

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
TRW INC.,
Defendant.

Civil No. C-88-4253

Filed: November 17, 1988

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. TRW Inc. maintains offices, transacts business, and is found within the Northern District of Ohio.

3. TRW proposes to acquire, through a Stock Purchase Agreement dated March 20, 1988, all of Chilton Corporation's stock from Borg-Warner Corporation. The United States alleges that this proposed acquisition will violate Section 7 of the Clayton Act.

II. DEFINITIONS

4. "Affiliate" or "affiliated credit bureau" means a credit bureau, not owned by a vendor, that purchases network services from a vendor.

5. "Consumer credit report" means a compilation of information relating to the credit worth, financial responsibility or paying habits of an individual supplied to a credit grantor or other person at their request.

6. "Credit bureau" means a person that engages primarily in the collection of information relating to the credit worth, financial responsibility or paying habits of any consumer purchaser or proposed consumer purchaser of goods or services on credit and that sells credit reports to credit grantors and other persons. A credit bureau may be either a vendor or an affiliate.

7. "Credit grantor" means a person who grants credit to individual consumers.

8. "HHI" means the Herfindahl-Hirshman Index, a measure of market concentration 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). THE HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

9. "Network services" means the computerized storage, updating, and retrieval of consumer credit records and files and the provision of consumer credit information from a data base to credit bureaus.

10. "Owned office" means an office owned and operated by a vendor for the purpose of selling credit reports.

11. "Person" means a natural person, corporation, association, firm, partnership or other business or legal entity.

12. "Vendor" means a provider of network services to affiliated credit bureaus.

III. DEFENDANT

13. TRW Inc. ("TRW") is made a defendant herein. TRW is a corporation organized and existing under the laws of the State of Ohio and maintains its principal offices in Cleveland,

Ohio. The Information Services Division of TRW's Information Services Group sells credit reports through owned offices in various locations in the United States and is a vendor of network services. In 1987, TRW's revenues from sales of credit reports and network services in the United States totaled about \$140 million. TRW is engaged in interstate commerce and in activities substantially affecting interstate commerce.

IV. TRADE AND COMMERCE

14. Chilton Corporation ("Chilton") is a corporation organized and existing under the laws of the State of Texas and maintains its principal offices in Dallas, Texas. Chilton is a wholly owned subsidiary of Borg-Warner Corporation. Chilton sells credit reports through owned offices and affiliates and is a vendor of network services. In 1987, Chilton's revenues from sales of credit reports and network services in the United States totaled about \$93 million.

15. Consumer credit reports are used by credit grantors to determine whether to grant credit, or how much credit to grant, to individuals. Credit bureaus collect consumer credit information, store it in computers, and sell it to credit grantors. Credit grantors usually receive consumer credit reports electronically through computer terminals. Vendors operate computer facilities that supply network services to credit bureaus. There are four vendors of network services in the United States, including TRW and Chilton. In 1986, the

total United States credit reporting revenues of all vendors from the sale of network services and the sale of credit reports were about \$410 million.

16. Consumer credit reports normally include the following information on individual consumers: age, marital status, number of dependents, social security number, current and most recent addresses, current and recent employers, and salary. Consumer credit reports also contain information obtained from the accounts receivable files of large and small credit grantors, including information on the current status of the account, the amount owed, any amount overdue and how long overdue, and any amount written off as uncollectable. In addition, consumer credit reports contain information compiled from public records, such as judgments, liens and bankruptcies. Consumer credit reports include records, called inquiries, of purchases of credit reports on an individual. National credit grantors, such as department store chains, provide vendors with information on consumers located throughout the country. Local credit grantors, on the other hand, supply credit bureaus with information on consumers located in a specific city, state or region.

17. The information in a credit report covers an extended period of time. The Fair Credit Reporting Act, 15 U.S.C. § 1681 et. seq., provides that a credit bureau may retain and report adverse credit information on an individual for up to seven years, except bankruptcy information which may be retained and

reported for ten years. 15 U.S.C. § 1681c. A credit report must contain information on an individual that covers several years to be viewed as an adequate source of credit information by credit grantors. A credit report that contains all the information desired by credit grantors (described above in paragraph 16) and that covers a sufficient period of time is called a "full file." Full file credit reports contain information from local, as well as national, credit grantors.

18. Buyers purchase consumer credit reports primarily on the basis of the quality and quantity of information in the reports. Credit grantors do not consider more limited types of credit information to be an adequate substitute for full file consumer credit reports. There is no substitute for consumer credit reports that a significant number of credit grantors would purchase in response to a small, but significant, nontransitory increase in the price of consumer credit reports. The sale of consumer credit reports constitutes a line of commerce, or relevant product market, for antitrust purposes.

19. Only credit bureaus that have comprehensive file coverage in the local geographic area in which the consumer about whom a credit report is sought resides are likely to be considered as sources of credit reports by potential purchasers of credit reports. The geographic markets for consumer credit reports, therefore, are local and bounded by the overlapping geographic areas covered by particular competing credit bureaus.

20. TRW's proposed acquisition of Chilton would substantially reduce competition in the market for consumer credit reports in each of the sixteen (16) relevant geographic markets identified below in paragraphs 21 through 36. In each of these markets the proposed acquisition would substantially increase concentration, the HHI is currently greater than 3200, and the acquisition of Chilton would increase the HHI by more than 700 points.

21. There are no more than three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in any metropolitan area in Arizona. Based on the number of consumer credit reports sold, a TRW affiliate and a Chilton owned office are the two largest credit bureaus in every area of the state.

22. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Denver, Colorado. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's owned office is the second largest.

23. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Connecticut. TRW's and Chilton's owned offices compete with the affiliate of a third vendor in every area of the state. While their market shares vary from area to area, each of the three credit bureaus offers full file

consumer credit reports on individuals who reside throughout Connecticut. Based on number of consumer credit reports sold, Chilton and TRW are the second and third largest credit bureaus in Connecticut. A fourth credit bureau sells full file consumer credit reports in some parts of Connecticut, but it has a much smaller market share than any of the other three credit bureaus.

24. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Hawaii. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's affiliate is the second largest.

25. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Boston and the other counties in eastern Massachusetts. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's affiliate is the second largest.

26. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Worcester and the other counties of central Massachusetts. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's affiliate is the second largest.

27. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals

who reside in Springfield and the other counties of western Massachusetts. Based on the number of consumer credit reports sold, TRW's affiliate is the largest credit bureau and Chilton's owned office is the second largest. A third credit bureau sells full file credit reports in some counties in western Massachusetts, but it has a much smaller market share than either of the other credit bureaus.

28. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Detroit, Michigan. Based on the number of consumer credit reports sold, TRW's owned office is the largest credit bureau and Chilton's owned office is the third largest.

29. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in New Hampshire. Based on the number of credit reports sold, Chilton's affiliate is the largest credit bureau and TRW's affiliate, which is located in Massachusetts, is the second largest.

30. All the credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in New Mexico are affiliates of either TRW or Chilton. Based on the number of consumer credit reports sold, Chilton affiliates sell the largest number of consumer credit reports in most cities and towns in New Mexico and TRW affiliates sell the second largest number.

31. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Syracuse, New York. Based on the number of consumer credit reports sold, TRW's owned office is the largest credit bureau and Chilton's owned office is the second largest.

32. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Rochester, New York. Based on the number of consumer credit reports sold, Chilton's affiliate is the largest credit bureau and TRW's owned office is the second largest.

33. There are two credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Buffalo, New York. Based on the number of consumer credit reports sold, TRW's owned office is the largest credit bureau and Chilton's affiliate in Rochester is the second largest seller of credit reports on individuals who reside in Buffalo.

34. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Rhode Island. Based on the number of credit reports sold, Chilton's owned office is the largest credit bureau and TRW's affiliate is the second or third largest.

35. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Dallas and Fort Worth, Texas. Based on the number of consumer credit reports sold, Chilton's owned office is the largest credit bureau and TRW's owned office is the second largest.

36. There are three credit bureaus that collect information for and sell full file consumer credit reports on individuals who reside in Houston, Texas. Based on the number of credit reports sold, Chilton's owned office is the second largest credit bureau and TRW's owned office is the third largest.

37. Successful entry into local markets by an existing credit bureau is difficult. There is no firm that could enter any of the relevant geographic markets in less than two years in response to a 10% nontransitory increase in the price of consumer credit reports. It takes three to five years to compile sufficient information on the credit history of individual consumers to be a substitute source of consumer credit reports. Successful entry by a person other than the four existing vendors or a person affiliated with a vendor would take even longer because of the additional need to establish a computer system and software dedicated to consumer credit reports and to develop expertise in the business of consumer credit reports.

38. The activities engaged in by the defendant in the collection, storage, and dissemination of consumer credit reports are within the flow of, and substantially affect, interstate commerce.

V. VIOLATION ALLEGED

39. On March 20, 1988, TRW and Borg-Warner entered into a Stock Purchase agreement by which TRW would purchase all of the issued and outstanding capital stock of Chilton. An amendment to the contract was signed on October 3, 1988.

40. The effect of the proposed acquisition of Chilton by TRW under the terms of the aforesaid agreement may be substantially to lessen competition in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between TRW and Chilton (and their affiliates) in the sale of consumer credit reports in the geographic markets identified in paragraphs 21 to 36 above will be eliminated; and
- (b) competition generally in the sale of consumer credit reports in the geographic markets identified in paragraphs 21 to 36 may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That the acquisition of Chilton by TRW be adjudged to be in violation of Section 7 of the Clayton Act;
2. That the defendant be permanently enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to combine the operations of TRW and Chilton; and
3. The plaintiff have such other and further relief as the Court may deem just and proper.

Dated:



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