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**Subject:** Microsoft Settlement

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The proposed final judgement in the U.S. vs. Microsoft case, is insufficient to prevent future abuses of monopoly position, and fails to deny Microsoft the fruits of their illegal activities.

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement. I work for a company that produces software which operates on multiple platforms including Windows, and am also an end-user of several Microsoft Operating Systems, Middleware and Applications both at work and at home.

The Court of Appeals affirmed that Microsoft (MS) has a monopoly on Intel-compatible PC operating systems, and that the company's market position is protected by a substantial barrier to entry, and that Microsoft is liable under Sherman Act 2 for illegally maintaining its monopoly. According to the Court of Appeals ruling, "a remedies decree in an antitrust case must seek to 'unfetter a market from anticompetitive conduct', to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future".

Like all those found guilty of a crime, Microsoft need to be punished for their actions - ideally in a way that attempts to restore competition and undoes the damage inflicted on the consumer by their anticompetitive behaviour. MS has profitted greatly from their behaviour, and the fruits of their illegal actions must be denied to them.

Previous court ordered remedies have shown that Microsoft willfully ignores and attempts to circumvent any restrictions placed on them by careful selection of the language used in these remedies, and stalling with continued appeals such that by the time a resolution occurs, there is no surviving competition.

Microsoft show no signs of remorse or attempts to change their pattern of behaviour. Indeed, while conceding certain points on existing Operating Systems (OS), they are careful to ensure that applications (such as

Microsoft Office Suite) and future products such as .NET are excluded from any restrictions. It is clear from their pattern of behaviour that they will attempt to monopolise these markets, and that nothing but the most severe restrictions on their behaviour will have any effect.

Since many of the companies adversely affected by Microsoft are no longer operating due to the illegal monopoly, it is hard to make reparation to them. Rather, the remedy must seek to redress the harm done to the consumer, and to prevent Microsoft continuing to use its illegaly gained market dominance to monopolise new markets. It is apparent that Microsoft traditionally gains dominance in a new market buy tying sales of one product to sales of another - for example, the bundling of Microsoft Office with Windows, and the intimidation of Original Equipment Manufacturers (OEMs) to ensure that this continues to the exclusion of competitors. Their willful circumvention of previous court restrictions, which violate the spirit if not the exact letter of the agreements, indicate that MS must be given no latitude in which to avoid punishment. The only option remaining if this is true, is a structural remedy.

Structural Remedy:
The existing MS corporation must be split into at least 5 separate companies, each of which is barred from operating in the other 4 areas or joining with one of the other compnaies for a period of not less than 10 years. The company should be split along the following lines:- Operating Systems, Computer Programming Languages (must include .NET and C#), Applications (such as MS Office), Hardware (including XBox), and Internet Services (MSN etc).

Microsoft continually use their monopoly position in each of these sections to dominate others - and must be denied the opportunity to do so in the only method it appears that will work. It is imperative that the .NET be split from all other services, since it is clear MS intends to use this to tie in future applications and services and 'lock out' competing products. Previous anti-trust cases which have resulted in large corporations being split extensively detail prohibitions on these individual companies.

It is clear that despite all evidence pointing to a structural remedy as being the only solution, the courts are unlikely to impose such a remedy. Whether or not this is implemented, the following aspects of MS illegal behaviour must be addressed.

Consumers Overcharged and Require Compensation:
In addition to monopolising markets, the consumer has been harmed by Microsoft products being overpriced than would have occurred had competition been available. Once again, Microsoft must be denied any profits from their

illegal activities. The consumer must be recompensed for this, and so a substantial cash fine should be levied against MS, which would then be divided amongst all registered users of Microsoft products. This fine should be no less than 1 billion US dollars - note that MS currently have cash reserves of over $35 billion and this is increasing rapidly - it is a small fine to MS.

Should this not prove to be practical, then MS should still be fined, but with the money going to the purchase of computer and computer related hardware for schools, colleges and charity groups. MS should not be allowed to provide software for these systems, and alternatives such as Apple computers or free software such as Linux must be used instead. This will not only return some benefit to the consumer, but prevent further harm done to MS competitors.

Applications Barrier to Entry:
Significant barriers exist to competing products in the marketplace due to Microsofts illegal monopoly. These must be eroded and removed in the following ways:

By forbidding retaliation against OEMs, Internet Access Providers (IAPs), Independent Software Vendors (ISVs), and Independant Hardware Vendors (IHVs) who support or develop alternatives to Windows.

All APIs and file formats (MS Word, MS Excel, MS Access, MS Powerpoint, MS Outlook and Outlook Express, WMP - the Microsoft Middleware Products) should be available to ISVs and HSVs. File formats should be open and available for public viewing at no cost. Any changes made to APIs and file formats must be announced and specified a period of time must have passed before these changes are implemented (e.g. 180 days for APIs and 90 days for file formats). Current definitions of APIs allow MS to avoid releasing documentation on many important interfaces. File formats, while an important barrier to entry, are currently not included in the proposed settlement and must be publicly disclosed.

Wording of the licence agreement for ISVs accessing APIs and documentation shall state that it will solely be for the purpose of interoperating with a Windows Operating System Product or with application software written for Windows. Current phrasing limits this to OS only.

Definitions of requirements for companies or individuals to access APIs should be publicly available and independently enforced - MS should have no say in this part of the decision process.

All patents covering the Windows APIs must be disclosed. Currently those ISVs producing Windows-compatible operating systems are uncertain if they are infringing on Microsoft software patents.

Wording of the current proposed final judgement should not prevent ISVs using released APIs to make alternative OSs compatible with Windows based OSs.

Forced Upgrades Must be Stopped:
MS abuses its monopoly postion by forcing consumers to upgrade from older products to newer ones, at substantial cost. Since there is now no effective competition due to the illegal actions, the consumer has no alternative but to go with MS products. By altering file formats in latest releases that are incompatible with older versions, and by removing older products from sale, MS force the consumer to upgrade.

To prevent this, file formats for all Office Applications and WMP must be publicly available at no cost to allow alternatives to be developed. This is mentioned in detail above.

To prevent the removal of older products that are still viable applications, Microsoft must continue to support older products for at least 15 years after their introduction. MS may choose not to support the software during this time citing that it is not a useful product, in which case it is allowed to do so but must make the entire MS source code to the application publicly and freely available. Under these circumstances, users may maintain and compile the software themselves. This will apply to operating systems as well as middleware and applications.

Prohibiting practices towards OEMs:
In addition to current restrictions in the Proprosed Final Judgement (PFJ), Microsoft must be restricted against reprisals for OEMs that sell PCs with a competing OS but no Microsoft OS.

The PFJ requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs if they offer competing products. There should be selected 'groups' of OEMs of varying sizes, for example OEMs 1-20, 21-100, 101-1000, 1001+, and in those bands prices must be uniform and published on all MS OS, Applications, and Middleware products.

Market Development Allowances (discounts) to OEMs must be fully disclosed in public. Discounts may not be given in one product (e.g. Office Applications) due to sales in another product (e.g. OS). This will prevent MS using its OS dominance to move its monopoly into other areas.

Enforcement:
MS will attempt to circumvent all remedies to the best of their ability. Strong, independent and effective supervision of MS is necessary, and a panel of several industry experts (chosen by the courts and complainants, with minimal input by MS) must be allowed full and unfettered access to MS documents. They will be provided with support staff, and be paid for by MS at competitive rates given their experience. This panel should have the ability to force release of MS documentation and source code, and delay the release of products until compliance is complete. Any undisclosed APIs discovered should result in a large cash fine. Current proposed enforcement allows no incentive for MS to comply with the remedy.

Some of the above stated remedies may seem extreme, but given the magnitude of the MS corporation and the extend to which it has broken the law, the remedies must be of a similar magnitude. As stated in the first few paragraphs, the intent of any remedy is to restore competition, terminate the monopoly, deny the benefits of the illegal actions, and prevent such abuses from ocurring in the future. Due to the uncooperative nature of MS, the remedy must be decisive and strongly enforced.

While MS has already done considerable harm to the consumer by its illegal actions, there are many future markets in which MS can gain a further monopoly - and exacerbate the problem. They must be prevented from doing so. If an individual commits a crime where the public have been illegaly overcharged that individual will be fined, and perhaps imprisoned - and certainly would be if he was a repeat offender shown to ignore previous court orders. Microsoft must be no different, or justice will not be done, and will not be seen to be done.