

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: None

UNITED STATES' CERTIFICATE OF COMPLIANCE WITH TUNNEY ACT

Plaintiff, the United States of America, hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(d) and states:

1. The revised proposed Final Judgment was filed on November 6, 2001.
2. The Competitive Impact Statement was filed on November 15, 2001.
3. Pursuant to 15 U.S.C. § 16(b), the revised proposed Final Judgment and Competitive Impact Statement were published in the *Federal Register* on November 28, 2001, 66 Fed. Reg. 59452 (Nov. 28, 2001).
4. Pursuant to 15 U.S.C. § 16(c) and the Court's Order of November 8, 2001, a summary of the terms of the revised proposed Final Judgment and Competitive Impact Statement were published:

- a) in the *Washington Post*, a newspaper of general circulation in the District of Columbia, during the period November 16-22, 2001;
- b) in the *New York Times* during the period November 17-23, 2001; and
- c) in the *San Jose Mercury News* during the period November 17-23, 2001.

5. The 60-day comment period specified in 15 U.S.C. § 16(b) commenced on November 28, 2001, and terminated on January 28, 2002.

6. The United States received and responded to 32,392 comments on the revised proposed Final Judgment.¹ The United States' response to the public comments ("Response") was filed with the Court on February 27, 2002. At that time, the United States also filed its Memorandum in Support of Entry of Proposed Final Judgment ("Entry Memorandum"), along with a Stipulation and second revised proposed Final Judgment ("SRPFJ"), which reflected modifications agreed to by the United States, Microsoft and the States of New York, Ohio, Illinois, Kentucky, Louisiana, Maryland, Michigan, North Carolina, and Wisconsin (the "Settling States") in response to issues raised in the public comments, and the United States' Memorandum Regarding Modifications Contained in Second Revised Proposed Final Judgment ("Modification Memorandum"). The foregoing documents were published in the *Federal Register* on March 18, 2002. 67 Fed. Reg. 12089 (Mar. 18, 2002).

¹The United States also chose to accept and treat as Tunney Act comments various communications from members of the public commenting on the proposed settlement that were received by the Department of Justice beginning on November 5, 2001, the first business day following submission of the initial proposed Final Judgment to the Court, even though the official 60-day comment period had not yet begun.

7. The United States filed a CD-ROM containing the full text of the public comments with the Court on February 28, 2002. On March 5, 2002, the United States submitted a CD-ROM containing versions of the Response and Entry Memorandum with hyperlinks to relevant comments and legal authorities. On March 12, 2002, the United States filed a revised CD-ROM containing the full text of the public comments, including corrected text for thirteen (13) comments for which either an incomplete or incorrect electronic version had been included in the CD-ROM filed on February 28, 2002. On that date, the United States also submitted to the Court a CD-ROM that contained the public comments categorized by major substantive issues.

8. Consistent with the procedure proposed by the United States in its Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication, the United States also made the full text of the public comments available for viewing and downloading on the Department of Justice's website at www.usdoj.gov/atr/cases/ms-comment.htm, beginning March 1, 2002. The United States has made available copies of CD-ROMs containing the full text of the public comments at no charge to interested individuals (one copy per request) and entities (five copies per request). The United States published a Notice of Availability of Public Comments describing the procedures available for obtaining access to the public comments in:

- a) the *Federal Register* on March 5, 2002, 67 Fed. Reg. 9984 (Mar. 5, 2002);
- b) the *Washington Post* on March 1 and 8, 2002;
- c) the *New York Times* on March 1 and 8, 2002; and
- d) the *San Jose Mercury News* on March 1 and 7, 2002.

9. On March 18, 2002, the United States published in the *Federal Register* a list of the names of the individuals and entities that submitted public comments on the revised proposed Final Judgment, along with a unique identifier number to identify each comment and the number of pages in each comment, as well as an index of the comments categorized by level of detail. 67 Fed. Reg. 12208 (Mar. 18, 2002). The United States has also posted the list and index on the Department of Justice's website, along with the full text of the comments, its Response, Entry Memorandum, Modification Memorandum, and the Stipulation and SRPFJ.

10. On March 1, 2002, the United States submitted the full text of the public comments for publication in the *Federal Register*. On May 3, 2002, the public comments were published in the *Federal Register*. 67 Fed. Reg. 23653, Books 2-12 (May 3, 2002). An addendum containing the corrected text of thirteen (13) comments for which either an incomplete or incorrect electronic version had been included in the original submission to the *Federal Register* was published on May 9, 2002. 67 Fed. Reg. 31373 (May 9, 2002).

11. On March 6, 2002, the Court held its Tunney Act hearing regarding the SRPFJ, during which the United States, Microsoft, and the Settling States presented oral argument. In addition, the Court permitted several organizations to participate in the Tunney Act hearing as amici:

- a) the American Antitrust Institute (briefing and oral argument);
- b) the Computer & Communications Industry Association ("CCIA") (briefing and oral argument);
- c) the Project to Promote Competition & Innovation in the Digital Age ("ProComp") (briefing and oral argument);

- d) the Software & Information Industry Association (“SIIA”) (briefing and oral argument);
- e) SBC Communications (briefing and oral argument);
- f) the Association for Competitive Technology (“ACT”) (oral argument only);
- g) Novell, Inc. (briefing only);
- h) NetAction and Computer Professionals for Social Responsibility (“CPSR”) (briefing only); and
- i) the Litigating States (briefing only).

12. Microsoft submitted a certificate of compliance with the requirements of 15 U.S.C. § 16(g), on December 10, 2001. On March 20, 2002, Microsoft filed a supplemental certificate of compliance.

13. Pursuant to the Stipulation filed on February 27, 2002, and 15 U.S.C. § 16(e), the Court may enter the SRPFJ after it determines that it serves the public interest.

14. The materials filed by the United States, including the Competitive Impact Statement, the Response, the Entry Memorandum, and the Modification Memorandum, as well as the United States’ presentation to the Court during the Tunney Act hearing on March 6, 2002, demonstrate that the SRPFJ satisfies the public interest standard of 15 U.S.C. § 16(e).

15. The United States is submitting simultaneously with this Certificate its Motion for Entry of Judgment. The United States requests that this Court enter the SRPFJ without further proceedings. The United States is authorized by counsel for Microsoft and the Settling States to state that they join in this request.

DATED: May 9, 2002

Respectfully submitted,

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