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The European Union's Microsoft Case: No Time for Jingoism

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Body

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If press accounts are to be believed, the European Union is about to clamp down on Microsoft for violating European competition laws. Stand by for a flood of editorial and political outrage. We can hear it now from the laissez faire newspaper editorialists to the big-business think tanks:

"Those arrogant Europeans! What right did the European Union have to bring an antitrust case against Microsoft, especially since our Justice Department just finished its own lengthy suit against the same company? The United States had antitrust enforcement for almost 70 years before the Europeans even thought about the subject. But now these newcomers in Brussels have the gall to rule that our icon of the New Economy has been competing unfairly! Is this yet another exercise in America-bashing? Or is it to protect inefficient European companies?

The answer is: none of the above!

The EU's antitrust case against Microsoft was filed out of legitimate concerns over a wide array of allegedly anticompetitive conduct that directly and substantially affects the European market. The remedies that the EU is rumored to be about to order may well be necessary and fair. They may also be in the best interests of the American economy and European and American consumers alike, for several reasons.

First, it should be stressed that the EU antitrust case against Microsoft involves different conduct and different markets from the antitrust case that was filed by the US Department of Justice and a group of States. In the US case, Microsoft was found to have illegally maintained its monopoly in the PC operating systems market. It did this by engaging in a dozen different types of illegal acts, many of which involved Internet browsers; others involved Java technology (as to which another judge in Baltimore recently likened Microsoft's conduct to Tonya Harding kneecapping her opponent.)

By contrast, the EU case involves allegations of an attempt by Microsoft to take over the market for workgroup server operating systems (the software that makes computer networks operate) by deliberately preventing servers made by other companies from interconnecting well with the 95% of PCs that use a Microsoft operating system. This case also involves an attempt by Microsoft to take over the market for media players by using a variety of illegal tactics, none of which were challenged as illegal in the US case.

Both cases involve allegations of an abuse of monopoly power by the same global corporation. In both cases Microsoft engaged in conduct that had no other purpose than preventing other firms from competing. But the conduct at issue was completely different, as were the markets involved. Indeed, in the States' case against Microsoft, Judge Kollar-Kotelly would not consider a remedy for these other markets, saying that a separate case would have to be brought to consider the subject.

Second, the harm from Microsoft's anticompetitive conduct produced anticompetitive effects in Europe (indeed, worldwide). The Europeans are merely applying their rule book to protect their consumers against ANY predator, just as

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the US Department of Justice recently brought an analogous landmark case against an international vitamin cartel. A group of mostly European companies colluded to raise the prices of vitamins worldwide. The U.S. antitrust case against this cartel resulted in fines and damages that have, so far, exceeded \$ 2 billion. The EU and the US actually cooperate to fight such abuses, among others, to cope with some effects of globalization.

Last but not least, the Europeans have no favored child in this fight - their interest is in opening up the affected markets to competition so as that the resulting increased innovation will benefit all consumers in the form of better choices and lower prices. As it happens, the firms whose innovative efforts were anticompetitively suppressed were mostly American companies. Whatever remedies the EU might impose will be intended to enhance their ability to innovate, benefiting both European and American consumers.

We don't know how the EU will rule, but if it finds Microsoft guilty and imposes a remedy that is further-reaching than the one our Justice Department thought was sufficient, we should be prepared to evaluate it with an open mind. Ignore the jingoism that may erupt. Discount what you will hear about European antitrusters not understanding modern economics. Be skeptical of any declarations that their competition policy regime is inferior to ours, favors European companies, or picks on American companies. Focus instead on what these respected, experienced professionals find that Microsoft did that was wrong and what, in that light, it will take to restore and protect competition.