eBay sued over will-not-recruit agreement with Intuit

David Ingram, Reuters

(Reuters) - The Justice Department and the state of California sued e-commerce company eBay Inc on Friday over what they called an illegal agreement with Intuit Inc not to recruit Intuit's employees.

The agreement eliminated competition for workers, depriving them of access to better job opportunities, the Justice Department and California Attorney General Kamala Harris said in simultaneous news releases.

Meg Whitman, then eBay's CEO, and Scott Cook, Intuit's founder, were closely involved in creating and enforcing the agreement. Cook was serving on eBay's board at the same time he was complaining about eBay's recruiting of Intuit employees, federal officials said.

EBay said the government is wrong and that it will vigorously defend itself.

"EBay's hiring practices conform to the standards that the Department of Justice has approved in resolving cases against other companies. The DOJ is taking an overly aggressive interpretation in their enforcement of antitrust law in this area," said eBay spokeswoman Lara Wyss.

Tax and financial software [1] company Intuit, which faced similar antitrust allegations in 2010 and settled, called the new lawsuits a matter for eBay.

"We have already resolved any concerns that the DOJ had about our recruiting practices and believe the matter for Intuit is closed," said Intuit spokeswoman Diane Carlini.

A spokesman for Whitman, who left eBay in early 2008 and now leads Hewlett-Packard Co, declined to comment.

The suit, and similar legal issues involving other technology companies, highlight the intense competition for talent in Silicon Valley. It also shows how the search for talented employees can sometimes clash with relationships on the boards of top technology companies.

The "handshake" agreement between eBay and Intuit was in effect from 2006 until 2009 or later, federal officials said. During that time, eBay's recruiting staff were instructed to throw away resumes that came from Intuit employees, the officials said.

The policy was put in place to avoid an awkward situation in which eBay might have

recruited Intuit staff while Cook was on the eBay board, according to a person familiar with eBay's stance on the case.

In 2007, Apple Inc's Steve Jobs asked former Google Inc Chief Executive Eric Schmidt to stop trying to recruit an Apple engineer, a transgression that threatened one junior Google employee's job, according to a court filing earlier this year. At the time, Schmidt was an Apple board member.

EBay believes its policy was not illegal because it did not have an effect on the market. The positions being sought, including in marketing [2] and engineering [3], were so broad that the job seekers had lots of opportunity to find employment elsewhere, the person familiar with the company's position said. He spoke on condition of anonymity because they were not authorized to speak publicly about the case.

Federal antitrust enforcers have "consistently taken the position that these kinds of agreements are per se unlawful under the antitrust laws," said Joseph Wayland, acting head of the U.S. Justice Department's antitrust division.

EBay ended its recruiting policy after the DOJ changed its legal position on such agreements, according to the person familiar with the company's stance.

In the past, the DOJ focused on whether such agreements actually impacted the market. But it changed that in 2009 to assume that such policies automatically had an impact and were therefore illegal, the person added.

The lawsuits target eBay only because Intuit was already a defendant in a wide-ranging 2010 lawsuit that federal officials brought against six technology companies. Intuit signed a settlement agreement with the government that federal officials call sufficient to prevent similar conduct in the future.

The eBay case grew out of the same wide-ranging investigation, officials said.

A proposed class action pending in federal court in California also addresses anti-poaching agreements among the six technology companies: Adobe Systems Inc, Apple, Google, Intel Corp, Intuit and Pixar.

(Reporting by David Ingram. Additional reporting by Alistair Barr in San Franciso.; Editing by Bernard Orr and Andre Grenon)

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