WEEKLY JUSTICE DEPARTMENT MEDIA BRIEFING

SUBJECT: MICROSOFT RULING OF JUNE 7, 2000

ATTORNEY GENERAL JANET RENO AND

JOEL KLEIN, ASSISTANT ATTORNEY GENERAL

ANTITRUST DIVISION

U.S. DEPARTMENT OF JUSTICE

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9:32 A.M. EDT

ATTY GEN. RENO: I brought my lawyer with me this morning -- (laughter) -- in case you had questions about Microsoft.

Q Ms. Reno and Mr. Klein, Bill Gates was right about one thing: This battle is far from over. One of the more immediate things that you'll have to deal with is the company's request of a stay of Judge Jackson's order. Can you explain in layman's language why this is a bad idea, why a stay is a bad idea?

MR. KLEIN: Sure.

As you know, we of course proposed that the divestiture be stayed until the completion of the appellate process.

However, there is a real dynamic activity going on in the market today, affecting a wide range of developments and products.

And the remedies that we would like to see implemented are straightforward remedies, things like Microsoft not being able to intimidate computer manufacturers who choose to select other people's products, things like their not illegally tying two products together as a way to force them on consumers and so forth, things that are really, I think, rather basic and fundamental.

And during the time of the appeal, it's very important that further harm to the market, much of which has been thoroughly documented by the court, not take place. Let me use that as just the opportunity to say that's all the more reason why we should have an expedited appeal to the Supreme Court.

We should put those remedies in place, but it's very important to get a final ruling before the United States Supreme Court.

And I was quite pleased last night listening to Mr. Gates, that he would like an expedited ruling, as well.

And he seemed concerned that, because of the states' case, that that would somehow prevent that from going to the Supreme Court.

But I can assure you that that would be no prohibition whatsoever; the state case is consolidated with ours. And in any event, of course, if the Supreme Court were to rule on our case, it would be the law of the land. So for all those reasons, I think we need the temporary remedies to protect against harm during the appeal, to the extent we can, and I would like to see the case immediately reviewed by the Supreme Court.

Q Mr. Klein, can you explain for us procedurally what happens, who files what?

Then what do you file? I know that -- doesn't the company have to ask -- file notice of appeal first, before you can ask for the expedited review and so forth?

Can you walk us through that?

MR. KLEIN: I can, Pete. First of all, Microsoft has filed a stay before the federal district court.

And we will file our papers in response to that in due course.

Then --

Q Let me stop you right there. Do you have a time limit, a number of days by which you must file your response?

MR. KLEIN: We do not, and the court has issued no time limit at this point.

The second thing that will happen is that, as you observe, Microsoft will file -- they've said they will file their notice of appeal shortly.

When they do, we will then file a motion in federal district court, pursuant to the Expediting Act, for the case to be certified by Judge Jackson to the United States Supreme Court.

If Judge Jackson grants that motion and certifies the case, then the case will be docketed in the Supreme Court like any other Supreme Court case, and the proceedings will take place.

The court has the option of granting plenary review or, if it decides, it can remand it to the court of appeals.

If it grants plenary review, I believe the case can be argued reasonably early next term and brought to a conclusion -- early in 2001 would be my anticipation.

Q Since the Expediting Act was passed, do you have any idea how often the court has been asked to expedite a case, and how often it has said yes or no?

MR. KLEIN: I'm willing to answer it if you understand that

I'm not certain about the answer. I think the answer is twice, relating to the AT&T litigation, and in both cases, I believe the court took the case and summarily affirmed, did not grant plenary review.

But of course, since the time of the Expediting Act until now, AT&T and Microsoft are the only two structural cases.

So the paucity of precedent, I think, actually reinforces the government's view that the act was designed precisely for this kind of case, where there is an overriding national interest in a quick resolution by the highest court in the land, a national interest that's based on the legitimate concerns of the company, the industry, the employees, and the shareholders.

So for all those reasons, this seems to me to be precisely the case Congress had in mind.

Q Would you anticipate that Judge Jackson would hold hearings on expediting here?

MR. KLEIN: Certainly there's no requirement that he do so. And I think the considerations in that situation are essentially straight legal and discretionary considerations; in other words, why there is a need for expedition here, which I think will be clear from the papers and how that dovetails with the purposes of the act. Now, I'm quite confident that this is a case that falls within the parameters of the act.

Q Do you expect to hear from the Supreme Court one way or the other by the end of their term?

MR. KLEIN: This year?

Q Yes. (Inaudible) -- June, hear from them whether they will hear it or whether or not they will send it back?

MR. KLEIN: I think that would be unlikely. I think even if the case is certified, then you have what is called a jurisdictional statement that needs to be filed,

opposition, or a motion to affirm or dismiss, et cetera, et cetera.

That process would go on over the summer.

At some point the court would issue its determination whether to grant plenary review or to remand the case to the court of appeals.

Q Can you expect that in the summer or when they come back in October?

MR. KLEIN: That will depend on the court's timetable and its exercise of its discretion.

Q Is it a problem procedurally because, just based on your knowledge about any trust cases, the court held no hearings on the remedy phase. There's no real adversarial cross-examined record of testimony on the remedy.

Is that normal in an anti-trust case, or is that a hole in this case that could present a problem on appeal?

MR. KLEIN: I don't think it's a hole. I think Judge Jackson explained his reasoning in his opinion yesterday.

Second, I think if you follow the court's 208-page findings of fact, coupled with its 50 pages of legal reasoning, you see that the remedy, in a sense, grows out of the trilogy of remedial needs that the court identified. And I think Judge Jackson has explained that, given his concerns about Microsoft's unwillingness to follow legal requirements, the need for a structural remedy is appropriate.

So I think that this is sound exercise of discretion.

I believe it's going to be upheld.

Q Is it typical in antitrust cases, though, that there would be no extensive findings on a remedy?

MR. KLEIN: There have been cases where there have been

findings focused on the specifics of a remedy, but it would again depend on the circumstances. From the beginning, Judge Jackson made clear he wasn't bifurcating the case into two separate parts.

But there have been cases where a court has done that kind of bifurcation and held a second round of hearings, if you will.

Q One wild card in all this -- and I'll very quickly get out of the way here. One wild card in all of this is that we have a change of administrations next January. Are you confident that the case, if necessary, can be carried over into a Bush or a Gore administration, absent key people at the top of the command chain?

MR. KLEIN: I have enormous regard for the commitment of the United States Department of Justice, on a nonpartisan basis, to engage in law enforcement.

And I think history clearly demonstrates that this is not some sort of unsupported view.

The AT&T case was filed in the Nixon administration. It was then aggressively prosecuted by the Carter administration.

And it was settled in the light of real political disquiet; that is, the secretary of Commerce and the secretary of Defense were publicly on record, during the Reagan administration, opposed to a breakup.

But this Department of Justice, with its commitment to law enforcement, under the leadership of Assistant Attorney General Bill Baxter, went ahead and insisted on a breakup.

So my own view is that you'll see continuity of law enforcement because that's what makes the Department of Justice unique.

Q Were you -- (inaudible) -- on some of the language the judge used yesterday, strongly supporting the notion that Microsoft continues perhaps to violate the law?

MR. KLEIN: I was not surprised. I think the record supports that, Pierre. I think it's instructive that, for all the issues through the consent-decree proceedings in 1995 and through the behavior at issue in this case, to this day Microsoft does not have an Antitrust Compliance Program. And I think that reflects its unwillingness to come to grips with the fact that the antitrust laws are a critical piece of the economic mosaic in the United States.

Q Mr. Klein, what about the -- you mentioned the urgency to resolve this case because of the uncertainty in the market, because of the continued behavior you see on the part of Microsoft, that needs to be stopped -- what about the countervailing argument that this is really in a sense, a case of first impression for the Supreme Court, marrying this very high technology with antitrust law, and that that's all the more reason to have a very deliberate proceeding with the Appeals Court stating its views before it gets to the Supreme Court?

MR. KLEIN: I think, in the normal course, Pete, that that is reasonable concern. But I would say two things in response.

When you think about this case, and even if you listened to Microsoft's presentation, fundamentally they seem to think the critical issue on appeal will be what they call the issue of technological tying.

I believe that's part of a much larger Section 2 violation.

But be that as it may, that issue is a legal issue, based on a well-developed record, and the United States Supreme Court, of course, is the court that ultimately will have to decide those fundamental legal issues.

Beyond that, I actually think most of the other issues in the case are ready for appellate review and that while it's always preferable to have one more body perhaps think about and analyze the issues before it gets to the Supreme Court, you've got to weigh, on the other side, the considerations

that Congress thought were paramount.

Now mind you, you don't have an Expediting Act in 95, 99 percent of the cases even that we, the Department of Justice, are involved in.

Congress singled this area out, realizing the overriding need for expedited review and a Supreme Court resolution in cases that have this kind of implication. So the balance seems to be clearly struck in our favor here.

Q Back to -- (off mike) -- for a minute. The judge seemed to be saying in his opinion and also in some interviews that he's very reliant upon the Justice Department's recommendation that this breakup will work and produce, as you said yesterday, two vibrant, successful companies that compete. Could you describe for us the basis for your confidence that that will happen?

MR. KLEIN: Well, I would say a couple of things. I think the judge's reliance was part of a, if you will, multi-factored analysis, including his observation of Microsoft's behavior during the two-year- plus set of proceedings and as well a lengthy trial, with documents and so forth.

Under the law, the Supreme Court law to this effect -- I think it's U.S. v. Ciccone Vacuum (sp), but it's been a long time since I cracked the books, but I think that's it -- it says that when it comes to remedies, the government having prevailed in an antitrust case, all doubts should be resolved in favor of the government's proposal. So I think there's a legal basis for that as well, Jim.

In terms of our work, I think you know that from the beginning, after the trial was completed and the matter was before the judge for a decision, we put together a team of inside and outside consultants, none of whom had an ax to grind, none of whom came to this with any preconceptions, but several of whom were truly distinguished international leaders in fields relevant to this: Paul Roma (sp) from Stanford, in the Hoover Institute, who is the father of the New Growth Economics; Rebecca Henderson (sp), who is one of

the leading dynamic technology theorists at MIT; and several people in house, Tim Bresnahan and Doug Melamed on my staff.

And that group, working with enormous input from industry participants, that is, not simply people who are competitors, but also people who were partners of, who relied on Microsoft to distribute Microsoft products, who worked with Microsoft in joint development relationships, and based on all of that, there was a remarkable of coalescence of views on this particular remedy by the Justice Department. And I have confidence that it is the right remedy.

While it is obviously a major remedy, I also think the significance of it is that it has very low risk with a very high probability of upside.

It has low risk because unlike, for example, a "baby bill" proposal -- that is, cloning Microsoft into three operating system companies, that would risk causing real consumer harm by having the current interoperability issues be put into some play -- this lets competition grow organically through a vertical divestiture.

And in that respect is is exactly like the AT&T divestiture, which was a vertical divestiture, with one difference, and I think a critical and salutary difference.

We don't impose line of business business restrictions with respect to either company, whereas in ATT there were line of business. So I think the vertical nature of it and the way that people, rather than simply splitting the operating system in two, will have to innovate in order to stay competitive has a maximum upside.

Q Mr. Klein, in the order, it's been criticized that the judge didn't really give much legal underpinning for deciding what the standard is for remedy and how he came to his conclusion. It's been suggested that because there isn't a lot of case law cited, that this won't be expedited to the Supreme Court because the Supreme Court would like

to see perhaps some of that analysis that wasn't in there. Were you surprised at the length of the order? And what does that say for expediting the case?

MR. KLEIN: Number one, I wasn't surprised. Number two, it is not unlike the judge's conclusions of law, which, of course, were built very soundly on a wide range of precedent, Supreme Court, court of appeals precedent.

This is a remedy phase which, under recognized Supreme Court precedent, the district court has wide discretion, having heard the evidence at trial, having observed the demeanor of the witnesses and having become familiar with this multi-thousand-page record of documented testimony.

So I think that is not surprising. And second, my view is it should have no impact on expedition in the case.

Q Mr. Klein, the judge told me yesterday that he would like you and Microsoft to swallow your reluctance and settle the case.

Would you accept a settlement with Microsoft that did not include break-up of the company at this point?

MR. KLEIN: Jim, let me say two things. First of all, I have said and believe that settlement is always the preferred course in this kind of litigation.

It's in the interest of the industry, it's in the interest of the company and it's in the national interest to have Microsoft address, in a meaningful way, the competitive issues that animated the case and that the court found and for people to go on about their business, rather than to have a protracted legal proceeding.

Having said that, it's also imperative that a settlement meaningfully address the harm that's occurred to this market and assure on a going-forward basis that it not be replicated. There are enormous dynamic changes that can and will take place in this market.

The extent of those changes and the pace of those changes will be directly affected by Microsoft's willingness to either live by the law or to continue to abuse its monopoly power to put a chokehold on distribution of products, to tie separate products together, to deny technical information to competitors, and so forth. And we would need a meaningful resolution of those issues.

As for the specific details, I think you know any negotiation should be between the parties and not conducted in public like this.

Q But it sounds like you wouldn't accept a settlement that didn't include some form of divestiture.

MR. KLEIN: I don't think you should read anything one way or the other with respect to what you just said. All I would say to you is that the department is prepared to engage in meaningful settlement negotiations addressing the issues I just mentioned, and that the form of that is not something that would be appropriate to negotiate in public.

Q Question for Ms. Reno and for you, Mr. Klein. Is there any concern that the changes proposed could have an adverse effect on a company that many claim has played a very dynamic role in helping the current new economy?

ATTY. GEN. RENO: Why don't you go ahead --

MR. KLEIN: Yeah. I don't think so, Peter. I think we did a tremendous amount of due diligence and, again, if you look back at history, I think, whether it's Standard Oil, whether it's AT&T, I think these companies will be two very powerful companies, each with flagship products, highly distinguished in the industry, each with very high-quality engineers, support and other staff.

And if you look at it -- for example, think about the recent breakup, voluntary breakup, of Lucent from AT&T and the marketplace opportunities that arose as a result -- I think you will see those kind of things paralleled by this kind of work.

Q Ms. Reno?

ATTY GEN. RENO: I think you can have competition and innovation. And in many instances, competition will spur it.

I think people have come to some unwarranted conclusions. And I just think it's possible. You look at this history of this country, you look at the efforts to promote competition, you remember what we are dealing with; the people of this country and their ability to get quality products at a price they can afford. That's what it's all about, and I think we can achieve it.

MR. KLEIN: You know, people say, "Just think about Microsoft's competitors." One of the things I was thinking about yesterday is I think what I would say to their competitors is, "Watch out," because now you have got two companies that are going to be powerhouses, each with an increased incentive to innovate because of the competitive pressures, instead of one company that had a phenomenally dominant position in operating systems and a moat around it, created by this Office Productivity Suite and the other applications.

So I think this will keep everybody on their toes.

Q If I could ask another question?

Q Just one other one on the appeal issue, if I may?

Is it another problem to go directly to the Supreme Court because of the clear differences between Judge Jackson and the Appeals Court on the tying issue? He said in his Conclusions of Law that he thought that the Appeals Court had it wrong.

Given that difference between him and the Appeals Court, is that possibly something that the Supreme Court might choke at?

MR. KLEIN: Well, is seems to me two answers to that: Pete,

I think the heart of this case is Section 2. I think that's what sustains the remedy in the case. That's what the critical legal conclusion is, that -- Microsoft's widespread series of practices leading to a maintenance-of-monopoly claim.

The tying issue was a Section 1 issue, as to which the court the appeals made clear it was not deciding the tying issue on

Section 1.

But in any case -- let me assume the hypothetical, even though I disagree with it -- if you're right, then the Supreme Court would say, "Well, the court of appeals had one view. The district court had another view. We're going to have to resolve that issue.

" That's exactly the kind of thing that the Supreme Court would have to resolve. If the court of appeals reaffirmed its view, it would only be a second time stating it.

So I don't think that undermines the direct appeal.

Q Thank you.

ATTY GEN. RENO: Since when did they get to be the arbiters? (Laughter.)

Q We're just all so polite to each other these days.

There was an indictment by a federal grand jury in Mississippi yesterday of the man accused of crime on federal property, the murder of a black man 34 years ago. Can you say how it is that this case came to brought after all this time?

ATTY GEN. RENO: I think it was again an instance in which the media brought a question to our attention as to whether it had been on federal property and there might be federal jurisdiction.

Q And is the -- it's kind of unusual for what was -- all the evidence shows this was a hate crime, but nevertheless it was not charged under any civil rights statutes. It was charged under the law forbidding murder on federal property.

Is this the first time those kind of circumstances have obtained --

ATTY GEN. RENO: I will have to have Myron check. I'm not sure I'm --

Q Ms. Reno, with that case, is there any sort of systematic effort at the department to look at older cases like that, or is this a case-by-case basis?

ATTY GEN. RENO: I think we'd have to check on that, but one of the things that I learned after 15 years as a prosecutor, if you keep at a case, if you go back and check it, the cold case squads in a whole variety of different types of cases can oftentimes, if they keep at it, find that clue, or a person lets down their guard and starts talking, or there is information exchanged in the community.

And so I think, generally speaking, there is a -- not an organized effort, but I would refer to it, perhaps, as a systematic effort on significant cases not to let them go unreviewed.

Q Ms. Reno, for the first time, we have a suspect in a serial killing that's intimately connected to the Internet.

Is there a federal interest in the case? Is there a federal interest in pursuing this type of crime without borders?

ATTY GEN. RENO: As you've heard me talk about the issue on so many occasions, the Internet has given us a tool of remarkable opportunity; it has also given us some extraordinary challenges because it is breaking down borders, it is making a crime something that happens across state lines, across country lines. And I think we're all

going to have to focus on how

we address these issues, how we maintain the sovereignty of states while at the same time ensuring that everyone knows there is no safe place to hide.

Q Do you have a mechanism for addressing these issues? Are you appointing a commission? Are you looking for state and federal --

ATTY GEN. RENO: No, we're just digging at it and trying to figure out what the best answer is.

Q Mr. Klein, since we have you this morning, I know that you can't talk about investigations, but can you say anything at all in general about all of the speculation about mergers in the airline industry in the wake of the US Air deal?

MR. KLEIN: Again without commenting on any particular deals, obviously this is an industry in which one needs to pay careful attention to the competitive issues. I believe, and I think you've probably heard me on this, I believe that the deregulation of the airlines that took place during the Carter administration, under Fred Kahn's (sp) direction, along with key leaders on the Hill, was a very, very sensible U.S. policy. However, we've now developed a situation where there is a great deal of hub dominance by individual carriers, and I think it raises significant competitive concerns.

We have two cases pending, one of which I think is critical to creating opportunities in this area.

That's the American Airlines predatory pricing and capacity case, which I think is so important in terms of creating opportunities for new low-cost carriers that could compete on the merits and create a great deal of alternative travel, along the lines of Southwest Airlines or some of the others, if they're allowed to get an effective beachhead. And at least in the American Airlines case, we believe that they were essentially taken out in their

infancy through predatory strategies.

As well, we challenged Continental's -- I mean Northwest's acquisition of the stock in Continental.

But that, other than to say it's an area that merits very careful scrutiny, that says nothing about the underlying determinations one might make in any of these mergers.

Q Ms. Reno, some local prosecutors --

ATTY. GEN. RENO: You've had plenty of --

Q (Off mike.) (Laughter.)

Q Let me go -- there's a physical border of --

ATTY. GEN. RENO: You, then you.

Q All right. Thank you very much. (Inaudible) -- the physical border that Mexico and the United States, especially in the South Texas area, there's a group of, on the Mexican side in the Reynosa area, called "Citizens for the Defense of Community," and this group has been offering up to $10,000 bounty on U.S. Border Patrol officers. This apparently has been rescinded just this week; that was the gist of the article. And I would ask you, are you outraged at another bounty on U.S.

officers besides that that the drug cartels are putting up?

ATTY. GEN. RENO: "Outrage" doesn't express my outrage.

Q (Off mike) -- you talked a minute ago about a systematic effort to look at some of these older civil rights cases, and I'm just wondering if you could elaborate on that. Are you talking about a --

ATTY. GEN. RENO: I'm not -- I didn't mean to -- and I'll ask Myron to check to see whether there's any such systematic effort underway -- but what I was referring to was the effort of all law enforcement agencies to identify

cases of significant

import that had not been solved and the -- as I understand it, systematic effort through cold-case squads or otherwise to go back and see just where we stand on those cases.

Q Is that effort being coordinated out of Main Justice, or just out of local U.S. attorneys offices?

ATTY. GEN. RENO: No, it would be coordinated through the law enforcement agency, and I don't want to give you more.

I think you're assuming more from what I said than I meant to convey. I meant it just as a general effort on all types of cases, not just specifically civil rights cases.

Q Ms. Reno, on a separate question, the terrorism report.

ATTY. GEN. RENO: Could you speak just a little bit louder?

Q Sorry. On a separate question, the terrorism report that was out earlier this week had two, sort of, recommendations that were particularly interesting and somewhat controversial, one of which is to give the military a greater role in domestic control of terrorism and domestic response to terrorism, and the other is to step up surveillance of foreign students visiting the United States.

What's your attitude toward taking those two steps?

ATTY. GEN. RENO: With respect, we had the opportunity, in the recent top-off exercise that was discussed and coordinated recently, to show what we do now and the processes, the orders, the procedures in place for bringing in the military, pursuant to existing law. It seemed to work well, and I think the processes and the understandings and the relationships are in place so that there is a proper line to be drawn between law enforcement efforts and the military.

There could be situations where law enforcement would not have the capacity to do it, and there are provisions for

bringing in the military. But to bring the military in to what would be a standard law enforcement operation that law enforcement could handle, would be, I think, unnecessary at this point and would be inconsistent with our nation's tradition.

I may -- I have just summarily reviewed the report and would like to go back and make sure that I understand all of the ramifications of it.

Q And the foreign students?

ATTY GEN. RENO: I want to look at that and see just what they have in mind.

Q I understand that there is some new website which some of the airline companies are going to present fares on. Is there any concern that those airlines might be working too closely together in terms of putting out these fares?

MR. KLEIN: Again, I want to be very careful on matters that the division has not publicly taken any position, with respect.

The Internet is going to create a wide range of new business opportunities. At is core, it's enormously empowering for consumers because it allows them access to a great deal of information, which is what maximizes consumer power.

We will, from time to time, look at some of the new business arrangements that grow up, if they raise potential concerns.

On any sort of competitive, joint venture like that, one of the things you look at is what kind of strategic business information do they share, what is the likelihood that a process like that can raise concerns? We had a case, for example, involving computer reservation systems in the airlines, which we found was a price-signaling mechanism. We brought the AT&T cases and settled those successfully.

The other thing in any kind of aggregate industry effort is to look at the buyer side or what we call monopsony of power.

But again, that doesn't mean that any of these sites may be perfectly legitimate, pro-competitive developments.

But those are the kind of routine questions an antitrust lawyer would ask.

ATTY GEN. RENO: Thank you.

Q Thank you.

END.