

hospitals to produce embossed plastic cards for patient identification. The complaint requests that Data Card be required to divest the AFI 1500/1600 embosser product line, which is part of the assets that it will acquire from DBS, and to continue until divestiture occurs to operate that product line as an active competitor in the market for low-volume embossers.

The United States and Data Card have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Data Card and DBS entered into an agreement dated July 31, 1986, pursuant to which Data Card would acquire all the stock of DBS for \$52 million in cash. Data Card and DBS, which are both diversified companies, had 1985 sales of approximately \$104 million and \$105 million, respectively.

DBS, the largest United States seller of low-volume embossers, had 1985 sales of low-volume embossers in the United States of approximately \$6 million. Its AFI 1400 embosser accounted for approximately \$3.4 million of this total and its AFI 1600 embosser accounted for the remainder. Data Card, the fourth largest United States seller of low-volume embossers, sells only one low-volume embosser, its Model 300. Data Card had 1985 sales of approximately \$1.1 million in the United States

low-volume embosser market. Total 1985 United States sales of low-volume embossers were approximately \$10 million.

The complaint alleges that the production and sale of low-volume embossers is a relevant product market for antitrust purposes and that the effect of the combination of the low-volume embosser businesses of Data Card and DBS pursuant to the proposed acquisition may be substantially to lessen competition in the United States in that market in violation of Section 7 of the Clayton Act.

Embossers are used to produce raised characters on plastic cards. Low-volume embossers produce 100-200 embossed cards per hour, sell for \$13-20,000, have automatic-feed mechanisms that feed blank cards from a hopper to the embossing mechanism, and are capable of operating on-line to a computer so that information can be fed directly from the computer to the embosser, but they are not capable of encoding machine-readable information onto magnetic stripes on cards. Low-volume embossers are differentiated from other types of embossers on the basis of price and performance.

Hospitals are the primary purchasers of low-volume embossers. They use the machines to produce embossed plastic cards for patient identification. When a patient is admitted, information from the hospital's computer is typically fed directly to the embosser, which produces an embossed plastic card containing the patient's name, sex, blood-type, room number, doctor's name, and other identifying information. The cards are used to imprint the patient information onto hospital documents,

such as patient charts and multipart forms for ordering tests and procedures. A small but significant nontransitory increase in the price of low-volume embossers would not cause purchasers of them to substitute other types of embossers or a means of data recording other than embossed plastic cards.

The complaint alleges that the production and sale of low-volume embossers in the United States is highly concentrated. In 1985, DBS accounted for approximately 59 percent of the low-volume embosser market and Data Card accounted for about 12 percent. Only two other firms sell low-volume embossers in the United States. The Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, in the market for low-volume embossers is 4129. The acquisition of DBS by Data Card would increase the HHI by 1378 to 5507.

Successful new entry into the production and sale of low-volume embossers involves significant costs and time. Since the low-volume embosser market is relatively small and a substantial investment of time and money would be necessary to enter, a small but significant nontransitory price increase would not induce entry.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT
AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because the effect of the acquisition of DBS by Data Card may be substantially to lessen competition in violation of Section 7 of the Clayton Act

in the production and sale of low-volume embossers. The only anticompetitive effects associated with the merger would be eliminated if the AFI 1600 could be sold to a purchaser that would operate the business as an active and independent competitor in the manufacture and sale of low-volume embossers.

To this end, Section IV of the Final Judgment would require that by November 1, 1986, Data Card sell that portion of DBS's business relating to the AFI 1600. The assets that would have to be sold would include the exclusive rights to produce and sell the AFI 1600, as well as a related embosser, the AFI 1500, which is the same basic machine as the AFI 1600, except that it has a manual-feed mechanism. Data Card also would be required to divest the technology, inventory, vendor lists, and a list of the installed base for the AFI 1500 and the AFI 1600 and any equipment used on or with those machines. The divested assets are hereinafter referred to as "the AFI 1500/1600 product line."

Section IV also would require, unless the United States otherwise consents, that Data Card sell the AFI 1500/1600 product line to a purchaser that has the intent and capability to compete effectively in the production and sale of low-volume embossers to hospitals and other customers throughout the United States. Any purchaser of the product line must be approved by the United States.

If Data Card is unable to divest the AFI 1500/1600 product line by November 1, 1986, under Section V of the proposed Final Judgment, the Court would, at the request of the United States,

appoint a trustee to sell the product line at the best price obtainable to a purchaser acceptable to the United States. Section V would provide a mechanism that should permit a trustee to be selected and appointed by November 1, 1986. Once a trustee has been appointed, only the trustee, and not Data Card, would have the right to sell the AFI 1500/1600 product line. Further, if a trustee is appointed, Data Card would be required to pay all of the trustee's expenses in selling the AFI 1500/1600 product line, and the trustee's commission would be structured to provide an incentive for it to complete the sale promptly.

Section VI of the proposed Final Judgment would provide the United States with an opportunity to review any proposed divestiture before it occurs. Under Section VI, the United States may request information from Data Card and the proposed purchaser to assess a proposed divestiture. If the United States requests such information from Data Card and the proposed purchaser, the divestiture may not be consummated until the United States certifies in writing that it is satisfied that Data Card and the proposed purchaser has provided the additional information. Data Card and the proposed purchaser may not consummate the divestiture until 20 days after they have supplied the information. If the United States were to object to a divestiture of the AFI 1500/1600 product line proposed under Section IV of the proposed Final Judgment, the divestiture could not be completed. If the United States were to object to a

divestiture of the AFI 1500/1600 product line proposed under Section V, the divestiture could not be completed unless approved by the Court.

Until the divestiture required by the proposed Final Judgment is completed, Data Card would be required to continue to preserve the AFI 1500/1600 product line as an active competitor in the low-volume embosser market. Moreover, Data Card would be required to take all steps necessary to assure that proprietary technology and other proprietary business information relating to the AFI 1500/1600 product line is not used by Data Card to compete with the AFI 1500/1600 product line, except that Data Card can use such technology and information that it reasonably needs to enable it, along with the purchaser, to service previously installed units of the AFI 1500/1600.

Section IX of the proposed Final Judgment would require Data Card to provide the United States with periodic reports concerning the fact and manner of its compliance with the proposed Final Judgment, and Section X would allow the United States to obtain additional information and documents relating to Data Card's compliance with the proposed Final Judgment.

Section XI would require Data Card, upon request of the purchaser, to assist the purchaser in hiring and training a production staff, identifying competent vendors for parts, hiring and training a service staff, and identifying competent third parties to provide service for the AFI 1500/1600. Data Card would be required to make such assistance available at cost.

Section XII would require Data Card, at the purchaser's option, to enter into a contract regarding service for products sold by the purchaser under rights it acquired pursuant to the divestiture. The contract would 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 years following the divestiture, all at the purchaser's option. The service must be provided on a reasonable nondiscriminatory basis compared to the price Data Card charges for service on the Data Card 300 low-volume embosser.

Finally, Section XVII would provide that the Final Judgment would expire on the second anniversary of Data Card's completion of the required divestiture.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V. PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and Data Card have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

P. Terry Lubeck, Chief
Litigation II Section
Antitrust Division (700 Safeway)
U.S. Department of Justice
Washington, D.C. 20530

Under Section XV of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or Data Card to apply to the Court for such further orders or directions as may be necessary or

appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment would provide all of the relief requested by the United States in its complaint in this civil action. The proposed Final Judgment would require Data Card to divest the AFI 1500/1600 product line by November 1, 1986. It also would assure that the AFI 1500/1600 product line would remain an active competitor in the low-volume embosser market. Compliance by Data Card with the proposed Final Judgment and the completion of the divestiture required by the Judgment would resolve fully all of the competitive concerns raised by the proposed acquisition of DBS by Data Card. The United States could have obtained no better relief after a full trial on the merits.

The United States initially believed that to resolve the competitive concerns raised by the acquisition, either the entire low-volume embosser business of DBS, the AFI 1400 and 1600, or the entire low-volume embosser business of Data Card, the Model 300, should be divested. After further investigation of the competitive dynamics of the low-volume embosser market, the United States concluded that divestiture of the AFI 1600 would fully resolve the competitive concerns. The only other alternative considered to settling this action pursuant to the proposed Final Judgment was for the United States to file suit

and seek a preliminary injunction to enjoin Data Card's acquisition of DBS until the AFI 1500/1600 product line had been completely divested. The United States rejected this alternative because substantial risk existed that a court might be reluctant to halt consummation of the entire merger because of a competitive problem posed by a small part of the entire business operations of the two companies. The court's reluctance to grant a preliminary injunction likely would have been substantially increased because of Data Card's willingness to divest the AFI 1500/1600 product line.

Under the circumstances, although the government believes that sound responses to these arguments exist, it determined that the public interest in preserving competition in the low-volume embosser market would be served best by obtaining Data Card's consent to an enforceable decree requiring it to divest the AFI 1500/1600 product line and by filing the decree with the Court prior to the consummation of any part of the proposed acquisition.

Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because Data Card has stipulated to comply with the terms of the Judgment pending its entry by the Court. The United States believes that the overriding public interest in having these enforceable safeguards in effect prior to consummation of any part of the proposed acquisition required

that it not attempt to seek a preliminary injunction, and thereby avoid the risk that the acquisition might be permitted to go forward without any enforceable safeguards in effect.

VII. DETERMINATIVE DOCUMENTS

There were no documents determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: August 22, 1986

Respectfully submitted,


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