

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (CKK)

Next Court Deadline: March 6, 2002
Tunney Act Hearing

**UNITED STATES' SUPPLEMENT TO PRIOR MOTION FOR LEAVE OF COURT TO
ADOPT AN ALTERNATIVE PROCEDURE FOR COMMENT PUBLICATION**

Pursuant to the Court's Order of February 15, 2002, the United States files this supplement to its prior Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication in this Tunney Act proceeding (filed February 12, 2002) ("Motion").

During the status conference with the parties on February 8, 2002, the Court suggested that, in addition to the United States' proposal to make CD-ROM versions of the Tunney Act public comments available at cost, we also give consideration to providing each state a number of CD-ROMs free for their public libraries. Tr. (2/8/02) at 9. In our Motion proposing an alternative publication procedure, we advised the Court that we were studying various options to try to develop a mechanism to efficiently distribute CD-ROMs free to libraries. Motion at 8. Subsequently, in the February 15, 2002, telephone status conference with the Court, we indicated that it was possible that the costs of producing CD-ROM copies of the comments would be low enough that the United States could provide CD-ROMs free of charge to anyone requesting them. The Court suggested that, should the United States be able to provide CD-ROMs at no cost to

those who request them, the Court's concerns regarding establishing a method of free access to the CD-ROMs through providing copies to public libraries might be taken care of. Tr. (2/15/02) at 14. The Court directed the United States to submit this Supplement to our Motion once we had resolved the cost issue.

We have now determined that the costs of reproducing necessary quantities of the CD-ROMs containing the public comments will be sufficiently low that we can distribute them, in the manner described below, without charge to the recipients. Accordingly, we request leave of the Court to withdraw our prior proposal to develop a separate mechanism to distribute free CD-ROMs of the comments to public libraries in every state. We also request leave to amend our prior proposal under which we would have provided copies of the CD-ROM or set of CD-ROMs at cost, and substitute the following:

The United States will provide, to anyone who requests it, a CD-ROM or set of CD-ROMs that contain the full text of all the comments identified in the Federal Register notice. The CD-ROM(s) will permit access to the comments using the unique identifier numbers or, separately, using a list of substantive issues raised by the comments, and will be text searchable within each comment or group of comments. The United States will provide free of charge one copy of this CD-ROM or set of CD-ROMs to each individual person and five copies to each library or other institution that requests it. The United States will provide, at cost, additional copies above these limits to individuals or institutions upon request.

This substitute procedure will accomplish the Court's original goal of ensuring that anyone who wants to review the comments but does not have access to the Internet or the means to purchase an electronic copy of the comments will be able to obtain them at no charge. Combined with the other procedures in the United States' previous proposal, particularly posting of comments on the Internet,¹ the alternate publication procedure will ensure an unprecedented

¹We note that the effectiveness of the Internet as a means of public access to the comments was further demonstrated by the number of people who accessed the 47 "detailed" comments posted on the Antitrust Division's website. Although those comments were only

level and ease of public access to the Tunney Act comments without the massive and unnecessary expenditure of millions of dollars that would be required for full publication in the *Federal Register*.

Accordingly, the United States respectfully requests that the Court order the proposed alternative publication procedures as set forth in our Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication and as modified herein.

Dated: February 21, 2002

Respectfully submitted,

PHILLIP R. MALONE
RENATA B. HESSE
BARBARA J. NELSON
KENNETH W. GAUL
PAULA L. BLIZZARD
DAVID BLAKE-THOMAS
JACQUELINE S. KELLEY
Trial Attorneys
U.S. Department of Justice
Antitrust Division
901 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2413

PHILIP S. BECK
Special Trial Counsel

available on the website for three days during the week of February 11-17, 2002, in that time the web page on which they are located, <www.usdoj.gov/atr/cases/ms-major.htm>, received almost 32,000 hits, making it the most-visited page on the Antitrust Division's website and the sixth most-visited page on the entire Department of Justice website for the whole week.