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INDUSTRY NEWS

CDA's OFT complaint against Sun Microsystems

25/04/07

The Association of Service and Computer Dealers International ("ASCDI"), which represents the interests of computer resellers, service providers and end users worldwide, yesterday filed a Complaint with the UK competition authority, the Office of Fair Trading against Sun Microsystems UK Limited ("Sun"). The Complaint seeks to reverse Sun policies that infringe UK competition law.

The Complaint concerns Sun's refusal to supply provenance information (i.e. product specific historical sales and distribution information) to independent resellers who resell Sun products in the UK . Prior to 2006, like other computer equipment manufacturers, Sun had not interfered with the free trade of Sun products by independent resellers. In 2006 however, Sun made the need for provenance information critical to the trade in its products in the UK , and elsewhere in the EU, under the guise of trademark protectionism. It began a policy of refusing to provide such information whenever requested by independent resellers. The ASCDI supports Sun's legitimate trademark rights but without Sun's cooperation, Sun has made it impossible to know whether a given Sun product is or has been placed on the EEA market with Sun's consent.

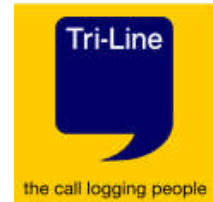
"Sun's policy effectively closes the secondary market trade in Sun products to anyone other than Sun. It is anti-competitive behaviour plain and simple," said ASCDI President Joe Marion.

Prior to filing the Complaint, the ASCDI had made numerous direct requests to Sun for access to its provenance information and to resolve the issue, but to no avail. Sun is the only major computer manufacturer challenging the importation of its products into the EEA. Provenance information is readily available from other manufacturers including IBM, HP and Cisco. These manufacturers support free trade of their products and don't hide behind trademark protectionism to limit or eliminate competition in the trade of their products in the UK and in the EU.

The Complaint states that Sun's refusal to supply the provenance information interferes with free trade and is prohibited by UK competition law, specifically the Chapter II prohibition of the Competition Act 1998. Case law makes it clear that Sun is prohibited from using its authorized distribution system to create obstacles to the resale of its products outside its authorized distribution network. The Complaint also asserts that Sun's refusal to disclose provenance information -- and its threats of litigation to independent resellers who trade in Sun computers -- is resulting in

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diminished competition in the secondary market. Some independent resellers have transitioned their businesses to other computer manufacturers, some have been left holding large inventories of Sun equipment they are or may be prohibited from selling, while others have gone out of business.

At stake is an estimated \$1.4 billion market in 2007 in the EU for used Sun products. Absent interference from Sun, independent resellers should achieve a market share for Sun products of at least \$533 million. If Sun's behaviour continues unchecked, not only will this share drop, other manufacturers may follow suit, forcing independent resellers out of the market and giving manufacturers near monopolies for their respective products.

ASCDI's Complaint seeks a declaration from the Office of Fair Trading that Sun's refusal to provide provenance information on its used products is prohibited under the Chapter II prohibition of the Competition Act 1998, and seeks an order that Sun provide such information in a timely manner, without disclosure of such requests to Sun's direct sales force and a fee-free basis.

"Our goal is to keep the secondary computer marketplace free and open to independent resellers," Marion said. "Ultimately, it will be the customer/end-user that will benefit from a more open marketplace."

Nick Gibson, editor

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