MARCH 2001

COMPLAINT SUBMITTED UNDER THE COMPETITION ACT 1998 BY SWAN SOLUTIONS LIMITED (Swan) ALLEGING A BREACH OF THE CHAPTER II PROHIBITION BY AVAYA ECS LIMITED (Avaya) AND A RELATED BREACH OF THE CHAPTER I PROHIBITION BY AVAYA AND OTHERS

Relating to Avaya’s actions in respect of interfaces connected to the Avaya Index Private Branch Exchange (PBx).  

INTRODUCTION

1. This case involves an alleged breach of the Chapter II prohibition by Avaya and an alleged breach of the Chapter I prohibition relating to an agreement between Avaya and a number of computer software developers.

THE FACTS

The Parties

2. Swan designs and supplies software for Computer Telephone Integration (CTI). CTI is the means by which computer systems and telephone systems are able to interact. For the purposes of this investigation, CTI is taken to mean a functional integration of business application software with telephone based communications using some form of intelligent control link to enhance telephone call handling.

3. Avaya is a manufacturer of telecommunications equipment. It manufactures the INDeX PBx telephone system. Until 30 September 2000, Avaya was part of the Lucent Technologies group of companies which acquired the INDeX system through the acquisition of SDX Business Systems plc. Since 1 October 2000, the Avaya group of companies (including the operations relating to INDeX) has been independent of the Lucent Technologies Group of companies.

The Complaint

4. As noted above, Swan produces CTI software which connects to PBx systems. The software is purchased by PBx owners for use with either new or existing systems. CTI is used predominantly by businesses such as call centres or customer helplines where, for instance, by using caller line identification, CTI will allow the telephone agent in the call centre to assess customer details as soon as the call is answered. In addition, it allows for call management, whereby calls can be routed to agents as they become available, and accurate records of calls received can be maintained. CTI software, such as that produced by Swan, requires an interface in order to connect with the PBx.

5. Swan’s CTI software interfaced with the INDeX telephone system through Event and CTSA ports which were previously provided as part of the INDeX system. Avaya

1 A Private Branch Exchange is a telephone system within an undertaking that switches calls between that undertaking’s users on local lines while allowing all users to share a certain number of external phone lines.
announced in 1998 that these ports would be replaced by a new interface called “CT Integrator”. Oftel understands that Avaya has withdrawn the Event and CSTA ports from new versions of the INDeX PBx and is now actively promoting the CT Integrator. Swan claims that the abuse consists of a refusal by Avaya to maintain the previous interfaces or to provide this new interface only at unreasonable cost.

6. In competition to Swan’s CTI software, Avaya offers Call Centre Management (CCM) software which connects directly to the client’s computer with no separate interface being required. It also offers, as an alternative to CCM, CTI software which, while requiring an interface, is not subject to payment of a licence fee for use of that interface. Swan claims it cannot therefore offer a CTI product for use with the Avaya Index system which is competitive with Avaya’s own CCM or CTI software², as a person buying Swan’s CTI software would be subject to a surcharge in the form of the additional licence fee. Swan also object that additional charges (based on number of agents connected to the system) have been levied by Avaya to enable automatic call distribution which is a crucial part of many CTI applications.

7. Swan has also claimed that the Synergy Developers licence which it was asked to sign in order to develop CTI software for the INDeX PBx is restrictive in that it prevents the development of competing software and amounts to a breach of the Chapter I prohibition.

8. Swan’s complaint concerns access to the Avaya INDeX PBx alone.

ALLEGED BREACH OF CHAPTER II: ABUSE OF A DOMINANT POSITION

Competition Assessment

The relevant geographic market

9. Many manufacturers of PBxs and developers of CTI applications are based outside the UK, but the majority sell their products either through a UK-based direct sales force or through UK-based dealers or distributors. From the information available to Oftel, it appears that most UK customers currently source PBxs and CTI applications from the UK, either direct from the manufacturers or through dealers / distributors.

10. As far as PBxs are concerned, although basic switches are generally sold worldwide, units tend to be ‘nationalised’ by means of different specifications. In addition, a significant reason for buying from a UK supplier is the need for easily accessible after-sales support. It is therefore generally the case that a UK customer will buy its PBx from a manufacturer with a UK base or a UK-based reseller / dealer / distributor.

11. As far as CTI software is concerned, most UK customers currently tend to source CTI applications from the UK. While Oftel is aware that these products are developed, sold and, increasingly, supported on a worldwide basis, and the market for CTI applications could therefore be considered to be worldwide, Oftel appreciates that there may be significant resistance from purchasers, in terms of uncertainty of after-sales service for example, which could limit the impact of the non-UK alternatives. It is for such reasons

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² For the purposes of this assessment, the term CTI is taken to include Avaya’s CCM applications.
that Oftel has chosen to limit the relevant market for the purchase of CTI applications in this case to the UK alone.

The relevant product market

12. Given the circumstances of this particular case and the fact that it involves the connection of the CTI application through an interface to the PBx, Oftel has considered the possibility of the relevant product market consisting either of each of these products alone (or certain versions of them) or a combination of the products.

PBxs

13. From research conducted by Gartner Dataquest (Premise switching equipment: United Kingdom, 1999 actuals) it appears that the Avaya business (then part of Lucent) had around 21% share of the market for UK PABX sales by number of lines in 1999 compared to Nortel who had around 25%. A number of other players occupied the remainder of the market.

14. The above does, in fact, overstate Avaya’s position for the purposes of this complaint. The Avaya Index PBx system which is the subject of this complaint accounted for only part of Lucent’s PBx sales and therefore accounted for 10.7% of UK PBx sales (by number of lines) in 1999 according to information provided by Avaya.

Dominant position – PBxs

15. A market share of 10.7% is not sufficient to enable Avaya to exert market power. Accordingly it can be concluded without further analysis that if this were the relevant market, Avaya would not have a dominant position in it for the purposes of the Chapter II prohibition.

PBXs for use with CTI applications

16. Oftel has also investigated the possibility that a niche market may exist within the general PBx market covering PBxs which are particularly suited to the addition of CTI applications. For instance, purchasers requiring CTI functionality may be restricted in terms of the number of competing PBxs which are able to support their required CTI applications.

17. Oftel has found that most modern PBxs have some measure of CTI functionality, and that while the INDeX system is suited to running CTI applications, it is not the only choice available in the PBx market for purchasers using CTI applications.

18. Oftel has also noted the possibility of the relevant market also including non-PBx telephone systems which offer CTI functionality. This is a developing area of the market where network or IP based alternatives are becoming increasingly available and so lessening the influence of PBxs.

3 The OFT Guideline on the application of the Chapter II Prohibition (OFT 402, March 1999) at para. 3.13, indicates that the Director General of Fair Trading considers it generally unlikely that an undertaking will be individually dominant if its market share is below 40%.
19. The above views are also borne out by a June 2000 study by MZA which considered the market penetrations of the various systems that support CTI applications. This is shown in the chart below:

![Third Party CTI 1999 Manufacturer Shares](chart)

**Source:** MZA Limited – European Telecommunications Market Study – UK CTI Volume 2000 edition

**Dominant position – PBxs for use with CTI applications**

20. As noted above, the Director General of Fair Trading has taken the view that it is unlikely that an undertaking will be individually dominant if its market share is below 40 per cent. In the above table the Avaya INDeX system forms a part of the Lucent figure.

21. It follows that neither the Avaya INDeX System alone nor the Avaya company as a whole would be likely to have a dominant position in a market consisting of systems which support CTI applications, because their market share levels would not be sufficient to allow for the exertion of market power. This is particularly the case given that there are a significant number of players in the market and that Nortel have a greater market share than Avaya.

22. Given the above factors and market share information, Oftel has concluded that if a separate market exists for CTI functional PBX’s, the Avaya INDeX system would not be dominant in that market.

23. Given the availability of competing viable alternatives, Oftel has also concluded that the INDeX system could not be considered to form a relevant market in its own right. However the position in relation to primary and secondary markets is considered in further detail below.

**PBX’s for use in Call Centres**
24. As noted above, CTI is of particular use in the Call Centre environment. Oftel has therefore looked at the specific market for the supply of PBxs to call centres. In their Call Centres: United Kingdom, 1999 Actuals Gartner Dataquest have shown that Nortel Networks have around 30% market share and Avaya have almost 28% market share in the market for the supply of PBxs to Call Centres by number of agents with a number of other significant players occupying the remainder of the market.

**Dominant position – PBxs for use in Call Centres**

25. Given the above, Oftel does not consider that Avaya is able to exert market power in a market for the supply of PBxs to Call Centres, given the position of other undertakings in the market, and accordingly would not be dominant in such a market.

**CTI software**

26. While UK demand for CTI is served by a number of suppliers who are important in the PBx market, a large number of independent software companies also provide CTI applications. A CTI market would therefore encompass both traditional PBx vendors who have developed CTI links for their switches, and also a large number of specialist computer vendors. Due to the varied nature of that market, Oftel does not consider that Avaya could be considered to be dominant in such a market.

**Interfaces between the INDeX PBx and CTI software**

27. As noted at paragraph 4 above, CTI software such as that produced by Swan requires an interface in order to operate on the INDeX PBx. Oftel accepts that there are arguments for the view that interfaces between the INDeX PBx and the CTI software do not form a distinct product market, as, in the case of the INDeX system, the interface is written into and forms an integral part of the INDeX operating software. However, for completeness, Oftel has considered the possibility that a separate market does exist as a secondary market to the primary market of the INDeX PBx.

**Competition in the secondary market**

28. While Avaya has informed Oftel that at least three companies supply interfaces for use with the INDeX switch, manufacturers of primary products (in this instance the INDeX PBx) sometimes have a high market share in the supply of a secondary product (such as, in this case, the interface). It is therefore appropriate to consider whether conduct by an undertaking having such a market share could have a detrimental effect on competition.

29. An important consideration in such an assessment, as described in OFT’s Market Definition guideline, is whether customers take account of the whole-life cost of a product before purchasing. If customers were aware of these costs then the manufacturer of the primary product is less likely to possess market power in the secondary market.

30. Oftel considers that purchasers of PBxs and related equipment are mostly large organisations, well aware of the overall costs of the products they are purchasing who will factor in any costs for the interface when making their purchase decision. Given that,
as discussed above, the primary market is competitive, and that pricing in this industry is transparent, the purchaser has a choice as to which PBx / Interface / CTI combination it purchases based on all available evidence.

31. Oftel has also considered whether there are any constraints, in terms of how often a product is replaced and the switching costs incurred in changing suppliers, which could support a conclusion that secondary product customers could be considered captive. (In other words, that their ownership of the INDeX system prevented them from switching easily to competing suppliers.) While customers using third party CTI applications will be able to continue to use their existing software through their existing interface, they would be unable to incorporate certain software upgrades and would need to switch to the CT Integrator (and pay the additional fees) if they wished to continue using competitor CTI on the INDeX switch. From information available to Oftel it appears that PBx’s generally have a lifespan of around seven years.

32. Oftel has considered this issue but, given that a significant portion of customers who are upgrading software will be some way through their ownership of the PBx, does not consider that such customers can necessarily be considered captive in that the costs of switching to a different supplier will not be sufficiently significant. The ability of these customers to switch away from the INDeX PBx will act to protect customers with newer PBxs from potentially abusive interface pricing. In addition, Avaya notified the industry of the (at that time proposed) changes to its charging structure in February 1998, and purchasers have therefore been aware of the additional costs which they may have to face for some time.

33. Oftel does not therefore consider that Avaya would be able to behave anti-competitively in relation to interface supply. If it was to seek to abuse any potential dominance it may have in this market, potential buyers and a significant number of existing owners, would easily be able to switch to a different PBx manufacturer. This prevents Avaya from behaving anti-competitively with regard to the pricing or supply of the interface.

ALLEGED BREACH OF CHAPTER I: AGREEMENTS BETWEEN UNDERTAKINGS, DECISIONS BY AN ASSOCIATION OF UNDERTAKINGS AND CONCERTED PRACTICES

The Agreement or Concerted Practice

34. In order to develop CTI software for use with the INDeX system, Avaya required certain developers to sign a Synergy Development Licence. Swan has claimed that clause 13(b) of this contract amounts to a breach of the Chapter I prohibition. The relevant clause states: “you may not develop or market any competitive voice processing or ACD Management Information System that connects through the INDeX Event Port without our express written permission...................”

35. Swan has claimed that this clause has had the effect of preventing them from developing CTI software which is competitive to Avaya’s own CTI software. Avaya state that some developers may have signed the agreement containing this clause, however, it is no longer included in the terms and conditions of such contracts as it has become irrelevant now that the Event stream has been withdrawn.
Effect on trade within the UK

36. As the Synergy Developers contract concerns the development of CTI applications for use in the UK, the contract will therefore affect trade within the UK within the meaning of section 2 of the Act.

The Prevention, Restriction or Distortion of Competition in the UK.

37. The clause restricts the development of certain competing CTI features - voice processing and ACD Management Information systems - that connect through the Event Port to the INDeX PBx. Avaya has informed Oftel that the purpose of the clause was to ensure that customers had access to applications which are supportable in the long term (i.e. that were still operable without the Event port). Avaya has also provided arguments as to why it no longer wishes to promote applications which rely on the Event Port. Such reasons include the impossibility of accommodating certain technical developments on the Event Port and that providing technical support to such applications was no longer economically or commercially feasible.

38. As noted above, the clause relates solely to the Port which was being withdrawn. The conclusion reached above is that removal of the Port does not amount to an abuse of a dominant position. One of the effects of the clause was to prevent the development of applications which would not have been supportable in the long run. Another effect of the clause is that it serves to prevent Swan from developing or updating what it may consider to be commercially viable software that connects through the Event Port. Oftel notes that connection through the CT Integrator to the INDeX PBx system (albeit for a fee) is still available. Based on this, Oftel does not believe that the clause will result in an appreciable reduction or distortion in the overall level of competition and therefore it does not fall within the scope of the Chapter I prohibition.

CONCLUSIONS: NON-INFRINGEMENT

39. Oftel considers that Avaya does not hold a dominant position in any market for the purposes of this complaint and that the stated restriction within the Synergy Developers contract does not have an appreciable effect on competition.

40. Accordingly, on the basis of the facts as currently before it and for the reasons set out above, Oftel has concluded that the alleged actions of Avaya as outlined above do not infringe either Sections 2 or 18 of the Competition Act 1998.