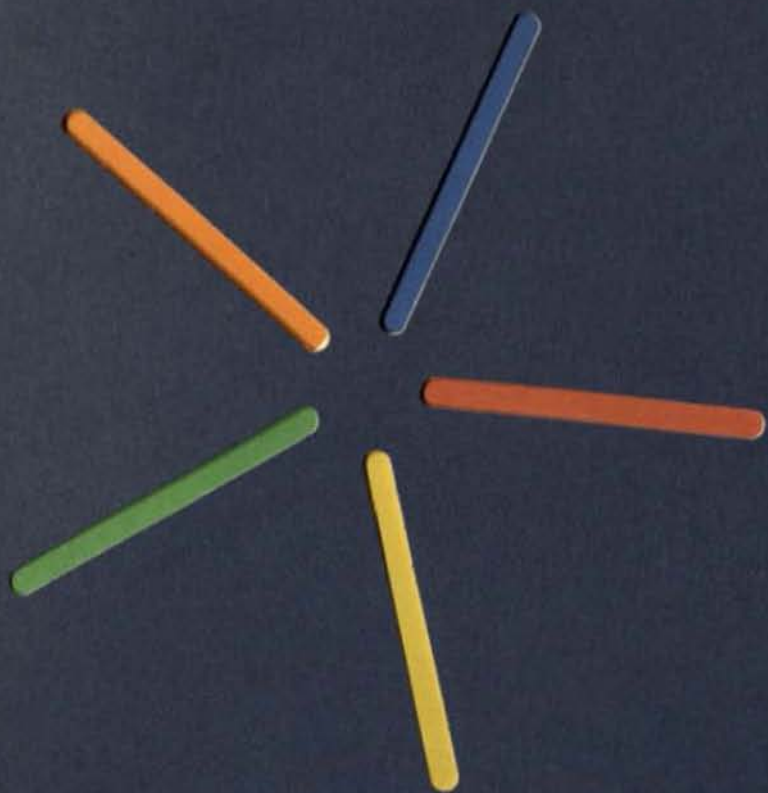
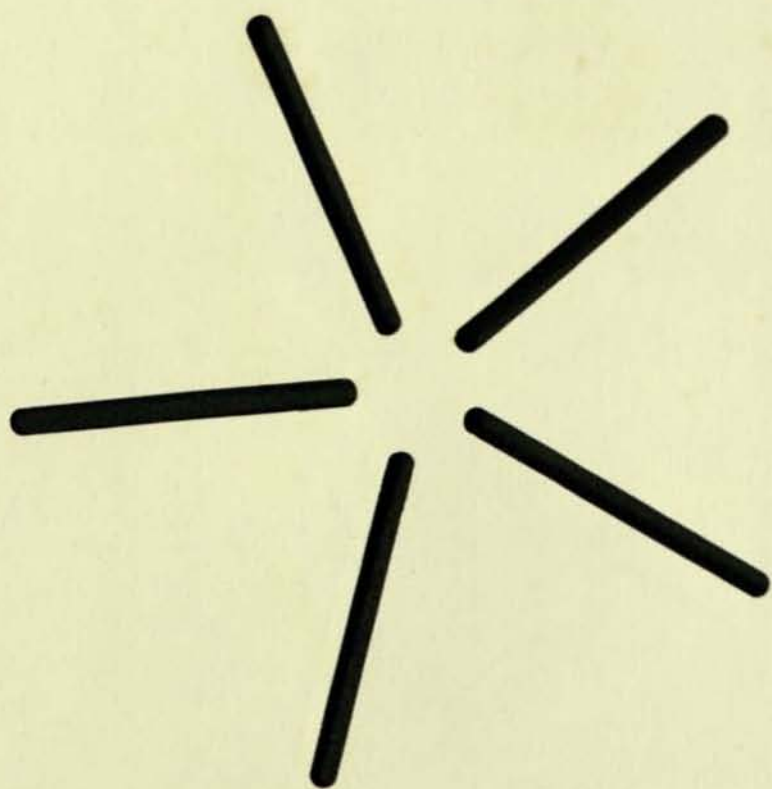


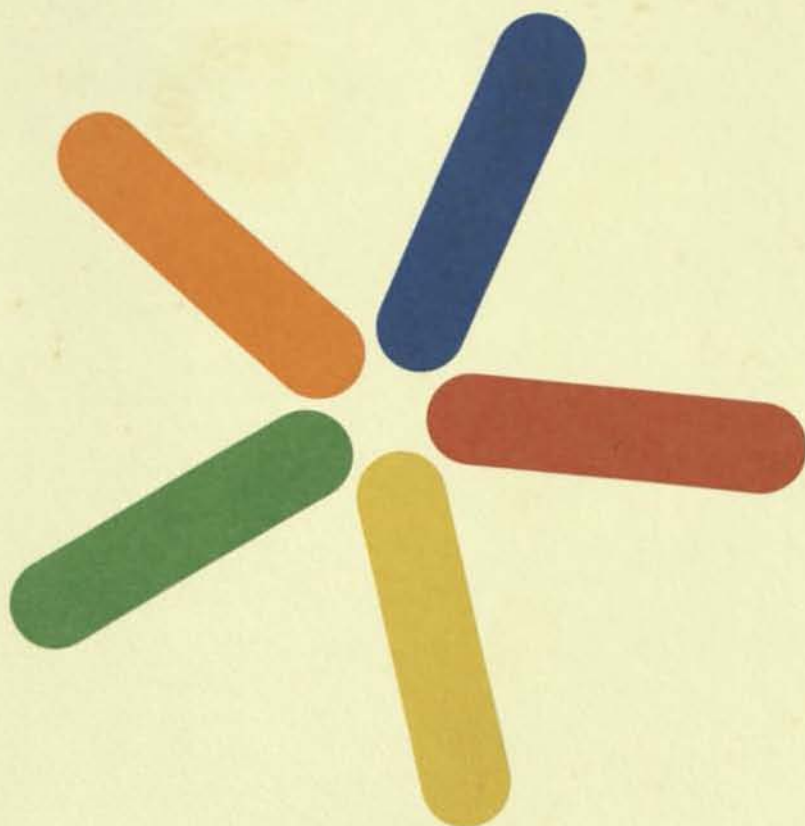
Business
Conduct
Guidelines







Business
Conduct
Guidelines



Business
Contract
Goldsmith

A letter from the Chairman	5
Introduction	6
Some broad guidelines	7
The marketplace: customers and prospects	15
The marketplace: our competitors	19
The marketplace: IBM as a customer	23
The antitrust laws	27

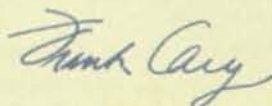
A letter
from
the Chairman

Business today is being called upon as never before to explain its actions, provide reasons for its decisions and speak out clearly on where it stands on ethical behavior. I think that's fine. I believe that the vast preponderance of men and women in business live up to a high ethical standard, and have sound answers to the questions they are being asked.

I also believe it essential in this time of questioning and testing that everyone—employees and their families, customers and competitors, friends as well as critics—know just where IBM stands on basic ethical issues. Although IBM long has had detailed guidelines for business conduct which have been read and attested to by employees who must act for the corporation, this book summarizes our fundamental requirements for worldwide business conduct.

If there is a single, overriding message in this book, it is that IBM expects every employee to act, in every instance, according to the highest standards of business conduct.

Ultimately, in every business decision—as in personal ones—the responsibility is yours. And knowing IBM people as I do, that makes me very comfortable.

A handwritten signature in dark ink, reading "Frank Cary". The signature is fluid and cursive, with the first name "Frank" and last name "Cary" clearly distinguishable.

Frank Cary, Chairman of the Board

IBM from its beginnings has had a reputation for high standards of business conduct.

Those standards didn't just happen. They grew out of the beliefs upon which IBM was founded and which have been reaffirmed by IBM managers and employees for more than sixty years. The three basic beliefs that guide all IBM actions are:

Respect for the individual. Respect for the dignity and the rights of each person in the organization.

Customer service. To give the best possible service to the customer.

Excellence. The conviction that an organization should pursue all tasks with the objective of accomplishing them in a superior way.

There are also related responsibilities: Providing the user with the best possible products. Obligation to the stockholders. A fair deal for suppliers. Competing fairly. Being a good corporate citizen wherever we do business.

In IBM, the chief executive officer and the senior executives have a primary responsibility to set the standard for business ethics, and to say clearly what they expect of all IBM employees. And all employees are responsible for following the guidelines.

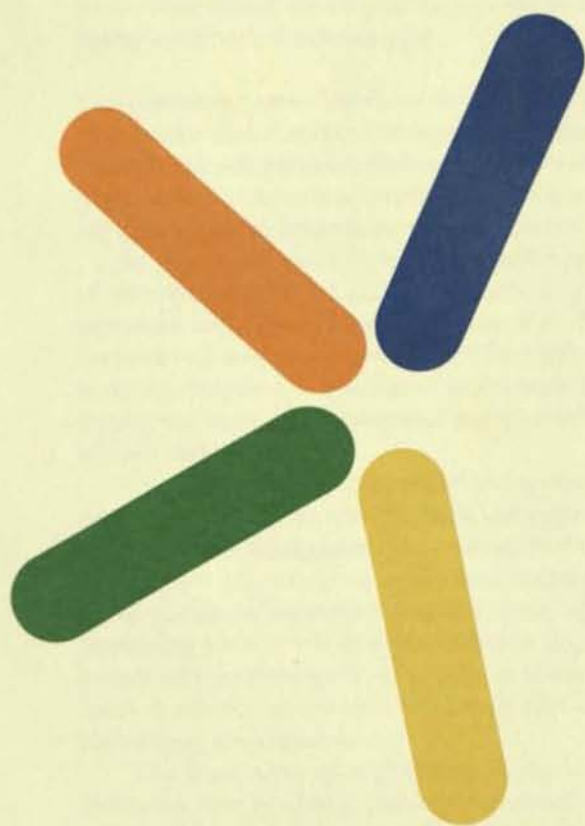
First, there is the law. It must be obeyed. This book will discuss some of the most important laws that affect our business, and what they require of you.

But the law is the minimum. You also must act ethically. This book discusses some of the basic ethical issues you may confront in our business—a broad range of issues with which, generally speaking, all of us should be familiar. It does not, however, go into the level of detail that, for instance, a marketing representative might need to assess a complex competitive situation. IBM employees who work in sales or in purchasing, or in even more specialized areas such as government marketing, regulatory matters or tax procedures, must also be familiar with their own functional or divisional guidelines.

No book of rules, however, can provide all the answers. You are responsible for your actions, and this responsibility will not always be an easy one.

The next time you have an ethical dilemma, you might try this test. Ask yourself: If the full glare of examination by associates, friends, even family were to focus on your decision, would you remain comfortable with it? If you think you would, it probably is the right decision.

Some broad guidelines



Public Service

IBM encourages its employees to be good citizens, to speak out on public issues and to be active in civic and political life. However, conflicts of interest can arise when an IBM employee is active in public service, and it's important to avoid such conflicts—or even the appearance of one.

There are three ground rules:

Make it clear that you are employed by IBM.

Abstain from participating in any decision or vote involving IBM. This would include, for example, purchasing decisions for things such as typewriters and computers. Or a decision by a board of tax assessors on the assessment of IBM property.

When you do abstain, state clearly that it's because there is a potential conflict of interest.

If you run for public office or serve as a public official, you cannot be paid by the company for any time spent on political activities or in public office. Requests for time off for public duties, like all requests for time off, must be approved by your manager. Together, you can decide whether the time should be taken without pay, be counted as vacation time or be made up, when that can be arranged.

It's also important that when you speak out on public issues you do so as an individual. Don't give the appearance that you're speaking or acting on behalf of the company.

Respect for IBM's Assets

Our company's assets are more than physical plant and equipment, more than production machines, computers, typewriters and pencils. They include technologies and concepts, valuable ideas, business and product plans, as well as information about the business. They include drawings, computer programs, surveys and charts.

In past years, there have been significant, well-documented cases of misappropriation of IBM assets, including concepts, technologies and customer lists. These losses represented theft of the ideas, work and creativity of IBM people and of the advantages these would have brought in the marketplace. A number of individuals, including some IBM employees, have been prosecuted in the courts and convicted as a result of such thefts.

Company property can also be given away inadvertently. Sometimes outsiders know about new products, new practices, or business plans before we announce them. They can learn about such things from IBM people through casual conversations at social gatherings. A good many people are interested in our company and our industry—data processing users, stock analysts, and most importantly, competitors. The people who hear things from us may be above suspicion. But they may speak to others—and so on. Until finally IBM's plans for a new product or technology are revealed.

This is not a complex guideline. Respect IBM's assets as you would your own. IBM property, ideas and information belong in your hands or in the plant, laboratory or office—not in the hands of a competitor.

"Moonlighting"

A conflict of interest also can arise when an employee is involved in activity for personal gain which for *any* reason is in conflict with IBM's business interests. Generally speaking, "moonlighting" is defined as working at some activity for personal gain outside of your IBM job. If you do perform outside work, you have a special responsibility to avoid any conflict with IBM's business interests.

Obviously, you cannot solicit or perform work in competition with IBM product or service offerings. Outside work cannot be performed on IBM time, including "personal" time off. You cannot use IBM equipment, materials, resources or "inside" information for outside work. Nor should you solicit business or clients, or perform outside work, on IBM premises.

Political Contributions and Questionable Payments

IBM will not make contributions or payments to political parties or candidates. Nor will IBM bribe or make payoffs to government officials, civil servants or anyone. This is a single worldwide policy. If you ever are approached for what you believe is a questionable payment, report the circumstances to your manager as soon as possible.

In many countries political contributions by corporations are illegal. In other countries they are legal, but IBM will not make them in either case. Nor will IBM provide things other than direct cash payments which may be considered contributions. For example, if you want to campaign for a political candidate, the company will give you reasonable amounts of time off from work without pay, commensurate with your duties. IBM encourages people to be involved in politics, but on their own time and at their own expense. If IBM were to pay you while you were campaigning, your salary could be considered a contribution to the candidate or party you were supporting.

Financial Interests and Insider Information

No two individuals are likely to view an investment or other financial interest in a competitor or supplier in the same light. Its absolute size, its importance in relation to their income and other investments, how much it could possibly influence their business decisions—these all vary.

But everyone understands the consequences of divided loyalty—a situation in which an individual is pulled two ways. So when we consider the possible implications of a financial interest in a competitor or supplier to IBM, the basic question isn't complicated: Could it cause divided loyalty—could it pull us two ways if we had to make a decision about our finances, our job, our career, our employer?

IBM employees should not have any financial interest in a competitor or supplier that could cause divided loyalty, or even the appearance of divided loyalty. Nor should they have any interest that could cause speculation or misunderstanding about *why* they have the interest.

Some of the questions you must ask yourself before you can decide whether you have a financial conflict of interest are:

What's your job in IBM? For example, could your decisions for IBM be affected by your interest in a competitor?

What is the dollar amount of the investment and how does it measure up against your salary and other family income, your other savings and investments, your financial needs?

When and where was the investment originally made and under what circumstances? Long before you joined IBM, or after you became aware through your job of information about the competitor or supplier?

What is the nature and extent of the competition or relationship between IBM and the other company or business?

If your professional or managerial responsibility includes working directly with information about a competitor or supplier, you must not buy or sell any of its stock.

It's always important to establish whether the company in question is a competitor. Many companies have more than one line of business, so just a portion of their operation may be competitive. Product lines change from time to time, IBM's and others, so situations change.

If you have any doubts or questions about the propriety of holding a financial interest in any company, the best course is to discuss it with your manager or IBM counsel.

Finally, we have to recognize that it isn't just money that causes people to have an interest in a company's success. Relationships such as being on a board of directors, or being an employee or advisor of a competitor, could cause divided loyalties.

A specific area of concern in investing is improper use of what's often called "insider information": the use of confidential non-public company information for your own financial benefit.

Such improper use may be more than an ethical consideration; it may be a violation of law. The U.S. Securities and Exchange Act of 1934 has sections on insider trading and deceptive practices in stocks and securities, and these sections may apply outside the United States.

Some examples of improper use of insider information are:

If IBM is about to announce a new product or make a purchasing decision and the news could affect the stock of a competitor or supplier, you must not trade in the stock of those companies.

If IBM is about to make an announcement that could affect the price of its stock, you must not trade in IBM stock.

If you work with a customer, you normally may own stock in that customer's company. You must not, however, buy or sell that stock based on inside information.

If IBM is about to build a new facility, you must not invest in land or business near the new site.

If you know someone in a business whose customers are mainly persons moving into newly purchased homes, you should not disclose information on new hires and transfers of IBM employees to anyone who might offer the service or product of that business to IBM employees.

Of course, you should never attempt to evade any rules against improper investment or misuse of insider information by acting indirectly through anyone, whether a spouse, relative or friend.

There are two basic guidelines:

No IBM employee, or any member of his or her immediate family, can accept gratuities or gifts of money from a supplier, customer or anyone in a business relationship. Nor can they accept a gift or consideration that could be perceived as having been offered because of the business relationship. "Perceived" simply means this: If you read about it in your local newspaper, would you wonder whether the gift just might have had something to do with a business relationship?

No IBM employee can give money or a gift of significant value to a customer, supplier, or anyone if it could reasonably be viewed as being done to gain a business advantage.

If you are offered money or a gift of some value by a supplier or if one arrives at your home or office, let your manager know immediately. If the gift is perishable, your manager will arrange to donate it to a local charitable organization. Otherwise, it should be returned to the supplier. Whatever the circumstances, you or your manager should write the supplier a letter, explaining IBM's guidelines on the subject of gifts and gratuities.

Of course, it is an accepted practice to talk business over a meal. So it is perfectly all right to occasionally allow a supplier or customer to pick up the check.

Similarly, it frequently is necessary for a supplier, including IBM, to provide education and executive briefings for customers. It's all right to accept or provide some services in connection with this kind of activity—services such as transportation, food or lodging. For instance, transportation in IBM or supplier planes to and from company locations, and lodging and food at company facilities are all right.

It's important to remember that there are a number of local, state and federal laws and regulations governing relations with government customers and suppliers. These may prohibit or modify the customary practices governing IBM relations with commercial accounts.

It's important, too, to have a good understanding of any detailed guidelines that your functional area may have—whether you are in marketing, purchasing or another part of the business. Ultimately, though, the best guideline of all is your common sense. Rely on it.

Accurate Reporting

Almost every employee reports data of some kind. The engineer filling out a product test report; the salesman reporting on the status of an order; the scientist filling out an expense account; the customer engineer completing a call record—all are reporting information. All should do it accurately and honestly.

Some forms of inaccurate reporting are illegal. Listing a fictitious expense on an expense account or petty cash card, for example, is illegal. You should list on your expense account everything you paid for on a trip that IBM is required to pay for, neither more, nor less.

All reporting of information—whether sales results, hours worked or equal opportunity efforts—should be accurate and timely and should be a fair representation of all the facts. It should not be organized in any way that is intended to mislead or misinform the reader.

IBM has four basic practices concerning the use of personal information about employees:

To collect, use and retain only personal information that is required for business or legal reasons.

To provide employees with a means of ensuring that their personal information in IBM personnel records is correct.

To limit the internal availability of personal information about an individual only to those with a clear business need to know.

To release personal information outside IBM only with approval of the employee affected, except to verify employment or to satisfy legitimate investigatory or legal requirements.

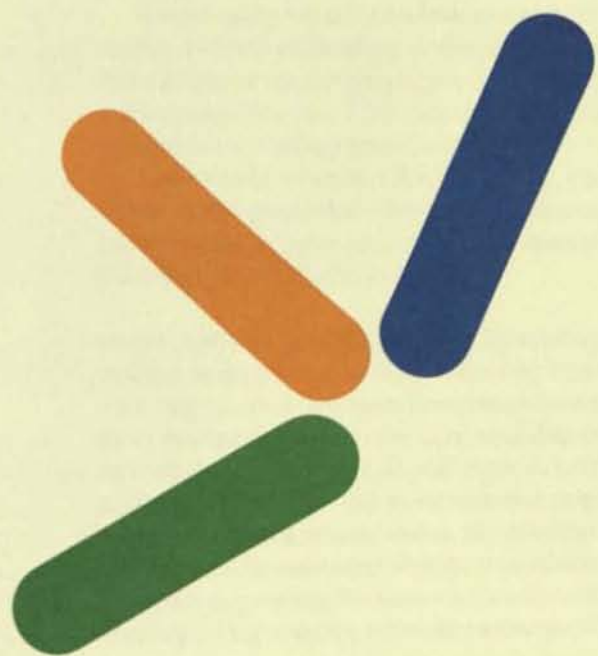
But even with these practices, not every case can be covered. What constitutes a legitimate business need for a particular piece of information? Should information about an employee ever be released without his or her knowledge, even if it might be to his or her benefit?

Ultimately, you must balance the right of the organization to use information for valid business purposes with the individual's right to privacy. Your own conscience and judgment and the advice of your management and of IBM Personnel all should be considered in this delicate area.

Information about any organization or individual must not be misused. IBM collects only necessary business information about customer, prospect, and supplier organizations and their employees. Information which an organization identifies as confidential may not be received or stored in an IBM file without properly approved written agreements.

Only persons with a business need to know should have access to information. Whenever feasible, information should be analyzed only in the aggregate, to avoid identifying individual persons or organizations.

The marketplace: customers and prospects



THEORY OF THE EARTH AND ITS HISTORY



The dictionary puts it very simply:

Com-pete. To contend with another for acknowledgment, for a prize, for a profit.

Eth-i-cal. Dealing with morals or the principles of morality; pertaining to right and wrong in conduct.

These simple definitions describe what IBM requires of those who represent it in the marketplace. It asks them to compete—vigorously, energetically, untiringly. But it also insists they compete ethically, honestly, and fairly, in accordance with basic principles of morality. Clearly, there are situations that individual IBM employees confront only in business, and for those IBM provides detailed guidelines. But IBM employees who deal directly with customers must be guided first by the knowledge that ethics and morality are the same at work as at home. There is no special, less-restrictive set of ethics for business, no easier “marketplace morality.”

Fair Competition

From the very beginning, IBM has relied on one thing above all to sell its products: Excellence. It always has been IBM's policy to provide the best possible products and services to customers, and to sell on the merits of our own products and services—not by disparaging competitors, or their products and services. In short, sell IBM.

Disparaging remarks include not only false statements, but also information which is misleading or simply unfair. Even factually correct material can be disparaging if it's derogatory and irrelevant to the particular sales situation. This includes casting doubt on a competitor's capabilities or making unfair comparisons.

Subtle hints or innuendos are wrong, too. For instance, asking a customer or prospect what they've heard about the competitor's maintenance service. If your objective is to focus the prospect's attention on a known problem, don't do it.

Don't Boast

IBM should not try to get business by trading on its size or success or its position in the industry. That means no boasting to customers about how much money we spend on research or product development, or how many systems engineers we have available throughout the company to work with customers. It is all right to talk about the *quality* of IBM's products or services—the resources and people that represent a commitment to the customer and to the concept of excellence. For instance, you can tell the customer that an area education facility is staffed and equipped to provide the customer's education requirements. That's not boasting of bigness; it's relevant to that particular customer's needs.

Unannounced Products	<p>It is IBM practice not to disclose, discuss or sell IBM products before their announcement. For IBM to reveal anything about unannounced products—whether equipment, programs, or services—to a prospect or customer could be viewed by a competitor as unfair. In addition, pre-announcement disclosure could reach other customers and impact sales of IBM's existing product line, or jeopardize IBM copyright or patent positions. Besides, it is always possible for technical difficulties during product development to result in cancellation or postponement of the new product.</p> <p>Nondisclosure also means that an IBM representative may not attempt to delay a customer decision to order competitive equipment by hinting that a new IBM product is under development. (There are exceptions to the nondisclosure rule, as in the case of national interest, or when a user works with IBM to develop new products, programs, or services. For such cases, there are careful procedures which must be closely followed.)</p>
Sequential Delivery	<p>IBM does its best to fill all orders worldwide in the sequence in which it receives them. For U.S. orders for data processing and tabulating equipment, this is a requirement of the 1956 Consent Decree. A customer always can request earlier delivery than the published schedule. This may be granted if there are openings in the schedule resulting from prior order cancellation, deferment or increase in supply.</p>
Preferential Treatment	<p>Customers must be offered IBM products and services (as available within geographic areas) on an equitable basis, without preference or discrimination. This is a long-established IBM policy, and applies to prices, scheduled delivery dates and contract terms.</p> <p>Pressure to make an exception to the rules generally comes in tough, competitive situations. But winning an order by violating this policy and providing free or extra services, preferential delivery or unauthorized contract terms could result in a major loss—for the individuals concerned and for the corporation.</p> <p>Special prices and terms are sometimes granted when permitted by law. The best examples are contracts with educational institutions and governmental customers.</p>
Selling Against Competitive Orders	<p>This is a complex subject which on its face appears simple. The rule is that we do not market IBM products or services for a customer's application if a competitor already has a firm order for the application. The difficulty is determining just when a firm order exists, because unless one does exist an IBM sales representative should sell, and sell vigorously. Letters of intent, free trials, conditional agreements and the like generally are not firm orders; unconditional contracts are.</p> <p>Each operating unit has comprehensive guidelines to cover the many situations which can arise. IBM legal counsel is always available and should be consulted to help resolve unusual situations. The ultimate judgment, however, must be based on your knowledge of the facts and a sense of fair play.</p>

The marketplace: our competitors



In the real world of business, it is inevitable that IBM and its competitors will meet, talk and attend the same seminars from time to time. That's neither against the law nor to be avoided.

What is against the law, and what must be avoided at all costs, is collaboration on such things as prices, production, or sales territories. To talk about these can be an illegal "conspiracy."

IBM people, with some regularity, also must participate in other normal business contacts with competitors. These include sales by IBM to other equipment manufacturers, participation in "team" bids with other companies and business shows.

But even these perfectly acceptable business contacts require caution. In *all* contacts with competitors, IBM employees must avoid discussing such things as pricing policy, terms of sales, costs, inventories, product plans, market surveys or studies, or any proprietary or confidential information.

If a competitor raises any of these subjects, the IBM representative should stop the discussion right there . . . and explain why he or she cannot discuss these matters.

Trade associations or standards meetings and similar events may create the appearance of collusion—making unlawful agreements.

To avoid these risks, IBM people should confine their discussion to specific items on a meeting agenda. If any discussion is opened on the prohibited subjects listed above, IBM representatives should object and refuse to participate. *If the discussion does not stop then and there, they should leave the meeting in a manner that will be noticed and remembered by others at the meeting.*

Any discussion of the prohibited subjects by any competitor should be reported to IBM counsel right away.

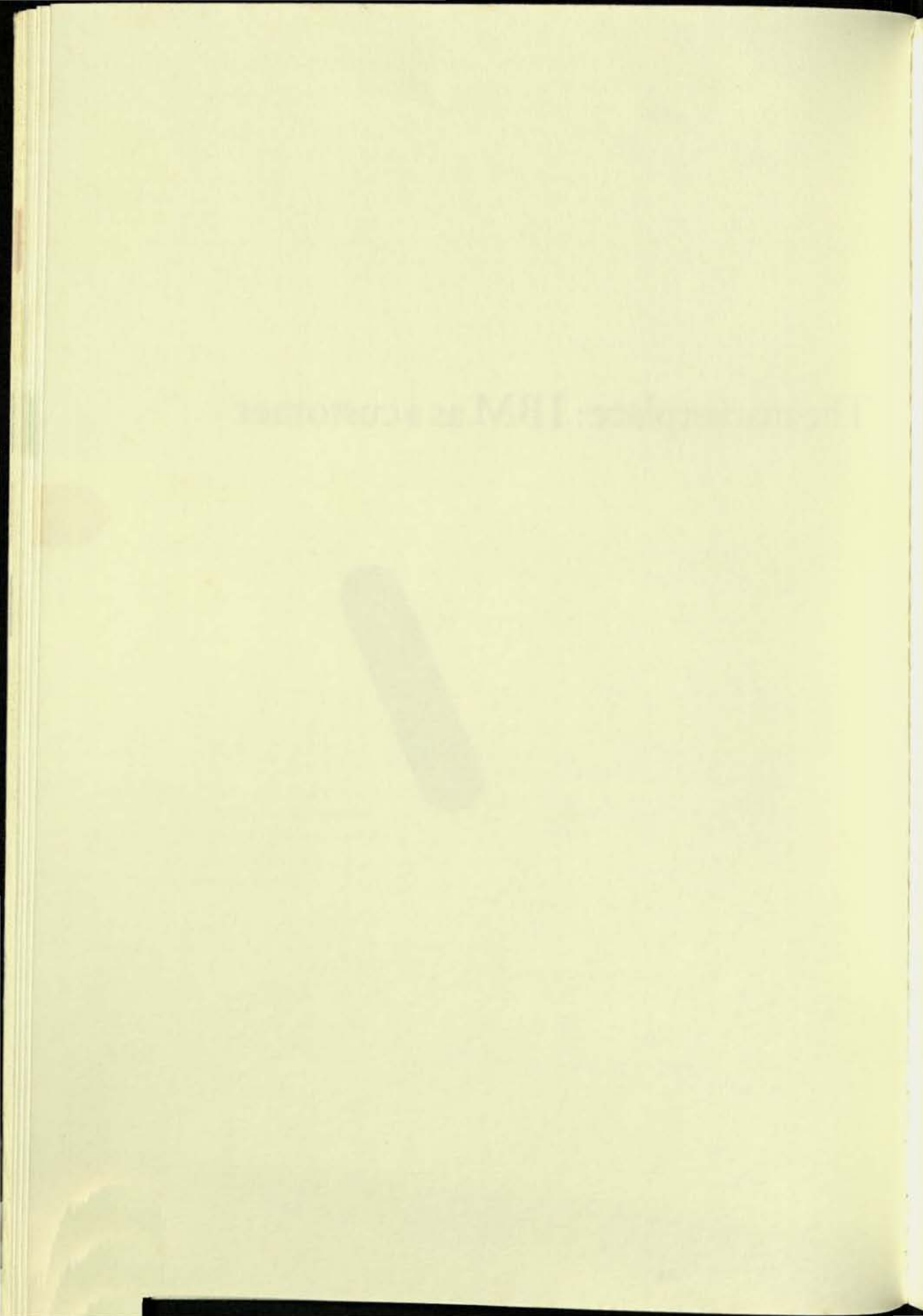
Information About Competitors

There are some very real restrictions on *how* information about competitors can be obtained, and even on *what* may be obtained. Obviously, no company may attempt through improper means to acquire a competitor's trade secrets, or other proprietary or confidential information. This includes lists of customers, or information about company facilities, capacities, technical developments or operations. It's obvious that "improper" means such things as industrial espionage, hiring competitors' employees to get confidential information, urging competitive personnel or customers to disclose confidential information, or any other approach that is not open and above board.

Confidential information may be obtained only if its owner clearly consents to its disclosure and if IBM's receipt of this information has been properly approved.

The marketplace: IBM as a customer





When IBM does business with suppliers, everyone is entitled to even-handed treatment.

It doesn't matter whether the supplier is competing for a ten-million-dollar contract for electronic circuitry, or a hundred-dollar driveway patch job in a suboffice. Both suppliers should go away, win or lose, with the feeling that IBM gave them every reasonable opportunity to win the contract.

Lots of things can erode that impression. Every one of them begins with you, regardless of your job, whether you're in purchasing, in a branch office or any other part of the company.

Put yourself in the shoes of a supplier. How would you feel if your business were anxious for an IBM order—maybe even felt it had to win to be able to survive—and you lost to a competitor?

At least, you ought to walk away knowing that you had every reasonable opportunity to present your case, that IBM weighed all the facts fairly and squarely, without prejudice or preference. Without seeking a preferential price. Without unfair influence by anyone.

That's sometimes difficult to do, but it's not impossible.

Let's look at three critical areas in doing business with suppliers:

No person can serve two masters. That pretty much sums up guidelines on investing, or having any other significant interests, in suppliers.

If you have anything to do, directly or indirectly, with a decision on whether IBM does business with a supplier, stay out of that supplier's business. That means, obviously, you cannot be an investor in, or a director, officer, employee or agent of, that supplier.

This is a clear-cut decision if your job in IBM involves establishing specifications for supplier products or services, or recommending, testing, or approving a supplier's products or work, or if you actually select suppliers.

It's not so clear-cut if you do not directly influence these actions. Even so, you must avoid doing anything which might create the *appearance* that a supplier has a "friend at IBM," that special influence may have been exerted on a supplier's behalf by anyone.

Obviously, no IBM employee can accept money or any benefits from any supplier for business advice or services with respect to the supplier's business with IBM. Nor can he or she represent a supplier to IBM, or be a part of its operating management, or contribute work on anything offered by that supplier to IBM. And an IBM employee may not, except under very unusual circumstances, be a supplier in his or her own right to IBM.

There's a best price, and then there's a preferential price.

Every buyer tries to get the best price available—and that includes quantity discounts. But no buyer may knowingly "induce or receive" a preferential price, that is, one lower than the supplier charges others for the same product where the quantities and the methods of sale are the same. If you ever think you're treading on uncertain ground, make sure you ask IBM counsel for advice.

Keeping at
Arm's Length
from
Suppliers

Getting
the Best Price . . .
but Not a
Preferential One

Reciprocity

You certainly can buy products and services from a supplier who buys products and services from IBM. But you cannot make an agreement to buy from suppliers on the condition that they agree to use IBM products and services. This means, quite clearly, that IBM's decision whether to use a supplier's services and products must be totally independent from his or her decision to use IBM as a supplier. You should not even *hint* to a supplier that, somehow, IBM's purchases from the supplier should be a reason why it ought to do business with us.

Obviously, this does not mean we cannot use a product or service of an IBM customer. It does mean that both IBM's decision and the customer's decision must be made *independently*.

Some Common Sense

Finally, fairness to suppliers calls for a few more simple rules:

Don't disclose confidential information unless necessary, and then only under properly approved written agreements.

Don't accept from the supplier any information it considers confidential, unless necessary, and then only under the same kind of written agreement.

Don't spread rumors or make gratuitous comments to others—IBMers included—about a supplier's performance. If a supplier has made a mistake, you can be sure the supplier is unhappy about it. In most cases, the supplier will want a fair chance in the future of showing us it is also capable of good work. Also, you should treat all information about the relationship between IBM and a supplier as confidential. It should not be given to anyone else outside IBM without the supplier's approval.

Pay suppliers for everything we receive, and on time. Don't accept discounts for prompt payment unless IBM is entitled to them.

The antitrust laws

The first of the year was a very dry one, and the crops were much injured. The second of the year was a very wet one, and the crops were much injured. The third of the year was a very dry one, and the crops were much injured. The fourth of the year was a very wet one, and the crops were much injured. The fifth of the year was a very dry one, and the crops were much injured. The sixth of the year was a very wet one, and the crops were much injured. The seventh of the year was a very dry one, and the crops were much injured. The eighth of the year was a very wet one, and the crops were much injured. The ninth of the year was a very dry one, and the crops were much injured. The tenth of the year was a very wet one, and the crops were much injured.

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A competitive business environment is essential to the private enterprise system.

Competition generally benefits consumers through lower prices and better products and services. It benefits business by encouraging greater productivity and increased efficiency and by increasing consumer satisfaction.

The purpose of the antitrust laws is simple: to benefit consumers by encouraging competition. Without the antitrust laws, firms might be tempted, for example, to agree *not* to do business in each other's territory, or to fix prices at identical levels.

These are examples of unlawful agreements, or "conspiracies." Since they both involve agreements between two or more competitors—and are clearly illegal—they illustrate why you should clearly understand the rules about meeting with competitors.

Another way a firm might try to avoid competition would be to "monopolize" under United States laws, or engage in "abuse of dominance" under antitrust laws in certain other countries.

For example, a firm with a dominant position in a particular market might drive out competitors by cutting prices below cost. That would be illegal. Also, a firm cannot require "tied" sales, such as insisting that a customer buy IBM typewriter ribbons if it buys IBM typewriters.

The law also says that it is a violation to *attempt* to monopolize, even though no actual monopoly power may have resulted.

The law says something else, too: Size alone is not a violation of the law; bigness is *not* badness.

But obviously, a large firm is more susceptible than a small firm to charges by its competitors of illegal activity. If a smaller competitor goes out of business, for example, it may be difficult to determine the reason. Were ordinary market forces involved? Or did the larger firm use unfair trade practices?

It's easy to see that large firms must bend over backwards to avoid even the appearance of illegal or unethical conduct. IBM's policy now, as in the past, is to comply fully in letter and spirit with the antitrust laws.

The Sherman Act

The first statement of U.S. antitrust law was embodied in the Sherman Act in 1890. Basically, this statute consists of two major provisions.

Agreements between two or more persons to restrain trade or commerce are illegal.

This first section of the Sherman Act prohibits unlawful agreements or "conspiracies" to restrain trade. This means, for example, that competitors may not agree to fix prices at identical levels and may not agree to refrain from doing business in each other's territory.

Monopolizing trade or commerce is illegal.

This second section of the Sherman Act involves "monopolization." The U.S. Supreme Court has stated that, under this section, there are two elements of monopoly: 1) Possession of monopoly power in the relevant market; and 2) Willful acquisition of such power by improper means.

These issues are obviously complex. But there are a few important principles to bear in mind. For example, the fact that a company possesses the power to control prices or to exclude competition from a market does not mean it has acted improperly. Possessing such power is legal if it has been attained and maintained through superior skill, foresight and industry, and has not been used improperly to exclude competition.

However, *any* unfair or unethical activity used by a firm against its competitors can be challenged in court as an attempt to preclude competition.

Finally, it is illegal under the Sherman Act even to *attempt* to monopolize a market. Even if a firm does not achieve monopoly power, it may violate the antitrust laws if it engages in illegal exclusionary practices.

The Clayton and Robinson-Patman Acts

The Sherman Act was supplemented in 1914 by the Clayton Act, and in 1936 by the Robinson-Patman Act. The two acts contain three basic prohibitions:

You may not discriminate in price between purchasers when the effect may be substantially to lessen competition.

This provision forbids price discrimination. Although there are cases when price differences are permissible, this section basically bars the practice of charging one customer lower prices than another if the effect may be substantially to lessen competition.

You may not lease or sell a product upon the condition that the purchaser will not use or purchase the products of a competitor when the effect may be substantially to lessen competition.

This section prohibits so-called exclusive-dealing arrangements, total-requirement obligations and tying arrangements. These are agreements where products are made available to a customer with the proviso that other products or services are to be procured only from the original seller. Again, these are prohibited if the probable effect may be substantially to lessen competition.

No firm may acquire another company's stock or assets if the effect may be substantially to lessen competition.

This provision declares certain corporate acquisitions of the stock or assets of another firm to be illegal. Again, as with the preceding sections of these two acts, such transactions are lawful unless the effect may be substantially to lessen competition.

Originally enacted in 1914, Section 5 of the Federal Trade Commission Act supplements the Sherman and Clayton Acts by broadly prohibiting "unfair" activities.

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, also are unlawful.

While the scope of this section to some extent overlaps the other acts, it goes beyond them by including all "unfair" acts, whether or not they are "methods of competition." Thus, the Federal Trade Commission, which enforces this provision, can proceed against other activities. Misrepresentation or the use of false advertising to sell products are examples of "unfair" or deceptive practices.

The United States government is not the only enforcer of antitrust laws. Other countries around the world have been active as well, especially since World War II.

Some nations, for example, have "anti-cartel" laws. Some regional groupings of nations—most notably, the European Economic Community—also have acted to prevent antitrust abuse.

The United States antitrust laws apply to the international operations of U.S. companies when competition within the United States or U.S. imports or exports are affected.

To assure compliance with U.S. and other national laws, these business conduct guidelines apply to IBMers everywhere.

In most cases, simply adhering to the principles addressed in U.S. federal law will assure compliance with laws of most other countries. This is true because many other national and state laws have been patterned after the American laws. However, employees should understand that details of the law occasionally differ. If they should have any questions about possible differences, they should consult with the legal staff.

In 1952, the United States government brought an antitrust action against IBM. The government's chief allegation was that IBM had monopolized domestic and foreign commerce in the tabulating machines business. The major remedy sought by government attorneys was divestiture by IBM of its tabulating card and service bureau businesses.

In its reply to the Court, IBM denied the allegations. This initiated a series of lengthy negotiations which culminated on January 25, 1956 in the entry of a "Consent Decree."

The Consent Decree meant that the Court did not rule on the government's allegations. IBM admitted no violations and no findings were made against IBM. Further, divestiture along the lines originally suggested by the government was not required. IBM did, however, agree to take certain actions and to adopt certain business practices, including the following:

- 1) To sell as well as lease equipment without discrimination and at sale prices reasonably related to lease charges.
 - a) To disclose prices and terms for sale and lease in order solicitations.
 - b) To fill orders without discriminating between purchase and lease customers and, to the extent practicable, in order of their receipt.
 - c) To offer purchasers the same services provided without separate charge to lease customers (with certain exceptions).
 - d) To offer training to outsiders in or entering the repair and maintenance business; and to sell to them and IBM equipment owners certain technical documents, replacement parts and subassemblies, and instruction manuals.
 - e) To allow customers to alter or attach equipment (with certain exceptions) and to provide instruction manuals.
 - f) Not to require customers to purchase additional IBM machines or cards in order to get the machine they want.
- 2) To license certain DP patents at reasonable royalties and to limit consultant agreements with inventors and engineers to one year.
- 3) To license certain card machinery patents without charge; to sell card machinery under certain cases until 1961; and in 1963 to divest card manufacturing capacity in excess of 50% of total industrial capacity. These were met and the requirements have expired.
- 4) To transfer its service bureau business to a wholly owned subsidiary and not to engage in service bureau business on its own or to furnish tabulating or DP equipment to its service bureau subsidiary except on the same terms offered to other service bureaus.
- 5) To refrain from acquiring used machines except through trade-in or credit against sums payable to IBM and to offer these to secondhand dealers at prescribed maximum prices (with certain exceptions).

Some of the provisions of the Consent Decree have expired. All other provisions are permanent and not subject to change without Court review. It is advisable that employees dealing in these areas thoroughly familiarize themselves with the actual Consent Decree provisions. Any questions should be discussed with IBM counsel.

