

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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In the Matter of)	
)	
Automatic Data Processing, Inc.)	Docket No. 9282
a corporation.)	
)	

AGREEMENT CONTAINING CONSENT ORDER

The agreement herein, by and between Automatic Data Processing, Inc. ("ADP"), by its duly authorized officers, hereafter sometimes referred to as Respondent, and its attorneys, and counsel for the Federal Trade Commission ("Commission"), is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent ADP is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at One ADP Boulevard, Roseland, New Jersey 07068.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

- a. any further procedural steps;
- b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision containing the Order herein, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Commission's complaint, or that the facts as alleged in the Commission's complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to the Respondent, (1) issue its decision containing the following Order to divest in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the Order to Respondent's attorney, Kevin J. Arquit, Esq., Rogers & Wells, 200 Park Avenue, New York, NY 10166, shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Within thirty (30) days after the date Respondent signs this agreement and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II or III of the Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of the Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

9. Respondent has read the Complaint and Order contemplated hereby. Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further

understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Respondent" or "ADP" means Automatic Data Processing, Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by ADP, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "Parts Services" means the Parts Services Division of ADP Claims Solutions Group, Inc., a subsidiary of ADP.

C. "Commission" means the Federal Trade Commission.

D. "Acquisition" means the April 1, 1995, acquisition by ADP of assets from AutoInfo, Inc., including salvage yard management systems, communications systems and networks, automotive interchange, inventory data collection contracts and other assets.

E. The "AutoInfo Assets" means the AutoInfo Interchange, the AutoInfo YMS, the AutoInfo Communication Systems, AutoInfo Parts Locator and the ARA Database Collector, and a non-exclusive, paid-up license to all research and development, by or for Parts Services, since April 1, 1995, through the date of divestiture for any new yard management system or communication system.

F. The "Hollander Interchange" means the numeric indexing system developed, maintained and sold or licensed originally by Hollander, Inc. and subsequently by ADP and used to identify automotive parts and assemblies and their ability to be interchanged and includes all updates prepared by or for ADP up to the date of divestiture pursuant to Paragraph II or Paragraph III of this Order, including but not limited to any interchange developed or updated by ADP since the Acquisition from then-existing Hollander Interchange and AutoInfo Interchange data.

G. The "AutoInfo Interchange" means the numeric indexing system owned by ADP, but previously developed, maintained and sold by AutoInfo, used to identify automotive parts and assemblies and their ability to be interchanged and includes all updates to the AutoInfo Interchange prepared by or for AutoInfo up to the date of the Acquisition or by or for ADP up to the date of divestiture pursuant to Paragraph II or Paragraph III of this Order, and includes supplier and service contracts, research and development, and other tangible and intangible assets used in the development and maintenance of the AutoInfo Interchange.

H. "AutoInfo YMS" means Checkmate, Checkmate Jr., Classic, the BidPad, PartPad, accounting and management modules, and any other salvage yard management systems developed, maintained, sold or licensed by AutoInfo, Inc., and subsequently by ADP, including source codes, application program interfaces, data formats and communication protocols, customer, supplier and service contracts, goodwill, research and development, and other tangible and intangible assets relating thereto.

I. "AutoInfo Communication Systems" means the ORION, ORION/RTS, AutoMatch, AutoXchange, and ORION Exchange communication systems used for the buying and selling of used auto parts and assemblies, including source codes, application program interfaces, data formats and communication protocols, customer, supplier and service contracts, goodwill, research and development and other tangible and intangible assets relating thereto, and Respondent's rights and obligations with respect to current and former subscribers to CalQwik.

J. "ARA" means the Automotive Recyclers Association.

K. "ARA Database Agreement" means the February 27, 1996, "Amended and Restated Agreement Regarding the ARA International Database by and between Automotive Recyclers Association and ADP Claims Solutions Group, Inc." and any addenda thereto.

L. "ARA Database Collector" means the rights and obligations to act as the manager and operator of the Automotive Recyclers Association International Database pursuant to the ARA Database Agreement.

M. "Compass" means the Compass Communications Network, the group of voice communication, data, and buying networks to the automobile salvage industry formerly owned by AutoInfo, and customer, supplier and service contracts, goodwill, research and development and other tangible and intangible assets used in the development, maintenance, sale or licensing of the Compass communication systems.

N. "AutoInfo Parts Locator" means the AutoInfo Parts Locator, a computerized on-line telephone service that is offered to the automobile casualty insurance industry, which uses ORION/RTS, and software that provides access to the ORION/RTS database, customer, supplier and service contracts, customer lists, goodwill, research and development and other tangible and intangible assets used in the development, maintenance, sale or licensing of the AutoInfo Parts Locator.

O. "HYMS" means the Hollander Yard Management System, originally developed, maintained and sold or licensed by Hollander, Inc., and subsequently developed, maintained and sold or licensed by ADP.

P. "EDEN" means the Electronic Data Exchange Network, a communications and database inventory-search system used by salvage yards for the buying and selling of used automobile parts and assemblies.

Q. "Trustee Assets" means the AutoInfo Assets and Compass.

R. "Acquirer" means the acquirer or acquirers of the AutoInfo Assets pursuant to Paragraph II or the Trustee Assets pursuant to Paragraph III of this Order.

II

A. Respondent shall divest, absolutely and in good faith, (1) within one hundred fifty (150) days after the date the Agreement Containing Consent Order is accepted for public comment by the Commission, or (2) within sixty (60) days after the date on which this Order becomes final, whichever date is later, the AutoInfo Assets as an on-going business to the Acquirer at the time of divestiture. Respondent shall divest the AutoInfo Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the AutoInfo Assets is to maintain the AutoInfo Assets as on-going businesses, to continue use of the AutoInfo Assets in the same businesses in which the AutoInfo Assets were engaged at the time of the Acquisition in competition with ADP, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

PROVIDED, HOWEVER, Respondent may, in lieu of divesting its rights as the ARA Database Collector to an Acquirer pursuant to this Paragraph II.A. and in satisfaction of its obligations to divest its rights as the ARA Database Collector under this Paragraph II.A., terminate in accordance with all of the provisions specified in the ARA Database Agreement its role as the ARA Database Collector.

PROVIDED, HOWEVER, Respondent shall grant to any entity that becomes the ARA Database Collector, if such entity is not the Acquirer, a royalty-free license to the Hollander Interchange to use solely for purposes of collecting and transmitting data and managing and operating a database for the ARA pursuant to a data collection agreement with the ARA.

PROVIDED, HOWEVER, Respondent may retain a non-exclusive, paid-up license to the AutoInfo Interchange as of the date of the divestiture, excluding supplier and service contracts, research and development, and other tangible and intangible assets used in the development and maintenance of the AutoInfo Interchange.

B. Pending divestiture of the AutoInfo Assets, Respondent shall take such actions as are necessary to maintain the viability, competitiveness and marketability of the AutoInfo Assets and the Trustee Assets and to prevent the destruction, removal, wasting, deterioration, or

impairment of any of the AutoInfo Assets and the Trustee Assets except for ordinary wear and tear.

C. Respondent shall comply with the terms of the Asset Maintenance Agreement, which is attached hereto and incorporated herein.

III

IT IS FURTHER ORDERED that:

A. If Respondent has not divested the AutoInfo Assets pursuant to and within the time required by Paragraph II.A., the Commission may appoint a trustee to divest the Trustee Assets. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Trustee Assets in order to assure the viability, competitiveness, and marketability of the Trustee Assets and to accomplish the remedial purposes of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

PROVIDED, HOWEVER, the trustee may, at his or her option and in satisfaction of his or her obligations under this Paragraph III.A., require ADP to terminate its role as the ARA Database Collector pursuant to the ARA Database Agreement.

PROVIDED, HOWEVER, Respondent shall grant to any entity that becomes the ARA Database Collector, if such entity is not the Acquirer, a royalty-free license to the Hollander Interchange to use solely for purposes of collecting and transmitting data and managing and operating a database for the ARA pursuant to a data collection agreement with the ARA.

PROVIDED, HOWEVER, Respondent may retain a non-exclusive, paid-up license to the AutoInfo Interchange as of the date of the divestiture, excluding supplier and service contracts, research and development, and other tangible and intangible assets used in the development and maintenance of the AutoInfo Interchange.

B. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Trustee Assets.
3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Trustee Assets and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner

and to the acquirer or acquirers as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Trustee Assets.
8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. In the event that the Trustee determines that he or she is unable to divest the Trustee Assets in a manner consistent with the Commission's purpose in Paragraph II, the trustee may divest additional ancillary assets of

Respondent related to the Trustee Assets and effect such arrangements as are necessary to satisfy the requirements of the Order.

12. The trustee shall have no obligation or authority to operate or maintain the Trustee Assets.
13. The trustee shall report in writing to Respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish divestiture.

IV

IT IS FURTHER ORDERED that Respondent shall:

A. Grant to the Acquirer, at the time of the divestiture, a paid-up, perpetual, non-exclusive license, with no continuing royalties and with unlimited rights to sub-license, to the Hollander Interchange and to each update of the Hollander Interchange, including but not limited to α (alpha) and β (beta) releases of any updates, prepared by or for Respondent for a period of three (3) years starting at the date of divestiture, or for such longer period and on such terms as may be agreed by the Acquirer and Respondent, and the right to use the name "Hollander Interchange" in reference to the Hollander Interchange and updates prepared by or for the Respondent pursuant to this Paragraph IV.A. Respondent shall provide such updates to the Acquirer no later than when it first provides each such update to its salvage yard customers; and

B. Provide to the Acquirer, at the time of the divestiture, a copy of, and non-exclusive license to, all computer programs and databases, and a list of and sources for all information, used by Respondent to update the Hollander Interchange.

PROVIDED, HOWEVER, Respondent may include in the license entered pursuant to this Paragraph IV a provision preventing or limiting the Acquirer from reproducing and selling the copyright protected format of Respondent's printed, book form of the Hollander Interchange, but Respondent shall not otherwise restrict the Acquirer from producing and selling the Hollander Interchange in any form, including in printed, book form.

V

IT IS FURTHER ORDERED that Respondent shall, for a period of twelve (12) months from the date of the divestiture pursuant to Paragraph II or Paragraph III of this Order, allow, without penalty, any customer who entered into a contract for HYMS or EDEN between April 1, 1995 and the date of divestiture, to switch from HYMS to an AutoInfo YMS or any yard management system licensed or sold by the Acquirer and/or switch from EDEN to the AutoInfo Communication Systems or to any communications systems licensed or sold by the Acquirer.

VI

IT IS FURTHER ORDERED that:

A. Respondent shall not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict any person who was employed by Respondent in Parts Services, or formerly by AutoInfo, Inc., at any time since January 1, 1995, from working for the Acquirer and shall cooperate with the Acquirer in effecting transfer to the Acquirer of any such employee who chooses to transfer to the Acquirer. Respondent shall not offer any incentive to any such employees to decline employment with the Acquirer or to accept other employment by ADP; and shall remove any non-compete or confidentiality restrictions with respect to employment of such employees by the Acquirer. Respondent shall pay, for the benefit of such employees transferring to the Acquirer, accrued bonuses, vested pensions and other accrued benefits.

PROVIDED, HOWEVER, Respondent may match or exceed the Acquirer's terms for employment offered by the Acquirer to Respondent's employees who were not employees of AutoInfo, Inc. as of January 1, 1995.

PROVIDED, HOWEVER, nothing in this Paragraph shall restrict Respondent from protecting or asserting Respondent's attorney client or work product privileges.

B. For a period of twelve (12) months following the date of divestiture pursuant to Paragraph II or Paragraph III, upon reasonable notice from the Acquirer, Respondent shall provide, at reasonable times and levels, such personnel, information, technical assistance, advice and training to the Acquirer as are necessary to transfer the AutoInfo Assets or the Trustee Assets, as applicable, and to facilitate the Acquirer in developing, maintaining and conducting the AutoInfo Assets as viable, on-going businesses. Such assistance shall include reasonable consultation with knowledgeable employees of ADP to satisfy the Acquirer's management that its personnel are appropriately trained to the extent ADP has the ability to do so after the divestiture is complete. Respondent shall not charge the Acquirer a rate more than its own direct cost for providing such assistance.

C. No later than the date of the execution of a divestiture agreement between Respondent and the proposed Acquirer, Respondent shall provide the proposed Acquirer with a complete list of all non-clerical employees of ADP who have been involved in the development, production, distribution, or sale of the Hollander Interchange, and of the AutoInfo Assets or of the Trustee Assets at any time during the period from January 1, 1994, until the date of the divestiture agreement. Such list shall state each such individual's name, position, address and telephone number. If the person is no longer employed by Respondent, Respondent shall provide all such information as it has available.

D. Respondent shall make available to any person, on whose behalf Respondent has filed an application to divest, for inspection, the personnel files and other documentation relating

to the individuals identified in Paragraph VI.C. of this Order to the extent permissible under applicable laws and with the permission of such individuals. For a period of six (6) months following the divestiture, Respondent shall further provide the Acquirer with an opportunity to interview such individuals identified in Paragraph VI.C. of this Order and negotiate employment with any of them.

E. For a period of one (1) year commencing on the date of any individual's employment by the Acquirer pursuant to this Paragraph VI, Respondent shall not offer employment to such individual, unless such individual is no longer employed by the Acquirer.

VII

IT IS FURTHER ORDERED that, for a period of ten (10) years following the date of divestiture, Respondent shall not prohibit, prevent or restrict, or threaten to prohibit, prevent, restrict or enforce any contractual arrangements that have the effect of prohibiting, preventing, or restricting any customer or licensee of the Hollander Interchange from accessing, connecting with, or communicating data through, the products of the Acquirer or its licensees, or the ARA Data Collector, including but not limited to the AutoInfo Communication Systems or any communication system licensed or sold by the Acquirer or its licensees, the AutoInfo YMS or any yard management systems licensed or sold by the Acquirer or its licensees, or data collection systems provided by the Acquirer or its licensees. Respondent shall provide to the Acquirer, for use by Acquirer and its licensees, specifications and information reasonably necessary for the Acquirer and its licensees to create interfaces with Respondent's yard management and communications systems and a paid-up, perpetual, non-exclusive license to the Acquirer and its licensees to use the Hollander Interchange and future updates of the Hollander Interchange in connection with collecting or searching inventory data.

PROVIDED, HOWEVER, nothing in this Paragraph VII shall require Respondent to extend to the Acquirer or its licensees rights to sell or distribute updates of the Hollander Interchange other than the rights specified in Paragraphs II or IV.A. of this Order.

PROVIDED, HOWEVER, nothing in this Paragraph VII shall require Respondent to create or modify application program interfaces or to alter Respondent's existing products.

PROVIDED, HOWEVER, nothing in this Paragraph VII shall prohibit the Respondent from restricting transmission of Hollander Interchange numbers to persons other than the Acquirer or its licensees.

PROVIDED, HOWEVER, nothing in this Paragraph VII shall require Respondent to repair any customer's HYMS or EDEN product in the event such product's functionality is damaged by the use of any product of the Acquirer or its licensees.

VIII

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years from the date of the divestiture of the AutoInfo Assets or the Trustee Assets, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire all or any part of the AutoInfo Assets, if divested pursuant to Paragraph II, or Trustee Assets, if divested pursuant to Paragraph III; and

B. For a period of ten (10) years from the date this Order becomes final, Respondent shall not, without prior notification to the Commission, directly or indirectly:

1. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in the development or sale of yard management systems or communications systems used by automobile salvage yards within the year preceding such acquisition; provided, however, that an acquisition of such stock, share capital, equity or other interest will be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Respondent will hold no more than five (5) percent of the shares of any class of security; or

2. Acquire any assets used or previously used (and still suitable for use) in the development or sale of yard management systems or communications systems used by automobile salvage yards provided, however, that such an acquisition will be exempt from the requirements of this paragraph if the purchase price is less than \$1,500,000 (one million five hundred thousand dollars).

The prior notifications required by this paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared, transmitted and kept confidential in accordance with the requirements of that part, except that: no filing fee will be required for any such notification; notification shall be filed with the Secretary of the Commission and a copy shall be delivered to the Bureau of Competition; notification need not be made to the United States Department of Justice; and notification is required only of Respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to the consummation of any such transaction (hereinafter referred to as the "initial waiting period"). If, within the initial waiting period, the Commission or its staff makes a written request for additional information and documentary material, Respondent shall not consummate the transaction until at least twenty (20) days after complying with such request for additional information and documentary material. Early termination of the waiting periods in this paragraph may, where appropriate, be granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for

which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, HOWEVER, that this Paragraph VIII shall not apply to the acquisition of products or services in the ordinary course of business.

IX

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II or III of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One year (1) from the date of the divestiture of the AutoInfo Assets pursuant to Paragraph II or the Trustee Assets pursuant to Paragraph III, and annually thereafter until the obligations of Paragraph VIII have expired, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV, V, VI, VII and VIII of this Order.

X

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure or status of Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

XI

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

XII

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order becomes final.

Signed this ____ day of May, 1997.

AUTOMATIC DATA PROCESSING, INC.

By: _____
Arthur Weinbach
Chief Executive Officer and President

James Benson
General Counsel and Vice-President

Michael Martone
President, Claims Solutions Group

Kevin J. Arquit
Counsel for Automatic Data Processing, Inc.
Rogers & Wells
200 Park Avenue
New York, NY 10166-0153

FEDERAL TRADE COMMISSION

By: _____
Eric D. Rohlck
Attorney

Daniel J. Silver
Attorney

Rhett R. Krulla
Senior Litigator

M. Howard Morse
Assistant Director

Mark D. Whitener
Deputy Director

William J. Baer
Director
Bureau of Competition

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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Automatic Data Processing, Inc.,)	Docket No. 9282
a corporation.)	
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ASSET MAINTENANCE AGREEMENT

This Asset Maintenance Agreement is by and between Automatic Data Processing, Inc. ("ADP"), a corporation organized and existing under the laws of the State of Delaware, and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* ("Commission").

PREMISES

WHEREAS, ADP acquired certain assets of AutoInfo, Inc. on April 1, 1995 (the "Acquisition");

WHEREAS, ADP has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and has filed an answer to said complaint denying said charges;

WHEREAS, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement") in this matter, the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance of the

Consent Agreement and so notify ADP, in which event the Commission will take such action as it may consider appropriate, or issue and serve its decision containing the order in the Consent Agreement, in disposition of the proceeding;

WHEREAS, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm relating to the assets and businesses proposed for divestiture;

WHEREAS, the entering into this Asset Maintenance Agreement by ADP shall in no way be construed as an admission by ADP that the Acquisition constitutes a violation of any statute; and

WHEREAS, ADP understands that no act or transaction contemplated by this Asset Maintenance Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Asset Maintenance Agreement.

NOW THEREFORE, ADP agrees, upon the understanding that the Commission has issued an administrative complaint, and in consideration of the Commission's agreement that, from the time it accepts the Consent Agreement for public comment and pending either the order becoming final or the Commission withdrawing its acceptance of the Consent Agreement, it will not return this matter to administrative adjudication, as follows:

1. ADP agrees to execute the Consent Agreement and, pending divestiture of either the AutoInfo Assets or the Trustee Assets, as those terms are defined in the Consent Agreement, pursuant to Paragraph II or Paragraph III of the Consent Agreement, ADP

shall take such actions as are necessary to maintain the viability, competitiveness and marketability of the AutoInfo and the Trustee Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the AutoInfo or Trustee Assets except for ordinary wear and tear.

2. ADP agrees that, from the date ADP signs the Consent Agreement until the first of the dates listed in subparagraphs 2.a. and 2.b., it will comply with the provisions of this Asset Maintenance Agreement:

- a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 3.25(f) of the Commission's Rules; or
- b. the date the Order is final.

3. ADP waives all rights to contest the validity of this Asset Maintenance Agreement.

4. For the purpose of determining or securing compliance with this Asset Maintenance Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, ADP shall permit any duly authorized representative or representatives of the Commission:

- a. access, during office hours of ADP and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ADP relating to compliance with this Asset Maintenance Agreement; and

b. upon five days' notice to ADP and without restraint or interference from it, to interview officers, directors, or employees of ADP who may have counsel present, regarding any such matters.

5. This Asset Maintenance Agreement shall not be binding until accepted by the Commission.

Dated: May ____, 1997.

FEDERAL TRADE COMMISSION

AUTOMATIC DATA PROCESSING, INC.

By: _____

By: _____

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Stephen Calkins
General Counsel

James Benson
Vice President and General Counsel

The Commission accepted the consent agreement for public comment on June 16, 1997.

Donald S. Clark, Secretary

ANALYSIS TO AID PUBLIC COMMENT ON THE PROVISIONALLY ACCEPTED CONSENT ORDER

The Federal Trade Commission ("Commission") has accepted, for public comment, from Automatic Data Processing, Inc. ("ADP"), an Agreement Containing Consent Order ("Agreement"). The Agreement has been placed on the public record for sixty days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's order ("Order").

The Commission issued an administrative complaint on November 13, 1996, charging ADP with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, for its April 1, 1995, acquisition of assets from AutoInfo, Inc. ("Acquisition"). The Complaint alleged that prior to the Acquisition, AutoInfo and ADP were vigorous, head-to-head competitors (Complaint at ¶ 36) and the principal or only competitors in five product markets: (1) automotive used parts and assemblies interchange; (2) computerized automotive salvage yard management systems that use an interchange; (3) electronic communication systems using an interchange used to buy and sell used automotive parts and assemblies; (4) the integrated network consisting of an interchange, yard management systems and communication systems; and (5) the collection and provision of salvage yard inventory data to customers that provide such data as part of estimating products sold to insurance companies (Complaint at ¶¶ 16-30). The Complaint charged that the effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant markets, that through the acquisition agreement, ADP engaged in unfair methods of competition, that ADP attempted to monopolize the relevant product markets, and that ADP monopolized the relevant product markets (Complaint at ¶¶ 42-49).

According to the Complaint, entry into the relevant product markets would not be timely, likely or sufficient in magnitude, character and scope to deter or counteract anticompetitive effects of the Acquisition. The interchange is based on a database that took many years to develop and would be difficult and time-consuming to attempt to reproduce (Complaint at ¶ 39). The interchange is a key input to the yard management systems and electronic communication systems, and without entry into the interchange market, it is also unlikely that timely or sufficient entry will occur (Complaint at ¶ 39). Entry would also be difficult, time-consuming and unlikely in yard management systems, electronic communication systems, and salvage yard information services because of the large number of customers ADP currently has using these products and services. According to the Complaint, salvage yards are reluctant to rely upon a new entrant without a significant number of other salvage yard customers participating in the network (Complaint at ¶ 40). The Complaint also alleged that timely or sufficient entry is unlikely in the collection and dissemination of salvage yard inventory data largely because of the time, expense, and difficulty in collecting salvage yard inventory data independent of ADP and because ADP is

the gatekeeper of salvage yard inventory data through its control of the interchange, integrated yard management systems, electronic communication systems, and salvage yard information systems (Complaint at ¶ 39).

The Complaint alleged that the Acquisition was part of a two-step plan by ADP to acquire the leading information service providers to the salvage industry and thereby acquire market power. ADP acquired such market power by first acquiring Hollander, Inc., in 1992, a provider of salvage yard information services with the largest customer base, and then acquiring the AutoInfo assets in 1995, a provider with the second largest customer base (Complaint at ¶ 33).

The Complaint alleged that the Acquisition would, among other things, eliminate AutoInfo as an actual, substantial, and direct competitor, increase or potentially increase prices or reduce technological improvements or innovations in the relevant product markets, increase barriers to entry, harm users of the former-AutoInfo products, and give ADP market and monopoly power in the relevant product markets (Complaint at ¶ 33).

Since November 1996, this matter has been in pretrial discovery before an administrative law judge, with trial scheduled to begin on July 15, 1997. The matter was removed from administrative adjudication on May 22, 1997, on a joint motion of ADP and Commission counsel, so the Commission could consider the Agreement. The Agreement Containing Consent Order would, if finally accepted by the Commission, settle the charges alleged in the Complaint.

Paragraph II of the Order accepted for public comment would require ADP to divest, to an acquirer or acquirers and in a manner that receives the prior approval of the Commission, the following assets, collectively known as the "AutoInfo Assets":

- (1) the former-AutoInfo yard management systems, including, among other things, Checkmate, Checkmate Jr., Classic, the BidPad, PartPad, accounting and management modules, source codes, application program interfaces, data formats, communication protocols, and customer, supplier and service contracts;
- (2) the former-AutoInfo communication systems, including ORION, ORION/RTS, AutoMatch, AutoXchange, and ORION Exchange communication systems, including, among other things, source codes, application program interfaces, data formats, communication protocols, customer, supplier and service contracts, and ADP's rights and obligations with respect to current and former subscribers to CalQwik;
- (3) a non-exclusive, paid-up license to all research and development done by or for ADP Claims Solutions Group, Inc.'s Parts Services Division for any new yard management system or communication system;
- (4) the AutoInfo Interchange, including the assets used in the development and maintenance of the AutoInfo Interchange; and

(5) the former-AutoInfo Parts Locator, a computerized on-line telephone service that is offered to the automobile casualty insurance industry, which uses ORION/RTS, and, among other things, software that provides access to the ORION/RTS database, and customer, supplier and service contracts.

Paragraph II of the Order also requires that ADP divest its rights and obligations as the data collector for the Automotive Recyclers Association ("ARA") International Database. The proposed Order provides that, in the alternative to a divestiture of the data collector rights, ADP can terminate its rights as the ARA Database Collector pursuant to the contract with the ARA.

ADP would be required to divest the AutoInfo Assets absolutely and in good faith, as an on-going business, to an acquirer within 150 days from the date the Commission accepted the Agreement Containing Consent Order for public comment or 60 days after the Order becomes final, whichever is later, or be subject to civil penalties and the possibility of a trustee being appointed pursuant to Paragraph III of the Order. The trustee would have the right to divest not only the AutoInfo Assets, but also the Compass network of voice lines ("Trustee Assets"). If the trustee is unable to divest the Trustee Assets consistent with the Commission's purpose, the trustee may divest additional ancillary assets of ADP related to the Trustee Assets and effect such other arrangements as are necessary to satisfy the requirements of the Order.

Paragraph II.A. of the proposed Order states that the purpose of the divestiture is to maintain the divested assets as on-going businesses, to continue use of the former-AutoInfo businesses in the same manner as before ADP acquired AutoInfo when ADP and AutoInfo were competitors, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

Since the Acquisition, ADP has not updated the former-AutoInfo Interchange and has switched the former-AutoInfo yard management system customers (Checkmate, Checkmate, Jr. and Classic users) from the AutoInfo Interchange to the Hollander Interchange with some integration of the AutoInfo Interchange. Because the merger has led to a migration to a single interchange, the proposed Order would require ADP to grant a paid-up, perpetual, non-exclusive license to the Hollander Interchange with updates from ADP for at least a three-year period. The Hollander Interchange is an important component for trading salvage parts and the proposed Order would allow for the identical Hollander Interchange to be used by the acquirer and its customers and licensees for a period of time.

The acquirer would be free to create its own updates to the Hollander Interchange. This would allow the acquirer to differentiate and improve the Hollander Interchange during the time it is receiving updates from ADP and thereafter. Paragraph IV.B. would assist the acquirer in writing updates by requiring ADP to provide to the acquirer at the time of divestiture, a copy of, and non-exclusive license to, all computer programs and databases, and a list of and sources for all information, used by ADP to update the Hollander Interchange.

Under Paragraph IV.A. of the proposed Order, the acquirer of the divested assets would have the right to sublicense the Hollander Interchange and reproduce it in any form including electronic or printed forms (other than the copyright-protected format of Hollander Interchange books presently produced and sold by ADP). These rights granted the acquirer pursuant to the Order should allow for a competitive environment to emerge through development of the acquirer's or its licensee's products and broaden the choices available to salvage yard customers for parts trading.

Several provisions of the proposed Order are intended to ensure that the acquirer would be a viable and competitive entity at the time of divestiture. The Commission's Complaint alleges that ADP stopped selling the former-AutoInfo yard management systems after the Acquisition and that ADP had a virtual monopoly in the provision of yard management systems to the salvage industry (Complaint at ¶¶ 24 and 32-38). New yard management system customers were denied the choice of acquiring the AutoInfo yard management system from the date of the Acquisition up to the time of the divestiture under the proposed Order. Paragraph V of the proposed Order would facilitate those customers' switching to the acquirer's products by requiring ADP, for a year, to allow, without penalty, any customer who entered into a contract for the Hollander Yard Management System or ADP's EDEN communication system between April 1, 1995 (the date of the AutoInfo acquisition) and the date of divestiture, to switch from ADP systems to a yard management system or communication system of the acquirer.

Paragraph VII of the proposed Order would prohibit ADP, for ten years, from restricting, or threatening to restrict any customer or licensee of the Hollander Interchange from using or connecting to the products of the acquirer, its licensees or the ARA Data Collector. To facilitate interconnection, the proposed Order would also require ADP to provide to the acquirer and its licensees specifications and information reasonably necessary to create interfaces with ADP's yard management and communication systems. The acquirer and its licensees will be able to transmit inventory data using the Hollander Interchange numbers even after the three-year time period prescribed in Paragraph IV expires because ADP is required to grant a paid-up, perpetual, non-exclusive license to the Hollander Interchange to the acquirer and its licensees in connection with the collecting or searching of inventory data. This provision would allow customers to choose to access or connect to other companies' products, thereby increasing their options for buying and selling used parts and assemblies.

Paragraph VII of the proposed Order would not require ADP to give acquirer and its licensees rights to sell or distribute updates of the Hollander Interchange other than the rights specified in Paragraphs II and IV, would not bar ADP from restricting transmission of Hollander Interchange numbers to persons other than the acquirer or its licensees, and would not require ADP to create the interfaces to connect to its products or to repair any customer's Hollander yard management system or EDEN communication system if the product's functionality is damaged by use of the acquirer's or licensees' products.

Paragraph VI of the proposed Order would require ADP to cooperate with the acquirer in hiring persons knowledgeable about interchange, yard management systems, and communication

systems from ADP; ADP would be prohibited from restricting or threatening to restrict any person employed by ADP's Parts Services division or formerly by AutoInfo, Inc. at any time since January 1, 1995, from working for the acquirer; and, ADP would be required to cooperate in effecting transfer of any employee who chooses to transfer to the acquirer. For a year after the date the acquirer hires an ADP employee, ADP is also prohibited from re-hiring that person. The requirements of this Paragraph would assist the acquirer to obtain technical expertise to serve its customers.

Paragraph VIII of the proposed Order would require ADP to obtain prior approval from the Commission for any reacquisition of the assets required to be divested. Certain acquisitions that would not require a premerger filing under the Hart-Scott-Rodino Premerger Notification Act would be subject to a prior notice requirement.

The proposed Order also would require ADP to provide periodic reports of compliance (Paragraph IX), to notify the Commission of changes in its corporate structure or status (Paragraph X), and to permit authorized representatives of the Commission access to, among other things, documents and memoranda relating to matters contained in the Order (Paragraph XI). The proposed Order would terminate twenty years from the date the Order is final.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.