1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

COPY

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Civil Action
5 vs.) No. 98-1232(TPJ)
6 MICROSOFT CORPORATION,)
7 Defendant.)
8)
9 STATE OF NEW YORK ex rel,)
Attorney General DENNIS C.)
10 VACCO, et al,)
11 Plaintiff,)
12 vs.) Civil Action
) No. 98-1233(TPJ)
13 MICROSOFT CORPORATION,)
14 Defendant.)

60-7371-0014
DEPARTMENT OF JUSTICE
JUL 13 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

15
July 9, 1998
16 9:30 a.m.

17 HIGHLY CONFIDENTIAL

18 Videotape deposition of BRYAN SPARKS, taken
19 by Defendants, pursuant to notice, at the offices
20 of Ray, Quinney & Nebeker, 79 South Main Street,
21 Salt Lake City, Utah, before Vicki L. Godfrey, a
22 Certified Realtime Reporter and Notary Public
23 within and for the State of Utah.
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21 Q In advance of this deposition, did you
22 talk at all with any representatives of a state
23 Attorney General's office?
24 A Yes.
25 Q With whom did you speak?

1 A Mr. Klein.
2 Q How many times did you speak with
3 Mr. Klein?
4 A Once.
5 Q Did you meet with Mr. Klein?
6 A Yes.
7 Q How long was that meeting?
8 A A couple of hours.
9 Q Did a representative of the United
10 States Department of Justice attend that meeting,
11 as well?
12 A Yes.
13 Q And who attended from the Department of
14 Justice?
15 A I'm not going to remember names, but
16 the three individuals that are here around the
17 table.
18 Q Three lawyers from the Department of
19 Justice?
20 A Yes. If I got their introductions
21 right.
22 Q And this was the same meeting that you
23 had with Mr. Klein yesterday?
24 A Yes.
25 Q And your lawyers attended that meeting,

1 as well?
2 A Yes.
3 Q That lasted, I think you said, a couple
4 of hours?
5 A Something like that.
6 Q What did you discuss during that
7 meeting?
8 A The Department of Justice and Mr. Klein
9 had some questions and I responded to them. I'm
10 not sure how detailed I should go there, but I
11 pretty much responded to questions.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 Q After you acquired the DR-DOS product,
25 did you determine that Internet connectivity would

1 be an important feature of that product?

2 A Yes.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5 Q The OpenLinux Standard product, is that
6 primarily intended to be a server product?
7 A Primarily, though it does include a
8 graphical user interface and an office productivity
9 suite because we do appeal to some UNIX work
10 station markets, and we include those. But the
11 fact that it has a commercial Web server, that's
12 how we would prefer to position the product as a
13 server.
14 Q Can all three of these products, could
15 they be used as a desktop operating system?
16 A Yes.
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9 Q Do all three of these products come
0 with a Web browser?
1 A Yes.
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

2 Q And DR-DOS can be used as a general

3 purpose operating system?

4 A Yes it can.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 Q If you could look at the next bullet
25 point here on the document which is labeled 000775,

1 and it says that, "The OEM distribution channel,
2 the strongest and largest for the desktop OS
3 market, is basically closed to new entrants for all
4 but the smallest OEM's."
5 A Yeah.
6 Q Do you agree with that?
7 A Yes.
8 Q And could you explain what that means?
9 A That's kind of the subject of our
10 lawsuit where we believe that there are a number of
11 anti competitive practices in place that make it
12 difficult for people to get into the distribution
13 channel, among other things. And I'm not sure how
14 to elaborate on that, but it is difficult to break
15 in. We also have the -- at least perceived -- I
16 don't have direct knowledge of real, but the
17 perceived notion -- or I can't comment on the
18 real -- where there's the notion that it would be
19 difficult for the OEM's to take a risk on anything
20 other than Microsoft for retaliatory reasons.
21 Q What attempts has Caldera actually made
22 to distribute OpenLinux through OEM's?
23 A We've tried. We've talked to some of
24 the larger OEM's, made efforts -- came where we
25 thought was pretty close on one or two of those.

1 Just haven't been successful. We made
2 presentations, we've negotiated price, we've talked
3 about market segments, we've talked about
4 cooperative marketing and sales rollouts, and just
5 haven't been successful in doing that.
6 Q Which of the OEM's have you talked to?
7 A We did talk to Compaq quite a while,
8 several occasions, and another that we're still in
9 negotiations with on this new product we're coming
10 out with. But, you know, Compaq we came pretty
11 close, I thought, and, you know, just couldn't
12 consummate a deal with them.
13 Q And what was Compaq going to OpenLinux
14 for?
15 A As an ISP -- targeted as ISP's. We
16 have a good product there, and creating a line of
17 PC's that was targeted at ISP's with our product on
18 it. Which fits us well. We have good features set
19 for them and made sense to us.
20 Q And what ultimately happened with
21 Compaq?
22 A Couldn't get it done. Don't know why,
23 just couldn't get it done. They weren't -- like I
24 said, we got down the road quite a ways and then,
25 you know, stopped. So I don't know why.

1 Q Did Caldera approach Del to try to get
2 OpenLinux distributed through Del?
3 A We had a contact into Del through --
4 not by me by somebody else in the company, a former
5 Novell employee that was known, and we talked to
6 them. You know, weren't successful there, as well,
7 really getting an OEM agreement there. They're a
8 very outspoken Microsoft shop at Del, and so, you
9 know, we didn't make much headway there,
10 apparently.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19 Q Are any of those browsers -- do you
20 consider any of those browsers to be part of the
21 Linux operating system?
22 A No.
23
24
25

1

2 Q When Caldera distributes OpenLinux
3 Standard through resellers, does Caldera require
4 those resellers as a contractual matter to
5 distribute the browser and/or install it along with
6 the operating system?
7 A No, we do not.
8 Q Why not?
9 A It doesn't make sense for us to do
10 that. The reseller knows what the customer needs
11 better than we do. He's closer to the customer.
12 We let him decide that. He is buying the boxed
13 product and has the browser, but we don't mandate
14 he install it or configure it, if he doesn't wish
15 to.
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 Q (BY MS. GIULIANELLI) You've testified
25 about the ability of end users to customize

1 OpenLinux when installing it. Would Caldera also
2 allow OEM's to customize OpenLinux to not include a
3 browser if they wished?
4 A Yes.
5 Q Why?
6 A Why wouldn't we? As long as we had a
7 contract. I'm not in a position where I can't be
8 picky on the customers I get. So if they wanted to
9 customize it, that's fine.
10 Q Would Caldera also allow resellers to
11 customize OpenLinux installing it?
12 A Yes.
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9 Q Would Caldera lower the price of
10 OpenLinux Base for other customers that wanted it
11 without a browser without Navigator, for instance?
12 A Not since Netscape has given the
13 browsers away for free. Previous to that, we might
14 have, but now, we bundle that in. We did that with
15 Montra before Netscape gave the browsers away for
16 free.
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11 Q Mr. Sparks, you've mentioned a couple
12 of times this afternoon that your company has a
13 lawsuit pending against Microsoft?
14 A Yes.
15 Q And that is an antitrust lawsuit?
16 A Yes.
17 Q Is one of the claims in that lawsuit, I
18 think you used the phrase earlier, a technical tie
19 claim?
20 A I believe that's how we characterize it
21 in the amended complaint.
22 Q Since the United States brought
23 litigation against Microsoft in October, 1997
24 relating to Windows 95 and Internet Explorer, has
25 Caldera publicly supported the United States in its

1 lawsuit against Microsoft?
2 A No.
3 MR. PEPPERMAN: Let me mark, I think
4 it's Exhibit 24. This is dated October 21st, 1997
5 and it's entitled Provo Company Applauds Action
6 Against Microsoft.
7 (Whereupon, Deposition Exhibit
8 No. 24 was marked for
9 identification.)
10 THE WITNESS: Okay.
11 MR. KLEIN: I guess I'll register an
12 objection as being beyond the scope.
13 MR. PEPPERMAN: It goes to bias.
14 THE WITNESS: Okay.
15 Q (BY MR. PEPPERMAN) Have you seen this
16 article before?
17 A No, it doesn't -- I don't recall. What
18 magazine is this?
19 Q It was produced by Caldera as part of
20 the production. It bears the Bates No. DOJ 522.
21 Up top, I can see a www.daily-herald.com com.
22 A It's probably press clips, out of the
23 press clips that we gave you.
24 Q The title of the article as I said, was
25 Provo Company Applauds Action Against Microsoft.

1 The action referred to there is the Department of
2 Justice action against Microsoft that was commenced
3 in October of '97?
4 A Well, this is -- I'm sorry, I'll have
5 to have the question again, I apologize.
6 Q The action referred to in this article,
7 is the action brought by the United States against
8 Microsoft, the one that was commenced in the fall
9 of '97?
10 A Yeah, according to the date, it must
11 be, yeah.
12 MR. PEPPERMAN: Okay. Let me mark as
13 Caldera Exhibit 25, an article from the Deseret
14 News dated October 22nd, 1997.
15 (Whereupon, Deposition Exhibit
16 No. 25 was marked for
17 identification.)
18 Q (BY MR. PEPPERMAN) This article is
19 entitled Utah Firm That Is Suing Microsoft Welcomes
20 Scrutiny of Software Giant. And this article -- is
21 this from a local Salt Lake paper, the Deseret
22 News?
23 A It says it's from the Deseret News,
24 yeah.
25 Q And the scrutiny that's referred to

1 there, this is again a reference to Caldera's
2 welcoming the United States action against
3 Microsoft?
4 A According to -- I'm sorry, I phased out
5 there for a minute.
6 Q Sure. The scrutiny of Microsoft that
7 Caldera is welcoming here, it is the United States
8 action against Microsoft?
9 A That's not my title, that's his title
10 and obviously, that refers to the original -- or
11 the DOJ action that was taken in October. Those
12 aren't my words, those are his words or her words.
13 Q Sure. Both of these articles, Exhibit
14 24 and Exhibit 25, there is a gentleman in there
15 quoted by the name of Ransom Love?
16 A Yes.
17 Q Is he an employee of Caldera?
18 A Yes.
19 Q Is he a senior Caldera executive?
20 A Yes.
21 Q Was he one of the founders?
22 A Yes. Well, that's what we call one of
23 the founders. He came in in January.
24
25

1 -

2 Q You were asked a number of questions

3 about what would happen if the browser wasn't

4 loaded and you gave answers?

5 A Yes.

6 Q And my question is, were those answers

7 with respect to your operating system product, the

8 OpenLinux product?

A Yes, absolutely.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25