PUBLIC
WEB EDITION

of the

Opinion
Presented 28 October 2009

to the

Commission of the European Union

This public web edition is available in the following web page:
    http://www.jukkarannila.fi/lausunnot.html#nro_18

The Public Undertaking by Microsoft can be downloaded from the following web page
    http://www.microsoft.com/presspass/press/2009/oct09/10-07statement.mspx

Files for the Public Undertaking by Microsoft:
        * Proposed Interoperability Undertaking (Oct. 6, 2009, .doc file)
        * Annex A - Warranty Agreement (Oct. 6, 2009, .doc file)
        * Annex B - Template Interoperability Patent License (Oct. 6, 2009, .doc file)
        * Annex C - Additional Outlook and Exchange Versions (Oct. 6, 2009, .doc file)
        * Annex D - Outlook and Exchange Future Standards Process (Oct. 6, 2009, .doc file)

Readers of this Opinion are strongly to evaluate critically Public Undertaking by Microsoft before reading this Opinion.

With Best Regards,

Jukka Rannila

citizen of Finland
signed and delivered electronically

1
2
3   European Commission
4   Directorate-General for Competition
5   Antitrust Registry
6   B-1049 Brussel
7
8
9
10   COMMENTS OF THE PUBLIC UNDERTAKING BY MICROSOFT
11
12
13   First of all thanks for Directorate-General for Competition for possibility to comment the public
14   version of the **Public Undertaking by Microsoft (dated 6 October 2009)**.
15
16
17   Opinions are presented after this page 1.
18
19   This opinion does not contain any business or trade secrets.
20
21   Annex 1 holds information of copyright, licence and disclaimer.
22
23
24
25
26
27
28   Best Regards,
29
30
31
32   Jukka Rannila
33   citizen of Finland
34
35   signed electronically
36
37

38
39   **Please read the Public Undertaking by Microsoft first**
40
41   **Proposal:**
42   It is strongly proposed, that the reader of this document **reads first** the **Public**
43   **Undertaking by Microsoft** and makes personal notes while reading the the Public
44   Undertaking by Microsoft.
45
46   Opinion:
47   Reading these opinions should be done after personal notes, since these opinions, and
48   proposal might direct thinking to wrong direction and I might have wrong conclusions.
49
50   **Request for new round of hearings in the case COMP/39.294 - Microsoft (ECIS complaint)**
51
52   **Proposal:**
53   It is possible that this invitation for comments will result a large amount of opinions
54   and positions. Since this case is utmost important, I propose a second round of
55   comments / Market test after the second version of the proposed "**Interoperability**
56   **Commitment**" is ready, and gathered feedback collected by the Commission is
57   consolidated to the next proposal of Interoperability Commitment.
58
59   **General comments**
60
61   Opinion: Readability of the Public Undertaking by Microsoft is terrible, it contains sloppy
62   definitions, it has unclear structure, and is generally speaking very sloppy presentation.
63   Noting that Microsoft Corporation (Microsoft) in one the largest corporations in the world, it
64   is not acceptable that their written presentations are low-level and unclear.
65
66   **Proposal:**
67   Major improvements for readability are needed in the main document, and there
68   should be a second round of comments after the second version of the Public
69   Undertaking by Microsoft is ready, being it an informal round of comments or an
70   official Market Test by the Commission.
71
72   Opinion: Readability of the Annexes is terrible, they contain sloppy definitions, some
73   definitions are clearly missing, some definitions contradict with each other and some of the
74   text in the Annexes is hastily copied some general model, which does not comply with the
75   legislation in the European Union.
76
77   **Proposal:**
78   Major improvements for readability are needed in the in the Annexes , and there
79   should be a second round of comments after the second version of the Public
80   Undertaking by Microsoft is ready, being it an informal round of comments or an
81   official Market Test by the Commission.
82

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83
84

85   # pages 1-9 of the
86   ## Public Undertaking by Microsoft
87   ### (i.e. sections A-G)

88

89   ## also called the

90   # **Main Document**

91   ## in this Opinion

92
93   **Current structure of the Undertaking**
94
95   Opinion:
96   According to my understanding the structure of the Undertaking is following:
97
98   Main document ==> containing chapter "F. Definitions"
99   Annex A
100   Exhibit A of Annex A==> Definitions of the Annex A
101   Exhibit B of Annex A
102   Exhibit C of Annex A
103   Annex B ==> containing chapter "1. Definitions"
104   Annex C
105   This structure of these documents is complicated, especially with the chapters calle
106   "Definitions"
107
108   **Proposal**:
109   The structure of the final Interoperability Commitment should be following:
110
111   Main document
112   Annex A
113   Exhibit B of Annex A
114   Exhibit C of Annex A
115   Annex B
116   Annex C
117   Annex X: Dispute Settlement
118   Annex Z : DEFINITIONS
119   ==> containing chapter "F. Definitions" of the main document
120   ==> containing "definitions" of the Exhibit A of Annex A
121   ==> containing chapter "1. Definitions" of Annex B
122
123   **Proposal**:
124   In the main document the chapter "F. Definitions" is repealed and added to annex Z.
125   Exhibit A of Annex A is repealed and added to annex Z.
126   Chapter "1. Definitions" of the Annex B is repealed and added to annex Z.
127   All other definitions are repealed and added to the Annex Z
128
129   **Proposal**:
130   The previously mentioned definitions added to the annex Z are consolidated, refined,
131   validated and possibly partly rewritten in order to add readability in the Main
132   Document and in the Annexes A, B and C.
133
134   Opinion: In this way there is only one Annex containing definitions to be used in the main
135   document and in Annexes A and B. In the current for there are lot of redundant and
136   contradicting definitions, and that is not acceptable.

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137
138   Opinion: Microsoft seems to think, that Warranty Agreement (for Protocols, Standards and
139   Format) and Licence Agreement (Microsoft's Patented Protocols) are separate things.
140   In reality there are products that have both protocols: BOTH open protocols AND patented
141   protocols by Microsoft (and possibly with other software companies).
142
143   **Proposal**:
144   Warranty Agreement and Template Licence (Annex A and Annex B) must be a
145   coherent which each other.
146
147   **Proposal**:
148   Annex A and Annex B have the same definitions, and they are added to the Annex Z,
149   and defined well enough in one document, and not dispersing conflicting definitions
150   to different unclear documents.
151
152   Opinion: A large company, like Microsoft, can not have different definitions for different
153   agreements/contracts, and definitions cannot change from division to division.
154
155   Opinion: Dispute settlement procedure in the Annex seems reasonable, and it could be
156   applied to both Annexes (A and B), and then the role of the Commission is more clear in
157   both Annexes. In the current form Annex B holds vague definitions for dispute settlement.
158
159   **Proposal**:
160   Dispute settlement is repealed from Annex A and Annex B, and they are consolidated
161   to the Annex X, and there should be the same dispute settlement procedure for both
162   Annexes (Annex A and Annex B)
163

164
165 **Paragraph 1 (page 1) / Main Document**
166
167   Opinion: Paragraph 1 misses clear explanation, what the Judgement of the Court of First
168   Instance (Grand Chamber) of 17 September 2007 - Microsoft v Commission (Case T-
169   201/04) exactly expects Microsoft to do. This is very unfortunate and not acceptable.
170
171   **Copy from the operational part of the Judgement (Case T-201/04)**
172
173   1) it orders Microsoft to submit a proposal for the establishment of a mechanism
174   which is to include a monitoring trustee with the power to have access,
175   independently of the Commission, to Microsoft's assistance, information, documents,
176   premises and employees and to the source code of the relevant Microsoft products;
177
178   2) it requires that the proposal for the establishment of that mechanism provide that
179   all the costs associated with the appointment of the monitoring trustee, including his
180   remuneration, be borne by Microsoft; and
181
182   3) it reserves to the Commission the right to impose by way of decision a mechanism
183   such as that referred to in the first and second indents above;
184
185   Opinion: There is not any mentioning that what or who would be this monitoring trustee.
186
187   **Proposal**:
188   There must a clear definition and explanation of this monitoring trustee.
189
190   Opinion: Monitoring trustee has probably some rights and obligations related to the final
191   form of the Interoperability Commitment.
192
193   **Proposal**:
194   The Commission sets the rules for the monitoring trustee based on the judgement of
195   the Court of First Instance (Grand Chamber) of 17 September 2007 - Microsoft v
196   Commission (Case T-201/04). There could be some more explanation, what
197   Microsoft is exactly obliged to do.
198
199
200 **Paragraph 2 (page 1) / Main Document**
201
202   Opinion: Paragraph 2 (page 1) is not complying with the judgement of Case T-201/04
203   mentioned in the operational part of the judgement. Microsoft's assistance, information,
204   documents, premises, employees and to the source code is not mentioned in the Guiding
205   Principles.
206
207   **Proposal**:
208   Guiding Principles must be changed to comply with the judgement of Case T-201/04

209   mentioned in the operational part of the judgement.
210
211   **Proposal**:
212   The Commission defines the rules for the Monitoring Trustee, and these rule take
213   account Microsoft's assistance, information, documents, premises, employees and to
214   the source code.
215
216
217   **Paragraph 3 (page 1) / Main Document**
218
219   Opinion: It is not mentioned that WHO is going to interpret the Guiding Principles.
220
221   **Proposal**:
222   It is must be defined, that WHO is going to interpret the Guiding Principles, and the
223   Commission can accept this definition before the final version of the Interoperability
224   Commitment.
225
226
227   **Paragraph 6 section A (page 1) / Main Document**
228
229   Opinion: "interested" in section A is too vague.
230
231   **Proposal**:
232   In section A "interested" must be changed to "**all interested**". There must no
233   discrimination to any private person or any legal entity.
234
235   Opinion: "undertakings" in section A is too vague.
236
237   **Proposal**:
238   In section A "undertakings" must be changed to "**all interested private persons and
239   all interested legal entities**".
240
241   Opinion: Microsoft's products are used by both individual person and by legal entities.
242   Because of the nature of Microsoft's products and Microsoft's technologies, both individual
243   persons and large corporations can develop products, which are very similar. Therefore there
244   has to b equal footing to all interested private persons and all interested legal entities.
245

246
247 **Generally: Paragraph 7 sections A, B and C (pages 1-2) / Main Document**
248
249   Opinion: These sections A, B and C are contradicting with each other.
250
251   Opinion: In section C there is mentioning: "compatible with Open Source Licenses" and
252   section A there is mentioning: "reasonable and non-discriminatory terms".
253
254   Opinion: These contradictions show that Microsoft does not understand what is an Open
255   Source Licence or Microsoft is deliberately creating misunderstandings and confusion
256   between terms "non-discriminatory terms" and "open source license".
257
258   Opinion: Since Microsoft does not understand what is an Open Source Licence, there is not
259   any mentioning of specific Open Source Licence and the definition in the part "F.
260   Definitions" is not complying with the definition by Open Source Initiative [1], aka. The Open
261   Source Definition [2].
262
263   **Proposal**:
264   In Paragraph 7 sections A, B and C (pages 1-2) must be changed to comply with the
265   The Open Source Definition by Open Source Initiative, and Microsoft must define
266   which Open Source Licence it is going to use in this paragraph 7.
267
268
269 **Paragraph 7 section A (page 1) / Main Document**
270
271   Opinion: Term "reasonable and non-discriminatory terms" is not defined in the part "F.
272   Definitions".
273
274   **Proposal**:
275   Term " **reasonable and non-discriminatory terms**" must be **defined,** and added to
276   the Annex Z, Definitions.
277
278
279 **Paragraph 7 section B (pages 2-3) / Main Document**
280
281   Opinion: Paragraph 7 Section B (pages 2-3) is totally vague and totally unacceptable.
282
283   **Proposal**: There must be following sentences in the section B:
284
285   **"**Microsoft will provide **Patent Information** about its patents. Microsoft will
286   provide a a public, complete and concise list of patents, which are related to
287   Microsoft´s Relevant Software Products and Microsoft Software Products. Microsoft
288   will provide a public, complete and concise list of patents which are related

1   Open Source Initiative, http://www.opensource.org/
2   The Open Source Definition, http://www.opensource.org/docs/osd

289   Compatible Software, being it Free/Open Source Software (FOSS) or Closed
290   Software. Access to information of these patents and patents itself must be free to all
291   interested persons and legal entities. If there is user manuals, development manuals,
292   introductory software, test suites or defect information, Microsoft will provide
293   public, complete and concise list and free access of this information to all interested
294   persons and legal entities.
295
296   If Microsoft finds that a software provider is infringing Microsoft's patents,
297   Microsoft will inform about this infringement to the Commission, especially in the
298   cases related to Microsoft's Relevant Software Products. Microsoft shall give notice
299   of this kind infringement to the Commission. Microsoft and the Commission can
300   investigate this infringement before Microsoft sue a legal entity of infringing
301   Microsoft's patents related to Microsoft's Relevant Software Products. **"**
302
303   **Proposal**:
304   Term "**Patent Information**" must be **defined,** and added to the Annex Z,
305   Definitions.
306

307
308 **Paragraph 7 section C (page 2) / Main Document**
309
310   Opinion: Paragraph 7 section C (page 2) is totally vague and totally unacceptable.
311
312   **Proposal**:
313   There is be some text to be removed in the first sentence in the following way:
314
315   ~~subject to no more than a nominal upfront fee and licensing terms which are~~
316
317   **Proposal**:
318   First sentence must be following:
319
320   " Access to and use of the Interoperability Information shall compatible with
321   Open Source Licenses and public domain Copyright Licences."
322
323   Opinion: Microsoft must not invent its own Open Source Licenses and Copyright Licences.
324
325   **Proposal**:
326   "Copyright Licence" might be defined in a better way in the Annex Z.
327
328   Opinion: Microsoft does not define which Open Source Licences and Copyright Licences
329   Microsoft is going to follow. This is totally unacceptable. Microsoft must define, which
330   well-known Open Source Licence or Copyright Licence it is going to comply, when
331   providing Interoperability Information.
332
333   **Proposal**:
334   The selected licence must comply with the The Open Source Definition by Open
335   Source Initiative, and Microsoft must define which Open Source Licence it is going
336   to use in this paragraph 7.
337
338   Opinion: Microsoft has right to have patented technology, but Interoperability Information
339   must be provided accordingly to Interoperability Commitment. Previous proposals do not
340   alter that situation.
341

342
343   **Paragraph 7 section D (page 2) / Main Document**
344
345   **Proposal**:
346   Sentence in Paragraph 7 section D (page 2) must be following:
347   "
348   **Patent Information** and Interoperability Information shall be kept updated in a
349   Timely Manner.
350   "
351
352   **Proposal**:
353   Term "**Timely Manner**" must be **defined better**, and added to the Annex Z.
354
355
356
357   **Paragraph 7 section E (page 2) / Main Document**
358
359   Opinion: Paragraph 7 section E (page 2) is totally vague and totally unacceptable.
360
361   Opinion: Microsoft has to accept that third parties might provide to Microsoft their own
362   tests, test tools and test information in order to determine interoperability with Microsoft's
363   Relevant Software Products.
364
365   Opinion: Microsoft's "own tests and tools" and third party "tests and tools" must be listed
366   publicly, which guarantees that there is not misinformation about which "tests and tools"
367   actually mean. There must be also version information about "tests and tools".
368
369   Opinion: Moreover, there must information about defects related to Interoperability of the
370   Microsoft's Relevant Software Products.
371
372   Opinion: And finally, there must be a possibility to inform about founded defects related to
373   the Microsoft's Relevant Software Products. And Microsoft must be obliged to validate,
374   determine and provide corrective measures related to Interoperability of the Microsoft's
375   Relevant Software Products.
376
377   **Proposal**:
378   Sentence 1 must be changed in Paragraph 7 section E (page 2):
379   "
380   Microsoft shall provide a public list of its **tests, test results, defects, defect reports**
381   **and tools** that Microsoft uses to test interoperability of Microsoft Software Products
382   with the applicable Microsoft's Relevant Software Products.
383   "
384
385   **Proposal**:
386   After Sentence 1 there must **a new sentence** in Paragraph 7 section E (page 2):

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387
388   "
389   Microsoft will provide **a complete version information** of its tests, test results,
390   defects, defect reports and tools that Microsoft uses to test interoperability of
391   Microsoft Software Products with the applicable Microsoft's Relevant Software
392   Products.
393   "
394
395   **Proposal**:
396   After Sentence 1 there must **a new sentence** in Paragraph 7 section E (page 2):
397   "
398   Software Providers trying to comply with the Standards and Protocols related with
399   the applicable Microsoft's Relevant Software Products **can provide** a public list of
400   its **tests, test results, defects, defect reports and tools** related Standards and
401   Protocols of the applicable Microsoft's Relevant Software Products
402   "
403
404
405   **Proposal**:
406   After Sentence 1 there must **a new sentence** in Paragraph 7 section E (page 2):
407   "
408   Microsoft shall use tests, test results, defects, defect reports and tools that **third
409   parties** provide in order to test Microsoft's Relevant Software Products. Microsoft
410   will provide a public list of tests, test results, defects, defect reports and tools that
411   third parties have provided to Microsoft when testing Interoperability Information of
412   Microsoft's Relevant Software Products.
413   "
414
415   **Proposal**:
416   After Sentence 1 there must **a new sentence** in Paragraph 7 section E (page 2):
417   "
418   Microsoft will publicly gather information **about defects reported by users, and
419   defect status of user-committed defects** related Interoperability Information of
420   Microsoft's Relevant Software Products. Microsoft will provide public information
421   of these defects reported by users. Microsoft will provide information about these
422   **defects reported by users** to all all interested persons and all interested legal
423   entities, which are interested about Interoperability Information of Microsoft's
424   Relevant Software Products.
425   "
426

427
428   **Paragraph 7 section F (page 2) / Main Document**
429
430   Opinion: Paragraph 7 section F (page 2) is totally vague and totally unacceptable.
431
432   Opinion: The Warranty (Annex A) mentioned in the Paragraph 7 section F (page 2) is totally
433   vague and totally unacceptable.
434
435   **Proposal**:
436   There is be some text to be removed in the second sentence in the following way:
437
438   ~~subject to no more than a nominal upfront fee and~~
439
440   Opinion: The mentioned 10000 Euros in the Annex A (Warranty) is totally unacceptable and
441   it must be removed. When thinking private individuals, not companies, who are making
442   software complying with Interoperability Information, 10000 Euros is far from nominal.
443
444   **Proposal**:
445   "Nominal upfront fee" must be removed both from this paragraph and from Annex A
446   (Warranty), and the interpretation of 10000 Euros must be removed from Annex A
447   (Warranty) must be removed.
448
449   Opinion: Microsoft seems not to understand that in many software projects **ALL members**
450   of the project are **private individual**s, not any legal entity or a private company, and the
451   whole software endeavour might be co-operation of private individuals without a specific
452   legal entity.
453

454
455 **Paragraph 8 section A (page 2) / Main Document**
456
457   Opinion: Paragraph 8 section A (page 2) is totally vague and totally unacceptable, and it
458   must be **rewritten totally** from the beginning to the end.
459
460   Opinion: The following LONG text must be read.
461   "
462   Agreement on Government Procurement [3] as annex 4(b) to Marrakesh Agreement
463   Establishing the World Trade Organization (WTO).
464
465   Article VI: Technical Specifications
466
467   1. Technical specifications laying down the characteristics of the products or services to be
468   procured, such as quality, performance, safety and dimensions, symbols, terminology,
469   packaging, marking and labelling, or the processes and methods for their production and
470   requirements relating to conformity assessment procedures prescribed by procuring entities,
471   shall not be prepared, adopted or applied with a view to, or with the effect of, creating
472   unnecessary obstacles to international trade.
473
474   2. Technical specifications prescribed by procuring entities shall, where appropriate:
475
476   (a) be in terms of performance rather than design or descriptive characteristics; and
477   (b) be based on international standards, where such exist; otherwise, on national technical
478   regulations(footnote 3), recognized national standards (footnote 4), or building codes.
479
480   (footnote original) 3 For the purpose of this Agreement, a technical regulation is a
481   document which lays down characteristics of a product or a service or their related
482   processes and production methods, including the applicable administrative
483   provisions, with which compliance is mandatory. It may also include or deal
484   exclusively with terminology, symbols, packaging, marking or labelling requirements
485   as they apply to a product, service, process or production method.
486
487   (footnote original) 4 For the purpose of this Agreement, a standard is a document
488   approved by a recognized body, that provides, for common and repeated use, rules,
489   guidelines or characteristics for products or services or related processes and
490   production methods, with which compliance is not mandatory. It may also include or
491   deal exclusively with terminology, symbols, packaging, marking or labelling
492   requirements as they apply to a product, service, process or production method.
493
494   3. There shall be no requirement or reference to a particular trademark or trade name, patent,
495   design or type, specific origin, producer or supplier, unless there is no sufficiently precise or
496   intelligible way of describing the procurement requirements and provided that words such as
497   "or equivalent" are included in the tender documentation.

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3   http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

498
499   4. Entities shall not seek or accept, in a manner which would have the effect of precluding
500   competition, advice which may be used in the preparation of specifications for a specific
501   procurement from a firm that may have a commercial interest in the procurement.
502   ”
503
504   Opinion: Microsoft's interpretation of Open and Public Standards is not acceptable in the
505   light of Agreement on Government Procurement [4] as annex 4(b) to Marrakesh Agreement
506   Establishing the World Trade Organization (WTO).
507
508   **Proposal**: First sentence must be following:
509
510   **“**If some open and public standard(s) related to Interoperability Information of
511   Microsoft's Relevant Software Products is mandated as **Technical Specifications** (in
512   the light of Agreement on Government Procurement as annex 4(b) to Marrakesh
513   Agreement Establishing the World Trade Organization (WTO)) in Government
514   Procurement(s), where Microsoft's Relevant Software Products are in the group of
515   bidding option(s), Microsoft will comply to the mandated Technical Specification(s)
516   in the specific Government Procurement(s).**”**
517
518   **Proposal:**
519   Based on the previous requirements in Government Procurements the following text
520   is totally unacceptable and must be removed:
521   ~~Microsoft shall provide support for applicable standards by either~~
522   ~~(i) implementing the required portions of the applicable standard that relates to~~
523   ~~functionality of the implementing product,~~
524   ~~or~~
525   ~~(ii) completely and accurately documenting instances where required portions of the~~
526   ~~applicable standard are not implemented or are implemented with variations.~~
527   ~~Microsoft shall make this documentation publicly available in a Timely Manner.~~
528
529   **Proposal:**
530   The text removed in the previous proposal must be replaced:
531   "
532   Microsoft shall provide and support Technical Specifications (in the light of
533   Agreement on Government Procurement as annex 4(b) to Marrakesh Agreement
534   Establishing the World Trade Organization (WTO)), and will:
535   (i) Provide a complete, concise and public list of these Technical Specifications,
536   (ii) Provide a complete, concise and public Technical Information of these Technical
537   Specifications, and
538   (iii) If there are versions of Technical Information of these Technical Specifications,
539   shall publish the Technical Information from all versions of these Technical
540   Specifications.
541   (iv) When Microsoft's Relevant Software Products are in the group of bidding

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4   http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

542   option(s) (in the light of Agreement on Government Procurement as annex 4(b) to
543   Marrakesh Agreement Establishing the World Trade Organization (WTO)), Microsoft
544   shall comply to the mandated Technical Specification(s) in the specific Government
545   Procurement(s).
546   (v) When Microsoft's Relevant Software Products are in the group of bidding
547   option(s) (in the light of Agreement on Government Procurement as annex 4(b) to
548   Marrakesh Agreement Establishing the World Trade Organization (WTO)), Microsoft
549   **shall provide Technical Information of** mandated Technical Specification(s) in the
550   specific Government Procurement(s) **beforehand of the specific Government**
551   **Procurement(s)**.
552   "
553
554   Opinion: The Commission must have a **possibility to monitor** markets of the Microsoft's
555   Relevant Software Products, and the Commission can publish, on its own will, Market
556   Review of the market where Microsoft's Relevant Software Products are competing.
557   Without a question, there will be an immense load of new standards during the ten (10) years
558   offered in the Public Undertaking by Microsoft. Applicable Standards, not Technical
559   Specifications, can be determined by the Market Review done by the Commission.
560
561   **Proposal:**
562   Based on the previous line of thought, there must be following sentences added:
563   "
564   During the term of this Interoperability Commitment there will be immense load of
565   new standards developed, and Microsoft's Relevant Software Products and
566   competing products must comply some of these standards. Some of these standards
567   are enforced as Technical Specification mandated by Government Procurements (in
568   the light of Agreement on Government Procurement as annex 4(b) to Marrakesh
569   Agreement Establishing the World Trade Organization (WTO)). Some of these
570   standards are enforced my market demand, or specific standardization efforts by
571   customers, or specific standardization efforts by governmental organizations.
572
573   Therefore Commission must have a **possibility to monitor markets** of the
574   Microsoft's Relevant Software Products in order to determine validity of proposed
575   different standards.
576   "
577
578   Opinion: In reality standards are developed by Standards Development Organisation (SDO),
579   and new Standards Development Organisations (SDO) are established every year in the
580   information technology field. In reality information technology standards define the market,
581   and there is no markets before the standards are established. After all, information
582   technology market is all about standards, starts with standards and ends with standards.
583   Microsoft is notorious of not complying with the standards, enforcing its own standards,
584   extending standards with unclear documentation, extending standards with patents, etc.
585   Therefore the **possibility to monitor markets** by the Commission is utmost important when
586   accepting the final version of the Interoperability Commitment.

587
588   **<u>Proposal:</u>** Based on the previous line of thought, there must be following sentences added:
589
590   "
591   Microsoft **will inform** the Commission about every new standard it will **implement**
592   in its Microsoft's Relevant Software Products.
593
594   The Commission can ask publicly information (Public Consultation) about the
595   market situation in the market field Microsoft's Relevant Software Products. This
596   Public Consultation can be informed to Customers of the Microsoft's Relevant
597   Software Products, Competitors of the Microsoft's Relevant Software Products,
598   Competition Authorities in the Member States, Standard Setting Organisations,
599   Information and Communication Technology Experts Associations and to the general
600   public. Based on this review the Commission can publish a Market Review.
601
602   If the Commission can determine after a Market Review of the market field of
603   Microsoft's Relevant Software Products, that Microsoft is not complying to a
604   applicable standard based on the market situation, the Commission can order
605   Microsoft to comply with an applicable standard based on the market situation,
606   especially if Microsoft is hindering competition with non-compliance to a specific
607   applicable standard.
608   "
609

610
Paragraph 8 section C (pages 3) / Main Document
612

613   Opinion: Paragraph 8 section B (page 2) is totally vague and totally unacceptable, and it
614   must be **rewritten totally** from the beginning to the end. Words "Optional" and
615   "Informative" when dealing with standards is not a good sign; We need more words like
616   "Comply", "Totally", "Conformed".
617

618   **Proposal:** Next text must be removed:
619   ~~Microsoft shall completely and accurately and in a Timely Manner make~~
620   ~~documentation of the optional or informative portions of the standard it has chosen to~~
621   ~~implement publicly available.~~
622

623   **Proposal:** Text must rewritten totally in the following way:
624

625   "
626   Microsoft shall completely, accurately and fully provide public information about
627   applicable standards in the following way:
628   (i) which standards Microsoft complies fully and totally
629   (ii) which standards Microsoft complies partly.
630   (iii) in both cases Microsoft will provide documentation about the
631   implementation of the standard.
632   In the previously mentioned Market Review there might be a list of standards, which
633   Microsoft must comply fully and totally.
634   "
635

636   Opinion: Paragraph 8 section C (page 3) is totally vague and totally unacceptable, and it
637   must be **rewritten totally** from the beginning to the end. Words "Extension" near the words
638   "Standard" is not a good sign; We need more words like "Comply", "Totally", "Conformed"
639   near the word "Standard". This Paragraph 8 section C (page 2) is total and final proof of
640   Microsoft's notorious way of extending standards to non-standards or "Standards".
641

642   **Proposal:** Next text must be removed:
643   ~~Extensions include the format of the content types, relationships, elements and~~
644   ~~attributes that are not defined in the standard..~~
645

646   **Proposal:** Text must rewritten totally in the following way:
647

648   "
649   Microsoft **will inform** the Commission about every New Standard Extension it will
650   **implement** in its Microsoft's Relevant Software Products. This new standard
651   extension must be explained to the Commission.
652   The Commission can ask following:
653   (i) is the New Standard Extension based on customer needs?
654   (ii) is the New Standard Extension **publicly committed** to a Standard Setting

655   Organisation?
656   If the New Standard Extension is **not publicly committed** to a Standard Setting
657   Organisation, the Commission can order Microsoft to **publicly commit** the New
658   Standard Extension to a relevant Standard Setting Organisation. In the Market
659   Review by the Commission, there can be questions about public and non-public
660   standard extensions, which might or might not hinder competition.
661   The Commission can have a public consultation for Customers of the Microsoft's
662   Relevant Software Products, Competitors of the Microsoft's Relevant Software
663   Products, Competition Authorities in the Member States, Standard Setting
664   Organisations, Information and Communication Technology Experts Associations
665   and to the general public, and there might be questions about the the New Standard
666   Extension.
667   If the new New Standard Extension is hindering the competition, the Commission
668   and Microsoft negotiate on remedies to the situation.
669   If Microsoft is hindering competition with unpublished and non-interoperable
670   standard extensions related Microsoft's Relevant Software Products, the Commission
671   can order fines based on severity of the non-complying of the Interoperability
672   Commitment.
673   "
674
675   Opinion: General business executives rarely understand, that even a simple computer
676   program means tens/hundreds/thousands instructions to a computer. In reality developing
677   software code is very tedious task and standards must very specific, not general gibberish.
678   General business executives rarely understand understands the level of details needed in
679   information technology standards. Therefore discussion about standards extensions will
680   always cause unrest among technology-oriented persons in the information technology field.
681   Therefore there should be assurances that Microsoft does not enforce numerous extensions,
682   which are ambiguous and hard to implement technically, that will finally lead to several
683   interoperability problems.
684
685
686

687
Paragraph 8 section D (page 3) / Main Document
689
690   Opinion: Paragraph 8 section D (page 3) is totally vague and totally unacceptable.
691
692   Opinion: The Warranty (Annex A) mentioned in the Paragraph 7 section F (page 2) is totally
693   vague and totally unacceptable.
694
695   **Proposal**:
696   There is be some text to be removed in the second sentence in the following way:
697
698   ~~be made available for no more than a nominal fee~~
699
700   **Proposal**: The second sentence should be following:
701
702   The warranties shall be made available **freely** and be subject to effective private
703   enforcement.
704
705   Opinion: The 10000 Euros fee is **not nominal** for a private person creating software
706   products complying with all kinds of standards. Microsoft seems not to understand that in
707   many software projects **ALL members** of the project are **private individual**s, not any legal
708   entity or a private company, and the whole software endeavour might be co-operation of
709   private individuals without a specific legal entity.
710

711
Paragraph 9 (page 3) / Main Document
713

714   Opinion: Paragraph 9 (page 3) and references to Annexes A and B are totally vague and
715   totally unacceptable. Moreover, the "Definitions" part of Undertaking, Annex A and B are
716   contradicting, meaning that there are several unambiguous definitions floating around
717   causing a lot of confusion.
718

719   Opinion: Following sentence is **dangerous**: "Microsoft shall make more advantageous
720   licensing terms granted to one licensee available to other licensees at their request" and it
721   must removed.
722

723   Opinion: Microsoft's notorious prior behaviour with divisive, divided, complicated,
724   complex, multi-part, poorly-written and altering licences have created a quagmire to any
725   legal scholar, and with the previously mentioned **dangerous** sentence Microsoft is trying to
726   thwart the Commission to that legal quagmire.
727

728   **Proposal:**
729   There is be some text to be removed in the **dangerous** second sentence in the
730   following way:
731   ~~Microsoft shall make more advantageous licensing terms granted to one~~
732   ~~licensee available to other licensees at their request.~~
733

734   **Proposal:**
735   The removed sentence must be changed to following:
736   "
737   Microsoft shall publish publicly all New Licence Variations of Annexes A and
738   B, and will give the Commission 90 days after prior notice to review Licence
739   Variations of Annexes A and B before any publication any New Licence
740   Variations of Annexes A and B.
741   The Commission can have a public consultation for Customers of the
742   Microsoft's Relevant Software Products, Competitors of the Microsoft's
743   Relevant Software Products, Competition Authorities in the Member States,
744   Standard Setting Organisations, Information and Communication Technology
745   Experts Associations and to the general public, and there might be questions
746   about the the New Licence Variations.
747   If the New Licence Variations are hindering the competition, the Commission
748   and Microsoft negotiate on the remedies to the situation.
749   If Microsoft is hindering competition with New Licence Variations related
750   Microsoft's Relevant Software Products, the Commission can order fines
751   based on severity of the non-complying to the Interoperability Commitment."
752

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753
Paragraph 10 (page 3, under the title "1.1 Interoperability between Microsoft's PC
Productivity Applications and third-party server Software Products") / Main Document

Opinion: Paragraph 10 (page 3) and its first sentence is totally vague and totally
unacceptable. Microsoft seems not to understand that in many software projects **ALL**
members of the project are **private individual**s, not any legal entity or a private company,
and the whole software endeavour might be co-operation of private individuals without a
specific legal entity.

Proposal:
        The first sentence in the Paragraph 10 (page 3) must be following:
        "
        Microsoft shall make available to **all interested private persons and to all**
        interested legal entities Interoperability Information that enables non-Microsoft
        server Software Products to interoperate with Microsoft's PC Productivity
        Applications on an equal footing with Microsoft Server Software Products.
        "

Opinion: Paragraph 10 (page 3) and its second sentence is totally vague and totally
unacceptable. It must noted, that all all interested private persons and to interested legal
entities must be informed about all changes in the Interoperability Information, and just
publishing new information must be informed to all interested parties.

Proposal:
From second sentence in the Paragraph 10 (page 3) must be following part removed:
        "
        Microsoft shall provide a warranty with respect to this Interoperability Information
        (including any updates), as specified in the general provisions in Section B.I of this
        Interoperability Commitment , effective 1 January 2010.
        "

Proposal:
        There must be added a new third sentence in the Paragraph 10 (page 3):
        "
        Interoperability Information about Microsoft's PC Productivity Applications will be
        no doubt updated several times during this Interoperability Commitment, and
        therefore Microsoft will keep information lists to all interested private persons and to
        all interested legal entities, and these information lists will inform about the
        Interoperability Information Updates of Microsoft's PC Productivity Applications to
        all interested private persons and to all interested legal entities.
        "

796
Paragraph 11 (page 3, under the title "1.2 Interoperability between the Windows Client PC
Operating System and third-party server Software Products") / Main Document

Opinion: Paragraph 11 (page 3) and its first sentence is totally vague and totally
unacceptable. Microsoft seems not to understand that in many software projects **ALL**
members of the project are **private individual**s, not any legal entity or a private company.

Proposal:
The first sentence in the Paragraph 11 (page 3) must be following:
"
Microsoft shall make available to **all interested private persons and to all**
interested legal entities Interoperability Information that enables non-Microsoft
server Software Products to interoperate with the Windows Client PC Operating
System on an equal footing with Microsoft Server Software Products.
"

Proposal:
From second sentence in the Paragraph 11 (page 3) must be following part removed:
"
Microsoft shall provide a warranty with respect to this Interoperability Information
(including any updates), as specified in the general provisions in Section B.I of this
Interoperability Commitment, effective 1 January 2010 for Windows Vista and
Windows 7, and effective 15 March 2010 for Windows XP.
"

Proposal:
There must be added a new third sentence in the Paragraph 11 (page 3):
"
Interoperability Information of the Windows Client PC Operating System will be no
doubt updated several times during this Interoperability Commitment, and therefore
Microsoft will keep information lists to all interested private persons and to all
interested legal entities, and these information lists will inform about the
Interoperability Information Updates of the Windows Client PC Operating System to
all interested private persons and to all interested legal entities.
"

Opinion: Paragraph 11 (page 3) does not mention, that after Windows VISTA and after
Windows 7, there might be new Windows Client PC Operating Systems.

Proposal:
There must be added a new sentences in the Paragraph 11 (page 3):
"
After Windows VISTA and after Windows 7, there might be new Windows Client PC
Operating Systems, and this Interoperability Commitment will cover those new

841   Windows Client PC Operating Systems during this Interoperability Commitment.
842   Microsoft shall make available to all interested private persons and to all interested
843   legal entities Interoperability Information that enables non-Microsoft server Software
844   Products to interoperate with the **successor versions of Windows Client PC**
845   **Operating System AFTER Windows XP, Windows VISTA and Windows 7** on an
846   equal footing with Microsoft Server Software Products.
847   "
848
849

850   **Paragraph 12 (pages 3-4, under the title "1.2 Interoperability between the Windows Client PC**
851   **Operating System and third-party server Software Products") / Main Document**
852

853   <u>**Proposal:**</u>
854   The first sentence in the Paragraph 12 (page 3-4) must be following:
855   "
856   Microsoft shall make available to interested **all interested private persons and to**
857   **all interested legal entities** Interoperability Information that enables non-Microsoft
858   server Software Products to interoperate with Windows Server Operating System on
859   an equal footing with other Microsoft Server Software Products.
860   "
861

862   <u>**Proposal:**</u>
863   From second sentence in the Paragraph 12 (page 3-4) must be following part
864   removed:
865   "
866   Microsoft shall provide a warranty with respect to this Interoperability Information
867   ~~(including any updates)~~, as specified in the general provisions in Section B.I of this
868   Interoperability Commitment, effective 1 January 2010 for Windows Server 2008,
869   and effective 15 March 2010 for Windows Server 2003.
870   "
871

872   <u>**Proposal:**</u>
873   There must be added a new sentences in the Paragraph 12 (page 3-4):
874   "
875   After Windows Server 2008 and Windows Server 2003 there might be new Microsoft
876   Server Software Products, and this Interoperability Commitment will cover those
877   new Microsoft Server Software Products during this Undertaking. Microsoft shall
878   make available to all interested private persons and to all interested legal entities
879   Interoperability Information that enables non-Microsoft Software Products to
880   interoperate with the **successor versions of Microsoft Server Software Products**
881   **after Windows Server 2008 and Windows Server 2003** on an equal footing with
882   Microsoft Software Products.
883   "

884
885 **Paragraph 13 (page 4, under the title "1.4 Interoperability with SharePoint") / Main**
886 **Document**
887
888   **Proposal:**
889   The first sentence in the Paragraph 13 (page 4) must be following:
890   "
891   Microsoft shall make available to interested **all interested private persons and to**
892   **all interested legal entities** Interoperability Information that enables non-Microsoft
893   server Software Products to interoperate with Microsoft's SharePoint Server
894   Software Products on an equal footing with other Microsoft Server Software
895   Products and Microsoft Client Software Products.
896   "
897
898   **Proposal:**
899   From second sentence in the Paragraph 13 (page 4) must be following part removed:
900   "
901   Microsoft shall provide a warranty with respect to this Interoperability Information
902   ~~(including any updates)~~, as specified in the general provisions in Section B.I of this
903   Interoperability Commitment, effective 1 January 2010.
904   "
905
906   **Proposal:**
907   There must be added a new sentences in the Paragraph 13 (page 4):
908   "
909   After Microsoft's SharePoint Server Software Products there might be new
910   Microsoft's SharePoint Server Software Products , and this Interoperability
911   Commitment will cover those new Microsoft's SharePoint Server Software Products
912   during this Interoperability Commitment. Microsoft shall make available to all
913   interested private persons and to all interested legal entities Interoperability
914   Information that enables non-Microsoft Software Products to interoperate with the
915   **successor versions after Microsoft's SharePoint Server Software Products** on an
916   equal footing with Microsoft Software Products.
917   "
918

Jukka S. Rannila

OPINION

26 (55)

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28 October 2009

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919
920 **Paragraph 14 (page 4, under the title "Interoperability with Outlook and Exchange") / Main**
921 **Document**
922
923   <u>**Proposal:**</u>
924   The first sentence in the Paragraph 14 (page 4) must be following:
925   "
926   Microsoft shall make available to interested **all interested private persons and to**
927   **all interested legal entities** Interoperability Information that enables non-Microsoft
928   Software Products to interoperate with Outlook on an equal footing with Exchange,
929   and with Exchange on an equal footing with Outlook.
930   "
931
932   <u>**Proposal:**</u>
933   From second sentence in the Paragraph 14 (page 4) must be following part removed:
934   "
935   Microsoft shall provide a warranty with respect to this Interoperability Information
936   ~~(including any updates)~~, as specified in the general provisions in Section B.I of this
937   Interoperability Commitment, effective 1 January 2010.
938   "
939
940   <u>**Proposal:**</u>
941   There must be added a new sentences in the Paragraph 14 (page 4):
942   "
943   There might be new version Outlook and Exchange, and this Interoperability
944   Commitment will cover those new Outlook and Exchange products during this
945   Interoperability Commitment. Microsoft shall make available to all interested private
946   persons and to all interested legal entities Interoperability Information that enables
947   non-Microsoft Software Products to interoperate with the **successor versions after**
948   **Outlook and Exchange Products mentioned in the Annex C** on an equal footing
949   with Microsoft Software Products.
950   "
951

952
General Remarks of Paragraphs 15 and 16 (page 4, under the title "1.6 Interoperability with
Microsoft's PC Productivity Applications") / Main Document

Opinion: There are numerous amount of versions of Microsoft Office Word, Microsoft
Office Excel and Microsoft Office PowerPoint, when counting BOTH the versions of Office
products AND Office file formats.

Opinion: Microsoft seems not to value the fact, that there are millions of documents
circulating around the world, and some of them are done with very archaic versions of the
Microsoft Office software package.

Opinion: If somebody is going to create a real interoperability lab to test numerous amount
of versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office
PowerPoint, AND testing BOTH the versions of Office products AND the versions of Office
file formats, it is obvious that Paragraph 15 (page 4) is totally vague and totally
unacceptable.

Opinion: Real interoperability laboratory would mean several installations of Microsoft
Office products in several computer machinery installations, some computer machinery
installations being very archaic.

Opinion: It must be possible to order ONE bundled set of ALL versions of Microsoft Office
Word, Microsoft Office Excel and Microsoft Office PowerPoint from the first version of
Microsoft Office product family. There must be also computer machinery information for
specific Microsoft Office version. Then it would be possible to create real interoperability
laboratory.

Proposal:
        Proposals based on the previous opinions in this page are proposed on the next pages.

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983

General Proposals for Paragraphs 15 and 16 (page 4, under the title "1.6 Interoperability with Microsoft's PC Productivity Applications") / Main Document

Proposal / New Paragraph A:
"Microsoft will provide a Product Containing Legacy Microsoft Office Products, which is ONE bundled set of ALL versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office PowerPoint from the first versions of Microsoft Office product family."

Proposal / New Paragraph B:
"Microsoft´s legal and marketing departments can define a snappy, easy and easily recognised name for the Product Containing Legacy Microsoft Office Products, which is ONE bundled set of ALL versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office PowerPoint from the first versions of Microsoft Office product family."

Proposal / New Paragraph C:
"Specific products in the Product Containing Legacy Microsoft Office Products will be sold with their original retail price."

Proposal / New Paragraph D:
"Microsoft will sell the Product Containing Legacy Microsoft Office Products with non-discrimination to all all interested private persons and to all interested legal entities."

Proposal / New Paragraph E:
"Microsoft will disclose Interoperability Information of all versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office PowerPoint legacy binary formats, since there are several format for the same file type name, e.g. DOC, XLS, RTF and PPT."

Proposal / New Paragraph F:
"Interoperability Information of all versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office PowerPoint legacy binary formats must be sold with the Product Containing Legacy Microsoft Office Products."

Proposal / New Paragraph G:
"Interoperability Information of all versions of Microsoft Office Word, Microsoft Office Excel and Microsoft Office PowerPoint legacy programs will contain information about the computing machinery, which can run specific legacy programs."

1026
Specific Proposal for Paragraph 15 (page 4, under the title "1.6 Interoperability with
Microsoft's PC Productivity Applications") / Main Document

Opinion: Paragraph 15 (page 4) is totally vague and totally unacceptable. Microsoft seems
not to understand what "interoperability" and "legacy format" actually means.

Proposal:
Paragraph 15 (page 4) must be totally rewritten:
"

(15)
This paragraph describes how Microsoft shall implement paragraphs [H to T
renumbered] and Section 2.2.
Microsoft's PC Productivity Applications and information describing associated
properties of that data, and the Interoperability Information does not include
information about the functionality of these applications or the underlying operating
systems that could be used to clone or port Microsoft products in whole or in part.
Microsoft shall make Interoperability Information relative to file formats used by
Microsoft Office Word, Microsoft Office PowerPoint and Microsoft Office Excel
available to to all interested private persons and to all interested legal entities.
Microsoft shall provide a set of Microsoft Office Word, Microsoft Office PowerPoint
and Microsoft Office Excel documents, which shall implement all features of
Microsoft Office Word, Microsoft Office PowerPoint and Microsoft Office Excel
document standards provided by Microsoft.
Interoperability Information of all versions of Microsoft Office Word, Microsoft
Office Excel and Microsoft Office PowerPoint legacy binary formats must contain a
set of Microsoft Office Word, Microsoft Office PowerPoint and Microsoft Office
Excel documents, which shall implement all features of Microsoft Office Word,
Microsoft Office PowerPoint and Microsoft Office Excel document standards, which
are implemented in different program versions.
"

Opinion: In practical terms this means some amount of documents, which can be reopened
with certain versions of Microsoft Office products. When these documents contain all
aspects of Microsoft Office Word, Microsoft Office PowerPoint and Microsoft Office Excel
document standards, it should not be overwhelming to create an actually interoperable Other
Software Products, which will open all legacy binary formats.

1064
1065
1066 **Specific Remarks Paragraph 16 (page 4, under the title "1.6 Interoperability with Microsoft's**
1067 **PC Productivity Applications") / Main Document**
1068
1069   **Proposal:**
1070   Paragraph 16 (page 4) can be the same, if new paragraphs [**A-G renumbered]** and
1071   paragraph 15 is rewritten. Also Paragraph 16 must be then renumbered.
1072
1073
1074 **Paragraphs 17-18 (page 4-5, under the title "1.6 Interoperability with Microsoft's PC**
1075 **Productivity Applications") / Main Document**
1076
1077   Opinion: The final corrected version of ISO 29500:2008 will mean correcting all Technical
1078   Corrigenda, and amending all Technical Amendments presented to the ISO 29500:2008
1079   standard can be defined as the final form of ISO 29500:2008.
1080
1081   Opinion: Microsoft does not to seem understand, that ECMA-376 and ISO 29500:2008 are
1082   different standards. ISO 29500:2008 with its forthcoming Corrigenda and forthcoming
1083   Amendments are not ECMA standards, since they are ISO standards. This confusion with
1084   the issue is noticed, when Microsoft does not even bother to use term ISO 29500:2008, and
1085   then specifying possible successor standards.
1086
1087   Opinion: International Organization for Standardization (ISO) must be given a reasonable
1088   and non-discrimatory timetable to finish the final corrected version of ISO 29500:2008,
1089   which means correcting all Technical Corrigenda and amending all Technical Amendments
1090   presented to the ISO 29500:2008 standard.
1091
1092   **Proposal:**
1093   **Paragraphs 17-18 (page 4-5) are repealed and replaced following paragraphs / Main**
1094   **Document**
1095   "
1096   (i) The new versions of the of the ISO 29500:2008 shall be developed by the rules of
1097   the ISO/IEC JTC 1 committee and subcommittee.
1098   (ii) Microsoft shall comply with the the rules of the ISO/IEC JTC 1 [5] committee and
1099   its subcommittee [6] 34 (JTC 1/SC 34 - Document Description and Processing
1100   Languages).
1101   (iii) Commission can monitor the standardisation process of the new versions of the
1102   the ISO 29500:2008 and standardisation of technical corrigenda and technical
1103   amendments to ISO 29500:2008.
1104   (iv) If there is abuse of the dominant market position, **of any party standardising**
1105   **the ISO 29500:2008**, during the development of the new versions of the of ISO
1106   29500:2008 Commission can put on fines on the basis of abuse of the dominant

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5   http://www.jtc1.org/
6   http://www.itscj.ipsj.or.jp/sc34/

1107   market position.
1108   (v) Commission can ask for Market Review for all interested parties involved in the
1109   the standardisation process of the new versions of the 29500:2008, and parties
1110   involved outside of the the standardisation process of the new versions of the the
1111   29500:2008.
1112   (vi) If there is abuse of the dominant market position based on the Market Review,
1113   the Commission can put on fines on the basis of abuse of the dominant market
1114   position in the the standardisation process of the new versions of the the 29500:2008.
1115   (vii) The new versions of the 29500:2008 shall be published and accepted by the
1116   rules of the ISO/IEC JTC 1 committee and its subcommittee 34, and Microsoft shall
1117   comply to these rules.
1118   (viii) Irrespective of the termination of this Interoperability Commitment Microsoft
1119   shall maintain the then existing level of the 29500:2008 support (version 2008,
1120   versions between the version 2008 and the then latest version, and the then latest
1121   version) over the commercial product lifetime of the then latest major version release
1122   of Microsoft's Primary PC Productivity Applications.
1123   (ix) In this respect Microsoft shall provide a warranty in line with the general
1124   provisions outlined in Section B.I effective as of the date of the termination of this
1125   Interoperability Commitment.
1126   "

1127

1128   **Proposal / New Paragraph H:**
1129   "
1130   International Organization for Standardization (ISO) and the Commission can agree
1131   on the reasonable and non-discrimatory timetable to finish the final corrected version
1132   of ISO 29500:2008, which means correcting all Technical Corrigenda and amending
1133   all Technical Amendments presented to the ISO 29500:2008 standard. Microsoft will
1134   comply the rules [7] of JTC 1 (especially ISO/IEC JTC 1 N 8557) and the rules [8]of the
1135   subcommittee 34 (especially document ISO/IEC JTC 1/SC 34/WG 4 N 0012,
1136   document ISO/IEC JTC ISO/IEC JTC 1/SC 34/WG 4 N 0031 and document 1/SC
1137   34/WG 4 N 0036).
1138   "

1139

1140   **Proposal / New Paragraph I:**
1141   "
1142   International Organization for Standardization (ISO) and the Commission can agree
1143   on that the final corrected version of ISO 29500:2008, which means correcting all
1144   Technical Corrigenda and amending all Technical Amendments presented to the ISO
1145   29500:2008 standard, will be given as a different standard number, e.g. ISO
1146   29500:2011.
1147   "

1148

1149   **Proposal / New Paragraph J:**

---

7   http://isotc.iso.org/livelink/livelink/3959538/Jtc1_Directives.pdf?func=doc.Fetch&nodeid=3959538 (public)
8   http://www.itscj.ipsj.or.jp/sc34/wg4/ (public documents)

1150   "
1151   Microsoft and the Commission agree on that file formats named DOCX, XLSX and
1152   PPTX are used for the software that complies with the ECMA-376 standard.
1153   "
1154
1155   **Proposal / New Paragraph K:**
1156   "
1157   Final specified format specified in the final corrected version of ISO 29500:2008
1158   means correcting all Technical Corrigenda and amending all Technical Amendments
1159   presented to the ISO 29500:2008 standard. Microsoft and the Commission agree on
1160   that file formats named DOCX, XLSX and PPTX are used for the software that
1161   complies with ISO 29500:2008 standard, Technical Corrigenda, Technical
1162   Amendments and successors of 29500:2008 standard.
1163   "
1164
1165   **Proposal / New Paragraph L:**
1166   "
1167   With this procedure it can be guaranteed that when the final corrected version of ISO
1168   29500:2008, which means correcting all Technical Corrigenda and amending all
1169   Technical Amendments presented to the ISO 29500:2008 standard, there will be an
1170   uniform standard to both Microsoft and to its competitors to comply.
1171   "
1172
1173   Opinion: The following LONG text must be read.
1174   "
1175   Agreement on Government Procurement [9] as annex 4(b) to Marrakesh Agreement
1176   Establishing the World Trade Organization (WTO).
1177
1178   Article VI: Technical Specifications
1179
1180   1. Technical specifications laying down the characteristics of the products or services
1181   to be procured, such as quality, performance, safety and dimensions, symbols,
1182   terminology, packaging, marking and labelling, or the processes and methods for
1183   their production and requirements relating to conformity assessment procedures
1184   prescribed by procuring entities, shall not be prepared, adopted or applied with a
1185   view to, or with the effect of, creating unnecessary obstacles to international trade.
1186
1187   2. Technical specifications prescribed by procuring entities shall, where appropriate:
1188
1189   (a) be in terms of performance rather than design or descriptive characteristics; and
1190   (b) be based on international standards, where such exist; otherwise, on national
1191   technical regulations(footnote 3), recognized national standards (footnote 4), or
1192   building codes.
1193

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9   http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

1194   (footnote original) 3 For the purpose of this Agreement, a technical regulation
1195   is a document which lays down characteristics of a product or a service or
1196   their related processes and production methods, including the applicable
1197   administrative provisions, with which compliance is mandatory. It may also
1198   include or deal exclusively with terminology, symbols, packaging, marking or
1199   labelling requirements as they apply to a product, service, process or
1200   production method.
1201
1202   (footnote original) 4 For the purpose of this Agreement, a standard is a
1203   document approved by a recognized body, that provides, for common and
1204   repeated use, rules, guidelines or characteristics for products or services or
1205   related processes and production methods, with which compliance is not
1206   mandatory. It may also include or deal exclusively with terminology,
1207   symbols, packaging, marking or labelling requirements as they apply to a
1208   product, service, process or production method.
1209
1210   3. There shall be no requirement or reference to a particular trademark or trade name,
1211   patent, design or type, specific origin, producer or supplier, unless there is no
1212   sufficiently precise or intelligible way of describing the procurement requirements
1213   and provided that words such as "or equivalent" are included in the tender
1214   documentation.
1215
1216   4. Entities shall not seek or accept, in a manner which would have the effect of
1217   precluding competition, advice which may be used in the preparation of
1218   specifications for a specific procurement from a firm that may have a commercial
1219   interest in the procurement.
1220   ”
1221
1222   **Proposal / New Paragraph M:**
1223   "
1224   The Commission and Member States agree, that ECMA-376 standards are not
1225   Technical Specifications based on the regulations of Agreement on Government
1226   Procurement [10] as annex 4(b) to Marrakesh Agreement Establishing the World Trade
1227   Organization (WTO). Therefore ECMA-376 standards cannot be reference
1228   documents or Technical Spefications in Government Procurements in the Member
1229   States.
1230   "
1231
1232   **Proposal / New Paragraph N:**
1233   "
1234   ISO 29500:2008 with its final corrigenda and final amendments might be a Technical
1235   Specification, if certain conditions are met. The problem in Government
1236   Procurement might be that Microsoft's Productivity Product might be the only
1237   application to comply with ISO 29500:2008 AND its final corrigenda and final

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10 http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

1238   amendments. Therefore Commission and Members States can agree, that in
1239   Government Procurement there must several software, which comply with ISO
1240   29500:2008 AND its final corrigenda and final amendments.
1241   "
1242
1243   **Proposal / New Paragraph O:**
1244   "
1245   The Commission and Member States can agree, that the final corrected version of
1246   ISO 29500:2008, meaning correcting all Technical Corrigenda and amending all
1247   Technical Amendments presented to the ISO 29500:2008 standard, can be a
1248   Technical Specification; based on the regulations of Agreement on Government
1249   Procurement [11] as annex 4(b) to Marrakesh Agreement Establishing the World Trade
1250   Organization (WTO).
1251   "
1252
1253   **Proposal / New Paragraph P:**
1254   "
1255   The Commission and Member States can agree on the reasonable and non-
1256   discrimatory timetable to finish the final corrected version of ISO 29500:2008, which
1257   means correcting all Technical Corrigenda and amending all Technical Amendments
1258   presented to the ISO 29500:2008 standard. The Commission can consult
1259   International Organization for Standardization (ISO) on this matter.
1260   "
1261
1262   **Proposal / New Paragraph R:**
1263   "
1264   Microsoft shall publicly document Additional Information for the ECMA 376
1265   Specification that meets the requirements of paragraph **(new paragraphs H-P)**
1266   above. This commitment shall apply to successor versions of Microsoft's Primary PC
1267   Productivity Applications with respect to ECMA-376.
1268   "
1269
1270   **Proposal / New Paragraph S:**
1271   "
1272   Microsoft shall publicly document Additional Information for the ISO 29500:2008
1273   Specification, and information about all its corrigenda and all its amendments, that
1274   meets the requirements of paragraph **(new paragraphs H-P)** above. This
1275   commitment shall apply to successor versions of Microsoft's Primary PC
1276   Productivity Applications with respect to the final version of ISO 29500:2008
1277   standard, i.e. the the final corrected version of ISO 29500:2008, meaning correcting
1278   all Technical Corrigenda and amending all Technical Amendments presented to the
1279   ISO 29500:2008 standard.
1280   "
1281

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11 http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

1282
Paragraph 19 (page 5, under the title "1.7 Interoperability with the .NET Framework") /
Main Document

Opinion: First sentence in the paragraph 19 is too vague.

Proposal: First sentence in the paragraph 19 must be changed to following:
          "
          Microsoft shall make available to interested undertakings Interoperability
          Information that enables non-Microsoft Software Products to interoperate on an
          equal footing with the .NET Framework, **with previous versions, current version**
          and the future version of the .NET Framework during the term of this
          Commitment.
          "

Paragraph 20 (page 5, under the title "1.7 Interoperability with the .NET Framework") /
Main Document

Opinion: "undertakings" in paragraph 20 first sentence is too vague.

Proposal: in paragraph 20 first sentence must be changed

          "Microsoft shall make available to **all interested private persons or** all interested
          legal entities Interoperability Information used in communications between different
          instances of the .NET Framework,[...]"

Opinion: Defects are inevitable, when developing .NET Framework, .i.e. new versions, and
also in the old versions there might be defects found.

Proposal: in paragraph 20 there must a new sentence:

          "
          Microsoft will keep information lists to **all interested private persons and to**
          all interested legal entities, and these information lists will inform about
          .NET Framework defects in all versions, about new versions and new
          developments in the .NET Framework . Defect information will inform about
          new defects, defect status and defect corrections in all versions of the .NET
          Framework.
          "

1323
1324 **Paragraph 21 (page 5, under the title "1.7 Interoperability with the .NET Framework") /**
1325 **Main Document**
1326
1327   <u>**Proposal**</u>: in paragraph 21 first sentence must be changed:
1328
1329   "
1330   Microsoft shall document and license specifications of XAML to **all**
1331   **interested private persons and to all interested legal entities. Licence for**
1332   **the specification will be based on public domain Copyright Licence.**
1333   "
1334
1335   <u>Opinion</u>: Microsoft must not invent its own Open Source Licenses and Copyright Licences.
1336
1337   <u>Opinion</u>: in paragraph 21 first the term "licence" is too vaguely defined, and exact licence
1338   terms to specifications of XAML documenting and licensing must be either referenced to
1339   existing licences or a new licence must be added as an annex to this Interoperability
1340   Commitment.
1341
1342
1343
1344 **Paragraph 22 (page 5, under the title "2.1 Support for Standard Protocols in**
1345 **Outlook/Exchange") / Main Document**
1346
1347   <u>**Proposal**</u>:
1348   In paragraph 21 first sentence must be changed to following, adding "and
1349   documented":
1350   "
1351   Microsoft commits to support and implement open, public **and documented**
1352   standard protocols in Outlook and Exchange as described below.
1353   "
1354
1355
1356 **Paragraphs 23-27 (pages 5-6, under the title "2.1 Support for Standard Protocols in**
1357 **Outlook/Exchange") / Main Document**
1358
1359   <u>Opinion</u>: This section seems reasonable, but the Commission should still review critically
1360   paragraphs 23-27 with other/third parties, who are interested of the final version of the
1361   Interoperability Commitment.
1362

1363
Paragraph 29 (page 6, under the title "2.2 Support for Standards in Microsoft's PC
Productivity Applications") / Main Document

      <u>**Proposal**</u>:

          In the paragraph 29 there must a **new second sentence**:

          "

          Beginning with the Word 2007, Excel 2007 and PowerPoint 2007 in Office Service
          Pack 2 ("SP2"), the **update to SP2** will have a **mandatory prompt** the possibility
          select the default format as "ODF", and there must be linked information about ODF
          in this prompt.

          "

1376
1377 **Paragraph 32 (page 7, under the title "2.2 Support for Standards in Microsoft's PC**
1378 **Productivity Applications") / Main Document**
1379
1380   **Proposal**:
1381   In the paragraph 32 there must a be following text to be removed:
1382   "
1383   ~~This provision is subject to the following pre-requisites for each version of the ODF~~
1384   ~~Standard: (i) the version of the standard must be developed and available for~~
1385   ~~implementation under substantially similar terms as ODF 1.0, including for a~~
1386   ~~substantially similar purpose and under substantially similar (no less than reasonable~~
1387   ~~and non-discriminatory) licensing terms covering all intellectual property rights in~~
1388   ~~the standard; (ii) the version of the standard is not substantially more difficult to~~
1389   ~~implement technically than the previously supported version; and (iii) the standards~~
1390   ~~development process for that version of the standard has not been manipulated or~~
1391   ~~otherwise subject to misuse. Irrespective of the termination of this Undertaking~~
1392   ~~Microsoft shall maintain the then existing level of ODF support over the commercial~~
1393   ~~product lifetime of the then latest major version release of Microsoft's Primary PC~~
1394   ~~Productivity Applications. In this respect Microsoft shall provide a warranty in line~~
1395   ~~with the general provisions outlined in Section B.I effective as of the date of the~~
1396   ~~termination of this Undertaking.~~
1397   "
1398
1399   **Proposal**:
1400   The removed text in the paragraph 32 there must be changed to following:
1401   "
1402   (i) The new versions of the ODF (after version 1.1) shall be developed by the rules of
1403   the ISO/IEC JTC 1 committee and its subcommittees.
1404   (ii) Microsoft shall comply with the the rules of the ISO/IEC JTC 1 [12] committee and
1405   its [13] subcommittee 34 (JTC 1/SC 34 - Document Description and Processing
1406   Languages).
1407   (iii) Commission can monitor the standardisation process of the new versions of the
1408   ODF.
1409   (iv) If there is abuse of the dominant market position, **of any party standardising**
1410   **the ODF**, during the development of the new versions of the ODF (after version 1.1),
1411   Commission can put on fines on the basis of abuse of the dominant market position.
1412   (v) Commission can ask for Market Review for all interested parties involved in the
1413   the standardisation process of the new versions of the ODF, and parties involved
1414   outside of the the standardisation process of the new versions of the ODF.
1415   (vi) If there is abuse of the dominant market position based on the Market Review,
1416   the Commission can put on fines on the basis of abuse of the dominant market
1417   position in the the standardisation process of the new versions of the ODF.
1418   (vii) The new versions of the ODF (after version 1.1) shall be published and accepted

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12 http://www.jtc1.org/
13 http://www.itscj.ipsj.or.jp/sc34/

1419   by the rules of the ISO/IEC JTC 1 committee and its subcommittee 34, and Microsoft
1420   shall comply to these rules.
1421   (viii) Irrespective of the termination of this Interoperability Commitment Microsoft
1422   shall maintain the then existing level of ODF support (versions 1.1., versions
1423   between the version 1.1. and the then latest version, and the then latest version) over
1424   the commercial product lifetime of the then latest major version release of
1425   Microsoft's Primary PC Productivity Applications.
1426   (ix) In this respect Microsoft shall provide a warranty in line with the general
1427   provisions outlined in Section B.I effective as of the date of the termination of this
1428   Interoperability Commitment.
1429   "
1430

1431   **Proposal / New Paragraph T:**
1432   International Organization for Standardization (ISO) and the Commission can agree
1433   on the reasonable and non-discrimatory timetable to finish the new versions of ODF
1434   after version 1.1., which means correcting all Technical Corrigenda and amending all
1435   Technical Amendments presented to the ISO 26300:2006 standard. Microsoft will
1436   comply the rules [14] of JTC 1 (especially ISO/IEC JTC 1 N 8557) and the rules [15] of
1437   the subcommittees 34 WG 6 (OpenDocument Format).
1438

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14 http://isotc.iso.org/livelink/livelink/3959538/Jtc1_Directives.pdf?func=doc.Fetch&nodeid=3959538 (public)
15 http://www.itscj.ipsj.or.jp/sc34/wg4/ (public documents)

1439
1440   **Paragraphs under the "2.3 Support for Standards in Internet Explorer" / Main Document**
1441
1442   **Proposal**:
1443   One of the paragraphs under this title must to be removed:
1444   "
1445   ~~In any case where Internet Explorer does not pass a recommended conformance test~~
1446   ~~provided for in the preceding paragraphs, MS shall completely and accurately~~
1447   ~~document test suite failures and how Microsoft's implementation differs from the~~
1448   ~~standard based on the test suite results.~~
1449   "
1450
1451   **Proposal**:
1452   The removed text must changed to following:
1453   "
1454   In any case where Internet Explorer does not pass a recommended conformance test
1455   provided for in the preceding paragraphs, Microsoft will work to get the
1456   conformance to these tests. The Commission can nominate technology experts to
1457   review non-conformance of Internet Explorer with Microsoft, and based on this
1458   Microsoft and Commission can negotiate reasonable timetable to get the full
1459   conformance to these tests.
1460   "
1461
1462   **Proposal:**
1463   Based on the previously mentioned guidelines, there must be following sentences
1464   added:
1465   "
1466   During this Interoperability Commitment there will be new WEB standards
1467   developed, and Internet Explorer and competing products must comply some of these
1468   standards. Some of these standards are enforced as Technical Specification mandated
1469   by Government Procurements (in the light of Agreement on Government
1470   Procurement [16] as annex 4(b) to Marrakesh Agreement Establishing the World Trade
1471   Organization (WTO)). Some of these standards are enforced my market demand, or
1472   specific standardization efforts by customers, or specific standardization efforts by
1473   governmental organizations.
1474   Therefore Commission must have a **possibility to monitor markets** of the Internet
1475   Explorer in order to determine validity of proposed different standards.
1476   "
1477
1478   **Proposal:**
1479   Based on the previous line of thought, there must be following sentences added:
1480   "
1481   Microsoft **shall inform** the Commission about every new standard it will **implement**
1482   in Internet Explorer.

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16 http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

Copyright, licence and disclaimer: check last page of this opinion.

1483
1484   The Commission can ask publicly information (Public Consultation) about the
1485   market situation in the market field of Internet Explorer. This Public Consultation
1486   can be informed to Customers of the Microsoft's Relevant Software Products,
1487   Competitors of the Microsoft's Relevant Software Products, Competition Authorities
1488   in the Member States, Standard Setting Organisations, Information and
1489   Communication Technology Experts Associations and to the general public. Based
1490   on this review the Commission can publish a Market Review.
1491
1492   If the Commission can determine after a Market Review, that Microsoft is not
1493   complying to a applicable standard based on the market situation, the Commission
1494   can order Microsoft to comply with an applicable standard based on the market
1495   situation, especially if Microsoft is hindering competition with non-compliance to a
1496   specific applicable standard.
1497   "
1498
1499
1500 **Main Document**
1501
1502   Opinion:
1503   Missing
1504   Windows Media Player (WMP)
1505   information / **Main Document**
1506
1507
1508   **Proposal:**
1509   Microsoft and the Commission will negotiate for constructive proposal for the
1510   Windows Media Player, i.e. what provisions will be in the Interoperability
1511   Commitment related to the the Windows Media Player.
1512
1513   **Proposal:**
1514   This constructive proposal about Microsoft Media Player (WMP) can be evaluated
1515   better during the possible next round of comments.
1516

Copyright, licence and disclaimer: check last page of this opinion.

1517

ANNEX A

1518

1519

<u>Warranty Agreement</u>
Proposed changes

1520

1521
1522
1523

1524
1525   **Title in the Warranty Agreement, i.e. Annex A**
1526
1527   <u>**Proposal**</u>:
1528   Title "Warranty Agreement" is changed to "**Warranty Agreement in the European**
1529   **Economic Area (EEA)**".
1530
1531
1532
1533   **Recitals (of the Warranty Agreement)**
1534
1535   <u>Opinion:</u> "Covered Products" is misleading definition.
1536
1537   <u>**Proposal**</u>:
1538   "Covered Products" must changed to "Microsoft's Relevant Software Products"
1539   thoroughly in the Annex A.
1540
1541   <u>**Proposal**</u>:
1542   Under the "Recitals" section new paragraphs are added:
1543   "
1544   (3) Original version of this Warranty Agreement, dated on the effective date of the
1545   Interoperability Commitment is called to "Warranty Agreement Baseline Text".
1546   (4) Annex Z of the Interoperability Commitment and the Main Document of the
1547   Interoperability Commitment are integral part of this Warranty Agreement and they
1548   are attached to this Warranty Agreement.
1549   (5) All changes to Warranty Agreement Baseline Text are added to the Exhibit D of
1550   this Warranty Agreement
1551   "
1552
1553
1554   **Paragraph 1 in the Annex A**
1555
1556   <u>**Proposal**</u>:
1557   Paragraph 1 in the Annex A is changed to following:
1558   "
1559   Capitalized terms used in this **Warranty** Agreement have the meaning given in the
1560   **Annex Z.**
1561   "
1562

Jukka S. Rannila

OPINION

44 (55)

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28 October 2009   Public / World wide web

1563
1564 **Paragraph 2.1. (b)(i) in the Annex A**
1565
1566
1567   **Proposal**:
1568   The term "**Tagline**" is given the meaning in the **Annex Z.**
1569
1570   **Proposal**:
1571   Following sentence is added to the Paragraph 2.1. (b)(i):
1572   "
1573   The mutually agreed tagline is added to the Exhibit D of this Warranty Agreement.
1574   "
1575
1576
1577 **Paragraph 2.1. (b)(ii) in the Annex A**
1578
1579   **Proposal**:
1580   Following sentence is added to the Paragraph 2.1. (b)(ii):
1581   "
1582   The selected option is added to the Exhibit D of this Warranty Agreement.
1583   "
1584
1585
1586 **Paragraph 2.1. (b)(iii) in the Annex A**
1587
1588   **Proposal**:
1589   Following sentence is added to the Paragraph 2.1. (b)(iii):
1590   "
1591   The selected option is added to the Exhibit D of this Warranty Agreement.
1592   "
1593
1594
1595 **New Paragraphs 2.3. and 2.4. in the Annex A**
1596
1597   **Proposal**:
1598   Following new paragraphs are added to the Annex A:
1599   "
1600   2.3.
1601   (a) Development Cycle
1602   **[definition of the Development Cycle in the Annex Z]**
1603   (b) Roadmap
1604   **[definition of the Roadmap in the Annex Z]**
1605   (c) Maintenance Cycle
1606   **[definition of the Maintenance Cycle in the Annex Z]**
1607

1608   2.4. Microsoft will provide information of the Development Cycle, Roadmap and
1609   Maintenance Cycle of the Microsoft's Relevant Software Products.
1610   "
1611
1612
1613   **Paragraph 3.3. (c)(iv) in the Annex A**
1614
1615   **Proposal**:
1616   The sentence in paragraph 3.3. (c)(iv) is changed:
1617
1618   IS 29500 is changed to **ISO 29500:2008.**
1619
1620
1621   **Paragraph 3.3. (c)(vi) in the Annex A**
1622
1623   **Proposal**:
1624   The sentence in paragraph 3.3. (c)(vi) is changed:
1625
1626   IS 29500 is changed to **ISO 29500:2008.**
1627
1628
1629   **Paragraph 3.3. (c)(vii) in the Annex A**
1630
1631   **Proposal**:
1632   The sentence in paragraph 3.3. (c)(vii) is changed:
1633
1634   IS 29500 is changed to **ISO 29500:2008.**
1635
1636
1637   **Paragraph 3.5 in the Annex A**
1638
1639   **Proposal**:
1640   The first sentence in paragraph 3.5 is changed:
1641   "
1642   Microsoft further represents and warrants and undertakes that it will not assert any
1643   patent claims other than Subject Patent Claims against Company or any third party
1644   for developing, distributing, making, using, selling, offering for sale, or importing
1645   any Implementation(s), **which are compatible with Microsoft's Relevant Software**
1646   **Products and compatible with file formats of Microsoft's Relevant Software**
1647   **Products.**
1648   "
1649

1650
1651 **Paragraph 5 in the Annex A**
1652
1653   **Proposal**:
1654   The first sentence in paragraph 5 is removed:
1655
1656   ~~Fee. Company will pay Microsoft a one-time fee of 10,000 Euros ("Fee") within 30~~
1657   ~~days after the Effective Date to an account specified by Microsoft.~~
1658
1659
1660
1661 **Paragraph 6.1 in the Annex A**
1662
1663   **Proposal**:
1664   The first sentence in paragraph 6.1 is changed:
1665   "
1666   The initial term of this Agreement commences on the Effective Date and remains in
1667   effect until the date that is the earlier of: (a) ten years from the Effective Date, or, (b)
1668   the date on which the **Interoperability Commitment with the Commission of the**
1669   **European union** expires or is terminated; in either case unless and until this
1670   Agreement is earlier terminated in accordance with Section 6.2.
1671   "
1672
1673   **Proposal**:
1674   Undertaking is changed to Interoperability Commitment with the Commission of the
1675   European Union.
1676
1677
1678 **Exhibit A of the Annex A**
1679
1680   **Proposal**:
1681   Exhibit A of Annex A is repealed, and the definitions of terms are consolidated to the
1682   annex Z.
1683
1684
1685 **General proposal for changes to Warranty Agreement or Licence Agreement**
1686
1687   **Proposal**:
1688   All selected options should be added to an Exhibit of an agreement.
1689   All changes to agreements should be added to an Exhibit of an agreement.
1690   Old changes to to agreements should be added to an Exhibit of an agreement.
1691
1692   Opinion: There might be disputes, that in what order changes to agreements is done.

1693

ANNEX B

1694

1695

Template Patent Licence

1696

Proposed changes

1697
1698

1699
1700   **Generally about the Annex B**
1701
1702   Opinion: When comparing Annex A and Annex B, it can be noted that Annex B is quite
1703   general, and gives room for possible misunderstandings. Annex A has much better
1704   explanation, and the process of handling disputes in the Annex is reasonable.
1705
1706   **Proposal**:
1707   The Commission and Microsoft can negotiate on better and modified version of the
1708   Annex B.
1709
1710   **Proposal**:
1711   Dispute settlement could be the same in the both cases, i.e. Annex A and Annex B.
1712
1713   **Proposal**:
1714   Common dispute settlement procedure should be something like "Annex X", and
1715   both agreement types could use the same Annex for dispute settlement.
1716
1717   Opinion: Compared to the Annex A, the role of the Commission is hard to understand. The
1718   only mentioning is following:
1719   "The Parties acknowledge and agree that any formal action or suit to enforce any
1720   right or remedy under this Agreement or to interpret any provision of this Agreement
1721   constitutes an issue relating to the application of Article 82 of the Treaty within the
1722   meaning of Article 15 of Regulation 1/2003."
1723
1724   Opinion: To an average business executive this issue can be totally unknown, and the role of
1725   the Commission in the possible dispute should be defined better, if that is the case based on
1726   the Regulation 1/2003.
1727

1728
1729   **Titles in the Template Patent License, i.e. Annex B**
1730
1731   **Proposal**:
1732   Title "Template Patent License" is changed to "**Template Patent Licence to be used**
1733   **in the European Economic Area (EEA)**".
1734
1735   **Proposal**:
1736   Title "Microsoft [insert target] Protocols" is changed "**Patented Protocols of**
1737   **Microsoft Software Products**".
1738
1739
1740   **Paragraph 1 in the Annex B**
1741
1742   **Proposal**:
1743   Paragraph 1 in the Annex B is changed to following:
1744
1745   Capitalized terms used in this **Template Patent Licence** have the meaning given in
1746   the **Annex Z.**
1747
1748   **Proposal**:
1749   Sections from 1.1 to 1.12 are repealed and definitions of the terms are consolidated
1750   to the Annex Z.
1751
1752   **General proposal for changes to Warranty Agreement or Licence Agreement**
1753
1754   **Proposal**:
1755   All selected option should be added to an Exhibit of an agreement.
1756   All changes to agreements should be added to an Exhibit of an agreement.
1757   Old changes to to agreements should be added to an Exhibit of an agreement.
1758
1759   Opinion: There might be disputes, that in what order changes to agreements is done.
1760

Jukka S. Rannila

OPINION

50 (55)

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1761
1762

ANNEX X

1763

1764
1765

Dispute settlement

1766

1767
1768
1769 **Proposal**:
1770 Common dispute settlement procedure could be something like "Annex X", and both
1771 agreement types (Annex A and Annex B) could use the same Annex for dispute
1772 settlement.
1773
1774 **Proposal**:
1775 For the next version there is better description of dispute settlement that will be the
1776 same for both agreement types (Annex A and Annex B).
1777
1778 **Proposal**:
1779 Dispute Settlement procedures from Annex A and Annex X are consolidated together,
1780 and there is only one type of dispute settlement.
1781

1782

ANNEX Z

1783

1784
1785

Definitions

1786

1787

1788 to the Parts 1-2 and to

1789 the annexes A, B, C and D

1790 of the

1791 Interoperability Commitment

1792 (proposal dated 6 October 2009)

1793

1794
1795   **Proposal**:
1796   Following definitions are defined and added to the Annex Z.
1797
1798   **Proposal**:
1799   There is only one place for definitions.
1800
1801   Opinion: Microsoft has millions of end-user customers and hundreds/thousands partners in
1802   several jurisdictions all over the world. Therefore a simple (American) term can mean
1803   something else in other jurisdictions, like in Europe or in the European Economic Area. In
1804   the age of semantic web, it is not acceptable that Microsoft have several different definitions
1805   in their different agreements.
1806
1807   **Proposal**:
1808   Here is the list of needed definitions; at least these are mentioned in the Public
1809   Undertaking by Microsoft, or in this opinion.
1810
1811   **Proposal**:
1812   These could be for example with the following address:
1813   http://www.microsoft.com/eu/definitions
1814
1815
1816   "Access (program)"   1844   "Binary File Format Documentation"
1817   "Acknowledgement"   1845   "Binary File Formats"
1818   "Additional Information   1846   "Binary File Format(s)"
1819   for the ECMA 376 Specification or IS 29500" 1847   "Bug" See: Defect.
1820   "Additional Information   1848   "Burden of Proof"
1821   for the ECMA 376 Specification"   1849   "Closed Software"
1822   "Additional Information for IS 29500"   1850   "Code (Software Code)"
1823   "Additional Microsoft Warranty"   1851   "Commercial Software"
1824   "Affiliate"   1852   "Commercial Open Source Software"
1825   "Alpha version"   1853   "Commission"
1826   "Amendment to the ISO 29500:2008"   1854   means the Commission of the European Communities.
1827   "Amendment to the ISO 26300:2006"   1855   "Company Warranty"
1828   "amicus curiae"   1856   "Company (Customer)"
1829   "API"   1857   "Compatible Software"
1830   "Arbitration"   1858   "Compatible Software"
1831   "Arbitration Notice"   1859   "Competitor"
1832   "Arbitral Institution"   1860   "Copy"
1833   "Arbitration Tribunal"   1861   "Copyright"
1834   "Applicable"   1862   "Copyright Licence"
1835   "Applicable Format"   1863   "Corrigendum to the ISO 29500:2008"
1836   "Applicable Protocol"   1864   "Corrigendum to the ISO 26300:2006"
1837   "Applicable Standard"   1865   "COSS"
1838   "Attempts to Resolve"   1866   "Court"
1839   "Availability"   1867   "Covered Product(s)"
1840   "Availability (Documentation)"   1868   "Covered Protocol(s)"
1841   "Availability (Product)"   1869   "Covered Standard(s)"
1842   "Beta version"   1870   "CSS 1.0"
1843   "Binary"   1871   "CSS 2.1"

1980	"Open Source License"	2026	"Support Discussion"
1981	"Open Source Software".	2027	"Tagline".
1982	"OSS". See: Open source software.	2028	"TAM".
1983	"Other Software Product".	2029	"Technical Account Manager".
1984	"Outlook (program)"	2030	"Technical Amendment to the ISO 26300:2006"
1985	"Patent".	2031	check "Amendment to the ISO 26300:2006"
1986	"Patent in the European Union"	2032	"Technical Amendment to the ISO 29500:2008"
1987	"Patent in the USA"	2033	check "Amendment to the ISO 29500:2008"
1988	"Patent Information"	2034	"Technical Corrigendum to the ISO 26300:2006"
1989	"Patent Protocol(s)"	2035	check " Corrigendum to the ISO ISO 26300:2006"
1990	"POP3 Standard"	2036	"Technical Corrigendum to the ISO 29500:2008"
1991	"PowerPoint (program)"	2037	check " Corrigendum to the ISO 29500:2008"
1992	"Preliminary Documentation"	2038	"Technical Documentation"
1993	"Prepaid Royalties"	2039	"Technical Expert Association(s)"
1994	"Protocol"	2040	"Template"
1995	"Protocols"	2041	"Termination"
1996	"Protocol Documentation"	2042	"Test Suite".
1997	"Provide"	2043	"Timely Manner"
1998	"Public Consultation of the Commission"	2044	"Trademark"
1999	"Public Domain"	2045	"Update"
2000	"Publisher (Program)"	2046	"User"
2001	"Qualifying ODF Version"	2047	"Warranty".
2002	"Reasonable and non-discriminative terms"	2048	"Warranty Agreement"
2003	"Release Candidate"	2049	"Warranty Agreement Template".
2004	"Requesting Party"	2050	"Volume Licensing Customers"
2005	"Reservation of Rights"	2051	"Windows Server Operating System"
2006	"RFC 2445"	2052	"Windows"
2007	"RFC 2446"	2053	"Windows Media Player"
2008	"RFC 2447"	2054	"Word (Programs)"
2009	"Roadmap"	2055	"World Trade Organization".
2010	"Royalties"	2056	"WSPP Program"
2011	"Rules". Check ICC Rules, if it is applicable.	2057	"WTO". World Trade Organization.
2012	"SharePoint Product(s)"	2058	"Undertaking"
2013	"SharePoint Protocol Documentation"	2059	"Update"
2014	"SharePoint Protocols"	2060	"W3C".World Wide Web Consortium.
2015	"Similar Agreements"	2061	"Windows Client PC Operating System"
2016	Software Code	2062	"Windows Client PC Operating System Protocol
2017	"Software Product"	2063	Documentation"
2018	"Standard".	2064	"Windows Client PC Operating System Protocols"
2019	"Standard Developing Organization".	2065	"Windows Server"
2020	"Standard Setting Organization".	2066	"Windows Server Protocol Documentation"
2021	"Standards Documentation"	2067	"Windows Server Protocols"
2022	"Subject Patent Claims"	2068	"World Wide Web Consortium".
2023	"Supplemental"	2069	"WSPP Program"
2024	"Supplemental I.E. Standards"	2070	"XAML"
2025	"Support"	2071	"XAML Documentation"

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2074
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17 Based on the Finnish three-party system there is phenomenon called extreme-centre in Finland.