Curtain Time for the I.B.M. Case
By WILLIAM D. SMITHThe New York TimesThe New York Times
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Curtain Time for the I. B. M. Case

6 Years in the Making, Giant Antitrust Action Finally Comes to Trial

By WILLIAM D. SMITH

Tomorrow, barring some totally unforeseen event, what is perhaps the most important antitrust trial in history, the United States v. the International Business Machines Corporation, will begin in Federal Court for the Southern District of New York in Foley Square.

The suit charges I.B.M. with monopolizing the data processing industry and asks for a break up of the giant corporation into "several discrete, separate, independent and competitively balanced entities."

The trial comes six years after the suit was filed as the last official act of the Justice Department under the Administration of President Lyndon B. Johnson. The outcome of the case will set the future course of the data processing industry, which will probably become the world's largest business as soon as the nineteen-eighties.

Even before the trial begins, the case is a mass of legal superlatives. The Justice Department has acknowledged that it is the largest antitrust action it has ever undertaken. I.B.M.'s defense operations are reckoned to be the most extensive ever. The number of documents gathered in the discovery process are thought to be reaching beyond the 50 million level; a total, ironically, that no one could have contemplated dealing with before the advent of the computer.

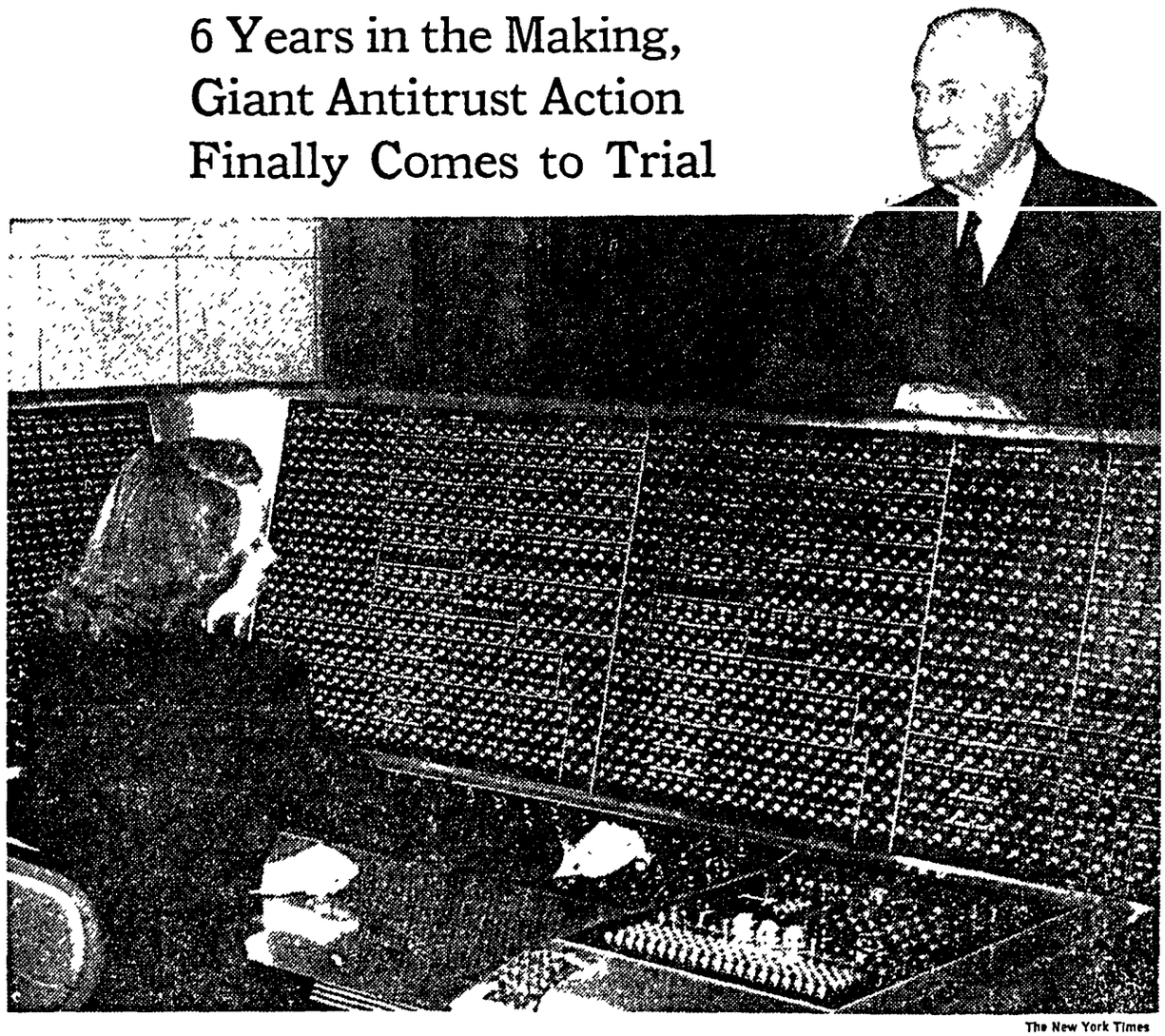
And then there is the fact that the stock of I.B.M. has the highest aggregate value of any company in the world.

Although I.B.M. is ranked only sixth in terms of assets and ninth in terms of sales among the nation's industrial concerns the marketplace gives it a value higher than that of the Exxon Corporation, the largest industrial and General Motors Corporation, the second largest, combined.

In fact, its value is roughly equivalent to that of all American Stock Exchange companies combined.

Thus any court decision affecting I.B.M. will have broad ramifications in the securities business.

The case will be presided over and the decision rendered solely by Chief Judge David N. Edelstein. Judge Edelstein, a 65-year-old native New Yorker, is probably best qualified in the nation to handle the complexities of the case. He signed the 1956 I.B.M. consent decree which ended the last legal skirmish with the Justice Department and he has overseen its enforcement since.



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Thomas J. Watson, I.B.M.'s founder, with Selective Sequence Electronic Calculator in 1948

The 1956 consent decree basically required that I.B.M. sell, as well as lease, its tabulating and computer lines; that the company offer to purchasers without separate charge the same services, other than maintenance, it provided to those who leased those machines, and that it establish a separate subsidiary to conduct its service-bureau business.

Judge Edelstein has let it be known that he considers the current case a landmark.

"It's universality, its complexity, and its sheer volume of documentation beggars the imagination. But it is even larger in a sense than being the largest case," he said. "Its potential impact and consequences involve not only the data processing industry but such things as relations with foreign governments and the balance of trade. It's not like "A" suing "B". This case involves the public and the world."

Judge Edelstein anticipates that the trial will take a year and that it will take another year for him to come to a decision. Appeals could take the case into 1980, according to informed legal sources.

The Justice Department suit, designated 69 Civil 200, charges I.B.M. with violation of Section 2 of the Sherman Act. This section of the law, used less frequently than others, involves "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize."

In order to convict I.B.M. under Section 2 the Government must prove both that a monopoly exists and that the defendant acted deliberately to create or continue the monopoly situation.

The Government's chief arguments are that I.B.M. resorted to the following practices to achieve a monopoly:

¶Bundling — That I.B.M. engaged in a practice called "bundling", which means marketing a combination of products and services for a single price, in order to forestall the growth or entry of competitors.

¶Fighting machines—That I.B.M. announced and introduced selected computers with unusually low profit expectations and also introduced products prematurely in order to discourage prospective customers from acquiring computers marketed by competitors.

¶Leasing—That I.B.M. encouraged a lease-oriented market environment in order to discourage the entry or expansion of competitor.

¶Educational allowances—That I.B.M. restrained competitors from entering, remaining in or expanding certain markets by granting discriminatory allowances and other considerations to educational and scientific institutions for the purpose of maintaining its installations at prestige accounts and insuring familiarity among graduates of educational institutions.

The Justice Department's pretrial brief in general portrays data processing as a young and rapidly growing industry and points to I.B.M. as the dominant force that has acted to constrain and direct the growth of the industry along lines beneficial to I.B.M.

I.B.M. in its pretrial brief argues that this is a false view of the industry. It contends that "I.B.M.'s success is not due to any violation of Federal Law. It is an achievement based upon the skill and hard work of thousands of I.B.M. employes. It is the natural consequence of superior effort and competition in a free and evolving market place."

The brief cites legal precedents and uses statements from the Government's own witnesses, admissions from competitors and quotes from the Justice Department's brief itself.

I.B.M. enters court tomorrow undefeated after more than a dozen antitrust actions brought by the Government and competitors, although it has had some close scrapes. It entered into a consent agreement with the Justice Department in 1956, and has settled out of court with a number of competitors.

The most important of the private cases was a 1973 settlement with the Control Data Corporation which called for I.B.M. to sell its Service Bureau Corporation to C.D.C. for $16-million, and to pay C.D.C. about $100-million over a 10 year period for various expenses and services.

Also in 1973, I.B.M. was found guilty of violations of the Sherman Act in Federal District Court in Tulsa, Okla., and ordered to pay treble damages of $352.5-million to the Telex Corporation, the plaintiff, a manufacturer of peripheral equipment for computers.

But the trial judge, A. Sherman Christensen, subsequently reduced the payments to $259.5-million and last January the Federal Court of Appeals in Denver overturned the I.B.M. conviction entirely. Telex is appealing this decision to the Supreme Court.

Most observers feel that the overturn of the Telex

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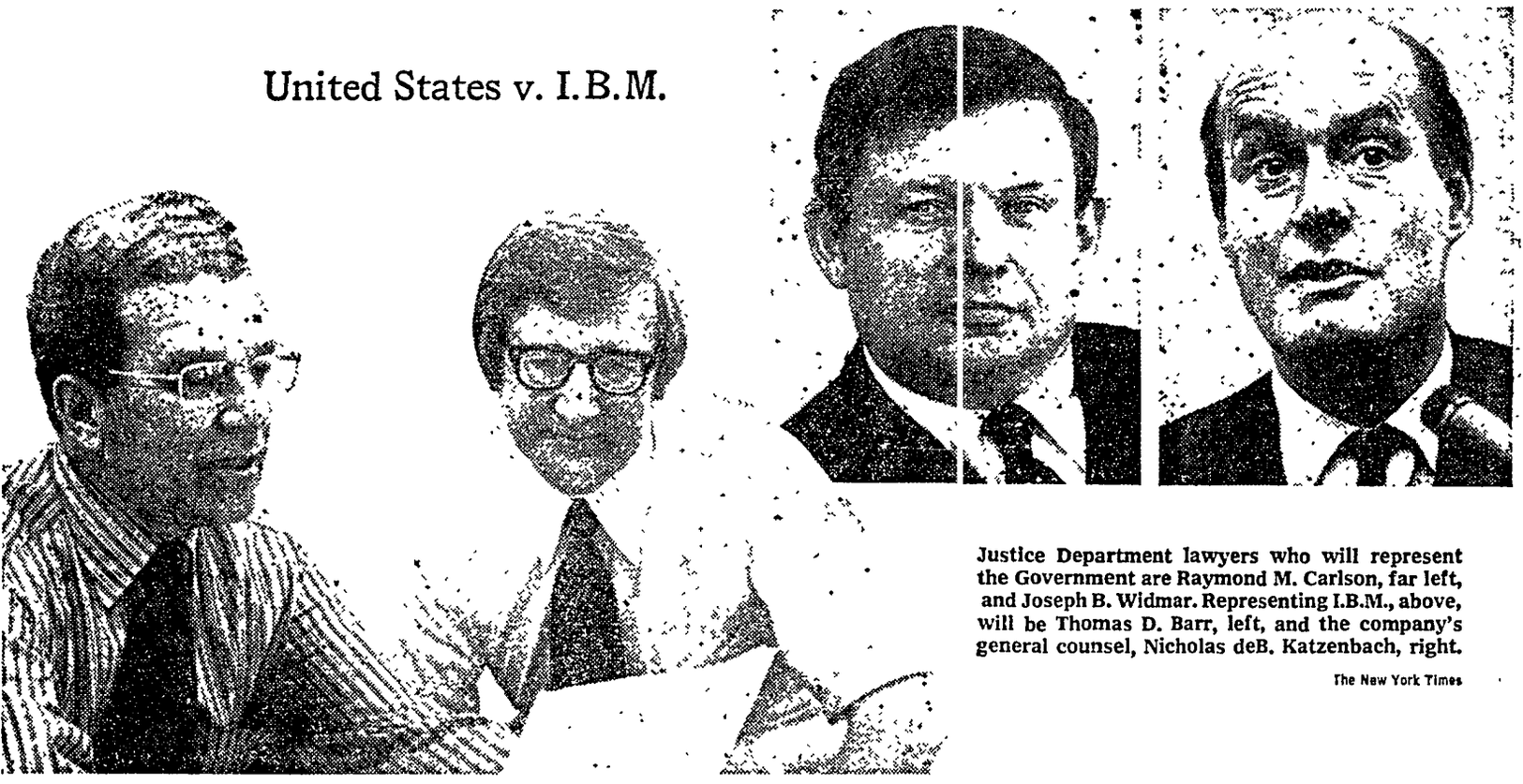
Curtain Going Up on Computer Case

United States v. I.B.M.



Justice Department lawyers who will represent the Government are Raymond M. Carlson, far left, and Joseph B. Widmar. Representing I.B.M., above, will be Thomas D. Barr, left, and the company's general counsel, Nicholas deB. Katzenbach, right.

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decision has damaged to some degree the Justice Department case, partially because it amended its complaint late last year to contain some of Telex's charges with regard to peripheral equipment.

Many informed observers, both legal and industry, feel that a central issue of the case will be definition of what constitutes a relevant market with regards to monopoly.

Mark Green of the Corporate Accountability Research Group, a Ralph Nader organization, said that the I.B.M. case "may set legal precedent in defining relevent market."

James C. Blair, computer analyst for the brokerage firm White, Weld & Co., commented, "Market definition is the primary issue and has to be resolved early."

The Government's contention is that I.B.M. has controlled between 63 and 73 per cent of a main frame computer systems market in which it has competed through the year against eight other companies — Honeywell, Inc.; the Control Data Corporation; the Sperry Rand Corporation; the Burroughs Corporation; the National Cash Register Company ; the Digital Equipment Corporation; the RCA Corporation, and the General Electric Corporation.

I.B.M. contends that this is a myopic view and that there are anywhere from scores to thousands of companies active in the market.

The I.B.M. case brings to the fore once again one of the overriding questions of antitrust law—is bigness bad in itself?

Only on rare occasions have the nation's antitrust laws, which were introduced in the 1890's, been used to break up existing corporations. The most significant examples involved the Standard Oil Company and the American Tobacco Company.

In 1911, the Supreme Court ordered the dissolution of each, setting forth in the process the "rule of reason."

It stated, in effect, that big was not necessarily synonomous with bad, and that only trusts that had achieved size through predatory practices were to be dissolved. A "good trust," as it found the United States Steel Corporation to be nine years later, would be permitted to continue.

A decision involving the Aluminum Corporation of America in 1945, to a large degree revised the "rule of reason." Alcoa's sin was simply size, not predatory behavior.

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The Government, however, did not break up Alcoa, nor did it break up the United Shoe Machinery Company in a similar case in 1953. It forced other remedies.

In the I.B.M. case the Government is decidedly asking for a breakup, although some segments of the industry are less convinced of the need for it than is the Government.

William C. Norris, chairman of Control Data, has commented, "Anyone who has tried to compete with I.B.M. and many of these are no longer here to tell it, knows first hand the enormous strengths and overwhelming dominance possessed by I.B.M.

But, he added, "We strongly disagree with the Government's announced solution of splitting up I.B.M. into a number of computer systems companies. We feel that this will stifle the industry and prevent technical advance, for with a number of "little" I.B.M.'s (each larger than its competitors) manufacturing and marketing products, users will gravitate toward the compatible I.B.M. technologies and non-I.B.M. companies will eventually wither away."

Charles P. Licht, head of Applied Computer Techniques, Inc., a computer service and software company, said, "I.B.M. has been competing unfairly for years but divestiture would hurt everyone more than I.B.M. If I.B.M. loses, it will win."

Some experts believe that the case will yet be settled by another consent decree.

"The trial will be started but not concluded," said Dan Mandresh of Alliance One Institutional Services. A consent decree is in the best interests of the Government, I.B.M. and the public. It would be less drawn out and would be more realistic than an externally imposed judgment which would require the wisdom of a Solomon."

A. G. Biddle, executive director of the Computer Industry Association, which represents some 40 concerns in various segments of the computer industry excluding the major main frame area and is generally regarded as a spearhead of anti-I.B.M. activity, said his membership was split on whether it would prefer a consent decree or a decision by the court.

"It is a question of whether you go for the long haul of a court decision that will make the world a better place for decades or take a compromise that allows you to be around to see the next decade," he said. "With a court case the industry is at least two years away from any change in the status quo. A consent decree would keep the industry alive."

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Mr. Blair of White, Weld believes the case will end with a consent degree possibly involving:

¶A modest change of certain I.B.M business practices relating to announcements of products and specifications on new equipment.

¶Sharing of new technology and software with competitors.

¶Establishment of an industry standards group with full I.B.M. participation and cooperation.

He said that some agreement on limiting I.B.M.'s market share in certain submarkets might be possible, but not likely.

But if the Justice Department wins its case then what form would divestiture take? Would the dissolution reflect the point of view of the customers, the shareholders or the competition? All would have considerably different results.

The two chief methods would be vertical—into several separate, self-contained companies—or horizontal—creating companies out of the various functions such as components, manufacturing, software and office equipment.

Exponents of both methods are serving as economist consultants to the Justice Department. Hendrik S. Houthakker of Harvard opts for vertical, into companies that would be competitive with each other and "balanced domestically and internationally."

Gerald Brock, professor at the University of Arizona, wants separate companies in central processing, peripheral equipment maintenance and marketing. Professor Brock believes that "lack of competitiveness in the main computer industry is a result of integrated systems selling rather than in concentration itself."

Mr. Biddle for his part is worried that whatever way the case is settled, the solutions presented will be more concerned with the past than the future.

"If the 1956 consent decree had looked to the future rather than the past there would be no suit now," he commented.

As for Judge Edelstein, the man who will decide, he stated at a pretrial hearing in 1973 that his intention was to prove that the legal system "is so advanced and so sophisticated that there is no case that is unmanageable and cannot go to trial. And proving that will be as important as the eventual outcome of this case."