

PUBLIC WEB EDITION

of the

Opinion Presented 18 January 2010

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_20

The Public Undertaking by Microsoft can be downloaded from the following web page

<http://www.microsoft.com/presspass/press/2009/dec09/12-16statement.msp>

Files for the Public Undertaking by Microsoft:

- * Microsoft Interoperability Undertaking (Dec. 16, 2009, .doc file)
- * Annex A - Warranty Agreement (Dec. 16, 2009, .doc file)
- * Annex B 1 - Template Interoperability Patent License (Dec. 16, 2009, .doc file)
- * Annex B 2 – Template Patent Covenant Agreement (Dec. 16, 2009, .doc file)
- * Annex C - Additional Outlook and Exchange Versions (Dec. 16, 2009, .doc file)
- * Annex D - Outlook and Exchange Future Standards Process (Dec. 16, 2009, .doc file)
- * Annex E – Patent Pledge for Open Source Developers (Dec. 16, 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 European Commission

3 DG Competition

4 Markets and cases II: Information, Communication and Media

5 Antitrust: IT, Internet and Consumer electronics

6

7

8

9 First of all thanks for Directorate-General for Competition for possibility to comment the public
10 version of the **second version of Public Undertaking by Microsoft (16 December 2009)**.

11

12 It has to be noted that this Opinion is different than 28 October 2009 opinion. The previous Opinion
13 can be downloaded from the following web page:

14 http://jukkarannila.fi/lausunnot.html#nro_18

15

16

17 Annex 1 holds information of copyright, licence and disclaimer.

18

19 Opinions are presented after this page 1.

20

21 This opinion does not contain any business or trade secrets.

22

23

24

25 Best Regards,

26

27

28

29 Jukka Rannila

30 citizen of Finland

31

32 signed electronically

33

34

35

36 **General remarks**

37

38 Like the previous proposal for Interoperability Commitment, also this proposal is very sloppy and
39 very poor presentation.

40

41 Noting that Microsoft Corporation is one the largest corporations in the world, it is totally
42 unacceptable to have ambiguous definitions for the final version of the Interoperability
43 Commitment.

44

45 **Proposal:**

46 A third well revised version of Interoperability Commitment proposal is needed.

47

48 Especially Annexes are very confusing collections of arbitrary text, and Annexes should be
49 revised accordingly.

50

51

52 **Previous version of the Opinion (dated 28 October 2009)**

53

54 The previous version of the Opinion (dated 28 October 2009) contains numerous improvement
55 proposals, and there is not need to repeat all those proposals. The previous Opinion can be
56 downloaded from the following web page:

57 http://jukkarannila.fi/lausunnot.html#nro_18

58

59 **Ambiguous definitions are scattered to several documents**

60

61 The general flaw is, that ambiguous definitions are scattered to the main document of proposal and
62 to annexes. This is totally unacceptable.

63

64 **Proposal:**

65 Following sections are repealed:

66 – Section F from main document (Public Undertaking by Microsoft)

67 – Exhibit A from Annex A

68 – Section 1 from Annex B1

69 – Section 1 from Annex B2

70 These definitions of these sections are consolidated to **ONE EXHIBIT of definitions**, e.g.
71 Exhibit Z, and it referenced from all documents.

72

73

74 It is totally unacceptable, that different divisions of Microsoft Corporation have multiple
75 contradicting definitions when finalising the Interoperability Commitment.

76

77

78

79 **Section 7 A. in the main document (Public Undertaking by Microsoft)**

80

81 **Proposal:**

82 “Reasonable and non-discriminatory terms” are not defined, and that should be defined.

83

84 **Section 7 C. in the main document (Public Undertaking by Microsoft)**

85

86 It is totally unacceptable, that Microsoft uses term “Compatible with Open Source Licences”.

87

88 **Proposal:**89 Microsoft must not invent new Open Source Licences, since there are enough Open Source
90 Licences accepted by the Open Source Initiative ¹.

91

92 **Proposal:**93 Microsoft must define, which Open Source Licences accepted by the Open Source Initiative
94 it is going to use.

95

96 **Section 8.A. in the main document (Public Undertaking by Microsoft)**

97

98 Following sentences are dangerous:

99 (ii) completely and accurately documenting any deviations or variations of required
100 portions of the applicable standard. Microsoft shall make this documentation publicly
101 available in a Timely Manner.

102

103 It is staggering, that Microsoft even mentions deviations and variations in the Interoperability
104 Commitment proposal.

105

106 Microsoft seems to forget, that there is an Agreement on Government Procurement ² as annex 4(b)
107 to Marrakesh Agreement Establishing the World Trade Organization (WTO).

108

109 If a standard is a technical regulation, as referenced in the WTO agreement about
110 government procurement, there can not be deviations or variations, since they are technical
111 regulations – not some arbitrary standards floating around.

112

113 **Proposal:**

114 Government procurement should be better noted in this section

115

116

117

118

119

120

1 <http://opensource.org/licenses>2 http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm

121

122 Section (32) in the page 7 (Public Undertaking by Microsoft)

123

124 In this section is the following sentence, which is totally unacceptable:

125

126 and (iii) the standards development process for that version of the standard has not
127 been manipulated or otherwise subject to misuse.

128

129 Proposal:

130 It is not Microsoft's task to determine, if the development of future standard versions of
131 ODF are subject to misuse.

132

133 Proposal:

134 Microsoft and other companies can make a complaint to the Commission, if there is misuse
135 in the ODF standardisation process.

136

137 Proposal:

138 It is up to the Commission make an investigation of misbehaviour in the ODF
139 standardisation process, not by Microsoft or other corporations.

140

141

142 Paragraph numbering totally sloppy – unacceptable (Public Undertaking by Microsoft)

143

144 In the page 8 there is mentioning about paragraph 40.

145

146 It might be a programmatic error, but the version I am reading, paragraphs are numbered only to the
147 33. instance.

148

149 Proposal:

150 If there is more than 33 paragraphs, they should also be numbered accordingly.

151

152 Once again, also this defect shows that Microsoft Corporation is not seriously creating a concise
153 and clear presentation. This is totally unacceptable.

154

155

156 Generally / Annexes – Dispute resolution

157

158 In Annexes A, B1 and B2 there are several kind of dispute resolution methods.

159

160 Is it necessary to have several different dispute resolution methods?

161

162 Proposal:

163 It would be more efficient have one well-thought dispute resolution method, and add this
164 selected dispute resolution method as a separate Annex.

165

166

167 Generally / Annexes – Dispute resolution / Commission role

168

169 When there is only one well-thought dispute resolution method, there can be clear definitions, what
170 is the Commission role in different situations.

171

172 With the current unclear structure between annexes A, B1 and B2, it seems that the Commission
173 role is not well-thought in the proposal(s). There is some vague definition like “Government order”.

174

175 Proposal:

176 It should be clear what “Government Order” means in the European Union context.

177

178

179 Annex A / Section 1 / (Exhibit A)

180

181 Proposal:

182 Exhibit A is repealed and all definitions from the main document.

183 Definitions from the main document, Annexes A, B1, B2, C, D and E are repealed and they
184 are collected to one exhibit, e.g. Exhibit X.

185

186

187 Annex A / Section 2.1.(a) Test Suites

188

189 There might several versions of Test Suite(s).

190

191 Proposal:

192 Therefore there has to be mentioning about test suite versions, and Microsoft shall give
193 access to all versions of test suites.

194

195 Annex A / Section 2.1. Test Suites, Generally

196

197 It is possible, that Companies might have their own test suites.

198

199 Proposal:

200 Therefore there has to be mentioning about test suite versions provided by Companies, and
201 Microsoft will work with these test suites provided by Companies.

202

203 Interoperability must be two-way phenomenon, not one-way interoperability defined by the terms
204 of Microsoft.

205

206 Annex A / Section 2.2. Support and Execute Discussion

207

208 This section is compatible with the section 7.3. “Fast Track Resolution”.

209

210 Proposal:

211 To ease readability, it could be possible to gather all dispute resolution methods to one
212 section, not to scattered to two sections.
213

214 **Proposal:**

215 It would also be worth considering, that dispute resolution methods are repealed from
216 Annexes A, B1, B2, C, D, E, and there is only one exhibit for dispute resolution methods,
217 e.g. Exhibit Y.
218

219
220 **Annex A / Section 2.2. Last Paragraph**
221

222 In the last paragraph there is following text:
223

224 “The parties acknowledge and agree that the applicable standards development
225 organization maintains and is responsible for the accuracy and sufficiency of the
226 documentation of Covered Standards as adopted by the applicable standards
227 development organization.”
228

229 **Proposal:**

230 There should be a separate Exhibit of applicable standards and standard organisations in the
231 Effective date of the Agreement.
232

233 **Proposal:**

234 Also, Microsoft shall pledge, that it will work with the applicable standard organisations,
235 and Microsoft will conform with future versions of applicable standards.
236

237 **Proposal:**

238 If there is totally new standards and totally new standards organisations after the Effective
239 Date, Microsoft will inform of implementing these new standards.
240

241 There should be also time limit for acknowledgement of these totally new standards and
242 totally new standards organisations.
243

244 **Proposal:**

245 The role of the Commission should be noted, when totally new standards and totally new
246 standards organisations affect the competitive situation in the market.
247
248
249
250
251
252
253
254
255

256

257

258 **Annex B1, Annex B2, Annex C**

259

260 No proposals.

261

262

263

264 **Annex D**

265

266 One proposal for Solicitation of Feedback.

267

268 **Proposal:**

269 Microsoft will provide a public discussion list for the feedback process. Interested third
270 parties, invited customers and invited partners can register to this discussion list.

271

272 The discussion in the a public discussion list is public, and not enforced by Microsoft or its
273 subsidiaries.

274

275 There can votes on the public discussion list.

276

277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322

ANNEX 1

DISCLAIMER

Legal disclaimer:

All opinions in this opinion paper are personal opinions and they do not represent opinions of any legal entity I am member either by law or voluntarily. This opinion paper is only intended to trigger thinking and it is not legal advice. This opinion paper does not apply to any past, current or future legal entity. This opinion paper will not cover any of the future changes in this fast-developing area. Any actions made based on this opinion is solely responsibility of respective actor making those actions.

Political disclaimer:

These opinions do not represent opinions of any political party. These opinions are not advices to certain policy and they are only intended to trigger thinking. Any law proposal based on these opinions are sole responsibility of that legal entity making law proposals.

These opinions are not meant to be extreme-right, moderate-right, extreme-centre³, moderate-centre, extreme-left or moderate-left. They are only opinions of an individual whose overall thinking might or might not contain elements of different sources. These opinions do not reflect past, current or future political situation in the Finnish, European or worldwide politics.

These opinions are not meant to rally for a candidacy in any public election in any level.

Content of web pages:

This text may or may not refer to web pages. The content of those web pages is not responsibility of author of this document. They are referenced on the date of this document. If referenced web pages are not found after the date when this document is dated that situation is not responsibility of the author. All changes done in the web pages this document refers are sole responsibility of those organisations and individuals maintaining those web pages. All illegal content found on the web pages referenced is not on the responsibility of the author of this document and producing that kind content is not endorsed by the author of this document.

COPYRIGHT

This opinion paper is distributed under Creative Commons licence, to be specific the licence is "Creative Commons Attribution-NoDerivs-NonCommercial 1.0 Finland". The text of the licence can be obtained from the following web page:

<http://creativecommons.org/licenses/by-nd-nc/1.0/fi/legalcode>

The English explanation is in the following web page:

<http://creativecommons.org/licenses/by-nd-nc/1.0/fi/deed.en>

³ Based on the Finnish three-party system there is phenomenon called extreme-centre in Finland.