

## EUROPE VS. US

*By George Pieler*

In the wake of Europe's record fines and sanctions against Microsoft on antitrust grounds, there was some hope for a pause in Europe's regulatory war against the United States. Its aggressive antitrust commissar, Mario Monti, is being replaced, but he nearly wasn't. The European Parliament objected to the new European Commission (EC) team proposed by incoming President Manuel Barroso (Portugal). The Parliament, riled by the socially conservative views of proposed Justice Minister Rocco Buttiglione (Italy), also targeted some proposed new Europe Commissioners: Laszlo Kovacs (Hungary) Ingrida Udre (Latvia) and Neelie Kroes (Netherlands, old Europe but more in tune with the new these days). After intense negotiations, Mr. Barroso ended up with Ms. Udre out (too skeptical of the European Union), Mr. Kovacs switched to taxation (implications unclear, but Mr. Kovacs is an ex-communist who made the transition to a free Hungary), and Ms. Kroes surviving in Mr. Monti's competition portfolio (despite concerns she is "too close" to the private sector). Mr. Buttiglione, of course, bit the dust.

Meanwhile, back at the Euro-ranch, Monti (or at least his staff) will render judgment in the EC's review of a Microsoft/Time Warner venture to take over ContentGuard, a digital rights management software provider, and is expected to raise serious objections to the proposed acquisition. Note that all three of the parties to the ContentGuard transaction are U.S. companies, but as *Reuters* dutifully notes, "The European Commission reviews transactions for companies which do a large portion of their business in Europe to protect European consumers."

Optimists thought a new wave of EC regulators under Barroso would adopt a more pro-market stance, and Microsoft, the EC's favorite punching-bag, did get some positive reinforcement when Microsoft case Judge Bo Vesterdorf, of the Court of First Instance, (who will rule on Microsoft's request to suspend the EC's penalties pending appeal in late December) indicated skepticism of the EC's market and technical analysis. But Judge Vesterdorf also kept in play evidence submitted by Novell and CCIA, which reached independent settlements with Microsoft. Even if Vesterdorf suspends Microsoft's massive penalties and EC-imposed "unbundling" of Windows Media Player, Microsoft will be in the EC court for years, while the market for its products evolves in ways no one can predict. What exactly is the point of this endless bureaucratic interference in the high-tech marketplace?

Before we assume too much about a changing of the regulatory guard in Europe, remember Microsoft is not alone, and the competition views of Ms. Kroes are unknown. The E.U. blocked the GE-Honeywell merger (3 years in court and counting), pressured Coca-Cola into overhauling its distribution system by threatening an antitrust review, and killed the WorldCom-Sprint merger, which foundered on the antitrust shoals of Europe. Ironically, Europe's Court of First Instance just overturned Monti's ruling against WorldCom on technical grounds. Too late: the merger was abandoned four years ago!

There can be no doubt that Europe has broader targets than Microsoft. Mario Monti's status among the European power elite reflects Euro-envy and resentment of

the vigorous American economy, envy also manifested by Euro-taxes on digital downloads from the U.S., E.U. regulations blocking U.S. advances in genetically engineered foods, and stifling the U.S. in talks designed to reduce Europe's massive subsidies to Airbus in its competition with Boeing.

Europe's first inclination is always to regulate and obstruct its competitors, rather than becoming more market-friendly itself. Over the past decade U.S. productivity grew twice as fast as Europe's, widening the gap between the (higher) standard of living in the States and that in Europe. The E.U. responds by exporting its anti-growth policies to the U.S. to level the playing field. Thus Monti's Microsoft decree, which is really about establishing the E.U.'s power to micromanage markets for emerging technology, and U.S. companies in particular. This is ironic, given that Europe is well aware of its need to modernize and compete with the U.S. on market terms. The E.U.'s so-called "Lisbon Agenda" of becoming more competitive by 2010 has yielded little result because it is a top-down, formal bureaucratic exercise in planned competition. Former Dutch PM Wim Kok, architect of the Lisbon Agenda, admits the contradiction: he asserts Europe needs less regulation to move forward, but that the European tradition of subordinating private interest to society (i.e. the state) "is a core value for Europeans... We don't want a free-for-all society."

No wonder Europe (or rather *old* Europe, in the Rumsfeldian paradigm) has to compete with legal and regulatory tools rather than market superiority, and is determined to demonstrate Euro-power in the global marketplace. Even before the Microsoft decree was announced, Mario Monti said "setting a clear and strong legal precedent is indeed of key importance. It is very important to have a precedent to guide the conduct of such a dominant company in cases which are either there or on the horizon." In 2004 he also visited South Korea and lent his moral support to further complaints against Microsoft by Korea's largest ISP. The E.U.'s global ambitions conflict with letting U.S. companies be guided by U.S. regulations. No surprise, then, that Monti himself shows signs of higher ambitions within the E.U. He recently told *La Repubblica* (Rome) that E.U. member states who decline to ratify the newly-signed European Constitution should leave the E.U. because "this would be a question of fair play" and would avoid a "guarantee of paralysis." (The E.U. does not *require* such a severance, it's just another helpful suggestion from Mario).

The issue isn't whether you approve of leading U.S. companies like Microsoft, or Honeywell, or Time-

Warner. The question is how much power Europe should have to decide how Microsoft, or any American enterprise, structures its products? Even if (as we are told) the EC's Microsoft sanctions only affect Microsoft's behavior within the E.U., the costs it imposes (both now and for years to come) will be transmitted to consumers all around the globe.

Mario Monti really symbolizes a new, transnational class of professional bureaucrats as a key element of law enforcement around the globe. Do we want an anti-trust government in exile—a consortium of international bureaucrats telling us to ignore our own political authorities? Should regulators not accountable to U.S. voters be making policy decisions that affect jobs, productivity, and the health of the U.S. economy?

As Sen. George Allen (R-VA) noted, the E.U. Microsoft sanctions violated the spirit of the 1991 U.S.-E.U. accord on antitrust enforcement. As Sen. Allen put it, "Here, the E.U. is investigating a U.S. company based on complaints from other U.S. companies. If the U.S. government does not make a clear and strong statement objecting to this extraterritorial approach, we will lose influence and credibility for years to come to the detriment of U.S. industry, as well as U.S. consumers."

European regulations aimed at American economic and technological superiority might be dismissed as silly, but they forebode increasing competition-by-regulation rather than competition for freer markets. We can't wait to see what Europe will do next. The best U.S. policy is to remind the world of the superior power of economic freedom by cutting its own taxes and regulations to lure more business from abroad. Now *that* would enhance consumer welfare.

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