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23. these risks, and the costs of enforcement and litigation, are especially likely to deter innovation and the development of new products in the most important areas of the marketplace, such as networking, web-services, and browser-based software. there are some areas of middleware that may be more open, such as file-systems or operating systems. to some extent, these markets are already quite open, although there are some significant barriers to entry that may make it difficult to create a new competitor. but these are areas in which middleware innovations are still new and in which potential innovators have little incentive to enter the field. the same may not be true of the applications barrier. this is the area of middleware in which there is the greatest incentive to innovate, the area in which there is greatest opportunity for the creation of new markets and the greatest likelihood that a new competitor will successfully enter the market. yet the most significant developments in that area are likely to be applications that run on top of the microsoft operating system, which will create a very substantial barrier to entry for potential competitors. 24. the evidence of past anticompetitive conduct i have reviewed leads me to the conclusion that microsoft's dominance in the pc operating system market is not inevitable. indeed, despite its dominant position, it does not have an iron-clad competitive position in the operating system market. in fact, it may be vulnerable, as it was in 1995, to new middleware products that threaten to replace the dominance of microsoft products. although this does not necessarily mean that microsoft can be expected to lose its monopoly in operating systems, it does mean that there is a substantial chance that its monopoly power in pc operating systems could erode, and that if it is not prevented from doing so, it may not exist in a year or so.

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71. the doj's communications with microsoft about the negotiation of the final judgment occurred before the doj entered into negotiations with microsoft to discuss the terms of the final judgment. some of the communications that microsoft has produced were made in connection with the negotiation of the final judgment. 47. microsoft argues that in order to achieve interoperability, it must know the details of how its apis are used. microsoft's own internal definitions of technical information define technical information as all information necessary to achieve interoperability. but microsoft's definition is necessarily limited to the extent that microsoft's own software does not work in interoperable fashion with others' software. without interoperability, there is no interoperability "problem." but microsoft has not shown that it must know the details of how its apis are used to achieve interoperability. 48. microsoft also claims that it must disclose technical information in order to enforce its patent rights, which are the only means by which it can maintain its monopoly in the relevant technology. the interim order rejected this contention and held that "the possibility that [an alleged infringer] may be liable for a willful violation of the patent laws does not, by itself, require it to violate the antitrust laws.. [t]he potential for a willful violation of the patent laws does not suffice to allow [the alleged infringer] to obtain antitrust immunity." id. at 59441. the court held that "an alleged infringer may not use a violation of the patent laws as a shield against liability for violating the antitrust laws. at 59442. the court rejected microsoft's argument that a violation of the patent laws is to be treated as a defense to liability under the antitrust laws. the court explained that "whether a patentee may assert a violation of the patent laws as a defense to an antitrust action depends on whether the patent laws at issue provide patentees with a private right of action. the court held that "the mere possibility of a violation of the patent laws does not establish an antitrust violation. at 59444. 5ec8ef588b

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