From: William A. Ogden
To: Microsoft ATR
Date: 1/17/02 11:48am
Subject: Microsoft Settlement

Good Day,

Since college in the mid seventies, I am and have been a computer industry professional. Starting with main frame computers I moved to microcomputers in the late seventies. During the intervening years, I have been involved in programming solutions in FORTRAN to BASIC, from dBase IV to FoxBase, and from MS Access to FileMaker Pro. Working with CPM, Apple DOS, MS/DOS, Mac OS, and Windows, I provided a variety of professional computer services. I have designed, implemented and maintained network architectures. I have setup and maintained e-mail servers, file servers, web servers and many other network based services. I feel well qualified to comment on the proposed agreement between Microsoft and the United States Justice Department.

In the early days, I watched as Microsoft brought a level of professionalism lacking in much of the microcomputer industry. Their products, such as "Microsoft's CPM Card", were well thought out and implemented. Later, their GUI windowing products for the Mac OS were some of the best of class. Developed and available years before Microsoft Windows became popular, in the early nineties.

However since the mid to late eighties I have seen a change in Microsoft's professionalism. Rather than present products based wholly upon merit, which they did in the beginning, they began using questionable tactics to eliminate their competition. These questionable tactics, eventually found illegal by the courts, have eliminated my ability to choose which product I deemed best.

Watching the Microsoft anti trust trial during the last few years, I have been fascinated by the ups and downs of the case and also frustrated by it?s lack of progress. I have followed the trial?s proceedings in the news and have read many of the published legal papers. I am amazed by the number of times Microsoft?s representatives twisted words and meanings in their testimonies, giving all observers, including the judge, an impression of deceit.

Now Microsoft is guilty of breaking the law. The trial court said so and the Appeals Court affirmed it, unanimously 7 to 0.

And that takes us to the recent agreement between Microsoft and The Justice Department. Where, after reading the settlement agreement, I find no penalty and no punishment for Microsoft. Does this mean Microsoft is exempt from the Rule of Law?

What I do find is the Agreement regulates Microsoft's behavior, much like the agreement in 1994 where Microsoft consented ?to refrain from anticompetitive bundling and licensing of its Windows operating system.? (CNET News.com-September 25, 1997) And of course it was Microsoft?s ignoring this decree that gave rise to the anti trust case. And even if the intent of today's Proposed Agreement is followed honestly and ethically, Microsoft?s past successes using these, proposed banned, behaviors make any behavioral remedy moot. All effective competition has been eliminated, so how are behavior limitations on Microsoft going to jump start competition? Plus the Proposed Agreement puts Microsoft in charge as all competitors are under the requirement ?that the licensee?(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft...?.(section J 2(b),(c)) And even Microsoft could not meet the requirements under section J 2(a) of the Proposed Agreement.

?"Microsoft has demonstrated time and again that through their sheer power and immense wealth, they can easily evade behavioral remedies designed to constrain their unlawful activity," said Edward J. Black, president of the Computer and Communications Industry Association, which backs Microsoft's corporate adversaries.?
(www.nytimes.com/2001/09/07/technology/07LOBB.html)

Let me finish by asking the questions. How can any settlement with Microsoft be just five years? Particularly when section D requiring disclosure, and section H, of the Proposed Agreement does not require Microsoft?s compliance for a year. How can any law breaker, proven and affirmed to be so in a court of law, not be punished? If you have enough money and you burn someone?s house down, we let you go if you promise not to do it again. How can we, as a country based on the rule of law, allow a company proven to have broken that law, benefit from their crime and there be no material consequences.

I ask you to please find a way to bring fairness and open competition back to our industry. Let new ideas find a fertile environment to flourish. Please let the market place, not Microsoft?s special interests, determine what software products and internet services I purchase and support.

Thank you,

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