

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,)
600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20580)

Plaintiff,)

v.)

No. ____-CV-_____

CCC HOLDINGS INC.)
222 Merchandise Mart Plaza, Suite 900)
Chicago, IL 60654)

and)

AURORA EQUITY PARTNERS, III L.P.,)
10877 Wilshire Boulevard, Suite 2100)
Los Angeles, CA 90024,)

Defendants.)

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION PURSUANT TO
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, for a temporary restraining order and preliminary injunction enjoining defendants CCC Holdings Inc. (“CCC Holdings”) and Aurora Equity Partners III L.P. (“Aurora”), including their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from taking any steps toward combining or acquiring any stock, assets, or other interest of one another, either directly or indirectly; thereby maintaining the status quo during the pendency of an administrative proceeding that has already been initiated by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18.

NATURE OF THE CASE

1. This is an action to stop defendants from consummating or otherwise taking any steps toward an anticompetitive merger-to-duopoly until the completion of an administrative review proceeding begun by the Commission on November 25, 2008. Absent Court action, defendants may merge after December 3, 2008.

2. Defendant CCC Holdings is the parent of CCC Information Services, Inc. (“CCC”). Defendant Aurora is the parent of Mitchell International, Inc. (“Mitchell”). CCC and Mitchell sell, among other things, computer software and data services used by automobile repair shops and similar software and services used by insurance companies to estimate vehicle repair costs and to value “total loss” claims. Insurers must declare a vehicle a total loss when the expected repair costs reach a threshold established by state insurance laws.

3. If defendants’ proposed \$1.4 billion merger is consummated, the number of significant companies selling these products in the United States would be reduced from three to two, and the merged company will dominate these duopoly markets. The administrative complaint issued by the Commission on November 25, 2008, alleges that this merger-to-duopoly would result in higher prices, reduced product quality, and fewer services. Exh. 1. A hearing on the merits of the merger before an FTC Administrative Law Judge is scheduled to begin on March 31, 2009. *Id.* at 5.

4. Temporary and preliminary injunctive relief is imperative to preserve the status quo and allow the Commission to examine the proposed merger on the merits. Allowing CCC Holdings and Aurora to merge during the administrative proceeding would harm consumers and undermine the Commission’s ability to remedy the anticompetitive effects of the transaction.

JURISDICTION AND VENUE

5. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, and under 28 U.S.C. §§ 1331, 1337 and 1345. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action. CCC Holdings, Aurora, and their relevant operating subsidiaries are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

6. Venue is proper under 15 U.S.C. §§ 22 and 53(b), and 28 U.S.C. § 1391(b) and (c), as both CCC Holdings and Aurora transact business in the District of Columbia.

7. Section 13(b) of the FTC Act, 15 U.S.C. 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

THE PARTIES

8. Plaintiff, the Commission, is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*,

with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission has the authority and responsibility to enforce, among other things, Section 7 of the Clayton Act and Section 5 of the FTC Act.

9. Defendant CCC Holdings is a for-profit corporation, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 222 Merchandise Mart Plaza, Suite 900, Chicago, Illinois 60654. CCC Holdings wholly owns CCC.

10. Defendant Aurora is a limited partnership, existing and doing business at 10877 Wilshire Boulevard, Suite 2100, Los Angeles, California 90025. Aurora wholly owns Mitchell.

THE MERGER

11. A merger agreement executed by CCC Holdings and Aurora on or about April 2, 2008, contemplates a merger of equals. The transaction is valued at \$1.4 billion and will create an entity with annual sales exceeding \$450 million.

12. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a timing agreement between defendants and the FTC staff, unless restrained or enjoined by this Court, defendants may consummate the merger after December 3, 2008. Defendants have indicated they intend to do so as soon as possible.

13. On November 25, 2008, the Commission authorized commencement of this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek a temporary restraining order and preliminary injunction barring the merger until the resolution of the administrative proceeding that was commenced by the Commission on the same day, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), and Section 5 of the FTC Act, 15 U.S.C. § 45. The legality of the merger under Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15

U.S.C. § 45, and the appropriate remedy in the event liability is found, will be determined by the Commission through an administrative proceeding and will be subject to judicial review.

14. In authorizing the filing of this complaint in this Court, the Commission has determined that (1) it has reason to believe this merger would violate the Clayton Act and the FTC Act by substantially reducing competition in one or more lines of commerce, and (2) it will promote the public interest for this Court to enjoin the merger pending the resolution of the Commission's administrative proceedings, and any appeals, so as to minimize the potential harm to customers and preserve the Commission's ability to grant an adequate remedy if it concludes, after the hearing, that the merger is unlawful.

AFFECTED MARKETS

15. The relevant product markets that would be affected by the merger are:

- a. partial loss estimating systems ("estimatics") and
- b. total loss valuation systems ("TLV systems")

for passenger vehicles sold in the United States. These products could be produced throughout the world.

16. Estimatics are used by repair shops and insurers to estimate vehicle repair costs for passenger vehicles sold in the United States. Estimatics include: (1) a database of parts and labor information for specific vehicle makes, models, and years, and (2) software to access the database and calculate repair costs based on damage information provided by a user.

17. When repair costs reach a certain threshold, which varies from state to state, but is typically between 65 and 75 percent of the vehicle's value, a vehicle must be declared a total loss for insurance purposes. Insurers use TLV systems to determine replacement values of vehicles

sold in the United States. TLV systems include: (1) a database of vehicle sales information from various sources, and hundreds of localities, and (2) software to access and use the database.

18. Both relevant product markets are already highly concentrated, and the proposed merger would further increase concentration levels.

19. There are only three significant providers of estimatics for passenger vehicles sold in the United States: CCC, Mitchell, and Audatex North America, Inc. (“Audatex”). The proposed merger would reduce the number of significant sellers of these products from three to two, with the merged entity having a share of well over half the market.

20. CCC, Mitchell, and Audatex are also the only providers of TLV systems for passenger vehicles sold in the United States. The proposed merger would reduce the number of sellers of these products from three to two, with the merged entity having a share of well over half the market.

ANTICOMPETITIVE EFFECTS

21. The merger of CCC and Mitchell would consolidate two of the three significant providers of estimatics and TLV systems, eliminating substantial head-to-head competition between CCC and Mitchell.

22. Thus, the merger would eliminate both price and nonprice competition between CCC and Mitchell and facilitate the merged entity’s unilateral exercise of market power

23. In addition, with a post-acquisition duopoly consisting of CCC-Mitchell and Audatex, and with information relating to competitors’ offerings, customers, and prices being available, both of these markets are conducive to the coordinated exercise of market power.

24. The acquisition is of additional concern because, but for the merger, competition between Mitchell, CCC, and Audatex in total loss valuation systems likely would increase in intensity in the coming years, because Mitchell has been gradually gaining market share.

ENTRY BARRIERS

25. Substantial and effective entry into the relevant markets sufficient to deter or counteract the anticompetitive effects of the proposed merger-to-duopoly is unlikely, as the estimatics and TLV systems markets exhibit significant barriers to entry. These include, but are not limited to, the substantial time and expense required to assemble, edit, and maintain estimatics and TLV databases relating to virtually every vehicle driven in the United States, as required by customers, to develop and market a communications software platform, reputation and expertise required by customers to operate these systems, long-term contracts with customers who do not switch easily, and complementary products that are sold as part of bundled packages.

LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF

26. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the *public* equities, using a sliding scale. Equities affecting only the defendants cannot tip the scale.

27. The Commission's administrative complaint raises questions about the lawfulness of defendants' proposed three-to-two merger under the Clayton Act and the FTC Act that are serious, substantial, difficult, or doubtful enough to make them fair ground for thorough investigation, study, deliberation, and determination by the Commission during the administrative proceeding in the first instance, subject to appellate review.

28. The Commission has reason to believe that the proposed merger would violate Section 7 of the Clayton Act and that the merger agreement violates Section 5 of the FTC Act. In particular, the Complaint Counsel for the Commission is likely ultimately to succeed in demonstrating, among other things, that:

- a. The proposed merger-to-duopoly would have anticompetitive effects in both the estimatics and TLV systems markets;
- b. Substantial and effective entry into the estimatics and TLV systems markets is difficult, and would not be likely, timely, or sufficient to offset the anticompetitive effects of the merger; and
- c. Any efficiencies that defendants may assert will result from the merger are speculative, not merger-specific, and are, in any event, insufficient as a matter of law to justify the merger.

29. Should the Commission rule, after the full administrative trial, that the proposed transaction is unlawful, completely reestablishing the status quo ante of vigorous competition between CCC and Mitchell would be difficult, if not impossible, if the merger has already occurred. Moreover, substantial harm to competition would likely occur in the interim, even if suitable divestiture remedies could be devised.

30. Accordingly, the equitable relief requested here is in the public interest.

WHEREFORE, the Commission respectfully requests that the Court:

1. Temporarily restrain and preliminarily enjoin CCC Holdings and Aurora from taking any further steps to consummate the proposed merger, or any other acquisition of stock, assets, or other interests, either directly or indirectly;

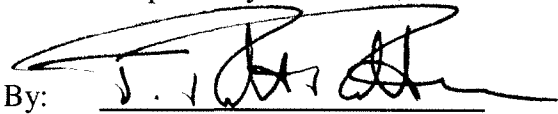
2. Retain jurisdiction and maintain the status quo until the administrative proceeding that the Commission has initiated is concluded; and

3. Award such other and further relief as the Court may determine is appropriate, just, and proper.

November 26, 2008

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of November, 2008, I filed the attached document with the clerk of the court.

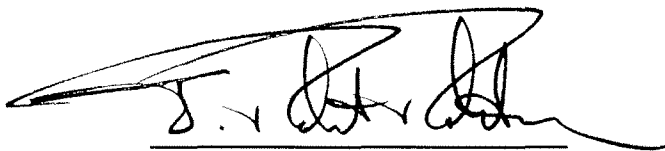
I FURTHER CERTIFY that on such date I served the attached on the following counsel by electronic mail (PDF) and U.S. Mail:

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

J. Robert Robertson
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