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third, the decree does not apply to future efforts by microsoft to protect its monopoly position in the operating systems market. it does not address microsoft's efforts to extend its operating system monopoly into the area of server operating systems and web services. these markets are becoming increasingly important to the competitive position of middleware. the fact that microsoft is engaged in these efforts means that it is unlikely to abandon them. the decree will not prevent microsoft from continuing to seek to leverage its current monopoly in the operating systems market against any and all threats to its monopoly position in the future. this should be a top antitrust enforcement priority, if middleware is to be brought back to competitive parity with the dominant operating system. finally, the decree will not prevent microsoft from persisting in its illegal conduct. instead, it encourages and rewards such conduct and in fact strengthens microsoft's position in the operating systems market. indeed, this is the worst of all possible scenarios. the decree fails to address the problems that led to the department's litigation and the decision to impose a consent decree. this failure will allow microsoft to continue its anticompetitive practices, while reducing the prospects that it will ever be held accountable for its past, illegal conduct. 66. the five-year term of the final judgment is long enough to permit the parties to resolve this dispute. 4 by the end of the five-year term, all provisions of the final judgment will become enforceable, including section iii.5 of the proposed decree. that section provides: within ten (10) business days after the court signs the final judgment, microsoft must provide written notice to the doj of any circumstances that would affect its ability to enforce the provisions of the final judgment. the doj shall promptly review the asserted circumstances and report them to the court for consideration by the court in connection with its further consideration of the entry of a final judgment. in addition, at the end of the ten-year term, if any provision of the final judgment remains in effect, the parties shall meet and confer to determine whether the provision should be continued. if they are unable to agree on the continuation of the provision, the provision will terminate. (emphasis added.)

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15. by the middle of 1996, netscape was almost the only company in the world that had a browser that ran on microsoft's operating systems. the following graph shows the percentage of users who had netscape as their browser: source distribution market share 16. the netscape browser, and java technology, threatened to break microsoft's monopoly in pc operating systems. this threat prompted microsoft to take action to prevent netscape from expanding its share of the browser market. 4 it set out to develop two different strategies to prevent netscape from gaining market share in the browser market: (1) the "build first" strategy, and (2) the "lock-in" strategy. with its "build first" strategy, microsoft attempted to design its own browser, internet explorer, to take on netscape. 45. in light of the fact that it is unlikely that middleware can re-create the kind of competitive threat to microsoft's monopoly power in pc operating systems that existed prior to microsoft's illegal conduct, additional remedies are needed to address the underlying source of microsoft's market power in pc operating systems. these remedies could include requirements that microsoft license all of its patent rights to any products or technologies that can be used to reduce the applications barrier to entry, and not just the use of such technology in operating systems or browser plug-ins. such a requirement would ensure that future developments could be built on existing technologies and that microsoft would not be able to use its patent portfolio in a way that would limit competition. such a requirement would also help to ensure that microsoft does not use its patent portfolio to block its entry into new markets, such as client operating systems, or from entering into exclusive relationships with other software developers. 5ec8ef588b

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