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## E.C. COMMISSION AND I.B.M. SETTLE ANTITRUST SUIT

International Business Machines (I.B.M.) has agreed to change its business practices in the European Community, thus settling a major E.C. antitrust suit involving I.B.M. mainframe computers.

"This settlement will bring new opportunities for competition in this sector, which becomes every day more important," Frans Andriessen, the E.C. Commission member responsible for competition, said today. "The European industry now has a chance to increase its share in this market."

The Commission in 1980 charged that I.B.M. had abused its dominant position in the market by restricting the ability of competitors to supply compatible equipment for its most powerful range of computers, the I.B.M. System/370.\* Article 86 of the Treaty Establishing the European Economic Community prohibits abusive practices that adversely affect trade between the 10 E.C. member states.

I.B.M. has now agreed to disclose sufficient information to allow competitors to connect hardware and software products to System/370. It has also agreed to offer System/370 "central processing units" without a main memory capacity included in the price, thus allowing competitors to supply that function.

"Improved competition benefits the consumer," Mr. Andriessen said. "As a result of this settlement, users of computer equipment throughout the European Community will have a wider and earlier choice of equipment to meet their future needs."

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\*Currently available central processing units such as 43XX, 303X and 308X are included in this definition. Currently available central processing units such as System/36, System/38, Series/1, 8100, I.B.M. Personal Computer are excluded from this definition.

### Issues Involved

The Commission originally charged that I.B.M. had violated Article 86 in four ways:

--By failing to supply other manufacturers with technical information in time for them to produce competitive products to be used with System/370.

--By not offering System/370 central processing units without a capacity of main memory included in the price. A central processing unit is that part of a computer system primarily responsible for interpreting, storing and executing instructions and controlling the functioning of the system's various products. Main memory contains the instructions for operating the system and allows program instructions and user information to be read or entered.

--By not offering System/370 central processing units without the basic software included in the price.

--By discriminating against users of I.B.M. software with non-I.B.M. central processing units by refusing to supply them with certain software installation services known as "installation productivity options."

In its written reply to the Commission's statement of objections, I.B.M. denied both that it had a dominant position and that it had committed any of the alleged abuses. I.B.M., however, had previously informed the Commission that it had taken steps to offer the installation productivity options to all users of its software. In its written reply, it also stated that it was in the course of offering central processing units without basic software included in the price.

Parallel to the formal proceedings, informal discussions between I.B.M. and the Commission began in April 1983. Based on complaints by some major European computer manufacturers, the Commission added the issue of I.B.M.'s disclosure practices for its Systems Network Architecture, technical specifications that allow computer systems to communicate.

Following a period of protracted negotiation, a final solution acceptable to the Commission was reached.

### I.B.M.'s Undertaking

I.B.M. has undertaken to offer its System/370 central processing units in the E.C. either without main memory or with only such capacity as is

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strictly required for testing. I.B.M. has further undertaken to disclose sufficient interface information to enable competing companies in the E.C. to attach both hardware and software products of their design to System/370. Finally, I.B.M. has undertaken to disclose adequate and timely information to competitors to enable them to connect their systems or networks with I.B.M.'s System/370 using Systems Network Architecture.

Information on interfaces to hardware products will be made available by I.B.M. within four months of the date the product is announced, or when it is generally available, if earlier. Information on interfaces between software products will now be made available as soon as the design is reasonably fixed, but no later than general availability.

In order to protect I.B.M.'s legitimate interests, the Commission has agreed that I.B.M. should not have to disclose unique interfaces between a subsystem of two specific products. These interfaces are those most likely to reveal product design. This exception will not, however, exclude competition from suppliers who themselves offer both products as a subsystem.

#### Effects of the Undertaking

The undertaking will have the effect of substantially improving the position of both users and competitors in the markets for System/370 products in the E.C.

Interface information should now be available earlier and in some cases the reduction in time will be considerable. By making a clear statement as to I.B.M.'s future conduct, the undertaking also introduces an element of certainty which had been missing.

As a result, the structure of competition can be expected to be strengthened and made more effective. Users will now be given the possibility of a choice between different suppliers at an earlier time. They may also be free to choose from a wider selection of products because other manufacturers will now have the incentive to develop new products knowing that the essential interface information will be made available.

In the increasingly important field of systems and network inter-communication, I.B.M.'s undertaking to disclose adequate and timely information about Systems Network Architecture represents a major improvement over present practice.

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I.B.M.'s undertaking to offer central processing units without the capacity of main memory will give users a choice and competitors opportunities which have not existed for many years.

#### Duration of Undertaking

The duration of the undertaking is for an indefinite period, but I.B.M. has the right to terminate its engagement on giving one year's notice after January 1, 1990.

#### The Suspension of the Proceedings

The Commission is confident that the effects of I.B.M.'s undertaking will be to produce a substantial improvement in market conditions sufficient to make it now unnecessary to adopt a formal decision.

Mr. Andriessen has informed I.B.M. that the Commission has decided to suspend the formal proceedings. He has, however, emphasized that the effect and implementation of I.B.M.'s undertaking will be kept under constant review and that the Commission reserves the right to terminate the suspension or to initiate new proceedings if so required.

#### Conclusion

The Commission acknowledges that I.B.M. has given its undertaking in good faith and with a view to meeting the Commission's concerns without any admission of wrong doing. On the basis of goodwill expressed during the negotiations and reflected in the undertaking, the Commission expresses its satisfaction at the solution achieved and expects that the new standards of behavior for this important sector will prove to be to the benefit of consumers and manufacturers alike.