Microsoft and RealNetworks settle antitrust case

Mike Ingram
14 October 2005

Microsoft and RealNetworks announced October 11 a settlement to their antitrust case and the creation of a new partnership worth $761 million to RealNetworks.

The settlement silences one of Microsoft's most vocal critics and a key player in the case against the software giant brought by the European Union.

Last March, the European Commission (EC) found that Microsoft broke the European Union's competition law. After a five-year investigation, the EC concluded that Microsoft had 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 added, "Because the illegal behavior 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."

Microsoft was fined $600 million, far less than the company has spent in settling antitrust cases out of court. The ruling also included the opening of Microsoft's Applications Programming Interface (API) and the production of a new version of Windows without the Windows Media Player. Microsoft is currently in the process of appealing the ruling, but the deal with Real is seen as a significant blow to the EU case.

In a joint press release October 11 the two companies stated: "Today's agreement includes a global settlement of all antitrust disputes, including the lawsuit brought by Real against Microsoft nearly two years ago in the United States and Real's participation in the proceedings initiated by the European Union and Korea. The agreement includes a variety of assurances regarding the design of the Windows operating system, including Windows Media Player, and access for Real to a broad range of Windows platform technologies. Among other things, Microsoft will provide Real expanded access and long-term licenses to a wide range of Windows Media and security technologies, that will enable Real to build services and software that enhance consumer's experience with Real's products and services and take advantage of innovations in Windows Vista."

Microsoft said it will pay $460 million in cash and provide services worth $301 million to promote RealNetworks' Rhapsody online music service and digital games, a cash settlement worth more than half Real's current estimated value. The cash settlement is the latest in a long line as Microsoft has sought to buy off its rivals' withdrawal from antitrust actions. Last November, the software giant agreed to pay $536 million to Novell over legal claims between the two companies related to Novell's NetWare operating system. Earlier last year, Microsoft struck a ten-year deal with Sun Microsystems in which the company paid $1.95 billion to resolve antitrust and patent issues. A deal with AOL Time Warner costing $750 million also secured that company's withdrawal from antitrust proceedings.

The settlement with Real, like others before it, shatters the self-created myth that Microsoft's rivals were primarily interested in freedom of choice for the consumer. With their opposition to Microsoft's monopoly based upon the extent to which it limits the profit-making abilities of rival corporations, in the end each rival has been shown to have its price.

In return for an agreement to jointly promote and market RealNetworks' music subscription service, Rhapsody, on Microsoft MSN and offer RealNetworks' digital games through MSN Games and Xbox Live Arcade for XBox 360, not to mention the massive cash injection, Real has agreed to support Microsoft's Windows Media DRM (digital rights management) format in its RealPlayer media software, a move that helps Microsoft evolve Windows as the platform for a digital media hub.

"Today we're closing one chapter and opening a new one in our relationship with Microsoft," said Rob Glaser, Founder and CEO of RealNetworks. "The legal chapter is being closed with an appropriate and fair outcome that sets the stage for a very productive and collaborative relationship between our companies. By integrating Real's premier music and games services into Microsoft's very popular MSN service, we will reach more consumers today and deliver even better products and services tomorrow."

Microsoft's Bill Gates added, "This agreement will provide MSN's millions of customers with easier access to subscription services for the music and games they love. Digital music is one of the fastest growing segments of the online entertainment industry, and by promoting Rhapsody's subscription music services from within MSN, we will provide a better experience for our users."

From a legal standpoint there is nothing in the settlement with Real that invalidates the ruling of the European Union last year. Though some of the specific measures, such as the release of the API's was designed to aid Real in the development of its software, the basis of the case was that Microsoft had used its dominance of the desktop operating system in order to prevent competition to its Windows Media player by bundling the latter with the Windows Operating System. Though testimony from Real was a key part of the case, the investigation was not brought specifically in behalf of Real.

A lobby group made up of prominent Microsoft rivals including International Business Machines, Oracle and Nokia has called on the European Commission to defend its 2004 ruling.

The companies are part of the European Committee for Interoperable Systems (ECIS), which also includes Red Hat and RealNetworks. Responding to the settlement with Real, ECIS legal counsel Thomas Vinje said, "Any such settlement should not result in the closure of the EU (Microsoft) case. The Commission should, and we expect it will, proceed vigorously with its case against Microsoft."

"Microsoft has not given up its exclusionary policies.... Indeed any settlement in fact validates the Commission's case. Since the Commission is not bound by any private settlement, ECIS therefore urges the Commission to vigorously defend its 2004 Decision."

Vinje added, "This is yet another example of Microsoft paying substantial sums to firms to settle specific lawsuits while the courts are still reviewing the matter without fundamentally changing its market behavior which has been deemed to be anti-competitive by competition authorities in numerous jurisdictions. Pursuing the EU and Korean case is therefore more important than ever."

Jonathan Todd, spokesperson for EU competition commissioner Neelie Kroes, told *Forbes* magazine that the settlement between Microsoft and RealNetworks would not affect the EU's case against Microsoft in any way. "The EC will continue to work to ensure Microsoft's total compliance with the March 2004 decision," he said.

According to the *Korea Times*, Korea will continue its investigation into the antitrust charges against Microsoft. The Fair Trade Commission (FTC) said that the Korea's anti-monopoly regulator would make its ruling on Microsoft as expected late this month or early next month.

"The settlement between the two companies does not affect our deliberations on the case. Even if RealNetworks drops its accusation against Microsoft, we will keep it going," FTC spokesman Park Sang-yong told the *Korea Times*.

"Before RealNetworks filed a complaint against Microsoft last October, we suspected antitrust activity in April. Subsequently, the exit of RealNetworks does not change the probe," Park added.

"We regard this investigation to be about consumer welfare and the development of the national economy."

For its commercial rivals, opposition to Microsoft's monopoly is based solely upon its impact on their profits. If Microsoft can convince them that the monopoly can actually be of benefit, all opposition is dropped. But the various antitrust cases that have been brought against Microsoft, beginning with one in the US itself, have expressed broader concerns than the profits of this or that corporation.

In the US, the antitrust case brought by the former Clinton administration 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.

The judge presiding over the case took the extraordinary step of recommending the breakup of 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.

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 its rivals.

The antitrust ruling in Europe and that expected in Korea are an attempt to resist this, for both economic and political reasons. There is an increasing concern that the development of strategic technologies is left largely in the hands of a US corporation.