

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Washington, D.C. 20530
(202) 724-7974

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION
Old Orchard Road
Armonk, New York
(914) 765-1900

and

ROLM CORPORATION
4900 Old Ironside Drive
Santa Clara, California 95054
(408) 986-1000

Defendants.

Civ. No. 84-3508
Filed: 11/19/84

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended (15 U.S.C. § 25),

to prevent the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

2. International Business Machines Corporation transacts business, maintains offices, and is found within the District of Columbia.

3. ROLM Corporation transacts business and is found within the District of Columbia.

II.

DEFINITIONS

4. "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.

5. "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;

6. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market shares 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 30, 30, 20, and 20 percent, the HHI is 2600 $[(30)^2 + (30)^2 + (20)^2 + (20)^2 = 2600$.] (For convenience, the decimal is dropped and the index is expressed in whole numbers.) The HHI, which takes into account the relative size and

distribution of the firms in a market, can range from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

III.

DEFENDANTS

7. International Business Machines Corporation (hereinafter "IBM") is made a defendant herein. IBM is a corporation organized and existing under the laws of the State of New York. IBM is engaged in the manufacture and sale of computers and computer-related equipment. IBM maintains its principal offices at Old Orchard Road, Armonk, New York, with local offices located at 1801 K Street, N.W., Washington, D.C. In 1983, IBM reported worldwide sales of approximately \$40.2 billion.

8. ROLM Corporation (hereinafter "ROLM") is made a defendant herein. ROLM is a corporation organized and existing under the laws of the State of California. ROLM is engaged in the manufacture and sale of computers and computer-related equipment. ROLM maintains its principal offices at 4900 Old Ironsides Drive, Santa Clara, California. For the fiscal year ended June 29, 1984, ROLM reported sales of approximately \$660 million.

9. IBM and ROLM currently purchase supplies from out-of-state sources, and sell computers and other commodities to out-of-state purchasers. Such transactions regularly result in interstate transfers of equipment and funds. IBM and ROLM are each engaged in interstate commerce, and their activities substantially affect interstate commerce.

IV.

TRADE AND COMMERCE

10. Computers are information processing machines used for a variety of commercial, military, personal, and other purposes. The United States military uses computers to aid in communications, command, control, and in the intelligence functions on battlefields, in navigation and in the operation of aircraft, ships, submarines, and missiles, and for other purposes. Such computers frequently must be specially designed and built to withstand harsh environmental conditions such as extremes in temperature, dust, or vibration.

11. Many mil-spec computers utilize standard architectures developed by the military. Among other things, such standardization allows for economies in maintenance, back-up, and procurement.

12. Mil-spec commercial based computers are another type of specially toughened computer used by the military. Such a computer differs from other types of mil-spec computers because it is software compatible with a computer that is used for a variety of commercial applications. Software compatibility

permits the mil-spec commercial based computer to run software that can be run on the generally available commercial computer. It is thus often unnecessary to design new software for mil-spec commercial based computers, and where creation of new software is required, it is facilitated by the availability of commercial software. Also, mil-spec commercial based computers generally have greater processing capabilities than other types of mil-spec computers. In 1983, domestic sales of mil-spec commercial based computers were about \$150 million.

13. For a significant number of military applications, some of which have been developed recently, there is no acceptable alternative to the use of mil-spec commercial based computers. For such applications, including certain communications, command, control, and intelligence applications (e.g., missile launch and control), the speed, reliability, and flexibility of mil-spec commercial based computers is required. In addition, the software compatibility of mil-spec commercial based computers permits the military to take advantage of software developments in commercial applications. Because of these and other unique capabilities, sales of mil-spec commercial based computers to the United States military comprise a relevant market for antitrust purposes.

14. The production and sale of mil-spec commercial based computers is highly concentrated. For each year from 1980 through 1983, 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. Other competitors such as Electronic Memories & Magnetics of Encino, California, have relatively small shares of the business and limited production capacity. Based on 1983 sales, the HHI in the production and sale of mil-spec commercial based computers is over 4000.

15. There are substantial barriers to entry into production and sale of mil-spec commercial based computers. Entry requires, among other things, access to and expertise in an appropriate commercial computer design, the adaptation of that design to meet military specifications, and the development of or access to special ceramic-coated mil-spec semiconductor chips and other speciality components. Also, a firm must have appropriate production facilities, approval by the United States military, and a marketing group with expertise in military procurement.

16. 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 of Data General's computers. In calendar year 1983, ROLM's sales of mil-spec commercial based computers were approximately \$75 million, or about 50 percent of total mil-spec commercial based computer sales.

17. IBM is the dominant manufacturer of computers for commercial uses in the United States. Many of its commercial machines are used by the United States military. In addition, IBM manufactures mil-spec computers for the military. While IBM does not currently manufacture mil-spec commercial based computers, it is by far the most significant of at most a few such potential entrants into that market. IBM has the capability and incentive to commence the production and sale of these computers. Also, IBM has indicated to the United States military that it intends to enter this market and to commence accepting orders in 1985. IBM has significant and unique advantages with respect to entry into the production and sale of mil-spec commercial based computers. These include a variety of commercial computer designs upon which mil-spec commercial based computers could be based, expertise in semiconductor chip design, and extensive experience in production and sale of mil-spec computers to the military.

18. Mil-spec commercial based computers are manufactured by ROLM and other firms from parts they purchase from suppliers located in states other than the states where they assemble mil-spec commercial based computers. Such parts are shipped across state lines to points of assembly. Payments for such parts also cross state lines. The United States military purchases mil-spec commercial based computers made by ROLM and other companies with funds from the United States Treasury. Such funds regularly cross state lines. ROLM and other

companies regularly ship their mil-spec commercial based computers across state lines and to foreign countries. The production and sale of mil-spec commercial based computers constitutes interstate commerce and substantially affects interstate commerce.

V.

VIOLATION ALLEGED

19. On or about September 26, 1984, IBM and ROLM entered into agreements pursuant to which IBM agreed to purchase all the outstanding voting securities of ROLM, other than those already owned by IBM. (Pursuant to an 1983 agreement between IBM and ROLM, IBM already owned approximately 23 percent of the outstanding voting securities of ROLM.) This sale would, in effect, merge ROLM's mil-spec computer business into IBM, and give IBM complete control over ROLM's operations. Defendants intend to consummate the proposed acquisition by November 21, 1984.

20. The effect of IBM's acquisition of ROLM may be substantially to lessen competition in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

- a. potential competition between IBM and ROLM in the production and sale of mil-spec commercial based computers will be eliminated;

- b. competition generally in the production and sale of mil-spec commercial based computers may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition of ROLM's voting securities by IBM be adjudged to be in violation of Section 7 of the Clayton Act;
2. That defendant IBM be ordered and directed to divest itself of ROLM's Mil-Spec Computer Division within six (6) months from the date of its acquisition of ROLM's voting securities;
3. That defendant IBM be ordered and directed to hold ROLM's Mil-Spec Computer Division separate and independent from IBM from the time of acquisition until IBM's divestiture of the Mil-Spec Computer Division;
4. That the plaintiff have such other and further relief as the Court may deem just and proper; and
5. That plaintiff recover the costs of this action.

J. Paul McGrath
J. PAUL MCGRATH
Assistant Attorney General

Mark Leddy
MARK LEDDY

Roger B. Andewelt
ROGER B. ANDEWELT

Respectfully submitted,

P. Terry Lubeck
P. TERRY LUBECK

Burney P.C. Boote
BURNLEY P.C. BOOTE

Don Allen Resnikoff
DON ALLEN RESNIKOFF

Richard L. Irvine
RICHARD L. IRVINE

Attorneys
U.S. Department of Justice
Antitrust Division
Washington, D.C.
(202) 724-7974

Dated: November 19, 1984