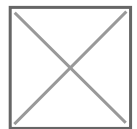


10 January 2012: The markets for corporate servers and relational database management systems (RDBMS)

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The *Autorité de la concurrence* declines to impose emergency measures against Oracle, but will continue to investigate the merits of Hewlett-Packard's complaint

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Hewlett-Packard Company and **Hewlett-Packard France** filed a complaint with the *Autorité de la concurrence* concerning practices of **Oracle Corporation** and **Oracle France** which, according to the complainants, are intended to drive Hewlett-Packard from the market for high-end corporate servers¹. Hewlett-Packard's complaint included a request for interim measures.

In the decision that it has just issued, the *Autorité de la concurrence* denies the request for interim measures on the grounds that the conditions for granting such measures have not been met, but considers that the investigation of the merits of the case should continue.

The sectors concerned by Hewlett-Packard's complaint: corporate servers and RDBMS

This case concerns the corporate servers and relational database management systems (RDBMS) sectors. IBM, Hewlett-Packard, Dell and Oracle are the main hardware suppliers in the market for corporate servers (all types of servers), both worldwide and in France. In the market for RDBMS (the database software that

complements the hardware layer comprised of the servers), the main software suppliers are Oracle (the market leader, with a worldwide market share of about 45-50%), IBM and Microsoft. Since it acquired Sun Microsystems in January 2010, Oracle, which until then had been a software supplier, has also been present in the corporate servers market and, more broadly, throughout the entire 'technology stack'.

Hewlett-Packard complains that Oracle has adopted a general strategy to drive it from the market, which may constitute an abuse of a dominant position

Hewlett-Packard complains that Oracle has adopted a general strategy to exclude it from the market, consisting of a set of practices in the RDBMS market, intended to drive it from the corporate servers market, limited, according to the complainant, to the high-range segment. This concerns primarily the following two practices:

- 1 On 22 March 2011, Oracle announced that it would refuse to develop future versions of its RDBMS (which may become available in October 2012) that would support Intel's 'Itanium' processor, which Hewlett-Packard uses almost exclusively to manufacture its range of 'HP Integrity' servers. In light of the fact that, for companies, changing RDBMS is much more expensive and risky than changing servers (the so-called 'captive effect'), faced with the impossibility of migrating to a future version of Oracle's RDBMS, users of 'HP Integrity' servers, could, according to Hewlett-Packard, choose to change their hardware platform rather than the RDBMS, i.e. opt for migrating to the new version of Oracle's RDBMS and replacing their Hewlett-Packard servers with the servers of another manufacturer.

At this stage of the investigation, the Autorité de la concurrence considers that Oracle may hold a dominant position in the RDBMS market. It cannot be excluded that Oracle's refusal to develop future versions of its RDBMS that support 'HP Integrity' servers constitutes an abuse of a dominant position that may inter alia lead to the creation of a duopoly between Oracle and IBM, which are fully integrated at the various stages of the 'technology stack' (hardware, operating systems, databases, middleware and software

applications).

- .2 Hewlett-Packard also complains that Oracle engages in discriminatory pricing for its RDBMS licence (current version) to the detriment of the new generation of 'HP Integrity' servers, which was released in Spring 2010.

If confirmed by the investigation on the merits, a practice consisting of charging different licence fees on the basis of the range of servers used could be discriminatory and, therefore, may constitute an abusive practice.

These two practices that Hewlett-Packard alleges are claimed to be increasingly driving it from the market for high-end corporate servers, which could constitute an abuse of a dominant position due to the close nexus between the high-end servers market and the RDBMS market. This market exclusion could ultimately be detrimental to consumers. However, a more in-depth investigation is necessary to establish the degree of substitutability among the various types of servers and the relevant markets therefor and, consequently, to decide whether Oracle holds a dominant position and is engaging in abusive practices.

The Autorité de la concurrence declines to grant emergency measures, but decides that the investigation on the merits should continue

The Autorité de la concurrence has decided to continue the investigation on the merits of the case, but has not granted interim measures because the conditions for granting emergency measures have not been met (no serious and immediate harm to the general economy, the sector, the interests of consumers or the complainant company).

The investigation on the merits will focus on determining if the practices alleged against Oracle will drive Hewlett-Packard from the market for high-end corporate servers.

(1) More precisely, Hewlett-Packard describes this market as a market for 'critical servers', i.e. servers able to perform critical duties. These servers can handle tasks 'whose uninterrupted completion is essential for the proper functioning of an organisation'.

> Full text of decision 12-D-01 concerning a request for interim measures with respect to the practices engaged in by Oracle Corporation and Oracle France (in French)

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