

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
U.S. Department of Justice)
Antitrust Division)
555 Fourth Street, N.W.)
Washington, DC 20001)

Plaintiff,)

v.)

COMPUTER ASSOCIATES)
INTERNATIONAL, INC.,)
One Computer Associates)
Plaza)
Islandia, NY 11788-7000)

and)

LEGENT CORPORATION,)
575 Herndon Parkway)
Herndon, Virginia 22070)

Defendants.)

CASE NUMBER 1:95CV01398

JUDGE: Thomas Penfield Jackson

DECK TYPE: Antitrust

DATE STAMP: 07/28/95

COMPLAINT

The United States of America, acting under the direction of the Attorney General, brings this civil action to prevent the proposed acquisition by Computer Associates International, Incorporated ("CA") of Legent Corporation ("Legent"), which would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The United States alleges:

1. CA is the world's largest independent vendor of computer software for mainframe computers and a leading producer of mainframe computer systems management software. Legent is CA's major competitor in the mainframe computer systems management software business. The proposed acquisition would eliminate significant competition between CA and Legent, which

has benefitted consumers by leading to high quality, innovative products at low prices.

2. CA and Legent are leading suppliers in five markets for systems management software used with mainframe computers that work with the VSE operating system: VSE tape management software (used to manage data tape storage systems); VSE disk management software (to manage data storage on disk drives); VSE security software (to control access to programs and data); VSE job scheduling software (to automate scheduling and running of batch processing jobs); and VSE automated operations software (to automate computer console operations, such as event monitoring and message handling, tracking, and distribution).

3. CA and Legent also are leading competitors in the emerging market for "cross-platform" systems management software for 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).

4. CA's proposed acquisition of Legent would leave CA with monopolies in three of the markets described above -- VSE tape management software, VSE disk management software, and VSE security software. In the other markets, the acquisition would enable CA to exert substantial market power over customers with few remaining competitive options. The likely effects of the acquisition on customers would be higher prices, lower levels of technical support and other services, and decreased innovation in

developing product upgrades or new products. Accordingly, the proposed acquisition would violate Section 7 of the Clayton Act.

I. JURISDICTION AND VENUE

5. CA and Legent both sell computer systems management products in interstate commerce. This Court has jurisdiction of this action and over the parties pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

6. CA and Legent both transact business in the District of Columbia. Venue is proper in the District of Columbia under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. THE DEFENDANTS

7. CA is the world's largest supplier of mainframe computer software other than International Business Machines, Inc. ("IBM"), which produces most of the world's mainframe computers and supplies the operating systems software used on mainframe computers. In 1994, CA had over \$2.1 billion in total revenues.

8. Legent also is a major producer of mainframe computer software. In 1994, Legent had total revenues of approximately \$500 million, a substantial portion of which derived from the development and production of systems management software for mainframe computers.

III. THE RELEVANT MARKETS

9. Systems management software is used to help manage, control, or enhance the performance of mainframe computers, which are the large and powerful computers used by industrial,

commercial, educational, and governmental enterprises for "mission critical" data processing applications that require great amounts of reliable computing performance and throughput.

10. Systems management software works in concert with the computer's "operating system." The 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.

11. Systems management software, as is generally the case with computer software, normally is designed to function only with a particular processor design (or "platform"). Thus, software designed for use on a mainframe computer processor typically will not work on other computer platforms (such as midrange or minicomputers, workstations, or personal computers).

12. The vast majority of the world's mainframe computers run with the VSE or MVS operating systems developed by IBM. Systems management software is designed for and used exclusively on one operating system and not others. Thus, systems management software for the VSE system generally cannot be used on a computer operating with MVS, and vice versa. A user would face substantial costs in switching between the VSE and MVS operating systems (including costly hardware changes and the loss of

millions of dollars of investments in software that run only with the incumbent operating system). Due to such prohibitive costs, VSE systems management software customers are unlikely to switch to the use of the MVS operating system and MVS systems management software to escape even a very significant increase in the prices of VSE systems management software. For similar reasons, MVS customers would not switch to VSE software to avoid a significant increase in the prices of MVS systems management software.

13. CA and Legent both supply a variety of different types of systems management software providing different systems management functions for both the VSE and MVS operating systems. Examples are tape management, disk management, job scheduling, security management, and automated operations. Customer purchases of these products are dictated by specific needs for particular functionality. A customer of tape management software, for example, would not consider as a reasonable substitute systems management software performing a different function if prices of tape management software increased significantly.

14. Due to the lack of substitutability between systems management software for the VSE and MVS operating systems, and among systems management software products of different functionality, each of the following products as to which CA and Legent are competitors constitutes a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act: VSE tape management software; VSE disk management

software; VSE security software; VSE job scheduling software; and VSE automated operations software.

15. Both CA and Legent produce and sell software products that provide cross-platform systems management solutions for computer networks in which a mainframe computer is linked to other platforms. Customers that require these cross-platform systems management products would not turn to other means of systems management in response to a small but significant increase in prices of such cross-platform systems management software. Cross-platform systems management software for computer systems in which a mainframe computer is linked to other platforms constitutes a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

16. In each of the relevant product markets for mainframe computer systems management software products and cross-platform systems management software, competitors sell such products to customers located throughout the United States. For each of the relevant products, the United States constitutes a relevant geographic market within the meaning of Section 7 of the Clayton Act.

IV. COMPETITION IN THE RELEVANT MARKETS AND IMPACT OF THE PROPOSED ACQUISITION

17. As described below, in a number of the relevant markets, CA and Legent are the only competitors, and in other markets they are the dominant or leading competitors with few other rivals. In each relevant market, the proposed acquisition

would eliminate significant competition between CA and Legent, and the reduction of such competition is likely to produce higher prices, lower quality, and less innovation in products and related services.

18. **VSE tape management software.** In this market, total U.S. sales amounted to about \$9.7 million in 1994. CA and Legent are the only two significant competitors, with respective market shares (based on sales revenues) of 42 percent and 57 percent, and CA's proposed acquisition of Legent would essentially result in a monopoly. Using a measure of market concentration called the "HHI" (defined and explained in Appendix A), the proposed acquisition would increase the market concentration by about 4756 points, to a post-acquisition level of about 9746 points.

19. **VSE disk management software.** Total U.S. sales were about \$3.9 million in 1994. CA and Legent, the only significant competitors, have respective market shares of 96 percent and 4 percent. The proposed acquisition would give CA a monopoly and increase the HHI by about 805 points to a post-acquisition level of about 10000 points.

20. **VSE security software.** Total U.S. sales were about \$6.3 million in 1994. CA and Legent, the only significant competitors, have respective market shares of 31 percent and 69 percent. The proposed acquisition would give CA a monopoly and increase the HHI by about 4254 points to a post-acquisition level of about 10000 points.

21. **VSE job scheduling software.** Total sales were about

\$4 million in 1994. CA and Legent have market shares of 25 percent and 46 percent respectively. The proposed acquisition would give CA a 71 percent market share, increasing the HHI by about 2341 points to a post-acquisition level of about 5748 points.

22. **VSE automated operations software.** Total sales were about \$6.7 million in 1994. CA and Legent have market shares of 3 percent and 85 percent respectively. The proposed acquisition would give CA a 88 percent market share, increasing the HHI by about 432 points to a post-acquisition level of about 7663 points.

23. **Cross-platform systems management software.** CA and Legent currently are two of only a few competitors uniquely positioned to provide cross-platform systems management solutions for customers that use mainframe computers among a variety of systems platforms. The proposed acquisition would eliminate substantial competition in this market.

24. The competitive harm resulting from the proposed acquisition is not likely to be mitigated by possibilities of new entry in any relevant market. For each market, a new entrant would be required to expend substantial costs and time for the development of a competitive product and sufficient marketing presence and reputation to attract significant sales. 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.

V. VIOLATION ALLEGED

25. On June 1, 1995, CA and Legent notified the United States that they had entered into an agreement providing for CA to acquire all of the outstanding voting securities of Legent by means of a cash tender offer valued at approximately \$1.7 billion. The parties intend to consummate the transaction on July 28, 1995.

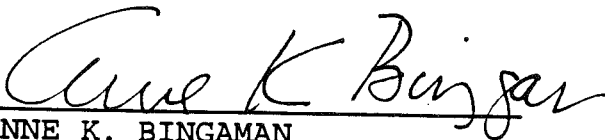
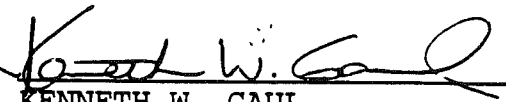
26. Unless restrained, CA's proposed acquisition of Legent is likely substantially to lessen competition in the United States markets for VSE tape management software, VSE disk management software, VSE security software, VSE job scheduling software, VSE automated operations software, and cross-platform systems management software, in the following ways:

- a. Actual and potential competition between CA and Legent will be eliminated in each of the markets; and
- b. Competition generally in each of the markets is likely to be substantially lessened.

V. REQUESTED RELIEF

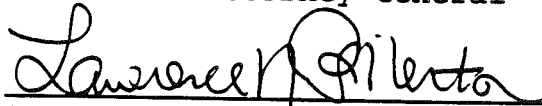
The United States requests (a) adjudication that CA's proposed acquisition of Legent would violate Section 7 of the Clayton Act, (b) preliminary and permanent injunctive relief preventing consummation of the proposed acquisition, (c) an award to the United States of the costs of this action, and (d) such other relief as is just and proper.

Dated: July 28, 1995

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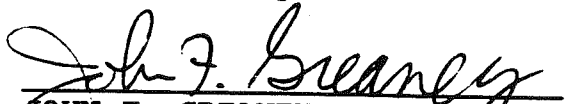
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APPENDIX A
DEFINITION OF HHI

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated and concentrated markets presumptively raise antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.