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Antitrust Lawsuits Against Microsoft for Monopolizing Computer Software Markets

Carey C. Basala

SANS Institute

Security Essentials Practical Examination

December 2001

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Abstract

Is Microsoft a monopolist or an American success story? These are among the characterizations that swirl around the investigations of the antitrust violations against Microsoft. With the Internet becoming increasingly popular as a method of information retrieval and advertising, the question arises as to which browser to use to take full advantage of the Internet. This question brought on 2 antitrust lawsuits against Microsoft Corporation because of their web browser, Internet Explorer. The outcome of this lawsuit will most likely not affect the choices consumers make when they choose what operating system, application software, and web browser they use.

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## Antitrust Lawsuits Against Microsoft for Monopolizing Computer Software Markets

### Background

Before 1980, few people outside of the computer industry had heard of Microsoft. In 1980 the company purchased the rights to a software package called “Quick and Dirty Operating System” (QDOS). Shortly after that acquisition, IBM selected Microsoft to provide the operating system for the personal computers (PC) that IBM would launch in August 1981. Microsoft modified QDOS to meet IBM’s requirements and renamed it MS-DOS (White, 1985).

The success of the IBM PC containing the operating software MS-DOS, caused Microsoft to become the dominant producer of operating software. In 1992, MS-DOS accounted for 80% of all system software sold with PCs. By mid-1993, over 120 million copies of MS-DOS had been installed on PCs and another 50 million copies of Microsoft’s new graphic user interface (GUI) operating system Windows 3.1 had been installed. The sell of these operating systems contributed to the growth of Microsoft to become a company with annual sales of \$3.75 billion and assets of \$3.80 billion (White, 1995).

The astounding success Microsoft experienced with its operating system caused rival producers to complain that Microsoft was trying to monopolize the software industry because of their pricing structure and contract agreements with PC makers. These claims were the basis for the first antitrust investigation against Microsoft.

### July 15, 1995 – Signed consent Decree

In June 1990, the US Federal Trade Commission began an investigation of Microsoft’s marketing practices. In February 1993, a formal commission vote on whether to seek a Preliminary injunction ended in a 2-2 deadlock. Another voting effort in July again yielded a 2-2 tie. These voting efforts almost stopped the investigation, but in June 1993, Novell Inc., filed an antitrust complaint with the European Union’s Competition directorate against Microsoft. This new complaint revived the interest of the US Federal Trade Commission and combined their efforts with the European Union’s Competition Directorate in the investigation of Microsoft (White, 1995).

At this time, no formal charges had been filed against Microsoft but the investigation had already consumer four years. This case had a potential for continued litigation for an extended length of time, not including the litigation and court proceedings that would follow. On July 15, 1995, the US Federal Trade Commission, European Union’s Competition Directorate and Microsoft announced a joint agreement, “a consent decree”, that brought the investigations to a close.

By signing the decree, Microsoft agreed to the following: (1) It would rewrite its contracts so that PC makers would pay only for each copy of MS-DOS that was installed on the PCs shipped and Microsoft's contracts would be no longer than one year. (2) Microsoft's testing agreements with application software developers would no longer preclude them from working with other operating system producers (ZDNN, 1997).

### Netscape versus Internet Explorer

Before one can understand what the battle of the top Web browsers is about, one must first understand what a Web browser is? Microsoft Press (1997) defines a Web browser as: "Software that lets a user view HTML documents and access fields and software related to those documents. Originally developed to allow users to view or browse documents on the World Wide Web (WWW), Web browser can blur the distinction between local and remote resources for the user by also providing access to documents on a network, an Intranet, or the local hard drive. Web browser software is built on the concept of hyperlinks, which allow users to point and click with a mouse in order to jump from document to document in whatever order they desire. Most Web browsers are also capable of downloading and transferring files, providing access to newsgroups, displaying graphics embedded in the document, and executing small programs, such as Java applets or ActiveX controls included by programmers in the documents. Some Web browsers, such as Netscape Navigator, are an addition to the operating system on a client computer, while others, such as Internet Explorer, are actually part of the operating system and support some system functions." In simplest terms, a Web browser is a user-friendly program that allows a user to view and transfer many different documents from many different places.

The Internet has become a personal necessity; and it has become an everyday source of information and advertising for businesses. Web browsers are the essential tools that allow access to the resources that the Internet offers. In day-to-day business operations, Web browsers are used for e-mail, downloading and uploading files, and for search engines. The Internet also provides businesses with free advertising by publishing their Web pages. Advertising is an essential part of the Internet, and Web page designers are careful when developing pages. Designers typically test their sites to ensure that all aspects of a Web page are visible to viewers using both Netscape Navigator and Internet Explorer browsers.

The rivalry between Internet Explorer and Netscape Navigator began when the release of Microsoft's Windows 95 bundled with Internet Explorer was first announced. Netscape Communications Corporation controlled more than 70% of the browser market. Following the first release of Internet Explorer, this control decreased to 60%. This market share decrease made Netscape concerned about the release of Windows 95 bundled with Internet Explorer and prompted federal authorities to explore legal action.

The claim against Microsoft and Internet Explorer. In 1997, Microsoft was accused of anti-competitive marketing practices directed at personal computer manufacturers who pre-install operating system software on the personal computers they produce for retail sale. This

lawsuit was based on the argument that Internet Explorer and Windows 95 were two self-standing products and that integrating them into one package gave Microsoft an unfair advantage over Netscape Communications Corporation. The lawsuit further stated that this action by Microsoft violated the company's consent decree of 1995. The suit sought to force Microsoft to offer Windows without the features of Internet Explorer or to include Netscape Navigator in its package (Encarta, 2000\_ . (Netscape Communications Corporation charged a licensing fee to original equipment manufacturers for the use of Netscape Navigator.)

The ruling of the lawsuit. US District Court Judge Thomas Penfield Jackson ruled that Microsoft must not require original equipment manufacturers to bundle Microsoft Internet Explorer with Windows 95. Judge Jackson further stated that his ruling would not cause Microsoft significant hardship nor prevent the promotion of Internet Explorer as a single product in the free market. This ruling pleased the executives at Netscape Communications Corporation. Senior Vice President Lori Mirek stated "the ruling cleared the way for Netscape Communications Corporation to seek out computer makers to preinstall their browser" (Moeller, 1997). Unfortunately for Netscape Communications Corporation, the US Circuit Court of Appeals overturned Judge Jackson's ruling.

### US Versus Microsoft

On May 18, 1998, Microsoft released Windows 98 and the Department of Justice and 20 State Attorney Generals and the District of Columbia filed another lawsuit that accused Microsoft of engaging in multiple anti-competitive acts. The government contends that Microsoft is violating the Sherman antitrust Act of 1890 by using its monopoly with Windows 95 to dominate the Internet browser market.

The government's case. The Justice Department alleges the following illegal conduct by Microsoft:

1. In May 1995, Microsoft proposed to Netscape that Netscape's browser become the sole browser for those with non-Windows operating systems while Microsoft would supply the sole browser for computer operated by Windows. Windows, however, is the operating system on 90 percent of the nation's PCs, and Netscape rejected the non-competition proposal.
2. Microsoft required computer manufacturers to license and install its browser as a condition of licensing the existing Windows 95 operating system.
3. Microsoft intends to use the same tie-in contracts to force manufacturers to accept its browser with Windows 98.
4. Microsoft forces computer manufacturers to adopt a uniform first screen sequence of Microsoft's design, preventing them from giving more prominent display to a browser from one of Microsoft's competitors.

5. Microsoft reached anti-competitive agreements with nearly the entire nation's largest and most popular on-line server providers and Internet service require providers to offer Microsoft's Internet Explorer as the exclusive or primary browser through which they distribute their services.
6. Microsoft has contracts with Internet content providers to give them on-click access on the Windows active desktop feature, on condition they do not reach agreements for on-click access on a competitor's browser (<http://www.policy.com/reports/dojvsms>).

These allegations against Microsoft are to eliminate Microsoft's licensing and marketing contracts that restrict the ability of computer manufacturers to choose which browser to install on their PCs. It also seeks to eliminate the ability of Internet service, online service, and Internet content providers to distribute and promote competing browser software.

Judge Jackson's ruling on U.S. versus Microsoft. On April 3, 2000, Judge Penfield Jackson of the United States District Court for the District of Columbia finds in U.S. versus Microsoft that Microsoft violated the Sherman Anti-Trust Act. Microsoft used anti-competitive practices to create and maintain monopoly power, Jackson finds, ordering that the trial not enter the phase in which penalties are assessed. On June 7, 2000, Judge Jackson ordered Microsoft to be divided into two companies. (<http://www.policy.comreports/dojvsms>).

On June 20, 2000, Judge Thomas Penfield Jackson sent Microsoft's appeal to the Supreme Court trying to bypass the appeals courts and expedite a final verdict on whether Microsoft violated the Sherman Anti-Trust Act. He also delayed his previous ruling that would have broken up the company and imposed strict conditions on Microsoft's business practices beginning September 5, 2000 (<http://www.policy.com/reports/dojvsms>). Microsoft opposed forwarding the case directly to the Supreme Court and has currently won a victory from the appeals court by denying the government's request to prevent Microsoft from filing an immediate appeal. On September 26, 2000 the Supreme Court made its decision to not hear a direct appeal and sent the case back to the U.S. Court of Appeals.

U.S. Court of Appeals for the District of Columbia. On February 6, 2001 the U. S. Court of Appeals for the District of Columbia asked Microsoft to prepare to argue about the conduct and the interview comments made by Judge Jackson, about his ruling of the Microsoft Anti-trust case. Microsoft tried to prove that Judge Jackson had a bias opinion and that his ruling should be reversed. One of the biggest controversial statements that came under attack at the hearing was the comments made by Judge Jackson comparing Bill Gates to Napoleon and the Microsoft Company to a Murderous street gang. Because of these comments and the lack of defining the market that Microsoft was being accused of monopolizing, on June 28, 2001 the federal appeals court reversed Judge Jackson's order to break up Microsoft and removed Judge Jackson from the case.

U.S. District Judge Colleen Kollar-Kotelly is appointed to hear the remaining arguments in the Microsoft Anti-trust case. The Justice Dept and 18 States that have the lawsuit against Microsoft have officially decided not to seek a breakup of Microsoft. Instead they are going

after Microsoft for violating the 1995 Consent decree between Microsoft and the government and Microsoft's anticompetitive conduct.

Antitrust Settlement. On November 1, 2001, the Justice Department and Microsoft agreed on a settlement but that the wording of the agreement had not been finalized and that the negotiations could still break down. Judge Kollar-Kotelly trying to get this case settled quickly asked for a hearing on arguments of the settlement agreement. Microsoft thought that their long court battle would be diminished today November 6, 2001 but 9 states including the District of Columbia refused to accept the settlement agreement. The case now takes two directions. The Justice Department and 9 states will continue with the settlement proposal and the settlement agreement will be published in the Federal Register by the end of November. The states that are against the settlement will proceed with their anticompetitive lawsuit against Microsoft sometime in March 2002 (<http://www.washingtonpost.com/ac2/wp-dyn/A47104-2001Nov6>).

### Conclusion

Microsoft characterizes the antitrust case as part of an unfair pursuit of a company whose only crime is being too adept and successful as a computer software creator. Microsoft said "it devotes enormous resources to innovation, steadily increasing the features and functionality of its operating system products... A monopolist, lacking competition, would have no need for such a high level of investment in innovation" (<http://www.policy.com/reports/dojvsms>).

These cases are important to a profession that requires the use of computers or an individual who uses a computer. With a settlement agreement that restricts Microsoft from performing software development and software integration, the operating system software that 90 percent of the population uses could change. The results could have a serious effect in the way software manufacturing companies develop application software and networking software. The Antitrust case will continue making history with its long litigation that has expanded so far over 4 years. Unfortunately, there does not seem to be an end to this case in the near future.

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