

What U.S. Courts Could Teach Europe's Trustbusters

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Two recent decisions on different continents illustrate widely divergent approaches to antitrust policy. The European Commission vetoed the merger of General Electric Co. and Honeywell International Inc. largely on the grounds that the merged company would be much stronger than its competitors in aviation equipment. By contrast, a U.S. federal appeals court evaluated Microsoft Corp.'s business practices in light of their presumed effects on consumers.

It is noteworthy that complaints against both the GE-Honeywell merger and Microsoft were brought not by customers, but by rivals. The U.S. political process is often criticized for responding to the pleas of interest groups, even when that harms consumers and other unorganized interests. But in these two cases, Europe appears to be guilty of caving in to powerful interests, whereas the appeals court in Washington rose above special pleading. It used the standard of whether Microsoft's practices helped or harmed the consumer.

The European Commission, under the leadership of Mario Monti, opposed GE's \$42 billion takeover of Honeywell partly because the merged company would offer a much wider range of aviation products than its competitors. In particular, it alleged that the resulting vertical integration would give GE-Honeywell a sizable advantage--by combining GE's important position in aircraft engines and in the financing and purchasing of aircraft with Honeywell's presence in avionics and aerospace products. But the commission paid little attention to whether a merged company—perhaps tougher and more efficient--might bring lower prices and better products.

BUNDLING. The EC voiced special concern that other companies would be unable to compete effectively if the merged company provided discounts to customers that purchased packages of components and services from GE-Honeywell. The worry about such product bundling seems unusually speculative at this time, since bundling has been uncommon in this industry, even where companies such as GE have been dominant. Moreover, economic theory and the evidence compiled in many antitrust cases show that bundling of products, even when it hurts rivals, usually benefits consumers by lowering prices and offering convenient product packages.

Even so, the EC's worries about bundling were probably not the real obstacles to the merger, since the commission could have given approval subject to the restriction that the merged company could not bundle Honeywell's products with GE's, or subject to other limitations on bundling.

Discussion of the Microsoft decision has focused on whether it was a win for Microsoft or for the government. But the main public-policy message of the ruling is that business practices should be evaluated by whether they hurt or help consumers. Microsoft and other companies should be allowed to compete aggressively when that contributes to lower prices and other consumer benefits.

FAST CHANGE. Using this criterion, the court overturned the lower court opinion by Judge Thomas Penfield Jackson on several crucial issues. The appeals court effectively killed his recommendation to break up Microsoft into separate companies--controlling its software and operating system--because such a move did not appear to serve consumer interests in an industry with rapid technological progress. Also, the court affirmed that Microsoft could be aggressive and charge lower prices without being ``predatory." The company could tie together its computer operating system and Internet browser--the source of the original complaint--if that benefited consumers of these products, even though Net rivals such as Netscape Communications Corp. were greatly damaged.

To be sure, the District of Columbia Circuit also found that Microsoft abused its monopoly position with various exclusionary practices. For example, the court supported Judge Jackson's finding of liability against the company for commingling the codes for its browser and operating system and for its exclusive marketing arrangements with equipment manufacturers. But underlying these findings against Microsoft was still the appeals court's opinion about the effects on consumers, not on computer manufacturers or companies with competing operating systems, such as Sun Microsystems Inc. The court ordered some of these issues to be considered further in a retrial with a different judge, although Microsoft has already responded to the decision by eliminating several of the criticized practices.

With the growing importance of companies that operate on several continents, it is more important than ever that policymakers in different parts of the world take the right approach to mergers and other antitrust issues. Global antitrust policy would be consistent, and it would also encourage efficiency if business practices were universally judged by their effects on consumers rather than on competitors with political power.