



Valentin Petkantchin's (IEM) answers to a letter sent by Mr. Con Zymaris (CEO Cybersource, Director of Open Source Industry Australia and Convenor of Open Source Victoria-Australia, A Government-funded industry cluster) following the publication of his article on Microsoft entitled "The Real Enemy" <http://www.institutmolinari.org/editos/20070420.htm> (Financial Post, Canada, April 11, 2007).

Neelie Kroes (EU Competition Commissioner), Brian Cassidy (CEO, Australian Competition and Consumer Commission), Sheridan Scott (Commissioner of Competition, Canada), Geoff Thorn (General Manager, Commerce Commission-New Zealand) and Open Source Industry Australia, were put in copy to the letter.

1) As regards the argument that under free competition, it is consumers who ultimately decide if a product or service is sufficiently innovative, the following question was raised:

"Can you explain how consumers can have any real choice, when Microsoft has coerced the market to the extent that no major vendor can actually ship an alternative operating system?"

Valentin Petkantchin's (IEM) answer: Contrarily to what Mr. Con Zymaris seems to imply, there is no legal obligation forbidding vendors from shipping alternative operating systems. If most of the vendors ship computers running on Windows, it is because they anticipate - all factors, innovation included, taken into account- that it is what consumers want. And, it is ultimately because the offers made by vendors generally meet the needs of consumers that some vendors eventually enjoy a significant market share.

When it is no longer the case, consumers will not hesitate to shift to other - established or new - vendors who provide more innovative or cheaper systems than Windows. As explained in our earlier paper, Intel may well be in the process of opening its vendor network to ease the commercialization of computers running on Linux.

2) Mr. Con Zymaris asks: "Can you explain to me how you view the following court case: http://www.usdoj.gov/atr/cases/ms_index.htm which showed that Microsoft *did indeed* abuse its market position to attack other software niches?"

Valentin Petkantchin's (IEM) answer: The point raised in the paper is an economic one, not a legal one. The fact that a company is "attacking" other niches - and being condemned under current US, EU or other, anti-trust legislations - is not the one that

is relevant per se. The crux of the matter is to know whether such a move hampers competition or not.

Under free competition, there are no legal obstacles or barriers to entry for any firm - whether it is an already successful company in some other sector of the economy, like Microsoft or not - to come and compete in the economic sector or sub-sector of their choice. Microsoft may thus even decide some day to build its own computer from scratch, and thereby become the exclusive vendor selling machines running Windows on them. Would this instance of vertical integration completely abolish competition in all computer-related niches "attacked" by Microsoft?

Even if it may constitute a threat to old players, a new player actually increases competitive pressure - instead of diminishing it - for the benefit of consumers in the sectors or sub-sectors in question. It puts additional pressure on already established players - which explains why they don't like it - in the same way as Intel (the major processor maker providing for 80% of the 'market') was attacking the niche of operating systems and thus challenging by the same token Microsoft's position.

It is ultimately up to consumers to decide if such business decisions to enter new niches serve them better or not, by making an overall comparison between new products and existing alternatives.

3) With regard to the fact that it is also possible to "put together one's own computer, or have an independent professional do so, and equip it free of charge with the Linux operating system", Mr. Con Zymaris asks: "Can you explain to me why consumers who do not want to pay for a Microsoft operating system today, should have to contort themselves in such a manner? Surely, they should be able to choose *any* PC and acquire that PC *without* the cost of Windows, or perhaps even ask the hardware vendor to provide Linux pre-installed?"

Valentin Petkantchin's (IEM) answer: A situation implying that there would supposedly be better and cheaper offers than already existing ones, provides, if true, a profit-making opportunity and potential new value to consumers. And that's what entrepreneurs do all the time. But the fact that all possible and imaginable offers are not available on the market (precisely because there wouldn't be consumers for them) doesn't mean at all that it is an anti-competitive market. It is not because the end consumer should "contort" him-/herself trying to buy a new Toyota without engine motor or turbo compressor that competition among car makers is indeed somehow precluded.

If Mr. Con Zymaris is genuinely convinced that consumers should be able to choose "any" PC - especially computers "without" having to pay the cost of Windows - and that there is eventually a real demand for that, there is an obvious market solution. He should find - if it's not already done - like-minded associates or investors and found a company doing exactly that. But such an offer will have to pass the market test and the consumers' verdict instead of relying on weaker competitive pressure from established players through anti-trust legislation.

4) IEM's paper was discussing the nature of free competition relying on property rights / free prices and the artificial "market" in information on the interoperability of the Windows operating system created by the EC. On this issue Mr. Con Zymaris specifies that "in computer science, such interoperability protocols are not considered as "property rights", but merely a method of communication between systems - the sign of good network citizenship, if you will. Having one vendor, wielding monopoly power, withhold such interoperability protocols from others, only heightens that vendor's monopoly position." He then asks:

"I assume you refer to the EU's requirement for the interoperability protocols to be made available to other suppliers? If so, I would be interested to understand how you view these protocols as "property rights". Are they copyrights? Software idea patents? Or trademarks?"

Valentin Petkantchin's (IEM) answer: Without going into details concerning the legal status of interoperability information, the argument we were trying to make is that the free market rests upon free will and voluntary exchanges. Because of the existence of voluntary disclosure ('open source') of some information in the 'network' milieu, one might be tempted - but wrongly so - to generalize and to conclude that companies should automatically disclose such information. Coerced transactions stemming from decisions of bureaucratic bodies to reveal information to one's own competitors cannot in any way be justified on market principles. If a company chooses not to reveal such information ('closed source'), it is acting in conformity with market principles, even if it is a company which holds a significant market share.

As Mr. Con Zymaris stated himself elsewhere (<http://www.cyber.com.au/users/conz/shoulders.html>), 'open source' seems to have numerous advantages benefiting creator companies themselves in terms of saving time, etc. But this 'open source' business model may also present some drawbacks, such as problems with "generating revenue to ensure core source coders continue their work, ego battles, and the possibility of fragmentation of standards and protocols". These reasons, among others, certainly explain why we have to pay for some software while others are available for free.

From an economic point of view, it's not up to bureaucratic bodies to decree which business model is the best, but up to each company to decide voluntarily to open or to keep closed their information. Ultimately it is up to consumers (and to vendors who are prospecting the market relentlessly) to sanction which products suit their needs lesser or better.

5) According to Mr. Con Zymaris, in another of our papers ("Microsoft vendetta hurts customers": <http://www.institutmolinari.org/editos/20060926.htm>), IEM would have argued, "that Microsoft's monopoly position does not negatively impact consumers". To illustrate the contrary, Mr. Con Zymaris relies on a hypothetical estimation and comparison with the hardware market, concluding that Microsoft would "extract" AU\$10 billion per year more from consumers globally "than it would if there was strong competition in the software market" (see paper: http://www.cybersource.com.au/press/the_cost_of_software_monopoly.pdf).

Valentin Petkantchin's (IEM) comment: In fact, the careful reader will not find any reference to the monopoly position of Microsoft in our previous paper. One of the points we were trying to put forward was that the numerous attacks of the EC on Microsoft may well end up penalizing consumers and businesses, because firms divert productive resources from attempts at satisfying consumer needs towards attempts at responding to the bureaucratic requirements of the EC.

Without going into all the details of the possible critics of this previous paper, this extrapolation and comparison with the hardware market is a pure speculation. Its main flaw lies in it leading us to believe that strong competition is impossible when there are few players and when one company holds a significant market share.

But the relevant point - for existing/potential competitors, as well as for consumers - is not what the market shares of each company were in the immediate past, but whether or not there are legal barriers to entry in the sub-sector at issue. However, the absence of such barriers doesn't provide automatically a new competitor with distributors, purchasers, clients and easy profits. It requires investment and risk-undertaking. The only way of knowing whether an abnormal profit opportunity is genuine or completely illusory (i.e., the presumed annual amount of AU\$10 billion), is to effectively enter the field, convince vendors and consumers of the superiority of one's products, instead of calling for intervention from anti-trust bureaucracies like the EC or similar bodies in other countries in the world.