Selling Your Business' Disused Microsoft Volume Software

Legalities:

In July 2012, the question over the legalities of the second-hand Microsoft Volume software market received a definitive answer from the European Court of Justice (ECJ) when it ruled that reselling intangible software in Europe was legal.

The rights of the software vendor to control the resale of the software copy are 'exhausted' after the first sale of the copy (Exhaustion Principle). This precedent is now enshrined within the European Software Directive 2009. However, this landmark ECJ ruling was not the sole catalyst towards the growth of the pre-owned Microsoft Volume software market. A key factor to its growth has ironically been Microsoft's own aggressive Cloud strategy, whereby companies have been increasingly migrating to the Cloud (albeit at a much slower rate than predicted) and therefore leaving behind disused perpetual / on-premise Microsoft Volume software. The combination of the ECJ's landmark ruling, which swelled business' confidence with regards to buying pre-owned software, plus Microsoft's aggressive Cloud strategy, which has increased the number of organisations willing to sell their disused Microsoft Volume software meant that demand was no longer being curtailed by supply as it was previously. For the first time since its beginnings in 2003-2005, the secondary Microsoft Volume software market has been experiencing significant growth year on year.

CASE STUDY:

In a real case scenario that started in July 2018, 'Client A' was approached by one of Discount-Licensing's intermediaries, a French based company that mainly specialises in independent software licence optimisation in the France. 'Client A' is a French multinational operating in the health, nutrition and materials industries and as of 2018, it employed just over 21,000 staff with a turnover in excess of €10bn. 'Client A' had already migrated all of its perpetual Microsoft Volume Application and Server software to the Cloud and after completing the Cloud migration, it decided that it wanted to sell its disused perpetual Microsoft Volume software licences. Worth noting that whilst there are an increasing number of companies becoming "overlicenced" due to migrating to the Cloud, this scenario is also created because of a move to a more recent on-premise / perpetual Microsoft software version or reduced headcount because the business has contracted.

1) The First Step:

Discount-Licensing completed an initial valuation of Client A's disused software based on a simple 'shopping list' supplied by 'Client A' through the intermediary (at this stage, DiscountLicensing was unaware of who 'Client A' was). The shopping list was long and as certain products were older versions and slower moving products, an 'outright' purchase was offered for the main / faster moving items alongside a second purchase offer for the slower items based on purchasing on a 'broker' style need-to-buy basis – these valuations / offers were supplied within 48 hours: **'Client A' Shopping list (main / fast moving items):**

15,950 @ Office 2016 ProPlus

11,330 @ Core CAL Suite

4,900 @ Enterprise CAL Suite

2) Valuation & Acceptance:

In July 2018, Discount-Licensing submitted a software licence valuation in excess of €1,000,000 via its intermediary for the above main / faster moving items, together with a second proposal using the 'broker' style offer for the slower items. It was agreed that the transaction would be completed directly between 'Client A' (often the case so that the transaction is protected under Discount-Licensing's Professional Indemnity insurance) and as such, Discount-Licensing offered the intermediary in excess of €100,000 commission should the purchase of the main / faster moving items be successful (a separate commission structure was offered for the 'brokered' items). By the end of July, the intermediary confirmed that the valuations were acceptable and that it would like to proceed with Discount-Licensing's proposals.

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3) Legal Due Diligence:

At this point, protected under a Mutual Confidentiality Agreement, 'Client A' made itself known to Discount-Licensing and within 7 days, supplied a Microsoft Licensing Statement (MLS) report in order to identify and validate that the software licences were there and resalable in line with the ECJ ruling (2012) and European Software Directive 2009. In terms of 'validation', the MLS was used to verify the purchase history of 'Client A's' Licence Agreements (LA) in order to verify that the:

1. Licences were perpetual, not subscription;
2. Company names on LA's were correct / related;
3. LA's renewed in line with Microsoft rules;
4. Underlying Licences / upgrade paths married up;
5. Confirm where the agreements were purchased but more important, where the licences were 'first put into use' (if outside EEA, the licences cannot be resold);
6. Confirm the correct 'licence entitlement' and ultimately confirmwhat was available to sell.

This legal due diligence was successfully completed remotely within 7-14 days without the need for site visits. Note that in this instance, not all the software licences were being purchased outright and so 'Client A' decided not to provide DiscountLicensing with access to its Volume Licence Service Centre (VLSC).

4) Formal Offer & Acceptance:

The MLS report was sufficient to satisfy Discount-Licensing that the licences were there and legitimate. A formal Indicative Purchase Offer (mimicking the initial valuation) was emailed in August (2018) along with an amended set of Transferor 'Terms and Conditions' (including products, purchase and payment terms), which had been agreed between 'Client A' and Discount-Licensing's legal departments in parallel to the legal due diligence (formal Sale & Purchase Agreements are not necessary but sometimes preferred by the transferor). That Indicative Purchase Offer was reaccepted in writing (via email) within 14 days.

5) Invoice, Deliverables & Payment:

A Purchase Order Confirmation was created by Discount Licensing and the Microsoft software licences detailed above was booked into DiscountLicensing's stock controlsystem. 'Client A' raised its first invoice on 25th August 2018 on the agreement that €250,000 was payable immediately, the remainder within 30 days of receipt of the documents that were agreed to be delivered (documents required to legally resell the pre-owned software licences) - this included the 'Deletion Statement' from 'Client A', which confirmed that the software has been uninstalled / no longer in use, as well as VLSC screenshots including Volume Licence Keys (VLK's) for installation (media was not required in this instance). Following receipt of the agreed documents, the final / outstanding payment was made by Discount-Licensing on 12th September 2018 along with the intermediary's commission invoice.

6) Post Transaction Relations:

'Client A' was unable to find an outright buyer for the remaining 'slower moving' items and so following receipt of a customer Purchase Order in November (2018), Discount-Licensing offered to buy 550 (out of 2,151) Dynamics CRM 2016 Professional CALs. The offer was accepted and the licences were purchased / delivered / paid for using the same process as with the main / faster' moving items in August. From start to finish, the process of selling the main disused Microsoft software took 'Client A' only 2 months and the relationship between 'Client A', Discount-Licensing and its intermediary remains very much intact; the disused 'slower moving' items continue to be sold by Client A to Discount-Licensing on a need-to-buy basis with the intermediary being consulted beforehand regarding its commission.