Monopoly and the development of computer software

The US government case against Microsoft

James Brookfield
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On May 18 the US Department of Justice (DOJ) and 20 state attorneys general filed their long-anticipated antitrust suit against the Microsoft Corporation.

While the new lawsuit includes the states as plaintiffs and adds a minor complaint about Microsoft Office, it is in all other respects similar to the case that was brought by the DOJ last fall (see linked article below). Like that case, the new suit alleges that Microsoft has violated the terms of a 1995 consent decree it signed with the government by illegally using its monopoly in desktop operating systems, i.e., Windows, to eliminate competition in Internet browsing software. Since Microsoft decided to give away its browser, Internet Explorer, in 1995 and pressured computer makers to install it with new machines, Microsoft's rival Netscape has seen its market share decline from 90 percent to 60 percent.

The fall 1997 case centered on the technical issue of whether Microsoft had illegally "tied" Explorer to Windows 95 or whether it had developed a new integrated product which combined the two, a step permitted by the 1995 consent decree. By April 1998 a compromise had been reached which worked in Microsoft's favor: the Windows-Internet Explorer combination would be included with new machines, but computer makers would be able to "hide" Explorer, an option few are presently choosing.

The new case targets Microsoft marketing practices, like forcing computer makers to display its desktop screen, which features the Web sites of Microsoft and its partners and shuns those who include rivals like Netscape. In other words, Microsoft's products are visible as soon as a new machine is turned on, while those of competitors must be actively sought by new users. The trial has been scheduled for September 8.

Several newspaper editorials have claimed that the filing of the new case indicates that the Justice Department has taken action to limit corporate power over information technology and protect democratic rights. An examination of the case and its history indicates, however, that the DOJ is motivated by other concerns.

The government has proceeded with trepidation throughout its eight-year investigation of Microsoft, commenting on more than one occasion that it did not want to disrupt the profitable software industry, 90 percent of which is controlled by US big business. Back in early 1995, when the consent decree was initially rejected by Federal District Court Judge Stanley Sporkin for allowing questionable Microsoft business practices to continue, Anne Bingaman, then deputy attorney general in charge of the antitrust division, rebuked Sporkin and successfully persuaded an appeals court to have him removed from the case and approve the decree. Since that time, the DOJ has indicated that it would not seek to break up the company, an option presently being discussed in several business journals. The DOJ even decided, apparently not long before launching the latest suit, that it would not attempt to delay the shipment of the new Microsoft upgrade, Windows 98, which is expected to sell several million copies before the planned September 8 trial.

The strategy of the government is apparently to allow Microsoft to consolidate its control over the industry while opposing a limited number of its business practices. The DOJ agrees with Microsoft (and the other big software companies) that the development of computer technology must be subordinated to the financial interests of the major corporations. Likewise, it claims that the unfettered operation of the capitalist market provides the best solution to the information technology needs of society. The only question being argued between the DOJ and Microsoft is whether the company has transgressed the normal rules of conduct that prevail between the giant capitalist concerns. The government's role, both as plaintiff and as judge, is to act as an arbiter between the major corporations.

With the exception of a few smaller software companies, all the complaints in the case have been submitted by major corporate rivals of Microsoft, whose interests were articulated, directly or indirectly, by various government representatives. In the most direct instance a lawyer for Novell, a networking company and Microsoft competitor, reportedly drafted a 1993 memo that was then issued by Ohio Senator Howard Metzenbaum calling on the DOJ to take over the Microsoft case from the Federal Trade Commission where it was stalled. At the same time, all the other software companies, like the rest of big business, have vied for government favor by giving hundreds of thousands of dollars to both parties.

This is not to suggest that earlier complaints against Microsoft are entirely without substance. There are enough cases in the history of Microsoft to validate the company's reputation for disingenuous tactics, like introducing software changes in its own products to hinder competitors whose programs were supposed to be compatible, or announcing products far from completion in order to shunt orders from rivals who had similar software already available. But the framework of the capitalist system itself, where profitability is the sole measure of success, creates the conditions where such methods are richly rewarded while less ruthless business practices are often punished by failed ventures and bankruptcies.

At the same time, Microsoft's chief argument, that the government is hampering its "right to innovate," can be safely dismissed. The success of Microsoft's browser is generally acknowledged to be a victory of money and marketing over creativity. Rather than invent a browser, Microsoft initially licensed one, called Mosaic, from another company, Spyglass, in November 1994. Spyglass, in turn, had purchased it from the National Center for Supercomputing Applications, a unit of the University of Illinois at Urbana-Champaign, in April 1994. The browser had actually been written by NCSA programmers in early 1993. Programmers at Microsoft have made improvements since that time, but the increase in market share is largely a result of its packaging with the Windows operating system.

Nevertheless, there is a logic to the inclusion of new software, like Web browsers, in the operating system. When a new machine is purchased, it makes sense for it to have all the software that it needs rather than require additional programs with further costs and inconvenience. The

standardization which has resulted from bundling software into the operating system is an important and arguably necessary development. It would be difficult to maintain that the computing needs of society would be better served by 10 or 15 different operating systems, each requiring additional "plug-in" software to fulfill minor functions. The ensuing chaos would only make purchasing, training, and networking more difficult. In other words, the much-trumpeted "perfect competition" has little in common with the rational development of information technology.

However, the consolidation of the software industry within the framework of capitalism has resulted in a number of serious problems. Control over a technology upon which millions of people and substantial spheres of economic life depend is now in the hands of relatively few people. One-third of Microsoft's stock is owned by one person—CEO Bill Gates. Vital decisions, which affect products essential for the functioning of schools, offices and hospitals, are made by private individuals unaccountable to the people who will feel their impact. Furthermore, the accumulation of massive amounts of private wealth has its own very adverse consequences. Fortunes paid out to big stockholders who are already rich beyond imagination could obviously be used more productively serving other crucial *social* functions.

As for the claim that Microsoft's monopoly is simply the expression of consumer choice, we must ask: what other choice could there be when competing products were likely to be driven from the market? A case can actually be made that the domination of Microsoft has often *directed resources away* from areas of consumer interest. To cite one example: In the early 1990s Microsoft poured hundreds of millions of dollars into so-called interactive television with little market research indicating consumer interest. The alternative technology, which would soon develop rapidly, the Internet, was viewed with skepticism because Microsoft executives could not imagine a profitable venture on the public network. They even attempted to build an exclusive commercial alternative, called Microsoft Network (MSN), rather than link up with Internet e-mail and discussion groups. It was not until millions of copies of Netscape's browser had been distributed that Microsoft changed its approach to the Internet.

While Microsoft products, particularly DOS, Windows and Office, now have the vast majority of the market, there were certainly more promising early alternatives, like CP/M, which preceded DOS, or the Macintosh operating system, which made early use of graphical user interfaces. A similar argument can be made about many computer products, dating back to the era of mainframes in the 1950s and 60s. An empirical survey since that time would conclude that there is no direct relationship between the quality of a product and its dominance in the capitalist market. On more than one occasion a machine or piece of software of lesser effectiveness has pushed a better product out of existence on the basis of more careful—or heavy-handed—marketing practices.

The outcome of the present case is likely to be a compromise which slightly modifies Microsoft's plans in a manner which is consistent with its business interests. Already the software giant has indicated that it may allow computer makers a greater degree of control over the desktop screen, and has suggested other minor marketing changes. At the same time, its browser has effectively been packaged with its operating system, and other products, like software for listening to audio files on the Internet, are likely to follow suit. The course of consolidation in the industry is not likely to change in the immediate months ahead.

The development of computer software has reached a definite impasse. On the one hand, much control has already passed into the hands of one manufacturer, allowing it to direct the industry as a whole. On the other hand, the measures being considered in government and business circles cannot resolve the situation. Preserving a niche for Microsoft's rivals or splitting up the company would, within the framework of the profit system, tend to be anarchic and even reactionary, considering the need for computer standardization in the development of society's productive capabilities.

There is effectively no way out of this dilemma so long as the constraints of the profit system are accepted. Only one means exists by which the industry can develop in a manner which provides standardized, easy-to-use software while facilitating the creative development of new programs and guaranteeing job security and adequate income to computer programmers, technicians and other workers. That is to transform the big companies, including Microsoft, into public computer utilities. The computer code of established and vital programs, like the operating system, should be made public and administered by a body of programmers and experts to guarantee standardization and approve new innovations, much as is currently done with the protocols for the World Wide Web and certain networking technologies.

To those who claim that removing the incentive of private accumulation of wealth would cripple the industry and prevent future improvements, a few observations should be made about the history of computers, which has been pushed forward by public financing to a greater degree than perhaps any other industry.

Government funding of the computer industry dates back to its embryonic development. In the early nineteenth century Charles Babbage received the research money from the British government to design his Difference Engine, which was to be used to calculate tables for marine navigation. From that time forward government projects and universities helped to initiate and develop a vast array of computers and techniques: from the US census of 1890 which first used punch cards, to the processing of Social Security records in the 1930s following the New Deal legislation, to machines designed to calculate ballistic tables and decrypt military transmissions during World War II, to the development of the Internet itself, which began as a project of the US Defense Department in 1969. Without such funding and coordination of resources, the computer industry, Microsoft included, would not exist.

Of course, the US, British and (later) other governments were not attempting to establish a socialized sector of industry by these measures. Their support for and use of computers were aimed at achieving definite ends, above all promoting their commercial and military predominance in world affairs. The degree to which this effort had to be financed with government money only indicates the limitations of the capitalist market system in carrying out massive and complicated scientific endeavors.

The transfer of computer technology to social ownership, bound up with the establishment of a socialist workers government, would have a very different aim. It would seek to foster the communication necessary for the advance of economic life generally and support the fraternal collaboration of the working people of every region of the world in exploiting the globe's resources for the benefit of mankind as a whole.