

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 1:11-cv-00948 (BAH)
H&R BLOCK, INC.,)	
2SS HOLDINGS, INC., and)	
TA IX L.P.,)	
)	
<i>Defendants.</i>)	
_____)	

**ANSWER OF DEFENDANTS H&R BLOCK, INC.,
2SS HOLDINGS, INC., AND TA IX L.P.**

Pursuant to Federal Rule of Civil Procedure 12, H&R Block, Inc., 2SS Holdings, Inc., and TA IX L.P. hereby answer the United States of America’s May 23, 2011 Complaint as follows:

PRELIMINARY STATEMENT

H&R Block, Inc.’s (“H&R Block’s”) proposed acquisition of 2SS Holdings, Inc. (“TaxACT”) will enhance competition at all levels of the tax preparation industry and will thereby benefit consumers.¹ To that end, Plaintiff’s characterization of the transaction as potentially anti-competitive is wrong and is contrary to logic and the evidence.

A. Competition at All Levels of the Industry Is Robust.

Taxpayers have numerous alternatives for tax preparation and filing, including numerous professional tax preparation options and numerous do-it-yourself (“DIY”) options. Taxpayers

¹ Defendants note that the Complaint defines the terms “H&R Block” and “TaxACT” as referencing only H&R Block, Inc. and 2SS Holdings, Inc., neither of which sells tax preparation products and services. For convenience and clarity, Defendants have adopted the same naming conventions in answering Plaintiff’s allegations and have used more specific, accurate terms (where appropriate) in the Preliminary Statement.

utilizing DIY options typically choose between preparing their taxes with “pencil and paper” or using some form of tax preparation software. Taxpayers who choose to use tax preparation software can purchase software that runs on their home computers via Internet download or electronic media (“desktop”). They can also purchase (or obtain for free) access to an online service on servers controlled by the provider (“online”). Almost two dozen companies offer desktop and/or online products.

The products being offered by these companies can generally be separated into two categories: “premium” and “value.” “Premium” products are typically offered by companies with strong brand-name recognition like Intuit’s TurboTax and H&R Block at Home. Premium products typically cost significantly more than value products. Premium products also typically include more features and functionality than value products.

B. The Transaction Will Benefit Consumers.

This transaction involves H&R Block, which through its subsidiaries HRB Digital LLC and HRB Technology LLC (collectively “H&R Block Digital”) primarily sells premium products, acquiring TaxACT, which through its subsidiary 2nd Story Software, Inc. (“2SS”) sells only value products. The acquisition will enhance competition and benefit consumers in two fundamental ways. First, it will replace H&R Block Digital’s costly digital infrastructure with 2SS’ efficient, low-cost technology platform (and experienced personnel). This will allow the combined firm to compete more effectively against premium providers of tax services (including Intuit, the largest provider of tax preparation services in the United States) on price, features, and innovation. Second, H&R Block Digital will acquire a low-cost value brand that is already an effective and profitable competitor in the value segment.

C. Plaintiff’s Competitive Effects Theory Is Illogical

The proposed transaction will not harm competition or lead to increased prices in the value segment. First, increasing 2SS' prices would significantly erode TaxACT's profitability because the value segment has many strong competitors who would quickly move to take share should 2SS falter. Indeed, the IRS website states that at least seventeen providers of DIY tax software—most of which are in the value segment—meet IRS' "high standards" for tax preparation and provide "fast," "safe," and "accurate tax return[s]." Within the value segment, firms such as FreeTaxUSA, TaxSlayer, On Line Taxes, and others have significant customer bases, have been growing quickly, and have the capacity to grow significantly.² As a result, these companies would be quick to react to any competitive mistakes made by 2SS.

Second, contrary to the DOJ's allegations, H&R Block Digital cannot and would not raise 2SS' prices in the hope of driving more sales to H&R Block Digital's more expensive premium products because such a move would destroy the profitability of 2SS' proven business model. As Alan Bennett, the then-President and Chief Executive Officer of H&R Block told the public when the deal was announced, 2SS' "business model has enabled the company to generate consistently strong financial results," and "I love how they run their business." More recently, the new Chief Executive Officer, Bill Cobb, emphasized: "Consumers will be the primary beneficiaries of the merger through innovation, enhanced functionality and low prices." H&R Block's Digital abandoning the proven 2SS low-cost model is thus implausible and contrary to the plain statements in documents written by the executives who recommended this merger.

* * * * *

² For example, the products offered by TaxSlayer and FreeTaxUSA each can process a sufficiently broad number of forms to serve more than 95% of taxpayers, and OLT likewise provides a broad offering of federal forms.

For all of the above reasons, H&R Block and H&R Block Digital have already committed to the DOJ that they would not raise any prices on 2SS' tax preparation products for at least three years and would continue offering 2SS' free tax preparation product to all taxpayers for at least three years. Even with this knowledge, the DOJ brought this case claiming that H&R Block's intentions are the opposite. Defendants deny these allegations and seek a decision on this matter as soon as is practicable, so that the merger can close in early Fall 2011. Permitting consummation of this merger will allow consumers to benefit from more innovation, enhanced functionality and low prices.

I. INTRODUCTION

1. Defendants are without knowledge and information sufficient to form a belief as to the truth of allegations in the first sentence of Paragraph 1 and therefore deny them. Defendants admit that some taxpayers choose to prepare their U.S. federal and state tax returns using digital do-it-yourself tax preparation products (defined by the Plaintiff as "Digital DIY Tax Preparation Products") over the Internet or on their desktop computers. Defendants are without knowledge and information sufficient to form a belief as to the truth of allegations in the third sentence and therefore deny them. Defendants deny the allegations contained in the fourth, fifth, and sixth sentences, except to the extent that they contain legal conclusions to which no response is necessary.

2. Defendants deny the allegations contained in the first, second, and third sentences of Paragraph 2. Defendants admit that documents produced to Plaintiff by H&R Block contain the phrases quoted by Plaintiff in the fourth sentence. Defendants deny, however, that the documents are "internal" as they were not authored by H&R Block, Inc. or H&R Block Digital employees. Moreover, the documents speak for themselves. To the extent Plaintiff

alleges the quoted statements are admissions by Defendants, these allegations are denied. To the extent that any allegation is not expressly admitted, it is denied.

3. Defendants deny the allegations contained in the first sentence in Paragraph 3, except to the extent that the allegations contain legal conclusions to which no response is necessary. While Defendants admit that a document produced by H&R Block contains the phrase “avoid further price erosion,” Defendants note that the document was not authored by an H&R Block or an H&R Block Digital employee, did not use the word “maverick,” and does not refer to any other document using the word “maverick.” Moreover, the document speaks for itself. Defendants admit that 2SS used the word “maverick” in a 2005 press release. The document speaks for itself. To the extent Plaintiff alleges the quoted statement is an admission by Defendants, this allegation is denied. Defendants admit that 2SS produced documents containing the phrases quoted by Plaintiff in the second sentence of Paragraph 3. Defendants otherwise deny the allegations contained in the second sentence of Paragraph 3. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied. Defendants deny the allegations in the third sentence of Paragraph 3. With regard to the fourth sentence of Paragraph 3, Defendants deny that documents produced by H&R Block contain the word “disrupted” in reference to TaxACT’s or 2SS’ actions in 2005. The documents speak for themselves. To the extent Plaintiff alleges the quoted word is an admission by Defendants, this allegation is denied. Defendants otherwise deny the allegations contained in the fourth sentence of Paragraph 3. Defendants admit the allegation contained in the fifth sentence of Paragraph 3 that Intuit is the industry leader. Defendants otherwise deny the allegations contained in the fifth, sixth, and seventh sentences of Paragraph 3, except insofar as these sentences contain legal conclusions to which no

response is necessary. Defendants admit that a document produced by H&R Block contains the phrase “at risk,” as alleged in the eighth sentence of Paragraph 3. The document speaks for itself. To the extent Plaintiff alleges the quoted statement is an admission by Defendants, this allegation is denied. Defendants otherwise deny the allegations contained in the eighth sentence of Paragraph 3. Defendants deny the allegations in the final sentence of Paragraph 3, except to the extent that they contain legal conclusions to which no response is necessary. To the extent that any allegation is not expressly admitted, it is denied.

4. Paragraph 4 contains legal conclusions to which no response is necessary.

II. JURISDICTION AND VENUE

5. Defendants admit that this action was filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. § 25, purportedly to prevent and restrain Defendants from violating Section 7 of the Clayton Act 15 U.S.C. § 18. To the extent that this paragraph contains legal conclusions, no response is necessary.

6. The first and second sentences of Paragraph 6 contain legal conclusions to which no response is necessary. Defendants deny that H&R Block or TaxACT sell Digital DIY Tax Preparation Products. The final sentence of Paragraph 6 contains legal conclusions to which no response is necessary.

7. Defendants deny that either of H&R Block or TaxACT transacts business in the District of Columbia. The remaining allegations in Paragraph 7 are legal conclusions to which no response is necessary.

8. The allegations in Paragraph 8 are legal conclusions to which no response is necessary.

III. THE DEFENDANTS AND THE TRANSACTION

9. Defendants admit the allegations in the first sentence of Paragraph 9. Defendants deny the remaining allegations in Paragraph 9.

10. Defendants admit the allegations contained in the first sentence of Paragraph 10. Defendants deny the remaining allegations in Paragraph 10.

11. Defendants admit the allegations in the first and second sentence of Paragraph 11. Defendants deny that the approximately one-third interest in 2SS Holdings, Inc. not held by TA I.X. L.P. is held wholly by TaxACT executives and employees.

12. Defendants admit the allegations in Paragraph 12.

IV. THE RELEVANT MARKET

A. Description of the Product

13. Defendants are without knowledge and information sufficient to form a belief as to the truth of allegations in Paragraph 13 and therefore deny them.

14. Defendants admit the allegations contained in the first sentence of Paragraph 14. Defendants deny the allegations contained in the second sentence of Paragraph 14.

15. Defendants admit the allegations contained in the first sentence of Paragraph 15, except to the extent that they purport to describe how all digital DIY tax preparation products offered by companies other than Defendants work. Defendants deny the

allegations contained in the second, third, fourth, fifth, and sixth sentences. Defendants admit the allegations contained in the seventh sentence.

16. Defendants admit the allegations contained in first, second, sixth, and seventh sentences of Paragraph 16, except to the extent that they purport to describe how all digital DIY tax preparation products offered by companies other than Defendants work. Defendants admit the allegations in the third sentence, except to the extent that Plaintiff alleges that users of the “software” channel (as defined by Plaintiff) are limited to CD-ROM or DVD, which Defendants deny. Defendants admit that consumers may be sent electronic media containing digital DIY tax preparation products directly from a company, through a distributor, or through a retailer. To the extent that Plaintiff alleges that users of the “software” channel are limited to purchasing products directly or from “retail stores,” Defendants also deny this allegation.

17. Defendants deny that “all Digital Tax Preparation Products function in the same way,” as alleged in Paragraph 17. Defendants are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17 and therefore deny them.

18. Defendants admit the allegations contained in the first sentence of Paragraph 18. Defendants deny the remaining allegations relating to TaxACT and H&R Block. Defendants are without knowledge and information sufficient to form a belief as to the truth of allegations regarding Intuit and therefore deny them.

19. Defendants admit the allegations in Paragraph 19, except Plaintiff’s characterization of tax engines as “complicated,” which Plaintiff has not defined; Defendants are

without sufficient information to form a belief as to the truth of the allegation and therefore deny it.

20. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 and therefore deny them.

21. Defendants admit the allegations in Paragraph 21.

22. Defendants admit that 2SS' published prices are generally lower than H&R Block Digital's and Intuit's published prices. Defendants deny the remaining allegations in Paragraph 22.

B. Relevant Product Market

23. Defendants deny the allegations contained in Paragraph 23, except to the extent that these allegations contain legal conclusions to which no response is necessary.

24. Defendants deny the allegations contained in Paragraph 24, except to the extent that these allegations contain legal conclusions to which no response is necessary.

25. Defendants deny the allegations contained in Paragraph 25, except to the extent that these allegations contain legal conclusions to which no response is necessary.

26. Defendants deny the allegations contained in Paragraph 26, except to the extent that these allegations contain legal conclusions to which no response is necessary.

C. Relevant Geographic Market

27. Defendants deny the allegations in the first sentence of Paragraph 27. The final sentence contained in Paragraph 27 is a legal conclusion to which no response is necessary.

Defendants are without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 and therefore deny them.

V. TAXACT's ALLEGED HISTORY OF "DISRUPTING" THE MARKET

28. Defendants admit that documents produced by H&R Block contain the word "disrupted" as well as the language quoted at the end of Paragraph 28. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied. Defendants deny the remaining allegations contained in Paragraph 28.

29. Defendants are without knowledge and information sufficient to form a belief as to the truth of allegations contained in the first and second sentences of Paragraph 29 to the extent that these allegations pertain to companies other than Defendants, and therefore Defendants deny the allegations to the extent that they pertain to such companies. Defendants also deny the allegations contained in the first and second sentences of Paragraph 29 as they relate to Defendants. Defendants admit the allegations contained in the third sentence of Paragraph 29.

30. Defendants admit that the documents cited in Paragraph 30 contain the language quoted therein. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied. Defendants deny the remaining allegations in Paragraph 30.

31. Defendants admit that documents produced by H&R Block to Plaintiff cited in Paragraph 31 contain the language quoted therein. The documents speak for themselves.

To the extent Plaintiff alleges the quoted statements are admissions by Defendants, they are denied. Defendants deny the remaining allegations in Paragraph 31.

32. Defendants deny the allegations in the first sentence contained in Paragraph 32, except to the extent that these allegations are legal conclusions to which no response is necessary. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 32 regarding Intuit and therefore deny them. Defendants deny the remaining allegations in Paragraph 32.

33. Defendants admit that documents produced by H&R Block contain the language quoted in Paragraph 33. Defendants deny that an H&R Block executive in January 22, 2009 made the statements quoted by Plaintiff in the third sentence of Paragraph 33. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied. Defendants deny the remaining allegations in Paragraph 33.

34. Defendants admit that a document produced by H&R Block contains the phrase quoted in the final sentence of Paragraph 34. The document speaks for itself. To the extent Plaintiff alleges the quoted statement is an admission by Defendants, this allegation is denied. Defendants deny the remaining allegations in Paragraph 34.

35. Defendants admit that a document produced by H&R Block contains the quoted language in Paragraph 35. The document speaks for itself. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, they are denied. Defendants deny the remaining allegations in Paragraph 35.

36. Defendants deny that Lance Dunn authored any documents “based on” facts alleged in the Complaint and denied by Defendants, as alleged in Paragraph 36. Defendants further deny that Lance Dunn based the press release cited in Paragraph 36 on facts post-dating the press release and/or on facts otherwise unknowable to Lance Dunn as alleged by Paragraph 36. Defendants deny the remaining allegations contained in Paragraph 36.

VI. MARKET CONCENTRATION

37. Defendants deny the allegations contained in Paragraph 37.

38. Defendants admit that the Herfindahl-Hirschman Index (“HHI”) is cited as a measure of market concentration in the *Horizontal Merger Guidelines* issued by the Department of Justice. The remaining allegations contained in Paragraph 38 are legal conclusions to which no response is necessary.

39. Defendants deny the allegations in the first and second sentences of Paragraph 39. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations concerning TurboTax in Paragraph 39 and therefore deny them. Defendants deny that the market alleged in the Complaint is a relevant market. Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations concerning market share or HHI in the market alleged by the Complaint and therefore deny them. Defendants admit that 399 plus 4,276 is 4,675. Defendants admit that the *Horizontal Merger Guidelines* state that a market with an HHI of 4,675 is highly concentrated. Defendants deny that any properly defined market would become substantially more concentrated as a result of the acquisition. Defendants deny the remaining allegations contained in Paragraph 39.

VII. ALLEGED ANTICOMPETITIVE EFFECTS

A. Alleged Head-to-Head Competition Between H&R Block and TaxACT

40. Defendants deny the allegations in Paragraph 40.

41. Defendants admit the allegations contained in the first and second sentences of Paragraph 41, except insofar as these sentences suggest that (1) all digital tax preparation companies compete with one another, and (2) competition between private companies is the only or primary pricing constraint for Digital DIY tax preparation companies. Defendants deny the remaining allegations contained in Paragraph 41.

42. Defendants admit the allegations contained in the first sentence of Paragraph 42, except insofar as this sentence suggests that all digital tax preparation companies compete with one another. Defendants deny the remaining allegations contained in Paragraph 42.

43. Defendants deny the allegations contained in Paragraph 43. Defendants admit that documents produced by H&R Block contain the language quoted in Paragraph 43. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied.

44. Defendants deny the allegations contained in Paragraph 44. Defendants admit that documents produced by H&R Block contain the language quoted in Paragraph 44. Defendants deny that the documents were “internal” as they were not authored by H&R Block or H&R Block Digital employees. Moreover, the documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied.

45. Defendants deny the allegations contained in Paragraph 45.

B. Alleged Increase in the Likelihood of Anticompetitive Coordination

46. Defendants deny the allegations contained in Paragraph 46.

47. Defendants deny the allegations contained in Paragraph 47.

48. Defendants deny the allegations contained in Paragraph 48. Defendants admit that documents produced by H&R Block contain the language quoted in Paragraph 48. Defendants deny that the language quoted in Paragraph 48 was authored by an H&R Block executive or by any person with authority or input on the transaction or decisions regarding post-transaction planning. The documents speak for themselves. To the extent Plaintiff alleges the quoted statements are admissions by Defendants, these allegations are denied.

49. Defendants deny the allegations contained in Paragraph 49.

C. Alleged Lack of Countervailing Factors

50. Defendants are without knowledge and information sufficient to admit or deny allegations concerning other companies in Paragraph 50. Defendants deny the remaining allegations contained in Paragraph 50.

51. Defendants deny the allegations contained in Paragraph 51.

52. Defendants admit that H&R Block asserts that the acquisition will produce efficiencies. Defendants deny the remaining allegations contained in Paragraph 52.

VIII. VIOLATION ALLEGED

53. Defendants incorporate their admissions and denials from Paragraphs 1 through 52 as set forth above in response to Plaintiff's incorporation of said paragraphs in Paragraph 53.

54. Defendants deny the allegations contained in Paragraph 54.

55. Defendants admit that the United States requests in Paragraph 55 that the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18. Defendants further admit that the United States requests that Defendants be permanently enjoined and restrained from carrying out the Agreement and Plan of Merger dated October 13, 2010, or from entering into or carrying out any agreement, understanding, or plan by which H&R Block would acquire TaxACT, its stock, or its assets. Defendants also admit that the United States requests that it be awarded costs of this action and that the United States requests that it be awarded such other relief as the Court may deem just and proper. Defendants deny that the United States is entitled to any of the relief it is seeking.

IX. AFFIRMATIVE DEFENSES

The inclusion of any ground within this section does not constitute an admission that Defendants bear the burden of proof on each or any of the matters, nor does it excuse Plaintiff from establishing each element of its purported claim for relief.

56. The Complaint fails to state a claim on which relief can be granted.

57. The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

58. Efficiencies and other pro-competitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.

59. Defendants reserve the right to assert any other defenses as they become known to Defendants.

WHEREFORE, Defendants respectfully request that the Court (i) deny Plaintiff's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Defendants their costs of suit, including attorneys' fees, and (iv) award such other and further relief as the Court may deem proper.

Dated: July 7, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Robert Robertson", is written over a horizontal line.

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