



DEPARTMENT OF JUSTICE

PRESS CONFERENCE

"MICROSOFT"

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12:02 p.m.

STATEMENT OF HON. JANET RENO, ATTORNEY GENERAL OF THE

UNITED STATES OF AMERICA

Attorney General Reno: The high technology revolution of the past two decades is one of America's greatest success stories.

The revolutionaries who are embittered, people with bold ideas, they possess something else as well: A fair chance to develop those ideas into products that can compete in the marketplace.

And for more than a century, strong antitrust laws have protected ordinary Americans by ensuring real competition. Today, we are taking another step to keep our marketplace

competitive.

The Justice Department has charged Microsoft with engaging in anti-competitive and exclusionary practices designed to maintain its monopoly in personal computer operating systems, and attempting to extend that monopoly to Internet browser software.

The Department alleges in its complaint that Microsoft has engaged in a series of anti-competitive practices, including misusing its Windows operating system monopoly by requiring computer manufacturers, as a condition of getting Windows, to adopt a uniform boot-up or first-screen sequence that promotes Microsoft's products; secondly, by attempting to persuade NetScape, an Internet browser software competitor, not to compete with Microsoft and instead divide up the browser market; by engaging in exclusionary contracts with providers of Internet and online services and Internet content providers; and by forcing computer manufacturers to purchase and install Microsoft's Internet browser as a condition of getting its Windows operating system.

In short, Microsoft used its monopoly power to develop a choke-hold on the browser software needed to access the Internet.

Microsoft's actions have stifled competition in the operating system and browser markets. But most importantly, it has restricted the choices available for consumers in America and around the world.

Today's action is intended to ensure that consumers and computer makers have the right to choose which software they want installed on their personal computers, and not have that software chosen for them. It is also designed to preserve competition and promote innovation in the computer software industry.

The Department also filed today a motion seeking a preliminary injunction. The injunction seeks to end Microsoft's practice of forcing Windows 98 purchasers to take Microsoft's Internet browser as well, so that consumers can have a real choice. If Microsoft insists on including its browser on Windows 98, it should also include NetScape's browser. Computer manufacturers would have the option of deleting either browser.

If Microsoft does not want to include NetScape, it must unbundle its own browser and let it compete in the free market on its merits.

Secondly, the motion would seek to require Microsoft to give computer manufacturers the right to install their own first screen at the conclusion of the initial boot-up sequence, the first screen on which they can promote any products they wish; require Microsoft to give computer manufacturers additional options for installing browser software on new computers; and finally, forbid Microsoft from enforcing contractual provisions that require providers of

Internet and online services and Internet content providers to limit their distribution and promotions of competing browsers.

The Internet is already revolutionizing communications, commerce and the flow of information around the world. No firm should be permitted to use its monopoly power to keep out competitors or to spurn innovations.

Without antitrust laws, the innovators of today would be shut out of the marketplace. Competition will dry up along with the incentive to innovate.

Microsoft has an excellent record of innovation. But we want to make sure that the field is open to the next Microsoft, to the next great innovator who can help improve our lives and our economy if they are given the opportunity.

I am pleased to be joined today by Joel Klein, the Assistant Attorney General in charge of the Department's Antitrust Division; Iowa State Attorney General Tom Miller, the Chair of the Antitrust Committee of the National Association of Attorneys General; New York Attorney General Dennis Vacco; and Connecticut Attorney General Richard Blumenthal, who are representing the 20 States and the District of Columbia who have also filed suit against Microsoft.

The Justice Department and the States have worked very hard to coordinate their investigations of this matter, and the American consumers have been well-served as a result.

I would now like to ask Joel Klein up.

STATEMENT OF JOEL KLEIN, ASSISTANT ATTORNEY GENERAL OF THE  
UNITED STATES OF AMERICA

Mr. Klein: Thank you, Madam Attorney General.

The lawsuit we have filed today seeks to put an end to Microsoft's unlawful campaign to eliminate competition, deter innovation, and restrict consumer choice.

In essence, what Microsoft has been doing, a wide variety of illegal business practices, is leveraging its Windows monopoly operating system to force its other software products on consumers.

This is like having someone with a monopoly in CD players forcing consumers to take its CDs in order to get the machine. We believe that most Americans prefer to choose their own CDs and, for that matter, their own software products as well.

The specific details of Microsoft's scheme are set out at length in the court papers we have filed today. But to put it in a nutshell, what the evidence shows is that Microsoft, from Bill Gates on down, quickly realized that NetScape's Internet browser, called The Navigator, posed a real threat to Microsoft's Windows monopoly.

To deal with that threat, Microsoft first went to NetScape and proposed that rather than compete with each other, the two companies should enter an illegal conspiracy agreement to divide up the market.

Now, when NetScape rejected that offer, Microsoft then went about using its Windows monopoly to, in Microsoft's own words -- and I quote -- "cut off NetScape's air supply."

Microsoft accomplished this largely by locking up the two major distribution channels for Internet browsers. In particular, what it did was: First, it leveraged its Windows monopoly to force its browser onto all new computers.

And, second, it entered into anti-competitive contracts with all of the major Internet and online services companies, companies like America Online.

At the same time, Microsoft severely restricted NetScape's ability to gain access to these critical distribution channels.

Now, the evidence we gathered during our extensive investigation demonstrates that Microsoft's use of these predatory and exclusionary devices and practices was not designed to help consumers, but rather to make sure that Microsoft could crush its competition.

As one key Microsoft executive candidly stated -- and I quote -- "It seems clear that it will be very hard to increase our browser market share on the merits of our browser alone. It will be more important to leverage Windows to make people use our browser instead of Navigator."

Now, that last point bears emphasis and re-emphasis, because it reflects not only what Microsoft said or what it did, as the evidence makes clear, Microsoft is unwilling to compete fairly and on the merits; rather, it prefers to leverage its Windows monopoly "to make people use its browser."

The antitrust laws take a very different view of the way the marketplace should work. Those laws are based on the belief that instead of having a monopolist make people use a product, people should be free to choose for themselves what products they want to use.

In order to protect consumer choice, then, and to preserve the existing competition, we

have today moved for a preliminary injunction in Federal District Court in Washington, D.C.

First, we will seek an order providing that if Microsoft insists on including its browser with Windows 98, it must also include NetScape's browser.

Now, if Microsoft would prefer not to include NetScape, all it needs to do is unbundle its own browser and let it compete on the merits.

But to allow Microsoft and Microsoft alone to bundle its browser with its monopoly operating system could well cause irreversible harm to competition, by letting Microsoft unlawfully achieve a second monopoly in the Internet browser market during the time it would take to fully litigate this lawsuit.

At the same time, we believe that computer manufacturers should not be forced to carry products that they do not want. And so our proposed injunction allows them to remove Microsoft's browser, NetScape's browser or both and, of course, to include any other browser of their choosing. This will ensure equality and real choice during the pendency of this lawsuit.

In addition the preliminary injunction also seeks to remove the competitive shackles that Microsoft has placed on computer manufacturers.

At present, Microsoft is using its monopoly power to ensure that all PCS are, in reality, Microsoft PCS. It does this largely by controlling the first screen that consumers see when their computers boot-up. And so today, as a result of Microsoft's exercise of monopoly power, that screen is virtually identical, regardless of whether your computer is made by Compaq, Gateway, Hewlett Packard, or any other company.

Bill Gates himself recognized the key competitive significance of this Microsoft restriction of computer manufacturers.

Indeed, shortly before the restriction was imposed by Microsoft several years ago, Mr. Gates directly expressed his serious concern, stating that the computer-makers were, "coming up with offerings that get displayed on their machines in a far more prominent way than our products are displayed."

And he went on to say that these offerings by the computer manufacturers, among other things, were "interfering with the very, very important goal of winning Internet browser share for Microsoft."

To restore those competitive options, which Microsoft subsequently eliminated from the market, the preliminary injunction will allow computer manufacturers to control the first screen of their own computers so they can decide what software products they will feature and

promote.

This will increase competition, increase consumer choice and stimulate innovation in the software market.

Finally, we will seek an immediate end to all of the Microsoft exclusionary agreements with online service providers, Internet service providers, and Internet content providers.

Microsoft claims that it has amended these contracts to make them legal, but it has not. Microsoft cannot be allowed to use its monopoly power to force these companies to promote Microsoft's products. Free choice, free choice is what these companies are entitled to, and what will best serve consumers.

I should also note here that, while today's lawsuit focuses on certain critical issues relating to browser technology and the likely effect of Windows 98 in that competitive arena, our investigation into other Microsoft business practices and products will continue.

In closing, let me be absolutely clear: Nothing we are doing here will or should prevent Microsoft from innovating or competing on the merits.

What cannot be tolerated and what the antitrust laws forbid is the barrage of illegal, anti-competitive practices that Microsoft uses to destroy its rivals and to avoid competition on the merits. That and that alone is what this lawsuit is all about.

It is now my pleasure to introduce Tom Miller, the Attorney General from Iowa, who is chair of the National Association of Attorneys General Antitrust Committee.

Tom.

STATEMENT OF THOMAS MILLER, ATTORNEY GENERAL, IOWA,

CHAIR, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

ANTITRUST COMMITTEE

Mr. Miller: Thank you, Joel.

There is a basic principle here, the principle of law that says that if you have a monopoly in one product, you cannot leverage or use that to sell other products. The other products have to rise or fall on their merits, not on the leverage provided by the monopoly product.

I think everybody agrees with that, everybody from Judge Bork to Senator Hatch to Senator Kennedy. It is a basic principle.

And while others believe in it, it falls to us at the State level, and Joel, and General Reno at the national level, it falls to us to enforce it. We are the law enforcement officials that need to enforce that principle.

And that is what we are doing today, 20 States and the District of Columbia filing one joint action in the District of Columbia to assert that the law will be enforced when it comes to the software industry.

The case is directly about the browser, but the browser is only one example of the basic principle. The basic principle extends throughout the software industry and throughout America.

In the browser, as has been suggested, the basic allegations are that Microsoft could not win the browser battle, were hovering around 5 percent and decided they need some -- needed some help, according to the complaint.

The help was first these agreements, these restrictive agreements with all of the other players in this process. And that still was not quite enough, according to the petition.

So they moved to bundling, to tie it right directly to Windows. And it had some effect. They went from 5 percent to 30 percent of the market to about 42 percent of the market in about a year and a half.

But that is why we have to step in, to enforce the law and to seek the preliminary order, to stabilize the situation, while this litigation is pending.

The reason for this is, too, very fundamental, that if one company can monopolize an industry and then expand upon that monopoly, ultimately consumers lose. Prices go up; quality goes down. In an industry where innovation is, innovation suffers.

There is a chilling effect on the rest of the industry in terms of innovation, because a major player can come in and take your product away at any time. And there is a chilling effect for the giant, too. They do not -- are not challenged as much. Innovation suffers.

That is why the United States Supreme Court said it probably best when they talked about the principles that we are talking about today. They said the Sherman Act is the Magna Carta of the free enterprise system in the United States of America.

I believe the Attorney Generals have a rich history of multi-state enforcement activities dating back at least 21 years. We found there is strength in numbers when we get together, like the 20 States have here today.

And it is usually about consumers, either consumers in the antitrust area, consumers in the consumer protection area, or consumers in a related area. That is who we represent, the 20 States. We represent the consumers of America, and our job is to fight for them.

I want to acknowledge the enormous work that was done by Joel Klein and the Justice Department and the great cooperation that we have had on this litigation. I believe particularly over the last few days, the crucial days, that it has been a textbook example, a model of how the Federal Government and the State Governments should work together.

And I want to acknowledge the great efforts by the States, by the other States, Texas and Massachusetts, for really pioneering this, 12 States for being in the working group and, most of all, New York. New York, to date, has provided the most work among our efforts. And they are the lead counsel going forward.

They will -- you will continue to do a disproportionate amount of work, and we thank you for that.

I thank all of the States for joining, and I thank the Federal Government for being such a great partner in this very important project.

Mr. Klein: Now, I would like to introduce the Attorney General of the State of New York, Dennis Vacco.

#### STATEMENT OF DENNIS VACCO, ATTORNEY GENERAL, NEW YORK

Mr. Vacco: Thank you, Joel.

General Reno, Joel Klein, Dick Blumenthal and Tom Miller, it is a pleasure to be here today with the group of you as we bring this consumer case on behalf of the American consumer.

While we bring this case couched in antitrust law, what this case really is all about -- or these two separate lawsuits filed together is really all about is whether or not consumers and business people will have a real choice, a real opportunity to choose the preferred on-ramps to the information superhighway.

This case is also about innovation and startup companies. It is about whether a young entrepreneur working in a loft in Manhattan's Silicon Alley or a teenager experimenting on a



laptop in a garage will still have the incentive to develop software that will revolutionize the next generation of technology, just as Bill Gates and Microsoft had the chance to do nearly 20 years ago.

It is about leveling the playing field in one of the most influential and dominant industries of our time, and whether one company will be allowed to control and dominate the bridge between consumers and information as we enter the 21st Century.

Anti-competitive activity usually leads to higher prices, lower quality and fewer choices, to say nothing of stifling innovation. Indeed, it is worth noting that in the past few years, as computer prices have fallen at the shelf -- as you go into outlets across America to buy your PCS, you will find that computers, indeed, are cheaper -- all the while that the cost of Microsoft's software has gone up.

Anti-competitive activity in the software industry is harmful to the vitality of a broad range of businesses, including the PC manufacturers or the OEMs as we refer to them, but also includes a risk for the Internet service providers, software developers, and content providers and ultimately, in our collective estimation, will harm consumers and restrict their choice.

In this lawsuit that was filed this morning in District Court on behalf of the States, the States charge that Microsoft's current monopolistic hold on key parts of the business -- on key parts of its business is already inhibiting the development of software and is also inhibiting consumer choice.

Our lawsuit differs in one substantial sense from the lawsuit brought by the Department of Justice in that in addition to the browser wars that we allude to in our lawsuit, we also claim that Microsoft has used its monopoly to leverage its Office Suite products as well, through contracts and agreements with the OEMs.

We contend that Microsoft has increasingly adopted outrageous business practices that are impeding competition in the technology marketplace, snuffing out some of the smaller innovators and reducing the choices available for the computer-using public.

I have been somewhat disturbed over the past several days, through the course of the weekend, in news reports about the negotiations, disturbed about Microsoft's public comments as they have attempted to characterize our actions as over-reaching.

It is really Microsoft who is acting like an Orwellian big brother by controlling the range of products available to consumers across America.

As State Attorney -- as State Attorneys General, we have a responsibility to fight for

businesses and to fight for their freedom to innovate without fear or unfair and illegal anti-competitive action by any other company.

Nearly 100 years ago, in a case that established the precedent for modern-day antitrust action, President Roosevelt saw the need to control and limit the ability of large corporations to monopolize and dominate industries to the detriment of consumers and competing businesses.

President Roosevelt's calls for antitrust laws came in the midst of the industrial revolution.

Today's action, as we stand united, the United States Department of Justice and 20 States, comes in the midst of a technological revolution.

Roosevelt said at the time that both the biggest corporation and the richest man like the humblest private citizen must be held to obey the law in order to ensure protection of the law for all.

Some of these same arguments -- some of the same arguments that were posed against President Roosevelt's efforts are again being raised today at the end of the 20th Century, and the President's response then is still appropriate today: We do no man an injustice when we require him to obey the law.

Thank you.

Mr. Klein: Thank you, Dennis.

Now, we will hear from the Attorney General of the State of Connecticut, Richard Blumenthal.

STATEMENT OF RICHARD BLUMENTHAL, ATTORNEY GENERAL,

CONNECTICUT

Mr. Blumenthal: Thank you, Joel, Madam Attorney General, ladies and gentlemen.

We are here today to make sure that there is indeed a free and open market offering consumers a wide array of choices at the best prices with the best quality and to make sure that competitors and innovators have a level playing field.

And in a real sense, these lawsuits are about innovation. Innovators and inventors now

and in the future will be chilled and blocked if these predatory practices on the part of Microsoft continue.

Our action today seeks to stop Microsoft from stifling innovation and shortchanging consumers. A free market unrestrained by Microsoft's dominance and dictates is vital to new ideas and investment.

And untying new products, enabling them to compete on their own merits is necessary to unblock access to the market. All of those ideas are important and vital and well established as principle.

But what we are saying to Bill Gates, in a very real sense, is: Stop your 800-pound gorilla from blocking access to the Internet information superhighway. And if you want that gorilla to be left alone, as you say, simply leave alone your competitors and consumers from the unlawful restraints that have been imposed on them.

Today is really D-Day for American consumers and customers, but it is also Independence Day for America's inventors, dreamers, entrepreneurs, who are devising and developing new products, who want to bring them to market and build their own companies, much in the way that Microsoft was built; so that instead of applying for jobs at Microsoft and selling their products through Microsoft, they can do it their own way, and bring those products to market and develop their own companies free of the unlawful restraints that Microsoft is now imposing and that threaten to throttle the market as a whole for software.

Let me say in closing that today's actions really are the result of a remarkable partnership, one unprecedented in my experience as Attorney General, involving the Federal Government and the States.

The States and the Federal Government overwhelmingly share common ground despite the differences that may be perceived in our including the Office Suite claim and our somewhat different claim for relief. The States have done their own work and their own investigation, but we have worked truly in partnership with the Federal Government.

And finally, about the States, let no one mistake the fact that there is a remarkable -- a truly remarkably diverse spectrum of ideology and party and background in the Attorneys General who are joining these lawsuits.

The Attorneys General involved here span party lines, geographical distinctions and ideological differences; and we truly have operated together to assure that there is real choice for consumers.

The objective here is to make sure that no company can exercise monopolistic

dominance over the gateway to Internet commerce, because a company that can control Internet commerce ultimately can control commerce itself, in travel and industry, business and news, and entertainment.

And the objective here really in two words, very simply, is real choice.

Thank you.

Mr. Klein: Thank you, Dick.

We will take your questions, but one short statement: I want to thank the Attorney General for her support, her guidance, her leadership on this matter.

And I know I speak for all of the Attorneys General behind me and those who support this action: We have been blessed with enormously talented staffs who have done remarkable investigative work and who represent the best in terms of both the legal profession and in terms of public service.

For our part, my principal deputy, Doug Melimed (phonetic), Rebecca Dick, our Director of Enforcement, and Jeff Vladner (phonetic), our special counsel for information technology, who have served remarkably and indefatigably; and most of all, Phil Malone and the staff in San Francisco have worked in the highest traditions of public service and professionalism. It is an honor to be associated with them and to stand here today.

Thank you.

Question from Audience: Assistant Attorney General, you say that the general public turns on their computer screen and everything that they see is Microsoft. Ideally, what do you want the American public to see when they turn on their new computer at home?

Mr. Klein: To see all of the possible options that the various computer-makers could make available to them. We have some history with this because we know in the past before these restrictions were put on them, they would distinguish their screens, make available other options.

And so the people then could buy different products, get different screens that suit their particular needs and particular desires. And that is the vision we have. That increases choice, increases competition.

Question from Audience: Sir, Microsoft says that its Windows operating system and Internet Explorer is one product. How do you counter that argument?

Mr. Klein: Well, it is just wrong. Their own documents make clear time and time again -- let us just start with them -- that they are concerned about Internet browser share. They aggregate share not just in terms of the Windows platform, but in terms of the Mac, Solaris and other product forms.

And what they have said, all of this detailed in

its -- in our complaint, is that browser share, browser market share is our number one priority. What all of this shows is what is quite obvious and quite clear, is that the browser represented a threat to the Microsoft operating system. And browser share was necessary to beat back that threat.

Go ahead.

Question from Audience: I know this is a civil action. But is there a criminal investigation underway against Microsoft?

Mr. Klein: No, there is not.

Question from Audience: Mr. Klein?

Mr. Klein: Yes.

Question from Audience: Why did you stop short of asking for enjoinder of the product? And practically speaking, how soon can you, you think, get relief from the Courts to get the changes made at least on first --

Mr. Klein: Yes, I think that is an important question. We stopped short of asking for enjoining the product precisely because we believe in creating options, not restricting them. That is our enforcement philosophy and that is critical.

We believe we can get the necessary relief in time frames that will preserve competition and give people a fair chance to compete on the merits. That is what we intend to do. We will move immediately for a hearing on our preliminary injunction.

Question from Audience: Do you think you can do it within weeks?

Mr. Klein: Well, again, the timing is going to be up to the judge. But we are prepared to move immediately with respect to the injunction.

Question from Audience: Do you have a --

Mr. Miller: Joel, if I can -- if I can just expand on this: This is something we talked about a lot in this case. And the clear consensus was again: What do consumers want, and what do consumers need?

We did not want to disrupt the flow of commerce or consumer options; so that is not -- why we did not block it. We have tried to finely tune the request for relief so that things can continue, but before very long consumer choice can be maximized. That is our star. That is what we always look at.

Question from Audience: Can you explain how this is good for consumers if on the one hand a computer-maker can now without your legal action today install NetScape if it wants to, but your other option is to allow a computer-maker to take something off what is on Windows, which is the Internet browser? So you are actually getting -- giving a consumer less. How -- how is this good for consumers?

Mr. Klein: There is no way that we are giving consumers less. The computer manufacturers will put on what they believe consumers want. I know that because computer manufacturers are in a highly competitive market, and if one computer manufacturer does not give consumers what they want, another one surely will. We know what the margins are in that industry.

How this is good is because competition on the

merits -- we have 100 years experience with it -- will lead to innovation, will lead to lower prices and better products.

And the image that a number of people have talked about is absolutely critical. People who have new ideas, new software products, new threats to the operating system, need to believe that they can be the next generation of Microsoft, and that their products are not, in the words of one of Microsoft's chief executives, should not be kept off of the market because he said, you know, looking at the odds, they probably will not succeed.

We want to send exactly the opposite message. We want to know anybody who has the chance, got the ingenuity, got the talent and got the skill, you can come to play because you can win.

Question from Audience: If you get what you want, preliminary injunction, regarding the bundling of NetScape and Explorer, will -- is it possible that Explorer could still work better than the Navigator since it is an integrated product?

Mr. Klein: We believe that the technology can be handled properly, and the opportunity

to compete on the merits will be there.

Go ahead.

Question from Audience: How much of the Government's case was based on internal memos and e-mail documentation that was turned over by Microsoft in the CIDs? I mean, how significant were the internal company documents to your case?

Mr. Klein: They were an important but by no means the only part of this. We have extensive investigative materials growing out of our interviews and our depositions and our document request throughout the entire software industry, at all of the various levels. And the details of that information are contained in the complaint and in the preliminary injunction that we filed today and the background evidence that has also been included.

Question from Audience: Will -- will your preliminary injunction seek to stop or alter the software after it leaves the factory? Microsoft is shipping their stuff today. So will you try to stop it before it arrives at the store?

Mr. Klein: We will -- we will not try to stop the distribution of software. At this point, we will try to create remedies that will give computer manufacturers and ultimately consumers a choice.

Question from Audience: So -- so they can ship --

Question from Audience: You want -- you want the software to just be uninstalled like before with Windows 95 and during the first preliminary injunction where you had that uninstall system, so the browser does not pop up; or do you want the codes stripped out of Windows 98?

Mr. Klein: Well, right now in order to maintain the competitive balance, we have asked for two things: One, immediately to be able to have people uninstall. And that remedy has received -- has been adopted by one significant computer manufacturer in the interim.

Second, we want to ensure that both codes are available on the machine in terms of opportunities so that software writers and others who are concerned about creating an alternative platform will be able to write to the NetScape code as well.

Question from Audience: What is the difference in the claims for relief between Justice and the States' lawsuits?

Mr. Klein: As I understand it, there is the additional claim that the States have raised with respect to the Office Suite. And the second point is that the States in terms of requiring

Microsoft to create options have sought an injunction that would, in addition to NetScape, allow or require or carriage of a third browser as well.

Is that correct?

Mr. Vacco: If I could just expand upon that, in our complaint we allege that in the context of the Office Suite, they used their monopolistic power through their licensing agreements with the OEMs, essentially, to force the OEMs to install the Office Suite and all of the functions that come along with Office Suite.

They made it simply cheaper for the OEMs that were willing to use the Office Suite in terms of their -- their royalties. That was the inducement to get them to do so.

The -- the distinguishing feature in the preliminary injunction is that in addition to NetScape -- well, first, we are asking for an unbundling. That is our first request, to simply unbundle.

Question from Audience: Unbundle the Office Suites?

Mr. Vacco: No. We are asking to unbundle the browser, the net -- the Internet Explorer from the basic operating system software, to unbundle it.

In the alternative, we are then asking for them to include NetScape and one other Internet browser.

Question from Audience: How daunting is it to go up against a company that has much more money than the Department's annual budget? And secondly, has this gotten personal between you and Bill Gates?

Mr. Klein: It absolutely has not gotten personal. And I think the nature of law enforcement is that it is the merits of the claims, not the size of the teams, that will decide it. And I am confident about the merits of our claims.

Question from Audience: We understand from people on the other side that you left the room rather early on Friday. And there was a feeling in their camp that this meant that you did not think that there was going to be much point in you being there, because you did not think there was much to negotiate.

Mr. Klein: Well, that is absolutely incorrect. I put together the finest negotiating team, but I had other obligations and other commitments. I was constantly, continually in contact with all of our people.



And let me say this, so that everyone understands, our job and the States' job when we went into this was to restore competitive conditions, to make sure that consumers had options, that competitors and innovators had a chance to bring market -- to bring products to market and compete on the merits.

What we said to Microsoft is we would look at a range of remedies that could achieve those outcomes. We did not have a fixed view on that. And we were prepared to negotiate.

What was clear to us is that remedies that would make the market open so that products could compete on the merits and consumers could choose were not going --

Question from Audience: In your view --

Mr. Klein: -- to be available --

Question from Audience: -- did they make a genuine attempt to settle the case?

Mr. Klein: I am not going to characterize their attempt. But what they put on the table would not have, by any means, protected consumers and eliminated the anti-competitive practices that are the focus of the complaint.

Question from Audience: Your -- your comments about attempting to divvy up the market with Navigator are quite interesting. Could you tell us how they tried to do that? Was there a high-noon kind of meeting with Bill Gates and the --

Mr. Klein: Again, I think the best reference to this is in the complaint where it is described. But essentially, it was a meeting at NetScape where early on in the process, they tried to create a market division so that there would not be head-to-head competition, but basically, as they say in the computer industry, NetScape would stay in its space and Microsoft would stay in the Windows space.

Question from Audience: Is that under --

Question from Audience: (Inaudible) criminally illegal under antitrust laws, isn't that correct, and did you consider that?

Mr. Klein: Well, the agreement was not entered into because NetScape refused. And so in those circumstances, the agreement -- the efforts speak for themselves. But there was no agreement fortunately, because there was no acquiescence.

Question from Audience: Well, there was not either in U.S. versus American Airlines, as

well, which held that there was collusion, and --

Mr. Klein: Well, I think that that was a civil enforcement action.

Question from Audience: Okay. So you have to have an agreement from NetScape's half -- half in order to --

Mr. Klein: For us -- our prosecutions depend on the actual horizontal --

Question from Audience: If you and the States prevail in court, what makes you think PC makers will avail of these choices to actually give choice to consumers?

There has not been a mad rush for PC makers to avail of the browser icon blocking temporary settlement you got for 95. And industry analysts say that companies are afraid of doing anything that might damage their relationship with Microsoft.

Why do you think PC makers would be willing to do -- to take this option if you do get it?

Mr. Klein: Well, I think first of all there has been a PC maker that has availed itself of the option in the last go-around.

Question from Audience: There was?

Mr. Klein: Second of all -- I think for competitive reasons that matter is currently under seal.

Second of all, in terms of the basic question, we are of course concerned about any threats, covert or overt, any intimidation, any pressure, anything that might be brought to bear on PC manufacturers, computer manufacturers. We will seek relief to ensure that there will be no such retaliation, threat, or otherwise.

We believe that PC manufacturers want to compete robustly and that they are operating on -- in a highly competitive market, and the ability to distinguish product, to create new options for consumers is something that we look forward to and welcome.

In the end, though, as long as they are exercising their independent business judgment and their free choice, we are not trying to tilt the playing field in the direction of any competitor.

Mr. Blumenthal: If I may say one thing?

Mr. Klein: Sure.

Mr. Blumenthal: The States very specifically in our claim for relief make reference to the threat of retaliation and discrimination and seeks specific measures to prevent retaliation or discrimination, because we know from our investigation that there is an overlay of fear and anxiety on the part of many of the computer makers that has led them, in fact, to make public statements that perhaps they would not have but for some of the implied or overt threats that have been made to them.

And so we feel that it is one of the central parts of our immediate claim for relief that there be protection against threats or retaliation or discrimination.

Question from Audience: Mr. Blumenthal, who is the competitor you are trying to protect here? Are you trying to protect future innovation and competition in the abstract; or is there some competitor you are trying to protect right now, or competition you are trying to protect right now, namely NetScape? And don't they have 60 percent of the market?

Mr. Blumenthal: We are not trying to protect any single competitor, any more than Microsoft is trying to achieve a free market. Our objective is not to protect any single competitor in software or any other part of this industry.

It is to provide a level playing field and choices for consumers, unencumbered by the kinds of exclusionary tactics that Microsoft has exploited by virtue of its dominate position and its leveraging and tying practices.

Question from Audience: But isn't this theoretical? Aren't you saying -- aren't you saying in a sense, "Trust us. If we win, there will be more innovation"?

Mr. Blumenthal: We are not asking anyone to trust the United States Government. We are not trying to --

[Laughter.]

Mr. Blumenthal: Or the States, and most especially the State of Connecticut.

[Laughter.]

Mr. Blumenthal: We are not asking any consumer to trust any government. In fact, we are not trying to meddle or muck up the free market. We are not trying to cage or shackle Microsoft any more than we are any other competitor. We are trying to provide now and in the future real protection against monopolistic dominance.

And the kinds of practices that prevent the free market really from working in that is the reason why, across the ideological spectrum, people are supporting this kind of action, which does not condemn success in any product or on the part of any company, but simply the use of dominance in the market and monopolistic power to extend and preserve the market share that that product has.

Question from Audience: Mr. Klein, could you -- in your announcement or in your release, you said that you are also looking into other Microsoft practices and products.

Can you elaborate on that at all? Can you say whether you are looking into the Windows NT operating system which is going to be coming out next year, and any problems with that?

Mr. Klein: I think, as you know, when we have an ongoing investigation, we do not comment about it. It would be unfair to the parties. So in this circumstance, we will not comment on the substance of any of --

Question from Audience: Mr. Klein --

Question from Audience: Is there --

Mr. Klein: -- the issues that we are looking into.

Question from Audience: Is there any way that the Windows NT system could be affected by this particular lawsuit, then?

Mr. Klein: Again, I think we -- in terms of any ongoing investigations, I think those will remain quiet. This one focuses on the browser market and Windows 98.

Question from Audience: A multi-part question if I may: I was told, I think, by good sources that Bill Gates made the first-boot offer to you Wednesday night, and that it was withdrawn by Friday morning that, in effect, the talks never really began. Can you comment on that?

Mr. Klein: I do not negotiate in public. I believe those negotiations are matters between the parties. As far as I am concerned, the key point was there were several ways to remedy the anti-competitive effects and create options. None of those ways were put on the table and so, therefore, we had no choice.

Please let me make one point. First of all, the market shares that you are talking about are not what the evidence will support. Second of all, the effect of these anti-competitive

practices on the market shares is very critical.

These are markets which can tip. You can move this market to a single dominant and ultimately like an operating system, a monopoly player.

So perceptions which Microsoft's documents will itself reflect, as articulated in the complaint, perceptions about dominance, the role of product bundling in terms of perceptions about dominance, and the ability to tip a market, are all things that are immediately in play here.

Second, on long-term innovation, let me make clear: It was Microsoft's chief operating officer who said in an interview that if somebody were to try to bring a product to market that Microsoft could bundle with its operating system, what their odds were, he flatly said: You know, you ought to stay out of the market because your odds are not very good.

If that is the message, that is it for innovation.

Question from Audience: Mr. Klein, in terms of a consumer, I am trying to understand what you are alleging here.

Are you -- are you all saying that the situation is such that in the future it could have an adverse impact economically on the consumer, or are you saying that there is already damage that has occurred, and do you have a number of any sort on that?

Mr. Klein: No. There is damage that is occurring now and will occur in the future. The damage that is occurring now in particular, is consumers are being denied options; products are being forced through the stream of commerce.

And ultimately that could lead not just to specific consumers not getting the benefits of competition but ultimately to a second monopoly which is something we are certainly very concerned about.

On a larger scale, we are concerned about innovation and what can be and should be one of the most vibrant industries in America today. The software industry and the potential of that industry is really limitless, and we want to make sure monopoly power does not put a lid on it.

In the back.

Question from Audience: Are you at all concerned that this could turn into a 13-year court quagmire like the IBM case, and that any remedy might come too late for a fast-moving industry?

Mr. Klein: I believe the preliminary relief that we are seeking here will be timely and efficacious. And I believe that the courts and the United States Department of Justice and the State Attorneys General will be able to move efficiently and effectively in dealing with these problems.

Question from Audience: I understand that the States are seeking a slightly different remedy with the Office Suite. Why is it going to take 22 governmental entities to bring this case to achieve the same thing?

Mr. Klein: Well, I --

Question from Audience: Is that --

Mr. Klein: I think that reflects the --

Question from Audience: You can only unbundle it once, can't you? In which case, is there a little bit of coat-tailing going on?

Mr. Klein: No. But I think that -- what that reflects is the pervasive concern about these practices. These are not just practices that are having a national impact, but obviously have an impact, as Dennis Vacco said, on Silicon Alley as well as Silicon Valley. And I think that is what it reflects is real injury to consumers on a wide scale, multi-jurisdictional basis.

Mr. Miller: If I can just add to that: As I suggested before, the States have a rich history of multi-State enforcement activities. And what we have found over two decades is that when the States band together, we can use our resources in a very effective way.

We can make decisions that represent cross sections of America, and that the multi-State vehicle is one important way for defending and protecting consumers throughout the nation on this issue and other issues. And that is why we find that there is strength in numbers.

Mr. Klein: We will take one in the back there.

Question from Audience: Yes. Mr. Klein, what do you define as the boot-up screen, and why do you view the ability to change it as so important? Particularly -- and if you succeed, will this affect the display screens that other products have like -- like NetScape itself when it first loads, it has a screen showing its own logo.

Mr. Klein: This has to do with the operating system monopoly that Microsoft has. The relief is specific to that.

Why I think it is important is precisely the reasons I quoted from Mr. Gates in his e-mail that laid to the imposition of this restriction. And that is, computer manufacturers were actually featuring and promoting other products than Microsoft products. And this is a critical distribution facility; that is, the personal computer.

And here you are, whether you are Compaq or whether you are Hewlett Packard, whatever, you basically want to be able to say, "How can I bring new, interesting and challenging opportunities to consumers?" All of that is good for consumers. And what -- Microsoft said, "You can do it our way."

We just as soon put the power back in the hands of the computer manufacturers.

Question from Audience: The Attorney General has said previously she would wish that the Department, if possible, settle. Is this so entrenched at this point -- is there any possibility that you could go back to some settlement talks?

Mr. Klein: At any point when Microsoft is willing to put opportunities into an agreement that will create consumer choice, ensure that there is competition on the merits, and that people are not restricted by a barrage of anti-competitive practice, we are prepared to engage in settlement -- and if the settlement remedies are efficacious to settle the case.

Question from Audience: Mr. Klein --

Question from Audience: Given the differences so far in the business tools that Microsoft has, what will it take to implement and oversee an agreement over the following years so that new tools and techniques are not adopted by Microsoft to push new businesses in our -- in their direction?

Mr. Klein: Well, we believe that the remedies that we propose are fully capable to achieving that, and they will accomplish that.

Over here.

Question from Audience: Mr. Klein, do you think that Microsoft really realizes the magnitude of this case, and that it may be the biggest anti-competition case in history?

Mr. Klein: I -- I am not going to, obviously, comment on what Microsoft's realizations are. I do think this is a very important antitrust case, precisely because it involves a monopoly bottle-neck in one of the most fundamental industries in this nation.

Question from Audience: Mr. Klein --

Question from Audience: Talking about settlement, if one should occur, is there an agreement between the States and the Department that that there is no separate settlement, that you all continue to have a united stance?

Mr. Klein: There is no such agreement. Obviously, each law enforcement authority has to reserve its own discretion. I would say this: I think our analysis of the problem, the competitive problems, are such that there is a clear eye-to-eye view of what the problems are and what kind of relief would be necessary to remedy them.

There is a very clear shared view in that regard.

Question from Audience: With respect, sir, to consumer choice which is the gravamen of your case, just to be the Devil's advocate, is it not true that any consumer can use Internet Explorer to download NetScape from NetScape's website and can -- on the Internet with NetScape? So how does that figure into your calculations?

Mr. Klein: Well, there is a lot of evidence on that, on the likelihood of that, on studies that Microsoft did about that. But let me ask you a question in this way: Of course, any consumer could use NetScape to download Internet Explorer off of the web as well. And if Microsoft was willing to play on those equal options, that would be one thing.

But I think the evidence is quite clear that distribution on computers and distribution through online services and Internet service providers is critical to these markets. Those are the two primary distribution sources.

Question from Audience: Mr. Klein, if you are asking that Microsoft unbundle the browser from Windows 98, are you not, as Microsoft suggests, getting into the business of telling them what they can and cannot put into their products?

Mr. Klein: Well, first of all, our focus is on product in code -- product in contract, not on code. Second of all, at this point, all we have sought is -- they have the choice. They can either unbundle their product which is something that they are capable to doing, or they can load NetScape's product for the time being.

At the same time, in terms of the commercial identification of the product, what shows up on the computer, that power, we believe, remains with the computer manufacturers.

Question from Audience: Why didn't the Justice Department put the Office Suites part of it, that the States have in their case, in its case?



Mr. Klein: Just simply because we will focus on other issues; and, as I said, we have ongoing investigations into other matters. And at this point, our focus, our investigative work had concluded with respect to the issues that we allege in the complaint. That is the basis.

On the side.

Question from Audience: Robert Reish in the L.A. Times last Friday wrote an article called "Democracies and Mega-Corporations may be Mutually Exclusive." He made the argument that there are two strands of antitrust law. One is the political; the other is economic. The economic one, you are citing today that it hurts consumers and innovation.

And he said that mega-corporations might be incompatible with democracies -- or with democracy. Do you have any views on that, or to any of the -- because

I -- the Attorney General Miller said it was -- the Sherman Act was the Magna Carta of the free market. And I was wondering what your view is.

Mr. Klein: Well, my --

Mr. Blumenthal: The Supreme Court said that, not --

[Laughter.]

Mr. Klein: My view is -- well, it is the Magna Carta, but I think the essence -- the essence of the antitrust law is pure and simply that what the market should allow and tolerate is that which is efficient and good for consumers.

And I think that there are times that we have supported, or at least not challenged, large-scale mergers because we thought they would be efficient in bringing new products and new goods and services to consumers. I think that is the way we enforce the laws, and I think that is the proper guidance.

What is at stake here is injury to consumers, injury to competition.

Question from Audience: What about Mr. Reish's historical analysis, that there is a strain that -- the reason -- one of the reasons the Sherman Act was passed was because mega-corporate power, monopoly power poses a threat to democracy.

Mr. Klein: Well, I believe that the abuse of power can pose a real threat to the market, in my own view.

I have not seen Mr. Reish's article. He is an old and good friend, and we have known each other a long time. And I am sure it is both provocative and stimulating, and I look forward to the opportunity to study it.

[Laughter.]

Question from Audience: If Microsoft ships its Windows 98 with the browser simply uninstalled, is it not still bundled with Windows 98, or is -- if they just ship it uninstalled, is that your version -- your definition of unbundled?

Mr. Klein: We will have to look at the facts, of course, and see what they propose and what they are prepared to do. But our focus is on the separateness of the products. We are not trying to micro manage their code.

Question from Audience: Mr. Klein, just to clarify, if Microsoft runs every U-Haul in the country and starts moving its Windows 98 now, and you get your preliminary injunction, will those shipments be affected that have already left the factory?

Mr. Klein: Those shipments that are loaded on machines will be subject to whatever options the OEMs have under the law as it stands. We are not seeking to impose a recall, if that is the question you are asking.

Question from Audience: Will the OEMs become defendants in this case?

And part two, that I did not get to ask earlier, at several points you talked about ensuring a level playing field. But Rule, who is steeped in antitrust law says that antitrust law does not ensure a level playing field. But the Government's and the States' burden is to show that Microsoft has put things into Windows 95 (sic) specifically to thwart competitors and with no consumer benefit.

Mr. Klein: Well, the answer to your first question is we have no intention to join the computer manufacturers into this lawsuit.

As to your second view, I think Mr. Rule has given you a small piece of the corpus of antitrust law.

[Laughter.]

Mr. Klein: And he may not be aware of the tying doctrine, but the Supreme Court in -- in Jefferson-Paris made clear that the tying doctrine was applicable. There were lots of cases about exclusionary agreements, restrictive agreements by a monopoly and so forth.

So I think the theories that we are arguing about in this case are conventional Section Two and Section One theories under the antitrust laws.

Question from Audience: Are you arguing that the operating system is an essential facility for --

Mr. Klein: We have not made that claim in this case.

Question from Audience: Is that the same --

Mr. Klein: It is a monopoly facility, and it is one that is being leveraged to hurt competitors and competition.

Susan?

Question from Audience: Even though this case, or at least the preliminary injunction, deals with the

browser -- the browser integration unbundling, as you litigate this case over time, do you expect that this will be used simply as an illustration of a greater problem, integration into the operating system of other functions, whether it be voice recognition or e-mail or video streamings?

Mr. Klein: Susan, what I -- what I think -- the way that is -- that, obviously, is concerns we expressed in the complaint, are competitive concerns of some general dimensions.

The answer to any specific question is going to have to depend on the kind of careful analysis of the facts, as we go through our investigative work. And so I would not want here to speculate on what, if any, future concerns we might specifically articulate.

Question from Audience: Mr. Klein, particularly in view of your remark earlier that you do not want to tilt the playing field in favor of any competitor, how did you pick NetScape for the role that it has in your litigation?

Mr. Klein: In part for two reasons: One, it is the intended victim of the anti-competitive actions that we have identified. And second, we are seeking preliminary relief of a limited sort.

And what I mean by that: Right now, our concern is that during the litigation, that this market not tip so that we have a monopoly browser situation.

In order to preserve the status quo and ensure ongoing competition, given the problem

Microsoft created by unlawfully tying its two products together, we think this is the best competitive response. Microsoft could have avoided this problem if it had not, knowing our concerns, if it had not gone ahead and tied two separate products together.

Given the situation we found, this is the most efficacious remedy to preserve the status quo.

Question from Audience: Mr. Klein?

Mr. Klein: Yes, sir.

Question from Audience: What is the practical benefit of bringing this action in concert with the States? As you move forward, does that strengthen your hand at all as a prosecutor?

I understand the States have standing. But I am not quite sure I really know why they are here and whether this is at all motivated by the fact that you are all political people, some of whom are running for governor in your home States.

Mr. Klein: No, I do not think it is fair to say -- and obviously, the States will speak for themselves. For us, we quite often work collaboratively with States Attorneys General in our investigations.

There are shared concerns. There are shared Federal-State law enforcement interest. And that is what is going on here. I believe the States Attorneys General as a matter of effectiveness and efficiency would like to join forces with us, but they will retain their own independent law enforcement judgment, just as we will as we go through the process.

Question from Audience: Mr. Klein --

Question from Audience: Is the --

Mr. Vacco: Let me just -- let me just respond to that. I mentioned in my prepared remarks that one of the motivations of New York's involvement, indeed New York's contributing the most resources to the States' lawsuit, indeed, is the growing software industry in New York State.

And while Joel Klein is a New Yorker at heart, and I know that the Department of Justice has the interest of New York State at heart, I was elected to have those interests at the forefront of my decision-making process.

That is why we got involved in this, because we were concerned about how Microsoft was inhibiting the development of technology in New York State, how it was closing down

markets in New York State, and how it was foreclosing consumer choice in New York State. So that is why we got involved.

And I think that is why our sister States, 19 of them, including -- and the 20th participant being -- or 21st participant being the District of Columbia -- we all came together because of our individual respective interest in our home states.

Mr. Miller: Let me -- let me just take a crack at that, too.

[Laughter.]

Mr. Miller: As was mentioned, the States got involved in this well over a year or two ago. We had independent investigation. We have independent authority. When Justice was also looking at it, it just made sense to do it together.

You -- in asking that question, your assumption, you ignore 21 years of history in America, the last 21 years when we have done case after case on a comprehensive basis. You may recognize the tobacco litigation, for instance.

This is something that States do. It is our responsibility. It is our role. We do it every year, every month, no matter what the election cycle is.

Mr. Blumenthal: I would just say I appreciate the nominating speech, but I am not running.

[Laughter.]

Mr. Blumenthal: There are Attorneys General who, very simply, here and in addition to those 20 States, I might add, who are hearing from their constituents about how important this problem is. And that is why there may be more than 20 States before we are done.

And the other point is that when you get into this kind of litigation and someone asks about the daunting odds of taking on a company the size of Microsoft, you better be in it for the long-haul, and you better be very sure that the evidence and the resources are there for the long-haul battle that will occur.

None of us has done it lightly. All of us are prepared to persevere in moments that may not be as visible as this one, but may test the perseverance and conviction of the Attorneys General who are -- who have decided to be a part of it.

Question from Audience: Mr. Klein, could you describe the nature of your professional

relationship with Judge Bork, and whether you have had conversations with him about this case?

Mr. Klein: Well, my professional relationship with Judge Bork was that independently we were both hired by Milton Gould of the New York law firm of Shay-Gould to work on an appeal for Leona Helmsley, who was then in Danbury Prison. And we were working on a habeas corpus motion in that case, a Connecticut constituency.

[Laughter.]

Mr. Klein: In any event, that was the extent of my professional relationship with him. We have had a couple of discussions about this matter.

Question from Audience: Mr. Klein, can you comment on the analogy that your requirement that -- one alternative remedy here that Windows include NetScape, is like making Coke include Pepsi in a six-pack?

Mr. Klein: Sure. It is a totally inapt analogy, first of all.

[Laughter.]

Mr. Klein: I mean, the -- the real analogy would be if Coke owned all of the supermarkets in the world, and there was no other way to get the product on the shelf.

But the point is here, this is a temporary remedy which Microsoft can eliminate tomorrow. All that Microsoft has to do is to let its browser compete independently and on the merits.

This is a product it recognizes to be separate. It is promoted as separate. It is kept share on as separate. If it does that, the problem will go away. And in any event, under our view, in order to maintain the status quo, this remedy will do that with the right of any computer manufacturer to delete out the -- either of the browsers.

Question from Audience: If time is so much of the essence and Microsoft is so predatory, why aren't you blocking the release of Windows 98? I mean, Windows 95 works perfectly well, does it not?

Mr. Klein: The reason, again, is we do not want to restrict consumer option. We think these other remedies are more efficacious at the same time that consumers will be able to get whatever product they want. I think our job is to create, not to restrict, options.

I will take just one more. Go ahead.

Question from Audience: Some people say that Microsoft will never have the financial incentive not to engage in this type of behavior. Did you consider seeking a remedy that would split up the operating system?

Mr. Klein: We have not sought such a remedy. We believe that on a preliminary injunction, the remedies we have sought are appropriate. And it is our belief that if Microsoft lives by the antitrust laws, that its behaviors will be pro-competitive, innovative and constructive. And if it does not, we of course will take whatever action is necessary to enforce those laws.

Go ahead. Last question.

Question from Audience: Mr. Klein, it was mentioned earlier that PC prices have gone down, Microsoft's products have gone up in price. Are you saying that the company has kept its products at an artificially high price, given consumer -- the advances in technology? And do you have some statistics, percentage, how much it has gone up in price versus PCS going down?

Mr. Klein: Again, I do not have the specific answers to those questions. So I do not -- I do not think I should speculate about that.

Thank you very much.

(Whereupon, at 1:00 o'clock, p.m., the press conference was concluded.)