

28 November 2001

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[Federal Register: November 28, 2001 (Volume 66, Number 229)]
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[DOCID:fr28no01-83]

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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

implement a reasonable technical requirement (e.g., a requirement to be able to host a particular Active X control) that is necessary for valid technical reasons to supply the end user with functionality consistent with a Windows Operating System Product, provided that the technical reasons are described in a reasonably prompt manner to any ISV that requests them.

Microsoft's obligations under this section III.H as to any new Windows Operating System Product shall be determined based on the Microsoft Middleware Products which exist seven months prior to the last beta test version (i.e., the one immediately preceding the first release candidate) of that Windows Operating System Product.

I. Microsoft shall offer to license to ISVs, IHVs, IAPs, ICPs, and OEMs any intellectual property rights owned or licensable by Microsoft that are required to exercise any of the options or alternatives expressly provided to them under this Final Judgment, provided that:

1. All terms, including royalties or other payment of monetary consideration, are reasonable and non-discriminatory;

2. The scope of any such license (and the intellectual property rights licensed thereunder) need be no broader than is necessary to ensure that an ISV, IHV, IAP, ICP or OEM is able to exercise the options or alternatives expressly provided under this Final Judgment (e.g., an ISV's, IHV's, IAP's, ICP's and OEM's option to promote Non-Microsoft Middleware shall not confer any rights to any Microsoft intellectual property rights infringed by that Non-Microsoft Middleware);

3. An ISV's, IHV's, IAP's, ICP's or OEM's rights may be conditioned on its not assigning, transferring or sublicensing its rights under any license granted under this provision;

4. The terms of any license granted under this section are in all respects consistent with the express terms of this Final Judgment; and

5. An ISV, IHV, IAP, ICP, or OEM may be required to grant to Microsoft on reasonable and nondiscriminatory terms a license to any intellectual property rights it may have relating to the exercise of their options or alternatives provided by this Final Judgment; the scope of such license shall be no broader than is necessary to insure that Microsoft can provide such options or alternatives.

Beyond the express terms of any license granted by Microsoft pursuant to this section, this Final Judgment does not, directly or by implication, estoppel or otherwise, confer any rights, licenses, covenants or immunities with regard to any Microsoft intellectual property to anyone.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) Portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of a particular installation or group of installations of anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) and API, interface or other information related to any Microsoft product it lawfully directed not to do so by a governmental agency of competent jurisdiction.

2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft

product to any person or entity on the requirement that the licensee:
(a) Has no history of software counterfeiting or privacy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph.

IV. Compliance and Enforcement Procedures

A. Enforcement Authority

1. The Plaintiffs shall have exclusive responsibility for enforcing this Final Judgment. Without in any way limiting the sovereign enforcement authority of each of the plaintiff States, the plaintiff States shall form a committee to coordinate their enforcement of this Final Judgment. A plaintiff State shall take no action to enforce this Final Judgment without first consulting with the United States and with the plaintiff States' enforcement committee.

2. To determine and enforce compliance with this Final Judgment, duly authorized representatives of the United States and the plaintiff States, on reasonable notice to Microsoft and subject to any lawful privilege, shall be permitted the following:

a. Access during normal office hours to inspect any and all source code, books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Microsoft, which may have counsel present, regarding any matters contained in this Final Judgment.

b. Subject to the reasonable convenience of Microsoft and without restraint or interference from it, to interview, informally or on the record, officers, employees, or agents of Microsoft, who may have counsel present, regarding any matters contained in this Final Judgment.

c. Upon written request of the United States or a duly designated representative of a plaintiff State, on reasonable notice given to Microsoft, Microsoft shall submit such written reports under oath as requested regarding any matters contained in this Final Judgment. Individual plaintiff States will consult with the plaintiff States' enforcement committee to minimize the duplication and burden of the exercise of the foregoing powers, where practicable.

3. The Plaintiffs shall not disclose any information or documents obtained from Microsoft under this Final Judgment except for the purpose of securing compliance with this Final Judgment, in a legal proceeding to which one or more of the Plaintiffs is a party, or as otherwise required by law; provided that the relevant Plaintiff(s) must provide ten days' advance notice to Microsoft before disclosing in any legal proceeding (other than a grand jury proceeding) to which Microsoft is not a party any information or documents provided by Microsoft pursuant to this Final Judgment which Microsoft has

identified in writing as material as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure.

4. The Plaintiffs shall have the authority to seek such orders as are necessary from the Court to enforce this Final Judgment, provided, however, that the Plaintiffs shall afford Microsoft a reasonable opportunity to cure alleged violations of sections III.C, III.D, III.E and III.H, provided further that any action by Microsoft to cure any such violation shall not be a defense to enforcement with respect to any knowing, willful or systematic violations.

B. Appointment of a Technical Committee

1. Within 30 days of entry of this Final Judgment, the parties shall create and recommend to the Court for its appointment a three-person Technical Committee ('TC') to assist in enforcement of and compliance with this Final Judgment.

2. The TC members shall be experts in software design and programming. No TC member shall have a conflict of interest that could prevent him or her from performing his or her duties under this Final Judgment in a fair and unbiased manner. Without limitation to the foregoing, no TC member (absent the agreement of both parties):

a. Shall have been employed in any capacity by Microsoft or any competitor to Microsoft within the past year, nor shall she or he be so employed during his or her term on the TC;

b. Shall have been retained as a consulting or testifying expert by any person in this action or in any other action adverse to or on behalf of Microsoft; or

c. Shall perform any other work for Microsoft or any competitor of Microsoft for two years after the expiration of the term of his or her service on the TC.

3. Within 7 days of entry of this Final Judgment, the Plaintiffs as a group and Microsoft shall each select one member of the TC, and those two members shall then select the third member. The selection and approval process shall proceed as follows.

a. As soon as practicable after submission of this Final Judgment to the Court, the Plaintiffs as a group and Microsoft shall each identify to the other the individual it proposes to select as its designee to the TC. The Plaintiffs and Microsoft shall not object to each other's selection on any ground other than failure to satisfy the requirements of section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of selection.

b. The Plaintiffs shall apply to the Court for appointment of the persons selected by the Plaintiffs and Microsoft pursuant to section IV.B.3.a above. Any objections to the eligibility of a selected person that the parties have failed to resolve between themselves shall be decided by the Court based solely on the requirements stated in section IV.B.2 above.

c. As soon as practical after their appointment by the Court, the two members of the TC selected by the Plaintiffs and Microsoft (the 'Standing Committee Members') shall identify to the Plaintiffs and Microsoft the person that they in turn propose to select as the third member of the TC. The Plaintiffs and Microsoft shall not object to this selection on any grounds other than failure to satisfy the requirements of section IV.B.2 above. Any such objection shall be made within ten business days of the receipt of notification of the selection and shall be served on the other party as well as on the Standing Committee Members.

d. The Plaintiffs shall apply to the Court for appointment of the

person selected by the Standing Committee Members. If the Standing Committee Members cannot agree on a third member of the TC, the third member shall be appointed by the Court. Any objection by Microsoft or the Plaintiffs to the eligibility of the person selected by the Standing Committee Members which the parties have failed to resolve among themselves shall also be decided by the Court based on the requirements stated in section IV.B.2 above.

4. Each TC member shall serve for an initial term of 30 months. At the end of

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a TC member's initial 30-month term, the party that originally selected him or her may, in its sole discretion, either request re-appointment by the Court to a second 30-month term or replace the TC member in the same manner as provided for in section IV.B.3.a above. In the case of the third member of the TC, that member shall be re-appointed or replaced in the manner provided in section IV.B.3.c above.

5. If the United States determines that a member of the TC has failed to act diligently and consistently with the purposes of this Final Judgment, or if a member of the TC resigns, or for any other reason ceases to serve in his or her capacity as a member of the TC, the person or persons that originally selected the TC member shall select a replacement member in the same manner as provided for in section IV.B.3.

6. Promptly after appointment of the TC by the Court, the United States shall enter into a Technical Committee services agreement ('TC Services Agreement') with each TC member that grants the rights, powers and authorities necessary to permit the TC to perform its duties under this Final Judgment. Microsoft shall indemnify each TC member and hold him or her harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the TC's duties, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the TC member. The TC Services Agreements shall include the following.

a. The TC members shall serve, without bond or other security, at the cost and expense of Microsoft on such terms and conditions as the Plaintiffs approve, including the payment of reasonable fees and expenses.

b. The TC Services Agreement shall provide that each member of the TC shall comply with the limitations provided for in section IV.B.2 above.

7. Microsoft shall provide the TC with a permanent office, telephone, and other office support facilities at Microsoft's corporate campus in Redmond, Washington. Microsoft shall also, upon reasonable advance notice from the TC, provide the TC with reasonable access to available office space, telephone, and other office support facilities at any other Microsoft facility identified by the TC.

8. The TC shall have the following powers and duties:

a. The TC shall have the power and authority to monitor Microsoft's compliance with its obligations under this final judgment.

b. The TC may, on reasonable notice to Microsoft:

(i) Interview, either informally or on the record, any Microsoft personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Microsoft;

(ii) Inspect and copy any document in the possession, custody or control of Microsoft personnel;

(iii) Obtain reasonable access to any systems or equipment to which Microsoft personnel have access;

(iv) Obtain access to, and inspect, any physical facility, building or other premises to which Microsoft personnel have access; and

(v) Require Microsoft personnel to provide compilations of documents, data and other information, and to submit reports to the TC containing such material, in such form as the TC may reasonably direct.

c. The TC shall have access to Microsoft's source code, subject to the terms of Microsoft's standard source code Confidentiality Agreement, as approved by the Plaintiffs and to be agreed to by the TC members pursuant to section IV.B.9 below, and by any staff or consultants who may have access to the source code. The TC may study, interrogate and interact with the source code in order to perform its functions and duties, including the handling of complaints and other inquiries from non-parties.

d. The TC shall receive complaints from the Compliance Officer, third parties or the Plaintiffs and handle them in the manner specified in section IV.D below.

e. The TC shall report in writing to the Plaintiffs every six months until expiration of this Final Judgment the actions it has undertaken in performing its duties pursuant to this Final Judgment, including the identification of each business practice reviewed and any recommendations made by the TC.

f. Regardless of when reports are due, when the TC has reason to believe that there may have been a failure by Microsoft to comply with any term of this Final Judgment, the TC shall immediately notify the Plaintiffs in writing setting forth the relevant details.

g. TC members may communicate with non-parties about how their complaints or inquiries might be resolved with Microsoft, so long as the confidentiality of information obtained from Microsoft is maintained.

h. The TC may hire at the cost and expense of Microsoft, with prior notice to Microsoft and subject to approval by the Plaintiffs, such staff or consultants (all of whom must meet the qualifications of section IV.B.2) as are reasonably necessary for the TC to carry out its duties and responsibilities under this Final Judgment. The compensation of any person retained by the TC shall be based on reasonable and customary terms commensurate with the individual's experience and responsibilities.

i. The TC shall account for all reasonable expenses incurred, including agreed upon fees for the TC members' services, subject to the approval of the Plaintiffs. Microsoft may, on application to the Court, object to the reasonableness of any such fees or other expenses. On any such application: (a) The burden shall be on Microsoft to demonstrate unreasonableness; and (b) the TC member(s) shall be entitled to recover all costs incurred on such application (including reasonable attorney's fees and costs), regardless of the Court's disposition of such application, unless the Court shall expressly find that the TC's opposition to the application was without substantial justification.

9. Each TC member, and any consultants or staff hired by the TC, shall sign a confidentiality agreement prohibiting disclosure of any information obtained in the court of performing his or her duties as a member of the TC or as a person assisting the TC to anyone other than Microsoft, the Plaintiffs, or the Court. All information gathered by the TC in connection with this Final Judgment and any report and

recommendations prepared by the TC shall be treated as Highly Confidential under the Protective Order in this case, and shall not be disclosed to any person other than Microsoft and the Plaintiffs except as allowed by the Protective Order entered in the Action or by the further order of this Court.

10. No member of the TC shall make any public statements relating to the TC's activities.

C. Appointment of a Microsoft Internal Compliance Officer

1. Microsoft shall designate, within 30 days of entry of this Final Judgment, an internal Compliance Officer who shall be an employee of Microsoft with responsibility for administering Microsoft's antitrust compliance program and helping to ensure compliance with this Final Judgment.

2. The Compliance Officer shall supervise the review of Microsoft's activities to ensure that they comply with this Final Judgment. He or she may

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be assisted by other employees of Microsoft.

3. The Compliance Officer shall be responsible for performing the following activities:

a. Within 30 days after entry of this Final Judgment, distributing a copy of the Final Judgment to all officers and directors of Microsoft;

b. Promptly distributing a copy of this Final Judgment to any person who succeeds to a position described in section IV.C.3. a above;

c. Ensuring that those persons designated in section IV.C.3.a above are annually briefed on the meaning and requirements of this Final Judgment and the U.S. antitrust laws and advising them that Microsoft's legal advisors are available to confer with them regarding any question concerning compliance with this Final Judgment or under the U.S. antitrust laws;

d. Obtaining from each person designated in section IV.C.3.a above an annual written certification that he or she: (i) Has read and agrees to abide by the terms of this Final Judgment; and (ii) has been advised and understands that his or her failure to comply with this Final Judgment may result in a finding of contempt of court;

e. Maintaining a record of all persons to whom a copy of this Final Judgment has been distributed and from whom the certification described in section IV.C.3.d above has been obtained;

f. Establishing and maintaining the website provided for in section IV.D.3.b below.

g. Receiving complaints from third parties, the TC and the Plaintiffs concerning Microsoft's compliance with this Final Judgment and following the appropriate procedures set forth in section IV.D below; and

h. Maintaining a record of all complaints received and action taken by Microsoft with respect to each such complaint.

D. Voluntary Dispute Resolution

1. Third parties may submit complaints concerning Microsoft's compliance with this Final Judgment to the Plaintiffs, the TC or the Compliance Officer.

2. In order to enhance the ability of the Plaintiffs to enforce compliance with this Final Judgment, and to advance the parties' joint interest and the public interest in prompt resolution of issues and disputes, the parties have agreed that the TC and the Compliance

Officer shall have the following additional responsibilities.

3. Submissions to the Compliance Officer.

a. Third parties, the TC, or the Plaintiffs in their discretion may submit to the Compliance Officer any complaints concerning Microsoft's compliance with this Final Judgment. Without in any way limiting its authority to take any other action to enforce this Final Judgment, the Plaintiffs may submit complaints related to sections III.C, III.D, III.E and III.H to the Compliance Officer whenever doing so would be consistent with the public interest.

b. To facilitate the communication of complaints and inquiries by third parties, the Compliance Officer shall place on Microsoft's Internet web site, in a manner acceptable to the Plaintiffs, the procedures for submitting complaints. To encourage whenever possible the informal resolution of complaints and inquiries, the web site shall provide a mechanism for communicating complaints and inquiries to the Compliance Officer.

c. Microsoft shall have 30 days after receiving a complaint to attempt to resolve it or reject it, and will then promptly advise the TC of the nature of the complaint and its disposition.

4. Submissions to the TC.

a. The Compliance Officer, third parties or the Plaintiffs in their discretion may submit to the TC any complaints concerning Microsoft's compliance with this Final Judgment.

b. The TC shall investigate complaints received and will consult with the Plaintiffs regarding its investigation. At least once during its investigation, and more often when it may help resolve complaints informally, the TC shall meet with the Compliance Officer to allow Microsoft to respond to the substance of the complaint and to determine whether the complaint can be resolved without further proceedings.

c. If the TC concludes that a complaint is meritorious, it shall advise Microsoft and the Plaintiffs of its conclusion and its proposal for cure.

d. No work product, findings or recommendations by the TC may be admitted in any enforcement proceeding before the Court for any purpose, and no member of the TC shall testify by deposition, in court or before any other tribunal regarding any matter related to this Final Judgment.

e. The TC may preserve the anonymity of any third party complaint where it deems it appropriate to do so upon the request of the Plaintiffs or the third party, or in its discretion.

V. Termination

A. Unless this Court grants an extension, this Final Judgment will expire on the fifth anniversary of the date it is entered by the Court.

B. In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

VI. Definitions

A. "Application Programming Interfaces (APIs)" means the interfaces, including any associated callback interfaces, that Microsoft Middleware running on a Windows Operating System Product uses to call upon that Windows Operating System Product in order to obtain

any services from that Windows Operating System Product.

B. ``Communications Protocol'' means the set of rules for information exchange to accomplish predefined tasks between a Windows Operating System Product and a server operating system product connected via a network, including, but not limited to, a local area network, a wide area network or the Internet. These rules govern the format, semantics, timing, sequencing, and error control of messages exchanged over a network.

C. ``Consideration'' means any monetary payment or the provision of preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos.

D. ``Covered OEMs'' means the 20 OEMs with the highest worldwide volume of licenses of Windows Operating System Products reported to Microsoft in Microsoft's fiscal year preceding the effective date of the Final Judgment. The OEMs that fall within this definition of Covered OEMs shall be recomputed by Microsoft as soon as practicable after the close of each of Microsoft's fiscal years.

E. ``Documentation'' means all information regarding the identification and means of using APIs that a person of ordinary skill in the art requires to make effective use of those APIs. Such information shall be of the sort and to the level of specificity, precision and detail that Microsoft customarily provides for APIs in its documents in the Microsoft Developer Network (``MSDN'').

F. ``IAP'' means an Internet access provider that provides consumers with a connection to the Internet, with or without its own proprietary content.

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G. ``ICP'' means an Internet content provider that provides content to users of the Internet by maintaining Web sites.

H. ``IHV'' means an independent hardware vendor that develops hardware to be included in or used with a Personal Computer running a Windows Operating System Product.

I. ``ISV'' means an entity other than Microsoft that is engaged in the development or marketing of software products.

J. ``Microsoft Middleware'' means software code that

1. Microsoft distributes separately from a Windows Operating System Product to update that Windows Operating System Product;

2. Is Trademarked;

3. Provides the same or substantially similar functionality as a Microsoft Middleware Product; and

4. Includes at least the software code that controls most or all of the user interface elements of that Microsoft Middleware.

Software code described as part of, and distributed separately to update, a Microsoft Middleware Product shall not be deemed Microsoft Middleware unless identified as a new major version of that Microsoft Middleware Product. A major version shall be identified by a whole number or by a number with just a single digit to the right of the decimal point.

K. ``Microsoft Middleware Product'' means

1. The functionality provided by Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, Outlook Express and their successors in a Windows Operating System Product, and

2. For any functionality that is first licensed, distributed or

sold by Microsoft after the entry of this Final Judgment and that is part of any Windows Operating System Product.

a. Internet browsers email client software, networked audio/video client software, instant message software or

b. Functionality provided by Microsoft software that--

i. Is, or in the year preceding the commercial release of any new Windows Operating System Product was, distributed separately by Microsoft (or by an entity acquired by Microsoft) from a Windows Operating System Product;

ii. Is similar to the functionality provided by a Non-Microsoft Middleware Product; and

iii. Is Trademarked.

Functionality that Microsoft describes or markets as being part of a Microsoft Middleware Product (such as a service pack, upgrade, or bug fix for Internet Explorer), or that is a version of a Microsoft Middleware Product (such as Internet Explorer 5.5), shall be considered to be part of that Microsoft Middleware Product.

L. ``Microsoft Platform Software'' means (i) a Windows Operating System Product and/or (ii) a Microsoft Middleware Product.

M. ``Non-Microsoft Middleware'' means a non-Microsoft software product running on a Windows Operating System Product that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System.

N. ``Non-Microsoft Middleware Product'' means a non-Microsoft software product running on a Windows Operating System Product (i) that exposes a range of functionality to ISVs through published APIs, and that could, if ported to or made interoperable with, a non-Microsoft Operating System, thereby make it easier for applications that rely in whole or in part on the functionality supplied by that software product to be ported to or run on that non-Microsoft Operating System, and (ii) of which at least one million copies were distributed in the United States within the previous year.

O. ``OEM'' means an original equipment manufacturer or Personal Computers that is a licensee of a Windows Operating System Product.

P. ``Operating System'' means the software code that, inter alia, (i) controls the allocation and usage of hardware resources (such as the microprocessor and various peripheral devices) of a Personal Computer, (ii) provides a platform for developing applications by exposing functionality to ISVs through APIs, and (iii) supplies a user interface that enables users to access functionality of the operating system and in which they can run applications.

Q. ``Personal Computer'' means any computer configured so that its primary purpose is for use by one person at a time, that uses a video display and keyboard (whether or not that video display and keyboard is included) and that contains an Intel x86 compatible (or successor) microprocessor. Servers, television set top boxes, handheld computers, game consoles, telephones, pagers, and personal digital assistants are examples of products that are not Personal Computers within the meaning of this definition.

R. ``Timely Manner'' means at the time Microsoft first releases a beta test version of a Windows Operating System Product that is distributed to 150,000 or more beta testers.

S. ``Top-Level Window'' means a window displayed by a Windows Operating System Product that (a) has its own window controls, such as

move, resize, close, minimize, and maximize, (b) can contain sub-windows, and (c) contains user interface elements under the control of at least one independent process.

T. "Trademarked" means distributed in commerce and identified as distributed by a name other than Microsoft or Windows that Microsoft has claimed as a trademark or service mark by (i) marking the name with trademark notices, such as or \TM\, in connection with a product distributed in the United States; (ii) filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (iii) asserting the name as a trademark in the United States in a demand letter or lawsuit. Any product distributed under descriptive or generic terms or a name comprised of the Microsoft or Windows trademarks together with descriptive or generic terms shall not be Trademarked as that term is used in this Final Judgment. Microsoft hereby disclaims any trademark rights in such descriptive or generic terms apart from the Microsoft or Windows trademarks, and hereby abandons any such rights that it may acquire in the future.

U. "Windows Operating System Product" means the software code (as opposed to source code) distributed commercially by Microsoft for use with Personal Computers as Windows 2000 Professional, Windows XP Home, Windows XP Professional, and successors to the foregoing, including the Personal Computer versions of the products currently code named "Longhorn" and "Blackcomb" and their successors, including upgrades, bug fixes, service packs, etc. The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion.

VII. Further Elements

Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling either of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce

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compliance, and to punish violations of its provisions.

VIII. Third Party Rights

Nothing in this Final Judgment is intended to confer upon any other persons any rights or remedies of any nature whatsoever hereunder or by reason of this Final Judgment.

United States District Court for the District of Columbia

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

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

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

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

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement relating to the revised proposed Final Judgment ("Proposed Final Judgment") submitted on November 6, 2001 for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 18, 1998, the United States filed a civil antitrust Complaint alleging that Microsoft Corporation ("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. The case was tried in the United States District Court for the District of Columbia, which found that Microsoft violated both sections 1 and 2 of the Sherman Act. Microsoft appealed to the United States Court of Appeals for the District of Columbia, and the Court of Appeals affirmed in part and reversed in part the decision of the District Court, and vacated the Final Judgment that had been entered by the District Court. After the case was remanded to District Court for further proceedings, the parties reached the agreement that is embodied in the Proposed Final Judgment. The Proposed Final Judgment will provide a prompt, certain and effective remedy for consumers by imposing injunctive relief to halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals and restore competitive conditions to the market. Entry of the Proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Overview of Relief

The Court of Appeals upheld the conclusion that Microsoft had engaged in a variety of exclusionary acts designed to protect its operating system monopoly from the threat posed by a type of platform software known as "middleware," in violation of section 2 of the Sherman Act. Specifically, the Court determined that, in response to the middleware threat, Microsoft: (1) Undertook a variety of restrictions on personal computer Original Equipment Manufacturers ("OEMs"); (2) integrated its Web browser into Windows in a non-removable way while excluding rivals; (3) engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors and Apple Computer; and (4) attempted to mislead and threaten software developers in order to contain and subvert Java middleware technologies that threatened Microsoft's operating system monopoly.

The relief contained in the proposed Final Judgment provides prompt, certain and effective remedies for consumers. The requirements and prohibitions will eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings. The provisions benefit consumers by: \1\

Ensuring that computer manufacturers have contractual and economic freedom to make decisions about distributing and supporting

non-Microsoft middleware products without fear of coercion or retaliation by Microsoft, by broadly prohibiting retaliation against a computer manufacturer that supports or distributes alternative middleware or operating systems.

Further ensuring computer manufacturers' freedom to make middleware decisions by requiring that Microsoft provide uniform licensing terms to the 20 largest and most competitively significant computer manufacturers.

Ensuring that computer manufacturers have the freedom to configure the personal computers they sell to feature and promote non-Microsoft middleware, and ensuring that developers of these alternatives to Microsoft products are able to feature those products on personal computers, by prohibiting Microsoft from restricting computer manufacturers' ability to install and feature non-Microsoft middleware and competing operating systems in a variety of ways on the desktop and elsewhere.

Ensuring that computer manufacturers have the freedom to offer, and consumers the freedom to use, non-Microsoft middleware, by requiring Microsoft to provide the ability for computer manufacturers and consumers to customize, without interference or reversal, their personal computers as to the middleware they install, use and feature, and by requiring Microsoft to allow them also to designate non-Microsoft middleware to be invoked automatically in place of Microsoft middleware.

Ensuring that Microsoft cannot thwart the purposes of the remedies in the Proposed Final Judgment by withholding or providing only in discriminatory fashion necessary intellectual property licenses, by requiring Microsoft to offer necessary related licenses for the intellectual property that it is required to disclose.

Creating the opportunity for software developers and other computer industry participants to develop new middleware products that compete directly with Microsoft by requiring Microsoft to disclose all of the interfaces and related technical information that Microsoft's middleware uses to interoperate with the Windows operating system.

Preventing Microsoft from incorporating into the Windows operating system features or functionality with which only its own servers can interoperate by requiring Microsoft to disclose the communications protocols that are necessary for software located on a computer server to interoperate with the Windows operating system.

Ensuring that software and hardware developers are free to develop, distribute, or write to software that competes with Microsoft middleware or operating system software without adverse action by Microsoft, by prohibiting Microsoft from retaliating against developers or conditioning consideration on a developer refraining from developing, distributing or writing to software that competes with Microsoft platform software.

Depriving Microsoft of the means with which to retaliate against, or induce the hindering of the development of, competing products by prohibiting Microsoft from entering into agreements that require parties to exclusively, or in a fixed percentage, promote Microsoft middleware or operating system products.

The requirements and prohibitions in the Proposed Final Judgment are supported by strong enforcement

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provisions, including the power to seek criminal and civil contempt

sanctions and other relief in the event of a violation, and the imposition of three full-time, on-site, independent enforcement monitors. The Proposed Final Judgment also provides that, in an enforcement proceeding in which Microsoft has been found to have engaged in willful and systematic violations, the Court may order that the five-year term may be extended by up to two years, in addition to any other relief the Court deems appropriate.

III. Description of the Practices Giving Rise to the Alleged Violation

A. Background of the Proceedings

1. Proceedings in the District Court

On the same day that the United States filed its Complaint against Microsoft, 20 states and the District of Columbia (one state later withdrew and another later reached a separate settlement) filed a similar, although not identical, complaint. The District Court consolidated the cases at Microsoft's request. The Complaint alleged that Microsoft unlawfully maintained its monopoly in the market for operating systems designed to run on Intel-compatible personal computers by engaging in a series of exclusionary, anticompetitive and predatory acts in violation of section 2 of the Sherman Act. The Complaint also asserted that Microsoft unlawfully attempted to monopolize the market for Web browsers in violation of section 2 of the Sherman Act, and that certain actions taken by Microsoft as part of its campaign to protect its operating system monopoly power, such as tying its Web browser, Internet Explorer, to its operating system and entering into exclusive dealing arrangements, constituted unreasonable restraints on competition in violation of section 1 of the Sherman Act.

After extensive discovery, on October 19, 1998, the Court began a 78-day trial that ended on June 24, 1999. The Court heard testimony from 26 witnesses and admitted depositions of 79 other witnesses and 2,733 exhibits. On November 5, 1999, the Court entered its Findings of Fact. *United States v. Microsoft Corp.*, 84 F. Supp.2d 9 (D.D.C. 1999). On April 3, 2000, after the parties had engaged in four months of intensive but ultimately unsuccessful mediation efforts before Judge Richard Posner, the Court entered its Conclusions of Law. *United States v. Microsoft Corp.*, 87 F. Supp.2d 30 (D.D.C. 2000).

The District Court held that Microsoft engaged in a series of illegal anticompetitive acts to protect and maintain its personal computer operating system monopoly, in violation of section 2 of the Sherman Act and analogous state laws. The Court also concluded that Microsoft violated Section 2 by attempting to monopolize the market for Web browsers and section 1 by tying its browser to its Windows operating system. The Court ruled that Microsoft's exclusive dealing arrangements did not separately violate Section 1. The Court then proceeded to consider a remedy for Microsoft's antitrust violations, and on June 7, 2000, issued this Final Judgment, which imposed a remedy that included a break-up of Microsoft into separate operating system and applications businesses, along with interim conduct provisions. *United States v. Microsoft Corp.*, 97 F. Supp. 2d 59 (D.D.C. 2000).

2. Proceedings in the Court of Appeals

Microsoft appealed the District Court's decision. On June 28, 2001, the Court of Appeals, sitting en banc, unanimously affirmed in part, reversed in part and remanded in part the District Court judgment. Specifically, the Court affirmed the District Court's finding and conclusion that Microsoft had illegally maintained its operating system monopoly in violation of Section 2. *United States v. Microsoft Corp.*,

253 F.3d 34 (D.C. Cir. 2001). The Court upheld the District Court's finding of monopoly power in the market for Intel-compatible personal computer operating systems. With certain exceptions, the Court agreed with the District Court's findings and conclusions that Microsoft had engaged in a variety of exclusionary acts designed to protect its operating system monopoly from the threat posed by a particular type of software known as "middleware." Specifically, the Court upheld the conclusion that, in response to the middleware threat, Microsoft undertook a variety of restrictions on OEMs; integrated Internet Explorer into Windows in a non-removable way while excluding rivals; engaged in restrictive and exclusionary dealings with Internet Access Providers, Independent Software Vendors, and Apple Computer; and attempted to mislead and threaten software developers in order to contain and subvert so-called "Java" middleware technologies that threatened Microsoft's operating system monopoly. Each of these actions, which served to maintain the Windows monopoly, violated section 2 of the Sherman Act.

The Court reversed and remanded the Section 1 tying claim for reconsideration under the more rigorous rule of reason standard. It also reversed the District Court's determination that Microsoft had attempted to monopolize the Web browser market in violation of Section 2. In light of its finding that an evidentiary hearing on remedy was necessary and the fact that the District Court's Final Judgment may have rested on liability determinations that did not survive appellate review, the Court of Appeals vacated the Final Judgment and remanded the case to the District Court for new remedy proceedings. Finally, the Court of Appeals disqualified the trial judge retroactively to the date of entry of the Final Judgment based on violations of 28 U.S.C. 455(a).
3. Proceedings in the District Court Upon Remand

Upon remand, the District Court ordered the parties to confer and file a Joint Status Report, identifying the issues that remained on remand and the measures to be taken to reach resolution, and proposing a schedule. As part of that process, Plaintiffs advised Microsoft that they did not intend to pursue further proceedings on remand regarding their Section 1 tying claim and did not intend to pursue on remand the restructuring of Microsoft into separate operating system and applications businesses that had previously been ordered by the District Court. Plaintiffs took these steps after careful consideration of the Court of Appeals' decision and its likely impact on prospective remedies, in an effort to obtain prompt, effective and certain relief for consumers.

Subsequently, the District Court ordered the parties into a period of intensive settlement and mediation discussions to attempt to reach a fair resolution, commencing on September 28, 2001, and expiring on November 2, 2001. During that period, the parties expended every effort to comply with the Court's order and, after extensive negotiations, the United States, nine of the States (New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin), and Microsoft were able to reach agreement upon a Proposed Final Judgment that would achieve a prompt, certain and effective remedy for consumers by imposing 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, and restore the competitive conditions prevailing prior to Microsoft's unlawful conduct. The Proposed Final Judgment was filed on November 6, 2001.\2\

B. Factual Background

1. Microsoft's Operating System Monopoly

Personal computers consist, inter alia, of central processing components (a microprocessor and main memory), software, and data storage (e.g., a hard disk). The software on a personal computer largely consists of an operating system and applications designed to accomplish specific tasks, such as word processing. The operating system controls the allocation and use of computer resources and serves as a "platform" for applications by exposing interfaces (application programming interfaces, or APIs) that applications invoke to perform crucial tasks such as displaying text on a screen.

Microsoft has monopoly power in the market for Intel-compatible personal computer operating systems and undertook an extensive campaign of exclusionary acts to maintain its operating system monopoly. The relevant market for evaluating Microsoft's monopoly power is the licensing of all Intel-compatible personal computer operating systems worldwide. Intel-compatible personal computers are designed to function with Intel's 80x86 and successor families of microprocessors (or compatible microprocessors). Operating systems designed for Intel-compatible personal computers do not run on other personal computers, and operating systems designed for other personal computers do not run on Intel-compatible personal computers. Moreover, consumers are very reluctant to substitute away from Intel-compatible personal computers (for any reason, including an increase in operating system prices) because to do so would entail incurring substantial costs and would not result in a satisfactory substitute. Thus, a monopolist of operating systems for Intel-compatible personal computers can set and maintain the price of a license substantially above that which would be charged in a competitive market without losing so many customers as to make the action unprofitable.

2. The Applications Barrier to Entry

The operating system serves principally two functions: it enables the computer's hardware to operate and it serves as a platform for applications programs, such as word-processing and spreadsheets. The latter function is the source of an "applications barrier to entry" that protects Microsoft's monopoly power in the operating system market: users do not want to invest in an operating system until it is clear that the system will support generations of applications that will meet their needs, and developers do not want to invest in writing or quickly porting (i.e., adapting) applications for an operating system until it is clear that there will be a sizeable and stable market for it. This self-reinforcing cycle is sometimes referred to as a "network effect," a phenomenon by which the attractiveness of a product increases with the number of people using it.

The ubiquity of the Windows operating system thus induces developers to create vastly more applications for Windows than for other operating systems. The availability of a rich array of applications in turn attracts consumers to Windows. A competing operating system will not attract large numbers of users unless those users believe that there is and will continue to be a sufficient and timely array of applications available for use on that operating system. Software developers, however, have little incentive to write applications for an operating system without a large number of users.

3. Combating the Middleware Threats

The formidable applications entry barrier may be eroded through platform software known as "middleware." A middleware program is not

an operating system; rather, it is platform software that runs on top of an operating system--i.e., uses operating system interfaces to take advantage of the operating system's code and functionality--and simultaneously exposes its own APIs so that applications can run on the middleware itself. An application written to rely exclusively on a middleware program's APIs could run on all operating systems on which that middleware runs. Because such middleware also runs on Windows, application developers would not be required to sacrifice Windows compatibility if they chose to write applications for a middleware platform. Applications developers would thus have incentives to write for widely used middleware, and users would not be reluctant to choose a non-Windows operating system for fear that it would run an insufficient array of applications.

Middleware's potential to erode the applications barrier to entry thus poses a threat to Microsoft's ability to maintain its operating system monopoly. Recognizing this threat, Microsoft engaged in an extensive pattern of conduct designed to eliminate the threat posed by middleware. To protect its operating system monopoly, Microsoft focused on two incarnations of middleware that, working together, had the potential to weaken the applications barrier severely without the assistance of any other middleware: Netscape's Web browser and Sun Microsystems' implementation of the Java technologies.

a. Microsoft's Campaign To Eliminate the Netscape Threat. In December 1994, Netscape first marketed a Web browser called Navigator. Within months, Navigator was the preeminent Web browser. Microsoft became deeply concerned that Netscape was moving its business in a direction that could diminish the applications barrier to entry and thus decided to eliminate the threat that Navigator would become a viable alternative platform for applications. Microsoft first tried to reach an agreement with Netscape in June 1995, pursuant to which Netscape would have stopped efforts to develop Navigator into "platform-level" (i.e., API-exposing) browsing software for the Windows 95 operating system that was to be released later that summer; in return, Microsoft proposed to refrain from competing with Netscape in developing browsers for other operating systems.

Microsoft warned Netscape that timely access to critical technical information about Windows APIs--information that Netscape needed to make its browser run well on Windows 95--depended on its acquiescence. Had Netscape acquiesced in Microsoft's proposal, it would have become all but impossible for Navigator or any other browser rival to pose a platform threat to Windows.

Netscape did not accept Microsoft's proposal, and in response, Microsoft withheld from Netscape crucial Windows-related technical information that it routinely provided to others, and delayed the provision of necessary APIs, so that Netscape was excluded from most of the 1995 holiday selling season. Moreover, once it became clear to senior executives at Microsoft that Netscape would not abandon its efforts to develop Navigator into a platform, Microsoft focused its efforts on ensuring that few developers would write their applications to rely on the APIs that Navigator exposed.

Microsoft understood that software developers would only write to the APIs exposed by Navigator in numbers large enough to threaten the applications barrier if they believed that Navigator would emerge as the standard software employed to browse the Web. If Microsoft could demonstrate that Netscape would not become the standard and that Microsoft's browser, Internet Explorer, would meet or exceed Netscape's browser usage share, developers would continue to focus

their efforts on the Windows platform. Therefore, to protect the applications barrier to entry, Microsoft embarked on a multifaceted campaign to maximize Internet Explorer's share of usage and to minimize Navigator's.

Decision-makers at Microsoft worried that simply developing its own attractive browser product, providing it to consumers free of charge, and promoting it vigorously would not divert enough browser usage from Navigator to neutralize Navigator as a platform. Thus, rather than confine itself to improving and promoting Internet Explorer as a competitor to Navigator, Microsoft decided to constrict Netscape's access to the two distribution channels that led most efficiently to browser usage: installation by OEMs on new personal computers and distribution by Internet Access Providers (''IAPs''). Users rarely switched from whatever browsing software was placed most readily at their disposal, which was usually the browsing software installed on their computer by the OEM or supplied by their IAP when they signed up for Internet service. Microsoft thus sought to ensure that, to as great an extent as possible, OEMs and IAPs bundled and promoted Internet Explorer to the exclusion of Navigator.

Microsoft largely succeeded in exiling Navigator from the crucial OEM distribution channel. By January 1998, Microsoft executive Joachim Kempin was able to report to CEO Bill Gates that Navigator was being shipped through only 4 of the 60 OEM distribution sub-channels, and even then most often in a position much less likely to lead to usage than would Internet Explorer's position. By early 1999, Navigator was present on the desktop of only a tiny percentage of the personal computers that OEMs shipped.

Similarly, Microsoft's IAP channel restrictions significantly hampered Netscape's ability to distribute Navigator: they caused Internet Explorer's usage share to surge; they caused Navigator's usage share to plummet; they raised Netscape's own costs; and they sealed off a major portion of the IAP channel from the prospect of recapture by Navigator.

To help ensure that developers would not view Navigator as truly cross-platform middleware, Microsoft also pressured Apple to make Navigator less readily accessible on Apple personal computers. As leverage to obtain Apple's compliance, Microsoft threatened to cancel development of its ''Office for Macintosh'' software, which, as Microsoft recognized, was critical to Apple's business. Microsoft required Apple to make Internet Explorer its default browser and restricted Apple's freedom to feature and promote non-Microsoft browsing software, in order to protect the applications barrier to entry.

As part of its effort to hamper distribution of Navigator and to discourage the development of software that used non-Microsoft technology, Microsoft also targeted Independent Software Vendors (''ISVs''). Microsoft contractually required ISVs to use Internet Explorer-specific technologies in return for timely and commercially necessary technical information about Windows, and precluded important ISVs from distributing Navigator with their products.

Microsoft's actions succeeded in eliminating the threat that the Navigator browser posed to Microsoft's operating system monopoly. Foreclosed from effectively using the OEM and IAP distribution channels by Microsoft's exclusionary conduct, Navigator was relegated to more

costly and significantly less effective modes of distribution. The adverse business effects of these restrictions also deterred Netscape from undertaking technical innovations in Navigator that might have attracted consumers and revenues.

Because of its reduced access to efficient distribution channels, Navigator's share of browser use fell precipitously. Even though Navigator's installed base of users increased during the browser war, the population of browser users expanded so quickly that Navigator's usage share fell dramatically even as its installed base grew. Navigator lost its ability to become the standard software for browsing the Web because Microsoft had successfully--and illegally--excluded Navigator from that status.

b. Microsoft's Efforts To Extinguish Java. Microsoft also feared another middleware technology, Sun Microsystems' Java. Java software presented a means for overcoming the applications barrier to entry by enabling developers to write programs that could be ported to different operating systems with relative ease. Microsoft was concerned about Java because a key to maintaining and reinforcing the applications barrier to entry has been preserving the difficulty of porting applications from Windows to other platforms, and vice versa.

Java software has four elements: a programming language; a set of ``class libraries,'' which are Java programs that expose APIs on which developers writing in Java can rely; a compiler that translates the code written by the developer into Java ``bytecode''; and ``Java Virtual Machines'' (``JVMs''), programs that translate the Java bytecode into instructions comprehensible to the underlying system. The Java class libraries and JVM together form the ``Java runtime environment.'' If a software program relies only on APIs exposed by the Java Class libraries, it will run on any personal computer system carrying a Java runtime environment, no matter what operating system is on the computer. Therefore, Java applications require porting only to the extent that those applications rely directly on the APIs exposed by a particular operating system.

In May 1995, Netscape announced that it would include a Sun-compliant Windows JVM with every copy of Navigator, thereby creating the possibility that Sun's Java implementation would achieve the necessary ubiquity on Windows to pose a threat to the applications barrier to entry. Microsoft's determination to cripple cross-platform Java was an important reason for its concern about Navigator. Microsoft thus took, numerous steps to interfere with the development, distribution, and use of cross-platform Java. Those steps included: (1) Pressuring third parties not to support cross-platform Java; (2) seeking to extinguish the Java threat through technological means that maximized the difficulty with which applications written in Java could be ported from Windows to other platforms, and vice versa; and (3) other anticompetitive steps to discourage developers from creating Java applications compatible with non-Microsoft JVMs.

Through its actions against Navigator and Java, Microsoft retarded, and perhaps extinguished altogether, the process by which these two middleware technologies could have facilitated the introduction of competition into the market for Intel-compatible personal computer operating systems.

4. Summary of Effects of Microsoft's Anticompetitive Conduct

The Court of Appeals affirmed that, through its anticompetitive conduct, Microsoft has unlawfully protected and maintained its operating system monopoly in violation of section 2 of the Sherman Act.

IV. Explanation of the Proposed Final Judgment

The Proposed Final Judgment seeks to eliminate Microsoft's illegal practices, to prevent recurrence of the same or similar practices and to restore the competitive threat that middleware products posed prior to Microsoft's

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unlawful conduct. As discussed in further detail below, it seeks to achieve these goals by prohibiting Microsoft from engaging in specified activities, by requiring Microsoft to undertake certain other specified activities, by establishing a three-person independent Technical Committee ('`TC'') to assist in enforcement and compliance, and by requiring Microsoft to establish an internal antitrust compliance program. The Proposed Final Judgment applies to Microsoft's conduct nationwide.

A. Scope of the Proposed Final Judgment

A number of the definitions contained in the Proposed Final Judgment are essential to understanding the proper construction of the scope of the requirements and restrictions contained in the Proposed Final Judgment.

'`Microsoft Middleware,'` a defined term, is the concept that triggers Microsoft's obligations, including those relating to Microsoft's licensing and disclosure obligations under sections III.D. and III.E., in this Proposed Final Judgment. Microsoft Middleware means software code that is distributed separately from a Windows Operating System Product to update that Windows Operating System Product, is Trademarked (as that term is defined in the Proposed Final Judgment), provides the same or substantially similar functionality as a Microsoft Middleware Product and, at a minimum, includes the software code that controls most or all of the user interface elements of the Microsoft Middleware. Microsoft typically develops and distributes a '`redistributable`` associated with Microsoft Middleware Products. For instance, Microsoft offers a redistributable of Internet Explorer 6, which is a set of software code that is distributed separately under the Internet Explorer trademark and has the same functionality as Internet Explorer in Windows XP. This block of software code is the Microsoft Middleware that corresponds to the Internet Explore Microsoft Middleware Product. If such a redistributable exists, as they currently do for most Microsoft Middleware Products, then the redistributable is Microsoft Middleware. The primary purpose of the fourth requirement, that the Microsoft Middleware include at least the code that controls most or all of the user interface, is to ensure that the definition captures situations where no such redistributable exists, or where Microsoft chooses to divide up the software code that would otherwise have been a redistributable and to distribute that code not in one block but in various smaller blocks. In such cases, even though the first three requirements would be met, there could be uncertainty as to which of the smaller blocks of code constitute the Microsoft Middleware, particularly if some of the blocks are characterized by Microsoft as operating system updates. The fourth requirement sets a minimum functional requirement that in no case (regardless of the size of, or manner of, distributing the code) shall the software code constituting Microsoft Middleware be less than that which controls most, or all of, the user interface elements of that Microsoft Middleware.

Software code distributed to update a Microsoft Middleware Product, such as an update to Internet Explorer, is Microsoft Middleware if it is a new "major version" of that Product: e.g., if it is identified by a new name or a new version number that consists of a whole number (e.g., "7.0") or a number with a single digit to the right of the decimal place (e.g., "7.1"). This requirement is intended to focus the definition on code updates that provide commercially meaningful new or improved functionality, rather than simple bug fixes or patches, and uses Microsoft's current, regular versioning practices to differentiate minor fixes from more significant new versions.

"Microsoft Middleware Product," a defined term, is a concept critical to, among other things, identifying software to which user access and defaults must be made removable in favor of competing software pursuant to section III.H. Microsoft Middleware Product is broad; it covers not only a variety of existing products, but also sets forth an objective test for products not yet in existence that may become covered by the definition in the future. Existing products within this definition are those that include the functionality provided to users by a number of identified Microsoft products: Internet Explorer, Microsoft's Java Virtual Machine, Windows Media Player, Windows Messenger, and Outlook Express. The definition includes not only the functionality provided by these products, but also functionality provided by any successors to these products distributed by Microsoft. A future product would also be a Microsoft Middleware Product if it is first licensed, distributed or sold by Microsoft after entry of the Proposed Final Judgment as part of a Windows Operating System Product, and provides functionality similar to Internet browsers, email client software, networked audio/video client software, and instant messaging software. Thus, for example, future real time communications software that provides functionality similar to instant messaging software would be included, whether that software provides instant messaging via text, audio, and/or video. Alternately, future products would be encompassed within this definition if, in the year preceding commercial release of a new Windows Operating System Product, they are distributed separately from Windows, provide functionality similar to a Non-Microsoft Middleware Product, and are Trademarked.

To be distributed separately from a Windows Operating System Product means that the software code is distributed separately from the original installation on a Personal Computer in any channel. Examples of channels include retail, separate installation by OEMs, downloads, inclusion with third-party software products, mass-mailings, and the Windows Update facility. Any software received in any of these channels after the original installation of a Windows Operating System Product is distributed separately from that Product. Software can be considered to be both part of a Windows Operating System Product and distributed separately from that Product.

"Non-Microsoft Middleware Product," a defined term, is the concept used, among other places, to identify software that may be installed in lieu of a Microsoft Middleware Product, as provided in Section III.H. Generally speaking, "Non-Microsoft Middleware" is third-party software that, similar to the browser, has the potential to create a competitive threat to Microsoft's Windows monopoly by lowering the applications barrier to entry. A Non-Microsoft Middleware Product is any software that both meets the definition of Non-Microsoft Middleware and has at least one million copies distributed in the United States within the previous year. This requirement of a minimal amount of actual distribution of such products is intended to avoid

Microsoft's affirmative obligations--including the API disclosure required by Section III.D. and the creation of the mechanisms required by Section III.H.--being triggered by minor, or even nonexistent, products that have not established a competitive potential in the market and that might even be unknown to Microsoft development personnel.

``Non-Microsoft Middleware'' is any software: (i) Not licensed, distributed or sold by Microsoft; (ii) that is capable of running on a Windows Operating System Product; (iii) that itself provides APIs that can be invoked by ISVs to obtain a range of functionality; and (iv) that, if ported to or made to work with

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a non-Microsoft Operating System, could make it easier for software applications that invoke its functionality to be ported to or run on such non-Microsoft Operating Systems.

It was important to provide some limitations on these and other, related definitions, because not all software that exposes APIs would qualify as ``middleware'' with competitive significance for purposes of this case. While it is critical that meaningful, future middleware products be captured by the Proposed Final Judgment, such products may not always be readily identifiable as such. Without limitations on the definition, any software developer would be able to claim that any software product was middleware and thereby insist on exercising options and alternatives provided by the Proposed Final Judgment. The limits in the definitions ensure that the provisions of the Proposal Final Judgment apply to products that can credibly be said to pose, alone or in combination with other products, nascent threats to the applications barrier to entry.

The definition of ``Trademarked'' is designed to ensure that the Microsoft Middleware and the Microsoft Middleware Products that Microsoft distributes (either for free or for sale) to the market as commercial products are covered by the Proposed Final Judgment. The definition of Trademarked in all respects applies equally to both trademarks and service marks.

The definition has two categories. The first category covers products distributed in commerce under distinctive names or logos other than by the Microsoft or the Windows names by themselves. In order for such products to be Trademarked within the meaning of this definition, Microsoft must claim the name under which the product is distributed, or by which the product is identified, as a trademark or service mark in one of the following ways: (1) By marking the name with trademark notices in connection with a product distributed in the United States; (2) by filing an application for trademark protection for the name in the United States Patent and Trademark Office; or (3) by asserting the name as a trademark in the United States in a demand letter or lawsuit. As long as Microsoft makes a claim in one of these three ways, for any name other than Microsoft or Windows by itself, the definition is satisfied. For example, products distributed in commerce under, or identified by, the Windows Media name are covered.

The second category covers products distributed in commerce under generic or descriptive terms or generic or descriptive terms in combination with either the Microsoft or the Windows name, where such terms of combinations of terms do not meet any of the three requirements for being claimed as a trademark

or service mark outlined in connection with the first category. Microsoft expressly disclaims all rights in, and abandons any rights it may acquire in the future to, such generic or descriptive terms or combinations of generic or descriptive terms with either the Microsoft or the Windows name. Products falling within this second category are neither Microsoft Middleware nor Microsoft Middleware Products. The second category does not exempt from coverage as Trademarked any product distributed in commerce under, or identified by, marks that consist of any combination of generic or descriptive terms and a distinctive logo or other stylized presentation. For example, the mark MEDIA, although a generic term, would not fall within the second category if it were presented as a part of a distinctive logo or another stylized presentation because the mark itself would not be either generic or descriptive.

The portion of this definition relating to Microsoft's disclaimer of certain trademarks or service marks and its abandonment of any rights to such trademarks or service marks in the future is designed to ensure that, to the extent that Microsoft distributes a product in commerce under generic or descriptive terms or generic or descriptive terms in combination with either the Microsoft or the Windows name and claims on that basis that such product does not fall within the definition of Microsoft Middleware or Microsoft Middleware Product, it must forever disclaim and abandon any rights to the name under which any such product is distributed in commerce.

``Windows Operating System Product'' means the software commercially distributed by Microsoft for use with Personal Computers under the names Windows 2000 Professional, Windows XP Home and Professional, and successors to these products. In general terms, it refers to Microsoft's line of ``desktop'' operating systems, as opposed to its server or other operating systems. Windows Operating System Product applies to software marketed under the listed names and anything marketed as their successors, regardless of how that software code is distributed, whether the software code is installed all at once or in pieces, or whether different license(s) apply.

While the software code that comprises a Windows Operating System Product is determined by Microsoft's packaging decisions (i.e., by what it chooses to ship as ``Windows''), software code that is part of a Windows Operating System Product can also meet the requirements of other definitions, such as those for Microsoft Middleware and Microsoft Middleware Product. For example, Internet Explorer is both part of a Windows Operating System Product and a Microsoft Middleware Product.

B. Prohibited Conduct and Anticipated Effects of the Proposed Final Judgment

Appropriate injunctive relief in an antitrust case should: (1) End the unlawful conduct; (2) ``avoid a recurrence of the violation'' and others like it; and (3) undo its anticompetitive consequences. See Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 697 (1978); United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961); Int'l Salt Co. v. United States, 332 U.S. 392, 401 (1947); United States v. Microsoft Corp., 253 F.3d 34, 103, 107 (D.C. Cir. 2001). Restoring competition is the ``key to the whole question of an antitrust remedy,'' du Pont, 366 U.S. at 326. Competition was injured in this case principally because Microsoft's illegal conduct maintained the applications barrier to entry into the personal computer operating system market by thwarting the success of middleware that would have assisted competing operating systems in gaining access to applications and other needed complements. Thus, the key to the proper remedy in

this case is to end Microsoft's restrictions on potentially threatening middleware, prevent it from hampering similar nascent threats in the future and restore the competitive conditions created by similar middleware threats. The Proposed Final Judgment imposes a series of prohibitions on Microsoft's conduct that are designed to accomplish these critical goals of an antitrust remedy.

1. Section III.A.

Section III.A. ensures that OEMs have the contractual and economic freedom to make decisions about distributing and supporting non-Microsoft software products that have the potential to weaken Microsoft's personal computer operating system monopoly without fear of coercion or retaliation by Microsoft. The District Court found, and the Court of Appeals upheld, that OEMs are a crucial channel for the distribution and ultimate usage of non-Microsoft Middleware Products such as browsers. Accordingly, it is critical that the OEMs, through whom the large majority of

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copies of Microsoft's Windows Operating System Products reach consumers, are free to choose to distribute and promote middleware without interference from Microsoft.

Section III.A. broadly prohibits any sort of Microsoft retaliation against an OEM based on the OEM's contemplated or actual decision to support non-Microsoft software. Specifically, Microsoft is barred from retaliating by altering its existing commercial relations with an OEM based on the OEM's work with Non-Microsoft Middleware or Operating Systems. The existing Microsoft-OEM relationship provides a baseline against which any changes Microsoft makes in its treatment of that OEM for prohibited reasons can be detected and assessed. Microsoft is further prohibited from retaliating against OEMs by withholding newly-introduced forms of non-monetary "Consideration" (a defined term referring to the various means available to Microsoft by which it can retaliate against or reward another firm; specifically, preferential licensing terms; technical, marketing, and sales support; enabling programs; product information; information about future plans; developer support; hardware or software certification or approval; or permission to display trademarks, icons or logos). For example, if Microsoft begins a new technical program or a new logo or software certification program that is not yet part of its existing commercial relations with an OEM, Microsoft cannot withhold the new Consideration from the OEM because the OEM is shipping or promoting products that compete with Microsoft Middleware or Operating Systems. Microsoft similarly cannot punish the OEM by withholding participation in a successor version of an existing form of Consideration, for example, in a logo program for calendar year 2003. This effectively bars Microsoft from using either money or the wide range of economic and commercial levers at its disposal to restrain OEM's support of competing software.

Section III.A. is also broad in the range of OEM activities which Microsoft is prohibited from affecting through retaliation or coercion. Microsoft cannot retaliate against an OEM because Microsoft knows that the OEM either is or is contemplating: (i) Developing, distributing, promoting, using, selling, or licensing any software that competes with Microsoft Middleware or a Microsoft Operating System, or any product or service that distributes or promotes Non-Microsoft Middleware; (ii) shipping personal computers that have more than one operating system or that will "dual boot" into different operating systems; or (iii)

exercising any other options or alternatives that are assured to OEMs by other provisions of the Proposed Final Judgment. Thus, OEMs will be assured the freedom to make independent decisions about the middleware and other operating systems they install, distribute and promote based on the demands of their customers and not on fear of retaliation by, or coercion from, Microsoft.

Section III.A. does permit Microsoft to provide Consideration to an OEM for a particular Microsoft product or service where the Consideration is commensurate with the level or amount of the OEM's development, distribution, promotion or licensing of that product or service. Thus, Microsoft is limited to providing Consideration for a specific Microsoft product or service in return for the OEM supporting that product or service. Moreover, Microsoft can base such Consideration only on the absolute level or amount of the OEM's support for the Microsoft product or service, rather than on any relative level or amount.

Finally, Section III.A. helps ensure the freedom of OEMs to make decisions about the software they install and promote free from Microsoft's influence by protecting the OEMs from having their vital licenses to Windows Operating System Products canceled without notice. Microsoft is barred from terminating the licenses of any of the 20 largest and most competitively significant OEMs (defined as "Covered OEMs") without first giving written notice of the reasons for the proposed termination and not less than a 30-day opportunity to cure (except for a Covered OEM that has already received two such notices during the term of its license agreement). Without such protection, the threat that key OEMs could suddenly lose their Windows license, and that such loss is at Microsoft's discretion, could act as a powerful deterrent against OEMs taking the risk of promoting and distributing software that competes with Microsoft's.

2. Section III.B.

In order to ensure freedom for the 20 Covered OEMs from the threat of Microsoft retaliation or coercion, Section III.B. requires that Microsoft's Windows Operating System Product licenses with such OEMs contain uniform terms and conditions, including uniform royalties. These royalties must be established by Microsoft in advance on a schedule that is available to Covered OEMs and the Plaintiffs.

Windows license royalties and terms are inherently complex and easy for Microsoft to use to affect OEMs' behavior, including what software the OEMs will offer to their customers. By eliminating any opportunity for Microsoft to set a particular OEM's royalty or license terms as a way of inducing that OEM to decline to promote non-Microsoft software or retaliating against that OEM for its choices to promote non-Microsoft software, this provision will ensure that OEMs can make their own independent choices. The provision permits Microsoft to employ volume discounts, but requires that such discounts be based on pre-set, legitimate volume levels.

Section III.B. also prohibits Microsoft from using market development allowances ("MDAs") or programs or other discounts to reward or retaliate against particular OEMs for the choices they make about installing and promoting Non-Microsoft Middleware or Operating Systems or for any other purpose that is inconsistent with the provisions of the Proposed Final Judgment. If Microsoft utilizes MDAs or similar discounts, they must be available and awarded uniformly to the ten largest OEMs on one discount scale and separately to the ten next largest on the same or another discount scale. In addition, the discounts must be based on objective, verifiable criteria that are

