

From: Dr. Arthur C. Sucusy
To: Microsoft ATR
Date: 1/9/02 12:04pm
Subject: Microsoft Antitrust Case

Dear Attorney General Ashcroft,

More than a year and a half ago I wrote the following e-mail to Texas Federal Senators. It basically gives a layman's point-of-view on the Federal Antitrust Prosecution of Microsoft at that time. You may wish only to scan the contents at this time.

"Dear Senators,

My understanding of the Federal Anti-trust Laws is that they were intended to protect the general public from any economic or physical harm, which may be caused by collusion among individuals and companies on product price or product availability.

When Judge Thomas Jackson ruled last November that Microsoft violated Federal Antitrust Laws, he gave no indication that Microsoft had in any way harmed the public. This seems to me to have missed the first test on application of the law. In fact, there are many of us (public) who believe that Microsoft has made a tremendous contribution to the public through the process of establishing a workable system of communication through the Internet.

There is no doubt that Microsoft has harmed its competitors through the competitors' inability to compete strongly. But this is a clear indication that the purpose of the Anti-trust Laws is functioning; i.e, fierce competition. If Microsoft had driven its competitors out of business and then raised prices beyond reasonable limits or limited product availability, that would be a different matter. But, they have not done that.

If I were a Microsoft competitor, I would be much tempted to be in court claiming "foul", because that is the easiest way to gain an advantage. I don't know what motivated Judge Jackson to his conclusion, but if he was influenced by competitors' claims of pain, he should have had one more reason to recognize that no anti-trust violation existed.

We might also consider the matter of "bundling", which has been a "red herring" in this whole situation. I recently bought a Cadillac Deville and wanted the Convenience Package. However, the "bundle" included a compass, which I didn't want. Was I hurt, when I took the "bundle"? Yes. Did I have an option to not take the "bundle"? Yes. Can I expect that the Federal Justice Department will soon be suing General Motors for infringement of Anti-trust Laws? You may want to answer that one.

Some have said that present Anti-trust Laws are out-moded and need to be brought up to date. I do not believe that is so. Violation of the present law is a serious matter. As in most categories of civil or criminal violation, a violation is committed by an individual or a group of individuals, who have seriously damaged the public. The retribution for such damage is jail time, with the ancillary advantage of discouraging future potential violators from similar action. Have Bill Gates and perhaps other members of Microsoft violated Federal Antitrust Laws? If so, they should get jail time. If jail time seems inappropriate, one should then re-ask whether there has been a violation.

Human beings tend to enjoy positions of power and authority, and Federal Prosecutors are no exception. What better way is there for a Federal Prosecutor to obtain recognition than to prosecute one of the largest corporations in the world? If we can't get Bill Gates directly, we'll get him indirectly, even if we can't prove our case to the extent to give him jail time.

Such action by the Justice Department is not prosecution. It is persecution

and should not be permitted. We have already seen the difficulties caused by the Spanish Inquisition. The purpose of government is to establish and maintain a reasonably fair playing field. When there is a winner, it is not government's role to take away the prize because other contenders did not have the capability to compete. If government does that, it is meddling.

We now have 19 states and others, for a total of 28 organizations, also suing Microsoft for anti-trust violations. One must ask whether these are legitimate suits or whether because of our litigious society these appendages are using the previous good reputation of the Federal Government to obtain windfalls in damage settlements.

Dear Senators, I have earlier said that I believe the present Anti-trust Laws are satisfactory for today's society. However, with subsequent sociological changes in our society since the establishment of those laws, it is probably appropriate for Congress in general and the Senate in particular to more specifically define these laws in order to avoid persecution by aggressive career seekers in the Justice Department.

Through Justice Department persecution, Microsoft is being seriously hurt financially and in their ability to concentrate on continued innovation to further develop the Internet and related communication devices. This is a disadvantage to the general public, and you may want to consider some form of specific intervention to bring this matter to a quick conclusion. The law enforcement people are obviously confused, and I humbly suggest that it is up to Congress to show leadership.

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I recently had a phone call from a Microsoft employee. He had a hazy knowledge concerning the above e-mail. While Microsoft was not copied, and I do not know how that e-mail came to his attention, it was not private. The Microsoft employee advised me that part of the recent agreement between Microsoft and the Federal Department of Justice required a time period for the public to comment. The Microsoft employee indirectly asked me to comment to you on their behalf. In fact, he had drafted a letter for my approval and signature, and which I chose not to use.

I am pleased that this case is being concluded. In retrospect, I believe a Justice Department investigation should have been initiated, but a case should not have been filed.

My experience with commercial matters has led me to conclude that Microsoft was aggressive in their business practices but not illegal and in no way damaged the public.

I have been advised that Microsoft will design future versions of Windows to provide a mechanism to make it easy for computer makers, consumers and software developers (competitors) to promote non-Microsoft software within Windows. The mechanism will make it easy to add or remove access to features built into Windows or into non-Microsoft software. Consumers will have the freedom to choose to change their configuration at any time.

Such concession on the part of Microsoft goes well beyond what I consider a reasonable settlement. Consumers have always had the option to use non-Microsoft software. They have used Microsoft, because it is better than competitive offerings.

Let's finish up the Agreement, close down the case, let Microsoft take its unjust penalties, and get on with our business of building a better country.

For those who may suspect that I have an ulterior motive in writing this e-mail, let me say that I receive

no special benefit from Microsoft, have never worked for the Company, have no friends or family that have ever worked for the Company, and that less than 2% of my stock portfolio is in Microsoft stock.

Respectfully yours,
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