From: Eberhard Hafermalz
To: Microsoft ATR
Date: 1/7/02 6:05pm
Subject: Settlement with MicroSoft

Dear Sir/Madam

Following a request by Helmar Rudolph who is part of the BeUnited Team and with whom a DOJ person has talked on January 4, 2002, I would like to submit my views on what is necessary to remedy the damage done to the market for PC operating systems (OS) by MicroSoft.

I am not a developer but a user of the BeOS, an alternative operating system widely acclaimed for its potential as a desktop OS. I would like to stress that the BeOS never has taken off as a widely used OS on the PC market. Not because it does not have the potential; there is publicly available numerous evidence to the contrary. The BeOS has died because computer makers were not allowed to pre-install this OS on their systems instead of or even alongside a MicroSoft OS, thus precluding a broad distribution. It is a known fact that computer makers declined the offer of Be, Inc., the maker of BeOS, to ship their machines with the BeOS pre-installed because this would invoke the respective punitive clauses in the licensing agreement they had with MicroSoft.

Further, when installing a MicroSoft OS onto a computer already equipped with the BeOS (or any other OS), the MicroSoft OS wipes the so-called bootblock, resulting in the computer only booting into the MicroSoft OS afterwards. As is well known, MicroSoft OSs are prone to get unusable after a short period of time, requiring extensive maintenance which more often than not is easiest done by re-installing the whole system. This obviously invokes the bootblock problem every time a re-install is conducted.

These two issues alone make it almost impossible for the average computer user to (a) acquire a non-MicroSoft OS running computer, and (b) maintain a dual-boot system where one of the OSs is a MicroSoft one.

The remedy for issue (a) would be to disallow MicroSoft in clear terms the use of any contractual clauses in their licensing agreements that restrict the decision of the computer maker on what OS, if any, to ship with the computer they manufacture.

The remedy for issue (b) is to disallow MicroSoft the overwriting of the bootblock when Windows (or another MicroSoftware) is installed. This is technically possible by giving the user the choice which systems to boot into. Resolving issue (b) is in fact complementary to issue (a) for the reasons explained above; otherwise MicroSoft would be allowed to abuse their dominant market position by simply accomplishing at a later point in time what they have been denied at the manufacturer's stage: killing the competing OS on the same computer.

In light of the MicroSoft strategy of the past, the above is not the only remedy I think necessary because it would only create a level playing field. MicroSoft would be allowed to maintain the fruit of their previous unfair competition practice. Thus it appears justified to require MicroSoft to cede proprietary information in areas where it has acquired a de-facto monopoly by way of utilizing advantages from their unfair competitive behavior.

Most importantly, this includes the "office" part of the company's business. MicroSoft Office is the standard because Office was pressed onto the consumer as "part of Windows", which--as well as the Internet Explorer--it is not. MicroSoft thus utilized the practice described above to eliminate any competitor in this software segment.

In order for rival makers of office software to compete they need the information required to create translators, software add-ons ("plug-ins" in Windows-speak) that allow the competing software to import from and export files to MicroSoft Office (and other) formats. I would like to point out that in order to accomplish this it is not required that MicroSoft open their source code of Windows, MicroSoft Office, or any other software.

Moreover, I would like to bring to your attention that it is not only Windows, and MicroSoftware running on Windows, that needs to be included in a settlement. MicroSoft is already showing the same patterns of behavior as before in the market for handheld computers. Also they are obviously trying to delay any remedial action against the Windows monopoly in the desktop computer market until Windows is no longer their main productline. Any settlement that is to create and ensure a level playing field in the longer term not only needs to remove the Windows monopoly but at the same time include any future OS or, indeed, software MicroSoft might sell, be it ".Net" software, Windows CE/Stinger, or any other product.

Finally, please revise your stance on the issue of MicroSoft's "giving away freely" computers, software, and service for these to schools. This is no remedy but an opportunity. It will create a new market for the company. These days MicroSoft's power to abuse their position stems from the very fact that for most people the term "computer" automatically means "Windows", i.e. MicroSoft. Letting MicroSoft "make good" for their abusive behavior by opening one of the few places where competing OS maker Apple still holds a better than insignificant market share would mean, as we say in Germany, to try to expel the devil with the Beelzebub.

The fate of innovation is at stake. Innovation cannot come from a company that has been holding the monopoly for almost ten years now. There is much better, much more innovative software out there than MicroSoft one but it will never have a chance.
Unless MicroSoft is forced to give it that chance.

Thank you for your attention.

Faithfully yours

Eberhard Hafermalz