A glimpse behind the veil of business secrets

Microsoft lawsuit reveals predatory corporate practices

Mike Ingram
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The anti-trust action against Microsoft by the US Justice Department has brought to the surface a virtual state of war between major corporations in the fields of computer technology, telecommunications and the media.

The struggle for control of new technologies and markets has been brought to a head by the emergence of the Internet as a mass medium. Every week sees new corporate alliances, mergers and consolidations.

The open intervention of the US government is itself indicative of the scale of the battle now taking place. Government intercession in such matters is itself not new. On a routine basis, the government is involved in mediating the conflict between different blocks of capital in order to further the interests of American capitalism as a whole. But the intensity of the battle among computer and Internet giants has reached such a scale that the usual methods of quiet negotiation and back-room deal-making do not suffice.

Normally, corporate tactics of extortion and bribery are pursued behind a screen of legality and concealed from the public in the name of protecting "business secrets". When, however, the government is forced to intervene openly on behalf of one or another camp, it is often compelled to lift, if only slightly, the sacred shield of business secrets, providing a glimpse of the modus operandi of big business. The Microsoft suit is one such case.

Submissions in behalf of the government and the Justice Department, together with the Conclusions of Law presented by Judge Thomas Penfield Jackson, show how the practices of Microsoft not only served to suppress the computer giant's business rivals, but acted to the detriment of society as a whole by stifling technological innovation.

Microsoft, as opposed to its rivals Netscape and Sun Microsystems, is on the receiving end of the Justice Department's indictment not, fundamentally, because of the personal traits or psychological quirks of company chairman Bill Gates. Individual greed and ruthlessness play a part, but in the end Microsoft stands condemned for committing criminal and anti-competitive practices because, as by far the biggest monopoly, it had the most to lose from the challenges to its position arising from the emergence of the Internet, and responded accordingly.

Microsoft enjoys an enormous monopoly in Intel-compatible PC operating systems, currently holding more than 80 percent of market share. This is a self-perpetuating monopoly in the following sense: because Microsoft is the majority platform, it is the one for which applications are most likely to be developed. In turn, because there are more applications available, Microsoft is the platform most likely to be chosen by users, and particularly business users. In the sector of business applications, Microsoft controls 90 percent of market share through its Office software suite.

As the dominant force in what has become the "traditional" computer software market, Microsoft saw the emergence of new technologies as a direct threat to its position and consciously sought to suppress them. There is no reason to believe that, if the situation were reversed, the CEOs of its rivals would have acted any differently.

Judge Jackson's conclusions of law were based upon expert submissions amounting to hundreds of pages. A study of these submissions gives an insight into the methods that large corporations resort to when their markets are threatened.

The emergence of the World Wide Web opened up the possibility for a huge advance in the way computers are used. Developed on the basis of open protocols that allow a multitude of computer hardware and software combinations to talk to each other, the Web held out the promise of transcending the reliance upon the desktop computer and, specifically, Microsoft operating systems and applications.

Not long after the emergence of the first web browsing software, it became clear that it was not only possible to read documents on any computer connected to the Internet, but that the open character of the Internet could be utilised to run applications on any connected computer. If the Internet was understood as a "network of networks", then a natural progression was the emergence of network computers. These would be low-cost devices that would utilise the Internet for both storage and processing power. The web browser would become the basic interface through which all computer applications would run.

A number of new programming languages were developed to facilitate this. The best known of these is Java, launched by Sun Microsystems in May 1995. Java programs are not written to a specific machine language of a particular hardware/software combination. Instead, Java utilises a virtual machine that sits on top of a given operating system. A program written in the Java language is compiled to a bytecode file that can run wherever the Java platform is present, on any underlying operating system.

Netscape, which at the time had the largest share of the market for web browsers with its Navigator software, embraced the Java technology and incorporated it into the Navigator browser. Thus Netscape and Sun Microsystems became the two main players in the action against Microsoft.

In what became known as the "browser war", Microsoft developed a strategy to ensure that Navigator would not become a platform for the development of alternative software.

According to the "Conclusions of Law" issued by Judge Jackson, "Microsoft never intended to derive appreciable revenue from Internet Explorer directly." The importance of Internet Explorer (Microsoft's browser) for Microsoft lay in the potential of browser software to become an interface for "cross-platform middleware".

The term "middleware" refers to software that does not have to interface directly with the operating system. Instead, it utilises a third party such as

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the web browser. An example of this is web-based email programs such as hotmail.com. A user can send and receive email from any computer with a web browser. Because the software that runs the web-based email application resides on the Internet server rather than on the user's desktop computer, it works independently of the operating system used and is therefore cross-platform.

Because cross-platform middleware can utilise an interface not controlled by Microsoft, and can be accessed using a range of operating systems, it has the potential of opening up the development of applications outside of Microsoft's control, thus threatening both Microsoft's applications market and ultimately the operating system market itself.

Jackson writes, "Microsoft early on recognized middleware as the Trojan horse that, once having, in effect, infiltrated the applications barrier, could enable rival operating systems to enter the market for Intel-compatible PC operating systems unimpeded. Simply put, middleware threatened to demolish Microsoft's coveted monopoly power. Alerted to the threat, Microsoft strove over a period of approximately four years to prevent middleware technologies from fostering the development of enough full-featured, cross-platform applications to erode the applications barrier."

In June 1995, Microsoft proposed that Netscape not release browsing software for the 32-bit versions of Windows (Windows 95 and NT). When Netscape refused to abandon its project, Microsoft began a campaign to minimise the extent to which it would be taken up by developers.

Jackson explains that Microsoft's strategy was to ensure that "firms comprising the most effective channels for the generation of browser usage would devote their distributional and promotional efforts to Internet Explorer rather than Navigator."

The first targets of this campaign were hardware manufacturers. Explaining that the campaign proceeded on three fronts, Jackson says, "First, Microsoft bound Internet Explorer to Windows with contractual and, later, technological shackles in order to ensure the prominent (and ultimately permanent) presence of Internet Explorer on every Windows user's PC system.... Microsoft imposed stringent limits on the freedom of OEMs (hardware manufacturers) to reconfigure or modify Windows 95 and 98 in ways that might enable OEMs to generate usage for Navigator in spite of the contractual and technological devices that Microsoft had employed to bind Internet Explorer to Windows... Microsoft used incentives and threats to induce especially important OEMs to design their distributional, promotional and technical efforts to favour Internet Explorer to the exclusion of Navigator."

Jackson says the decision by Microsoft to tie Internet Explorer to Windows cannot be explained as an attempt to benefit consumers or improve the efficiency of the software, "but rather as part of a larger campaign to quash innovation that threatened its monopoly position."

Microsoft's claims to be protecting the "integrity" of the Windows platform were also rejected by the judge. "Microsoft itself engendered, or at least countenanced, instability and inconsistency by permitting Microsoft-friendly modifications to the desktop and boot sequence, and by releasing updates to Internet Explorer more frequently than it released new versions of Windows."

The second target of Microsoft's attack in the browser war was Internet access providers (IAPs). Microsoft licensed Internet Explorer and the Internet Explorer Access Kit to hundreds of IAPs at no charge. The company then gave valuable promotional packages to 10 of the most important IAPs in exchange for their agreement to promote and distribute Internet Explorer and exile Navigator from the desktop. Microsoft granted rebates, and in some cases outright payments to providers who upgraded users to client software bundled with Internet Explorer instead of Navigator.

The court found that Microsoft also established a "contractual right to dismiss the IAP from its own favoured position in the Referral Server [the server that presents various providers as options for the user when the user runs the Internet Connection Wizard] or the Online Services Folder." This was the case even if the IAP had not promoted the Navigator browser in its client software, had purged all mention of it from any web site connected to its Referral server and distributed no other browser than Internet Explorer to subscribers it got through the Windows desktop.

Microsoft has claimed that Netscape's complaints against the company amount to demands for a "free ride" on the basis of markets created by the Microsoft platform. The court found that "Microsoft's restrictions closed off a substantial amount of distribution that would not have constituted a free ride to Navigator."

Judge Jackson concluded that "the efforts of Microsoft directed at OEMs and IAPs successfully ostracized Navigator as a practical matter from the two channels that lead most efficiently to browser usage."

The third aspect of Microsoft's attack on Navigator was a mafia-style combination of bribes and threats to competitors and business partners alike. Most notably, Microsoft extracted from Apple an agreement to distribute Internet Explorer rather than Navigator on the desktop of Apple Macintosh computers. Microsoft threatened to cancel production of the Mac version of its Office application if Apple refused. The enlisting of Apple ensured that developers would not see Navigator as a truly cross-platform middleware product.

"Microsoft's willingness to make the sacrifices involved in cancelling Mac Office, and the concessions relating to browsing software that it demanded from Apple, can only be explained by Microsoft's desire to protect the applications barrier to entry from the threat posed by Navigator," Jackson wrote.

To undermine the portability of applications written in Java, Microsoft developed its own Java implementation for Windows that was incompatible with other implementations. The company then induced developers to use the Windows implementation of Java rather than Sun-compliant ones. According to Jackson, "It pursued this tactic directly, by means of subterfuge and barter, and indirectly, through its campaign to minimize Navigator's usage share." Microsoft also used its monopoly power to prevent companies such as Intel from aiding in the creation of cross-platform interfaces.

In her submission to the court, Rebecca M. Henderson, a professor at the Massachusetts Institute of Technology's Sloan School of Management, wrote: "Microsoft subverted the cross-platform capabilities of the Java technology by a number of means. One method was to ship development tools intended to create applications that ran only on Windows while intentionally failing to warn developers that the products of these tools would operate only on the Win-32 platform." She sites a Microsoft email of 1996, which says: "[We] should just quietly grow J++ [Microsoft's developer tools] share and assume that people will take advantage of our classes without ever realizing they are building win32-only java apps."

Judge Jackson concluded, "Microsoft's actions to counter the Java threat went far beyond the development of an attractive alternative to Sun's implementation of the technology. Specifically, Microsoft successfully pressured Intel, which was dependent in many ways on Microsoft's good graces, to abstain from aiding in Sun's and Netscape's Java development work.... Microsoft also deliberately designed its Java development tools so that developers who were opting for portability over performance would nevertheless unwittingly write Java applications that would run only on Windows."

There are clear indications that the government did not intend initially to go to the point of proposing a break-up of Microsoft. The company was given ample opportunity to strike a deal involving modification of its business practices. Even after the court ruled that the company had violated anti-trust laws, Bill Gates was feted at the White House. (*See* WSWS *article: "Two days after the antitrust ruling, White House, Congress hail Microsoft billionaire"*

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http://www.wsws.org/articles/2000/apr2000/mic-a08.shtml).

It is by no means certain that the proposed break-up, dividing the operating system from the Office suite, will come to pass. Microsoft has indicated its intent to drag out the proceedings as long as possible, saying that if the break-up proposal is confirmed May 24, it will demand more time to make a case for appeal. New hearings could be delayed until December. In the course of a protracted legal battle, it is possible that Microsoft will curb some of its more extreme business practices and reach a deal with its opponents.

There is, however, a substantial body of opinion that rejects the possibility of such an outcome on the grounds that the practices cited in the anti-trust case go to the very heart of Microsoft's business empire. They cite the fact that the predatory practices of Microsoft continued well after the court action was taken against them.

MIT Professor Henderson makes this clear in the section of her submission dealing with Microsoft's latest operating system, Windows 2000. She explains that the new desktop operating system offers a significant number of functions that will work only if businesses also choose Windows 2000 as the server operating system. Microsoft's implementation of the so-called Kerberos security system, which has become a standard for authenticating passwords on Unix servers, will work only with servers running Windows 2000. Similarly, new networking facilities allowing the user to access the same desktop and files on any machine on a network will work only with a Windows 2000 server, as will the group-sharing products incorporated into the new operating system.

It is also feared that Microsoft will continue to block innovation in other areas. According to press reports, an email said to be from Gates, which was redacted from the conclusions of law at Microsoft's request, shows Gates directing Microsoft to redesign its software so as to harm competitors in the palm-size computing sector. Commentators believe the email is in reference to competition between hand-held devices running Microsoft's CE operating system and the Palm series of hand-held devices. Microsoft Outlook is the only major email package that doesn't synchronise with Palm unless users install additional software.

Even a brief review of what has been revealed about Microsoft makes clear that its practices are not only criminal, from the standpoint of US anti-trust laws, but also detrimental to society as a whole. The Microsoft case has serious consequences for the daily lives of millions of people. Hundreds of thousands work for Microsoft and other technology companies world-wide. Millions more have savings tied up in the stock market that could be wiped out if, for example, a sharp fall in Microsoft share prices provoked panic selling of stocks. Not only CEOs and investment bankers, but increasing numbers of working people are dependent on the stock market for pensions and insurance.

Moreover, Microsoft and its rivals deal with technology that plays a significant role in the lives of people around the world. Advances in medical science, for example, are intimately bound up with further innovations in computer technology.

Clearly, these monopolies cannot be allowed to trample on the common good. Can anyone seriously believe, however, that the Clinton administration is a reliable trustee of the interests of the masses of working people?

This is an administration that has repeatedly demonstrated its subservience to big business. It presides over an unprecedented bonanza for Wall Street and a vast accumulation of personal wealth for the few alongside worsening economic hardship for workers.

Nevertheless, in taking action against Microsoft, the US government has unavoidably shed light on a fundamental contradiction of the present epoch: the vast technological advances of the last two decades have come into increasing conflict with the organisation of society on the basis of private ownership of the means of production and production for profit.

The emergence of the Internet and its utilisation of open standards hold out the promise of a strategic development in computer technology, and with it, the social and cultural level of mankind. As a world-wide network of computers, the Internet allows an unprecedented social division of labour on an international scale. But the capitalist market, far from fostering the full potential of this technology, acts as a barrier to its rational and progressive development.

Microsoft, as the most powerful technology company in the world, is able to stifle those technologies that threaten its position. In doing so it actually sets back the technological advance of society. But Microsoft is not alone.

As the date for oral arguments in the Microsoft case approaches, an equally ferocious struggle is under way between cable operators for control of the broadband technologies through which people access the Internet. At the very point when the break-up of the Microsoft monopoly is being contemplated, the mega-monopoly of a merged America Online (AOL) and Time Warner is being prepared. AOL is by far the largest Internet provider in the world and Time Warner is the second largest cable television operator and a world leader in publishing, music, cinema and other media.

Monopoly is the inevitable outcome of the development of capitalist economy. Not only in computer technology, but in every major industry, the process of capitalist accumulation leads to the consolidation of small capitals into large, with one or a handful ultimately becoming dominant. The problem is not simply Bill Gates, or even Microsoft, but rather an economic system whose basic requirements dictate practices that are socially destructive.

The full technological and social potential of society will not be realised by regulating this or that aspect of the capitalist market. Splitting Microsoft's monopoly into a duopoly will do little to suppress the type of predatory business practices that are raised in the suit.

Such is the broad social significance of the technology under dispute that it cannot be left as the private fiefdom of a relative handful of businessmen and investment bankers. What is required is the transformation of capitalist monopolies into public utilities, operated under the democratic control of the working people.

The Microsoft case points to the necessity for a fundamental reorganisation of society along socialist lines. In place of the market as the determinant of which standards prevail, bodies of experts, answerable to the people, should be established, which will oversee standardisation and approve new innovations. The benefits of technology must be judged not by their ability to generate personal wealth for corporate CEOs, but rather their ability to advance society as a whole.

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