1 UNITED STATES DISTRICT COURT

2 DISTRICT OF CONNECTICUT

3 BRISTOL TECHNOLOGIES, INC., Volume III

4 Plaintiff,

5 V. No. CV-98-1657

6 October 19, 1998

7 MICROSOFT CORPORATION, 915 Lafayette Blvd.
Bridgeport, CT

8 Defendant.

9 COURT HEARING

10 B E F O R E:

11 THE HONORABLE JANET C. HALL, U.S.D.J.

12 A P P E A R A N C E S:

13 FOR THE PLAINTIFF:

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GOVERNMEN
EXHIBIT
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1 in a given market?
2 A Yes.
3 Q What is that definition?
4 A It's the power to hold price substantially above
5 competitive levels and doing that for a long period of
6 time necessarily entails the ability to prevent injury.
7 Q Where does that definition come from?
8 A That definition, although not necessarily exactly
9 those words, but that definition in substance appears in
10 essentially every reputable textbook.
11 Q How does an economist such as yourself go about
12 determining whether a seller of a product has monopoly
13 power in a given product market?
14 A There are a number of approaches depending on the
15 availability of data. The traditional and most common
16 approach is an instance where one can define a relevant
17 market in the anti-trust sense to first look at shares of
18 that market and then, if shares are large, to move on to
19 considered conditions of entry.
20 Q In your opinion, Dr. Schmalensee, does Microsoft
21 currently have monopoly power in the market for work
22 station operating systems as that market has been defined
23 by Professor Langlois?
24 A No, it does not.
25 Q And what is the basis for that?

1 Q All right. Do you have an opinion as to whether or
2 not there is a dangerous probability that Windows NT will
3 achieve monopoly power in the market for departmental
4 server operating systems?
5 A Yes, I do.
6 Q And what is that opinion?
7 A Well, a combination of Professor Langlois' own data
8 and the trade press, the Langlois data shows Microsoft's
9 market share rising relatively gradually, does not show
10 UNIX or alternatives disappearing in either of these
11 tables, and the trade press generally concludes that UNIX
12 alternatives to Microsoft will be viable for some time to
13 come.
14 Q Are you familiar with the concept of network
15 effects?
16 A Yes.
17 Q Would you please explain.
18 A Network effects or network externality are a set of
19 related terms, appear in the theoretical literature in
20 economics, and they're referred to a situation in which
21 the more users adopt a technology or product or standard,
22 the more attractive that technology or product or standard
23 becomes to other users.
24 Q Are you familiar as well with the concept of
25 tipping?

1 between UNIX and Windows NT.
2 Q And the number is actually a bit less than
3 two-tenths of 1 percent because we threw out Table 30
4 completely and you testified at least some of Table 30
5 should be included, correct?
6 A Yes, although we're now somewhere in the second
7 decimal place or second digit.
8 Q All right. Dr. Schmalensee, in your opinion, is
9 there any realistic way of thinking of Bristol as a
10 competitor of Microsoft in the market for departmental
11 server or technical work station operating system?
12 A No. Bristol doesn't produce an operating system.
13 Q As an economist, how do you normally identify the
14 competitors in a given market?
15 A I look for substitutes. I look for products or
16 firms that do or could exert discipline on pricing.
17 Q Do you consider Bristol or WIND/U to be a
18 substitute under that analysis for an operating system?
19 A No.
20 Q Now, Professor Langlois has said that Bristol could
21 be considered a competitor of Microsoft in the operating
22 system market because WIND/U enhances UNIX and UNIX
23 competes with Microsoft in the operating system markets;
24 therefore, WIND/U can be viewed as competing with
25 Microsoft in the operating system markets. You are

1 familiar with that opinion as expressed by Professor
2 Langlois?
3 A I have read it, yes. I'm familiar with it.
4 Q Do you agree that under this theory Bristol ought
5 to be considered a competitor of Microsoft in the various
6 operating system markets that we're dealing with here?
7 A No. I have never actually before seen anybody
8 analyze competition in quite that way, and under that view
9 of the world, essentially everybody that is writing
10 software is competing with everybody else that is writing
11 software, and I just don't think that's useful. My
12 declaration goes through, again, a quantitative exercise.
13 If everybody that writes software competes with Microsoft,
14 then Microsoft has, depending on what you include in the
15 market, between 9 and 12 percent of that market. If it's
16 not on the market, I'm not quite sure what the analysis is
17 pointing to.
18 Q And the basis for that 9 to 12 percent that you
19 just stated is set forth in your declaration?
20 A Yes, it is.
21 MR. TOMAINO: Okay. Thank you. Nothing
22 further.
23 THE COURT: Do you wish to inquire?
24 Attorney Altieri, do you wish to inquire?
25 MR. ALTIERI: Yes, your Honor.

1 Q So you would not dispute a relevant market that
2 consisted of the market for operating systems for personal
3 computers, the market for operating and work stations and
4 departmental servers, except it might be a little too
5 broad on the high end; is that correct?
6 A Well, it might be a little too broad in the sense
7 it would include things with different capability, but I
8 wouldn't dispute it as being too narrow, no.
9 Q Now, sir, have you studied Microsoft's market share
10 in that market?
11 A I wasn't asked to and I haven't.
12 Q Now, sir, neither that market nor the departmental
13 server market that Professor Langlois defined includes
14 enterprise servers; is that correct?
15 A That's correct.
16 Q And enterprise servers perform a major of the
17 server operating systems market? Excuse me. Strike that.
18 Have you gone through the materials that you
19 were shown on your direct examination, and I guess you
20 were shown on Saturday morning last? Have you gone
21 through those to weed out which of those numbers pertain
22 there to software in the enterprise server market?
23 A No. I have the same problem that Professor
24 Langlois had indicated in his declaration that the data
25 don't split easily that way, and these data don't seem to

1 market; isn't that correct?
2 A I was clear one can conclude some things from
3 looking only at market share, but under some circumstances
4 it's definitely not enough.
5 Q And I believe you have previously testified, have
6 you not, that in looking at a particular historical market
7 share data, that there is no fixed number that one can use
8 to determine whether or not there is dominance in the
9 marketplace by a particular competitor; is that correct?
10 A There is no generally accepted right line in
11 economics, that's correct. It's a continuum.
12 Q Haven't you said, sir --
13 A To be clear, may I correct something? I don't
14 believe we talked about dominance. I believe we talked
15 about monopoly power. I treat those as being roughly
16 having the same meaning. I'm not sure the law does. I
17 just want to be clear.
18 Q Now, haven't you previously testified that in at
19 least some areas such as the merger guidelines that you
20 were involved with, that the 35 percent number has been a
21 threshold for concern about single-firm market power?
22 A In the context of the merger guideline and the
23 anti-trust law adopted by the Russian Federation in 1991,
24 that number appears, so in that sense, yes, indeed, it has
25 been a concern, a threshold.