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Europe: United in Regulation

By George Pieler

The road to a blissful united Europe may be strewn with constitutional pitfalls and budgetary roadblocks. Nevertheless, the members of the European Community are unwavering in their collective commitment to out-regulating the U.S. and Asia. Despite Microsoft's payment of massive fines to the EC in compliance with Europe's antitrust decree against the software giant, and its moves to sell Windows in Europe decoupled from its Internet Explorer browser (Europe says that nasty "bundling" of software is anticompetitive), the EC's antitrust officials continue to hold Microsoft in de facto "regulatory receivership."

First EC officials didn't like Microsoft's marketing approach for the stripped-down Windows version, then it didn't like the company's approach to disclosing key elements of its software to competitors, then EC Competition Commissioner Neelie Kroes complained that Microsoft was stalling on its compliance with her Commission's antitrust order. In early June the EC and Microsoft appeared to have an agreement on compliance that would avert Kroes' threat to impose an additional $5 million-a-day fine on Microsoft. Apparently European antitrust enforcement has great potential to be "the gift that keeps on giving" to fill the coffers of Europe's bureaucracy.

Meanwhile, Europe is creating delays of its own in proceeding with both the Microsoft settlement, and the final adjudication of Microsoft's appeal against the EC's antitrust ruling. Bo Vesterdorf, President of Europe's Court of First Instance, is suggesting a special panel of senior judges to hear that appeal, an unanticipated shift that inevitably will slow things down (how much slower can they get?). Vesterdorf's initiative was provoked by an unusual article by the head of the judicial panel reviewing the Microsoft case, Hubert Legal, who suggested EC law clerks might have too much power (why that would be news to anyone is another question altogether).

Further clouding Europe's software scene are Microsoft's reluctance to grant open source providers access to its code as part of its antitrust settlement (still an open question whether they will be compelled to do so), and the European Parliament's failure to regularize software patenting rules across Europe: a common-sense change desired by Microsoft and many European technological leaders, but opposed by open source community proponents. Since the European Union subsidizes open source software development with R&D grants, this is not exactly a level playing field.

If Europe's aggressive stance on the fine print of Microsoft's compliance seems a bit presumptuous for a political union that can't draft a successful constitution, think again. Taxes and regulations are in many respects the financial glue that holds the European Project together. Interestingly enough, while the EC member nations continue to wrangle over the proper management of their budgetary obligations, EC President Manuel Barroso announced that "We at the Commission are thinking of an idea that I find very interesting, and that is the funds from fines imposed on *companies that break competition rules* could go to development aid." Barroso linked his announcement to the coalition called Global Call to Action Against Poverty, which included among its projects Bob Geldof's "Live 8" concerts designed to raise consciousness of African poverty in particular.

"Live 8" promoted some good ideas (cut trade protection), some mediocre ones (Third World debt relief), and some bad ones (global redistribution of wealth—haven't we tried that?). Its immediate aim was to influence policy decisions at the July G8 summit of developed nations, a summit perhaps more influenced by terror attacks in London. Lost in the equation is the fact that the wealth "Live 8" wants to tap into is created by entrepreneurs, innovators, and captains of modern industry who thrive despite, not because of, government interference. Indeed Europe clearly grasps the fact that Microsoft, whatever its faults, is the premier exemplar of the modern multinational corporation. Not coincidentally, Microsoft's Bill Gates has gone far beyond the call of duty in funding anti-poverty and health-improvement strategies for the African continent. As a fun bit of irony, America Online partnered with "Live 8" to radiocast the "Live 8" concerts through Microsoft Internet Explorer, and Microsoft XBox helped bankroll the event.

Mr. Barroso didn't mention Microsoft, the most heavily fined company in history under Europe's competition rules. But the writing is on the wall: Microsoft (and other multinational companies, especially American ones) is a reliable cash cow for Europe, and what better way to cement Microsoft into Europe's budget process than to link Microsoft's fines to a nebulous anti-poverty crusade? Assuming Barroso's plan is implemented, activists can complain that any shortfall in Microsoft's payments to Europe is taking food out of the mouths of starving children in sub-Saharan Africa.

Microsoft can of course handle its own public relations, and indeed Bill Gates linked his own donations of time and money to the cause of Africa with a well-timed appearance at "Live 8" in London. But Barroso's cynical ploy makes clear that Europe wants to market itself as the great "regulatory leveler" between the developed world and the developing nations. That does not bode well for American enterprises doing business in Europe (even enterprises that don't much like Microsoft). Since Europe's low productivity, high taxes, and abundant regulations continue to put it at a disadvantage internationally, it can only increase its power in the world by extorting money from elsewhere: from the U.S. government if possible, and from U.S. companies for certain.

What's indisputable is that all the regulatory holdups and intra-Europe wrangling over the appropriate regulatory framework for software marketing and developing hurt Europe itself most of all. Europe aspires to global economic leadership in the 21st century, but it resolutely declines to unleash its own free market, its entrepreneurs and innovators to propel the continent towards its ambitious geopolitical goals. Instead, Europe seems destined to grow its government bureaucracy faster than its economic base.

That's too bad, because Europe's neglect of economic fundamentals, and failure to comprehend the power of economic freedom, cost the entire world the wealth Europeans can create. That doesn't hurt Microsoft, which can afford to deal with any number of regulatory idiocies. It does hurt everyone else, and particularly the hard-pressed citizens of the developing world, who need more markets for their goods and services (as well as a heavy dose of that same economic freedom). It is indeed ironic that Europe's vendetta against leading American companies undermines the very cause Mr. Barroso claims to espouse: raising the Third World out of poverty. Maybe Mr. Geldof can talk Barroso into singing a different tune at his next extravaganza.

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