

Fool's Gold: Analyzing the Means and Ends of Microsoft

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After encountering Microsoft on the list of the world's most ethical companies, I admit that I was surprised. For a while, Microsoft had been associated with one word in my mind: monopoly, an impression stemming from previous reading on principles of deontology and the 1999 *United States v. Microsoft Corp.* antitrust case. By default, I had assumed that a company with a reputation of monopolistic practices would be unethical.

For this reason, I decided to research the details of Microsoft's ethics, and indeed, I discovered a substantial amount of evidence of corrupt business practices. A 2009 report by the European Commission¹ outlined numerous governance-level instances, including threatening and stifling competition from IBM², Intel³, Novell⁴, and Netscape⁵. Furthermore, Microsoft intentionally voided Windows' interoperability with a rival DR-DOS⁷ software and falsified that their "WISE"⁸ software was cross-platform, all while neglecting transparency to consumers and developers. The list of similar violations is extraordinarily long, but ultimately, the multimillion-dollar settlements were far below the amount of revenue that the company acquired.

However, Microsoft appears to have changed. The company's placement in the 2020 list of the World's Most Ethical Companies marks their 10th year receiving such recognition from the Ethisphere Institute⁸, and Microsoft leads JUST Capital's 2020 rankings both in their industry and overall⁹.

In terms of the environment, Microsoft has self-implemented a carbon tax, maintained 100% carbon neutrality in operations since 2012¹⁰, and pledged to go carbon-negative by 2030¹¹. Additionally, the company has provided 230 grants to fund AI development to address climate change and reduced product packaging to limit fuel consumption.

On a social level, Microsoft has greatly improved their transparency on multiple fronts, including creating a sustainable framework of regulations for preserving digital rights and publishing workforce demographics in efforts to promote diversity¹². Microsoft also consistently aspires to improve employee relationships by mandating contractors to increase benefits to grant twelve weeks of fully paid parental leave and providing childcare services even amidst the COVID-19 pandemic¹³.

The final criteria is governance, arguably the most prominent stain on Microsoft's history. Despite regularly declaring their commitment to anti-corruption¹⁴, Microsoft has still been subject to high amounts of suspicion. Notably, Microsoft was investigated for alleged bribery

charges for violating the Foreign Corrupt Practices Act in 2018; following a familiar pathway of previous litigations, these charges were resolved with a paid settlement of \$26 million¹⁵. However, Microsoft should receive credit for efforts to preserve shareholder rights, as the company has established an annual cycle that involves modifying governance practices in the spring, speaking with shareholders in the summer, publishing communications in the fall, and assessing feedback in the winter. In 2017, board members interacted with stakeholders owning almost 45% of the company's shares¹⁶.

Ultimately, Microsoft appears to be a corporation that is genuinely trying and succeeding at amending their past. My final lingering reflection from my research is one of hope - that Microsoft will continue along a positive pathway to ethically bring the technology that will inevitably be a vital part of our future.

¹ "Antitrust: Commission Sends Statement of Objections to Microsoft on Non-Compliance with Browser Choice Commitments." *European Commission*, 24 Oct. 2012, ec.europa.eu/commission/presscorner/detail/en/IP_12_1149.

² Stephanie Condon, Vista Marketing Draws Antitrust Complaints, CNET NEWS, Jan. 28, 2009, at http://news.cnet.com/8301-13578_3-10151757-38.html; Interim Joint Status Report on Microsoft's Compliance with the Final Judgments at 4 (Jan. 29, 2009), *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000) (No. 98-1232), available at <http://www.usdoj.gov/atr/cases/f241600/241677.pdf>.

³ Findings of Fact 387–90, *United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 (D.D.C. 1999) (98-1232) [hereinafter "Findings of Fact"], available at <http://www.usdoj.gov/atr/cases/f3800/msjudge.pdf>.

⁴ *Novell, Inc. v. Microsoft Corp.*, No. JFM-05-1087, 2005 U.S. Dist. LEXIS 11520, at *6 (D. Md. June 10, 2005) (quoting email from Jeff Raikes at Microsoft to Warren Buffet at Berkshire Hathaway (Aug. 17, 1997)).

⁵ Press Release, Department of Justice, Statement by Assistant Attorney General Joel I. Klein: Filing of Antitrust Suit Against Microsoft at 2 (May 18, 1998), available at http://www.usdoj.gov/atr/public/press_releases/1998/1770.htm; see also Plaintiffs' Joint Proposed Findings of Fact 91.3.1, *United States v. Microsoft Corp.*, 87 F. Supp. 2d 30 (D.D.C. 2000) (No. 98-1232), available at <http://www.usdoj.gov/atr/cases/f2600/2613-1.htm> [hereinafter "Plaintiffs' Joint Proposed Findings of Fact"].

⁶ *Caldera, Inc. v. Microsoft Corp.*, 72 F. Supp. 2d 1295, 1303 (D. Utah 1999). See Consolidated Statement of Facts in Support of Its Responses to Motions for Summary Judgment by Microsoft Corporation 383, *Caldera, Inc. v. Microsoft Corp.*, 72 F. Supp. 2d 1295 (D. Utah 1999) (No. 2:96-CV-645 B).

⁷ Fred Vogelstein, Search and Destroy, FORTUNE, May 2, 2005, at 74, available at http://money.cnn.com/magazines/fortune/fortune_archive/2005/05/02/8258478/index.htm (showing "Microsoft's Battles" market share graphics).

⁸ "The 2020 World's Most Ethical Companies® Honoree List." *Ethisphere® Institute* | *Good. Smart. Business. Profit.®*, 22 June 2020, www.worldsmostethicalcompanies.com/honorees/.

⁹ "Microsoft Corporation." *JUST Capital*, 2020, justcapital.com/companies/microsoft-corporation.
12 *Microsoft Code of Conduct: Ethics & Compliance*. www.microsoft.com/en-us/legal/compliance/default.aspx.

¹⁰ Winston, Andrew. "Microsoft Taxes Itself." *Harvard Business Review*, 8 May 2012, hbr.org/2012/05/microsoft-taxes-itself.html.

¹¹ Vetter, David. "Microsoft Is Going Carbon Negative. What Does That Mean?" *Forbes*, Forbes Magazine, 20 Jan. 2020, www.forbes.com/sites/davidrvetter/2020/01/20/microsoft-is-going-carbon-negative-what-does-that-mean/.

¹² Rahul, et al. *Study Finds Microsoft More Ethical than Facebook, Google and Apple*. 13 Nov. 2019, mspoweruser.com/microsoft-ethical/.

¹³ Iyengar, Rishi. "Microsoft Is Giving Workers 12 Weeks of Paid Parental Leave Because of School Disruptions." *CNN*, Cable News Network, 9 Apr. 2020, www.cnn.com/2020/04/09/tech/microsoft-12-weeks-parental-leave/index.html.

¹⁴ "Commitment to Anti-Corruption: Ethics & Compliance." *Microsoft*, 2020, www.microsoft.com/en-us/legal/compliance/anticorruption/default.aspx.

¹⁵ Greene, Jay. *Microsoft to Pay \$26 Million to Settle Probe into Hungarian Kickback Scheme*. 22 July 2019, www.washingtonpost.com/technology/2019/07/22/microsoft-pay-million-settle-probe-into-hungarian-kickback-scheme/.

¹⁶ "1. Corporate Governance at Microsoft." *Microsoft 2017 Interactive Proxy*, Microsoft, 2017, iiwisdom.com/msft-2017/corporate-governance-at-microsoft/.

* adapted from 2009 European Commission reports