European Union extends investigation of Microsoft

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As the software giant Microsoft seeks to bring an end to its four-year battle with the US Justice Department, the company has come under increasing scrutiny in Europe.

In an extension of the US case, the European Union (EU) investigation focuses upon the company's efforts to use its dominance in computer operating systems to increase its market share for server software that runs networks of Personal Computers (PCs). The EU is also investigating the bundling of Windows Media Player with new versions of Microsoft's operating systems.

In February 2000, the European Commission began an investigation into Microsoft's Windows 2000 operating system, arguing that Microsoft had abused its leading position in desktop computer operating systems with the launch of its Windows 2000 software in the server market. That action was taken on the European Commission's own initiative, but was supported by Microsoft's rivals who presented evidence.

This investigation was followed by a complaint in August 2000 by Sun Microsystems that Microsoft engaged in discriminatory licensing and refused to supply essential information on its Windows operating system.

The expanded EU probe examines:

* Whether Microsoft illegally bundles Media Player—which uses streaming technology to play audio and video over the Internet without lengthy downloads—with its Windows operating system

* If Microsoft illegally uses restrictive license agreements, requiring corporate Windows users to install Microsoft software rather than those of rivals such as Sun Microsystems and IBM.

The EU case has no direct bearing upon that brought by the US Justice Department and 18 states, but will nevertheless be seen as a vindication of Microsoft's opponents. Iowa Attorney General Tom Miller said, "This is the same type of activity as in the American case. I welcome the EU action today. Microsoft's consistent and repeated pattern of illegal behaviour is of serious concern to the Europeans, as it is to us."

If Microsoft is found to have violated European anti-trust laws, the company could in theory face a maximum penalty of up to 10 percent of its annual sales of $25 billion, amounting to a fine of $2.5 billion. In reality, fines in such cases have been limited to less than one percent of revenues.

Microsoft was given 60 days to respond to the charges.

The EU stopped short of an attempt to block the launch of the new Windows XP operating system, due for release on October 25, which incorporates the streaming media and Internet authentication objected to by Microsoft's rivals.

Democratic Senator Charles Schummer of New York asked last month for the Justice Department to include the new product in its antitrust settlement negotiations with Microsoft and called on the company to delay release of Windows XP.

The impact of the latest changes to the Microsoft operating system go beyond attempts to block out rival's products. Industry experts have charged that Microsoft's latest actions will ultimately restrict the open standards of the Internet. Web sites carrying media in rival formats such as Real Audio or Real Video will, they allege, no longer work with new versions of Internet Explorer, which thanks to the Windows monopoly is by far the most popular web browser on desktop computers. The change will force site designers to radically alter the programming code, possibly even requiring two versions of the same site to cater for non-Microsoft browsers. This is already the case with certain sites using the cross-platform programming language Java, to which Microsoft added its own extensions requiring the Windows platform to run. Similarly, authentication changes to the Microsoft operating system are, experts argue, designed to prevent the easy integration with servers from other vendors.

Expert witnesses in the case presented by the US Justice Department to Judge Thomas Penfield Jackson last year addressed all of these issues. Jackson ruled that the company had acted in a criminal manner to maintain a monopoly that stifled technological innovation. He ordered that Microsoft be broken into two, with one company for the operating system and another for the web browser and business applications such as Microsoft Office.

But in a case that signalled a shift of official political opinion more firmly behind the Washington-based company, an appeals court earlier this year removed Jackson from the case for “perceived bias” against Microsoft, and quashed the break-up ruling. The appeals panel upheld the thrust of Jackson’s ruling that Microsoft improperly wielded its monopoly power, but sent the case back to the lower court to be heard by a new judge.

That judge has now been selected at random by computer. Colleen Kollar-Kotelly is a Clinton appointee, with 17-year judicial career. She has ordered a meeting between herself and lawyers for the Justice Department, the 18 states and Microsoft to set out key issues in the case and to develop a mutually agreed plan for how the case is to proceed. The move is widely interpreted as an attempt to jump-start settlement talks. Meetings are due to begin September 21, with all parties required to file briefs by September 14.

The EU’s extended probe, far from adding fuel to the anti-Microsoft camp as some predict, may well work in the company’s favour. Against rival’s claims of stifling innovation and complaints from government (at least in private) that this is not good for the global position of the US, Microsoft has argued that it is precisely their dominance of the industry that secures the leading role of the US in world economic affairs. After what many regard as an attempt by the EU to use anti-trust action to ward off US dominance of Europe’s IT market, Microsoft may find stronger support amongst America’s political elite.