

Client Server News

Systems, Virtualization and Cloud Computing

EC Opens Two Antitrust Investigations of IBM

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by Maureen O’Gara

Monday, July 26, 2010 – The European Commission said this morning that it has opened not one but two formal investigations of IBM and its mainframe business on the suspicion that Big Blue has abused its dominant position.

IBM is already under investigation by the Justice Department for the same thing and the EC’s move may inspire the DOJ to make its case.

IBM’s immediate reaction was to blame Microsoft and “its satellite proxies” for its troubles but that “pretty to think so” excuse doesn’t quite hold water.

One of the twin probes the EC currently has underway has nothing to do with any of the recent complaints that would-be rivals have made against IBM. It is solely the regulators’ idea.

The Commission, which has apparently overcome witnesses’ fear of reprisal, said that – on its “own initiative” – it’s investigating what smells like discriminatory behavior towards competing suppliers of mainframe maintenance services.

‘It is vital that a market that is responsible for more than three quarters of the world’s government and business data not be walled off from competition and innovation.’

It said it “has concerns that IBM may have engaged in anti-competitive practices with a view to foreclosing the market for maintenance services (i.e. keeping potential competitors out of the market), in particular by restricting or delaying access to spare parts for which IBM is the only source.”

One is left to wonder where this surprise charge came from. Third-party hardware maintenance was created by the 1956 consent decree that is still supposed to govern IBM’s mainframe business. With the downturn IBM may have looked to shore up its top line by reclaiming even low-margin business like hardware maintenance.

The EC has been investigating IBM for a lot longer than most people realize, certainly a lot longer than the DOJ, which only opened its probe last October.

The EC had started down the investigatory path when IBM bought the mainframe-to-Itanium start-up Platform Solutions Inc (PSI) in mid-2008 to get its monopoly maintenance complaint dropped. Whatever the EC found out during that preliminary investigation presumably became part of its institutional memory.

The PSI charges were replaced in January 2009 by T3T, once the world’s second-largest

mainframe systems integrator which wanted to resell PSI boxes. Then this past March Paris-based TurboHercules SAS, the start-up begun to commercialize the open source Hercules mainframe project, filed a formal complaint against IBM with the EC.

These two complaints reportedly dumped a heap of evidence on the EC's desk.

The EC says its second investigation concerns the charges that both T3T and TurboHercules made about IBM illegally tying its mainframe hardware to its mainframe operating system and – in the later case – shutting out providers of emulation technology that could enable users to run critical applications on non-IBM hardware.

IBM foreswore tying in its antique consent decree and in the undertakings given to regulators on both sides of the pond to get the decree terminated by 2001.

[The] investigation concerns the charges... about IBM illegally tying its mainframe hardware to its mainframe operating system...

IBM's allegation of the "meritless" charges being the work of Microsoft and its stooges comes from the fact that Microsoft put money into both PSI and T3T, whose new business involves migrating mainframe site to Windows servers. Microsoft's investment wasn't made until after T3 filed suit against IBM and complained to the EC.

But that's why Blue figures it can say that "Certain IBM competitors which have been unable to win in the marketplace through investments in fundamental innovations now want regulators to create for them a market position that they have not earned."

Of course, one wonders how much truck Microsoft, a convicted monopolist, has with the regulators that fined it a small fortune.

In response to IBM's statement, Microsoft said it isn't a party to T3T complaint and that it puts money in companies like T3T to give users greater choice. "We do share T3T's belief that there needs to be greater openness and choice for customers in the mainframe market," it told Bloomberg. "Customers tell us they want greater interoperability between the mainframe and other platforms."

IBM is the only mainframe maker left and as it told the UK press last week "Western civilization runs on this system." The Commission acknowledges that the vast majority of corporate data worldwide still lives only on the mainframe. It is too expensive to move it.

The EC puts the worldwide market for mainframes last year at roughly €8.5 billion (\$11 billion) and €3 billion (~\$4 billion) in the European Union, but those estimates apparently just cover mainframe hardware and operating systems.

IBM's mainframe margins are understood to be quite handsome – BusinessWeek reckons the new next-generation mainframe that IBM just announced last Thursday could have a profit margin of ~70% – and Sanford Bernstein, for one, says the mainframe contributes over 20% of IBM's revenues and 40% of its profits all things considered: hardware, software, storage, services, financing.

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Last week IBM reorganized its executive suite and for the first time united hardware and software under one person. Steve Mills, its long-time software boss, will also have all of IBM's servers, including mainframes, and the chips they're made out of reporting to him. IBM's latest theory is that computer systems must be “designed and brought to market as tightly integrated” packages of hardware and software, a theory that suggests it's seeking tighter control of the mainframe.

The EC is also entertaining another official complaint about IBM's “on-going anticompetitive and abusive conduct” in the mainframe market that it didn't mention this morning. That one was lodged in late June by Texas-based Neon Enterprise Software, a company 100% owned by John Moores, the “M” in BMC. Neon is also suing IBM for antitrust in district court in Texas.

Observers wonder whether the EC will ultimately open a third investigation involving Neon's allegations. And Ed Black, the head of the Computer & Communications Industry Association (CCIA), whose complaint led to the DOJ investigation, issued a statement saying, “Although we are pleased the European Commission is taking a serious look into IBM's actions, it comes as no surprise to us as the evidence of anticompetitive behavior is strong. We believe competition authorities around the world, as they learn about and focus on this vital market will take similar actions....It is vital that a market that is responsible for more than three quarters of the world's government and business data not be walled off from competition and innovation. All we ask is that IBM actually apply the same principles they espouse in the open source world to their mainframe business as well.” Microsoft is a member of CCIA.

T3 president Steven Friedman, who is trying to get his antitrust suit against IBM back on track – it was dismissed on a legal technicality and he's appealing that decision – said, “We applaud the EU Commission for taking formal action on the material issues raised in our complaint. We've felt all along that through a prism of just the fact of our case, the commission and others would find enough compelling documentation on IBM market abuses to warrant a complete investigation into IBM's practices over the past decade. We're hopeful that other judicial agencies will come to the same conclusion.”

Roger Bowler, the president of TurboHercules SAS and the originator of the Hercules project, said, “We welcome the European Commission's decision to initiate formal proceedings against IBM's suspected abuse of its dominant market position. Hopefully, it will lead to remedies that will allow companies like TurboHercules to compete in the mainframe market. We simply ask that customers be allowed to run their mainframe applications on the hardware of their choice. It is also good news for the Hercules open source community and its 11-year history of innovative development.”

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