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Oracle: Muddying the Gene Pool

By Jim Balderston

Judge Vaughn Walker of the Federal District Court in San Francisco has ruled that Oracle can go ahead with its proposed $7.7 billion hostile takeover bid of PeopleSoft. Walker ruled that the Justice Department's case against the takeover bid, based on antitrust concerns, was not convincing and that the merger would not "lessen competition in a relevant product and geographic market." Walker's ruling can, and possibly will, be appealed.

Walker's 164-page ruling is the latest twist in a widely publicized saga that began in June 2003, when Oracle made the first of its four hostile bids for PeopleSoft. At that time Oracle CEO Larry Ellison said that the purpose of the takeover was not to obtain PeopleSoft technology or products but to shut down the company and woo its customers to Oracle products. Oracle has repeatedly upped the bid offer and has had to confront open hostility from PeopleSoft's management and many of its customers. PeopleSoft's Board of Directors adopted a "poison pill" provision that would up the cost of any takeover bid. After Walker's ruling, Oracle officials called on the PeopleSoft board to rescind the poison pill and allow stockholders to accept their latest bid of $21 per share of PeopleSoft stock.

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Throughout the takeover drama, Ellison has argued that his efforts to acquire PeopleSoft are part of a larger trend toward consolidation in the software market. On this point we agree with Ellison: the market will most certainly see a reduction of numbers in coming years as companies merge, are acquired, or simply shut down from lack of market interest. Such is the nature of any maturing industry: the number of participants shrinks over time as the remaining players grow in size. The history of the automotive industry is a perfect blueprint for what will continue to occur in the software ecosystem.

Where we disagree strongly with Ellison is the means by which this irresistible path of consolidation should happen. In nature, evolution occurs at its own pace, with variations appearing randomly. Those that help an organism thrive in its ecosystem tend to be selected and continued in the gene pool; those that do little or nothing for the organism tend to disappear over time. In the end, the organism has adopted many of the gradual mutations so that it can find a prosperous niche within its ecosystem. Its adaptations meet the demands of its ecosystem.

In our mind, consolidation of markets should be allowed to occur organically as well. Companies whose adaptations do not help them prosper within their ecosystem – or market – will eventually find themselves in a position to be acquired or go out of business altogether. Companies whose adaptations allow them to thrive in the market will do so, sometimes with the assistance of cherry-picking strategies or products from those that failed to fully capitalize on a good idea or service. In this natural course of consolidation the remaining competitors evolve to meet the needs of the marketplace. Those innovations with real value persist in the marketplace even through the act of consolidation while those without merit are tossed from the market gene pool.

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Ellison proposes to buy a competitor and shut it down, and in this way he claims to be complying with the natural order of a consolidating market. We would argue this is more akin to genetic engineering. Such a forced alteration, in our mind, does not allow the vendor gene pool to mature in a fashion that meets the needs of the market ecosystem. By simply tossing PeopleSoft out of the market, its sizeable collection of market adaptations will be lost and evolution thwarted. Ellison believes that he is speeding up the pace of market evolution and that he's doing a good thing. We would respond with; "Haste makes waste."

Our take is that this is clearly a situation where the letter of the law does not necessarily create a desirable result, potentially opening the door to a rash of predatory acquisitions. While this saga is far from over, this latest ruling would seem to tilt the odds of the takeover happening to Oracle's favor and PeopleSoft stockholders should begin considering their options. We are not stock or financial analysts, and are not providing this advice as such; but as watchers of technology evolution, we would counsel PeopleSoft stockholders – if forced to face the inevitable – to hold Ellison to committing as much money as possible for each and every share. He should pay for the waste his haste will incur and he clearly has the money to do so.

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