January 15, 2002

Hon. Colleen Kollar-Kotelly
U.S. District Court, District of Columbia

c/o Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Dear Judge Kollar-Kotally:

The recent proposed settlement between the Department of Justice and Microsoft does not put an end to Microsoft's questionable practices.

Does the final settlement in *U.S. v. Microsoft* adequately protect competition and innovation in this vital sector of our economy? Does it sufficiently address consumer choice and meet the standards for a remedy set in the unanimous ruling against Microsoft by the Court of Appeals for the District of Columbia? These questions remain unanswered. The five-year time frame of the proposed settlement seems far too short to deal with the multiple antitrust actions of a company that has maintained and expanded its monopoly power through years of unmatched success.

Microsoft's liability under the antitrust laws is no longer open for debate. The company has been found liable before the District Court, lost its appeal to the United States Court of Appeals for the District of Columbia in a 7-0 decision, saw its petition for rehearing in the appellate court denied, and had its appeal to the Supreme Court turned down. The courts have decided that Microsoft possesses monopoly power and has used that power unlawfully to protect its monopoly.

The next step is to find a remedy that meets the appellate court's standard to "terminate the monopoly, deny to Microsoft the fruits of its past statutory violations, and prevent any future anticompetitive activity." This proposed settlement may not be strong enough.. In fact, the settlement between Microsoft and the Department of Justice seems to ignore key aspects of the Court of Appeals ruling against Microsoft. The decision as it stands gives Microsoft "sole discretion" to unilaterally determine that other products or services which don't have anything to do with operating a computer are nevertheless part of a Windows Operating System product, thus failing to terminate Microsoft's standing position in the market.

The settlement allows Microsoft to retaliate against would-be competitors, take the intellectual property of competitors doing business with it and permits Microsoft to define many key terms, which is unprecedented in any law enforcement proceeding.

In addition, the proposed settlement contains far too many strong-sounding provisions that are riddled with loopholes. The agreement requires Microsoft to share certain technical information with other companies. However, Microsoft is under no obligation to share information if that disclosure would harm the company's security or

software licensing. The question is, who gets to decide whether such harm might occur? The settlement says that Microsoft "shall not enter into any agreement" to pay a software vendor not to develop or distribute software that would compete with Microsoft's products. However, another provision permits those payments and deals when they are "reasonably necessary." The ultimate arbiter of when these deals would be "reasonably necessary?" Microsoft.

Furthermore, the provisions in this proposed deal may create a scenario in which Microsoft has too much freedom. The company appoints half the members of its overseeing committee and has the ability to violate regulations, knowing that whatever the committee finds inappropriate is not admissible in court. Finally, Microsoft must only comply with the lenient restrictions in the agreement for only five years. This is clearly not long enough for a company found guilty of violating antitrust law.

Various industry experts from such institutions as Morgan Stanley, the Harvard Business School, Schwab Capital Markets and Prudential Financial have been quoted as saying that this settlement is beneficial to Microsoft's current monopolistic intentions.

Antitrust law has protected free markets and enhanced consumer welfare in this country for more than a century. The Microsoft case does not represent a novel application of the law, but is the kind of standard antitrust enforcement action that could ensure vigorous competition in all sectors of today's economy. These same standards have been applied to monopolies in the past, such as Standard Oil and AT&T. Court decisions to break up these monopolies led to prices declining as much as 70% and an increase in competition-driven innovation.

The end result is that Microsoft may still be able to preserve and reinforce its predominance. After more than 11 years of litigation and investigation against Microsoft, I eagerly await what is to be the final outcome.

Thank you for your time.

Regards,

Gustavo Godoy
Publisher
Vista Magazine

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