

Opinion

San Jose Mercury News
www.mercurynews.com/opinion

12A

THURSDAY, MARCH 15, 2007

Another view

Microsoft's European experience troubling for U.S. companies

By Stephen H. Haber, F. Scott Kieff
and Troy A. Paredes

The latest regulatory actions by the competition unit of the European Union against Microsoft could have a profound impact on other U.S. companies doing business in Europe. Consumers may end up paying the freight for runaway regulation.

This latest salvo by the EU's European Commission is a voluminous "Statement of Objections" in its unending antitrust proceedings against Microsoft. True, domestic and foreign governments should be concerned whenever a single large player dominates a market through unreasonable restraints on competition. That's

what antitrust laws are designed to remedy. But the devil is in the details. The European Commission seems to be overreaching in its efforts.

We believe the commission is playing a simple hold-up game that is designed more to shake down an individual company for the benefit of the government regulators than to help competition. This is alarming not just to Microsoft but also to other large, U.S.-based companies doing business in Europe. This treatment of Microsoft at the hands of a unilateral regulatory body will probably be used against other global businesses as the commission's appetite to regulate grows. Companies like Apple and Qualcomm already have drawn the commission's attention.

In both Europe and the United States, the antitrust proceedings against Microsoft seemed to settle on a set of obligations under which Microsoft would make available to other software makers technical protocols to help them write and run code to al-

low interoperability with the Windows platform. In both cases, Microsoft agreed to license the necessary technologies and intellectual property associated with these protocols to other software companies on reasonable terms.

In the United States, after discussion between the company and U.S. regulators, Microsoft offered acceptable terms, and a significant number of companies immediately signed up.

In Europe, there was an underlying antitrust decision in 2004, which led to almost \$1 billion in fines being paid by Microsoft to the European Commission and an agreement by Microsoft to offer the technical protocols on terms similar to those offered in the United States. Without waiting to see if any companies would refuse to sign up, and without even engaging Microsoft in a discussion, the European Commission conducted its own proceedings.

The resulting Statement of Objections on March 1 contained more than

We believe the European Commission is playing a simple hold-up game that is designed to shake down one company.

100 pages of objections to Microsoft's offer. In the multibillion-dollar application software market, estimates put the maximum amount of money that Microsoft could have hoped to receive for these licenses at no more than \$30 million. So, it took the European Commission more than 100 pages to object to what amounts to a tiny potential royalty of roughly 1 percent, given the industry's size.

Why would the commission make such a big deal over such a tiny amount of money in such a big market? Why would it end-run an established process to bring this new complaint? It's hard to tell. But because the amount at stake for other software companies is so small, helping those companies might not be what this is all about.

The commission's primary objective may be to bolster its own reputation or the reputations of some of its individual leaders by cracking down on Microsoft. Or, the commission wanted to take money from Microsoft to line its own coffers. At any rate, improving licensing terms for other companies does not appear to be the primary regulatory goal. By challenging the price that Microsoft could charge for access to these interoperability protocols, in the name of helping those who would have to pay the fees, the European Commission is generating for itself the excuse to hit Microsoft with sanctions of millions of dollars a day.

In either case, the principal beneficiaries of such a tollbooth strategy are the government regulators who collect the tolls — be they dollars or personal political points. But the company paying the tolls will pass them on to consumers. In some cases, businesses may simply choose to do business elsewhere.

STEPHEN H. HABER is a senior fellow at the Hoover Institution and a professor at Stanford University. **F. SCOTT KIEFF** is a research fellow at the Hoover Institution and a professor at Washington University in St. Louis. **TROY A. PAREDES** is a professor at Washington University in St. Louis. The authors are collaborating on a research project.