E.U. Orders Microsoft To Modify Windows
One Version Must Omit Media Player

By Jonathan Krim
Washington Post Staff Writer
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Microsoft Corp. will for the first time be forced by antitrust regulators to change how it designs and sells its widely used Windows computer operating system, after a European Union judge yesterday rejected the company's bid to postpone sanctions against it.

Bo Vesterdorf, chief judge of Europe's second-highest court, ruled that the company failed to prove it would suffer irreparable harm if it were forced to modify its software before it exhausts its appeals, a legal process that could take years.

The decision means the company must create two versions of Windows for the European market. One version will include programs for playing digital music and video and one will not. E.U. antitrust officials hope that will give rival makers of media-playing software a better chance to compete for prominence on Windows-based computers.

The stripped-down version, which Microsoft said would have little value to consumers because it would not work as well as the full-featured package, will not be sold outside Europe.

But E.U. officials said the ruling sent an important message that antitrust enforcement needs to be vigilant and should not be delayed, "in particular in fast-moving markets as in this case."

The ruling is at least a temporary blow to the core business strategy that has helped Microsoft to overwhelming dominance: bundling more and more functions, such as those for playing digital media or browsing the Web, into the Windows operating system that runs 90 percent of the world's personal computers.

With a ruling, released in March, that bundling the media player was illegal, E.U. authorities took a starkly different path from that of U.S. courts and regulators, which have generally allowed companies to add features to their products that benefit consumers. As a result, Microsoft now faces different regulations in different parts of the world.

The E.U. also found that Microsoft illegally withheld key software code from competing developers of server systems, the machines that control computer networks, so they would not work properly with Windows systems.

Microsoft was ordered to license certain server code and to pay the largest antitrust fine in history, more than $600 million.

In yesterday's ruling, Vesterdorf was careful not to disparage the merits of Microsoft's appeal on the bundling and server issues. The ruling addressed only the question of whether the sanctions should be
postponed until an appeal is heard.

Microsoft chief counsel Bradford L. Smith yesterday vowed that the company will continue to pursue an appeal, but he said it would comply with the E.U. orders. He said a version of Windows without media-playing capability would be available to computer makers next month and in retail stores in Europe by February.

Smith said the stripped-down version will not be priced lower.

Regulators on both sides of the Atlantic have long been concerned that Microsoft can take advantage of its Windows monopoly to squeeze out competing developers of secondary applications.

While Microsoft includes a media player in every copy of Windows it sells, for example, rival RealNetworks Inc. relies on consumers to download its software separately, or it pays computer makers to add its player to machines before they are sold.

In the United States, the Justice Department began focusing in the mid-1990s on Microsoft's inclusion of its Internet Explorer browser in Windows. Ultimately, federal courts ruled that Microsoft employed several business practices that allowed it to crush the first major consumer browser, Netscape Navigator.

But the courts stopped short of finding bundling to be illegal. One judge, in part to avoid regulating software design and at the urging of the Clinton administration Justice Department, ordered that the company be broken in two, with an operating system unit and another for other applications. But a federal appeals court overturned the breakup.

In late 2001, Microsoft and new Justice Department leadership in the Bush administration struck a deal that forced some changes to Microsoft's business practices but left the company's ability to bundle intact. Instead, the settlement allows users and computer makers to mask access to Microsoft applications without removing them.

The E.U. determined that only with the programs removed entirely would other software developers have an incentive to write new applications, knowing they would not be competing against the ubiquitous distribution of Windows. The regulators in Europe want to force Microsoft to compete with others for a place on the desktop.

Microsoft said the order was unnecessary because competition from rivals such as the Apple iTunes service is flourishing. It also protested the portion of the order that requires it to reveal more technical information to rivals. Microsoft argued that it is effectively being required to give up valuable trade secrets to competitors, although it will be able to collect royalties for the information under a licensing program.

And the company can still bundle its products in the rest of the world. But some legal experts viewed the ruling as a critical development because unbundling will now be a market reality, not just a legal concept.

"I don't think the fact that it only affects the E.U. is going to be much comfort to Microsoft," said Jeffrey M. Shohet, a California antitrust lawyer. "It's a huge market."

Shohet said the E.U. action might embolden other competition authorities around the world to embrace the E.U. approach to bundling rather than the path chosen by the United States.

Others doubt that consumers will want the stripped-down product.

"I don't think it will change the competitive landscape," said Chicago antitrust lawyer Hillard M. Sterling.
But Andrew I. Gavil, a law professor and antitrust expert at Howard University, said the beauty of the ruling is that consumers now get to decide.

Justice Department lawyers had lobbied their E.U. counterparts hard to try to get them to craft a settlement with Microsoft that mirrored the U.S. approach.

Microsoft, too, had pushed hard for a settlement with former E.U. competition commissioner Mario Monti, whose term ended in the fall. But negotiations broke down, largely because Monti sought a settlement that would cover future bundling of applications, which Microsoft would not accept.

Smith said the company still wants to reach a negotiated settlement with the E.U. The company recently reached agreements with two of the key U.S. organizations that had encouraged and assisted with the European case. Novell Inc., which makes server systems, and the Computer & Communications Industry Association, a trade group, both received cash payments from Microsoft and withdrew from the litigation.

Since its deal with the Justice Department, Microsoft has spent nearly $3 billion settling various antitrust and other claims against it by companies big and small, as well as several U.S. states.

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