

Final Report ⁽¹⁾ in the Oracle/Sun Microsystems Case COMP/M.5529

(2010/C 91/04)

The draft Decision gives rise to the following observations:

Introduction

On 30 July 2009, the Commission received a notification pursuant to Article 4 of the Merger Regulation ⁽²⁾, by which Oracle Corporation, USA, ('Oracle') notified its proposed acquisition of the control of Sun Microsystems Inc., USA, ('Sun') by way of purchase of shares (Article 3(1)(b) of the Merger Regulation).

The Procedure in Phase II

On 3 September 2009, the Commission initiated proceedings and opened a Phase II investigation pursuant to Article 6(1)(c) of the Merger Regulation. It took the view that the concentration raised serious doubts as to its compatibility with the common market. Subsequently, on 9 November 2009, the Commission issued a Statement of Objections ('SO'). It set out its preliminary view that the acquisition of MySQL (owned by Sun), the largest open source database, by Oracle, the largest and strongest proprietary database vendor, would significantly impede effective competition on the worldwide market for databases.

Following the SO and prior to the Oral Hearing, the Commission sent two Letters of Facts to Oracle, the first was sent on 30 November 2009 and the second on 8 December 2009 with deadlines for comments of 7 and 11 December 2009 respectively. Oracle submitted written observations on the SO, after having been granted an extension of the time limit, and on the first Letter of Facts on 3 and 8 December 2009 respectively but did not comment on the second.

Ten third parties requested admission to the merger procedure. Of these, six were admitted, attended and gave presentations at the Oral Hearing, three were admitted but did not attend the Oral Hearing and one party was rejected. The rejected party was not a competitor, customer or supplier but an investment firm with shareholdings in software vendors. It has no direct knowledge of the market under examination in the proceedings.

The Oral Hearing

Oracle exercised its right to be heard in an Oral Hearing, which took place on 10 December 2009 (full day) and the morning of 11 December 2009. Sun and six third parties also participated in the Oral Hearing. It was well attended and a number of senior members of DG Competition and of the Cabinet of Commissioner Kroes were present.

In addition to the admitted third parties, a number of employees of Oracle's customers gave presentations during the Oral Hearing. The customers themselves did not apply to be admitted as third parties and did therefore not demonstrate a sufficient interest. As such, these employees spoke in their personal capacity and their interventions could only form part of the presentations from the parties to the concentration.

The Oral Hearing was instructive and involved lively debate in which the parties to the concentration, the third parties, the Commission services and the Member States engaged.

⁽¹⁾ Pursuant to Articles 15 and 16 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21.

⁽²⁾ Council Regulation (EC) No 139/2004 of 20 January 2004, OJ L 24, 29.1.2004, p. 1.

The draft Decision

The draft Decision finds that, on the balance of probabilities, the proposed transaction will not lead to a significant impediment to effective competition on any relevant market. This finding takes account of the specific characteristics of MySQL as an open source product, publicly announced pledges by Oracle concerning the maintenance of MySQL as a competitive force in the database market after Oracle's acquisition of Sun and the extent to which other open source databases might develop to exercise a constraint on Oracle, along with all the other elements in the Commission's file. Since the Commission has arrived at the conclusion that the merger will not raise competition concerns and no formal remedies within the meaning of the Remedies Notice ⁽¹⁾ have been submitted in this case there can be no requirement for the Commission to perform a market test.

In view thereof, and taking into account the observations set out above, I consider that the parties' rights to be heard in this case have been respected.

Brussels, 12 January 2010.

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⁽¹⁾ Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22.10.2008, p. 1.