

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
 Plaintiff,
 v.
DATA CARD CORPORATION,
 Defendant.

File No. 86-2339

Entered: 1/29/87 **FILED**

AUG 22 1986

FINAL JUDGMENT

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on August 22, 1986, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement and defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "Data Card" means defendant Data Card Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

C. "Low-volume embosser" means an embosser that is used to form raised characters on plastic cards or metal plates, that has the capability of producing up to about 200 embossed cards or plates per hour, that has a mechanism that automatically feeds blank cards or plates into the embossing mechanism, that is capable of operating on-line to a computer, and that does not have the capability of encoding data onto magnetic stripes.

D. "AFI 1500/1600" means (1) the AFI 1500, AFI 1600, AFI 6500, AFI 6600, and AFI 6660 embossers; (2) all automatic-feed

mechanisms for one or more such machines; (3) all manual-feed mechanisms for one or more such machines; (4) all interfaces for one or more such machines; (5) all video display units for one or more such machines; (6) all software for one or more such machines; and (7) all other equipment used on or with such machines.

E. "AFI 1500/1600 technology" means all patents, copyrights, trade secrets, know-how, documentation, and other information relating to the AFI 1500/1600, to parts for one or more such machines, or to tooling relating to one or more such machines or parts.

F. "AFI 1500/1600 product line" means: (1) all rights in the AFI 1500/1600, including the exclusive right to produce and sell the AFI 1500/1600, except that Data Card may retain such nonexclusive rights in the AFI 1500/1600 as Data Card reasonably needs to enable it, along with the purchaser, to service previously installed units of the AFI 1500/1600; (2) all inventory of the AFI 1500/1600, whether totally or partially assembled; (3) all inventory of parts for the AFI 1500/1600 except that Data Card may retain such spare parts as it reasonably needs to fulfill its obligations to service previously installed units of the AFI 1500/1600, provided, however, that Data Card may not retain any spare parts other than the entire inventory of spare parts that was in the possession of DBS Inc.'s field personnel and Branch Offices on June 30, 1986, one-half of the spare parts located at

DBS Inc.'s Randolph, Massachusetts Distribution warehouse on June 30, 1986, and one-half of the spare parts previously ordered by DBS Inc. under purchase orders numbers 32603 and 32680; (4) all tooling relating to the AFI 1500/1600; (5) the AFI 1500/1600 technology, including the exclusive rights to that technology, except that Data Card may retain the nonexclusive right to use such existing technology as Data Card reasonably needs to enable it, along with the purchaser, to service previously installed units of the AFI 1500/1600; (6) all product manuals, technical manuals, service manuals, marketing materials, and promotional materials relating to the AFI 1500/1600, including exclusive rights to all copyrights and other intellectual property rights related thereto, except that Data Card may retain the nonexclusive right to use copies of technical and service manuals that Data Card reasonably needs to enable it, along with the purchaser, to service previously installed units of the AFI 1500/1600; (7) all proposals, drawings, plans, or suggestions for reducing the cost of or improving the AFI 1500/1600; (8) a list of all persons that have supplied one or more parts for the AFI 1500/1600 since January 1, 1985, including for each such supplier, its name, address, and telephone number, the identity of all such parts it supplied, and for each such part, the terms of any supply agreement; (9) a list of all persons that have been considered since January 1, 1985, as potential suppliers of one or more parts for the AFI 1500/1600, including for each such person, its name,

address, and telephone number, and the identity of all such parts for which the person was considered as a potential supplier; (10) a list of all persons in the United States that own an installed unit of the AFI Cardwriter III, AFI 1400, AFI 1500, AFI 1600, AFI 6500, AFI 6600, or AFI 6660 embossers including for each such person, its name, address, telephone number, and contact person, and the number of units of each such type of installed machine the person owns; (11) at the purchaser's request, all trade secrets, know-how, documentation, and other information the purchaser reasonably needs to service previously installed units of the AFI Cardwriter III and AFI 1400 low-volume embossers provided that Data Card may limit the purchaser's use of such trade secrets, know-how, documentation, and other information to servicing the AFI Cardwriter III and AFI 1400; (12) at the purchaser's request, nonexclusive rights in parts for the AFI Cardwriter III and AFI 1400 that the purchaser reasonably needs to enable it, along with Data Card, to service the AFI Cardwriter III and AFI 1400, provided that Data Card may limit the use of such parts to servicing the AFI Cardwriter III and AFI 1400; and (13) all other assets relating to the AFI 1500/1600 that Data Card, the purchaser, or the trustee, if there is one, reasonably believes would be useful in accomplishing the divestiture in the manner set forth in paragraphs IV and V of this Final Judgment.

III.

A. The provisions of this Final Judgment shall apply to Data Card, its successors and assigns, and to all other persons in

active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Except for Section IV.D. of this Final Judgment, nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Data Card shall require, as a condition of the sale of all its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

D. Data Card shall require, as a condition of the sale or other disposition of all or substantially all of its assets relating to its low-volume embosser business, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

A. Data Card having committed itself to acquire all of the stock of DBS, Inc. pursuant to an agreement dated July 31, 1986, Data Card is hereby ordered and directed, no later than November 1, 1986, to divest to a purchaser all of its direct and indirect ownership and control of the AFI 1500/1600 product line. The obligation to divest shall be satisfied if, by November 1, 1986, Data Card enters into a binding contract for sale of the AFI 1500/1600 product line (a) that is to a purchaser approved by plaintiff, (b) that is on terms approved by plaintiff, (c) that is contingent only upon compliance with the terms of this Final

Judgment, and (d) that specifies a prompt and reasonable closing date no later than January 1, 1987, and if sale is completed pursuant to the contract.

B. Unless plaintiff otherwise consents, a divestiture under Section IV of this Final Judgment shall be accomplished in such a way as to satisfy plaintiff that the AFI 1500/1600 product line can and will be operated by the purchaser as a viable, on-going business engaged in the production of low-volume embossers for sale to hospitals and other customers throughout the United States. Such divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing effectively in the production of low-volume embossers for sale to hospitals and other customers throughout the United States and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the production of low-volume embossers for sale to hospitals and other customers throughout the United States.

C. Upon objection by plaintiff, a divestiture proposed under Section IV of this Final Judgment to a producer of low-volume embossers or to a potential entrant into the low-volume embosser market shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section V of this Final Judgment to a producer of low-volume embossers or to a potential entrant into the low-volume embosser market shall not be consummated unless approved by the Court.

D. In accomplishing the divestiture of the AFI 1500/1600 product line ordered by this Final Judgment, Data Card shall make

known in the United States, by usual and customary means, the availability of the AFI 1500/1600 product line for sale. Data Card shall notify any person making an inquiry regarding the possible purchase of the AFI 1500/1600 product line that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Data Card also shall furnish to all bona fide prospective purchasers who so request, and subject to customary confidentiality assurances, all pertinent information regarding the AFI 1500/1600 product line. Data Card shall provide such information to plaintiff at the time it furnishes such information to any other person. Data Card also shall permit all bona fide prospective purchasers to have access to any and all personnel who have any responsibilities for the AFI 1500/1600 product line and to make such inspection of physical assets and any and all financial, operational, or other documents and information as may be relevant to the sale of the AFI 1500/1600 product line.

V.

A. If Data Card has not accomplished the divestiture required by Section IV of this Final Judgment by November 1, 1986, the Court shall, upon application of plaintiff, appoint a trustee to divest the AFI 1500/1600 product line. Such appointment shall become effective on November 1, 1986 or as soon thereafter as the Court appoints the trustee. After the trustee's appointment becomes effective, only the trustee, and not Data Card, shall have the right to sell the AFI 1500/1600 product line. The trustee

shall be a business broker or a member of the investment banking community with experience and expertise in acquisitions and divestitures. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee to a purchaser acceptable to plaintiff, subject to the provisions of Section VI of this Final Judgment. The trustee shall have such other powers as the Court deems appropriate. Data Card shall use all reasonable efforts to assist the trustee in accomplishing the required divestiture. Data Card shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by Data Card must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified Data Card of the proposed sale.

B. If Data Card has not divested its ownership interest in the AFI 1500/1600 product line by October 1, 1986, Data Card shall notify plaintiff of that fact. If Data Card still has not divested all of its ownership interest in the AFI 1500/1600 product line within five (5) days thereafter, plaintiff shall provide Data Card with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Data Card will notify plaintiff within five (5) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Data Card, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as the trustee.

If neither of such nominees is acceptable to Data Card, it shall furnish to plaintiff, within five (5) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by Data Card. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Data Card, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of the AFI 1500/1600 product line and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Data Card and the trust shall be terminated. The trustee's compensation shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The trustee shall have full and complete access to the personnel, books, records, and facilities of Data Card, and Data Card shall develop such financial and other information relevant to the assets to be divested as the trustee may request. Data Card shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within ten (10) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee at the same time shall furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the trust, which shall include, if necessary, extending the term of the trust and the term of the trustee's appointment.

VI.

At least fifteen (15) days prior to the scheduled closing date of a proposed divestiture pursuant to Section IV, or at least thirty (30) days prior to the scheduled closing date of a proposed divestiture pursuant to Section V of this Final Judgment, Data Card or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify Data Card. The notice shall set forth the details of the proposed transaction and for each person not

previously identified who offered or expressed an interest or desire to acquire any ownership interest in the AFI 1500/1600 product line, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, plaintiff may request from Data Card and the proposed purchaser additional information concerning the proposed divestiture. Data Card shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that both Data Card and the proposed purchaser have provided the additional information requested from them, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within twenty (20) days after receipt of the additional information from Data Card and the proposed purchaser, whichever is later, unless Data Card shall agree to extend the time, plaintiff shall notify in writing Data Card and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Data Card and the trustee, if there is one, that it does not object, the divestiture may be consummated, subject only to Data Card's right to object to the sale under the proviso in Section V.A. of this Final Judgment. Upon objection by plaintiff, a divestiture proposed under Section IV of this Final Judgment

shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section V of this Final Judgment shall not be consummated unless approved by the Court. Upon objection by Data Card under Section V.A. of this Final Judgment, the proposed divestiture shall not be consummated unless approved by the Court.

VII.

Data Card shall not finance without plaintiff's permission all or any part of the purchase of the AFI 1500/1600 product line pursuant to the divestiture required by Section IV or V of this Final Judgment.

VIII.

Data Card shall abide by the following hold-separate provisions:

A. Data Card shall take all steps necessary to assure that no proprietary technology and other proprietary business information specific to the AFI 1500/1600 product line is used by Data Card to compete with the AFI 1500/1600, except that Data Card may use such technology and information that it reasonably needs to enable it, along with the purchaser, to provide service on previously installed units of the AFI 1500/1600.

B. Data Card shall:

- (1) Refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel

- involved with the AFI 1500/1600 product line, except in the ordinary course of business, without prior approval of plaintiff;
- (2) Preserve the AFI 1500/1600 as an active competitor in the market for low-volume embossers;
 - (3) Refrain from altering or selling any assets relating to the AFI 1500/1600 product line, except in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of competition between the AFI 1500/1600 and other low-volume embossers, without the prior approval of plaintiff;
 - (4) Refrain from taking any action that would jeopardize the sale of the AFI 1500/1600 product line as a viable product line in any market in which it participated at the time of the filing of the Complaint in this civil action.

IX.

Data Card shall submit in writing to plaintiff verified written reports setting forth in detail the fact and manner of compliance with Section IV or V, as the case may be, and Section VIII of this Final Judgment. The first three (3) such reports shall be submitted on September 15, 1986; October 8, 1986; and October 31, 1986 and the remaining reports shall be submitted

at periodic intervals of no less than thirty (30) days until the divestiture required by Section IV or V of this Final Judgment is accomplished. Plaintiff shall determine such periodic intervals and give Data Card no less than 30 days' notice of any changes therein. Each such report of compliance with Section IV shall include, for each person who, during the preceding reporting period made an offer to acquire, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the AFI 1500/1600 product line, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Data Card shall maintain full records of all efforts made to divest the AFI 1500/1600 product line. With respect to Section VIII, such report of compliance shall also describe the status of Data Card's efforts during the preceding reporting period to make new sales of the AFI 1500/1600, to secure contracts to service the AFI 1500/1600, or to perform service on those products. Data Card shall maintain full records for all such efforts.

X.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust

Division, and on reasonable notice to Data Card made to its principal office, be permitted:

- (1) Access during office hours of Data Card to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Data Card, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of Data Card and without restraint or interference from it, to interview officers, employees and agents of Data Card, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Data Card's principal office, Data Card shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Data Card or a potential purchaser to plaintiff, Data Card or the potential purchaser represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Data Card or the potential purchaser marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to Data Card or the potential purchaser, whichever furnished the requested information, prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI.

A. Upon request of the purchaser, Data Card shall use its best efforts to make available, at a reasonable time and place and for a period not to exceed eighteen (18) months from the date of the divestiture of the AFI 1500/1600 product line, qualified personnel to assist the purchaser in: (1) hiring and training a production staff to produce the AFI 1500/1600, (2) identifying competent vendors to supply parts for the AFI 1500/1600, (3) hiring and training a sales staff to market the AFI 1500/1600, (4) hiring and training a service staff to service the AFI 1400 low-volume embosser and the AFI 1500/1600, and (5) identifying competent third parties to service the AFI 1400 low-volume embosser and the AFI 1500/1600, and training a third party, chosen by the purchaser, to service the AFI 1400 low-volume embosser and the AFI 1500/1600.

B. All assistance and advice made available pursuant to this Section XI shall be made available at cost (salary, benefits, and out-of-pocket expenses), determined in accordance with generally accepted accounting principles. Any controversy concerning the cost of the assistance and advice shall be settled by arbitration.

XII.

At the request of the purchaser made up to one (1) year after the date of the divestiture of the AFI 1500/1600 product line, Data Card shall enter into a contract with the purchaser regarding service for products sold by the purchaser under rights acquired pursuant to this Final Judgment. The contract shall commit Data Card to providing service for the useful lives of any or all such products sold by the purchaser during a period up to four (4) years following the completion of the divestiture required by this Final Judgment, all at the purchaser's option. Such contract shall commit Data Card to providing such service on a reasonable non-discriminatory basis compared to the price Data Card charges for service on the Data Card Model 300 low-volume embosser. Any controversy concerning such a contract shall be settled by arbitration.

XIII.

In the event that Data Card is unwilling to divest an asset that the purchaser or the trustee wants included in the divestiture pursuant to Section II.F.(12) of this Final Judgment, Data Card may refuse to include such asset in the divestiture provided that Data Card shall promptly notify in writing plaintiff

and the purchaser of such refusal. Such notice shall state why, in the opinion of Data Card, such asset should not be included in the divestiture. Plaintiff shall have fifteen (15) days from the receipt of such notice in which to notify Data Card that it disagrees with Data Card's position. If plaintiff fails to so notify Data Card, then Data Card shall not be required to include such asset in the divestiture. If plaintiff so notifies Data Card, Data Card shall include such asset in the divestiture unless, within fifteen (15) days from the receipt of such notice, Data Card petitions the Court for an order relieving it of its responsibility to include such asset in the divestiture and the Court enters such an order.

XIV.

At the time of the required divestiture, Data Card shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. When any controversy is submitted to arbitration, Data Card shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XV.

Jurisdiction is retained by this Court for the purpose of enabling any 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, implementation, or modification of any of the provisions of this

Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XVI.

Rule 6 of the Federal Rules of Civil Procedure shall govern the computation of the running of all time periods under this Final Judgment.

XVII.

This Final Judgment will expire on the second anniversary of the completion of the divestiture required herein.

XVIII.

Entry of this Final Judgment is in the public interest.


UNITED STATES DISTRICT JUDGE

Dated:

January 29, 1987


