

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 COMPUTER ASSOCIATES)
 INTERNATIONAL, INCORPORATED,)
 and LEGENT CORPORATION,)
)
 Defendants.)

AUG 15 1995

Case No.: 95 CV 1398 (TPJ)

Filed: 8/18/95

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

The United States filed a civil antitrust Complaint on July 28, 1995, alleging that the acquisition of Legent Corporation ("Legent") by Computer Associates International, Inc. ("CA") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. CA and Legent are among the world's leading suppliers of systems management software for mainframe computers.

The Complaint alleges that the acquisition would eliminate significant competition between CA and Legent in five markets for systems management software used with mainframe computers that work with the VSE operating system: VSE tape management software;

VSE disk management software; VSE security software; VSE job scheduling software; and VSE automated operations software. In addition, the Complaint alleges that the transaction would substantially lessen competition in the market for "cross-platform" systems management software, used in computer installations where a mainframe computer is linked together with other types of computer "platforms" (such as midrange computers or networks of workstations or personal computers). The Complaint seeks adjudication that CA's acquisition of Legent would violate Section 7 of the Clayton Act and preliminary and permanent injunctive relief.

At the same time as the filing of the Complaint, the United States filed a Stipulation and a proposed Final Judgment in settlement of the suit. With respect to each of the five markets for VSE systems management software products, the proposed Final Judgment requires CA to license Legent's products to a person who can and will use the license to compete effectively in the relevant markets. With respect to the market for cross-platform systems management software, the proposed Final Judgment prohibits CA from taking any action to restrict competitors' access to an important technology, called "PIPES," that has been licensed to Legent by a third party, Peer Logic, Inc. ("Peer Logic").

The United States, CA, and Legent have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed final judgment would terminate this

action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II. DESCRIPTION OF EVENTS GIVING
RISE TO THE ALLEGED VIOLATION**

**A. The Defendants and
the Proposed Transaction**

CA is a Delaware corporation with its principal place of business in Islandia, New York. In its fiscal year 1994, CA reported revenues in excess of \$2.1 billion. CA produces and markets software for a variety of computers and operating systems, including systems management software for mainframe computers running IBM's VSE operating system. Aside from IBM, which writes the operating system software that run almost all mainframe computers, CA is the largest vendor of software for IBM and IBM-compatible mainframe computers.

Legent is a Delaware corporation with its principal place of business in Herndon, Virginia, and sells several different types of computer software and related services. In its fiscal year 1994, Legent's total revenues were over \$500 million. Like CA, Legent is a leading vendor of systems management software products for mainframe computers.

On May 25, 1995, CA announced that it had entered into a definitive agreement with Legent to purchase all issued and outstanding shares of Legent's common stock through a cash tender offer. This \$1.75 billion transaction forms the basis of the government's suit.

B. VSE Systems Management Software

Mainframe computers are the large and powerful computers used by industrial, commercial, educational, and governmental enterprises for large scale data processing applications. Mainframe computers provide unique storage, throughput, and security features and functions that make them superior data processing devices for large corporate and institutional computer users throughout the world.

An operating system is software that controls the operational resources of the computer (including the central processor unit, memory, data storage devices, and other hardware components) and allows "applications" software (programs that perform user-directed tasks requested of the computer, such as programs that maintain payroll, inventory, sales, and other business accounts of a company) to run on the computer. The vast majority of the world's mainframe computers run with operating systems developed by IBM, of which one of the most widely used is the VSE operating system.

Systems management software is used to help manage, control, or enhance the performance of mainframe computers. Some systems management functionality may be incorporated in an operating system. Separate systems management software programs such as the products offered by CA and Legent, however, provide additional functionality that is demanded by mainframe users. These separate systems management programs work in conjunction and generally must be compatible with the computer's operating

system.

CA and Legent both produce a wide range of mainframe computer systems management software products for the VSE operating system. They are direct competitors of each other with respect to the following VSE systems management software products: (1) tape management software, which controls the computer's cataloging, loading, formatting, and reading of the magnetic tapes used for data storage; (2) disk management software, which performs functions similar that of tape management with respect to data storage in hard disk drive installations; (3) security management software, used to prevent unauthorized access to computer applications and data; (4) job scheduling software, used to direct the computer to run particular processing operations (called "jobs") at particular times or sequences; and (5) automated operations software, used to automate message and error handling and other operations at the computer system console.

Each of the above described VSE systems management software products perform distinct functions for which no reasonable substitute products exist. As to each of the VSE products, even a substantial price increase would not cause their purchasers to begin substituting any other products. Each of the VSE products, therefore, constitutes a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

C. Cross-Platform Systems Management Software

"Cross-platform" refers to different types of computer processor designs or architectures. In addition to mainframe computers, other "platforms" are midrange computers, workstations, and PCs, all of which can, in varying degrees, be linked together into integrated multi-platform networks. These networks are also referred to as "distributed" computer systems. The integration of mainframe computers into distributed multi-platform systems is a relatively recent development, but is of increasing importance to modern computer installations.

CA and Legent have developed cross-platform systems management software products that allow different platforms that make up a multi-platform network of computers to be efficiently managed from a single point in the network. Customers that require cross-platform systems management products would not turn to other means of systems management in response to a significant increase in prices of such cross-platform systems management software. Cross-platform systems management software therefore constitutes a relevant product market in which to assess the competitive effects of CA's acquisition of Legent.

D. Competition Between CA and Legent

CA and Legent compete against each other for sales of VSE and cross platform systems management software throughout the United States. They compete with respect to both license royalties they charge users of systems management products, and

the flexibility of the license terms they offer. Both firms market their products under licenses that require royalty payments for the right to use the product and payments for maintenance of and upgrades to the products.

Moreover, CA and Legent compete in providing product support and service to their customers. Due to the "mission critical" nature of the work done with mainframe computers, users highly value the speed and effectiveness of a vendor's installation, maintenance, and technical support of systems management products. CA and Legent also compete to improve, upgrade, and enhance their systems management products, both in terms of developing products of greater performance or functionality and in terms of products that are easier to install, use, and maintain.

E. Anticompetitive Consequences of the Acquisition

The Complaint alleges that CA's acquisition of Legent would substantially lessen competition and create (or facilitate CA's exercise of) market power in each of the relevant systems management software markets. Each of the relevant markets already is highly concentrated, and the acquisition would substantially increase concentration. In the VSE tape management, VSE disk management, and VSE security markets, CA's acquisition of Legent would make CA the sole supplier. In the VSE job scheduling and VSE automated operations markets, the acquisition would allow CA dominate with post-acquisition market

shares of 71 percent and 88 percent respectively. In the cross-platform systems management market, the acquisition would eliminate substantial competition because CA and Legent currently are two of only a few competitors that have to date developed and commercialized the technology necessary to integrate mainframe computers into distributed computing systems.

The Complaint alleges that in each of the relevant markets, the reduction or elimination of competition from CA's acquisition would likely lead to higher prices and lower levels of product quality, service and support, and product innovations and development. The Complaint further alleges that the competitive harm resulting from the proposed acquisition is not likely to be mitigated by possibilities of new entry. For any of the relevant markets, entry would entail expenditures of substantial costs and time for the development of a competitive product that would be acceptable to mainframe customers. Such entry would not be timely, likely, or sufficient in scale to counteract or deter a price increase or a reduction in service or product quality in any of the relevant markets.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would preserve competition in each of the relevant systems management software markets in which CA's acquisition of Legent would be anticompetitive. As to each of the five VSE markets, the proposed Final Judgment requires CA to license Legent's products to a person determined by the United

States to have the capabilities and resources needed to use the licenses as a viable and effective competitor.

Under the proposed Final Judgment, each of the VSE product licenses will be worldwide and perpetual in scope, granting the licensee full rights and capabilities to produce, market, and support the products, as well as to develop and market new product versions. The proposed Final Judgment provides the licensee with product development and support assistance and expertise -- including the right to recruit Legent development and support personnel -- that may be needed to compete effectively.

The proposed Final Judgment establishes procedures enabling current Legent customers to choose whether to purchase future support, maintenance and upgrades of the relevant systems management software products from CA or the licensee, without regard to the customers' current contracts with Legent. Five days after a license is finalized, Legent customers will be notified and given up to 45 days to elect to be supplied by CA or by the licensee. Customers who do not make an election will be assigned to CA or to the licensee on a pro rata basis in the same proportion as the customers who did make elections. The proposed Final Judgment provides that the new supplier will have all customer files, service and support records, and other documentation necessary for the new supplier to effectively serve the needs of the customers who elect to be supplied by the licensee.

If CA, with the assistance of an investment banker, is unable to identify a viable licensee that is satisfactory to the Department of Justice, the Court may appoint a trustee to attempt to carry out the licensing. In the event that the licensing provisions of the proposed Final Judgment do not result in the selection and establishment of a viable and effective competitor in a relevant VSE market, the Judgment requires CA to dispose of additional assets, including the complete divestiture of the products and transfer of Legent customer contracts, to accomplish the goal of establishing a viable and effective competitor.

With respect to the cross-platform systems management software market, the proposed Final Judgment forbids CA for five years from taking any action to restrict any other person's access to a key cross-platform systems management technology. This technology, called "PIPES" and developed by Peer Logic, consists of communication software technology that, among other things, allows the different operating systems in a cross-platform environment to interact with each other.

Peer Logic has licensed PIPES to Legent, for use with or incorporation into Legent products. With its acquisition of Legent, and depending on the interpretation of contractual relationships between Legent and Peer Logic, CA may succeed to Legent's rights to use PIPES. By prohibiting CA from potentially interfering with Peer Logic's licensing of PIPES to others, the proposed Final Judgment makes PIPES available to others who would use the technology in competing in the market for cross-platform

systems management software.

The relief sought in the markets of concern in the Complaint has been tailored to maintain the level of competition that existed in those markets prior to the acquisition. With respect to the VSE systems management products, the proposed Final Judgment will establish a firm or firms that will offer consumers proven products and competent support. With respect to cross-platform systems management products, the proposed Final Judgment maintains the availability to third parties of technology that is useful in the development of cross-platform systems management solutions, thereby facilitating the more rapid development of competing products by other firms.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

John F. Greaney
Chief, Computers & Finance Section
Antitrust Division
United States Department of Justice
Suite 9901
555 4th Street, N.W.
Washington, D.C. 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the

Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants CA and Legent. The United States is satisfied, however, that the licensing and other relief contained in the Final Judgment should maintain viable and effective competition in the relevant VSE and cross-platform systems management software markets that would otherwise be substantially affected by the acquisition. Moreover, in the event that Legent's five VSE products cannot be promptly licensed to a viable competitor, the Court may order complete divestiture of the products. Thus, the Final Judgment will achieve the same benefit to competition that the government could have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

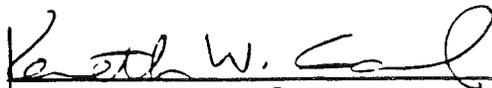
VII. DETERMINATIVE DOCUMENTS

One determinative document within the meaning of the APPA -- a July 26, 1995 letter from Sanjay Kumar, CA's President and Chief Operating Officer -- was considered by the United States in deciding to consent to the proposed Final Judgment. Mr. Kumar's letter clearly acknowledges that section IV.C.6 of the proposed

Final Judgment empowers the Court to order full divestiture of Legent's five VSE products if viable licensee(s) cannot be found. A copy of this document is attached hereto, and will be available for public inspection.

Dated: August 18, 1995

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kenneth W. Gaul", written over a horizontal line.

Kenneth W. Gaul
Attorney
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D.C. 20001
(202) 307-6200

July 26, 1995

BY FACSIMILE

Honorable Anne K. Bingaman
Assistant Attorney General
Antitrust Division
United States Department of Justice
10th Street & Pennsylvania Avenue, N.W.
Washington, DC 20530

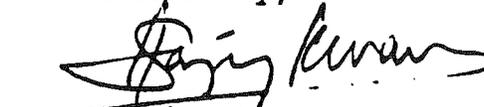
RE: Computer Associates International, Inc./
Legent Corporation

Dear Anne:

Pursuant to our conversation of this afternoon, this letter will act as confirmation of Computer Associates' understanding regarding the proposed Consent Decree. We hereby acknowledge that the Decree permits the Court sufficient discretion, if the Court so desires, to dispose of the five VSE software products in question in the event that a suitable licensee or licensees are not found. We understand that such disposition ordered by the Court could include the divestiture of one or more of these five VSE software products.

We remain confident that, with the Department's cooperation, the license mechanism proposed in the Decree will work and satisfy all of your requirements.

Sincerely,



Sanjay Kumar
President and Chief Operating Officer
Computer Associates International, Inc.

CAF

RECEIVED JUL 28 1995

CERTIFICATE OF SERVICE

The undersigned certifies that he is a paralegal employed by the Antitrust Division of the United States Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on August 13, 1995, he caused true copies of the Competitive Impact Statement of plaintiff, United States, and this Certificate of Service, to be served upon the persons at the place and addresses stated below:

Counsel for Computer Associates

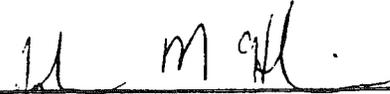
Richard L. Rosen, Esq.
Arnold & Porter
555 12th Street, N.W.
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(by facsimile and by hand delivery)

Counsel for Legent

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Dated: August 18, 1995