From: Aaron Katz
To: Microsoft ATR
Date: 12/17/01 8:35am
Subject: Microsoft Settlement

I would like to express my opposition to the settlement in the Microsoft antitrust case. I am not a lawyer but a user of personal computers, a tool essential to my livelihood for approximately 20 years. I have used many personal computing operating systems over the years, including those made by Microsoft (MSDOS, Windows 3.11, Windows 95, Windows 98, Windows ME, Windows NT 4.0 and Windows XP Pro), Amiga, Commodore, IBM, Texas Instruments and Apple Computer. My opinion is that operating systems other than Microsoft's have been superior in features and performance at each stage of development of the personal computing platform. Yet Microsoft achieved a monopoly, i.e. in excess of 70 percent of the personal computer market. Microsoft's illegal behavior in maintaining and expanding that monopoly to in excess of 90 per cent of the market effectively destroyed all existing competitive personal computing operating systems in the process, save one, and perhaps prevented others from being developed.

I am firmly opposed to the settlement for three principal reasons. First, the settlement does not in any way compensate for the effects of Microsoft's illegal maintenance of a monopoly. Second, it forecloses further pursuit of illegal tying. Third, its attempt to prevent future illegal monopolistic behavior is inadequate.

Microsoft stands convicted after appeal of conducting illegal acts to maintain its monopoly of personal computer operating systems. Microsoft's illegal acts certainly have cost consumers billions of dollars directly and possibly much more by preventing the development of alternatives. We will never know what we've lost as a result of illegally stifled competition. Yet the settlement does not provide even a minuscule penalty for the deleterious results of Microsoft's egregiously illegal behavior. It simply dismisses this and proceeds with a lame attempt to prevent a continuation of such illegal behavior. No corrective action of any type that simply attempts to put Microsoft on a legal course can be reasonably construed to be a penalty of any sort. A penalty is required and none is provided by the settlement.

Microsoft was also convicted of illegally tying its products to its monopoly operating system but that conviction was overturned on appeal based on the standard used by the District Court judge to convict Microsoft. The issue was remanded to the District Court for further consideration. A decision to not pursue the illegal tying issue is formalized in the settlement even though the Justice Department announced that it would not pursue it before entering into the settlement. In my experience it is indeed Microsoft's tying of its products to its monopoly operating system that has been the most

damaging to competition in the personal computing market. Microsoft was initially found guilty of illegal tying and the remanded issue should be pursued. The settlement formally forecloses the opportunity to do so.

Finally, the settlement is inadequate to prevent Microsoft from continuing its practices of illegally maintaining its monopoly. Clearly, Microsoft is an unrepentant criminal. As an example, its CEO Steve Ballmer was quoted as stating that he does not even know what a monopoly is after Microsoft was convicted of being one. It is totally incredulous to believe that Microsoft will simply go forth and be a good corporate citizen. While the settlement contains provisions to enforce its restrictions through oversight, the burden is on the government to catch Microsoft in the act and, if so, then Microsoft is simply returned once again to proceedings such as these. Where is the incentive for Microsoft to comply? My mind boggles in that this is the second time that a settlement of this nature has been reached with the same convict. The second is no more satisfactory than the first. Any resolution of this case against Microsoft must provide appropriate incentives for the unrepentant criminal to comply with the law.

Sincerely,

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