

Most of you are familiar w/ Novell's case against M/S for Monop of the P.C. O.S. Market. We led the fight against M/S in Europe & the U.S. which led to Consent Decree where the D.O.S. declared illegal certain conduct of M/S which had had a direct effect on a declining Novell DOS sales.

Novell has declined to date to pursue a private cause of CONFIDENTIAL Action against M/S even though the SUBJECT TO ATTORNEY-CLIENT PRIVILEGE I recognize Potential damage Award ~~is substantial~~ could be large.

To: David Bradford

From: Stephen Hill

Date: May 23, 1996

Subject: DOS business—further thoughts

We have declined to pursue it because:

1. Affect on mgmt time
2. Customer Reaction — Novell fighting w/ M/S
3. Reaction from M/S — Retribution w/ holders of Data etc.

~~Further~~ So we have proceeded down the line of selling this Business. It's only about \$1 million a yr to NOVELL but as I Having reflected further, I have the following thoughts regarding presentation of the DOS business sale to the Board.

have met w/ 3rd parties, I have been once again reminded of the Strength of this case. The statute of limitations begins I agree it makes sense to discuss it this morning, if possible. August is obviously too late and trying to do so by special meeting, as you indicated, would likely be impractical. I think you need assurance that your continued efforts to complete a sale would be met with approval.

running against whoever owns the Asset in a month or so. — is a sure my guess is that we will get ~~the~~ around \$2 million for the business. So there is a sure urgency to set it done.

But I suspect the purchaser whoever it is will file suit. ~~this~~ Under the current thinking, I had negative reaction. If & when the suit is filed, it will be publicized & then negative reaction.

3. If the business is sold and the purchaser brings an action against Microsoft, the action may provide indirect benefits to Novell: — but also

- it would capture much of the time and attention of MS's top management. my sense from the judgement but
- it may, particularly if a strong legal team is on board and a large verdict result, that we do not significantly moderate MS's behavior.
- it would demonstrate Novell's willingness to make sure that illegality is redressed.

4. If the Board decides to proceed with a sale, for reasons we discussed yesterday you may want to consider including some findings in the board minutes explaining the reasons for the sale. The findings may include the following:

we

- Various possibilities
- we could do a straight sale — the current plan
- we could choose not to do anything — I would like free Bd minutes to reflect proper deliberation on this point.
- but we would risk a Shareholder Derivative Action — Explain at least 2 outside holders have raised at
- we have previously tried thru letters & mtgs. to use the DOS case as an asset to negotiate a favorable result w/ M/S — been unsuccessful because we were never serious about seeing it through

--effort has or will be made to obtain the best possible price for the business.

--the Board believes the DOS claim has merit and should be pursued but that for reasons including the following it was determined that the claim would best be sold with the DOS business:

- * full management attention to current business matters is required;
- * the duration and potential outcome of the litigation is uncertain and, in the best case, the money damages that might be recovered would not be commensurate with the risk of adverse reaction to the litigation in the market;
- * any injunctive relief beyond that obtained in the Justice Department action would likely come too late to be of benefit to Novell.

I hope this is of some help. I look forward to a report on the meeting.

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Novell Dos

- ① Get Top dollar
- ② Avoid Deration
- ③