

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

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U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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U.S. DISTRICT COURT
AT BALTIMORE

DEPUTY

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates To:

All Competitor Cases

(*Netscape Communications Corp. v. Microsoft Corp.*, Civil Action No. JFM-022090; *Be, Inc. v. Microsoft Corp.*, Civil Action No. JFM-02-2738; *Sun Microsystems, Inc. v. Microsoft Corp.*, Civil Action No. JFM-02-2739; *Burst.com, Inc. v. Microsoft Corp.*, Civil Action No. JFM-02-2952)

MDL Docket No. 1332
Hon. J. Frederick Motz

ORDER GOVERNING DEPOSITIONS

Having considered the positions of the parties at a telephonic hearing on December 17, 2002, it is this 19th day of December, 2002, ORDERED that this order shall govern deposition practice in the *Be*, *Burst*, *Netscape*, and *Sun Microsystems* cases (the "Competitor Cases").

1. Plaintiffs in the Competitor Cases shall coordinate among themselves before attempting to schedule or notice the deposition of a current or former employee of Microsoft (a "Microsoft witness").

2. A party wishing to notice the deposition of a former employee of Microsoft or a former employee of any Competitor Plaintiff shall request, in accordance with the procedure set out below, that Microsoft or that Competitor Plaintiff make its former employee available for deposition.

3. Before noticing the deposition of a current or former employee of Microsoft (a "Microsoft witness") or a current or former employee of any Competitor Plaintiff (a "Competitor witness"), the party noticing the deposition shall (a) inform opposing counsel in writing of a 21-day period during which the noticing party wishes to depose the witness and (b)

provide a good faith estimate of the number of days of deposition required. The noticing party's written request shall be made at least seven days before the 21-day period begins to run and shall designate the person authorized on behalf of the noticing party to discuss scheduling for the deposition. Opposing counsel shall then respond to the noticing party's request in writing within five days by stating dates during the 21-day period when the witness can be made available. The noticing party shall then notice the deposition on dates provided by opposing counsel within five days of receiving those dates. No deposition of a Microsoft witness or a Competitor witness shall be taken on less than seven days' notice unless the parties otherwise agree or good cause is shown before that Court.

4. The party noticing the deposition of a witness shall specify in the deposition notice the specific Competitor Case(s) in which the deposition is being noticed.

5. The parties shall attempt to conduct depositions at a place that is convenient for the deponent. Depositions shall be noticed for a location in and shall be conducted in the city or metropolitan area where the witness is located, unless the witness, the party or parties noticing the deposition and the party representing the witness agree otherwise. Unless otherwise agreed in advance by the witness, the party or parties noticing the deposition and the party representing the witness, depositions shall not be noticed or conducted on weekends or federal holidays.

6. Discovery in the Competitor Cases will proceed in two tracks, with the discovery in the *Be, Burst* and *Netscape* cases proceeding in parallel with and ahead of discovery in the *Sun* case. Sun's right to and need for discovery of issues beyond those common to all Competitor Cases should not become a reason to delay the progress of discovery in the *Be, Burst* or *Netscape* cases, nor should it become a reason to deny Sun the opportunity for fair discovery of the issues unique to its case. Absent good cause shown, Microsoft witnesses and Competitor witnesses may be deposed only once in the *Be, Burst* and *Netscape* cases. Sun will participate fully in depositions in the *Be, Burst* and *Netscape* cases on issues common to its case and take reasonable steps to reduce the need for subsequent depositions of such witnesses on issues

unique to Sun's case. Sun may depose individuals previously deposed in the *Be, Burst* or *Netscape* cases without leave of court. Microsoft may move for a protective order if Sun's questioning of any witness previously deposed in the *Be, Burst* or *Netscape* cases violates this Order.

7. Notices of depositions of non-parties shall provide the current address where the witness can be reached and identify the witness's current employer and his or her counsel, if any.

8. For the deposition of each Microsoft witness, the Competitor Plaintiffs shall make their best efforts not to duplicate questions already posed by other Competitor Plaintiffs earlier in that same deposition. When examining a Microsoft witness who previously was deposed in the Consumer Cases or in *United States v. Microsoft Corp.*, No. 98-1232 (D.D.C. filed May 18, 1998) (the "DOJ case"), counsel for the Competitor Plaintiffs shall make their best efforts not to duplicate that prior examination.

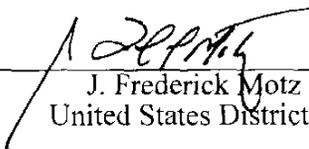
9. For the deposition of each Competitor witness, Microsoft shall designate one attorney who shall question the witness regarding all issues of potentially general relevance to the Competitor Cases (the "lead Microsoft examiner"). After the lead Microsoft examiner has questioned a Competitor witness, counsel for Microsoft in other Competitor Cases may question the witness regarding case-specific subjects provided that such questions are non-duplicative of the questions posed by the lead Microsoft examiner. When examining a Competitor witness, counsel for Microsoft shall make their best efforts not to duplicate any prior examination of that witness in the Consumer Cases or the DOJ case.

10. All time spent by counsel for Microsoft or a Competitor Plaintiff in questioning a witness shall be counted against the hour limits for each of the Competitor Cases in which the deposition is noticed. For example, if Microsoft notices a deposition in two Competitor Cases and examines the witness for four hours, four hours shall be deducted from Microsoft's remaining deposition hours in each of the two Competitor Cases in which the deposition was noticed. If Netscape notices the deposition of a non-party in *Netscape* and *Be*

cross notices the non-party in *Be*, the time spent by *Netscape* examining the witness shall be counted against *Netscape*'s hour allocation in *Netscape* and the time spent by *Be* examining the witness shall be counted against *Be*'s hour allocation in *Be*.

11. The transcript for each deponent shall be numbered with consecutive numbers that do not duplicate page numbers; *i.e.*, in the event that a deposition is conducted on more than one day, the deposition transcript for the second day and any succeeding days shall be numbered consecutively, beginning after the last numbered transcript page for the preceding deposition day.

12. Any party may apply for modification of this Order for good cause shown.

By: 

J. Frederick Motz
United States District Judge