

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

To: David Bradford  
From: Stephen Hill  
Date: May 23, 1996  
Subject: DOS business - further thoughts

Potential damage Award ~~is substantial~~  
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 have met w/ 3rd parties, I have been once again reminded of the strength of this case. The statute of limitations begins to run against whoever owns the asset in a month or so. - so there is a strong urgency to set it done

As I mentioned in a recent memo, the two deciding factors a year ago seemed to be that there was no urgency because there was at least a year to go on the statute of limitations and there was a possibility of relief through the Justice Department action. Now the statute will soon begin to run so it is now or never. With the Justice action concluded by the consent decree addressed to conduct injurious to Novell, if Novell does nothing a shareholder's derivative action is possible, if not likely, in which both Novell and M/S would be named as defendants. In such an action the plaintiff shareholders may be able to recover attorneys' fees from Novell.

running my guess is that whoever owns the asset in a month or so... But I suspect the purchaser whoever it is will file suit. 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 board is significantly moderate MS's behavior.  
- it may, particularly if a strong legal team is on board and a large verdict result, that we do not want to risk containing to own any part of the business. If we sell the business...  
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:

- Various possibilities
  - we could do a straight sale - the current plan
  - we could choose not to do anything
  - but we would risk a shareholder Derivative action - Explain at least 2 outside holders have hinted 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 selling it through
- THIS if we proceed w/ our to sell current plan I would like the Bd minutes to reflect proper deliberation on this point.

-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 Derivation
- ③