

Microsoft Congressional Letter: Foreign Action Against US Companies
Date: Monday, January 09, 2006
Word Count:

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Dear {name},

As the directors, officers and leadership of the undersigned organizations and businesses, we represent thousands of constituents and business leaders across the nation. Collectively we operate in more than 20 countries and territories around the world.

Recently an international business regulatory trend has emerged that is a cause of great alarm to us. It appears to have come into vogue for leaders of foreign nations to aggressively pursue and penalize American corporations based on so called "fair trade" laws that attempt to protect consumers from monopolistic and illegal practices. It is true that when used correctly, such laws are necessary and beneficial. However, it would appear that several foreign countries are utilizing these consumer protection regulations to realize substantial financial rewards for their governmental treasuries.

The current plight of Microsoft in South Korea and Europe should simultaneously raise the red flag of danger and warning to all US companies looking to do international business, especially organizations that provide innovative solutions to consumers and are considered to have robust financial resources.

On December 7, 2005 the South Korean Fair Trade Commission levied Microsoft with a whole host of demands, fines and penalties, including a \$32 million fine and an order to create and distribute 2 different, South Korea specific, versions of Windows – a process that would cost Microsoft billions of dollars in development, marketing, packaging and distribution. Additionally, meeting these requirements would sharply escalate the production costs of their main product and hamper innovative development of other all software products. No doubt such costs and limitations would be passed on to US consumers, who would be forced to shoulder the burden of increased prices and sluggish production of new products.

In a brief statement regarding the ruling, Microsoft's deputy general counsel commented, "We are disappointed with the Commission's decision and strongly believe that their case is without basis in law or in fact."

However irregular and unsubstantiated South Korea's ruling was, its impact pales in comparison to antitrust ruling delivered by the European Union this past summer. The EU's ruling fined Microsoft \$584 million and mandated that a stripped down version of Windows be made available. Additionally, requirements are being imposed on the software provider to openly publish essential trade secrets and intellectual property. This later penalty represents perhaps the most alarming development in international aggression against US companies. Consider the enormous financial and innovative repercussions to forcing US companies to expose their intellectual property to international competitors.

Additionally, these rulings represent a slap in the face to international treaties and the traditional deference typically applied to antitrust cases. Utilizing the principle commonly known as comity, historically ally nations with strong trade agreements have deferred to the rulings of the home country of the business in question. This timeless respect has been breached by the EU and South Korea as these exact concerns and competitive questions surrounding Microsoft's operations were addressed and settled by US courts back in 2001. Neither country addressed or made reference to the US settlements.

These deliberate actions by foreign governments to prey on the success of US companies should be of great concern to Congress, the Administration and US business leaders everywhere. If US companies are successfully targeted and fined in the EU and South Korea it will send a signal to other nations of the world to follow suit. The reality of potentially severe fines and mandates to share essential trade secrets and intellectual property will serve as significant deterrents to international trade, innovation and development.

We urge members of Congress to aggressively address these urgent concerns and to move swiftly to protect US businesses and consumers. Immediate action on the part of Congress and the Administration could suppress future aggressions and profiteering and potentially soften the blow of current actions. Failure to do so could have a drastic, negative impact on the technology industry and the free market.

Sincerely,

A whole lot of business leaders.