

Antitrust regulators must listen to reason on iPods

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By Thomas W. Hazlett

When Apple's iTunes rocked our planet with its 2003 blast-off, it triggered near-instantaneous iPod adoption by a generation of audio thrill-seekers and revived the company that delivered us into the age of the personal computer.

The innovation has achieved the ultimate imprimatur of success: antitrust regulators are descending. France has passed legislation that could force Apple's iTunes to play on devices other than Apple's iPods. While the law allows Apple to retain iTunes exclusivity if it gains copyright permission, this escape hatch could prove treacherous. Record companies want to renegotiate their iTunes deals upwards, and regulation sends its own signal. "We are the first in the world to do this," crowed Renaud Donnedieu de Vabres, French culture minister. Norway, Denmark and Sweden are poised to follow.

The competition policy bureaucrats squeeze Apple's achievement into this box: they sell a product that is so popular it is dominant; this market power is then exploited by excluding rivals from using its software (iTunes) to build competitive mousetraps (iPods). By untying the two products, via regulation, market rivalry will be unleashed and consumers will be better off.

The theory disregards how this smash hit was created. Bundling pods and tunes was the business model that Apple chose to execute its innovation. The consumer's reward has been musical, lyrical and sensational. The producer's reward is antitrust enforcement. Worse, regulators ignore what is efficient, as testified to by the most ruthless of Apple's rivals. Microsoft has been flailing at the iTunes market since it launched, providing software for iPod competitors such as Sony and Samsung. The platform is open to independent device makers near and far just the type of market structure that makes regulators feel warm and fuzzy.

Yet customers have given it scarcely a listen. In spite of the firms involved, which dwarf Apple, the latter accounts for 77 per cent of the \$4bn in US digital player sales. Voting with their money, customers prefer Apple's package. Were Apple to truly exploit its customers, its market would be ripe for an upstart. Microsoft is, let us put this calmly, a well-equipped upstart. Their counter iPod offerings giving customers a choice of hardware should rock.

Microsoft will now shift gears. Impatient with independent manufacturers' digital play devices that keep losing to the venerable iPod, Microsoft will make its own complete with wireless download functionality as yet unavailable to iPodsters. May the best dominance-seeking corporate behemoth win.

Microsoft's desperate course correction delivers a verdict on the efficiency of rival business models. Apple produced a better mousetrap there, too. But policymakers appear star-struck, unable to see this evidence nor to spot new rivals on the horizon. Amazon is set to introduce a music player that it will subsidise to embed with customers, while the cellular carriers, already cashing \$6bn annual cheques for ringtones, are swarming the iPod space.

European regulators are increasingly pointing their revved-up antitrust sceptre at US firms. In a forthcoming paper in the *Economic Journal*, Nihat Aktas, Eric de Boddt and Richard Roll show that EU authorities tend to block mergers where competition to European firms, as revealed by stock

market movements, is most likely. The iPod presents an inviting target.

Recall the muck that the iPod-iTunes solution oozed out of. File sharing services such as Kazaa were downloaded by the millions, yet as Jack Goldsmith and Tim Wu detail in *Who Controls the Internet?* (Oxford, 2006), this resulted in chaos. Not only were copyrights routinely appropriated, "Kazaa users were weeding through a junkyard of corrupt files, deliberate fakes and efforts to advertise pornography sites that made the P2P experience a major chore".

The French law aims to disrupt a process that was enhancing the wealth of nations. From the rubble of file sharing, with its Pirates of the Caribbean business model and its "junkyard" user experience, emerged a spiffy iTunes marketplace where songs and their listeners embrace, 99 cents a hug. The format brought artists together with users, ending their conflict and forming a virtuous circle of co-operation. A rival field of dreams is now being built by the Microsofts, Sonys, Dells, Amazons and T-Mobiles, stomachs growling and each eager to devour a little Apple. Antitrust regulators should stand back and let Apple feast or be eaten.

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