

# M\$ remains unrepentant, says antitrust judge

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Microsoft Corp. is still trying to "leverage" its Windows operating system monopoly to control all software markets, said the former judge who ordered the company's breakup in the U.S. government's landmark antitrust case.

"Nothing has changed, to my observation, in the five years that have elapsed since my decision," said Thomas Penfield Jackson, who retired last year as a federal judge. He said the settlement of the government's case hasn't diminished Microsoft's power in the marketplace or changed its business strategy of trying to expand its monopoly.

"Windows is an operating-system monopoly, and the company's business strategy was to leverage Windows to achieve a comparable dominion over all software markets," Jackson said yesterday in Washington at a conference sponsored by the American Antitrust Institute.

Jackson's 2000 decision ordered the breakup of Microsoft, but in 2001, a U.S. appeals court overturned that element, leaving the company intact. It upheld his findings that Microsoft illegally protected its Windows monopoly for personal computer operating software by squelching competition from rival Netscape Communications Corp.'s Web browser.

The Bush administration, which inherited the case from the Clinton administration, settled with Microsoft once the company agreed to let computer makers promote rival software products.

Jackson defended his decision to grant the Clinton administration's request to break up the company. "The Microsoft persona I had been shown throughout the trial was one of militant defiance, unapologetic for its past behavior and determined to continue as before," he said.

Jackson said he "had no illusions that an order less drastic than that advocated by the government would meet with Microsoft's even grudging submission."

Jackson didn't criticize the settlement negotiated by the Bush administration, which drew objections from half the 19 states that had joined the Justice Department in suing Microsoft.

Still, he noted that Microsoft hasn't "fared so well in Europe." Antitrust enforcers ordered it to sell a Windows version without a music and video player and to grant competitors access to information on the operating system's inner workings.

"Microsoft has won the browser war in the United States," Jackson said, noting that Netscape's Navigator, now owned by Time Warner Inc., "has only a small fraction of the browser market."

Microsoft spokeswoman Stacy Drake said the company won't comment on the former judge's remarks.

Microsoft supporter Jim Prendergast disputed Jackson's description of the software industry. "Five years later, the industry has certainly been competing as vigorously as ever," said Prendergast, president of Americans for Technology Leadership, a pro-Microsoft group. "You can run three or four different browsers that are widely available now on your laptop. The settlement was a much more reasonable approach" than Jackson's breakup remedy, he said.

The appeals court that overturned Jackson's breakup order also disqualified him from overseeing further proceedings in the case because he had granted interviews to reporters during the trial. In his speech, Jackson said the appeals court "concluded that my indiscretions in allowing two journalists to confer with me in chambers, off the record, during the trial disqualified me from presiding over further proceedings."

Writer Ken Auletta, who wrote a book about the Microsoft case, based in part on interviews with Jackson, quoted the judge as comparing Microsoft executives to members of a drug gang because of their unrepentant attitude in court.

The judge who replaced Jackson on the case, Colleen Kollar-Kotelly, rejected calls by the states for tougher antitrust remedies.

Jackson said the breakup would have promoted competition by creating a company that sold software applications, including Internet browsers and another that sold operating systems for computers.

"The rationale was to enable the divisions to compete -- the former for applications from independent software suppliers as well as with its now independent counterpart, and the counterpart to write applications for nascent operating systems that might someday offer worthy competition to Windows."

Jackson said he ordered the breakup without more hearings because each side would continue to produce "equally eminent experts" who "were in good faith in almost total disagreement about every issue in the case."

"Time, moreover, was on Microsoft's side," Jackson said. "Microsoft would continue to do what it had been doing until some court told it to stop. A remedies trial would postpone that indefinitely."

By JAMES ROWLEY  
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