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Microsoft and the U.S. Government

Microsoft first came to be in the late 1970s and early 1980s (Auletta, 2001). From 1980 to 1982 it would develop the Microsoft Disk Operating System, MS-DOS. From there they would work very closely with Intel and IBM, two other industry giants at the time. By 1983 the operating system was revealed, and by 1986 the company went public, with the founder becoming a billionaire. By the 1990s, Microsoft was the world's largest software company. It was then that Microsoft started to have its first real confrontation with the government.

In 1990 the Federal Trade Commission (FTC), started an investigation based on Microsoft licensing practices (Gilbert & Katz, 2001). This investigation ended in 1993 with no action taken, as the commission was deadlocked on how to proceed. The investigation resumed in 1994 under the United States (U.S.) Department of Justice (DOJ). In July 1994 the DOJ brought forth the complaint that Microsoft had attained a monopoly of personal computer (PC) operating systems (OS), by using "exclusionary and anti competitive contracts". Alongside the announcement of this filing, Microsoft and the government entered into a consent decree, where to be in accordance with the decree, it will change its licensing practices to fit within certain standards. While this overall deal was seemingly intended to keep Microsoft within certain bounds, while also keeping Microsoft from facing other immediate responses from the government, the terms of the decree would lead to further conflict, as the parties seemingly disagreed on what exactly the terms of the deal would require to keep Microsoft in compliance. One important measure of the deal, was that Microsoft was to agree that it could not condition licensing of its products based on the licensing or use of another product (Gilbert & Katz, 2001). Essentially, Microsoft was not allowed to require that customers use another product in order to be able to use a different product. After signing this decree, this issue would immediately come

into the spotlight, as Microsoft started requiring its manufacturers to use Internet Explorer in order to use its Windows OS. To Microsoft, they viewed Internet Explorer as an “integrated” product and not a separate one from its OS and thus according to Microsoft, they were not breaching their consent decree. To Microsoft at the time, this was not only about making the most amount of profit, but also a crucial measure for restricting any possible competition. Microsoft viewed a number of software products as rivals and threats, and it was thought that by keeping Internet Explorer on each system it would ensure there was no possibility for their rivals to succeed.

In December 1997 a Judge ruled that Internet Explorer and Microsoft Windows were separate products, and thus, Microsoft was to cease its current practice based on that distinction immediately, or be in breach of their consent decree. The following year, however, Microsoft successfully won an appeal and overturned the initial ruling. Under the backdrop of some viewing the consent decree as being violated, and others viewing it as perhaps not enough to reach an intended result, the U.S. Government brought forth an antitrust case against Microsoft in May 1998. The Government’s case was based on the Internet Explorer issue, along with a number of other issues related to misconduct and predatory and monopolizing behaviors. In 2000, a judge ruled Microsoft was in fact guilty of violating the Sherman Anti-Trust act. This ruling was appealed, however, this time a portion of the charges did stick (Evans et al., 2005). Numerous remedies were proposed, with Microsoft recommending smaller changes, and the government recommending larger ones. The initial proposed remedies even recommended Microsoft be split into multiple companies. Eventually, remedies were implemented, at a level between the original proposals of the government and Microsoft. The remedies were upheld in 2004 and objections to the remedies were rejected. While some have been known to express the

opinion that the remedies may have gone too far to harm Microsoft, the findings of Evans et al. conclude that a reasonable middle ground was found between addressing the concerns brought forth against Microsoft, while still allowing it to thrive and compete. As the remedies ended however, after this case, Microsoft was able to seemingly recover and was able to once again “ride to success in the cloud” (Picker, 2020).

From there, landmark confrontations between the U.S. government seemed to mostly subside. One key instance, however, of confrontation, was the “Microsoft Ireland” case (Brier, 2017). In this case, the U.S. was attempting to force Microsoft to give up its data about a foreign actor. This data was stored on the cloud through servers based exclusively in Ireland. Eventually a judge ruled Microsoft could not be compelled to do so, and thus, it could be seen as the government backing down from such a demand.

While there were numerous conflicts, there also seemingly have been potentially countless instances and habits of cooperation between Microsoft and the United States. In more recent years, in fact, there seems to be an overall trend of collaboration between the two, when compared to perhaps a more adversarial environment during the late 1990s. One form of collaboration seems to be the deep levels of cooperation between Microsoft and the NSA in the realm of surveillance (Nelson & Simek, 2014). Microsoft has supposedly worked together with the NSA to undermine its very own security and confidentiality for the NSA and the U.S. government's benefit. This includes giving pre encryption access to the NSA for its email services, helping the NSA to circumvent the encryption altogether in order to surveil email communications, giving increased levels of access to services like SkyDrive, among other forms of cooperation.

Another interesting example of perhaps even deeper potential cooperation between Microsoft and the U.S. government, lies in the case of Skype (Nelson & Simek, 2014). Before Microsoft owned Skype, it was generally thought to be somewhat secure as a method of communication. Sometime after Microsoft came into owning the project, however, the story completely changed. Firstly, Microsoft changed the very architecture of the service, leaving it in a state much more prone to surveillance. Microsoft also spurred along the process of tripling the amount of Skype calls captured under the NSA's surveillance program called PRISM. Microsoft has perhaps even been "unlocking" certain pieces of data for the NSA.

Another case where the U.S. government and Microsoft cooperate and collaborate, seems to be in regard to foreign actors, primarily with China. In fact, in a 2007 study in Asian Perspective, Blanchard had this to say on the relationship between Microsoft and the U.S. in regard to China "Microsoft's most significant ally in its interaction with China has been the U.S. government" (Blanchard, 2007). In the study it is pointed out that certain U.S. policy goals, in regard to China, line up exactly with Microsoft's goals. "Freeing" up markets, protecting intellectual property rights, opening up to foreign companies, and removing barriers to foreign goods are all instances where the goals of both parties align in their relations to China. While the paper concludes that there is nuance, and Microsoft and the U.S. government do have some divergences on their attitudes and goals concerning China, it does seem that if China's power stays the same or even proliferates, then Microsoft and the U.S. may continue to seek deep cooperation between the two parties.

As we can see that the relationship between Microsoft and the U.S. government has changed over the years, from a more apprehensive and sometimes adversarial one, to perhaps a more willing partnership, it may beg the question then what role did the conflict play in changing

how Microsoft performed and worked as a company. As has been alluded to in the past and as table 1 illustrates, while there may have been an effect, particularly an immediate effect, from the

Table 1. Microsoft Financial and Performance Data

	Net Income		Current	
	Tot. Revenues (\$Millions)	before Taxes (\$Millions)	Assets (\$Millions)	% Growth in Total Revenues (YOY)
1998	15,262	7,117	15,889	-N/A-
1999	19,747	11,891	21,702	29.39
2000	22,956	14,275	30,308	16.25
2001	25,296	11,525	39,210	10.19
2002	28,365	7,875	48,576	12.13
2003	32,187	11,054	58,973	13.47
2004	36,835	12,196	70,566	14.44
2005	39,788	16,628	48,737	8.02
2006	44,282	18,262	49,010	11.29

(Blanchard, 2007)

antitrust trial, Microsoft seemingly rebounded and continued with substantial growth even after the remedies went into place (Blanchard, 2007). According to Evans et al. in a 2005 paper, the landmark case was seemingly a government victory first and foremost, however, Microsoft could also be seen to have “won” (Evans et al, 2005). Many of Microsoft's behaviors on trial were seen to have been perfectly lawful and fine, and it skirted from some of the harshest remedies. This left Microsoft in a “conciliatory” state, and thus could go some way to explaining the future pattern of a more cooperative Microsoft. Table 2 can go some way to illuminating just how many of the potential violations could have been applied, and what remedies could have been put into place by the U.S. government. Many other tools could be used to further cement this conclusion,

Table 2

<u>Allegation</u>	<u>District Court</u>	<u>Court of Appeals</u>
<i>Sherman Act Section I Claims:</i>		
Microsoft exclusive dealing contracts barred Netscape from the market	No Violation	Not Appealed
Microsoft's inclusion of Internet Explorer in Windows was a <i>per se</i> illegal tie	Violation	Vacated (dropped on remand)
<i>Sherman Act Section II Claims:</i>		
(States Only) Microsoft leveraged its operating system monopoly to monopolize the browser market	No Violation (summary judgment)	Not Appealed
Microsoft attempted to monopolize the browser market	Violation	Reversed
Microsoft illegally maintained a monopoly in operating systems	No Violation for some allegations Violations for some allegations	Not Appealed Some not addressed

such as the profits Microsoft may see in the future, future cabinet and committed appointees within the U.S. government who have connections to Microsoft, and what % of revenue Microsoft sees in the future in the U.S. versus abroad. In this way, the case could be seen as a show of good faith by the U.S. It kept asserting its influence, imposing remedies and finding Microsoft guilty of some crimes. It however would then reverse some decisions, and take some of its harsher remedies off the table. These kinds of measures could be seen as a way to show what the government could do if it wanted to, so long as Microsoft continued acting out in a way antagonistic to the interests of the U.S. government. This could also further explain why Microsoft will become more cooperative in the coming years. If the current trends were to continue, it would seem likely that Microsoft and the U.S. government would continue to cooperate immensely in the future, especially so long as their goals on foreign powers continue to align.

In conclusion, Microsoft has had an evolving and storied history with the U.S. government. In the early years, it was a very large and profitable company that would eventually come under fire from the authority of the U.S. government. Microsoft was found guilty of certain antitrust violations, while many others violations were overturned or not found to be applicable. Following the case, remedies were levied on Microsoft. Microsoft did see some smaller scale conflicts with the U.S. later on, but largely became a more conciliatory party that cooperated with the U.S. much more, especially when it comes to surveillance.

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