214 Massachusetts Avenue, N.E.
Washington, D.C. 20002-4999
(202) 546-4400
http://www.heritage.org

The Heritage Foundation

F.Y.I.

No. 162
November 13, 1997

THE DEPARTMENT OF JUSTICE'S UNJUSTIFIABLE INQUISITION OF MICROSOFT

Adam D. Thierer
Alex C. Walker Fellow in Economic Policy

If you build a better mousetrap, the world will beat a path to your door. So will the Justice Department. That seems to be the lesson behind the government's decision to haul software colossus Microsoft Corp. into court.

—The Chicago Tribune[1]

INTRODUCTION

On October 20, 1997, officials at the U.S. Department of Justice announced they would seek major penalties against the Microsoft Corporation for supposed violations of a consent decree the latter was forced to sign in 1994. The Department of Justice wants the U.S. District Court in Washington, D.C., to block Microsoft's ability to bundle its own World Wide Web browser software with its popular Windows 95 operating system. Microsoft insists, however, that it has abided by the terms of the consent decree and that its actions are not in violation of anti-trust regulations.

According to the Department of Justice's claims, by packaging its Internet software free of charge with its operating system, Microsoft is attempting to squeeze other browser software providers out of the market. To counter this supposed transgression, the Department of Justice wants the District Court to (1) prohibit Microsoft from bundling its Internet Explorer 4.0 software with its operating systems; (2) require Microsoft to inform consumers they do not have to use the Internet Explorer with the Windows 95 operating system; and (3) require the company to provide instructions on how to remove the Internet Explorer icon from a computer's desktop. Until Microsoft complies with this command, the Department of Justice has asked the court to impose an unprecedented fine of $1 million a day on the company.

1 "When Is Success Too Successful?" *The Chicago Tribune,* October 23, 1997.

The Department of Justice's move against Microsoft represents arrogant industrial planning of an industry that exhibits remarkable growth and entrepreneurialism, rapid innovation, and continual price decreases. Microsoft has been one of the most successful companies in its segment of the computer industry, and its products and innovations over the past decade have benefited computer users immensely. In addition, the efforts of the Department of Justice to micromanage the affairs of the Microsoft Corporation represent a shift in the government's rationale behind antitrust enforcement policy. The new rationale strays far from the original intent of seeking lower prices, higher quality, and increased consumer welfare within an industry. Ironically, in the computer industry, Microsoft's development of products and services positively affected these goals. Consequently, a significant number of industry experts, antitrust scholars, and a surprising diversity of media sources have responded to the ongoing assault on Microsoft with surprise and objections (see Appendix). For example, a recent editorial in *USA Today* noted,

> Who has Microsoft so grievously harmed to earn such condemnation? Not computer makers. Microsoft's packaging of its Web browser costs them nothing. Indeed, Dell, IBM and other computer makers say they'd ask to put in the browser if it weren't part of the package.
>
> Not other browser firms. Netscape, Microsoft's main rival, has seen its share drop from 80% of the browser market to about 60%. But its profits are up. They beat expectations by 50% last quarter. Meanwhile, new browser companies are building on Microsoft's to provide faster applications.
>
> And, up to now, not consumers. They are getting more software for the lowest possible price: nothing. And with computer makers providing deals to install Netscape and other browsers as well, they are hardly being denied free choice, either. Indeed, the injuries that the Justice Department complaint indicates have been wrought are hard to find.[2]

Policymakers on Capitol Hill should make every effort to ascertain just how widespread the opposition is—and *why*—before they allow the agency to continue its assault on Microsoft. Congress should take appropriate action to restrain the agency's overzealous inquisition of a company that became a success simply because it strove to respond to the needs of American consumers.

THE HISTORY OF THE DEPARTMENT OF JUSTICE'S FEUD WITH MICROSOFT

The Department of Justice's current move against Microsoft is the latest in a series of antitrust attacks against the Redmond, Washington, company over the past few years. In 1994, the Department of Justice and Microsoft reached a settlement that ended a heated dispute over Microsoft's licensing practices. The consent decree they signed requires Microsoft to change the length of certain licensing and contract agreements as well as to alter its method of collecting royalties from manufacturers of personal computers (PCs) that use Microsoft's products. The Department of Justice argued at the time that Microsoft's power in the software market was so great that it could force its customers and competitors into disadvantageous positions. Specifically, the Department of Justice expressed its concern that Microsoft could tie together the sale of two or more its products, such as Windows and another Microsoft application like Office 95.

---

2 "Microsoft Under Attack, But Who Is It Hurting?" *USA Today,* October 23, 1997.

Although Microsoft undermined its own business interests by agreeing to settle the dispute in this manner (instead of litigating it in court), concern over the costs of such judicial battles coupled with the costs of the associated delays in product development and deployment may have compelled the company to sign the consent decree. Microsoft now must operate with Department of Justice bureaucrats looking over its shoulders; many of the company's business decisions have been affected by the consent decree. For example, the Department of Justice essentially forced Microsoft to abandon its efforts to acquire financial software manufacturer Intuit, Inc., in mid-1995 just by asking a federal court in San Francisco to prevent the deal from moving forward. The prospect of lengthy delays and constant micromanagement by the Department of Justice was enough for Microsoft to lose interest in the acquisition.[3]

When Microsoft agreed to sign the consent decree, however, it wisely reserved the right to develop "integrated products" to package with its operating systems in order to offer new services to customers or to complement other applications they already possessed. Over time, Microsoft has continued to broaden the range of software applications and services it offers Windows users, much to the benefit of those users. For example, *The Economist* recently noted:

> Microsoft has routinely integrated software into upgrades of Windows that had previously been available only as separate programs. Over the years it has included software for hard-disk defragmenting, disk-compression, calculators, games, graphics and word processing along with software to connect PCs to networks. This may have made life hard for the companies that own those products, but it has been good for consumers. Not only do those products seem to come at no extra cost but they tend to work together seamlessly, thanks to a common standard.[4]

Microsoft has offered Windows users an increasingly wide array of services, seamlessly integrated into one easy-to-use package. Obviously, many competing producers of these software products are not happy with Microsoft's decision and ability to integrate its own version of an application in the Windows system. This unhappiness led a handful of lawyers for competing software developers to argue that Microsoft's actions are unfair; bundling their applications directly within Windows might discourage customers from purchasing a competing vendor's products. These rival software developers and the Department of Justice essentially would like to see Microsoft sell only a bare-bones, stripped-down operating system with few Microsoft applications running on top of it. This would be like proclaiming the local ice cream shop can sell only plain vanilla ice cream to customers, not flavored versions or toppings; instead, its customers must take their cones to other stores to buy the toppings or any additional ingredients they desire.

The Department of Justice original case against Microsoft rested on such a premise, even though Microsoft then offered, and still does offer, its competitors the capability to run their own applications on top of its Windows platform. Windows remains an open platform for which all software developers can produce applications. Yet, regardless of this capability, when Microsoft began integrating its Internet Explorer Web browser software into the Windows platform, rival companies and the Department of Justice soon cried foul. They believe that packaging Internet Explorer with the Windows operating system will drive rival Web browser providers—especially Netscape Communications Company with its Netscape Navigator Web browser—from the market, even though Netscape, like any other software provider, is free to offer PC users any Web browser application or

---

3 See G. Christian Hill, Don Clark, and Viveca Novak, "Microsoft Drops Bid for Intuit—A Victory for Antitrust Agency," *The Wall Street Journal,* May 22, 1995, p. A1.

4 "Microsoft's Browser: A Bundle of Trouble," *The Economist,* October 25, 1997, p. 74.

software product they desire. The obvious question remains: On what possible grounds does the Department of Justice hope to pursue its case against Microsoft?

PROBLEMS WITH THE ARGUMENTS OF THE DEPARTMENT OF JUSTICE

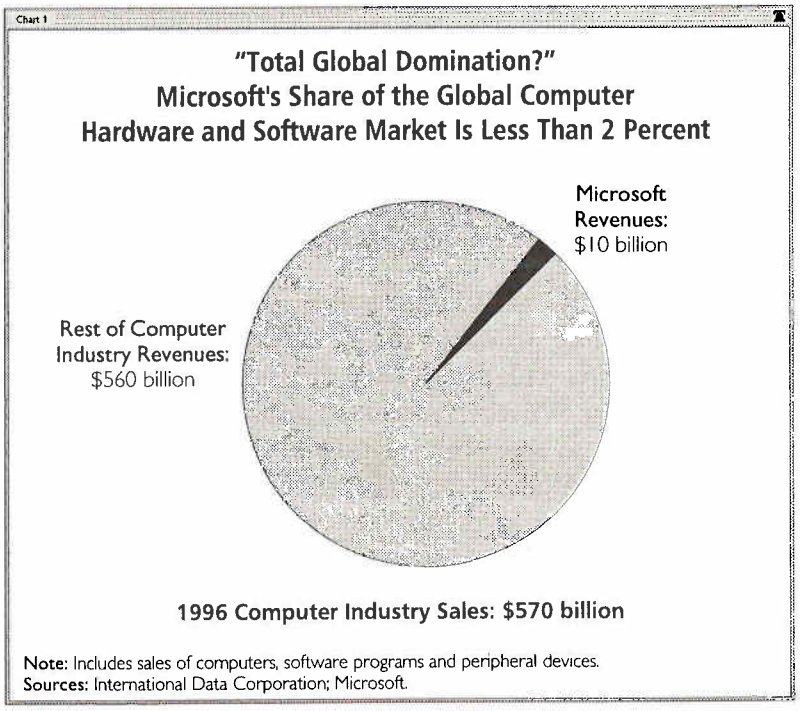
The Department of Justice's case against Microsoft essentially rests upon two fallacious arguments:

- **First,** Microsoft is a monopolistic company that threatens the entire future of the Internet and the competitiveness of the computer industry.
- **Second,** there is something inherently wrong and illegal about efforts by such a company as Microsoft to tie the sale of one product to another.

These faulty arguments can be refuted by examining realities in the marketplace.

Microsoft Is Not a Computer Industry Monopolist

The first faulty argument behind the Department of Justice's suit is that Microsoft is a monopolistic company whose policies threaten the future of the Internet and the computer industry. Microsoft does not possess monopolistic market power within the industry, however; in fact, the computer industry remains remarkably competitive despite Microsoft's success.



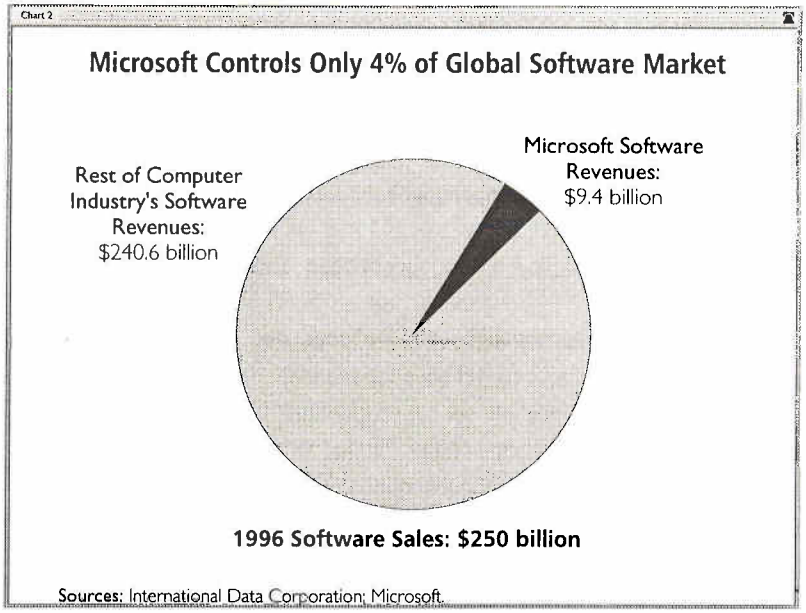
The most obvious refutation of the Department of Justice's claim that Microsoft is a computer industry monopolist is the fact that Microsoft controls only a very small portion of the $570 billion computer industry. As Chart 1 illustrates, Microsoft accounts for less than 2 percent of the entire computer hardware and software industry. It simply is not true that Microsoft is endangering the future of the remaining 98 percent of the industry.

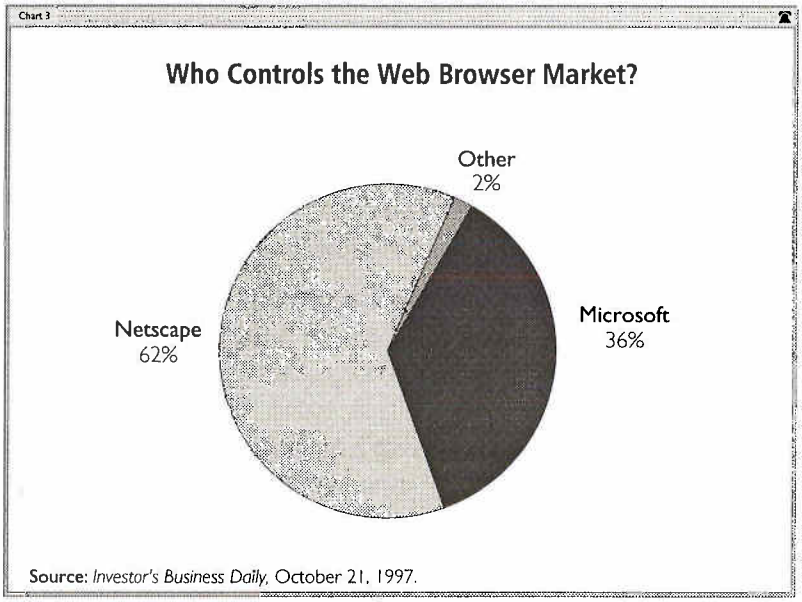
Critics might charge that it is unfair to look at Microsoft's market power over the entire computer sector because Microsoft does not produce much computer hardware. But even if hardware sales are disaggregated from total computer industry sales and only Microsoft's share of the software segment is examined, it will become obvious that Microsoft does not possess overwhelming market power. Far from it, in fact; as Chart 2 illustrates, Microsoft only holds 4 percent of the entire software market.

Even Microsoft's power within the Web browser market—a market the Department of Justice currently accuses it of trying to dominate—is not overwhelming. Netscape, with its popular Netscape Navigator Web browser, remains the dominant software provider with over 60 percent of the market (see Chart 3).

Furthermore, Microsoft's overall market power should be examined in the larger context of how well it is doing financially relative to other computer companies. And as Table 1 indicates, according to the most recent *Fortune* 500 survey (in 1996), IBM, Intel, Digital Equipment, and Apple Computer all had higher revenues than Microsoft.

Overall, Microsoft ranked only 172nd on last year's *Fortune* 500 list of the largest corporations in the United States. The survey noted, "Last year IBM generated more revenue from selling software than any other company, some $13 billion. What were total revenues for Microsoft? Just $8.7 billion."[5]





Viewed in this light, it is difficult to understand the claim that Microsoft's market power in the computer industry is destroying competitive opportunities for these larger, more profitable companies, or for any other company in the industry. Moreover, it is difficult to reconcile the Department of Justice's argument about the industry position of Microsoft with four indisputable facts about the computer industry:

- **First,** prices are low and continuously falling.
- **Second,** quality is high and constantly improving.
- **Third,** innovation and entrepreneurialism are vibrant.
- **Fourth,** competition is cutthroat and ubiquitous.

Many industries in the United States do not exhibit these four trends as strongly and consistently as the computer sector, yet the Department of Justice has been wise in not pursuing antitrust cases against them. For example, relative to the computer software market, far fewer competitors exist within the cola industry, the automobile manufacturing industry, the disposable battery market, and the photographic film market. This does not mean these industries are not competitive or that the companies do not serve consumers well in the marketplace. It only shows that hundreds of rivals are not needed for consumers to accrue genuine benefits. Within the computer marketplace,

5 "Fortune 5 Hundred Largest U.S. Corporations," *Fortune,* April 28, 1997, p. F-4.

however, hundreds of hardware and software developers already exist and compete with Microsoft, which makes the case against it even more illogical.

Finally, even if the Department of Justice views Microsoft as the proverbial king of the hill in today's operating systems market, there is no guarantee that it will continue to hold such a distinguished position forever. Indeed, the highly publicized case of IBM's fall from power in the 1980s serves as an important reminder of why consumers make better regulators than bureaucrats in Washington, D.C, do.

Table 1

How Microsoft Ranks in the 1996 *Fortune* 500 Rankings

		Revenues in Billions of Dollars
1st	General Motors	$168,369
2nd	Ford Motor	146,991
3rd	EXXON	119,434
4th	Wal-Mart Stores	106,147
5th	General Electric	79,179
6th	IBM	75,947
7th	AT&T	74,525
8th	Mobil	72,267
9th	Chrysler	61,397
10th	Philip Morris	54,553
43rd	Intel	20,847
51st	Xerox	19,521
72nd	Compaq Computer	18,109
78th	Digital Equipment	14,562
117th	Texas Instruments	11,713
150th	Apple Computer	9,833
172nd	Microsoft	8,671

Source: *Fortune*, April 28, 1997.

Remembering IBM's Example. The Department of Justice pursued a 13-year antitrust investigation of the IBM Corporation from the late 1960s to 1982. The department had attempted to conjure up enough evidence to take action against the reigning computer giant, but after not being able to do so, it dropped its case in 1982. Michael K. Kellogg, John Thorne, and Peter Huber, authors of *Federal Telecommunications Law,* aptly note that the Department of Justice's case against IBM would "prove to be one of the slowest, most expensive, paper-clogged, and useless antitrust lawsuits ever undertaken."[6]

In hindsight, the futility of the Department of Justice's actions against IBM is even more remarkably evident today. Goliath IBM's own failure to recognize the threat of small entrepreneurs who were creating new PCs for the home right before their eyes proved a greater Achilles' heel. The company lost more than $70 billion, more than two-thirds of its market value, between 1987 and 1992.[7] The Department of Justice's systematic failure to appreciate the dynamic nature of the industry led the agency to waste its time investigating IBM the same way it is pursuing Microsoft.

It is sadly ironic that Microsoft was just getting started when the Department of Justice was dropping its case against computer giant IBM. Microsoft was a small software firm no one had heard of and certainly no one feared back then. As countless computer industry entrepreneurs offer new products every day and many of the major developers collaborate to gain a competitive advantage, it is anybody's guess who will turn out to be tomorrow's king of the computer hill.

Microsoft Is Not Acting Illegally or Unfairly by Tying Products Together

The Department of Justice would like the District Court and the country to believe there is something inherently wrong and illegal about efforts by a company to tie the sale of one product to another. But in reality the practice of tying together products and services for sale within any given market happens every day. There is nothing economically inefficient or anti-competitive about it.

---

6 Michael K. Kellogg, John Thorne, and Peter Huber, *Federal Telecommunications Law* (Boston, Mass.: Little, Brown and Company, 1992), p. 48.

7 See Peter K. Pitsch, *The Innovation Age: A New Perspective on the Telecom Revolution* (Washington, D.C.: Hudson Institute and Progress and Freedom Foundation, 1996), p. 29.

It is important to refute this second argument because it has significant ramifications for the future of antitrust theory and enforcement in general. In theory, illegal tying occurs when a large producer or supplier requires a buyer to purchase one or more additional products or services along with the product it purchasing. Unfortunately for the Department of Justice, however, many antitrust experts and most economists have viewed tying arrangements as an entirely efficient, pro-consumer practice. As noted legal scholar and antitrust expert Judge Robert Bork aptly argues in his 1978 study, *The Antitrust Paradox: A Policy at War With Itself,* economic tying arrangements are used every day by companies to the benefit of consumers. Bork notes:

> Every person who sells anything imposes a tying arrangement. This is true because every product or service could be broken down into smaller components capable of being sold separately, and every seller either refuses at some point to break the product down any further or, what comes to the same thing, charges a proportionally higher price for the smaller unit. The automobile dealer who refuses to sell only the chassis or the grocer who declines to subdivide a can of pears are engaged in tying. [Antitrust] law...attempts to avoid this ridiculous conclusion by distinguishing between packages that are inherently one product and those that are inherently more than one. *But the distinction makes no sense. There is no way to state the "inherent" scope of a product.*[8] [emphasis added]

Bork adds, "A review of the cases and the economics of tying leads inescapably to the conclusion that the law in this field is unjustified and is itself inflicting harm upon consumers."[9] Likewise, antitrust expert Dominick T. Armentano, professor of economics at the University of Hartford, argues in his 1982 book, *Antitrust and Monopoly: Anatomy of a Public Policy Failure,* that:

> [I]f a group of buyers were unhappy with certain tying contracts, sellers of alternative products would enter the market to offer more favorable terms. Some alternative sellers would offer nontying terms to formerly tied buyers, and over time, a rivalrous process would be expected to purge the relatively undesirable practice from the market. If this did not occur, it must be concluded that buyers prefer such arrangements vis-à-vis other alternatives. It would certainly be incorrect and foolish to believe that buyers are victimized by a system that is voluntarily perpetuated, in the face of open market alternatives, by the very same buyer victims.[10]

The wise words of Bork and Armentano on this issue clearly show how absurd it is to think that requiring a buyer to purchase a bundled good or service is uncompetitive and illegal per se. To the contrary, consider how uncompetitive and inefficient the market would be if tying and bundling arrangements were not allowed in such lines of business as the market for home stereos in which consumers buy stereo components individually or bundled as a single unit, and often at a lower price. Judge Bork notes that the automobile industry is virtually dependent on tying arrangements, because every car purchase presents consumers with a bundled package of styles, colors, and options. Within the computer industry itself, bundling occurs whenever consumers purchase PCs for their homes or offices. Such computer hardware as the central processing unit, the monitor, modems, speakers, and printers are purchased as a single unit from a major retail outlet, although they can be

---

8 Robert H. Bork, *The Antirust Paradox: A Policy at War With Itself* (New York, N.Y.: The Free Press, 1978, 1993), pp. 378–379.

9 *Ibid.*

10 Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Public Policy Failure* (New York, N.Y.: Holmes & Meier, 1982, 1990), pp. 200–201.

purchased individually. Consumers clearly benefit from such bundling or tying arrangements—and often prefer them.

Similarly, Microsoft hardly can be accused of performing an uncompetitive, inefficient, or illegal act simply by *asking* its customers to accept the Internet Explorer with its Windows operating system. In fact, consumers are benefiting by this tying practice because they are being given a new, competing product free of charge. This factor alone shatters the underpinnings of the Department of Justice's case, because consumer welfare is enhanced by Microsoft products and services. Yet the Department of Justice claims that Microsoft simply is using its current market power to engage in "predatory pricing" of its software applications in order to drive customers from the market and raise prices in the long run. Thus, as this theory goes, Microsoft would continue to price software like Internet Explorer at zero cost, or next to zero, until it drove all competition from the market. Supposedly, then, Microsoft—as the only software provider left in the market—would raise its prices and gouge consumers continually.

Again, this fear is based on another traditional, but discredited, antitrust theory. Predatory pricing is impossible within the dynamic computer industry, just as it is in most other industries. If Microsoft seriously attempted to price all competitors out of the market in order to raise prices and recover profits lost when they gave their products away for free, then it ultimately would lose money as alternative vendors entered the market to offer cheaper substitutes. There simply is no way Microsoft could eliminate all other software entrepreneurs from the software market or force them out of business for good.

Furthermore, it is worth repeating that Microsoft in no way is attempting to restrict access by competitors to its Windows platform. To do so would be economic suicide for the company—Windows customers demand an open operating system platform upon which they can run any type of software they want. Because Windows will remain an open platform for which customers can demand and receive products by other vendors, consumer welfare will not be affected adversely by Microsoft's current business practices.

But therein lies the most disturbing part of the Department of Justice's case against Microsoft: It is not at all clear that consumer welfare is the guiding principle at work in the department's analysis. Rather, the Department of Justice's continuing efforts to micromanage the affairs and operations of the Microsoft Corporation appear to reflect the agency's greater concern for the welfare of its competitors within the software industry. In other words, the Department of Justice's case against Microsoft could be interpreted as an effort to reinvigorate the old antitrust theory that "big is bad," and to help smaller competing producers who covet the status of industry leader. Microsoft's competitors apparently have been successful in persuading the Department of Justice of the need to stop a normal business practice they do not like because it could cost them customers and profits. The reliance of the Department of Justice on such an outdated and discredited rationale for antitrust enforcement bodes poorly not only for Microsoft, but for any company that gains an advantage within an industry by offering consumers additional choices at a lower price.

CONCLUSION

Clearly, Microsoft possesses a certain degree of market power within the computer operating system sector of the software industry. This is hardly justification, however, for federal antitrust officials to intervene in a fast-paced, rapidly evolving industry and set up industrial policy for software management and development. Microsoft's products and innovations over the past decade have benefited computer users greatly. And although many of their competitors are, understandably, unhappy about this situation, it does not follow that Microsoft should be punished for this success.

Most disturbing, the Department of Justice's actions against Microsoft represent a newfound willingness of federal regulators to interfere in the dynamic and rapidly evolving computer marketplace. The problem with this new approach is explained admirably by American Enterprise Institute scholar J. Gregory Sidak:

> The government's crusade against Microsoft reveals a stunning lack of humility that in turn indicates a subtle change in the orientation of antitrust policy. The government's multiple cases against Microsoft suggest a tendency to use the consent decree process to establish the Antitrust Division as an ad hoc regulatory agency having jurisdiction over the development of software for personal computers. In effect, this would-be Federal Software Commission could require that Microsoft secure prior approval of every significant strategic endeavor....
>
> The requirement of prior approval in the consent decree process destroys the element of surprise as a tool of competitive rivalry. It makes a competitive industry resemble a regulated industry in which a regulatory commission must issue a certificate of public convenience and necessity before a firm may offer a new service or enter the market. In this respect it is paradoxical that while the telecommunications industry is moving from heavy-handed regulation to competition...the Antitrust Division is seeking to impose on Microsoft a regulatory regime that more resembles the one Congress scrapped for telecommunications in 1996.[11]

Many other scholars and media sources of varying orientations agree with this summation and have voiced their opposition to the inquisition of the Microsoft Corporation. Members of Congress should heed these warnings and reject calls by Microsoft's competitors and their backers in the Department of Justice to punish an innovative company simply because it has been so successful.

Punishing Microsoft for its success is a ridiculous use of antitrust law and a dangerous precedent for the future. Congress should communicate its dissatisfaction with the Department of Justice with regard to the Microsoft case. And Congress should consider scaling back the powers of the Antitrust Division at the Department of Justice while simultaneously initiating a comprehensive review of existing antitrust statutes to ensure they cannot be used in such anti-competitive ways in the future.

---

11 J. Gregory Sidak, "Antitrust and the Federal Software Commission," *Jobs & Capital,* Vol. VI (Winter 1997), pp. 20–21.

APPENDIX:
WHAT THE EXPERTS ARE SAYING ABOUT THE DEPARTMENT OF JUSTICE'S ONGOING MICROSOFT INQUISITION

FROM NEWSPAPER EDITORIAL BOARDS AND MAGAZINES

The Chicago Tribune:

> [I]t's hard to see how adding a web browser to Windows is unfair to competitors, since nothing is keeping manufacturers from offering customers other browsers as well.... The truth is that Microsoft has become an overwhelmingly dominant player in the highly competitive operating systems market because it developed the most desirable product and continues to build on that success with innovation and imagination. The government would be foolhardy to try to put the brakes on that kind of success simply because it is, well, so successful.[12]

The Wall Street Journal:

> [A]t the end of the day, we'd say technology and free markets are working out pretty well. Probably the least pressing problem facing the people in Washington is how to make this aspect of our system work better.... Microsoft's success is evident, so naturally its competitors want Microsoft held down while they nibble at its business. Standing ready to help in Washington are the serried ranks of antitrust bureaucrats and headline-hunting politicians, waving the inarticulate prejudices of the antitrust laws and offering their services.... Microsoft is where the money is, so Microsoft is the target. It's just too bad that so many $400-an-hour brains can't be engaged in solving real problems instead.[13]

The Washington Times:

> Microsoft...has done as much as any company to expand access to the information network known as the Internet and at steadily falling prices.... Consumers should get the message: They have far more to lose at the hands of the Justice Department than they do from Microsoft.[14]

The Economist:

> [T]he advantages for consumers of a single operating standard in the complex computer-software market is such that nobody seriously suggests that Microsoft's monopoly should be broken up. This is all the more so because Microsoft has kept the price of Windows low—it represents less than 5% of the cost of a new PC—and has constantly improved it.... Nor is it obvious that Microsoft has breached the 1995 settlement. At the time, the firm fought hard to keep open the right to make "integrated" products that enhanced Windows. And whatever the legal case for arguing that the browser is currently distinct from the operating system, these pieces

---

12 "When Is Success Too Successful?" *The Chicago Tribune,* October 23, 1997.

13 "On Pestering Microsoft," *The Wall Street Journal,* October 22, 1997, p. A22.

14 "Open Windows," *The Washington Times,* October 22, 1997, p. A16.

of software are well on the way to being integrated, and will be entirely so in next year's new Windows operating system.[15]

The Detroit News:

> [A]s an antitrust action, [the Department of Justice's case] is a colossal waste of taxpayer's money and an abuse of government powers.... Microsoft appears only to be guilty of benefiting consumers by offering more technology at a lower price.... So weak a case suggests ulterior motives at play. Perhaps Ms. Reno believes acting tough against Microsoft can blunt embarrassing disclosures about the lapses in her investigation of Democratic fund-raising improprieties.... Ms. Reno would do a lot better to dedicate the appreciable resources of the Justice Department to real problems—illegal fund-raising, for example—rather than trying to make villains of capitalist heroes.

FROM THE ACADEMIC COMMUNITY, COLUMNISTS, ANTITRUST EXPERTS, AND PUBLIC POLICY RESEARCH ORGANIZATIONS

Clyde Wayne Crews, fellow in regulatory studies, Competitive Enterprise Institute:

> The Justice Department's complaint is that Microsoft requires computer manufacturers to bundle Internet Explorer 4.0, the World Wide Web browser, with the Windows 95 operating system. So? Products have been bundled at least since the toy surprise inside Cracker Jacks. Reviews consistently show Internet Explorer 4.0 to be a superb product, free to grateful consumers who retain their option to download competing products.[16]

Charles Rule, former assistant U.S. attorney general for antitrust:

> The department reacted, maybe overreacted, to what was perceived as a threat to their institutional manhood.... As a result of that, they had to make it appear they were going to be real tough on old Microsoft.[17]

> Every generation there has been some company or group of companies, that have succeeded wildly, that have been synonymous with power, growth and success, and they tend to be the companies subjected to a disproportionate amount of antitrust scrutiny and attack.[18]

Tibor Machan, Distinguished Fellow, Chapman University:

> Here we go again. About 25 years ago, it was IBM. Now it's Microsoft. The Justice Department just needs to have its bogeyman! Any firm that is very successful in making itself appealing to millions of customers stands a good chance of getting nailed. Never mind that there is nothing to worry about with Microsoft, as there was nothing to worry about other companies that played by the rules of the free

---

15 "Taming Bill Gates," *The Economist,* October 25, 1997, p. 20.

16 Clyde W. Crews, "Microsoft Is Being Punished for Its Success," *The New York Times,* October 24, 1997.

17 Quoted in Michele Matassa Flores and James V. Grimaldi, "U.S. Officials Contend Microsoft Has Crossed a Fine Line," *The Seattle Times,* October 21, 1997.

18 Quoted in Cynthia Flash, "Experts Say Justice Won't Get Far with Its Microsoft Case," *The News Tribune,* October 22, 1997.

market. If a firm does not steal from or defraud others, if it pays the wage it agreed to pay, if it practices no industrial espionage, government has no business interfering with its operations.[19]

Bruce Bartlett, nationally syndicated columnist:

> Supporters of the antitrust laws would have us believe their only goal is to protect the consumer, but in reality, their concern is that bigness per se is bad. Over the years, many of the most important antitrust cases were brought against corporations where there was no evidence of monopoly pricing or any other action that was injurious to consumers. They were brought simply because a company's market share was considered too large.
>
> However, economists generally have failed to find any adverse economic consequences even when a single company dominates a particular market.... Looking only at a company's market share today tells us almost nothing about what will happen in the future.... The Microsoft case is just the last dying gasp of a legal dinosaur.[20]

Brit Hume, contributing editor, *Fox News:*

> [Microsoft's] domination of the personal computer desktop is seriously threatened.... The Justice Department's claim that Microsoft is using its dominance in operating systems to stuff a separate Microsoft program down the throats of computer vendors and users misses the point. Microsoft is desperately trying to keep its operating system from becoming irrelevant.[21]

David Bank, staff reporter, *The Wall Street Journal:*

> [T]his fight promises to be harder than other classic antitrust efforts to bust up "bundled" products. In software, features blend so seamlessly into one another that it's difficult to say just what's bundled with what. Indeed, Windows has dozens of features that once looked like distinct software products but now make up one indistinguishable sea of bits.[22]

Jim Balderston, analyst for Zona Research:

> We think when the rest of the industry really looks at this decision, they are going to be very, very afraid.... If the DOJ [Department of Justice] can do this to Microsoft, what's to stop them from dictating software development for anyone else in the industry?[23]

---

19 Tibor Machan, "Microsoft and Nanny Reno," *The Washington Times,* October 23, 1997.
20 Bruce Bartlett, "Microsoft Ensnared in a Political Web," *The Washington Times,* October 30, 1997.
21 Brit Hume, "Justice Takes on Microsoft," *The Weekly Standard,* November 10, 1997, p. 15.
22 David Bank, "Why Software and Antitrust Law Make an Uneasy Mix," *The Wall Street Journal,* October 22, 1997.
23 Quoted in Tom Quinlan, "Microsoft Rivals Fear Feds May Regulate Their Software, Too," *San Jose Mercury News,* October 22, 1997.

Richard Seifert, intellectual property and antitrust attorney based in Seattle, Washington:

> [The Department of Justice has] got a tough case because there's nothing wrong with success, even phenomenal success, and Microsoft has gotten where it is by selling products that people want.... It looks like it's not driven by what consumers want, but by political considerations in D.C. that come from Microsoft competitors who'd like to see Microsoft be less successful.[24]

---

24 Quoted in Cynthia Flash, "Experts Say Justice Won't Get Far with Its Microsoft Case," *op. cit.*