

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITICORP, INC., CITICORP SERVICES, INC.,
GTECH HOLDINGS CORPORATION, and
TRANSACTIONAL CORPORATION,

Defendants.

Civil No.98-436

VERIFIED COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against defendants and alleges as follows:

1. The United States brings this antitrust case to enjoin Citicorp, Inc., through its wholly owned subsidiary, Citicorp Services, Inc. (collectively, "Citicorp"), from acquiring certain assets of Transactional Corporation, a wholly owned subsidiary of GTECH Holdings Corporation (collectively, "Transactional"), which are used in the provision of Electronic Benefits Transfer ("EBT") services, and to enjoin the defendants from entering into related non-compete agreements.

2. The defendants are head-to-head competitors in the

provision of EBT services. Each of them has developed and implemented EBT systems, which are electronic payment systems used to deliver government benefits, such as food stamps and Temporary Assistance for Needy Families, to millions of individuals and families in the United States. EBT systems eliminate much of the paper used to provide benefits, thereby reducing government costs in delivering benefits, in addition to reducing fraud and providing a more efficient and dignified delivery system for benefits recipients. Given that EBT services could be used to distribute over \$100 billion in benefits to over 31 billion people in the next few years, competition among EBT vendors is important to maintaining and further promoting the cost savings associated with the use of EBT systems.

3. Citicorp is by far the dominant provider of EBT services to state and local governments in the United States. Transactive is today Citicorp's major competitor and, in many recent procurements, its only competitor for the provision of EBT services. Unless this proposed acquisition is blocked, the competition for EBT systems that now exists will be eliminated, resulting in higher prices and lower quality services for government agencies and ultimately resulting in lower quality services for the individuals and families receiving benefits.

I.

JURISDICTION AND VENUE

4. This action is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain defendants' violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

5. Citicorp, Inc. is a Delaware corporation that transacts business, maintains offices, and is found within the State of Delaware. Its wholly owned subsidiary, Citicorp Services, Inc. ("CSI"), a New York corporation, provides EBT services through a data center owned by an affiliate located in New Castle, Delaware, and Citibank Delaware, a Delaware-chartered bank.

6. GTECH Holdings Corporation ("GTECH") and its wholly owned subsidiary, Transactive Corporation, are Delaware corporations that transact business, maintain offices and are found within the State of Delaware.

7. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. EBT systems are regulated by the federal government and federal funds are used to provide food stamp benefits. Defendants provide EBT services to a number of states and routinely provide EBT services across state boundaries. The Court has subject matter jurisdiction over this action and jurisdiction over the defendants pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

THE DEFENDANTS

8. Citicorp, Inc., a bank holding company headquartered in New York, New York, is a financial services company with over \$21 billion in revenues, whose principal subsidiary is Citibank N.A., the nation's second largest bank. The Citicorp subsidiary with principal responsibility for Citicorp's EBT business is CSI, which is part of Citicorp's Advanced Development Group in its Global Electronic Cards Division. In addition to CSI, other Citicorp subsidiaries involved in its EBT business include Citicorp North America, Inc., which owns and operates a data center in New Castle, Delaware, that houses CSI's EBT system as well as manages certain EBT settlement transactions, and three depository institutions, Citibank Delaware, Citibank N.A., and Citibank FSB, which provide "concentrator bank" services (management of accounts used to settle funds for retailers, banks, and others who have accepted EBT cards in payment transactions).

9. GTECH, headquartered in West Greenwich, Rhode Island, is primarily in the business of providing lottery products and services, with annual revenues of approximately \$991 million. GTECH entered the electronic benefits business as part of an acquisition of certain businesses from General Instrument Corporation in 1993. GTECH's EBT business is conducted principally through its wholly owned subsidiary, Transactive

Corporation.

III.

THE PROPOSED TRANSACTION

10. Defendants CSI and Transactive entered into an Asset Purchase Agreement dated February 26, 1998 (the "Agreement"), pursuant to which defendant CSI agreed to purchase from Transactive specified assets, including (i) the rights pursuant to EBT Contracts and related agreements with the States of Texas, Illinois, and Indiana and to an EBT subcontract with the County of Sacramento, CA (hereafter "EBT Contracts"); (ii) specified point-of-sale terminal equipment; (iii) all components of the Transactive EBT Processing System (computer hardware, software, intellectual property rights, and other ancillary equipment) and related computer equipment; (iv) licenses of specified software and intellectual property rights, including the right to use, modify and enhance the software for use in connection with the provision of EBT services under the EBT Contracts, including renewals; and (v) all Contract records.

11. Section 6.7 of the Agreement contains two non-compete provisions. The first prohibits Transactive from competing against Citicorp for any EBT contract put out to bid for a period of eight years starting from the date of the Agreement (except for three very limited circumstances, two of which involve limited services in New York). The second prohibits the license or sale of Transactive's processing system to any other person

for a period of eight years for use in connection with the provision of EBT services, except that in the event that the Commonwealth of Puerto Rico awards its EBT contract to the GM Group, Transactive can license its system to the GM Group solely for use in Puerto Rico.

12. The purchase price to be paid under the Agreement is eleven and a half million dollars (\$11.5 million), subject to a variety of adjustments.

IV.

TRADE AND COMMERCE

A. EBT SERVICES

13. EBT systems are electronic payments systems used by state and local government agencies to provide financial benefits and payments to qualified recipients by using cards rather than paper such as stamps or checks. The services are provided to individuals or families at qualified retail establishments and Automated Teller Machines ("ATMs").

14. The initial program to utilize EBT services, and the core program today, is the Food Stamp program. Today, approximately eight million households receive food stamp benefits in the United States. More than three and one-half million of those households receive their food stamp benefits through EBT cards. In 1993, Maryland became the first state to implement an EBT program statewide. Since then, many states have

implemented EBT programs through individual procurements or through multi-state alliances. Today, there are EBT systems operating in 34 states, with 9 states in the process of implementing EBT systems.

15. All of the state EBT systems are used to deliver food stamp benefits, and many also deliver Temporary Assistance for Needy Family cash benefits. Some states also deliver or plan to deliver, through EBT systems, other types of cash benefits, such as General Assistance, Heating Assistance, Emergency Assistance, and Child Support Disregard.

16. States generally prefer EBT services to the paper-based delivery system for a variety of reasons. EBT systems provide a more dignified and efficient delivery system for recipients and are less susceptible to fraud than the existing paper-based systems. EBT systems also provide a more efficient and less costly delivery mechanism for the states, with projected savings of hundreds of millions of dollars per year. It has been projected that a fully implemented EBT system, for food stamps alone, will save taxpayers \$1 billion over five years. The federal 1996 Welfare Reform Act, 7 U.S.C.A. § 2016(i)(1)(A) (West Supp. 1998) ("Welfare Reform Act") mandated that all states implement EBT systems for the delivery of food stamp benefits by 2002.

17. Nearly all contracts to provide EBT services are competitively bid under state procurement procedures which vary

according to the state involved. States generally publish Requests for Proposal ("RFPs") outlining the system requirements and establishing bid qualifications. Each state's food stamp EBT processing system must meet federal regulatory requirements and be certified by the Food and Nutrition Service of the U.S. Department of Agriculture. All EBT contracts are for a defined duration, generally five to seven years, with a provision for re-bidding the contracts prior to their termination. While the cost of EBT services varies from state to state, it can be significant. For example, in a large state, it may cost between 15 and 20 million dollars per year.

18. All EBT contracts are negotiated between the state and a prime contractor responsible for all aspects of performance of the contract, although prime contractors frequently use other firms as subcontractors for one or more of the various components of the contract requirements.

19. Developing and implementing an EBT system is a complex undertaking requiring the contractor to provide a wide range of products and services. The system must be sophisticated enough to maintain a client accounts database with an account for each client with separate subaccounts for each benefit program managed by different rules, and to provide real time transaction processing and account settlement under rules and standards unique to EBT. These services usually include, at a minimum,

issuing cards, training recipients and administrators, installing and maintaining terminals at retail points of sale, providing access to ATM networks, and providing twenty-four hour, seven-day-a-week customer service for both retailers and beneficiaries. The unique requirements for EBT processing systems have led suppliers, such as Citicorp and Transactive, to develop software systems specifically for EBT processing systems, rather than use or modify credit or debit card processing software.

20. There is a lag time between incurring expenses and receiving revenues in the EBT business. Contractors must make large up-front investments to develop the systems necessary to bid for EBT contracts and provide EBT services. Once such systems are operating, states pay EBT service providers on a per-case (per beneficiary), per-month basis. As a result, EBT contractors incur operating losses during the start-up period, with the expectation of ultimately earning a profit over the term of the contract. Profitability can be increased further as vendors are able to amortize these start-up costs over additional state contracts, addition of benefit programs to the contract, and rebids of the initial contracts.

B. Relevant Markets

21. The provision of EBT services to state and local governments is the relevant product market. EBT services are highly specialized; there are no substitute products or services that states may turn to for EBT services that can deliver food

stamps and other benefits using a card-based real-time electronic system. Other forms of delivery, such as paper-based distribution of food stamps and checks, are not as efficient and do not conform with the Welfare Reform Act, federal regulations implementing the Act, or state EBT system requirements as detailed in state RFPs. EBT services generally are purchased by states or consortia of states through a bidding process based on a single RFP, and contracts are awarded to a prime contractor that is responsible for an entire EBT system rather than for individual components of EBT systems and services (although the prime contractors generally use one or more subcontractors).

22. The relevant geographic market is the United States. Federal law mandates that EBT systems meeting U.S. Department of Agriculture requirements be used by the year 2002 by all states at least for food stamp programs, which are supported by federal funds. Such systems must also be able to process out-of-state transactions. The major suppliers of EBT services generally offer similar services nationwide, and bid in numerous states.

V.

LIKELY ANTICOMPETITIVE EFFECTS

A. The Market for EBT Services is Highly Concentrated

23. There are presently only four firms in the national market to provide EBT services: Citicorp, Transactive, Deluxe

Data Systems, Inc. ("Deluxe"), and Lockheed Martin IMS ("Lockheed"). While there are other firms that can and do provide individual components of EBT services, only these four firms are in the market and bid for EBT services contracts as the prime contractor in multiple states.

24. Actual bid competition generally involves fewer than these four bidders for two principal reasons. First, only three of these firms have EBT processing systems. Lockheed does not have an EBT processing system, and thus has had to submit its prime contractor bids with a processing subcontractor, as was the case in Oklahoma and the District of Columbia where Citicorp is Lockheed's processing subcontractor. Second, Citicorp, Deluxe, and Lockheed frequently bid jointly with one of the three bidding as the prime contractor and one or both of the others performing as a subcontractor on that bid. For example, Citicorp won the Northeast Coalition's EBT Contract (covering seven states and awarded in 1995) and the Western Alliance EBT Contract (covering six states and awarded in 1996) with Deluxe and Lockheed both participating as subcontractors to Citicorp rather than submitting independent competitive bids.

25. Over the last 18 months, Transactive has consistently bid against Citicorp for new state EBT systems and has been Citicorp's only EBT processing system competitor. Table 1 identifies all of the state EBT contracts put out to bid since September 1, 1996, and in no state has Citicorp/Deluxe faced EBT

processing system competition from anyone other than Transactive:

Table 1

Date of RFP	State	Prime Bidders	Winner
Sept. 1996	Indiana	Citicorp (Deluxe sub.) Transactive	Transactive
Sept. 1996	Mississippi	Lockheed (Citicorp sub.) Transactive Linknet*	Transactive
Jan. 1997	New Jersey	Deluxe (Citicorp sub.) Transactive	Deluxe
Jan. 1997	Virginia	Citicorp (Lockheed sub.) Transactive	RFP withdrawn
Feb. 1997	Michigan	Citicorp (Deluxe sub.) Transactive	Citicorp
Sept. 1997	New Mexico (rebid)	Citicorp (Deluxe sub.) Transactive	Citicorp
Nov. 1997	Wyoming (smart card)	Citicorp	RFP withdrawn
Nov. 1997	Puerto Rico	Citicorp GM Group (Transactive sub.)	GM Group
Dec. 1997	Iowa	Bid suspended	

*Linknet was disqualified because of its low technical score.

26. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A, the market for EBT services is both highly concentrated and dominated by Citicorp. Table 2 below shows prime contractor market shares as of March 1998, defined both by number of state contracts and by share of total food stamp case load (this is a revenue measure as prime contractors are paid a fixed amount per case each month,

and thus this measure accounts for the relative importance of the states with larger case loads):

TABLE 2

	Prime Contractor By State	Market Share Of States	HHI	Food Stamp Households By Prime Contractor	Market Share Of Households By Prime Contractor	HHI
Citicorp	28	65%	4225	4,638,115	62%	3844
Deluxe	7	16%	256	926,932	12%	144
Transactive	4	9%	81	1,278,986	17%	289
Other	4	9%	33	683,528	9%	37
Total	43	100%	4595	7,527,561	100%	4314
Change in HHI			1203			1343
Post-Acquisition HHI			5798			5657

Note: Deluxe is credited with California even though it has won only the pilot project for San Bernadino and San Diego counties; only the caseload for those counties is included in the number of households. Citicorp is credited with New Mexico, where it will be replacing First Security.

27. Measured by share of states or food stamps caseload, the EBT services market is already highly concentrated and the proposed acquisition would result in a substantial increase in concentration. As explained, these figures underestimate actual market concentration due to the tendency of Deluxe, Citicorp and Lockheed to bid jointly. In fact, if Citicorp's share is adjusted to include the households in contracts for which it is the prime contractor or a subcontractor, following the proposed acquisition it would control virtually the entire market.

B. The Proposed Transaction Will Eliminate Competition to Citicorp from its Most Important Rival and Limit Potential Competition from New Entrants

28. Transactive is Citicorp's most important rival in the market for EBT services. A firm's ability to bid as prime contractor is dependent on the ability to provide, itself or through a subcontractor, a specialized EBT processing system as a core component of the service. Of the firms presently in the market, only three firms have developed and implemented large-scale EBT processing systems -- Citicorp, Transactive, and Deluxe. But in many cases states receive bids only from two of the three firms because Deluxe frequently bids jointly with Citicorp so that they divide the EBT processing requirements between the two firms. Further, Deluxe has agreed by contract with Citicorp not to compete against Citicorp when contracts covering 16 states are rebid. Thus, in many bidding situations, there are only two bidders -- Transactive and either Citicorp or Deluxe.

29. If the proposed acquisition is allowed to be consummated, Transactive has agreed, pursuant to a non-compete clause, not to compete against Citicorp, with very limited exception, for any new contracts or rebid contracts for at least eight years. The duration of the non-compete agreement, itself unjustifiable and unreasonably long, is significant since it

would preclude Transactive from bidding on new contracts for those states that do not have an EBT provider as well as the first round of rebids for all those states that have selected an EBT provider. The non-compete agreement, therefore, removes Transactive and its EBT processing system from the market for an entire bidding cycle for every state, the District of Columbia and Puerto Rico. The effect of the proposed transaction and Agreement is to remove Transactive as Citicorp's only substantial competitor in the EBT services market.

30. In addition, the Agreement prohibits the license or sale of the Transactive EBT processing system to any other firm for use in connection with providing EBT services for at least eight years. To submit a bid as a prime contractor, a firm must be able to provide, itself or through a subcontractor, an EBT processing system. By restricting Transactive's ability to sell or license its EBT processing system, the Agreement deprives potential bidders of the only available opportunity to purchase or license a proven EBT processing system to enter and compete against Citicorp for large volume contracts. Finally, the sale of the EBT Contracts to Citicorp instead of another potential competitor reduces the amount of business available to such a potential entrant. Obtaining a significant amount of business would be important to a new or smaller competitor in order to enable it to amortize the very large start-up costs needed for entry over a large number of recipients, and to gain experience

and a track record in order to compete effectively for future new contracts or rebid contracts. The effect of the sale of the EBT Contracts and the restriction of the licensing of Transactive's EBT system is to make it less likely that a competitor could enter or expand its participation in the EBT services market.

C. Entry is Unlikely to Restore Competition

31. New entry into the EBT systems market is highly unlikely in response to any price increase resulting from the proposed acquisition. Indeed, the experience in the market shows a consistent trend of the exit of many firms after failed entry attempts.

32. The emergence of EBT systems in the early 1990s stimulated substantial interest in entry into this market by a number of the nation's largest financial and computer processing firms, including among others Mellon Bank Corporation, First Union Corporation, NationsBank Corporation, International Business Machine Corporation (IBM), Electronic Data Systems Corporation (EDS), and Unisys Corporation. After attempting entry and, in most cases, submitting unsuccessful bids, these firms have exited the market and have no intention to re-enter.

33. There has been no significant entry into the EBT services market in more than two years. Entry is even less attractive today than it was a few years ago because a large percentage, about 85 percent, of the available case load has been contracted and there is a more limited amount of yet-to-be bid

business over which to amortize the substantial costs of entry and to form a base from which to compete on rebids against the incumbent and market-dominant Citicorp. Entry will be further deterred by the sale of Transactive's contracts and the non-compete provisions included in the contract.

VI.

VIOLATION ALLEGED

34. The Agreement and proposed transaction would effectively eliminate competition between Transactive and Citicorp, significantly reduce competition in the provision of EBT services to state and local governments in the United States, and prevent Transactive from selling or licensing its assets to any other firm that would use them to compete in the EBT services market. The direct effect of the proposed transaction would be to harm the public by reducing substantially the ability of state and local government agencies to rely on competitive bidding to obtain the highest quality and lowest cost EBT services, and thus would likely result in an increase in prices to the states and a decrease in the quality of services being provided to benefits recipients. The proposed transaction and Agreement, therefore, may tend substantially to lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and constitutes an unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

VII.

REQUEST FOR RELIEF

Plaintiff requests:

35. That the proposed transaction and Agreement be adjudged a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1;

36. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on their behalf from carrying out the Agreement in whole or in part, or any similar agreement the effect of which would be to (i) transfer or license any assets of Transactive relating to the provision of EBT services, or (ii) limit competition between and among defendants in any fashion, including any joint bidding for, or provision of, any EBT service;

37. That plaintiff has such other relief as the Court may deem just and proper; and

38. That plaintiff recover the costs of this action.

DATED: July 27, 1998

For Plaintiff:

_____/s/_____
Joel I. Klein
Assistant Attorney General

_____/s/_____
John M. Nannes
Deputy Assistant Attorney
General

_____/s/_____
Constance K. Robinson
Director of Operations and
Merger Enforcement

_____/s/_____
Gregory M. Sleet
United States Attorney for the
District of Delaware
Delaware Bar No. 2912

_____/s/_____
Virginia Gibson-Mason
Chief of Civil Division,
Office of the United States
Attorney for the District of
Delaware

_____/s/_____
Nancy M. Goodman
Acting Chief, Computers &
Finance
N. Scott Sacks
Assistant Chief, Computers &
Finance
Tracy Greer
Jeremy W. Eisenberg
J. Roberto Hizon

Attorneys

Antitrust Division
U.S. Department of Justice
Computers & Finance Section
Suite 9500
600 E Street, N.W.
Washington, D.C. 20530

APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.