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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

NOVELL, INC., Plaintiff, -v- MICROSOFT CORPORATION, Defendant.	**MICROSOFT'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS NOVELL'S COMPLAINT** Civil No. 2:04 CV 1045 TS Judge Ted Stewart

March 10, 2005

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Introduction

Novell concedes that in 1996 it sold all rights to sue Microsoft for claims "associated" even "indirectly" with Novell's Intel-compatible PC operating systems. Count I asserts a claim covered squarely by that language, for it alleges unlawful monopolization of "the Intel-compatible [PC] operating systems market." Novell fails to mount a comprehensible argument as to why Count I should not be dismissed on this ground.

Count I is defective for a second reason as well — Novell lacks standing to recover damages to "office productivity applications" resulting from alleged harm to the PC operating system market. With respect to word processors and spreadsheets, Novell was neither a consumer nor a competitor in the PC operating system market. *Blue Shield of Virginia* v. *McCready*, 457 U.S. 465 (1982) cannot save Novell, for the Supreme Court explained in *Associated General Contractors* v. *California State Council of Contractors*, 459 U.S. 519 (1983) that plaintiff in *McCready* had antitrust standing precisely because she was a "consumer" harmed by the defendants' boycott. *Id.* at 538.

Novell's arguments for tolling the four-year statute of limitations on its 8½ year-old claims in Counts II through VI are foreclosed by its concession that "a private suit . . . arising *in a 'distinct' market [from that defined in the government suit]* does not trigger tolling" under 15 U.S.C. § 16(i). (Novell Br. at 20 (quoting 2 Philip E. Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 321a, at 241 (2d ed. 2000)).) All agree that there is no overlap between the two markets defined in Counts II through VI, on the one hand, and the two markets defined in the DOJ Complaint, on the other. This fact alone is dispositive.

Novell argues repeatedly that Counts II though VI benefit from tolling under Section 16(i) merely because Count I is similar to a claim asserted in the DOJ Complaint.[1] This is an astoundingly illogical proposition. If it were correct, then a plaintiff could resurrect claims that would otherwise be time-barred merely by setting them out in a complaint that included a meritless claim that is similar to a claim in a prior government suit.[2]

Counts II through VI may obtain the benefit of tolling only if those "right[s] of action" are "based in whole or in part" on the matters complained of in the DOJ Complaint. 15 U.S.C. § 16(i). Because they do not meet this standard, Counts II through VI are time-barred and should be dismissed.[3]

UNDISPUTED FACTS

A. The Sale of Novell's PC Operating System Claims to Caldera

Novell does not dispute that:

- the July 1996 sale to Caldera transferred all claims against Microsoft "associated directly or indirectly with" Novell's PC operating systems, including DR DOS and Novell DOS, and obligated Caldera to bring those claims against Microsoft (Microsoft Br. at 4-5);
- Caldera's promise "to pay Novell a percentage of its recovery" on the claims against Microsoft was "the central purpose of, and impetus for" the Novell-Caldera transaction (*id.* at 5);

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1 *See* Novell Br. at 15-16 (Count I "is by itself a sufficient overlap with the Government case to find tolling" as to Counts II through VI); *id.* at 1, 12-13.

2 Indeed, that is exactly the situation presented in this case.

3 Pursuant to Local Rule 3-3, which governs cases that may be subject to pretrial proceedings before the Judicial Panel on Multidistrict Litigation ("JPML"), Microsoft informs the Court that this action may soon be transferred to the U.S. District Court for the District of Maryland. The JPML has announced that Novell's motion to vacate the conditional transfer order in this case will be considered on March 31, 2005. If that motion is denied, the action will then be transferred to Judge Motz in Baltimore.

- Microsoft settled Caldera's claims in return for a release from all liability "associated directly or indirectly" with any of the PC operating systems that Caldera had purchased from Novell and any liability "relate[d] directly or indirectly to the facts alleged in" the Caldera action (*id.*); and

- Novell in fact received a portion of Caldera's recovery (*id.*); its present suit thus seeks to recover a second time for the same injury to the PC operating system market.

B. Count I Alleges Harm to the PC Operating System Market But Seeks Recovery Solely for Injuries to Products Outside that Market.

Novell concedes that Count I, which alleges unlawful monopolization of the PC operating system market, seeks recovery solely "for injuries to [Novell's] office productivity applications." (Novell Br. at 25; *see id.* n.27.) This establishes the irrelevance of Novell's repeated references to its supposed "cross-platform technologies." (*Id.* at 5-6, 22.) Those technologies, Novell claims, threatened to become a "platform" alternative to Microsoft's PC operating systems, thereby making Novell a target of anticompetitive conduct. (*Id.*) But Novell's failure to seek any recovery for damages to its "cross-platform technologies" means that for standing purposes, Novell is not a competitor or even a potential competitor in the PC operating system market at issue in Count I. None of this is in dispute.

C. The "Office Productivity Applications" Markets in Counts II Through VI

Novell does not dispute that:

- the DOJ Complaint defined only "two relevant product markets: The market for personal computer operating systems, and the market for Internet browsers" (DOJ Compl. ¶ 53; *see* Microsoft Br. at 9);

- there is no overlap between the products in those two markets and the products in the two alleged markets in Novell's Counts II through VI — markets for "word processing" and "spreadsheet" applications (Microsoft Br. at 7-9, 26);

- the federal judge overseeing many antitrust cases against Microsoft — Hon. J. Frederick Motz — found in a related context that office productivity applications and PC operating systems are in "separate markets," *In re Microsoft Corp. Antitrust Litig.*, 214 F.R.D. 371, 374 (D. Md. 2003); (*see* Microsoft Br. at 23); and

- neither Novell nor any of its products are even mentioned in the DOJ Complaint (Microsoft Br. at 26), and the primary conduct allegation in Novell's Complaint — Microsoft's supposed withholding of technical information from software developers — appears nowhere in the DOJ Complaint.[4] (*Id.* at 26-27.)

ARGUMENT

I. Count I Must Be Dismissed.

A. Novell Does Not Own the Claim Asserted in Count I.

The Novell-Caldera contract plainly states that Novell is selling to Caldera "all claims . . . associated" even "indirectly with" Novell's PC operating systems.[5] Count I by its

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[4] Novell also does not contest Judge Motz's conclusion that "there is a logical flaw at the fundament of" Novell's theory that Microsoft sought to harm Novell by withholding information from software developers. (Novell Br. at 9 n.12 (referring to *In re Microsoft Antitrust Litig.*, 274 F. Supp. 2d 743, 746 (D. Md. 2003)); *see* Microsoft Br. at 10-11, 19 & n.12, 26-27.) Novell tries to sidestep this point by asserting that it was a "target[] . . . that posed a unique threat to the applications barrier to entry." (Novell Br. at 9 n.12.) But this assertion, reflecting Novell's argument that Microsoft was threatened by certain "key franchise applications" (*id.* at 6-7), does nothing to remedy the logical flaw: Judge Motz's decision concerned allegations that Microsoft had "targeted" Novell and WordPerfect specifically. Indeed, plaintiffs in that action cited at length from testimony by a Novell employee and the same Bill Gates e-mail that Novell relies on here. (Consumer Plaintiffs' [Corrected] Memorandum of Law in Opposition to Microsoft's Motion for Partial Summary Judgment at 5-10 in *In Re Microsoft Corp. Antitrust Litig.*, No. 00-1332 (D. Md. filed Jan. 10, 2003); *compare id.* at 9 *with* Novell Br. at 15.) The DOJ case established that Microsoft's position in the PC operating system market was protected by an "applications barrier to entry" — meaning that it is in Microsoft's interest to have a large number of popular applications written for use with Windows. Novell's theory is that Microsoft sought to preserve its leading position in the PC operating system market by preventing Novell's popular word processing program from running on Windows. That theory is illogical.

[5] Asset Purchase Agreement between Novell, Inc. and Caldera, Inc., dated July 23, 1996, submitted as Exhibit B to Microsoft's Memorandum in Support of Its Motion to Dismiss Novell's Complaint, ¶ 3.1.

terms complains of Microsoft's monopolization of the PC operating system market. This is the claim Caldera purchased from Novell, asserted against Microsoft, and then released in exchange for a settlement, the proceeds of which were divided with Novell. Novell cannot bring that claim again.[6]

B. Novell Lacks Standing to Assert Count I.

Count I — Novell's claim for monopolization of the PC operating system market — seeks damages only for harm that such monopolization inflicted on Novell's "office productivity applications." Because Novell concedes (Novell Br. at 6) that these products did not compete with Microsoft's PC operating systems or even threaten to do so, Novell lacks antitrust standing to pursue this claim.

Novell's argument is based principally on *Blue Shield of Virginia* v. *McCready*, 457 U.S. 465 (1982), a case decided prior to *Associated General Contractors* v. *California State Council of Carpenters*, 459 U.S. 519 (1983), where the Supreme Court imposed the "consumer or competitor" limitation. 459 U.S. at 538-40. The Court there explained that plaintiff in *McCready* had antitrust standing as a "consumer" harmed by defendant's boycott. *Id.* at 539. Thus, where a plaintiff is not a consumer, "*McCready* does not lend much support, especially in light of the later-decided *Associated General Contractors*." *Lucas* v. *Bechtel Corp.*, 800 F.2d 839, 846 n.9 (9th Cir. 1986).

It is thus irrelevant that certain Novell products were allegedly "targeted" by Microsoft in response to the threat they purportedly posed to a barrier preventing third parties

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[6] Moreover, if Count I is, as Novell says, "identical" to a claim in the DOJ Complaint because both claims allege monopolization of the PC operating system market (Novell Br. at 1, 12, 15), then Count I also is "identical" to the claim that Novell sold to Caldera (Microsoft Br. at 4-5 & n.4).

from entering the PC operating system market. (Novell Br. at 27-30.) Whether or not such allegations could confer standing on the third parties, they do not confer standing on Novell. (*See* Microsoft Br. at 19-20.)

The case most like this one is *SAS of Puerto Rico, Inc.* v. *Puerto Rico Tel. Co.*, 48 F.3d 39, 44-46 (1st Cir. 1995), where the First Circuit denied standing to an alleged "target" of anticompetitive conduct, whose product threatened the defendant's monopoly, because the target did not compete in the monopolized market. Although Novell seeks to rely on *In re Lower Lake Erie Iron Ore Antitrust Litig.*, 998 F.2d 1144 (3d Cir. 1993) (*see* Novell Br. at 29-30), the plaintiff steel mills in that case were consumers — they "were the sole customers" of defendants in the ore transport market. 998 F.2d at 1168. Any doubt about the scope of the *Lake Erie* decision is dispelled by *Barton & Pittinos, Inc.* v. *SmithKline Beecham Corp.*, 118 F.3d 178 (3d Cir. 1997), in which the Third Circuit, after reviewing its *Lake Erie* decision, 118 F.3d at 181-82, held that because the plaintiff was "not a competitor or a consumer in the market in which trade was allegedly restrained," it lacked standing. 118 F.3d at 184. The same principle applies here.[7]

II. Counts II Through VI Are Time-Barred.

Novell bears the burden of establishing that its 8½ year-old claims have been tolled by 15 U.S.C. § 16(i),[8] but cannot come close to doing so. Indeed, Novell ignores the

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[7] In *Reazin* v. *Hospital Corp. of America*, 899 F.2d 951 (10th Cir. 1990) (*see* Novell Br. at 30), plaintiff "*was* a competitor of [defendant's] co-conspirators," which had implemented an agreement with defendant to harm plaintiff in violation of Section 1 of the Sherman Act. 899 F.2d at 965 (emphasis in original). Moreover, plaintiff — unlike Novell — was a "perceived competitor" in the restrained market because it was a wholly-owned subsidiary of one of defendant's fiercest rivals in that market. 899 F.2d at 962-63.

[8] 15 U.S.C. § 16(i) suspends "the running of the statute of limitations in respect of every private or State right of action arising under [the federal antitrust] laws and based in whole or in

(*continued*)

Supreme Court's instruction in *Greyhound Corp.* v. *Mt. Hood Stages, Inc.*, 437 U.S. 322 (1978) that an "important congressional purpose" behind Section 16(i) is to prevent the "undue prolongation of [antitrust] proceedings."[9] *Id.* at 334-35 (internal quotation marks omitted).

There is, all agree, no overlap between the two markets defined in Counts II through VI, on the one hand, and the two markets defined in the DOJ Complaint, on the other. Moreover, Novell has conceded that "a private suit . . . arising in a 'distinct' market [from that defined in the government suit] does not trigger tolling." (Novell Br. at 20 (quoting 2 Philip E. Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 321a, at 241 (2d ed. 2000)); *see* Microsoft Br. at 23-24.) This key concession is dispositive.

Novell nonetheless argues that Counts II through VI can be tolled because (1) Count I somehow has a restorative effect on the claims asserted in Counts II through VI (Novell Br. at 15-16); (2) the markets at issue in Counts II through VI, while mutually exclusive of the markets defined in the DOJ Complaint, are nonetheless "related" to them (*id.* at 19-21); and (3) Novell's Complaint asserts that Microsoft used similar "tactics" and inflicted "similar injuries" to achieve the same "purpose" that is alleged in the DOJ Complaint. (*Id.* at 11, 16-18.) None of these contentions can carry the day for Novell, which has never explained its lengthy delay in filing claims that it concededly knew all about from the beginning.

(*continued*)
part on any matter complained of" in an antitrust action brought by the federal government, during the pendency of the federal government's action and for one year thereafter.

[9] In both *Leh* v. *Gen. Petroleum Corp.*, 382 U.S. 54, 60-64 (1965) and *Minnesota Mining & Mfg. Co.* v. *N.J. Wood Finishing Co.*, 381 U.S. 311, 322-23 (1965), the subsequent private plaintiff made claims in the same market as (or in a market entirely encompassed by) the market involved in the earlier government case.

Furthermore, if Novell is correct that the markets in Counts II through VI are "related" to the PC operating system market at issue, then under the broad language of the Novell-Caldera contract — conveying all claims "associated" even "indirectly" with Novell's PC operating systems — Counts II through VI were sold along with Count I.

A. Count I Cannot Resuscitate Counts II Through VI.

Novell is wrong in arguing that Count I "is by itself a sufficient overlap with the Government case to" allow Counts II through VI to be tolled. (Novell Br. at 15-16; *see also id.* at 1, 12-13.) Even if Count I is eligible for tolling, the timeliness of Novell's other five claims, all of which allege harm to markets different from the one at issue in Count I, must be measured separately. If the presence of Count I were controlling, then a plaintiff could resurrect all causes of action not otherwise eligible for tolling by the artifice of tacking on a single claim that is tolled — even one defective for other reasons.[10]

Section 16(i) does not permit this result. The statute only tolls the limitations period "in respect of every private or State right of action" — not every complaint — that is based on a "matter complained of" in a federal enforcement action. The claim-by-claim approach reflected in the statute is fully consistent with Fed. R. Civ. P. 12(b)(6), which requires dismissal for "failure to state a claim upon which relief can be granted." Thus, if Counts II through VI are untimely, that is the end of the matter for those claims; the presence of an additional claim in the Complaint — alleging harm to a different market — cannot revive them.

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[10] This, in fact, is what Novell is trying to do here by arguing that Count I operates to toll Counts II through VI. Novell's tactic flies in the face of the Supreme Court's warning that when plaintiffs invoke Section 16(i), "care must be exercised" by courts "to insure that reliance upon the government proceeding is not mere sham." *Leh*, 382 U.S. at 59.

The statement in *Morton's Market* v. *Gustafson's Dairy, Inc.*, 198 F.3d 823, 830 (11th Cir. 1999) that if there is "significant . . . overlap of subject matter [with the government's complaint], the statute is tolled even as to the differences" does not help Novell. The private suit in *Morton's Market* actually asserted only a single cause of action — price fixing under Section 1 of the Sherman Act — and concerned the same antitrust market that was at issue in the prior government case. 198 F.3d at 830-31. *Morton's Market* does not permit a plaintiff to bring stale claims merely because it adds to the complaint a claim arguably eligible for tolling. The statute requires that each claim be measured separately.[11]

B. Under the "Distinct Markets" Rule, There Can Be No Tolling of a Claim Alleging Harm to a Market — "Related" or Otherwise — That Is Not Part of a Market Defined in the Prior Government Suit.

Novell contends that Counts II through VI are entitled to tolling because the allegedly harmed markets — the word processing and spreadsheet software markets — are "related" to the market for PC operating systems that the DOJ defined. (Novell Br. at 19-20; *see id.* at 23-24.) But the test for tolling is not whether the market alleged in the private claim is "related" to one in the government suit. Indeed, such a vague test would contravene the congressional goal of achieving "certainty and predictability in the application of" Section 16(i). *Greyhound Corp.*, 437 U.S. at 335. The test, as Professor Areeda says, is much more

[11] Novell also argues that one of its other claims — Count VI — can magically resurrect separate, otherwise stale claims in the Complaint (Novell Br. at 1, 12-13, 16), but this contention is even further off the mark because Count VI itself is not even arguably tolled. Novell concedes that the injury alleged in Count VI was solely "in the office productivity applications markets." (Novell Br. at 18; *see also* Compl., Count VI ¶ 175.)

straightforward: if the markets do not overlap, there is no tolling. Counts II through VI, when measured against the DOJ Complaint, fail that test.[12]

Although Novell acknowledges Professor Areeda's "distinct markets" rule, it argues that the two cases he cited involved government suits that defined "the monopolized market so narrowly as to exclude completely the possibility of any relationship with the markets alleged in the private suit." (Novell Br. at 20.) That is not correct. In *Charley's Tour and Transportation, Inc.* v. *Interisland Resorts, Ltd.*, 618 F. Supp. 84, 86 (D. Haw. 1985), the market defined by the government (for rental of hotel rooms) served "largely the same clientele" as the market alleged by the plaintiffs (for use of charter buses). The court there accepted as true the allegation that some of the same defendants used their illegally obtained position in the government-defined market in order to attempt to dominate the market identified by the private plaintiffs, but nevertheless rejected the argument for tolling, holding that "[t]o extend" the tolling statute to such a case "would mean that a defendant doing business in different markets would

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[12] As a factual matter, of course, the DOJ only defined one market "related" to the market for PC operating systems: the purported market for Internet browsers. And whether office productivity applications markets are "related" to the PC operating system market in some sense not relevant here, they certainly are not "related" in the same sense as a market for Internet browsers, which, as Novell explains, had "platform" potential and therefore — according to the DOJ — "threatened to make Windows obsolete." (Novell Br. at 5.) The special characteristics of the purported Internet browser market explain why Novell resorted to a monopoly maintenance theory that contradicts the theory of the DOJ Complaint. (Microsoft Br. at 10-11, 19 & n.12, 26-27.)

For the same reasons, Novell is wrong to imagine that the DOJ Complaint's vague reference to "other software markets" in addition to the PC operating system market (Novell Br. at 4, 19) extends to Novell's alleged markets. The DOJ made no claim of wrongdoing in any "office productivity applications market" — even though, for two months in 1998, the state attorneys general did so. (*See* Microsoft Br. at 9 n.8.) The DOJ Complaint does not even refer to office productivity applications products, save for one paragraph explaining that a function of PC operating systems is to "control and direct" such products. (DOJ Compl. ¶ 54.)

have the statute of limitations tolled as to all of its markets." *Id.* That principle requires dismissal of Counts II through VI of Novell's Complaint.

In *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 782 F. Supp. 481, 483, 486 (C.D. Cal. 1991), the markets defined by the government and private plaintiffs were the same ("refined oil products") — except that they covered different geographic areas — and nearly all of the same producers participated in both areas. *Id.* at 484. Even so, the court there rejected tolling because the markets were not precisely the same. *Id.* at 486. Here, of course, the markets overlap not at all.

C. Novell's Arguments Concerning Purported Similarities in "Tactics," "Injury," and "Purpose" Are Unavailing.

Faced with distinct markets, Novell asserts that its claims are similar to those in the DOJ Complaint because Microsoft used similar "tactics," inflicted the same "injury" and was motivated by the same "purpose" (*i.e.*, to monopolize). (Novell Br. at 11, 16-18.) These factors have no bearing on the tolling analysis under Section 16(i).

1. The Cases on Which Novell Relies Concern Overlapping Antitrust Markets.

No case has tolled claims like Counts II through VI, which allege harm to markets that do not overlap at all with the markets defined in the government's case. This is the determinative factor.

The cases cited by Novell where tolling was allowed all involve markets that overlap. Indeed, as Professor Areeda explains, *Gregg Communications Systems, Inc.* v. *American Telephone & Telegraph Co.*, 98 F.R.D. 715 (N.D. Ill. 1983) (*see* Novell Br. at 23-24) permitted tolling "where market pled in government case was broader than, but broad enough to encompass, market pled in subsequent private plaintiff's case." 2 Philip E. Areeda & Herbert

Hovenkamp, ANTITRUST LAW ¶ 321a, at 241 n.12; *see Gregg Communications Sys., Inc.*, 98 F.R.D. at 719-20 (plaintiff's "Soft-Touch" product was included in the government's "submarket definition for telecommunications equipment"). The market at issue in the private suit also was entirely within the market pled by the government in two other cases on which Novell relies. *Leh*, 382 U.S. at 64 (market in government suit was for the distribution of refined gasoline products in Pacific coast states, the same market at issue in the private suit save for the fact that private plaintiffs "focus[ed] on the southern California area"); *Morton's Market*, 198 F.3d at 830-31 ("both" lawsuits alleged that defendants sought "to eliminate competition in the wholesale marketplace [for milk] in Florida").

The other cases cited by Novell involve markets that overlapped at least to some degree — unlike here, where the markets involve different products and do not overlap at all. *In re Arizona Dairy Prods. Litig.*, No. CIV 74-569A (D. Ariz. Nov. 5, 1984) (private and government complaints each concerned a market for milk in Arizona); *In re Antibiotic Antitrust Actions*, 333 F. Supp. 317, 320-21 (S.D.N.Y. 1971) (private and government complaints both concerned the sale of broad spectrum antibiotics for humans in the United States).

Novell's suggestion that this Court should ignore the absence of any overlap among the relevant markets completely disregards the Supreme Court's instruction that carefully defined markets provide the sole context in which to measure competitive harm. (*See* Microsoft Br. at 24.) For that reason, Novell's position that the proofs required for Counts II through VI would be similar to the DOJ's proofs is frivolous. (Novell Br. at 18 n.22; 19-20.) One need look no further than the DOJ's own case to learn how much effort is required to prove the existence of a distinct antitrust market: the U.S. government, with all its resources, failed to demonstrate the existence of the proffered market for Internet browsers. *United States* v. *Microsoft Corp.*, 253

F.3d 34, 84 (D.C. Cir. 2001) (holding that markets must be proven with "evidentiary and theoretical rigor").

2. The Purportedly "Similar" Factors are Meaningless.

Because of the obvious differences between this case and the DOJ Complaint (including the fact that almost all of the acts at issue in the DOJ Complaint took place after Novell sold its office productivity applications to Corel), Novell is forced to define even the factors it has selected as "similar" in terms so general that if they were accepted as a basis for tolling, all antitrust claims against a defendant previously sued by the government would be tolled. *Cf. Charley's Tour & Transp., Inc.*, 618 F. Supp. at 86 (refusing to toll where plaintiff's argument "would mean that a defendant doing business in different markets would have the statute of limitations tolled as to all of its markets"). For instance, Novell's allegation that it suffered a similar "injury" to that alleged in the DOJ Complaint because Microsoft's conduct caused its "shares to plummet" is the type of allegation that any antitrust plaintiff seeking damages could make. (Novell Br. at 17.)

Similarly, Novell's argument for tolling based on similar "tactics" means that a plaintiff could obtain tolling in any action, no matter how far removed from the government case the new case might be. Of course, tolling has been denied to private claims with much more specific similarities to government claims than a similarity in "tactics." *E.g., In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 782 F. Supp. at 486. Finally, Novell's argument concerning Microsoft's supposedly common "purpose" — the monopolization of software markets (Novell Br. at 16) — also would toll nearly any stale claim against Microsoft. Novell's arguments ignore the true test of tolling under Section 16(i) and would, contrary to

Greyhound Corp., 437 U.S. at 335, transform that statute into a vehicle for "undue prolongation of [antitrust] proceedings."

CONCLUSION

This Court should grant Microsoft's motion to dismiss Novell's Complaint.

DATED this 10th day of March, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2005, I caused a true and correct copy of Microsoft's Reply Memorandum in Support of Its Motion to Dismiss Novell's Complaint to be served upon the following by overnight mail:

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