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## Microsoft braced for big fines by EU

BY DOMINIC RUSHE IN NEW YORK

**The software giant could face a tougher crackdown in Europe than it has in America**

ON Sunday August 17, 1997, at 9.37pm Jeff Raikes, a senior Microsoft executive, sent an e-mail to Warren Buffett, the world's second-richest man. Buffett had been invited to a football game by Bill Gates, Raikes's boss and the only man who is richer than Buffett.

The e-mail began with a long preamble. Raikes did not fancy the chances of Gates's local team, the Washington Huskies, against the Nebraska Cornhuskers (he was right, they lost). Raikes, his wife Tricia and the kids had just been to Disney World, followed by a trip to Nantucket, Massachusetts, where Raikes had read the book Buffett: The Making of an American Capitalist, by Roger Lowenstein.

Raikes's e-mail, now featuring in a Minnesota court case, gets down to business: "The book got me thinking ... why don't you invest in Microsoft or high technology?" Microsoft, said Raikes, is not so different from other companies that Buffett invests in. It is similar in fact to one of Buffett's most famous investments: Coca-Cola. Coca-Cola doesn't actually make the world's bestselling pop. It makes its money selling Coke's secret formula syrup at a huge profit to bottling companies that make Coke.

Similarly, Microsoft doesn't make computers. It makes the operating systems that make computers run. Profits at Microsoft are huge — \$1 billion (£545m) net a month — "probably as good as the syrup business", said Raikes.

"I would never write down the analogy of a toll bridge," he said, doing just that. But others outside the company might see Microsoft's Windows program that way, collecting a \$45 toll on every personal computer sold. With control of more than 90% of the market, Windows is one lucrative toll bridge.

Raikes — writing six years ago — then went on to outline a Microsoft strategy that today has rivals and regulators worried on both sides of the Atlantic. The "real goal" of Microsoft's investment in media and cable companies was to get an "operating system" royalty on each television set. Tens of millions of sets at \$10-\$20 each is a nice little "operating system" business.

The e-mail is one of hundreds expected to be presented as evidence by lawyers claiming that Microsoft overcharged consumers for its Windows operating system and its Office application software. Microsoft's lawyers have apologised for past behaviour. But now the

company's future conduct is under scrutiny.

The trial comes as Microsoft has failed to reach agreement with Mario Monti, EU competition commissioner. This week Monti is expected to fine the company and rule that it abused its monopoly position.

Music, video and games are increasingly going online. Microsoft, as the world's most powerful software company, is in prime position to seize control of the digital hub.

This Wednesday, Monti is expected to rule that Microsoft used its monopoly position to squeeze competition out of the market. Microsoft will have to offer a rival to its Media Player software, which plays audio and video on the computer, and comes bundled in with the Windows operating system.

Such a move, Monti said, would open up competition to the makers of other media players such as Realplayer and Apple's Quicktime.

But perhaps the most significant part of Monti's ruling is the effect it will have on Microsoft's future behaviour, said Ed Black, president of the Computer & Communications Industry Association. Black represents many Microsoft competitors.

Last week Monti said: "It is essential to have a precedent that will establish clear principles for the future conduct of a company with such a strong dominant position."

Black said: "It seems that the commission is trying to prevent future misconduct, not just deal with past misconduct. Microsoft is an aggressive invader of other markets."

Black said that Microsoft's strategy is to set the industry standard and then make sure the competition is at a disadvantage. "Microsoft wants to be the benevolent dictator and give people one product so they don't have to choose."

Nicholas Economides, economics professor at the Stern School of Business, New York, said the EU ruling is not necessarily a good thing for consumers. "For consumers the crucial point is, are they better off or worse off? If features on their computers are not bundled in with the package, if they have to pay for them or download them from somewhere else, you could argue that they are worse off. This isn't an open-and-shut case."

Last week Monti had three days of intense discussions with Steve Ballmer, Microsoft's chief executive. Ballmer was prepared to make concessions to the EU but the sticking point appears to have been Monti's insistence that a settlement would not be restricted to the current case.

Competitors have filed other complaints against Microsoft. Regulators are investigating its licensing terms for manufacturers and its influence on mobile devices. Monti's decision, which Microsoft will appeal against, sets a legal benchmark for future action.

Meanwhile, in Minnesota, Microsoft is being accused of stifling

competition. The law firm Zelle, Hofmann, Voelbel, Mason & Gette is leading the case against the company. Partner Richard Hagstrom said: "I hope the EU give them more than a slap on the wrist."

He said internal documents to be produced in court show Microsoft has consistently talked about the value of protecting its monopoly. "What benefit is there to consumers to have no choice?" he said.

Tomorrow, Hagstrom will call Jerry Kaplan, founder of now defunct start-up GO Corp. According to court documents, Gates and other Microsoft executives warned Intel, the chip maker, not to work with GO. "I guess I've made it very clear that we view an Intel investment in GO as an anti-Microsoft move," Gates wrote in a note to Andrew Grove, who was Intel's chief executive. For Kaplan, the toll bridge was closed.

### WHAT WILL THE EU VERDICT MEAN?

- Mario Monti is likely to impose a heavy fine on Microsoft for anti-competitive practices
- It will not dent Microsoft, which has \$53 billion in cash
- Monti will order Microsoft to sell two versions of Windows in Europe — one with Media Player, one without
- The ruling sets a precedent for future disputes when Microsoft bundles new programs in with Windows

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