Microsoft Placates Two Foes
Settlements Set For Novell, CCIA

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Microsoft Corp. settled legal disputes yesterday with two of its largest remaining antagonists, ensuring that its antitrust deal with the Justice Department will not be appealed to the U.S. Supreme Court, and removing two active proponents of a case against the company in the European Union.

Continuing a three-year campaign to end its lengthy legal battles through deals that often involve large cash payments, Microsoft said it would pay longtime rival Novell Inc. $536 million. In return, Massachusetts-based Novell agreed to withdraw from the E.U. case and not sue Microsoft over any software Novell currently owns. A Novell statement said, however, that the company still plans to sue over a product Novell no longer owns but claims was damaged by Microsoft's previous conduct.

Microsoft neither admitted or denied wrongdoing as part of the settlement.

In the E.U. case, several large companies had complained that Microsoft was breaking European antitrust laws by denying rivals the critical computer code that allowed their software to work properly with Microsoft's Windows systems. Separately, Microsoft said it is joining the Computer & Communications Industry Association, a trade group representing many Microsoft rivals that has fought pitched battles with the software giant for nearly a decade.

The group, whose members include Oracle Corp., Sun Microsystems Inc. and Time Warner Inc., actively lobbied Congress and state and federal prosecutors to convince them that Microsoft was an unrepentant, law-breaking monopolist that needed to be reined in.

A joint statement said Microsoft would pay an undisclosed sum to CCIA to cover some of its legal costs. CCIA will no longer participate in the current E.U. case and will withdraw a separate complaint against Microsoft's newest operating system, Windows XP, which CCIA filed in conjunction with other companies in early 2003.

CCIA also agreed not to pursue a possible Supreme Court appeal of Microsoft's 2001 antitrust deal with U.S. prosecutors, struck after federal courts found that the company had violated antitrust laws. The trade group had attacked the settlement as being full of loopholes that would not halt what it regarded as Microsoft's predatory practices.

"This sends a strong message that we and other companies in our industry have the capacity to sit down face to face on issues that in the past were left to the government to resolve," Microsoft general counsel Brad Smith said in a telephone news conference.

In a statement, Smith added that the agreement "helps us support an effective alliance to address issues that will benefit the industry and consumers in the future."

CCIA President Edward J. Black, deliverer of scathing verbal attacks on Microsoft over the years,
agreed, but added that the company and the group would still be at odds over some issues.

Since its settlement with the Justice Department, Microsoft has now paid nearly $3 billion to resolve private cases with America Online, Sun Microsystems and a variety of states and groups of consumers in the wake of the antitrust rulings against it. Microsoft also gave Sun Microsystems roughly $900 million to settle patent claims and $350 million for licensing some of Sun's technology in a broad deal promising close technical cooperation between the once-bitter rivals.

It was unclear how yesterday's deals would affect the European Union case. After a five-year investigation, the E.U. found in March that Microsoft broke European antitrust laws by denying rivals the computer code they needed for their software to work properly with Windows. The E.U. also found that Microsoft was using the overwhelming dominance of Windows to muscle out rival makers of digital media-playing software. Microsoft is appealing the ruling, which included the largest antitrust fine in history, roughly $600 million. Microsoft also was ordered to produce two versions of Windows for personal computers, one with its media player included and one without it, to try to create a more level playing field for media players made by companies such as RealNetworks Inc., a U.S.-based company.

The competition section of the E.U.'s administrative arm said yesterday the withdrawals of Novell and the CCIA would have no impact on the case or its determination to pursue it.

Microsoft and the E.U. are awaiting a ruling by Europe's Court of First Instance on whether the sanctions will be put on hold pending a full appeal by Microsoft, which could take several years.

"These developments do not alter the necessity for immediate implementation of the remedies in order to restore effective competition in the market," said competition spokeswoman Amelia Torres in a prepared statement.

As for CCIA withdrawing the Windows XP complaint, Torres said that "antitrust enforcement by the Commission does not hinge upon complaints by individual parties, but is geared towards protecting the consumer's interests. Therefore, the Commission is free to examine the facts in the CCIA complaint on its own initiative."

Smith said Microsoft hopes the settlements will encourage the E.U. to return to the negotiating table. The two sides were close to a deal early this year, but talks broke down in part because competition commissioner Mario Monti wanted sanctions to address possible future conduct involving Windows XP.

Monti's term has expired, however, and it is uncertain how his successor views the case, or what weight might be assigned to the withdrawal of many of the companies that complained about Microsoft in the first place.

One U.S. legal expert who has followed the Microsoft case closely said that yesterday's settlements demonstrate Microsoft's ability to conquer its critics.

"It's sharing monopoly profits," said Howard University antitrust professor Andrew I. Gavil. "You wonder if we are getting to the point where Microsoft is buying peace in the industry at the expense of competition." Gavil added that Microsoft had essentially paid others to "discontinue lobbying," and that "an economist would say it's further evidence of the true value of [Microsoft's] monopoly."

He expressed particular concern at Smith's suggestion that antitrust issues might better be left to industry to work out on its own.

"Industry self-regulation is not the equivalent of competition," Gavil said. "The idea that the government should stay out of it . . . is really quite disturbing."
Smith said that for the first time, the company could now put a realistic number on its remaining exposure to antitrust claims: $950 million. RealNetworks is pursuing a private antitrust suit against Microsoft, as well as continuing to support the E.U.'s decision against Microsoft.

"Microsoft's payments to Novell and CCIA do not change the anti-competitive conduct condemned by the European Commission. We continue to support the Commission," Dave Stewart, deputy general counsel for RealNetworks, said in a statement.