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Global Competition Law

# The Microsoft cases

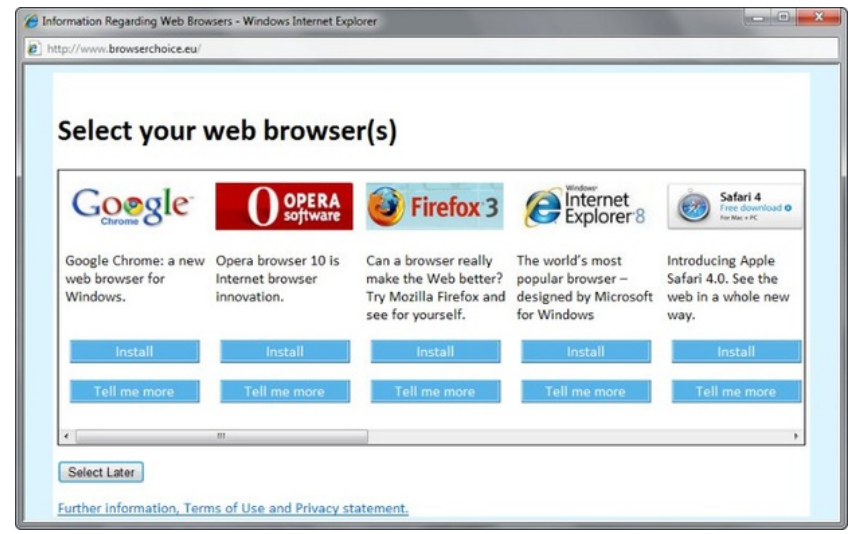
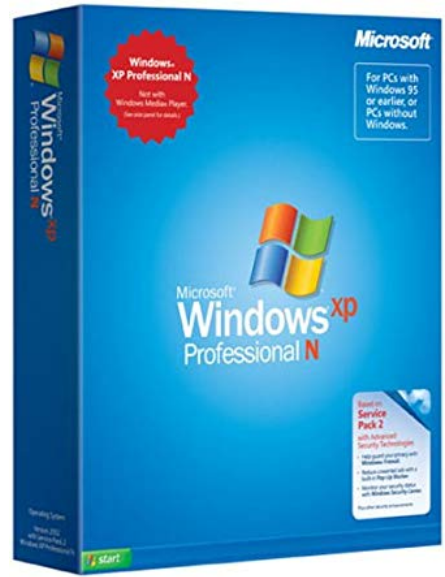
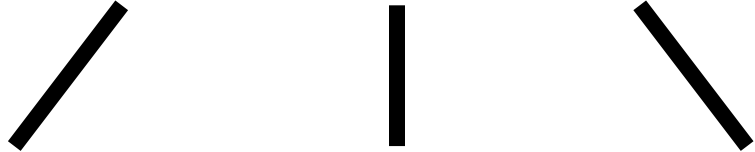
Ashwin van Rooijen (Clifford Chance)

Dan Gore (RBB Economics)

**16th ANNUAL CONFERENCE OF THE GCLC**

**Ex post assessment of European competition enforcement:  
Did agency intervention restore competition in the market?**





# *Interoperability remedy*

## *Direct effect on third parties*

- Limited initial take-up
  - As of 2008, no licences taken for competing products
- February 2008: Microsoft introduces interoperability protocols and fee-free access
- Subsequent increase in use of interoperability (Heiner 2012)
  - c.50 firms licensing protocols
  - c.90 commercial products implementing protocols

Practical difficulties to implementation, but interoperability objectives ultimately achieved

# *Interoperability remedy*

## *Market developments*

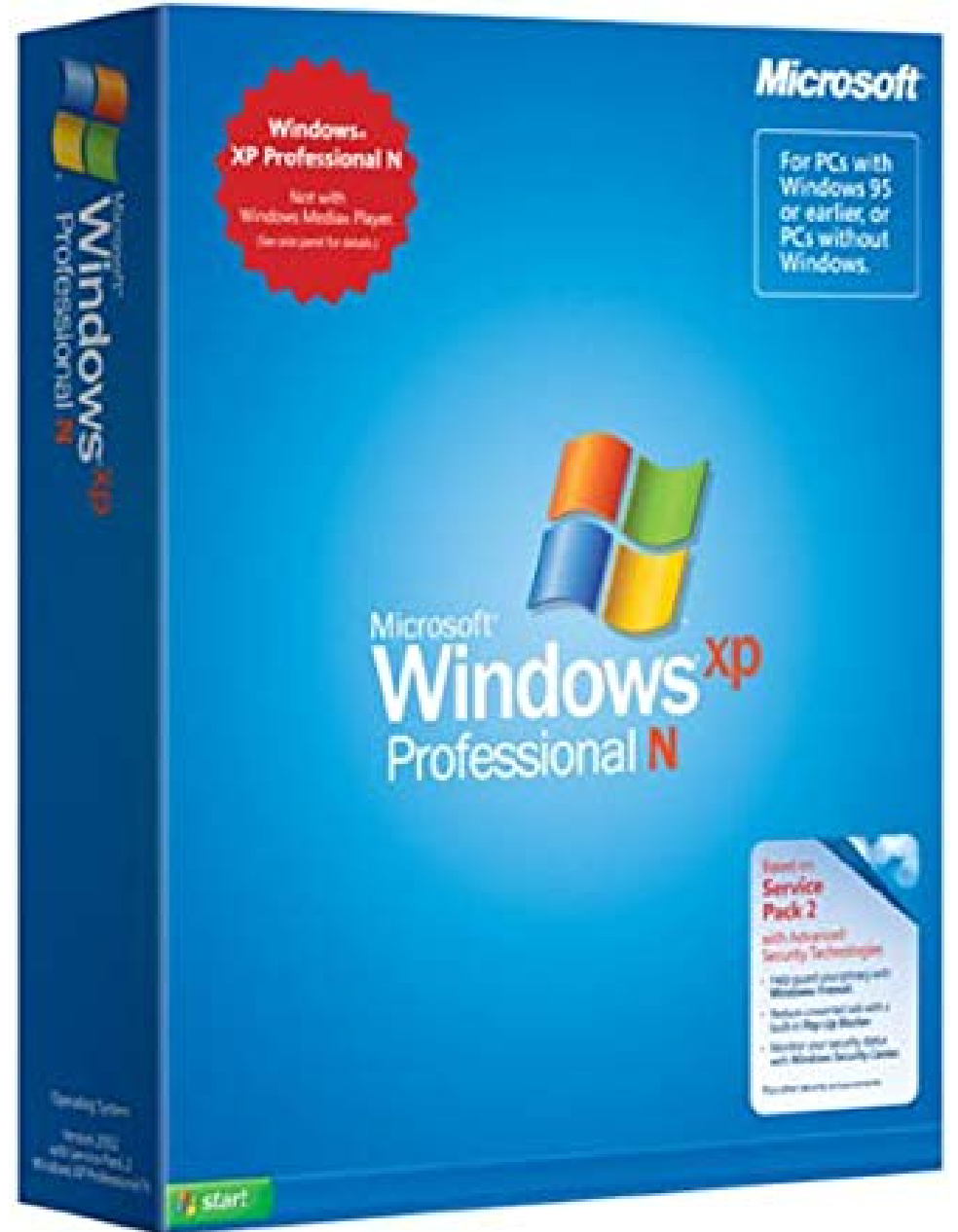
- Windows group server OS share increased following remedy
  - 2002: 60%
  - 2009: 68%
  - 2019: 72%
- No counterfactual
- High share not inconsistent with effective competition

Remedy impact not visible in group server market...  
...but not sufficient to indicate competition concerns or imply ineffective remedy

# *Media player remedy*

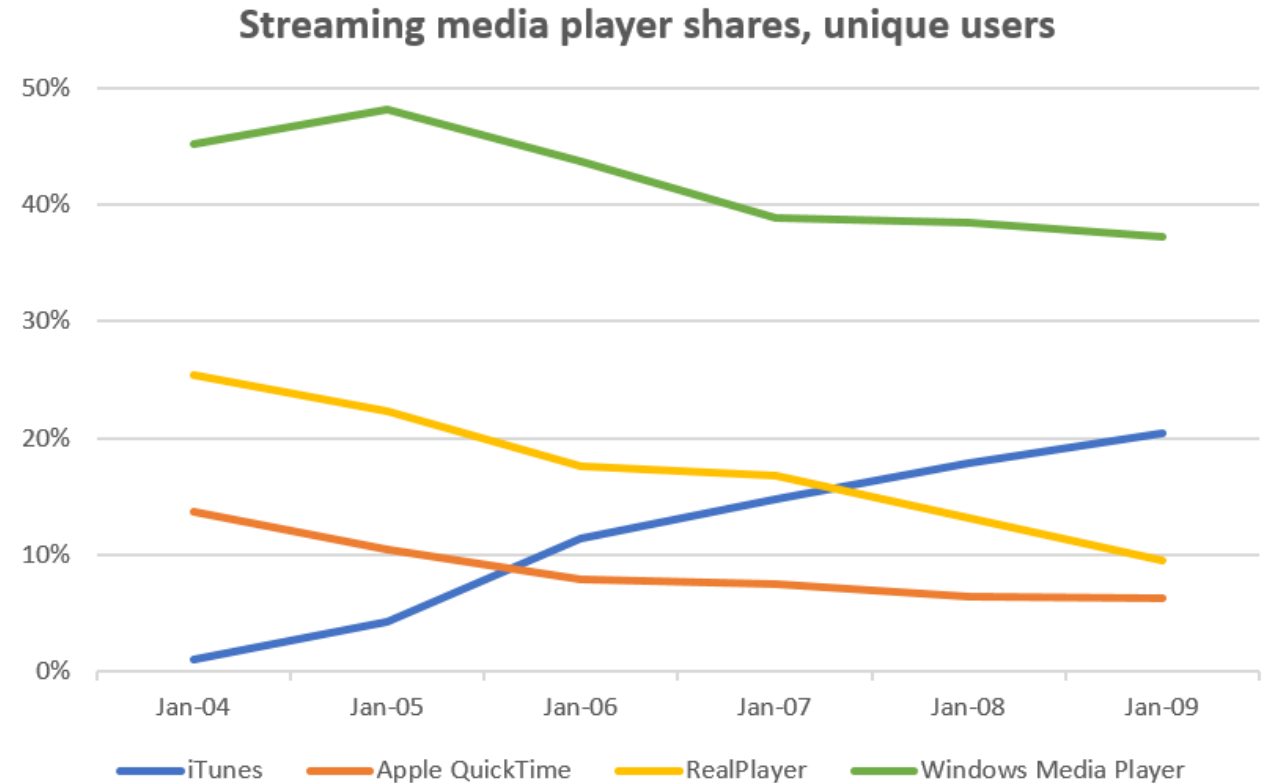
## *Direct effect*

- Limited take-up of XP Edition N
  - 1,787 copies sold, nine months to April 2006...
  - ...against 35.5 million copies of XP
- Remedy permitted Microsoft to set equal price for XP and XP Edition N
  - Incremental cost of WMP = zero



# Media player remedy Market developments

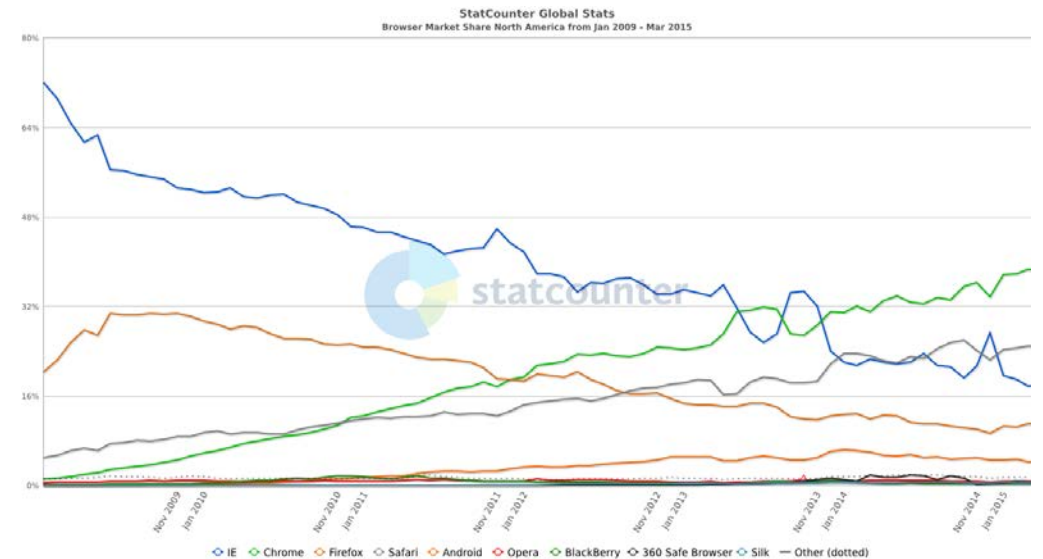
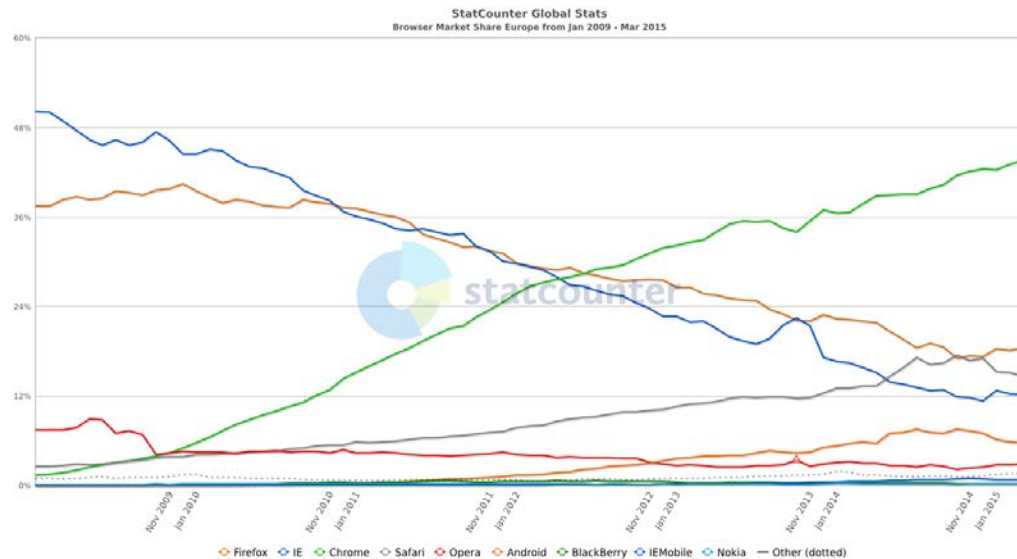
- Declining WMP share of streaming media players
- OEM installations of rival media players
  - 2004: 1.4
  - 2006: 3.2



Market may have addressed potential WMP dominance even in absence of effective remedy

# Browser remedy impact Market developments

- Regional scope provides impact comparator (Fletcher 2016)
  - IE share declining in Europe, steeper decline post-2010; rapid Chrome expansion
  - Steady, but slower, IE decline in US; slower Chrome expansion



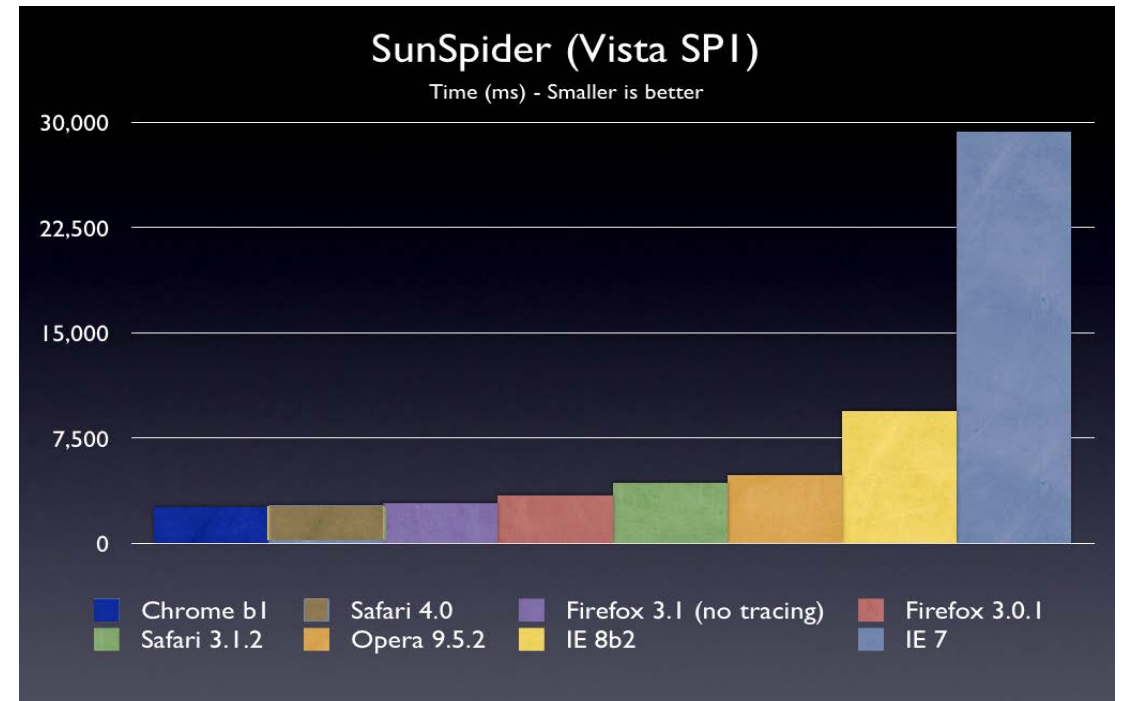
More rapid decline in IE position in EU than US consistent with EU remedy accelerating expansion of rival browsers



# Browser remedy impact

## Product quality

- IE considered inferior to Chrome and Firefox
  - E.g., SunSpider Javascript benchmark test
  - Fewer features: theme support, bookmark syncing, security sandboxing
- Evidence of improved performance and standard compliance



Quality improvements suggest greater competitive intensity  
May reflect EU remedy; but note also declining US position

# *Lessons*

## **Interoperability**

- Addressed theory of harm
- Practical obstacles to implementation
- Difficult questions of IPR

## **Tying**

- Media player
  - Effectively zero impact
- Browser
  - Evidence of increased browser competition in Europe relative to US
- Improvements to media player remedy?
  - Price controls, separation unattractive
  - Media player choice screen?