
Coalition for Fair Software Licensing Response to the Federal Trade Commission's Request for Information on the Business Practices of Cloud Computing Providers

Overview

On Tuesday, June 20, the Coalition for Fair Software Licensing submitted public comments to the Federal Trade Commission (FTC) in response to the agency's request for information (RFI) regarding the business practices of cloud computing providers.

The Coalition's comments focus on the anticompetitive licensing practices that have been repeatedly deployed by one software vendor in particular – Microsoft. These comments describe the harmful impact that the software giant's restrictive licensing tactics have on customer choice, competition, and cybersecurity.

The Coalition concludes by requesting that the FTC open an investigation into Microsoft's restrictive software licensing practices, which constitute violations of U.S. antitrust law.

Microsoft's Restrictive Software Licensing

Microsoft is leveraging its dominant position in desktop operating, server, and productivity software – including customer dependence on "must-have" products like Windows, Word, Excel, and PowerPoint – to force customers to use Azure. Specifically, Microsoft does this by:

- **Restricting "Bring Your Own License" (BYOL):** In August 2019, Microsoft announced that, beginning in October 2019, customers would need to repurchase their existing licenses to operate their software on Microsoft, Alibaba, Amazon (including VMware Cloud on AWS), and Google in addition to the Microsoft licensing they already had. Alternatively, they could migrate to Microsoft instead, forfeiting their perpetual license for a subscription service. For some software, there was no option to run it on a non-Microsoft cloud.
- **Discriminatory Licensing:** The Services Provider License Agreement is utilized by other cloud service providers, and the Cloud Solution Provider Program is utilized by resellers who host products on Microsoft's cloud servers. As Microsoft ended BYOL for its customers, it began increasing the cost of SPLA – but not the CSPP. Microsoft began charging more to cloud providers who compete with Azure.

- **Tying:** Microsoft ties several software products to its Microsoft 365 cloud-based office product, resulting in vendor lock-in and a less secure cloud experience for users. This results in price increases, less customer choice, reduced innovation, and poorer quality products. Meanwhile, rivals in cybersecurity, IAM, videoconferencing, and other consumer products are finding it harder to compete effectively. Nascent competitors have fewer incentives to enter the market.

Real Costs for Customers and Competition

Customers should be able to choose which services and IT service providers they can use to ensure they achieve the best solutions for their needs. Microsoft's practices inhibit customer choice, weaken existing competition, and discourage potential innovators from entering the market. These anticompetitive practices come at a steep cost:

- The licensing changes and discriminatory treatment of SPLA have led to increased prices — sometimes more than \$100M for a single customer — for Microsoft customers that wished to use Listed Providers' cloud services.
- Professor Frederic Jenny estimates that Microsoft's practices have imposed \$400M in Europe.
- Among customers that experienced a price increase when renewing their contract, the mean reported increase was around 20%.

European Regulators are Paying Attention

European regulators have already begun scrutinizing Microsoft's anticompetitive practices. CISPE and various European industry participants have lodged at least four complaints against Microsoft, and cases are pending before the European Commission. In response, Microsoft has announced a number of small shifts in policy in an attempt to circumvent European regulatory concerns, but customer concerns remain unaddressed.

Next Steps for the U.S. FTC

For nearly three decades, Microsoft has thrived by bullying its way into capturing new and emerging markets at the expense of competition and customers. Today the software giant is using this same playbook to exploit customers' reliance on its desktop operating system, server, and productivity software by forcing them to use Azure and other products in the Microsoft ecosystem. These anticompetitive behaviors are sure to continue unless federal regulators step in and hold the company accountable. This is why the Coalition for Fair Software Licensing has requested that the FTC open an investigation into Microsoft's restrictive software licensing.

Key Excerpts

- **On Microsoft's Most Recent Licensing Changes:** "While purporting to address competition concerns in Europe, without any justification Microsoft refused to stop its practices with respect to Listed Providers, ensuring that its restrictive licensing continued to apply to its key competitors and maintaining significant restrictions on customer choice. The changes the company adopted were aimed at mollifying some critics, but clearly do not resolve the systemic issues. ... What had been an anticompetitive policy was now also anticompetitive and facially discriminatory."
- **On Microsoft Driving Up Costs for Customers:** "Microsoft has made recent proposals that it suggests resolves these concerns. However, these proposals do nothing for, and indeed make no reference to, the effects of higher pricing for software running on other cloud service providers that results directly from their product license terms – significantly higher, prices that many of the Coalition's members today must endure. Nor do they address broader industry concerns. Indeed, Microsoft continues to impose key restrictions on Listed Providers and, in fact, introduced additional restrictions on SPLA partners hosting on Listed Provider infrastructure."
- **On Microsoft Undermining Customers' Cybersecurity:** "By driving customers to adopt single cybersecurity product for reasons unrelated to the quality of security (namely, its inclusion in a Microsoft 365 suite of otherwise unrelated products), Microsoft is removing the market mechanism for improving overall cybersecurity in favor of creating customer dependency on a single layer of defense. ... Microsoft's practices of locking customers into the Microsoft ecosystem (by increasing the switching costs for failing to use Azure) inhibits movement to potentially more secure cloud providers and removes incentive for Microsoft to innovate and continuously improve cybersecurity within its solutions."
- **On the Coalition Requesting that the FTC Open an Investigation into Microsoft:** "The Coalition believes these practices raise serious concerns under U.S. antitrust law, including the FTC Act; and respectfully requests the Commission open an investigation to examine and take action to stop them. ... The Coalition believes that Microsoft's practices may violate the Sherman Act and the Federal Trade Commission Act ('FTC Act') and merit investigation by U.S. antitrust enforcers."