

# Settlement reached in Microsoft antitrust case

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Reports emerged November 2 that the US software giant, Microsoft, has reached a settlement with the US Justice Department in the four-year antitrust case. The settlement has gone ahead without the agreement of the 18 states and the District of Columbia, which had launched the case alongside the Justice Department, with Judge Kollar-Kotelly giving them until Tuesday to decide if they will back this conclusion to the case.

The settlement falls far short of the initial proposal to break up the software giant, and fails to place any real curbs on Microsoft's monopolistic practices. A panel of three independent monitors will be appointed, to work onsite at Microsoft to oversee its conduct and review the company accounts. The company will be obliged to provide rival software firms with information to allow them to develop competing "middleware" products that interact with the Windows operating system. Microsoft will also be prevented from "retaliating" against computer manufacturers and software rivals who release competing products, and will be required to adhere to uniform licensing terms.

In the four years since the case was begun, it has been business as usual at Microsoft; indeed the company has succeeded in laying the basis for a further expansion of its monopoly. Those purchasing a new computer will have to go out of their way to avoid it being pre-loaded with the new Windows XP operating system, as well as Internet Explorer, Media Player and other software Microsoft chooses to integrate into the system.

Since the selection of George W Bush for president by the Supreme Court last November, the Department of Justice (DoJ) has backtracked from a confrontation with Microsoft. On September 6, the DoJ's Antitrust Division issued a statement saying that it had advised Microsoft that it would not seek a break-up of the company in remand proceedings before the US District Court. It also said that it did not intend to pursue further proceedings on the tying of the Internet Explorer web browser to the Windows operating system, a central component of the original case brought against the company.

The neutering of the case by the DoJ provoked allegations of political interference by the White House. Democratic Representative John Conyers, a senior House Judiciary Committee member, wrote to Attorney General John Ashcroft, saying he was "concerned there may have been unneeded or inappropriate contact or appearance of such contact" between the White House and the department. He demanded that records of all communication between the two be made available for inspection.

An article in the *New York Times* November 2 reported that Microsoft rivals intend to "provide evidence of what they claim was an improper discussion between a senior aide to Attorney General John Ashcroft who had been a top official in the Republican Party and a Republican lobbyist for AOL-Time Warner that demonstrated Microsoft's political muscle." According to the *Times*, Conyers has said he intends to examine the incident. The aide is said to be David Israelite, political director of the Republican National Committee, which received hundreds of thousands of dollars from Microsoft during the 2000 election.

Israelite, who is now Ashcroft's deputy chief of staff, has recused himself from the Microsoft case because he owns 100 shares of the Microsoft stock.

According to the *Times*, the lobbyist involved is top Republican fund-

raiser Wayne Berman. "According to the notes of a person briefed about the conversation on October 9, the day it is said to have occurred, Mr Israelite called Mr Berman: 'Are you guys behind this business of the states hiring their own layers in the Microsoft case?' Mr Israelite asked Mr Berman in the predawn conversation, according to the notes. 'Tell your clients we wouldn't be too happy about that.'

"Mr Israelite purportedly told the AOL lobbyist that the Supreme Court would probably deny a Microsoft appeal later in the day, as the court in fact did, clearing the way for the Justice Department to push hard for a settlement with the company. According to people who were later briefed on the conversation by an AOL executive, Mr Israelite then complained that AOL, a leading Microsoft rival, had been trying to 'radicalise' the states to oppose a settlement," the *Times* writes.

Both Israelite and Berman have denied having any conversations about the Microsoft case or even that they talked at all on the day in question. But the *Times* reports an AOL executive saying he was told by Berman of the conversation on October 9, the day it was said to have occurred. "Nevertheless, this executive and others at AOL said that upon re-examination of Mr Berman's initial description of the conversation with Mr Israelite, the company concluded that the account of the conversation might not have been reliable enough to justify filing an ethics complaint."

This has not prevented the issue being raised by other industry executives and lobbyists, who are to ask Judge Kollar-Kotelly to order an inquiry. Edward J Black, president of the Computer and Communications Industry Association, which includes many of Microsoft's business rivals, said he and other groups would be raising the incident as part of a court proceeding to consider the merits of the settlement.

"Something is very rotten here. Israelite is a recused official. He holds Microsoft stock. He raised a lot of money from Microsoft. He steered money into critical states that helped win the election. And then he takes action to help facilitate getting Microsoft out of trouble in an enforcement action," Black told the *Times*.

Clive Longbottom, analyst at Quocirca, told the Silicon.com technology website, "It sounds like Bush has been fiddling around in the background. The DoJ has caved in completely as Microsoft gets more out of this settlement than the government."

The antitrust case against Microsoft was never about securing a greater choice for consumers. It reflected a feeling among a section of America's ruling elite that the US was in danger of losing out to its economic rivals in Japan and Europe. In the original hearings held by Judge Jackson last year, a mass of evidence was brought forward that showed how Microsoft had subverted new technologies such as the Java programming language, in order to ensure the dominance of the Windows desktop.

The case reflected a growing feeling that in protecting its dominant place in the market for desktop computers, Microsoft was retarding the development of new technologies emerging around the Internet. While Microsoft today makes much of its embrace of the Internet, the company was taken completely by surprise in the early 1990s as the World Wide Web was becoming popular.

Three years before the launch of Windows 95, which first drew the attention of antitrust legislators because of it bundled the Internet Explorer

browser with the operating system, Microsoft was busy developing a project named Marvel. What eventually became MSN (The Microsoft Network) was not originally conceived as part of the publicly available Internet, but as a private service that would host proprietary content from newspapers, television networks, Microsoft's own consumer-product sources and a wide range of businesses with products and information to sell. The main purpose of Marvel was to kill off America Online, Compuserve, and Prodigy, who appeared set to dominate the emerging sector of electronic commerce.

By 1995 it was clear that the new medium for e-commerce would not be private networks, but the Internet and the World Wide Web. Accordingly, Microsoft switched track and purchased a minority share in an Internet access company that then served to launch MSN as a nation-wide US Internet access provider. Once Gates had grasped the significance of the Internet, he set out to dominate it.

When users of the popular "Internet in a Box" connection software from Compuserve upgraded to Windows 95, they found that their new operating system had disabled a key piece of software which made it difficult, if not impossible, to continue using Compuserve as a means of accessing the Internet. In its place appeared the now familiar MSN icon on the desktop. Many of MSN's first subscribers no doubt signed up out of sheer frustration trying to make an alternative access programme work with Windows 95.

When Microsoft began its foray into the Internet, Netscape was by far the most popular browser. This posed huge problems for Microsoft, given the potential for the Netscape browser to become a platform for developing alternative application software, undermining Windows' monopoly of the PC operating system market. Gates responded by releasing his own Internet Explorer browser, first distributing it free of charge, then bundling it with Windows 95, where it was the default browser. While it was possible to install and use Netscape as an alternative, few users would actually bother. Thus Internet Explorer became the most used browser, if not the most popular.

Having won the browser wars, Microsoft was in a position to subvert the Java programming language, developing code that broke the cross-platform aims of the project. In doing so it succeeded in killing off the idea of so-called "middleware", applications run through a web browser, and with it the concept of the "network computer," which could access and run programmes remotely via the Internet or an office network rather than being installed on each PC.

The forces behind the antitrust action against Microsoft range from green-eyed business rivals such as AOL, Sun Microsystems and database manufacturer Oracle, to those within the political elite concerned that Microsoft's practices have stifled technological advance and left the US in a weakened position.

From the beginning, the latter were hindered by the enormous economic weight of Microsoft in the US. The total market capitalisation of Microsoft is over \$470 billion, making the company, with only 30,000 workers, worth more than General Motors, Ford, General Electric and AT&T combined.

A central component of Microsoft's argument against the antitrust action was that it was precisely the dominance of Microsoft in the computer software market that gave the US the advantage over its global competitors. Supporters of this position within the new Bush administration appear to have won the day over those advocating a break up of the monopoly to facilitate greater innovation.

In the aftermath of the September 11 attacks, principal analyst at Ovum, Gary Barnett said, "It is in the interest of the DoJ and Microsoft to reach a settlement as there are more pressing issues." He went on to note the irony that after three years of legal wrangling over Windows 98 "bundling", Microsoft's latest operating system, Windows XP, was based on the same principles.

Far from having curbed its monopoly practices, Microsoft has extended them to new spheres. From a purely technical standpoint it is hard to argue against the integration of an Internet browser with any modern operating system. Indeed Microsoft's emphasis on the Internet is not so much a product of the farsightedness of Bill Gates, but rather recognises the importance that the Internet has assumed in all aspects of life in the 21st Century.

With the emergence of affordable, high-speed broadband connections, the spectre of the network computer has arisen once again. Having killed this off the first time round, Microsoft today embraces it, seeking to ensure that Windows will be the platform that drives such a development.

Whatever the virtues of Windows XP—and even the most diehard opponents of Microsoft would have to acknowledge that there are some significant improvements compared with previous releases—these are far outweighed by the negative implications the new operating system has for Internet freedom and democratic rights.

Windows XP takes "bundling", now re-labelled as "integration", to the extreme. Not only is the browser tightly bound into the operating system but so also is digital photography, music, online identification and technology for Microsoft's forthcoming .Net Internet strategy. Although technologically this would make sense, under conditions where Windows is a proprietary system, it gives unprecedented power to Microsoft, not only against commercial rivals, but also over ordinary users.

Microsoft has introduced new "activation" requirements, which involves sending personal information about an individual user to Microsoft's websites. When Windows XP launches for the first time, the user is asked to visit a Microsoft website to "validate" the software. XP is then registered to a particular hardware configuration and cannot be installed on a second computer without obtaining another validation key. Users who fail to follow this validation process will see their operating system stop working after 30 days, a significant hardware upgrade may also render XP inoperable. Under the guise of fighting software piracy, Microsoft is gaining an unprecedented amount of information about those who use its software.

Microsoft critics say that Windows XP is part of the company's drive to protect and broaden its monopoly. According to Timothy Bresnahan, an economist at Stanford and former senior official in the antitrust division of the Justice Department, "XP is a new and improved operating system, but it is also part of the company's effort to further bias the future of computing and Internet commerce in Microsoft's favour".

Fundamentally, the antitrust case against Microsoft was about how best to defend the interests of US capital in an increasingly competitive market for computer software and related technologies. One fact that no doubt made a conclusion to the case more urgent was the European Union's announcement that it intended to broaden its own investigation into the software giant, calling into question the company's strategy for the control of the Internet server market. Faced with such a challenge from an international rival, the powers that be in the US do not want to give them any ammunition. Whatever dissatisfaction there may have been with Microsoft, as far as Washington is concerned it is far preferable to have an American monopoly of the industry than a European one.

At a basic level, the case expressed the increasing conflict between the development of new technologies, especially the Internet, and their subordination to the capitalist market and the system of private property upon which it is based. Phenomenal technological advances have today created the conditions for a massive social step forward on an international scale. The world is far more closely integrated than ever before; Internet access is now technically possible in even the most remote and backward regions. Yet on an international scale, inequality is growing, within so-called advanced and developing countries alike. Advances in technology have done nothing to eliminate the threat of poverty for the mass of working people. Rather than reducing social

inequality, under the control of huge corporations such as Microsoft, the advances in technology have been used to further enrich a privileged few at the expense of the majority.



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