Kluwer Competition Law Blog

A few thoughts on Oracle's Sun takeover and Widenius appeal

Andrea Lofaro (RBB Economics, Belgium) · Friday, July 16th, 2010

On Friday 2nd July, Monty Widenius, founder of open source database company MySQL, owned by Sun, filed an appeal against the European Commission's unconditional clearance of the merger between Oracle and Sun Microsystems.

The main affected area in this case was the database market. This market is highly concentrated with the three main proprietary database vendors, Oracle, IBM and Microsoft, accounting for approximately 85% of the market in terms of revenue, according to the Commission's estimates. Although MySQL accounted for a tiny share of the market, the Commission was concerned that MySQL represented, given its open source nature, an important competitive force and that its elimination would have resulted in a substantial lessening of competition in the EEA.

In particular, the Commission was initially concerned that Oracle would have an incentive to harm the development of MySQL in order to eliminate a current or future significant competitive constraint exerted by MySQL, which would not be replaced by an alternative open-source database. In the end, however, the Commission cleared the transaction unconditionally for the following reasons.

First, the Commission acknowledged, on the basis of a bidding analysis submitted by the parties, a number of consumer surveys and internal documents, that although MySQL and Oracle competed in certain parts of the database market, they could not be considered as close competitors in others, such as the high-end segment. Importantly, the fact that it could not be demonstrated that MySQL exerted an important competitive constraint on Oracle in the overall database market (and that it could not be expected to start doing so in the future) implies that the post-merger entity would be unlikely to have an incentive to harm the development of MySQL.

A further relevant factor in this context is that Oracle would in any event not be able to remove MySQL, due to the open source nature of this product. As a result, any benefit that Oracle might achieve by relaxing whatever competitive constraint MySQL exerted would be slow to materialise. This would further reduce the potential gain to Oracle from a decision to delay or strategically redirect the development of MySQL such that it would not interfere with Oracle's proprietary databases.

Moreover, the Commission acknowledged that any benefit that Oracle might achieve by, in some sense, degrading MySQL would be short-lived. The reason for this is that it was considered to be likely that a viable successor to MySQL would emerge if MySQL was no longer developed by Oracle to the satisfaction of the MySQL community. Specifically, the Commission's investigation

showed that another open source database, PostgreSQL, was regarded by many database users as a credible alternative to MySQL and could be expected to replace, at least to some extent, any competitive constraint exerted by MySQL on the database market. In addition, the Commission found that 'forks' (branches of the MySQL code base), which are legally possible given MySQL's open source nature, might also develop in the future to exercise a competitive constraint on Oracle in a sufficient and timely manner. This of course would further reduce any incentives the merged entity might have to harm the development of MySQL, and it means that the transaction would be unlikely to give rise to a substantial lessening of competition.

Finally, in its decision the Commission appears to have taken into account Oracle's public announcement of a series of pledges to customers, users and developers of MySQL concerning issues such as the continued release of future versions of MySQL under the GPL (General Public Licence) open source license.

Aside from the issue of the public pledges, which appear to be the main focus of the appeal filed by Widenius against the Commission's clearance decision, the key message from this case was the way in which the economic analysis of the bidding data allowed Oracle to address a theory of harm that was based on a dynamic view on how competition in this sector might operate absent the merger.

Whilst that theory of harm was based on future projections, making it hard to test it using historical data, Oracle was able to link the hypothesised future harm to certain testable propositions, for example on the extent to which MySQL competed more vigorously for smaller database opportunities. By doing so, it successfully closed down areas of concern that might have led to more sustained objections in previous eras of enforcement under the Merger Regulation.

This entry was posted on Friday, July 16th, 2010 at 12:05 pm and is filed under Source: OECD“>Antitrust, Europe, European Union, Source: OECD

“>Mergers
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.