ADVANCED ANTITRUST SEMINAR
MICROSOFT AND THE GLOBALIZATION OF COMPETITION POLICY

Course Organization and Assignments

Professor Harry First
Spring 2004

Overview

In May, 1998 the United States Department of Justice and twenty states filed suit against the Microsoft Corporation charging it with unlawfully maintaining its monopoly in desktop computer operating systems. In the aftermath of the federal government’s partial victory in the case in 2001, dozens more complementary actions were filed in state and federal courts by classes of consumers and rivals, and the European Commission launched its own investigation into the competitive impact of Microsoft’s marketing strategies. The case thus triggered more than five years of intense litigation and critical public commentary.

This seminar will examine the Microsoft antitrust cases – in toto – as a case study of how antitrust suits are developed, brought, litigated, and settled in today’s global economy. The seminar will treat the Microsoft cases as an exemplar for how the institutions of antitrust enforcement currently operate. Viewed collectively, these cases should provide valuable instruction in how we manage the diversity of enforcement institutions that now exist in antitrust and allow us to think about the benefits and costs of an increasingly complex domestic and international enforcement system.

The goal of the seminar is to become immersed in the source materials relating to these cases so as to understand the dynamics of the litigation, the merits of the antitrust claims, and the way in which the process shaped the presentation and resolution of those claims. We will try to critique the decisions made by various actors in these cases in an effort to reach some conclusions on what global competition policy should look like and on what institutional structures are needed to implement it.

Class requirements

There will be eight class meetings at which we will discuss assigned materials. The remaining classes will be used for presentation and discussion of student papers. A list of class topics and dates is attached.

Writing requirements

Students will be required to write a research paper. For an "A" paper, students will be required to write a thesis statement of the topic (including a preliminary bibliography), a first
draft, and a final paper. For a "B" paper, students need not submit a first draft, but are required to submit the thesis statement (including the preliminary bibliography). A list of possible topics is attached, but you are also be free to pursue a topic of your own choosing that is within the scope of the seminar.

Submission dates

Your topic choice is due February 4. A thesis statement and preliminary bibliography is due February 20. The first draft is due March 22; the final paper is due May 12. There will be no extensions given.
CLASS ASSIGNMENTS

Class 1: January 14

Setting the stage

1. Who is Microsoft?
2. Who is Netscape?
3. Pre-1998 antitrust activity
   a. licensing case
   b. contempt case

Class 2: January 21

Litigation I

1. 1998 Windows case: complaints and opening of the litigation
2. Summary Judgment decision
3. Procedural devices: managing the litigation
4. The economists testify

Class 3: January 28

Litigation II

1. Judge Jackson’s opinion: findings of fact and conclusions of law
2. Judge Posner mediation
3. Briefs of the parties
4. Court of Appeals decision

Class 4: February 4

Remedies I

1. Remedy proposals: the scholarly debate
2. DOJ/States’ initial remedy
3. Court of Appeals decision
Class 5: February 11

Remedies II

1. State “opt-outs” and Tunney Act proceedings
2. Final remedies
3. Enforcement efforts

Class 6: February 18

Private litigation

1. Class actions
   a. state
   b. federal
2. Competitor suits
3. Foreign plaintiff suits

Class 7: February 25

European Union investigation

1. Complaint
2. Proceedings
3. Possible remedies
4. Investigations in other jurisdictions (e.g., Japan)

Class 8: March 3

Microsoft outside the courtroom

1. Political influence
2. Competitor efforts
3. Commentator views: was this a good case to bring?
4. Antitrust in the new economy

Class 9: March 10

Research break--no class.
Class 10: March 24
Student presentations

Class 11: March 31
Student presentations

Class 12: April 7
Student presentations

Class 13: April 14
Student presentations

Class 14: April 21
Recap and review of seminar topics
POSSIBLE PAPER TOPICS

1. Comparison of Microsoft case to other significant monopolization cases
   a. Alcoa
   b. IBM

2. Conflict and cooperation with European Commission: the EC’s 1982 IBM predisclosure case

3. State enforcement: the “big” cases (a comparison with, e.g., Tobacco and Household Finance)

4. Structural relief: a comparison with the LAPD case

5. Transparency and antitrust enforcement: the Microsoft record

6. Microsoft’s lobbying efforts: the impact of the antitrust prosecution

7. Application of the Tunney Act in the Microsoft litigation

8. Carrying out the consent judgment: the record so far

9. The antitrust debate over optimal enforcement

10. How did the 1998 case get brought? the impact of state antitrust enforcement

11. The role of economists in the Microsoft litigation

12. Today’s federalism debate: the literature on multiple enforcement

13. What happened in mediation?: a comparison of mediation settlement proposals and the final settlement

14. The intellectual property issues in the Microsoft litigation

15. Relief: did the original government proposal make sense?

16. Causation and injury: the need for proof in government cases

17. Relief in private class action cases
   a. distributing damages to injured consumers
   b. potential for conflict with government action

18. Non-U.S. antitrust enforcement against Microsoft
19. Litigation costs in Microsoft