MTC–00027805

From: Sudha
To: Microsoft ATR
Date: 1/28/02 11:04am
Subject: LOGICAL EXPLANATION—
Freedom to Innovate

Below are comments to specific issues addressed in the Court Case, http://www.usdoj.gov/atr/cases/ms-settle.htm#docs

Item #2: Someone else please invent a better operating system than Windows! Also if MS Windows has monopoly, what about Intel—would they be ''monopolizing'' the intel chip market?

Item #3: A better operating system will always win the user market.

Item #4: How ridiculous! When Netscape owned 70% of the market, was it not a monopoly?

Item #7: Java is very difficult to learn. Training is unaffordably expensive.

Item #11: Netscape is NOT the browser innovator—give credit to the real innovator, please!!! (universities!)

Item #18: Microsoft has a right to ''tie'' all ITS products together! Integrating applications makes better use of system resources.

Item #24, 25: As long as Windows is the operating system used, the creator of Windows, who is Microsoft, has the right to present it anywhich way to the users as they please—basic human right of ownership!

Additional Comments: Seems to me like other vendors like IBM and Sun and Netscape had nothing to complain about as long as THEY owned the lion's share of the market. Their products were difficult to use and hard to learn.

Microsoft brought the computing technolgy to the layman's door making it possible for the total computer illiterate people to be able to actually use the computer in effective and efficient ways, which would have been totally impossible otherwise!

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MTC–00027806

From: Bartucz, Tanya Y.
To: ''microsoft.atr(a)usdoj.gov''
Date: 1/28/02 11:03am
Subject: Tunney Act Comments

Attached please find the Association for Competitive Technology's Tunney Act comments on the Microsoft settlement. A paper copy has been submitted by fax.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff, v. Civil Action No. 98–1232 (CKK) MICROSOFT CORPORATION, Defendant. STATE OF NEW YORK ex rel.Attorney General ELIOT SPITZER, et al.,Plaintiffs,) v. Civil Action No. 98–1233 (CKK) MICROSOFT CORPORATION,Defendant.

COMMENTS OF THE ASSOCIATION FOR COMPETITIVE TECHNOLOGY

The Association for Competitive Technology (''ACT'') hereby submits its comments on the Revised Proposed Final Judgment (''RPFJ'') that has been proposed by most of the plaintiffs, including the United States, and defendant Microsoft Corporation. ACT is a trade association representing some 3,000 information technology (''IT'') companies, including Microsoft, on a number of issues important to the industry. ACT's mission is to promote a vibrant, competitive IT industry and a vibrant IT marketplace in which consumers, not the government, pick winners and losers. Because ACT believes that, on balance, the RPFJ will be good for both the industry and consumers, it supports the RPFJ. ACT also opposes the radical proposals advanced by the remaining plaintiffs because they would harm the industry and serve no other purpose than to advance the interests of such Microsoft rivals as Sun Microsystems, Oracle, and AOL Time Warner.

INTRODUCTION AND SUMMARY

The purpose of a Tunney Act proceeding is to determine whether the settlement that the federal government has entered into is within the reaches of the public interest. United States v. Microsoft Corp., 56 F.3d 1448, 1460 (DC Cir. 1995) (internal quotation marks and emphasis omitted). The RPFJ easily meets that forgiving standard. Indeed, as shown in detail below, this conclusion is easily established by measuring the RPFJ against four settled principles that govern relief in all antitrust cases, and by comparing the RPFJ to the radical remedies that have been proposed by the States that have refused to consent to the RPFJ (''Litigating States'').

First, it is well settled that an antitrust remedy should be designed to protect consumers rather than advance the interests of competitors. The RPFJ will accomplish this goal. It prevents Microsoft from engaging in exclusionary or retaliatory tactics, as well as foreclosing a number of more specific paths to unfair competition. However, it is carefully crafted to ensure that Windows will remain available to consumers as a reliable operating platform.

By contrast, many of the Litigating States' proposals seem to have been designed by Microsoft's competitors. Indeed, the companies that will benefit most from the Litigating States' efforts are the same ones that have led the campaign to scuttle settlement efforts case and to impose far-reaching restrictions on Microsoft: AOL Time Warner, Sun Microsystems, Oracle, IBM, and Apple. As a prominent commentator recently noted, Microsoft's enemies were largely responsible for instigating the lawsuit and were active behind the scenes in helping the government frame the charges and compile the evidence. Executives from Sun, AOL, Netscape and other companies testified against Microsoft. Fred Vogelstein, The Long Shadow of XP, Fortune, Nov. 12, 2001. Each of these companies dominates a particular market that is distinct enough from Intel-compatible PCs not to be a part of this case, but related enough that Microsoft's rivals fear Microsoft's competition. For example, Sun Microsystems dominates the market for server operating systems, but its market share is being eroded by lower-cost alternatives from Linux and Windows. Why Competitors Are Largely Quiet on Microsoft Settlement, Associated Press, Nov. 15, 2001; Peter Burrows, Face-Off, Bus. Wk., Nov. 19, 2001, at 104. In asking for must-carry provisions for Java, limits on technical integration and the use of Microsoft middleware, and restrictions on Microsoft's investment in intellectual property, Sun seeks to maintain its stranglehold over the server marketplace. Similarly, Oracle enjoys a privileged position in the server database market but it, too, is facing stiff competition from lower-priced alternatives that are gaining increasing favor with reviewers and customers. As Oracle tries to move into different markets, such as e-mail, where consumers expect tighter integration, it will be unable to maintain its high prices unless Microsoft's capacity for product improvement is limited. Finally, Microsoft and AOL are both dominant companies, orbiting in separate if overlapping domains. Yet both companies regard themselves as being on a collision course, as all forms of information and entertainment, including music and movies, are increasingly rendered in digital form. Steve Lohr, In AOL's Suit Against Microsoft, the Key Word Is Access, N.Y. Times, Jan. 24, 2001. An internal document makes clear that AOL is willing to take any necessary steps to gain control of the desktop, including even spreading false rumors about the stability of Windows XP. See http://www.betanews.com/aol.html.

4 Beyond these companies' own statements and court filings their views are parroted by various proxies. These include organizations that were specifically formed to hobble Microsoft, such as the misnamed Project to Promote Competition and Innovation in the Digital Age (''ProComp''), and existing trade organizations that these companies have recently joined and come to dominate, such as the Computer and Communications Industry Association (''CCIA'') and the Software Information Industry Assocation (''SIIA''). The apparently high level of coordination between these groups and the Litigating States' counsel is ample reason for skepticism when examining some of the States' arguments.

The reality is that these rivals, both directly and through their proxies, are trying to use the courts to increase their own profits rather than consumer satisfaction. This is shown by the fact that, while they condemn Microsoft for integrating its products, they, too, are vying to bring integrated products to consumers. For example, Sun's SunONE initiative tries to offer the same level of integration as Microsoft's .Net service. See SunONE, Services on Demand vision, at http://www.sun.com/software/sunone/overview/vision/. Not surprisingly, Oracle shares this vision of a global network of