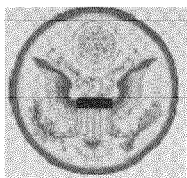


United States v. Microsoft Corp.



United States
Court of Appeals,
District of
Columbia Circuit, 2001.
253 F.3d 34.

<http://www.cadc.uscourts.gov>^a

HISTORICAL AND TECHNOLOGICAL SETTING In 1981, Microsoft Corporation released the first version of its Microsoft Disk Operating System (MS-DOS). When International Business Machines Corporation (IBM) selected MS-DOS for preinstallation on its first generation of personal computers (PCs), Microsoft's product became the dominant operating system for Intel-compatible PCs.^b In 1985, Microsoft began shipping a software package called Windows. Although originally a user-interface on top of MS-DOS, Windows took on more operating-system functionality over time. Throughout the 1990s, Microsoft's share of the market for Intel-compatible operating systems was more than 90 percent.

BACKGROUND AND FACTS In 1994, Netscape Communications Corporation began marketing Navigator, the first popular graphical Internet browser. Navigator worked with Java, a technology developed by Sun Microsystems, Inc. Java enabled applications to run on a variety of platforms, which meant that users did not need Windows. Microsoft perceived a threat to its dominance of the operating-system market and developed a competing browser, Internet Explorer (Explorer). Microsoft then began to require computer makers that wanted to install Windows also to install Explorer and exclude Navigator. Meanwhile, Microsoft commingled browser code and other code in Windows so that deleting files containing Explorer would cripple the operating system. Microsoft offered to promote and pay Internet service providers (ISPs) to distribute Explorer and exclude Navigator. Microsoft also developed its own Java code and deceived many independent software sellers into believing that this code would help in designing cross-platform applications when, in fact, it would run only on Windows. The U.S. Department of Justice and a number of state attorneys general filed a suit in a federal district court against Microsoft, alleging, in part, monopolization in violation of Section 2 of the Sherman Act. The court ruled against Microsoft.^c Microsoft appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

a. On this page, click on "All Opinions." In the section headed "Please select from the following menu to find opinions by date of issue," choose "June" from the "Month" menu, select "2001" from the "Year" menu, and click on "Go!" From the result, scroll to the name of the case and click on the docket number to access the opinion. The U.S. Court of Appeals for the District of Columbia Circuit maintains this Web site.

b. An *Intel-compatible* PC is designed to function with Intel Corporation's 80x86/Pentium families of microprocessors or with compatible microprocessors.

c. The district court ordered, among other things, a structural reorganization of Microsoft, including a separation of its operating-system and applications businesses. See *United States v. Microsoft*, 97 F.Supp.2d 59 (D.D.C. 2000).

IN THE LANGUAGE OF THE COURT



PER CURIAM: [By the whole court]

* * * *

* * * Claiming that software competition is uniquely “dynamic,” [Microsoft] suggests * * * that monopoly power in the software industry should be proven directly, that is, by examining a company’s actual behavior to determine if it reveals the existence of monopoly power. * * *

* * * *

* * * Microsoft’s pattern of exclusionary conduct could only be rational if the firm knew that it possessed monopoly power. It is to that conduct that we now turn.

* * * *

* * * [P]rovisions in Microsoft’s agreements licensing Windows to [computer makers] * * * reduce usage share of Netscape’s browser and, hence, protect Microsoft’s operating system monopoly. * * *

* * * *

Therefore, Microsoft’s efforts to gain market share in one market (browsers) served to meet the threat to Microsoft’s monopoly in another market (operating systems) by keeping rival browsers from gaining the critical mass of users necessary to attract developer attention away from Windows as the platform for software development. * * *

* * * *

* * * [W]e conclude that [Microsoft’s] commingling [of browser and nonbrowser code] has an anticompetitive effect; * * * the commingling deters [computer makers] from pre-installing rival browsers, thereby reducing the rivals’ usage share and, hence, developers’ interest in rivals’ [Application Programming Interfaces (APIs)] as an alternative to the API set exposed by Microsoft’s operating system.

* * * *

* * * By ensuring that the majority of all [ISP] subscribers are offered [Internet Explorer] either as the default browser or as the only browser, Microsoft’s deals with the [ISPs] clearly have a significant effect in preserving its monopoly * * * .

* * * *

* * * Microsoft’s exclusive deals with the [Internet software vendors] had a substantial effect in further foreclosing rival browsers from the market * * * .

DECISION AND REMEDY *The U.S. Court of Appeals for the District of Columbia Circuit affirmed the part of the lower court’s opinion holding that Microsoft did possess and maintain monopoly power in the market for Intel-compatible operating systems. The appellate court reversed other holdings of the lower court, however, and remanded the case for a reconsideration of the appropriate remedy.*

COMMENTS *The appellate court also concluded that the trial court judge’s remarks (to members of the press and others during the trial) “would give a reasonable, informed observer cause to question his impartiality in ordering the company split in two.” The appellate court cited this bias as its reason for reversing the order to break up Microsoft and remanding the case to a different trial court judge to reconsider what penalty would be appropriate. Essentially, the appellate court opened the door to a much lighter penalty for Microsoft. Since then, the Department of Justice and nine of the state attorneys general who brought the suit agreed with Microsoft to settle the case. On November 1, 2002, a federal trial court judge approved the settlement. Generally, the settlement gives consumers more choices and allows Microsoft’s rivals more flexibility to offer competing software features on computers running Windows.*