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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Revised Proposed Final
Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a revised proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of American v. Microsoft Corporation, Civil Action No. 98-1232. On May 18, the United States filed a Complaint alleging that Microsoft, the world's largest supplier of computer software for personal computers, restrained competition in violation of sections 1 and 2 of the Sherman Act, 15 U.S.C. 1-2. Following a 7-day trial in late 1998 and early 1999, the United States District Court found that Microsoft had violated both sections 1 and 2 of the Sherman Act. On appeal, the United States Court of Appeals for the District of Columbia unanimously affirmed portions of the district court's finding and conclusion that Microsoft illegally maintained its operating system monopoly in violation of section 2 of the Sherman Act, but reversed and remanded other portions of the district court's determinations. Specifically, the court of appeals reversed the district court's determination that Microsoft violated section 2 by illegally attempting to monopolize the Internet browser market and remanded the district court's determination that Microsoft violated section 1 of the Sherman Act by unlawfully tying its browser to its operating system. The court of appeals also vacated the district court's remedial order, including its order that Microsoft be split into separate operating systems and applications businesses, and remanded the case to a new district court judge for further proceedings. Following intensive mediation efforts, the United States and Microsoft subsequently reached the agreement embodied in the revised proposed Final Judgment, which would impose injunctive relief to enjoin continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the court of appeals.

The revised proposed Final Judgment, filed November 6, 2001, will stop recurrence of Microsoft's unlawful conduct, prevent recurrence of similar conduct in the future and restore competitive conditions in the

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personal computer operating system market by, among other things, prohibiting actions by Microsoft to prevent computer manufacturers and others from developing, distributing or featuring middlewear products that are threats to Microsoft's operating system monopoly; creating the opportunity for independent software vendors to develop products that will be competitive with Microsoft's middleware products; requiring Microsoft to disclose interfaces in order to ensure that competing middlewear and server software can interoperate with Microsoft's operating systems; ensuring full compliance with the revised proposed Final Judgment; and providing for swift resolution of technical disputes. Copies of the Complaint, revised proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC at Antitrust Documents Group, 325 7th Street NW., Ste. 215 North, Washington, DC 20530 (please call 202-514-2481, for appointments only), on the Department of Justice web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20002.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Renata Hesse, Trial Attorney, Suite 1200, Antitrust Division, Department of Justice, 601 D Street NW, Washington, DC 20530; (facsimile) 202-616-9937 or 202-307-1545; or e-mail microsoft.atr@usdoc.gov. While comments may also be sent by regular mail, in light of recent events affecting the delivery of all types of mail to the Department of Justice, including U.S. Postal Service and other commercial delivery services, and current uncertainties concerning when the timely delivery of this mail may resume, the Department strongly encourages, whenever possible, that comments be submitted via email or facsimile.

Constance K. Robinson,
Director of Operations & Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, vs. Microsoft Corporation,
Defendant

[Civil Action No. 98-1232 (CKK)]

State of New York ex rel. Attorney General Eliot Spitzer, et al.,
Plaintiffs, vs. Microsoft Corporation, Defendant

[Civil Action No. 98-1233 (CKK)]

Next Court Deadline: November 6, 2001, Status Conference.

Stipulation

Plaintiffs United States of America ('United States') and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina and Wisconsin and Defendant Microsoft Corporation ('Microsoft'), by and through their respective attorneys, having agreed to the entry of this Stipulation, it is hereby stipulated and agreed that:

1. A Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the revised proposed Final Judgment by serving notice thereof on Microsoft and by filing that notice with the Court.

2. Unless otherwise provided in the revised proposed Final Judgment, Microsoft shall begin complying with the revised proposed Final Judgment as it was in full force and effect starting on December 16, 2001. Subject to the foregoing, Microsoft agrees to be bound by the provisions of the revised proposed Final Judgment pending its entry by the Court. If the United States withdraws its consent, or if (a) the revised proposed Final Judgment is not entered pursuant to the terms of the Stipulation, (b) the time has expired for all appeals of any Court ruling declining to enter the revised proposed Final Judgment, and (c) the Court has not otherwise ordered continued compliance with the terms and provisions of the revised proposed Final Judgment, then all of the parties shall be released from all further obligations under this Stipulation, and the making of this Stipulation shall be without

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prejudice to any party in this or any other proceeding.

3. Pursuant to 15 U.S.C. 16(g), within ten (10) days of the submission of the revised proposed Final Judgment, Microsoft will file with the Court a description of any and all written or oral communications by or on behalf of Microsoft, or other person, with any officer or employee of the United States concerning or relevant to the revised proposed Final Judgment, except that any such communications made by counsel of record alone with the Attorney General or the employees of the United States Department of Justice alone shall be excluded from this requirement.

4. Pursuant to 15 U.S.C. 16(b), on or before November 16, 2001, the United States will file with the Court a Competitive Impact Statement explaining the terms of the revised proposed Final Judgment. The United States will publish the revised proposed Final Judgment and Competitive Impact Statement in the Federal Register.

5. The United States will publish a notice informing the public of the revised proposed Final Judgment and public comment period in the Washington Post and the San Jose Mercury News, for seven days over a period of two weeks commencing no later than November 15, 2001.

6. Members of the public may submit written comments about the revised proposed Final Judgment to a designated official of the Antitrust Division of the United States Department of Justice for a period of 60 days after publication of the revised proposed Final Judgment and Competitive Impact Statement in the Federal Register.

7. Within 30 days after the close of the 60-day public comment period, the United States will file with the Court and publish in the Federal Register any comments it receives and its response to those comments.

8. Once the aforementioned procedures have been complied with, the United States will file with the Court a certification of compliance with the requirements of 15 U.S.C. 16, and a Motion for Entry of Revised Proposed Final Judgment, unless it withdraws its consent to entry of the revised proposed Final Judgment pursuant to paragraph 2,

above. At any time thereafter, and at the conclusion of any further proceedings ordered by the court pursuant to 15 U.S.C. 16(f), the Court may then enter the revised proposed Final Judgment, provided that the Court determines that entry of the revised proposed Final Judgment will serve the public interest.

Dated this 6th day of November, 2001.

For Plaintiff the United States of America:

Charles A. James (Bar No. 292201),
Assistant Attorney General, Antitrust Division, United States
Department of Justice, 901 Pennsylvania Avenue, NW., Washington, DC
20530, (202) 514-2401.

For Plaintiffs the States of New York, Ohio, Illinois, Kentucky,
Louisiana, Maryland, Michigan, North Carolina and Wisconsin:

Eliot Spitzer,
Attorney General of New York, 120 Broadway, New York, New York
10271, (212) 416-8282.

For Defendant Microsoft Corporation:

John L. Warden (Bar No. 222083),
Sullivan & Cromwell, 125 Broad Street, New York, New York 10004,
(212) 558-4000.

Revised Proposed Final Judgment

Whereas, plaintiffs United States of America ('United States')
and the States of New York, Ohio, Illinois, Kentucky, Louisiana,
Maryland, Michigan, North Carolina and Wisconsin and defendant
Microsoft Corporation ('Microsoft'), by their respective attorneys,
have consented to the entry of this Final Judgment;

And Whereas, this Final Judgment does not constitute any admission
by any party regarding any issue of fact or law;

And Whereas, Microsoft agrees to be bound by the provisions of this
Final Judgment pending its approval by the Court;

Now Therefore, upon remand from the United States Court of Appeals
for the District of Columbia Circuit, and upon the consent of the
aforementioned parties, it is hereby

Ordered, Adjudged, and Decreed:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action
and of the person of Microsoft.

II. Applicability

This Final Judgment applies to Microsoft and to each of its
officers, directors, agents, employees, subsidiaries, successors and
assigns; and to all other persons in active concert or participation
with any of them who shall have received actual notice of this Final
Judgment by personal service or otherwise.

III. Prohibited Conduct

A. Microsoft shall not retaliate against an OEM by altering Microsoft's commercial relations with that OEM, or by withholding newly introduced forms of non-monetary Consideration (including but not limited to new versions of existing forms of non-monetary Consideration) from that OEM, because it is known to Microsoft that the OEM is or is contemplating:

1. Developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Platform Software or any product or service that distributes or promotes any Non-Microsoft Middleware;

2. Shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, or (b) will boot with more than one Operating System; or

3. Exercising any of the options or alternatives provided for under this Final Judgment.

Nothing in this provision shall prohibit Microsoft from enforcing any provision of any license with any OEM or any intellectual property right that is not inconsistent with this Final Judgment. Microsoft shall not terminate a Covered OEM's license for a Windows Operating System Product without having first given the Covered OEM written notice of the reasons for the proposed termination and not less than thirty days' opportunity to cure. Notwithstanding the foregoing, Microsoft shall have no obligation to provide such a termination notice and opportunity to cure to any Covered OEM that has received two or more such notices during the term of its Windows Operating System Product license.

Nothing in this provision shall prohibit Microsoft from providing Consideration to any OEM with respect to any Microsoft product or service where that Consideration is commensurate with the absolute level or amount of that OEM's development, distribution, promotion, or licensing of that Microsoft product or service.

B. Microsoft's provision of Windows Operating System Products to Covered OEMs shall be pursuant to uniform license agreements with uniform terms and conditions. Without limiting the foregoing, Microsoft shall charge each Covered OEM the applicable royalty for Windows Operating System Products as set forth on a schedule, to be established by Microsoft and published on a web site accessible to the Plaintiffs and all Covered OEMs, that provides for uniform royalties for Windows Operating System Products, except that:

1. The schedule may specify different royalties for different language versions;

2. The schedule may specify reasonable volume discounts based upon the actual volume of licenses of any Windows Operating System Product or any group of such products; and

3. The schedule may include market development allowances, programs, or other discounts in connection with Windows Operating System Products, provided that:

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- a. Such discounts are offered and available uniformly to all Covered OEMs, except that Microsoft may establish one uniform discount schedule for the ten largest Covered OEMs and a second uniform discount schedule for the eleventh through twentieth largest Covered OEMs, where the size of the OEM is measured by volume of licenses;

b. Such discounts are based on objective, verifiable criteria that shall be applied and enforced on a uniform basis for all Covered ;s, and

c. Such discounts or their award shall not be based on or impose any criterion or requirement that is otherwise inconsistent with any portion of this Final Judgment.

C. Microsoft shall not restrict by agreement any OEM licensee from exercising any of the following options or alternatives:

1. Installing, and displaying icons, shortcuts, or menu entries for, any Non-Microsoft Middleware or any product or service (including but not limited to IAP products or services) that distributes, uses, promotes, or supports any Non-Microsoft Middleware, on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict an OEM from displaying icons, shortcuts and menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products.

2. Distributing or promoting Non-Microsoft Middleware by installing and displaying on the desktop shortcuts of any size or shape so long as such shortcuts do not impair the functionality of the user interface.

3. Launching automatically, at the conclusion of the initial boot sequence or subsequent boot sequences, or upon connections to or disconnections from the Internet, any Non-Microsoft Middleware if a Microsoft Middleware Product that provides similar functionality would otherwise be launched automatically at that time, provided that any such Non-Microsoft Middleware displays on the desktop no user interface or a user interface of similar size and shape to the user interface displayed by the corresponding Microsoft Middleware Product.

4. Offering users the option of launching other Operating Systems from the Basic Input/Output System or a non-Microsoft boot-loader or similar program that launches prior to the start of the Windows Operating System Product.

5. Presenting in the initial boot sequence its own IAP offer provided that the OEM complies with reasonable technical specifications established by Microsoft, including a requirement that the end user be returned to the initial boot sequence upon the conclusion of any such offer.

6. Exercising any of the options provided in Section III.H of this Final Judgment.

D. Starting at the earlier of the release of Service Pack I for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the sole purpose of interoperating with a Windows Operating System Product, via the Microsoft Developer Network ('`MSDN'') or similar mechanisms, the APIs and related Documentation that are used by Microsoft Middleware to interoperate with a Windows Operating System Product. In the case of a new major version of Microsoft Middleware, the disclosures required by this Section III.D shall occur no later than the last major beta test release of that Microsoft Middleware. In the case of a new version of a Windows Operating System Product, the obligations imposed by this Section III.D shall occur in a Timely Manner.

E. Starting nine months after the submission of this proposed Final Judgment to the Court, Microsoft shall make available for use by third

parties, for the sole purpose of interoperating with a Windows Operating System Product, on reasonable and non-discriminatory terms (consistent with Section III.I), any Communications Protocol that is, on or after the date this Final Judgment is submitted to the Court, (i) implemented in a Windows Operating System Product installed on a client computer, and (ii) used to interoperate natively (i.e., without the addition of software code to the client operating system product) with a Microsoft server operating system product.

F. 1. Microsoft shall not retaliate against any ISV or IHV because of that ISV's or IHV's:

a. Developing, using, distributing, promoting or supporting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, or

b. Exercising any of the options or alternatives provided for under this Final Judgment.

2. Microsoft shall not enter into any agreement relating to a Windows Operating System Product that conditions the grant of any Consideration on an ISV's refraining from developing, using, distributing, or promoting any software that competes with Microsoft Platform Software or any software that runs on any software that competes with Microsoft Platform Software, except that Microsoft may enter into agreements that place limitations on an ISV's development, use, distribution or promotion of any such software if those limitations are reasonably necessary to and of reasonable scope and duration in relation to a bona fide contractual obligation of the ISV to use, distribute or promote any Microsoft software or to develop software for, or in conjunction with, Microsoft.

3. Nothing in this section shall prohibit Microsoft from enforcing any provision of any agreement with any ISV or IHV, or any intellectual property right, that is not inconsistent with this Final Judgment.

G. Microsoft shall not enter into any agreement with:

1. Any IAP, ICP, ISV, IHV or OEM that grants Consideration on the condition that such entity distributes, promotes, uses, or supports, exclusively or in a fixed percentage, any Microsoft Platform Software, except that Microsoft may enter into agreements in which such an entity agrees to distribute, promote, use or support Microsoft Platform Software in a fixed percentage whenever Microsoft in good faith obtains a representation that it is commercially practicable for the entity to provide equal or greater distribution, promotion, use or support for software that competes with Microsoft Platform Software, or

2. Any IAP or ICP that grants placement on the desktop or elsewhere in any Windows Operating System Product to that IAP or ICP on the condition that the IAP or ICP refrain from distributing, promoting or using any software that competes with Microsoft Middleware.

Nothing in this section shall prohibit Microsoft from entering into (a) any bona fide joint venture or (b) any joint development or joint services arrangement with any ISV, IHV, IAP, ICP, or OEM for a new product, technology or service, or any material value-add to an existing product, technology or service, in which both Microsoft and the ISV, IHV, IAP, ICP, or OEM contribute significant developer or other resources, that prohibits such entity from competing with the object of

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the joint venture or other arrangement for a reasonable period of time.

This Section does not apply to any agreements in which Microsoft licenses intellectual property in from a third party.

H. Starting at the earlier of the release of Service Pack 1 for Windows XP or 12 months after the submission of this Final Judgment to the Court, Microsoft shall:

1. Allow end users (via a mechanism readily accessible from the desktop or Start menu such as an Add/Remove icon) and OEMs (via standard preinstallation kits) to enable or remove access to each Microsoft Middleware Product or Non-Microsoft Middleware Product by (a) displaying or removing icons, shortcuts, or menu entries on the desktop or Start menu, or anywhere else in a Windows Operating System Product where a list of icons, shortcuts, or menu entries for applications are generally displayed, except that Microsoft may restrict the display of icons, shortcuts, or menu entries for any product in any list of such icons, shortcuts, or menu entries specified in the Windows documentation as being limited to products that provide particular types of functionality, provided that the restrictions are non-discriminatory with respect to non-Microsoft and Microsoft products; and (b) enabling or disabling automatic invocations pursuant to section III.C.3 of this Final Judgment that are used to launch Non-Microsoft Middleware Products or Microsoft Middleware Products. The mechanism shall offer the end user a separate and unbiased choice with respect to enabling or removing access (as described in this subsection III.H.1) and altering default invocations (as described in the following subsection III.H.2) with regard to each such Microsoft Middleware Product or Non-Microsoft Middleware Product and may offer the end-user a separate and unbiased choice of enabling or removing access and altering default configurations as to all Microsoft Middleware Products as a group or all Non-Microsoft Middleware Products as a group.

2. Allow end users (via a mechanism readily available from the desktop or Start menu), OEMs (via standard OEM preinstallation kits), and Non-Microsoft Middleware Products (via a mechanism which may, at Microsoft's option, require confirmation from the end user) to designate a Non-Microsoft Middleware Product to be invoked in place of that Microsoft Middleware Product (or vice versa) in any case where the Windows Operating System Product would otherwise launch the Microsoft Middleware Product in a separate Top-Level Window and display either (i) all of the user interface elements or (ii) the Trademark of the Microsoft Middleware Product.

3. Ensure that a Windows Operating System Product does not (a) automatically alter an OEM's configuration of icons, shortcuts or menu entries installed or displayed by the OEM pursuant to section III.C of this Final Judgment without first seeking confirmation from the user and (b) seek such confirmation from the end user for an automatic (as opposed to user-initiated) alteration of the OEM's configuration until 14 days after the initial boot up of a new Personal Computer. Microsoft shall not alter the manner in which a Windows Operating System Product automatically alters an OEM's configuration of icons, shortcuts or menu entries other than in a new version of a Windows Operating System Product.

Notwithstanding the foregoing Section III.H.2, the Windows Operating System Product may invoke a Microsoft Middleware product in any instance in which:

1. That Microsoft Middleware Product would be invoked solely for use in interoperating with a server maintained by Microsoft (outside the context of general Web browsing), or
2. That designated Non-Microsoft Middleware Product fails to

