European antitrust case finds against Microsoft

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The European Commission issued a statement March 24 announcing that it had found that Microsoft broke the European Union competition law. After a five-year investigation the EC concluded that Microsoft has carried out illegal practices "by leveraging its near monopoly in the market for PC operating systems (OS) onto the markets for work group server operating systems and for media players."

The statement adds, "Because the illegal behaviour has been ongoing, the Commission has ordered Microsoft to disclose to competitors, within 120 days, the interfaces required for their products to be able to 'talk' with the ubiquitous Windows OS. Microsoft is also required, within 90 days, to offer a version of its Windows OS without Windows Media Player to PC manufacturers (or when selling directly to end users). In addition, Microsoft is fined 497 million euros for abusing its market power in the EU."

The European Commissioner Mario Monti found that "Microsoft abused its market power by deliberately restricting interoperability between Windows PCs and non-Microsoft work group servers, and by tying its Windows Media Player (WMP), a product where it faced competition, with its ubiquitous Windows operating system."

The findings have been attacked by United States assistant attorney General Hewitt Pate, who in a statement called the $613 million fine "unfortunate" as it surpasses fines the Commission has imposed on price-fixing cartels and that may send the wrong message about anti-trust enforcement priorities.

Pate said that in the case brought against Microsoft by the US Department of Justice, it never proposed that Microsoft remove any part of Windows: "Imposing anti-trust liability on the basis of product enhancements and imposing 'code removal' remedies may produce unintended consequences," Pate warned. "Sound anti-trust policy must avoid chilling innovation and competition even by 'dominant' companies. A contrary approach risks protecting competitors, not competition, in ways that may ultimately harm innovation and the consumers that benefit from it."

There is a great deal of hot air here. The US antitrust case against Microsoft was never about securing a greater choice for consumers. In the original hearings held by Judge Jackson in 2000, a mass of evidence was brought forward that showed how Microsoft had subverted new technologies such as the Java programming language, in order to ensure the dominance of the Windows desktop.

The case reflected a growing feeling among a section of America's ruling elite that the US was in danger of losing out to its economic rivals in Japan and Europe because, in protecting its dominant place in the market for desktop computers, Microsoft was actually retarding the development of new technologies emerging around the Internet.

Jackson recommended the break up Microsoft into separate companies for the OS and applications such as Microsoft Office, as the only way to curb the predatory and illegal practices inherent to the company. Following the stolen election by George W. Bush in 2000, his findings were overturned.

The new Department of Justice reached an agreement with Microsoft, amid allegations of political interference that had little impact upon business practices. [See: "US Justice Department drops demand for Microsoft break-up", 10 September 2001]

With Bush in power, Microsoft was able to convince the now dominant sections of the political establishment in the US that the interests of American capital were best served by preserving the monopoly and using the economic weight of Microsoft against the rivals of the US.

The EC case showed that the European capitalists, for their part, no longer accepted the unchallenged dominance of Microsoft. The five years in which the case has been running have seen an increasing numbers of European governments and city councils switching to the open source Linux operating system.

Like its US counterpart, however, the measures imposed against Microsoft, far from being "excessive", can be seen to have more bark than bite.

The fine, while the biggest ever imposed in an anti-trust case, amounts to a mere two-week's cash flow to Microsoft. Industry experts estimate the $600 million to be around two percent of revenues and about 0.5 percent of cash on the balance sheet. The commission has the power to impose fines of up to 10 percent of revenues and the maximum fine could have been as high as $3.5 billion. Microsoft has cash reserves in excess of $50 billion.

On the issue of making the interfaces available, Monti pointed out that this did not mean a demand for Windows source code to be released and that Microsoft has a right to charge "reasonable" royalties for the "documentation" if it proves to be protected by Intellectual Property (IP). Representatives of the open source community were quick to criticise this. Jeremy Allison, the leader of the Samba team that develops networking software for interaction between Linux/UNIX systems and Windows servers, said that royalties make the interface provision "useless as it

explicitly excludes one of the few potential competitors Microsoft has, the free software/open source community."

Allison told *LinuxWorld.com* that the language of the EC ruling is "vague and unclear", but it "sounds like it will allow Microsoft to charge for access to the interface definitions themselves (The 'IDL' - Interface Definition Language fields that contain the description of the interfaces) and prevent their public disclosure." Allison said it would have been better for the EC to impose no fine and force Microsoft to put the interfaces in the public domain. "This would allow the possibility of real competition. Allowing Microsoft to retain control in any form over the interface disclosure leaves the competitive landscape unchanged," he said.

The most distasteful part of the findings from Microsoft's standpoint is the demand that they release a version of Windows without the Windows Media Player included. Microsoft general council, Brad Smith, has said the company would disown such a product. Calling it Windows amounts to compulsory licensing of the Windows trademark, a defence that Smith says Microsoft is going to use when it appeals the EC's decision against it in the Court of First Instance in Luxembourg. It is likely that such an appeal would be won and Microsoft's proposal to distribute competing media players alongside Windows Media Player adopted instead.

In any case, an appeal is likely to take five years, during which time technology will have moved on to such an extent as to render the proposals useless.

The EC's proceedings against Microsoft is also motivated by efforts to end the reliance upon a US corporation for strategic technologies. In the end, however, such efforts will prove fruitless and it will be business as usual for Microsoft.

This is because the problem does not lay with Microsoft but with capitalism. Microsoft represents only the most extreme example of how the interests of masses of ordinary working people are subordinated to the profits of big business. The EC case, of course, in no way challenges this. It is simply designed to secure a more prominent place for Europe in that process. The ruling elite in Europe, no less than its American counterpart, recognise the sanctity of private property. This is graphically illustrated in the current dispute of software patents. [See European battle over software patents http://www.wsws.org/articles/2003/dec2003/pated231.shtml]

Both the US case and the EC ruling reveal that Microsoft has played a significant role in retarding the development of technological innovations that threaten its dominance. Even as the present case heads for the appeals court, the seeds of the next are being sown. The next release of the Windows operating system is said to include a search facility designed to overturn Google as the predominant Internet search engine.

Under existing conditions of the dominance of Microsoft, it is not possible for technologies to achieve success or failure on the basis of their technical merits alone. A 95 percent share of the desktop market means that applications released by Microsoft become the de facto standard, regardless of whether they are the best tools for the job.

The growing dissatisfaction among business and home users alike is expressed in the increasing adoption of open source solutions as an alternative to Microsoft. This will in turn lead to more predatory actions by Microsoft, such as its support for a case challenging the legal basis for open source software. The US software company, SCO Group, filed a $1 billion civil lawsuit against IBM, claiming the latter had stolen proprietary code from the UNIX operating system for use in the current version of Linux, the free open source operating system. [See: "US court case: Renewed attack on open source software", 12 December 2003]

Monopoly is the inevitable outcome of the development of capitalist economy. Not only in computer technology, but also in every major industry, the process of capitalist accumulation leads to the big capital driving small capital out of business, with one or a handful of companies ultimately becoming dominant.

The full technological and social potential of society cannot be realised by regulating this or that aspect of the capitalist market. The issue that must be confronted is one of an economic system whose basic requirements dictate practices that are socially destructive.

Microsoft is the product of a social system in which the benefits of technology are judged not by their ability to advance society as a whole, but their ability to generate personal wealth for corporate CEOs. This situation must be reversed.

Computer related technologies have today such huge social significance that they cannot be left in the hands of businessmen and investment bankers. What is required is the transformation of capitalist monopolies into public utilities, operated under the democratic control of the working class. In place of the market as the determinant of which standards prevail, bodies of experts, answerable to the people, should be established, which will oversee standardisation and approve new innovations. While the basis for such a development can be seen within the formation of such bodies as the World Wide Web Consortium and open source projects such as Linux and the Apache foundation, this cannot be realised fully under capitalism.