Is Microsoft ruling an example of European protectionism ?

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Competition is alive and well on the browser market. What, then, explains the Commission's continued pursuit of Microsoft?

Is Microsoft hindering internet browser competition by tying its Microsoft Internet Explorer to Windows? Can things really look so different in the EU from the way they look to the rest of the world?

Last week's announcement that the European Commission had grounds to believe that Microsoft had been breaking EC competition rules since 1996 by 'tying' its web browser Internet Explorer to the Windows operating system followed a complaint made last year by Opera, the Norwegian browser manufacturer.

Opera was failing to break through in the market, though other rivals with better products were at the time starting to eat into dominant Microsoft's historically high share. Opera asked the Commission competition department to force Microsoft to unbundle Internet Explorer from Windows and, going a step beyond the Commission's controversial remedy in the Windows MediaPlayer case, to mandate the inclusion of alternative browsers pre-installed on the desktop.

Even at the time, Opera's arguments seemed a little thin, since any PC manufacturer or end-user was free to uninstall Internet Explorer or/and install any other browser of his/her choice, or even to use multiple browsers. In economic terms, this means that the market does not have any barriers to entry, so that Microsoft does not hinder effective competition within it.

Since then Microsoft has seen a steep drop in its market share – especially in the second half of 2008 – because of strong competition from internet browsers such as Open Source Mozilla's Firefox and Google's Chrome. One might have thought that the problem was, well, solving itself (would Google have invested in developing its sleek, fast competitor if the market were really being foreclosed by Internet Explorer?).

It is true that many Windows customers enjoy the convenience of having the web browser integrated into the operating system. Maybe, instead of forcing them to do without, they should simply be adequately informed as part of their computer purchase that they can choose between all browsers available. In that case they would keep the right of choice, while a software producer would keep its legitimate right to connect its product to its own browser. Otherwise, a successful company could be forced to take care of and promote its own competitors.

After the Court of First Instance's judgment on the Microsoft-Commission dispute, lessons were learnt and full interoperability was achieved. It is only natural that, now and in the future, some companies (will) keep trying to play on and benefit from this case law in every way they see fit.

Still, not all markets and circumstances are comparable and the law disallows concrete behaviours, and is not applicable at a general/abstract policy level but on the basis of the facts at hand. So the delivery of a statement of objections by the Commission's competition department is something of a surprise, though coming from such an expert service no doubt well thought-through. Can it be justified by the need to assert the continuing relevance of competition policy in a world where competition policy is being thrown out the window so governments can jump-start their economies in the wake of the financial crisis? Is it a US versus Europe thing, Opera being an honorary native son despite Norway's non-membership of the Union?

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