

## **International Business Machines Corporation & Red Hat Inc.**

1443<sup>rd</sup> Commissioners' Meeting (2019)

Case: IBM filed a pre-merger notification regarding its intention to merge with Red Hat

Keyword(s): Information service industry, information technology, open source software

Reference: Fair Trade Commission Decision of July 3, 2019 (the 1443<sup>rd</sup> Commissioners' Meeting)

Industry: Computer Programming Activities (6201)

Relevant Law(s): Articles 10, 11 and 13 of the Fair Trade Law

### Summary:

1. International Business Machines Corporation (hereinafter referred to as IBM) engaged in the development, production and marketing of solutions to various types of information technology (hereinafter referred to as IT) problems, managed corporate IT software and systems (including servers, storage systems, Cloud computing and product recognition) and offered IT system installation services (such as commercial information services and IT infrastructure). Red Hat Inc. (hereinafter referred to as Red Hat) was a supplier of open source software and related backup services around the world. It consolidated the power of social networks to develop open source software for corporate clients. IBM intended to acquire all the voting shares issued by Red Hat and Red Hat would become a wholly-owned subsidiary of IBM after the potential merger. As the condition met the definition of business merger set forth in the Fair Trade Law while the domestic market share of IBM's Deployment-Centric Application Platform also achieved the merger-filing threshold specified in Subparagraph 2 of Paragraph 1 of Article 11 and the proviso in Article 12 of the same law did not apply, IBM filed the merger notification according to law.
2. Findings of the FTC after investigation:
  - (1) IBM and Red Hat were horizontal competitors in the product markets of operating system, event-driven middleware and deployment-centric application platform. However, the margin of market share increase after the merger would be rather limited. In the meantime, when inquired by the FTC, most end users, competitors and industrial research institutions expressed that the products from the merging parties were not that intersubstitutable. The main pressure of competition before the merger came from businesses that were not part of the merger. Furthermore, after the merger there would still be large enterprises, such as Amazon, Microsoft, etc., to continue to participate in market competition. Therefore, the FTC found it hard to conclude that the merger between IBM and Red Hat would significantly change the market structure or weaken competition to a great extent.
  - (2) When reviewing the case, the FTC took into consideration whether IBM and Red Hat would impede competitors from accessing their open source codes, reduce the accessibility of Red Hat products, change the cooperative relations with Cloud service providers, extend their market power, and consequently jeopardize competition in related markets. After a careful assessment, the FTC concluded

that IBM would still face pressure from groups of open source software developers after the merger and at the same time there would be plenty of open source software able to replace Red Hat products. As a result, the merging parties would have no incentive or capacity to shut down market competition through the aforesaid approaches.

- (3) After the above comprehensive evaluation, the FTC decided that the merger would not lead to significant competition restraint disadvantages and therefore, citing Paragraph 1 of Article 13 of the Fair Trade Law, the FTC did not prohibit the merger.

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