

EU delays Oracle-Sun deal, probing database market

September 3 2009, By JORDAN ROBERTSON , AP Technology Writer

(AP) -- Oracle Corp. figured its \$7.4 billion buyout for Sun Microsystems Inc. could skate through antitrust scrutiny, folding Sun into a technology powerhouse when Sun badly needs the lifeline. Both companies will have to wait.

European Union regulators applied the brakes Thursday, launching a formal antitrust probe that shatters Oracle's goal of completing the acquisition this summer. The U.S. Department of Justice has already approved the deal.

The investigation is focused on whether Oracle will gain too much power in the market for database software, which underpins most things people do in business or on the Web. It helps companies manage and retrieve data they've stored, such as payroll or sales information. Typing in a search term, for example, forces a Web site to scour a database and spit out an answer.

In particular, EU regulators want to make sure Oracle will properly care for Sun's rival open-source database software - which is freely given away in hopes of selling other products to the users - or let it wither in favor of Oracle's [proprietary software](#).

EU Competition Commissioner Neelie Kroes said regulators needed to examine whether customers could have fewer choices or see higher prices "when the world's biggest proprietary database company proposes to take over the world's leading open-source database company."

The European Commission now has until Jan. 19 before it makes a final decision to clear the deal or block it. In some cases, such as with [Intel Corp.](#), the EU has been a stricter antitrust regulator than the U.S., and often presses companies to make changes that eliminate antitrust worries, such as selling off parts of their business.

Oracle is the database leader with 37 percent of the overall market, followed by IBM Corp. and Microsoft Corp., according to the IDC research firm.

MySQL, a Swedish company that Sun bought for \$1 billion last year, is a tiny player, with just 0.2 percent market share, but is the reason European regulators are worried.

The EU officials claim that MySQL, already popular among Web-based companies, will increasingly threaten Oracle's [database software](#) as it adds features and attracts more customers. The regulators questioned "Oracle's incentive to further develop MySQL as an open source database."

"In the current economic context, all companies are looking for cost-effective (information-technology) solutions, and systems based on open-source software are increasingly emerging as viable alternatives to proprietary solutions," Kroes said. "The commission has to ensure that such alternatives would continue to be available."

Sun and Oracle declined to comment Thursday.

EU spokesman Jonathan Todd said the EU was merely matching the U.S. in launching an in-depth investigation into the takeover. Todd stressed that the EU will use the coming weeks to weigh "serious doubts" about the deal - but that it could pass EU scrutiny unhindered.

The alternative - if the EU finds that its worries are justified - would be for the companies to offer compromises, such as selling off MySQL or making binding commitments so that rival developers could still base software on MySQL code.

Whatever the Europeans decide, the holdup represents a setback for a deal that was originally expected to endure little antitrust scrutiny. A key reason the deal got done in the first place was because Oracle was seen as a safer suitor than IBM Corp., which also bid for Sun. IBM was viewed as a bigger antitrust risk because it and Sun overlap in the server and data-storage markets.

The EU described the database market as "highly concentrated," with the three main proprietary software companies - Oracle, IBM and [Microsoft](#) - controlling some 85 percent of the market by revenue.

Peter Alexiadis, a partner at the Brussels office of law firm Gibson, Dunn & Crutcher LLP, said he was surprised that the EU was taking a different tack from the U.S. on the deal.

"If ever there was a case for the U.S. and the EU seeing eye to eye, I would have imagined that this was an appropriate one," he said, saying he was "hard pressed" to see how the deal would strengthen Oracle's position, given how varied and large the database market is.

"If the commission goes down the path of defining narrow database markets, they might be going down a path they may regret," he said.

Oracle shares fell 21 cents, 1 percent, to close at \$21.56. Sun shares fell 17 cents, or 1.8 percent, to \$9.15, as investors tried to gauge the risk that Oracle won't be able to complete the deal. Oracle would pay \$9.50 per share if the deal goes through.

If it doesn't happen, the result could be disastrous for Sun, which reported last week that it lost \$147 million in the April-June quarter as revenue dropped 31 percent to \$2.63 billion. Since 2002, Sun has only had two profitable years, and has lost a total of \$5.6 billion over that period.

While the [Oracle](#) deal hangs in limbo, Sun competitors such as IBM and Hewlett-Packard Co. have been trying to stir up fears among Sun's customers about what Oracle's plans for the company might be. And those tactics may have worked. Sun's server market share was 10 percent in the second quarter, an erosion of more than a full percentage point from last year, according to figures released this week by IDC.

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