

# Antitrust Law Blog

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## EC Objects to Oracle-Sun Deal

On November 9, 2009, the European Commission ("EC") issued a Statement of Objections ("SO") regarding Oracle Corporation's ("Oracle") proposed acquisition of Sun Microsystems, Inc., ("Sun"). The EC opened an in-depth investigation of the deal in September, shortly after the US Department of Justice's Antitrust Division ("DOJ") cleared the proposed transaction. The EC is concerned that the merger will reduce competition in the market for databases. [See EC Declines to Follow DOJ's Lead, Opens In-Depth Investigation of Oracle-Sun Deal.](#)

The EC's initial investigation found that the Oracle databases and Sun's MySQL compete directly in many sectors of the database market and that the competitive constraint presented by MySQL is expected to grow as the database becomes increasingly functional. The EC also found that the open source nature of Sun's MySQL might not eliminate fully the potential for anti-competitive effects. Following its in-depth investigation, it appears that the EC has concluded that Oracle will lack the incentive to further develop MySQL as an open source database.

Oracle has stated that it "plans to vigorously oppose the Commission's Statement of Objections" and that the EC's SO "reveals a profound misunderstanding of both database competition and open source dynamics". It argues that the "database market is intensely competitive with at least eight strong players...and three distinct open source vendors", and is "confident" that "[g]iven the lack of any credible theory of competitive harm...will ultimately obtain unconditional clearance of the transaction".

In a rare move, the DOJ issued a statement on the same day defending its decision and stating that it believed customers would still have a variety of choices after the companies merge. "Several factors led the Division to conclude that that the proposed transaction is unlikely to be anticompetitive...there are many open-source and propriety database companies...customers would continue to have choices from a variety of widely accepted database products...[and] there is a large community of developers and users of Sun's open source database with significant expertise in maintaining and improving the software".

An EC spokesman told a daily briefing that he thought that DOJ's comments were unusual, "I cannot recall any instance where the European Commission has ever issued a statement concerning an ongoing investigation in another jurisdiction...We have our methods, they have their". Despite the difference of opinion, DOJ maintains that "the two competition authorities have a strong and cooperative relations" and "remains hopeful that the parties and the EC will

reach a speedy resolution that benefits consumers".

It has been reported that Oracle submitted a request for an oral hearing with the EC concerning its objections to the purchase of Sun. The deadline for the EC's final decision is January 27, 2010.

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