

Steven Mariano

From: Kevin Harrang
To: Craig Fiebig; Dianne Gregg
Cc: Bruce Petersen; Kevin Harrang; Leann Nester
Subject: RE: Attorney/Client Privileged Information
Date: Tuesday, October 04, 1994 8:57AM

Privilege Material
Redacted

From: Craig Fiebig
To: Dianne Gregg
Cc: Bruce Petersen; Kevin Harrang; Leann Nester
Subject: Attorney/Client Privileged Information
Date: Thursday, September 29, 1994 10:06AM

First, please note that everything following is <<my opinion>> and may or may not reflect the actual nuances of the applicable law or the "real" policies of Microsoft. That being said, I feel my positions as expressed below to be as accurate as possible and highly relevant. I am absolutely NOT qualified to give legal opinions, but that has never stopped me from offering my views on a topic, as you will see below. :>)

This has been a huge issue for us in Select. From an ease of sales perspective it seems very straightforward to me that the simple thing to do is base pricing on the total revenue (okay, profit to be optimal) generated by a discrete customer. When we started designing the offering that is precisely what we expected to do. There are two reasons why we can't (or shouldn't) take this approach, one is marketing strategy the other is legal.

> From a marketing strategy perspective the central reason our operating systems have been so insanely successful has been unprecedented ISV support. We sell lots of Windows (and Chicago, fingers crossed) <not> because they are "great" operating systems (in no technical sense could we meet that definition until maybe Win95) but because users find thousands of applications available for those platforms. ISVs are very clear about their need to feel as though they have the ability to compete as fairly as possible for the sockets created by Windows on a user's desktop. The more we do to diminish that perception of fairness the more we damage our ability to optimize the broad market capability to maximize our OS revenues. If we were to embed word processing, spreadsheet and db functions into Windows, ISV support for that platform would evaporate over time and our cash cow would become increasingly difficult to milk. Offering large customers pricing for Apps because they buy lots of Windows is a step down this slope and one which we have scrupulously and publicly avoided. I believe this is the right macro level strategy, even accounting for the individual customer issues it creates.

Legally we have a different problem. The recent decision from DOJ notwithstanding we have a perception problem in that segment of the market with which we compete. They tend to think we have a "monopoly" in certain technologies. They are wrong, of course, because they too narrowly define the computer market in their opinion of what constitutes a monopoly. But right and wrong in law is subject to seemingly random jury decisions. One of the things that might keep out of trouble with DOJ in the future is that we have a licensing program that unambiguously states that absolutely no relationship exists between the price a large customer might pay for operating systems and price they might pay for applications.

As to the letter, it would be immaterial. The customer would not be the injured party and they have no right or capability to absolve us of wrongdoing in the event that someone hit us with an A-T suit. The injured party might be an applications vendor (if large purchases of Windows gave great prices on Excel) or

an OS vendor (if large purchases of Excel gave great prices on Windows). The letter from the customer saying, "But this is what I wanted" is wholly irrelevant.

I don't know that we should be talking about this to customers at all. Although I understand and agree with what the customer is requesting, the marketing and legal risk reasons for avoiding that path are, to me, quite clear. Nonetheless, for us to be making statements that could (and quite possibly would) become public would be, I believe, in error. If you need to pursue this, perhaps Kevin or Leann could step in and offer guidance on the wisdom and method for doing so.

Craig

From: Dianne Gregg
To: Craig Fiebig
Cc: Bruce Petersen
Subject: RE: Pools
Date: Tuesday, September 27, 1994 10:01PM

Can you give me the specifics on the legal reasons? I originally told the customer that I thought that we were prohibited from revenue based pricing because of the Department of Justice. Believe it or not, the customer offered to write letters to the DOJ in support of revenue pricing.

I just need to give the customer a more detailed explanation so that they will settle down and feel that I actually looked into this issue.

From: Craig Fiebig
To: Dianne Gregg
Cc: Bruce Petersen; Craig Fiebig
Subject: Pools
Date: Tuesday, September 27, 1994 10:42AM

We do pools for legal reasons. We cannot convey large discounts on Apps when someone buys lots of DOS, nor the reverse. The question of how competitors do this is (unfortunately) irrelevant as they neither have both OS and Apps products nor are they ever under scrutiny from the DOJ.

In short, we do not do this and will not. Please let me know if you need help positioning this with the customer.

Regards,

Craig

>From dianneg Tue Sep 27 09:37:42 1994
X-MSMail-Message-ID: 7CCE78CC
X-MSMail-Conversation-ID: 7CCE78CC
From: Dianne Gregg <dianneg@microsoft.com>
To: craigfi
Date: Tue, 27 Sep 94 09:12:12 PDT

Craig, I don't know if you are the right person to help with this so please advise. I recently met with a customer who questioned our contract product pools. They wanted their contract based on total revenue regardless of product mix.

I'm sure this request has been made before. How have we addressed it?

How do our competitors price?

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