

Microsoft Accused of Antitrust Violation by Small Computer Maker

Los Angeles, Nov. 12 (Bloomberg) -- Microsoft Corp., the world's largest personal computer software company, has been accused in an antitrust lawsuit of illegally refusing to sell its popular operating systems to a tiny California computer maker.

Uni-CNG Inc., with a half-dozen employees and annual computer sales of under \$1 million, filed the suit on Thursday in U.S. District Court in Los Angeles.

The Walnut, Calif.-based personal computer manufacturer, alleging state and federal antitrust law violations, seeks an injunction to force Microsoft to sell its operating systems to anyone who wants to buy them.

The suit was filed on the eve of the huge Comdex computer trade show in Las Vegas and just months after Microsoft settled a four-year antitrust investigation with the Justice Department.

The suit accuses Redmond, Wash.-based Microsoft of conspiring with unnamed large computer makers not to sell its MS-DOS and Windows operating systems to small computer original equipment manufacturers (OEM's) "for the sole purpose of destroying competition and maintaining its monopoly in the PC operating system market."

More software has been written to run on Microsoft's MS-DOS than any other operating system. More than 120 million computers use MS-DOS while more than 50 million use Windows.

"An OEM must have the ability to offer Microsoft operating systems to its customers to succeed" because most software is written to run on these systems, the suit said. Therefore, it alleged, small manufacturers "face extreme difficulty in entering and maintaining a position in the computer hardware market."

Microsoft spokesman Greg Shaw said the company had no comment because it hasn't yet received a copy of the suit.

July's Consent Decree

In July, Microsoft settled antitrust charges by agreeing to a consent decree with the Justice Department. The accord didn't require Microsoft to pay any fines or damages, and the company said the settlement wouldn't affect its revenue.

The decree required Microsoft to change some of its licensing and non-disclosure practices. Attorney General Janet Reno said the settlement "levels the playing field and opens the door for competition" by curbing Microsoft's "monopolistic practices."

But Uni-CNG's attorney Thomas Chang said the giant software firm still refuses to sell its operating systems to "little guys" like his client, despite the consent decree.

"It doesn't help the small computer manufacturers who do not have the clout to go to Microsoft and say, 'Please let me buy your product'," Chang said. The decree only helps large computer makers like International Business Machines Corp. and Novell Inc., while "the little guys don't have the power" to lobby the Federal Trade Commission and the Justice Department effectively, he said.

Chan said the classic Silicon Valley entrepreneur, building computers in his garage, is still has no choice but to violate

Microsoft's rules by buying operating systems on the open market.

'Bundling' Attacked

The suit claims, however, that Microsoft makes it hard for small OEM's to buy operating systems on the open market through 'bundling' contracts. These allegedly forbid large OEM's from reselling Microsoft operating systems unless bundled with a computer.

It also accused Microsoft of filing multiple 'sham' copyright infringement lawsuits to harass small OEM's that try to purchase unbundled operating systems to sell with the computers they build.

'They use copyright law as a smokescreen to enforce (Microsoft Chairman) Bill Gates' Law: Thou shalt not sell MS-DOS or Windows unbundled,' said Chan. The suit seeks to force Microsoft to sell its operating systems unbundled. Chan argued federal copyright law prevents a publisher like Microsoft from controlling resale of its products beyond the first sale.

He said Microsoft has used the powerful teeth of copyright law to shut down small computer manufacturers who manage to buy its operating systems unbundled. It's used the law to seize the assets, books and records of these companies, Chan said.

Chan said Microsoft sued privately held Uni-CNG last year for alleged copyright infringement. The case is still pending. He denied that Uni-CNG made illegal copies of Microsoft operating systems. He said they bought them, unbundled, from a Microsoft licensee. He said last year he persuaded a federal judge to lift the freeze Microsoft initially won against his client's assets.

'It gives us a lot more credibility, now that Microsoft has entered the consent decree,' said Chan. 'The court takes us seriously now. Before they didn't.'

Plaintiffs in the new suit also include Harry Yuan and Marina Kao, the owners of Uni-CNG.

-- David Evans in Los Angeles (310) 827-2348 through the Princeton Neweroom, (609) 279-4000/chd

(Story illustration: For a graph of Microsoft's stock activity during the past five days, type MSFT US <Equity> IGPO5 Go.

For more company news and stock information: MSFT US, IBM US, NOVL US <Equity> CN, BQ, COMP; for more on the software industry: NI SOF; for more on the computer industry: NI CPR; for more litigation news: NI LAW; for more on the Justice Department: NI JUS.)

20:38