From: Dan Zubairi
To: Microsoft ATR
Date: 1/23/02 12:29pm
Subject: Microsoft Settlement

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement. As an experienced technical consultant, I would like to point out the following reasons why I do NOT support the proposed settlement:

I. The PFJ doesn't take into account Windows-compatible competing operating systems

A) Microsoft increases the Applications Barrier to Entry by using restrictive license terms and intentional incompatibilities. Yet the PFJ fails to prohibit this, and even contributes to this part of the Applications Barrier to Entry.

II. The PFJ Contains Misleading and Overly Narrow Definitions and Provisions

A) The PFJ supposedly makes Microsoft publish its secret APIs, but it defines "API" so narrowly that many important APIs are not covered.
B) The PFJ supposedly allows users to replace Microsoft Middleware with competing middleware, but it defines "Microsoft Middleware" so narrowly that the next version of Windows might not be covered at all.
C) The PFJ allows users to replace Microsoft Java with a competitor's product -- but Microsoft is replacing Java with .NET. The PFJ should therefore allow users to replace Microsoft.NET, and subsequent similar products with competing middleware.
D) The PFJ supposedly applies to "Windows", but it defines that term so narrowly that it doesn't cover Windows XP Tablet PC Edition, Windows CE, Pocket PC, or the X-Box -- operating systems that all use the Win32 API and are advertized as being "Windows Powered".
E) The PFJ fails to require advance notice of technical requirements, allowing Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.
F) The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware -- but only after the deadline for the ISVs to demonstrate that their middleware is compatible.
G) The PFJ requires Microsoft to release API documentation -- but prohibits competitors from using this documentation to help make their operating systems compatible with Windows.
H) The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents or other similar applications.
I) The PFJ does not require Microsoft to list which software patents

protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users and non-Microsoft developers, and opens the doors to potential future lawsuits against Microsoft competitors.

III. The PFJ Fails to Prohibit Anticompetitive License Terms currently used by Microsoft

A) Microsoft currently uses restrictive licensing terms to keep Open Source apps from running on Windows.
B) Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.
C) Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system -- even for computers running competing operating systems such as Linux! (Similar licenses to OEMs were once banned by the 1994 consent decree.)

IV. The PFJ Fails to Prohibit Intentional Incompatibilities Historically Used by Microsoft

A) Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems. Modified implementations of Java and the Kerberos authentication protocol immediately come to mind.

V. The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

A) The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.
B) The PFJ allows Microsoft to discriminate against small OEMs -- including regional 'white box' OEMs which are historically the most willing to install competing operating systems -- who ship competing software.
C) The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft Office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

VI. The PFJ as currently written appears to lack an effective enforcement mechanism.

Thank you for your time.
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