

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRW INC.,

Defendant.

Civil No. *C-88-4263*

11/17/88

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On November 15, 1988, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, alleging that the proposed acquisition of Chilton Corporation ("Chilton") by TRW Inc. ("TRW") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The complaint names TRW as defendant.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in sales of consumer credit reports in sixteen (16) geographic markets. Both companies sell credit reports, either directly through credit bureau offices that they own (called "owned offices" herein) or indirectly through affiliated credit bureaus, in each of these markets. The complaint seeks, among other relief, to enjoin the transaction and thereby to prevent its anticompetitive effects and to maintain existing competitive conditions in the relevant markets.

On November 15, 1988, the United States and TRW filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, TRW would be required to consummate contracts to sell copies of the consumer credit files in some markets and end affiliation agreements with independent credit bureaus in others. The United States and TRW have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On March 20, 1988, TRW and Borg-Warner Corporation ("Borg-Warner") entered into a Stock Purchase agreement by which TRW would purchase all of the issued and outstanding stock of Chilton from Borg-Warner. TRW and its affiliates sell consumer credit reports to banks, finance companies, credit card companies, and other credit grantors under the trade name Credit Data. In many areas of the country, TRW competes with Chilton or its affiliates, which sell consumer credit reports under the trade name Credimatic.

Consumer credit reports are compilations of information on individual consumers that assist credit grantors in deciding whether or not to grant credit to particular consumers. Consumer credit reports normally include a consumer's 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 national, regional, and local 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 also disclose inquiry information that indicates each instance

in which a credit grantor has purchased a credit report about an individual and reveals the extent to which the person has recently received or been denied credit.

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 company selling credit reports in a given area must possess information on the overwhelming majority of individuals residing in that area, for substantially that period of time, in order to be viewed by credit grantors as an adequate source of credit reports. A credit report that contains all the information desired by credit grantors and that covers a sufficient period of time is called a "full file."

Buyers purchase consumer credit reports primarily on the basis of the quality and quantity of information in the reports. A consumer credit report that does not contain all types of credit information or that does not contain information that covers a sufficient period of time is not a substitute for a full file consumer credit report.

The Complaint alleges that the provision of full file consumer credit reports is a relevant product market for antitrust purposes. There is no reasonable substitute to which a substantial number of customers would turn in response to a

small, but significant and nontransitory, price increase for such reports.

Competition in the sale of credit reports occurs in local geographic markets, usually individual metropolitan areas. Credit grantors require credit information on a specific individual. For most areas there are only a small group of firms that compile information for and sell consumer credit reports on individuals that reside in that area.

Credit information is stored, updated and retrieved by computers. Only four companies, including TRW and Chilton, maintain data bases in which consumer credit information is stored. These companies sell credit reports primarily through their owned offices, but also through affiliated credit bureaus. Affiliated credit bureaus are independently owned and operated companies, or associations, that collect consumer credit information and store it in the centralized data bases of one of the four companies.

The owned offices and affiliated bureaus of each of the four companies make up a network for the provision of credit reporting services to credit grantors. Currently, each of the networks has particular regional strengths. Most of Chilton's offices and affiliated bureaus, for example, are in the southwest, midwest, and northeast. TRW is strongest on the east and west coasts. Although national coverage is an advantage for a network, TRW in many areas has not established an office. Rather, it has "Autofiles" which consist primarily

of accounts receivable data gathered from national credit grantors, but does not include the accounts receivable data of local credit grantors. In other areas, it has opened local offices and collected some local accounts receivable and public record information, but for less than the three to five years necessary to establish a competitive file. Given the different regional strengths of TRW and Chilton, the acquisition will expedite TRW's entry into many markets and increase the geographic area in which it offers full files.

However, in a number of local markets, TRW and Chilton are direct competitors in the sale of credit reports. The Complaint identifies sixteen areas in which the transaction is likely to reduce competition substantially: the state of Arizona; Denver, Colorado; the state of Connecticut; the state of Hawaii; Boston, Massachusetts; Worcester, Massachusetts; Springfield, Massachusetts; Detroit, Michigan; the state of New Hampshire; the state of New Mexico; Syracuse, New York; Rochester, New York; Buffalo, New York; the state of Rhode Island; Dallas and Fort Worth, Texas; and Houston, Texas. Both companies have full files in these areas and significant market share. In no case is there more than two other competitors in the sale of consumer credit reports. The Complaint alleges that each of these markets is highly concentrated, that each would become substantially more concentrated as a result of TRW's proposed acquisition of Chilton, and that the transaction

would cause the Herfindahl-Hirshman Index, ^{1/} a measure of market concentration, to increase by at least 700 points to at least 3900.

Entry into the business of providing consumer credit reports is difficult, time consuming and expensive. Generally it takes three to five years to collect sufficient information to provide full file credit reports in a given market. Consequently, new entry by another party could not be accomplished rapidly enough in any relevant geographic area to prevent the anticompetitive results of this transaction.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because the effect of the acquisition may be substantially to lessen competition in the market for consumer credit reports in the relevant geographic markets in violation of Section 7 of the Clayton

^{1/} The Herfindahl-Hirshman Index ("HHI") is 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%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 900 + 900 + 400 + 400 = 2,600$). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches 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 the leading firms and the remaining firms increases.

Act. The risk to competition posed by this acquisition substantially would be eliminated by the relief provided in the proposed Final Judgment which will ensure that all of the relevant geographic markets will have as many competitors after the acquisition as they do currently.

Specifically, the proposed Final Judgment requires that TRW not renew agreements with affiliates located in Honolulu, Hawaii; Framingham, Massachusetts; Manchester, New Hampshire; Albuquerque and Santa Fe, New Mexico; Rochester, New York; and Pawtucket, Rhode Island. Agreements with these affiliates must be terminated at the end of their current term and TRW cannot enter into new affiliation agreements with those affiliates for at least five years. In addition, the proposed Final Judgment enjoins TRW from taking any action to prevent these affiliates from entering into new affiliation agreements with other vendors before their existing contracts with TRW expire. Termination of affiliation agreements will ensure that the acquisition will have no effect on competition in the relevant geographic markets where the affiliates operate because the affiliates will be free to enter into affiliation agreements with vendors other than TRW or Chilton. The terminated affiliates will have strong financial incentives to enter into new contractual relationships with a credit information data base service not fully represented in the local market. As a result, the number of competitors and their local market positions will remain substantially unchanged.

In order to eliminate the potential anticompetitive effects of the acquisition in the other relevant geographic markets, TRW has entered into agreements to sell a copy of either the file it now owns or a copy of the file it will acquire from Chilton for such markets to one of the other companies providing network services. Copies of these agreements are attached hereto (see Section VII below). The United States has reviewed the agreements and has determined to its satisfaction that the purchasers intend to use the data to compete with TRW in the sale of credit reports in the affected markets. The purchasers currently are not significant competitors in these markets. Thus, consummation of these agreements will preserve the current number of firms with full files in the affected markets. By requiring TRW to sell the credit information to a new competitor, the Final Judgment will preserve competitive options for credit grantors and thus eliminate the adverse effects on competition that would otherwise result from the acquisition.

The proposed Final Judgment affords TRW one hundred twenty (120) days from the date of entry of the Final Judgment to fulfill its contractual obligation to transfer a copy of the consumer credit files. This period may be extended for up to sixty (60) days with the consent of the Department of Justice. TRW shall take all reasonable steps necessary to accomplish the sales quickly and shall cooperate with purchasers of the consumer credit files in completing the data transfer process.

If TRW is unable to consummate a contract to sell copies of consumer credit files, the Final Judgment provides that TRW shall transfer a copy of the consumer credit files for that overlap area to some other person acceptable to the Department of Justice. Copies of the data must be sold to a purchaser or purchasers who can and will use it to compete in the specific relevant geographic market.

If TRW is unable to transfer a copy of the consumer credit files for an overlap area within the time provided for transfers in the proposed Final Judgment, TRW shall file with the Court, within seven days of the date the transfers were to have been completed, a report setting forth its efforts to consummate the contracts and transfer the consumer credit files and stating why the transfer process has not been completed. TRW and the Department of Justice may then recommend what further action should be taken and the Court shall enter such orders as it shall deem appropriate to accomplish the purpose of the Final Judgment.

The United States and TRW have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any private lawsuit that may be brought against the defendants.

V.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to Barry Grossman, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, N.W., Washington, D.C. 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

For the markets in which TRW is required to consummate contracts to sell a copy of its or Chilton's consumer credit files, the United States considered requiring TRW to sell either the Chilton or TRW office along with the files. The United States rejected this alternative because it concluded that the most significant impediment to entry is acquisition of the data contained in consumer credit files. The United States concluded that other aspects of entry are not so substantial that a person with a copy of either the Chilton or TRW consumer credit files could not successfully enter a relevant geographic market within a reasonable time.

The United States also considered not allowing TRW to retain a copy of the consumer credit files that it must sell. The United States rejected this alternative because if TRW can retain a copy of both the Chilton and TRW consumer credit files it can provide consumers with a higher quality product.

As another alternative, the United States considered requiring TRW to sell copies of the combined TRW and Chilton consumer credit files that it will be retaining. This alternative was rejected because the United States believes that a copy of either firm's full file will be sufficient to enable the new firm to compete effectively in the relevant markets. The new firm will have all the credit information previously owned by one of the leading competitors in the market. That information will consist of full files, which means that it will cover most of the residents of the area for a substantial period of time.

As a final alternative to the proposed Final Judgment, the United States considered seeking a preliminary injunction to block TRW's acquisition of Chilton. The United States rejected that alternative because the sale of a copy of the consumer credit files or the termination of affiliates will establish viable independent competitors to TRW in all the relevant markets and will prevent the acquisition from having a significant anticompetitive effect in those markets. The United States is satisfied that the proposed Final Judgment provides substantially all the relief it would seek if it were to litigate the case in a full trial on the merits.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

The United States considers TRW's contracts with The Credit Bureau Inc. of Georgia and the Trans Union Credit Information Company to sell copies of consumer credit files in certain markets to be determinative documents. These contracts include the terms of the proposed divestiture and were determinative in formulating this proposed Final Judgment. Accordingly, they are being filed with this Competitive Impact Statement. However, insofar as the contracts contain confidential, commercially sensitive information relating to the price to be paid or the content of the files, that information has been redacted. The United States is prepared to file unredacted contracts with the Court, under seal, at its request.

Respectfully submitted,



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Dated: