

The EU Microsoft Decision

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Outline of presentation

- Overview of the case
- Network effects
- The lack-of-interoperability abuse: old wine in new bottles?
- The tying abuse: protection of competitors or consumers?

Overview of the Ms case

- Subsequent to a complaint by Sun Microsystems, the European Commission, and other regulatory agencies, started an inquiry into Microsoft's business practices
- The Commission focused on two main points: work group server operating systems and media players
- After five years of investigation, the Commission published its decision in march 2004.

Overview of the Ms case

- The Commission found Microsoft guilty of leveraging its quasi-monopoly into both related markets.
 - Microsoft possesses a near monopoly in the market for PC operating systems
 - Microsoft has tried to leverage its dominant position into the market for work group server operating systems by restricting interoperability between Windows PCs and non-Microsoft work group servers
 - Microsoft has leveraged this monopoly into the market for media players by tying its own Windows Media Player to its operating system

Overview of the Ms Case

- Microsoft's refusal to supply risks to eliminate market competition, granting Microsoft a dominant position in a heretofore competitive market
- Microsoft's refusal to supply stifles innovation in the impacted market
- Microsoft's refusal to supply thus diminishes customers' choices and locks them into a homogeneous Microsoft solution
- The Commission ordered Microsoft to facilitate competition by ordering interoperability through disclosure of information

Overview of the Ms case

- The Commission has found that the following necessary criteria of tying cases have been fulfilled in the Microsoft case involving the Windows Media Player:
 - The tying and tied goods are two separate products
 - The undertaking concerned is dominant in the tying product market
 - Customers do not have the choice to obtain the tying product without the tied product
 - Tying forecloses competition
- To remedy this situation, Microsoft has been required to offer a Windows operation system version that does not include the Windows Media Player

Network Effects

- Some characteristics that can be found in markets with strong network effects:
 - “Winner-take-most” markets
 - Extreme inequality in market shares
 - Superimposing a different market structure proves futile
 - Addition of competitors may not change market structure significantly (from one monopoly to the other)
 - Market inequality does not imply weak competition
 - Entry barriers: chicken and egg problems – fundamental question: is market contestable?

Issues relating to the interoperability abuse

- When should access be mandated?
- Are IP assets that different from physical assets?
- Is a level-playing field essential for effective competition?
- What are the implications of mandating access?

Issues relating to the interoperability abuse

When is a facility essential?

- Impossible to replicate the asset
- No alternative means of entering the relevant market
- Existence of spare capacity
- Lack of effective competition in the “foreclosed” market
- Owner of asset competes in the “foreclosed” market

Q: Is interoperability an essential facility?

Big difference between “essential to compete” and “it would make my life easier”

Implications of mandating access

- Mandating access implies the need for on-going regulation
- The impact on investment decisions not only in the markets under consideration but elsewhere as well.

Issues relating to the tying abuse

- The free distribution of additional software can be viewed as pro-competitive, as it enhances demand for the operating system
- Firms with a monopoly thus have a pro-competitive incentive to enter the markets of complementary products
- The effect of the different proposed remedies (i.e. break-up, imposing disclosure, imposing restrictions on contracts) is unclear

Issues related to the tying abuse

- Consumers benefited from the free software, as the price of the operating system did not (or to a lesser extent) rise in response
- Microsoft's free software had essentially the same capabilities as the competing products, thus not reducing significantly customers choice and variety
- The effect of Microsoft's actions/the Commission's remedy on innovation?

Thank you