



Department of Justice

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AT
(202) 633-2016

The Department of Justice announced today the filing of a civil antitrust suit challenging the proposed acquisition by International Business Machines Corporation of the stock of ROLM Corporation. The Department also filed a proposed consent decree settling the suit.

The decree would require IBM to divest ROLM's Mil-Spec Computer Division within half a year.

Assistant Attorney General J. Paul McGrath of the Antitrust Division said the Department filed a civil antitrust suit late Monday in the U. S. District Court for the District of Columbia challenging the acquisition as originally structured. The proposed decree was presented to the court Monday and formally filed today.

The decree will become final following a 60-day period for public comment.

The suit alleged that the acquisition may substantially lessen competition in the market for mil-spec commercial based computers. Mil-spec computers are manufactured to meet rigorous military specifications so that they can withstand harsh environmental conditions. Many mil-spec computers utilize standard architectures developed by the military. In contrast, mil-spec commercial based computers are based on the architecture

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of a commercially available computer and are software-compatible with that computer. They generally have greater processing capabilities than other types of mil-spec computers.

The suit alleged that the elimination of potential competition between IBM and ROLM in the market for mil-spec commercial based computers would violate Section 7 of the Clayton Act.

McGrath said the manufacture and sale of mil-spec commercial based computers is highly concentrated. For each year from 1980 to 1983, he said, two firms, ROLM and Norden Systems, Inc., a subsidiary of United Technologies Corporation of Hartford, Connecticut, have accounted for over 80 percent of total annual domestic sales.

Based on 1983 sales, the Herfindahl-Hirschman Index (a measure of industry concentration obtained by adding the squares of the market shares of all firms in the market) was over 4000.

In 1983, ROLM's sales of mil-spec commercial based computers were approximately \$75 million, or about 50 percent of the total sales of such computers.

The complaint said that there are substantial barriers to entry into the production and sale of mil-spec commercial based computers, and that IBM, the dominant manufacturer of computers in the United States, was by far the most significant of at most a few potential entrants into that market.

According to the complaint, IBM has indicated to the U. S. military that it intends to enter this market and to commence taking orders in 1985.

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The proposed consent decree requires IBM to divest the ROLM Mil-Spec Computer Division within six months of November 19, 1984. If IBM does not sell the Division in the time prescribed, the proposed final judgment provides that a trustee appointed by the court shall sell it.

According to the proposed final judgment, after a trustee has been appointed only the trustee has the right to sell the Division, and IBM may not object to a sale by the trustee on any grounds other than malfeasance.

Both the proposed final judgment and an accompanying proposed hold separate order contain IBM's agreement to maintain the Mil-Spec Computer Division as a separate entity until it is sold to a qualified buyer.

McGrath said that the proposed final judgment would preserve the ROLM Mil-Spec Division or its successor as a significant participant in the market for mil-spec commercial based computers. ROLM manufactures mil-spec commercial based computers under a series of licenses from Data General Corporation of Westboro, Massachusetts. ROLM's mil-spec commercial based computers are software compatible with certain Data General computers.

In 1983, IBM and ROLM agreed that IBM could acquire up to 30 percent of ROLM stock. IBM in fact now owns 23% of ROLM's stock. Although the Department reviewed the acquisition in 1983, it was not then aware of the expected entry of IBM into the mil-spec commercial based computer market.

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McGrath said that the Department learned of IBM's expected entry in the course of its recent investigation.

McGrath stated that the Department reviewed other aspects of the proposed acquisition, particularly IBM's acquisition of ROLM's private branch exchange (PBX) business, and concluded that there was insufficient legal basis for challenging those aspects of the acquisition.

The proposed decree would allow IBM and ROLM to proceed with the remainder of the acquisition as originally planned. IBM and ROLM have advised that they plan to consummate the remainder of the acquisition on November 21, 1984.

McGrath noted that IBM had informed the Department that it faced tax losses in the tens of millions of dollars if it did not purchase the remaining ROLM stock by November 21. He said that the Antitrust Division has no view on the likelihood of such losses or their magnitude.

He added that the government's only interest in this case relates to the competitive effects of the transaction. Once it was determined that a competitive problem existed in the mil-spec commercial based computer market, the government informed IBM that it would object to the acquisition of ROLM stock unless this problem could be satisfactorily resolved, he said.

IBM then requested that, if possible, a complaint and stipulated final judgment resolving the matter be filed before November 21, 1984. Negotiations commenced shortly thereafter and led to the proposed final judgment.

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In accordance with the Antitrust Procedures and Penalties Act of 1974, a competitive impact statement will be filed with the court explaining the proposed decree. Copies of the complaint, proposed final judgment, and competitive impact statement will be available on request from the Antitrust Division's Legal Procedure Unit, Room 7416, Department of Justice, Washington, D.C. 20530. They will also be available for inspection in the office of the Clerk of the United States District Court for the District of Columbia.

Comments to the Department and to the court regarding the judgment are invited from members of the public. They should be directed to P. Terry Lubeck, Acting Chief, Intellectual Property Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

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