

PERSPECTIVES ON THE MS-DOJ ANTITRUST CASE OF 1998

PATRICK G HORNEKER

Note. This article was originally written in August 1999, and is now a historical document.

Summary 0.1. On July 5, 1999 at 6:30 PM Eastern Standard Time, Federal Judge Thomas Jackson, in a 207 page verdict, ruled that Microsoft did use monopolistic powers to stifle innovation and curtail competition.

However, this verdict is just the fact finding portion of the entire lawsuit. During the last two weeks of March 2000, Microsoft and the Department of Justice attempted to settle the anti-trust matter using a mediator. On March 31, 2000, neither side could agree on a settlement, talks broke down, and now the case was back in federal judge Thomas Jackson's hands again.

That following Monday, Judge Jackson ruled that Microsoft was guilty of violating anti-trust laws. This was the official verdict of the trial.

1. HOW IT ALL BEGAN

The mainstream media covered this case as if it all began when Netscape filed bankruptcy. The real story began back in 1990 when Microsoft and PC manufacturers made agreements to include a copy of Windows 3.0 installed on the PC's hard drive with the purchase of every new PC whether the consumers wanted it or not.

One advantage to selling new PCs this way was that no effort on the part of the consumer was required to install the operating system to get the machine to run. This was clearly Bill Gates' intention, and I could not agree more on that issue.

However, the bundling of Windows to new PCs sparked the interest by the US Department of Justice, since the bundling of Windows on every hard drive on every new PC took away some freedom of choice consumers had when it comes to the components that are available to purchasers of PCs. At that time, not everyone wanted Windows installed on their PCs. Even to this day, not everyone wants Windows on their machines.

OS/2 V2.0, SCO Unix, and PC/GEOS (an operating environment that competed with Windows 3.0) were on the market as alternatives to Windows 3.0. At that time, Windows was simply a graphical interface that complemented DOS.

1.1. The Problem With OS/2. When IBM released OS/2 Warp 3.0 back in 1994, a version was packaged for installation to an existing Windows 3.x setup, and that is in addition to the full version, which was concurrently sold. OS/2 was then marketed as a better way to run Windows applications than Windows itself, and those of us who ran OS/2 well know, it certainly performed to expectations. Just using the Workplace Shell was enough to convince us of that.

The problems really started for Microsoft when Windows 95 was first released. Though OS/2 was a good product, the name OS/2 was not (and still is not) appealing to the masses. This brings up the issue of how important a name can be. The name Microsoft was (and still

is) a company that made computing accessible to the masses. The initials IBM represent a big business known for products that are not marketed to the average person.

This was the hurdle IBM had to overcome if it was to appeal to the masses, and marketing mistakes on IBM's part was a major reason why OS/2 did not make it in the consumer market.

One of the problems of OS/2 was that to run Windows 95 applications, IBM would have had to include a license for Windows 95 to include Win95 support in OS/2. This, of course, would have driven the cost of OS/2 to the point where it was cheaper to purchase Windows 95 in the first place.

Note. In September 2005, IBM announced that they will remove OS/2 from its product line at the end of 2005, and will no longer support OS/2 at the end of 2006. So if you wish to obtain OS/2, you will need to go to an online auction and find a legitimate copy of OS/2.

When masses of people who bought Windows 95 at its initial release, there were a substantial number of complaints about the product. Many of these were from people who had 486 and early Pentium PCs. This resulted in one million copies of OS/2 being sold in December 1995 alone (including the copy on my older Compaq PC), because of the frustration of trying to get Windows 95 to work. BTW, there are almost as many complaints about Windows ME percentage wise as sales of that system were much smaller than those of Windows 95.

1.2. The Issue With Windows XP. The story concerning Windows XP was different. Microsoft advised anyone with PC systems older than a Pentium III, or those that have less than 128MB of system RAM were advised not to upgrade to any version of Windows XP. (With Service Pack 2, you need at least 256MB of RAM to run Windows XP.)

To this day, new PCs available at local retailers continue to ship with the latest versions of Windows already installed on the hard drive. Many of these systems are pre-packaged hardware and software combos, so the consumer does not have to make any decisions regarding hardware or software, except which package to purchase. This is no different from ordering combo meals by number at your favorite fast food establishment. While it may be a convenient way to purchase a PC, it is not always the best way to purchase a PC. It is this ability for consumers to choose that was one of the main premises behind the antitrust case.

On the other hand, can we really blame Microsoft for this lack of choice? Not entirely. Yes, the bundling of Windows with every PC is an anti-competitive practice that continues to this day. But does that mean that we cannot find a PC that comes preloaded with an operating system other than Windows? Not if you know where to look.

What about the retailers of these systems? Each retailer has its own set of demographics. Places such as Best Buy do sell Macintosh systems in their stores. (The bad news is that Best Buy no longer sells boxed sets of Linux distributions, either in store or online.)

Wal-Mart does sell Linux based systems and Linux itself online, but not in their stores. The point here is that retailers only stock what sells in their stores.

2. THE NEXT STAGE, BROWSER INTEGRATION

On September 25, 1996, OS/2 Warp 4 was released, and was the first operating system to integrate a web browser. Since OS/2 is not a mainstream operating system, such integration was not an issue. The integration of Internet Explorer into Windows only moved the government's case closer to trial, as exhibited in Windows 98. Also note that IBM released version 4 of OS/2 eighteen months before the release of Windows 98, despite claims from Microsoft that web browser integration was one of their innovations!

One difference between OS/2 and Windows 98 in terms of integration of the web browser is that OS/2 allows the user to select whether Netscape Navigator/Communicator or IBM WebExplorer should be the default browser. Windows 98, on the other hand, forces Internet Explorer to be the default browser. (One result of the case was to include the ability to change the default browser.)

The browser war was a political battle between Netscape and Microsoft as to which browser is the best, and how much market share Internet Explorer can take from Netscape. In the Windows world, Internet Explorer exceeds Netscape in terms of percentage of all web surfers, and this integration is partly responsible for this! The integration also caused Netscape to file Chapter 11 bankruptcy, and its subsequent acquisition by America On-Line.

Note. Though Netscape is now up to Version 8.0 (as of this update), the Mozilla project has in some ways become the new Netscape, and is the preferred browser for Linux (and many other UNIX) systems. IMO, Mozilla is quite superior to Netscape, and Mozilla appears to be better maintained than Netscape in terms of performance and features. Only time will tell whether Mozilla will win Internet Explorer users over. (The Firefox product from Mozilla.org is directly competes with Internet Explorer, and has increasingly become a popular choice with web surfers, mainly due to concerns with Internet security and other annoyances).

3. POLITICS AS USUAL?

There is no disputing that Microsoft has been making computing easier for the consumer. What was being questioned here were the business practices of Microsoft.

One thing I have observed is that the "minimum system requirements" for various versions of Windows are not the real requirements for performance on PCs. The requirements listed there are the minimum specifications your system must have in order to be able to install that version of Windows.

To get any real performance from Windows, you will need to at least double the requirements specified on the package. Some would say there is a hidden marketing agenda here, especially if you have a low-end system. Windows 95 (and even XP Professional), for instance, forced many users to purchase hardware upgrades in order to run that version of the software with the same performance as before the software upgrade.

In the case of Windows XP, both the Home and Professional versions, the situation becomes different.

For some, this meant simply having to purchase hardware upgrades such as memory and hard drives. For others, it meant having to purchase a new PC, and replacing most everything, including the software on their systems.

...and some kept their old system and did not upgrade their systems. Many of those were running Windows 98SE or Windows 2000. In the case of the latter, there is not much difference between Windows 2000 and Windows XP. In fact, most everything on the market is supported more in Windows 98 and Windows 2000, than in Windows XP (at least for now), making the upgrade not worth the cost.

...and of course, some people (and some large corporations) make the switch to Linux. Among those are people with older hardware, or people and businesses with a local network. The main reason for this is (of course) cost, though other reasons such as the freedom to customize and modify software to customer needs are just as valid as far as making the switch to Linux.

4. FREEDOM TO INNOVATE?

Shortly after the verdict, Microsoft launched a series of TV ads designed to get the masses on their side. I watched some of these ads, and found them to be rather bizarre in nature. Gates emphasized on his so-called "freedom to innovate" and how the PC has effected the everyday lives of Americans, and how Microsoft is developing the next generation of Internet software.

Can we really believe that, especially with the Open Source revolution and its successes?

If I remember correctly, doesn't proprietary software restrict the ability to innovate? This is the main reason why we have the General Public License. What Bill Gates (at the time) really meant by "freedom to innovate" is freedom for Microsoft to innovate, not freedom for everyone else to innovate. This is rather obvious in the advertisements (and the "Software Assurance" program developed by Microsoft for software licensing in general and to keep businesses locked into buying their products for the duration of the contract).

Microsoft's latest attempt to lure Linux users over is to take on the server market with the Windows 2003 server product. Once again, Microsoft tries to convince us that businesses can save money by using a proprietary (and expensive) software product solution over a freely distributable and modifiable software product solution...and so the games continue.

In recent days, Microsoft has realized that Linux is not going away, and neither is the open source concept. Newer versions of its server products are now Linux friendly!

The next version of Windows is reported to sport its newest "innovation", a 3D desktop. Interestingly enough, there is already a window manager (3dwm), and an addon to X.org and XFree86 that allows for 3D desktop switching, both of which have been around for a while and are open source, which means you can examine the source files to see how these desktops are implemented; and Sun Microsystems has already implemented a 3D desktop to its Java Desktop package called the Looking Glass project, and it too is open source.

As for PCs impacting the lives of Americans, this is not entirely true either. Sure PCs have had positive effects on our lives, but even in the US, there are still (even to this day) many families that do not have a PC in the home, nor have access to a PC or Macintosh. Sure, the high-tech industry has strongly effected today's economy. But so does the oil industry, the railroads, the trucking industry, and most importantly public utilities, food producers, housing and construction, the auto industry, and clothing producers, among others. In other words, industries that have been around much longer than the high-tech

industries. After all, we got along just fine for thousands of years before the Internet was developed.

PCs have made mundane tasks easier. However, the PC has also been criticized for its impact on our social lives. The PC, let alone the Internet, has been shown as the target of blame for divorces, relationship breakups, lack of social skills, and general mistrust in our fellow man...and that is just the tip of the iceberg in the host of social problems associated with PCs. This is more so the case, especially with all the spam, trojan horses, viruses, and just plain dishonesty that you find on the Internet.

The worst thing is that these problems are preventable. To really understand what went on, we need to take a hard look at ourselves. (Thanks to Hurricane Rita, we may be doing just that.) However, the point of this section is to show the true picture of what is going on with Microsoft's software licensing campaign (designed to fight the GPL), which also brings up one last question.

5. CAN WE TRUST MICROSOFT?

Some of us are most likely to answer that with a resounding No. After all, there are many reasons why we chose Linux over Windows. I lost my trust in Microsoft after hearing all the horror stories about Windows 95. I said that I lost trust in Microsoft, but I did not say that I lost trust in Bill Gates.

On the other hand, Bill Gates did say that "OS/2 was the platform for the 90's". We all know where that went. But is that enough to not trust Bill Gates? Probably not. As for me, whether I trust Bill Gates or not does not matter as far as the future of this website and my commitment to the Open Source movement is concerned.

I got to give him credit for one thing. At least, he has a foundation to fight illiteracy, disease and other human challenges, and that he has donated software and hardware to schools, libraries and other non-profit organizations. (Of course, organizations such as the Ubuntu Project and Software for the Public Interest serve very much the same purpose.)

The Software Assurance program and the activation schemes being implemented in software suggest a definite lack of trust on both sides. Though the schemes were designed to fight piracy among commercial software producers, the schemes suggest that commercial software producers trust no one.

Besides, the GPL eliminates software piracy by allowing the free distribution of such software. (That's free as in the ability to distribute and modify the software, not free as in cost.)

6. THE IMPACT ON THE CONSUMER MARKET

Whatever happens to Microsoft will have some impact on what you see in the retail stores. You can obtain Linux by purchasing most any book on Linux through your local Barnes and Noble, Borders, or your favorite bookseller, and of course online through Amazon.com (which also sells the boxed distributions).

Some PC manufacturers offer a choice of either Linux or Windows with their home and small office system packages. Wal-Mart Online sells the Windows distribution by itself or preloaded on to some of their low-cost PC offerings, and Mandriva (formerly Mandrake), and Red Hat Enterprise Linux (oddly enough) are now part of their Linux offerings. Now, if only we can see systems preloaded with Linux on the retail shelves ...

Recently, retailers such as Best Buy and Staples no longer offer boxed distributions in their retail stores. This is in part because the market for Linux has changed. More users are downloading ISO images of Linux distributions and burning their own CDs as opposed to buying a boxed set. Also, companies such as Novell and Red Hat are marketing Linux more to businesses as an enterprise solution rather than a consumer OS solution.

Those of us who purchased boxed sets in the past are no longer interested in buying more boxed sets. There are far more Linux distributions now than at the time of the first writing of this article, and each distribution has a specific audience. Sure, you can get the major distributions from a book or magazine about Linux. You can also get CDs that allow you to run Linux without installing the distribution on the hard drive!

With so many ways to obtain Linux, there is no real market for boxed distributions these days.

7. AFTERTHOUGHTS

This anti-trust case is just one case of several in US anti-trust history. When Standard Oil was broken up, a number of small oil companies formed, and they are still thriving businesses working independently today (four of these companies today are ChevronTexaco, Sohio, Unocal, and BP/Amoco).

AT&T was another such company that broke up, and resulting from that were companies such as SBC, BellSouth, and Lucent Technologies. AT&T itself has grown enough that it recently acquired TCI Cable. (The Cable TV & Internet access was acquired by Comcast), and its Internet division, WorldNet, has acquired Advantis (IBM Global Network). Bell Atlantic, another Baby Bell merged with GTE to form Verizon.

IBM back in the 1950s and 1960s faced similar sanctions from the federal government. IBM survived that episode. Now, it's Microsoft's turn. The worst thing that could have happened is for the company to break up into smaller companies. Had this happened, those companies could have grown in much the same way that AT&T did. In these actions, the companies being sanctioned actually thrived over time, rather than be destroyed.

But for real change to happen, we as consumers must demand that such changes happen. Whether that will happen or not is up to all of us.

TRADEMARKS ACKNOWLEDGED AND OTHER LEGAL INFORMATION

- Linux is a registered trademark of Linus Torvalds.
- Red Hat and Fedora are registered trademarks of Red Hat Software.
- Deskjet, Compaq and HP are registered trademarks of the Hewlett-Packard Development Company.
- Microsoft, Internet Explorer, and Windows are registered trademarks of Microsoft Corporation.
- IBM, Workplace Shell and OS/2 are registered trademarks of International Business Machines Corporation
- All other trademarks are properties of their respective owners.

Acknowledgement. All opinions expressed on this page are those of my own, and not those of IBM, Hewlett-Packard, Linus Torvalds, the International Alliance for Compatible Technology, the Free Software Foundation, Linux International, Red Hat Software, Novell, Mandriva or any other entity.