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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

C 91 3666 MHP

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
BORLAND INTERNATIONAL, INC., and  
ASHTON-TATE CORPORATION,  
  
Defendants.

Civil Action No. C 91 3666 M  
Filed: October 17, 1991  
COMPLAINT  
  
15 U.S.C. § 18  
  
ANTITRUST

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

1 against the defendants named herein and complains and alleges as  
2 follows:

3  
4 I. JURISDICTION AND VENUE

5 1. This complaint is filed and this action is instituted  
6 under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25,  
7 to prevent and restrain the violation by defendants, as  
8 hereinafter alleged, of Section 7 of the Clayton Act, as amended,  
9 15 U.S.C. § 18.

10 2. The defendants maintain offices, transact business  
11 and are found within the Northern District of California.

12 3. Venue is proper in the Northern District of  
13 California under Section 12 of the Clayton Act, 15 U.S.C. § 22,  
14 and 28 U.S.C. § 1391(c).,

15  
16 II. DEFENDANTS

17 4. Borland International, Inc. ("Borland") is made a  
18 defendant herein. Borland is a corporation organized and  
19 existing under the laws of the State of Delaware, with its  
20 principal place of business in Scotts Valley, California.  
21 Borland is engaged in the business of the design and marketing of  
22 computer software. It designs and sells, among other things,  
23 relational database management system software for personal  
24 computers ("PCs") under the trade name "Paradox". For its fiscal  
25 year ending March 31, 1991, Borland reported revenues of  
26 \$226,755,000. Borland is engaged in interstate commerce and in  
27 activities substantially affecting interstate commerce.



1 software is a type of software that provides a means for users of  
2 PCs using the DOS operating system to create and manage multiple  
3 file or multitable relational databases, and to store,  
4 manipulate, and retrieve data from multiple file and multitable  
5 databases, as described more particularly in paragraph 9, below.  
6 RDBMS software includes, but is not limited to, the portions of  
7 Borland's "Paradox" software line and Ashton-Tate's "dBASE"  
8 software line that are designed for PCs using the DOS operating  
9 system.

10 8. "Software" means a computer program or programs in  
11 the form of a stored set of instructions that determine the  
12 operation of a computer system and that makes the computer  
13 equipment, or hardware, operate as a system, and related products  
14 and services that are sold as a package. It includes the program  
15 or programs, documentation, written materials and associated  
16 services such as post-sale support services.

17  
18 IV. TRADE AND COMMERCE

19 9. RDBMS software enables users to create and manage  
20 multiple database files, and to store, manipulate, and retrieve  
21 data from those database files. For example, large and small  
22 businesses use the software to manage accounting systems and  
23 inventory control systems.

24 10. Customers of RDBMS software do not have significant  
25 economic alternatives for managing multiple database files.  
26 Customers who rely on RDBMS software would not switch to another  
27 category of software or to software designed to operate on  
28

1 another hardware platform in sufficient numbers to defeat a small  
2 but significant and nontransitory increase in the price of RDBMS  
3 software.

4 11. The development and sale of RDBMS software  
5 constitutes a relevant product market within the meaning of  
6 Section 7 of the Clayton Act.

7 12. The firms that supply RDBMS software to customers in  
8 the United States are all located in the United States. A small  
9 but significant and nontransitory increase in the price of RDBMS  
10 software by United States suppliers would not cause customers in  
11 the United States to turn to firms outside of the United States.

12 13. The United States is the relevant geographic market  
13 for the sale of RDBMS software.

14 14. In the 1980s, Ashton-Tate was the early leader in  
15 RDBMS software. It developed its dBASE RDBMS software using a  
16 computer language also called dBASE. More recently, other firms  
17 have developed RDBMS software using the dBASE language. These  
18 products are important competitive alternatives to Ashton-Tate's  
19 dBASE and Borland's Paradox, which is based on a different  
20 language. Ashton-Tate has asserted intellectual property rights  
21 in the dBASE language, which claims to date are unresolved.

22 15. In 1990, total sales of RDBMS software in the United  
23 States were approximately \$200 million. Ashton-Tate and Borland  
24 were the two largest sellers of RDBMS software in the United  
25 States, together accounting for nearly 60 percent of dollar sales  
26 and over 60 percent of units shipped. Approximately twelve other  
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1 firms, including those selling products based on the dBASE  
2 language, accounted for the remainder of sales.

3 16. The market for RDBMS software is concentrated.  
4 Based on 1990 dollar sales, the HHI for RDBMS software in the  
5 United States was 1726. The proposed acquisition would increase  
6 the HHI by 1403 points to 3129 and the relevant market would  
7 become significantly more concentrated.

8 17. Successful entry into the development and sale of  
9 RDBMS software in the United States is difficult and  
10 time-consuming due to the complexity of the software and the need  
11 for state-of-the-art technology, as well as the reluctance of  
12 customers to purchase RDBMS software from a company which lacks  
13 the long-term financial viability and capability for continued  
14 support and improvements to its software.

15  
16 V. VIOLATION ALLEGED

17 18. Pursuant to a merger agreement entered into by  
18 Borland and Ashton-Tate on July 9, 1991, Borland acquired 100  
19 percent of the common stock of Ashton-Tate in exchange for  
20 Borland common stock at an approximate value of \$440 million.

21 19. The effect of the acquisition may be substantially  
22 to lessen competition in the market for the provision of RDBMS  
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1 software in the United States in violation of Section 7 of the  
2 Clayton Act in the following ways, among others:

3 (a) Actual and potential competition between  
4 Borland and Ashton-Tate in the market for the provision  
5 of RDBMS software will be eliminated; and

6 (b) Competition generally in the market for the  
7 provision of RDBMS software may be substantially  
8 lessened.

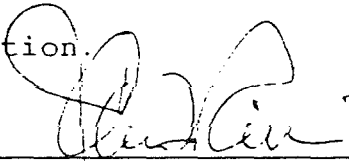
1 PRAYER

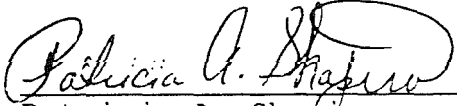
2 WHEREFORE, plaintiff prays:

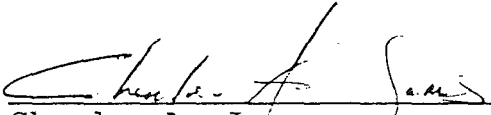
3 1. That Borland's acquisition of Ashton-Tate be adjudged  
4 to be in violation of Section 7 of the Clayton Act.

5 2. That the United States have such other and further  
6 relief as the Court may deem just and proper.

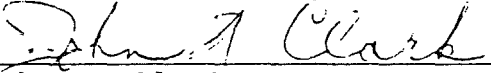
7 3. That the United States recover the costs of this  
8 action.

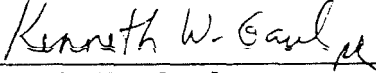
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12 Assistant Attorney General


  
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14 Patricia A. Shapiro

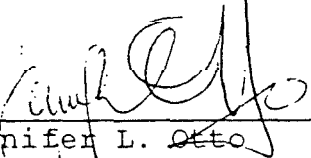
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