

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: February 15, 2002
Status Conference

DECLARATION OF RENATA B. HESSE

I, Renata B. Hesse, hereby make the following declaration in support of the United States' Motion for Leave of Court to Adopt an Alternative Procedure for Comment Publication:

1. I am providing this declaration based on my personal knowledge and on information obtained in the course of my employment. If called as a witness, I could competently testify to the facts set forth herein.

2. I am an attorney in the Antitrust Division of the United States Department of Justice, and I am one of the attorneys representing the United States in the above-captioned litigation. As part of my responsibilities in this case, I have been supervising the handling and review of the public comments submitted to the United States regarding the Revised Proposed Final Judgment ("RPFJ"). I also have been supervising ongoing discussions with personnel in the Antitrust Division's Information Systems Support Group, including personnel responsible for the Division's Internet website, regarding possible Internet- and CD-ROM-based alternative methods of publishing the comments that the United States has received in this matter.

3. To provide easy and widespread public access to the comments received by the United States, and to the United States' response to those comments, the United States has developed the proposed procedures described below. These proposed procedures are based on our current estimates of the volume, length, and nature of the comments and the steps required to accomplish each element of the procedures.

4. Of the over 30,000 comments received by the United States between November 5, 2001, and January 28, 2002, the United States proposes to publish, in the ways described below, all of them except for duplicate copies of comments submitted by the same person and a relatively small number of comments clearly unrelated to the RPFJ, the *Microsoft* case in general, or the parties to this action (*e.g.*, submissions that are advertisements or pornography). Out of an abundance of caution, the United States will publish the remaining unrelated comments – specifically, comments that were sent to the address for comments on the RPFJ or that refer to the RPFJ in their subject line but which discuss only the proposed settlement of the private, class-action litigation against Microsoft, and not the RPFJ.

Public Notice of the Alternative Procedures

5. As soon as possible after the Court approves an alternative publication procedure, the United States proposes to issue a press release containing a notice that describes the alternative procedure and the availability of the public comments and provides a telephone number, mailing address, and Internet website address the public can use to obtain detailed instructions for viewing, downloading or otherwise obtaining a copy of those comments. We also will publish that notice in the *Federal Register*; in the *Washington Post*, the *San Jose Mercury News*, and the *New York Times* (publication once a week for two weeks); and on the Department of Justice's Antitrust Division website. We will be unable to publish these notices,

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however, until the Court approves an alternative procedure.

Alternative Publication and Posting of the Comments on the Internet

6. As soon as possible after February 27, 2002, the United States will publish in the *Federal Register* a list of the public comments described in ¶ 4, above. We propose to arrange the list alphabetically by the name of the person or entity that submitted it (as such information is contained in the comment), the number of pages of the comment, and a unique identifier number. This publication will also include a separate index that indicates which of the following categories best describes each comment:

- Comments that, although they were sent to the address for comments on the RPFJ or refer to the RPFJ in their subject line, are essentially unrelated to the RPFJ or to *United States v. Microsoft* generally (except for duplicate copies of comments submitted by the same person and a relatively small number of comments clearly unrelated to the RPFJ, the *Microsoft* case in general, or the parties to this action, which will not be listed or published);
- comments that do not relate to the RPFJ but do relate to the *Microsoft* case in general;
- comments that express an overall view of the RPFJ, but do not contain any further discussion of it. These comments do not, for example, attempt to analyze the substance of the RPFJ, do not address any of its specific provisions, and do not describe any particular strengths or shortcomings of it;
- comments that express an overall view of the RPFJ and offer a limited degree of substantive discussion of it;
- comments that express an overall view of the RPFJ and provide a greater degree of

analysis or discussion of it than comments in the previous category; and
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- a relatively small number of comments, approximately 45, that are particularly focused or detailed in their discussion or analysis of issues concerning the RPFJ (“detailed comments”).

Finally, as part of this notice, we will repeat the portions of the previous *Federal Register* notice that provide the public with a telephone number, address, and website address for obtaining detailed instructions for viewing, downloading, or otherwise obtaining a copy of the full text of the comments.

7. At the same time and as part of the same *Federal Register* publication, the United States’ will publish its Response to the public comments. Based on our discussions with personnel of the *Register*, we anticipate that publication of the list described in ¶ 6 and the Response to comments should occur within approximately two weeks of February 27, 2002.

8. On or before February 27, 2002, we propose to post on the Department of Justice’s Antitrust Division website the full text of all the comments identified in the *Federal Register* notice above. Each comment will be easily accessible by the unique identifier number associated with it in the *Federal Register*, and the comments will be text searchable both individually and as a complete group (though the group-search capability may, for technical reasons, not be available until a short time after February 27). We will include on the website the index that will be published in the *Federal Register* that identifies the category (*see* ¶ 6 above) into which each comment falls. However, we will be unable, because of the extensive time and effort that would be required, to provide hyperlinks from the category index to each of the 30,000-plus comments.

9. The website also will contain a link that will permit interested members of the public to download a compressed file, such as a “Zip” file, that contains the full text of all the

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comments.

10. On or before February 27, 2002, we will post on the Antitrust Division website the full text of the United States' Response to the public comments, as well as our motion for entry of the RPFJ, our memorandum in support, and any other supporting papers. We also will post on the Antitrust Division website a version of the United States' Response that contains hyperlinks from each of its various subject areas to the portions of the detailed comments to which it is responding. However, because of the additional time required to create the hyperlinks, it is unlikely we will be able to complete the hyperlinked version by February 27. Instead, we propose to post it to the website as soon thereafter as possible, but in any event no later than March 2, 2002.

Distribution of CD-ROMs Containing All the Public Comments

11. To further assure the public's access to the comments, we will provide, at cost, to anyone who requests it, a CD-ROM or, if necessary for space reasons, a set of CD-ROMs, that contains the full text of all the comments identified in the *Federal Register* notice described in ¶ 6 above. The CD-ROM(s) will permit members of the public to access the comments using the unique identifier number described in ¶ 6, or using a list of substantive issues raised by the comments, as well as to search the full text of the groups of comments.

12. Finally, to provide an additional means for the public to access the comments – this one without any cost to individuals – the United States proposes to develop a procedure to distribute, free of charge, a certain number of the CD-ROMs containing all the comments, described in ¶ 11 above, to libraries in each state and the District of Columbia. We are currently working and consulting to determine what mechanism will permit us most efficiently to accomplish this distribution as soon after February 27, 2002, as possible.

Filing of the Comments and the United States' Response With the Court

13. On or before February 27, 2002, the United States will file with the Court all of the public comments identified in the *Federal Register* notice described in ¶ 6 above. The comments will be submitted to the Court in the form of the CD-ROM(s) described in ¶ 11 above and will be filed with the Clerk in a form determined through discussions with Court technical personnel. We anticipate that we already will have provided to the Court, on or before February 15, 2002, both paper and electronic copies of the approximately 45 “detailed comments” and posted those comments on the Antitrust Division website. (In order to make these materials available to the Court as quickly as possible, we propose to submit on CD-ROM and post on our website non-text, “PDF” versions of those detailed comments first, and then replace them with a revised CD and website containing searchable, “text” versions as soon as our IT staff is able, but no later than February 18, 2002.)

14. On or before February 27, 2002, the United States will file with the Court its Response to public comments. We propose also to submit to the Court a version of that Response on CD-ROM(s) that contains hyperlinks from each of its various subject areas to the portions of the detailed comments to which it is responding. We will make every effort to complete and submit that version by February 27, but ultimately we may require a small amount of additional time to complete the hyperlinks. In any event, we propose to submit the hyperlinked version no later than March 1, 2002.

Effectiveness of Posting on the Antitrust Division's Website

15. Recent experience indicates that posting of the public comments on the Antitrust Division's website will be a particularly effective way to make the comments accessible to the public. For example, of the more than 30,000 public comments received that purport to address the RPFJ, between 90% and 95% were submitted to the Antitrust Division via e-mail. In addition, the page of the Antitrust Division website devoted to information concerning the RPFJ, *see* <<http://www.usdoj.gov/atr/cases/ms-settle.htm>>, was typically one of the most frequently requested web pages on the Antitrust Division website, averaging about 3,000 hits per week in the 12 weeks from November 19, 2001, through February 4, 2002.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 12, 2002.

Renata B. Hesse