

Exhibit 46

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates to:
Novell, Inc. v. Microsoft Corporation

Civil Action
No. JFM-05-1087

DEPOSITION OF:
PETE HIGGINS

December 17, 2008

9:06 a.m.

** HIGHLY CONFIDENTIAL**

VIDEOTAPED DEPOSITION BEFORE KELLY A.

HERRICK, at Cooley Godward Kronish,
719 Second Avenue, Suite 900, Seattle,
Washington, on Wednesday, December 17, 2008,
commencing at 9:06 in the morning, pursuant to
notice.

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1 there have been an opportunity to gain market
2 share on Windows '95? Might have been.

3 I mean, you know, from our
4 position, we wanted -- we didn't -- you know, any
5 change -- when you're -- when you're the leader,
6 any change is a bad thing, if you don't take
7 advantage of it, whereas if you're a challenger,
8 discontinuities are a good thing, right?

9 Q Okay. Now let's just go in our
10 last minute or two to the language that counsel
11 read, the clause is, "Lotus and WordPerfect will
12 attempt to stall the market and convince their
13 customers to stay with them until they ship
14 Windows versions of their applications."

15 Do you have any recollection of
16 Lotus and WordPerfect making such an attempt?

17 A Generally, yes. Specifically, no.

18 Q Do you know whether either Lotus or
19 Word -- strike that.

20 Do you know whether WordPerfect was
21 successful in stalling the market, as that phrase
22 is used here?

23 A You could never measure that. Could never
24 measure it.

25 Q What, if anything, did Microsoft do

1 in response to the possibility that Lotus and
2 Microsoft -- that Lotus -- strike -- strike that.

3 What, if anything, did Microsoft do
4 in connection with the possibility that Lotus and
5 WordPerfect would attempt to stall the market?

6 A I don't remember. It's hard to compete
7 with something that doesn't exist, so all you can
8 really do is talk about how good your thing is.

9 I mean, we did -- you were always
10 doing that in the industry. Everybody was
11 preannounced to some degree, so you were always
12 competing with, you know, vapor was the term.

13 MR. ENGELHARDT: This is probably
14 as good a place to break as any.

15 Mr. Higgins, I thank you for your time. I
16 can't promise that we are done. I am
17 going to hold the deposition open. I
18 understand that Microsoft's counsel
19 disagrees. We may or may not seek your
20 time voluntarily.

21 We may or may not have to issue a
22 subpoena. We may or may not ever see you
23 again, so I'm going to say thank you and
24 good-bye for now.

25 MS. WHEELER: In the event we don't

1 see you again, I'm going to ask three
2 questions on cross.

3 EXAMINATION

4 BY MS. WHEELER:

5 Q Mr. Higgins, was the OEM channel a
6 significant channel for distribution of
7 Office '95?

8 A Not that I recollect.

9 Q In your experience as the head of
10 Microsoft desktop applications group, did
11 Microsoft give preferential information regarding
12 Windows to its own application developers that it
13 didn't give to independent software vendors?

14 MR. ENGELHARDT: Object to form,
15 foundation. Go right ahead.

16 THE WITNESS: Do you want to re-ask
17 that?

18 BY MS. WHEELER:

19 Q No, you can answer.

20 A I don't know of any advantage we got,
21 anything different we got.

22 Q In your experience as the head of
23 did Microsoft desktop applications group, did
24 Office developers receive information regarding
25 Windows operating systems earlier than other ISVs

1 received that information?

2 MR. ENGELHARDT: Same objection.

3 THE WITNESS: Not to my knowledge.
4 They might have learned something over a
5 beer at a party, but otherwise, no.

6 MS. WHEELER: Then I will designate
7 the transcript highly confidential and do
8 whatever is necessary in the protective
9 order and ask that Mr. Higgins be given
10 the opportunity to review and sign the
11 transcript.

12 And thank you for your
13 accommodations about the time today.

14 THE VIDEOGRAPHER: This concludes
15 Volume 2 [sic], Tape 4, in the deposition
16 of Peter Higgins. The time is now
17 12:33 p.m.

18 (At 12:33 p.m. the deposition was
19 recessed.)
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