

EURIM Working Party Minutes

Working Party: 10 -Fairness in IT Procurement

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Tabled Papers:

- Agenda
- Code of Fair Use and Best Practice for Software Owners and Licensees / Users (Michele Rennie - Computalaw)
- Mediation vs. Litigation - a guide to resolving disputes in the IT industry (CSSA)
- CSSA Contract Guidelines (CSSA)

Other Docs. Presentation - Karl Schneider, Computer Weekly

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Minutes of the meeting of the EURIM WP for Fairness in IT Procurement 4th November 1999, The Regus Centre, London SW1

Organisations Represented

Abbey National

BT

Buy IT

Standard Life

ICL

EURIM

Computing

Reynolds Porter Chamberlain

SmithKlineBeecham plc

P&O Nedlloyd

Robin Laidlaw Associates

CSSA

Beta Systems S/W

IMIS

CGU

CCTA

NCC

Gsoft

Computalaw

EURIM

Computer Weekley

TIF - The Infrastructure Forum

Computer Weekly

CIS Insurance

Landmark Systems UK Ltd

EURIM

Identrus

FEI

BT

BBA

SOCITM

Primark

- 1 Meeting Notes**
- Chairman's Introduction**
- 1.1 Lord Renwick (LR), as Chairman of EURIM, welcomed everybody to the launch meeting and introduced the Working Party Chairman, Geoff Petherick (GP)
- 1.2 Background:-
Computer Weekly and EURIM had independently discovered that suppliers were taking advantage of the Y2K situation to abuse their existing customers. IBMCUA surveys had revealed that this problem was widespread and high value.
- 1.3 GP outlined the purpose of the working party -
- to establish the extent to which software contracts were being abused
 - to identify means of addressing and controlling this abuse, probably through a dispute resolution procedure
 - to alert parliamentarians to such abuse
 - to identify action (if any) required from regulatory authorities and Government in the form of proposed changes to legislation.
- 1.4 Objectives of the meeting were:
- to update everyone with the current situation
 - to gain volunteers to address specific areas both from the user and supplier sectors
- Members were reminded that the meeting would be held under Chatham House rules, where comments would be recorded but not attributed.
- 2 Name of the Working Party**
- 2.1 It was agreed on the suggestion of PM that the working party henceforth be titled: "**Fairness in IT Procurement**".
- 3 Overview current situation**
- 3.1 GP recapped progress to date: - the proto-WP had held two planning meetings and was now ready to start up in earnest.
- 3.2 He referred those present to the agenda where the main topic had been divided into 5 subject areas, each with a nominal chairman. Volunteers would be sought to address each of these areas. They were:
1. Issues to be addressed
 2. Codes of conduct and good practice
 3. Alternative dispute resolution
 4. Model contracts
 5. The role (if any) of government regulators
- 3.3 PV summarised EURIM's function as a medium to communicate across political and operational boundaries. Whilst government ideally preferred such issues to be solved by industry itself, the situation was serious:- many contracts were substantially dated and did not reflect changes in business practice. EURIM aimed to produce a formal briefing for parliamentarians and decision-makers apprising them of the exact situation.
- 4 Overview**
- 4.1 KS from Computer Weekly defined "stiffing" as "*the exploitation of weaknesses in software contracts by suppliers to extract excess profits from customers*". He gave a series of examples and outlined how prolific this abuse was.
- 4.2 Stiffing was enabled by poor wording in software contracts, and by the nature of such contracts, which are broadly exclusive. A user could technically fall outside IT contract terms very easily - for instance through expansion, restructuring, name change, out-sourcing, Y2K, or a geographical move. They would therefore be liable to a charge dictated by the supplier even when usage patterns remained largely unchanged. Users were not always free to walk away from their supplier because they were reliant on continuity in their IT systems for business survival.
- 4.3 Very few cases ever get to court but it was estimated that 30% of UK companies had been affected and sums involved were in the range of £280 Million. The worst offenders were the largest software companies but smaller firms were catching on.
- 4.4 The reasons for stiffing were economic - it was cheaper to extract more money

from existing customers than to find new ones. - effectively maximising return. Users were also to blame - firstly for not taking enough care when undertaking contracts, and secondly for subscribing to the UK predilection for focusing too much on up-front costs rather than total cost in IT procurement, which encouraged suppliers to quote for low front-end costs with high exclusivity or high ongoing costs.

- 4.5 KS outlined three principal skillsets needed for successful software purchase - IT knowledge, purchasing/negotiating knowledge, and legal knowledge. The majority of bad stiffing cases were found in companies where IT professionals had entered into contracts without the support of legal or purchasing departments. The public sector was one of the worst affected areas.
- 4.6 KS then outlined the progress of the CW campaign. He felt it was important both to users and suppliers that the situation be addressed - users were losing money and suppliers were getting a damaging reputation which could only be bad for business. He stressed the need to have both user and supplier input in any representation to ensure a balanced view.

5 **Code of Practice**

- 5.1 Michele Rennie from Computalaw tabled a draft document that she had produced, summarised its scope and content, and invited comments.
- 5.2 She reported that notwithstanding the terms of a contract, some protection was already given in law, (for instance back up copies of software could be made for disaster situations).

Comments and input

- 5.3 It was agreed that the Licence Capacity of a software system should not be based on the number of users since some systems were designed to cut user numbers. System capability would be a better standard.
- 5.4 It was also agreed that Software supply criteria could not be dictated since much depended on the relative buying power of the purchaser.
- 5.5 A number of codes already exist - the CIPS code or the CSSA code which could be resourced.
- 5.6 It was agreed that code of practice should be distinguished from code of conduct. It was also necessary to separate these generic guidelines from the actual physical contract. The user must be able to tell whether the terms and conditions or a contract lie within an existing code. This transparency is vital both to prevent more stiffing and to rebuild confidence.
- 5.7 Frequently in IT procurement the standard purchasing terms of the user are often mutually exclusive from the standard terms of the supplier. If a dovetailing of standard terms could be achieved for IT procurement this would be a major achievement.
- 5.8 All members of the WP were asked to forward any further comments on the draft to GP and MR. **ALL**
- 5.9 A sub-group was established to develop the paper further, keeping it technologically neutral and using details merely to furnish examples. **MR, LH, TF, TN, DL, CS, GF**
Chairman:- Michele Rennie
Volunteers: Liz Hartley, Tony Newsam, Theresa Friend, David Lloyd, Colin Sills and Grant Forsyth

6 **Alternative Dispute Resolution**

- 6.1 Tony Lewis of CSSA reminded those present that stiffing was an issue for suppliers as well as users since many of the biggest users of software are software companies. Outsourcing was also a major issue.
- 6.2 He remarked that although CSSA had not produced standard terms and conditions for contracts they had produced a set of "*Contract Guidelines for software*" and he tabled a copy.
- 6.3 He reported that CSSA already were involved in some informal dispute mediation and tabled a second CSSA publication - "*Mediation vs Litigation - a Guide to resolving disputes in the IT Industry.*"
- 6.4 The group proposed to establish a mechanism for alternative dispute resolution - all agreed that mediation was a far better method of resolving disputes than

litigation which could be protracted, expensive and risky. Tony Lewis of CSSA agreed to head up a sub group of users and suppliers to work with CEDA (the Centre for Alternative Dispute Resolution) and the IUA (to access PI insurers). The sub-group aimed to produce criteria for a working basis for alternative dispute resolution procedure in two stages, a) identifying underlying principles and b) outlining the process of dispute resolution in the form of a step by step guide with "do's" and "don't's".

- 6.5 Volunteers for the alternative dispute resolution sub-group were:
Chairman:- Tony Lewis
Volunteers:- Robin Laidlaw, Peter Duschinsky and Liz Hartley.

TL, RL,
PD, LH

7 **Model Contracts**

- 7.1 Two problems emerged:- firstly there was a polarisation of views - One member felt that the need for a model contract indicated the supplier-customer relationship had failed. Some felt that the model contract would never be applied effectively because the fairness of the contract depended entirely on the relative size and buying power of suppliers and customers. Others felt that a model contract provided a vital framework for fair practice. Secondly there was a risk of re-inventing wheels - many model contracts existed already.
- 7.2 The group therefore agreed to establish whether model contracts would be a useful way forward. It might be counter productive to create new model contracts when a plethora already exist which can be accessed easily via the CCTA. It would then just be a case of making them more widely accessible.
- 7.3 It was agreed that a good alternative to drafting a model contract would be to create a web-based information source. Good practice terms, criteria for IPR, warranties, payments, etc could all be included. A sub-group therefore agreed to source a collection of good practice terms and clauses which could be edited and web-mounted for easy access. The resulting "model contract" would therefore simply be a collection of useful terms, clauses and examples clearly referenced and indexed.
- 7.4 PD offered the Buy IT website to host this, provided there was no conflict of interests.
- 7.5 PM noted that the various guidelines could be organised into a pyramid going from the generic to the specific. Only the specific clauses would need frequent updating.
- 7.6 The group agreed to focus on two areas:
1) compiling information from existing sources to create a virtual library. This would be referenced and accessed via an index map.
2) the effective dissemination of such information which was vital - firstly to those who actually draw up contracts (such as lawyers), and secondly generically for to help educate businesses. JR and KS agreed to help publicise such an information source through Computer Weekly.
- 7.7 The model contract ./ index map sub-group would consist of:
Chairman:- Stephen Cannon
Volunteers: Dr John Perkins, Peter Monk

See
Doc

8 **Role of Government**

- 8.1 The WP agreed to keep parliamentarians fully informed and to involve the OFT in all discussions but to leave lobbying until they had identified clearly and specifically whether and where there was a need for Government intervention.
- 8.2 The group therefore agreed to compile a briefing outlining the main issues and identifying firstly what industry can do to resolve them and secondly any action required from Government.
- 8.3 It was agreed that although a "name and shame" policy would be very effective in reducing "stiffing" it might be more beneficial to operate by positive endorsements rather than negative case studies. Confidence in the industry was already undermined and negative publicity would only aggravate this.
- 8.4 Such an endorsement practice would need an audit procedure to ensure compliance. JR and KS agreed to help publicise such a code.
- 8.5 The WP agreed that although large companies with much leverage were harder targets, the present group represented such a powerful voice in terms of range and

number of organisations that any position they took as a whole would have considerable force.

9

Date of Next Meeting

9.1 Subgroups would decide amongst themselves when to meet, but would need to provide feedback to the WP by mid-January. This would enable the WP to provide input to parliamentarians by the end of February.

9.2 GP agreed to liaise with the sub-group chairmen and propose a date for the next WP meeting. **GP**