UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:	**Jon Leibowitz, Chairman** **William E. Kovacic** **J. Thomas Rosch** **Edith Ramirez** **Julie Brill**

In the Matter of	)	
	)	**Docket No. 9342**
The Dun & Bradstreet Corporation	)	
	)	**PUBLIC DOCUMENT**

ANSWER AND DEFENSES OF RESPONDENT THE DUN & BRADSTREET CORPORATION

Pursuant to Rule 3.12 of the Commission's Rules of Practice for Adjudicative Proceedings, Respondent The Dun & Bradstreet Corporation ("D&B"), answers the Administrative Complaint ("Complaint") filed by the Federal Trade Commission ("FTC") as follows:

The FTC makes the sweeping allegation that the February 2009 acquisition by D&B's Market Data Retrieval ("MDR") division of the QED K-12 list business was "in practical effect a merger-to-monopoly." Compl. ¶ 1. Beyond this, however, the Complaint pleads virtually nothing about the industry in which MDR operates, makes cursory and conclusory allegations concerning market definition and competitive effects, and gives summary treatment to entry conditions. Far from supporting any contention that MDR's acquisition of QED was anticompetitive, the Complaint completely fails to allege sufficient factual detail to raise any plausible antitrust claims against the acquisition.

In fact, the education marketing industry in which MDR functions is highly competitive and characterized by the existence of multiple competitive alternatives, no impediments to frequent switching by customers among competitive alternatives, low barriers to entry and the entry of new entrants and expansion of industry incumbents since the acquisition, and external pressures on the continued relevance and effectiveness of the particular products offered by traditional mailing list businesses such as MDR.

D&B's responses to the specific paragraphs of the Complaint appear in Part A below. D&B's defenses, together with supporting factual allegations on the industry, competitive dynamics and entry, appear in Part B below.

A. D&B's RESPONSES TO PARAGRAPHS OF THE COMPLAINT

I. SUMMARY

1. D&B admits that MDR maintains a database containing publicly available contact and demographic information regarding Kindergarten through twelfth-grade teachers, administrators, schools and school districts in the United States ("K-12 Database"). D&B admits that MDR sells products and services based on its K-12 Database, primarily in the form of traditional direct mail lists and email marketing services. D&B states on information and belief that its customers use MDR's products and services to market their own products and services to K-12 educators, including by using direct mail lists to mail catalogs and other marketing materials through the United States Postal Service, and using email marketing services to send by electronic mail advertisements, special offers and links to company websites. D&B admits that it acquired the assets of QED on February 11, 2009. In all other respects, the allegations contained in Paragraph 1 are denied.

II. RESPONDENT D&B

2. D&B admits the allegations contained in Paragraph 2.

3. D&B admits that it is a supplier of commercial information and insight on businesses, that its commercial databases contain more than 150 million business records, and that, in 2008, its revenue exceeded $1.7 billion. In all other respects, the allegations contained in Paragraph 3 are denied.

4. D&B admits that MDR is a division of its subsidiary, Dun & Bradstreet, Inc. D&B admits that MDR supplies products and services based on its K-12 Database, primarily in the form of traditional direct mail lists and email marketing services, to customers in the United States. D&B admits that MDR's principal place of business is located at 6 Armstrong Road, Suite 301, Shelton CT 06484, and that it has an office in Chicago, Illinois. In all other respects, the allegations contained in Paragraph 4 are denied.

5. D&B admits the allegations contained in Paragraph 5.

III. QED

6. D&B admits that QED was a division of Scholastic, Inc. until February 11, 2009, and that QED's principal place of business was located at 1050 17th Street, Suite 1100, Denver CO 80265. The other allegations contained in Paragraph 6 relate to an entity other than D&B and D&B is without knowledge or information sufficient to form a belief as to the truth of these allegations. The remaining allegations are therefore denied.

7. D&B admits that, prior to its acquisition by D&B on February 11, 2009, QED supplied products and services to customers based on its own database of Kindergarten through twelfth-grade teachers, administrators, schools and school districts in the United

States. In all other respects, the allegations contained in Paragraph 7 are denied.

IV. THE ACQUISITION

8. D&B admits that Dun & Bradstreet, Inc., entered into an Asset Purchase Agreement with Scholastic, Inc. on January 28, 2009 (the "Agreement").

9. D&B admits that Dun & Bradstreet, Inc., acquired the assets detailed in the Agreement on February 11, 2009 (the "Acquisition"). In all other respects, the allegations contained in Paragraph 9 are denied.

V. JURISDICTION

10. D&B admits the allegations contained in Paragraph 10 as they pertain to D&B. The other allegations contained in Paragraph 10 relate to an entity other than D&B and D&B is without knowledge or information sufficient to form a belief as to the truth of these allegations. The remaining allegations are therefore denied.

VI. RELEVANT PRODUCT MARKET

11. D&B denies the allegations contained in Paragraph 11.

VII. RELEVANT GEOGRAPHIC MARKET

12. D&B admits the allegations contained in Paragraph 12.

VIII. STRUCTURE OF THE MARKET

13. D&B denies the allegations contained in Paragraph 13.

14. D&B denies the allegations contained in Paragraph 14.

15. D&B denies the allegations contained in Paragraph 15.

16. D&B denies the allegations contained in Paragraph 16.

IX. COMPETITIVE EFFECTS

17. D&B denies the allegations contained in Paragraph 17 and each of its subparts.

X. ENTRY CONDITIONS

18. D&B denies the allegations contained in Paragraph 18.

19. D&B denies the allegations contained in Paragraph 19.

20. D&B denies the allegations contained in Paragraph 20.

XI. VIOLATIONS CHARGED

21. D&B denies the allegations contained in Paragraph 21.

22. D&B denies the allegations contained in Paragraph 22.

XII. NOTICE

This section does not contain any factual averments; therefore it does not require any response.

XIII. NOTICE OF CONTEMPLATED RELIEF

D&B denies that any of the relief set forth in the Complaint's Notice of Contemplated Relief, or the subparts thereto, are justified by fact, law, or in equity.

B. D&B's DEFENSES

Background

1. MDR supplies direct mail lists, email marketing services and related products and services based on its database of publicly available contact and demographic information regarding kindergarten through twelfth-grade teachers, administrators, schools and school districts in the United States. MDR supplies its products and services to customers seeking to market their own products and services to the K-12 education industry, including textbook publishers, companies selling supplemental materials and classroom aids, and companies seeking to market general consumer products to educators. MDR's customers use its direct mail lists to mail catalogs and other marketing materials through the United States Postal Service to schools, teachers and other K-12 education industry contacts. They use MDR's email marketing services to send advertisements, special offers and links to company websites by electronic mail messages to teachers and other K-12 education industry contacts.

2. MDR's products and services support traditional direct mail and email marketing programs. Direct mail and email marketing are just some of the many ways customers market their products to the K-12 education industry. Customers can and do allocate their marketing budgets among an array of list-based and non-list-based marketing channels and programs in order to maximize their return on total marketing investment. For these reasons, alternative list and non-list based marketing programs posed, and continue to pose, a strong competitive constraint on MDR both prior to and since the Acquisition.

3. Alternative sources of K-12 education list data to support direct mail and email programs include MCH, Agile Education Marketing, the lists of various professional associations, lists maintained by publishers, such as eSchoolNews, and conference organizers, and customers' "house lists" of past customers and leads generated though alternative means. Customers typically combine names from a variety of sources in developing a mailing or email list for a particular campaign, and many will conduct a number of direct mail or email campaigns throughout the year. Each campaign represents an opportunity to use an alternative list source other than MDR or to reduce the number of names acquired from MDR in favor of names from alternative sources. Thus, alternative sources of list data represent a significant competitive constraint on MDR, both before and since the Acquisition, and are properly part of the relevant market.

4. Non-list marketing channels include customers' in-house sales forces, print advertising, websites, pay-per-click and other internet advertising, social networking, and attendance at industry trade shows, conferences and other events. Customers allocate and adjust marketing budgets among list-based marketing programs and non-list marketing channels to maximize the return on total marketing investment. Industry trends have increased emphasis on non-list marketing channels at the expense of traditional direct mail and email marketing programs. Accordingly, non-list-based marketing channels represent a significant competitive constraint on MDR, both before and since the Acquisition, and are properly part of the relevant market.

5. Prior to the Acquisition, QED also supplied direct mailing lists and email marketing services based on its own database of K-12 educational institutions and teachers. MDR's rationale for the Acquisition was to generate savings from the elimination of duplicative costs and increase customer demand for the combined firm's K-12 education list products and services through enhanced quality, coverage and range of those products and services. The Acquisition generated cost synergies in the order of millions of dollars. Prices for the combined firm's products and services have not increased since the Acquisition.

6. Although QED's products and services were similar to those offered by MDR, and by the time of the Acquisition QED's K-12 Database had reached a comparable size, MDR believes that QED was not a significant competitor. QED had a comparatively smaller sales force. QED had a limited data compilation budget, many fewer internal compilation resources, and relied heavily on internet research to collect names, resulting in a database of significantly lower quality than MDR's. QED's email marketing services were outsourced to a third party, ePost, and did not provide the same level of customer service, campaign feedback and analysis of the same quality as MDR's email marketing services. QED typically lagged behind MDR in introducing new products, services and innovative ways to address customers' needs. For these reasons, QED provided a relatively small competitive constraint upon MDR compared with other alternatives.

7. Prior to the Acquisition of QED, MDR faced a high degree of competition from list and non-list alternative marketing options other than QED. An analysis of customer switching patterns for the two-year period prior to the Acquisition indicates that

approximately 84% of MDR's lost business went to list and non-list alternatives other than QED. Thus, the non-QED alternatives collectively imposed a far greater competitive constraint on MDR than did QED. Following the Acquisition, MDR continues to face strong competition from these non-QED alternatives, which ensures that competition would not be diminished as a result of the Acquisition.

8. Businesses in which the principal asset is a database, such as MDR, are typically characterized by high fixed costs and low marginal costs. The nature of the business means that lost revenues translate almost directly into lost profits. Accordingly, MDR is very sensitive to even small losses of business to competitive alternatives.

9. MDR's high fixed costs and low marginal costs further implies that alternatives do not need to completely replace MDR in order to be an effective constraint on its ability to increase prices. The loss of even a small part of a customer's business as a consequence of a price increase—whether it be in the form of a reduction in marketing budget being allocated to direct mail and email programs, the purchase of fewer MDR names for a particular direct mail or email marketing program, or the substitution of alternative list sources for a particular direct mail or email campaign—will defeat the profitability of the price increase and competitively constrain MDR's pricing.

10. Entry to the direct mail and email list business is easy and barriers to entry are low. The requirements for entry into the list business are freely available: the data elements themselves are publicly and readily available; data can be easily compiled using limited staff and resources; technology infrastructure is simple and readily available; few personnel are required and do not need any complex set of skills. Entry could come from a number of sources, including companies already in the list business, list brokers or publishers.

11. Since the Acquisition, there have been a number of instances of new entry and expansion by existing market players. These include:

(a) Agile Education Marketing was established in September 2009 by former employees of QED. It has developed a database of K-12 contacts and has commenced selling K-12 direct mail and email lists to customers.

(b) MCH, a market incumbent, has expanded its K-12 Database to approximately 80% of the size of the MDR K-12 Database. MCH also has substantially developed its K-12 email marketing service, which was launched in October 2008.

(c) Statlistics, an existing list brokerage company, recently introduced a K-12 email list with counts comparable to MDR.

(d) eSchoolNews, an education technology publication and online news organization, has recently announced the availability of substantial K-12 direct mail and email lists.

12. Given the high fixed cost/low marginal cost structure of MDR's business, new entry or expansion by market incumbents need not replicate MDR's business to pose an effective constraint. A competitor drawing away even a small amount of a customer's business as the result of an attempted MDR price increase will defeat the profitability of the price increase. Thus, the threat of entry on any scale has in the past and will continue to competitively constrain MDR's pricing.

13. Moreover, the education marketing industry has been subject to significant change over the last few years. In particular, there has been an increasing emphasis on electronic marketing as opposed to traditional catalog and other mailings, centralization of school purchase decision-making at the district level leading to increased emphasis on direct sales forces rather than mail or email marketing, centralization of customer power as large mergers of K-12 publishers have occurred, and increased access to the internet leading to internet advertising, website development and social networking as a form of marketing. These changes have intensified the competitive pressures on MDR from list and non-list marketing alternatives available to MDR's customers.

First Affirmative Defense

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

Second Affirmative Defense

The alleged relevant product market definition fails as a matter of law.

Third Affirmative Defense

The Acquisition has resulted in substantial merger-specific efficiencies that will benefit consumers, and as a result is procompetitive.

Fourth Affirmative Defense

The contemplated relief would not be in the public interest.

Fifth Affirmative Defense

D&B has not knowingly or intentionally waived any applicable affirmative defenses. D&B presently lacks sufficient knowledge or information on which to form a belief as to whether it may have available additional, as yet unstated, affirmative defenses, and reserves the right to assert such additional defenses.

WHEREFORE, having fully answered the Complaint, D&B respectfully requests that the Commission: (i) deny the Commission's contemplated relief; (ii) dismiss the complaint in its entirety with prejudice; (iii) award D&B its costs of suit, including expert's fees and reasonable attorneys' fees, as may be allowed by law; and (iv) award such other or further relief as the Commission may deem just and proper.

Dated: May 26, 2010

Respectfully Submitted,

Wayne Dale Collins
Lisl J. Dunlop
Edward B. Schwartz
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
Telephone: (212) 848 4000
Facsimile: (212) 848 4173
wcollins@shearman.com
ldunlop@shearman.com
edward.schwartz@shearman.com
Attorneys for Respondent

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2010, I caused the foregoing Answer and Defenses of Respondent The Dun & Bradstreet Corporation to be served by first class mail and email on each of the following:

The Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-135
Washington, D.C. 20580
Email: secretary@ftc.gov
Email: dclark@ftc.gov

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Rm. H-104
Washington, D.C. 20580
Email: oalj@ftc.gov

Leonard L. Gordon
Jonathan Platt
William H. Efron
Gerald A. Stein
Federal Trade Commission
Northeast Region
One Bowling Green
Suite 318
New York, NY 10004
Email: lgordon@ftc.gov
Email: jplatt@ftc.gov
Email: wefron@ftc.gov

Email: gstein@ftc.gov

Joseph S. Brownman
Victoria Luxardo Jeffries
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580
Email: jbrownman@ftc.gov
Email: vjeffries@ftc.gov

Dated: May 26, 2010

Lisl J. Dunlop
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York NY 10022
Telephone: (212) 848 8010
Fax: (646) 848 8010
Email: ldunlop@shearman.com

Counsel for Respondent
The Dun & Bradstreet Corporation