DOMINANT POSITION (PC SYSTEMS): THE MICROSOFT (II) CASE

Subject: Dominant position
Abuse of dominant position
Licensing

Industry: Personal computer operating systems
(Some implications for other industries)

Parties: Microsoft Corporation

Source: Commission Statement IP/01/1232, dated 30 August 2001

(Note. In our August, 2000, issue, we carried a report on the first Statement of Objections sent to Microsoft by the Commission. This is a second Statement of Objections; it has been merged with the first. The case is another in the series of cases involving European anti-trust control over American corporations.)

The Commission has informed Microsoft Corporation that it believes that the United States software company may have violated European anti-trust rules by using illegal practices to extend its dominant position in the market for personal computer operating systems into the market for low-end server operating systems. Low-end server systems are cheaper servers usually used as file and print servers as well as Web servers. In a Statement of Objections, the Commission also alleges that Microsoft is illegally tying its Media Player product with its dominant Windows operating system. This Statement of Objections supplements one sent to the company a year ago and adds a new dimension to the Commission's concerns that Microsoft's actions may harm innovation and restrict choice for consumers. A Statement of Objections is a formal step in European ant-itrust proceedings and does not prejudge the final outcome.

The Commission's action follows an extensive investigation into Microsoft's Windows 2000 operating system, which was launched in February 2000. Microsoft may have an overwhelmingly dominant position in the market for personal computer (PC) operating systems and also has a very significant market share in the market for low-end server operating systems. Most PCs today are embedded into networks which are controlled by servers, with interoperability - the ability of the PC to talk to the server - providing the basis for network computing.

To enable alternative server software to interoperate in the prevailing Windows PC and server environment, technical interface information must be known. Without such information, alternative server software would be denied a level playing field, as it would be artificially deprived of the opportunity to compete with Microsoft's products on technical merits alone. The Commission believes that Microsoft may have withheld from vendors of alternative server software key interoperability information which they need to enable their products to "talk to"

Microsoft's dominant PC and server software products. Microsoft may have done this through a combination of refusing to reveal the relevant technical information, and by engaging in a policy of discriminatory and selective disclosure on the basis of a "friend-enemy" scheme.
Furthermore, the Commission believes that Microsoft may have reinforced this strategy of extending its dominance from the PC to the server through the operation of an abusive licensing policy for Windows 2000. Under the Microsoft scheme, if customers choose not to use an all-inclusive Microsoft scenario for PCs and servers, but decide to use competing server products, they are forced to bear a double cost. The effect of this policy may be to drive customers artificially towards Microsoft server products, reducing choice to the detriment of the final customer.

Media player

Finally, the Commission also believes that Microsoft may have acted illegally by incorporating its new Media Player product into its Windows PC operating system. Media players are software products which allow consumers to see and hear audio and video files without lengthy download times on their PCs. These innovative products are developed and manufactured by several companies, including Microsoft itself. However, Microsoft's ties its Media Player to its ubiquitous Windows operating system, a channel of distribution which is not available to competing vendors of media players. Microsoft may thereby deprive PC manufacturers and final users of a free choice over which products they want to have on their PCs, especially as there are no ready technical means to remove or uninstall the Media Player product. Competing products may therefore be *a priori* put at a disadvantage which is not related to their price or quality. The result is a weakening of effective competition in the market, a reduction of consumer choice, and less innovation.

According to the Commission, server networks lie at the heart of the future of the Web and every effort needs to be made to prevent their monopolisation through illegal practices. The Commission also wants to see undistorted competition in the market for media players. These products will not only revolutionise the way people listen to music or watch videos but will also play an important role with a view to making Internet content and electronic commerce more attractive. The Commission is determined to ensure that the Internet remains a competitive marketplace to the benefit of innovation and consumers alike.

Microsoft has about two months to reply in writing to the supplementary statement which is now merged with the existing procedure triggered by a Sun Microsystems complaint. This was the origin of the first statement of objections of 3 August 2000. As part of the procedure, Microsoft will have the right of access to the file compiled by the Commission and can also request an oral hearing to present its case. The first statement of objections focused on discriminatory licensing and refusal to supply software information to allow for the interoperability of rival server products with older versions of Microsoft's Windows operating systems. ■