



December 21, 2010

Steve Ballmer  
Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-7329

Dear Mr. Ballmer:

We are writing with ongoing concerns that American consumers do not have access to the same choices among browsers that are today available to our European counterparts. When the United States settled its antitrust litigation with Microsoft nine years ago, it allowed Microsoft to continue bundling the Internet Explorer web browser with the Windows operating system. Unfortunately, that settlement did little to create competition in either the operating system or web browser market.

In contrast, when the European Union settled its litigation with Microsoft last year, Microsoft agreed not only to unbundle Internet Explorer from Windows, but also to give consumers a software ballot asking them to choose which browser to install from a list of 12 browser products. That competition has resulted in consumers choosing browsers other than Explorer. Since Microsoft began sending out ballots to European consumers, although conspicuously not to Americans, Internet Explorer's share of the European market has fallen to 39.8 percent, down from 44.9 percent. Even on a worldwide basis, its market share has also declined, dropping below 50 percent in September according to one study. In the United States, however, its share has fluctuated between 53.6 and 51.31 percent during the same period of time.

But market share in and of itself shouldn't matter. The goal of antitrust and competition law is not to choose winners in the marketplace, but to ensure a competitive process. What matters is not whether a particular browser's market share increased, decreased, or stayed the same. Nor should the focus be on the choices theoretically available to consumers with a high degree of sophistication regarding computer technology. Undoubtedly, some consumers have enough sophistication to write their own web browser application. What matters is whether typical "non-geek" consumers have the realistic option to decide among competing browsers instead of having no choice other than to use Internet Explorer as the only browser installed on their computers. It can be procompetitive for a consumer voluntarily and knowingly to choose Internet Explorer. It is anticompetitive for a consumer to use Internet Explorer because he or she has no choice.

Extending the same browser choice to American consumers might not create a dramatic shift away from Internet Explorer in the United States in the short run, but it could well lead to more robust competition in the longer run.

As Microsoft can appreciate, innovation is one of the beneficial byproducts of competition for consumers. In September, Microsoft announced plans to release Internet Explorer 9 later this year, the first major upgrade to this browser in nearly two years. Granted, Microsoft has not disclosed the reason for its decision to release Internet Explorer 9, but two years is an unusually long time to for a software application to go without a significant upgrade. The timing, coming as it does on the heels of increased competition as a result of the EU's action, also suggests that "browser ballot" may have brought an improved Internet Explorer as well as increased choice to European consumers. American as well as European consumers will benefit from the innovations contained in Internet Explorer 9.

We wish to ask why Americans consumers are receiving only the spillover benefits of Europe's more aggressive antitrust remedies against Microsoft? Why hasn't Microsoft facilitated for American consumers the choices it has agreed to give Europeans? In fact, we did ask this question to a Microsoft representative some months ago, but the reply was that the settlement in

Europe was forced on the company and is a bad idea because consumers really don't want choices and those who care enough can learn how to change their settings in order to use a different browser. This seems like the wrong response for a company that views itself as, innovative and consumer-friendly. Now is the time for American consumers to enjoy the browser choices being offered to European consumers. We urge Microsoft voluntarily to extend those same benefits in its American customers. It would make a much deserved and appreciated holiday gift; the gift of choice for consumers.

Sincerely,



Albert Foer  
American Antitrust Institute



Sally Greenberg  
National Consumers League



Linda Sherry  
Consumer Action



Parul Desai  
Consumers Union