EXCLUSIVITY (SOFTWARE): THE CHECK POINT CASE

Subject: Exclusivity
Distribution

Industry: Software; firewalls, virtual private network systems
(Some implications for other industries

Parties: Check Point Software Technologies Ltd (Israel)
Stonesoft (Finland (complainant)

Source: Commission Statement IP/02/521, dated 9 April 2002

(Note. There are some resemblances here to the "ice-cream cases", in which suppliers made it a condition of business with retailers that they should stock only their own products. The main differences are that the relationship here is between supplier and distributors and that there was nothing comparable to the provision of refrigerated cabinets, which tied the ice-cream retailers to their suppliers and gave the suppliers additional leverage. The principle is nevertheless the same: that exclusivity of supply can result in foreclosure of the market.)

The Commission has closed an investigation into a complaint against Check Point Software Technologies Ltd. after the Israeli software company undertook not to engage in exclusionary supply practices with its distributors. Check Point is one of the world's main operators in selling firewall and virtual private network (VPN) software that protects corporate networks from hacking. Firewall/VPN software is used to prevent unauthorised external access to internal computer networks, and to provide data encryption in public computer networks. The Commission had received a complaint from rival Finnish firm Stonesoft that Check Point's distribution practices were unfairly excluding it from the market.

The Commission began an investigation of Check Point's marketing practices following a complaint by Stonesoft, a Finnish software company, ahead of the launch in March 2001 of a competing firewall/VPN product.

Following an extensive market investigation, the Commission was concerned that Check Point had told some of its distributors and resellers that, if they attempted to sell Stonesoft's competing firewall/VPN product, they would no longer be supplied with Check Point's own product. Given Check Point's market presence, the Commission was concerned that this was having a negative foreclosure effect in the market for firewall/VPN software in violation of the rules on competition of the European Community. Negotiations between the Commission and Check Point led to an offer by Check Point of an undertaking which covers the Commission's concerns. The terms of the undertaking are as follows.

Check Point confirms that it will not place undue or unacceptable pressure upon its distributors and resellers regarding their independent decision whether or not

to sell competing products; in this respect, Check Point will confirm to its distributors and resellers their right independently to choose to handle products of other manufacturers which directly or indirectly compete with Check Point's own products. Therefore, Check Point will inform all its distributors and resellers by letter that it will not make the supply of its products, or the terms and conditions of supply of its products, conditional on whether or not its distributors and resellers stock, market and sell competing products. A copy of this letter will be provided to Stonesoft.

Check Point will also ensure that its sales and other relevant personnel are informed about the European Community rules on competition and that they understand the requirement to comply with those laws in their business dealings. The Commission has reviewed and is satisfied with the letter that Check Point is sending to its distributors and resellers. As a result of Check Point's undertaking, Stonesoft's complaint has been withdrawn; and the Commission will therefore close the case file. Nevertheless, the Commission will continue to monitor developments in this market to ensure that the terms of the undertaking are respected. ■

The Opel Case (State Aid)

The Commission has decided to initiate detailed investigation proceedings concerning aid amounting to €41.7 million earmarked for Opel's plant in Azambuja (Lisbon region). At this stage, the Commission has not been able to establish that the planned aid meets the criteria of the Community framework for state aid to the motor vehicle industry and has asked Portugal to forward any comments within one month. The notified project concerns the production of a new small passenger and commercial vehicle based on the Opel Corsa platform, the Corsa Combo. The vehicle, produced from 2001 onwards, replaces ageing models based on the old Corsa platform. The Portuguese authorities have indicated that the General Motors group considered the alternative option of carrying out the investment at its plant in Gliwice (Poland) instead of Azambuja. Comparing the cost in the two options by the means of a cost benefit analysis, they established that the investment in Azambuja would have a cost disadvantage of 37.21% with respect to Gliwice, which is enough to justify a regional aid intensity of 32.5%.

However, the cost benefit analysis does not, at this stage, prove the reported cost disadvantage of Azambuja compared to Gliwice. The Commission's main doubts relate to the alternative of carrying out the project in Gliwice. A first point regards the costs associated with the maintenance of the old paintshop in Azambuja, and a second point the estimated proceedings from the sale of the land where the Azambuja plant is located. At this stage, the Commission has doubts on the compatibility of the aid in question with the common market. The Commission has therefore decided to open a detailed investigation and asked Portugal to provide within one month all the information necessary for the examination of the case.

Source: Commission Statement IP/02/490, 3 April 2002