solution:  
Specifically define a standard table of percentage discounts for numbers of actual volume of licenses. e.g. for 10,000 - 20,000 licenses the volume discount would be 2% (some average industry number).

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III. Prohibited Conduct. B.3.b:  
such discounts are based on objective, verifiable criteria that shall be applied and enforced on a uniform basis for all Covered OEMs; and

Question#1:  
What is the ?objective, verifiable criteria??

Concern#1:  
That ?objective, verifiable criteria? is not specifically spelled out in this document.

My Solution:

Specifically define "objective, verifiable criteria" in this document.

Question#2:

Who defines the "objective, verifiable criteria"? Microsoft?

Concern#1:

That "objective, verifiable criteria" is defined by Microsoft.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define "objective, verifiable criteria" in this document.

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III. Prohibited Conduct. C.1:

Installing, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware or any product or service (including but not limited to IAP products or services) that distributes, uses, promotes, or supports any Non-Microsoft Middleware, on the desktop or Start menu, or icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products.

Question#1:

Who defines "types of functionality"? Microsoft?

Concern#1:

That "types of functionality" is not specifically spelled out in this document.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define "types of functionality" in this document.

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III. Prohibited Conduct. D:

Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ("MSDN") or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

Question#1:

Who defines "Timely Manner"? Microsoft?

Concern#1:

That "Timely Manner" is not specifically spelled out in this document.

My Solution:

Specifically define "Timely Manner" in this document to be the same as a new major version of Microsoft Middleware: "shall occur no later than the last major beta test release of that Microsoft Operating System Product".

Question#1:

What is the definition of Beta test?

Concern#1:

That ?Beta test? is not specifically spelled out in this document.

My Solution:

Specifically define ?Beta test? in this document to be the same as the Industry understands it (the last stage of testing before the product is released for consumer purchase).

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III. Prohibited Conduct. F.2:

Microsoft shall not enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, except that Microsoft may enter into agreements that place limitations on an ISV's development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft.

Question#1:

Who defines the ?reasonably necessary to and of reasonable scope and duration?? Microsoft?

Concern#1:

That ?reasonably necessary to and of reasonable scope and duration? is defined by Microsoft.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define ?reasonably necessary to and of reasonable scope and duration? in this document.

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III. Prohibited Conduct. G.1:

any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software, or

Comment#1:

Microsoft has already been proven to act in BAD faith, that?s why this document was created. They should not be allowed to make that judgment themselves.

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III. Prohibited Conduct. G:

Nothing in this section shall prohibit Microsoft from entering into (a) any bona fide joint venture or (b) any joint development or joint services arrangement with any ISV, IHV, IAP, ICP, or OEM for a new product, technology or service, or any material value-add to an existing product, technology or service, in which both Microsoft and the ISV, IHV, IAP, ICP, or OEM contribute significant developer or other resources, that prohibits such entity from competing with the object of the joint venture or other arrangement for a reasonable period of time.

Question#1:

What in this document is going to prevent Microsoft from entering into a bona fide joint venture, etc. and using that ?ownership? as a way of forcing the OEM, etc. to do what Microsoft wants?

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should be allowed to scrutinize all of Microsofts joint venture, etc. proposals, before they are entered into, and all through their existence.

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III. Prohibited Conduct. H.1:

Allow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product by (a) displaying or removing icons, shortcuts, or menu entries on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict the display of icons, shortcuts, or menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products; and (b) enabling or disabling automatic invocations pursuant to Section III.C.3 of this Final Judgment that are used to launch Non-Microsoft Middleware Products or Microsoft Middleware Products. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access (as described in this subsection III.H.1) and altering default invocations (as described in the following subsection III.H.2) with regard to each such Microsoft Middleware Product or Non-Microsoft Middleware Product and may offer the end-user a separate and unbiased choice of enabling or removing access and altering default configurations as to all Microsoft Middleware Products as a group or all Non-Microsoft Middleware Products as a group.

Question#1:

Who defines ?types of functionality?? Microsoft?

Concern#1:

That ?types of functionality? is not specifically spelled out in this document.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define ?types of functionality? in this document.

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III. Prohibited Conduct. H.2 (the second 2):

that designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement (e.g., a requirement to be able to host a particular ActiveX control) that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.

Question#1:

Who defines ?reasonable technical requirement?? Microsoft?

Concern#1:

That ?reasonable technical requirement? is not specifically spelled out in this document.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define "reasonable technical requirement" in this document.

Comment#1:

This is exactly how Microsoft gains control of the market for a piece of software. They require the developer to use Microsoft's proprietary code for a specific function to work.

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III. Prohibited Conduct. J and J.1:

No provision of this Final Judgment shall:

Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.

Question#1:

Who determines if it would "compromise the security of a particular installation...?" Microsoft?

Concern#1:

That Microsoft can add "security code" to any piece of code in any product, which would in effect, make this whole document null and void.

My Solution:

The Plaintiffs (the States, Industry Leaders, and Consumer Groups, none of which would be aligned with or pro-Microsoft) should specifically define "compromise the security of a particular installation..." in this document.

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IV. Compliance and Enforcement Procedures. A.2.a & b:

Access during normal office hours to inspect any and all source code, books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Microsoft, which may have counsel present, regarding any matters contained in this Final Judgment.

Subject to the reasonable convenience of Microsoft and without restraint or interference from it, to interview, informally or on the record, officers, employees, or agents of Microsoft, who may have counsel present, regarding any matters contained in this Final Judgment.

Question#1:

Can counsel advise Microsoft not to make its code available to the Plaintiffs? Or is counsel in a passive role?

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IV. Compliance and Enforcement Procedures. A.4:

The Plaintiffs shall have the authority to seek such orders as are necessary from the Court to enforce this Final Judgment, provided, however, that the Plaintiffs shall afford Microsoft a reasonable opportunity to cure alleged violations of Sections III.C, III.D, III.E and III.H, provided further that any action by Microsoft to cure any such violation shall not be a defense to enforcement with respect to any knowing, willful or systematic violations.

Question#1:

Why is Microsoft given ?reasonable opportunity to cure alleged violations??

My Solution#1:

Microsoft should NOT be allowed to ?cure alleged violations?. They should be punished immediately. That is why this document was written.

Question#2:

Why are only Sections III.C, III.D, III.E and III.H mentioned?

My Solution#1:

Any violation of any section in this document should be punishable immediately. That is why this document was written.

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IV. Compliance and Enforcement Procedures. B.2.a & b & c:  
The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

Question#1:

Why shouldn't the TC members have a conflict of interest?

My Solution#1:

All the TC members should be either neutral or biased AGAINST Microsoft to ensure the toughest possible scrutiny. They don't necessarily have to act on every violation they find, but they should find ALL of them.

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IV. Compliance and Enforcement Procedures. B.3:  
Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

Question#1:

Why should Microsoft have any representation on the TC?

My Solution#1:

All the TC members should be either neutral or biased AGAINST Microsoft to ensure the toughest possible scrutiny. Microsoft should not have in any way, the means to delay, prevent, etc. any ability to scrutinize, find, disclose, etc. any violations. That's what this document is all about.

Comment#1:

The way it is set up now, you would get the following TC members:  
1 possibly biased against Microsoft (the Plaintiffs choice. Note: if this includes the U.S. Justice Department then this is probably biased for Microsoft).

1 completely biased for Microsoft (the Microsoft choice).

1 probably biased for Microsoft (since the world in 90% Microsoft OS's)

So that's 2 pro Microsoft TC members who are supposed to be watching for Microsoft violations.

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IV. Compliance and Enforcement Procedures. B.5:  
If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in Section IV.B.3.

Question#1:  
Why should the U.S. determine that a member of the TC failed to act...?

My Solution#1:  
It should be the Plaintiffs, excluding the U.S. Justice Department, that determines that a member of the TC failed to act...

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IV. Compliance and Enforcement Procedures. C.1:  
Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

Question#1:  
Why should Microsoft designate an internal Compliance Officer who shall be an employee of Microsoft...?

My Solution#1:  
It should be the Plaintiffs, excluding the U.S. Justice Department, that designate an internal Compliance Officer, who is NOT an employee of Microsoft...

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IV. Compliance and Enforcement Procedures. C.3.g:  
receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in Section IV.D below; and

Question#1:  
How does this prevent the Microsoft employee (Compliance Officer) from filtering the complaints?

My Solution#1:  
It should be the Plaintiffs, excluding the U.S. Justice Department, that designate an internal Compliance Officer, who is NOT an employee of Microsoft...

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V. Termination. A:  
Unless this Court grants an extension, this Final Judgment will expire on the fifth anniversary of the date it is entered by the Court.

Question#1:  
Why, and How, was 5 years chosen?

Comment#1:  
This is NOT long enough. Microsoft has been violating antitrust laws for years.

My Solution:  
At a minimum, they should be punished for the same amount of years that they have been violating the antitrust laws, so their competitors can make up the lost ground.

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V. Termination. B:

In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

Question#1:

Why, and How, was just a one-time extension of this Final Judgment of up to two years chosen?

My Solution:

Both should be changed as follows:  
?one-time extension? should be at least a three time extension, and  
?two years? should at least be 5 years.

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Other Questions:

Question#1:

What are the current penalties for all of the years of violating the antitrust laws? Nothing?

My Solution:

They should be penalized 80% of their cash holdings as of today. The monies should be made available as Hi Tech Venture Capital. This will accomplish a couple of things:

- 1) Will punish Microsoft, but not destroy them, by taking away their ability to control the markets with their huge cash reserves.
- 2) Will deplete their reserve monies that were gotten illegally.
- 3) Will provide money to create new markets, via Venture capital, that will compete with Microsoft.

Question#2:

Where, in this document, are the penalties for future violations of the antitrust laws ? Go back to Court for another 4 years?

My Solution:

Define in this document a monetary fine for each type of violation in addition to going to court for more punishment.

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Other Comments:

This is about justice, not economics!

The attempt to make this an economic argument is disingenuous. Punishing Microsoft will NOT hurt the economy. It will help the economy.

There will be hundreds of new companies, with new products, that will not be afraid that Microsoft will either steal, intimidate them out of, or buy their ideas. That's what we lost all of those years that Microsoft was allowed to violate antitrust laws. The market place will continue to prosper, as long as the entrepreneurs are not afraid of losing their original ideas.

Sincerely,

Pat Ricevuto

email: cmprice@gte.net

11-26-01.