From: Tom Giebel
To: Microsoft ATR
Date: 1/23/02 3:29pm
Subject: Microsoft Settlement

To: microsoft.atr@usdoj.gov
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To: Renata B. Hesse
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Under the Tunney Act, I wish to comment on the Microsoft settlement's inadequacy in improving the competitive environment in the software industry. Some serious shortcomings relate to:

1) Middleware
The current language in Section H.3 states "Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing)" does nothing to limit the company's ability to tie customers and restrict competition in non Web-based networked services under .NET, as they fall "outside the context of general Web browsing". Microsoft has already begun abusing its desktop monopoly to tie customers int .NET revenue streams and set up a new monopoly over the network.

Part 2 of the same section states "that designated Non-Microsoft Middleware Product fails to implement a reasonable technical requirement..." essentially gives Microsoft a veto over any competitor's product. They can simply claim it doesn't meet their "technical requirements."

2) Interoperability
Under the definition of terms, "'Communications Protocol' means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product on a client computer and Windows 2000 Server or products marketed as its successors running on a server computer and connected via a local area network or a wide area network." This definition explicitly excludes the SMB/CIFS (Samba) protocol and all of the Microsoft RPC calls needed by any SMB/CIFS server to adequately interoperate with Windows 2000. Microsoft could claim these protocols are used by Windows 2000 server for remote administration and as such would not be required to be disclosed. The Samba team have written this up explicitly here:
http://linuxtoday.com/news_story.php3?ltsn=2001-11-06-005-20-OP-MS

3) General veto on interoperability
In section J., the document specifically protects Microsoft from having 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 anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria"

Since the .NET architecture being bundled into Windows essentially builds "anti-piracy, anti-virus, software licensing, digital rights management, and authentication systems" into all levels of the operating system, ANY API, documentation, or communication layer can fall into this category. This means that Microsoft never has to disclose any API by claiming it's part of a security or authorization system, giving them a complete veto over ALL disclosure.

4) Veto against Open Source
Substantial amounts of the software that runs the Internet is "Open Source", which means it's developed on a non-commercial basis by nonprofit groups and volunteers. Examples include Apache, GNU/Linux, Samba, etc. Under section J.2.c., Microsoft does not need to make ANY API available to groups that fail to meet "reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business." This explicitly gives them a veto over sharing any information with open source development projects as they are usually undertaken on a not-for-profit basis (and therefore would not be considered authentic, or viable businesses).

These concerns can be met in the following ways:

1) Middleware: Extend middleware interoperability with a Microsoft server to ALL contexts (both within general Web browsing as well as other networked services such as are those being included under .NET).

2) Interoperability: Require full disclosure of ALL protocols between client and Microsoft server (including remote administration calls)

3) General veto on interoperability: Require Microsoft to disclose APIs relating to "anti-piracy, anti-virus, software licensing, digital rights management, encryption, or authentication systems" to all.

4) Veto against Open Source: Forbid Microsoft from discriminating between for-profit and nonprofit groups in API disclosure.

Sincerely,

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