



An acid test of European motives

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It goes without saying that this is not an era of excessive trust between members of what once was known as the Atlantic Alliance. Nor is it a time, such as when we jointly confronted an expansionist Soviet empire, when a breakdown in mutual respect between the US and Europe would necessarily produce dire consequences. But building suspicion between the world's two largest economies can never be a good thing.

Atlanticists on the American side have particular problems when European behaviour seems driven not by a desire to improve the lives of Europeans but by a desire to frustrate America. Rhetoric about checking US hyper-power can be dismissed as political posturing. However, economic policies that do no good for Europeans and yet are aimed at harming US interests are not so easily explained.

Antitrust policy is one area in which European motives are becoming increasingly hard to defend, even for committed Atlanticists. Problems began when the European Commission blocked the planned merger of General Electric and Honeywell in 2001. It did not help that both companies were US-based and that American authorities had conducted an extensive review of the merger before approving it.

But Europe said it was pursuing a new and different legal theory from America's. A suspicious American mind, not prone to giving Europe the benefit of the doubt, might conclude that the European authorities would not have been equally pioneering in their legal approach if the companies involved had been, say, German and French.

The record-setting fine that Europe levied against Microsoft coupled with demands for highly interventionist remedies further fuelled suspicions about European motives. Yet many Americans are not particularly fond of Microsoft, and excessively interventionist policies are extremely common in Europe, hampering European growth. European bureaucrats were not being particularly more authoritarian toward Microsoft than they often are about their own economies. So European malice could not be established beyond a reasonable doubt.

But an attempt by the European Commission to block Oracle's bid for PeopleSoft would remove all doubt about the protectionist and anti-American nature of European antitrust policy. The US Justice Department case against Oracle was clearly ambitious and - as the judge who decided the case concluded - an almost comically long one.

Judge Vaughn Walker noted that while Justice Department lawyers were alleging there were only a very limited number of vendors that large companies could use, the department itself was using a vendor not on its list. The novel and factually weak case brought by the department, "startlingly sparse" in the judge's words, could be chalked up to the time-honoured practice of attempted bureaucratic empire building.

Normally one could forgive the European Commission's motives as being along the same lines. But to bring its own case the Justice Department had explicitly to exclude the European and global markets from its analysis and look at only US market shares. The reason was the European and global dominance of the German firm SAP outside the American market. No broader definition of the market could possibly show a competitive problem.

A decision by Europe to oppose the merger would not rest on any alleged problems in the European market, where the Commission has obvious standing, but on conditions in the US market, where it not only lacks standing but an American judge has already said the merger may proceed.

Moreover, antitrust theory suggests that, by being able to challenge more effectively the dominance of SAP in the European market, an Oracle-PeopleSoft merger would actually enhance competition in Europe and help European consumers. Europe would thus be seen as not just acting to harm America but doing so in a way that was harmful to the interests of its own people. In common parlance, Europe would be acting out of spite, not out of logic or even self-interest.

In a historically new bureaucracy seeking to make its mark, Mario Monti, the outgoing European Union's antitrust chief, and his staff have an important call to make. By pursuing the case beyond reason, their reputation would sink

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to that of their comrades who administered the EU's Common Agricultural Policy: anti-American, anti-consumer and anti-globalisation.

But now that they are reviewing the same data studied by Judge Walker, they have the ability to signal that facts, not political competition, will determine Europe's antitrust policy and that comity on cross-Atlantic economic issues is alive.

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