

IBM

Business Conduct Guidelines



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Business Conduct Guidelines

Business Contact: Baldemar

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FOREWORD

This booklet replaces the booklet *Business Conduct Guidelines* published in May, 1973. It attempts to state in clear and understandable language some guidelines that apply to all IBM employees.

This booklet is a reorganization of the prior booklet to make it easier to use and understand. The basic rules have not changed. These guidelines still reflect IBM's policy of complying fully with the antitrust laws and adhering to the highest standard of business ethics.

I believe the antitrust actions against IBM were not caused by any deficiencies in IBM's business conduct guidelines nor in the conduct of our employees under them. To the contrary, the guidelines, which we have had for many years, have stood us and will continue to stand us in good stead as we defend these actions.

As in the past, all exempt employees and certain non-exempt employees will be required to read or review this booklet each year, certify to the IBM Company that they understand their responsibility to comply with the guidelines, and recognize that any violation of these guidelines may be cause for dismissal from the Company.

NICHOLAS deB. KATZENBACH
Vice President and General Counsel
April 10, 1975

I. POLICY STATEMENT

It always has been and continues to be IBM's policy to comply with the antitrust laws in letter and spirit. This is a key factor in the way we conduct our business.

Both the data processing industry and IBM have grown dramatically. We have succeeded because of newer and better products and the efforts of our people, but this success and the growing importance of the industry in our economy have greatly increased the risks of antitrust attacks in one form or another. Therefore, the necessity of complying with the intent as well as the literal language of the antitrust laws has never been greater. This booklet contains guidelines that implement our policy of antitrust compliance.

As a result of our high standards of business ethics, we as IBM employees today enjoy a reputation for excellence and fair dealing. But a good reputation must be diligently maintained. It is slowly acquired, day by day, year by year, but can be lost much faster than it is acquired. No course of action is worth the risk of impairing that reputation which has been built by all IBMers over so many years. We must see our actions in this perspective and understand clearly that business success goes hand in hand with compliance with the antitrust laws and high ethical standards.

The guidelines in this booklet will not provide an answer to every question that arises. They must be applied with understanding and judgment. IBM maintains a legal staff to guide you through the intricacies of the antitrust laws and the difficult problems of business ethics. You must in turn recognize your responsibility in dealing with the lawyers not to conceal, misstate or fail to analyze the facts, since any legal advice is no better than the facts upon which it is based.

FRANK T. CARY
Chairman of the Board
April 10, 1975

II. BUSINESS CONDUCT GUIDELINES

The guidelines in this booklet are based on IBM's policy of conducting its business in compliance with the antitrust laws and adhering to the highest standard of business ethics.

In applying the guidelines, three cautions must be mentioned.

- First, the guidelines will not provide an answer to every problem that will arise. Other sources of information and guidance should be consulted when appropriate. In the final analysis, good judgment and the highest standard of ethics and fair competition should guide our actions.
- Second, employees should not be so intent on observing one guideline that they overlook the applicability of others. For example, if a marketing representative properly obtains a competitive proposal under the guideline on obtaining competitive information, he or she must nevertheless not use it to make unfair comparisons in violation of the guideline on disparagement.
- Third, many of the examples are common situations chosen to illustrate a clear application of the particular guideline so that there will be no misunderstanding about the guideline itself. However, the spirit of the guidelines must be followed in less clear situations as illustrated by other examples. *Even the appearance of a violation must be avoided.*

Example: For security purposes, a program development department assigns to a program product under development the code name CRUSH, an acronym for Calculating Regressions Under Standard Hypotheses. The

program product when announced will compete very favorably with a successful program marketed by a small software company.

In choosing a code name that could be misinterpreted by the competitive software company as reflecting IBM's intent to "crush" the competition, the program development department has shown an insensitivity to appearances under the guideline on page 17 on taking "direct aim" at competitors.

Example: A long range plan of a development division discusses advanced technologies and how they will reduce cost and improve performance by combining functions that were previously found in separate machines so that they can be manufactured as a single machine. The plan also states as an added benefit the increased difficulties such a single machine will cause for specific competitors, in the mistaken belief that this will assure management approval of the development plan.

The part of the plan that discusses the difficulties a single machine will cause for competitors shows an insensitivity to appearances under antitrust theory as reviewed in Part III, as well as under the guideline on page 19 on tie-in sales. The combining of several functions in a single machine could be misinterpreted as being done artificially in order to thwart competitors, rather than as being done to reduce costs and for sound technological reasons such as improving performance, increasing reliability or simplifying maintenance. Even though we comply with these business conduct guidelines, we must avoid *appearing* to violate them both in what we do and in what we write, whether or not what we do and write are intended to be seen by outsiders.

A. GUIDELINES ON DEALINGS WITH CUSTOMERS (Including Prospective Customers)

1. GIFTS AND ENTERTAINMENT

An employee may not give any gift or gratuity (money) to a customer if it could reasonably be viewed as being done because of the IBM business relationship. He or she may give advertising novelties that are widely distributed.

An employee may not accept any gratuity (money).

An employee may not accept a gift except one of nominal value that is generally offered to others having a similar business relationship with the customer. Even then the gift should not be accepted if it would cause (or appear to cause) the employee to give preferential treatment to the customer. All gifts and offers of gifts should be reported by employees to their managers. If a gift is received but may not be accepted under this guideline, the manager should return it to the customer or, in the case of a perishable gift, give it to a local nonprofit charitable organization in accordance with established procedures.

An employee may accept discounts on personal purchases of the customer's products if such discounts are generally offered to others having a similar business relationship with the customer.

Example: The customer, a shirt maker, allows its employees to purchase shirts at a 20% discount. The customer generally extends this same benefit to suppliers who work on the premises from time to time, such as telephone installers and cafeteria caterers. The customer offers this benefit to an IBM customer engineer servicing the customer's data processing equipment.

The customer engineer may accept this benefit from the customer. However, branch office personnel who do not

work on the customer's premises may not accept the discount if offered, because they are not within the class normally offered this benefit by the customer. Such benefits must never be sought, requested or expected.

The nature of IBM's products and services requires that in marketing them the sales team develop a good understanding of the customer's business in order to propose the right solutions for its data processing problems. To develop such an understanding and the confidence of the customer, the sales team may have to work closely and extensively with the customer. This working relationship may lead to occasions when it is quite natural and appropriate for the IBM representatives and the customer to engage in some social activity together beyond the business relationship. An IBM representative may accept an offer of recreation, entertainment or other social activity with the customer if the offer is appropriate under the circumstances. For example, an offer of lunch following a business meeting is a typical social activity arising from a business relationship.

An IBM representative may invite a customer to engage in some social activity if *all* the following conditions are met:

- Management has approved it.
- The purpose is to develop a better understanding of and closer relationship with the customer rather than to influence the customer improperly.
- The social activity is reasonable in nature, frequency and cost.
- The social activity will not violate the customer's own rules against engaging in such activity with a supplier.

Under certain circumstances, services such as transportation, food and lodging that are appropriate to the marketing of our products may be provided to customers.

Example: IBM invites executives of a customer to a one week school to teach them basic concepts in data processing. IBM provides their food and lodging at the IBM Homestead and incidental services, including recreational facilities.

Example: IBM arranges for a customer to attend an executive briefing at an IBM Plant. IBM provides transportation in the IBM plane to and from the Plant location.

The above are appropriate marketing activities necessitated by the complex nature of data processing and the need for educating our customers. If a customer such as, for example, the federal or a state government, has laws or regulations governing its dealings with suppliers, such laws and regulations must be observed.

It will not always be possible to distinguish readily between what is and is not proper to accept from or to provide to a customer. Such decisions must always be made responsibly and with sensitivity to the total circumstances.

2. DISPARAGEMENT

Excellence of IBM products and services is the key-stone of IBM's competitive philosophy. It is IBM policy to stress the merits of our products and services and to refrain from criticizing our competitors or their products or services. Critical statements about a competitor or its products or services are disparaging if false, misleading or simply unfair.

False statements are not the only vehicles of disparagement. Half-truths can be disparaging as well as grimaces and other nonverbal forms of communication.

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False statements are not the only vehicles of disparagement. Half-truths can be disparaging as well as grimaces and other nonverbal forms of communication.

Even statements that are factually correct can be disparaging if they unfairly result in lowering the customer's estimation of the competitor or its product, or are irrelevant and state or imply anything negative or derogatory.

Example: An IBM representative gives to a customer articles that appear in newspapers and other publications concerning the failures or other problems of a competitor or its products or services.

The articles cast doubt on the competitor's capability and, since they do not set forth all the reasons for the competitor's problems, such an action by the IBM representative is unfair and improper.

Some of the more common examples of disparagement are:

- casting doubt on a competitor's capabilities
- making unfair comparisons
- taking unfair advantage of a competitor's troubles or weak points, including its financial condition

Example: IBM representative to customer: "I see Competitor X has announced a new single element typewriter. They have been working on it for years without success. I doubt that they've really been able to get all the bugs out of it."

Such statements cast doubt on the competitor's products as well as on the truth of its public statements and are improper.

Example: While a customer is on a plant tour to review IBM's technical capabilities, an IBM engineer describes to the customer a competitor's manufacturing process, and compares it unfavorably with IBM's own process.

Such a description and comparison are improper. We should not presume to know the current internal operations of a competitor. We may describe only our own operations.

Comparisons between IBM products and services and those of a competitor must be relevant, factual, fair and complete. If comparisons must be made, the representative should be as certain as possible that the competitive data is accurate by using reliable sources of information such as those provided by the commercial analysis functions of the various operating units. We may not state as fact that which is merely speculation, such as how a competitor will provide maintenance in a remote location, the future resale value of IBM or competitive equipment, or that a mixed system will take longer to maintain.

If a customer requests the location of installations of competitive equipment or programs, it is proper for IBM representatives, if they know, to respond. But in fairness they must refer the customer to *all* relevant competitive installations in the area known to them.

Example: In response to a customer's request to see a competitor's machine in operation, the IBM representative refers the customer to selected competitive installations known to be having problems.

To refer the customer only to an installation known to be having problems is misleading and improper. Having identified all relevant competitive installations, the IBM representative should not make other comments about them.

Even more subtle forms of disparagement are improper. For example, IBM representatives should not question a customer about the capabilities of a competitor or its products or services when they already know the answer and the primary purpose of the question is to direct the customer's attention to a deficiency in the competitor or its products or services. The result of such a selling tech-

nique may be to mislead customers or cause them to have undue concern about a competitive product or service.

An IBM representative should not use scare tactics to discourage customers from using competitive equipment.

Example: An IBM representative tells a customer, who is considering ordering competitive tape drives, disk drives or additional memory, that though such units may currently be compatible with the customer's IBM CPU, they may not be compatible in the future as hardware and software changes are made by IBM, and that such units may affect the integrity of the customer's EDP system so that it fails to meet the customer's operating deadlines.

If such customers have not been given a copy of the Multiple Supplier System Bulletin, the IBM representative should give them one to avoid any misunderstanding about IBM's responsibilities in multiple supplier systems.

Where competitive supplies, equipment or programs are used with IBM equipment, IBM maintenance representatives face a delicate situation when they suspect that the competitive product is the cause of a problem. When the competitive product is the problem, they, of course, must say so. But *how* they say so is very important. It can and must be said only when they are reasonably certain that it is true and then only objectively without intention to disparage and without arrogance. Sales or service personnel should not threaten cancellation or increased cost of IBM maintenance. Customers may be referred to the Multiple Supplier System Bulletin where appropriate. Difficult cases should be referred to IBM management for review.

3. SELLING AGAINST COMPETITIVE ORDERS

No action should be taken by an IBM representative to "unhook" a competitive order, that is, to do anything

to cause a customer to cancel a firm order with a competitor. Once IBM learns that the customer is committed to taking competitive products or services, no attempt may be made to cause the customer to cancel the order, even if the competitive equipment replaces IBM equipment. This includes suggesting or conducting surveys with respect to work to be performed by the competitor, submitting proposals or making any other efforts to sell a substitute for the competitor's products or services on order, and also includes any "protect" activity for the IBM equipment to be discontinued by the on order competitive equipment.

A firm order exists when the customer is definitely committed either orally or in writing to take competitive products or services. There would not be a firm order for competitive products placed in a customer's location on a "free trial basis" if the customer is not committed to acquire the equipment. But if the equipment is installed for "acceptance test" purposes, there would be a commitment. When the customer has given the competitor only a "letter of intent," our sales effort need not be halted unless and until the letter of intent is firmed up into an order. A letter of intent typically contains an expression of the customer's interest in or intention to order certain equipment, but the customer is not yet committed to going through with the order.

Example: Customer Q gives ABC Computers a letter stating:

"It is my present intention to order an ABC Computer Model 1, and you agree accordingly to place me on your delivery schedule. I agree to advise you of my final decision within 90 days."

In the example the customer was not yet committed, hence the letter would be regarded as one of "intent."

IBM representatives are not obligated to inquire about a possible commitment if they have no reason to believe that

one may exist. If they have reason to believe that there may be a commitment, they should ask the customer whether a commitment has been made. If the customer tells them there is no commitment, they may continue their sales activity. However, if they are told there is a commitment, they must suspend their sales activity. If IBM representatives are in doubt as to whether a customer letter is a firm order or letter of intent, they should ask the customer for a written statement clarifying the customer's relationship with the competitor before continuing their sales activity. A written statement from the customer indicating the status of its relationship with the competitor is also necessary if the customer says it has cancelled a firm competitive order or has reopened bidding to all vendors and asks us to make a proposal. This letter should include a statement that the customer no longer has a commitment to obtain the equipment, programs or services from the competitor and that the competitor has been so informed.

This guideline against unhooking does not prevent IBM representatives from soliciting orders for equipment, program products or services to be used in addition to, or in conjunction with, the equipment, programs or services ordered from the competitor. Also, they may keep the customer informed of IBM's new products, new offerings, new terms and conditions and new prices. After the competitive equipment or program has been installed or services commenced, IBM representatives may resume a full selling effort, including the application being handled by the competitive product or services. When a customer is committed to install multiple units of a competitive product over a period of time, IBM representatives may resume selling when a reasonable number of the units has been installed and IBM counsel has concurred.

4. UNANNOUNCED PRODUCTS

Disclosures of unannounced products (equipment, programs or services) in competitive situations could be con-

strued as an unfair practice aimed at injuring specific competitors. It is our practice not to discuss, disclose or propose IBM products before their announcement.

Example: A customer is considering ordering some newly announced competitive equipment to replace an IBM System 3 that has been installed for four years. The IBM representative tries to delay the action by reminding the customer of the succeeding generations of IBM equipment and giving the customer a newspaper article speculating on a new generation IBM product under development.

This is an improper attempt to circumvent this guideline on disclosing unannounced products.

Premature disclosures also tend to impact our current product line and jeopardize our patent and copyright position. In addition, embarrassment and legal liability could result if later technical difficulties caused cancellation of the project or failure to meet specifications. Therefore, an IBM representative may not discuss unannounced products even in noncompetitive situations.

Example: A customer states its intention to buy its installed IBM CPU. The IBM representative hears rumors that a successor IBM CPU will be announced three days after the scheduled purchase and knows the customer will be unhappy if it buys the installed equipment. Since no competition is involved, the IBM representative tells the customer of the rumored announcement.

Such a disclosure is improper.

Exceptions are made for reasons such as the national interest or to further the development of IBM products, programs or service. We have set up careful procedures controlling such disclosures to avoid any unfairness. No

disclosures may be made except in accordance with these procedures and the management approvals required by them.

5. PREFERENTIAL TREATMENT

It is IBM policy to make our products and services available to all customers on a fair and equitable basis, without discrimination or preference. This applies to prices, scheduled delivery dates, and contract terms. An antitrust exposure could arise if preferential treatment is offered to win an order.

Example: Faced with a vigorous competitive situation, the IBM representative, in a "last ditch" attempt to win the order, offers free coding and testing of an application program to be used with the new equipment.

Has the IBM representative violated our business conduct guidelines?

The answer is "Yes." Such effort is part of our Systems Engineering Services. These services are provided on a charge basis under a Systems Engineering Services Agreement. To offer such services free of charge would result in preferential treatment and would be a direct violation of our marketing practices.

Example: A customer with an installed IBM CPU offers to pay for systems engineering services to assist in modifying programming to attach competitive terminals. The customer offers to furnish the necessary interface information, and the systems engineering skills are available in the IBM branch office, but since such services would yield no hardware revenue, the branch office turns down the request.

To turn down the request solely for the reason stated would discriminate against IBM customers who also use non-IBM

equipment, in violation of this guideline and also the guideline on page 19 on tie-in sales.

Example: An IBM representative who is a former systems engineer is very close to obtaining an order from a customer for an IBM Program Product. At the last minute the customer decides that the program will have to be modified somewhat to be suitable. The customer agrees to take the Program Product only if IBM will in the future provide programming service support to the customer's altered portion of the program free of charge. Because the IBM representative has spent a considerable amount of time and energy in her sales effort and also because the anticipated program modifications will be minor, the IBM representative agrees to provide the programming service support herself free of charge.

Has she discriminated in favor of one customer?

The answer is "Yes." Our program products are licensed with specific programming service classifications. Providing a customer with support that goes beyond the service classification for that program is preferential treatment and in violation of our marketing practices. IBM may make program modifications, but only on a charge basis at our usual rates for such services.

The Information Records Division and Office Products Division offer legally justifiable quantity discounts on various supply items in order to be competitive. Also, educational and governmental customers are sometimes granted special prices and terms as permitted by law.

6. SEQUENTIAL DELIVERY

IBM fills purchase and lease orders in the order we receive them to the extent administratively practicable. In

the case of tabulating and EDP equipment, this is a requirement of the Consent Decree. Exceptions to this requirement would apply in the case of Government priority-rated orders.

Example: An IBM representative tells a customer that shipment of the customer's on order CPU will be delayed if the customer orders competitive peripheral equipment.

This is a violation not only of this guideline on sequential delivery but also of the guideline on page 14 on preferential treatment.

When a customer desires an earlier delivery than the published delivery schedule quoted by the IBM representative, it may submit a request for improved delivery, which may be granted if there are openings in the schedule.

7. DISCUSSION OF IBM'S SIZE

It is IBM practice not to trade on the Company's success or position in the industry. Except as provided below or as may be requested by a customer and agreed to by IBM, no reference should be made in proposals or discussions with customers to company-wide figures on such things as machines installed or on order, systems engineers, customer engineers or amounts expended on education or research.

Example: "We're the biggest so you can be sure we'll still be here five or ten years from now."

Example: "IBM spent X million dollars last year on customer education."

From the standpoint of fairness, success should be due to superior products and services rather than size or previous success. Moreover, customers know the difference between quality arguments and essentially meaningless statistics, and may resent the latter. Therefore, only information concerning IBM facilities and personnel in the immediate area may be disclosed, and only to the extent

necessary to assure the customer that his installation and application requirements will be taken care of.

Example: "We have a staff of fifteen customer engineers here at the branch who are proficient in serving your configuration. As for backup possibilities, there are three other customer installations like yours in the area."

8. TAKING "DIRECT AIM" AT COMPETITORS

Vigorous competition is the cornerstone of a free economy, which the antitrust laws are designed to promote and preserve. Nevertheless, a large company must avoid overreacting to competition.

In practical terms this means that we should sell energetically against all comers but avoid concentrating to an unreasonable extent on specific competitors. This kind of "direct aim" approach could be interpreted by the antitrust authorities or a competitor as a strategy to eliminate competition.

Example: "Competitor X has just won an order from one of our best accounts. Let's put him on the defensive by applying pressure to all X's other accounts."

But why shouldn't a seller be allowed to direct its forces against a competitor at any time it chooses? The answer is that competition works best with a maximum number of competing companies. If a large company concentrates on specific competitors rather than on the open market potential, the long term result might be too few competitors in a market where there is room for many.

It is often difficult to draw the line between proper reaction and overreaction to a competitive problem. Therefore, in any case of doubt the proposed action should be reviewed with IBM counsel before implementation.

9. OBTAINING COMPETITIVE INFORMATION

To succeed in today's business environment, a company must obtain reliable information concerning the competi-

tive environment in which it operates. Marketing and technical personnel as well as general management must keep up with competitive developments.

However, there are some important restrictions on how competitive information may be obtained and even what may be obtained.

A company may not attempt through improper means to acquire a competitor's trade secrets or other proprietary or confidential information, including information as to facilities, capacities, technical developments, operations or customers. Improper means would include industrial espionage, urging competitive personnel or customers to disclose confidential information, hiring competitors' employees to obtain confidential information, or any other means that are not open and aboveboard.

Regarding what competitive information may be obtained, IBM personnel must not accept or examine any information that appears to be confidential to another person or company. IBM may obtain or examine confidential information only if its owner clearly consents to its disclosure and IBM's receipt of such information has been approved under established procedures.

Example: A customer asks an IBM representative to evaluate for it a competitive proposal from The ABC Company that is marked, "ABC Company Confidential."

It would be improper for the IBM representative to examine the proposal. It would be improper not only if the proposal is marked "proprietary" or "confidential" or with a similar designation, but also if it is not marked but contains engineering drawings or is submitted to the customer on a closed-bid basis or under any other circumstances that indicate the information contained in the proposal should be kept confidential. The competitor and not the customer is the owner of the information and, therefore, only the competitor can consent to the disclosure of the proposal.

10. TIE-IN SALES

A seller with a strong position in one of its products or services may not force its customers to take other products or services in order to get the first one. This is called a "tie-in sale" because the other products or services are "tied" to the one that the customer really wants.

Example: The customer says it likes System/370 but prefers to buy its printers, terminals, program products or supplies from other vendors.

May the IBM representative object? The IBM representative should, of course, make all reasonable efforts to present the merits of the IBM products. However, if the customer's decision is to have a mixed system, or to use other than IBM products, the IBM representative should not threaten to or actually reduce the normal support that relates to the particular IBM equipment, program or service ordered by the customer from IBM. To do so could be seen not only as an attempt to "tie" the sale of other IBM products to the System/370, but also as discriminatory treatment of IBM customers.

"Tie-in sales" are best avoided by selling each individual product and service on the basis of its own merits.

11. RECIPROCITY

IBM may not agree to buy a customer's product or service in exchange for its agreement to take IBM equipment, programs or services. Such an agreement would constitute "reciprocity" and would be improper whether initiated by IBM or the customer.

Example: A bank demands that we increase our deposits as a condition to its ordering additional IBM equipment.

This does not mean that we may not use the product or service of a firm that is also an IBM customer, but the customer's decision and our own must be made independently.

12. UNFAIR MARKETING

The above guidelines relate to specific types of marketing practices that do not meet IBM's high standard of fair competition. They do not exhaust all instances of what may be viewed as unfair marketing. Whether or not covered by a specific guideline, our actions must always be measured against the highest standard of fair play.

Occasionally, the marketing activities and vendor relationship with federal, state and local government, school and hospital accounts may become the subject of public interest. When this occurs, vendors may be accused of using undue pressure and overselling their products or services. Therefore, we must remain sensitive to the nature of these accounts and propose and sell our products and services to meet the needs of these customers.

In all these cases our marketing activities should be:

- Open and aboveboard;
- Based on fact;
- Not disparaging of the government or its personnel;
- Able to stand critical evaluation.

Special attention should be given to the following considerations: ensuring that a government entity has the authority to conclude a binding contract; being aware of the law and regulations governing procurement at these accounts; not seeking or promoting violations of the procurement laws; seeking advice from IBM counsel on protesting government procurements; not violating lobbying statutes; and avoiding any real or potential conflicts of interests when involved with schools, governments and community agencies.

In the long run, our best interests lie in earning the respect and confidence of our customers by serving them honestly, just as we would want them to serve us were our roles reversed.

B. GUIDELINES ON DEALINGS WITH SUPPLIERS (Including Prospective Suppliers)

1. GIFTS AND ENTERTAINMENT

It is essential that in our relations with our suppliers, IBM employees avoid any interest in or benefit from any supplier that would in fact cause them or appear to cause them to favor that supplier over others. Our suppliers will retain their confidence in the objectivity and integrity of IBM only if each employee strictly observes this guideline.

Suppliers are not limited to those companies dealing with buyers at IBM's purchasing departments. They include all suppliers of goods and services who deal with any employee, such as branch office personnel, at any IBM location.

IBM employees and members of their immediate families may not accept any gratuity (money) from a supplier.

IBM employees and members of their immediate families may not accept any gift from a supplier that could be viewed as being offered because of the IBM business relationship.

A gift or gratuity or offer of a gift or gratuity should be reported by employees to their managers who should return gifts or gratuities if already received or, in the case of perishable gifts, give them to a local nonprofit charitable organization in accordance with established procedures. In any event, managers should contact suppliers by letter explaining IBM's guideline on the subject. A gift does not include advertising novelties (such as calendars or paperweights). However, if employees have contact with outsiders, they should not keep advertising novelties at their work stations.

It should be understood that under some circumstances, the acceptance of a gift or gratuity constitutes a crime.

IBM employees and members of their immediate families may not accept any discount on personal purchases of the supplier's products if such a discount could be construed

as being offered because of the IBM business relationship. Nor may employees accept any personal benefit for dealing with a supplier.

Example: A supplier offers trading stamps to the IBM buyer on all IBM purchases from the supplier.

The buyer may not accept this offer.

Discounts made available to all IBM employees as well as employees of other companies as a general practice may be accepted.

Example: An automobile rental company makes available to all IBM employees a discount on the rental of a car whether for personal or business use.

IBM employees may accept the discount, even if they rent the car for their own personal use.

IBM employees may not accept entertainment offered by a supplier unless it is incidental to and appropriate for a business meeting.

Example: An IBM buyer attends a trade show on electronic testing equipment. One supplier maintains a "hospitality suite" in the hotel to which all customers and prospects are invited for afternoon refreshments.

The IBM buyer may go to the hospitality suite for refreshments.

Example: An IBM industrial engineer attends a training seminar on numerical control equipment put on by the supplier of equipment IBM has on order. An afternoon of golf is included for the second day of the three day seminar.

The IBM engineer may participate in the recreation.

Example: A supplier of industrial microscopes invites three development engineers, who use such microscopes in their work, to a restaurant for dinner to discuss the merits of its product.

Assuming the engineers are in a position to influence decisions with respect to IBM business with the supplier, the engineers should not accept the invitation. Otherwise, it could appear to competing suppliers that getting IBM's business depends more on "wining and dining" the proper people than on offering the best product. A supplier has adequate opportunity to present its product to IBM personnel on IBM premises.

Services offered by a supplier may be accepted by an IBM employee when the need for the services is associated with a business relationship and the supplier provides the services to other customers and prospects as a normal part of its business. Examples of such services are transportation to and from the supplier's place of business, lodging at the supplier's place of business, and business lunches and dinners for business visitors to the supplier's location. The services should generally be of the type normally used by IBM employees and allowable on the travel expense account. The acceptance of such supplier provided services should be reported on the employee's expense account.

2. INVESTMENTS IN AND OTHER RELATIONSHIPS WITH SUPPLIERS

An IBM employee who in any way influences decisions with respect to IBM business with a supplier may not hold any position with that supplier, whether as a director, officer, employee, or agent, nor have any financial or other significant interest in that supplier. This would include employees who establish specifications for, recommend, evaluate, test or approve a supplier's product or service, or who participate in the selection of or arrangements with a supplier.

Employees who do not influence decisions with respect to IBM business with suppliers must nevertheless avoid any investments in or relationships with suppliers that would conflict with IBM's business interests. They must avoid any interest in a supplier that could cause them, for example, on behalf of a supplier, to exert any improper

influence within IBM, or use inside information. They must avoid any interest that would create even the appearance of such a conflict, in order to preserve the integrity of IBM's purchasing practices in the eyes of IBM's suppliers.

Under these general guidelines relating to IBM employees who do not influence decisions with respect to IBM business with suppliers, an IBM employee may not receive pay or any other benefit from a supplier for advising the supplier with respect to IBM purchases from the supplier. An employee may not be a supplier individually to IBM except in unusual circumstances where, for instance, he or she has a unique offering (such as an artistic talent) not offered by other suppliers. An employee may not be employed by a supplier to represent the supplier to IBM or to work on goods or services being produced by the supplier for IBM. An employee may not be part of the operating management of a supplier.

More difficult judgmental questions arise with respect to investments in and serving on the board of directors of suppliers by an employee who does not influence decisions with respect to IBM business with suppliers. The answer depends on whether, under all the circumstances of each case, other suppliers may be or believe themselves to be at an unfair competitive disadvantage. Employees should consult their managers or IBM counsel before making investments in or serving as directors of a supplier when either could have such an effect on other suppliers.

3. RECEIVING PREFERENTIAL PRICE

A buyer may not knowingly induce or accept a preferential price that would be unlawful for the supplier to give.

Example: An IBM buyer insists that the supplier sell electronic components to IBM at 10% less than the price it charges to any of IBM's competitors.

Such a price could be unlawful and the buyer found to have induced it. But since the buyer attempts to get the best

price available, it is not always easy to distinguish between lawful and unlawful activity. IBM counsel should be consulted when there is any question. If there is any reason to believe that an unlawful preferential price is being offered by a supplier, a clarifying written statement must be obtained from the supplier in accordance with the procedures set forth in the Purchasing Manual.

4. RECIPROCITY

We may not agree to buy from suppliers in exchange for their agreement to use our equipment, programs or services. Such an agreement would be improper whether initiated by IBM or the supplier. This does not mean that we may not try to sell IBM products or services to our suppliers, but the supplier's decision and our own must be made independently. We should never suggest to suppliers that our purchases from them constitute a reason why they should use our products.

5. TYING UP SOURCE OF SUPPLY

A manufacturer may not "tie up" its suppliers so as to limit unreasonably their freedom of action and thereby interfere with competitors' access to the needed items.

Example: A computer manufacturer induces the sole supplier of an important new component to agree (a) to supply all of the manufacturer's requirements for a five-year period, and (b) not to sell to the manufacturer's competitors.

As with customers, it is our policy to treat suppliers equally and fairly, and to avoid any exclusive arrangements with them that might unfairly block off competitors from sources of supply.

C. GUIDELINES ON DEALINGS WITH COMPETITORS

1. CONTACTS WITH COMPETITORS

While we must avoid all unfair acts against competitors, we may not go to the other extreme and be too "friendly"

with them. Competition functions best when each company makes its business decisions independently. When two or more competitors agree on such things as prices, production or territories, competition is restricted. All such agreements or "conspiracies" are prohibited by law.

Since our normal business activities involve occasional contacts with competitors, it is important to know what may and may not be discussed in order to avoid creating any wrong impressions. Common areas of normal business contacts include:

- sales to other equipment manufacturers, data services organizations and leasing companies
- participation in team bids
- purchasing activities
- furnishing interface information
- attendance at business shows

In all contacts with competitors, IBM personnel must avoid discussing such things as prices and terms of sale (except when the competitor is buying from or selling to IBM, or the competitor or IBM is providing to the general public such information on a product displayed at a business show), costs, inventories, product plans, market surveys or any other confidential or proprietary information. If one of these subjects is raised by a competitor, the IBM representative should explain why he or she may not discuss such matters and stop the discussion there.

Trade associations perform useful and legitimate functions in facilitating the exchange of information on such industry matters as technological developments and government regulations. Similarly, standards organizations seek to facilitate technological progress through the development of various technical standards.

Since trade association and standards meetings bring together employees of competitive companies, there is always the risk that some of the represented companies will be charged with having used the meetings to make un-

lawful agreements. To avoid this risk, IBM personnel should confine their discussion to the specific items on the meeting agenda and should not listen to or engage in informal discussions of any of the prohibited items stated above (prices, terms of sale, etc.). If a competitor begins to discuss such matters, the IBM representatives should refuse to participate and should leave the meeting if such discussion is not immediately stopped. Any such discussion should be reported to IBM counsel.

In all such activities, IBM personnel must avoid any attempt, or appearance of attempting, to take unfair advantage of their company's position in the industry.

All contacts with competitors should be approved by the Office of the IBM Vice President, Commercial and Industry Relations, CHQ, except normal sales and purchasing contacts and except when a competitor invites public contact such as at business shows or makes material available to the public on request.

2. INTERESTS IN COMPETITORS

IBM employees and members of their immediate families should not have an investment or other financial interest in a competitor that could create a divided loyalty or the appearance of one, or could cause speculation or misunderstanding.

It is not possible to compile a list of competitors that would be complete and reliable at all times. The more obvious types of companies that are competitive are:

- EDP equipment manufacturers and sales organizations
- computer leasing companies
- software houses
- computer maintenance companies
- facilities management firms
- systems engineering firms
- data processing schools organized for profit
- manufacturers of data processing supplies

- manufacturers of typewriters, dictating and copying equipment and supplies
- data servicers including service bureaus and time sharing organizations
- semiconductor manufacturers
- publishers of instructional and testing materials

The problem of determining who is a competitor is compounded by the fact that many companies have more than one line of business so that just a portion of their business may be competitive.

This guideline does not prohibit every investment or other financial interest in a competitor. The following factors should be considered in determining whether an investment or other financial interest is proper under this guideline:

- The IBM position held by the employee
- The dollar amount of the investment or interest
- The relative importance of the investment or interest to the employee
- The nature and extent of the competition between IBM and the other company
- The manner in which and time when the investment or other interest was acquired

Each situation must be considered on its own facts. If there is any question whatsoever as to the propriety of an investment or other financial interest in another company, employees should consult their managers or IBM counsel for assistance.

Since IBM and other companies modify their operations or add to their product line from time to time, employees should reexamine their investments periodically for compliance with this guideline.

Those employees whose professional or managerial responsibilities include working with information about a competitor should refrain from buying and selling any stock in such a competitor or similar competitors.

Apart from financial interests in competitors, other relationships that could cause employees to be interested in the success of a competitor could thereby compromise their loyalty to IBM and must be avoided. Such relationships include serving as a director or employee of or advisor to a competitor, or serving as an officer or director of a mutual stock fund specializing in business areas closely related to IBM's business.

3. COMPETITIVE ANALYSIS

To be successful in a dynamic and competitive industry, a company must constantly assess developments that may affect it. Thus, a company must continually study such things as the general economy, the availability of supplies, technological advances, the needs of customers, and competing products. Meaningful plans for research and development activities, manufacturing volumes and product and service offerings all depend on an accurate understanding of such factors.

Analyses of competitive products and terms and conditions are fully compatible with the antitrust laws. They reflect the competitive conditions that prevail and to which each firm must adapt in trying to meet the needs of its customers with better products and services than its competitors.

Though analysis of competitive factors is essential in the conduct of a successful business, it may carry with it some legal risk. If an analysis is not done very carefully, it may be used by a plaintiff to try to persuade a court that IBM's intent was to injure competition, and that such an intent made otherwise legitimate actions "predatory." The mere analysis of individual competitors, for example, could have this effect and should therefore be avoided.

It is not and never has been IBM's intent to injure, destroy or suppress competition. IBM's intent has always been to compete vigorously but fairly. IBM's actions are aimed at serving customers better than our competitors, rather than at injuring competitors. No individual employee should harbor in his own mind an intent to injure, destroy or suppress competition. Such thinking will inevitably be reflected in his competitive analyses or other writings and may later be imputed to the corporation by a court. A failure to be sufficiently sensitive on this matter can be extremely damaging to the corporation. All questions should be reviewed with IBM counsel.

Every competitive analysis should be based only on sources of information approved by those groups in the divisions and subsidiaries that have such activity as part of their responsibilities, such as Commercial Analysis. Competitive analyses should furthermore be done only in accordance with the guidelines followed by such groups. No competitive analysis should be used or distributed without the review and approval of IBM counsel.

D. MISCELLANEOUS GUIDELINES

1. ILLEGAL OR DISHONEST ACTIVITY

All employees must clearly understand that dishonest or unlawful acts, such as the sale of IBM proprietary information, are frequently criminal offenses. They also affect IBM's business interests directly and IBM will take appropriate action to protect its interests.

Example: An IBM engineer sells or gives the drawings and specifications of an unannounced product to a competitor.

Example: An IBM product planner is hired by a competitor as a product planner for competitive products. In performing his new job, the planner uses not only his general knowledge of the data processing industry but also his specific knowledge of IBM's future product plans.

Both examples represent the illegal misappropriation (theft) of IBM property. In the second example, even though the planner may not have taken any IBM documents with him, his use of specific confidential information about an unannounced product, such as its performance, date of announcement and forecasted sales, which he could have obtained only as an IBM employee, is unlawful.

2. UNETHICAL CONDUCT

Employees must observe the highest standard of business ethics. They must avoid any activity or interest that might reflect unfavorably upon their own or IBM's integrity or good name.

They must avoid personal conflicts of interests. This means that they must be free from the influence of personal considerations or relationships when dealing for IBM with others, or making recommendations or decisions regarding dealings with other persons or companies.

They must avoid any activity that is contrary to IBM's business interests for their own personal gain.

Example: An IBM systems engineer writes programs for a customer after work and during vacation periods to supplement her IBM salary.

Example: An IBM marketing representative works as an instructor on IBM equipment at a profit-making institution.

This kind of "moonlighting" is improper because it diverts a business opportunity from IBM to the employees for their personal gain.

Not all outside work or moonlighting is improper. Work unrelated to IBM's business would not ordinarily be improper, nor would most charitable work even though related to IBM's business.

Example: Two evenings a week, an IBM programmer teaches a course in programming to high school dropouts under the auspices of a nonprofit organization.

While such outside activity is ordinarily all right and even laudable, such activity should be discussed with the employee's manager or IBM counsel. In the example, for instance, the employee should avoid misleading the students into believing that IBM will hire them.

It would also be improper for employees to seize a business opportunity for themselves before IBM has announced a competing product under development.

Example: An IBM engineer provides technical consulting support to a manufacturer of a device of a kind that IBM is also developing but has not yet announced.

Example: An IBM programmer owns a program that he developed before joining IBM. IBM declines to market it because it has a similar program under development but not announced. The programmer thereupon elects to market the program himself and receive continuing income, rather than to sell outright all his interest in the program.

In each example, the employee's conduct would be improper if the particular facts showed that the employee was essentially disregarding IBM's legitimate business interests for the employee's own personal gain. This would be true even if the outside activity did not directly conflict with the employee's IBM job responsibilities in such a way as to create an actual conflict of interest.

Example: An IBM employee subscribes to the initial stock offering of a new company being formed to develop products competitive with IBM products. It is located near an IBM facility and has hired away IBMers for key management and engineering positions.

Such an investment is improper under the circumstances because, for a possible personal gain, the employee is help-

ing to launch a competitor while still employed by IBM. The further fact that IBM confidential information is jeopardized makes this a clear case of disregarding IBM's legitimate business interests for one's personal gain. Each case must be examined on its own facts to determine whether an investment in a new business venture is proper.

3. IMPROPER USE OF INSIDE INFORMATION

IBM employees may not use for their own financial gain, or disclose for the use of others, inside information obtained because of their employment with IBM.

Example: An IBM employee learns from a friend in purchasing that IBM is about to enter into an important contract with Supplier X. The employee invests \$5,000 in X stock.

Example: An IBM representative is told by a vice president of the ABC account that ABC is about to be acquired by XYZ Corporation, a very successful larger company. The vice president recommends in confidence that the IBM representative pick up some XYZ stock. The IBM representative does so.

Example: The secretary to an IBM marketing executive, while transcribing dictation, learns of a revolutionary new product IBM is planning to announce. The secretary tells a friend who runs out and buys IBM stock.

Example: An IBM employee believes that an impending IBM announcement will impact the stock of a competitor unfavorably and sells the competitor's stock short.

In all such cases, the taking advantage of inside information gives the insider and any "tippees" to whom the employee gives the inside information an unfair advantage

over the general investing public. It could create liability to those injured for both the insider and the "tippee," even in the case where only the tippee trades on the basis of the inside information.

In addition, those employees whose professional or managerial responsibilities include working with information about competitors or suppliers (regardless of its availability to the general investing public) should refrain from buying and selling of such stocks.

Inside information can be improperly used in situations other than buying and selling stock. Any use or disclosure by an employee of inside information that gives the user of the information an unfair advantage over others for the user's own personal gain is improper.

Example: An IBM employee has a family member, relative or friend in a business whose customers are predominantly persons moving into newly purchased homes. The employee methodically obtains information on new hires and transfers of IBM employees and discloses such information to the family member, relative or friend, enabling that person to offer the service or product of the business to the transferred or new employees.

This is an improper use of inside information.

4. NONPERSONAL CONFLICTS OF INTERESTS

Unlike personal conflicts of interests, in which employees' outside interests conflict with their duty to IBM, other conflicts of interests can arise when the interests of an outside organization with which an IBM employee is associated conflict with IBM's interests. IBM employees who are active in public service are particularly vulnerable. Many IBM employees serve on school and hospital boards, in legislatures or as instructors in schools and universities. Such employees must be sensitive to situations arising dur-

ing their service where the interests of the outside organization pull one way while IBM's interests pull the other way.

Example: An IBM employee serves on the town assessment board, whose duty it is to assess property owned by IBM.

Example: An IBM employee serves on a school board that is considering procuring some office typewriters, and educational materials of the type offered by SRA.

These are two examples of common situations where conflicts of interests could develop, since the interests of IBM and the other institution may not run parallel. Since IBM employees will not personally gain from their participation with the outside institution and may even believe they can act with the utmost objectivity, they may overlook the potential conflict. But their actions on behalf of the institution involving IBM would at least *appear* as a conflict and could subject them and IBM to criticism. They must refrain from acting in any situation where their actions could in fact, or in appearance, benefit IBM, and should take whatever other actions are appropriate to avoid the appearance or the fact of a conflict of interests.

III. THE THEORY OF ANTITRUST

Antitrust laws are based on the premise that a healthy state of competition tends to assure reasonable prices, efficient services and a more productive economy.

Two types of interference with competition, which these laws are designed to prevent, may be illustrated by the following cases:

Case 1—Two (or more) competitors agree between themselves to take life easy by fixing prices at identical levels or agreeing not to do business in each other's market territory.

Case 2—A company obtains a very large share of a market by predatory price cutting and other unfair acts intended to drive its competitors from the market.

Case 1 is called an unlawful agreement or "conspiracy" to restrain trade. While IBM's competitors could readily attest that we do not "take life easy" by entering into improper agreements, our normal business operations bring us into occasional contact with competitors. It is therefore important to know how to conduct ourselves to avoid any wrong impressions as to the purposes of any meetings with competitors.

Case 2 is called "monopolization" under U. S. law and "abuse of dominance" under various foreign laws. In order to prove that a company has monopolized, it must be shown that it (a) possesses the power in a particular market to set prices or foreclose entry to competitors, and (b) has achieved or retained that power by illegal or exclusionary practices. A company that possesses such power in a particular market would not have monopolized if it were found to have achieved and retained that power purely because of its superior skill, foresight and industry. Thus, how a company achieves and maintains a strong market position—whether by exclusionary practices or by superior skill, foresight and industry—is of critical importance.

Example: Company X has 80% of a particular market. Its prices are double those of the competition and are unresponsive to normal market forces. Recently two new companies almost succeeded in establishing themselves in the market, but X drove them out by selective price-cutting below cost, "unhooking" their orders and disparaging the quality of their products.

A court might hold that X in the example possessed the power to set prices and to exclude competition, and had retained this power by illegal and exclusionary practices. The consequences of being adjudged in violation of the antitrust laws can be very severe. Courts have the power to impose not only heavy fines but any appropriate relief to

diminish a company's monopoly power, by forcing a company, for example, to divest itself of some of its assets or product lines.

It is also illegal for a company to *attempt* to monopolize any market. Therefore, a powerful company that engages in illegal or exclusionary practices may violate the antitrust laws even though its efforts have not resulted in monopoly power.

Mere size alone is not a violation of the law unless accompanied by market power and illegal or exclusionary acts as discussed above. However, it should be apparent from the above discussion that any unfair or unethical tactic employed by a large company against a competitor could be open to challenge as an improper attempt to exclude competition. When a competitor goes out of business, it is not always easy to determine whether this resulted from normal market forces or from unfair trade practices. But when there is evidence that a large company has consistently acted in an unfair manner, the antitrust authorities or the competitor might be able to persuade a court that these acts caused the competitor's demise and that the large company therefore monopolized or attempted to monopolize in violation of the law.

The U. S. antitrust laws apply to the international operations of U. S. companies to the extent that competition within the United States or U. S. imports or exports are affected. In order to assure compliance with these laws and with foreign laws, IBM has a single set of business conduct guidelines applicable both to the operations of the IBM Corporation in the United States and to the worldwide operations of its international subsidiaries.

Some of the examples used in this book may not be appropriate in some World Trade countries because of differences in laws or methods of doing business. Otherwise these business conduct guidelines apply to all employees of IBM and its subsidiaries. These guidelines apply even though a competitor may not follow the same

guidelines and may, for example, "unhook" a customer's order for IBM equipment. Though our competitors are required by law to compete fairly just as IBM is, an unfair action by IBM may, because of IBM's size, be challenged as an exclusionary practice aimed at establishing a monopoly, a charge that competitors are not reluctant to make.

IV. SUMMARY

This booklet provides basic guidance to IBM employees in carrying on the business in accordance with IBM's policy of complying with the antitrust laws and adhering to the highest standard of business ethics. It is intended as a convenient reference work that will answer most recurring questions of business conduct. It cannot provide the answer in every situation that will arise. There are many other sources of information and guidance available, such as the General Information Section of the marketing unit's Sales Manual, the employee's manager and IBM counsel. They should be consulted when appropriate.

IBM must and will continue to compete vigorously. These guidelines are intended to insure that as we compete vigorously we also compete fairly. By observing these guidelines, we will continue to earn the respect and confidence of our customers, our suppliers and the general public, which will benefit all IBM employees and shareholders.

APPENDIX AND SUMMARY OF THE 1930 CONSENT DECREE

1. That the U. S. Government brought an antitrust
suit against IBM, alleging that it had monopolized U. S.
business and attempted to extend its control over
foreign business interests and markets. IBM had monopolized

1. the sale of the word;
2. the sale of patents, licenses and know-how;
3. the sale of the right of representation in foreign markets;
4. the sale of the right of representation in foreign markets;
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APPENDIX

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The Consent Decree

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HISTORY AND SUMMARY OF THE 1956 CONSENT DECREE

In 1952 the U. S. Government brought an antitrust action against IBM, alleging that it had monopolized U. S. domestic and foreign commerce in the tabulating machine business. Although the complaint contained many allegations, the main charges were that IBM had monopolized by:

1. a lease-only policy;
2. tying up patents, inventions and know-how;
3. restraining the growth of competitive tabulating card manufacturers;
4. restraining the growth of competitive service bureaus; and
5. restraining the growth of a used machine market.

Under 3 and 4, the Government's complaint asked the Court to order IBM to divest itself of its tabulating card and service bureau businesses.

IBM in its answer denied the allegations of the complaint. After lengthy negotiations, IBM agreed with the Government on January 25, 1956, to the entry of a Final Judgment or "Consent Decree" without a trial (Appendix A). Under this procedure, no determinations were made on the issues but IBM agreed to take various actions and to adopt various business practices, including the following:*

1. to sell, as well as lease, its tabulating and EDP equipment on nondiscriminatory terms, and at sale prices reasonably related to the lease charges [IV(b), (c) (1)-(3)].
 - (a) to fully disclose prices and terms for both sale and lease in the solicitation of orders [IV(c) (5)].
 - (b) to fill orders without discrimination between purchase and lease customers and, to the extent admin-

*The Decree sections are referenced after each item.

istratively practicable, in the order of their receipt [IV (c) (7)].

- (c) to offer to purchasers the same type of services rendered without separate charge to lease customers, except maintenance and repair service which would be offered to purchasers and other owners at reasonable prices [VI (a), (b)].
 - (d) to offer training courses to outsiders wishing to enter the repair and maintenance business; to sell to them and to owners of IBM equipment CE technical manuals, books of instruction, pamphlets, diagrams or similar documents, and repair and replacement parts and subassemblies [VI (c), IX (a), (b)].
 - (e) to permit any customer to make alterations and attachments (except where it would interfere with normal operation or maintenance so as to increase maintenance cost), and to furnish instructional manuals concerning his machine's operation or application [VII (d), IX (c)].
 - (f) not to require purchase or lease customers to purchase additional machines or tabulating cards from IBM [VII (d), XV (b)].
2. to license certain data processing patents at reasonable royalties, and to limit consultant agreements with inventors and engineers to one year [XI, XIII (a), (c)].
 3. to license certain card and card machinery patents without charge; to sell tabulating card machinery under certain circumstances until 1961; and in 1963 to divest itself of card manufacturing capacity in excess of 50% of total industry capacity [XI, X (b), (d)].
 4. (a) to transfer its service bureau business to a wholly owned subsidiary, which would not solicit orders

for IBM and would establish prices fairly reflecting all chargeable expenses [VIII (a), (b), (c)].

- (b) not to engage in service bureau business on its own or furnish tabulating or EDP equipment to its service bureau subsidiary except on the same terms offered to other service bureaus [VIII (a), (e)].

- 5. to refrain from acquiring used machines except by way of trade-in or credit against sums payable to IBM and to offer acquired used tabulating and EDP machines to secondhand dealers at prescribed maximum prices [V], except that IBM may comply with Article 9 of the Uniform Commercial Code (Appendix C).

The provisions of the Final Judgment dealing with CE training courses and consultant agreements (items 1(d) (first clause) and 2 above) have expired, but the Company generally has to date continued them as matters of business policy. Concerning item 3, IBM by 1963 had 51.6% of the national capacity for tabulating card manufacture, and therefore sold off sufficient card presses to come within the 50% required by the Decree (Appendix B).

All the other provisions of the Final Judgment summarized above are permanent and can be terminated or modified only if the Court finds it necessary or appropriate following a request by the Government or IBM. Violation of any of these provisions may be punishable by fine or imprisonment as determined by the Court.

All questions relating to the applicability or interpretation of any provisions of the Final Judgment should be referred to IBM counsel.

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APPENDIX A

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 72-344

UNITED STATES OF AMERICA,
Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant.

FINAL JUDGMENT

Filed and Entered January 25, 1956

United States District Court

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant.

Civil Action
No. 72-344

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on January 21, 1952; defendant International Business Machines Corporation (hereinafter called IBM) having appeared and filed its answer to the complaint denying the material allegations thereof; and plaintiff and defendant, by their attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without any admission by either party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of each party hereto,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

The Court has jurisdiction of the subject matter of this action and of the parties. The complaint states a claim upon which relief can be granted against IBM under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(a) "Tabulating card" shall mean a unit record card designed for the recording of data in the form of punched holes to be sensed by mechanical or electrical (including electronic) means.

(b) "Tabulating card machinery" shall mean machines and devices, and attachments therefor, used to make tabulating cards.

(c) "Tabulating system" shall mean any group of machines capable of entering, converting, receiving, classifying, computing and recording alphabetic and/or numeric accounting and/or statistical data by means of tabulating cards, and in which tabulating cards are used for storing data and communicating it within the system; provided that "tabulating system" shall not include "electronic data processing system" as hereinafter defined.

(d) "Tabulating machine" shall mean a machine or device and attachments therefor used primarily in a tabulating system.

(e) "Electronic data processing system" shall mean any machine or group of automatically intercommunicating ma-

chine units capable of entering, receiving, storing, classifying, computing and/or recording alphabetic and/or numeric accounting and/or statistical data without intermediate use of tabulating cards, which system includes one or more central data processing facilities and one or more storage facilities, and has either

(1) the ability to receive and retain in the storage facilities at least some of the instructions for the data processing operations required, or

(2) means, in association with storage, inherently capable of receiving and utilizing the alphabetic and/or numeric representation of either the location or the identifying name or number of data in storage to control access to such data, or

(3) storage capacity for 1,000 or more alphabetic and/or decimal numeric characters or the equivalent thereof.

(f) "Electronic data processing machine" shall mean a machine or device and attachments therefor used primarily in or with an electronic data processing system.

(g) "Standard tabulating machine" or "standard electronic data processing machine" shall mean a tabulating machine or an electronic data processing machine manufactured by IBM and made generally available to its customers.

(h) "Special purpose tabulating machine" or "special purpose electronic data processing machine" shall mean a tabulating machine or an electronic data processing machine designed and produced by IBM for use by a limited number of customers but not made generally available to all IBM customers.

(i) "New" machines shall mean tabulating or electronic data processing machines produced (1) by original assem-

bly of new and/or used parts or components or, (2) as to any type of machine generally offered for lease which is not currently being so assembled but is being produced by rebuilding existing machines, by such rebuilding.

(j) "Point value" shall mean the dollar amount of the monthly charge made by IBM in respect of a tabulating or electronic data processing machine leased by IBM to its customers under its machine service agreements.

(k) "Service bureau business" shall mean the preparation with tabulating and/or electronic data processing machines of accounting, statistical and mathematical information and reports for others on a fee basis.

(l) "Service bureau" shall mean an organization engaged principally in the service bureau business.

(m) "Existing patent" (or "existing patents") means any United States letters patent (including, but not limited to, the patents listed in Schedule A to be filed in this Court within 30 days after the entry of this Final Judgment) or patent application, and any division, continuation, reissue or extension of such patent, relating, but only in so far as it relates, to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, owned or controlled by IBM on January 1, 1956, or under which IBM then had the power to grant licenses or sublicenses to other persons.

(n) "Future patent" (or "future patents") means any United States letters patent or patent application (exclusive of existing patents), and any division, continuation, reissue or extension of such patent, relating, but only in so far as it relates, to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, owned or controlled

by IBM during the period of five years following January 1, 1956, or under which IBM during such period has the power to grant licenses or sublicenses to other persons.

(o) "Subsidiary" shall mean a corporation more than 50% of whose stock entitled to vote upon election of directors (other than preferred stock entitled to vote upon the failure of the corporation to pay certain dividends) is, directly or indirectly, owned by IBM.

(p) "Person" shall mean an individual, partnership, firm, association, government, governmental institution, or corporation other than individuals who are directors, officers, employees, agents, and representatives of IBM, but shall not include subsidiaries of IBM unless such inclusion is specifically provided for.

III

The provisions of this Final Judgment applicable to IBM shall also be applicable to its subsidiaries, officers, directors, agents, employees, successors, assigns, and all persons acting under, through or for IBM, but shall not impose any obligation to do or omit any action outside the United States unless specifically provided for hereinafter.

IV

(a) It is the purpose of this Section IV of this Final Judgment to assure to users and prospective users of IBM tabulating and electronic data processing machines at any time being offered by IBM for lease and sale an opportunity to purchase and own such machines at prices and upon terms and conditions which shall not be substantially more advantageous to IBM than the lease charges, terms and conditions for such machines.

(b) IBM is hereby ordered and directed, beginning not later than one year after the entry of this Final Judgment, to offer

(1) to sell, at any time during the period of 18 months next thereafter, to the lessee of any IBM tabulating or electronic data processing machine each such machine being used by such lessee;

Terminated
July 25, 1958

(2) to sell new standard tabulating and electronic data processing machines of each type at any time thereafter currently being manufactured and offered for lease or sale by IBM; and

(3) to sell any new special purpose tabulating or electronic data processing machine to the user for whom it has been designed and produced by IBM.

(c) IBM is hereby ordered and directed to:

(1) establish a sale price for each machine offered for sale pursuant to paragraph (b)(1) of this Section IV which shall not be greater than the sale price for a new machine of the same type and model less 10% for each full year of age, computed from the date of first installation after original assembly or rebuilding, except that for machines more than eight years of age the price may be not more than 25% of such sale price;

Terminated
July 25, 1958

(2) establish a sale price for each machine offered for sale pursuant to paragraphs (b)(2) and (b)(3) of this Section IV which shall have a commercially reasonable relationship to the lease charges for such machine;

(3) establish such other nondiscriminatory terms as may be appropriate to the sale of tabulating or electronic data processing machines, including, at the option of the purchaser, reasonable credit terms for purchasers

having satisfactory credit ratings and such warranties as are customary for the sale of similar business machines;

(4) afford to its salesmen compensation for selling tabulating and electronic data processing machines which shall be not less favorable to them than their compensation for leasing the same machines;

(5) make a full and fair disclosure, in the solicitation of orders for tabulating and electronic data processing machines, of the prices and terms for the sale and lease of such machines;

(6) furnish in writing, upon written request, to each person inquiring concerning the lease or purchase of IBM tabulating or electronic data processing machines complete information concerning delivery dates and terms and conditions of lease and purchase of such machines; and

(7) fill purchase and lease orders for machines required to be sold by paragraph (b)(2) of this Section IV without discrimination between lease and purchase orders and, to the extent administratively practicable and permitted by law, in the order of their receipt.

Terminated
January 25, 1966

(d) In any civil suit or proceeding instituted by the Plaintiff between two and ten years after the entry of this Final Judgment, in which IBM's compliance or noncompliance with the provisions of this Section IV shall be an issue, the burden of proof shall be upon IBM to establish that it has complied with the provisions of this Section IV.

V

(a) IBM is hereby enjoined and restrained from acquiring any used IBM tabulating or electronic data processing machine owned by another person or the Service Bureau Corporation hereinafter provided for in Section VIII of this Final Judgment otherwise than as (1) a trade-in on a purchase of a tabulating or electronic data processing machine from IBM or (2) a reasonable credit against sums then or thereafter payable to IBM by a customer.

(b) IBM is hereby ordered and directed to solicit, in the manner specified in the provisions of paragraph (c) of this Section V, from dealers in second-hand business machines orders for the purchase of any used IBM tabulating or electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V. The price charged by IBM for any such machine shall not exceed 85% of the price computed pursuant to paragraph (c)(1) of Section IV of this Final Judgment.

See Appendix C
"Stipulation
and Order"

(c) IBM is hereby ordered and directed:

(1) within one year after the entry of this Final Judgment, and each six months thereafter for a period of five years, to cause the provisions of this Section V to be published in at least two trade journals of general circulation among dealers in second-hand business machines;

Terminated
January 25, 1961

(2) commencing one year after the entry of this Final Judgment, to furnish at intervals of not more than 30 days to all dealers in second-hand business machines who shall within the preceding 180 days have made written requests therefor, and to at least one national trade association of such dealers, a list of all tabulating and

electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V since the date of the making of the last such list, and the prices thereof; and

(3) to keep all machines listed in the information furnished pursuant to subparagraph (2) of paragraph (c) of this Section V available for inspection and purchase by one or more of such dealers for a period of 60 days after such information shall have been furnished.

VI

IBM is hereby ordered and directed:

(a) to offer to render, without separate charge, to purchasers from it of tabulating or electronic data processing machines the same type of services, other than maintenance and repair services, which it renders without separate charge to lessees of the same types of machines;

(b) to offer, commencing one year after the entry of this Final Judgment and so long thereafter as IBM shall continue to render repair and maintenance service, to maintain and repair at reasonable and nondiscriminatory prices and terms IBM tabulating and electronic data processing machines for the owners of such machines; provided that, if any such machine shall be altered, or connected by mechanical or electrical means to another machine, in such a manner as to render its maintenance and repair impractical for IBM personnel having had the standard training and instruction provided by IBM to such maintenance and repair personnel, then IBM shall not be required by this Final Judgment to render maintenance and repair service for such IBM machine; and

(c) to offer to sell at reasonable and nondiscriminatory prices and terms, to owners of IBM tabulating or electronic data processing machines (whether or not the purchaser receives IBM repair and maintenance service) and to persons engaged in the business of maintaining and repairing such machines and during the period when IBM has such parts and subassemblies available for use in its leased machines, repair and replacement parts and subassemblies for any tabulating machines or electronic data processing machines manufactured by IBM.

VII

(a) IBM is hereby enjoined and restrained, for a period of ten years after entry of this Final Judgment, from entering into any lease for a standard tabulating or electronic data processing machine for a period longer than one year, unless such lease is terminable after one year by the lessee upon not more than three months' notice to IBM.

Terminated
January 25, 1966

(b) IBM is hereby enjoined and restrained from requiring any lessee or purchaser of an IBM standard tabulating or electronic data processing machine to disclose to IBM the use to be made of the machine.

(c) IBM is hereby enjoined and restrained from requiring any purchaser of an IBM tabulating or electronic data processing machine to have it repaired or maintained by IBM or to purchase parts and subassemblies from IBM.

(d) IBM is hereby enjoined and restrained from:

(1) requiring any lessee or purchaser of an IBM tabulating or electronic data processing machine to purchase tabulating cards from IBM or directly or indirectly discriminating against any such person by

reason of the fact that cards not manufactured by IBM are used,

(2) prohibiting, or in any way subjecting to IBM control or approval, experimentation with such machine, or

(3) prohibiting, or in any way subjecting to IBM control or approval, alterations in or attachments to such machine;

provided, however, that this Section VII (d) shall not be construed to restrain IBM from including in any agreement with any lessee of such a machine provisions reasonably designed to prevent such interference with the normal and satisfactory operation and maintenance of such machine as will substantially increase the cost of maintenance thereof.

VIII

(a) IBM is hereby ordered and directed to transfer, within one year after the date of the entry of this Final Judgment, all its contracts for service bureau business to a corporation (hereinafter called the Service Bureau Corporation), which may be wholly owned by IBM, and IBM shall thereafter be enjoined and restrained from engaging in the service bureau business except on a nondiscriminatory basis for the Service Bureau Corporation and for service bureaus operated by other persons.

(b) The Service Bureau Corporation shall be enjoined and restrained from:

(1) using any corporate name containing the words International Business Machines or IBM;

(2) employing any person also employed by IBM, or any person to solicit for IBM any order for the sale

or lease of any IBM tabulating or electronic data processing machines or systems;

(3) after three years following the date of the entry of this Final Judgment, subleasing space from IBM at the locations of more than 20% of its bureaus; or

(4) for a period of five years after the organization of the Service Bureau Corporation, having a board of directors the majority of which is constituted of persons who previously have not been approved by this Court.

Terminated
August 29, 1961

(c) The Service Bureau Corporation shall be ordered and directed to:

(1) maintain, in accordance with good accounting practice, separate and complete corporate records and accounts which shall be audited annually by independent public accountants; and

(2) charge for services rendered by it prices based upon rates which shall fairly reflect all expenses properly chargeable thereto provided, however, that nothing herein contained shall prevent the Service Bureau Corporation from reducing any price to meet an equally low price of a competitor.

(d) IBM is hereby ordered and directed to notify promptly service bureaus using IBM machines of the availability for purchase or lease as required by this Final Judgment of each new type of standard tabulating machine and electronic data processing machine offered by IBM for general use by its customers and of each new type of special purpose tabulating machine and electronic data processing machine made available to the Service Bureau Corporation, and the prices, terms and conditions for the sale or lease thereof.

(e) IBM is hereby enjoined and restrained from furnishing to the Service Bureau Corporation any tabulating or electronic data processing machines except upon the same terms, conditions and delivery schedules that such machines are furnished to any other service bureau.

(f) IBM is hereby ordered and directed to furnish, upon written application and at reasonable and nondiscriminatory charges, to any person engaged, or proposing to engage, in the operation of a service bureau using IBM machines copies of any pamphlets, books of instruction or other similar documents which it furnishes to the Service Bureau Corporation relating to the operation and application of IBM tabulating or electronic data processing machines for service bureau business.

IX

IBM is hereby ordered and directed:

(a) For a period of five years from the date of this Final Judgment, upon written request, to afford to any person (other than agents or employees of a manufacturer of tabulating or electronic data processing machines) who is engaged, or proposes in good faith to engage, in the repair and maintenance or distribution of IBM tabulating machines and/or electronic data processing machines the opportunity to obtain training in the repair and maintenance of such IBM machines, which shall be substantially equivalent in method and nature to such training then being given by IBM to its customer engineering employees. Reasonable and nondiscriminatory charges may be made to reimburse IBM for the cost of furnishing such instruction and any materials furnished to such person taking instruction.

Terminated
January 25, 1961

(b) Upon written request to furnish, at reasonable and nondiscriminatory charges made to reimburse IBM for the cost of furnishing them, to any owner of an IBM tabulating or electronic data processing machine and to any person eligible to receive training pursuant to paragraph (a) of this Section IX copies of any technical manuals, books of instruction, pamphlets, diagrams or similar documents, which it furnishes generally to its own repair and maintenance employees relating to tabulating or electronic data processing machines and which pertain to such training.

Terminated
January 25, 1981

(c) Upon written request to furnish, on a nondiscriminatory basis, without charge or at a reasonable charge made to reimburse IBM for the cost of furnishing them, to purchasers and lessees of IBM tabulating machines and electronic data processing machines, copies of manuals, books of instruction, pamphlets, diagrams, or similar documents which pertain to the operation or application of such machines owned or leased by such purchasers or lessees.

X

(a) IBM is hereby enjoined and restrained from:

(1) Entering into, maintaining, adhering to, or furthering, directly or indirectly, any contract, agreement, or understanding with or otherwise inducing any manufacturer, distributor, or vendor of raw materials suitable for the manufacture of tabulating cards to discriminate against or refuse to deal with third persons who buy or offer to buy such raw materials.

(2) Discriminating in price between different purchasers of tabulating cards of like grade and quality, provided that this provision shall not prevent differentials which (A) make only due allowance for differ-

ences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered, or (B) are made to meet an equally low price of a competitor. In any proceeding to enforce the provisions of this paragraph, IBM shall have the burden of establishing to the satisfaction of this Court that its price differentials are in fact so justifiable.

(3) Prescribing, fixing, establishing, or maintaining arbitrary, unreasonable, or unnecessary specifications for tabulating cards used in standard and special purpose tabulating machines leased or repaired and maintained by IBM.

(4) Entering into, maintaining, adhering to, or furthering, directly or indirectly, any contract, agreement or understanding with or otherwise inducing any manufacturer, distributor or vendor of tabulating card machinery to discriminate against or refuse to deal with third persons who buy or order to have manufactured and buy such machinery.

(b) IBM is hereby ordered and directed, for a period of five years following the date of entry of this Final Judgment, to offer to sell rotary presses in good condition, of the types used by IBM for the manufacture of tabulating cards, upon reasonable and nondiscriminatory terms and conditions to any person who (1) is engaged, or proposes in good faith to engage, in the manufacture of tabulating cards and (2) has been unable to obtain delivery of such presses, as required for his needs, within a reasonable time from manufacturers of printing presses; provided, that IBM shall not be obliged to deliver more than 30 presses in each year.

Terminated
January 25, 1961

(c) IBM is hereby ordered and directed, for a period of five years following the date of entry of this Final Judgment, to offer to sell, from its reserve stocks of paper suitable for the manufacture of tabulating cards, any such paper not required for the reasonably anticipated needs of IBM, to any person who (1) is engaged, or proposes in good faith to engage, in the manufacture of tabulating cards and (2) has been unable to obtain delivery of such paper, as required for his needs, from manufacturers of such paper in the United States. IBM may charge for such paper amounts sufficient to reimburse IBM for its costs.

Terminated
January 25, 1961

(d) Seven years from the date of entry of this Final Judgment IBM shall divest itself, upon terms and conditions approved by this Court, of such part of its then existing capacity for the manufacture of tabulating cards as may then be in excess of 50% of the total capacity for the manufacture of tabulating cards in the United States, unless subsequent to four years after the entry of this Final Judgment IBM shall have shown to the satisfaction of this Court that substantial competitive conditions exist in the manufacture, sale and distribution of tabulating cards or that such divestiture is not then necessary or appropriate.

See Appendix B
"Order Pursuant
to Section X(d)
of the Final
Judgment"

XI

(a) IBM is hereby ordered and directed to grant to each person making written application therefor an unrestricted, nonexclusive license to make, have made, use and vend tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems under, and for the full unexpired term of, any, some or all IBM existing and future patents.

(b) IBM is hereby enjoined and restrained from making any sale or other disposition of any existing or future patent which deprives it of the power or authority to grant such licenses, unless the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of this Section XI with respect to such patent.

(c) IBM and its subsidiaries are ordered and directed, in so far as they have power and right to do so, to grant upon written request and without compensation to a person licensed under any IBM existing or future patent or patents pursuant to Section XI of this Final Judgment, with respect to any products manufactured in the United States pursuant to such license, a nonexclusive grant of immunity from suit under any corresponding foreign patent or application owned or controlled by IBM or a subsidiary of IBM.

(d) IBM is hereby enjoined and restrained from including any restriction whatsoever in any license granted by it pursuant to the provisions of this Section XI, except as hereinafter provided:

(1) the license may be nontransferable;

(2) a reasonable royalty may be charged (except for licenses under existing patents to make, have made, use and vend tabulating cards and/or tabulating card machinery, which shall be royalty-free), which royalty shall be non-discriminatory as among royalty-paying licensees procuring the same rights under the same patents, provided that the royalty charged an applicant who grants a patent license to IBM may reflect the fair value of such license;

(3) reasonable provision may be made for periodic royalty reports by the licensee and inspection of the books and records of the licensee by an independent auditor, an independent engineer or any person acceptable to both licensor and licensee, who shall report to the licensor only the amount of the royalty due and payable;

(4) reasonable provision may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties or permit the inspection of his books and records as hereinabove provided; and

(5) the license must provide that the licensee may cancel the license in whole or as to any specified patents at any time after one year from the initial date thereof by giving 30 days' notice in writing to the licensor.

(e) Upon receipt of written application for a license under the provisions of this Section XI, IBM shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the applicant rejects the royalty proposed by IBM and if the parties are unable to agree upon a reasonable royalty within 120 days from the date such rejection is communicated in writing to IBM, the applicant or IBM may, upon notice to the Attorney General, apply to this Court for the determination of a reasonable royalty. In any such proceeding, the burden of proof shall be on IBM to establish the reasonableness of the royalty requested by it. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, have made, use and vend under the patents to which his application pertains without payment of royalty or other compensation. A final Court determination of reasonable royalty shall be applicable to the applicant, and to any other licensee then hav-

ing or thereafter obtaining the same rights under the same patents, at the option of such other licensee, from the date upon which the applicant requested such license. If the applicant fails to accept a license, such applicant shall pay the court costs in such proceedings and any royalties found by the Court to be due to IBM.

(f) Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents, nor shall this Final Judgment be construed as imputing any validity to any of said patents.

(g) The provisions of this Section XI shall not require IBM to grant a license to any applicant unless:

(1) for a license under an existing patent (except an existing patent relating to tabulating cards and/or tabulating card machinery), said applicant agrees not to bring suit under any, some or all of the United States patents and patents issued on applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license, for infringement by IBM arising out of the manufacture, use or sale of tabulating machines or systems or electronic data processing machines or systems of the types and models being manufactured or used by IBM in its regular line of business on the date of the request by the applicant, without first having offered to IBM a nonexclusive license for a reasonable royalty under and for the full life of said patent or patents claimed by the applicant to be infringed;

(2) for a license under a future patent (except a future patent relating to tabulating cards and/or tabulating card machinery), said applicant agrees upon

request to grant to IBM, for a reasonable royalty and for the full, unexpired term of each licensed patent, a nonexclusive license, or the right to obtain a nonexclusive license, to make, have made, use and vend tabulating machines or systems, or electronic data processing machines or systems under any, some or all of the United States patents and applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license;

(3) for a license under a future patent relating to tabulating cards or tabulating card machinery, said applicant agrees upon request to grant to IBM, for a reasonable royalty and for the full, unexpired term of each licensed patent, a nonexclusive license, or the right to obtain a nonexclusive license, to make, have made, use and vend tabulating cards or tabulating card machinery under any, some or all of the United States patents and applications owned or controlled by said applicant or under which said applicant has the power to grant licenses on the date of the request by the applicant for a license; and

(4) in any event, the applicant agrees upon request to grant without compensation, for any products manufactured in the United States pursuant to such license to IBM, a nonexclusive grant of immunity to IBM and any subsidiary of IBM from suit under any corresponding foreign patent or application then owned or controlled by said applicant.

For the purpose of this Section XI(g), a patent shall be deemed to be owned or controlled by an applicant if it is owned or controlled by the applicant, a subsidiary of the

applicant, by a person whose subsidiary the applicant is, or by a person on behalf of whom the applicant then is acting as an agent with respect to the manufacture, use or sale of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems or parts for such machines. Determination of a reasonable royalty for any license to IBM under this Section XI(g) shall be made in the same manner as provided in Section XI(e) for determination of the reasonable royalty for a license granted by IBM, provided that in any proceeding for determination of a reasonable royalty under this Section XI(g) the burden of proof shall be on the person from whom IBM has requested a license to establish the reasonableness of the royalty requested by it.

XII

IBM is enjoined and restrained from instituting, or threatening to institute, any action, suit or proceeding under Sections 281 *et seq.* of Title 35, United States Code (1953), against any person for acts of infringement of existing patents alleged to have occurred prior to the entry of this Final Judgment, except by way of counterclaim in any action brought by any person against IBM; provided, however, that such counterclaim shall not include any claim for infringement of any existing patent relating to tabulating cards or tabulating card machinery.

XIII

(a) IBM is ordered and directed to terminate upon the request of the licensee any existing patent-licensing agreement which is inconsistent with the provisions of Section XI of this Final Judgment and to grant new licenses to licensees affected by this provision upon the terms and conditions specified in Section XI of this Final Judgment.

(b) IBM is hereby enjoined and restrained for a period of five years from the date of entry of this Final Judgment from entering into, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, understanding, or arrangement with any person relating to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems which:

Terminated
January 25, 1961

(1) grants exclusively to IBM a license, sublicensing right, or immunity under any patent, unless (A) IBM shall have failed in a bona fide effort to obtain a nonexclusive license under such patent and (B) such grant shall permit IBM to grant sublicenses under such patent as required pursuant to Section XI; and

(2) provides for disclosure to IBM on an exclusive basis of any invention, formula, process or technical information, other than the results of joint development programs undertaken by IBM and such person or work done by established research or engineering organizations on behalf of IBM.

(c) IBM is hereby enjoined and restrained for a period of ten years from the date of entry of this Final Judgment from retaining any individual inventor or engineer for work on the design and development of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems except:

Terminated
January 25, 1966

(1) as an employee having regular hours of employment, or a retired IBM employee; or

(2) under contracts for research, development or engineering services which commit the inventor or engineer to provide personal services for periods of not more than one year.

XIV

Terminated
January 25, 1961

(a) IBM is hereby ordered and directed for the period of five years after the entry of this Final Judgment to furnish to each licensee under Section XI of this Final Judgment making written application therefor the technical information enumerated in paragraph (b) of this Section XIV, with respect to, and for use in the manufacture in the United States of:

(1) the IBM tabulating machines listed in Appendix A of this Final Judgment;

(2) tabulating cards; or

(3) tabulating card machinery

manufactured by or to the order of IBM and used commercially at any time during the five years immediately preceding the date of the entry of this Final Judgment. IBM may make reasonable and nondiscriminatory charges for furnishing such technical information pursuant to paragraphs (b) and (c) of this Section XIV which shall not exceed the costs to IBM of furnishing it.

Terminated
January 25, 1961

(b) The technical information to be furnished pursuant to paragraph (a) of this Section XIV shall consist of copies of the most current documents (including, but not limited to, schematic and detailed working drawings, specifications of material, prescribed production methods, and assembly drawings) employed by IBM prior to the date of the entry of this Final Judgment in the manufacture and assembly of such tabulating machines, tabulating cards, or tabulating card machinery, but shall not include information relating to typewriters or machines and devices for controlling, measuring or recording time, tolls or production.

(c) In the event that any applicant represents to IBM in writing that the technical information furnished by IBM is inadequate to enable him satisfactorily to manufacture or assemble the standard tabulating machines, tabulating cards, or tabulating card machinery covered thereby, IBM shall supply such applicant such further explanation of the information supplied as may be reasonably necessary for that purpose.

Terminated
January 25, 1961

XV

(a) IBM is hereby enjoined and restrained from entering into, adhering to, maintaining, or furthering, directly or indirectly and whether inside or outside the United States, any contract, agreement, understanding, plan or program with any person engaged in the manufacture, sale, distribution or repair and maintenance of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems to:

(1) divide sales or manufacturing territories;

(2) allocate markets among manufacturers; or

(3) limit, restrain, or prevent the import into, or export from, the United States, its territories and possessions, of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems.

(b) IBM is hereby enjoined and restrained from conditioning the sale or lease of any standard tabulating or electronic data processing machine (which shall include any machine unit on a separate base even if in normal use it is mechanically or electrically connected with another such machine unit) upon the purchase or lease of any other standard tabulating or electronic data processing machine.

XVI

(a) IBM is ordered and directed (1) within 90 days after the entry of this Final Judgment (A) to furnish a true and complete copy of this Final Judgment to each of its officers, directors and employees at the policy level, its engineering personnel, its employees engaged in selling tabulating machines, tabulating cards and electronic data processing machines, its patent licensees and all its present lessees, and (B) to notify all its lessees that their leases shall be deemed to have been modified to the extent, if any, necessary to conform to the provisions of this Final Judgment, and within 15 days thereafter to file with the Clerk of this Court its affidavit affirming that IBM has complied with the foregoing terms of this paragraph (a) of Section XVI; and (2) at any time within ten years after the entry of this Final Judgment to furnish to anyone, upon written request, a copy of Schedule A.

Terminated
January 25, 1966

(b) IBM is ordered and directed, on or before March 31 of each of the first ten years following the year in which IBM first offers machines for sale pursuant to Section IV of this Final Judgment, to furnish to the Attorney General, for the preceding calendar year:

Terminated
March 31, 1967

(1) a statement showing the sales and lease prices effective during such year, for each type of IBM standard tabulating and electronic data processing machine;

(2) a statement showing the number and the aggregate point values of each class of standard tabulating and electronic data processing machines sold by IBM in the United States pursuant to Sections IV(b)(2) and V of this Final Judgment, less the total point values of such machines reacquired by IBM, during such year;

(3) a statement showing the number and the aggregate point values of each class of standard tabulating and electronic data processing machines owned by IBM and placed in use by customers in the United States, less the total point values of such machines owned by and returned to IBM, during such year;

(4) a statement showing the number and the aggregate point values of each class of tabulating and electronic data processing machines sold by IBM during such year pursuant to Section IV(b)(1) of this Final Judgment; and

(5) a statement showing the number of tabulating machines acquired by IBM pursuant to paragraph (a) of Section V of this Final Judgment and in respect of each such machine resold to a dealer in second-hand business machines pursuant to paragraph (b) of Section V, its type, age, resale price and the price of a new machine of the same type.

XVII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall upon request of the Attorney General or the Assistant Attorney General in charge of the Anti-trust Division and on reasonable notice to IBM made to its principal office be permitted, subject to any legally recognized claim of privilege approved by this Court, (a) access during the office hours of IBM to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody, or control of IBM relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of IBM but

without restraint or interference from it, to interview officers, directors, agents, or employees of IBM, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, IBM upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

XVIII

Information obtained by the means provided in Sections XVI and XVII of this Final Judgment shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIX

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions contained herein and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained herein.

XX

The provisions of this Final Judgment shall not be deemed to have any effect on the judgments entered in this Court on December 26, 1935, and January 29, 1936, in *United States v. International Business Machines Corporation, et al.*

Dated: January 25th, 1956.

DAVID N. EDELSTEIN
United States District Judge

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

STANLEY N. BARNES
Stanley N. Barnes
Assistant Attorney General

HARRY G. SKLARSKY
Harry G. Sklarsky

MARCUS A. HOLLABAUGH
Marcus A. Hollabaugh

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For the Defendant:

CRAVATH, SWAINE & MOORE DAVIES, HARDY & SCHENCK

by GEORGE B. TURNER

by JOHN W. BURKE, JR.,
a member of the above
firm;

and

BRUCE BROMLEY
members of the above firm;
EDWARD Q. CARR, JR.

PATTERSON, BELKNAP &
WEBB

COOPER, DUNHAM, KEITH &
DEARBORN

by JOHN N. IRWIN, II
a member of the above
firm;

by DRURY W. COOPER, JR.,
a member of the above
firm.

APPENDIX B

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff.

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant.

Civil Action
No. 72-344

ORDER

This action having been commenced by a complaint filed on January 21, 1952, and terminated by a Final Judgment entered on consent of the parties herein on January 25, 1956 (hereinafter called the Final Judgment); and plaintiff and defendant, by their attorneys, having consented, before any testimony has been taken, to entry of this Order pursuant to Section X(d) of the Final Judgment without trial or adjudication of any issue of fact or law and without this Order constituting any admission or adjudication with respect to any such issue, it is hereby ordered as follows:

I

Solely for the purposes of this Order:

(a) "Tabulating cards" means unit record cards designed for the recording of data in the form of punched holes to be sensed by mechanical or electrical (including electronic) means.

(b) "Special feature tabulating cards" means all tabulating cards, whether single or incorporated in sets, sheets, or continuous rolls, other than single, cut tabulating cards $3\frac{1}{4}$ " wide and $7\frac{3}{8}$ " long, unprinted or printed on one side in any one color ink, with no special features except one or two corner cuts on the same end, striping and/or edge coating. Special feature tabulating cards include those having such features as punching, numbering, scoring, back printing, overprinting, and those with more than normal ink coverage or printing quality.

(c) "Capacity" means the number of tabulating cards per hour capable of being produced by tabulating card presses solely from tabulating card stock, and shall be calculated on the basis of the press manufacturer's rated capacity of such presses.

II

(a) IBM is hereby ordered and directed:

(1) On or before September 1, 1963, to divest itself of such part of its capacity for the manufacture of tabulating cards, determined as of December 31, 1962, as may have been in excess of 50% of the total capacity on December 31, 1962, for the manufacture of tabulating cards in the United States. Any tabulating card presses of which IBM shall be required to divest itself shall be presses capable of manufacturing special feature tabulating cards;

(2) On or before September 1, 1963, to file with this Court and furnish to the Attorney General a report setting forth the manner in which it has complied with the provisions of subsection (a)(1); and

(3) On or before September 1, 1968, to divest itself of such part of its capacity for the manufacture of

Completed
August 31, 1963

Completed
August 31, 1963

special feature tabulating cards, determined as of December 31, 1967, as may have been in excess of 50% of the total capacity on December 31, 1967, for the manufacture of such tabulating cards in the United States.

Terminated by
determination
as of Decem-
ber 31, 1967,
that capacity
was under 50%

(b) The extent of the divestiture by IBM pursuant to subsection (a)(1) and (a)(3) hereof shall be determined, if possible, by stipulation or agreement between the parties to be approved by this Court. In case of inability of the parties to agree, this Court, upon motion by either party, shall hear and determine the matters in dispute.

(c) Any tabulating card presses of which IBM shall be required to divest itself pursuant to subsection (a)(1) and (a)(3) hereof shall, beginning not later than June 1, 1963, or 1968, as the case may be, be taken out of production of tabulating cards by IBM and, for a period of ninety days, shall be offered by IBM for sale to all licensees under IBM's patents relating to tabulating cards or tabulating card machinery and, upon request, shall be sold by IBM to any such licensee or any other person, at prices which shall not be greater than the sale price for a new press of the same type and model less 10% for each full year of age, except that for presses more than eight years of age the price may be not more than 25% of such sale price.

III

The making and entry of this Order shall not in any manner create any bar or estoppel against either party in any action, suit or proceeding based upon or arising out of any alleged violation of the Final Judgment or this Order or based upon or arising out of any alleged violations of the antitrust laws.

IV

The obligations imposed upon IBM by this Order shall be in lieu of those imposed upon it by subsection (d) of Section X of the Final Judgment but this Order shall not otherwise have any effect upon any of the other provisions of the Final Judgment.

Dated, January 14, 1963.

DAVID N. EDELSTEIN
United States District Judge

We consent to the making and entry of the foregoing Order:

For the Plaintiff:

LEE LOEVINGER
Lee Loevinger
Assistant Attorney General

W. D. KILGORE, JR.
William D. Kilgore, Jr.

HARRY N. BURGESS
Harry N Burgess

For the Defendant:

CRAVATH, SWAINE & MOORE
by

BRUCE BROMLEY
Bruce Bromley

and

GEORGE B. TURNER
George B. Turner
members of the above firm

APPENDIX C

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant.

Civil Action
72-344

STIPULATION AND ORDER

1. On January 25, 1956, this Court entered on consent a Final Judgment in the above-entitled action. Section V (a copy of which is attached as Exhibit 1) of that Final Judgment generally relates to the acquisition and disposition by IBM of any used IBM tabulating or electronic data processing machines. In particular it provides that IBM is required to solicit orders from dealers in second-hand business machines for the purchase of any such machines acquired by IBM as a credit against sums then or thereafter payable to IBM by a customer. The price to be charged by IBM for any such machine shall not exceed 85% of an amount computed pursuant to paragraph (c) (1) of Section IV of the Final Judgment.

2. IBM has entered into Installment Payment Agreements under which credit is extended to purchasers of machines and IBM retains a security interest entitling it, among other things, to exercise its rights as a creditor in the event of a default by the debtor.

3. Since entry of the Final Judgment the States, including New York, have generally enacted the Uniform Commercial Code. Under that Code (§ 9-505(2)), a defaulting debtor (or a subordinate secured party) can require a secured creditor to dispose of the collateral by a public sale at auction or a private sale to assure that the maximum amount is realized from disposition of the collateral to reduce the deficiency, if any, for which the debtor remains liable and to produce, if the sale price exceeds the prior lien, funds available to the subordinate secured party. The secured creditor may also as a matter of right sell at public or private sale after notice to the debtor. In all events, the sale must be made in a method, manner, time and place and under terms which are "commercially reasonable" (§ 9-504(3)).

4. The provisions of Section V of the Final Judgment, requiring that sales of repossessed machines be made to second-hand dealers at a formula price, are consequently in direct conflict with the subsequently adopted Uniform Commercial Code and the rights thereunder of both debtors and creditors.

5. Under Section XIX of the Final Judgment this Court retained jurisdiction for the purpose of enabling either of the parties to the Final Judgment

"to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions contained herein. . . ."

6. To eliminate the conflict between the Uniform Commercial Code and Section V of the Final Judgment, the

parties hereby stipulate that Section V of the Final Judgment shall be amended by adding thereto the following paragraph:

(d) With respect to any IBM equipment on which IBM has a lien or has obtained a security interest, whether or not perfected ("IBM Security Equipment"), IBM shall be entitled to exercise such rights and remedies as may be available to IBM under, and which are consistent with, the applicable provisions of the Uniform Commercial Code, as in effect from time to time and as construed from time to time by applicable judicial decisions, if any ("the Uniform Commercial Code") and the exercise of such rights and remedies shall be deemed to comply with this Section V, provided that IBM shall not bid or otherwise offer to purchase any IBM Security Equipment at a price exceeding the higher of (i) a price computed pursuant to paragraph (b) of this Section V or (ii) the total indebtedness (including interest, time charges, legal fees and other costs and expenses of enforcement and realization) owed IBM in respect of such IBM Security Equipment at the time of such bid or offer to purchase. If IBM shall acquire title to any IBM Security Equipment as a consequence of a public or private sale of such Equipment pursuant to the provisions of the Uniform Commercial Code, IBM shall thereafter be free to sell, lease or otherwise realize upon such Equipment and any such sale, lease or other realization shall be deemed to comply with this Section V. Nothing contained herein shall be deemed to limit or abrogate in any way (a) any right or remedy which any person may have under the Uniform Commercial Code or any other applicable law,

whether Federal or state, pertaining to enforcement of creditors' rights and remedies generally with respect to any action taken or omitted to be taken by IBM as a consequence of IBM's rights and remedies under the Uniform Commercial Code; or (b) any right or remedy which the United States of America may have under the Antitrust Laws with respect to any acquisition by IBM of any IBM Security Equipment.

For the Plaintiff:

JOHN L. WILSON

For the Defendant:

CRAVATH, SWAINE & MOORE

by GEORGE B. TURNER
George B. Turner,
a member of the above firm

Dated: December 29, 1970

So ordered:

DAVID N. EDELSTEIN
United States District Judge

TRUE COPY
JOHN LIVINGSTON, Clerk

[SEAL]

By I. WEINBERG
Deputy Clerk

EXHIBIT 1

V

(a) IBM is hereby enjoined and restrained from acquiring any used IBM tabulating or electronic data processing machine owned by another person or the Service Bureau Corporation hereinafter provided for in Section VIII of this Final Judgment otherwise than as (1) a trade-in on a purchase of a tabulating or electronic data processing machine from IBM or (2) a reasonable credit against sums then or thereafter payable to IBM by a customer.

(b) IBM is hereby ordered and directed to solicit, in the manner specified in the provisions of paragraph (c) of this Section V, from dealers in second-hand business machines orders for the purchase of any used IBM tabulating or electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V. The price charged by IBM for any such machine shall not exceed 85% of the price computed pursuant to paragraph (c)(1) of Section IV of this Final Judgment.

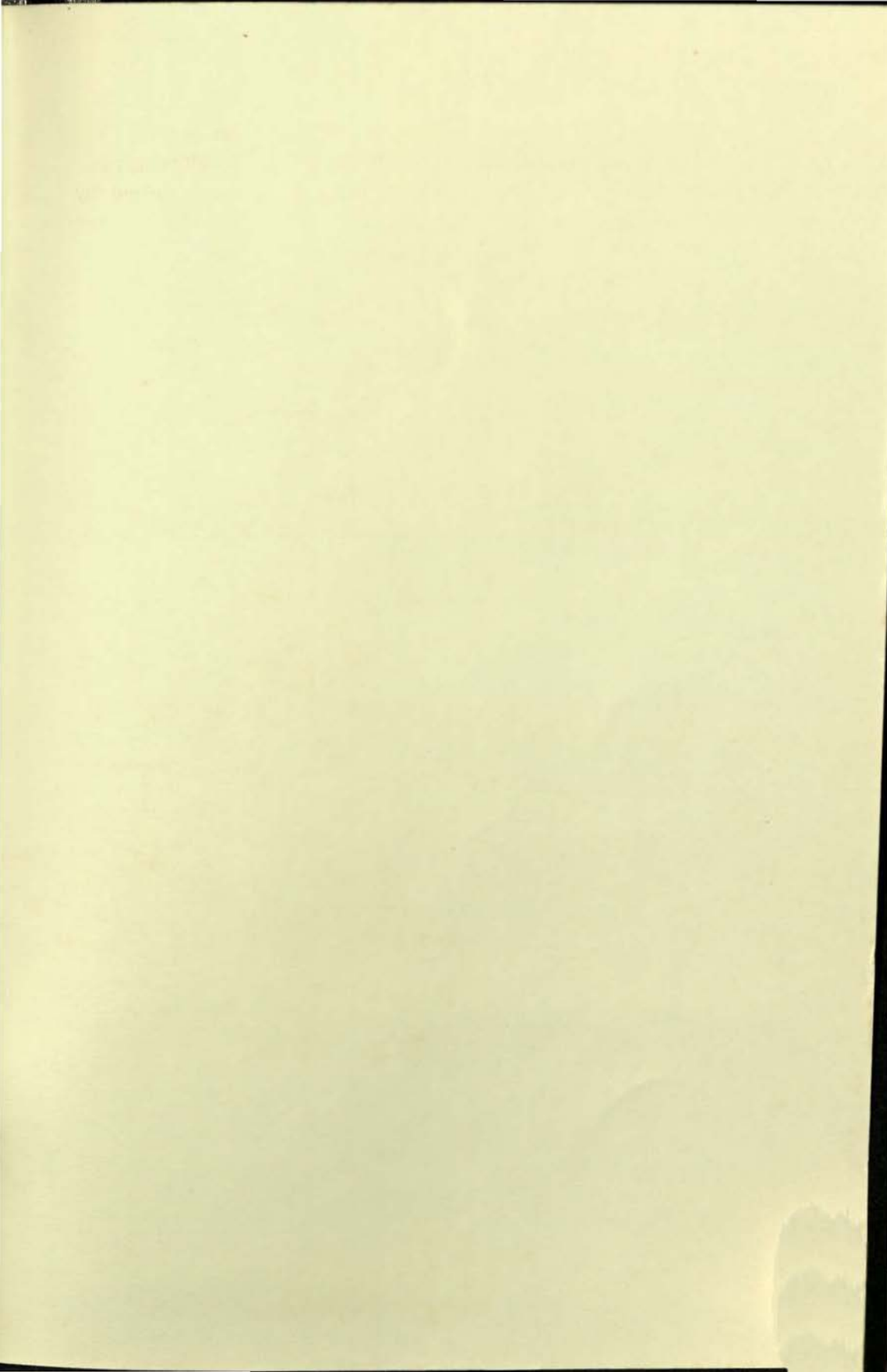
(c) IBM is hereby ordered and directed:

(1) within one year after the entry of this Final Judgment, and each six months thereafter for a period of five years, to cause the provisions of this Section V to be published in at least two trade journals of general circulation among dealers in second-hand business machines;

(2) commencing one year after the entry of this Final Judgment, to furnish at intervals of not more than 30 days to all dealers in second-hand business machines who shall within the preceding 180 days have made

written requests therefor, and to at least one national trade association of such dealers, a list of all tabulating and electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V since the date of the making of the last such list, and the prices thereof; and

(3) to keep all machines listed in the information furnished pursuant to subparagraph (2) of paragraph (c) of this Section V available for inspection and purchase by one or more of such dealers for a period of 60 days after such information shall have been furnished.



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IBM