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**A broader approach to US anti-trust legislation:  
The anti-trust case against IBM and Remington Rand in 1932.**

The anti-trust legislation distinguished the business environment in the United States from the situation in continental Europe, between the late 1880s and 1950s. Monopolies were illegal in the United States, while cartels were accepted, for example in Germany and France. This legislation and its enforcement were used by Alfred D. Chandler to explain the success of the US economy, and this argument has been adopted by scholars on both sides of the Atlantic.<sup>1</sup>

Really, these scholars imply a substantial amount of efficiency that contrasts the duration of the raising of the anti-trust suit in 1932 against IBM and Remington Rand, the members of the punched card cartel in the United States. They were indicted for an act committed eighteen years earlier and a practice established even earlier. Further the matter was complicated by the constitutional protection of inventions. In the court hearings, IBM attorneys argued that the ensuing patent privilege had priority over the anti-trust legislation, an essential argument, as IBM's production to some extent had patent protection, a general characteristic of industrial production.

Most research on anti-trust legislation in the United States and its implications did not address these issues. They focussed on the making of the anti-trust legislation and the records of litigation, notably the decrees. The objectives of the scholars were either the importance of the legislation for the development of a strong competitive capitalism or the importance of the individual company's advantages. They neither studied the interrelated story of the implication of patent protection for competition, nor analysed the importance of the process of shaping the indictments. True patents were studied by historians of technology for their

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<sup>1</sup>. Alfred D. Chandler, *The Visible Hand*, Cambridge, Massachusetts: Harvard University Press, 1977, p.331-334, 375-76, 498-500; Alfred D. Chandler, *Scale and Scope*, Cambridge, Massachusetts: Harvard University Press, 1990, p.78-79, 424, 600.

role in the shaping of technology and business organisations, but these historians did not analyse patents' role in shaping national economies.<sup>2</sup>

In order to open for a discussion of the potentiality of a broader approach to the analyses of anti-trust legislation in the United States, this paper opens the dusty boxes of the anti-trust record in the Department of Justice in Washington, DC. This allows analysis of the shaping of the indictment in the anti-trust case against IBM and Remington Rand, which was filed in 1932. Further, it will include the role of patents in the shaping of this case.

### **The punched card cartel**

IBM had been established in 1911 as the Computing Tabulating Recording (CTR) conglomerate, and got the name International Business Machines Corporation in 1924. CTR comprised four companies producing and selling various products and services, one of which was the patent based monopoly in punched card equipment, machines and cards.<sup>3</sup>

The punched card company had been founded in the 1880s by the inventor and entrepreneur Herman Hollerith in the United States in the 1880. His original equipment was patent protected. In order to encourage inventiveness, the Constitution for limited times granted inventors exclusive rights to their discoveries.<sup>4</sup> These exclusive rights had been implemented as patents granted for seventeen years on the condition that the invention was published and that it became public domain by the expiration of this period.

Hollerith improved the technological basis for his business during the 1890s and 1900s, and he received patents on key components of the improvements. Consequently, he accomplished to renew his patent protection, which enhanced his prime mover position. In 1914, he sold his company, the Tabulation Machine Company, to the CTR conglomerate.

A challenger in the United States, the Powers Accounting Machine Company, started to

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<sup>2</sup>. For example, Thomas P. Hughes, *Networks of Power*, Baltimore: Johns Hopkins University Press, 1983.

<sup>3</sup>. Geoffrey Austrian, *Herman Hollerith. Forgotten Giant of Information Processing*, New York: Columbia University Press, 1982; Emerson W. Pugh, *Building IBM: Shaping and Industry and Its Technology*, Cambridge, MA: 1995; Lars Heide, "Shaping a Technology: American Punched Card Systems 1880-1914", *IEEE Annals of the History of Computing*, vol.19 (1997), p.28-41.

<sup>4</sup>. Constitution of the United States, Article 1, Section 8, Clause 8.

produce punched card machines in 1914. However it needed a license on CTR held patents to produce and sell punched card machines. This caused the Powers company to approach CTR and they reached an agreement in 1914. CTR utilised the opportunity not only to grant a licence, but the agreement also included fixed minimum prices and restricted the Powers company's choice of technology. This cartel violated the Sherman Act from 1890 and the Clayton Act from 1914. Further, the licence conditions were harsh. Powers had to pay about 20 percent of their total revenues as royalty to the Computing Tabulating Recording Company,<sup>5</sup> which should be compared to the 5 percent royalty for the similar license in Germany that was subsequently imposed by use of law. In Germany, the patent law encompassed clauses on court imposed compulsory licensing, which reduced the parties' incitement extend a licence to encompass market arrangements.<sup>6</sup>

### **The United States' road to the anti-trust suit against the punched card cartel**

The anti-trust suit against IBM and Remington Rand in 1932 had two charges: IBM's cartel with the Powers company and the tying of punched card machine leases to the acquisition of punched cards from the lesser. IBM's cartel with the Powers company had existed since 1914, and the tying of punched card machine leases to the acquisition of punched cards was a practice introduced by Herman Hollerith in 1890 and it had remained since. Hollerith based his business exclusively on renting the machines, which gave him power over their operations. The punched card sale provided approximately a quarter of his business. The raising of these anti-trust charges can be explained either through the emergence of the anti-trust legislation, the slow detection of the accused illegalities or the accused illegalities gaining sufficient importance to attract a federal anti-trust suit.

The emergence of the anti-trust legislation can not explain why this suit against IBM and Remington Rand only was launched in 1932, as the legal basis for the suit had existed for

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<sup>5</sup>. CTR, Executive and Finance Committee Meeting, 21 July 1914, IBM, Board Meeting Minutes, IBM Archives, New York.

<sup>6</sup>. Lars Heide, "Between Parent and 'Child', IBM and its German Subsidiary, 1910-1945", in *Multinationals in dictatorships*, eds. Per H. Hansen and Chris Kobrak, New York: Berghahn Books, forthcoming.

many years before being applied. The first of the two charges in 1932 concerned the two companies' organising of their market and was mainly based upon the Interstate Commerce Act from 1887 and the Sherman Act from 1890. Both laws existed when the agreement between the two companies was concluded in 1914, and an additional eighteen years had passed, when the suit was filed. These two laws were directed against collusions of two or more companies in restraint of trade. Further, monopolies and monopolising were forbidden, which did not make a monopoly illegal per se. For example, the first to bring a new product to the market inevitably had a monopoly for a period, which was considered ludicrous to charge a criminal offence. Monopolising was not simply to possess a monopoly. It implied active drive - intent - apart from sheer competitive skills, to seize and exert power in the market, for example when a firm charged excessive prices or drove small competitors out of business.<sup>7</sup>

The second of the charges against IBM and Remington Rand in 1932 claimed that they were tying punched card machine leases to the acquisition of punched cards from the lesser. This charge was mainly based upon the Clayton Act, the third major federal anti-trust law, which had been adopted by Congress in 1914, eighteen years before the suit was launched. The Clayton Act explicitly declared illegal tying contracts, which is contracts conditioning sale of a commodity or service to the sale of another, for example the sale of a printer to the sale of ink cartridges.<sup>8</sup>

The shortcoming of an explanation through the emergence of the federal anti-trust law turns the focus to an explanation through the slow detection of the accused illegalities. The files of the Department of Justice disclose that only in 1923 did they commence considerations of possible anti-trust violations by IBM and the American Powers company. The Powers company was acquired by Remington Rand in 1927. True, there had been prior litigation on Hollerith's punched card monopoly. In 1905, the Census Bureau had commenced its own production of punched card machines to circumvent Hollerith's monopoly.<sup>9</sup> This endeavour

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<sup>7</sup>. Act of 4 February 1887 (Public Law 49-41); act of 2 July 1890 (26 Stat. 209); A. D. Neale and D. G. Goyer, *The Antitrust Laws of the United States of America. A Study of Competition Enforced by Law*, Cambridge, UK: Cambridge University Press, 1980, p.35-180.

<sup>8</sup>. Act of 15 October 1914 (38 Stat. 730), section 3. Also banned in more general terms in the Federal Trade Commission Act, Act of 26 September 1914 (38 Stat. 77), section 5.

<sup>9</sup>. Opinion of Court, 14 March 1910, and Judgment, 23 May 1912, in *Tabulating Machine Co. v. E. D. Durand*, Supreme Court of the District of Columbia, Equity Case No. 29,065, in Washington National Records

included modifications to several machines acquired from Hollerith's Tabulating Machine Company.<sup>10</sup> This caused Hollerith to sue the Census Bureau for patent infringement. He lost this case in 1912, as the court did not assess the changes adequate to constitute an infringement.<sup>11</sup>

The earliest anti-trust record in the Department of Justice dates from 1923. The progressing expansion of the punched card applications in the federal administration had caught the interest of the Government Printing Office, which had been established in 1860 to furnish printing supplies and bindings to congress and government agencies, and to distribute government publications. Twelve new punched card installations had been established in the federal administrations to process various statistics between 1921 and 1923.<sup>12</sup> Now he wanted to supply punched cards, but he found that the Computing Tabulating Recording Company and the Powers company required their machines exclusively to process punched cards supplied by themselves. The Government Printer found this tying clause undue competition and a waste of public money, as he could supply as good cards at cheaper rates.

First, the Public Printer tried to gain access to this market through the federal administration. In 1923, he got the Bureau of the Budget to compile information about the applications in federal departments of punched card equipment and the quantity and price of the punched cards applied.<sup>13</sup> The Bureau of the Budget was an office under the immediate direction of the President, established in 1921 in the Department of the Treasury. The Bureau's assignment was to assist the President in formulating government fiscal programs,

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Center (WNRC), Suitland, DC, box 741A. The basic patent is: Herman Hollerith, "Registering Apparatus", [US] *Patent*, No.777,209 (1904, filed 1903), reissued as Herman Hollerith, "Apparatus for use in tabulating systems", [US] *Reissued Patent*, No. 12,523 (1906, filed 1906). Austrian 1982, p.259-266, 276-305; Pugh 1995. p.22-23.

<sup>10</sup>. Hollerith's selling of these machines was an exception from his practice of renting machines, caused by these machines being custom made.

<sup>11</sup>. The US Census Bureau was established in 1902 as a permanent institution. Each prior census was managed by a separate organisation that was dismantled by the end of processing data.

<sup>12</sup>. Endorsement memoranda, U. S. Government Printing Office, Re: Tabulating Cards Ordered in the Government Printing Office from July 1, 1923 to date", 21 April 1930, National Archives, College Park, Maryland (NA), RG-60, Anti-trust Division, Acc. No. 70A4771, box. 709, file 60-235-6, section 1; George Soule, *Prosperity Decade: From War to Depression, 1917-1929*, New York: Holt, Rinehart and Winston, 1947, p.132.

<sup>13</sup>. "Statement showing the number and kind of Tabulating ... Machines in use, the number and cost of Statistical Cards used in Several Departments and establishments .....", compiled by the Bureau of the Budget ..", 15 June 1923, NA, RG-60, Acc. 70A4771, box 709, file 60-235-6, section 1.

clearing legislative proposals from federal agencies, and preparing the annual budget.

Based upon the Bureau of the Budget's report on the federal punched card consumption, the Public Printer got the Comptroller General, the watchdog for public spending and head of the General Accounting Office,<sup>14</sup> to issue an opinion requiring all punched cards for Federal Government departments to be produced by the public printer, where he was prepared to do the work. This opinion caused an exception to some of the Government contracts with the punched card companies to allow government customers to use punched cards from the Public Printer. To be able to meet orders, the Public Printer acquired new punched card printing equipment in 1927, and the Comptroller General reissued his opinion. However, the Public Printer only gained few orders, as IBM and the Powers Company compelled the federal departments using punched cards from the Public Printer to pay fifteen percent higher rental for the use of the machines. In 1928 the Public Printer only sold cards to about one percent of the tabulators leased by the government.<sup>15</sup> On the other hand, the federal market for punched cards was not negligible by the Public Printer, as he had supplied 129 million punched cards between 1923 and 1930, 16 million in yearly average.<sup>16</sup> For comparison, IBM supplied 400 million punched cards to the Bureau of the Census to process the census in 1930 that is to one federal organisation to process a single though then the largest assignment.<sup>17</sup>

The poor outcome of the opinions from the Comptroller General did not suffice the Public Printer, who started an endeavour to obtain a government anti-trust suit. For this end, he approached the Federal Trade Commission,<sup>18</sup> which had been established in 1914 to develop and administer federal regulations to prevent unfair methods of competition and undue

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<sup>14</sup>. 1921 established as a Congressional agency.

<sup>15</sup>. J. A. Simpson, "Final Report, application for issuance of a complaint against [IBM] ...", 14 March 1928, p.4, 18; "Report, application for issuance of a complaint against [IBM] ...", 23 March 1928, p.4; both in NA, RG-122, Applications for Insurance of Complaint, Acc. 53-A-634, box 20, File # 1-4541.

<sup>16</sup>. Endorsement Memorandum U. S. Printing Office, "Tabulating Cards Ordered in the Government Printing Office from July 1, 1923 to date," 21 April 1930, NA, RG-60, Acc. 70-A-4771, box 709, file 60-235-6, section 1.

<sup>17</sup>. Report, W. C. Gorsuch, Bureau of Investigation (BOI), Anti-trust Matters on IBM ..., 10 May 1930, p.6, NA, RG-60, Acc. 70-A-4771, box 709, file 60-235-6, section 1.

<sup>18</sup>. Otis B. Johnson, "Memorandum for Secretary, ...", 18 August 1927 (year corrected from docket), NA, RG-60, RG-122, Applications for Insurance of Complaint, Acc. 53-A-634, box 20, File # 1-4541.

In addition, an anti-trust investigation appears to have taken place from the spring of 1927 based upon the contract between IBM and Powers from 1922, letter, Charles P. Franchot, RR, to BOI, 12 May 1930, NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box. 709, file 60-235-6, section 1.

restraints of trade.<sup>19</sup> In 1928 after a preliminary investigation and hearing, the Federal Trade Commission declined to issue any complaint, in spite of the arguments tabled.<sup>20</sup> This was an outcome of the passive inclination to anti-trust matters in the administration of the Republican President Calvin Coolidge from 1923 to 1929, particularly after the Republicans gained a majority on the Federal Trade Commission in 1924.<sup>21</sup>

But the Public Printer was not beaten: in 1929, he appealed directly to the new Republican president, Herbert Hoover.<sup>22</sup> The appeal was forwarded to the Department of Justice, who started a new investigation, this time carried out by their Bureau of Investigation (the Federal Bureau of Investigation, FBI, since 1935).<sup>23</sup> This investigation focussed on two issues: the tying of machine lease from IBM and Remington Rand to acquisition of punched cards from the same company, and the restrictions to trade in the agreement from 1914 to licence the Tabulating Machine Company patents to the Powers company, which had been renewed by the successor companies in 1931.<sup>24</sup>

The Department of Justice's investigation lasted for more than two years. They started examining the tying of machine lease and card sale, and later they extended the investigation to include the fixing of the two companies machine leasing rates and card prices, based upon the two companies' renewal of their contract in 1931.<sup>25</sup> Finally in March 1932, IBM and

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<sup>19</sup>. <http://www.nara.gov/guide/rg122.html> (National Archives and Record Administration web site).

<sup>20</sup>. Acts of the Federal Trade Commission on the application for complaint against IBM et al., NA, RG-122, Applications for Insurance of Complaint, Acc. 53-A-634, box 20, File # 1-4541.

<sup>21</sup>. Gilbert C. Fite and Jim E. Reese, *An Economic History of the United States*, Boston, Massachusetts: Houghton Mifflin, 1973, p.493-494; Soule 1947, p.131-146.

<sup>22</sup>. Copy of letter, George H. Carter, Public Printer, to the President, 7 October 1929, NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box. 709, file 60-235-6, section 1.

<sup>23</sup>. Copy of letter, Lawrence Richey, Secretary to the President, to Attorney General, 8 October 1929; copy of letter, John Lord O'Brian, Assistant to the Attorney General, to Lawrence Richey, Secretary to the President, 10 March 1930, NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box 709, file 60-235-6, section 1.

<sup>24</sup>. Reports, W. C. Gorsuch, Bureau of Investigation, Antitrust matter, on International Business Machines Corp., and Remington Rand Business Services, Inc, 10 May 1930, 11 August 1930, 4 September, 30 September 1930, 9 October 1930, 21 November 1931, NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box 709, file 60-235-6, sections 2-3.

<sup>25</sup>. Jas. Maxwell Fassett, "memorandum for Mr. O'Brian re: United States of America v. International Business Machines Corporation, et al., 24 July 1931; report, W. C. Gorsuch, BOI, Antitrust matter, on International Business Machines Corp., and Remington Rand Business Services, Inc, 21 November 1931, p.1; both in NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box. 709, file 60-235-6, section 3.

Remington Rand were sued for both charges.

Anyway, neither the slow detection of the accused anti-trust violations does answer why the litigation came so late, which turns the focus to how the accused illegalities gained sufficient importance to attract a federal anti-trust suit. This can be approached by reviewing the anti-trust action of federal administrations since the original agreement was concluded between the Tabulating Machine Company and the Powers company in 1914. First, the Democratic administration of President Woodrow Wilson was busy with the First World War. Then during the Republican administrations of Presidents Warring Harding and Calvin Coolidge from 1921 to 1929, the anti-trust laws were mildly enforced within their general policy of favouring business and industry. The Federal Trade Commission was the main anti-trust weapon, established in 1914. During the Harding and Coolidge years, they had little success in preventing unfair and monopolistic practices, and they were reluctant to recommend prosecution. And when the Commission recommended prosecution, the Justice Department often failed to act.<sup>26</sup>

The Hoover administration between 1929 and 1933 differentiated from its two immediate predecessors by filing the anti-trust suit. But the preliminary investigation lasted two years, which does not indicate a high priority. The insistence of the Public Printer during the 1920s explains why the case did not die, in spite of the abrasion from successive administrations, and his resolve caused the investigation starting in 1929 that led to the suit in 1932. The reasons that the case at last was proceeded with can be found in the Public Printer's interest in producing punched cards. This was based upon the substantial growth of punched card applications in the Federal services in the First World War and during the 1920s, exemplified by the establishment in Federal services of twelve new punched card installations between 1921 and 1923.<sup>27</sup> On a more general level, this growth raised the likelihood that someone would question the legality of the trade restrictions in the 1914 agreement between the Tabulating Machine Company and the Powers company. Also, this growth indicates the increasing importance of punched cards in society that came to attract an anti-trust case.

This point can also be reached along a different path. Only the growth of the punched card

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<sup>26</sup>. Fite and Reese 1973, p.493-494; Soule 1947, p.131-146.

<sup>27</sup>. Indorsement memoranda, U. S. Government Printing Office, Re: Tabulating Cards Ordered in the Government Printing Office from July 1, 1923 to date", 21 April 1930, NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box. 709, file 60-235-6, section 1; Soule 1947, p.132.

trade in the 1920s enabled IBM to gain a sufficient size to attract an anti-trust suit. Before the First World War, the size of the companies prosecuted for anti-trust violations were bigger than the Tabulating Machine Company. For example, when the National Cash Register Company in 1912 was charged for anti-trust violations, their revenue was 49 times bigger than the Tabulating Machine Company's revenue. Only in 1936, did IBM attain a similar sale in fixed prices as the National had had in 1912, and IBM accomplished a sale of 92 percent of this figure in 1931.<sup>28</sup>

### **The anti-trust case and the punched card trade**

The 1932 anti-trust suit charged IBM and Remington Rand for jointly fixing the machine leasing rates and card prices by their mutual agreement from March 1931.<sup>29</sup> Further, they were charged for tying machine rental to the purchase of punched cards from the machine vendor. The Department of Justice did not find sufficient concession in IBM's and Remington Rand's acceptance that a lessee could acquire punched cards from other producers, as the lessee then was obliged to pay the costs of repair and maintenance of the machines. All repairs were included in the rent, when the lessee exclusively applied cards from the machine vendor.<sup>30</sup>

During the legal proceedings, Remington Rand exploited the opportunity to get out of the licence agreement within their renewed contract with IBM from March 1931. Then the fundamental patent in the punched card trade was on "automatic group control", a facility to control generation of sub and grand totals which significantly eased the processing of punched cards. Hollerith filed his patent application on this facility in 1914, while the

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<sup>28</sup>. James W. Cortada, *Before the Computer. IBM, NCR, Burroughs, and Remington Rand and the Industry They Created, 1865-1956*, Princeton, New Jersey: Princeton University Press, 1993, p.72; figures in Library of Congress, Hollerith Papers, box 10, fld. 7; Pugh 1995 p.323. Comparison based upon deflation from whole sale prices in *Historical Statistics of the United States. Colonial Times to 1957* (1960), Washington, DC: U.S. Bureau of the Census, 1976, p.199.

<sup>29</sup>. "Petition", filed 14 April 1932, p.6-7, 13, in NA-NR: National Archives - Northeast Region, New York (NA-NR), US vs. IBM et al., Southern District of NY, Equity 66-215.

<sup>30</sup>. "Petition", filed 14 April 1932, p.7, 9, 12; "Stipulation" by IBM, filed 12 November 1935, p.9 and enclosure of 1927 IBM leasing contract with the US Dept. of Agriculture; both documents in NA-NR, US vs. IBM et al., Southern District of NY, Equity 66-215.

Powers' less comprehensive patent application was filed the next year and granted in 1917. These two applications ran into a lengthy patent litigation in the United States with each other and several other inventors. Therefore Hollerith's important patent was only granted in November 1931, which made it valid from 1914 to 1948.<sup>31</sup>

However, this did not bring about the cancellation of the Powers patent granted in 1917, which made Remington Rand realise that they did not need their just obtained license to the Hollerith group control patent. Consequently, they wanted to terminate the licence agreement with IBM that, which had been renewed only eight months earlier. For this end Remington Rand filed a separate suit against IBM in 1935 for having been misled, and the two companies agreed to nullify their licence agreement and market arrangements.<sup>32</sup> IBM never again raised the question of patent infringement by Remington Rand on this facility, which confirmed Remington Rand's view that they did not need this patent.

This nullification turned the focus exclusively upon the second charge of tying tabulator lease and card sale. One of IBM's arguments was their several patents, which referred to the constitutional basis for patent rights.<sup>33</sup> This argument implied precedence of the constitutionally based patent rights over the anti-trust laws approved by Congress. However, the lower court dismissed the argument, as the Clayton anti-trust act outlawed basing restriction to the free trade on patents, and the court judged illegal IBM's tying of machine leasing and card sale.<sup>34</sup> IBM appealed, but the judgment was upheld by the United States Supreme Court.<sup>35</sup>

Thus the government achieved both to break the punched card cartel and to eliminate the

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<sup>31</sup>. National Archives, RG 241, Entry 9A, Patent Case File No.1,830,699; Herman Hollerith, "Automatic Group Control for Tabulating Machines", [US] *Patent*, No.1,830,699 (filed 1914, issued 1931); James Powers, "Automatic Total-Taking Mechanism of Accounting-Machines", [US] *Patent*, No.1,245,506 (1917, filed 1915) "Consolidated Patent Act of 1870", 16 Statutes at Large, 198, sections 22, 23.

<sup>32</sup>. This was an outcome of a separate suit by Remington Rand versus IBM at the Supreme Court of New York for fraud in the process of granting patents related to automatic group control, "Petition", filed 26 August 1935, in RR v. IBM at Supreme Court of New York, copy filed 10 September 1935, in NA-NR, US vs. IBM et al., Southern District of NY, Equity 66-215; "Answers" from IBM, filed 10 September 1935, in NA-NR, US vs. IBM et al., Southern District of NY, Equity 66-215.

<sup>33</sup>. "Stipulation" by IBM, filed 12 November 1935, p.11-12a, in NA-NR, US vs. IBM et al., Southern District of NY, Equity 66-215.

<sup>34</sup>. "Opinion", filed 2 December 1935, p.5; "Order" dated 26 December 1935; both in NA-NR, US vs. IBM et al., Southern District of NY, Equity 66-215.

<sup>35</sup>. "Opinion", 27 April 1936, in WNRC, IBM v. USA, Supreme Court of the US, File No. 758 of 1935.

tying of punched card machine lease and card sale. However, there is no indication that the court ordered un-tying of card sale had significant impact on IBM's business, as it did not change the cards' share of the total revenues from punched card machines and cards in the United States.<sup>36</sup> Further after IBM had lost the case in the lower court, the Comptroller General suggested to claim damage from government punched card acquisitions from IBM and Remington Rand due to these companies' higher punched card prices and for the extra rent charged from users of punched cards from the Government Printing Office, but the government never brought this claim to court.<sup>37</sup>

During the legal proceedings in this anti-trust case, President Franklin D. Roosevelt succeeded President Hoover in 1933. The new administration was economic interventionist and punched cards had since the First World War been an important tool to facilitate the federal administrations' monitoring of economic, social, etc. activities across the nation. Therefore, a significant growth could be expected in the federal government's punched card applications. Further, in 1937 the federal government introduced huge punched card registers as a tool to administer the obligatory old age savings for the contributory old age pensions of the Social Security Act from 1935. This scheme comprised 32.9 million people in 1937, which implied a consumption of several tens of millions of cards four times a year. However, this application posed technical requirements that only IBM could fulfil. This reduced the government's choice and weakened their ability to control IBM's punched card monopoly.

### **Contribution to a broader approach**

The anti-trust case launched against IBM and Remington Rand in 1932 provides a glimpse into the dynamics and implications of the anti-trust legislation and the ensuing litigation. Further, it offers a basis for reflections on a broader approach to the anti-trust legislation in the United States.

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<sup>36</sup>. For example, Complaint, the United States v. International Business Machines, 21 January 1952, p.8, 9, in NA-NR, US vs. IBM et al., Southern District [of NY] Court Case File 72-344.

<sup>37</sup>. Letter, Comptroller General of the United States, to Attorney General, 10 January 1936; letter, Attorney General, to Comptroller General, 21 January 1936; letter, Comptroller General, to Attorney General, 25 June 1936; George, P. Alt, "Memorandum for Mr. Cox, in re: International Business Machines Corporation, 27 August 1941; all in NA, RG-60, Anti-trust Division, Acc. No. 70A4771, box 709, file 60-235-6, sections 11, 12.

This paper tried to explain the emergence of this anti-trust suit in three ways: first, through the emergence of the anti-trust legislation; second, through the slow detection of the accused illegalities; and finally, third, through the accused illegalities gaining sufficient importance to attract a federal anti-trust suit. The first approach to base the institution of the proceedings through the history of law-making was inadequate, as both the infringement of the law claimed by the Department of Justice in 1932 and the main laws invoked that year had existed for eighteen years.

The second approach was to study the slow detection of the accused illegalities. This approach could neither answer the late emergence of this anti-trust suit, as the Public Printer called the attention of the Department of Justice to the punched card cartel's organisation of this market nine years before the suit was filed. Therefore, this approach turns the focus to the reluctance of especially the Harding and Coolidge administrations between 1921 and 1929 to persecute anti-trust violations and the importance of the Public Printer's endeavour as the claimed injured party to raise the issue.

The third approach was to try to explain the accused illegalities through their gaining sufficient importance to attract a federal anti-trust suit. In the limited context of the office machine industries, this apparently provides reasonable explanation, as in the suing of the National Cash Register Company in 1912 and IBM in 1932 indicated that the size of a company was a reason to attract an anti-trust litigation. Further, this argument also applies for many additional cases, like the suits against Standard Oil, American Tobacco and Du Pont in the 1910s. However, this explanation is too simple, as smaller companies were persecuted as well.

Therefore these three reasons are too simple to provide an adequate explanation, but the analysis of the case opened for the fruitful study of the process of raising a case. Further, this observation questions the impartiality of court based anti-trust regulation in the United States.

Also the analysis provided an example of the relation between the constitutional patent privilege and the anti-trust regulation. First, the Clayton anti-trust act from 1914 ruled out the use patents as a basis for restriction to the free trade, which was upheld by subsequent Supreme Court rulings. Patents did not play a significant role in the court hearings of the 1932 anti-trust suit, as neither the cartel between two punched card producers, nor the tying of machine rental and punched card acquisition could be substantially reasoned by valid patents. On the other hand, the patents held by IBM's predecessor played an important

indirect role in this story, as the Powers company's need for a licence, in 1914, provided an occasion for the establishment of the two companies' cartel. Thus this case indicates the importance for broadening the study of anti-trust regulation to encompass context beyond the judgments that is patents' role in the shaping of cartels in the United States – in contrast to Germany – and the crucial process of shaping charges for anti-trust violations.