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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

| | | |
|-----------------------------|---|--|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | No. _____ |
| |) | |
| v. |) | (Antitrust) |
| |) | |
| MICROSOFT CORPORATION, a |) | COMPLAINT FOR INJUNCTIVE RELIEF |
| Washington corporation, and |) | AGAINST COMBINATION IN |
| INTUIT INC., a Delaware |) | VIOLATION OF SECTION 7 OF THE |
| corporation, |) | CLAYTON ACT |
| Defendants. |) | |

The United States of America, acting under the direction of the Attorney General, brings this civil action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to obtain equitable and other relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and alleges:

Nature of the Action

1. The United States brings this antitrust action to prevent the proposed acquisition by Microsoft Corporation, the world's largest and most powerful personal computer software company, of Intuit, Inc., the dominant producer of Personal Finance/Checkbook ("PF/Checkbook") software. Microsoft is Intuit's most significant competitor. The proposed acquisition would eliminate competition between Microsoft and Intuit, which has benefitted consumers by leading to high quality, innovative products at low prices.

2. The PF/Checkbook Software Market is highly concentrated, with Intuit's "Quicken" product commanding a 1994 unit sales share of 69% and a total installed base of more than seven million customers. Microsoft's PF/Checkbook product, "Microsoft Money," was introduced in 1991, and the resulting competition led to lower prices and increased innovation. Microsoft is now the number two competitor in the PF/Checkbook Software Market, with a 1994 unit sales market share of about 22%, and an installed user base of about one million customers. Absent the acquisition, Microsoft Money would likely continue to compete successfully because (a) Microsoft already has devoted substantial resources to the Money product, which it would increase even more substantially in the future, and (b) the PF/Checkbook Software Market, for the reasons explained below, is strategically important to Microsoft.

3. The effects of this proposed acquisition could reach well beyond today's PF/Checkbook Software Market. The acquisition threatens harm to consumers in other important areas of commerce, especially the area of personal computer based ("PC-based") home banking, which is a relatively tiny part of the PF/Checkbook Software Market today. Before the acquisition, Microsoft and Intuit had independent plans to compete in the field of electronic commerce, starting with enhancement of their PF/Checkbook software products to enter the emerging home banking marketplace. Established PF/Checkbook software products provide an important asset to develop home banking, in part because existing customers are likely

candidates for PC-based home banking. The special competitive significance to Microsoft and Intuit of dominating the present PF/Checkbook Software Market as a strategic "cornerstone" asset in that emerging business (and the likely effect of the proposed acquisition) were recognized by Intuit's Chairman, who wrote in a September 1994 memorandum to his board about the proposed acquisition of Intuit by "Godzilla" (Intuit's code name for Microsoft):

Our future vision is both vulnerable to and would benefit from Godzilla's strengths. . . . Our combination gives FIs [Financial Institutions] one clear option, *eliminating a bloody share war* and speeding adoption. --That, in turn *enriches the terms of trade* we can negotiate with FIs.

. . . .

Vulnerability [of Intuit to Microsoft] is a key question.

If we believe we are not overly vulnerable, then we believe we can succeed. *Elimination of competition will enhance that success, perhaps greatly.*

(Emphasis supplied).

4. Microsoft's Manager, Business Development and Investments, reached a similar conclusion in an August 1994 analysis of the proposed acquisition.

* Slade [a Microsoft code name for Intuit] is the clear and dominant leader in PF software and the current installed base of users would likely prefer to stay with Quicken when they do electronic transactions. MS owns Windows and Marvel [a new Microsoft on-line network] and therefore is in a much better position to access many millions of users in the future with PF service options. Since neither company has both of these strengths, the banks, credit card associations and others *are in a stronger position to play us off against each other. As a combination, we would be dominant.*

(Emphasis supplied).

5. Microsoft has agreed to acquire Intuit for what, as of Monday, April 24, 1995 would exceed \$2 billion in Microsoft stock, more than twice Intuit's preannouncement market capitalization of \$813 million. In an attempt to avoid an obvious antitrust challenge, Microsoft devised a planned "fix," whereby it has agreed simultaneously to transfer part (but not all) of Microsoft's Money business unit to a third party, Novell, Inc. The purported fix would fail to remedy the anticompetitive effects of the proposed Intuit transaction. Novell, with the assets it is supposed to receive from Microsoft, cannot be nearly as effective a competitor with Money as Microsoft is and would be absent the transaction.

6. If consummated, the proposed transaction, even accounting for the asset sale to Novell, likely would add to the dominance of the number one product (Quicken), would weaken greatly the number two product (Money), and would substantially increase concentration and substantially reduce competition in the PF/Checkbook Software Market. Because these products are a crucial springboard into other important, but emerging, areas of commerce, the effect on consumers would likely be higher prices and lessened innovation not only in PF/Checkbook software products but in other related products and services, such as PC-based home banking.

7. Accordingly, the proposed acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

Jurisdiction

8. Microsoft sells Microsoft Money and Intuit sells Quicken in interstate commerce. Defendants' activities in developing, producing and selling Money and Quicken also substantially affect interstate commerce in other respects. The Court has jurisdiction of this action and jurisdiction over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

Venue

9. Both Microsoft and Intuit transact business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

The Defendants

10. Microsoft is a Washington corporation with its headquarters in Redmond, Washington. Microsoft's operating system software, particularly its Disk Operating System ("DOS") and its associated Windows product, are by far the dominant operating systems for Intel x86 architecture personal computers (sometimes also called "IBM-compatible" personal computers), which in turn is the dominant platform for personal computing. Microsoft also develops, markets and sells applications software, including applications software for use with DOS and Windows on IBM-compatible personal computers. Microsoft has announced that it will introduce "Windows 95" in August of this year. Windows 95 will be the next upgraded release of Microsoft's Windows operating system.

11. Microsoft has a dominant position in operating systems for IBM-compatible

personal computers. It also is the most powerful competitor in the world for many categories of applications software. Using its resources and operating system position, Microsoft has introduced new products to compete directly against, and has secured the leading position over, the previous leaders in the most significant business applications software categories for IBM-compatible personal computers, including spreadsheet software (Microsoft's Excel has overtaken Lotus 1-2-3), word processing software (Microsoft's Word has overtaken WordPerfect), and others. Intense competition against category leaders by the most powerful competitor in the industry has benefitted consumers by increasing the pace of innovation and accelerating the price decline of products in those categories.*

12. In the field of consumer software for IBM-compatible personal computers, Microsoft also has competed vigorously and successfully. It has the leading applications in several categories, including a combined word processing/spreadsheet/database product (Microsoft Works), a low-end desktop publishing product (Microsoft Publisher), a CD-ROM encyclopedia (Microsoft Encarta) and others. As with business applications, Microsoft has directly challenged the leader in some categories (such as desktop publishing and CD-ROM encyclopedias), and has competed successfully to a leading position. Such competition has benefitted consumers through greater innovation and lower prices.

13. Intuit is a Delaware corporation with its headquarters in Menlo Park, California. Intuit has concentrated its efforts on the development and sale of financial applications software. Intuit's Quicken is the leader in the PF/Checkbook Software Market by a substantial margin. Intuit also owns the category leader in personal tax preparation software (Turbo Tax, a recently acquired product) and the co-leader in small business accounting software (Quickbooks).

Relevant Product Market

14. Some 30% of households in the United States now have a home personal computer (a "home PC"). The vast majority of home PCs now being sold are IBM-compatible personal computers. All IBM-compatible personal computers can run Microsoft's DOS or Windows operating systems, and an overwhelming majority (well in excess of 80%) now are

* The United States takes no position in this complaint as to whether all of Microsoft's practices were lawful under the antitrust laws.

being sold with a Microsoft operating system. Because applications are written to work with specific operating systems, applications programs for IBM-compatible personal computers must, as a practical matter, be written to run on Windows or, to a lesser, waning extent, on DOS without Windows.

15. One important application for home PCs is PF/Checkbook software. Intuit's Quicken product was the number one selling home PC software product in 1994, topping all others, including even the most popular entertainment programs. PF/Checkbook software is designed to give the home PC user electronic control over an integrated set of personal finance records and transactions. Currently, the core integrated functions of PF/Checkbook software products include an "electronic checkbook," which automates check writing and check register record keeping, household budgeting, personal asset and liability tracking and reporting, including features such as loan tracking, stock and bond portfolio tracking, home inventories, cash and retirement account tracking and personal financial statements, and "front end" software for automated bill-paying in association with a bill-paying service. The term "front end" means that only the initiating part of the function resides in home PC software. To complete the function, there must also be a communication channel or "switch" (usually a service using the telephone network) and a "back end," consisting of software and associated equipment at the other end of the line to receive and process each transaction (in this example, the other end of the line would be located at a bill-paying service, but for home banking it would be at the bank).

16. Importantly, the checkbook, automated bill paying, asset tracking and other functions in PF/Checkbook software are linked together so that transactions are automatically accounted for wherever affected assets appear in the program. That integration allows the consumer to track all transactions across account, financial and tax files.

17. The core functions of PF/Checkbook software have increased in both number and quality over the past several years, as Microsoft and Intuit have battled to attract new customers through better and more useful products. Competition to improve old functions and to add new ones is an important part of the rivalry between Intuit and Microsoft.

18. There has been substantial innovation in the market for Personal Finance/Checkbook software. Within the past year, a potentially important new function, front

end software for home banking, has been developed and incorporated into some PF/Checkbook software products. Microsoft's 1994 release of Microsoft Money (version 3.0) included a home banking feature. This year, Intuit plans to add home banking in its 1995 release of Quicken products. As with the functions discussed above, home banking is linked to the rest of the program so that home banking transactions are accounted for automatically wherever affected assets appear in the program.

19. PF/Checkbook software is targeted principally for sale to owners of home PCs. It is sold through two major distribution channels, the "OEM channel" and the "retail channel." The OEM channel consists of personal computer manufacturers who pre-install operating systems and applications programs on their personal computers. The retail channel consists both of sales through retail stores that sell software products and direct sales to consumers who order from a catalog or over telephone lines.

20. PF/Checkbook software for IBM-compatible personal computers (the PF/Checkbook Software Market) is a relevant product market under the Clayton Act. PF/Checkbook software offers a group of linked features that make it a superior product for personal financial asset tracking and for which there are no close substitutes. Purchasers and potential purchasers of IBM-compatible PF/Checkbook software would not turn to any alternate product if the price of PF/Checkbook software increased by a small but significant amount.

Relevant Geographic Market

21. The relevant geographic market is the United States. Monetary, language, financial industry, and other differences outside the United States prevent PF/Checkbook software products suitable for other foreign markets from being reasonable substitutes for a U.S. version.

Competition and Entry

22. The principal competitors in the PF/Checkbook Software Market are Intuit with Quicken and Microsoft with Money. H&R Block Financial's "Managing Your Money" and Computer Associates' "Simply Money" also are sold in the market, but have little competitive significance. Managing Your Money was a significant participant several years ago, but its

importance as a competitive influence has declined. The product recently has been offered for sale by H&R Block at least partly as a result of the announcement of the proposed Intuit acquisition. Similarly, Computer Associates, a major supplier of mainframe computer software, attempted unsuccessfully to enter and establish a meaningful presence in the market by "giving away" more than a million free copies of Simply Money for only a shipping and handling charge. A low percentage of "free copy" recipients actually use the software and Computer Associates has little, if any, competitive influence in the market.

23. The PF/Checkbook Software Market is highly concentrated. Quicken's unit market share of 1994 sales was about 69%. Microsoft Money's unit share was about 22%. Unit shares for Managing Your Money and Simply Money were less than 5% each. From a 1994 revenue perspective, Quicken's lead in the market was even more substantial: Quicken, 85%; Microsoft Money, 7%; Managing Your Money, 5%; and Simply Money, 2%.

24. Entry into the PF/Checkbook Software Market is difficult. Between them, Intuit and Microsoft control more than 90% of the market, and both are daunting competitors in the market. A substantial installed user base with an established, successful product (such as Intuit's seven million customer installed base for Quicken) creates a revenue stream of profitable upgrade sales to the installed base. The upgrade revenue stream can justify low initial pricing by market leaders with a proven product, particularly in the OEM market. Such pricing, and the prospect of such pricing, discourages new entry, because a potential competitor with an unproven product would know that it would at best be faced with years of losses, with no assurance of ever generating enough upgrade revenue to recoup its losses. Writing adequate software "code" even to match today's successful products would be no easy task--as witnessed by Microsoft's own four-year effort to achieve feature parity with Quicken. Even with the code, entry into the PF/Checkbook Software Market would be difficult, expensive and slow. Microsoft's own attempt to enter the market with its Microsoft Money product has been slow and expensive. After four years, it still has not achieved a positive return on its investment, but has incurred substantial losses.

25. Most OEMs and retail customers in the PF/Checkbook Software Market will purchase only products with an established reputation for reliability, performance and customer

support. At a minimum, it takes years and a significant investment of resources to build such a reputation.

26. In sum, a new competitor would not be likely to enter successfully the PF/Checkbook Software Market within any reasonable time with a product offering the core functions necessary to compete effectively. No such entry could be expected, within any reasonable time, to deter or counteract a small but significant price increase resulting from the acquisition.

The Proposed Acquisition

27. Microsoft has agreed to acquire all the stock of Intuit from Intuit's shareholders in exchange for 1.336 shares of Microsoft stock for each share of Intuit stock, with a minimum price of \$1.4 billion. If the transaction closed today, the price would be approximately \$2 billion. There is no ceiling on the purchase price, which ultimately could be higher.

28. If the proposed acquisition of Intuit closes, Microsoft has agreed to transfer to Novell some of its Microsoft Money business assets--but not enough to allow it to compete anywhere near the level provided by Microsoft before the proposed Intuit acquisition. The transfer to Novell would include only the Microsoft Money computer code, associated intellectual property and documentation, the Microsoft Money customer list and some technical assistance from a few members of the Microsoft Money team during a brief transition period. The Microsoft Money team itself, including all product managers, developers, programmers and sales and marketing personnel, apparently will remain with Microsoft. In contrast, Microsoft has described the Intuit people as the most important resource it will acquire if the transaction closes. Novell had no plans to enter the PF/Checkbook Software Market as an owner/developer of such software before Microsoft offered Microsoft Money to it in connection with this proposed transaction. Instead, Novell proposed to become a Quicken customer, intending to resell Quicken as part of a package of home computer software products.

29. Although Microsoft considered the Microsoft Money business to be important enough to justify devoting significant resources--many millions of dollars--as a business in its own right and as the cornerstone of a significant emerging market, the up-front purchase price to be paid by Novell for those Microsoft Money assets that Microsoft has agreed to transfer would

be zero. Novell would thereafter pay to Microsoft a ten percent royalty on its first year of net sales of Money, which would be less than a million dollars even if Novell were as successful as Microsoft expected to be in 1995. To induce Novell to enter into the proposed transaction, Microsoft has given Novell certain other guarantees that could require Microsoft to pay millions of dollars to Novell if it does not succeed with Money.

30. Before the proposed transaction was announced, part of the vigorous competition between Intuit Quicken and Microsoft Money was competition for OEM customers and for PC-based home banking strategic allies. Microsoft has an existing business relationship with two important OEMs, Packard-Bell and Gateway 2000. Both currently pre-install on their Home PCs a "bundle" of Microsoft consumer applications software that includes Microsoft Money. Shortly before the acquisition was announced, Microsoft received a signed letter of intent from MasterCard, under which Microsoft Money and derivative products of Microsoft Money would have been used as part of a "Master Banking" home banking program in a strategic alliance between Microsoft and MasterCard. Both relationships were valuable to Microsoft's Money business. The Microsoft Money relationships with Packard-Bell, Gateway and MasterCard would be of critical importance to Novell's ability to compete with Money. Microsoft did not agree to transfer those relationships to Novell, but agreed instead not to use Quicken to compete with Novell in relationships with Packard-Bell, Gateway or MasterCard through March 1996.

Harm To Competition

31. The effect of the proposed acquisition of Intuit by Microsoft may be substantially to lessen competition in the PF/Checkbook Software Market.

32. Actual and potential competition between Microsoft and Intuit, the two strongest and most significant competitors in the PF/Checkbook Software Market, will be eliminated. Competition from Novell against Quicken will be at best a weak replacement for the lost competition from Microsoft. Microsoft, the strongest competitor in the software industry, has the resources, ability and resolve to challenge Intuit's leading market position (in both the OEM and retail channels), while Novell does not. Absent the acquisition, competition between Quicken and Microsoft Money would increase. Microsoft's reason for proposing the acquisition of Intuit was its identification of the PF/Checkbook Software Market as strategically important

to Microsoft as a leading home PC application today, as a front end for home banking tomorrow, and as a front end more generally for on-line financial transactions in the more distant future.

33. But for the proposed acquisition, Microsoft would compete aggressively against Intuit for sales in the PF/Checkbook Software Market. In fact, Microsoft advised Intuit that Microsoft would substantially increase its competitive efforts against Quicken if Intuit did not agree to be acquired. Microsoft's Executive Vice President reported to Microsoft's Chairman:

I tried to tell him [Intuit's Chairman] what else we could do since we have decided this is such an important area and we had not organized or staff[ed] adequately. I tried to tell him how much we could do with a \$1 billion. I tried to be non threatening, but let him know we would do something aggressively.

34. The proposed transaction would weaken Money greatly, which would further enhance the dominance of Quicken in Microsoft's hands. As a senior Microsoft official responsible for Microsoft Money wrote in approximately June 1994:

If we were to try to buy Intuit and had to sell our offerings in [the core PF/Checkbook functions], *who would be willing to buy us out and be a serious competitor*. If it was known that we were buying Intuit's offerings in [the core PF/Checkbook functions], then *I can't imagine anyone would be stupid enough too* [sic]--not only would they be way, way far behind competitively[,] I think they would imagine that we'd never be allowed to do it.

(Emphasis supplied).

35. Potential new competitors, if any, would find it even more daunting to compete against Quicken, the number one product in the market, if it were in Microsoft's hands. Microsoft would retain many of the advantages that made Microsoft Money a powerful number two competitor against Quicken. Instead of using those advantages to compete against Quicken, Microsoft would be able to use the combined advantages of both to dominate potential customers and strategic partners more thoroughly than Intuit could do with Quicken or Microsoft could do with Microsoft Money--especially if the two had to compete with each other.

36. As spelled out in defendants' documents (quoted in Paragraphs 3 and 4), the proposed transaction creates an appreciable risk that future PC-based home banking services will have to use a Microsoft Quicken front end at higher prices than would prevail in the absence of the acquisition.

37. Novell would be a substantially weaker competitor with Money against Microsoft Quicken than Microsoft has been (and would continue to be) against Intuit Quicken. For

example, because of the market power that Microsoft will acquire if the acquisition is consummated and Novell's lack of comparable advantages, MasterCard, Gateway and Packard-Bell, which Microsoft and Novell agreed were crucial to Novell's ability to compete with Money in the marketplace, will not commit to arrangements with Money in Novell's hands that are comparable to the arrangements they had or proposed to have with Microsoft Money.

38. Novell lacks important assets, resources and commitment to the product that give Microsoft competitive strength with Money and make the PF/Checkbook category strategically important to Microsoft. Novell was not willing to pay any up-front purchase price to obtain Money. The category is not as strategically important to Novell as it is to Microsoft. Novell may ultimately conclude not to continue funding the extended losses that would be required, with little chance of success, to compete vigorously enough to provide price, quality and innovation discipline in the PF/Checkbook Software Market comparable to Microsoft's competition in the absence of the proposed acquisition.

39. Unless restrained, the proposed acquisition will violate Section 7 of the Clayton Act.

Requested Relief

The United States requests (a) adjudication that Microsoft's proposed acquisition of Intuit would violate Section 7 of the Clayton Act, (b) preliminary and permanent injunctive relief preventing consummation of the proposed acquisition, (c) an award to the United States of the costs of this action, and (d) such other relief as is just and proper.

Dated: April 27, 1995

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