From: Joe Williams
Sent: Monday, February 16, 1998 8:08 PM
To: Joachim Kempin; Carl Sittig
Cc: Bengt Akerlind; Peter Miller (LCA); Joe Williams
Subject: RE: Microsoft

Joachim,
I reviewed the BTD, WDF, and MDA with Compaq again this morning, and have cleared up some additional sticking points....however, there are still a few issues that are open; Tim Harris will bring up in his call with you tomorrow at 2:15pm.

CarlSi and I will be with you at 2pm to prep for the call with Harris.

There are six acknowledged issues remaining, and one that may come up regarding License Exchange. Here they are:

No. 1: % of Per-System units OK to ship naked. From earlier CarlSi email:
- They want 10% naked systems. We said "no", but will consider language for case-by-case issues where MS actually has a legacy Select license that gives the customer bootable bits.
- *[Joachim Kempin]* I think this is O.K. as stated but no blank check.

[Joe Williams] This is still open....I have proposed terms for those customers that already get their OS from Select, Compaq was generally OK with the terms. We can nail down the details.
Tim Harris still wants a blank check for a certain % of systems that are licensed "per system" that he can ship naked, and believes that you and he discussed this and "agreed". I would hope that we don't agree to this, since it continues the practice of ambiguity with Compaq.....

If you do decide to do this with Tim, the % should be very low, perhaps 1% with a provision for MS and Compaq to agree to discuss changes to the %. (Each 1% = 120,000 systems...before we add in DEC or other future purposes).
I asked what their last two years performance actually was, and they replied that it was close to zero %.
One other idea....if the % goes over 1%, Compaq agrees to designate sku's in order to keep it below 1%.

No. 2: Patent Immunity from Suit for all Windows products. You and Flannigan discussed, this should be solvable. From earlier Carlsi email:
- They are not willing to grant a waiver or license for the 2 patents they gave us notice about above and beyond the immunity
- *[Joachim Kempin]* I am OK here . No need to go over board .

[Joe Williams] ....you and Flannigan agreed that they should license all Windows products in order to have our products covered under the Immunity from Suit. Their negotiating team has conceded Windows 3.1 in the agmt (turns out they ship it), but are resisting the addition of Windows NTW 3.x.

No. 3: Language allowing Compaq to insert an ISP into the bootup process. From earlier CarlSi email:
- We wrote clearer language for the Internet Experience (ISP, Hotmail) issue that Bill was so concerned about. They want the pure LOI language which is vague. CPQ believes that some of our services should have revenue sharing w/ them. Comments? How firm do you want us to be?
- *[Joachim Kempin]* bottom line sharing?

[Joe Williams] Part of this is still open. Terms around revenue sharing are not included...the agmt. will be silent on this point. Their negotiating team has been told that they can no longer discuss this section, that it has to be between Tim and you. I have proposed terms that are very, very close to the LOI, but better reflect a contract's terms. I'll provide you with copies of the LOI and my proposed text. This should be easy to solve, and one that you can "give" to Harris.

No. 4: $5 Rebate program for NTW including Soft Landing systems. From earlier Carlsi email:
- They want $5 off all NT, including soft landing units! Going by the letter of the LOI. No discussion on our part. We will not give.
- *[Joachim Kempin]* agree

[Joe Williams] This is still open...see my previous email for specifics attached here:

RE: Compaq update

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No 5: Suspension rights and notice.
Compaq is demanding 48hr. advance fax notice that we intend to suspend their rights to a license (including having ARs stop-ship). We have already agreed that MS OEM VP must review and authorize any suspension, and have put other limits on our ability to suspend them.

I have not given the 48hr. notice to them because I'm not convinced that we would actually wait 48 hours if we felt a need to stop-ship...I would prefer not to put in the license something that we would probably break in reality. I'll bring the text to our 2pm conversation.

No. 6: MDA termination.
Current terms would allow MS to terminate the MDA if Compaq were in default of the WDF. Even if we didn't terminate the WDF, we could actually kill the MDA.....

We probably wouldn't kill the MDA under normal circumstances but if they are holding something over our heads (like they are today with Patent rights), having this ability could be pretty strong for us, since we can almost always find cases where they are in default of an agreement.

We may want to keep this lever.

No. 7: License Exchange continuation.
LauraSch sent email to you on this subject earlier today warning that Tim may bring this up and try to trade for something else. Their channel configuration program and their CTO launch have been delayed despite table-pounding by Pfeiffer and they are faced with a situation starting in April where the don't have a way to provide a commercial customer with the right OS on standard sku's. Tim may come to you to solve this for him by getting License Exchange extended.....I can't stress enough what a catastrophe this License Exchange program has been for MS. Compaq has badly mismanaged the program, and still won't face the fact that they are screwed up.

A workable solution for Tim may be to include a Windows 95/98 Recovery CD so that a user who buys NTW (but needs 95/98) can "downgrade". It's expensive, but we've conceded a ton already on this agreement.

Compaq still owes us quite a bit of information in order to close these agreements (i.e. list of Customer Systems, list of Subsidiaries, breakdown on uses for Windows as a utility, etc.)

Here is a brief update on the balance of issues from Carl's earlier email:

BTD

- Overall fundamental issue about tying 2 agreement together for things such as suspension, default, etc. (i.e. they screw up in an Office license and then we suspend the WDF)
- *[Joachim Kempin]* this is not very hard to solve.

[Joe Williams] This has been solved...I removed.

- They want 10% naked systems. We said "no", but will consider language for case-by-case issues where MS actually has a legacy Select license that gives the customer bootable bits.
- *[Joachim Kempin]* I think this is O.K. as stated but no blank check.

[Joe Williams] See No. 1 above

- Default Charge - We agree that WDF does not have a default charge, but we included language for a path to resolve dispute if there are damages. The only recourse we will have now is to deem them in breech if their in material damage. We might be able to interpret Suspension in 2i to help us here.
[Joachim Kempin] You are too hard core on this and if you can't solve it fast you run thedanger I will overrule you.

[Joe Williams] Solved....if the parties can't agree on damages, there is no Default Charge. We have other remedies.

- They are not willing to grant a waiver or license for the 2 patents they gave us notice about above and beyond the immunity
- *[Joachim Kempin]* I am OK here . No need to go over board .

Joe Williams] See No. 2 above

- They don't want to Indemnify or guarantee 3rd party's with regard to channel installers or 3rd party manufacturers. We are holding firm to this, and they are thinking about it and owe us some language.

- *[Joachim Kempin]* needed

[Joe Williams] Solved....Compaq gave up on this.

WDF

- We wrote clearer language for the Internet Experience (ISP, Hotmail) issue that Bill was so concerned about. They want the pure LOI language which is vague. CPQ believes that some of our services should have revenue sharing w/ them. Comments? How firm do you want us to be?
- *[Joachim Kempin]* bottom line sharing?

[Joe Williams] See No. 3 above

- Internal use with regards to DEC
- *[Joachim Kempin]* you know my point there

[Joe Williams] We made no changes to the agmt., so DEC (or any other acquisition) will get the internal use, etc.

- They want $5 off all NT, including soft landing units! Going by the letter of the LOI. No discussion on our part. We will not give.
- *[Joachim Kempin]* agree

[Joe Williams] See No. 4 above

MDA

- They don't want to put MS URL's in Favorites. Joe thinks this he has resolved this with Schrock.
- they know better.

[Joe Williams] This is solved; I owe them a small tweak on the language.

Tools license

- Being drafted.

Emerging Market Plan

- Being drafted

Carl Sittig
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425-936-6348

From: Joe Williams
Sent: Monday, February 16, 1998 1:30 PM
To: Joachim Kempin; Carl Sittig; Bengt Akerlind
Subject: RE: Compaq update

*****Actual Damage*****

Soft landed systems are limited to 25% of their shipments in Q2 and Q3 CY98. A rough estimate would be:

Q2CY97+Q3CY97 volume per royalty report: 4.5M....assume a healthy growth year to year, and these two quarters in CY98 should be about 6M units. 25% of that volume=1.5M units.

What is their NT penetration during the time? They are now at about 25%, so put some improvement there to 30%.

Here's the dollar damage:

1.5M units * 30% = 450,000 units * $5 = $2.25M

*****Damage to Account Control*****

This isn't that much money....but we NEVER discussed a $5 rebate coming off of their already super low $31 rate for NTW in Phoenix or otherwise. All discussion surrounded $86-$5 = $81....not once did we discuss $31-$5 = $26. I agree that dollar-wise, it's small, but we are being asked to agree to this because the LOI wording gave them an edge.

CarlSi and I have been super-firm on this point...., especially after we received the below email direction from you (from Carlsi's email to you):

- They want $5 off all NT, including soft landing units! Going by the letter of the LOI. No discussion on our part. We will not give.
- *[Joachim Kempin]* agree

I believe that it will hurt us in the account if you change course and agree to this after we have been so firm.

Here's another issue.....if we allow the $11.50 Emerging Markets dollars to apply on Soft Landed systems as well, then Compaq's net effective royalty for NTW systems in Emerging Markets = $31 - $5 - $11.50 = $14.50. Again, all discussion was focused on the new royalty rate....in fact, one of our written proposals to them in Houston said that the amount was tied to where the WDF ended up. The net (either $40-$12.50=$27.50 or $39-$11.50=$27.50) was to be $27.50 for WDF, and not some number way below $31.

This is highway robbery, and they are not being our partner with such demands. We need to live within the spirit of the LOI, but only as it reflects the commitments that we agreed to during our discussions.

Shame on me for not being perfect on the execution of the LOI, but at the same time they know what was discussed and committed.

---Original Message---
From: Joachim Kempin
Sent: Sunday, February 15, 1998 9:21 AM
To: Carl Sittig; Bengt Akerlind
Cc: Joe Williams
Subject: RE: Compaq update

In case we have to give them the $5, how much damage?

---Original Message---
From: Carl Sittig
Sent: Wednesday, February 11, 1998 6:09 PM
To: Joachim Kempin; Bengt Akerlind
Cc: Joe Williams
Subject: Compaq update

Latest docs were sent to Compaq yesterday. I believe we have addressed all the remaining issues in a way they will sign, except for the $5 off NT for "Softlanded Systems" (i.e. NT for $26). There are a couple minor clean-up pieces that Joe is working on. Compaq owes us bits and pieces also (Customer System table, Notice addresses, etc). Joe

will review with them Thursday. I am out Thurs, Fri and Mon.

Tools license will have 2nd review with Peter Miller on Friday, and we will deliver it to Compaq as soon as they get us the info we have requested (how used, MS product used, functionality)

Tamara is meeting with them on Thursday to continue the Emerging Market piece. We still need data from them.

Harris wants to talk with you this week. I asked Sherrie to call Tim's admin and set up the call for next Tuesday. The reason is that the latest docs are close to what they want and they still owe us several things, so no reason to have the call yet. I believe he has another reason for wanting to talk to you this week, probably to complain that this is taking too long and he wants to speed it up. For the reasons above I think we are fine and the call can be next Tuesday.

Thanks

Carl Sittig
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