

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. International Business Machines Corporation., U.S. District Court, S.D. New York, 1956 Trade Cases ¶68,245, (Jan. 25, 1956)**

Federal Antitrust Cases

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United States v. International Business Machines Corporation.

1956 Trade Cases ¶68,245. U.S. District Court, S.D. New York. Civil Action No. 72-344. Filed and entered January 25, 1956. Case No. 1115 in the Antitrust Division of the Department of Justice.

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**Headnote**

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**Sherman Antitrust Act**

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Sale of Tabulating Machines, Cards, and Parts—Rendition of Services.**—A manufacturer of tabulating and electronic data processing machines and tabulating cards was required by a consent decree to offer (1) to sell new standard tabulating and electronic data processing machines, (2) to sell new special purpose tabulating or electronic data processing machines to the user for whom it had been designed, and (3) to sell, during a specified period of time, any of its tabulating or electronic data processing machines which it leases to such lessees. The decree provided for the establishment of sales prices by the manufacturer, and stated that sales prices and terms and conditions of sale should not be substantially more advantageous to the manufacturer than the lease charges, terms, and conditions for such machines. The manufacturer was required to furnish specified reports to the Attorney General regarding such sales.

The manufacturer was ordered to offer to render, without separate charge, to purchasers of its machines the same type of services, other than maintenance and repair services, which it renders without separate charge to lessees of the machines; to offer to maintain and repair, at reasonable and nondiscriminatory prices and terms, machines owned by others; and to offer to sell, at reasonable and nondiscriminatory prices and terms, to owners of such machines and to persons engaged in the business of maintaining and repairing such machines repair and replacement parts and subassemblies for any machines which it manufactures.

The manufacturer was required, for a specified period of time, to offer to sell rotary presses of the types used by it for the manufacture of tabulating cards, upon reasonable and nondiscriminatory terms and conditions, to specified classes of persons; and to offer to sell, from its reserve stocks of paper suitable for the manufacture of such cards, to specified classes of persons any such paper not required for the reasonably anticipated needs of the manufacturer.

Also, the manufacturer was required to solicit, in specified ways, from dealers in second-hand business machines orders for the purchase of any used tabulating or electronic data processing machine acquired pursuant to the provisions of the decree. The price charged by the manufacturer for such machines was not to exceed 85 per cent of the price computed for the sale of new machines.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Patents—Technical Information.**—A manufacturer was required by a consent decree to grant to any person an unrestricted, nonexclusive license to make, have made, use, and vend tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems under any, some, or all of its existing and future patents (patents controlled by the manufacturer during a 5-year period after a specified date); and the manufacturer and its subsidiaries were ordered to grant upon written request and without compensation to a person licensed under any of the manufacturer's existing or future patents,

pursuant to the decree, with respect to any products manufactured in the United States pursuant to such license, a nonexclusive grant of immunity from suit under any corresponding foreign patent owned or controlled by the manufacturer or a subsidiary of the manufacturer. The decree provided that the manufacturer could charge a reasonable royalty, except for licenses under existing patents to make, have made, use, and vend tabulating cards and/or tabulating card machinery, which shall be royalty free. The decree further specified other provisions which could be included in such licenses, the procedures for establishing a reasonable royalty, and the conditions under which licenses would not have to be granted.

The manufacturer was required, for a period of five years, to furnish such licensees technical information with respect to, and for use in the manufacture in the United States of, specified tabulating machines, tabulating cards, or tabulating card machinery manufactured by or to the order of the manufacturer and used commercially at any time during the five years immediately preceding the entry of the decree. Reasonable and nondiscriminatory charges for the furnishing of such information could be made; however, such charges could not exceed the cost of furnishing the information.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Divorcement—Service Bureau Business.**

—A manufacturer of tabulating and electronic data processing machines and tabulating cards was required by a consent decree to transfer all its contracts for service bureau business (the preparation of information and reports for others on a fee basis) to a new corporation, which could be wholly owned by the manufacturer. The manufacturer was thereafter prohibited from engaging in the service bureau business, except on a nondiscriminatory basis for the new corporation and for service bureaus operated by other persons.

The new corporation was prohibited from (1) using the corporate name of the manufacturer, (2) employing any person also employed by the manufacturer, (3) subleasing space from the manufacturer at the locations of more than 20 per cent of its bureaus, or (4) having a board of directors, the majority of which is constituted of persons who previously have not been approved by the court. The new corporation was ordered to maintain separate and complete corporate records and accounts and to charge for services rendered, prices based upon rates which fairly reflect all expenses properly chargeable to such services.

Also, the manufacturer was required to notify service bureaus using its machines of the availability of new machines for purchase or lease; prohibited from furnishing to the new corporation any machines, except upon the same terms and conditions that such machines are furnished to any other service bureau; and required to furnish, at a reasonable charge, to specified classes of persons copies of any pamphlets, books of instruction, or other similar documents, which it furnishes to the new corporation, relating to the operation and application of its machines for service bureau business.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Divestiture—Tabulating Card Business.**

—A manufacturer of tabulating and electronic data processing machines and tabulating cards was required by a consent decree to divest itself, seven years from the date of the entry of the decree, of such part of its then existing capacity for the manufacture of tabulating cards as may then be in excess of 50 per cent of the total capacity for the manufacture of tabulating cards in the United States, unless subsequent to four years after the entry of the decree, the manufacturer shall have shown to the satisfaction of the court that substantial competitive conditions exist in the manufacture, sale, and distribution of tabulating cards or that such divestiture is not then necessary or appropriate.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Furnishing Training or Information Relating to the Maintenance and Operation of Tabulating Machines.**

—A manufacturer of tabulating and electronic data processing machines and tabulating cards was required (1) to afford to any person, for a specified period of time, who is engaged, or proposes to engage, in the repair and maintenance or distribution of the manufacturer's machines the opportunity to obtain training in the repair and maintenance of such machines, (2) to furnish to any owner of its tabulating or electronic data processing machines and to any person eligible to receive such training copies of any technical manuals, books of instruction, pamphlets, diagrams, or similar documents, and (3) to furnish to purchasers and lessees of its machines copies of manuals, books of instruction, pamphlets, diagrams, or similar documents which pertain to

the operation or application of such machines. A reasonable charge could be made for the furnishing of such information.

**Department of Justice Enforcement and Procedure—Consent Decrees—Enforcement—Burden of Proof.**

—A consent decree, which ordered a manufacturer of tabulating and electronic data processing machines to offer such machines for sale, provided that in any suit or proceeding by the Government in which the manufacturer's compliance or noncompliance with such order is an issue, the burden of proof should be upon the manufacturer to establish that it had complied with the order.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Acquiring Used Tabulating Machinery.**

—A manufacturer was prohibited by a consent decree from acquiring any used tabulating or electronic data processing machine of its manufacture owned by another person or a new service bureau corporation otherwise than as (1) a trade-in on a purchase of any such machine from the manufacturer or (2) a reasonable credit against sums then or thereafter payable to the manufacturer by a customer.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Restrictions on Lessees and Purchasers of Machines—Tie-in Arrangements.**

—A manufacturer of tabulating and electronic data processing machines and tabulating cards was prohibited by a consent decree from (1) entering into any lease, during a specified period of time, for a standard tabulating or electronic data processing machine for a period longer than one year, unless such lease is terminable after one year by the lessee upon not more than three months' notice to the manufacturer, (2) requiring any lessee or purchaser of a standard machine to disclose to the manufacturer the use to be made of the machine, (3) requiring any purchaser of such machines to have them repaired or maintained by the manufacturer or to purchase parts and subassemblies from the manufacturer. The manufacturer was prohibited from requiring any lessee or purchaser of its machines to purchase tabulating cards from the manufacturer and from prohibiting, or in any way subjecting to its control or approval, experimentation with such machine or alterations in or attachments to such machine. Also, the manufacturer was prohibited from conditioning the sale or lease of any standard machine upon the purchase or lease of any other such machine.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Discrimination.—**

A manufacturer of tabulating and electronic data processing machines and tabulating cards was prohibited by a consent decree from (1) entering into any understanding with or otherwise inducing any manufacturer, distributor, or vendor of raw materials suitable for the manufacture of tabulating cards to discriminate against or refuse to deal with third persons who buy or offer to buy such raw materials, (2) discriminating in price between different purchasers of tabulating cards of like grade and quality, except under specified circumstances, (3) prescribing or maintaining arbitrary, unreasonable, or unnecessary specifications for tabulating cards used in standard and special purpose tabulating machines leased or repaired and maintained by the manufacturer, or (4) entering into any understanding with or otherwise inducing any manufacturer, distributor, or vendor of tabulating card machinery to discriminate against or refuse to deal with third persons who buy or order to have manufactured and buy such machinery.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Institution of Patent Infringement Suits.**

—A manufacturer of tabulating and electronic data processing machines and tabulating cards was prohibited by a consent decree from instituting or threatening to institute any patent infringement action against any person for acts of infringement of existing patents alleged to have occurred prior to the entry of the decree, except by way of counterclaim in any action brought against the manufacturer.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Patent Licensing Agreements—Right to Grant Sublicenses.**

—A manufacturer of tabulating and electronic data processing machines was prohibited by a consent decree, for a specified period of time, from entering into any understanding relating to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems which (1) grants exclusively to the manufacturer a license, sublicensing right, or immunity under any patent, unless (a) the manufacturer shall have failed to obtain a nonexclusive license under such patent and (b) such grant shall permit the manufacturer to grant sublicenses under such patent; and (2) provides for disclosure to the manufacturer, on an exclusive basis, of any invention, formula, process, or technical information, other than the results of joint development programs undertaken by

the manufacturer and such person or work done by established research or engineering organizations on behalf of the manufacturer.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Retaining Services of Inventor or Engineer.**—A manufacturer of tabulating and electronic data processing machines and tabulating cards was prohibited by a consent decree from retaining any individual inventor or engineer for work on the design and development of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, except (1) as an employee having regular hours of employment or a retired employee of the manufacturer, or (2) under contracts for research, development, or engineering services which commit the inventor or engineer to provide personal services for periods of not more than one year.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Allocation of Markets—Restrictions on Imports or Exports.**—A manufacturer of tabulating and electronic data processing machines and tabulating cards was prohibited by a consent decree from entering into any understanding with any other person engaged in the manufacture, sale, distribution, or repair or maintenance of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems to (1) divide sales or manufacturing territories, (2) allocate markets among manufacturers, or (3) limit or prevent the import into, or export from, the United States of such cards or machinery.

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#### Final Judgment

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

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

It is hereby ordered, adjudged, and decreed as follows:

#### I

##### [ *Sherman Act* ]

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

#### II

##### [ *Definitions* ]

As used in this Final Judgment:

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

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

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

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

(e) "Electronic data processing system" shall mean any machine or group of automatically intercommunicating machine units capable of entering, receiving, storing, classifying, computing and/or recording alphabetic and/or numeric accounting and/or statistical data without intermediate use of tabulating cards, which system includes one or more central data processing facilities and one or more storage facilities, and has either

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

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

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

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

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

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

(i) "New" machines shall mean tabulating or electronic data processing machines produced (1) by original assembly of new and/or used parts or components or, (2) as to any type of machine generally offered for lease which is not currently being so assembled but is being produced by rebuilding existing machines, by such rebuilding.

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

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

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

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



(n) "Future patent" (or "future patents") means any United States letters patent or patent application (exclusive of existing patents), and any division, continuation, reissue or extension of such patent, relating, but only in so far as it relates, to tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems, owned or controlled by IBM during the period of five years following January 1, 1956, or under which IBM during such period has the power to grant licenses or sublicenses to other persons.

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

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

### III

#### [ *Applicability of Judgment* ]

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

### IV

#### [ *Sale of Tabulating Machines* ]

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

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

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

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

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

(c) IBM is hereby ordered and directed to:

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

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

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

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

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

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

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

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

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

## V

### [ *Used Tabulating Machines* ]

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

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

(c) IBM is hereby ordered and directed:

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

(2) commencing one year after the entry of this Final Judgment, to furnish at intervals of not more than 30 days to all dealers in second-hand business machines who shall within the preceding 180 days have made written requests therefor, and to at least one national trade association of such dealers, a list of all tabulating and electronic data processing machines acquired by IBM pursuant to paragraph (a) of this Section V since the date of the making of the last such list, and the prices thereof; and

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

## VI

[ *Repair and Maintenance Services—Parts* ]

IBM is hereby ordered and directed:

- (a) to offer to render, without separate charge, to purchasers from it of tabulating or electronic data processing machines the same type of services, other than maintenance and repair services, which it renders without separate charge to lessees of the same types of machines;
- (b) to offer, commencing one year after the entry of this Final Judgment and so long thereafter as IBM shall continue to render repair and maintenance service, to maintain and repair at reasonable and nondiscriminatory prices and terms IBM tabulating and electronic data processing machines for the owners of such machines; provided that, if any such machine shall be altered, or connected by mechanical or electrical means to another machine, in such a manner as to render its maintenance and repair impractical for IBM personnel having had the standard training and instruction provided by IBM to such maintenance and repair personnel, then IBM shall not be required by this Final Judgment to render maintenance and repair service for such IBM machine; and
- (c) to offer to sell at reasonable and nondiscriminatory prices and terms, to owners of IBM tabulating or electronic data processing machines (whether or not the purchaser receives IBM repair and maintenance service) and to persons engaged in the business of maintaining and repairing such machines and during the period when IBM has such parts and subassemblies available for use in its leased machines, repair and replacement parts and subassemblies for any tabulating machines or electronic data processing machines manufactured by IBM.

VII

[ *Restrictions on Lessees and Purchasers* ]

- (a) IBM is hereby enjoined and restrained, for a period of ten years after entry of this Final Judgment, from entering into any lease for a standard tabulating or electronic data processing machine for a period longer than one year, unless such lease is terminable after one year by the lessee upon not more than three months' notice to IBM.
- (b) IBM is hereby enjoined and restrained from requiring any lessee or purchaser of an IBM standard tabulating or electronic data processing machine to disclose to IBM the use to be made of the machine.
- (c) IBM is hereby enjoined and restrained from requiring any purchaser of an IBM tabulating or electronic data processing machine to have it repaired or maintained by IBM or to purchase parts and subassemblies from IBM.
- (d) IBM is hereby enjoined and restrained from:

- (1) requiring any lessee or purchaser of an IBM tabulating or electronic data processing machine to purchase tabulating cards from IBM or directly or indirectly discriminating against any such person by reason of the fact that cards not manufactured by IBM are used,
- (2) prohibiting, or in any way subjecting to IBM control or approval, experimentation with such machine, or
- (3) prohibiting, or in any way subjecting to IBM control or approval, alterations in or attachments to such machine;

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

VIII

[ *Service Bureau Business* ]



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

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

- (1) using any corporate name containing the words International Business Machines or IBM;
- (2) employing any person also employed by IBM, or any person to solicit for IBM any order for the sale or lease of any IBM tabulating or electronic data processing machines or systems;
- (3) after three years following the date of the entry of this Final Judgment, subleasing space from IBM at the locations of more than 20% of its bureaus; or
- (4) for a period of five years after the organization of the Service Bureau Corporation, having a board of directors the majority of which is constituted of persons who previously have not been approved by this Court.

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

- (1) maintain, in accordance with good accounting practice, separate and complete corporate records and accounts which shall be audited annually by independent public accountants; and
- (2) charge for services rendered by it prices based upon rates which shall fairly reflect all expenses properly chargeable thereto provided, however, that nothing herein contained shall prevent the Service Bureau Corporation from reducing any price to meet an equally low price of a competitor.

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

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

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

## IX

### [ *Repair and Maintenance Training and Information* ]

IBM is hereby ordered and directed:

(a) For a period of five years from the date of this Final Judgment, upon written request, to afford to any person (other than agents or employees of a manufacturer of tabulating or electronic data processing machines) who is engaged, or proposes in good faith to engage, in the repair and maintenance or distribution of IBM tabulating machines and/or electronic data processing machines the opportunity to obtain training in the repair

and maintenance of such IBM machines, which shall be substantially equivalent in method and nature to such training then being given by IBM to its customer engineering employees. Reasonable and nondiscriminatory charges may be made to reimburse IBM for the cost of furnishing such instruction and any materials furnished to such person taking instruction.

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

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

**X**

[ *Tabulating Cards—Prohibitions, Sales, Divestiture*]

(a) IBM is hereby enjoined and restrained from:

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

(2) Discriminating in price between different purchasers of tabulating cards of like grade and quality, provided that this provision shall not prevent differentials which (A) make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered, or (B) are made to meet an equally low price of a competitor. In any proceeding to enforce the provisions of this paragraph, IBM shall have the burden of establishing to the satisfaction of this Court that its price differentials are in fact so justifiable.

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

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

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

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

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

## XI

### [ *Licensing of Patents* ]

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

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

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

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

- (1) the license may be nontransferable;
- (2) a reasonable royalty may be charged (except for licenses under existing patents to make, have made, use and vend tabulating cards and/or tabulating card machinery, which shall be royalty-free), which royalty shall be non-discriminatory as among royalty-paying licensees procuring the same rights under the same patents, provided that the royalty charged an applicant who grants a patent license to IBM may reflect the fair value of such license;
- (3) reasonable provision may be made for periodic royalty reports by the licensee and inspection of the books and records of the licensee by an independent auditor, an independent engineer or any person acceptable to both licensor and licensee, who shall report to the licensor only the amount of the royalty due and payable;
- (4) reasonable provision may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties or permit the inspection of his books and records as hereinabove provided; and

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

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

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

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

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

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

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

(4) in any event the applicant agrees upon request to grant without compensation, for any products manufactured in the United States pursuant to such license to IBM, a nonexclusive grant of immunity

to IBM and any subsidiary of IBM from suit under any corresponding foreign patent or application then owned or controlled by said applicant.

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

## XII

### [ *Patent Infringement Suits* ]

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

## XIII

### [ *License Agreements—Inventors* ]

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

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

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

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

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

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



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

#### XIV

[ *Technical Information* ]

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

- (1) the IBM tabulating machines listed in Appendix A of this Final Judgment;
- (2) tabulating cards; or
- (3) tabulating card machinery

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

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

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

#### XV

[ *Allocation of Markets—Tie-in Sales* ]

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

- (1) divide sales or manufacturing territories;
- (2) allocate markets among manufacturers; or
- (3) limit, restrain, or prevent the import into, or export from, the United States, its territories and possessions, of tabulating cards, tabulating card machinery, tabulating machines or systems, or electronic data processing machines or systems.

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

## XVI

### [ Notice of Judgment—Report to Attorney General]

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

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

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

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

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

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

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

## XVII

### [ Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall upon request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to IBM made to its principal office be permitted, subject to any legally recognized claim of privilege approved by this Court, (a) access during the officer hours of IBM to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of IBM relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of IBM but without restraint or interference from it, to interview officers, directors,

agents, or employees of IBM, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, IBM upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

#### XVIII

##### [ *Disclosure of Information* ]

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

#### XIX

##### [ *Jurisdiction Retained* ]

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

#### XX

##### [ *Prior Judgments* ]

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

#### Appendix A

##### IBM STANDARD TABULATING MACHINES

Class	Type	Name
Key Punches	001	Mechanical Punch
	010	Card Punch
	011	Electric Punch
	012	Duplicating Punch
	015	Motor Drive Punch
	016	Motor Drive Duplicating Punch
	024	Card Punch
	026	Printing Card Punch
	031	Duplicating Punch
	036	Alphabetic Printing Punch
Key Verifiers	051	Mechanical Verifier
	052	Motor Drive Verifier

	053	Motor Drive Verifier
	054	Alphabetic Verifier
	055	Verifier
	056	Verifier
Card-Paper Tape Punches		
	043	Tape-Controlled Card Punch
	044	Tape-Controlled Card Punch
	046	Tape-to-Card Punch
	047	Tape-to-Card Printing Punch
	063	Card-Controlled Tape Punch
Typewriter Punches		
	824	Typewriter Card Punch
	826	Typewriter Card Punch
	884	Typewriter Tape Punch
Data Transceivers		
	065	Data Transceiver Card Unit
	66	Printing Data Transceiver Card Unit
	067	Telegraph Signal Unit
	068	Telephone Signal Unit
Reproducers, Gang Punches and Summary Punches		
	501	Numbering Gang Punch
	512	Reproducing Punch
	513	Reproducing Punch
	514	Reproducing Punch
	516	Duplicating Summary Punch
	517	Gang Summary Punch
	518	Gang Summary Punch
	519	Document Originating Machine
	522	Duplicating Summary Punch
	523	Gang Summary Punch
	524	Duplicating Summary Punch
	526	Printing Summary Punch
	528	Accumulating Reproducer
	549	Ticket Converter
Sorters		
	071	Vertical Sorter
	075	Card Counting Sorter

	080	Sorter
	082	Sorter
	083	Sorter
Collators		
	077	Collator
	089	Alphabetic Collator
Interpreters		
	550	Numeric Interpreter
	551	Check Writing Interpreter
	552	Alphabetic Interpreter
	557	Alphabetic Interpreter
Accounting Machines		
	090	3-Counter Accounting Machine
	091	3-Counter Vertical Accounting Machine
	092	5-Counter Accounting Machine
	093	5-Counter Accounting Machine 222 Type III E, 5-Counter, 5-Bank Accounting Machine
	232	Type III G, 5-Counter 5-Bank Accounting Machine
	285	Electric Accounting Machine
	297	Electric Accounting Machine
	298	Electric Accounting Machine 376 Utility Biller
	402	Alphabetic Accounting Machine
	403	Alphabetic Accounting Machine with Multiple Line Printing
	404	Alphabetic Accounting Machine
	405	Alphabetic Accounting Machine 407 Accounting Machine
	416	Numerical Accounting Machine
	419	Numerical Accounting Machine
	916	Bill Feed
	920	Bill Feed
	921	Automatic Carriage
	922	Tape-Controlled Carriage
	923	Tape-Controlled Carriage
	924	Dual-Feed Tape Carriage
	933	Carbon Ribbon Feed Device
	934	Carbon Ribbon Feed Device
Calculating Punches		



	601	Multiplier
	602	Calculating Punch
	602A	Calculating Punch
	604	Electronic Calculating Punch
	521	604 Punch Unit
Cardatypes		
	854	Cardatype
	856	Cardatype
	857	Secondary Document Writer
	971	Auxiliary Keyboard Unit
	858	Cardatype Accounting Machine
	534	Cardatype Card Punch
	536	Cardatype Printing Card Punch
	863	Arithmetic Unit
	866	Non-transmitting Typewriter
	868	Transmitting Typewriter
	961	Tape Punch Unit
	972	Auxiliary Keyboard Unit
Miscellaneous		
	101	Electronic Statistical Machine
	954	Facsimile Posting Machine
	955	Numbering Machine