

two stagnant products lines into a single offering. The United States claims this was illegal, because the loss of MATRIXx constituted a harm to consumers. Wind River customers complained to the United States that once MATRIXx was no longer serviced, they would "have to begin a costly migration to the MathWorks' Simulink products." The United States initiated this case to preclude this from happening. The question now before the Court is whether the PFJ serves the interest. CAC believes that it does not.

This case is part of a federal antitrust effort to micromanage various facets of the private technology sector. In the past year alone, the Department of Justice prosecuted Computer Associates International for their alleged conduct during the consummation of an otherwise lawful merger<sup>2</sup>, and the Federal Trade Commission imposed a settlement upon an industry that vehemently denied the need for government intervention.<sup>3</sup>

This matter picks up where those cases left off. Now the United States claims the right to force the sale of a business they know to be unprofitable to a mystery competitor that may not exist. The government wants to "restore" competition beyond the level that actually existed prior to the challenged conduct. In doing so, the United States has ignored the economic realities of the marketplace and the technical knowledge of the specific market they seek to regulate. Thus, the PFJ here results not from the United States acting in the public interest, but from the DOJ submitting a specious claim before the Court. For this reason, the United States should withdraw from the PFJ and dismiss its complaint, or in the alternative, the Court should reject entry of the PFJ under the Tunney Act.

At the heart of this case is the independent viability of the MATRIXx product line. Wind River acquired control of MATRIXx when they acquired Integrated Systems, Inc., in April 2000. In its own competitive impact statement, the United States admits that MATRIXx was on the road to decline well before the consummation of the agreement challenged here:

"Wind River, itself a significant vendor of software for embedded systems, pursued the acquisition of ISI, in large part, to obtain a skilled pool of embedded system software developers

that it hoped would shorten the time to market for critical new embedded system products. Wind River soon came to view MATRIXx as a struggling product line within ISI with small revenue and no growth potential. More importantly, the MATRIXx market was neither within Wind River's core competency nor central strategic focus or the future. Thus, Wind river decided not to devote any of its resources to the continued development and sale of MATRIXx." <sup>4</sup>

The Government never refutes or challenges Wind River's claims with respect to MATRIXx. Instead, the DOJ simply ignores these concerns, and merrily proceeds on the basis of alleged consumer harm. There is no effort to place the challenged conduct in an overall business context, nor does the DOJ consider any evidence that the defendants' agreement benefited competition. Instead, the DOJ relied upon its own prejudiced theories of antitrust, and imposed this proposed judgment to force the defendants' behavior to conform to the Government's expectations. The DOJ thus substituted its own *business judgment* for that of MathWorks and Wind River without any credible arguments or evidence.

By the DOJ's admission, this case was initiated in large part by consumer complaints. Apparently, some MATRIXx users were unhappy at the prospect of having to pay the transitional costs of eventually converting to Simulink. An impartial observer would conclude that while the customers' short-term costs might increase as a result of the MATRIXx acquisition, in the long term, competition would benefit from Wind River's decision to shed an unprofitable and stagnant product line. In the free market, the more efficient allocation of resources is often fostered through the natural elimination of unnecessary or redundant competition, as appears to be the case here. Short-term pricing policies are not the overriding concern of the marketplace, yet they are the *exclusive* concern of the DOJ, which acts myopically to prevent any potential increase in consumer costs.

Free competition cannot be enforced by government fiat. Competition is an inherently dynamic process that must account for multiple variables, including the freedom to either enter or exit the market as the facts demand. Businesses rely on the expertise of their officers, employees, and partners to ensure both the profitability of the firm and the fulfillment of consumer needs.

Businesses that successfully answer the question of production gain customers and wealth, businesses that fail lose both.

The DOJ, by contrast, relies on static rules that fail to account for the complexity of business and yet seek to enforce an unjust and unworkable egalitarianism. While claiming that it is protecting the free market, the Government maintains total faith in its ability to identify and enforce what is in the best interest of every single businessman and consumer in the United States absent their own uncoerced choices. This faith is usually referred to as protecting the "public interest."

Reasonable people understand, however, that the DOJ can not speak for the "public interest," because no such interest has ever existed. The United States is a nation predicated on the defense of individual rights, not the collective interests of opposed pressure groups. Every individual has the right to assert their right to economic self-determination through the pursuit of voluntary trade. Objective laws are necessary to ensure the protection of individual rights in our system of voluntary trade, but that is far different than assigning the government arbitrary and capricious power to dictate economic outcomes, as is the situation here. In this case, the DOJ is suspending individual rights and replacing them with a definition of the "public interest" that doesn't hold water. Simply by asserting the metaphysical existence of the public interest in its enforcement of the antitrust laws, the DOJ denies almost every fact that drives the voluntary exchange between individuals in the free market.

This case reveals both the fundamental defects of both the antitrust laws and the strategy employed by the Government in their enforcement. Previously, in the DOJ's answer to CAC's objections to its proposed settlement agreement in *United States v. Computer Associates International, Inc., et al.*<sup>5</sup>, the DOJ noted both CAC's philosophic opposition to the antitrust laws and the Supreme Court's history of upholding these laws. While CAC appreciates the DOJ's mastery of the blatantly obvious, we must respectfully point out that even within the context of the Supreme Court's odious approval of antitrust, the Government's position in this case and its subsequent settlement is logically defective.

Nothing in the proposed judgment benefits producers, consumers, or the

<sup>2</sup> *United States v. Computer Associates Int's, et al.*, Civil No. 01-020602 (D.D.C. April 23, 2002).

<sup>3</sup> *In re American Institute for Conservation of Historic and Artistic Works*, File No. 011-0244 (Sept. 10, 2002).

<sup>4</sup> 67 FR 64657, 64662 (October 21, 2002).

<sup>5</sup> 67 FR 66419 (Oct. 31, 2002).