



DEPARTMENT OF JUSTICE PRESS CONFERENCE

**SUBJECT: COURT ORDER ON MICROSOFT SPLIT WITH: U.S. ATTORNEY
GENERAL JANET RENO, JOEL KLEIN, ASSISTANT ATTORNEY GENERAL,
ANTITRUST**

DIVISION, IOWA STATE ATTORNEY

GENERAL TOM MILLER AND CONNECTICUT STATE ATTORNEY

GENERAL RICHARD BLUMENTHAL

THE DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

WEDNESDAY, JUNE 7, 2000

4:58 P.M. EDT

ATTY GEN. RENO: Good afternoon. As you know, the court has just announced its remedy in the Microsoft case. I'm pleased that the court has ordered a strong, effective remedy to address the serious antitrust violations that Microsoft has committed. The court's remedy strikes the right balance. The structural remedy will stimulate competition that will have a lasting impact on this important industry, and the interim conduct relief will ensure that Microsoft cannot break the law while the structural provisions are taking effect.

Today's ruling will have a profound impact not only by promoting competition in the software industry, but also by reaffirming the importance of antitrust law enforcement in

the 21st century and the importance of competition.

I am so very proud of all of the hard work and efforts of this team, with the remarkable trial work of David Boies and Phil Malone, all the other attorneys from the San Francisco field office, the paralegals, the computer technicians and others.

Joel, your team has demonstrated once again that the Department of Justice can meet any challenge in discharging our duties to enforce the law, and it's a great feeling. Your efforts will protect competition and ensure that consumers have more choices and improved products in the marketplace.

I also want to tell the attorneys general how happy I am you are here today. Tom Miller and Dick Blumenthal are representing the State Attorneys General, who have worked so well and so tirelessly on this case. The cooperation of federal and state law enforcement has been superb.

And, Joel, thank you for your leadership, your vision, your absolute determination, which have provided the American people with an outstanding example of the legal system at its best.

Joel?

MR. KLEIN: Good afternoon. First, let me thank you, Attorney General Reno, for your comments and for your unwavering support and leadership throughout this entire case.

The court's order today is the right remedy for Microsoft's serious and repeated violations of the antitrust laws. It will stimulate competition in the PC operating system market and throughout the entire computer industry.

When the remedy is implemented -- and this is the key point -- customers, consumers, in a free and competitive marketplace, will decide for themselves what software they want to purchase. Neither a monopolist nor the government

will dictate that choice.

The court had an extraordinary record upon which to enter today's order. Judge Jackson had this case before him from the -- more than two years. He heard all the testimony and arguments, and reviewed thousands and thousands of documents during a 78-day trial. He carefully weighed the evidence and made extraordinarily detailed findings of fact. He analyzed the legal precedents and issued lengthy conclusions of law.

He found that Microsoft had repeatedly abused its monopoly power and violated law by crushing emerging threats to Windows' dominance and, specifically, by increasing the barriers to entry into the PC operating system market.

The remedy the court ordered -- breaking Microsoft into an operating systems company and an applications company -- is fair, and it's measured. Indeed, it directly flows from the extensive findings and legal conclusions that the courts had previously entered.

That's what the law requires, and that's what Judge Jackson did.

Sustained abuse of monopoly power is among the most serious and most damaging of all antitrust violations, since it eliminates the competition that creates innovation and choice in the marketplace. Microsoft repeatedly used its operating system monopoly to eliminate threats posed by cross-platform software products, cross-platform products that would have essentially allowed other operating systems to compete with Windows.

The divestiture will give the applications company every incentive to develop precisely those kinds of cross-platform products on its own and to make the key office productivity suite available for other operating systems. All of this will stimulate competition and innovation.

And the interim restrictions on the operating systems company are needed to permit competition to emerge.

They are narrowly tailored to prohibit Microsoft from repeating the past illegal actions.

And three years after divestiture is implemented, all of the interim conduct provisions will terminate. All that will remain are provisions to stop the two companies from colluding with one another. By then, competition, not regulation, will limit Microsoft's power to thwart innovation. After the divestiture, I expect both companies will be vibrant, strong and successful firms.

Each will be free to create new, exciting products. And they will have every incentive to compete vigorously with one another and with others in this industry. That competition will benefit America's consumers and the entire economy.

I'm very proud of the Antitrust Division for the extraordinary work done by our entire team in assembling the evidence, presenting it to the court and preparing and submitting our remedy. These people, starting with David Boies and Phil Malone -- and David, unfortunately, could not be here today because he has trial proceedings in Florida -- these people have demonstrated a fact that is forgotten all too frequently today, and that is that government service can be a noble calling in which dedicated men and women work hard, usually with little or no recognition, to enforce our country's laws and to protect the public interest.

America is in their debt.

I also want to pay tribute to my friends, Attorney General Tom Miller and Dick Blumenthal, and their colleagues in the states.

They, too, are dedicated public servants, and we have worked well together to enforce the laws over these many months.

In closing, I want to stress that Microsoft itself is responsible for where things stand today. Its repeated

illegal actions were the results of decisions made at the highest levels of the company over a lengthy and sustained period of time.

They reflected defiance of, not respect for, the rule of law.

Today's decision marks an important step in redressing the serious effects of Microsoft's illegal actions, in requiring the company to obey the law.

Tom, it's my pleasure to turn it over to you.

MR. MILLER: Thank you, Joel.

And of course, I want to start by paying tribute and acknowledging the extraordinary courage and incredible work by Attorney General Reno, Assistant Attorney General Joel Klein, the legendary David Boies, the incredibly hardworking Phil Malone and everybody else on the federal team. They were a great team.

And I also want to acknowledge my 18 colleagues and their staffs in the states, who were a terrific team, too. And I want to particularly mention two people -- they were our lead counsels during this two-year period -- Steve Hauck (sp) from New York and Kevin O'Connor (sp) of Wisconsin.

Together, as the judge referred in his opinion, "The collective effort of the senior officials at the Department of Justice, and the 19 states, brought forward a good product." We worked hard. I believe we worked in the public interest, and I believe we did our best.

Today's opinion, today's order, by Judge Jackson, I believe, is strong but yet fair and measured. And that combination -- strong, fair and measured -- produces a good remedy.

It's strong because it does break up the company into two companies. It's strong in certain aspects of the conduct relief, but yet it's fair.

It's fair for a number of reasons. Let me mention two:

One is Microsoft had a lot of warning. They have the FTC proceeding; they had the consent-decree proceeding. And then, as Judge Jackson found, in spite of that, they had repeated serious violations.

The other reason it's fair is because what the evidence showed, that Microsoft, when they were confronted with important and perhaps difficult competition, their resort was to their monopoly, to use that in an illegal way to maintain that monopoly or to use it in other ways. It was not reaching for a better product or for innovation.

It was reaching for that crutch, that illegal crutch.

So it's fair, in that situation, and it's measured, because, as was discussed in the May 24th hearing, it could have been more, it could have been stronger, there could have been three companies, it could have been broken up into the baby bells.

But this is the least intrusive of the divestitures that are possible, and that has two important consequences in its measured qualities.

One is that the question of compatibility that some consumers, rightly, are very concerned about, is not put in jeopardy.

And secondly, it maintains the highest possible shareholder value, probably increases shareholder value, in the opinion of many experts.

I looked at the Wall Street Journal yesterday and it showed what happened to AT&T when it was broken up and the enormous increase in shareholder value. That potential is here as well.

And it's the right remedy, because of those qualities. Strong, fair and measured. Right for consumers. Consumers

always benefit by competition. They never benefit by monopoly. Consumers, most of all, will have greater choice.

They'll have additional products, they may pay lower prices, they probably will have better service. It's classic economics, it's classic antitrust law, and it's the right remedy for innovation.

When Microsoft has to compete by innovating rather than reaching for its crutch of the monopoly, it will innovate more; it will have to innovate more. And the others will be free to innovate. As the decision said, there are certain areas that Microsoft stakes out with its monopoly and you cannot succeed there. You cannot innovate.

That will change, and we'll have greater innovation.

And this is the right remedy for the respect of law. That above all else, attorney generals of this country enforce the law.

The law needed to be enforced here. Nobody is above the law, no matter how powerful or how rich or how successful.

Nobody is above the law. And this case, and this decision says that very strongly. The right decision, right for consumers, right for innovation, right for the law. Strong, but fair and measured. This is the best we could do. I believe we did what we thought was right.

MR. KLEIN: Be happy to take any questions.

Q Joel? Joel? Right here. Will the -- (inaudible) -- move to have any appeals directly to the Supreme Court? Have you made that decision yet?

MR. KLEIN: We have. The solicitor general has authorized the United States under the Expediting Act, which is a special statute, as you know, that Congress enacted for precisely, we believe, this kind of situation where we need a quick and effective resolution of the case to go right to the United States Supreme Court. And the solicitor general

has authorized the United States to file the appropriate certifications to pursue that direct review.

Q Will you make that motion before the end of the week?

MR. KLEIN: We will make it in a timely fashion.

Q Will it be Judge Jackson first, he has to approve it?

MR. KLEIN: Under the law it goes first to Judge Jackson. Then he -- it's his determination whether he believes the case should be certified under the Expediting Act.

Q (Off mike) -- do that?

MR. KLEIN: Well, he made mention of it in his hearing. Obviously, he'll consider the motions when they're filed, as I say, in a timely way.

David?

Q Triggered by -- first by filing an appeal.

MR. KLEIN: Under the statute, I believe the notice of appeal is filed, and then we are authorized to make such a filing before the District Court, yes.

Q What do think of the chance --

Q Microsoft has to cooperate in this. They're responsible for putting forth a plan of divestiture, and they have a certain amount to time to do that, or -- ?

MR. KLEIN: They do. They do, and again, that makes sense, and that's quite routine. They are most familiar with their business.

They ought to put forward the plan. We will, of course, scrutinize it. That portion, the actual implementation of the delay of the divestiture, has been delayed until all appeals. But the planning process, of course, should go

forward.

STAFF: Bill?

Q What will be the first impact that consumers will see as a result of these conduct remedies that go into effect immediately? And also, does your restrictions on pricing prohibit Microsoft from doing volume discounting?

MR. KLEIN: No, they don't prohibit appropriate volume discounting. All they prohibit is Microsoft using pricing as a club, which the record in this case demonstrates happened time and again. They would use price to coerce computer manufacturers in a very competitive market: You play ball with us, you carry our products, you get a low price; you carry our competitors' products, you get a high price on this monopoly product.

That will be prohibited.

In terms of consumer benefits, I think you can look forward to the following sets of events:

Markets work in dynamic and exciting ways, and once Microsoft stops abusing its monopoly power, you'll see increased innovation, increased opportunity, and, as Attorney General Miller said, I believe you'll see increased service, better pricing, more innovation.

When exactly that's going to happen, I don't know. But my own sense is, the sooner the remedy takes place, the sooner the Supreme Court has the opportunity to resolve the case and the divestiture remedy takes place, that's the more likely we're going to see the fruits of this particular proposal.

MR. MILLER: Yeah. Joel, if I could just add, one of the things they might see most quickly is more choice on the PC.

The OEMs will be able to have much more freedom to be able to deal with other companies. The first screen you may see

many, many more options. But generally, the OEMs, acting really on behalf of consumers, will have the ability to provide choice, I think, very, very quickly. And that's one of the first things that consumers might see.

Q The Supreme Court tends to like the case to go through the appellate process first. But assuming that Judge Jackson approves the expedited appeal to the Supreme Court, what do you think are the chances that they will review the case?

MR. KLEIN: Well, of course, that's up to the court. And even a sort of experienced appellate lawyer like myself -- we never make predictions.

I will say this, though -- it's an important point -- the Supreme Court, of course, normally hears cases pursuant to the traditional measures of appellate review that Congress set out. And in that situation, obviously, the court of appeals and then the Supreme Court is the normal course.

Here we have a special expediting act, because Congress recognized the unique importance of these kinds of cases.

That reflects very important congressional judgment that resolution before the United States Supreme Court -- and if you think about it, a matter of this consequence, involving serious market implications and a major company should, one, benefit from Supreme Court review and, two, should benefit quickly, so that the expectations can be settled, the remedy can go forward, and the industry can move on.

So I think there is a lot of good arguments, but of course we'll leave that to the court to determine in due course.

MR. MILLER: Yeah. And of course, one of the arguments is the speed of change in this industry. You know, one can

suggest that this is just exactly what the Congress was thinking about in putting in this provision -- an industry where there's change like this.

And let's just reflect back for a second on this trial. You know, I think one of the concerns when it was first filed was, it will take years and years and years to litigate. Well, we've come a long ways in two years. We have a decision, a major remedy decision within two years. So I think that one of the things we've seen is that the courts can adapt to the technology industry, can make decisions in a relatively quick fashion.

And we have also seen fundamentally that no industry, whether it's fast-paced or technology, is above the law.

Every industry has to follow the law.

Q If Judge Jackson says, "Yes, it should go immediately to the Supreme Court," how, if it were inclined to do so, would Microsoft combat that ruling? Would there be an appellate rule process even for such a ruling under the -- (inaudible) -- Act?

MR. KLEIN: Under the act, Microsoft could urge the Supreme Court to return the case first to the Court of Appeals, if it so chose.

We would hope that they would join with us in seeking an expedited resolution before the highest court in the land.

It would seem to be in everybody's interest frankly, to do that.

David?

Q One of the things that the judge said -- after saying that he had gone with this remedy because the plaintiffs had won, that because you act in the public interest and Microsoft does not, he -- seemed to show -- well, I wonder how you interpret this when he says that, "The court cannot apply the judgment, as necessary, in accordance with instructions from the Appellate Court or to accommodate the" -- (inaudible) -- "change with the passage of time"?

The first part of that; is he showing some uncertainty

about the remedy of yours that he accepted word for word?

MR. KLEIN: I don't believe so, at all. I think what he is saying, which of course any judge would be duty-bound to say, there are two things that a court would need to consider. One, as Judge Jackson says: "What is the state of the record after the appeals process? Is it a total affirmance? Is it a partial affirmance?" And those are considerations that the court would take into account, he is saying.

And number two, standard Hornbook law: "Changed circumstances would require a court of equity to review its remedy."

So I think those are straightforward basic principles that a federal district court would apply in a situation like this.

Sir?

Q Joel, since it was early in the case that breakup wasn't really the goal here, at what point -- what was the turning point during the trial? I mean, when did you sense Judge Jackson was inclined to that sort of a remedy?

MR. KLEIN: Well, it's very hard to put myself, or anybody to put themselves, in Judge Jackson's mind.

From our point of view, I think we started our focus on remedy after the trial. Based on the evidence we had adduced, we believed that there were two or three critical considerations: One, Microsoft was prepared to use its vast monopoly power time and again, to squelch any form of competition, to kill this browser competition, and probably one of the most critical -- one of the most critical pieces of software that we have seen -- did the same thing to cross-platform Java -- challenged every major player -- Intel, IBM -- and disciplined them.

Given that the department quickly began to focus on a structural remedy as the way to ensure that market forces

would work, the way to minimize compliance costs and ongoing judicial procedures, and we became quite convinced that that was the preferred, not the only, but the preferred remedy.

Dick, did you --

MR. MILLER: If I could just add, and then Dick.

The states -- and I think probably everybody would acknowledge that a crucial point was when the case moved from basically a tying case, a technological tying case, as it appeared to be early, into the broader case of a maintenance and monopoly case, that was a crucial sort of turning point both in the case and, of course, ultimately in the remedy.

What we as states did was form a Remedies Working Group, headed by Kevin O'Connor, very early on, and searched and searched and looked at every possible remedy, tried to do it as professionally and as thoroughly as we could.

And each remedy we'd look at, it would have some advantages, but then it would have disadvantages, so we'd discard it and go from remedy to remedy in a very thorough way, I believe.

And in the end, we believed that this was the right balance; that it was

strong, but not too strong, that it would be effective, that it wouldn't harm shareholder value; that of all those remedies that we looked at for two years, that this was the best in terms of all the circumstances.

General Blumenthal, did you want to add something?

MR. BLUMENTHAL: Yeah, I have a slightly different view, taking what I think is a key word in the judge's opinion of today, the word "untrustworthy" as applied to Microsoft. I think at some point during this trial, Microsoft simply lost credibility before Judge Jackson and before the

public, and that was a critical point, not necessarily on one day with one witness or one piece of evidence, but the weight and overwhelming momentum of the evidence, which creates such a compelling record that the Court of Appeals will have to consider, eventually persuaded Judge Jackson that conduct remedies alone, if they relied on the good faith of this defendant -- guilty, as he said, of violating the law -- simply would not be sufficient.

So in the end, these remedies fit very fairly and precisely the kinds of violations of law that the judge found. Microsoft is a monopoly, it's misused that monopoly, it's harmed consumers. Corrective action must be taken, and it ought to rely on the free market, not on the continual policing or interference of a defendant that lacks credibility and is likely to repeat that misconduct unless, structurally, something strong, far-reaching, fundamental is done to prevent it in the future.

MR. KLEIN: In that respect, although I do think the point General Blumenthal makes is part of a mosaic that informs the court's discretion as he explains in his opinion today, I think the key sentence that Dick is referencing should be read, and that is, "It has also reluctantly come to the conclusion" -- meaning the court -- "that a structural remedy has become imperative.

Microsoft, as it is presently organized and led, is unwilling to accept the notion that it broke the law or accede to an order amending its conduct."

STAFF: Do you have a question?

Q Who's going to handle the appeal at the Justice Department? Is Mr. Voies going to continue on, or --

MR. KLEIN: Actually, we haven't made that determination. I think that --

MR. : (Off mike.)

MR. : Does he have any experience --

MR. KLEIN: Oh, I know a lot of good appeal lawyers, starting -- starting with David Voies. Starting with David Voies.

I am -- obviously, the matter in the United States Supreme Court would be handled by the Solicitor General's Office -- in my view, the best appellate law firm in the United States, and I expect that we will be ably represented in this matter.

Q How do you think this case would have turned out if Bill Gates had come to the courtroom?

MR. KLEIN: I think this case was based on the facts and that the outcome would have been precisely the same.

In my view, the single most important piece of this case was the court's 208-page findings of fact. They reflect two things that I think are critical; one, the pervasiveness of Microsoft's willingness to abuse monopoly power to no purpose other than to preserve its monopoly. And second, I think those findings put the lie to the notion that many have expressed that federal district courts were unable to understand the sophistication of the high-tech industry. Once again, common law judges, applying good common sense and enforcing the antitrust laws have proven that they are fully up to the task.

And in my view, that is because the opinion and everything that this judge did was based on the facts and the law.

No individuals will change that.

Q Is there anything that's happened in the past two years that has led to any Microsoft officials being under presently any criminal investigation?

MR. KLEIN: Well, I mean, that's a speculative -- entirely speculative question. And I don't want to infer anything from saying this, but we would never comment about any investigations of any sort. I don't want you to infer

anything from that, but I simply -- as a matter of department policy, we would never, ever comment on that.

Q Thank you.

MR. KLEIN: Thank you.

MR. MILLER: Thank you.

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