
1. Background:

The Microsoft Corporation is currently facing an antitrust lawsuit brought against it by the US government in May 1998, and is expected to reach a resolution soon. The Department of Justice (DOJ) is accusing Microsoft of anti-competitive business practices, claiming that the company illegally used its market power to try to destroy competition in the software industry, its using the market dominance of WINDOWS to gain an unfair advantage in providing Internet access. The Lawsuit charges Microsoft with violating the Sherman Anti-Trust Act, which defines that if companies have to compete with each other, they will be forced to offer the best products at the lowest possible prices to attract customers. The lawsuit centers on two main issues relating to control of the World Wide Web. The first is the practice of wrapping its browser software, Internet Explorer, with its WINDOWS operating system, thus effectively shutting out the main competitor, Netscape Navigator. In addition, Microsoft is accused of applying pressure on America Online to prevent the promotion of the Netscape browser on its platform. Microsoft's other partnerships were further soured with Intel and Compaq claiming that Microsoft bullied them out of the software business by pressuring PC makers to not use its rivals' software. In the opening months of the trial, government prosecutors produced evidence of Microsoft's tactics against competitors.

2. Identification of the Issue:

The DOJ lawsuit is centered on the issue of Microsoft's violation of U.S. anti-trust law. The outcome of the antitrust case is of vital importance to the management of Microsoft for several reasons. If Microsoft loses the lawsuit, the DOJ may try to break the company into 3 operating units, by separating WINDOWS from Microsoft's software and its Internet developments. Alternatively, it may demand that Microsoft license WINDOWS to its rivals, making the operating system into public property. "The outcome could shape not only the future of the computer industry, but of many other aspects of American life into the next century." The market implication is that ninety percent of the world's personal computers use Microsoft's WINDOWS operating system and Microsoft would probably lose its ongoing competitive edge and market share to its competitors. There also exist non-market implications arising from a possible loss of the lawsuit by Microsoft and a conclusion by the Court that Microsoft's previous practices were illegal and therefore subject to penalties. Microsoft will have to temper some of its practices since under the Law, monopolies answer to a different set of rules compared to others. The failure will also make it much easier for competitors to sue the company. Neither of these things can possibly be beneficial for the company's stock. Hence the issue has won much consideration from the top management of Microsoft.

3. Analysis of the Issue:

The issue can be traced back to 1990, when the Federal Trade Commission (FTC) began an investigation of Microsoft's competitive practices resulting in a consent decree and Microsoft imposing modest changes in its marketing practices. Since the DOJ began its lawsuit last May, Microsoft and the DOJ have remained at loggerheads and several interest groups like Netscape, Sun, Intel and Compaq have become involved. Thus the government has expanded its case from a narrow dispute over Internet browsers to a broad assault on the company's business practices. With the issue now being considered by the Judiciary it has shifted from phase 2 (*Interest group formation*) to phase 3 (*Legislation*) according to the Life Cycle theory of issue.

❖ *Interests Analysis:*

As shown in Appendix 1, the primary beneficiaries from the lawsuit are the main software competitors like Netscape and Sun Microsystems, other software rivals like Oracle and PC makers (Intel and Compaq), who would have a better chance to compete with the broken-up Microsoft. Since these benefits

are concentrated, Microsoft should give priority to them in handling the issue. The benefits from opposing political action are undoubtedly concentrated on Microsoft itself and its 15,000 employees, the nature of politics, according to Wilson, takes the form of *Interest Group Politics*. However, the interests are also widely distributed among Microsoft's consumers, its partners, PC makers, its worldwide stakeholders, Wall Street big brokers and etc, though they may not perceive whether they have been bullied by the monopoly power or benefit from it. Thus it is possible to gain support from these groups so as to gain more power or even change the nature of Politics. Actually, some of its partners (Intel), who benefited from the so-called non-competitive agreements, are potential supporters of Microsoft, though they expressed some complaints or claims about Microsoft's business practices. Special priority should also be given to these groups as they could become the powerful coalition of Microsoft. Such institutions as DOJ, the courts, the local governments, the federal government and the media also deserve high salience since their critical role on the final decision and distribution of the issue (as illustrated in recommendations).

✧ *Stakeholders Analysis*

From the stakeholders' map in appendix 2, AOL-Netscape, Intel, Compaq and some other stakeholders are both powerful and legitimate. Their powerful influence in the firm is assured as their shares make it possible for them to control or have a hand in the management of the company. Based on the normal business practices principle, they also have the legitimacy. By possessing power with legitimacy, they form the "dominant" coalition, as defined as "dominant stakeholders". The government (including some local governments, the DOJ, and the federal government) here is also a dominant stakeholder and should be given importance as they wield great power in the political arena. The DOJ's antitrust lawsuit has engendered a sense of urgency. On the one hand, Microsoft's rivals are losing their market share and can be expected to support the DOJ; on the other hand, the DOJ has already collected lots of evidence about Microsoft's non-competition practices. Once the above dominant stakeholders come to a coalition against Microsoft, the most common occurrence is the movement of a dominant stakeholder into the "definitive" category, a coalition with power, legitimacy and urgency. Managers of Microsoft should have a clear and immediate mandate to attend to and give priority to those claims.

✧ *Alternatives Analysis*

America's antitrust laws are highly ambiguous. They create offenses for which there are no clear-cut definitions for such terms as "unfair competition" and "intent to monopolize". It is impossible for a company to know what the antitrust laws outlaw, until a judge issues a verdict. So this problem can be interpreted in a variety ways with Mahon and McGowan's Framework as shown in Appendix 3.

The hi-tech software industry is a very different industry compared to other industries and it is difficult to apply regular business principles to this field. It changes so rapidly that even a 90 percent share of the market can disappear overnight. "All it takes is a smart competitor with a better idea." Some economists have asserted that Microsoft's WINDOWS is not a monopoly because rivals don't face a substantial barrier to entering the market. Even a company with Microsoft's high market share can't be tagged as a monopoly in dynamically competitive markets, especially those involving intellectual capital. The Internet's low costs, accessibility, and still newly developing features, such as e-commerce and business-to-business brands, can provide potentially intensive competition. Factors such as the recent merger of Netscape with America Online and other deals viz. At Home buying Excite, and Lucent acquiring Ascend Communications, prove that Microsoft's dominant position remains at best vulnerable to competition since these new alliances pose formidable threats to Microsoft's dominance. Therefore Microsoft could choose partners, such as big PC makers, ISPs and ICPs to form a powerful interest coalition. Chairman Larry Ellison of Oracle, the nation's second-largest software company, thinks the growth of the Internet will eclipse personal computing, giving "Oracle a chance to do the unthinkable, to dethrone Microsoft, ..." Such comments would seem to support Microsoft's position in the trial and would also prove that it is

possible to unite those partners on the basis of common benefits. This means that Microsoft would have to sacrifice some interests to achieve a coalition.

The comment "giving consumers a better product is not really a monopoly" is a telling one. Just as a top Compaq Computer Corporation executive stated, Microsoft's commitment to "open, industry-standard computing" has made computers cheaper, easier to use and more reliable. Consumers like the built-in Internet access provided by Windows, and adding Internet features to the operating system was a natural product evolution. Just as most PCs now contain built-in telephone modems. The company's software developers are like authors, and they have a right to prevent their work from being altered by PC makers, who are likened to booksellers.

4. Microsoft's Non-market Issue Agenda:

Microsoft has executed a clear defense strategy: ie. that they legally innovated to benefit consumers. Its argument is that its conduct reflects healthy competitive behavior which resulted in better products and lower prices. Microsoft also spent lots of money supporting some political elections, but unfortunately its partners were defeated. It appears that Microsoft Corp. has been doing poorly in its antitrust battle against the DOJ. Witness after witness in the trial has sworn that the software giant abused its near-monopoly over the PC's most essential software, the operating system, to bully customers and partners and to strangle competitors.

5. Recommendations:

Microsoft is already being hurt by the trial. Its reputation is being damaged by the daily revelations of acts that are unseemly, even if they are ultimately ruled to be legal. Rivals that had previously cowered in the face of Microsoft's power are beginning to feel emboldened. Its troubles could be attributed to its inflexibility in monopolization, poor public relations, tactical errors, and a brash attitude on a few occasions, which appears to have irritated the federal judge and led to a spate of negative publicity.

Antitrust policy has broad implications for management. Firms must conform to the law, but in many cases and for many practices, there is a considerable gray area in which the requirements of the law are unclear. Additionally, since antitrust law is in constant evolution, a practice that once was allowable under the law may no longer be allowed.

The strategies of Microsoft should focus on influencing the legislature or the court system. To this end lobbying is the most effective approach. However while proposing compromises, Microsoft unfortunately spent much money backing the losers in political elections. The top managers should recognize how and when to use its public relations strategies to target governmental agencies and society as allies in its competitive contests. Microsoft should make the right political decisions, which means it should choose better political partners to support. If not, it should at least not oppose them.

In order to build a better nationwide reputation in handling the issue, Microsoft should develop or improve relationships with the new media based on mutual respect and honest exchange. It would be easier for Microsoft to build a good relationship with business journals. But to handle non-marketing issue, the relationships with the television and newspaper are especially important. Microsoft's bad reputation from the lawsuit should partly be accounted for by its improper relationships with the media.

Additionally, it should use the media to actively call on its nation-wide customers to stand on its side. Most of its customers cannot positively perceive their interests in this issue and Microsoft has to identify it for them. In fact many organizations (e.g. Committee for the Moral Defense of Microsoft) are attempting to mobilize people to stand against the political action.