

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:99CV01318
)	
COMPUTER ASSOCIATES)	JUDGE: Gladys Kessler
INTERNATIONAL, INC. and)	
PLATINUM TECHNOLOGY)	DECK TYPE: Antitrust
INTERNATIONAL, INC.,)	
)	DATE STAMP: 05/25/99
Defendants.)	
)	

WHEREAS, plaintiff, the United States of America, having filed its Complaint in this action on May 25, 1999, and plaintiff and defendants, 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 issue of law or fact herein, and that this Final Judgment shall settle all claims made by the plaintiff in its Complaint filed on May 25, 1999;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the identified software and associated assets to assure that competition is not substantially lessened;

AND WHEREAS, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or

difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

AND WHEREAS, plaintiff currently believes that entry of this Final Judgment is in the public interest;

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.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

A. “Computer Associates” means defendant Computer Associates International, Inc., a Delaware corporation with its headquarters in Islandia, New York, and includes its successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. “Platinum” means defendant PLATINUM *technology* International, *inc.*, a Delaware corporation with its headquarters in Oakbrook Terrace, Illinois, and includes its

successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. “Defendants” means, collectively or individually as the context requires, Computer Associates and/or Platinum.

D. “Acquirer” means acquirer or acquirers of any of the Platinum Assets ordered to be divested by Section IV.A of this Final Judgment.

E. “Divested Product” means each of the following software products supplied by Platinum for use with the OS/390 or MVS mainframe operating system: (a) AutoSys/Zeke (formerly Altai’s Zeke), (b) AutoRerun (formerly Altai’s Zebb), (c) AutoMedia (formerly Altai’s Zara), (d) CCC/Life Cycle Manager; and each of the following software products supplied by Platinum for use with the VSE mainframe operating system, (e) AutoSys/Zeke (formerly Altai’s Zeke), and (f) AutoAction (formerly Altai’s Zack). With respect to each of the foregoing, a Divested Product includes each predecessor version of the product and each version that has been or is currently under development or that has been developed but has not been sold or distributed.

F. “Platinum Assets” means all tangible and intangible property or property rights owned or licensed by Platinum and reasonably required in developing, testing, producing, marketing, licensing, selling, or distributing any Divested Product, or in supplying any support or maintenance services for any Divested Product. The Platinum Assets include all of Platinum’s rights, titles and interests in any asset which Platinum has the right to convey, license, sublicense or assign. If Platinum’s rights in any Platinum Asset are licensed under terms that would prevent it from conveying, licensing, sublicensing or assigning such rights to an Acquirer, defendants

shall take no action (such as asserting or enforcing any exclusive rights included in Platinum's license of its rights to the asset) to bar the licensor of such asset from licensing rights in the asset to an Acquirer for use with any Divested Product, and defendants shall take all reasonable steps (including, but not limited to, promptly executing necessary documents or agreements with such licensor) to cooperate with and assist an Acquirer in obtaining such a license, provided, however, that nothing contained herein shall prevent defendants from asserting or enforcing any exclusive rights possessed by Platinum to prevent an Acquirer from using such licensed assets other than with a Divested Product. The Platinum Assets include, but are not limited to:

- (1) Each Divested Product;
- (2) All source code and object code for the version or versions of a Divested Product currently being sold or distributed anywhere in the world (including patches), all existing source code and object code for all prior versions previously sold or distributed anywhere in the world (including patches), and all other source code and object code for all versions of a Divested Product under development or developed but not yet being sold or distributed (including patches). Defendants shall not retain copies of any of the foregoing code, provided however, that to the extent at the time Computer Associates announced its proposed acquisition of Platinum any such code was also contained in Platinum products other than Divested Products ("retained code") defendants shall retain a perpetual, irrevocable, fully paid-up worldwide license to retain and use such retained code in any products that are not Divested Products, except that defendants shall not use such retained code to develop a product that is substantially identical to a

Divested Product or that competes in any market described in the Complaint.

This Final Judgment imposes no restrictions on defendants with respect to products, or source and object code for such products, owned or controlled by Computer Associates at the time Computer Associates announced its proposed acquisition of Platinum;

- (3) All software customizations, optional modules and add-ons for a Divested Product;
 - (4) All development tools, development environments, proprietary programming languages, know-how, designs, drawings, specifications, research data, trade secrets, copyrights, rights under patents, and all other intellectual property which Platinum has used to develop, upgrade, or maintain a Divested Product;
 - (5) All software programs, instructions, manuals, know-how, trade secrets, or documentation that Platinum has used or supplied to a user of a Divested Product to facilitate installation or operation of any Divested Product, or to facilitate migration or conversion to the use of any Divested Product from the use of any other product;
 - (6) All technical or development documentation, and all marketing information, sales training material, sales collateral, customer lists and credit reports and maintenance documentation used for a Divested Product;
 - (7) Assignment of license or maintenance agreements including a Divested Product.
- In the event any such license or maintenance agreement includes any products or services other than a Divested Product, defendants or such other persons holding

ownership rights to such other products or services shall retain all contractual rights relating to such other products or services;

- (8) With respect to all assigned licenses and maintenance agreements identified in Subsection II.F.(7) above, a sum of money equal to the pro rata amount of all maintenance fees for a Divested Product already paid to defendants pursuant to such maintenance agreements to the extent such fees paid relate to service periods after the date of such assignment. With respect to all such assigned licenses and maintenance agreements that include any products or services other than a Divested Product, the maintenance fees to be attributed to a Divested Product shall be calculated on a pro rata basis by apportioning the maintenance fees among the products and services subject to such agreements in a ratio derived from the list price of each product or service as of the date upon which such license and maintenance agreement became effective to the total of such list prices for all the products and services subject to such agreements. For any multi-year agreement assigned, the allocation described herein applies only to that portion of revenues attributable to maintenance fees. Defendants shall not allocate nor shall any Acquirer be entitled to receive any portion of revenues attributable to licensing of a Divested Product. This method of allocation of maintenance fees applies to both the allocation of maintenance fees already paid to defendants and payable in the future relating to service periods after the date of such assignment;

- (9) All files and records maintained by Platinum for any customer licensee of any Divested Product, including customer licenses, maintenance agreements, and other agreements, all customer call reports (or portions thereof relating to any Divested Product), pricing information for the Divested Products, support and maintenance logs for the Divested Products; all customer leads, customer pipeline reports, customer proposals or other information maintained by defendants to license and support any Divested Product. Where any such information relates to both a Divested Product and other products and services, defendants shall use their best efforts to segregate the information that relates to the Divested Products and shall provide, and shall not retain, such segregated information to the Acquirer; and
- (10) The trademarks "Zeke", "Zebb", "Zara", "Zack", "AutoRerun", and "AutoMedia", and for a period of eighteen (18) months from the time the Acquirer purchases the Divested Product, the Acquirer of AutoSys/Zeke may use the phrase "formerly known as AutoSys/Zeke" in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of AutoAction for VSE may use the phrase "formerly known as AutoAction for VSE" in connection with the marketing, sale, or distribution of that Divested Product; the Acquirer of CCC/Life Cycle Manager may use the phrases "formerly known as CCC/Life Cycle Manager" and "formerly known as CCC/LCM" in connection with the marketing, sale, or distribution of that Divested Product, and thereafter, defendants will not object to that Acquirer's use of "Life Cycle Manager" or "LCM".

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and 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. Defendants and each person bound by this Final Judgment shall cooperate in ensuring that the provisions of this Final Judgment are carried out.

B. The Trustee appointed pursuant to Section IV of this Final Judgment shall require, as a condition of the divestiture of the Platinum Assets required herein, that each Acquirer agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE BY TRUSTEE

A. Defendants are hereby ordered to divest the Platinum Assets to an Acquirer approved by the plaintiff in accordance with the terms of this Final Judgment. Divestiture shall be accomplished by a trustee to be selected by plaintiff at its sole discretion. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after plaintiff notifies defendants of the trustee's selection.

B. Only the trustee shall have the right to divest the Platinum Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon all reasonable efforts of the trustee, subject to the provisions of this Final

Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall divest the Platinum Assets in the manner that is most conducive to preserving and maintaining competition that currently exists between Computer Associates and Platinum in the markets for the development, sale and maintenance of the mainframe software products described in the Complaint. Subject to Section IV.C. of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Computer Associates any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of Computer Associates, on such terms and conditions as the plaintiff approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Computer Associates and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price obtained and the speed with which divestiture is accomplished.

D. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Platinum Assets, and shall assist the trustee in

accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Platinum Assets, and to Platinum's overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Platinum Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Subject to customary confidentiality assurances, defendants shall permit prospective acquirers of any Platinum Assets to have reasonable access to the information provided to the trustee and to management personnel for the Platinum Assets, and to make inspection of any physical facilities for the Platinum Assets.

E. After the trustee's appointment, the trustee shall confer regularly with designated representatives of the parties and shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. Any proposed divestiture of any of the Platinum Assets shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Platinum Assets can and will be

used by the Acquirer as part of a viable, ongoing business involving the sale or license of the Divested Products to customers, including a demonstration to plaintiff's satisfaction that (1) the divestiture is for the purpose of competing effectively in the selling of the Divested Products to customers; (2) the Acquirer has the managerial, operational, technical and financial capability and intent to compete effectively in the selling of the Divested Products to customers; and (3) none of the terms of any divestiture agreement gives defendants the ability artificially to raise the Acquirer's costs, impairs the Acquirer's ability to maintain or innovate with respect to any of the Divested Products, impairs the Acquirer's ability to support customers, or otherwise interferes with the ability of the Acquirer to compete effectively. Plaintiff may object to a proposed divestiture in the manner prescribed in Section VI of this Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants shall be made in the manner prescribed in Section VI of this Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. No less than three (3) days prior to filing such report with the Court, the trustee shall furnish a copy of such report to the parties. Upon the filing of such report with the Court, each party shall have the right to be heard and to

make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by plaintiff, or entering an order divesting any or all of the Platinum Assets to such Acquirer and upon such terms as the Court deems appropriate.

V.

DIVESTITURE AGREEMENT

Any agreement for divestiture of the Platinum Assets shall, at minimum, convey the following:

A. All of Platinum's rights, titles and interests in all the Platinum Assets (subject to Subsection V.E. below and subject to any limitations on defendants' ability to convey, license, sublicense or assign any such rights, as described in Subsection II.F. above).

B. The full and complete assignment of rights under all customer licenses and maintenance agreements for the Divested Products, subject to pro-rated allocation of maintenance revenue as specified in Subsection II.F.(8) above; provided however, that in the event any such licenses or maintenance agreements also encompass other products or services, Acquirer shall not be entitled to receive any rights with respect to such other products or services.

C. The right to obtain the interface information relating to the integration of AutoSys/Zeke and AutoSys as it exists as of the date of the filing of the Complaint; and in the event interface information relating to any existing or future version of AutoSys under any name is made available to any software developer or vendor, the right to obtain such information by the same means and on the same terms and to the same extent as it is made available to such

other software developer or vendor. No non-competition clause in or ancillary to any provision of such interface information that may impair the Acquirer's ability effectively to compete with defendants shall be enforceable in any court, except defendants may restrict the use of such interface information to establishing an interface between current and future versions of AutoSys/Zeke and current and future versions of AutoSys.

D. The right to negotiate, without interference by defendants, for the employment services of any of Platinum's employees who, prior to the announcement of the subject acquisition, had employment responsibilities relating to the Divested Products. If the Acquirer employs any such person, any employment-related non-competition clause, as it relates to the Divested Products, that runs in favor of defendants shall be unenforceable by defendants in any court, except for the persons identified on Exhibit 1 to the Final Judgment, which is filed under seal.

E. At Acquirer's option, any tangible assets that are used in conjunction with the development, support or maintenance of the Divested Products, excluding defendants' interests in real property, fixtures and leases and shared equipment.

F. Such usual and customary warranties as are necessary to effect the purposes of the trust.

VI.

NOTIFICATION

Two (2) days before proposing any divestiture, the trustee shall notify plaintiff and defendants of the proposed divestiture and proposed terms and conditions thereof. Defendants shall, within two (2) days after receiving such notice, have an opportunity to confer with the

trustee and Acquirer, to state their opposition to terms and conditions that they consider to be inconsistent with this Final Judgment, and to make such recommendations as to different or additional terms and conditions that they believe are consistent with this Final Judgment.

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to this Final Judgment, the trustee shall notify plaintiff and defendants of the proposed divestiture. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the definitive agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff in its sole discretion may request from defendants, the proposed Acquirer, or any other third party additional information concerning the proposed divestiture and the proposed Acquirer. Defendants and the trustee shall furnish any additional information requested from them within ten (10) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed Acquirer, and any third party, whichever is later, plaintiff shall provide written notice to defendants and the trustee stating whether or not it objects to the proposed divestiture. Any such notice objecting to a proposed divestiture shall state the reasons therefore. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section IV.F. of this Final

Judgment. Upon objection by plaintiff, the divestiture proposed under Section IV shall not be consummated. Any objection by defendants under Section IV.F. of this Final Judgment must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice of execution of a definitive agreement required under this Section VI of this Final Judgment. Upon such objection by defendants, the proposed divestiture shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within ten (10) calendar days of the filing of the Hold Separate Stipulation and Order in this matter, defendants shall deliver to plaintiff an affidavit which describes in detail all actions defendants have taken and all steps implemented on an on-going basis to preserve the Platinum Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain the Platinum Assets as an active competitor; to maintain at current levels the management, staffing, sales, marketing and pricing of the Platinum Assets; and to commit resources, development and support to the Platinum Assets at a level not materially less than that committed prior to the announcement of Computer Associates' proposed acquisition of Platinum. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within ten (10) calendar days after such change is implemented.

B. Until one year after such divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Platinum Assets and to effect the ordered divestitures.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Platinum Assets.

IX.

FINANCING

Computer Associates is ordered and directed not to finance all or any part of any divestiture to any person made pursuant to this Final Judgment, or to enter into any agreement requiring or permitting the reporting to defendants of sales units or revenues of the products included in the Platinum Assets by the Acquirer or the payment of continuing royalties to defendants by the Acquirer.

X.

COMPLIANCE INSPECTION

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

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

Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

- (1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
- (2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview informally or to depose under oath and on the record, their officers, employees, and agents, 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, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in this Section shall be divulged by a representative of plaintiff 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 defendants to plaintiff, defendants represent and identify 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 defendants mark 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) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI.

RETENTION OF JURISDICTION

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 or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

DOCUMENTS UNDER SEAL

)	
UNITED STATES OF AMERICA,)	
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Plaintiff,)	
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EXHIBIT ONE TO PROPOSED FINAL JUDGMENT

**Pursuant to ORDER TO PLACE
EXHIBIT ONE TO FINAL JUDGMENT UNDER SEAL**

Filed May 25, 1999