

Software design by competition law

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Europe is providing a steady stream of wrongheaded and counterproductive regulations—good for anecdotes, bad for Europeans.

When Windows Vista, the long-awaited successor to Microsoft's operating system Windows XP, is released to the general public on January 30, some consumers around the world will have an additional product available. But, if the sales records of Windows XP 'N' are any indication, then Vista 'N' will be Microsoft's most unpopular product in a long time.

The 'N' series is a special variety of Microsoft's operating systems designed specifically to comply with antitrust rulings in the EU and in South Korea, which also has aggressive competition laws. In order to do so, XP 'N' shipped without Media Player, the free video and audio player which, for users outside these jurisdictions, is bundled with a standard XP installation. Both versions, 'N' and the bundled package, were available to European consumers at the same price.

Unsurprisingly, there have been no reported sales of XP 'N' to consumers since it was released in mid-2005. It would be hard for a market to reject a product any more entirely.

As has been argued, as long as competition is a download away, the law has done its job. But a steady stream of regulatory intervention and litigation in the computer industry over the last ten years disagrees.

Microsoft has been a staple target of antitrust authorities across the world. In 1998, the US Government sued the software manufacturer for tightly integrating its Internet browser with its operating system. The litigants alleged that their victory in the 'browser wars'—a period of vigorous competition between Microsoft's Internet Explorer (IE) and Netscape

Navigator—was due to IE being bundled with XP. Both products were free—but free and bundled can't compete with free and downloadable, the critics alleged.

Experience suggest otherwise. Mozilla's Firefox, the heir to Netscape Navigator, is rapidly gaining a share of the browser market. Firefox's success has largely been due to a perceived lack of security and performance with Microsoft's bundled product. Consumers are fickle enough to choose between competing products.

Indeed, there is good reason to suggest that the death of Netscape Navigator in the late 1990s was not due to predatory bundling by its powerful competitor, but to consumer disappointment with the software itself. Navigator had undergone a complete rewrite, and was buggy and bloated. When consumers were looking to upgrade their browser for the new features and web specifications becoming available, Internet Explorer was simply *the better choice*.

In the highly competitive computer industry, technological change makes pronouncements of such-and-such company as 'anti-competitive' laughable. IBM is no longer the terrifying anti-competitive monster that prosecutors described it as in the 1970s—in part because of Microsoft's aggressive marketing of MS-DOS in the first years of the 1980s, and then the Windows 3.1x family of operating systems.

The 2004 competition actions in the European Union against Microsoft were encouraged by organisations such as Real Networks, which publishes a competing product to Windows Media Player. Again, Microsoft's rivals allege that the competitiveness of their product is harmed by the product bundled with Windows. The EU regulators forced Microsoft to provide European consumers the option of buying XP 'N'—without the bundled Media Player. Microsoft wanted to call the package 'Reduced Media Edition' until the EU objected.

But again, reality intervenes. While

Real Networks may have been disappointed with the popularity of their product, many of Microsoft's rivals should not be. Apple's iTunes, for instance, has ridden the popularity of its portable music player, the iPod.

In 2006, before it has been officially released, Windows Vista is under heavy fire from its competitors, and they're going to the European Union for help. The new operating system includes an array of new features for which, presumably, Microsoft foresees a demand. Producers of anti-virus and security software object to the new low-level enhancements to security—a feature that consumers have desperately sought for a long time. Adobe, which invented the PDF document format, objects to the new document format XPS—a more dynamic format than the now standard PDF.

The EU fined Microsoft €497 million for bundling Media Player with XP, and it has been remarkably vague about Vista's prospects when it comes before the European regulators. While Microsoft is already obligated to produce the Europe-only Vista 'N', the European regulator's role, the EU argues, is not to give a 'green light' before Vista is available to consumers. If Adobe and others have their way, Microsoft could be lumped with another massive fine or have its product crippled for providing new features that consumers demand.

The nineteenth-century French liberal economist Fredric Bastiat divided human activity into two categories: 'harmonious' and entrepreneurial, or 'antagonistic' and rent-seeking. Unfortunately, as the vibrant, innovative technology industry becomes bogged down in competition litigation, too many are showing themselves to be the latter.

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