# Second look at Oracle-Sun takeover is warranted

**By Spyros A. Pappas**
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**The risk that Oracle may limit access to a commonly used standard – Java – needs to be assessed.**

The European Commission's directorate-general for competition surprised some observers in early September when it decided to take a closer look at Oracle's proposed takeover of Sun Microsystems, moving formally to Phase 2 under the EC merger regulation. The deal had been cleared by the US Department of Justice in August. Shortly after getting the green light from the American regulator, Oracle quietly passed up the chance to propose "commitments" to address any lingering EU concerns about the deal, apparently confident that Brussels would follow Washington's lead.

Instead, the European commissioner for competition, Neelie Kroes, has given her services another three months to look into the file and expressed particular concern about the effect of the tie-up on the market for enterprise databases, in which Sun's MySQL currently competes with Oracle's product line. DG Competition noted that the market for databases is already a highly concentrated one, with three companies – Oracle, IBM and Microsoft – together accounting for around 85% of the market in terms of revenue. Sun's share is marginal if the yardstick is revenue (the Wall Street Journal has put it 14th worldwide, with 0.2% of the market), but is the leading open source database software.

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At the press conference announcing the move to Phase 2, a Commission spokesman was at pains to emphasise that the extension was a "routine" matter. But it is hard to see why DG Competition would invest time and energy in taking a deeper look (not to mention being prepared to incur the wrath of Sun and Oracle stockholders, since competitors are chipping away at their market shares while the deal is put through the regulatory hoops) if it does not have some specific aims, or remedies, in mind.

Superficially at least, Oracle and Sun would appear to have complementary lines, leaving little room for anti-trust concerns. Oracle is a world-class software company with a highly profitable enterprise database business; Sun is the world's fourth-largest maker of computer servers, and the owner of a lucrative enterprise software business that includes the ubiquitous Java application platform.

But Sun's business model – making its money on services and hardware, rather than from license fees – allowed it to license Java to application builders (and corporate users) for free, and to encourage open-source development of its technologies while – importantly – retaining intellectual-property rights. Oracle is a pure software company that will want to monetise its entire software product line, including what it inherits from Sun. At a minimum, Oracle will want to limit the scope for Sun's open-source software (MySQL database software and the Solaris server operating system) to compete with its own proprietary products.

It will also have incentives to hike up licensing fees for Java users, with the IP rights to Java code constituting a potential stranglehold over competitors. The estimated six million software developers whose products incorporate Java functionality, including companies like Europe's SAP who are building applications to run on Sun servers and competing directly with Oracle's proprietary software (Java is a vital component in nearly every application that SAP sells), may get a shock when the rules change post-merger.

Though in its announcement regarding the opening of Phase 2 DG Competition seemed to be excluding Java from the scope of the investigation, it is a legitimate area for concern. One analyst has described the intellectual-property rights accruing to Sun from Java – patents and copyrights to the code embodied in the Java platform editions and in dozens of critical standards – as "monumental".

Oracle itself has attempted in the past to weaken the grip that Sun had on the Java Community Process (JCP), calling for changes to give the JCP the trappings of a real standards body controlled by all of its members, not just one. Now it will be congratulating itself that its past attempts at reform were to no avail.

EU-based companies that calculated that it was not worth trying to interest Brussels regulators in the issue during Phase 1 may now be motivated to chime in.

There is some irony in the conspicuous absence of commentary on the deal from either the European Committee for Interoperable Systems (ECIS) or Open Forum Europe (OFE). ECIS, which counts Oracle, Sun, and IBM amongst its members, is on record as warning against letting a single undertaking gain control over a standard commonly used in the IT industry, with the attendant risk that it may exclude competitors from the market by limiting their access to the standard. The acquisition of Sun would appear to land Oracle in precisely this position, as sole custodian of Java – yet no press release to this effect has issued yet from this quarter. Some public comment might reassure the outside world that its members are bound by something other than commercial rivalry with Microsoft.

The Commission has until mid-January to give the deal the thumbs-down or approve it, with or without imposing conditions.

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