

From: Paul Maritz
Sent: Wednesday, August 19, 1998 2:18 PM
To: Joachim Kempin; Jim Allchin (Exchange); Mike Oldham; John Balciunas; Tom Phillips; Steve Ballmer; Bill Gates
Cc: David Vaskevitch
Subject: Compaq saga

[Jim & team please correct if needs be]

We had another status meeting with Rose, Strecker, Flannigan et al yesterday. Since June, a fair amount of water has flowed under the bridge. The net is that after a lot of enthusiasm on both sides on doing "NT - UNIX affinity" and a "Non-stop NT" (as originally envisaged), the "Non-stop NT" program got dramatically scaled down as we could not come to agreement on what Compaq really wanted us to do, which was to basically take over their Tandem software group lock, stock, and barrel (~400 persons), and leave it down in Bay Area.

Since then the deal got reformulated along lines we proposed:

- "NT Friendly UNIX (aka NTFU)": this is partially a technology license of few components (COM) to Compaq for hosting on UNIX, but mainly a commitment of MS to support Compaq's positioning of Digital UNIX as "the most NT-friendly UNIX", and a commitment to release Microsoft pieces for UNIX for Digital UNIX on a MFN basis.
- A commitment to jointly "accelerate" development of a "High Availability NT". Specifically, MS will be allowed to recruit up to 90 persons from Compaq (ie. either Tandem or Digital), and Compaq would license certain source code bases (certain Tandem distributed transaction components, and source to SQL-MX database) on non-exclusive basis to MS, along with associated patents. MS would license SQL Server source code to Compaq to allow them to port it to NSK, which Compaq would introduce instead of SQL-MX.

This is what we took into the review meeting yesterday with near final drafts of LOI's after lots of work by our respective teams. In the course of the mtg, and in a side 2-1 with Rose/Strecker, the following emerged:

- Strecker said that the deal is feeling one-sided to them, since Compaq is "transferring people and IP" with no guarantees back as to what benefit Compaq would get.
- To address above feeling, they proposed that (1) we commit to use the "Non-stop" brand on the high-end version of NT, this will allow them to have companion services and products that carry same brand, and (2) in lieu of licensing them SQL Svr Source code for port to NT, we just pay them \$50-60M for the SQL-MX code and people, and they will just live with current SQL Pro product on NSK.

I said in return that we were not getting much guarantees either as to whether we would in fact be able to hire people, and as to what value we would get out of their IP (to be fair, while we don't need their people or technology, our people think that there are very good people there, and that some of their code, eg. distributed transaction code, would be useful). I said I understood their request to use the Non-stop brand, but it was hard to commit to a name for a product that we don't have spec or schedule for. I said that maybe we could get rights to the name, but either party would have until end of 1999 to withdraw from MS-usage of the name. That way we can both see how things really work out.

Since then, it has come to light that Tandem in an apparently unsanctioned (by Rose, Strecker) action has licensed the name to SCO for use on a "Non-stop SCO UNIX". As far as Jimall is concerned, this means the name is now poisoned forever. My mind is not completely closed yet, but actions like this do mean that we would be buying into a brand that will be mainly associated with Compaq.

On the \$50-60M front, Mike Oldham (our Compaq Acct leader) thinks that this is just another tactic to get off the \$35M hook and that they are going to keep coming back until they find some way of getting out of this.

Lastly Compaq would like to announce the "new relationship" at their analyst meeting on Sept 8/9.

Stepping back from all of this, I think the following points are relevant:

- Rose/Flanigan/Rodgers (the new NT program manager to be based in bay Area, but reporting to Rose), and to a less degree Strecker, are still solidly on an NT-centric strategy. This is fundamentally very good for us, and we need to preserve and encourage it. But it is clear that they are having difficulty controlling the Digital and Tandem factions who are either not pro-NT and/or want to preserve their OS fiefdoms.
- We will probably get some benefit out of hiring their people and from their code, but it is not an overwhelming

Plaintiff's Exhibit

9354

Comes V. Microsoft

MS-CC-Sun 00000249985
HIGHLY CONFIDENTIAL

advantage. As Jimall says, we can do without it.

- Until the SCO-pollution issue came up, I would have been open to using the "Non-stop" name as way of demonstrating relationship between companies and denoting to customers what we are doing. We should think whether the SCO issue kills this. SCO per se doesn't worry me that much, but the fact that they did it makes me more nervous as to how they will use it in future and who else they would license it too. Will we have Non-stop Netware too? At minimum, I think we have to ask them if they are prepared to give us an exclusive on future use of the name outside of Compaq.
- The money really comes down to fact that they are asking us for \$35M(+) as a bribe to keep them "NT-centric". My view on this is that if this \$35M is really a chip that will get used by Joachimk in his future negotiations with them, then we should ask Joachimk for some creative idea as to make this money issue go away and have them feel that they got something of value. Unless someone has better idea, I will contact Joachim on this.

Beyond that, Rose told me that they have decided to do two server appliances:

- one at \$1500 price based on NT, and that this is their "strategic" direction, and
- one at \$999 price based on SCO UNIX with AT&T LM code.

I said that I didn't understand this - why have two products so close together in price. Rose gave me long spiel that our guys apparently understood the relative positioning of the products (but he couldn't explain it). He did say that they thought a <\$1000 price would expand the market, just as their sub \$1000 PC's expanded the market. I said that I didn't think we did understand, and I would pass on to Jim, and that we needed to engage again. We have to either convince them not to do the \$999 product, or we have to be the software in it. Jimall has promised to engage. I guess it is very small comfort that people don't think of using NCP-based servers any more.