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JOHN ARNOT WILSON
OF COUNSEL

**CONFIDENTIAL RESPONSE TO CID**

June 23, 1995

**VIA FACSIMILE**

Jon B. Jacobs, Esq.
U.S. Department of Justice
Antitrust Division
Main Justice Building
10th & Constitution Ave., NW
Washington D.C. 20530

**RE: Response to CID**

Dear Mr. Jacobs:

We are counsel to Netscape Communications Corporation. This letter and accompanying documents are submitted in response to your Civil Investigative Demand dated June 22, 1995. We hereby request "CONFIDENTIAL" status for this letter, all information that accompanies this letter, and any additional information or documents submitted to the Department of Justice pursuant to its Demand.

Netscape Communications is the industry leader in browser and similar Internet technology. In the course of its investigation of the Microsoft Network, the Antitrust Division personnel have repeatedly and correctly suggested that access to the Internet may provide the most powerful source of potential competition for the Microsoft Network. It is generally assumed that Netscape and other companies can provide access to the Internet without Microsoft's cooperation. This is not correct. Netscape's browser, like other third party applications, runs on top of the desktop operating system. Netscape already has a browser on the market that runs on Windows 3.1. It is attempting to bring a new browser to market that will run on Windows95 ("Win95").

In order to complete the development of this new version, Netscape needs certain critical technical information which might be called "internal APIs." Netscape has been negotiating with Microsoft to get this information. As of June 21, Microsoft indicated it would not provide this information to Netscape unless Microsoft gets an equity interest in Netscape, a seat on

GOVERNMENT EXHIBIT 1259

Netscape's Board of Directors, and otherwise controls Netscape's ability to compete against Microsoft.

As you will see from the enclosed documents, the general theme of the negotiation has been that Microsoft owns the platform and that if Netscape is going to compete with Microsoft in any way (at the platform level or the application level), then Microsoft will competitively harm Netscape.

Microsoft developers have advantages on the Microsoft platform that Netscape developers will not have, absent a special relationship with Microsoft. If Netscape does not "sign up" to this special relationship, Microsoft will develop a special relationship with a Netscape competitor thereby harming Netscape. Microsoft will also do what it can to competitively injure Netscape in such a scenario. In addition to the equity interest and board seat that the "special relationship" entails, it is contemplated that Netscape would be required to tell Microsoft ahead of time what Netscape is going to do and that Microsoft would be able to take what it wanted of Netscape's ideas and build them into the Microsoft platform. Conversely, however, Netscape would not be able to build anything that even remotely resembled a platform that might compete against the Microsoft platform -- and, in particular, Netscape would not be able to build anything that had its own Application Programming Interface ("API").

To understand the significance of what Netscape needs and what Microsoft is refusing to provide it is critical to understand: (1) the present manner in which the Internet is accessed through Windows and/or DOS, and (2) the way the Internet will be accessed through Win95.

Today, there are a number of independent Internet software vendors ("IISVs"), e.g., Netscape, Quarterdeck. Each of these companies provide both "high level" Internet software such as "browsers" and/or newsgroups software, as well as "low level" connection software such as RNA (remote network access), TCP/IP (transmission control protocol/Internet protocol), Winsock, Point to Point Protocol, Registration, and Scripting Engine software. Although only the "high level" software such as browsers are visible to consumers, the "low level" components referred to above provide the essential "plumbing" that gets a user out from his desktop station to the Internet. Presently, each IISV provides its own low level plumbing, and, hence, none of the providers have an architectural advantage over any of the others. This is about to change.

In the Win95 environment all the necessary low level Internet access components, the "plumbing," are integrated into the operating system software. Accordingly, IISVs will be compelled to use the components bundled with Win95. The interaction between high-level components and the Win95 plumbing is determined by Microsoft's APIs. IISVs such as Netscape, must have access to these APIs. These are not the same APIs that are used by normal applications vendors (e.g., word processing or spreadsheets) to make their products work on top of the Microsoft OS.

To that extent each IISV is now dependent upon Microsoft to provide the APIs so that the IISV can use Win95 internal code to dial-up to the Internet. However, if an IISV is not in Microsoft's good graces or is unwilling to agree to Microsoft terms, then the IISV must find an alternative "solution" to bypass the imbedded Win95 Internet access components.

While it may be technologically possible to create alternative solutions, many problems generally accompany creating such solutions. First, of course, a solution may not be readily available. Second, as a general matter, a solution that adds on a set of software calls which are already present in the operating system may lower the performance and increase the difficulty of use of a software solution, and will certainly delay release of Netscape's products. Depending upon how "clunky" the solution is, such a solution will generally cause poorer ratings in software reviews when compared to the system that uses the embedded technology, and accordingly will make OEMs less likely to bundle a product with its computers particularly where there exists an alternative Internet software that uses the Win95 embedded technology (i.e. Microsoft).

Additionally, specific capabilities of Win95 may be unavailable after certain non-embedded solutions are attempted. For example, if an IISV used their current 16 bit solution to circumvent an inaccessible Win95 Internet component, then the resulting connection would be unable to use 32 bit programs that are capable of accessing the Internet through a TCP/IP connection. Also such a 16 bit solution may eliminate the ability of any user to use the telephony capabilities (voicemail and facsimile identification and processing) provided by Win95. In short, implementing such marginal solutions could injure an IISV's ability to compete with Microsoft's high level Internet software because Microsoft would continue to maintain full access to all of Win95's features, while other IISVs would lose capability.

Therefore, by restricting access to critical Internet access APIs Microsoft can increase its consumer acceptance because it can make itself the only company that has Internet software that can use all the access software imbedded in Win95, and/or Microsoft can extort exorbitant "royalties" for supplying critical APIs to IISVs. In this case, Microsoft has told Netscape that it will not provide critical APIs (which it has admitted that it is able to provide immediately) to Netscape unless, among other things, Microsoft is given an equity stake in the company, a board seat, and essentially is able to control Netscape's ability to compete with Microsoft platforms.

One API that Microsoft is withholding is critical to enable Netscape's registration software to automatically configure a RNA "phonebook" with a user's Internet access settings. Without this capability, which Microsoft's own product offering will have, Netscape will be vastly less attractive to consumers and OEMs (1) because user self-configuration is so cumbersome, time consuming (potentially requiring an extra half hour commitment by the user), and so riddled with the possibility for error, that as a practical mater Netscape's access software will not be compatible with the built in Internet access features of Win95; and (2) because any

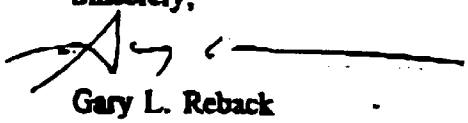
alternative solution will at the very least require Netscape to abandon using any of the dial up connection built into Win95, and create a whole new way to access the "plumbing system" which is so alien to the user, and which is so likely to "spring a leak" that OEMs would be extremely unlikely to bundle it in with a Win95 system, thereby putting Netscape at a severe disadvantage to Microsoft.

Additionally, Microsoft has refused to provide Netscape with either marketing or technical information regarding "scripting engines." Netscape needs to know whether Win95 or its upgrades will contain a "scripting engine" which will allow the user to configure her RNA phonebook so that she is able to automatically log into her Internet account without needing to enter a login ID or a password each time. Such a feature is clearly preferred by the user and it would be competitively detrimental for Netscape to create an alternative scripting engine when Microsoft will be able to benefit from the performance superiority of one built into Win95 or an upgrade, and which may actually be impossible to create without technical information from Microsoft. In any event, despite repeated efforts to get information, Microsoft has refused to indicate whether a scripting engine will be included in Win95 or in an upgrade, whether Netscape will be able to redistribute the scripting engine, or what the APIs for such a scripting engine might be.

Notes taken by a Netscape employee at the recent negotiation with Microsoft are called for by the CID and therefore attached to this letter. You should note that in reviewing this document, "Marc Andreessen" and "Mike Homer" work for Netscape. "Dan Rosen" indicated in the document as "DR" works for Microsoft. Generally speaking, references to "we" is a reference to Microsoft, from Microsoft's point of view.

We believe that this information is sufficient to respond to the Civil Investigative Demand. I cannot emphasize strongly enough how confidential this information is. Please contact us before using it in any way that might damage Netscape's interests. If you desire additional information, please contact us.

Sincerely,



Gary L. Reback

GLR:kp

Enclosures

cc: Joel Klein, Esq.
John F. Greaney, Esq.

Return-Path: pmarca@netscape.com
Date: Wed, 21 Jun 1995 19:28:32 -0700
Sender: pmarca@pop.netscape.com
To: jimb, mikeh, jimc, ram
From: pmarca@netscape.com (Private Marc Andreessen)
Subject: notes on ms meeting, 6/21 -- long
X-UIDL: 803789560.000

Microsoft attendees --

Anthony Bay -- MS Network guy -- Internet-related services, as well as some business applications.
J Allard -- internetworking in Bus Sys Div -- WinNT WS & Server, plus ackOffice.
Tom Reardon -- client platform
Chris Jones -- systems division
Barb Fox -- consumer systems, STT and crypto
Dan Rosen -- strategic relationships
Richard Wolf -- MS Office, workgroup functions

Mike Homer's Agenda --
(1) Review of the items.
(2) Go through each category.

Dan Rosen --
Key issues from MS point of view --
Chris --
MS's strategic role and partners in the Internet business. MS believes set of things that are provided in Internet servers and browsers that will e in the core operating systems or given away with the OSs, as a facility like the Win32 API. What MS needs is someone -- a partner -- who is going to take those core services to build on top of them and create solutions for customers. MS has some ideas about what these features are, where the line is, and who the partners should be. All of the relationship points revolve around critical fact of -- is Netscape the kind of company that's going to partner with MS on this or not? Will MS & NS be able to cooperate & agree on the line, where it's drawn, etc. If not, companies will compete. If so, then arrangement can be highly beneficial, with "aligned interests".

JB -- concern about what the line is, where will it move, who is to say where it will move, etc. We would like assurances as to who gets to move the line, who says the line will be moved, etc.

Chris -- agrees that that's the problem -- there's a set of services we want to enable by bundling with the OS. As MS there is benefit to drawing a line to create a value-add, for *a* partner. Is NS that company?

JB -- key issue comes down to, how much money is my partner making. If he's profitable, then the line generally moves.

Dan Rosen -- Wants us to both feel like we both won, even when the line moves over time. Basic Rosen assumption is that together we're going to make the market grow more quickly than we will separately. So if we can do what we're talking about, the market becomes bigger faster. And smaller percentage of large market is better than larger percentage of small market. So there's a way for both of us to win.

MH -- go through these items one at a time...

Client #1 -- what are the viewers and what do they do? Richard and Anthony

take the lead -- Rosen sez: as we look at kinds of content customers want, in certain cases it's worth having a viewer rather than a full program. already have a Word viewer. Richard: it expands our market to make ewers available for these office apps -- freely available for Office app ormats (Excel, PowerPoint, etc.). Chris -- viewers as technology are the core piece you need to access data on the network.

Guy in black & white stripad shirt --
Blackbird has BBML format. HTML with extensions for embedding. It's a way to lay out objects and import them in a dynamic way. Blackbird is an 80-person team -- publishing tools for online services. BB tries to do the right thing or
publishers. Publishers don't care if MS publishes the format, makes it open. What they want are enhancements.

Normal browsers will not be able to view Blackbird content. Blackbird viewer would make that possible. MS hasn't made a decision to open the format or not to, but is leaning towards not to.

TR -- knows that Marc hammers on the open stuff. MS will support HTML. Blackbird solves a different problem, two-dimensional page layout, and that's a different problem. Trying to embrace HTML rather than displace it.

DR -- problem with Acrobat is that it's more oriented towards print media. MS started from basic principles and is creating definitive electronic ublishing
story. It is going to embrace HTML. When we started Blackbird, no one knew the Internet was going to explode like it did.

lackbird isn't quite beta -- kind of alpha. MS Interactive Media Conference oming up in July (18th, in Long Beach); kit will be available shortly. msninfo@microsoft.com gets you info on how to be a content provider for MSN.

Lots of work in Blackbird to support dynamic content, updating on the back end. BB is like live version of Pagemaker.

DR -- just like the Web made the Internet exciting, Blackbird makes electronic publishing exciting.

There are going to be publishing tools that IPs are going to use. There needs to be client support for those tools, and that's why we're talking about this.

DocObject:

Two containers that exist are Binder and Mail. Others under development as well. ..There will be lots of DocObject objects. MS is going to evangelize the hell out of this. Currently is not MS's intention to license the ability to create containers. MS would consider licensing us the ability to turn Navigator into a container, IN THE CONTEXT OF THE LARGER DEAL. Proposal with viewers is that Blackbird viewer, e.g., would drop into the Netscape Navigator container. MS will be putting a lot of work into this. The Office Compatible program is fairly easy to get into, ... BUT:
DocObject APIs have been abstracted out into a layer above the normal Office Compatible program and people who want to use them are picked specificall by MS and are arbitrary -- MS reserves right to say who's in and who's out. Again, part of the broader discussion -- BOTH for container and for object. "There are things we can do if we're working together that we can't do otherwise."

.Explicit threat that if another browser gets out ahead on this (implicitly that if MS chooses another preferred ISV), then we're hosed.

)ocObject paper handout]

Catapult APIs -- API set for HTTP, Gopher, MIME, etc. This is an "opportunity" to extend protocols (by MS). This is the abstraction layer that they want all ISVs to use. Some of this is stuff we can just go do; opportunity for a closer relationship is that "it's closer". Haven't decided how they're going to be released. Very open to our feedback; want it. Spec is stable and MS is uilding
apps to it. In broader relationship, "process and pattern" for this is normal course of events, where we're a special partner.

Re accessing MSN --

If we didn't have a tighter relationship, you'd be back to what a normal ISV can do. If we do have a tight relationship -- then you can get tight ntegration.
MS has no plans to do this, but "it's on the table as part of the greater relationship".

There will be a level of MSN content that's Web-accessible. There will be another level that we charge for. Etc.

MH question -- what does it take beyond viewers to access core MSN content? "We would be happy to work with you on making this work, under the right circumstances."

We do believe that we're going to have more noses on MSN in 12 months than ny of our competitors."

If someone wants to publish content within MSN, they couldn't use a Netscape server to do that. How do you enable a publisher to use a Netscape server for this? Again, something we could make happen in the broader relationship.

Hard questions about what our client business is after MS builds in MSN and our browser -- pointed questions, hostile questions, etc. "What do you o?"

Would you be interested in having a partnership where NS gets all the non-Win95 stuff and MS gets all the Win95 stuff? If NS doesn't want to, then that's one thing. If NS does want to, then we can have our special relationship.
THREAT THAT MS WILL OWN THE WIN95 CLIENT MARKET AND THAT NETSCAPE SHOULD STAY AWAY.

DR -- key business proposition:
There's an arrangement where NS is a first-mover on this new MS platform.
DR -- also, we have limited interest in cross-platform.

What parts of MSN worry Netscape?

Let's clearly identify areas of competition...

MSN guy --
There could be a way where a Microsoft Network content offering could in fact be hosted on a Netscape server -- that is, Netscape server software gets used to run a service that's accessible to MSN customers.. with MS's current MSN economic model in place. It's on the table -- making Netscape servers work inside this "logical MSN" -- but they refuse to talk about it

until we have the broader relationship established.

We need an ISV who is going to take our platform and services and go sell things to people..."

"We consider Lotus Notes a threat, and if you want to be/compete with Lotus Notes, then we don't want to give you help."

We need to know what you're going to do on our platform before we can figure out how much we want to help you as a preferred developer on our platform.

JB: How are we a threat to MS? "Lotus Notes is a big supporter of NT, Windows clients, etc. I don't think that we'd get into the same type of strategic relationship -- wouldn't invite them in -- because some of the things we're doing as a company are worked against by Notes." Multiple people said this.

JB: What about RAS APIs? Mike: That's a problem. DR: We can fix that problem. In a perfect world, anyone can plug into that. With a special relationship with you, you'll be the first to plug into it. Others will in the future.

DR: We need to give you code. Our alternative is to give you stuff that wasn't developed for that purpose. There's internal stuff that implements internal APIs, and those APIs are only known inside Microsoft. "We have yet to decide distribution." JB sez MS has gained advantage as a result, and they agree.

Allard: "Depending on how we walk out of this room today, we have a solution for your problem..." or else in 3 months.

DR: "If we had a special relationship, you wouldn't be in this position."

Really perturbed because we put so much client stuff on the list, and they consider the client functionality to be something they build into the platform.

Server stuff --

"This gets into the hairy business questions that no one wants to answer." J Allard.

Obviously we have some plans in the future that overlap with your stuff.

BackOffice is a platform and our best friends are ISVs and integrators.

Potential point of contention --

Single most important element of your business is NSAPI. That's an API. Therefore that's a platform. Horrors. That's in conflict with us.

DR: "We share a belief that the Web is going to be a phenomenal area of growth, and that NT is a preferred way to get that growth happening."

JA: What if Communications Server drops into BackOffice?

JA: Line is drawn above basic HTTP and basic extension API.

Bundling of free eval version of Communications Server is problematic because NT just shipped, won't ship again for 9-12 months. But there's

all kinds of things we can do.

/JA: agreed that line is drawn between Communications Server and mmerce Server.

JA: If we were to modify NSAPI and start bundling it as part of our platform, what would your response be on non-NT platforms?

DR: "If we look out two years there'll only be one platform anyway." "If you can shoot for 95%, why can't we have 100%?"

DR: "The Internet is the democratization of network computing."

JA: "What could you do with NT and Excel? There's lots of things we can do together?"

Authoring --

We're not going to publish the Word format. "We want access to data formats to be open through code and not specifications."

"We'd like to find ways to work together so there's no surprises." "We don't want to be in a situation where on Windows you're switching to someone else's because the data formats changed on us."

TR: "It would make me feel a lot better to formalize this..."

DR: "Together we are going to be market leaders -- rather just exert market leadership ourselves."

quity --

If we're doing a deal of this scope, we would see an equity investment as a natural extension of that.

JB: Are these other things dependent on these?

"It certainly isn't independent. If the meeting had turned out completely differently and we were going to compete in a lot of areas, then we clearly don't want to do this. But if we're going to cooperate a lot we think it would be beneficial to do the investment and have active participation in the company. It makes it easier to do all of the above. It's a weak condition. We'd like you to consider it. We're reasonably serious -- discussed with Bill/Nathan/Paul. Positive motivations: gives us more insight into your direction, makes us want to invest more in the above areas, it makes it easier to do everything on this list. It means we're sort of engaged -- it's a stronger form of friendship. Our investment in any Internet-related software company, when they go public, significantly raises the valuation when that company goes public. If Bill Gates thinks a company is good enough for his money, it's good enough for investor's money."

"Our ability to have a tighter relationship with you -- it would raise our comfort level -- versus doing these things with some other developer -- it's a weak condition. It's an influencing role we want."

n the platform -- what will MS do on the platform side for 6 months?

They know what's coming out in August and slightly after August. They have lots of ideas for 12 months out, but no solid plans.

.Process question? --

"hey'll go draft a set of lines in the sand, and then Netscape will sit Redmond and get all-day briefings and have brainstorming sessions.

JB: What are the principles?

They want us to provide list of things we want to see above the line. They want us to give them all our new product ideas, basically. E.g. what would we like from MSN?

JB: Why are we so important?

DR: "The net causes all sorts of new paradigms. One of the things that MS has come into in network businesses, ITV, MSN, etc. is that we are entering businesses as MS that go beyond our traditional core competencies. Therefore we need to select partners. You need to get a core group of partners that you have a close rel'ship with and you trust. We realized right away we needed a partner in the access business, so we got UUNet, close relationship, invest time and money, etc. We look at other areas and say, we really need people where, if we're going to build an Internet platform, we need one preferential partner and you guys are wonderful and so on... Netscape is basically compatible with MS, and a lot of other companies are not. If we invest energy into this partnership, things will happen. Can we align visions so both sides can win over time? Our most precious resource is people... it's a significant issue for us. So we want a partner where that investment will pay good dividends, etc."

"J: Compare it to UUNet. UUNet is not in MS's business, at all. 're a pure SW company, you are too, why partner up too much?

DR: "Our biggest leverage points are from other software companies. We wouldn't be very successful if only MS apps ran on MS platforms. That's why we're a platform company. We don't usually go invest in just one particular company..."

JB: How many SW companies do you have investments with?

DR: "Lightspan, UUNet, etc. A lot of acquisitions. Our trend over time is more things like this. Trying to find ways to be better partners."

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