

# Remedies design in EC v. MSFT (WMP, IE)

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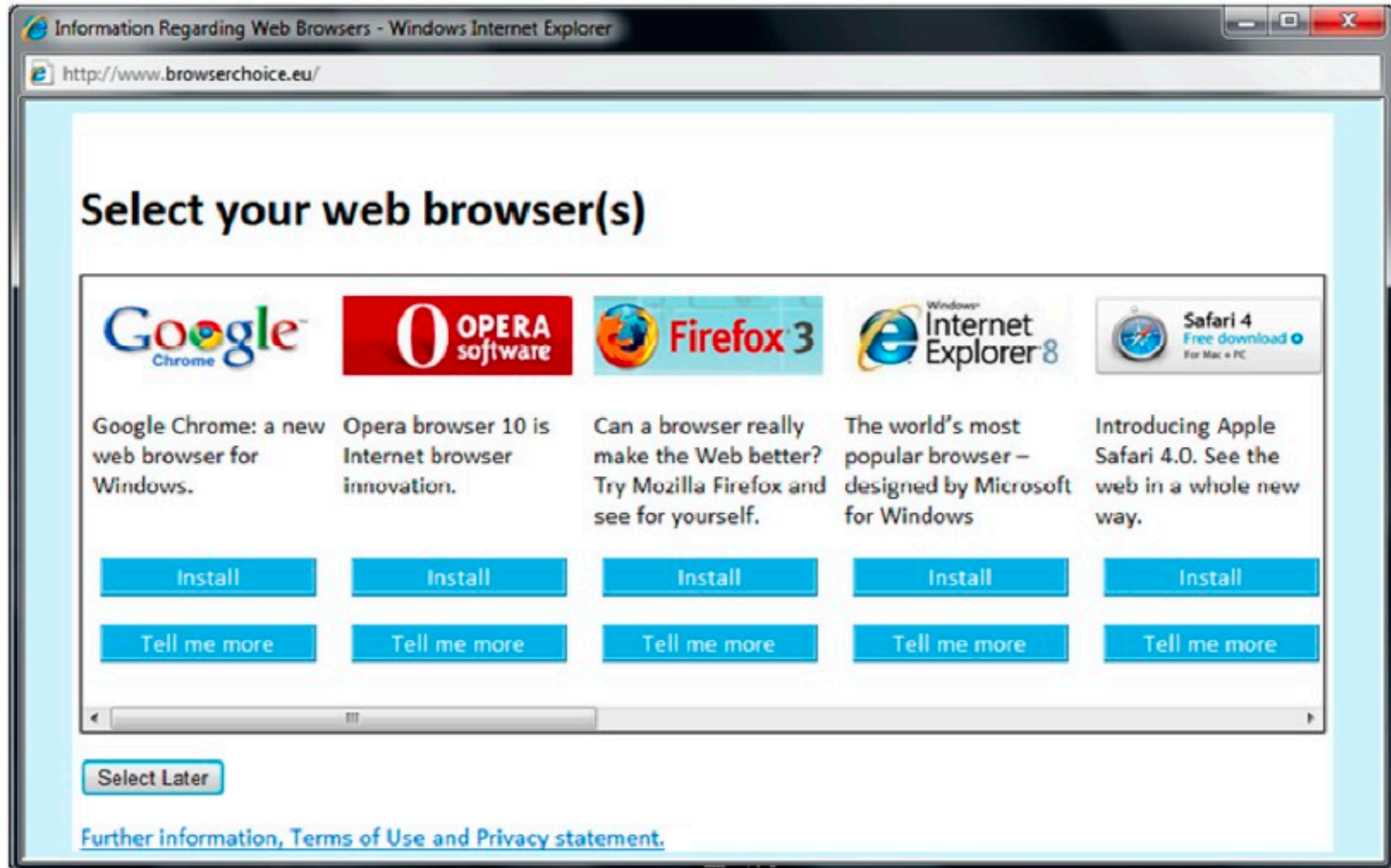
# Remedy 1.0: XP-N Commission v. MSFT (2004)



- The Commission required MSFT to offer European customers a version of Windows without media functionality
- The Commission named the product “Windows XP-N” for “not with media functionality.”
- The first product ever designed by an antitrust regulator was not a huge hit with the consuming public.
  - XP-N sold < 2,000 copies
  - XP sold > 400 million copies (Jan. 2006)

# Remedy 2.0: Choice screen

## *Commission v. MSFT (2008)*



# As a matter of legal classification, the WMP and the IE tying cases are similar

Elements	WMP (2004)	IE (2008)
Two products	Yes. Separate demand.	Yes. Separate demand.
Tie	Yes. Can't get XP without WMP. Ability to uninstall doesn't break the tie.	Yes. Can't get XP without IE. Ability to switch doesn't break the tie.
Market power in the tying product market (OS)	Yes.	Yes.
Foreclosure in the tied product market (MP, browser)	Unparalleled access to users (despite ~ 50% market share)	Unparalleled access to users

# Is a “default bundle” really a tie?

- Typical “antitrust relevant” ties are generally hard to overcome.
  - Contractual requirement (“I will sell you XP only under the condition that you also purchase and continue to use WMP/IE”)
  - Technological integration (“XP won’t work unless the user also uses WMP/IE”)
  - Financial incentive (“XP + WMP/IE is cheaper than XP on a stand-alone basis”)
- Assuming no transaction costs and no information asymmetries, users can be expected to always choose the bundle that maximizes subjective value
- Under these assumptions, default bundles are efficient. On that basis, some have argued that “nudges” should not amount to illegal ties

For more detail see: Stucke, Behavioral Antitrust and Monopolization (2011)

# Does reality conform to our rational choice predictions?

- Both WMP and IE were widely judged as inferior to readily available (free) alternatives. In other words:
  - Value (XP + WMP) < Value (XP + RealMedia Player)
  - Value (XP + IE) < Value (XP + Firefox)
- **Why did so many users stick to the inferior XP + WMP and XP + IE bundles?**
- Because most users do not act rationally. Rather, they act in predictably irrational ways
  - Status quo bias: It takes a lot to motivate people to change *anything*. Strong evidence from “opt-in” v. “opt-out” consumer behavior research. See, e.g., Thaler & Sunstein, *Nudge* (2008)
  - In other words, the “rational choice” assumption may be empirically incorrect (or at least incomplete)
- Key question: Taking cognitive biases into account, can non-coercive defaults be effective in saturating a “tied” product market with inferior products?
  - Predictable bias + millions of transactions + network effects = potentially significant effect in tied market

# Anatomy of a failed remedy

## Windows XP-N

- Windows XP (with WMP) and Windows XP-N (without any media player) were offered at the same price
- Implied assumption: Consumers value the “clean slate” choice that XP-N provides
- Reality: Consumers viewed XP-N as “getting less for the same price.”
- Contrary to rational choice theory, framing matters
  - Theory: “\$10 + \$2” = “\$12 – \$2”
  - Reality: Consumers view a “credit card surcharge” as abusive, but are fine with “cash discounts.”
- The Commission made “XP + WMP” the reference point against which “XP without any media player” was perceived as an inferior choice (“Hey, I’m getting less”)
- Better reference point: “XP + choice of media players” v. “XP + only WMP”

# The Choice Screen remedy tries to avoid the failures of XP-N

- The Choice Screen remedy attempts to frame the choice as follows: “XP with choice of browsers” v. “XP without choice of browsers”
  - The framing is implicit, because there is no “XP + IE-only” product
- The Choice Screen Remedy is an improvement over the XP-N remedy
  - IE market share in the EU < IE market share in the U.S.
  - Anecdotal evidence that the Choice Screen Remedy is a significant contributing cause
- The Choice Screen Remedy is not without problems
  - The Choice Screen can be gamed – many browsers but only three rendering engines
  - “Choice overload” – low consumer confidence in making the *right* choice. Many consumers don’t want to make choices. They want something that “just works.”
  - The “a priori” normative basis for preferring modularity over integration is debatable, in particular in systems markets