

From: whiteco2k@earthlink.net@inetgw
To: Microsoft ATR
Date: 1/24/02 9:15pm
Subject: Microsoft Settlement

I am not a Microsoft customer/client. I believe it is time to get off the back of Microsoft and 'cease and desist' in this settlement business.

Sincerely yours, Linda White

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To Whom It May Concern:

In accordance with the procedures prescribed in the Tunney Act (Antitrust Procedures and Penalties Act, 15 U.S.C. ? 16), I am writing to express my opposition to the Proposed Final Judgment (PFJ) in the case of US et al. vs. Microsoft. I believe that this settlement is fatally flawed and will not serve justice, nor have the desired effect on the behaviors of Microsoft.

Despite the findings of the District court, the Appellate Court, and Judge Jackson's Finding of Fact, the DOJ et al., having effectively won their long-running case against Microsoft, has seen fit to accept a settlement that I feel falls far short of a satisfactory conclusion to the case against Microsoft in three crucial areas: Punitive action for past behavior, corrective action to prevent future abuses, and oversight to ensure compliance with a final order.

First, very little in the PFJ addresses any possible penalty for past actions. The PFJ must serve as more than an edict from the courts to 3Go thou and sin no more.² It must send a message to Microsoft, and others that would achieve success in the ways that they have, that there is a penalty to be paid for blatant anticompetitive behavior in a free-market economy. While I understand that a structural remedy is quite unlikely, impractical, and probably undesirable in the current environment, I do feel that the behavioral remedies should serve not only to prevent illegal behavior in the future, but also to penalize the illegal behavior that has already occurred.

Second, I do not believe that the behavioral remedies laid out in the PFJ, while well-intentioned, go nearly far enough to ensure that Microsoft ends its illegal, anticompetitive practices in the future, nor does it fully prevent new anticompetitive practices. Although time and space do not allow for a point-by-point analysis of the PFJ here, I would like to address a few of the items that strike me as cause for concern:

1. File formats are not addressed by the PFJ. Noted in the Findings of Fact as being a barrier to switching from Windows to a competing operating system, Judge Jackson states that there are considerable costs involved in switching to a competing, non-Intel based platform and that 3It also includes the effort of learning to use the new system, the cost of acquiring

a new set of compatible applications, and the work of replacing files and documents that were associated with the old applications.² (720). He also notes the 3Positive Network Effect² that encourages the continuing use of Windows and Windows-based applications because 3The large installed base attracts corporate customers who want to use an operating system that new employees are already likely to know how to use, and it attracts academic consumers who want to use software that will allow them to share files easily with colleagues at other institutions.² (739). If files could be easily used within a variety of applications, without regard to vendor, it would serve to reduce this barrier to choice.

It has long been a painful fact of productivity applications that files written in one format, say Microsoft Word, may not necessarily be read correctly in a competing product, StarOffice, for example, nor vice-versa. Although a limited amount of compatibility exists, there are serious shortcomings in that compatibility that prevents the successful use of a competing product. For instance, tables, layouts and other more advanced document formatting do not often translate correctly between competing products. Because Microsoft Office is the defacto standard in office suites, many competing products attempt to utilize Microsoft's file formats. However, because Microsoft treats these file formats as proprietary trade secrets, it prevents any potential competitor from gaining the status of a viable replacement for their products. Indeed, as long as Microsoft is allowed to keep these file formats a secret, they have the ability to make fundamental changes to them, rendering the work of a competing product worthless. Competitors could likely find themselves in an endless game of catch-up as Microsoft changes the file formats of their office products.

Forcing Microsoft to disclose all the details of the file formats of their various products, including, but not limited to Office, would allow competitors to build competing office suites, and other software that interoperates with Office, and helps to restore the competitive landscape for these products. Unfortunately, the PFJ, in its current form, does nothing to address this issue.

2. Likewise, the closed, proprietary nature of networking protocols within Microsoft's products, while partially addressed, includes a rather large exception in the PFJ (7III.J.1): 3No provision of this Final Judgment shall: Require Microsoft 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 a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria.²

This exception would allow Microsoft to exclude competing products at will, regardless of the legitimacy of the competing product itself. There are a couple of instances where this already occurs in the industry.

The first involves the Kerberos authentication protocol, developed at MIT and designed to be an open authentication scheme for Unix-based systems. Microsoft adopted the use of Kerberos in their Windows 2000 product, beginning around 1997 during the early development of the Windows 2000 product. However, Microsoft utilized a portion of the protocol in an undocumented fashion, preventing the proper interoperability of competing systems with the Windows 2000 product. For years, Microsoft refused to publish the details to allow this interoperability, despite intense pressure from the industry. They later released this information, but in such a way that expressly forbid the use of the specifications to create interoperable systems, instead limiting the use of that information to peer review of the security of their additions.

The second involves the file-sharing protocols native to Windows, SMB (server message blocks). While a product does exist, named Samba (www.samba.org <<http://www.samba.org/>>), that allows limited interoperability with Windows by Unix-based systems, the project's efforts are continually hindered by the ongoing refusal by Microsoft to make the protocols public, and by Microsoft's repeated changes to the protocol itself, occasionally preventing interoperability at all.

In both cases, and others, Microsoft could easily and legally continue to block the efforts of its competitors by claiming that the protocols are security-related and therefore disclosure is exempt under the terms of this agreement.

Microsoft should be forced to publish the details of the protocols used on the network by their products to ensure the possibility that competing products can interoperate with Microsoft products. This would not require Microsoft to reveal any trade secrets with regard to the source-code of their products, and again, would serve to restore competition in the industry. Unfortunately, again, the PFJ fails to do this, instead giving Microsoft huge latitude in continuing their behaviors.

3. The PFJ defines APIs and Microsoft Middleware Products far too narrowly.

The PFJ defines APIs as the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain any services from that Windows Operating System Product.² (VI.A). This definition fails to take into account the various additional APIs that could be used by other applications, even though they don't necessarily qualify as Middleware² products. A good example of this is the Windows Installer APIs - these would not, in the strictest sense of the definition, qualify for disclosure by the PFJ.

Also, the PFJ defines Microsoft Middleware Product² to mean the functionality provided by Internet Explorer, Microsoft's Java Virtual

Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product² (?VI.K) This definition is far too narrow and raises some important issues because of what has been excluded.

First, although Java has been included, Microsoft's C# language has not, nor have the .NET products been included. This is of concern since Microsoft's own stated strategy minimizes the use of Java related technologies, instead favoring their own technologies (C# and .NET), which, by the strict reading of this definition, are excluded from regulation within the terms of the PFJ.

Second, although Outlook Express is included, its more powerful sibling, Outlook is not. This is troubling, since Outlook is the client of choice within business, and tends to fit the overall definition better than Outlook Express.

Indeed, a glaring omission here is Microsoft Office itself, which as a complete product, serves in the same capacity as many of the other stated Microsoft Middleware Products.²

These omissions prevent the PFJ being an effective behavioral remedy by providing very large loopholes with which Microsoft could easily defend their continuing anticompetitive behaviors for years to come. Many of these kinds of loopholes exist in the PFJ, allowing Microsoft to retain significant control over its relationships with its OEMs, ISVs, IHVs and other partners.

Third, the PFJ fails to define an effective enforcement mechanism under the terms of this settlement. Although the PFJ does define a committee with investigative powers, it does not vest within that committee the power to arrest behaviors that are in violation of the terms of this settlement. Instead, enforcement power is left to the legal system, which is likely not responsive enough to act in a timely fashion to any actions that are contrary to this settlement.

Microsoft has demonstrated its willingness and ability to test the boundaries and resolve of the legal system in prior consent decrees, illustrating, all too clearly, the ineffectiveness of this approach with them. Allowing Microsoft to get away with it² again would be a terrible miscarriage of justice.

In summary, I believe that the Proposed Final Judgment is ineffective in addressing Microsoft's past behavior, future behavior, nor the enforcement of the measures contained within it. I maintain the hope that this settlement, as currently written, will be rejected by the court, paving the way for a far more effective set of terms in the conclusion of this case against Microsoft.

Thank you for your consideration.

Sincerely,
Ken Klavonic
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