

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
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.)	
_____)	

HOLD SEPARATE STIPULATION AND ORDER

It is hereby STIPULATED AND AGREED by and between the undersigned parties,
subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Hold Separate Stipulation and Order:

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 the proposed Final Judgment attached hereto.

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. The proposed Final Judgment attached hereto 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 I.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".

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Platinum Assets for the purpose of 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 and thereby to remedy the anticompetitive effects that plaintiff alleges would otherwise result from Computer Associates' proposed acquisition of Platinum. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Platinum Assets to be divested be maintained as an independent, economically viable, ongoing business concern during the pendency of the divestiture.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the

signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall abide by and comply with all the provisions of this Hold Separate Stipulation and Order, pending the Order's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the Order, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Hold Separate Stipulation and Order as though the same were in full force and effect as an order of the Court.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV.A. above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

V.

CONSENT TO AMENDMENT

A. Contemporaneously with the acceptance for payment of the tendered shares of Platinum by Computer Associates, Computer Associates shall convey to CIMS Lab, Inc. all of its rights, titles and interests in the CIMS product line, which includes CIMS MVS Resource

Accounting System; CIMS UNIX/NT; CIMS MVS Capacity Planner; CIMS VSE; CIMS VMS; CIMS Desktop; CIMS Report Writer (Spectrum Writer); and all products related to any of the foregoing (collectively, the “CIMS product line”). Such conveyance shall be pursuant to contracts and licenses executed prior to the filing of the Complaint in this matter and approved by plaintiff, in its sole discretion.

B. If defendants do not effectuate the conveyance of the CIMS product line at the time and in the manner specified in Section V.A. above, defendants consent:

- (1) to the filing of an Amended Complaint by the United States in this matter adding allegations relating to the product markets in which the CIMS product line is developed, marketed and sold, and such other allegations relating to the CIMS product line as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;
 - (2) to the filing of a proposed Amended Final Judgment in this matter adding the CIMS product line to the definition of “Divested Product” contained in Section II.E., and such other amendments to the proposed Amended Final Judgment as plaintiff in its sole discretion deems necessary to effectuate full relief as regards the CIMS product line;
 - (3) that the CIMS product line shall be incorporated within the definition of “Divested Product” contained in Section I.E. of this Hold Separate Stipulation and Order;
- and

- (4) to be bound as fully in regards to the CIMS product line as defendants are regarding any other Divested Product presently incorporated in this Hold Separate Stipulation and Order and the proposed Final Judgment attached hereto.

VI.

HOLD SEPARATE PROVISIONS

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall use all reasonable efforts to preserve, maintain, and to the maximum extent feasible operate the Platinum Assets as an independent competitor with management, research, development, and operations of such assets held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the development, production, marketing or sale of Divested Products with defendants' other operations. Within ten (10) calendar days of the filing of the Complaint in this matter, defendants will inform plaintiff of the steps taken to comply with this Hold Separate Stipulation and Order.

B. Within ten (10) days of the filing of the Complaint, defendants shall take all reasonable steps necessary to ensure (1) that the Platinum Assets will be maintained and operated as an independent, ongoing and economically viable competitor in the development, production, marketing and sale of the Divested Products; (2) that management will be provided for the Platinum Assets that is separate from the management of defendants' other operations; (3) that the management of the Platinum Assets will not be influenced by defendants; and (4) that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Platinum Assets will to the maximum extent feasible be kept separate and apart from the defendants' other operations. The defendants' influence over the Platinum

Assets shall be limited to that necessary to carry out defendants' obligations under this Stipulation and Order and the Final Judgment. Defendants shall receive all historical, aggregate financial information relating to the Platinum Assets only to the extent necessary to allow defendants to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports. Nothing herein shall preclude defendants from examining any and all agreements acquired from Platinum and administering all such agreements.

C. Except as is provided in this Hold Separate Stipulation and Order or is otherwise reasonably necessary to conduct the business of Platinum as it relates to products and services other than the Divested Products, defendants shall not collect or solicit competitively sensitive or other confidential information relating to the operations of the Platinum Assets from (1) information that currently is within the possession, custody or control of Platinum, (2) any current Platinum director, officer, manager, employee or other agent or (3) any former Platinum director, officer, manager, employee, or other agent who currently is subject to a nondisclosure agreement with Platinum. All nondisclosure agreements to which Platinum is a party will continue in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of Platinum did not occur, and the defendants will notify all of Platinum's employees as to their continuing obligations under such agreements. Information pertaining to the Platinum Assets that Computer Associates has obtained pursuant to its due diligence of Platinum to the extent feasible shall be segregated from the defendants' other information, kept confidential and not used by the defendants. Any nondisclosure agreements pursuant to which any information was collected during any due diligence review inspection will remain in effect as to any information that relates to the Platinum Assets as if Computer Associates' proposed acquisition of

Platinum did not occur, and the defendants will notify all persons who received any due diligence information as to their continuing obligations under such agreements.

D. Defendants shall use all reasonable efforts to (1) maintain or increase the current sales of the Divested Products, and (2) maintain at current or previously approved levels, whichever are higher, internal research and development funding (including, but not limited to, any funding or approved funding for obtaining or assuring Year 2000 compliance), promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divested Products.

E. Defendants shall provide and maintain sufficient working capital or other financial resources to maintain the Platinum Assets as an economically viable, ongoing business.

F. Defendants shall maintain in operable condition the development facilities for any of the Divested Products at no lower than the current level of equipment.

G. Defendants shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Platinum Assets.

H. Until such time as the Platinum Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who (1) as of the date Computer Associates announced its proposed acquisition of Platinum, worked primarily on the Divested Products, or (2) is a member of management to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order.

I. The management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall be appointed by defendants, subject to plaintiff's approval, within two (2) business days following the filing of the Complaint. Until such time as the Platinum Assets are divested, the management for the Platinum Assets to be provided pursuant to Subparagraph VI.B. of this Hold Separate Stipulation and Order shall have complete managerial responsibility for the Platinum Assets, subject to the provisions of this Order and the Final Judgment. In the event that any member of the management is unable to perform his or her duties, defendants shall appoint, subject to plaintiff's approval, a replacement acceptable to plaintiff within ten (10) working days. Should defendants fail to appoint a replacement acceptable to plaintiff within ten (10) working days, plaintiff shall appoint a replacement. Within ten (10) days following the filing of the Complaint, and for thirty (30) consecutive days thereafter, for each of the Divested Products, management of the Platinum Assets shall post on the Platinum web site a notice that includes on the first page of the web site a summary heading with a link to the full notice. The notice must include text to which the plaintiff has agreed and shall explain that the Platinum Assets will be divested to a purchaser approved by the United States, explain how the Platinum Assets will be managed and operated pending consummation of the required divestiture, and assure customers that they will receive continuing maintenance and product support for the Divested Products pending consummation of the required divestiture.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a purchaser acceptable to plaintiff.

K. This Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA:

FOR DEFENDANTS
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Dated: _____

ORDER

It is SO ORDERED, this _____ day of _____, 1999.

United States District Court Judge