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# EC Takes a Tough Line With Antitrust Judgement-- Will Microsoft Ruling Have Knock-On Effect?

November 2007
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Now that the dust has settled on the legal battle between the European Commission and Microsoft, the question remains what, if any, impact the judgement of the Court of First Instance (CFI) may have on high-tech companies in the years to come.

The stakes in the Microsoft appeal were very high. The case represented the most high-profile and resource- intensive enforcement action attempted by the EC. The commission had been subject to criticism from US sources alleging protectionist bias and a failure to adequately promote intellectual property and innovation.

Most recently, French president, Nicolas Sarkozy, questioned the value of EU competition law. If the EC had stumbled badly, it would have risked retreat into a ghetto, its main activity processing uncontroversial cartel cases and rubberstamping mergers.

**The Microsoft Ruling**

Against this background, the CFI judgement represents a strong endorsement of the commission's aggressive enforcement position on two points in particular. First, forcing dominant companies to provide interoperability information to competitors, together with the related question of compulsory licensing of intellectual property rights. Second, bundling to achieve market power on the market for the bundled product.

The crux of the commission's case, upheld by the CFI, concerned Microsoft's unlawful leveraging of its dominant position on the desktop operating system market into two other markets: the low-end server market (by denying interoperability information to its competitors) and the media player market (by bundling Windows Media Player into the operating system).

**Should you be worried?**

Do other companies need to be concerned about this outcome? Probably not. It is important to recognise the uniqueness of Microsoft's market position. Few companies have a stronghold on a critical market for more than a decade.

Second, Microsoft's legal and media campaign, casting itself as the defender of competition, innovation and the consumer, lacks credibility. The disclosure of interoperability information remains limited to exceptional circumstances, and the commission is wary of this becoming a tool for complainants to get the information to clone the products of their competitors.

The bundling component of the CFI judgement is perhaps less menacing that it might appear. A

dominant company that intransigently insists on bundling may be vulnerable, but if it is willing to show some flexibility, there are many technical devices that are available to eliminate or attenuate the accusation of foreclosure of competition.

That said, the judgement confirms and consolidates the commission's status as the antitrust authority of choice for the high-tech sector. And as the majority of potential complainants and targets in this industry are US firms, the stage is set for some turbulence in transatlantic antitrust relations.