

## **In re Microsoft**

Translation of the Decision of the Japanese Fair Trade Commission,  
December 14, 1998

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The licensing of a computer program to manufacturers of personal computers with the obligation to license also other programs of the same software maker with a significant market share constitutes an unfair trade practice and is unlawful.

### FACTS:

Since about 1992, Japanese producers of personal computers have started to produce DOS and Windows compatible computers. Previously, almost every maker had developed its individual software. The switch has given Microsoft tremendous marketing opportunities, boosted by the development of Japanese versions for Windows, Word and Excel. Since 1995, Microsoft Japan had forced PC producers interested in obtaining a licence for the computer program Excel, to license the program Word in addition. Since 1997, PC producers interested in licensing Word or Excel were forced to license the personal information manager "Outlook", too.

According to Sec. 2(9)(v), "dealing with another party by unfairly exploiting one's own bargaining position" constitutes an unfair trade practice. The General Provisions on Unfair Trade Practices of 18 June 1982 in Sec. 10 accordingly prohibit "unjustly causing another party to purchase a commodity or service from oneself ... by tying it to the supply of another commodity or service." The Japanese Fair Trade Commission regards tie-in sales as unlawful if either effected by an entrepreneur with a dominant position in the relevant market, or if there is a certain danger that the practice will spread and be repeated by other entrepreneurs. Previous cases on tie-in sales decided by the FTC concerned the tying of morning to evening newspapers (Chubu Newspaper, 15 February 1955), the purchase of school textbooks (where the accused had a monopoly) to other textbooks (Nagano Textbook Case, 11 February 1964), and, most prominently, the immensely popular computer game software "Dragon Quest IV" to other, less popular programs (Dragon Quest IV, 30 November 1990).

Under normal FTC procedures, the FTC would first issue a recommendation to accept a cease and desist order, Sec. 48(1) Anti-monopoly Act. If the recommendation is accepted within 14 days, the Fair Trade Commission would issue a final order with the same contents. The recommendation system was introduced to ease the FTC's

workload. Even if accepted, it does not establish the fact that the Anti-monopoly Act has actually been infringed (in re Novo Industri, Supreme Court, 28 November 1975), but an irrevocable admission of guilt (In re Shell Oil et al., Supreme Court, 4 April 1978). In reputation-conscious Japan, more than 90% of all respondents choose to accept the recommendation also in order to avoid further adverse publicity.

The Japanese Fair Trade Commission issued a recommendation against the business methods of Microsoft on 20 November 1998, which was subsequently accepted and followed by the FTC's final order of 14 December.

ORDER:

Henceforth, Microsoft Japan will no longer tie its word processing software "Word" to its spreadsheet software "Excel", and its personal information manager software "Outlook" to "Word" and "Excel" when licensing such software to manufacturers of personal computers with the purpose of installing them for end users.

Should manufacturers of personal computers request Microsoft Japan to amend the existing licensing contract concerning the joint purchase of "Word", "Excel" or "Outlook", such requests shall be accepted by Microsoft Japan.

When licensing "Word" or "Excel" to manufacturers of personal computers, Microsoft Japan shall not tie these licenses with licences for other software.

Microsoft Japan shall inform manufacturers of personal computers and consumers of the foregoing (I) – (III).