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Your ref.: Your letter of:
Mr. Mensching 26.8.03

Subject: **Investigation of the EU Commission towards Microsoft**

Dear Mr. Monti,
Dear Mr. Mensching

thank you for your letter of August 26th 2003 in which you request further input on the Microsoft investigation regarding specifically their settlemen in the United States and its ineffectiveness at bringing back competition into the market.

As you know, the Free Software Project SAMBA(<http://www.samba.org>) is the last significant competitor of Microsoft in the file and print workgroup server area. So it seemed useful to let them describe their findings and difficulties themselves.

The following is a proposal by Mr. Jeremy Allison, project leader of the SAMBA team:

A Proposal to Restore Competition in the Workgroup Server Market.

The focus of this document is to examine the effects of the US Dept. of Justice settlement on the Samba project and to explain why this has not had the desired effect in restoring competition in the Workgroup server market. I will also make some recommendations as to steps the EU might take to correct the problems with the US Dept. of Justice settlement.

Background

Desktop computer clients communicate with larger server computers via a layered series of protocols. The lowest layers such as TCP/IP, the

Internet protocol for example, are fully and completely documented by a standards organization (such that interoperable implementations may be created by reading these documents). They are in the public domain and are well known and free to implement by anyone. As such they are included in all computers connected to the Internet. Applications such as email and file and print sharing services use communication protocols that are layered on top of these public protocols and provide increasingly sophisticated levels of functionality to desktop computer users.

Microsoft has been using their desktop client monopoly to tie their client and server software together using these more sophisticated application protocols, essentially forcing users of Microsoft desktops to purchase Microsoft server software. This is allowing Microsoft to leverage a client desktop monopoly into a dominant position in workgroup server software sales.

In addition, this tying is also a barrier to desktop competition. The tight integration of authentication, application (like email), and file and print sharing protocols between Microsoft clients and servers makes it difficult to use non-Microsoft desktops with Microsoft servers. Unless a desktop competitor also implement and can interoperate with existing deployed servers it is difficult for organizations to integrate non-Microsoft desktops into a Microsoft server environment.

The amplification effect of the mandatory use of these proprietary protocols serves to reinforce Microsoft's desktop monopoly, and to enable them to extend it into other areas like workgroup server software.

What did the US Dept. of Justice do to solve this ?

As part of the settlement with the US Dept. of Justice, Microsoft was required to make descriptions of some of their proprietary protocols available, those used to communicate between Windows clients and servers, under "reasonable and non-discriminatory terms". It did not require the publication of the proprietary data formats used by Microsoft Office or other productivity software or stipulate what these terms should be.

As far as I know, Microsoft did indeed make descriptions of these proprietary protocols available, but as allowed by the settlement, were allowed to chose the licensing terms under which they would allow the competition to view and implement these protocols in competing

products. Microsoft's original licensing scheme for these protocols, including the signing of a Non-Disclosure Agreement (NDA) in order to see the terms of licensing were generally considered to be too onerous and after discussions with the Dept. of Justice these terms were relaxed somewhat to allow the licenses to be examined without an NDA being required. In addition, the purchase cost of these protocols was reduced.

Even with these revisions the license on these protocols was too restrictive to allow true competing products to be created from these documents. The protocols used to communicate server to server were excluded and there were restrictions on how the information in these documents could be used to create products and shared as code in implementations.

I have examined one of these documents, the CIFS file access protocol specification publicly available from Microsoft without the requirement of an NDA.

In my professional opinion as an implementor of this protocol, this document is incomplete and inaccurate and is completely insufficient to create an interoperable implementation of the CIFS file access protocol (the protocol that Samba already implements, which has been written without any knowledge of or reference to information in this document). The description of the protocol was significantly worse than the knowledge Microsoft had already released in other publications and does not add any information that would be of use in writing Samba code. In addition, it does not give any information on the auxiliary protocols such as the printing protocols or authentication protocols which are required to create a competing workgroup server.

Since the publication of these documents I know of only two companies, Network Appliance, and EMC, which have licensed the Microsoft protocols in order to create competing file server products (neither Network Appliance or EMC have attempted to create competing print or authentication products). In addition, Network Appliance is bound by an earlier agreement with Microsoft not to implement the authentication pieces of Microsoft's proprietary protocols and EMC has recently started selling Microsoft server software on top of it's own hardware. This reduces EMC's presence in the file server market to that of a Microsoft OEM, acting as a further conduit for the propagation of Microsoft server software.

All other significant sellers of authentication, file and print services to Microsoft clients use the Samba implementation of these protocols. The Samba Team and the Free Software community have created

the only independent implementations of Microsoft's authentication and printing protocols. Due to the license Microsoft chose for these documents we are explicitly prohibited from signing the Microsoft license agreements as these agreements request per-client royalty payments. A measure incompatible with the Free Software paradigm and licensing models.

Why did this remedy fail ?

Microsoft enjoys such a monopoly on the desktop client (95%) that it has not been economically feasible to compete directly with them in this space. The recent failures of Netscape and BeOS show that attempting to directly replace Microsoft clients using the traditional proprietary software for purchase model is doomed to failure. The only surviving traditional competitor in this space is Apple, which interestingly enough is the only other desktop for which Microsoft makes its client applications available (Microsoft Office). A conclusion that might be drawn here is that traditional competition is only possible with the direct co-operation of Microsoft itself.

The only other potential competitor is currently the GNU/Linux desktop, which is developed in a co-operative manner by thousands of developers worldwide under a Free Software model. GNU/Linux changes the playing field for client software as there is no single company creating the software that Microsoft can destroy, as they did with Netscape and Be. Instead many companies can take the "raw" software product created by the Free Software community and turn it into customer products. Such companies include Redhat, SuSE, and the other GNU/Linux distributors, and also large hardware companies such as Cisco, HP, Sun and IBM. There is no one source for this software that can be destroyed or controlled.

The fact that this software is freely available to all, without client royalty payments or licensing deals is the key to enabling this competition to exist at all without the co-operation of Microsoft. Companies that must pay royalties to Microsoft for the use of the proprietary information will always be beholden to Microsoft to keep their access to the information that is vital to create inter-operable products. Companies that make such agreements can never provide true competition to Microsoft, as they are still dependent on Microsoft for their ability to compete.

This is why the proposed remedy is failing to create the desired competition in the workgroup server software space, as the only potential competition, the Free Software community, is explicitly

excluded from receiving the necessary information by the requirement of royalty payments and licensing fees.

In addition it has failed to give any chance of competition on the desktop for Free Software non-Microsoft clients. Again they are excluded from receiving and implementing the information needed to implement the client side of Microsoft's proprietary protocols.

What might be a better solution ?

In order to promote competition in the workgroup server space, the Samba Team would like to propose that the European Union require that Microsoft make its proprietary protocol information and its proprietary application data formats (in particular the Microsoft Office file formats) available in a royalty-free, non-discriminatory fashion, in exactly the same way as the TCP/IP protocol itself is available. The protocols and data formats required to be disclosed in this fashion should be all client to server protocols, all server to server protocols and all application data formats currently in use by Microsoft software and for a time into the future not less than five years.

The license on such protocol documentation and application data formats might look like this (taken from the Internet Standards documentation with the "Internet Society" replaced by "Microsoft Corporation") :

"This document and translations of it may be copied and furnished to others, and derivative works that comment on or otherwise explain it or assist in its implementation may be prepared, copied, published and distributed, in whole or in part, without restriction of any kind, provided that the above copyright notice and this paragraph are included on all such copies and derivative works. However, this document itself may not be modified in any way, such as by removing the copyright notice or references to Microsoft Corporation, except as needed for the purpose of developing Internet standards in which case the procedures for copyrights defined in the Internet Standards process must be followed, or as required to translate it into languages other than English.

The limited permissions granted above are perpetual and will not be revoked by Microsoft Corporation or its successors or assigns."

Such a license would prevent the restrictions on use that currently prevent Free Software from having access to these documents and from implementing more of the protocol than we can figure out on our own by

technical means.

In my opinion, this is more important than any fines or penalties imposed on Microsoft for past transgressions of Anti-Trust law, as these will not remedy any past infractions or prevent any future infractions. It is more important to require Microsoft to release the information on these proprietary protocols and application data formats to the public. This would allow the creation of truly interoperable software which will promote genuine competition in the workgroup server and desktop software space, repairing the damage done by Microsoft attempting to leverage their client monopoly into a server monopoly.

Jeremy Allison,
Samba Team.
San Jose, CA USA.

11th September, 2003.

We hope you will find this input helpful. In case of further questions, Mr. Allison has offered to make himself available also in person to discuss the issue and possible solutions with you.

For further reference on the potential impact of Free Software in favor of the European market, some articles already exist. Enclosed you will find a printout of an article published in the "Public Service Review" (Spring 2003 issue) that may be of interest.

Please don't hesitate to contact us in case of further questions,

Kind Regards,

Georg C. F. Greve, President

encl: Public Service Review Article: "Breaking the barriers to Free Software"