

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION and ROLM CORPORATION,

Defendants.

Civ. No. 84-0548

Filed:

FILED

DEC 22 1985

JAMES F. DAVEY, Clerk

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on November 19, 1984, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship

or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

II.

As used in this Final Judgment:

A. "IBM" means the defendant International Business Machines Corporation; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them. After IBM acquires ROLM, IBM includes ROLM but does not include the Mil-Spec Computer Division;

B. "ROLM" means the defendant ROLM Corporation; each division, subsidiary or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them;

C. "Defendants" means IBM and ROLM;

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity;

E. "Mil-spec computer" means a computer that is manufactured to meet certain rigorous military specifications so that it will have the ability to withstand harsh environmental conditions;

F. "Mil-spec commercial based computer" means a mil-spec computer that is based on the architecture of a commercially available computer and that is software compatible with that computer;

G. "Mil-Spec Computer Division" means the Mil-Spec Computer Division of ROLM. The Mil-Spec Computer Division includes all of ROLM's rights and obligations under all agreements between ROLM and Data General Corporation or other third parties relating to the business of the Mil-Spec Computer Division.

III.

A. The provisions of the Final Judgment shall apply to the defendants, their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for paragraph IV.C of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any

third party and nothing herein shall be construed to provide any rights to any third party.

C. IBM shall require, as a condition of the sale or other disposition of all or substantially all of its assets involved in the production and sale of mil-spec computers, other than the divestiture required herein, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

A. In the event that IBM acquires ROLM, IBM is hereby ordered and directed, no later than six (6) months after November 19, 1984, to divest to a purchaser or purchasers all of its direct and indirect ownership in and control over the Mil-Spec Computer Division. Nothing in this Final Judgment shall preclude plaintiff from approving a divestiture by means of a "spin-off," "leveraged buy-out," or public offering.

B. Divestiture of the Mil-Spec Computer Division shall be accomplished in such a way as to ensure that, as of the time of divestiture, it reasonably can be anticipated that the Mil-Spec Computer Division can and will be operated by the purchaser or purchasers as a viable, ongoing business engaged in the production and sale of mil-spec commercial based computers. Divestiture shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, if plaintiff objects, to the Court that (i) the purchase is for the purpose of competing effectively in the production and sale of mil-spec commercial

based computers and (ii) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of mil-spec commercial based computers.

C. In accomplishing the divestiture ordered by this Final Judgment, IBM shall make known in the United States, by usual and customary means, the availability of the Mil-Spec Computer Division for sale as an ongoing business. IBM shall notify any person making an inquiry regarding the possible purchase of the Mil-Spec Computer Division that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. IBM also shall furnish, to all bona fide prospective purchasers who so request, and subject to appropriate confidentiality assurances, all pertinent information regarding the Mil-Spec Computer Division and shall permit them to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of the Mil-Spec Computer Division.

D. IBM shall take all reasonable steps to accomplish said divestiture, including the sale of assets only.

V.

A. If IBM has not divested all of its ownership interest in the Mil-Spec Computer Division within six (6) months after November 19, 1984, the Court shall, on application of the plaintiff, appoint a trustee to effect the divestiture. Such

appointment shall become effective six (6) months after November 19, 1984 or as soon thereafter as the Court appoints a trustee. After the trustee appointment becomes effective, only the trustee, and not IBM, shall have the right to sell the Mil-Spec Computer Division. The trustee shall dispose of the Mil-Spec Computer Division at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. The trustee shall have the power to require IBM to divest assets only. IBM shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If IBM has not divested all of its ownership interest in the Mil-Spec Computer Division within four (4) months after November 19, 1984, IBM shall notify plaintiff of that fact. If IBM still has not divested all of its ownership interest in the Mil-Spec Computer Division within the next ten (10) days thereafter, the plaintiff and IBM shall exchange at that time written notices of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within twenty (20) days of the exchange of written notices, plaintiff shall notify this Court of the person

upon whom the parties have agreed and this Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish this Court the names of each party's nominees. This Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of IBM, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of the Mil-Spec Computer Division and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to IBM and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. IBM shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records and facilities of the Mil-Spec Computer Division, and IBM shall develop such financial or other information relevant to the business or assets to be divested as the trustee may request. IBM shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish the required divestiture, (ii) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (iii) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the trust and the term of the trustee's appointment.

VI.

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to Section IV or V of this Final Judgment, IBM or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed transaction

and for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Mil-Spec Computer Division, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days of receipt by plaintiff of such notice, the plaintiff may request additional information concerning the proposed divestiture and the proposed purchase. The defendants shall furnish the additional information within twenty (20) days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within (15) days after receipt of the additional information, whichever is later, the plaintiff shall notify in writing IBM and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the periods specified, or if the plaintiff notifies in writing IBM and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to IBM's limited right to object to the sale under the proviso in Section V(A). Upon objection by the plaintiff or by IBM under Section V(A), the proposed divestiture shall not be accomplished unless approved by the Court. IBM shall have no right to object to any divestiture of the Mil-Spec Computer Division proposed by the trustee except under Section V(A).

VII.

Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, IBM shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include, for each person who, during the preceding thirty (30) days, made an offer, expressed an interest or desire to acquire, or entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in, the Mil-Spec Computer Division, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. IBM shall maintain full records of all efforts made to divest the Mil-Spec Computer Division.

VIII.

IBM shall abide by the provisions set forth in the Stipulated Hold Separate Order entered by the Court, stipulated on November 19, 1984, a copy of which is attached hereto.

IX.

IBM shall provide to plaintiff for a period of five (5) years from the entry of this Final Judgment, twenty (20) days' advance notice, in writing, of its acquisition of one percent (1%) or more of the voting securities of any person engaged in the manufacture or sale of mil-spec commercial based computers (excluding components thereof), the assets of which are recorded on the books of such company in an amount in excess of \$15

million, or its acquisition from any such person, except pursuant to supply arrangements or otherwise in the ordinary course of business, assets relating to such products in an amount in excess of \$15 million. Nothing in this Section shall require IBM to give notice to plaintiff of any such acquisitions by its pension plans.

X.

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to IBM made to its principal office, be permitted:

1. access during office hours of IBM to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of IBM, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of IBM and without restraint or interference from it, to interview officers, employees, and agents of IBM, who may have counsel present, regarding any such matters;

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to IBM's principal office, IBM shall submit such

written reports, under oath if requested, regarding any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law;

C. If at the time information or documents are furnished by IBM to plaintiff, IBM represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and IBM marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure", then ten days' notice shall be given by plaintiff to IBM prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the

provisions hereof, for the enforcement of compliance herewith,
and for the punishment of any violations hereof.

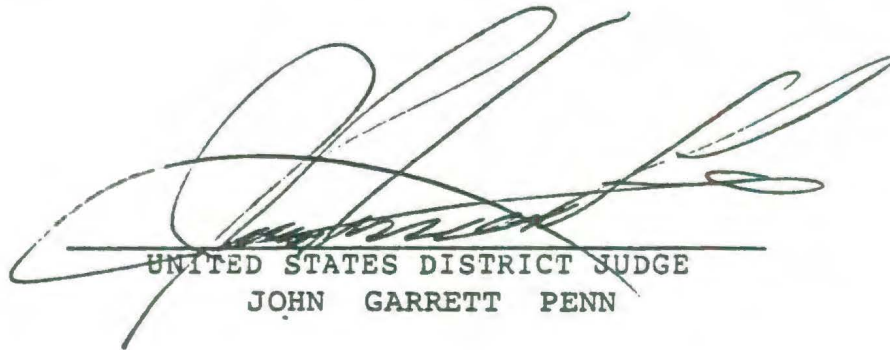
XII.

This Final Judgment will expire on the tenth anniversary of
the date of its entry.

XIII.

Entry of this Final Judgment is in the public interest.

Dated: FEB 22 1985



UNITED STATES DISTRICT JUDGE
JOHN GARRETT PENN