

multimedia content. Finally, in 1997 Microsoft noted the dangers of Apple's and RealNetworks' multimedia playback technologies, which ran on several platforms (including the Mac OS and Windows) and similarly exposed APIs to content developers. Microsoft feared all of these technologies because they facilitated the development of user-oriented software that would be indifferent to the identity of the underlying operating system.

V. MICROSOFT'S RESPONSE TO THE BROWSER THREAT

A. Microsoft's Attempt to Dissuade Netscape from Developing Navigator as a Platform

79. Microsoft's first response to the threat posed by Navigator was an effort to persuade Netscape to structure its business such that the company would not distribute platform-level browsing software for Windows. Netscape's assent would have ensured that, for the foreseeable future, Microsoft would produce the only platform-level browsing software distributed to run on Windows. This would have eliminated the prospect that non-Microsoft browsing software could weaken the applications barrier to entry.

80. Executives at Microsoft received confirmation in early May 1995 that Netscape was developing a version of Navigator to run on Windows 95, which was due to be released in a couple of months. Microsoft's senior executives understood that if they could prevent this version of Navigator from presenting alternatives to the Internet-related APIs in Windows 95, the technologies branded as Navigator would cease to present an alternative platform to developers. Even if non-Windows versions of Navigator exposed Internet-related APIs, applications written to those APIs would not run

on the platform Microsoft executives expected to enjoy the largest installed base, i.e., Windows 95. So, as long as the version of Navigator written for Windows 95 relied on Microsoft's Internet-related APIs instead of exposing its own, developing for Navigator would not mean developing cross-platform. Developers of network-centric applications thus would not be drawn to Navigator's APIs in substantial numbers. Therefore, with the encouragement and support of Gates, a group of Microsoft executives commenced a campaign in the summer of 1995 to convince Netscape to halt its development of platform-level browsing technologies for Windows 95.

81. In a meeting held at Microsoft's headquarters on June 2, 1995, Microsoft executives suggested to Jim Clark's replacement as CEO at Netscape, James Barksdale, that the version of Navigator written for Windows 95 be designed to rely upon the Internet-related APIs in Windows 95 and distinguish itself with "value-added" software components. The Microsoft executives left unsaid the fact that value-added software, by definition, does not present a significant platform for applications development. For his part, Barksdale informed the Microsoft representatives that the browser represented an important part of Netscape's business strategy and that Windows 3.1 and Windows 95 were expected to be the primary platforms for which Navigator would be distributed.

82. At the conclusion of the June 2 meeting, Microsoft still did not know whether or not Netscape intended to preserve Navigator's own platform capabilities and expand the set of APIs that it exposed to developers. In the hope that Netscape could still be persuaded to forswear any platform ambitions and instead rely on the Internet technologies in Windows 95, Microsoft accepted Barksdale's invitation to send a group of representatives to Netscape's headquarters for a technology "brainstorming session" on June 21. Netscape's senior executives saw the meeting as an opportunity to

ask Microsoft for access to crucial technical information, including certain APIs, that Netscape needed in order to ensure that Navigator would work well on systems running Windows 95.

83. Early in the June 21 meeting, Microsoft representatives told Barksdale and the other Netscape executives present that they wanted to explore the possibility of building a broader and closer relationship between the two companies. To this end, the Microsoft representatives wanted to know whether Netscape intended to adopt and build on top of the Internet-related platform that Microsoft planned to include in Windows 95, or rather to expose its own Internet-related APIs, which would compete with Microsoft's. If Netscape was not committed to providing an alternative platform for network-centric applications, Microsoft would assist Netscape in developing server- and (to a limited extent) PC-based software applications that relied on Microsoft's Internet technologies. For one thing, the representatives explained, Microsoft would be content to leave the development of browser products for the Mac OS, UNIX, and Microsoft's 16-bit operating system products to Netscape. Alternatively, Netscape could license to Microsoft the underlying code for a Microsoft-branded browser to run on those platforms. The Microsoft representatives made it clear, however, that Microsoft would be marketing its own browser for Windows 95, and that this product would rely on Microsoft's platform-level Internet technologies. If Netscape marketed browsing software for Windows 95 based on different technologies, then Microsoft would view Netscape as a competitor, not a partner.

84. When Barksdale brought the discussion back to the particular Windows 95 APIs that Netscape actually wanted to rely on and needed from Microsoft, the representatives from Microsoft explained that if Netscape entered a "special relationship" with Microsoft, the company would treat

Netscape as a “preferred ISV.” This meant that Netscape would enjoy preferential access to technical information, including APIs. They intimated that Microsoft’s internal developers had already created the APIs that Netscape was seeking, and that Microsoft had not yet decided either which ISVs would be privileged to receive them or when access would be granted. The Microsoft representatives made clear that the alacrity with which Netscape would receive the desired Windows 95 APIs and other technical information would depend on whether Netscape entered this “special relationship” with Microsoft.

85. After listening to Microsoft’s proposal, Barksdale had two main questions: First, where would the line between platform (Microsoft’s exclusive domain) and applications (where Netscape could continue to function) be situated? Second, who would get to decide where the line would lie? After all, the attractiveness of a special relationship with Microsoft depended a great deal on how much room would remain for Netscape to innovate and seek profit. The Microsoft representatives replied that Microsoft would incorporate most of the functionality of the current Netscape browser into the Windows 95 platform, perhaps leaving room for Netscape to distribute a user-interface shell. Where Netscape would have the most scope to innovate would be in the development of software “solutions,” which are applications (mainly server-based) focused on meeting the needs of specific types of commercial users. Since such applications are already minutely calibrated to the needs of their users, they do not present platforms for the development of more specific applications. Although the representatives from Microsoft assured Barksdale that the line between platform and solutions was fixed by a collaborative decision-making process between Microsoft and its ISV partners, those representatives had already indicated that the space Netscape would be allowed to occupy between

the user and Microsoft's platform domain was a very narrow one. Simply put, if Navigator exposed APIs that competed for developer attention with the Internet-related APIs Microsoft was planning to build into its platform, Microsoft would regard Netscape as a trespasser on its territory.

86. The Microsoft representatives did not insist at the June 21 meeting that Netscape executives accept their proposal on the spot. For his part, Barksdale said only that he would like more information regarding where Microsoft proposed to place the line between its platform and Netscape's applications. In the ensuing, more technical discussions, the Netscape executives agreed to adopt one component of Microsoft's platform-level Internet technology called Internet Shortcuts. The meeting ended cordially, with both sides promising to keep the lines of communication open.

87. The executive who led Microsoft's contingent on June 21, Daniel Rosen, emerged from the meeting optimistic that Netscape would abandon its platform ambitions in exchange for special help from Microsoft in developing solutions. His sentiments were not shared by another Microsoft participant, Thomas Reardon, who had not failed to notice the Netscape executives grow tense when the Microsoft representatives referred to incorporating Navigator's functionality into Windows. Reardon predicted that Netscape would compete with almost all of Microsoft's platform-level Internet technologies. Once he heard both viewpoints, Gates concluded that Rosen was being a bit naive and that Reardon had assessed the situation more accurately. In the middle of July 1995, Rosen's superiors instructed him to drop the effort to reach a strategic concord with Netscape.

88. Had Netscape accepted Microsoft's proposal, it would have forfeited any prospect of presenting a comprehensive platform for the development of network-centric applications. Even if the versions of Navigator written for the Mac OS, UNIX, and 16-bit Windows had continued to expose

APIs controlled by Netscape, the fact that Netscape would not have marketed any platform software for Windows 95, the operating system that was destined to become dominant, would have ensured that, for the foreseeable future, too few developers would rely on Navigator's APIs to create a threat to the applications barrier to entry. In fact, although the discussions ended before Microsoft was compelled to demarcate precisely where the boundary between its platform and Netscape's applications would lie, it is unclear whether Netscape's acceptance of Microsoft's proposal would have left the firm with even the ability to survive as an independent business.

89. At the time Microsoft presented its proposal, Navigator was the only browser product with a significant share of the market and thus the only one with the potential to weaken the applications barrier to entry. Thus, had it convinced Netscape to accept its offer of a "special relationship," Microsoft quickly would have gained such control over the extensions and standards that network-centric applications (including Web sites) employ as to make it all but impossible for any future browser rival to lure appreciable developer interest away from Microsoft's platform.

B. Withholding Crucial Technical Information

90. Microsoft knew that Netscape needed certain critical technical information and assistance in order to complete its Windows 95 version of Navigator in time for the retail release of Windows 95. Indeed, Netscape executives had made a point of requesting this information, especially the so-called Remote Network Access ("RNA") API, at the June 21 meeting. As was discussed above, the Microsoft representatives at the meeting had responded that the haste with which Netscape received the desired technical information would depend on whether Netscape entered the so-called "special relationship" with Microsoft. Specifically, Microsoft representative J. Allard had told