

BREAKUP OF I.B.M. IS ANTITRUST GOAL

**Justice Agency, Disclosing
Aim of 3½-Year-Old Suit,
Asks Separate Entities**

By WILLIAM D. SMITH

The Justice Department called yesterday in Federal District Court here for the breakup of the multibillion-dollar International Business Machines Corporation into "several discrete, separate, independent and competitively balanced entities."

The statement was the first indication by the Justice Department under the Nixon Administration of what it hoped to achieve in the 3½-year-old antitrust action against the giant computer company.

I.B.M.'s lawyer, Thomas D. Barr, called the Government's request mostly a "warming over" of charges in the original suit, which was filed on Jan. 17, 1969, the last working day of the Johnson Administration.

Case Closely Watched

The I.B.M. case is considered the most important antitrust action since 1911, when the original Standard Oil Company was broken up. Data processing is the world's fastest growing major business, permeating almost every aspect of human endeavor.

The case is also politically sensitive. It was handed to President Nixon by the outgoing Johnson Administration. The Nixon Administration has been accused of favoritism to big business, particularly in its

Continued on Page 66, Column 4

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Continued From Page 1, Col. 1

handling of antitrust charges against the International Telephone and Telegraph Corporation.

Also, critics of the Nixon Administration and I.B.M. have noted that Thomas J. Watson, chairman of I.B.M.'s executive committee, and son of the company's founder, is active in the Democrats for Nixon movement.

Yesterday's hearing was the result of an order Oct. 12 by Chief Judge David N. Edelstein to the Justice Department to submit a preliminary outline of the relief or penalties it believes appropriate if it wins the case. It was the latest in a series of pretrial hearings. The pace has been accelerated in recent months under Judge Edelstein's prodding.

The Justice Department's memorandum yesterday raised issues that were not in the original complaint. The most significant of these was the addition of overseas business to the original lawsuit's domestic scope. Computer leasing and peripheral equipment were also included for the first time in the Government's list of issues to be tried.

Motion Is Presented

Mr. Barr contended for I.B.M. that the interjection of the new issues delayed the prospect of trial. "It all shows that the Government just doesn't have a case," he said, declaring that it is moving away from rather than toward trial. "The Government wasn't ready before, and it just trebled the size of its case."

He presented a motion asking for a separate trial within 30 days to be held solely on the issue of defining "relevant market." Raymond M. Carlson, Justice Department attorney, opposed the motion. Judge Edelstein set Oct. 30 for arguments on the motion.

The size of the computer market and I.B.M.'s dominance of it are major points of dispute in the case. According to some surveys, I.B.M. controls about 70 per cent of the market. The company argues that its share of the market is considerably less than that and is declining every year.

In its memorandum, the Justice Department said the breakup it seeks is designed to "dissipate the enormous market power of the current I.B.M. computer manufacturing and marketing structure." The department said that the new companies that would be formed from the breakup of I.B.M. "should be capable of competing successfully in domestic and international markets with one another and with other . . . competitors."

The Government acknowledged that, "before any type of relief can be finalized in this matter, a more thorough and detailed analysis must be made of the markets which defendant is alleged to have monopolized."

It added: "This further analysis may demonstrate that other forms of divestiture, or divestiture coupled with injunctive relief, may be sufficient to remedy the effects of the alleged monopolization."

'Bundled' Pricing Hit

The Justice Department also asserted that I.B.M. should be enjoined from marketing its computer systems and services through "bundled" pricing (charging one combined price for both equipment and services).

In a document submitted to the court by I.B.M., along with its request for a separate trial on the market issue, the company charged that the Government had "consistently failed to comply with the understanding first reached with the Assistant Attorney General in January, 1967, and repeatedly reiterated thereafter, that I.B.M. would have an opportunity to enter into careful and thoughtful discussions with the Department of Justice before the institution of any action against I.B.M. and has similarly failed to comply with its January 3, 1972, commitment to enter into settlement negotiations within 60 days after material requested by the Department was furnished by I.B.M."

This accusation of bad faith was seen by some court observers as part of a continuing effort by I.B.M. to show that the Justice Department was deficient in dealing with the complicated technical nature of computer technology.

Since the antitrust action began, some people in the computer industry have argued that the Justice Department would not have the manpower or skills necessary to combat I.B.M.'s legal staff headed by a former Attorney General, Nicholas DeB. Katzenbach.

However, Mr. Barr, the I.B.M. lawyer, likened the pressure of the Government on I.B.M. to the weight of an elephant. "We feel that weight, and we want to stop it," he said. "If an elephant bumps you even a little, he bumps you quite a long way."

Besides the Government's suit, I.B.M. is facing about a dozen antitrust actions brought by competitors. The largest is a suit filed in Minneapolis by the Control Data Corporation.

I.B.M. won the first of these suits that came to trial when a Federal judge in Phoenix, Ariz., in June dismissed an action by the Greyhound Computer Corporation without even waiting to hear I.B.M.'s defense.