From: Robert Weiler
To: Microsoft ATR
Date: 1/24/02 4:37pm
Subject: Microsoft Settlement

Robert Weiler
Perfectsense Software
536 Marin Ave
Mill Valley, CA 94941
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Microsoft Tunney Acts comments
US Department of Justice

Dear Sir or Madam,

I am writing to express my opposition to the proposed final settlement of the Microsoft antitrust case. I have been a software developer for over 20 years and I am currently an executive of a start up corporation and have extensive experience with Microsoft's products as well as those of Microsoft's competitors. In addition, I have followed the trial very closely and have read the relevant documents. I would like to remind the court that the Microsoft has committed extraordinary public relations resources in an effort to influence public opinion, and ultimately, the court. Thus, it is likely that the overwhelming majority of pro-settlement comments were bought and paid for by the criminal. I trust that the court will take this into account and treat those comments accordingly.

Microsoft corporation has committed a serious federal crime. They received a fair trial, and the decision was unanimously upheld by a Court of Appeals. Microsoft has been repeatedly warned for past violations of the law and indeed the entire reason that this case is presently before the court is that Microsoft is unwilling to change their business practices to conform to the law. Microsoft is understandably reluctant to abandon those business practices as they are extremely effective and have allowed Microsoft to illegally eliminate competition and subsequently raise prices. Consequently, Microsoft has been able to make and retain extraordinary profits even despite the current recession. The Proposed Final Judgment is flawed for the following reasons:

1) It will do nothing to restore competition.

Microsoft corporation has effectively eliminated competition on the desktop due to illegal practices. Apple computer holds less than 5% of the desktop market. OS/2, as a direct result of Microsoft's violation

of the law, holds almost nothing, and Linux, the only likely future competitor, has perhaps 1%. Since Bill Gates, a founder and CEO of Microsoft, publicly derided the quality of past releases of Microsoft Operating Systems products at the Windows XP launch, and has recently derided the security of all Microsoft products, it is fair to say that Microsoft's success has not been due to having a superior product.

Instead, their success is due to illegal licensing terms and the application barrier to entry. The Proposed Final Judgment allows Microsoft to continue discriminatory licensing practices and to continue to maintain the application barrier to entry. In addition, the language contains so many loop holes as to be unenforcible. I propose the following language for section IIIb:

"Microsoft shall offer their all of their products to all customers at the same price. Microsoft may set a lower limit on the number of copies that are purchased directly from the corporation, but may not set any terms for distributors that buy a large number of copies and redistribute them in smaller volume."

For section IIIC, I would propose the following wording:

"Microsoft shall impose no additional terms on its OEM's or distributors regarding subsequent resale of Microsoft products."

Section IIID appears to attempt to reduce the application barrier to entry, but does not do so in any way that is effective. In addition, it contains serious loopholes that would not allow developers to develop for any platform other than Windows, nor does it take into account Microsoft's other monopoly in desktop productivity software. For section IIID, I would propose the following wording:

"Upon release of any Microsoft software product, Microsoft will provide complete documentation of any protocols, file formats, and APIs. In addition, Microsoft will license any intellectual property required to implement such protocols, file formats,and API's under a royalty free and non discriminatory basis to any interested party."

In addition, section III.J.2 must be dropped in its entirety. The only logical reason for this provision is for Microsoft to prevent competition from GNU Public License software, which Microsoft views as its primary competitor. Microsoft should not be able to select its desired competitors.

2) It imposes no penalty on Microsoft for past violation of the law.

As a direct result of illegal business practices, Microsoft has amassed a cash pile of over 35 billion dollars. Some of that money belongs to

the taxpayers due to the expense of the trial. In addition, Microsoft should pay some sort of fine for past violation of the law.

3) It fails to recognize that Microsoft posses two monopolies; one in desktop operating systems and another in office productivity software.

I addressed this in my previous comments, but it bears repeating. The proposed final judgment deal only with Microsoft's operating system monopoly. In addition, Microsoft possesses a monopoly in desktop productivity software. To a large extent, this monopoly was also illegally obtained by bundling Microsoft office with the operating system at greatly reduced cost, and using the operating system profits to offset the loss. Once the competitors were eliminated, Microsoft raised prices. Microsoft currently views the Linux operating system as it's biggest competitive threat. The largest factor preventing Linux from competing on the desktop is the lack of a 100% compatible office suite. Microsoft must publish and license their Office protocols and file formats on a non discriminatory royalty free basis. In addition, Microsoft must not be allowed to use Office licensing fees as a club to prevent operating system competition.

4) It contains no effective provisions for enforcing the judgment.

The technical committee proposed would have no actual power to enforce the agreement. In addition, the committee members would have a clear conflict of interest since one of the members is chosen by Microsoft and they would paid by Microsoft. Any violation found by the committee would still need to be brought to court before a remedy could be imposed. I would propose the following:

"The Plaintiffs will appoint a special master with the poser to enforce this judgment. Microsoft shall have the right to appeal decisions of the special master at their expense. The special master and staff will be employed and paid by the Department of Justice. Microsoft will reimburse the Department of Justice for reasonable expenses incurred by the special master and staff incurred in the performance of their duties."

5) The term of the agreement is too limited.

I would like to point out that the term of the agreement is not tied to any goals. The agreement should remain in effect until there is effective competition in desktop operating system and office productivity software markets. Microsoft can hardly complain about this as if the remedy is ineffective, it hardly matters. If it is effective, it will only serve to undo the effects of past illegal conduct and this should be the goal.

Robert Weiler