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United States v. Pitney-Bowes, Inc.

1959 Trade Cases ¶69,235. U.S. District Court, D. Connecticut. Civil Action No. 7610. Filed January 9, 1959. Case No. 1430 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Compulsory Licensing of Patents—Practices Prohibited.—A manufacturer of postage meter machines was ordered by a consent decree to (1) file with the court a list of the patents owned or controlled by it, (2) grant to any qualified domestic applicant a non-exclusive, unrestricted and royalty-free license to make, use, lease, and vend postage meter machines under any of the manufacturer's existing United States patents, (3) grant to any qualified domestic applicant a non-exclusive and unrestricted license to make, use, lease, and vend postage meter machines under any of the manufacturer's future United States patents, and (4) grant to any qualified foreign applicant a non-exclusive and unrestricted license under any of the manufacturer's existing and future patents to make postage meter machines for use, lease or sale in the United States. The manufacturer was enjoined from (1) granting licenses or sublicenses under certain patents except in accordance with the terms of the decree, (2) taking any exclusive right or license under any patent owned or controlled by others unless the manufacturer was also granted the right to grant sublicenses to others, and (3) making any disposition of any patents which deprived it of the power to grant the licenses required by the decree unless the acquiring party consented to be bound by the decree. The manufacturer was also ordered to grant to licensees licensed pursuant to the decree various kinds of technical assistance for certain periods of time and upon specified conditions.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Compulsory Licensing of Patents—Terms of Licensing Agreements—Royalties—Provisions; Permitted.—A manufacturer of postage meter machines, after having been ordered by a consent decree to grant licenses under its various patents to qualified applicants, was prohibited from including in those licenses any restrictions other than those specified by the decree. Licenses issued under the manufacturer's existing United States patents could be non-transferable and they could contain a reasonable provision for marking the machines manufactured, used, leased, or sold under such licenses with the number of the patents covering the machines. As to licenses issued to domestic applicants under the manufacturer's future United States patents, and licenses issued to foreign applicants under the manufacturer's existing and future patents, (1) they could be non-transferable, (2) a reasonable royalty could be charged, (3) periodic royalty reports could be required, (4) reasonable provisions could be made for cancellation upon the licensee's failure to make royalty reports, pay royalties, or permit inspection of its books and records, and (5) reasonable provisions could be made for marking the machines manufactured, used, leased, or sold under such licenses with the number of the patents covering the machines. Also, the licenses must permit cancellation by the licensee at any time after one year from the initial date of the license upon the giving of thirty days' notice.

Monopolies—Monopolies Under Sherman Act, Section 2—Consent Decree—Practices Enjoined—Patents—Institution of Infringement Suits—Order to Grant Immunity from Infringement Suit.—A manufacturer of postage meter machines was prohibited by a consent decree from instituting or threatening to institute any action, suit, or proceeding against any person for any act of patent infringement alleged to have occurred prior to the date of the decree. The manufacturer was also ordered to grant to any qualified domestic applicant licensed pursuant to the decree, with respect to any postage meter machines manufactured in the United States pursuant to such license, a non-exclusive and unrestricted grant of immunity from suit under any foreign patent or application owned or controlled by the manufacturer at the time of the issuance of such license.

Monopolies—Monopolies Under Sherman Act, Section 2—Consent Decree—Practices Enjoined—Horizontal Integration—Acquiring Stock or Assets of Competitors.—A manufacturer of postage meter machines was prohibited by a consent decree from acquiring, for a period of ten years, any of the assets or capital stock of, or financial interest in, any person, engaged in the manufacture, sale, distribution, or leasing of postage meter machines. However, such an acquisition could be permitted by the court, upon an application by the manufacturer after the decree had been in effect for five years, and upon a showing by the manufacturer that the effect of such acquisition would not be substantially to lessen competition or tend to create a monopoly in the manufacture, sale, distribution, or leasing of postage meter machines.

Monopolies—Monopolies Under Sherman Act, Section 2—Consent Decree—Practices Enjoined—Contracts and Agreements Not to Compete—Allocation of Markets and Customers—Distribution Agreements.—A manufacturer of postage meter machines was prohibited by a consent decree from entering into any agreement with any person engaged in the manufacture, sale, distribution, or leasing of postage meter machines which (1) allocated or divided territories, markets, or customers for the manufacture, sale, distribution, or leasing of postage meter machines, (2) designated the manufacturer as a distributor or agent for the distribution, lease, or sale in the United States of postage meter machines manufactured by others, and (3) designated any other person engaged in the manufacture of postage meter machines as an agent or distributor of the manufacturer. However, the manufacturer was not prohibited from entering into bona fide exclusive distributorship arrangements for designated territories with persons not then engaged in the manufacture or distribute of postage meter machines produced by a person other' than' the manufacturer.

Monopolies—Monopolies Under Sherman Act, Section 2—Consent Decree—Practices Enjoined—Foreign Activities and Agreements—Restricting Imports and Exports.—A manufacturer of postage meter machines was prohibited by a consent decree from entering into any Agreement with any person engaged in the manufacture, sale, distribution, or leasing of postage meter machines which restricted, hindered, limited or prevented such person, of "any other person, from importing such machines into the United States or exporting them from the United States.

Monopolies—Monopolies Under Sherman Act, Section 2—Consent Decree—Practices Enjoined—Price Fixing.—A manufacturer of postage meter machines was prohibited by a consent decree from entering into any agreement with any person engaged in the manufacture, sale, distribution, or leasing of such machines which fixed any price, or any element of price, for the distribution, sale, or lease of such machines.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief—Showing the Existence of Substantial Competition.—A manufacturer of postage meter machines was directed to show, within six months following the expiration of a ten-year period from the date of the decree, that substantial competition then existed with respect to the manufacture, sale, rental, and distribution of postage meter machines in the United States. Such competition should be deemed to exist if persons in each major market area of the United States then had the opportunity, actual and practical in fact, to purchase or rent from persons other than the manufacturer, on reasonably competitive terms, postage meter machines or devices and mechanisms serving purposes equivalent thereto under Post Office Department regulations. If the manufacturer should fail to establish to the satisfaction of the court that such competition then existed, the manufacturer should submit to the court a plan designed to bring about such competition as soon as possible. The decree further provided that the manufacturer could be relieved of its obligations under those sections at any time within ten years by applying to the court for such relief and establishing that a competitor or competitors, in no manner affiliated with it, was then actually engaged in the commercial manufacture, sale, rental and distribution of postage meter machines in the United States.

Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provisions—Acquisition of Stock or Assets.—A consent decree which prohibited a manufacturer of postage meter machines from acquiring any of the assets or capital stock of, or any financial interest in, any person engaged in the manufacture, sale, distribution, or leasing of postage meter machines also provided that the manufacturer, upon application to the court at any time after the decree had been in effect for five years, could be permitted to make such an acquisition upon a showing that its effect would not be substantially to lessen competition or tend to create a monopoly. The manufacturer was also permitted by the decree to (1) acquire the securities or assets

of any of its subsidiaries, (2) form subsidiaries and transfer to them its own assets or those of its subsidiaries, and (3) acquire the stock or assets of its agents or distributors who were not engaged in the manufacture or distribution of postage meter machines not produced by the manufacturer.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; William D. Kilgore, Jr., Harry N. Burgess, and Lewis J. Ottaviani, Attorneys, Department of Justice; and the U. S. District Attorney, District of Conn.

For the defendant: Shattuck, Bangs & Davis, by Charles P. Collins (Edwin P. Shattuck and Sigmund Timberg, of counsel); and Wiggin & Dana, by Frederick H. Wiggin.

Final Judgment

[*Consent Decree*]

ROBERT P. ANDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on January 9, 1959, and defendant, Pitney-Bowes, Inc., by its attorneys, having appeared and denied the substantive allegations thereof, and plaintiff and defendant having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission in respect to any issue:

Now, Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent to the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim against the defendant Pitney-Bowes, Inc. upon which relief can be granted under Section 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) "Postage meter" shall mean any device or mechanism, and the component parts thereof, which prints, registers and cancels pre-paid postage on mail matter;
- (B) "Mailing machine" or "base machine" shall mean any device or mechanism, and the component parts thereof, used to support or facilitate operation of a postage meter, and to feed, moisten, close and seal or stack mail matter impressed with postage by a postage meter;
- (C) "Postage meter machine" means any combination of (i) a postage meter and (ii) a mailing or base machine, which combination may be separable into two or more units or complete in itself when actually operated;
- (D) "Existing patent" or "existing patents" shall mean any, some or all claims of the following:
 - (1) United States and foreign Letters Patent owned or controlled by defendant on the date of entry of this Final Judgment;
 - (2) Applications for United States and foreign Letters Patent, and any Letters Patent which may issue on any such applications, which applications were filed prior to, and are owned or controlled by defendant on, the date of entry of this Final Judgment;

(3) United States and foreign Letters Patent owned or controlled on the date of entry of this Final Judgment by any person other than defendant and under which defendant on such date has the power to grant licenses or sub-licenses to others;

(4) Any divisions, reissues or extensions of the Letters Patent described in clauses (1), (2) and (3) above; relating to postage meters, mailing or base machines or postage meter machines;

(E) "Future patent" or "future patents" means any United States or foreign Letters Patent or applications therefor and patents which may issue thereon (exclusive of existing patents), and any divisions, reissues or extensions of such Letters Patent, relating to postage meters, mailing or base machines or postage meter machines, (i) which may be owned or controlled by defendant during a period of five (5) years after the date of entry of this Final Judgment or (ii) under which defendant may, during such period, acquire the power to grant licenses or sub-licenses to others;

(F) "Person" means any individual, partnership, firm, association, corporation or other legal or business entity other than the defendant, its directors, officers, employees, agents or subsidiaries;

(G) "United States" means the continental United States, its territories and possessions;

(H) "Qualified domestic applicant" means any person in the United States certified, in writing, by the United States Post Office Department as meeting the qualifications established by said Department to manufacture postage meters or postage meter machines;

(I) "Qualified foreign applicant" means any person outside the United States who (1) represents, in writing, to the United States Post Office Department, its intention to manufacture, outside the United States, postage meter machines to be used, leased or sold in the United States in accordance with applicable rules and regulations of such Department, and (2) is certified, in writing, by such Department as meeting the qualifications established by said Department to manufacture postage meters or postage meter machines for use, lease or sale in the United States;

(J) "Subsidiary" means 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 defendant;

(K) "Defendant" means the defendant Pitney-Bowes, Inc.

III

[*Applicability*]

(A) The provisions of this Final Judgment applicable to the defendant shall apply also to each of its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise;

[*Notice*]

(B) Defendant is ordered and directed forthwith to serve a copy of this Final Judgment upon (i) each member of its Board of Directors, (ii) each Vice President who is not a member of its Board of Directors, and (iii) the chief executive officer of each of its subsidiaries, and, within thirty (30) days after the date of entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of its compliance with this subsection (B), setting forth in said affidavit the name, position and address of each person upon whom a copy of this Final Judgment shall have been served as herein directed.

IV

[*Order to Grant Patent Licenses*]

(A) Defendant is ordered and directed, within ninety (90) days after entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit showing separately, as of the date of this Final Judgment:

(1) The number, and date of issue (or filing, as to applications) and name of owner, where applicable, of each existing patent;

(2) The number, date of issue (or filing, as to applications) and name of the owner, where applicable, of each existing United States patent owned or controlled by the defendant on the date of this Final Judgment.

(B) Defendant is ordered and directed to grant to any qualified domestic applicant, making written request therefor to the defendant, a non-exclusive, unrestricted and royalty-free license to make (but not to have made—except for component parts), use, lease and vend postage meter machines under any, some or all, as the applicant may request, existing United States patents;

(C) Defendant is enjoined and restrained from including in any license issued pursuant to subsection (B) any restriction or limitation whatsoever except that (i) the license may be non-transferable, and (ii) reasonable provision may be made for marking the postage meter machines manufactured, used, leased or sold by the licensee under such license with the number of the patents covering such machines under which the licensee is licensed.

(D) Defendant is ordered and directed to grant to any qualified domestic applicant making written request therefor to the defendant, a non-exclusive and unrestricted license to make (but not to have made—except for component parts), use, lease and vend postage meter machines under any, some or all, as the applicant may request, future United States patents;

(E) Defendant is ordered and directed to grant to any qualified foreign applicant making written request therefor to the defendant a non-exclusive and unrestricted license under any, some or all, as the applicant may request, existing patents and future patents to make (but not to have made—except for component parts) postage meter machines for use, lease or sale in the United States;

(F) Defendant is enjoined and restrained from including in any license issued pursuant to subsections (D) and (E) hereof any restriction or limitation whatsoever except that:

(1) The license may be non-transferable;

(2) A reasonable royalty may be charged, which royalty shall be uniform and nondiscriminatory as among licensees procuring the same rights under the same patents;

(3) Reasonable provisions may be made for periodic royalty reports by the licensee to the defendant and inspection of the books and records of the licensee by an independent auditor or any other person acceptable to both defendant and the licensee, who shall report to the defendant only the amount of the royalty due and payable;

(4) Reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties or permit inspection of his books and records as herein provided;

(5) The license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving to the defendant thirty (30) days' notice in writing;

(6) Reasonable provisions may be made for marking the machines manufactured, used, leased or sold by the licensee under such license with the number of the patents covering such machines under which the licensee is licensed;

(G) Upon receipt of a written request for a license under the provisions of subsections (D) and (E) hereof, defendant shall advise the applicant, in writing within thirty (30) days, of the royalty it deems reasonable for the patent or patents to which the application pertains. If such applicant and defendant are unable to agree upon what constitutes a reasonable royalty within ninety (90) days from the date the written application for the license was received by the defendant, either the applicant or defendant may, upon notice to the plaintiff, apply to this

Court for the determination of a reasonable royalty. In any such proceeding the burden of proof shall be upon the defendant to establish the reasonableness of any royalty requested. Pending the completion of any such court proceeding, the applicant shall have the right to make (but not to have made—except for component parts), use, lease and vend under the patents to which his application pertains without payment of royalty or other compensation, but subject to the following provisions: defendant may, upon notice to the plaintiff, apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date upon which the applicant requested the license. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action may be grounds for the dismissal of his application for a license; in the case of such dismissal, the applicant shall pay any royalties found by the Court to be due to the defendant. Whether or not an interim royalty is fixed by the Court, a final Court determination of reasonable royalty shall be applicable to the applicant for a license from the date upon which the applicant requested such license, and to any other licensee, at its option, then having the same rights under the same patents from the date of such final determination. If the applicant fails to accept a license pursuant to such Court determination, such applicant shall pay any royalties found by the Court to be due to the defendant;

(H) 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 or value to any of said patents;

(I) Defendant is enjoined and restrained from (i) granting, after date of this Final Judgment, any license or sublicense under any patents to which this Section IV shall apply, except in accordance with, and pursuant to, the terms of this Final Judgment, and (ii) taking, or accepting, after the date of this Final Judgment, any right or license under any patent owned or controlled by any person other than defendant, which right or license is, by its terms or in fact, exclusive to the defendant unless the defendant is also granted the right to grant sublicenses to others;

(J) Defendant is enjoined and restrained from making any sale or other disposition of any patent which deprives it of the power or authority to grant the licenses required by this Section IV, unless the purchaser, transferee or assignee shall file with this Court, and with the plaintiff, prior to consummation of any such transaction, its consent to be bound by the applicable provisions of this Section IV with respect to each patent;

(K) Defendant is ordered and directed, insofar as it has or hereafter may acquire the power to do so, to grant upon written request and without compensation, to any qualified domestic applicant licensed pursuant to this Section IV, with respect to any postage meter machines manufactured in the United States pursuant to such license, a non-exclusive and unrestricted grant of immunity from suit under any foreign patent or application owned or controlled by the defendant at the time of issuance of such license;

(L) Defendant is enjoined and restrained from instituting or threatening to institute any action, suit, or proceeding against any person for use of or any act of infringement of any patent alleged to have occurred prior to the date of this Final Judgment.

V

[*Order to Grant Technical Assistance*]

(A) Defendant, for a period of ten (10) years from the date of this Final Judgment, and upon written request therefor from any person licensed under existing or future patents pursuant to Section IV of this Final Judgment, is ordered and directed to furnish to such licensee, for a reasonable charge approximating cost, copies of any technical manuals, books of instruction, drawings, specifications, blueprints, pamphlets, diagrams or other similar documents, which it furnishes generally to its own manufacturing, servicing, repair or maintenance employees relating to the manufacture, repair, servicing or maintenance of postage meter machines commercially produced on the date of this Final Judgment.

(B) Defendant, for a period of five (5) years from the date of this Final Judgment, and upon written request therefor from any person licensed pursuant to Section IV of this Final Judgment, is ordered and directed to furnish to such licensee, for a reasonable charge approximating cost, copies of the patents under which such person is licensed and such of the defendant's technical information as licensee may reasonably need to enable him to utilize the invention or inventions of any of the patents licensed by the defendant to such licensee in such licensee's manufacture, not including, however, the type of documents referred to in sub-section (A) above.

(C) For a period of five (5) years from the date of this Final Judgment, and upon receipt of a written request from any person licensed pursuant to Section IV of this Final Judgment representing that the technical information furnished to such person by the defendant pursuant to subsections (A) and (B) of this Section V is inadequate or insufficient to enable such person satisfactorily to manufacture, operate, maintain, service or repair postage meter machines manufactured under his license from the defendant, the defendant is ordered and directed to make available to such licensee at the expense of the licensee for travel and at reasonable times and for reasonable periods, technically qualified personnel from among its own employees, for consultation with such licensee at the licensee's place of manufacture regarding the licensee's manufacture, repair, servicing or maintenance of postage meter machines. This subsection (C) shall not require the defendant to send any person outside of the United States.

(D) For a period of five (5) years from the date of this Final Judgment, any person licensed by the defendant pursuant to Section IV of this Final Judgment shall, upon written request to the defendant, and at his own expense, be permitted to visit the principal plant of the defendant manufacturing postage meter machines for the purpose of observing, and being advised as to, the methods, processes, machines and equipment then being used by the defendant in its commercial production of postage meter machines; provided, however, that such visits may be restricted as follows:

- (1) To not more than 3 officers or employees of the licensee at any one time;
- (2) To not more than 4 such visits per year.

(E) The defendant may, as a condition to furnishing the benefits set forth in the foregoing subsections of this Section V, require the licensee, in writing, to agree to maintain any technical information received by such licensee from the defendant in confidence and use such information solely in connection with the manufacture, maintenance, service or repair by or for the licensee of postage meter machines.

(F) In order to accomplish the purposes of this Final Judgment, nothing herein shall be construed to prohibit the defendant from providing, upon terms and conditions not inconsistent with the other provisions of this Final Judgment, to any person requesting it, information or assistance not otherwise provided for in this Final Judgment.

(G) The furnishing by defendant of patent licenses and technical assistance pursuant to the requirements of Section IV and V of this Final Judgment shall not, in and of itself, create or constitute as to defendant, any guaranty or warranty as to machines not manufactured by it.

VI

[*Acquisition of Stock or Assets*]

(A) For a period of ten (10) years from the date of this Final Judgment, the defendant is enjoined and restrained from acquiring, directly or indirectly, through nominees, agents or otherwise, any of the assets or capital stock of or any financial interest in, any person engaged in the manufacture, sale, distribution or leasing of postage meter machines.

(B) Nothing in this Section VI, however, shall be construed to prohibit (i) acquisition by defendant of all or part of the securities or assets of any of its subsidiaries; (ii) formation of subsidiaries by defendant and the transfer thereto of assets of defendant or of its subsidiaries; (iii) acquisition by the defendant of all or any part of the stock or assets of any agent or distributor of defendant's products, who is not engaged in the manufacture or distribution of postage meter machines not manufactured by defendant; (iiii) application to this Court, at any time

after this Final Judgment has been in effect for five (5) years from the date thereof, upon notice to the plaintiff, for permission to acquire any or all of the assets or capital stock of or financial interest in, a person engaged in the manufacture, sale, distribution or leasing of postage meter machines, which may be granted upon a showing by defendant to the satisfaction of the Court, that the effect of any such acquisition will not be substantially to lessen competition or to tend to create a monopoly in the manufacture, sale, distribution or leasing of postage meter machines.

VII

[*Practices Prohibited*]

(A) Defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, or claiming any right under, any contract, agreement, understanding, plan or program with any person engaged in the manufacture, sale, distribution or leasing of postage meter machines which:

- (1) allocates or divides territories, markets or customers for the manufacture, sale, distribution or leasing of postage meter machines;
- (2) fixes, determines or adheres to any price, or element of price, for the distribution, sale or lease of any postage meter machines;
- (3) restricts, hinders, limits or prevents such person or any other person from importing postage meter machines into the United States or exporting such machines from the United States;
- (4) appoints or designates the defendant as a distributor or agent for the distribution, lease or sale in the United States of postage meter machines produced by any person engaged in the manufacture of postage meter machines;
- (5) appoints or designates, as a distributor or agent of the defendant, for the distribution, sale or lease of postage meter machines manufactured by the defendant, any person engaged in the manufacture of postage meter machines;

provided that the foregoing shall not be construed to prohibit defendant from entering into bona fide exclusive distributorship arrangements for designated territories with any person not then engaged in the manufacture or distribution of postage meter machines manufactured by a person other than the defendant.

VIII

[*Promoting Competition*]

(A) Within six months following the ten (10) year period from the date of this Final Judgment, upon application by the plaintiff, the defendant shall show to the satisfaction of the Court that substantial competition then exists with respect to the manufacture, sale, rental and distribution of postage meter machines in the United States. Such competition shall be deemed to exist if persons in each major market area of the United States then have the opportunity, actual and practical in fact, to purchase or rent from other than the defendant on reasonably competitive terms, postage meter machines or devices and mechanisms serving purposes equivalent thereto, under Post Office Department regulations.

(B) If defendant fails to establish to the satisfaction of this Court that such competition then exists, defendant shall submit to the Court a plan, which to the satisfaction of this Court, in light of the conditions then existing, as well as the steps defendant has taken to try and bring about such competition, with full hearing and opportunity for both parties to be heard and present evidence, is designed to bring about such competition as soon as possible. Such plan shall provide for bringing about such competition, in a manner as, by the Court may be deemed necessary or appropriate (1) by substantial assistance to a competitor or potential competitor; or (2) by the establishment of competition by defendant out of its assets, business and properties; or (3) by some other or different method.

(C) Upon such terms as this Court may direct, the defendant may be relieved of its obligations under subsections (A) and (B) of this Section VIII at any time within ten (10) years from the date of this Final Judgment, by (i) applying to this Court, upon notice to the plaintiff, for such relief and (ii) establishing, to the satisfaction of this Court, (a) that a competitor or competitors to the defendant (and in no manner, directly or indirectly, affiliated with the defendant) is or are then actually engaged in the commercial manufacture, sale, rental and distribution of postage meter machines in the United States, and (b) that by reason of the then existence of such competitor or competitors to the defendant, the competition specified in subsection (A) of this Section VIII has then been accomplished.

IX

[Notice of Judgment]

(A) Defendant is ordered and directed, within ninety (90) days from the date of this Final Judgment, to furnish a true and complete copy of this Final Judgment (a) to the Postmaster General of the United States and (b) to each person who makes written request to the defendant for a copy of this Final Judgment.

(B) Defendant is ordered and directed to cause a copy of this Final Judgment to be published not less than once a month for three (3) successive months after the date of this Final Judgment, in a trade publication of general circulation to persons engaged in manufacturing office machines and equipment.

X

[Enforcement and Compliance]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted, subject to any legally recognized claim of privilege, (a) reasonable access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of the defendant, who may have counsel present, regarding any such matter. Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be reasonably necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the plaintiff, 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.

XI

[Jurisdiction Retained]

(A) 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, for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained herein.

(B) Jurisdiction is additionally expressly reserved to enter appropriate orders modifying Section V(A), (C) and (D) hereof, if such orders are consented to by the plain-tiff, which consent is not to be unreasonably withheld, with respect to the obligation of the defendant to furnish the technical assistance referred to in Section V(A), (C) and (D) hereof, where the furnishing of same would tend to defeat the objectives of this Final Judgment to assure

effective competition between defendant and others in the postage meter machine industry and to avoid undue concentration in such industry.