# Legal Updates & News Legal Updates

# **Green Reality**

February 2009

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Green IT has been touted as a key measure in reducing the IT industry's carbon footprint and in tackling climate change through the adoption of practices designed to use IT more efficiently.

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Recent years have seen moves from the seemingly random use of "environmentally-friendly" products alone to a more holistic approach to sustainability and the procurement of green IT products and services but there is still some way to go.

## Hype and reality

To date, the take-up of green IT in the market has been limited, certainly when considered against the amount of green IT hype over the past two years.

There are a number of potential barriers to the widespread use of green IT, such as a lack of established environmental targets and criteria, insufficient information and knowledge at a business level about IT efficiency (and the tangible benefits it can offer), and the lack of industry best practices and guidance in order to facilitate green IT procurement.

Those factors, combined with delays to the implementation of environmental regulation and the need for a cultural shift away from a traditional focus on the bottom-line, have all played a part.

### Market interest and future take-up of green IT

On the customer side, CIOs are increasingly aware of green IT and some are making all the right noises publicly (although recent surveys have shown that less that 50% of businesses have already developed environmental strategies and policies).

In recent months, large corporate organisations such as Tesco and Barclays have begun green IT initiatives to cut carbon emissions (focusing both on the environmental issues and on the cost savings that will result from a reduction in energy costs).

Given the energy price increases during the last 12 months, of course, more and more businesses are now seeing green IT as a direct cost reduction issue, not just as a trendy environmental issue or an intangible part of its corporate social responsibility programme. In the past, a barrier to green IT take-up has been the associated up-front cost and the need to sell to the business the potential future savings that could result. This becomes less of an issue as energy costs rise and new technology becomes available - such as the energy saving software being deployed by more and more businesses automatically to shut down parts of their IT estates outside core business hours. Such technology need not be expensive but could deliver real business benefits.

In addition, simple process changes may also deliver real savings for a negligible charge, such the use of "smart" heating and lighting, banning the use of screen savers and having devices shut down automatically when not in use. Increased consumer awareness and public focus should also help,

http://www.jdsupra.com/post/documentViewer.aspx?fid=f45f649c-7936-493f-ae0a-cff69bd9cd89 as organisations increasingly seek to promote their brands as "green" to a public that is reminded of climate change on a daily basis.

## Does green IT sell?

Without doubt, the IT industry is certainly pushing green credentials as a means of attracting business. In May 2007, IBM launched Project Big Green to develop and promote datacentre energy efficiency and Accenture has launched its Datacentre Calculator to provide tailored plans to improve datacentre efficiency through the use of virtualisation, consolidation and improved layout and cooling arrangements. Microsoft is engaged on a significant green IT exercise in all of its datacentres, and is even sensitising its business units to energy efficiency by cross-charging based on power consumption instead of floor or rack space.

On the other hand, the major India-based IT service provider WNS has launched its Green Lean Sigma Program, to re-define its processes to make them more energy efficient and to reduce carbon emissions with the aim of becoming carbon neutral. So, large IT suppliers certainly see green IT as a big selling point (and so does Greenpeace, which has published its own green IT supplier rankings to put pressure on the IT industry to clean up its act).

#### But how does the marketing of green IT translate into procurement?

If a customer wishes to procure green IT, then it must first know what goals it wants to achieve (*i.e.* reductions in energy savings, a move to wider use of thin client technology, process transformation etc.). Once it has identified these goals, the evaluation of green IT during the procurement process should be similar to non-green IT procurement. Although suppliers may promise to deliver exactly what the business requires, it will be for the business to evaluate which solution fits best.

However, one issue may be the lack of detailed green IT knowledge on the ground and, in particular, of how green (or not) existing technology may be. Another issue may be the complexity involved in moving to a green IT solution, while considering the wider environmental impact.

New hardware may deliver improved performance and energy savings by allowing consolidation but sourcing considerations should take into account the environmental impact of the manufacture and shipping of that hardware (causing embedded carbon and the creation of hazardous materials and pollution), together with the recycling of existing hardware. It may be that the best solution in the short term is to run existing hardware until there is no option but to refresh.

#### **Green IT contracts**

We have seen for some time that buyers of IT expect suppliers to comply with the customer's own environmental policy (or to have an equivalent policy). This is now more often a contractual requirement. But this pre-supposes that the customer itself has a sufficiently detailed and developed policy, and that there are ways to benchmark energy consumption and efficiency.

Another difficulty is that a supplier may only sign up to such obligations in relation to its provision of goods and services to that particular customer, without any obligation to follow green practices across its organisation. On a practical level, it may also be difficult (other than in circumstances of blatant non-environmentally friendly practices) for customers to ensure compliance with such obligations without specific audit rights.

Customers can, of course, contractually ensure green IT compliance by specifying relevant goods and services that are energy efficient or environmentally-friendly and ensuring that service descriptions specify processes that are designed in the most environmentally-friendly manner. Some customers are starting to go beyond initial specification and requiring service level adherence around energy consumption measures.

But to do so will require the business' overall IT strategy to be aligned to its environmental strategy and require buy-in from sponsors who historically may have been concerned only with bottom-line profitability (step forward the CFO!).

New technologies may be expensive (but not necessarily so) and a long term view of potential future savings may have to be taken. The uncertainty of quantifying the cost benefit analysis may be off-

http://www.jdsupra.com/post/documentViewer.aspx?fid=f45f649c-7936-493f-ae0a-cff69bd9cd89
putting to some businesses until better standard metrics exist.

Where future savings can be defined up-front and are a deal driver, customers should ensure that they have contractual remedies, such as liquidated damages, in the event that suppliers do not deliver those savings in breach of the contractual provisions, which may lead to interesting negotiations with suppliers unused to such an approach.

Contractual incentives could be put in place by way of specific service levels or bonus payments for hitting environmental improvement targets (although the latter may be less appealing to customers for cost reasons).

An issue here, however, may be the absence of industry-accepted metrics and the lack of staff with sufficient knowledge of green IT to put such measures in place, measures which may also require input from business areas not normally be involved in IT procurement, e.g., those responsible for facilities management.

The main barrier to specific green service levels and system improvement is likely to be around the measurement of compliance. For example, the business may not know exactly what proportion of its energy bill relates to its IT estate and in particular where energy is consumed across that estate.

Before meaningful green IT obligations can be imposed on suppliers, existing energy consumption will need to be detailed and baselined, usually through external audit (which will itself involve additional up-front cost). However, as with other baselining exercises, this should not be an insurmountable barrier; particularly with the advent of new measuring and benchmarking technologies and standards.

## Legislative initiatives

Green IT measures have been around for some time. The U.S. Energy Star Program, launched in 1992 has been revised to include greater computer equipment energy efficiency requirements. The U.S. Environmental Protection Agency, which created the Energy Star Program, has estimated that U.S. businesses alone could save \$4 billion a year in electricity costs by using more energy efficient datacentre equipment.

In Europe, EU Directives 2002/95/EC on the reduction of hazardous substances and 2002/96/EC on waste electrical and electronic equipment (the RoHS and WEEE directives) are now well established. While addressing limited aspects of green IT, they form part of the current legislative measures in place to address technology-related environmental issues.

On 16 July 2008, the European Commission published the communication "Public Procurement for a Better Environment". The Commission's ultimate aim is to ensure that EU member states lead the way in greener procurement, using increased demand to create or enlarge markets for environmentally friendly products and services, which will have a knock on effect in the private sector, while also providing a legal and operational framework to allow for the increased use of Green IT. Further EU initiatives are likely.

### The future's green?

Although green IT is an industry buzzword, the actual level of take-up to date remains to be seen, with mixed messages being given and the main business driver being reduced cost rather than environmental improvement.

However, the current regulatory and public climate, together with shareholder pressure, looks likely to converge over the next 12 months and beyond, with the result that green IT procurement is likely to become a day-to-day consideration, with new contracting practices developing accordingly.