A smart move on Microsoft

The government's decision to block the break-up and the "cloud" claims reflect a sensible decision to ens
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ative speed and certainty by jettisoning weak claims that would take ages to pursue. As the appeals court noted, a central problem is that long-running antitrust litigation tends to be outpaced by technological developments. The Microsoft litigation is largely about an operating system now four generations old. The most relevant issue today is an inter

The government was never going to get a "winning" argument, given the standard set by the appeals court. The tying claim would have been as much a struggle. The govern

ment had to agree that the government failed to prove either exclusive dealing or other anticompetitive features among other reasons. That would handi

cap and slowed existing diversity, putting off any relief for two or three years. Netscape- AOL and Java then

are better placed to pursue the tying claim because they can introduce evidence on browser market definition. Earned now from doing so, the government would have resorted to litigation with one hand be

hind its back, and might have lost and screwed up the tying claim for AOL-Netzero and Injus-ron. It is not an exaggeration that the state attorney general, who has always been the most aggressive about going after Microsoft, agrees entirely with Justice's decision to cast off the weak claims.

Many seem astonished and think the government will no longer oppose software net neutrality. Nothing could be further from the truth. The Department of Justice has said it will press relief that would be big and more. It would provide Microsoft from using 3rd party software in its products. Microsoft engineers or software developers from using software made by Microsoft's riv

als. It would fail Microsoft from conditioning the use of its operating system on any agreements to use a separately licensed third-

corporate product. It would prevent Microsoft from bundling other soft

ware into its operating system un

less Microsoft allows easier use to re

move it and get a discount, determined by the share of the market the deleted software holds.

Microsoft would have to offer its software on uniform terms to all buyers. It would have to refrain from interfering with the inter-

operability of real software, and the ability of computer makers to alter the box someone to launch or deploy real products. Micro-

soft would have to disclose the ap-

plication programming interface, which provide the platform for applications to run on its soft-

ware. And what Microsoft re-

leases an app, it would have to offer its "id" system for three more years.

That would mean everything Microsoft is accorded with doing with Windows XP and more. Indeed, it is similar to what the Depart-

ment of Justice would have pursued all of it. The government, meanwhile, is asking for unlimited discovery, limited to past Vista develop

ments, to see whether modific-

ations are Jeffersonian. But it seems plenty enough could it get at least preliminary injunctive relief before the mid-October release of Windows XP? That's why, al-

though today treated as a Microsoft victory, the government's de-

cision is probably more news than good for the company — which may explain why it took longer to declare. The big concern is that, unless Microsoft can settle, Win-

dows XP would likely be de-

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ed, which could cause massive stock-market reactions for all the firms hoping Windows XP will re-

vive the computer industry.

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