ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of The Dun & Bradstreet Corporation, Docket No. 9342

I. Overview

The Federal Trade Commission ("Commission") has accepted for public comment an Agreement Containing Consent Order ("Consent Agreement") with Respondent The Dun & Bradstreet Corporation ("D&B"), and has issued a final Decision and Order ("Order") that resolves an administrative Complaint issued by the Commission on May 7, 2010. The Complaint alleges that the $29 million acquisition by Market Data Retrieval ("MDR") (a division of D&B) of Quality Educational Data ("QED") (a division of Scholastic, Inc.) in February 2009 eliminated its closest rival and created a near monopoly in the United States K-12 data market, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

The Commission issued the administrative Complaint because it had reason to believe that MDR and QED were the only significant U.S. suppliers of kindergarten through twelfth-grade educational marketing data ("K-12 data"), which is used by customers for their direct mail and email marketing efforts. The K-12 data that companies like MDR and QED sell include contact, demographic, and other information that allow their customers to market to teachers, administrators, schools, and individual school districts. MDR, QED, and Mailings Clearing House ("MCH") were the only companies prior to the acquisition that provided that data. Other sources of marketing data, such as teacher association membership lists, are not close substitutes because of their more limited coverage, reduced functionality, and less frequent updating. Customers indicated that they would not shift their purchases toward these alternatives in response to a small but significant nontransitory increase in price.

According to documentary evidence and customers, competition from QED had constrained MDR's pricing and spurred MDR to improve product quality, including the development of new product features. Customers viewed MDR and QED as offering the most comparable products and were able to obtain better terms by the threat of turning to the other company. By contrast, MCH lacked a K-12 database comparable to MDR or QED's, generally served a different customer base, was not viewed by many MDR and QED customers as capable of meeting their needs, and had a very small share of the K-12 data market. MDR's near-monopoly position in the K-12 data market after the transaction is protected in part by significant barriers to entry, including the time and cost to develop a database with market coverage and accuracy comparable to MDR or QED's pre-merger databases and the need to obtain a reputation for data quality. A small firm that has begun to offer K-12 data is unlikely to be able to replace the lost competition resulting from the acquisition of QED for at least several years.

One of MDR's primary defenses to the acquisition was that MDR's purportedly high margins created a disincentive to raise prices post-merger. The Bureau of Economics and the Bureau of Competition were not persuaded by this critical loss argument because, as set forth in Section 4.1.3 of the 2010 Merger Guidelines, it failed to account for the possibility that high margins might also imply highly inelastic demand and thus fewer lost sales from a price increase. Indeed, as described above, the weight of the evidence indicated that post-merger market conditions would provide an incentive to raise prices.

The Consent Agreement is designed to remedy the likely anticompetitive effects of the acquisition by restoring, to the extent possible, the lost competition between MDR and QED. Among other things, it requires that D&B divest an updated and augmented K-12 database of names, addresses, and other pertinent information to MCH, a competitor in the K-12 data market. The Order also provides for the divestiture to MCH of the QED name and associated intellectual property as well as the appointment by the Commission of a monitor to ensure that all of the terms of the Consent Agreement are fully implemented by D&B.

II. Respondent D&B

D&B is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business at 103 JFK Parkway, Short Hills, New Jersey 07078. D&B is the world's leading supplier of commercial information on businesses. In 2008, D&B's revenue exceeded $1.7 billion. MDR, a division of D&B, has its headquarters at 6 Armstrong Road, Suite 301, Shelton, Connecticut 06484. MDR also has offices in Chicago, Illinois, and San Francisco, California.

III. The Commission's Complaint

The Complaint alleges that, prior to MDR's acquisition of QED, MDR was the largest provider of K-12 data in the United States. K-12 data is sold or leased to customers, including book publishers and other suppliers of educational products and services, that use the information to market the various products and services that they offer to education institutions. The Complaint further alleges that MDR's closest competitor in the K-12 data market was QED. After acquiring QED, MDR attained a near monopoly. Two firms, one of which was MCH, accounted for the remaining competition.

The Complaint alleges that if allowed to stand, the acquisition would likely enable MDR unilaterally to exercise market power in various ways, including by increasing prices and reducing product quality and services.

IV. Terms of the Order

A. MCH is the Acquirer.

MCH is a privately held company with offices located at 601 E. Marshall Street, Sweet Springs, Missouri 65351. The Commission believes that MCH is an appropriate acquirer of the assets to be divested, and that with those assets, it will be in a position to restore the competition that was lost when MDR acquired QED. MCH currently has a small share of the K-12 data market, but is a company with over 80 years of experience in the broader data market industry.

B. The Assets to be Divested.

The key asset that MCH will acquire is an updated K-12 database. As a result, MCH's database not only will rival MDR's, but will exceed the size and scope of the QED database when MDR acquired it.

A second important asset that MCH will acquire is the QED name and its associated intellectual property. The combination of the QED name and the updated database has the potential to enable MCH to compete for and offer customers K-12 data comparable to what QED had been offering when it was acquired by MDR.

C. Other Requirements Imposed upon MDR.

The Order also includes several provisions that will facilitate the ability of MCH to compete on a more even footing with MDR. The Order grants certain categories of MDR customers the option to terminate their contracts with MDR, without penalty, for a period of 21 months, upon 30 days notice to MDR that the customer intends to terminate its contract(s) for the purpose of considering alternative sources of K-12 data. The Order does not require that these customers actually make a purchase from an alternative source, nor does it require that the alternative source be limited to MCH. MDR will be required to notify customers with potentially terminable contracts, by certified mail, of their termination rights.

To facilitate the ability of customers to switch away from MDR to MCH, the Order also requires that MDR grant such customers access to a data translation table containing both MDR's and QED's unique identification numbers assigned to educational institutions contained in their K-12 databases [PIN/PID numbers]. The table assists customers in converting their internal marketing data systems from MDR's data reference numbering system [PIN] to QED's data reference numbering system [PID].

Former QED employees and certain MDR employees also are released from any restrictions on their ability to join MCH.

Another provision of the Order requires that for a period of 21 months, MDR offer all third parties placing orders for K-12 data with MDR a "net names" discount of up to 30% for names obtained from MCH (*i.e.*, a discount for overlap names).

The Order also requires that MDR, for up to one year, provide MCH with reasonably necessary technical assistance within five days of such a request and further requires MDR to facilitate the ability of MCH to enter into contracts with any vendor that had been doing business with QED.

D. A Monitor Will Help Ensure Compliance.

The Order provides for the appointment by the Commission of an independent monitor, with fiduciary responsibilities to the Commission, to help ensure that D&B carries out all of its responsibilities and obligations under the Order. The Commission has appointed Mr. Richard Casabonne, a person with significant experience in the K-12 data market, as monitor. Mr. Casabonne is chief executive officer of Casabonne Associates, Inc., a consulting firm that focuses on educational activities. In the event D&B fails to comply with its divestiture obligations, the Order also provides that the Commission may also appoint a divestiture trustee to fulfill those requirements.

V. Opportunity for Public Comment

The Consent Agreement has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and determine whether to take further action.[1] The purpose of this analysis is to facilitate comment on the Order. This analysis does not constitute an official interpretation of the Consent Agreement or Order, nor does it modify their terms in any way. The Consent Agreement does not constitute an admission by D&B that it violated the law or that the facts as alleged in the Complaint, other than jurisdictional facts, are true.

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[1] The Commission normally will issue an order for public comment but not issue a final order until it considers all comments received during the comment period. Here, however, consistent with the provisions of Commission Rule 2.34(c)(2), 16 C.F.R. § 2.34(c)(2), the Commission has issued the final Order in advance of the comment period. The Commission took this step because it believed it was important to enable MCH expeditiously to acquire the divested assets and begin to compete during the upcoming back-to-school selling season. After the public comment period, the Commission will have the option to initiate a proceeding to reopen and modify the Decision and Order or commence a new administrative proceeding – if the public comments lead it to believe that such action is appropriate.