

Press Release

Washington Legal Foundation

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FOR IMMEDIATE RELEASE

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JUSTICE DEPARTMENT RIGHT TO END PURSUIT OF CLAIMS IN *MICROSOFT*

As the Washington Legal Foundation (WLF) LEGAL BACKGROUNDER *Innovation and Integration: The Microsoft Case and Windows XP* went to press, the Department of Justice announced that it would no longer be seeking a court-ordered breakup of the company, nor would it pursue a claim that Microsoft illegally “tied” its Explorer browser to the operating system. The LEGAL BACKGROUNDER was prepared for WLF *pro bono* by New York City attorney Robert A. McTamaneý several weeks prior to the government’s announcement. “The Justice Department’s decision today demonstrates that WLF’s publishing program is on the cutting edge of legal policy debates, and that the paper’s analysis was right on point in terms of how flawed the government’s tying claim was,” said Daniel J. Popeo, WLF’s Chairman.

In this WLF paper, Mr. McTamaneý argues that Microsoft’s supposedly illegal activity — the integration of software programs into the computer’s operating system — in fact creates pro-consumer efficiencies and offers other benefits that do not in any way foreclose competition or inhibit consumer choice. For these reasons, Mr. McTamaneý concludes, the government has no viable tying claim against Microsoft’s bundling of the Internet Explorer, at issue in the *Microsoft* case, nor can it convincingly argue that the new Windows XP system violates these antitrust principles.

“Perhaps the leadership at the Justice Department finally realized something Mr. McTamaneý’s paper makes very clear — that further pursuit of the tying claim would chill software innovation and harm consumers,” stated Glenn G. Lammi, Chief Counsel of WLF’s Legal Studies Division. “They will hopefully come to the same conclusion if any thoughts arise at DOJ to pursue similar claims against Microsoft for Windows XP,” Lammi added.

Throughout the *Microsoft* trial and appeals process, WLF has argued against a breakup of the company, and is pleased that the government has dropped its insistence on such a draconian remedy. “It’s just a shame that millions of taxpayer dollars have already been wasted in seeking such a dangerous and unwarranted punishment. The sooner this misguided application of the antitrust laws ends, the better for consumers and our economy,” said WLF Chairman Popeo.

Washington Legal Foundation, a national, non-profit public interest law and policy center, has opposed government abuse of the legal system for over 25 years. WLF's Litigation Department and Legal Studies Division have played an integral role in explaining the pitfalls of activist government litigation to policy makers and the public.