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Microsoft Monopoly Caused Consumer Harm

CFA Releases Analysis of Judge Jackson's Findings of Fact:

Consumers paid too much and were denied new products and good quality.

Washington, DC – The overwhelming evidence in the Findings of Fact in the U.S. vs. Microsoft trial leaves no doubt as to the magnitude and scope of harm that Microsoft has caused consumers. After analyzing Judge Jackson's Findings of Fact, Mark Cooper, Director of Research for CFA, said, "There can be no doubt that the Microsoft monopoly forced consumers to overpay, denied access to new and better products, and stifled overall quality improvements. These are the classic symptoms of a monopoly, which is so fundamentally abhorrent to the American consumer."

In a detailed analysis of the consumer implications of Microsoft's monopoly, CFA identifies a dozen ways in which Microsoft harmed the public. The report, entitled, "The Consumer Harm Caused by the Microsoft Monopoly: The Facts Speak for Themselves and They Call for a Stern Remedy," summarizes four specific problem areas:

1. Microsoft retarded innovation by preventing specific products from being developed and deterring other software companies from devoting developer time and money to new products.
2. Microsoft denied consumer choice by delaying or driving specific products out of the market, preventing consumers from buying computers with software configured as they want, and forcing non-Microsoft products to be distributed in inconvenient ways.
3. Microsoft degraded the quality of its own products and exposed consumers to greater risk by forcing its Internet browser on the desktop to prevent competitors from being compatible with them. It degraded the performance of competing products to hurt their sales.
4. Microsoft increased costs for consumers in the short term by directly overcharging for operating system, discriminating against specific computer manufacturers, and causing consumers increased time and effort to obtain non-Microsoft products. It raised prices in the long term by preventing competitors from entering the operating system market. It caused consumers to pay more for hardware through its software design, licensing and upgrade pricing policies

Consumers always lose when competition is denied.

“One of the most important lessons to be learned from the Judge’s findings is that consumers always lose in a monopoly,” said Cooper. Consumers should not fear competition. In fact, it is one of the best means to improve operating systems and giving consumers more options. The claim that a competitive market would produce incompatible products is the type of false and misleading premise that Microsoft has hid behind for years. The American consumer has never feared competition. “In fact,” says Cooper, “in the world of computers, compatibility is likely the most highly valued commodity. It is something that corporations, if given the chance, would compete vigorously to provide. Microsoft, on the other hand, has created incompatibilities to prevent non-Microsoft products from becoming popular. They have actually attacked and driven products out of the market because it would increase compatibility.”

A Stern Remedy Must Be Forthcoming

In the analysis, Cooper said, “A stern remedy must be fashioned to counteract the behavior that Microsoft has practiced for so long and which harmed consumers. The history of attempted and failed behavioral remedies with Microsoft requires that another solution must be reached. It may be that only a classic antitrust remedy, divestiture, will suffice to regulate Microsoft’s actions.” Creating two or more “Microsofts” would set off a vigorous round of competition and demand less regulatory or governmental oversight. Computer manufacturers, who have been the captives of Microsoft, would immediately have alternatives immediately enabling them resist anticompetitive deals and stand up to threats.

The CFA report provides the first, detailed consumer group analysis and reaction to the profound findings in Judge Jackson’s findings. It is available on the CFA website at www.consumerfed.org/antitrustMicro.html

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The Consumer Federation of America (CFA) is a non-profit association of some 260 pro-consumer groups, with a combined membership of 50 million, which was founded in 1968 to advance the consumer interest through advocacy and education

**THE CONSUMER HARM CAUSED BY THE MICROSOFT
MONOPOLY:
THE FACTS SPEAK FOR THEMSELVES AND
THEY CALL FOR A STERN REMEDY**

HARMING THE PUBLIC IN DEFENSE OF MONOPOLY POWER

Throughout the course of the Microsoft antitrust¹ there has been a running debate in the press over the question of consumer harm. Regardless of the unfolding of damaging evidence in the courtroom about business practices, Microsoft's public relations machine hammered away at one theme,² "where is the consumer harm?" The Consumer Federation of America, the Media Access Project and USPIRG, have presented extensive analysis based on evidence in the trial and other data demonstrating the nature and extend of consumer harm.³

Now, U.S. District Court Judge Thomas Penfield Jackson's recent Finding of Fact,⁴ leaves no doubt that consumers have been hurt by Microsoft's abuse of monopoly power.

Many of these actions have harmed consumers in ways that are immediate and easily discernible. They have also caused less direct, but nevertheless serious and far-reaching, consumer harm by distorting competition. (409)

The purpose of this paper is to briefly summarize the consumer harm as now established in fact. Exhibit 1 lists the harms identified by Judge Jackson resulting from Microsoft's anticompetitive acts, along with paragraph references. In Attachment I, we let the Judge's words speak for themselves on these issues. In order to better comprehend the magnitude of the problem, we have pulled together the treads of the consumer harm argument, which are spread throughout the Findings of Fact.

Judge Jackson identifies almost two dozen specific ways that Microsoft has harmed the public in four general areas – retarding innovation, denying consumer choice, degrading product quality and increasing consumer cost.

¹ *United States v. Microsoft, State of New York v. Microsoft*, Civil Action Nos. 98-1232, 1233 (TPJ).

² *Microsoft Refutes Critics, Shows How It Leads in Giving Consumers High Value at Low Cost* Press Release, October 7, 1998 repeated in *Microsoft's Focus on Consumers: Low Prices and Innovative Technology are Continually Making Consumer's Lives Better*, January 1999.

³ *The Consumer Case Against Microsoft*, October 1998; *The Consumer Cost of the Microsoft Monopoly: \$10 Billion of Overcharges and Counting*, January 1999; and *Economic Evidence in the Antitrust Trial: The Microsoft Defense Stumbles Over the Facts*, March 18, 1999.

⁴ *U.S. v. Microsoft*, November 5, 1999.

**EXHIBIT 1
CONSUMER HARM RESULTING FROM
MICROSOFT'S ABUSE OF MONOPOLY POWER
IN THE PC OPERATING SYSTEM SOFTWARE MARKET**

<u>ANTITCONSUMER BEHAVIOR</u>	<u>PARAGAPH IN FINDINGS</u>
RETARDING INNOVATION	
Chilling effect on Investment	379, 397,412
Developer Time	
Money	
Cross-subsidy from Windows Profits	
Delaying and Preventing the Development of Products	411, 132,395-396
Netscape's Navigator	81-88,408-410
IBM's OS2/Smartsuite	116-118,125-130
Sun's JAVA	397-403
Real Networks	111-114
Apple's Quicktime	104-110
Intel's Native Signaling Processing	94-103
Undermining Compatibility	390-396, 407
DENIAL OF CONSUMER CHOICE	
Denying Products that Better Suit Consumer Needs	247, 410
Delaying Release of Products	167-168
Denying Consumers User-Friendly Configurations	210-216
Forcing Purchase of New Versions With New PCs	57, 66
Denying and Delaying Non-Microsoft Products	90-91,93
Thwarting Responses to Consumer Demand	225-229
Forcing Consumers to Buy Non-Microsoft Products	203-206, 239-240
In Inconvenient Ways	247,309-311,357
DEGRADATION OF QUALITY	
Impairing Functionality of Microsoft Products	173, 174
Reducing the Availability of Product	407
Impairing the Functionality of Non-Microsoft Products	92,128-129,160, 171-172,330,339-340
INCREASING CONSUMER COST	
Raising Consumer Transaction Cost	203-206, 239-240
240,247	
Monopolistic Software Pricing	
Short term revenue	57, 62-63
Price Discrimination	64,236-238
Undermining Long term competition	66
Raising Hardware Costs	57, 66,77

- ◆ Microsoft retarded innovation by preventing specific products from being developed and deterring other software companies from devoting developer time and money to new products.
- ◆ Microsoft denied consumer choice by delaying or driving specific products out of the market, preventing consumers from buying computers with software configured as they want, and forcing non-Microsoft products to be distributed in inconvenient ways.
- ◆ Microsoft degraded the quality of its own products and exposed consumers to greater risk by forcing its Internet browser on the desktop to prevent competitors from being compatible with them. It degraded the performance of competing products to hurt their sales.
- ◆ Microsoft increased costs for consumers in the short term by directly overcharging for operating system, discriminating against specific computer manufacturers, and causing consumers increased time and effort to obtain non-Microsoft products. It raised prices in the long term by preventing competitors from entering the operating system market. It caused consumers to pay more for hardware through its software design, licensing and upgrade pricing policies

CONSUMERS NEED NOT FEAR COMPETITION

Perhaps the most important lesson that can be learned from the Judge's careful consideration of the multiple forms of harm is that consumers need not fear competition in the software industry. Microsoft's claims that taking action against it will undermine the "experience" of computing and the current compatibility between the operating systems and the applications that run on top of it are dubious at best. Microsoft has repeatedly attacked and driven products out of the market because they would increase compatibility. It has created incompatibilities with non-Microsoft products to prevent them from becoming popular.

The ability of developers to create products that are compatible, which Microsoft then drives out of the market with anticompetitive tactics, suggests that if Microsoft were prevented from abusing its market power, a competitive market would produce compatible products. The implications for a remedy are fundamental. Fears that competition will cause computing to become more difficult, requiring support of multiple, incompatible applications and operating systems are unfounded. Portability will be highly valued in the market.

Experience in other industries suggests that real competition would produce many integrated, even more consumer-friendly operating systems that perform more reliably and better meet consumer needs. In a world of competing systems, compatibility would become a highly valued commodity and open standards would be developed. Competitive industries center on standards that all companies can develop products for. Non-dominant firms strive for enhanced compatibility. Microsoft exploited its dominance of the operating system to prevent competition from compatible products it could not control.

Judge Jackson makes this very point in dismissing Microsoft's claim that it needed to require the installation of its browser to prevent fragmentation of the Windows platform.

Microsoft's contention that offering OEMs [original equipment manufacturers] the choice of whether or not to install certain browser-related APIs [application programming interfaces] would fragment the Windows platform is unpersuasive because OEMs operate in a competitive market and thus have ample incentive to include APIs (including non-Microsoft APIs) required by the applications that their customers demand. (193)

One thing is clear, however: If an OEM develops a shell that users do not like as much as Windows, and if the OEM causes that shell to load as the default user interface the first time its PCs are turned on, consumer wrath will fall first upon the OEM, and demand for that OEM's PC systems will decline commensurately with the resulting user dissatisfaction. The market for Intel-compatible PCs is, by all accounts, a competitive one. Consequently, any OEM that tries to force an unwanted, low-quality shell on consumers will do so at its own peril. Had Microsoft's sole concern been consumer satisfaction, it would have relied more on the power of the market — and less on its own market power — to prevent OEMs from making modifications that lead to consumer disappointment. (110)

A STERN REMEDY IS CALLED FOR

Given the decisive demonstration of anticompetitive behavior and the long shadow that Microsoft has cast over the industry for such a long time, it is crucial to fashion a stern remedy. It must be recalled that the behaviors that led to the stunning Findings of Fact took place after a consent decree signed by Microsoft intended to address the very same underlying issues. Microsoft had fair warning that its behavior was suspect. To have persisted in that behavior to the extent that such a convincing case could be compiled against it, suggests that behavioral remedies that require either the good faith of Microsoft or regulation of its behavior will not work. Microsoft will certainly complain about not being allowed to innovate if it is subject to conduct restrictions.

Given the difficulty of policing Microsoft's behavior in the past and the overwhelmingly dominant position it has occupied for so long, it may be that only a classic antitrust remedy, divestiture, will suffice. Structural remedies do not demand nearly as much oversight of behavior. Creating two (or more) Microsofts, each with access to the underlying software code, would set off a vigorous round of competition. Both companies would know what practices are illegal, but their behavior would not be regulated. Computer manufacturers, who have been the captives of Microsoft, would immediately have alternatives, so that they would be willing to resist anticompetitive deals and stand up to anticompetitive threats.

With such a clear demonstration of harm resulting from Microsoft's abuse of monopoly power, it is clear that restoring competition will benefit the consumer. A breakup is not the only structural solution, to be sure, but a slam dunk victory under the Sherman Act has frequently led to the breakup of the offending company. One thing is certain, the debate over a remedy should start from the simple and obvious solution, divestiture. Those who wish to argue against it bear the burden of proving that the obvious solution will not work and that the alternative, which is likely to be more complex and difficult to implement, will.