1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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5 UNITED STATES OF AMERICA,)
6)
Plaintiff,)
7)
vs.) No. 98-1232(TPJ)
8)
MICROSOFT CORPORATION,)
9)
10)
Defendant.)
11)

60-7371-0014
DEPARTMENT OF JUSTICE
AUG 21 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

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15 DEPOSITION OF JOHN ROMANO

16 a witness herein, taken on behalf of the Plaintiffs at
17 11:05 a.m., Thursday, August 20, 1998, at 3215 Porter
18 Drive, Building 15, Palo Alto, California, before
19 Jennifer Arroyo, CSR, pursuant to Subpoena.

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REPORTED BY:
24 Jennifer Arroyo
CSR No. 10696
25 Our File No. 3-48919

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4 Q. To the extent that you're aware what the
5 considerations have been, has HPD ever considered
6 reinstalling OS/2?
7 A. Have we considered installing OS/2? Not
8 seriously, no.
9 Q. Why not?
10 A. Well, that's not a serious contender for
11 the home PC marketplace.
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16 Q. BY MR. HOLTZMAN: Was that part of the
17 assessment to the extent there was one of OS/2?
18 A. Well, our assessment of what it took to
19 be competitive in the home PC market, quickly built up a
20 set of requirements that basically included Windows and
21 excluded all other operating systems as a viable
22 candidate for us to be competitive.
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4 Q. Do you have any understanding as to what
5 the price trend for, if you can state one, in general
6 for the components that have gone into Pavilion PCs has
7 been over the last three years?
8 A. Price trends of components have been
9 dropping significantly.
10 Q. Can you describe components for which
11 that's true specifically?
12 A. Basically all components have been
13 dropping in light of the declining ASPs and the need to
14 be more competitive. So motherboard prices have gone
15 down. Processor prices have gone down. Memory has gone
16 down. Disk drives have gone down.
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10 Q. BY MR. HOLTZMAN: Do you have any
11 understanding as to what the trend has been from 1995
12 until now has been for the price of Windows 95? This is
13 the price that HPD pays or the --
14 A. You mean the operating system, itself?
15 Q. -- pays to Microsoft.
16 MR. LACOVARA: Objection.
17 THE WITNESS: Yes, I do.
18 Q. BY MR. HOLTZMAN: Okay. And what is that
19 understanding?
20 A. The price has gone up.
21 Q. What's your basis for saying that?
22 A. Well, I was aware all through that period
23 of the prices that we're paying for basically all of our
24 components.
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12 Q. Now, you testified, if I heard you
13 correctly, that price of motherboards to HPD from 1995
14 until now has gone down?
15 A. Yes.
16 Q. Over that same period of time do you have
17 any understanding as to what the trend has been in the
18 performance of the motherboards used in Pavilion PCs?
19 A. Well, the performance has gone up in
20 features and performance.
21 Q. And you saying "features and
22 performance," what do you mean by that?
23 A. Well, features are facilities or
24 capabilities that the system has, the speed at which
25 certain subsystems of the motherboard might operate.

1 For instance, the speed at which it talks to the disk
2 drive, the speed of which it talks to the modem or how
3 the modem talks to the telephone lines, those types of
4 things. Those would be the performance or features, the
5 speed of the processor, the speed of the memory.
6 Q. Okay. Now, did you also testify earlier
7 about the price trend for hard disk drives?
8 A. Yes.
9 Q. And over the period of time from 1995
10 until now, what has the trend been in terms of the
11 features or performance of hard disk drives?
12 A. Features measured in speed of access or
13 speed of transfer have increased significantly. Storage
14 capacity has increased significantly, and price measured
15 on either a performance or space has gone down
16 significantly.
17 Q. Are you familiar with something that is
18 called or was called the Personal Page?
19 A. Yes, I am.
20 Q. What is or what was that?
21 A. The Personal Page was a piece of software
22 that we at HPD had contracted with a third party to
23 create, which was a menuing system guide, that overlaid
24 Windows 95.
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16 Q. As of the time you left for Singapore,
17 was the Personal Page still available on Pavilion PCs?
18 A. No, it was not.
19 Q. Why not?
20 A. We stopped using the Personal Page
21 probably about a year prior to the time I left. We were
22 no longer allowed to offer an early choice to our
23 customers as to which user interface they would use, and
24 we found that after that occurred, there was much less
25 likelihood that our customers would be able to make that

1 choice before they got in trouble.

2 I guess -- let me go back and say some of

3 the motivation, I didn't say that, but a couple of the

4 motivations for us were, one, to differentiate our PC

5 from our competitors at point of sale.

6 Two, to make sure that the customers had

7 an easier, more successful use of the PC, but that it

8 also gave them the choice of going directly to a more

9 advanced interface like Windows 95, so we didn't want to

10 preclude that choice.

11 And the third one was more defensive and

12 that is by keeping people from getting into trouble with

13 the product, we would reduce our support calls. And

14 that was a large part of our motivation because support

15 calls is a very high percentage of our expense of our

16 business model.

17 Q. The "our" in that answer was whom? You

18 said "our" --

19 A. Our, HPD.

20 Q. Now, you also in your answer you said

21 that HPD, if I understood you correctly, was no longer

22 allowed to do something. Can you describe what you

23 meant by that?

24 A. Well, as I described earlier, we had this

25 so-called out-of-box experience from the time the PC

1 turned on where we could register our customers, and
2 then talk to our customer introduce them to the PC and
3 give them the choice of whether they wanted to use this
4 program or not by giving them a tour of what features
5 and benefits were.
6 We were no longer allowed to do that
7 automatically on boot-up sequence, and since we didn't
8 have that opportunity, the only way we could talk to our
9 customer was by having an icon on the desktop. And our
10 customers were much less likely to choose that icon from
11 other choices they had once they were dumped to Windows
12 desktop. So it was basically -- it became not a good
13 return on our investment to continue with that program
14 under those circumstances.
15 Q. And by whom was HPD not allowed to do
16 what you just described?
17 A. Microsoft.
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10 Q. And what, if anything, was it that people
11 from Microsoft said or did that conveyed to you that HPD
12 was not allowed to do that?
13 A. They told us specifically that we had to
14 cease doing that, and they did that based on their
15 observations of our machine. And subsequently they
16 required us to submit pre-releases of our machine to
17 them for their evaluation so they could judge whether it
18 was compliant or not compliant.
19 Q. And in response to those communications,
20 what did HPD do with respect to the Personal Page?
21 A. Well, our intention is always to honor
22 contracts, and we had a disagreement about what we
23 thought compliance or noncompliance was. And through
24 many discussions with Microsoft we came to mutual
25 understanding of what it did mean, and so when we

finally had a mutual understanding, we became compliant.

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3 Q. Do you have any understanding as to

4 whether Pavilion customers could also call Microsoft?

5 A. Pavilion customers of course could call

6 Microsoft, but when they did, they were asked their

7 serial number and serial numbers are coded to OEMs, and

8 they were told to call their OEM for support.

9 Q. What's your basis for saying that?

10 A. Excuse me?

11 Q. What's your basis for your understanding

12 that that was the process for a customer who called

13 Microsoft?

14 A. I was told by Microsoft representatives

15 that that was the process.

16 Q. Do you remember who those representatives

17 are?

18 A. Not specifically, no.

19 Q. You testified earlier about the removal

20 of a variety of programs from the boot-up sequence for

21 the Pavilion PC.

22 A. Uh-huh.

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3 Q. BY MR. HOLTZMAN: Do you have any
4 understanding as to whether there was an impact on
5 support calls?
6 A. Yeah. It's our judgment that -- and our
7 measured metrics that our support calls increased
8 significantly over the period of time from when we had
9 originally released the product to later, and basically
10 we did track all of our support calls by nature and type
11 of questions, so we had a database that keeps track of
12 exactly what type of issues the customers had. And then
13 we could count and run statistics on the numbers of
14 call, number of call minutes, and the nature of the
15 calls. We did -- ran reports on a monthly basis.
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23 Q. BY MR. HOLTZMAN: Okay. Did HPD reach
24 and conclusion -- I'll ask it that way -- from what you
25 described that --

1 MR. LACOVARA: Objection.

2 Q. BY MR. HOLTZMAN: -- HPD conclusion as

3 to the impact on support calls?

4 MR. LACOVARA: Objection lacks foundation.

5 MR. MILLER: You can answer.

6 THE WITNESS: Yes. I mean part of my

7 responsibility as R&D manager is to assess and to reduce

8 our support call loads by what I was responsible for in

9 the products, so it was my responsibility to study the

10 results of our support call load and to try to assess

11 what the causes were and to repair those causes.

12 So it was my judgment and the judgment of

13 my team that as a direct result of some of those changes

14 our support calls went up by approximately 10 percent in

15 the arena of Windows 95 usage.

16 Q. BY MR. HOLTZMAN: Now, you testified that

17 as to the placement of the Personal Page program during

18 the boot-up sequence, and I gather you were referring to

19 the boot-up sequence for Windows 95?

20 A. Yes.

21 Q. Did you or anybody else that you were

22 aware of at HPD consider putting the program before that

23 boot-up process began?

24 A. Yes, we did.

25 Q. And what conclusion did you reach?

1 A. Well, in exploring our alternatives after
2 we were told we couldn't do what we had been doing, we
3 looked at other ways to run our programs. The only ones
4 that we found were viable, technically viable, were to
5 run another operating system prior to booting Windows
6 95. We looked at several of those opportunities but
7 because of time constraints and resource constraints we
8 couldn't implement those in time to make that happen.
9 Q. Was the cost of doing that part of your
10 calculation?
11 A. Certainly, cost and time.
12 Q. Was that option considered again after
13 what transpired with Microsoft that you described
14 earlier about the removal of the programs from the
15 boot-up sequence?
16 MR. LACOVARA: Object to the form.
17 THE WITNESS: Yes, it was.
18 Q. BY MR. HOLTZMAN: And what conclusion was
19 reached?
20 A. Again, the time element -- you mean from
21 the time they told us to the next release of our
22 product?
23 Q. Correct.
24 A. Yes. We considered that as an option,
25 but there wasn't -- there wasn't enough time to

1 implement that.

2 Part of the problem was that the programs

3 that we had developed for registration -- our

4 registration client and our -- the other whole program

5 that I talked about, the personal tour, were all

6 developed with Windows 95 interfaces. So porting those

7 to another system would have been quite time consuming

8 and expensive for us. There's some other technical

9 issues as well, but.

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24 Q. Okay. When did Personal Page run?
25 A. Personal Page was the alternative user

1 interface that you asked me about just a moment ago, and
2 that ran after the whole boot sequence upon entering
3 into Windows 95.
4 Q. And Microsoft -- so your testimony is
5 Microsoft never told you -- never told HPD that it could
6 not allow a user to get to the Personal Page off the
7 Windows desktop; is that correct?
8 MR. MILLER: Vague and ambiguous.
9 THE WITNESS: As I understand the question, they
10 never told us that we couldn't get it off the standard
11 desktop.
12 Q. BY MR. LACOVARA: Right.
13 A. That's, yeah, that's a difficult
14 question. You mean -- we weren't told that we couldn't
15 access it from the desktop, no.
16 Q. So your understanding was that HPD was
17 permitted to have an icon for Personal Page?
18 A. Certainly we could have as many icons in
19 the desktop as we liked.
20 Q. And a user could use that icon and never
21 deal with Windows again; is that correct?
22 A. Yes, that's true.
23 Q. And the Windows interface would disappear
24 forever?
25 A. No, it would not.

1 Q. The user wouldn't have to see it ever
2 again; is that correct?
3 MR. MILLER: Vague and ambiguous?
4 Q. BY MR. LACOVARA: If I selected the
5 Personal Page desktop, what happened on subsequent
6 boots?
7 A. You would go to the Personal Page
8 desktop.
9 Q. Okay. And I could get back to Windows;
10 correct?
11 A. Yes, at any time.
12 Q. But I'd have to make a choice to get
13 back?
14 A. Yes.
15 Q. The default would be an alternative
16 interface to it?
17 A. Yes, it would.
18 Q. And Microsoft never restricted HPD's
19 ability to have an alternative interface after first
20 boot; is that correct?
21 A. Correct.
22 Q. Now, the Personal Tour, is that what you
23 called it?
24 A. Yes.
25 Q. The Personal Tour, that came up in the

1 first boot sequence; is that correct?

2 A. Yes.

3 Q. And Microsoft informed HPD to your

4 knowledge that that was not permitted under the OPK; is

5 that correct?

6 A. Yes, that's correct.

7 Q. And this I think is the question I should

8 have asked. Is it -- were you informed by Microsoft

9 that one of the reasons that the Personal Tour would not

10 be permitted is it permitted a user to get to the

11 Windows desktop without ever seeing and accepting the

12 Windows 95 end-user license agreement?

13 A. There was a escape that was feasible from

14 that; although, it was not a normal exit mode that made

15 that possible, yes.

16 Q. And had -- to your knowledge had HPD

17 designed the Personal Tour so that that would be

18 possible?

19 A. No, not at all.

20 Q. That was something that you had not

21 intended but that could happen; correct?

22 A. Yeah, it was a low probability occurrence

23 of it. What we called defect or side effect.

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8 Q. BY MR. LACOVARA: You testified a little
9 earlier I think that Microsoft permitted HPD to alter I
10 think it was four screens in the boot sequence; is that
11 correct?
12 A. I didn't give the number. You basically
13 named off the screens, but we were -- we had developed a
14 mouse tutorial. We had done what we call kind of a
15 personal system check, and they had allowed us to
16 change -- they had given us permission to change the
17 look of the two of the required screens but not really
18 the functionality.
19 Q. Okay. Was one of the alterations that
20 you were -- that HPD was permitted to change the splash
21 screen to insert an HP branded splash screen?
22 A. That has nothing to do with the boot
23 sequence per se, that has to do with after you enter
24 Windows 95. But yes that was finally granted. There
25 was a period of time where that was not granted.

1 Q. But it was granted after these
2 negotiations that led to a common understanding; is that
3 correct?
4 A. Yes.
5 Q. Okay. Is it also correct that Microsoft
6 and HPD instituted quarterly meetings to make sure there
7 would be fewer disputes in the future?
8 A. Yes, we did.
9 Q. You testified, I believe, that one of the
10 reasons that HPD wanted to create a unique out-of-box
11 experience was to promote the branding and
12 differentiation of Pavilion products; is that correct?
13 A. Yes, we did.
14 Q. And I take it that was to -- am I correct
15 that that is to establish a connection between the user
16 and the HPD or Pavilion -- HP or Pavilion brand; is that
17 right?
18 A. Yes.
19 Q. Under the OPK for Windows 95 or the OPKs
20 for Windows 95, did Microsoft restrict in any way HPD's
21 ability to put branding images in the BIOS?
22 A. No, they did not.
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22 Q. Under the Windows 95 OPK was HPD
23 permitted to customize help menus?
24 A. I'm not aware of that at this point, no.
25 Q. Do you know whether HPD was permitted to

1 add Pavilion-specific tutorials to either the task bar
2 the desktop?
3 A. We were permitted to add anything we
4 wanted to in Windows 95.
5 Q. You could add as many icons as you
6 wanted?
7 A. Yes, we could, as many programs --
8 Q. And going back to the Personal Page icon,
9 you could insert anything you wanted in the box that
10 told the user to use Personal Page, couldn't you?
11 A. Correct.
12 Q. And you could put a sticker on the screen
13 of the monitor to say "go to this icon on first boot,"
14 couldn't you?
15 A. Correct.
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23 Q. Do you know in the -- under the
24 Windows -- for Windows 98 whether an OEM is entitled to
25 have a multimedia tour in the boot sequence?

1 A. No, I'm not aware of that now.
2 Q. Do you know whether under Windows 98 --
3 Windows 98 OPK, the OEM can have its own ISP
4 registration sequence?
5 A. I'm not aware of Windows 98 features
6 currently, no.
7 Q. Do you have any knowledge as to whether
8 under Windows 98 the -- an OEM can have its own
9 registration sequence and make the Windows 95
10 registration sequence disappear entirely?
11 A. No, I'm not aware of current features of
12 Windows 98. That's not my job responsibility now.
13 Q. I know you said it a few times, I just
14 want to make it clear.
15 Is it a fair statement you have
16 absolutely no knowledge of restrictions -- restrictions
17 or abilities of -- restrictions on an OEM or abilities
18 of an OEM to customize the desktop or the boot sequence
19 for Windows 98?
20 MR. MILLER: Vague and ambiguous.
21 THE WITNESS: Yeah. My current job
22 responsibilities don't include Windows 98.
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1 Q. In the second sentence of that letter it
2 says, "To re-cap, below is a summary of the added
3 flexibility that Microsoft has granted us permission to"
4 and then there's a colon, and then there are four bullet
5 items.
6 A. Correct.
7 Q. Those four bullets items, are those the
8 four things you testified about in response to
9 Mr. Lacovara's questions?
10 A. Yes, those were.
11 Q. Now the reference here to "added
12 flexibility," would you have appreciated more
13 flexibility with respect to having the Personal Page or
14 the Personal Guide run in the boot sequence?
15 MR. LACOVARA: Objection.
16 THE WITNESS: Yes, that was -- that was a key
17 issue for us. It was something that we really wanted
18 and were not allowed to do.
19 Q. BY MR. HOLTZMAN: Why was it a key issue?
20 A. Because that was our primary vehicle for
21 speaking to our customer directly before Windows 95
22 began to run.
23 Q. And was that issue more important than
24 the four things represented by the bullet points here?
25 A. These were also important, but as a group

1 they were all important. That was the only one where we
2 primarily talked to the customer.
3 Q. Now, if you go down to the bottom
4 paragraph of this letter, Exhibit 353.
5 A. Uh-huh.
6 Q. The third sentence of that, it reads, "We
7 used the Compaq CD to install Windows-95 successfully on
8 a Pavilion product. This seems to be in clear violation
9 of the rules that we are required to operate under.
10 This is the second time that we have seen Compaq taking
11 advantage of more flexibility that we have in executing
12 our product plans." You see where I am?
13 A. Yes, I do.
14 Q. I gather from that last statement that
15 there was a first time. Now do you recall, as you sit
16 here today, what the first time that, using your words
17 here, you had saw Compaq taking advantage of more
18 flexibility?
19 A. The first time was in this context is
20 when we reported basically their attempt to talk to
21 their customers prior to the Windows 95 running.
22 Q. Was it your understanding that was
23 something that was in the boot sequence?
24 A. Yes, it was something in the boot
25 sequence.

1 Q. Was it your understanding, that the
2 result of that, that there was a different look and feel
3 if a customer turned on a Compaq Presario machine and an
4 HP Pavilion machine?
5 MR. LACOVARA: Objection, leading and not
6 established it was a Presario machine.
7 Q. BY MR. HOLTZMAN: Was it a Presario
8 machine what you were just referring to?
9 A. Yes, it says -- it was a Compaq Presario.
10 MR. LACOVARA: I'm sorry.
11 Q. BY MR. HOLTZMAN: So to go back to my
12 question, did you have an understanding as to whether
13 this -- the effect of this was that a user's experience
14 provided for a different look and feel that user was
15 accessing Windows 95 on a Compaq Presario machine or an
16 HP Pavilion machine in the wake of what Microsoft said
17 about the Personal Page process?
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22 A. Yes, they were. In our opinion, what
23 they were doing was exactly what we had wanted to do and
24 were told we could not and what we were previously
25 doing.

Q. BY MR. HOLTZMAN: Now Mr. Lacovara asked you some questions about including an icon for Personal Page program on the Windows 95 desktop?

A. Uh-huh, uh-huh.

Q. Do you have any understanding as to whether -- strike that.

1 Did you or anybody else that you're aware
2 of at HPD consider whether that means of access to the
3 Personal Page was a desirable substitute with regard to
4 putting access in the boot-up sequence?
5 MR. LACOVARA: Object to the form.
6 THE WITNESS: Our -- specifically we knew that
7 that was not as effective of a way to present ourselves
8 to our customers because it was basically after the
9 boot-up sequence. There was no single thread that led
10 the customer into that.
11 We asked for some flexibility in the
12 icon. In particular, we asked to put a larger icon and
13 were told specifically we could not do that, that it had
14 to be an icon of standard size. And by the way, it
15 was -- the icon really was to set off this Personal Tour
16 basically to talking to our customer and doing
17 registration, so it was essentially running the programs
18 that we had to move out of the boot-up sequence. It
19 wasn't Personal Page per se.
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