

Microsoft ordered to pay \$1 million to US software firm

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A US federal judge has ordered Microsoft to pay \$1 million to a small Connecticut company, declaring that the software giant had engaged in “wanton, reckless” and deceptive business practices.

Though deemed to be completely separate from the anti-trust action brought by the US government which resulted in Microsoft being ordered to break its company into two, the wording of the August 31 ruling bore a striking resemblance to that of Judge Thomas Penfield Jackson in the government case.

Ordering Microsoft to pay the £1 million fine to Bristol Technology, US District Judge Janet C Hall said, “Microsoft's deceptive acts constitute affirmative acts of misconduct which were designed to injure those to whom they were directed, and wantonly risked serious injury, albeit of a purely economic nature.”

Bristol makes a product called Wind/U, which acts as a bridge between computers running the Microsoft Windows operating system and the traditional business network operating system Unix. The company had a contract with Microsoft from 1994 to 1997, under which it was given access to the source code for an early version of Microsoft's own network operating system, NT.

The company filed suit against Microsoft in August 1998, after they were unable to reach an agreement on a contract for the newest versions of NT, claiming that Microsoft had violated US anti-trust law. On July 16, 1999, an eight-member jury found that Microsoft had not violated anti-trust law, but that it was liable for violating Connecticut business law and awarded damages to Bristol of just \$1. The August 31 ruling was in response to a claim by Bristol for punitive damages.

In its lawsuit, Bristol argued that Microsoft was trying to crush competition by preventing access to the software blueprints for Windows NT. The company

claimed that Microsoft was trying to gain a foothold in the server and workstation markets and then kill off competition from the Unix operating system. In opposition Microsoft said Bristol had taken a mere contract dispute and tried to dress it up with claims of antitrust violations.

Microsoft will appeal the ruling. Spokesman Jim Cullen said, “We believe the jury decision was the right decision. We think [the August 31] ruling is contradictory with what the jury said. There are a number of issues we will raise on appeal, and we look forward to raising them as soon as possible.”

The 103-page ruling of Judge Hall went far further than simply awarding punitive damages. Bristol's vice president of marketing and company co-founder, Jean Blackwell, said, “It seems to me she is agreeing with Bristol's facts that we presented in the case, and not just the unfair-practices facts but the anti-trust facts as well.”

The award falls far short of the \$263 million Bristol asked for at trial and amounts to less than \$40 for each copy of Windows sold by Microsoft in the state. More important than the financial penalty, however, the judge gave no indication in the ruling that she accepted the jury's verdict and scheduled a hearing for motions on final judgement for September 15 and September 30. Some commentators believe that the degree to which Hall agreed with Bristol in her ruling could indicate that she may vacate the jury's verdict. Legal experts warn that nothing is certain. Facts that constitute an unfair competition claim may not necessarily constitute an anti-trust violation.

The hearings for final judgement in the Bristol case could well coincide with an announcement by the Supreme Court as to whether it is prepared to hear the government case against Microsoft directly, without the

input of the appellate court. This was requested by the US Department of Justice and 19 states, because of the importance of the case to the economy. A decision could be made as early as September 8.

Judge Hall's remarks will also be noted by the European Commission, which is pursuing its own anti-trust case against Microsoft. The Bristol case is very relevant to the EU's allegation that Microsoft abused its dominant share in desktop computer operating systems with the launch of its Windows 2000 software in the server market. In addition, Microsoft faces some 140 private anti-trust cases.



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