

allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2001), on the World Wide Web, <http://www.ftc.gov/os/2001/04/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Microsoft Corporation ("Microsoft").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations about Pocket PC handheld computers ("Pocket PCs")—personal digital assistants ("PDAs") which feature Microsoft's Windows CE operating system, including Hewlett-Packard Company's Jornada Pocket PC and Compaq Computer Corp.'s Pocket PC. This matter concerns allegedly false and deceptive advertising claims made in advertisements regarding the ability of Pocket PCs to access the Internet and email accounts.

According to the FTC complaint, Microsoft falsely claimed that Pocket PCs contain everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In fact, in order to access the Internet and their email accounts using Pocket PCs, when away from their computers ("remotely"), consumers

must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone; and moreover, many mobile telephones currently in use in the United States are not compatible with Pocket PCs. The complaint also alleges that in representing that consumers can use Pocket PCs to access the Internet and their email accounts, at anytime and from anywhere, Microsoft failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar device. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent Microsoft from engaging in similar acts and practices in the future. Specifically, Parts I and II address representations regarding any PDA or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to access the Internet or email accounts remotely ("covered devices").

Part I of the proposed order prohibits Microsoft from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts.

Part II of the proposed order prohibits Microsoft from making any representation about the ability of any covered device to access the Internet or email accounts unless Microsoft discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services (other than general-purpose ISP service, as defined in the order) that consumers must purchase in order to access the Internet or email accounts.

Parts III through VI of the order require Microsoft to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

#### **Concurring Statement of Commissioner Orson Swindle**

I voted to accept both of these consent agreements for public comment, because the proposed consent orders are adequate relief for the violations alleged in the complaint. Nonetheless, I have strong reservations about the use of unenforceable "voluntary" consumer education. In each of these cases, staff negotiated with the proposed respondent to achieve a consumer education campaign that is being undertaken wholly outside the confines of the order. Consumer education remedies sometimes pose difficult issues and Commissioners may disagree as to whether a particular consumer education remedy is appropriate and reasonably related to the complaint allegations. Yet the solution for such disagreements is not simply to excise such remedies from the legally enforceable obligations that respondents are undertaking in settlement. If consumer education is important enough to include in negotiations, there likely is some impact on what is achieved in negotiating the terms of the consent order itself. Moreover, to the extent that the FTC promotes such "voluntary" consumer education initiatives in our efforts to publicize the consent agreements, we may see many more deep-pocketed respondents seeking to add a bit of "voluntary" and unenforceable consumer education to a broader promotional campaign in exchange for a weaker order than might otherwise be negotiated.

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#### **FEDERAL TRADE COMMISSION**

#### **Cigarette and Smokeless Tobacco Reports; Request for Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") is soliciting comments to help it determine whether to continue to issue reports on the sales, advertising and promotion of cigarettes and smokeless tobacco products, as well as the formats for any such reports.

**DATES:** Written comments must be received on or before June 11, 2001.

**ADDRESSES:** Submit comments to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Five paper copies of each written comments should be submitted. All comments also should be submitted, if possible, in electronic form, on a 3½ inch personal computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. Windows-based programs are preferred. Files from other operating systems should be submitted in ASCII text format. Individuals filing comments need not submit multiple copies or comments in electronic form. Comments alternatively may be submitted by electronic mail (e-mail) to *Cigarette&Smokeless Tobacco Reports@ftc.gov*. Submissions should be identified as "Cigarette and Smokeless Tobacco Reports."

**FOR FURTHER INFORMATION CONTACT:** Michael Ostheimer, Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2699.

**SUPPLEMENTARY INFORMATION:** The FTC has issued statutorily required reports to Congress on domestic sales and advertising and promotion expenditures for cigarettes and smokeless tobacco products.<sup>1</sup> The aggregate sales and marketing data in these reports are based on data submitted to the Commission pursuant to compulsory process by the largest cigarette and smokeless tobacco manufacturers in the United States.

The Federal Reports Elimination and Sunset Act of 1995 terminated many mandatory reporting requirements, and allows agencies to assess the need for such reports.<sup>2</sup> Accordingly, the Commission is seeking public comment on whether it should continue to issue reports on the cigarette and smokeless tobacco industries and what forms any such reports should take.

The Commission is seeking comments on the following questions:

1. Who uses the cigarette and smokeless tobacco reports? For what purposes do they use them?
2. What are the costs to the industries to provide the Commission with the

<sup>1</sup> Beginning in 1967, the Commission submitted annual reports to Congress on cigarettes pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331, *et seq.* Beginning in 1986, the Commission submitted biennially to Congress reports on smokeless tobacco pursuant to the Comprehensive Smokeless Tobacco Health Education Act, 15 U.S.C. 4401, *et seq.*

<sup>2</sup> Pub. L. 104-66, section 3003(a)(1), 109 Stat. 734.

date included in the cigarette and smokeless tobacco reports?

3. Should the Commission continue to collect and publish data regarding cigarette and smokeless tobacco sales, advertising and promotion? Why or why not?

4. What data or other information contained in the reports are useful and should be continued in any future reports? Why? What data or other information in previous reports are of little or no use, and could be omitted in future reports? Why?

5. Is there information about cigarette and smokeless tobacco sales, advertising and promotion that has not been included in the reports, but that would be of use? If so, what additional information would be of use, and why would it be useful?

6. If the Commission decides to continue issuing reports, how frequently should they be issued (e.g., annually, biennially)? Why?

7. What other information should the Commission consider in deciding whether to continue reporting on the sales and advertising and promotion of cigarettes and smokeless tobacco products. If the Commission decides to issue future reports, what formats would be useful?

By direction of the Commission.

**Benjamin I. Berman,**  
*Acting Secretary.*

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## GENERAL SERVICES ADMINISTRATION

### Public Building Services, Portfolio Management (9PT); Notice of Availability of Draft EIS

The United States General Services Administration has filed with the Environmental Protection Agency (EPA) and made available to other government and private bodies a Draft Environmental Impact Statement (DEIS) on the following project: U.S. Courthouse, Los Angeles, California.

The project will provide a total usable area of about 680,000 square feet, housing the United States District Courts and other court related agencies. Copies of the Draft EIS are available from: Javad Soltani, General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, San Francisco, California 94102, Tel: (415) 522-3493, FAX: (415) 522-3215, Email: *javad.soltani@gsa.gov*.

Council on Environmental Quality regulations provide for a 45-day review

period, which begins with the date of the **Federal Register** notice of the availability of the Draft EIS. The date is March 26, 2001; comments are due to the GSA contact named above no later than May 4th, 2001.

Dated: March 26, 2001.

**Javad Soltani,**

*Asset Manager, General Services Administration.*

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## GENERAL SERVICES ADMINISTRATION

### Public Building Services, Technical Support Division; Notice of Availability of Record of Decision

The United States General Services Administration has signed a Record of Decision for the proposed project: U.S. Courthouse, Inspection of State Street and Eliot Street, Springfield, Hamden County, Massachusetts.

The building will comprise approximately 160,000 gross square feet of space, housing the United States District Court, the United States Bankruptcy Court for Western Massachusetts, and other court related agencies.

The public is invited to view a copy of the Record of Decision at the Springfield Public Library or by contacting: Frank Saviano, U.S. General Services Administration, Public Building Service, Technical Support Division (1PC), Thomas P. O'Neill Federal Building, 10 Causeway Street, Room 975, Boston, MA 02222, Tel: 617-565-5494, Email: *frank.saviano@gsa.gov*.

Dated: March 20, 2001.

**Tom Mailander,**

*Director, Technical Support Division, Public Building Service, General Services Administration.*

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## GENERAL SERVICES ADMINISTRATION

### Public Buildings Service; Region 10; Notice of Intent To Prepare an Environmental Impact Statement

**ACTION:** The US General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality