

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

**MEMORANDUM OPINION AND ORDER**

Presently pending before the Court are four motions, each of which seeks participation in the above-captioned proceedings as *amicus curiae*.<sup>1</sup> The motions are brought by the following individuals or entities: (1) Professors Timothy Bresnahan, George Hay, Richard Gilbert, Daniel Rubinfeld, Lawrence White, and Dr. Bruce Owen; (2) Robert E. Litan, Robert Shapiro, and Drexel Sprecher; (3) Consumers for Computing Choice and Open Platform Working Group; and (4) BeUnited.org. Microsoft has filed an opposition to each request for amicus status. Plaintiffs have not taken a position on the issue. Upon review of the above-described motions, Microsoft's oppositions thereto, and the record in this case, the Court concludes that each of the requests for amicus status should be denied.

None of the proposed amici address themselves to issues of law, but instead offer factual information, whether technical or economic, which appears to concern the substantive issue of remedy. Viewed in this light, it is apparent that consideration of the materials submitted by these

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<sup>1</sup> The Court issued its Opinion in this case on November 1, 2002.

proposed amici is likely improper. As Microsoft points out, the information contained in the proposed amicus briefs<sup>2</sup> is akin to “unsworn expert testimony.” Microsoft Opp’n to Litan, et. al. at 1; Microsoft Opp’n to Bresnahan, et. al. at 1. Moreover, even if such information could properly be presented to the Court, the Court failed to see a need for the presentation of additional material, some of which appears to be concerned with rather narrow and parochial matters. In evidentiary hearings, the parties, represented by numerous and competent counsel, presented 33 witnesses, including four economic experts and three computer science experts. Given the extensive record created during over 32 trial days of testimony and argument, the presentation of additional information which the parties did not themselves present would serve little purpose. Since an *amicus curiae* does not represent the parties but participates only for the benefit of the Court, it is solely within the discretion of the court to determine the fact, extent, and manner of participation by the amicus. Accordingly, the Court shall deny the motions of the aforementioned entities and/or individuals to participate as *amicus curiae* in these proceedings.

Based on the foregoing, it is this 6<sup>th</sup> day of November, 2002, hereby

**ORDERED** that the motion of Professors Timothy Bresnahan, George Hay, Richard Gilbert, Daniel Rubinfeld, Lawrence White, and Dr. Bruce Owen to participate as *amici curiae* is DENIED; and it is further

**ORDERED** that the motion of Robert E. Litan, Robert Shapiro, and Drexel Sprecher is DENIED; and it is further

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<sup>2</sup> Of the four groups of individuals or entities seeking amicus status, only Consumers for Computing Choice and Open Platform Working Group failed to attach their proposed amicus brief to their motion seeking leave to file.

**ORDERED** that the motion of Consumers for Computing Choice and Open Platform Working Group is DENIED; and it is further

**ORDERED** that the motion of BeUnited.org is DENIED.

**SO ORDERED.**

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COLLEEN KOLLAR-KOTELLY  
United States District Judge