From: Brent Casavant
To: Microsoft ATR
Date: 1/25/02 2:17am
Subject: Microsoft Settlement

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Date: Friday, January 25, 2002

Submitted to the United States Department of Justice, in accordance with the public comment period provided by the Tunney Act, in regard to the case United States vs. Microsoft (Civil Action No. 98-1232 (CKK)).

Introduction

Comments upon the proposed Final Judgement in its whole

If there is one striking feature of this proposed Final Judgement, it is the lack of any form of punishment or restitution imposed upon Microsoft such that it forfeits the gains due to its anticompetitive practices. The remedies therein provide only for behavioral modification and oversight, but fail in any manner to deny Microsoft the fruits it has enjoyed from its illegal behavior.

While I do not propose a specific punishment, I believe it is in the interest of the United States, its citizens, and all commercial entitites to discourage anticompetitive practices. Unless this proposed Final Judgement is significantly strengthened the provisions will serve as little more than a "slap on the wrist". This sends a clear message to all monopolies that the law may be freely flouted and disregarded as long as legal proceedings can be sufficiently drawn out to firmly enthrone the monopoly in an unassailable market position. More importantly, this sends a clear message to Microsoft that it may do so again at any time it should so choose.

There is also a specific behavioral and punitive remedy which is notably lacking from the proposed Final Judgement which should be considered for inclusion. Microsoft has achieved large portions of its market dominance through "locking in" end users to its proprietary application (i.e. Word, Excel, Powerpoint) data file formats, and through making incompatible changes to such formats, forcing end users into purchase of new application software to conduct business with other parties.

This could be remedied through either of two means:

- Require Microsoft to make available, in a timely manner, all information regarding application file formats necessary for third parties to develop software which is capable of interoperating with the Microsoft application software.
- Require Microsoft to implement, as the default and preferred option, file formats which are trivially reverse-engineered by third parties for the purpose of interoperability.

In either case Microsoft should be required to assign licenses to any intellectual property needed to properly implement software which can interoperate with the Microsoft application software.

There is another area of general weakness in the proposed Final Judgement. Underlying the entire judgement is a presupposition that only for-profit commercial entities will enter into licensing agreements (either explicitly or through the purchase of Microsoft products and services). However, there is a large and increasing number of not-for-profit organizations which develop software (typically so-called "Open Source" software) which is distributed free of charge. Such organizations cannot in and of themself wield the financial incentives necessary to cause Microsoft to provide them the documentation or intellectual property rights necessary to implement software which is interoperable with Microsoft products.

While Microsoft certainly has a reasonable right to expect compensation for its efforts, research, development, and intellectual property, it is also clear that they will use their monopoly position to choke out any competition from these not-for-profit organizations. The proposed

Final Judgement should be amended to provide for the release of information necessary for interoperability to these not-for-profit organizations. This is only one of the many ways in which amends can be made for the anticompetitive practices of Microsoft, and to take some small bite out of the fruits of their illegal behavior.

Comments upon specific provisions of the Proposed Final Judgement
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Section III.E

The terms of this section are inadequate to address harms and disadvantages already imposed upon third parties with regard to Communications Protocols.

Microsoft has demonstrated with regularity that it will modify existing protocols, both those of its own design (i.e. the SMB protocol) and of other widely accepted protocols (i.e. the Kerberos protocol), with tenuous technical justification. While one cannot adequately judge Microsoft's every intention in such matters, it is often clear that these decisions do little more than lock out competetitors from interoperating with Microsoft products.

As such, the remedy in Section III.E should be amended to cover existing protocols for current Microsoft Windows Operating System Products.

This section remedy also fails to address the terms under which these Communication Protocols must be made available to third parties. There is no provision that such disclosures must be made under reasonable or fair terms to the third party. This inadequacy should be addressed so as to prevent Microsoft from circumventing the spirit of this order by an action as simple as making the price of such information practically unobtainable for all but the largest of ISVs.

Sections III.H.1 and III.H.2

Thes provisions are inadequate to the extent that they do not stipulate that Microsoft must reasonably ensure the correct operation of the specific Windows Operating System Product after these actions are taken. This section should also restrict Microsoft from displaying alarming messages or languages which would serve to dissuade end users from utilizing Non-Microsoft Middleware Products.

Microsoft has demonstrated its willingness to deliberately compromise the stability of their own software products in order to discourage the use of third party software. This was demonstrated most clearly in the early 1990's when they implemented checks for the DR-DOS operating environment in their Windows Operating System Products. In this case an alarming message was displayed to end users which served to discourage use of the DR-DOS product, and the Windows Operating System Product was (anecdotally) deliberately designed to interoperate poorly with the DR-DOS product.

Section III.H.3

There is little technical justification for the arbitrary limit of 14 days, after which Microsoft Operating System Products may automatically prompt the end user to confirm alteration of an OEM's configuration. While it is certainly justifiable to allow the user to cause the Operating System Product to revert to a Microsoft-specified configuration, it is not reasonable to automatically ask the user to confirm or prohibit this reconfiguration.

As such, this provision should be amended as to prevent Microsoft from implementing a system which prompts the user to restore Microsoft-specified configurations, unless the end user has initiated a deliberate action to

cause this to occur. That is to say, the end user should need to initiate the action which causes a Microsoft specified configuration to be restored.

Section III.H.2 (second set of numbered items)

This section allows a Windows Operating System Product to invoke a Microsoft Middleware Product in a case where the Non-Microsoft Middleware Product fails to implement certain technical requirements.

This section should be amended to include language which prohibits the Windows Operating System Product from taking this action due to additional technical requirements imposed after release of the Non-Microsoft Middleware Product. That is, Microsoft must be prevented from requiring ISVs to update previously compliant (by the terms of this provision) products. This limitation, however, should not apply in the case of a major revision of the Windows Operating System Product.

Section V.B

Microsoft has demonstrated a remarkable ability to delay and hinder legal proceeding against it. As such this provision should be amended to provide for an indefinite limited term extensions of the Final Judgement while any legal proceedings against Microsoft according to this provision are underway.

Such an amendment should also provide that the Final Judgement will expire no earlier than one year after the date of termination of such proceedings, in order to further ensure compliance.

Background and contact information

I am interested in this matter as a long-time technology enthusiast and worker. My formal education is in computer and electrical engineering, and my work experience and personal interests have given me a deep understanding of the technical merits and considerations involved in software development, particularly in the area of operating systems. I am currently in the employ of a major computer systems manufacturer and vendor, a competitor in some fields with Microsoft, with my engineering work focusing on operating system software development.

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