

could arise to depreciate the value of selling PC operating systems; however, the fact that these new paradigms already exist in embryonic or primitive form does not prevent Microsoft from enjoying monopoly power today. For while consumers might one day turn to network computers, or Linux, or a combination of middleware and some other operating system, as an alternative to Windows, the fact remains that they are not doing so today. Nor are consumers likely to do so in appreciable numbers any time in the next few years. Unless and until that day arrives, no significant percentage of consumers will be able to abandon Windows without incurring substantial costs. Microsoft can therefore set the price of Windows substantially higher than that which would be charged in a competitive market — or impose other burdens on consumers — without losing so much business as to make the action unprofitable. If Microsoft exerted its power solely to raise price, the day when users could turn away from Windows without incurring substantial costs would still be several years distant. Moreover, Microsoft could keep its prices high for a significant period of time and still lower them in time to meet the threat of a new paradigm. Alternatively, Microsoft could delay the arrival of a new paradigm on the scene by expending surplus monopoly power in ways other than the maintenance of high prices.

G. Significance of Microsoft's Innovation

61. The fact that Microsoft invests heavily in research and development does not evidence a lack of monopoly power. Indeed, Microsoft has incentives to innovate aggressively despite its monopoly power. First, if there are innovations that will make Intel-compatible PC systems attractive to more consumers, and those consumers less sensitive to the price of Windows, the innovations will translate into increased profits for Microsoft. Second, although

Microsoft could significantly restrict its investment in innovation and still not face a viable alternative to Windows for several years, it can push the emergence of competition even farther into the future by continuing to innovate aggressively. While Microsoft may not be able to stave off all potential paradigm shifts through innovation, it can thwart some and delay others by improving its own products to the greater satisfaction of consumers.

H. Microsoft's Pricing Behavior

62. Microsoft's actual pricing behavior is consistent with the proposition that the firm enjoys monopoly power in the market for Intel-compatible PC operating systems. The company's decision not to consider the prices of other vendors' Intel-compatible PC operating systems when setting the price of Windows 98, for example, is probative of monopoly power. One would expect a firm in a competitive market to pay much closer attention to the prices charged by other firms in the market. Another indication of monopoly power is the fact that Microsoft raised the price that it charged OEMs for Windows 95, with trivial exceptions, to the same level as the price it charged for Windows 98 just prior to releasing the newer product. In a competitive market, one would expect the price of an older operating system to stay the same or decrease upon the release of a newer, more attractive version. Microsoft, however, was only concerned with inducing OEMs to ship Windows 98 in favor of the older version. It is unlikely that Microsoft would have imposed this price increase if it were genuinely concerned that OEMs might shift their business to another vendor of operating systems or hasten the development of viable alternatives to Windows.

63. Finally, it is indicative of monopoly power that Microsoft felt that it had substantial discretion in setting the price of its Windows 98 upgrade product (the operating