

1 Anne K. Bingaman
Steven C. Sunshine
2 Constance K. Robinson
UNITED STATES DEPARTMENT OF JUSTICE
3 10th & Constitution Avenue, N.W.
Washington, D.C. 20530
4 (202) 514-2401

5 John F. Greaney
N. Scott Sacks
6 Michael F. Bailey
Reid B. Horwitz
7 Kenneth W. Gaul
Antitrust Division
8 UNITED STATES DEPARTMENT OF JUSTICE
555 4th Street, N.W.
9 Room 9901
Washington, D.C. 20001
10 (202) 307-6200

11 Michael J. Yamaguchi
United States Attorney
12 OFFICE OF THE UNITED STATES ATTORNEY
450 Golden Gate Avenue
13 Box 36055
San Francisco, CA 94102
14 (415) 556-1126

15 Attorneys for Plaintiff United States of America

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 UNITED STATES OF AMERICA,)
21)
Plaintiff,)
22)
v.)
23)
MICROSOFT CORPORATION, a)
24 Washington corporation, and)
INTUIT INC., a Delaware)
25 corporation,)
Defendants.)
26)
27 _____)

No. _____

(Antitrust)

**COMPLAINT FOR INJUNCTIVE
RELIEF AGAINST
COMBINATION IN VIOLATION
OF SECTION 7 OF THE CLAYTON
ACT**

1 marketplace. Established PF/Checkbook software products provide an important asset to develop
2 home banking, in part because existing customers are likely candidates for PC-based home banking.
3 The special competitive significance to Microsoft and Intuit of dominating the present
4 PF/Checkbook Software Market as a strategic "cornerstone" asset in that emerging business (and
5 the likely effect of the proposed acquisition) were recognized by Intuit's Chairman, who wrote in a
6 September 1994 memorandum to his board about the proposed acquisition of Intuit by "Godzilla"
7 (Intuit's code name for Microsoft):

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

11

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

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

15 (Emphasis supplied).

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

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

23 (Emphasis supplied).

24 5. Microsoft has agreed to acquire Intuit for what, as of Monday, April 24, 1995 would
25 exceed \$2 billion in Microsoft stock, more than twice Intuit's preannouncement market
26 capitalization of \$813 million. In an attempt to avoid an obvious antitrust challenge, Microsoft
27 devised a planned "fix," whereby it has agreed simultaneously to transfer part (but not all) of
28 Microsoft's Money business unit to a third party, Novell, Inc. The purported fix would fail to

1 remedy the anticompetitive effects of the proposed Intuit transaction. Novell, with the assets it is
2 supposed to receive from Microsoft, cannot be nearly as effective a competitor with Money as
3 Microsoft is and would be absent the transaction.

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

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

13 **Jurisdiction**

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

18 **Venue**

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

21 **The Defendants**

22 10. Microsoft is a Washington corporation with its headquarters in Redmond,
23 Washington. Microsoft's operating system software, particularly its Disk Operating System
24 ("DOS") and its associated Windows product, are by far the dominant operating systems for Intel
25 x86 architecture personal computers (sometimes also called "IBM-compatible" personal
26 computers), which in turn is the dominant platform for personal computing. Microsoft also
27 develops, markets and sells applications software, including applications software for use with DOS
28 and Windows on IBM-compatible personal computers. Microsoft has announced that it will

1 introduce "Windows 95" in August of this year. Windows 95 will be the next upgraded release of
2 Microsoft's Windows operating system.

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

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

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

26
27 * The United States takes no position in this complaint
28 as to whether all of Microsoft's practices were lawful under the
antitrust laws.

1 **Relevant Product Market**

2 14. Some 30% of households in the United States now have a home personal computer
3 (a "home PC"). The vast majority of home PCs now being sold are IBM-compatible personal
4 computers. All IBM-compatible personal computers can run Microsoft's DOS or Windows
5 operating systems, and an overwhelming majority (well in excess of 80%) now are being sold with
6 a Microsoft operating system. Because applications are written to work with specific operating
7 systems, applications programs for IBM-compatible personal computers must, as a practical matter,
8 be written to run on Windows or, to a lesser, waning extent, on DOS without Windows.

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

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

28 17. The core functions of PF/Checkbook software have increased in both number and

1 quality over the past several years, as Microsoft and Intuit have battled to attract new customers
2 through better and more useful products. Competition to improve old functions and to add new
3 ones is an important part of the rivalry between Intuit and Microsoft.

4 18. There has been substantial innovation in the market for Personal Finance/Checkbook
5 software. Within the past year, a potentially important new function, front end software for home
6 banking, has been developed and incorporated into some PF/Checkbook software products.
7 Microsoft's 1994 release of Microsoft Money (version 3.0) included a home banking feature. This
8 year, Intuit plans to add home banking in its 1995 release of Quicken products. As with the
9 functions discussed above, home banking is linked to the rest of the program so that home banking
10 transactions are accounted for automatically wherever affected assets appear in the program.

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

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

23 24 **Relevant Geographic Market**

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

28 **Competition and Entry**

1 22. The principal competitors in the PF/Checkbook Software Market are Intuit with
2 Quicken and Microsoft with Money. H&R Block Financial's "Managing Your Money" and
3 Computer Associates' "Simply Money" also are sold in the market, but have little competitive
4 significance. Managing Your Money was a significant participant several years ago, but its
5 importance as a competitive influence has declined. The product recently has been offered for sale
6 by H&R Block at least partly as a result of the announcement of the proposed Intuit acquisition.
7 Similarly, Computer Associates, a major supplier of mainframe computer software, attempted
8 unsuccessfully to enter and establish a meaningful presence in the market by "giving away" more
9 than a million free copies of Simply Money for only a shipping and handling charge. A low
10 percentage of "free copy" recipients actually use the software and Computer Associates has little, if
11 any, competitive influence in the market.

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

17 24. Entry into the PF/Checkbook Software Market is difficult. Between them, Intuit and
18 Microsoft control more than 90% of the market, and both are daunting competitors in the market. A
19 substantial installed user base with an established, successful product (such as Intuit's seven million
20 customer installed base for Quicken) creates a revenue stream of profitable upgrade sales to the
21 installed base. The upgrade revenue stream can justify low initial pricing by market leaders with a
22 proven product, particularly in the OEM market. Such pricing, and the prospect of such pricing,
23 discourages new entry, because a potential competitor with an unproven product would know that it
24 would at best be faced with years of losses, with no assurance of ever generating enough upgrade
25 revenue to recoup its losses. Writing adequate software "code" even to match today's successful
26 products would be no easy task--as witnessed by Microsoft's own four-year effort to achieve feature
27 parity with Quicken. Even with the code, entry into the PF/Checkbook Software Market would be
28 difficult, expensive and slow. Microsoft's own attempt to enter the market with its Microsoft

1 Money product has been slow and expensive. After four years, it still has not achieved a positive
2 return on its investment, but has incurred substantial losses.

3 25. Most OEMs and retail customers in the PF/Checkbook Software Market will
4 purchase only products with an established reputation for reliability, performance and customer
5 support. At a minimum, it takes years and a significant investment of resources to build such a
6 reputation.

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

11 **The Proposed Acquisition**

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

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

1 competition from Microsoft. Microsoft, the strongest competitor in the software industry, has the
2 resources, ability and resolve to challenge Intuit's leading market position (in both the OEM and
3 retail channels), while Novell does not. Absent the acquisition, competition between Quicken and
4 Microsoft Money would increase. Microsoft's reason for proposing the acquisition of Intuit was its
5 identification of the PF/Checkbook Software Market as strategically important to Microsoft as a
6 leading home PC application today, as a front end for home banking tomorrow, and as a front end
7 more generally for on-line financial transactions in the more distant future.

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

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

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

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

25 (Emphasis supplied).

26 35. Potential new competitors, if any, would find it even more daunting to compete
27 against Quicken, the number one product in the market, if it were in Microsoft's hands. Microsoft
28 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.

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ANNE K. BINGAMAN
Assistant Attorney General

MICHAEL F. BAILEY
REID B. HORWITZ
KENNETH W. GAUL
United States Department of Justice
555 4th Street, N.W.
Room 9901
Washington, D.C. 20001
(202) 307-6200

STEVEN C. SUNSHINE
Deputy Assistant Attorney General

CONSTANCE K. ROBINSON

Director of Operations

MICHAEL J. YAMAGUCHI
United States Attorney

By _____

JOHN F. GREANEY

Chief, Computers and Finance Section

Assistant United States Attorney
Office of the United States Attorney
Northern District of California
450 Golden Gate Avenue
Box 36055
San Francisco, California 94102
(415) 556-1126

N. SCOTT SACKS
Assistant Chief, Computers and Finance Section

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