

A.1. Summary of the complaint

A.1.1. Overview

1. Microsoft is abusing its overwhelmingly dominant positions on the markets for PC operating systems, browsers and personal productivity applications (PPAs) in violation of Article 82 of the EC Treaty through a variety of anti-competitive behaviours, including in particular:

- Bundling multiple software products with the Windows operating system;
- Biasing the user interface and operation of Windows XP and the products bundled with Windows to advantage Microsoft's own software and services;
- Imposing Microsoft proprietary technologies, protocols and formats;
- Employing abusive licensing and other exclusionary practices vis-à-vis PC OEMs to foreclose the PC OEM distribution channel to competing products; and
- Refusing to disclose the document formats for the programs in Microsoft's Office suite of personal productivity applications.

2. Microsoft's abusive behaviour designed into or accompanying Windows XP serves *both* to protect its superdominant position for desktop operating systems and its related superdominant positions for PPAs and browsers, *as well as* to leverage those superdominant positions into markets where it has not yet achieved such dominance, including:

- the market for media player software;
- the market for email client software;
- the markets for instant messaging software and services;
- the markets for server operating system software;
- the markets for server applications (notably, mail server and collaboration software and media server software);
- the market for authentication software;
- the markets for multi-media content/management software (including digital rights management software);
- the markets for consumer Internet portals and Internet advertising;

- the markets for handheld computing device operating systems and applications software;
- the markets for smart phone operating systems and applications software; and
- the markets for software for various other non-PC devices such as game consoles and set-top boxes.

3. The forms of Microsoft's abusive conduct are often closely interrelated, and their market foreclosure effects in many instances reinforce each other. The effectiveness of Microsoft's anti-competitive behaviours in preserving Microsoft's existing desktop dominance and in leveraging that dominance into related markets can only truly be understood if these behaviours and their exclusionary impact are viewed as a whole, rather than examined in isolation from each other.

A.1.2. Key characteristics of the software markets involved

4. Microsoft's anti-competitive behaviour exploits two key characteristics of software markets:

- *Software markets are subject to very strong direct and indirect network effects.* The more users who use a software platform, the more likely it is a) other users will obtain the same software to be able to interact effectively with the greatest number of other users, and b) developers will write new applications for that software platform rather than alternative platforms with a smaller user base. Dominant market players can manipulate these network effects to preserve and expand their dominance.
- *Strong interdependencies exist between the markets for different software products.* Users need to use numerous devices and programs together and to exchange information between them, as well as to connect various types of computing devices and software in a network. Thus, for example, PC operating system software must work together with PC applications software, which in turn must work together in a network with server operating systems and applications, all of which need to interact in today's interconnected world with operating systems and applications software for

other devices such as handheld computing devices and smart phones.

5. These characteristics greatly enhance Microsoft's ability to foreclose competition and leverage its desktop monopolies into markets where it has not yet achieved a dominant position, and they aggravate the negative effects of Microsoft's anti-competitive conduct. Microsoft's Windows XP exploits these characteristics of the software industry more than any previous version of the Windows operating system.

A.1.3. Microsoft has monopoly market power in the critical desktop software markets

6. Microsoft has enduring and dominant positions on the markets for technologies of primary importance to computing, software, and the Internet. Those positions are bolstered by the direct and indirect network effects that apply in software markets. In particular, the "applications barrier to entry" (a powerful indirect network effect) insulates the dominance of operating systems and other platform software from competition.

7. On the market where Microsoft's anti-competitive behaviour originates, desktop computer operating systems, Microsoft's market power is truly massive. Microsoft occupies a position of overwhelming dominance approaching a total monopoly on the market for PC operating systems, with over 93 percent market share — a degree of market power that must be characterised as "superdominance" and that in economic reality gives Microsoft the same degree of market power as would a total monopoly. Microsoft's position on these markets continues to grow, coming ever closer to the 100 percent limit. This dominance has persisted for at least ten years, and no serious threat to Microsoft's power on the market for desktop operating systems exists or is likely to emerge. Apple, the second largest player on the market, has a (diminishing) market share of less than 5 percent, while Linux, often touted by Microsoft as a major threat, has had at best only limited success on the *server* markets and has no visible presence on the desktop. Indeed, the various threats to which Microsoft has pointed in the past several years either have failed to develop or were suppressed by Microsoft's anti-competitive conduct.

8. In addition to its superdominant position in desktop operating systems, Microsoft holds such positions on the markets for PPAs (“Microsoft Office,” over 90 percent) and browsers (“Internet Explorer,” 96 percent). Microsoft’s three superdominant positions reinforce each other, permitting Microsoft an unprecedented freedom from constraint by competition. In particular, because PPA suites are among the few applications that most individuals use most of the time, Microsoft’s superdominance in that market provides it with a large degree of control over the applications barrier to entry in the PC operating systems market, Microsoft’s original (and still central) monopoly. If users already own a Windows PPA suite, they are unlikely to switch to an alternative operating system, because this would mean they would need to obtain new versions of the PPA for another operating system. The pervasiveness of Windows applications, including the Microsoft Office PPAs and browsers, thus reinforces demand for Windows. The installed base of Microsoft PPA and browser users therefore represents a virtually insurmountable applications barrier to entry for potential new entrants to the desktop operating system market.

9. In addition to the monopoly positions described above, Microsoft, through prior and persistent anti-competitive behaviour, aspects of which are detailed in the European Commission’s Statement of Objections in its Windows 2000 investigation, is rapidly expanding its dominant position on the market for workgroup server operating systems. Indeed, Microsoft is rapidly approaching dominance even if the market were (incorrectly) defined to include *all* server operating systems (as opposed to workgroup server operating systems). Microsoft’s dominant position in the work group server operating system market reinforces its dominant position on the market for desktop operating systems, as the privileged connection between Microsoft clients and servers drive the adoption of Microsoft client software for use with Microsoft server software (and vice versa).

10. Microsoft’s extraordinary financial performance and pricing behaviour provide powerful evidence of its dominance. In particular, Microsoft’s

exceptional freedom from competition is apparent in its 80 percent profit margins for both operating systems and personal productivity applications.

A.1.4. Microsoft abuses its dominant positions in multiple ways in Windows XP

11. Microsoft's strategies to protect and extend its dominant positions reach a new level with Windows XP, and infringe Article 82 by abusing Microsoft's dominant positions in many different ways.

A.1.4.a. Bundling products in violation of Article 82 of the EC Treaty, including Article 82(b) and Article 82(d)

12. Microsoft bundles an extraordinary array of products with Windows XP. They include:

- Internet Explorer (browser);
- MSN Explorer (browser);
- Windows Media Player (media player);
- Windows Messenger (instant messaging client);
- Outlook Express (e-mail client); and
- Windows Movie Maker (video editor).

13. Moreover, Microsoft employs several tactics to enhance the anti-competitive effects of this bundling. In particular, to ensure presence on the PC, Microsoft makes it impossible, or nearly impossible, to *remove* the bundled products. The Add/Remove or similar utility may remove only the icon, not the underlying software, which is a meaningless modification in competitive terms. In addition, designed-in interdependencies among Microsoft products override users' efforts to make choices of non-Microsoft products at several junctures.

14. The Commission and the courts have long recognised that Article 82(d) forbids tying or bundling of a dominant product with another product, and Microsoft's pervasive bundling of software products into Windows XP infringes Article 82(d). Microsoft's bundling also infringes Article 82(b), because it limits the development of markets and of innovation.

15. The effects of Microsoft's bundling of products with its PC operating system are especially pernicious because of the extraordinary level of dominance of Windows, and because Windows is the world's uniquely ubiquitous distribution system for client software. Because OEMs must include a Microsoft Windows operating system on nearly every new PC, and because Microsoft makes available only the entire Windows XP bundle of products, every new PC must contain every product in that bundle. And because the installed base of PCs turns over within a few years, soon nearly every PC in the world will run every product in that bundle, thereby giving maximum direct network effects to those bundled products.

16. Bundling leads to a welfare loss to consumers, because they are forced to buy the bundled product as part of the monopoly Microsoft operating system, and do not have the opportunity to choose instead an alternative product from another vendor. But the effects for consumers of Microsoft's bundling are even worse than this: experience shows that once Microsoft bundles an application with its monopoly desktop operating system, competitors rapidly lose the ability to compete by providing alternatives to the bundled applications. Existing competitors cease investing in competing products and potential new competitors refrain from entering the market for the bundled program. Thus, innovation in such markets evaporates, as both actual and potential competitors refrain from investing in markets for products Microsoft has bundled with its monopoly operating system. In short, by bundling programs with its monopoly operating systems, Microsoft virtually guarantees that effective competition will be eliminated from the market for the bundled program and that consumers will be denied the many benefits of competition in that market.

17. The best example of the effects of Microsoft's bundling is Internet Explorer. As was well documented in the U.S. antitrust case against Microsoft, Netscape pioneered in the browser market with its Navigator browser. Microsoft, realising the threat Netscape's browser presented to its desktop operating system monopoly, reacted by, *inter alia*, bundling its own browser (Internet Explorer) with its monopoly operating system. As a result,

Microsoft's browser market share rose from 7 percent in 1996 to 55 percent in early 1999 (and 96 percent today), and effective competition in this market was eliminated. Today, this same pattern is being repeated with Windows Media Player, Windows Messenger and other applications bundled into Windows.

18. Moreover, most of the products bundled into Windows XP constitute "intermediate platform software," that is, software (such as browsers and media players) that both runs on top of an operating system *and* itself exposes applications programming interfaces for the development of other applications. Such products, if not controlled by Microsoft, might present a challenge to the dominance of Windows because they can provide alternative platforms upon which applications can be developed and run, and hence might breach the applications barrier to entry. But by bundling such intermediate platform software into its monopoly Windows XP product, Microsoft rapidly achieves ubiquity in the market for such platforms, and thus the ubiquity of the application programming interfaces ("APIs") exposed by such platforms. This ubiquity draws independent software developers to develop applications for Microsoft's bundled platforms before they develop applications for any other platforms, and indeed eventually exclusively for such platforms. As in the case of Netscape's Navigator browser, this diversion of independent software developers to the Microsoft platform — and the resulting lack of applications for other platforms — eventually eliminates the viability of alternative platforms.

19. In short, bundling achieves practical exclusivity for products bundled with superdominant Microsoft products (thereby ensuring that any new "killer" application is brought within Microsoft's own stable of dominant products), and it rapidly eliminates the platform threat from any software that provides functionality that is similar to a bundled product. Microsoft thus abuses its superdominant position in PC operating systems both to preserve that dominance and to leverage that dominance into new markets, including for example markets for e-mail and collaboration server software, digital rights

management software and handheld computing device and smart phone software.

A.1.4.b. Biasing the user interface and operation of Windows XP and the products bundled with Windows to advantage Microsoft's own software and services, in violation of Article 82 of the EC Treaty, including Article 82(b)

20. The Windows XP operating system and the programs bundled with it have been designed to incorporate strong screen and operational bias in order to drive the adoption and use of other Microsoft programs and services. The primary means through which Microsoft achieves this bias is the layout and operation of the Windows and Internet Explorer graphical user interface. Microsoft can curtail competition in a market unilaterally, simply by the way it configures the Windows desktop or Internet Explorer.

21. To take just a few examples, Windows Messenger and Windows Media Player receive favoured placement on the Windows Start Menu and on the toolbars for Internet Explorer and MSN Explorer. Windows Messenger loads whenever Windows launches. Mistyped Internet addresses bring up MSN Search. Neither Windows Messenger nor MSN Explorer can be used without opening a .NET Passport account and employing it with each use of the application. And MSN Explorer essentially incorporates consumer Internet portal functionality into a browser, with an unalterable home page (MSN.com) and a host of Microsoft software and service links built into it.

22. In each of these examples, Microsoft has designed the user interface and operation of its monopoly products in ways that drive users towards other Microsoft products and services. Competitors can neither match nor emulate the effectiveness of such biasing, because its success depends entirely on the omnipresence of Microsoft's products on the desktop. Thus, by engaging in such biasing behaviour, Microsoft leverages its monopolies into other markets in ways that have nothing to do with competition on the merits and by doing so Microsoft infringes Article 82.

23. Among the highly effective biasing techniques employed by Microsoft is screen biasing. Biasing the first screen seen by users, or the most-visited

screen, gives control over the usage habits of a very large proportion of end-users. The effects of preferable screen placement cannot be overcome by price or quality competition, because customers normally only consider the first choices presented to them. The Commission has in the past recognised the significance of screen bias in the context of computerised airline reservation screens. In that context, studies have shown that 90 percent of users choose flights from the first screen, and 50 percent choose the flight displayed at the top of the first screen.

24. In addition to screen biasing, Windows XP also uses operational bias to compel use of Microsoft programs and services. For example, Windows XP, through default settings, chooses Microsoft programs and services even before the user has made a choice for himself, and the way the program operates makes it difficult to choose an alternative. This operational bias creates a use habit for the default programs and services, and prevents true user choice on the basis of objective qualitative criteria that would apply in a normal competitive environment. Third parties are prevented by Microsoft's biasing behaviour from competing on the merits by providing better programs or services in terms of performance, price and/or functionality.

25. While different from bundling in that the user is not always *forced* through such biasing tactics to take a Microsoft product or service when buying Windows XP, these tactics also have a devastating exclusionary effect on competition and allow Microsoft to leverage its existing monopolies into new markets in ways having nothing to do with competition on the merits. The biasing tactics embodied in Windows XP will soon reach nearly 100 percent of the market of PC users, and most consumers will not engage in a struggle to avoid the products and services to which Microsoft gives preference (and in many cases exclusive preference) in Windows XP and its bundled browsers.

26. Microsoft's biasing conduct is not only exclusionary and illegal under the wording of Article 82 generally: Microsoft also limits markets or technical development to the prejudice of consumers in violation of subsection (b) of that Article, as the screen and operational bias in Windows XP restricts

competing firms' ability to compete, and ultimately eliminates the incentives for the development of new products and technology.

A.1.4.c. Imposing proprietary technologies, formats and protocols in violation of Article 82 of the EC Treaty, including Article 82(b)

27. Microsoft has excluded competition by supplanting open, interoperable technologies, formats and protocols with proprietary ones through many different techniques. In particular, Microsoft has bundled with Windows XP client software of many kinds that ensures ubiquitous support for Microsoft-proprietary standards for Web services and other types of server-centric computing. This practically excludes the possibility that competing products or competing standards can achieve the same ubiquity, no matter what their merits. To take just one example, Microsoft is ensuring ubiquitous distribution of Windows Media Player to make Windows Media Format into the standard for audio/video streaming and playback, and Windows Media Rights Manager — Microsoft's digital rights management technology — into the standard for online distribution of copyrighted content.

28. Microsoft's .NET initiative takes this strategy to a new level, by establishing interdependencies, based on proprietary interfaces and protocols, between and among Microsoft's dominant products and a staggering range of additional products — not only PC client software, but a wide array of operating system and applications server software, in addition to mobile devices. .NET is appropriately viewed as an extension of the Windows platform, designed to protect and extend Microsoft's current dominant positions more deeply into the Internet. In other words, with .NET, Microsoft is establishing technological interdependencies to leverage its current dominant and superdominant positions to distort the competitive structure of, and eventually eliminate competition in, a far larger set of software markets.

29. In large part, the .NET initiative builds upon Microsoft's earlier efforts to foreclose Java from distribution, and thereby to eliminate the threat that platform-neutral Internet computing posed to its superdominant position in desktop operating systems. Now Microsoft is again foreclosing the universal Windows XP distribution channel to the Java runtime, while preparing to

bundle a new Microsoft-proprietary runtime, the Common Language Runtime (which is part of the .NET Framework), with the next version of Windows.

30. The anti-competitive consequences of Microsoft's imposition of proprietary technologies, protocols and formats (and the concomitant elimination of open, interoperable versions of the same technologies, protocols and formats) has far-reaching foreclosure effects, and Microsoft's abuse of its dominant position to preserve and extend its market power in this way infringes Article 82, including Article 82(b).

A.1.4.d. Employing abusive licensing and other exclusionary practices vis-à-vis PC OEMs to foreclose the PC OEM distribution channel to competing products in violation of Article 82 of the EC Treaty, including Article 82(b)

31. Microsoft's position as the superdominant, virtually exclusive supplier of PC operating systems gives it exceptional power over OEMs, who have no choice but to install Windows on virtually every machine they sell. The extremely low profit margins of OEMs and the large portion of any OEM's costs represented by its Windows license gives Microsoft a formidable weapon to ensure that OEMs comply with Microsoft's strategy: a small variation in the Windows license fee has a disproportionate impact on an OEM's profitability. Microsoft in particular uses this power over OEMs to prevent them from allowing Microsoft competitors access to the OEM distribution channel.

32. Microsoft licenses Windows to OEMs (and end users) only as a bundle with the Microsoft programs it decides to include, and contractually limits the ability of PC OEMs to change that bundle. Moreover, through explicit and tacit agreements, threats, incentives and disincentives, Microsoft discourages OEMs from distributing rival software products, or from giving those products promotion or emphasis on the desktop. In addition, by providing exclusionary discounts to the largest OEMs, Microsoft has considerably reduced the vitality of the OEM channel as an alternative to the dominant Windows distribution channel. The ever-diminishing variation in PC configurations confirms that Microsoft's efforts have successfully overridden OEMs' incentives to differentiate their products by providing different software product offerings.

Thus, Microsoft has successfully foreclosed the OEM channel as an effective means of distribution for software that competes with Microsoft products.

33. These restrictions on the freedom of OEMs to differentiate their products and to distribute competing products prevent Microsoft's competitors from using the desktop distribution channel to enter various markets, including the markets for PC operating systems, intermediate platform software and personal productivity applications. As a result, Microsoft's practices have an exclusionary effect on competition. This falls afoul of the principle that "an undertaking in a dominant position" abuses its dominance and infringes Article 82(b) whenever it "limits production, markets or technical development to the prejudice of consumers." In addition, the different discount schemes that are used by Microsoft are clearly aimed at excluding rivals in order to allow Microsoft to keep prices at a monopoly level and to eliminate threats of potential entry by non-Microsoft intermediate platform software.

A.1.4.e. Refusing to disclose the document formats for the programs in Microsoft's Office suite of personal productivity applications in order to reinforce the applications barrier to entry and ultimately its Windows monopoly, in violation of Article 82 of the EC Treaty, including Article 82(b)

34. As noted above, the dominant position of the Microsoft Office suite gives Microsoft a large degree of control over the applications barrier to entry that insulates the dominant position of Windows. To maintain its dominant position in the PPA market (and thereby to maintain the network effects protecting its Windows monopoly), Microsoft utilises Microsoft-specific PPA file formats, obstructing competitors' abilities to interoperate with such files. As a result, most documents to which individuals and undertakings need access are in the proprietary formats used by Microsoft's Word, Excel, and PowerPoint programs (*i.e.*, .doc, .xls, .ppt). Programs in competing productivity suites are unable to read or duplicate these Microsoft-specific file formats in the same manner as can programs in Microsoft's Office, resulting in a lack of interoperability and diminished performance.

35. By not porting Office to Linux and refusing fully to disclose the Office file formats so that third parties could develop PPA products that accommodate

Office file formats, Microsoft preserves the core of the applications barrier to entry and the resulting indirect network effects protecting Windows. Microsoft's refusal to provide the interface information necessary to achieve interoperability between Microsoft's dominant Office software and competing products undermines the equality of opportunity between Microsoft and competing operating system manufacturers and inhibits technical innovation and the development of markets. Such behaviour fails to comport with Microsoft's special responsibilities as a superdominant undertaking not to allow its conduct to impair genuine and undistorted competition in the common market, and infringes Article 82 of the EC Treaty.

A.1.4.f. Abusively leveraging its dominant positions to distort competition in markets for e-mail and collaboration server software

36. Microsoft is using well-known anti-competitive practices to leverage its dominance in personal computer operating system, workgroup server operating system, and PPA markets into the markets for e-mail and collaboration server software. These practices include bundling, technological tying, contractual tying and failure to disclose technical information.

37. Microsoft bundles its e-mail client, Outlook Express, with both Windows XP and Internet Explorer, and a full-feature e-mail client and personal information management program, Outlook, with its dominant personal productivity suite, Microsoft Office. This bundling has rendered Outlook and Outlook Express nearly ubiquitous in the market, and this means that competing collaboration software vendors must ensure that their server software can interoperate with these Microsoft client products. Microsoft has established undisclosed technological interdependencies between Outlook/Outlook Express and its own e-mail/collaboration server software (Microsoft Exchange), and it has not provided the information necessary for competing server software vendors to achieve interoperability with Outlook/Outlook Express. In addition, Microsoft has engaged in licensing practices that economically tie licenses for its dominant Windows and Office client licenses with licenses for its e-mail/collaboration server software, Microsoft Exchange. These various means of leveraging Microsoft's desktop

dominance into the markets for e-mail and collaboration server software infringe Article 82 EC Treaty.

A.1.4.g. Leveraging its PC operating system, browser and PPA monopolies to the markets for handheld computing device and smart phone software, through bundling, the failure to supply interface information and the imposition of proprietary formats and protocols in violation of Article 82 of the EC Treaty, including Article 82(b)

38. Microsoft is leveraging its existing dominant positions into the markets for handheld computing device and smart phone software by employing several closely related anti-competitive tactics that exploit the dependencies of handheld computing devices and smart phones on PCs:

- bundling Microsoft's intermediate platform software (first Internet Explorer, more recently Windows Media Player and other programs, and soon the .NET Framework — including its Common Language Runtime) with its monopoly desktop operating system and thereby ensuring the pervasive presence (and ultimately the dominance) of such intermediate platform software on PCs;
- bundling both the Pocket PC operating system and the Microsoft Smartphone operating system with "pocket" versions of Microsoft's superdominant PPA applications and intermediate platform software, thereby ensuring seamless interoperability between handheld computing devices and smart phones running Microsoft software and Microsoft's core applications and intermediate platform software;
- denying non-Microsoft mobile device operating system producers (in particular Palm and Symbian) the interface information necessary for their operating system and application products to interoperate with Microsoft's dominant products;

- not making available interoperability information sufficient for third party developers to develop applications for the non-Microsoft handheld computing device and smart phone platforms that are compatible with the protocols and/or content formats defined by the Microsoft core PC applications and the intermediate platform software bundled with Windows, thus depriving non-Microsoft mobile device operating systems of applications compatible with Microsoft's dominant PC applications and intermediate platform software; and
- not porting the "pocket" versions of its principal applications and intermediate platform software to run on non-Microsoft mobile device operating systems.

39. The combined effect of the above practices is to leverage from Microsoft's dominant position on the market for various types of PC software to the market for operating systems (and other software) for handheld computing devices and smart phones. Working together, these practices produce the result that the only option for a consumer contemplating the purchase of a handheld computing device or smart phone that will interoperate with Microsoft PC applications (and, more and more in the future, with applications and services accessed via Microsoft's dominant server products) is to purchase a device with Microsoft software. Since Microsoft PC applications are themselves dominant and ubiquitous, this has a powerful exclusionary effect on other suppliers of software for smart phones and handheld computing devices. For the above reasons, Microsoft's practices infringe Article 82 EC Treaty.

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40. The main characteristic of all of the above anti-competitive behaviours is that they are exclusionary. While each of these behaviours falls within one or more of the various illustrative subsections of Article 82, they in addition

represent infringements by Microsoft of the fundamental principle enshrined in Article 82, namely that a dominant company has a “special responsibility not to allow its conduct to impair genuine undistorted competition on the common market.” The scope of that responsibility increases with the extent of the undertaking’s dominance, so that Microsoft’s superdominant positions impose upon it a particularly stringent obligation to avoid further impairing competition. That responsibility extends beyond the literal terms of Article 82(a)-(d) to encompass any conduct that, by means other than competition on the merits, exploits the undertaking’s dominant position to impair competition on the dominated market or a related market. Accordingly, the Commission and the courts have condemned a wide variety of conduct by dominant parties that forecloses competition and limits consumer choice. Among other things, Article 82 also prohibits tactics that, by means other than competition on the merits, permit the dominant party to leverage its market power into another, complementary market.

41. The above is particularly relevant since the true impact of Microsoft’s abusive behaviours is only properly understood by recognising that they operate in parallel and reinforce each other. Pigeonholing each separate anti-competitive aspect of Windows XP into a subsection of Article 82 does not truly capture the nature of the abuse. For example, many of the applications bundled in Windows XP are also advantaged through screen bias; services such as MSN.com and Windows Media make use of proprietary or non-standard formats used by bundled applications, such as MSN Explorer, Internet Explorer and Media Player; and Microsoft’s foreclosure of the OEM distribution channel through bundling, and through the imposition of restrictive licensing, marketing, development and support arrangements, prevents the addition of alternative services and applications by OEMs to those already bundled and biased in Windows XP, further enhancing the effect of that bundling and biasing.

A.1.5. Microsoft’s abusive behaviour harms consumers

42. Microsoft’s anti-competitive conduct causes immediate and serious harm to consumers in all the affected markets referred to above, for example by

eliminating consumer choice as third-party alternatives are foreclosed through Microsoft's bundling practices.

43. However, the greatest harm may result from the maintenance of a monopolistic market structure itself. Consumers of PC operating systems and applications bear substantial direct and indirect costs from the persistence of monopolies in operating systems and applications. Consumers lose the choices and innovations that would arise in a competitive market. The prevalence of a single operating system and set of core applications has produced significant shortcomings in security. And Microsoft has successfully maintained high prices on its dominant products (and 80 percent profit margins) even as prices on all significant hardware and most other software products have plummeted in the face of quality improvements that far outstrip anything Microsoft has offered. Indeed, Microsoft has steeply increased prices to most business consumers as a result of its new multi-year pricing and upgrade policies. There can be no doubt that a competitive market structure — one unaltered by Microsoft's long-standing and deep-seated abuses of its multiple dominant positions — would constrain Microsoft's ability to impose consumer harm of this kind.

A.1.6. The outcome of the *United States v. Microsoft* litigation does not remedy Microsoft's anti-competitive behaviour

44. The U.S. case did not address the issues addressed in this complaint. For example, the case did not address the bundling or biasing behaviour with regard to Windows XP, or Microsoft's behaviour on the mobile devices markets.

45. To the extent some of the issues in CCIA's complaint touch upon some of the principles involved in the U.S. case, it is important to realise that the settlement of the case by the U.S. Department of Justice and Microsoft does not remedy Microsoft's anti-competitive behaviour in Windows XP:

- First, the U.S. case addressed acts that took place from 1995 to 1998, and involved the Windows 95 and Windows 98 operating systems. The

settlement is not designed to address the more complex anti-competitive conduct occurring *today*.

- Second, the settlement does not even adequately address the violations that *were* addressed by the U.S. case. The agreement does not restore competition to the operating system market. It does not deny Microsoft even the most obvious benefits of its adjudicated anti-competitive activity. It does not even prevent Microsoft from engaging in some of the identical conduct that was found to be illegal (such as commingling the Internet Explorer code with Windows).
- Third, the recent ruling by Judge Kollar-Kotelly approving the settlement explicitly sets the stage for this complaint. Her narrow reading of the applicable remedies law explicitly *excluded* Microsoft's *current conduct* from consideration in fashioning a remedy for Microsoft's adjudicated 1995-1998 violations.

46. Perhaps most tellingly, independent analysts have overwhelmingly concluded that the settlement will not cause Microsoft to change its conduct in any meaningful way.

A.1.7. The challenge presented by the multifaceted abuses in Windows XP can only be met by forceful, effective remedies

47. The threat from the anti-competitive activity relating to Windows XP is immediate: since its release in October 2001, Windows XP already has been installed on more than one-third of all PCs, and will be installed on almost all the rest within two or three more years. Through various strategies to force upgrades, Microsoft can accelerate the already-swift process of turning over the installed base to the latest version of Windows.

48. The remedies in this case must be sufficiently forceful to eliminate Microsoft's abuses, an especially difficult challenge in light of Microsoft's

history of evading and ignoring past remedies. Although we believe that in the end the only effective remedy is likely to be a structural one, at a minimum the following remedies should be imposed:

- a requirement to unbundle illegally bundled products and to refrain from future bundling;
- a prohibition on biasing the operation and user interface of its dominant products to favour Microsoft products and services;
- a requirement that Microsoft disclose its OEM licensing terms, in order to deter Microsoft from using its licensing practices to foreclose competition;
- a requirement that Microsoft offer equal pricing of its dominant products to the ten largest OEMs, in order to limit Microsoft's ability to foreclose the OEM distribution channel;
- a requirement that Microsoft use open standards or fully disclose the information necessary to achieve interoperability with its dominant products (including in particular its Office document formats);
- a requirement that Microsoft adopt an open message format synchronisation protocol for synchronisation with its server and client software or contribute its ActiveSync technology or the message formats on which it is based to an open standards group; and
- a requirement that Microsoft include Java Virtual Machine on Windows in order to remedy Microsoft's suppression of Java as an intermediate platform threat to Microsoft's desktop operating system dominance.