A Truce for Yahoo, but the War May Not Be Over

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Carl C. Icahn backed down over the weekend and worked out an agreement with Yahoo to join Yahoo's board, along with two more people on his slate, which had been set to go to shareholders for a vote on Friday. Yahoo's statement is here.

The tipping point may have been the decision by Bill Miller, the influential portfolio manager at Legg Mason, to vote his 4.4 percent stake in Yahoo in favor of the company's slate of candidates. I'd assume that over the weekend, Mr. Icahn realized that a majority of shareholders held similar views.

This can't exactly be seen as a vote of confidence in Yahoo's current management. Rather it is an expression of a lack of confidence in Mr. Icahn's ability to solve Yahoo's problems.

A troublemaking shareholder like Carl Icahn can make a difference when there is a relatively easy decision a company could make that for some reason its management is resistant to. For the first part of the year, the narrative fit that template: Microsoft wanted to buy the company and Jerry Yang, Yahoo's chief executive, didn't want to sell it. If that was still true, Mr. Icahn's board slate would probably sail to victory.

But in the convoluted story this has become, Microsoft says it no longer wants to buy Yahoo and Mr. Yang is desperate to sell it. If Mr. Icahn found himself in control of Yahoo, what could he do? He suggested he may just sell Yahoo's search business to Microsoft, leaving shareholders owning a portal with some serious problems and a board taking cues from an investor who hardly uses a computer.

Under the plan worked out over the weekend, one member of Yahoo's nine-member board — Robert Kotick, the chief executive of Activision Blizzard — will not stand for reelection. Mr. Icahn will join the board, as will two people chosen by Yahoo's board, upon the recommendation of its nominating committee. They will chose from a list that includes the eight remaining members of Mr. Icahn's proposed slate and Jonathan Miller, the former chief executive of AOL.

Mr. Miller represents a fine addition to Yahoo's board. The rest of the slate presents a tougher choice. Mark Cuban has real Internet experience. But his biggest moment was selling Broadcast.com to Yahoo for $5 billion, one of Yahoo's worst deals ever. Otherwise, the choice is a bit of a grab bag. Among them are Frank J. Biondi Jr., the former chief executive of Viacom, Adam Dell, a venture capitalist and brother of the PC monger, and Lucian A. Bebchuk, a law professor and shareholder rights advocate.

What happens next? Yahoo needs to stabilize, fill in its thinned management ranks and get back to business. It also has to get the Justice Department to approve its deal to have Google sell its search ads. At some point, maybe soon, the board will have to decide whether it has confidence in Jerry Yang as chief executive. Mr. Miller now becomes a leading candidate for his spot.

The less desperate Yahoo looks, the stronger a position it is in to do any deal that may present itself. In the last six months AOL has come on the block. Buying AOL may well be good for Yahoo, but only at a price that is probably less than its owner, Time Warner, would like to get.

Then, of course, there is Microsoft. Unless Mr. Icahn is far more convincing in the board room than he has been outside it, Yahoo is not going to abandon the Google deal and sell its search unit to Microsoft. So Steve Ballmer, Microsoft's chief executive, must decide now or later whether to put a bid for the whole company back on the table.

Over the last six months, there has been a vigorous debate among us chattering classes about the arguments for and against that deal. By all accounts, Mr. Ballmer has at various times agreed with all of them.

He might well bet that Yahoo's new hybrid board will continue to flounder, allowing him to scoop up the company for much less than the $33 a share he had offered. But if that happens, Yahoo will be truly worth less and Google's lead in all things Internet will be larger.

So ultimately Microsoft is facing the choice between an expensive deal that will swallow all of the company's resources for years or what may well be a further slide into irrelevancy on the Internet. My instinct is that the later is less palatable to Mr. Ballmer than the former.

And all that means that despite the truce with Mr. Icahn announced today, the battle for Yahoo may well not be over.