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ANTITRUST

Microsoft ends 9-year battle with European regulators

The software giant, running out of legal options, agrees to make highly guarded code available at low prices.

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WASHINGTON — Microsoft Corp. didn't become one of the world's most powerful companies by backing down from fights. But when Europe's second-highest court denied the software giant's appeal of an antitrust case there last month, Chief Executive Steve Ballmer decided it was time to give up.

Microsoft on Monday bowed to European regulators after a nine-year battle, agreeing to overhaul its business practices.

The move demonstrates Europe's growing role as the world's antitrust police and places pressure on other giant American corporations doing business overseas to appease the region's competition chiefs.

But it also showed Microsoft's desire to swallow its pride and finally put the matter behind it. With competitors such as Google Inc. gaining strength, the world's largest software maker decided to fight today's battles rather than yesteryear's.

The Redmond, Wash., company had been hit with a record $605-million fine in 2004, then an additional $351 million in 2006 for failure to comply, and it has since been threatened by penalties of as much as $4.2 million a day.

European regulators were eating Ballmer's lunch. So he went out to dinner to make up.

He and Europe's competition commissioner, Neelie Kroes, met discreetly at a small restaurant near her Dutch hometown of Rotterdam early this month (she paid). Over the last few weeks, they have been in almost daily contact, she said.

After nearly a decade fighting the EU, Ballmer agreed to drop Microsoft's appeal and make some of the company's highly guarded software code available at low prices. That lets developers better design products that work with the nearly ubiquitous Windows operating system.

"This is protecting the consumer and stimulating competition," Kroes said in Brussels. "We have to take into account that there should be a fair and level playing field whatever the size, whatever the nationality of those companies are."

Microsoft shares gained 34 cents, or 1.1%, to $30.51.

The case highlighted the clout of European Union regulators, who are taking on major American companies even as the Bush administration shies away.

The contrast has been underscored by the U.S. Federal Trade Commission's refusal to start a formal antitrust investigation of Intel Corp.'s business practices, despite pressure from Congress and its rivals.

The European Commission in July formally accused Intel of violating antitrust laws, alleging that the Santa Clara, Calif.-based company used its position as the world's largest computer chip maker to offer discounts and rebates that discouraged companies from buying microprocessors from rival Advanced Micro Devices Inc.

"I think the European Union is filling a perceived vacuum," said Robert E. Litan, a former Clinton administration antitrust official and senior fellow at the Brookings Institution. "In the last seven years, we've had a more live-and-let-live philosophy about dominant firms, and they haven't."

The FTC's reluctance to start formal proceedings against Intel was first reported by the New York Times.

Antitrust experts said U.S. companies that dominate their markets had to be concerned about Europe's aggressive approach to antitrust enforcement -- one that even mighty Microsoft couldn't deflect.

"If the antitrust authorities in Senegal go after you, you don't have to worry," Litan said. "But if it's the EU, where maybe 25% of the market is, you are worried."

Google showed that Monday. As European regulators decide whether to investigate its planned $3.1-billion purchase of online advertising firm DoubleClick Inc., Google offered an olive branch by promising not to change some of DoubleClick's business practices. Google didn't go into detail, but the move appeared aimed at addressing worries that combining the two companies' databases would give Google too much power over the online advertising market.

The announcement led Europe's competition commission to delay a decision on the case, which had been expected Friday, until Nov. 13. The U.S. Federal Trade Commission launched a detailed review of the deal in May.

Microsoft increasingly is battling with Google as traditional computer tasks, such as word processing and e-mail, move off the desktop and to Web-based applications. That trend was a factor in Microsoft's decision to finally give in to European regulators, said Jim Yin, an equity research analyst with Standard & Poor's.

"They are much more focused on the next platform, and they know their main competitor in the next couple of years will be Google," he said. "So I think this is, 'OK, let's move on.' "

Running out of legal options, Microsoft agreed to drop its appeal and provide information to software developers to allow their products to work with Windows. Microsoft had agreed to provide the information before, but only at costs that Kroes called "wholly unreasonable."

The software giant said it would lower the fee it charged companies for a worldwide license to use its software code, from 5.95% of the requesting company's revenue to just 0.4%. Microsoft also dropped its demand for a royalty of 2.98% of the money made from software developed using Microsoft's protocols. Now, companies will have to pay only a one-time fee of 10,000 euros, or about $14,000.

Microsoft also will make its code available to open-source developers, such as those that design applications for the freely shared Linux operating system, under terms that allow other users of the software to copy and modify it.

Microsoft said in a statement that it would "continue to work closely with the commission and the industry to ensure a flourishing and competitive environment for information technology in Europe and around the world."

The decision should not have a significant effect on Microsoft in the short term because even if it faces more competitors for software that works well with Windows, Yin said, the company still has a big advantage: It sells integrated suites of well-known products.

Kroes hailed Microsoft's decision to end "this dark chapter of our relationship" as a shining moment for consumers.

"Now that Microsoft has agreed to comply with the 2004 decision, the company can no longer use the market power it derived from its 95% share of the PC operating system market and 80% profit margin to harm consumers by killing competition on any market it wishes," she said.

But she warned that European regulators would continue to watch Microsoft -- and any other company that they think is abusing its market power.

"The shop is still open," she said. "I can assure you."

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