Europe and the US must lighten up, but only a little

Neelie Kroes refuses to back off in her battle with Microsoft

Irwin Stelzer
Viewpoint

The buzz around Washington is about the transatlantic "dialoguing" that is in full flow among regulators and politicians. New York Mayor Mike Bloomberg, all of a twitter about Wall Street's loss of market share to the City of London, hops over to meet financial regulators in the City. SEC chairman Chris Cox tells me he is studying FSA chairman Callum McCarthy's use of light-handed, principles-based rather than rules-based regulation to control City types who might be overly zealous in their pursuit of bonuses.

Here we have what seems to be a case of overly costly US regulation driving business to London and other markets. And an odd role reversal, with an eurocrat, Charlie McCreevy, EU Commissioner for Internal Markets and Services, coming to the US Chamber of Commerce to plead the virtues of light-handed regulation to Americans, who are, historically, advocates of small government.

Meanwhile, when it comes to competition policy, the reverse is true: US regulators are urging their EU counterparts to lighten the heavy hand its Competition

Regulation is crucial to maintenance of faith in markets

Commissioner, Neelie Kroes, is laying on Microsoft and other US companies. Ms Kroes believes dominant firms should have their competitive practices reviewed carefully. And she and Meglena Kuneva, EU Consumer Affairs Commissioner, are considering making it easier for consumers to mount class-action lawsuits ("collective action", in EU jargon) to gain redress from cartels, suits that American businessmen and European businessmen dread.

So Europeans want Americans to lighten up on the regulation of financial services, and Americans want Europeans to do the same when enforcing competition policy. Who is right, if anyone?

Start with financial services. Mr Bloomberg, Treasury Secretary Hank Paulson and others blame Wall Street's declining market share on the burdens placed on corporate boards by the Sarbanes-Oxley Act. Never mind that investment bankers' fees are higher in America, or that a recent serious study by Harvard Law School professor John C Coates IV concludes, that Sarbox "should bring net long-term benefits" if the administrative enforcement regime is merely tweaked.

Consider, too, that in an industry riddled with internal conflicts of interest (analysts reporting on companies that colleagues are pitching for investment banking business), where information asymmetry is rife (providers know a lot more about their products than do potential consumers) and where abuses do indeed occur, effective regulation is important to maintenance of faith in markets. SEC commissioner Roel Campos might have overstated things when he said that AIM "feels like a casino", but surely he was right when he warned the City: "It is a losing proposition to lower standards as a way to promote your markets."

Despite pressures coming from Messrs Bloomberg and Paulson, Hillary Clinton and others, Congress and the SEC are unlikely to do more than make a slight move in the direction of UK-style, principles-based financial regulation. But rejection of light-handed regulation of financial services by US policymakers won't deter the Bush Administration from pressing Europe to adopt just such a regulatory regime towards the business practices of dominant firms.

EU attempts to force Microsoft to stop tying products for which it has competitors to its monopoly operating system are depicted as anti-Americanism, or

hostility to big, successful companies. And the possibility of an EU investigation of Intel's pricing policies persuaded *The Wall Street Journal* to open its pages to critics of any such review of just how Intel has retained its 80 per cent market share.

Whatever the outcome of these individual cases, one thing is clear: America's regulatory agencies are more reluctant to move against dominant firms than are their European counterparts. Microsoft, although found guilty of violating the US antitrust laws, managed to negotiate a settlement with the Bush Administration so favourable that the judge who bought the deal is suffering from buyers' remorse. Ms Kroes is not so gullible, and is resisting pressures to back off in her battle with Gates & Co.

Who is right — the US, relaxed about the practices of dominant firms, or the EU, worried that market power can be abused? I have been at seminars in which representatives of both sides have argued the case, and in my judgment, the EU has won. Dominant firms are quite capable of substituting muscle for efficiency as a competitive tool, with the result that consumers are ill-served. For example, American policymakers seem to favour all price cuts, on the grounds that lower prices are invariably in consumers' interests. But there are price cuts and there are price cuts — those that penalise customers who switch part of their patronage can reduce competition and harm consumers in the long run.

These issues are complicated and, truth be told, boring. But get them wrong in financial services, and we will end up with an industry that is either choked with regulation or left free to disadvantage investors. Get competition policy wrong, and we will end up with industries in which large efficient firms are prevented from competing, or big muscular ones are allowed to stifle competition.

● *Irwin Stelzer's consulting clients include AMD, a competitor of Intel*