



Department of Justice

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DEPARTMENT OF JUSTICE AND MICROSOFT CORPORATION REACH EFFECTIVE SETTLEMENT ON ANTITRUST LAWSUIT

Settlement Provides Enforcement Measures to Stop Microsoft's Unlawful Conduct, Prevent Its Recurrence, and Restore Competition

WASHINGTON, D.C. – The Department of Justice reached a settlement today with Microsoft Corporation that imposes a broad range of restrictions that will stop Microsoft's unlawful conduct, prevent recurrence of similar conduct in the future and restore competition in the software market, achieving prompt, effective and certain relief for consumers and businesses.

The settlement reached today accomplishes this by:

- creating the opportunity for independent software vendors to develop products that will be competitive with Microsoft's middleware products on a function-by-function basis;
- giving computer manufacturers the flexibility to contract with competing software developers and place their middleware products on Microsoft's operating system;
- preventing retaliation against computer manufacturers, software developers, and other industry participants who choose to develop or use competing middleware products; and
- ensuring full compliance with the proposed Final Judgment and providing for swift resolution of technical disputes.

“A vigorously competitive software industry is vital to our economy and effective antitrust enforcement is crucial to preserving competition in this constantly evolving high-tech arena,” said Attorney General John Ashcroft. “This historic settlement will bring effective relief to the market and ensure that consumers will have more choices in meeting their computer needs.”

The settlement, which will be filed today in U.S. District Court in the District of Columbia with Judge Colleen Kollar-Kotelly, if approved by the court, would resolve the lawsuit filed by the Department on May 18, 1998.

“This settlement will promote innovation, give consumers more choices, and provide the computer industry as a whole with more certainty in the marketplace,” said Charles A. James, Assistant Attorney General for the Antitrust Division. “The goals of the government were to obtain relief that stops Microsoft from engaging in unlawful conduct, prevent any recurrence of that conduct in the future, and restore competition in the software market—we have achieved those goals.”

Today's proposed settlement is modeled on the conduct provisions in the original Final Judgment entered by Judge Jackson, but includes key additions and modifications that take into account the current and anticipated changes in the computer industry, including the launch of Microsoft's new Windows XP operating system, and the Court of Appeals decision revising some of the original liability findings.

The proposed Final Judgment includes the following key provisions:

Broad Scope of Middleware Products— The proposed Final Judgment applies a broad definition of middleware products which is wide ranging and will cover all the technologies that have the potential to be middleware threats to Microsoft's operating system monopoly. It includes browser, e-mail clients, media players, instant messaging software, and future new middleware developments.

Disclosure of Middleware Interfaces— Microsoft will be required to provide software developers with the interfaces used by Microsoft's middleware to interoperate with the operating system. This will allow developers to create competing products that will emulate Microsoft's integrated functions.

Disclosure of Server Protocols— The Final Judgment also ensures that other non-Microsoft server software can interoperate with Windows on a PC the same way that Microsoft servers do. This is important because it ensures that Microsoft cannot use its PC operating system monopoly to restrict competition among servers. Server support applications, like middleware, could threaten Microsoft's monopoly.

Freedom to Install Middleware Software— Computer manufacturers and consumers will be free to substitute competing middleware software on Microsoft's operating system.

Ban on Retaliation— Microsoft will be prohibited from retaliating against computer manufacturers or software developers for supporting or developing certain competing software. This provision will ensure that computer manufacturers and software developers are able to take full advantage of the options granted to them under the proposed Final Judgment without fear of reprisal.

Uniform Licensing Terms— Microsoft will be required to license its operating system to key computer manufacturers on uniform terms for five years. This will further strengthen the ban on retaliation.

Ban on Exclusive Agreements— Microsoft will be prohibited from entering into agreements requiring the exclusive support or development of certain Microsoft software. This will allow software developers and computer manufacturers to contract with Microsoft and still support and develop rival middleware products.

The proposed Final Judgment also includes key additional provisions related to enforcement:

Licensing of Intellectual Property– Microsoft also will be required to license any intellectual property to computer manufacturers and software developers necessary for them to exercise their rights under the proposed Final Judgment, including for example, using the middleware protocols disclosed by Microsoft to interoperate with the operating system. This enforcement measure will ensure that intellectual property rights do not interfere with the rights and obligations under the proposed Final Judgment.

On-Site Enforcement Monitors– The proposed settlement also adds an important enforcement provision that provides for a panel of three independent, on-site, full-time computer experts to assist in enforcing the proposed Final Judgment. These experts will have full access to all of Microsoft’s books, records, systems, and personnel, including source code, and will help resolve disputes about Microsoft’s compliance with the disclosure provisions in the Final Judgment.

The core allegation in the lawsuit, upheld by the Court of Appeals in June 2001, was that Microsoft had unlawfully maintained its monopoly in computer-based operating systems by excluding competing software products known as middleware that posed a nascent threat to the Windows operating system.

Specifically, the Court of Appeals found that Microsoft engaged in unlawful exclusionary conduct by using contractual provisions to prohibit computer manufacturers from supporting competing middleware products on Microsoft’s operating system; prohibiting consumers and computer manufacturers from removing Microsoft’s middleware products from the operating system; and reaching agreements with software developers and third parties to exclude or disadvantage competing middleware products.

The proposed Final Judgment will be published by the Federal Register, along with the Department’s Competitive Impact Statement, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed consent decree within 60 days of its publication to: Renata Hesse, Trial Attorney, 325 7th Street, N.W., Suite 500, Washington, D.C. 20530, (202-616-0944). At the conclusion of the 60-day comment period, the Court may enter the proposed consent decree upon a finding that it serves the public interest.

The proposed Final Judgment will be in effect for a five year period and may be extended for an additional two-year period if the Court finds that Microsoft has engaged in multiple violations of the proposed Final Judgment.

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