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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MICROSOFT CORPORATION,)
)
Defendant.)
)

No. CIV 98-1232 (TPJ)

CONFIDENTIAL

60-7371-0014
DEPARTMENT OF JUSTICE
AUG 28 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

DEPOSITION OF BILL GATES, a witness
herein, taken on behalf of the plaintiffs at
9:09 a.m., Thursday, August 27, 1998, at One
Microsoft Way, Redmond, Washington, before Kathleen
E. Barney, CSR, pursuant to Subpoena.

REPORTED BY:
Kathleen E. Barney,
CSR No. 5698

Katherine Gale
CSR No. 9793

Our File No. 1-49005

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I want

22 to ask you about is ~~Exhibit 353~~ ^{Gov. TRIAL EX. 345}, and this is a
23 December 1, 1996 e-mail from you to Mr. Nehru.

24 (The document referred to was marked by
25 the court reporter as ~~Government's Exhibit 353~~ ^{Gov. Trial EX. 345} for

1 identification and is attached hereto.)

2 Q BY MR. HOUCK: Do you recall asking
3 Mr. Nehru in or about December 1996 to collect for
4 you information about Netscape revenues?

5 A No.

6 Q Do you recall sending this e-mail on or
7 about December 1, 1996 to Mr. Nehru?

8 A No.

9 Q Okay.
10 Do you recall receiving from Mr. Nehru
11 the attached e-mail dated November 27, 1996?

12 A From time to time we do reviews of
13 various competitors, and at least one point in time
14 Netscape was one of the people that we looked at. So
15 it doesn't surprise me, but I don't remember it
16 specifically.

17 Q On the second page of the exhibit,
18 which is part of Mr. Nehru's November 27, 1996
19 e-mail, he talks about browsers.

20 A What page?

21 Q Page 2.

22 A Okay.

23 Q He identifies there sources of
24 Netscape's revenue. He says,

25 "Browser revenue for the

1 quarter amounted to \$45 million (a 32
2 percent increase over the last
3 quarter) representing 60 percent of
4 total Netscape revenue."

5 Do you have any reason to doubt the
- 6 accuracy of the information reported there?

7 A Well, I know that Mr. Nehru didn't work
8 for Netscape, so I'm sure he didn't have access to
9 the figures directly. If you're interested in that,
10 you should ask Netscape.

11 Q Was this the best information you had
12 in December of 1996 as to the proportion of
13 Netscape's revenue that was derived from browsers?

14 A I don't know.

15 Q Do you recall receiving any other
16 information than this on that subject?

17 A I might have seen an analyst report.
18 It says here we're 70 percent confident
19 about our numbers.

20 Q Do you recall why it was in this time
21 frame you had asked Mr. Nehru to collect this
22 information for you?

23 A I don't think I did. I already told
24 you that.

25 Q You have no recollection of asking him

1 for this information?

2 A I'm quite certain I wasn't the one who
3 asked for the information.

4 Q Do you have any recollection as to who
5 did?

6 A Perhaps Steve.

7 Q Steve, you mean Steve Ballmer?

8 A Uh-huh.

9 Q In your memo here -- strike that.
10 In your e-mail here you say, "What kind
11 of data do we have about how much software companies
12 pay Netscape?"

13 Do you recall asking that question to
14 Mr. Nehru in or about December 1996?

15 A It looks like I sent him that question
16 after he sent out one of these competitive analysis
17 reports.

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The -- Exhibit ~~253~~³⁴⁵, in particular
25 Mr. Nehru's memo, says his conclusion was of the \$45

1 million in revenue obtained that quarter by Netscape
2 as a result of the browsers ISPs commanded the
3 largest share at 40 percent of browser revenue.

4 Did you have any reason to doubt the
5 accuracy of that information obtained by Mr. Nehru?

6 A Well, I'll say two things about that:

7 First of all, he's not including the
8 prime -- when he gives that number he's not including
9 the primary browser revenue source which is what was
10 called service revenues in this report; that is,
11 taking the ad space in the browser, which is proven
12 to be the biggest source of revenue and a significant
13 source of revenue for browsers, he's not including
14 that in. So that would be a rather significant
15 change.

16 Also, although I haven't had a chance
17 to read his entire e-mail, it says that his
18 confidence in these numbers is about what he says 70
19 percent.

20 So clearly, there are people at
21 Netscape who would be 100 percent sure about the
22 numbers.

23 Q Do you know what, if any, service
24 revenue Netscape was earning from its browsers in or
25 about the first quarter of 1996?

1 A No, I don't.

2 Q Was Microsoft earning any service
3 revenue on its browsers the first quarter of 1996?

4 A In the first quarter of 1996? No.
5 That developed into a large business subsequently in
6 our case.

7 Q Do you know whether Netscape was any
8 different or not?

9 A Well, it's a measurable business for
10 them. You can just read what I say in the mail.

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4 Q Do you generally make public comments
5 about the financial health or welfare of Microsoft's
6 competitors?

7 A I'm often asked about various
8 companies, and I respond to questions. But I've
9 never given a presentation that had that focus.

10 Q Do you recall making public statements
11 in mid-1996 calling into question Netscape's
12 financial viability?

13 A I may have been asked questions about
14 that by the press, but I didn't go out and make any
15 speeches or statements about it.

16 Q I'd like to mark as ~~Exhibit 355~~ a copy
17 of an article that appears in The Financial Times of
18 London dated July 3, 1996.

19 (The document referred to was marked by
20 the court reporter as ~~Government's Exhibit 355~~ Gov. Trial Ex. 83
21 identification and is attached hereto.)

22 Q BY MR. HOUCK: The next to the last
23 page of Exhibit 356 appears the following quote,

24 "Our business model works
25 even if Internet software is free,"

1 says Mr. Gates. 'We are still
2 selling operating systems.'
3 Netscape, in contrast, is dependent
4 upon its Internet software for
5 profits, he points
6 out."

7 Do you recall making statements to this
8 effect to The London Financial Times in or about July
9 1996?

10 A I'm quite sure I didn't make a
11 statement. I think I was interviewed by Louise Kehoe
12 where she kept saying to me how various people were
13 predicting, including Netscape, that we would go out
14 of business because of the Internet and that we were
15 doomed because of the Internet.

16 Q ~~Do you recall in or about~~ July 1996
17 providing the information attributed to you here to
18 the reporter for The London Financial Times?

19 A I don't know what you mean "providing
20 the information."

21 Louise Kehoe is a reporter. She
22 interviewed me about this time with the proposition
23 that we were on our way out of business. And I said
24 to her, "If we didn't do a good job for our customers
25 in terms of what they wanted, that would be the case,

1 but that we thought we could do -- do good work
2 around the new scenarios that customers were
3 interested in."

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Q Do you have any reason to believe that she has inaccurately quoted you here in her article?

A I know it was an interview where the basic supposition was that Netscape and others were going to put us out of business. That much I recall. But in terms of the specific quote, I'm not sure.

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5 Q Sir, do you deny making the statement
6 attributed to you here?

7 A I think it was in the context of some
8 fairly aggressive questions about was my company
9 going to go out of business in the near future. And
10 I think it's -- it's valuable to know that context
11 whenever you look at an answer somebody gives to a
12 question.

13 Q Well, can you answer my question "yes"
14 or "no"?

15 Read the question back to him, please.

16 (The following question was
17 read:

18 "Q Sir, do you deny making
19 the statement attributed to you
20 here?")

21 THE WITNESS: I'm not denying making
22 the statement, but I am pointing out that I didn't
23 just make a statement. I was in an interview with a
24 reporter, and it would be valuable to understand her
25 questions. And I do recall the general tenure of

1 those questions. And so if your interest is
2 understanding the quote, understanding that context
3 is. I think, quite valuable.

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Q Did you make any effort in 1996 to find out what Netscape's revenues actually were?

A Personally?

1 Q Either personally or through some of
2 the many employees of Microsoft?

3 A Oh, I'm sure there were people at
4 Microsoft who looked at Netscape's revenues during
5 that year.

6 Q Did they communicate with you as to
7 what those revenues were at all?

8 A Among the thousands and thousands of
9 e-mail messages I get, I'm sure there were some that
10 had for certain periods of time information about
11 that.

12 Q Did you request any information
13 concerning Netscape's revenues in 1996?

14 A I'm sure I was in meetings where the
15 information was presented, but I don't think I was
16 the one who specifically asked for the presentation.

17 Q Whether you specifically asked for a
18 presentation in a meeting or not, did you ask people
19 to provide you with information concerning Netscape's
20 revenues in 1996?

21 A I may have asked some questions about
22 their revenue.

23 Q Do you recall doing that, sir?

24 A No.

25 Q Did you receive any answers to your

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Gov. Trial Exhibit 71

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Q BY MR. BOIES: Do you have ~~Exhibit 364~~

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in front of you, sir?

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Gov. Trial Ex. 83

~~Exhibit 355~~ that we were just talking

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about is a July 3, 1996 Financial Times article.

7

Gov. Trial Ex. 71

~~Exhibit 364~~ is a June 10, 1996 Financial Times

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article. And I'd like you to look on the fourth

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page, the first paragraph, and you can read as much

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of the document as you need to to put this in

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context. But the paragraph that I'm interested in is

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at the top of the page, and it says, quote,

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"Our business model works

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even if all Internet software is

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free,' close quote, says Mr. Gates.

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Quote, 'We are still selling

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operating systems. What does

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Netscape's business model look like

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if that happens, not very good,'"

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close quote.

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Did you say those words to this

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reporter, Mr. Gates?

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A Well, just understand we're covering

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exactly the same ground. I didn't give two

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interviews. This is all the same reporter, the same

1 interview. So we can go through all of that exactly
2 like we did. Louise Kehoe is Louise Kehoe, I gave
3 one interview.

4 Q Of course the June 10, 1996 article is
5 written by two reporters; correct, sir?

6 A And I've never met or given an
7 interview to Hugo Dixon as far as I can recall

8 Q Well, let's see if looking at this
9 article in any way refreshes your recollection.

10 Did you say to a Financial Times
11 reporter in 1996, quote:

12 "Our business model works
13 even if all Internet software is
14 free. We are still selling operating
15 systems. What does Netscape's
16 business model look like if that
17 happens? Not very good."

18 Did you say those words --

19 A I don't remember.

20 Q -- to a Financial Times reporter,
21 Mr. Gates?

22 A I said I don't remember.

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22 Do you have any reason to believe that
23 there would have been any reason for this reporter to
24 have made up these quotations?

25 A Didn't you already ask that?

1 Q I asked that with respect to the
2 Business Week reporter. I'm now asking it with
3 respect to The Financial Times reporter.

4 A Same answer.

5 Q You do have to give it for the record,
6 sir. What I'm asking you is whether you have any
7 reason to believe that The Financial Times reporter
8 would have made up or had any reason to make up the
9 quotations that are attributed to you here.

10 A I don't think they're infallible, but I
11 have no reason to suspect in this case that they made
12 it up.

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Q On June 10, 1996, in a document that had been marked as ~~Exhibit 364~~, The Financial Times ^{Gov. Trial Exhibit 71} attributed to you a quotation, quote,

"'Our business model works even if all Internet software is free,' close quote, says Mr. Gates. 'We're still selling operating systems. What does Netscape's business model look like if that happens? Not very good,'" close quote.

Did you ever contact either the reporter for The Financial Times who interviewed you or The Financial Times to assert that they had misquoted you in any way?

1 A No.

2 Q On July 3, 1996 The Financial Times
3 published what I think you refer to as a subset of
4 that quote: Quote,

5 " 'Our business model works
6 even if all Internet software is
7 free,' close quote, says Mr. Gates.

8 Quote, 'We are still selling
9 operating systems,' " close quote.

10 And then added not in quotes the
11 statement, "Netscape in contrast is
12 dependent on its Internet software
13 for profits he points out."

14 Did you ever contact either the
15 reporter or The Financial Times to assert that either
16 they had misquoted you or that the textual assertion
17 about what you said was inaccurate in any way?

18 A No.

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9 Q In 1996 did you believe that Netscape
10 posed a serious threat to Microsoft?

11 A They were one of our competitors.

12 Q Were they a serious competitor in your
13 view, sir?

14 A Yes.

15 Q Did you believe that Netscape's browser
16 was a serious threat to your -- that is
17 Microsoft's -- operating system's business?

18 A Well, you have to think about what work
19 we were going to do to improve our software and then
20 what Netscape and others were going to do to improve
21 their software. You can't just look at it
22 statically. It's more the work than -- the new
23 things you do than the history.

24 Q Did you believe that by 1996, that
25 Netscape and Netscape's Internet browser was a

1 serious alternative platform to the platform
2 represented by Microsoft's Windows operating system?

3 A Well, as was articulated by Marc
4 Andreessen and other people from Netscape, if we
5 didn't do new product work, that was a very likely
6 outcome.

7 Q What was a very likely outcome?

8 A That the value of the Windows platform
9 would be greatly reduced.

10 Q Did you believe that it was in
11 Microsoft's interest to convince financial analysts
12 that Netscape was not going to be financially viable?

13 A I never had a goal to do that, and my
14 only comments about Netscape's business would have
15 come in response to direct questions about that topic
16 from reporters.

17 Q Well, let me ask you to look at what
18 has been previously marked as ~~Exhibit 354~~, which is a
19 memorandum from you in May of 1996. ^{Gov. Trial Exhibit 41} And the last
20 paragraph begins, quote,

21 "At some point financial
22 minded analysts will begin to
23 consider how much of a revenue stream
24 Netscape will be able to generate,"
25 close quote.

1 Why was that important to you in this
2 internal memorandum which, obviously, is not
3 something which you're merely responding to a
4 reporter's inquiry, but it is something that is
5 involved in your internal deliberations within
6 Microsoft. —

7 A Who said it was important? It doesn't
8 say -- I mean, it's one of many sentences in the
9 memo.

10 Q Is it your testimony that this is an
11 unimportant sentence, sir?

12 A I don't think it's any more important
13 than any of the other sentences in here.

14 Q Is it any less important than any of
15 the other sentences?

16 A Yeah. It's not germane to the primary
17 topic of the memo.

18 Q If it wasn't germane to the primary
19 topic of the memo and if it wasn't particularly
20 important, why did you include it, Mr. Gates?

21 A It's merely an observation that I put
22 into this rather extensive memo that talks about our
23 plans in doing innovative products, and it's tacked
24 on as the last paragraph. And you didn't read the
25 whole paragraph, but it says "at some point." So it

1 seems to be a prediction about that.

2 Q Yes, I agree, it seems to be a
3 prediction. And I think I did read the "at some
4 point."

5 But my point to you is this is a
6 memorandum that you ~~were~~ sending to a number of the
7 top executives of Microsoft; correct, sir?

8 A All product people.

9 Q Well, let's see. We have Mr. Ballmer.

10 A It's not to him.

11 Q He's getting a copy?

12 A That's right.

13 Q Okay.

14 And what was Mr. Ballmer's position in
15 May of 1996?

16 A Executive vice president.

17 Q How many executive vice presidents did
18 Microsoft have at that time?

19 A One, two, three, four.

20 Q And who were the others?

21 A Bob Herbold, Pete Higgins and Paul
22 Maritz -- no, no, no. Maybe -- no, I think it's just
23 four.

24 Q So that this memorandum went to all
25 four of the executive vice presidents; correct, sir?

1 A It went to Paul Maritz. It was copied
2 to the other people there.

3 Q It was either addressed or copied to
4 all four of the executive vice presidents?

5 A They're among the recipients, yes.

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5 Q What was Brad Silverberg's position?

6 A I think he was a senior vice president,
7 but he worked for Paul and did a lot of the
8 development of software that went into Windows.

9 Q And he was one of the addressees of
10 this memo?

11 A That's right. It goes Maritz, and then
12 he's the second person on the "To" line.

13 Q And the third person to whom it's
14 addressed is Jim Allchin; is that correct?

15 A That's right.

16 Q What was his position?

17 A Senior vice president of the core
18 Windows development.

19 Q And the next person to whom it's
20 addressed is Brad Chase. And what is his position?

21 A At that time or at this time?

22 Q At that time.

23 A At that time he worked for Brad
24 Silverberg managing our relationships with ISVs
25 broadly defined and some of the marketing activities.

1 Q Did he have a position like vice
2 president?

3 A Oh, I'm sorry. He was a vice
4 president.

5 Q The next person to whom it's addressed
6 is Rich Tong.

7 A He was a vice president with an
8 analogous person to Brad Chase but working for Jim
9 Allchin.

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6 Q Are memoranda ~~more~~ formal an more
7 serious than e-mails?

8 A No. I'd say they're longer and more
9 thoughtful than most e-mail.

10 Q Now, what we're looking at here is one
11 of the longer more thoughtful documents, that is, a
12 memorandum; correct?

13 A Right.

14 Q And in that longer more thoughtful
15 memorandum in the final paragraph you write,

16 "At some point financial
17 minded analysts will begin to
18 consider how much of a revenue stream
19 Netscape will be able to generate."

20 Now, what was the significance of that
21 to you at the time, sir?

22 A It was a fact that I stated in the
23 memo.

24 Q Well, it clearly is a fact that you
25 state in the memo. But my question to you, sir, is:

1 What was the significance to you of that fact?

2 A I'm not sure what you mean by that.

3 Q In 1996 at the time that you wrote this
4 memorandum, what was the significance to you of the
5 fact that, quote,

6 "At some ~~point~~ financial
7 minded analysts will begin to
8 consider how much of a revenue stream
9 Netscape will be able to generate"?

10 A I think it must have referred to the
11 fact that Netscape was at this point a public
12 company.

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14 Were you in 1996 trying to get
15 financial analysts to develop a more negative and
16 more pessimistic view about Netscape's business
17 prospects?

18 A Except through the indirect effect of
19 them seeing how customers received our products and
20 our product strategies, that was not a goal.

21 Q If that was not a goal, sir, why did
22 you say in substance that the Internet browser would
23 be forever free?

24 A That was a statement made so that
25 customers could understand what our intent was in

1 terms of that set of technologies and how it would be
2 a part of Windows and not an extra cost item, and so
3 people would have that information in making their
4 decisions about working with us on Windows.

5 Q Now, is it your testimony that when
6 Microsoft told the world that its browser would be
7 forever free, that the desire to affect financial
8 analysts' view of Netscape played no role in that
9 decision?

10 A I can be very clear with you. The
11 reason we told people that it would be forever free
12 was because that was the truth. That's why we told
13 them that, because it was the truth.

14 Q Now, Mr. Gates, my question to you

15 A That's the sole reason we told them.

16 Q And my question to you is whether or
17 not the truth was, in part, due to your desire to
18 adversely affect financial analysts' view of
19 Netscape. Did that play any role, sir?

20 A You've been asking me a question
21 several times about why did we say something. We
22 said it because we thought our customers would want
23 to know and because it was the truth. And that
24 explains our saying it completely.

25 Q And what I'm asking you, sir -- and it

1 may be that the answer to my question is, "no, it
2 played no role." But if that's your answer, I want
3 to get it on the record. And my question--

4 A Are you talking about saying it?

5 Q Yes.

6 A Or how we came up with our decision -
7 about how to price our products?

8 Q Let's take it each step at a time, one
9 step at a time, so that your counsel doesn't say I'm
10 asking you a compound question, okay? And first
11 let's talk about saying it.

12 I know you're telling me it was the
13 truth. In addition to it being the truth, did the
14 fact that this would, in your view, adversely affect
15 the view of financial analysts of Netscape play any
16 role at all in your decision to announce that your
17 browser would be forever free?

18 A I actually think that came up in
19 response to some questions that people asked in an
20 event we had on December 7, 1995. So it wasn't so
21 much a question of our saying, okay, we're going to
22 go make this a headline, but rather, that there were
23 questions that came up during that including our
24 future pricing plans

25 Q This was a meeting on December 7 of

1 what year?

2 A 1995.

3 Q And was it attended by people outside
4 Microsoft?

5 A It was a press event.

6 Q And prior to attending that press
7 event, had you made a decision that it would be
8 forever free?

9 A Well, if you really want to probe into
10 that, you'll have to get into the different ways that
11 we made Internet technology available.

12 In terms of what we were doing with
13 Windows 95 and its successors, yes. In terms of some
14 of the other ways that we offered the Internet
15 technologies, there was some -- there hadn't been a
16 clear decision about that.

17 Q When you refer to other ways that you
18 offer Internet technologies, would you explain for
19 the record what you mean?

20 A Oh, we created an offering that ran on
21 the Macintosh OS that offered some but not all of the
22 capabilities that we put into Windows and used a
23 common branding for that. And we came up with a
24 package that ran on a previous version of Windows,
25 Windows 3.1, and made an offering of that.

1 Subsequently I mean, not on that day, but
2 subsequently.

3 Q And those were charged for; is that
4 what you're saying?

5 A I'm saying that before the December 7th
6 event, it was clear to everyone that in the Windows
7 95 and its successors, that the browser technology
8 would be free for those users. But it was unclear to
9 people what we were going to do with the other ways
10 that we packaged up the technologies.

11 Q Would you read the question back,
12 please?

13 (The following question was read:

14 "Q And those were charged
15 for; is that what you're saying?")

16 THE WITNESS: Well, they weren't
17 available. So if we're talking about December 7,
18 1995, it's not a meaningful question.

19 Subsequently those products were made
20 available to the customers without charge. But I'm
21 saying that there was some lack of clarity inside
22 Microsoft even up to the event itself about what we
23 were going to do with those other ways we were
24 providing Internet Explorer technology.

25 Q BY MR. BOIES: Uncertainty as to

1 whether you would charge for them; is that what
2 you're saying?

3 A That's right.

4 Q Okay.

5 Prior to the December 7, 1995 meeting,
6 had a decision been made to advise the world that not
7 only would the browser be free, but it would be
8 forever free?

9 A Well, it's always been the case that
10 when we put a feature into Windows, that it remains
11 part of Windows and doesn't become an extra cost
12 item. So it would have been kind of a silly thing
13 for anyone to ask including about that particular
14 feature. And by this time, of course, browsing is
15 shipping with Windows 95.

16 Q Exactly sort of the point I wanted to
17 come to, Mr. Gates.

18 When you put things into the operating
19 system generally, you don't announce that they're
20 going to be forever free, do you?

21 A Yes, we do. If anybody --

22 Q You do?

23 A If anybody asks, that's obviously the
24 answer we give.

25 Q Have you finished your answer?

1 A Yes.

2 Q Okay.

3 Could you identify for me the products
4 other than browsers that Microsoft has announced that
5 they would be forever free, expressly said, "These
6 are going to be forever free"?

7 A As I said to you, I think that actually
8 came up only in response to some questions. So it's
9 not proper to ask me and suggest that we announced it
10 like it was some, you know, press release
11 announcement or something of that nature.

12 Q Well, let me come back to that aspect
13 of it and just ask you for the present. What
14 products has Microsoft said publicly, whether in
15 response to a question or otherwise, that these would
16 explicitly be forever free?

17 A I've said that about the broad feature
18 set that's in Windows.

19 Q When did you say that, sir?

20 A I remember an analyst talking to me
21 about that once at an analyst meeting.

22 Q When was that?

23 A It would have been one of our annual
24 analysts meetings.

25 Q When?

1 A Not this year. Either last year or the
2 year before.

3 Q Is there a transcript of that analyst
4 meeting?

5 A Not with the conversation with that
6 analyst, no.

7 Q There are transcripts of analysts
8 meetings, aren't there, Mr. Gates?

9 A Only of the formal Q and A, not of
10 the -- most of the Q and A, which is where people are
11 mixing around with the press and analysts who come to
12 the event.

13 Q And this question that you say happened
14 happened after the transcript stopped being taken; is
15 that what you're saying?

16 A That's my recollection, yes.

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6 Q BY MR. BOIES: Is that the testimony,
7 this happened in a cocktail hour?

8 A I'm saying, yeah, in the informal Q and
9 A, not the formal Q and A.

10 Q This was at the cocktail hour?

11 A Or a dinner or a lunch.

12 Q Well, which was it?

13 A I'm certain that it was in the informal
14 part of the Q and A. Exactly was it on the way to
15 the bathroom or the cookie table or the dinner or the
16 cocktail hour, I can't say.

17 Q Sir, sometime on the way to the
18 bathroom or cookie table or the cocktail hour --

19 A Or lunch or dinner.

20 Q -- or lunch or dinner, some analyst,
21 whose name you do not recall, asked you a question.
22 Is that what your testimony is?

23 A Yes.

24 Q And what was that question?

25 A They asked about were there parts of

1 Windows that would become separate products and we'd
2 charge separately for in the future.

3 Q And what did you say?

4 A I said, "No."

5 Q Other than this conversation that you
6 say took place on the way to the bathroom or the
7 cookie table or a cocktail party or lunch or dinner,
8 was there ever any other time that Microsoft publicly
9 explicitly asserted that something would be forever
10 free?

11 A I'm sure that if anybody ever asked
12 about an operating system feature, we would have made
13 that clear to them. I don't -- beyond the one I've
14 talked about, I don't -- I don't recall that.

15 Then, again, you know, in the case of
16 the browser you have the case where another company
17 had -- it had been free and so, you know, the fact
18 that people were asking about that feature in some
19 ways is not surprising.

20 Q Well, you say another company had a
21 browser that had been free. What company was that,
22 sir?

23 A Well, certainly Mosaic was free. And
24 there are a number of other free browsers. The
25 Netscape browser in its early days was also free.

1 Q In 1996 was the Netscape browser free?

2 A I'm not sure of the exact chronology.
3 But I'm pretty sure that in 1996 anybody who wanted
4 to use the Netscape browser could download and use it
5 in any way they would want without Netscape coming
6 and asking them to pay them.

7 Q Mr. Gates, in 1996 what was Mosaic's
8 market share?

9 A I don't know.

10 Q Approximately?

11 A I really don't know.

12 Q Can you give me any estimate or range?

13 A By 1996, probably under 10 percent.

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5 In 1996 Netscape was charging OEMs who
6. it licensed to distribute its browser; correct, sir?

7 A I don't know that.

8 Q Do you know one way or the other?

9 A I think they were charging some, but
10 I'm not sure they were charging all.

11 Q Did you ever try to find out?

12 A I know we were always unclear what the
13 nature of those deals were.

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8 Q Indeed today the amount of Netscape's
9 revenue that's attributed to charging people for the
10 use of the browser is zero; right, sir?

11 A I don't know that.

12 Q Because they don't charge for the
13 browser; right? You know that, don't you?

14 A No, I don't know if, you know, they had
15 some commitment contracts with various people and you
16 can do special things with browsers. And understand,
17 they -- you know, they do lots of different deals
18 that include various special things. And so I don't
19 think it's fair for me to sit here and tell you what
20 Netscape's revenue are from a particular source.

21 If you want to ask me about Microsoft,
22 that would be a different thing. But I'm not an
23 expert on Netscape revenue.

24 Q And so you just don't know, is your
25 answer, as you sit here now?

1 A Yeah. It may have dropped down to
2 zero. I don't know.

3 Q Okay.

4 Was it part of your intent in taking
5 the actions that Microsoft took to drive that down to
6 zero?

7 MR. HEINER: Objection.

8 THE WITNESS: We price our product,
9 Windows. That's the only thing we do relative to
10 pricing. The most important thing we do is we create
11 the features of the product including improved
12 versions.

13 Q BY MR. BOIES: Let me be sure my
14 question is clear.

15 Was any part of Microsoft's actions
16 with respect to its browser or, as you sometimes
17 refer to it, browser technology, motivated by desire
18 to drive Netscape's revenues from users of Netscape's
19 browser down to zero?

20 A Well, I think you're getting a little
21 bit psychological there.

22 Q No. I'm asking what you intended.
23 What was the purpose of what you were doing?

24 A My purpose was to make Windows a better
25 product and maintain and increase the popularity of

1 Windows.

2 Q Was that the only purpose?

3 A That was the purpose on which the
4 decision was made.

5 Q I just want to be clear.

6 It's your testimony that an intent to
7 deprive Netscape of revenue played no role in any of
8 the decisions that Microsoft made with respect to
9 browsers or browsing technology? Is that your
10 testimony?

11 A Well, our decision to have the browser
12 be a feature of Windows was in no way motivated by
13 something to do with Netscape. We had chosen that
14 that was a logical evolution of the Windows feature
15 set before Netscape was a factor at all.

16 Q Mr. Gates, if your answer is that it
17 played no role, that is your answer. But I need to
18 get on the record what your answer is.

19 And my question is whether an intent to
20 deprive Netscape of revenue played any role in any of
21 the decisions that Microsoft made with respect to its
22 browser or browsing technology.

23 A We decided that it was a logical
24 improvement of Windows to put the browser into
25 Windows before we had much awareness of there even

1 being a Netscape. So the decision that that would be
2 a feature -- and as I've said, when we make something
3 a feature of Windows, that means that it's available
4 along with all the other features and the license
5 fee, that decision had been made very early on.

6 We also had a very early recognition of
7 the potential revenue sources from things like the
8 Search button and the Home Page and that those would
9 become ite substantial.

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9 Q. BY MR. BOIES: In or about January of
10 1996 or thereafter, did Microsoft try to study
11 Netscape to determine how you could reduce Netscape's
12 ability to compete?

13 MR. HEINER: Objection.

14 THE WITNESS: I don't know what you
15 mean by that.

16 Q. BY MR. BOIES: Let me try to break it
17 up into as small a pieces as I can.

18 In or about January, 1996 or
19 thereafter, did Microsoft, to your knowledge,
20 undertake to try to study Netscape as a company,
21 including where its revenues came from, what its
22 dependencies were, what it needed to remain viable?

23 A. I'm sure we looked at their revenue.
24 And I'm sure we looked at their products and their
25 organizational structure.

1 Q. Was that in whole or in part a result
2 of an attempt to find out what their vulnerabilities
3 were, Mr. Gates?

4 MR. HEINER: Objection.

5 THE WITNESS: Did you end the question?

6 Q. BY MR. BOIES: Both your counsel and I
7 thought so.

8 A. Okay.

9 Q. But if you don't understand it, I'll
10 rephrase it.

11 A. We were interested in learning what
12 users liked about their products and what kind of
13 response customers had.

14 Q. For my present question I'm not asking
15 about learning about their products just for the sake
16 of learning about their products. What I'm asking
17 about is whether you were trying to figure out where
18 Netscape's dependencies were so that you could attack
19 Netscape and render Netscape a less effective
20 competitor?

21 MR. HEINER: Objection.

22 THE WITNESS: We were interested in
23 building a product that users would prefer over them

24 Q. BY MR. BOIES: My question, sir, is
25 whether in addition to whatever you did to improve

your product, were you also attempting to ascertain
2 what Netscape's dependencies were so that you could
3 attempt to render Netscape less viable, less able to
4 compete with Microsoft?

5 MR. HEINER: Objection.

6 THE WITNESS: We gathered information
7 about Netscape like we do a number of companies we
8 compete with, including IBM, Sun, Novell and many
9 others.

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Q. BY MR. BOIES: The November 27, 1996

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Nehru e-mail that you sent around is headed "Netscape
(GOV. TRIAL EX. 100)

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Revenues;" correct, sir? And it is a discussion of

8

an analysis of Netscape's revenues?

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A. I didn't send it around. Amar sent it

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around. I enclosed it.

11

Q. I thought we established that you then

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sent it around.

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A. I enclosed it, yes.

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Q. When you say you enclosed it, that

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means it's enclosed with what you have written so

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that it goes around to everybody that your e-mail is

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directed to; correct?

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A. Well, Amar had already sent it to quite

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a large superset of the people I copied on my e-mail,

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so he sent it to them.

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Q. He sent it to them and then you sent it

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to everybody that is on the addressee or copy list of

23

your e-mail; correct?

24

A. I enclosed it to those people who had

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already all gotten it from Amar.

1 Q. And by enclosing it means you sent it
2 around?

3 A. That's not the word I would use, but it
4 was enclosed in the e-mail I sent to those people who
5 had already received it directly from Amar.

6 Q. So when people got your e-mail -- all
7 I'm trying to do is -- I don't think this is obscure.
8 All I'm trying to do is establish that when you sent
9 your e-mail to the five people that you sent it to,
10 with your e-mail they got Mr. Nehru's e-mail?

11 A. Which they had already gotten.

12 Q. And they got it again?

13 A. As an enclosure, yes.

14 Q. As an enclosure to your e-mail?

15 A. Right.

16 Q. And that e-mail from Mr. Nehru that you
17 enclosed with your e-mail is a discussion of
18 Netscape's revenues; correct, sir?

19 A. That's the subject line of his e-mail.

20 Q. Not only is it the subject line, that's
21 what the substance of the e-mail is?

22 A. Do you want me to look at it?

23 Q. If you need to to answer the question.

24 A. It appears to be a discussion of
25 Netscape's revenue, or what he was able to find out

1 about it at a 70 percent confidence.

2 Q. And the first line of your memo that
3 you send to the five people indicated here, including
4 Mr. Maritz and Mr. Ballmer, is "What kind of data do
5 we have on how much software companies pay Netscape?"
6 correct, sir?

7 A. Yes.

8 Q. And did they furnish you with that
9 information?

10 A. I don't think so.

11 Q. You say in the next line, "In
12 particular I am curious about their deals with Corel,
13 Lotus and Intuit." Do you see that?

14 A. Uh-huh.

15 Q. You've got to say yes or no for the --

16 A. Yes.

17 Q. Did you ever receive information about
18 what revenues Netscape was getting from any of those
19 companies?

20 A. I'm quite sure I didn't.

21 Q. Netscape was getting revenues from
22 Intuit. You knew that in December of '96; correct,
23 sir?

24 A. I still don't know that.

25 Q. You still don't know that? You tried

1 to find that out in December of 1996; correct?

2 A. I did not myself try and find that out.

3 Q. You tried to find it out by raising it
4 with people who worked for Microsoft, didn't you?

5 That's what this message is?

6 A. It says I'm curious about it.

7 Q. Well, the first line says, "What kind
8 of data do we have about how much software companies
9 pay Netscape? In particular I am curious about their
10 deals with Corel, Lotus and Intuit." That's what you
11 wrote to Mr. Nehru, Mr. Silverberg, Mr. Chase,
12 Mr. Ballmer and Mr. Maritz; correct, sir?

13 A. Right, because Amar's mail didn't seem
14 to have any data about that.

15 Q. And is it your testimony that you never
16 got any data about that?

17 A. That's right. I don't remember getting
18 any data. I'm quite sure that I didn't.

19 Q. Did you follow up to try to get an
20 answer to those questions?

21 A. No.

22 Q. After December of 1996, Microsoft
23 entered into an agreement with Intuit that would
24 limit how much money Intuit paid Netscape; correct,
25 sir?

1 A. I'm not aware of that.

2 Q. Are you aware of an agreement that
3 Intuit entered into with Microsoft?

4 A. I know there was some kind of an
5 agreement. I wasn't part of negotiating it, nor do I
6 know what was in it.

7 Q. Do you know anything that was in the
8 Intuit agreement?

9 A. I'm quite sure that Intuit had a plan
10 to use our componentized browser. And I think in the
11 agreement they agreed to make that their default
12 browser.

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3 Q. Let me show you a document that has
4 been marked as Exhibit 386. The second item here
5 purports to be a message from you to a number of
6 people dated April 6, 1995. Do you see that?

7 A. Yes.

8 (The document referred to was marked
9 by the court reporter as Government ^{Deposition} Exhibit 386 for
10 identification and is attached hereto.)

11 Q. BY MR. BOIES: Did you send this
12 message on or about April 6, 1995?

13 A. I don't remember sending it, but I
14 don't have any reason to doubt that I did.

15 Q. Now, attached to this message, as it
16 was produced to us, I believe, by Microsoft, is a
17 two-page document headed "Netscape as Netware." Do
18 you see that?

19 A. I see a three-page document, yes.

20 Q. Yes, three pages. Pages 3558 through
21 3560.

22 Have you seen this before?

23 A. I don't remember seeing it before.

24 Q. Now, the title of this three-page
25 attachment is "Netscape as Netware" and there is a

1 footnote that says, "The analogy here is that the
2 major sin that Microsoft made with Netware was to let
3 Novell offer a better (actually smaller and faster
4 with simpler protocol) client for networking. They
5 got to critical mass and can now evolve both client
6 and server together."

7 Do you see that?

8 A. Uh-huh. Yes.

9 Q. In or about April of 1995, was
10 Microsoft concerned with Netscape getting to what is
11 referred to here as critical mass?

12 A. I don't know what Paul meant in using
13 that word.

14 Q. Do you have any understanding at all
15 about what Mr. Maritz meant when he referred to a
16 competitor getting "to critical mass"?

17 A. He seems to be using that phrase with
18 respect to Netware or Novell, but I'm not sure what
19 he means by it.

20 Q. He is also using it with respect to
21 Netscape in the analogy, is that not so?

22 A. It's not clear that the term "critical
23 mass" is part of the analogy, is it? It's not to me.

24 Q. Okay. This document is about Netscape,
25 it's not about Novell; correct, sir?

1 A. I didn't write the document. The
2 document appears to refer to "Netscape as Netware" as
3 its title, so Novell is talked about in this document
4 and a lot of things seem to be talked about here. Do
5 you want me to read it?

6 Q. If you have to to answer any of my
7 questions.

8 Netware is something from Novell;
9 correct, sir?

10 A. Fact.

11 Q. What?

12 A. Fact.

13 Q. Does that mean yes?

14 A. Yes.

15 Q. And what Mr. Maritz here is doing is
16 analogizing Netscape to Netware; correct?

17 A. It's kind of confusing because Netscape
18 is the name of a company and Netware is the name of a
19 product and so I'm not sure what he is doing.

20 Usually you think of analogizing two products to each
21 other or two companies to each other, but he appears
22 to be analogizing a company to a product, which is a
23 very strange thing.

24 Q. Well, sir, in April of 1995, insofar as
25 Microsoft was concerned, was Netscape primarily a

1 browser company?

2 A. No.

3 Q. It was not?

4 A. No.

5 Q. All right, sir.

6 In this document do you understand what
7 Mr. Maritz is saying is that Microsoft should not
8 make the same mistake with Netscape's browser as it
9 did with Novell's Netware?

10 A. I'd have to read the document. Do you
11 want me to?

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17 And the question is, do you understand
18 that what this document is saying is that Microsoft
19 should not make the same mistake with Netscape's
20 browser as it did with Novell's Netware? And you can
21 read any portion that you want, but I am particularly
22 interested the heading which says "Netscape as
23 Netware" and the footnote right off that heading,
24 "The analogy here is that the major sin that
25 Microsoft made with Netware was to let Novell offer a

1 better (actually smaller and faster, with simpler
2 protocol) client for networking. They got to
3 critical mass and can now evolve both client and
4 server together."

5 A. Are you asking me a question about the
6 whole document?

7 Q. No, I didn't think I was. I thought it
8 was possible for you to answer the question by
9 looking at the title and first footnote.

10 A. I thought you were asking me what the
11 document is about.

12 Q. I think it's possible to answer the
13 question by looking at the heading and that footnote.
14 My question is whether, as you understand it, what
15 Mr. Maritz is saying here is that Microsoft should
16 not make the same mistake with Netscape's browser as
17 it did with Novell's Netware?

18 A. Does it say "mistake" somewhere?

19 Q. All I'm asking you is whether you
20 interpret this that way?

21 A. Does it say "mistake" somewhere?

22 Q. Mr. Gates, we have had a conversation
23 about how I ask the questions and you give the
24 answers. I think --

25 A. I don't see where it says "mistake."

1 Q. It doesn't say "mistake." It says
2 "major sin." If you think major sin is something
3 different than mistake, you can answer the question
4 no, that's not what you think Mr. Maritz means. My
5 question is clear. You can answer it yes, no, or you
6 can't tell.

7 A. What is the question?

8 Q. My question is whether -- as you
9 understand what Mr. Maritz is saying here, is he
10 saying that Microsoft should not make the same
11 mistake with Netscape's browser as it did with
12 Novell's Netware?

13 A. No, I think he is saying something
14 else.

15 Q. Okay. Do you think that when
16 Mr. Maritz uses the term "major sin" that Microsoft
17 made, he is referring to what he thinks is a mistake?

18 A. Probably.

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