

Complaint

IN THE MATTER OF

FIDELITY NATIONAL FINANCIAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3929; File No. 991 0298
Complaint, February 17, 2000 – Decision, February 17, 2000

This consent order addresses Fidelity National Financial Inc.'s ("Fidelity") acquisition of the common stock of Chicago Title Corporation ("Chicago Title"). The consent order requires Fidelity to divest or sell copies of the pre-acquisition title plant interests of either Fidelity or Chicago Title in five of the identified local jurisdictions to a buyer or buyers approved by the Commission. The consent order also requires Fidelity to divest the pre-acquisition interests of Fidelity or Chicago Title in a jointly owned title plant in San Luis Obispo County, California, or, alternatively, to relinquish any additional voting rights in the joint plant that Fidelity may have accrued post-acquisition while obtaining a new owner of the joint plant.

Participants

For the Commission: *Daniel J. Silver, Jacqueline Tapp, and Michael E. Antalics.*

For the Respondents: *John A. Herfort, Gibson, Dunn & Crutcher, and John C. Christie, Jr., Hale and Dorr.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Fidelity National Financial, Inc. ("FNF"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the common stock of Chicago Title Corporation ("CT"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in

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the public interest, hereby issues its Complaint, stating its charges as follows:

I. DEFINITIONS

1. "Title plant" means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.

2. "Title information services" means providing selected information contained in a title plant to a customer or user or permitting a customer or user to have access to information contained in a title plant.

3. "Acquisition Agreement" means the agreement between FNF and CT for FNF's proposed acquisition of the common stock of CT pursuant to the Agreement and Plan of Merger dated August 1, 1999.

4. "Respondent" means FNF.

II. RESPONDENT

5. Respondent FNF is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 17911 Von Karman Avenue, Irvine, California 92614-6253. Respondent, among other things, is engaged in the sale of title insurance and the provision of title information services.

6. Pursuant to the Merger Agreement, Respondent will purchase the common stock of CT.

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7. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in, or affects, commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE ACQUIRED COMPANY

8. CT is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 171 North Clark Street, Chicago, Illinois 60601. CT is engaged, among other things, in the sale of title insurance and the provision of title information services.

IV. THE ACQUISITION

9. On August 1, 1999, FNF and CT entered into an Acquisition Agreement under which FNF is to acquire the common stock of CT for an amount valued, at the time of entering into the Acquisition Agreement, at approximately \$1.2 billion (“Acquisition”).

V. THE RELEVANT MARKETS

10. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the provision of title information services.

11. For the purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition in the relevant line of commerce are the following counties or other local jurisdictions in the United States: San Luis Obispo County, California; Tehama County, California; Napa County, California; Merced County, California; Yolo County, California; and San Benito County, California.

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VI. THE STRUCTURE OF THE MARKETS

12. The markets for title information services in the geographic areas listed under Paragraph 11 are highly concentrated.

VII. BARRIERS TO ENTRY

13. Entry into the market for providing title information services is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 14, because of, among other things, the time and expense necessary to develop effective data collection technology and the time necessary to develop historical data, and the importance of an established reputation for accuracy.

VIII. EFFECTS OF THE ACQUISITION

14. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct and substantial competition between Respondent and CT in the relevant markets;
- b. by increasing the likelihood of collusion or coordinated interaction in the relevant markets.

IX. VIOLATIONS CHARGED

15. The Acquisition Agreement described in Paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

16. The Acquisition described in Paragraph 9, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of February, 2000, issues its Complaint against said Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition by respondent Fidelity National Financial, Incorporated ("FNF") of Chicago Title Corporation ("CT"), and respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order ("Consent Agreement"), containing an admission by respondent of all the jurisdictional facts set forth in the aforesaid

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draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and issues the following order:

1. Respondent FNF is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its executive offices located at 17911 Von Karman Avenue, Irvine, California 92614-6253.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this order, the following definitions shall apply:

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- A. “Respondent” or “FNF” means Fidelity National Financial, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by FNF, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “CT” means Chicago Title Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by CT, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Title plant” means a privately owned collection of records and/or indices regarding the ownership of and interests in real property. The term includes such collections that are regularly maintained and updated by obtaining information or documents from the public records, as well as such collections of information that are not regularly updated.
- E. “Acquisition” means FNF’s proposed acquisition of the common stock of CT pursuant to the Agreement and Plan of Merger dated August 1, 1999.
- F. “Copy” means a reproduction of a title plant that will enable an acquirer to use the reproduction in a qualitatively similar way to the original. A Copy will reproduce all of the information contained in the original and enable the information to be accessed no less quickly and no less conveniently than it could be using the original.

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II.**IT IS FURTHER ORDERED** that:

- A. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall, for each of the following counties or local jurisdictions listed below, either (1) divest at no minimum price, absolutely and in good faith, either the rights, title, and interest held by FNF prior to the Acquisition or the rights, title, and interest held by CT prior to the Acquisition in all title plants serving such county or local jurisdiction, or (2) sell at no minimum price or otherwise permanently transfer, absolutely and in good faith, a Copy of all title plants serving such county or local jurisdiction in which FNF prior to the Acquisition held rights, title, and interest or a Copy of all title plants serving such county or local jurisdiction in which CT prior to the Acquisition held rights, title, and interest:

Merced County, California
Napa County, California
San Benito County, California
Tehama County, California
Yolo County, California.

- B. Within four (4) months from the date the Consent Agreement is signed by Respondent, Respondent shall either (1) divest at no minimum price, absolutely and in good faith, the rights, title, and interest, other than the right, subject to the approval of the Commission, to a copy of the joint title plant's data covering the period prior to divestiture, held by FNF or CT prior to the Acquisition in the San Luis Obispo Joint Title Plant ("San Luis Obispo JTP") to an entity that is not currently an owner of San Luis Obispo JTP ("New Owner"); or (2) relinquish all of

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the voting rights held by FNF prior to the Acquisition or all of the voting rights held by CT prior to the Acquisition in the San Luis Obispo JTP, and obtain the admission to full participating ownership in the San Luis Obispo JTP of a New Owner, which New Owner shall have (i) the equivalent voting rights in the San Luis Obispo JTP after the admission of the New Owner to those retained by Respondent or CT, (ii) an ownership share no less than that of the other owners, and (iii) no greater financial responsibilities with respect to the San Luis Obispo JTP than those of the other owners.

- C. Respondent shall divest the properties or sell or otherwise permanently transfer the Copies specified in Paragraphs II. A. and II. B. of this order only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Respondent shall obtain the admission to ownership specified in Paragraph II. B. of this order only by a New Owner that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture, sale, transfer, or obtaining admission to ownership pursuant to Paragraphs II. A. and II. B. of this order is to ensure the continued use of the divested or copied title plants as ongoing, viable title plants used in the production and/or sale of title information, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.
- D. Pending divestiture, sale, or transfer of the properties as specified in Paragraphs II. A. and II. B. of this order, Respondent shall take such actions as are necessary to maintain the viability and marketability of such properties and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the properties. FNF shall comply with the following requirements with respect to all title plants serving the counties or other local

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jurisdictions listed in Paragraphs II. A. and II. B. of this order in which either FNF or CT has any rights, title or interest, during the period prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order:

1. FNF shall cause the title plants to be maintained, including but not limited to updating the records and/or indices contained in the title plants, to the extent and in the manner maintained prior to the Acquisition.
2. FNF shall cause to be maintained in good faith all contracts or agreements for access to the title plants subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable under the terms of such contracts or agreements.
3. FNF shall cause access to the title plants to continue to be provided to accessors whose contracts or agreements for access to the title plants expire by their terms prior to the completion of the actions required by Paragraphs II. A. and II. B. of this order, in good faith on terms, conditions and stipulations identical to those set forth in such contracts or agreements.

III.

IT IS FURTHER ORDERED that:

- A. If FNF has not, within four (4) months from the date the Consent Agreement is signed by Respondent, divested, sold, or otherwise permanently transferred, absolutely and in good faith and with the Commission's prior approval, all

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of the properties specified in Paragraphs II. A. and II. B. of this order or not obtained the admission to ownership specified in Paragraph II. B. of this order, the Commission may appoint a trustee to accomplish the actions specified in Paragraphs II. A. and Paragraph II. B. of this order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, FNF shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III. A. of this order, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 1. The Commission shall select the trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

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2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to accomplish the actions specified in Paragraphs II. A. and II. B of this order with respect to the properties or rights that have not been divested or sold or transferred by FNF, including the authority, subject to the approval of the Commission, with respect to any of the listed counties or local jurisdictions as to which divestiture or sale or transfer has not been completed by FNF, to determine whether to divest, sell, or transfer the rights, title and interest held by FNF prior to the Acquisition or the rights, title and interest held by CT prior to the Acquisition in title plants serving such county or local jurisdiction, and to determine, subject to the approval of the Commission, whether to accomplish the relief specified in Paragraph II. A. of this order through divestiture or sale of a Copy and whether to accomplish the relief specified in Paragraph II. B. of this order through divestiture or by obtaining a New Owner under the terms and conditions specified in Paragraph II. B. of this order, provided that if the trustee determines to accomplish the relief specified in Paragraph II. A. or Paragraph II. B. of this order through divestiture, Respondent may retain a copy of the divested assets, subject to the approval of the Commission.
3. Within ten (10) days after appointment of the trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to accomplish the actions specified in Paragraphs II. A. and II. B. of this order.

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4. The trustee shall have twelve (12) months from the date the Commission or a court approves the trust agreement described in Paragraph III. B. 3. to accomplish the actions specified in Paragraphs II. A. and II. B. of this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan to accomplish the specified actions or believes that the specified actions can be accomplished within a reasonable time, the period to accomplish the specified actions may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the properties or rights specified in Paragraphs II. A. and II. B. that have not been divested, sold, or transferred by FNF, and to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the specified actions. Any delays caused by Respondent in accomplishing the specified actions shall extend the trustee's period for accomplishing the specified actions under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate expeditiously the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest or sell at no minimum price. The transactions shall be made in the

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manner and with the acquirer or acquirers as set out in Paragraph II. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall enter into transactions with the acquiring entity or entities selected by Respondent from among those approved by the Commission; provided, however, that Respondent shall select such entity within five (5) business days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the transactions and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's completing the actions specified by Paragraphs II. A. and II. B. of this order with respect to the properties specified therein that have not been divested or sold or transferred by FNF.

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8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. A. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the relief required by this order.
11. The trustee shall have no obligation or authority to operate or maintain the properties specified in Paragraphs II. A. and II. B.
12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.**IT IS FURTHER ORDERED** that:

- A. For a period of ten (10) years from the date this order becomes final, Respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or

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otherwise:

1. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction; or
2. Acquire any assets (other than in the ordinary course of business) or ownership interest in a title plant serving any county or other local jurisdiction specified in Paragraphs II. A. and II. B., where at the time of the acquisition the Respondent has a direct or indirect ownership interest in any title plant serving the same county or local jurisdiction.

Notification is not required to be made pursuant to this Paragraph IV. with respect to any acquisition by Respondent of a copy of title records or other information from a person or entity which thereafter retains the original information in its ownership and control, and where competition in the ordinary course between the parties is not otherwise restrained.

- B. Notification pursuant to this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of

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Justice, and notification is required only of Respondent and not of any other party to the transaction. In addition to the information required to be supplied on such Notification and Report Form pursuant to the above-referenced regulation, Respondent shall submit the following supplemental information in Respondent's possession or reasonably available to Respondent:

1. The name of each county or local jurisdiction to which the terms of Paragraph IV. A. 1. or 2. are applicable;
 2. A description of the title plant assets or interests that are being acquired; and
 3. With respect to each title plant serving each county or local jurisdiction to which the terms of Paragraph IV. A. 1. or 2. are applicable (including title plants in which the Respondent has a direct or indirect ownership interest as well as other title plants known to the Respondent), the names of all persons or entities who hold any direct or indirect ownership interest in the title plant and the percentage interest held by each; the time period covered by each category of title records contained in the title plant; whether the respective categories of title records are regularly being updated; the indexing system or systems used with respect to each category of title records; and the names of all persons, including but not limited to title insurers or agents, who have access to the title plant.
- C. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until twenty (20)

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days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. and III. of this order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and III. of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this order, including a description of all substantive contacts or negotiations for accomplishing the specified actions and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the accomplishment of the specified actions.
- B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the

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Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV. of this order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent.

VIII.

IT IS FURTHER ORDERED that this order shall terminate ten (10) years after the actions required by Paragraphs II. A. and II. B. of this order have been accomplished.

Analysis to Aid Public Comment

By the Commission.

**ANALYSIS OF PROPOSED CONSENT ORDER TO AID
PUBLIC COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from Fidelity National Financial, Inc. ("FNF"), which is designed to remedy the anticompetitive effects arising from FNF's acquisition of the common stock of Chicago Title Corporation ("CT"). Under the terms of the agreement, FNF will be required to divest or sell copies of certain assets known as "title plants" in six California counties. Title plants are privately owned collections of records and/or indices that are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

The proposed Consent Order has been placed on the public record for 30 days so that the Commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On August 1, 1999, FNF entered into an agreement to acquire the common stock of CT for an amount valued at the time of entering into the acquisition agreement at approximately \$1.2 billion. The proposed Complaint alleges that the acquisition, if consummated, would constitute a violation of Section 7 of the

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Clayton Act, as amended, 15 U.S.C. §18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in local markets for title information services in the following counties or local jurisdictions in the United States: San Luis Obispo County, California; Tehama County, California; Napa County, California; Merced County, California; Yolo County, California; and San Benito County, California.

Title plants are privately-owned collections of title information obtained from public records that can be used to conduct title searches or otherwise ascertain information concerning ownership of or interests in real property. Title plants typically contain summaries or copies of public records or documents (often in a format that is comparatively easily to store and readily retrievable), as well as indices to facilitate locating relevant records that pertain to a particular property. Title plants permit users to obtain real property ownership information with significantly greater speed and efficiency than by consulting the original public records, which may be located in a number of separate public offices (e.g., offices of the county recorder, tax authorities, and state and federal courts), may be stored in an inconvenient form, and may be indexed in a fashion that makes it difficult to readily research a particular property. Because of the county-specific way in which title information is generated and collected and the highly local character of the real estate markets in which the title plant services are used, geographic markets for title information services are highly localized, consisting of the county or local jurisdiction embraced by the real property information contained in the title plant.

In each of the local jurisdictions named in the Complaint, the market for title information services is highly concentrated, and FNF and CT are direct competitors in the sale or provision of title information services. In each of the local jurisdictions named, there are no commercially reasonable substitutes for title information services. For a number of reasons, including the relatively large fixed costs associated with building and maintaining title plants, entry into the market for title information

Analysis to Aid Public Comment

services in each of the local jurisdictions named is difficult or unlikely to occur at a sufficient scale to deter or counteract the effects of the acquisition. For these reasons, the Complaint alleges that in each of the named local jurisdictions the effects of the acquisition may be substantially to lessen competition by, among other things, eliminating direct actual competition between FNF and CT in title information services and increasing the likelihood of collusion or coordinated interaction among competing providers of title information services.

The Consent Order requires FNF to divest or sell copies of the pre-acquisition title plant interests of either FNF or CT in five of the identified local jurisdictions to a buyer or buyers approved by the Commission. The Order also requires FNF to divest the pre-acquisition interests of FNF or CT in a jointly owned title plant in San Luis Obispo County, California, or, alternatively, to relinquish any additional voting rights in the joint plant that FNF may have accrued post-acquisition while obtaining a new owner of the joint plant. The specified relief is required to be completed within four months after the respondent signs the Consent Order agreement. In the period prior to divestiture, the respondent is required to maintain the viability and marketability of the properties, including updating the title plants in the same fashion as before the acquisition and maintaining in effect all user contracts and relationships.

The Consent Order includes a provision permitting the Commission to appoint a trustee to accomplish the divestitures, sales of copies, or obtaining new ownership if the specified relief is not accomplished by the respondent within the four-month period. The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of future title plant acquisitions by the respondent in the counties where the specified actions are required if, at the time of any such acquisition, the respondent continues to have an interest in a title plant serving the county. A prior notice provision is appropriate in

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this matter because the small transaction size of most individual title plant acquisitions is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act § 7A, 15 U.S.C. § 18a, as amended) and because there is a credible risk that the respondent will, but for an order to the contrary, engage in otherwise unreportable, anticompetitive mergers.¹

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

¹ See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions, 4 Trade Reg. Rep. (CCH) ¶ 13,241 (June 21, 1995).

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IN THE MATTER OF

MEMTEK PRODUCTS, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-3927; File No. 9923114
Complaint, February 17, 2000--Decision, February 17, 2000*

This consent order prohibits Respondent, Memtek Products, Inc., from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards purchases will be mailed to purchasers. It also prohibits Respondent from failing to provide any offered rebate within the promised time specified, or if no time is specified, within thirty days. The consent order also prohibits Respondent from violating the Commission's Mail Order Rule which also prohibits marketers from failing to provide rebates in the form of merchandise or service for products within specified time or, if time is not specified, within thirty days unless they offer consumers the option of consenting to the delay and receiving compensation for the offered rebate.

Participants

For the Commission: *Michael Dershowitz, Michael Ostheimer, Mark Eichorn, C. Lee Peeler, and BE.*

For the Respondents: *Robert A. Padway, Bullivant Houser Bailey.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Memtek Products, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

Complaint

1. Respondent Memtek Products, Inc., is a California corporation with its principal office or place of business at 10100 Pioneer Blvd., Santa Fe Springs, CA 90670.

2. Respondent has repackaged, advertised, labeled, offered for sale, sold, and distributed products to the public, including Memorex computer diskettes and blank audiotapes and videotapes.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated labeling and rebate coupons for packages of Memorex computer diskettes, including but not necessarily limited to the attached Exhibits A and B. The labeling and rebate coupons contain the following statements:

A.	" \$15 REBATE With Proof of Purchase"	"Please allow 12 weeks for delivery."
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(Exhibit A, front of label
attached to packages of
Memorex computer
diskettes).

(Exhibit A, back of label
attached to packages of
Memorex computer
diskettes)

B.
"29.⁹⁹ Rebate by Mail
on specially marked
100 Pack Diskettes
Purchased at Staples"

(Exhibit B, front of
rebate coupon for

Complaint

Memorex computer
diskettes). . . .

Please allow 12 weeks for
delivery."

"Buy a Memorex MXR 100
Pack Diskettes
(Part#3210-5430) and Bulk
100 Pack Diskettes
(Part# 3210-5400)

(Exhibit B, back of rebate
coupon for Memorex
computer diskettes).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that purchasers of packages of Memorex computer diskettes would receive cash rebates within 12 weeks of respondent's receipt of their requests.

6. In truth and in fact, in numerous instances, purchasers of packages of Memorex computer diskettes did not receive cash rebates within 12 weeks of respondent's receipt of their requests. In many instances, consumers experienced delays of one to two months in receiving their cash rebates. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. Respondent has disseminated or has caused to be disseminated labeling for packages of blank Memorex audiotapes and videotapes, including but not necessarily limited to the attached Exhibit C. The labeling contains the following statements:

C.
"BUY THIS
MEMOREX PRODUCT
AND RECEIVE A \$10
Best Buy Gift Check
(by mail)

Good for purchase at
Best Buy of any pre-
recorded video tape or
music CD."

Complaint

(Exhibit C, front of label attached to packages of blank Memorex audiotapes and videotapes).

"Please allow 8 weeks for delivery."

(Exhibit C, back of label attached to packages of blank Memorex audiotapes and videotapes).

8. Through the means described in Paragraph 7, respondent has represented, expressly or by implication, that purchasers of packages of blank Memorex audiotapes and videotapes would receive \$10 Best Buy gift checks, entitling them to a \$10 discount off a future purchase from Best Buy retail stores of any pre-recorded videotape or music CD, within 8 weeks of respondent's receipt of their requests.

9. In truth and in fact, in numerous instances, purchasers of packages of blank Memorex audiotapes and videotapes did not receive \$10 Best Buy gift checks within 8 weeks of respondent's receipt of their requests. In many instances, consumers experienced delays of one to three months in receiving their \$10 Best Buy gift checks. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

THEREFORE, the Federal Trade Commission this seventeenth day of February, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits

Exhibit A



BUY: A specially marked Memorex 50 Pack (UPC 034707-004146, 036887 037143).

MAIL: 1) UPC symbol cut from the package. 2) Original cash register receipt with date and purchase price circled. 3) This original rebate sticker from front of package. 4) Print your name, address and zip code on a 3"x5" card.

SEND TO: Memorex 50 Pack Rebate Offer, P.O. BOX 52945, Dept. 5672, Phoenix, Arizona 85072-2945.

ADDITIONAL TERMS OF OFFER: Limit 2 refunds per name, household or address. Offer void where prohibited by law, taxed, licensed or restricted. Please allow 12 weeks for delivery. Offer good only in the U.S.A. Request must be postmarked within 30 days of date of purchase. This offer not to be used in conjunction with any other offer. Offer good while supplies last.

53953920

Exhibit A, enlarged

Complaint Exhibits

Exhibit B

\$29.99 Rebate by Mail

**on specially
marked
100 Pack Diskettes
Purchased at Staples**

Must complete purchase between 1/11/98 thru 1/18/98
Limit 1 request per name, household or address.
Request must be post marked 2/1/98

Here's How To Receive Your Memorex Rebate:

1. Buy a Memorex MPX 100 Pack Diskettes (Part#3210-5430) and Bulk 100 Pack Diskettes (Part#3210-5400)
2. Mail the UPC symbol from the original package and the Staples cash register receipt as proof of purchase. Please show date and purchase price.
3. Mail these required items, along with this completed request, to:
Memorex MPX 100 Pack Diskettes and Bulk 100 Pack Diskettes Rebate
PO BOX 52665, Dept 1755N, Phoenix, AZ 85072-2665
4. In order to properly redeem your request please print the following information:

Name _____
 Address _____
 City _____ State _____ Zip _____

Additional Terms of Offer:

Must complete purchase by 1/18/98. Request must be postmarked by 2/1/98. This completion form must accompany request and may receive additional reproduction limit 1 request per name, household or address. Please allow 12 weeks for delivery. Void where prohibited by law, taxed, licensed or restricted. Staples and organization of rebates will not be honored. Offer good only in the USA. Not responsible for age or misdirected mail. Incomplete redemption requests will not be honored. This offer not to be used in conjunction with any other offer. Offer good while supplies last.
 For questions regarding the status of your rebate, please call 1-888-354-4155

P0028

Complaint Exhibits

Exhibit C



BUY: A specially marked HS 7" x 9 1/2" pt., dBS-90 20-pt. or CD2-110 10-pt. (UPCA 071809-181917-32000, 411106)

MAIL: 1) UPC symbol cut from the outside package wrap; 2) Original cash register receipt (or copy) from Best Buy with date and purchase price circled; 3) This original rebate sticker from front of package; 4) Print your name, address and zip code on a 3"x5" card.

SEND TO: \$10 Best Buy Gift Check Offer
P.O. BOX 8864, Young America, MN 55551

ADDITIONAL TERMS OF OFFER: Offer good on purchases made through 6/30/99. Requests must be postmarked by 7/15/99. Limit 3 refunds per name, household or address. Offer void where prohibited by law, taxed, licensed or restricted. Please allow 8 weeks for delivery. Offer good only in the U.S.A. Not responsible for lost or misdirected mail. Incomplete redemption requests will not be honored. This offer not to be used in conjunction with any other offer. Offer good while supp. is avail. S00018

Exhibit C, enlarged

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Memtek Products, Inc. is a California corporation with its principal office or place of business at 10100 Pioneer Boulevard, Santa Fe Springs, CA 90670.

Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Rebate" shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered by respondent to consumers who purchase products or services from respondent, which is provided subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean Memtek Products, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Mail Order Rule" shall mean the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.
4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with respondent's manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

Decision and Order

- A. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit towards future purchases will be mailed, or otherwise provided to purchasers;
- B. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty days;
- C. fail to provide any rebate in the form of credit towards future purchases within the time specified, or, if no time is specified, within thirty days;
- D. in connection with any rebate in the form of merchandise, violate any provision of the Mail Order Rule, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or
- E. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Decision and Order

II.

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall for five (5) years after the last date of dissemination of any representation covered by this order maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All respondent's advertisements and promotional materials containing such representation;
- B. All materials that were relied upon by respondent in disseminating such representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on February 17, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

Analysis to Aid Public Comment

violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent Memtek Products, Inc. ("Memtek").

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will

Analysis to Aid Public Comment

decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Memtek repackages, advertises, labels and sells, among other products, "Memorex" brand computer diskettes, and blank audiotapes and videotapes. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of these products. The Commission's proposed complaint alleges that Memtek falsely represented that purchasers of its package of 100 computer diskettes would receive a \$29.99 cash rebate within 12 weeks of Memtek's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to two months late. The complaint also alleges that Memtek falsely represented that purchasers of its blank audiotapes and videotapes would receive a \$10 Best Buy Gift Check within 8 weeks of Memtek's receipt of purchasers' gift check requests. The \$10 Gift Check could then be used at any Best Buy retail store to obtain \$10 off the purchase of any pre-recorded videotape or music CD. The complaint alleges that in many instances purchasers received their \$10 Gift Checks one to three months late.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other

Analysis to Aid Public Comment

things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time it specifies for delivery, or if no time is specified, within thirty days, unless it offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Part II of the proposed order requires respondent to maintain copies of all materials relied upon in making any representation covered by this order.

Part III of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part IV of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a “sunset” provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

UMAX TECHNOLOGIES, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3928; File No. 9923242
Complaint, February 17, 2000--Decision, February 17, 2000*

This consent order prohibits Respondent, UMAX Technologies, Inc., from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards purchases will be mailed to purchasers. It also prohibits Respondent from failing to provide any offered rebate within the promised time specified, or if no time is specified, within thirty days. The consent order also prohibits Respondent from violating the Commission's Mail Order Rule which also prohibits marketers from failing to provide rebates in the form of merchandise or service for products within specified time or, if time is not specified, within thirty days unless they offer consumers the option of consenting to the delay and receiving compensation for the offered rebate.

Participants

For the Commission: *Michael Dershowitz, Michael Ostheimer, C. Lee Peeler, and BE.*

For the Respondents: *Joe Q. Kaufman, UMAX Technologies, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that UMAX Technologies, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent UMAX Technologies, Inc., is a California corporation with its principal office or place of business at 3561 Gateway Boulevard, Fremont, California 94538.

Complaint

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including computer scanners.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated labeling and rebate coupons for computer scanners, including but not necessarily limited to the attached Exhibits A and B. The labeling and rebate coupons contain the following statements:

A. "Astra 1220P \$30 Rebate"

"Please allow 10 to 12 weeks to receive your rebate."

(Exhibit A, label attached to packaging of Astra 1220P scanners).

B.

" UMAX
Astra 1220S
\$50 Rebate"

"Please allow 10 to 12
weeks to receive your
rebate."

(Exhibit B, front of rebate
coupon for Astra 1200S
scanners).

(Exhibit B, back of rebate
coupon for Astra 1200S
scanners).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that purchasers of UMAX scanners would receive cash rebates within 12 weeks of respondent's receipt of their requests.

Complaint

6. In truth and in fact, in numerous instances, purchasers of UMAX scanners did not receive cash rebates within 12 weeks of respondent's receipt of their requests. In many instances, consumers experienced delays of one to five months in receiving their cash rebates. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventeenth day of February, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits

Exhibit A

EXHIBIT A

PEEL OFF

Astra 1220P \$30 Rebate

To receive your rebate you must mail in:

- *Complete original bar code
- *Label cut out of your scanner box.
- *A copy of your sales receipt
- *This completed claim coupon.

Mail to:

UMAX Astra 1220P Rebate
Department 0463
1421 S. Beltline Rd. Ste. 400
Coppell, TX 75019

If you have not received your rebate or have questions please call the rebate hotline at: 1-800-724-9273

wmn.UMAX.com

Rebate applies to the Astra 1220P scanner only. Purchase must be made between October 1, 1998 and February 28, 1999. All requests MUST be postmarked by March 15, 1999. Offer not valid with any other offers, rebates or promotions. Offer valid in US and Canada only. Good for actual purchases by end users; excludes resellers and distributors of UMAX products and their families. Please allow 30 to 12 weeks to receive your rebate. All rebates will be made in US Dollars. UMAX is not responsible for lost or misdirected mail and illegible entries. UMAX logo and product names are trademarks of UMAX. Fraudulent submission of multiple requests could result in federal prosecution under the US Mail Fraud Statutes (18 U.S.C. Section 1341 & 1342). Keep a copy of your submission for your future reference. UMAX reserves the right to record and/or change promotional offer at any time.

UMAX

Name _____
Address _____
City _____ State _____ ZIP _____
Tel: _____

Complaint Exhibits

Exhibit B

EXHIBIT B

	
<h2>Astra 1200S \$50 Rebate</h2>	
<p>Purchase an Astra 1200S-DLX or an Astra 1200s-LE between October 1, 1998 and December 31, 1998 and become eligible for a \$50 mail-in rebate from UMAX.</p> <p>See complete rules and regulations on back.</p>	
<p>See the reverse side of this coupon for complete details on how to submit your claim. Mail all required claim information to:</p>	<p>If you have not received your rebate or have questions please call the rebate hotline at: 1-888-724-9273</p>
<div style="border: 1px solid black; padding: 2px;"> <p>UMAX 1200S Rebate Department # 462 2924 N. Skyway Circle Irving, TX. 75038</p> </div>	<p style="text-align: center;">www.UMAX.com</p>
(FRONT)	

 <h2>Astra 1200S-DLX & LE \$50 Rebate</h2>	
<p>Mail this completed coupon along with a copy of your receipt and the UPC/Serial Number label cut from the side of your scanner box to become eligible for a \$50 Mail-in rebate.</p>	<div style="border: 1px solid black; padding: 5px;"> <p>Name _____</p> <p>Address _____</p> <p>City _____ State _____ ZIP _____</p> <p>tel: _____</p> </div>
<p>Select the UMAX product purchased:</p> <p><input type="checkbox"/> Astra 1200S-DLX valid UPC is 785461134005</p> <p><input type="checkbox"/> Astra 1200s-LE valid UPC is 785461133985</p> <p>Please check one selection</p>	<p><small>Rebate applies to the Astra 1200S-DLX and 1200s-LE scanner only. Purchase MUST be made between October 1, 1998 and December 31, 1998. All requests MUST be postmarked by January 15, 1999. Offer not valid with any other offers or promotions. Offer valid in US and Canada only. Good for actual purchases by end users; excludes resellers and distributors of UMAX products and their families. Please allow 10 to 12 weeks to receive your rebate. All rebates will be made in US Dollars. UMAX is not responsible for lost or misdirected mail and illegible entries. UMAX logo and product names are trademarks of UMAX. Fraudulent submission of multiple requests could result in federal prosecution under the U.S. Mail Fraud Statutes (18 USC Section 1341 & 1342). Keep a copy of your submission for your future reference. UMAX reserves the right to rescind and/or change promotional offer at any time.</small></p>
<p>www.UMAX.com</p>	(BACK)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent UMAX Technologies, Inc. is a California corporation with its principal office or place of business at 3561 Gateway Boulevard, Fremont, California 94538.

Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Rebate" shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from respondent, which is provided subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean UMAX Technologies, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Mail Order Rule" shall mean the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.
4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit

Decision and Order

towards future purchases will be mailed, or otherwise provided to purchasers;

- B. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty days;
- C. fail to provide any rebate in the form of credit towards future purchases within the time specified, or, if no time is specified, within thirty days;
- D. in connection with any rebate in the form of merchandise, violate any provision of the Mail Order Rule, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or
- E. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Decision and Order

II.

IT IS FURTHER ORDERED that respondent UMAX Technologies, Inc., and its successors and assigns shall for five (5) years after the last date of dissemination of any representation covered by this order maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent UMAX Technologies, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondent UMAX Technologies, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent UMAX Technologies, Inc., and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate on February 17, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an

Analysis to Aid Public Comment

accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent UMAX Technologies, Inc. ("UMAX").

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will

Analysis to Aid Public Comment

again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

UMAX advertises, labels and sells various types of computer scanners. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of computer scanners. The Commission's proposed complaint alleges that UMAX falsely represented that purchasers of its Astra 1220P scanner, for example, would receive a \$30.00 cash rebate, and that purchasers of its Astra 1220S scanner, for example, would receive a \$50.00 cash rebate, within 12 weeks of UMAX's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to five months late.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered.

Analysis to Aid Public Comment

Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time it specifies for delivery, or if no time is specified, within thirty days, unless it offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Part II of the proposed order requires respondent to maintain copies of all materials relied upon in making any representation covered by this order.

Part III of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part IV of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

DBC FINANCIAL, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket C-3931; File No. 9923228
Complaint, March 13, 2000--Decision, March 13, 2000*

This consent order prohibits Respondent DBC Financial, Inc. in connection with the advertising or sale of Delaware Bank Card or any back card or related services from making and misrepresentations or material omissions regarding the costs, benefits, or conditions of a bank card or related services including that 1) that the card has no up-front fees if there is an Account set-up fee or other initial charge, 2) that the card provides over-draft protection free of charge if there is an over-draft protection fee. The consent order also prohibits respondent from making misrepresentations in connection with the advertising and sale of bank card or related services of any connection or affiliation with any United States government agency, institution, or program. The consent order also requires that Respondent conspicuously disclose in connection, in connection with any representation about the availability of electronic fund transfers from any government entity "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program". The order requires Respondent to pay \$250,000.00 for a redress program and administrative costs.

Participants

For the Commission: *Rolando Berrelez, Michelle Chua,
Jessica Rich, David Medine.*

For the Respondents: *Sylvia Kochler, Nelson Mullins Riley &
Scarborough, LLP.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that DBC Financial, Inc., a corporation (“respondent” or “DBC Financial”), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent DBC Financial is a Delaware corporation with its principal office or place of business at 75 Piedmont Ave., Suite #202, Atlanta, GA 30303.
2. Respondent has advertised, offered for sale, sold, and distributed automated teller machine (“ATM”) bank card services to the public, including the Delaware Bank Card. The Delaware Bank Card is a direct deposit ATM bank card.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated, or has caused to be disseminated, advertisements and promotional materials for the Delaware Bank Card in direct mailings and on television, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statements:
 - A. “Because you receive a Government Benefits Check, here is your **PRE-APPROVED** Delaware Bank Card: The Card that puts **CASH** in your hands. With this card, you get the following benefits: Automatic Deposit of Your Check! . . . \$1,000 Overdraft Protection per Year! With the Delaware Bank Card you have access to Extra Cash when you need it (even when your account balance is \$0.00)”
 - B. “Best of all, because you are Pre-Approved, there are **no up front fees** required to take advantage of this offer.”

Complaint

C. "If you receive social security, SSI or VA benefits, you are preapproved to receive the Delaware Bank Card. The card that puts cash in your hands. With the Delaware Bank Card, your money gets direct deposited automatically on checkday. No waiting for the mailman. Instant access to your money at thousands of ATM's. With the card you also get a thousand dollars per year of overdraft protection. Call 1-800-784-2600 to sign up today. Guaranteed approval. No upfront Fees. It's simple, it's fast, it's that easy."

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

A. Use of the Delaware Bank Card requires no upfront fees.

B. The Delaware Bank Card is affiliated with a United States government agency, institution or program.

C. Use of the Delaware Bank Card automatically provides free overdraft protection services of up to \$1,000 a year.

6. In truth and in fact:

A. Use of the Delaware Bank Card requires an "Account Set-Up Fee" of \$19.95, as well as a monthly service fee in the amount of \$9.95.

B. The Delaware Bank Card is not affiliated with any United States government agency, institution or program.

C. The Delaware Bank Card charges an overdraft protection fee of \$19.95 for every month in which the consumer's account is overdrawn by up to \$80.00. Therefore, the representations set forth in Paragraph 5 were, and are, false or misleading.

Decision and Order

7. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this thirteenth day of March, 2000, has issued this complaint against respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (the "Commission") having initiated an investigation of certain acts and practices of respondent DBC Financial, Inc., incorporated in Delaware ("DBC Financial"), named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent DBC Financial with violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's rules; and

Decision and Order

The Commission having thereafter considered the matter and having determined that it has reason to believe that respondent DBC Financial has violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent DBC Financial, Inc. is a Delaware corporation, with its principal office or place of business located at 75 Piedmont Avenue, Suite 1200, Atlanta, Georgia 30303.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Account" shall mean a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution, and established primarily for personal, family, or household purposes.
2. "Account Set-up Fee" shall mean any fee charged by respondent to any customer to open or activate a Delaware Bank Card Account.

Decision and Order

3. "Bank card" or "Bank card-related service or product" shall mean any form of direct deposit bank card service offered by or through respondent, including but not limited to any card, code, or other means of access to an Account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.
4. "Clearly and prominently" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence and location sufficient for an ordinary consumer to hear and comprehend it, prior to purchase of the service or product. The videodisclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it, prior to purchase of the service or product.
 - B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, prior to purchase of the service or product, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or first page.

Decision and Order

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

5. "Current Eligible Customers" shall mean all customers who, as of the Effective Date of this order, have an open Delaware Bank Card Account, and whose Accounts have been charged an Account Set-up Fee.
6. Unless otherwise specified, "DBC" or "Respondent" shall mean DBC Financial, Inc., and each of its successors and assigns, and officers, agents, representatives, and employees.
7. "Electronic Fund Transfer" shall mean any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:
 - a. point-of-sale transfers;
 - b. automated teller machine transfers;
 - c. direct deposits or withdrawals of funds;
 - d. transfers initiated by telephone; and
 - e. transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.
8. "ETA" shall mean the U.S. Treasury-designated electronic transfer account made available by a federally-insured financial institution acting as a Financial Agent in accordance with the requirements set out in 31 C.F.R. Section 208.5

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9. "Overdraft Protection Fee" shall mean any fee charged by respondent to any customer for overdraft protection services.
10. "Past Eligible Customers" shall mean all customers who had an open Delaware Bank Card Account on August 31, 1999, and who were charged an Account Set-up Fee, but who, between August 31, 1999 and the Effective Date of this Order, have closed their Delaware Bank Card Account.

I.

IT IS ORDERED that respondent DBC, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product in or affecting commerce, shall not, orally or otherwise, directly or indirectly, make any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including but not limited to the following:

- A. That use of the Bank Card requires no up-front fees, if in fact DBC is charging an Account Set-up Fee or any other initial fee; and
- B. That use of the Bank Card provides free of charge any overdraft protection services, if in fact DBC is charging an overdraft protection fee.

II.

IT IS FURTHER ORDERED that respondent DBC, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale,

Decision and Order

sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, shall not, orally or otherwise, directly or indirectly, make any misrepresentation that DBC or any of its Bank Card or Bank Card-related services or products are affiliated in any way with any United States governmental agency, institution, or program.

III.

IT IS FURTHER ORDERED that respondent DBC, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, shall not make any representation, in any manner, expressly or by implication, about the availability of electronic transfer of funds from any government entity, including but not limited to social security payments, unless DBC discloses, clearly and prominently, and in close proximity to the representation, the following:

"NOTICE: The [Delaware Bank Card or Name of Bank Card] is **NOT** affiliated in any way with any federal government agency or program"

Provided, however, that to the extent DBC is advertising or promoting the ETA, as defined herein, on behalf of a financial institution that is offering that product, the above disclosure shall not be required.

IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns, jointly and severally, shall pay redress to consumers in the amount of \$ 250,000.00 (U.S. Dollars) ("Redress Fund"). Respondent shall wire transfer the sum of \$ 250,000.00 into an

Decision and Order

escrow account designated by the Commission, on or before five (5) days after the date of issuance of this Order. This sum shall be used to (1) provide redress to all Current Eligible Customers and Past Eligible Customers, as those terms are defined herein; and (2) pay any attendant expenses of administration. The Redress Fund shall be used to provide all Current Eligible Customers and Past Eligible Customers a full refund of the Account Set-up Fee of \$19.95, and a one-time partial refund of the Overdraft Protection Fee. The FTC shall determine, in its sole discretion, which consumers are eligible for redress as well as the amounts to be paid.

- A. Within 10 (ten) business days after the date of issuance of this order, DBC shall deliver to both the Commission and an independent agent designated by the Commission, on magnetic tape or some other electronic medium, the following data concerning all Current Eligible Customers and Past Eligible Customers: Name, Last Known Mailing Address, Bank Routing Number, and Bank Account Number.
- B. Respondent shall also provide, within ten (10) business days of receiving a written request, any additional information that the independent agent reasonably needs to carry out the redress program described herein. DBC shall deliver all data and information described in this paragraph to the independent agent in a clean format compatible with the independent agent's computers.
- C. Within ten (10) days of the date of issuance of this order, DBC shall send by first class mail the letter, attached as Appendix A hereto, informing all Current Eligible Customers concerning consumer redress.
- D. The independent agent, in administering the redress fund to Past Eligible Customers, shall send the letter, attached as Appendix B hereto, informing all Past Eligible Customers concerning consumer redress.

Decision and Order

If the Commission determines, in its sole discretion, that redress to consumers is wholly or partially impracticable, any funds not so used shall be deposited into the United States Treasury. Respondent shall be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission.

Notwithstanding any other provision of this Order, Respondent agrees that if it fails to meet the payment obligations set forth in Section IV of this Order, respondent shall pay the costs and attorneys fees incurred by the Commission and its agents in any attempts to collect amounts due pursuant to this Order. Respondent further agrees that the facts as alleged in this Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

V.

DBC hereby further represents, covenants, and agrees that it has waived and will waive and will not charge the Account Set-up Fee of \$19.95 for any Delaware Bank Card account opened between August 31, 1999 and January 31, 2000.

VI.

IT IS FURTHER ORDERED that, within five days after the date of issuance of this order, DBC's President shall submit to the Commission a truthful sworn statement reaffirming and attesting that, to the best knowledge and information of DBC and its President, the list of Current Eligible Customers and Past Eligible Customers, which list shall have been previously submitted to the Commission, is true, accurate and complete. The Commission's

Decision and Order

tentative approval of this settlement is expressly premised upon the truthfulness, accuracy, and completeness of DBC's list of customers enumerated in this Paragraph, which contain material information upon which the Commission relied in negotiating and agreeing to this tentative settlement. The sworn statement required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VII.

IT IS FURTHER ORDERED that respondent DBC, a corporation, and its successors and assigns, shall, for three (3) years from the date of entry of this order, maintain and upon request immediately make available to the Federal Trade Commission for inspection and copying, all documents demonstrating compliance with this order.

VIII.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., and its successors and assigns, shall, for a period of three (3) years following the date of service of this order, deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future agents, representatives, and management employees having responsibility with respect to the subject matter of this order, as well as any independent contractor retained to market the DBC Bank Card or similar Bank Card products and services, and shall secure from each such person a signed statement acknowledging receipt of the order. Respondent shall maintain and make available upon request by representatives of the Federal Trade Commission copies of said signed statements. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

IX.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

X.

IT IS FURTHER ORDERED that respondent DBC Financial, Inc., a corporation, its successors and assigns, and its officers, shall, within one hundred and eighty (180) days of the date of service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XI.

This order will terminate on March 13, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an

Analysis to Aid Public Comment

accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however,** that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from DBC Financial, Inc. ("DBC Financial"). The agreement would settle a complaint by the Federal Trade Commission that DBC Financial engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

Analysis to Aid Public Comment

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made by DBC Financial in its advertising of the Delaware Bank Card, an automated teller machine ("ATM") bank card that offers direct deposit services with an affiliated bank. The administrative complaint alleges that DBC Financial violated the FTC Act by falsely representing: (1) that use of the Delaware Bank Card requires no upfront fees, when, in fact, use of the card requires an account setup fee of \$19.95, as well as a monthly service fee of \$9.95; (2) that the Delaware Bank Card is affiliated with a United States government agency, institution, or program, when in fact it is not; and (3) that use of the Delaware Bank Card automatically provides free overdraft protection services of up to \$1,000 a year, when in fact the card charges an overdraft protection fee of \$19.95 for every month in which the consumer's account is overdrawn by up to \$80.00.

To remedy the violations charged and to prevent respondent from engaging in similar acts and practices in the future, the proposed order contains injunctive provisions and a consumer redress program. Part I of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from making any misrepresentation or material omission concerning the costs, benefits, or conditions of the Bank Card or Bank Card-related service or product, including the following: (1) that use of the Bank Card requires no up-front fees, if in fact DBC Financial is charging an Account Set-up fee or any other initial fee; and (2) that use of the Bank Card provides free of charge any

Analysis to Aid Public Comment

overdraft protection services, if in fact DBC Financial is charging an overdraft protection fee.

Part II of the order prohibits respondent, in connection with the advertising or sale of the Delaware Bank Card or any Bank Card or Bank Card-related service or product, from misrepresenting that DBC Financial or any of its Bank Card or Bank Card-related services or products are affiliated in any way with any United States governmental agency, institution, or program.

Part III of the order requires respondent to clearly and conspicuously disclose, in connection with any representation about the availability of electronic transfer of funds from any government entity, the following: "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program." This disclosure is not required, however, to the extent that respondent is promoting a U.S. Treasury-designated ETA on behalf of a financial institution that is participating in the government ETA program.

Part IV of the order requires respondent to pay \$250,000.00 for the redress program and administrative costs. The redress program applies to certain consumers who, as of August 31, 1999, had an active Delaware Bank Card account and who were charged an account set-up fee. In addition, Part V of the order requires respondent to waive the account set-up fee of \$19.95 for all Delaware Bank Card accounts opened between August 31, 1999 and January 31, 2000.

The proposed order also contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

Analysis to Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

Complaint

IN THE MATTER OF
CERIDIAN CORPORATIONCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket C-3933; File No. 9810030*
Complaint, April 5, 2000--Decision, April 5, 2000

This consent order addresses the acquisition by Respondent Ceridian Corporation of NTS Corporation and Trendar Corporation. The order requires Respondent to grant fleet card issuers access to Comdata's Trendstar fuel purchase desk automation system and to grant fuel purchase desk automation systems suppliers the right to process Comdata's fleet cards. The order also requires Comdata, for a period of three years, to grant a ten-year license to effect transactions on the Trendar system to any company providing, or seeking to provide, fleet card services. Comdata is required to promptly disseminate the software to all truck stops on the Trendar network. Comdata is further required to provide licensees with equal access to any upgrades or modifications to the Trendar system, and is prohibited from basing any transaction fees charged to truck stops for processing the Comdata card, as well as access to the Comdata card, on whether such truck stops accept any other firm's fleet cards. The order requires Comdata, for a period of three years, to grant a ten-year license to all incumbent suppliers of fuel purchase desk automation systems, and to the first three new system providers that request a license.

Participants

For the Commission: *Michael R. Moiseyev, Yolanda R. Gruendel, Andrew J. Topps, Robert R. Pickett, Sylvia M. Brooks, Ann Malester, Daniel P. Ducore, Christopher Garmon, Jeffrey Fischer, and Gregory Vistnes.*

For the Respondents: *Jeane Thomas and Randy Smith, Crowell & Moring, R. Dale Grimes, Bass, Berry & Sims, and Joe Warren, Michael Crimmens, and Joe Kattan, Gibson, Dunn & Crutcher.*

Complaint

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Respondent, Ceridian Corporation ("Ceridian"), a corporation subject to the jurisdiction of the Commission, has acquired, through its wholly owned subsidiary Comdata Network, Inc., substantially all of the assets of NTS, Inc. ("NTS"), a corporation subject to the jurisdiction of the Commission, from First Data Corporation ("First Data"), and, through its wholly owned subsidiary Comdata Holdings Corporation, has acquired Trendar Corporation ("Trendar"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Ceridian is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its office and principal place of business located at 8100 34th Avenue, South, Minneapolis, Minnesota 55425.
2. Respondent is engaged in, among other things, the provision of fleet card services to over the road trucking companies and the development, manufacture and sale of truck stop fuel desk automation systems.
3. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANIES

4. First Data is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 901 Hackensack Avenue, Hackensack, New Jersey 07601.

5. NTS, a subsidiary of First Data, was, until the time of its acquisition by Respondent, engaged in, among other things, the business of providing fleet card services to over the road trucking companies.

6. First Data was at all times relevant herein engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

7. Trendar was, until the time it was acquired by Respondent, a corporation organized, existing, and doing business under and by virtue of the laws of Tennessee, with its office and principal place of business located at Murfreesboro Road, Nashville, Tennessee.

8. Trendar was, until the time of its acquisition by Respondent, engaged in, among other things, the design, manufacture and sale of truck stop fuel desk automation systems.

9. Trendar was at all times relevant herein engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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III. THE ACQUISITIONS

10. In January, 1998, Respondent Ceridian, through its wholly owned subsidiary Comdata Network, Inc., acquired substantially all of the assets of NTS from First Data Corporation in exchange for certain Ceridian assets and businesses and \$50 million.

11. In March, 1995, Comdata Holdings Corporation, a subsidiary of Respondent Ceridian, acquired Trendar Corporation, for approximately \$14.2 million.

IV. THE RELEVANT MARKETS

12. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisitions are the provision of fleet card services to over the road trucking companies and the development, manufacture and sale of truck stop fuel desk automation systems.

13. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisitions in the relevant lines of commerce.

V. STRUCTURE OF THE MARKET

14. The market for the provision of fleet card services for over the road trucking companies is highly concentrated as a result of the acquisition of NTS by Ceridian. At the time of its acquisition, NTS was Ceridian's closest and most significant competitor in the market for fleet card services for over the road trucking companies.

15. The market for fuel desk automation systems is highly concentrated. At the time of its acquisition by Respondent, Trendar was the leading supplier of truck stop fuel desk automation systems in the United States. Trendar remains the

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leading supplier of truck stop fuel desk automation systems in the United States.

VI. BARRIERS TO ENTRY

16. The relevant markets described in Paragraphs 12 and 13 are characterized by high barriers to entry. Prospective entrants into the market for the provision of fleet card services to over the road trucking companies must be accepted onto Ceridian's Trendar fuel desk automation system and must establish a nationwide network of truck stop locations that accept their cards. Potential entrants into the truck stop fuel desk automation system market must be able to process Ceridian's fleet cards in order to be viable options for truck stops. Entry into the relevant markets would not occur in a timely manner to deter or counteract the adverse competitive effects described in Paragraph 17 because of these high barriers.

VII. EFFECTS OF THE ACQUISITIONS

17. The effects of the Acquisitions may be substantially to lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- (a) by increasing the likelihood that customers of fleet card services to over the road trucking companies will pay higher prices; and
- (b) by increasing the likelihood that customers of truck stop fuel desk automation systems will pay higher prices; and
- (c) by raising barriers to entry into the market for fleet card services to over the road trucking companies; and
- (d) by raising barriers to entry into the market for truck stop fuel desk automation systems.

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VIII. VIOLATIONS CHARGED

18. The Acquisitions described in Paragraphs 10 and 11 constitute violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifth day of April, 2000, issues its Complaint against said respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the acquisition by Comdata Network, Inc., a wholly-owned subsidiary of respondent, of substantially all of the assets of NTS, Inc., and the acquisition by Comdata Holdings Corporation, a wholly-owned subsidiary of respondent, of Trendar Corporation, and the respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by respondent of all the jurisdictional facts

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set forth in the aforesaid draft of Complaint, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, and having modified the Consent Order in certain respects, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Ceridian Corporation is a corporation organized, 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 8100 34th Avenue South, Minneapolis, Minnesota 55425.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply (where appropriate, words in the singular include the plural, and words in the plural include the singular):

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- A. “Acquisitions” means the acquisition of substantially all of the assets of NTS, Inc. by Comdata Network, Inc., a wholly-owned subsidiary of Ceridian, and the purchase of Trendar Corporation by Comdata Holdings Corporation, a wholly-owned subsidiary of Ceridian.
- B. “Comdata” means Comdata Network, Inc., a Maryland corporation and wholly-owned subsidiary of Ceridian, with its office and principal place of business located at 5301 Maryland Way, Brentwood, Tennessee 37027.
- C. “Comdata Business” means any division or entity within or controlled by Respondent that is engaged in, among other things, the development, issuance, distribution, sale or licensing of the Comdata Cards.
- D. “Comdata Cards” means all of Comdata’s current and future proprietary, private label Comchek®, TIC, NTS, EDS or other Fleet Cards, however named, issued by Comdata, either directly or indirectly through an approved third-party designated by Comdata, to Trucking Companies or truck drivers who use such cards to effect Transactions at Fueling Locations approved by Comdata; provided, however, that Comdata Cards shall not include cards for which Respondent does not have final authority to determine which POS Systems are permitted to effect diesel fuel purchases or data capture transactions for those cards. For the purposes of this Order, Comdata Cards shall be included as one type or kind of Fleet Card, as hereinafter defined.

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- E. “Comdata Confidential Information” means any information not in the public domain disclosed by Respondent to a Designated POS System Provider or Fleet Card Issuer, as applicable, in its capacity as the provider of the Comdata Cards or Trendar Services, respectively. Comdata Confidential Information shall not include: (1) information that falls within the public domain through no act, error, or omission by the Designated POS System Provider or Fleet Card Issuer, as applicable; (2) information that becomes known to the Designated POS System Provider or Fleet Card Issuer, as applicable, from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; (3) information already known to the Designated POS System Provider or Fleet Card Issuer, as applicable, prior to requesting a license pursuant to Paragraph II. or III., respectively; and (4) information independently developed by the Designated POS System Provider or Fleet Card Issuer, as applicable, without reference to or use of any Comdata Confidential Information.
- F. “Commission” means the Federal Trade Commission.
- G. “Designated POS System Providers” means New System Providers that have received Commission approval and Incumbent System Providers.
- H. “Fleet Card” means any card issued to cardholders who are authorized to use such cards to effect data capture Transactions or Transactions funded by the Fleet Card Issuer.
- I. “Fleet Card Issuer” means any Person who (1) issues or seeks to engage in the business of issuing Fleet Cards to Trucking Companies, truck drivers, or other cardholders who may use such Fleet Cards to effect Transactions, provided that a Fleet Card Issuer must

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have, or seek to have, issued at least one thousand (1,000) Fleet Cards; or (2) develops a Fleet Card for the purpose of having it issued by third-parties, provided that the Fleet Card Issuer must have, or seek to have, third-parties issue at least one thousand (1,000) Fleet Cards.

- J. "Fueling Location" means any truck stop, gasoline service station, fueling service center, Terminal Fueling Facility, cardlock, or unattended fueling site.
- K. "Incumbent System Provider" means any Person who is authorized by Respondent on the date Respondent signs this Order to effect all Transactions using any one (1) Fleet Card issued by Respondent.
- L. "Injunctive Relief" means: (1) a permanent injunction obtained on or after January 1, 1994; (2) a temporary restraining order or preliminary injunction obtained on or after January 1, 1994 that is in effect; or (3) a temporary restraining order or preliminary injunction obtained on or after January 1, 1994 that has expired or terminated due to mootness, and was not obtained in an ex parte proceeding.
- M. "New System Provider" means any Person not affiliated with Respondent who manufactures, markets, sells, deploys, maintains or has developed a POS System used by Fueling Locations to effect Transactions, and whose POS System has been operational at 25 Fueling Locations for a period of not less than six (6) months. The term "New System Provider" does not include any Incumbent System Provider.

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- N. “Non-Public Fleet Card Information” means any information not in the public domain disclosed by any Fleet Card Issuer (other than Ceridian) to Respondent in its capacity as the provider of Trendar Services. Non-Public Fleet Card Information shall not include: (1) information that falls within the public domain through no violation of this Order by Respondent; (2) information that becomes known to Respondent from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; (3) information already known to Respondent on the date it signs the Agreement Containing Consent Order; and (4) information independently developed by Respondent without reference to or use of any Non-Public Fleet Card Information.
- O. “Non-Public Point of Sale Information” means any information not in the public domain disclosed by any Designated POS System Provider (other than Ceridian) to Respondent in its capacity as provider of the Comdata Cards. Non-Public Point of Sale Information shall not include: (1) information that falls within the public domain through no violation of this Order by Respondent; (2) information that becomes known to Respondent from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; (3) information already known to Respondent on the date it signs the Agreement Containing Consent Order; and (4) information independently developed by Respondent without reference to or use of any Non-Public Point of Sale Information.
- P. “Non-Public Programming Information” means any information not in the public domain disclosed by any Fleet Card Issuer (other than Ceridian) to the Third-Party Developer. Non-Public Programming Information shall not include: (1) information that falls

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within the public domain through no violation of this Order by Respondent; (2) information that becomes known to the Third-Party Developer from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information; (3) information already known to the Third-Party Developer on the date Respondent signs the Agreement Containing Consent Order; and (4) information independently developed by the Third-Party Developer without reference to or use of any Non-Public Programming Information.

- Q. "Person" means any individual, corporation, partnership, limited liability partnership, joint venture, association, joint-stock company, limited liability company, trust or unincorporated organization.
- R. "POS Standards" means the following standards that a Designated POS System Provider must maintain: (1) its POS System complies with the same Comdata Card functional specifications as the Trendar System; (2) it promptly disseminates Comdata Card specification changes or updates that have been implemented on the Trendar System; (3) it provides twenty-four (24) hour support for its POS System; (4) its POS System is Year 2000 compliant; and (5) it maintains the confidentiality of all Comdata Confidential Information.
- S. "POS System" means a point of sale purchase authorization system comprised of hardware, software, communications networks and related components used by Fueling Locations for any or all of the following purposes: (1) to obtain authorization for Transactions; (2) to capture and compile information related to such Transactions for themselves and others;

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and (3) to execute ancillary services related thereto as may be made available from time to time in connection with such POS System.

- T. "Respondent" or "Ceridian" means Ceridian Corporation, its directors, officers, employees, agents, representatives, predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Ceridian Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- U. "Terminal Fueling Facility" means any fueling facility owned or operated by or on behalf of a Trucking Company.
- V. "Third-Party Developer" means the Person designated by Respondent to perform the functions described in Paragraph III.C. of this Order.
- W. "Transactions" means any diesel fuel purchase, cash advance, data capture, or any other type of transaction effected by a Fleet Card holder with the Fleet Card Issuer either: (1) by use of a Fleet Card; or (2) based on information, numbers, or data obtained from a Fleet Card. Transactions shall not include transactions that are not authorized by the Fleet Card Issuer.
- X. "Transaction Fee" means the fee per transaction that a Fleet Card Issuer may charge to: (1) Fueling Locations authorized to accept the Fleet Card Issuer's Fleet Card; or (2) cardholders authorized to use the Fleet Card Issuer's Fleet Card.
- Y. "Trendar Business" means any division or entity within or controlled by Respondent that is engaged in, among other things, the development, sale or licensing of the Trendar System or Trendar Services.

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- Z. “Trendar Facility” means any Fueling Location that has purchased or leased a Trendar System.
- AA. “Trendar Services” means all services provided by Respondent that allow Fleet Card Transactions to be effected through the Trendar System, including, but not limited to: (1) reading the Fleet Card; (2) recognizing the Fleet Card's functions; (3) prompting for information required to execute Transactions; (4) transmitting information about Transactions; (5) communicating with the appropriate Fleet Card Issuer to seek authorization for Transactions; and (6) printing receipts with the requisite transaction information.
- BB. “Trendar System” means all versions of the proprietary POS System developed, marketed, deployed or maintained by Respondent.
- CC. “Trucking Companies” means companies and their employees and agents that operate trucks to haul their own products or provide trucking services to other Persons.

II.

IT IS FURTHER ORDERED that for the purpose of ensuring that Designated POS System Providers may effect Transactions originated by Comdata Cards, and to remedy the lessening of competition resulting from the Acquisitions as alleged in the Commission's complaint, Respondent shall:

- A. Except as otherwise provided in this Order, for a period of three (3) years beginning on the date this Order becomes final, grant a ten (10) year unrestricted non-exclusive royalty-free license to effect

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Transactions originated by Comdata Cards to each Incumbent System Provider who notifies Comdata in writing after this Order is issued; provided, however, that Respondent may require the licensee to enter into a license agreement containing the Comdata Card License Conditions attached as Appendix I hereto;

- B. Except as otherwise provided in this Order, for a period of three (3) years beginning on the date this Order becomes final, grant a ten (10) year unrestricted non-exclusive royalty-free license to effect Transactions originated by Comdata Cards to three (3) New System Providers. The licenses shall be granted, subject to the prior approval of the applicants by the Commission, to the first three (3) New System Providers who apply in writing by facsimile to the Federal Trade Commission's Bureau of Competition, Mergers I Division at (202) 326-2655 after this Order is issued, provided they subsequently become certified pursuant to Paragraph II.G. of this Order. The New System Provider applicants shall promptly notify Respondent in writing of their intent to seek a license under this Order. Paragraph II.B. of this Order is subject to the following conditions:
1. If any one of the New System Providers fails to be certified, the license shall be granted to another New System Provider in the manner set forth in this Paragraph II.B., and that is certified pursuant to Paragraph II.G.;
 2. Any such license may be transferred by the New System Provider to any Person that meets the definition of a New System Provider and that is certified pursuant to Paragraph II.G. of this Order; and

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3. Respondent may require the licensee to enter into a license agreement containing the Comdata Card License Conditions attached as Appendix I hereto;
- C. Make available to any Person requesting a license: (1) a description of the procedures for obtaining a license; and (2) a copy of this Order;
 - D. Make available to any Person who so requests a list of the New System Providers that obtain a license to effect Transactions originated by Comdata Cards under Paragraph II.B. of this Order;
 - E. Within ten (10) days of receipt of a written request by a Designated POS System Provider, provide to the Designated POS System Provider any and all information or assistance necessary to enable the Designated POS System Provider to effect on its POS System the same Transactions originated by Comdata Cards on the Trendar System, including, but not limited to, specifications (including, as applicable but not limited to, transaction set information specifications, card track or other card identification specifications, pre- and post-authorization specifications, settlement specifications, and receipt and report format specifications), protocols, programming, know-how, test accounts, site numbers, and host telephone numbers;
 - F. Include in each license with each Designated POS System Provider a provision that requires the Designated POS System Provider to provide the Monitor Trustee with any information or access requested by the Monitor Trustee relating to Comdata Cards for the purpose of determining whether

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Respondent is complying with Paragraph II. of this Order;

- G. Within thirty (30) days of receipt of a written request by a New System Provider, either: (1) grant a written certification that such New System Provider's POS System successfully executes Comdata Card Transactions in conformance with the POS Standards and has a right to do so; (2) deny certification in the event the New System Provider's POS System fails to execute Comdata Card Transactions in conformance with the POS Standards, and that failure is solely a result of the New System Provider's act or omission; or (3) extend, upon mutual written consent with the New System Provider, the time within which the New System Provider may obtain certification through testing of the New System Provider's POS System;
- H. Have the right to monitor processing of Comdata Cards by the POS System of the Designated POS System Provider to ensure continuing compliance with the POS Standards, provided that Respondent shall bear any cost associated with such monitoring; provided, however, that Respondent shall not terminate the license and may only suspend the license for the period that any Designated POS System Provider fails to comply with the POS Standards, provided that Comdata has furnished written notice, including an enumeration of all claimed deficiencies, ten (10) days in advance of suspension and the Designated POS System Provider has failed to cure the deficiencies within that time;
- I. Not Charge the Designated POS System Provider any fee for the license to effect Transactions originated by Comdata Cards or for certification of the Designated POS System Provider's POS System; provided, however, that Respondent may charge a Transaction

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Fee to approved Comdata Card holders; provided, further, however, that nothing herein shall require Respondent to pay any Designated POS System Provider a fee for processing Comdata Card Transactions;

- J. Not charge any Transaction Fee that is based upon which POS System a Fueling Location has purchased, leased, or otherwise acquired;
- K. Not condition the availability of the Comdata Card or related services to any Fueling Location on whether such Fueling Location has purchased, leased, or otherwise acquired any POS System other than the Trender System;
- L. Provide all of the Designated POS System Providers that may process Comdata Card Transactions in accordance with the terms of this Order with equal access to Comdata Cards, including, but not limited to, all Comdata Card functions, changes, modifications, upgrades, or new card developments with sufficient notice and assistance so that the Designated POS System Providers may introduce such changes no later than they are introduced by Respondent; and
- M. Notwithstanding any provision in this Paragraph, Respondent shall not be required to license (or continue to license) or provide any information under this Paragraph II. to any Person or an entity controlled by any such Person against whom Comdata or its predecessors have obtained Injunctive Relief to prevent the misuse, misappropriation, unauthorized use or improper disclosure or distribution of Comdata Cards, Comdata Card Transactions, Comdata equipment, data, information or other materials.

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III.

IT IS FURTHER ORDERED that for the purpose of ensuring that Fleet Card Issuers may effect Fleet Card Transactions through the Trender System, and to remedy the lessening of competition resulting from the Acquisitions as alleged in the Commission's complaint, Respondent shall:

- A. Except as otherwise provided in this Order, for a period of three (3) years beginning on the date this Order becomes final, grant a ten (10) year unrestricted non-exclusive royalty-free license to the Trender Services to any Fleet Card Issuer who notifies Comdata in writing after this Order is issued, provided it subsequently receives certification from the Third-Party Developer pursuant to Paragraph III.C. of this Order or becomes qualified pursuant to Paragraph III.D. of this Order; provided, however, that Respondent may charge a one-time access fee not to exceed US\$30,000; provided, further, however, that Respondent may require the licensee to enter into a license agreement containing the Trender License Conditions attached hereto as Appendix II;
- B. Make available to any Person requesting a license: (1) a description of the procedures for obtaining a license, including, but not limited to, obtaining programming and certification services from the Third-Party Developer; and (2) a copy of this Order;
- C. By the date this Order becomes final, enter into a contract, subject to the prior approval of the Commission, with an independent Third-Party Developer to perform all programming and certification services for Fleet Card Issuers relating to the provision of Trender Services that is subject to the following terms and conditions:

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1. Respondent shall provide to the Third-Party Developer all assistance, specifications, protocols, programming codes, interfaces, and any other information used to effect Fleet Card Transactions, and necessary to enable the Fleet Card Issuer to effect Fleet Card Transactions through the Trendar System;
2. Respondent shall not receive either directly or indirectly any compensation for such programming and certification services;
3. The contract between Respondent and the Third-Party Developer shall provide that the Third-Party Developer shall:
 - a. Render such programming and certification services to any Fleet Card Issuer that notifies Comdata pursuant to Paragraph III. A. of this Order;
 - b. Certify any Fleet Card that is able to execute Transactions on the Trendar System;
 - c. Notify Comdata (which, in turn, shall notify the Commission and the Monitor Trustee if one has been appointed) of any request by a Fleet Card Issuer for programming and certification services;
 - d. Notify Comdata (which, in turn, shall notify the Commission and the Monitor Trustee if one has been appointed) within ten (10) days of denying certification, including any grounds for any denials;

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- e. Provide the Monitor Trustee, if one has been appointed, with access to the personnel performing such programming and certification services, and the books, records and other relevant materials relating to the provision of (or inability to provide) such programming and certification services; and
 - f. Charge the Fleet Card Issuer a fee for such programming and certification services according to the schedule set forth in the contract between the Third-Party Developer and Respondent;
4. If the Third-Party Developer ceases to act or fails to act diligently, a substitute Third-Party Developer may be designated in the same manner as provided in this Paragraph III.C.;
- D. In the event the Third-Party Developer fails to provide to any Fleet Card Issuer programming and certification described in Paragraph III.C. in a timely manner, provide, within a reasonable time period, or cause to be provided, to the Fleet Card Issuer all assistance, specifications, protocols, programming codes, interfaces, and any other information used to effect Fleet Card Transactions, and necessary to enable the Fleet Card Issuer to effect Fleet Card Transactions through the Trendar System;
- E. Not terminate the license and may only suspend the license for the period that any Fleet Card Issuer fails to pay any amounts due to Respondent or the Third-Party Developer or fails to maintain the confidentiality of Comdata Confidential Information, provided that Comdata has furnished written notice, including an enumeration of all claimed deficiencies, ten (10) days in advance of suspension and the Fleet Card Issuer has failed to cure the deficiencies within that time;

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- F. Provide to every Trendar Facility designated by the Fleet Card Issuer all programming used to effect the Fleet Card Issuer's Fleet Card Transactions in the next regular quarterly release if such programming is completed at least thirty (30) days prior to such quarterly release or within three (3) months of the date such programming is completed, whichever is earlier;
- G. Not charge any Transaction Fee to any approved Fueling Location that is based upon, or in any way related to, whether such Fueling Location accepts any Fleet Cards other than the Comdata Card;
- H. Not condition the availability of the Comdata Card or related services to any Fueling Location on whether such Fueling Location accepts any Fleet Card other than the Comdata Card;
- I. Provide all of the Fleet Card Issuers with equal access to the Trendar Services, including, but not limited to, all new developments, changes, modifications or upgrades relating to the Trendar Services with sufficient notice so that the Fleet Card Issuer may introduce such changes, if such Fleet Card Issuer elects to do so, no later than they are made available on the Trendar System; provided, however, that this provision shall not prevent Respondent from undertaking technological and other modifications to the Trendar System and/or its hardware, software, communications networks, and related components, including modifications that require changes to Fleet Cards processed through the Trendar System;
- J. Have the right to discontinue the Trendar System should Ceridian reasonably determine the System is no longer commercially viable; and

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- K. Notwithstanding any provision in this Paragraph, Respondent shall not be required to license (or continue to license) or provide any information under this Paragraph III. to any Person or an entity controlled by any such Person against whom Comdata or its predecessors have obtained Injunctive Relief to prevent the misuse, misappropriation, unauthorized use or improper disclosure or distribution of the Trendar System, Trendar Services, or any other Comdata equipment, data, information or other materials.

IV.**IT IS FURTHER ORDERED** that:

- A. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Point of Sale Information, provide, disclose, or otherwise make available to any individual acting for the Trendar Business any Non-Public Point of Sale Information. Respondent shall use any Non-Public Point of Sale Information only in Respondent's capacity as a provider of the Comdata Cards or as otherwise provided by this Order, absent the prior written consent of the proprietor of Non-Public Point of Sale Information.
- B. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Fleet Card Information, provide, disclose, or otherwise make available to any individual acting for the Comdata Business any Non-Public Fleet Card Information. Respondent shall use any Non-Public Fleet Card Information only in Respondent's capacity as a provider of Trendar Services or as otherwise provided by this Order, absent the prior written consent of the proprietor of Non-Public Fleet Card Information.

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- C. Respondent shall not, absent the prior written consent of the proprietor of Non-Public Programming Information, obtain or seek to obtain, directly or indirectly, any Non-Public Programming Information. Respondent shall use any Non-Public Programming Information only in Respondent's capacity as a provider of Trendar Services or as otherwise provided by this Order, absent the prior written consent of the proprietor of Non-Public Programming Information.

V.**IT IS FURTHER ORDERED** that:

- A. After the date this Order becomes final, the Commission may appoint a Monitor Trustee to monitor any disputes, claims or controversies under this Order as outlined in Paragraph V.B.4. below.
- B. If a Monitor Trustee is appointed by the Commission, Respondent shall consent to the following terms and conditions regarding the Monitor Trustee's powers, duties, authority and responsibilities:
1. The Commission shall select the Monitor Trustee, the identity of the Monitor Trustee being subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of the proposed Monitor Trustee, Respondent shall be deemed to have consented to the selection of the proposed Monitor Trustee;

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2. Within ten (10) days after appointment of the Monitor Trustee, Respondent shall execute a Trust Agreement, subject to the prior approval of the Commission, that authorizes and permits the Monitor Trustee to perform the duties set forth in this Order;
3. The Monitor Trustee shall have the rights, duties, or powers necessary to perform the duties enumerated in Paragraph V.B.4. herein;
4. The Monitor Trustee shall prepare a written report and recommendation, if appropriate, which may include a finding of fault, with respect to each dispute or controversy arising out of: (a) each failure to grant certification or suspension of certification pursuant to Paragraph II. of this Order; (b) each instance when the Fleet Card Issuer alleges that the Third-Party Developer has failed to provide programming and certification services in a timely manner pursuant to Paragraph III. of this Order; (c) each failure to grant certification pursuant to Paragraph III. of this Order; or (d) Respondent's compliance with this Order;
5. If the Monitor Trustee elects to prepare a written report and recommendation, the Monitor Trustee shall issue such report and recommendation to the Commission within ninety (90) days after notification that a dispute or controversy exists;
6. The Monitor Trustee shall maintain the confidentiality of all confidential or proprietary information of Respondent, Designated POS System Providers, Fleet Card Issuers, and the Third-Party Developer, except that the Monitor Trustee may disclose to the Commission any confidential and proprietary information when reporting to the Commission on any matter bearing on compliance with the Trust

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Agreement and Order or bearing on the Monitor Trustee's performance of his duties;

7. The Monitor Trustee shall serve pursuant to the Trust Agreement from the time it is approved by the Commission for the term of the Order;
8. Respondent shall give the Monitor Trustee full and complete access to the personnel, facilities, computers, books, and records related to the performance of his duties under this Order. The Monitor Trustee shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondent's operations;
9. The Monitor Trustee shall serve without bond or other security and shall use his best judgment in performing his duties hereunder. The Monitor Trustee shall be exempt from personal liability, to the extent permitted by law, for any action or decision not to act taken or made in good faith, except that the Monitor Trustee may be liable for misfeasance in performing under this Agreement or to the extent the loss, claim, damage or liability results from the Monitor Trustee's gross negligence, willful or wanton acts, or bad faith;
10. The Monitor Trustee shall have the authority to retain at the cost and expense of Respondent, and at reasonable fees, such employees, agents, consultants, or any other third party the Monitor Trustee determines to be reasonably necessary to assist in performing his duties hereunder;
11. The Monitor Trustee shall be compensated by Respondent for the reasonable value of his services as provided in the Trust Agreement. In addition to such

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compensation, Respondent shall compensate the Monitor Trustee for reasonable expenses and costs (including travel, lodging, meals and incidental items) incurred by the Monitor Trustee in connection with the discharge of his duties and efforts under the Trust Agreement;

12. The Monitor Trustee may recover his costs of collection, including reasonable attorneys fees, if Respondent fails to pay compensation pursuant to Paragraphs V.B.10. and 11. herein; and
13. If the Monitor Trustee ceases to act or fails to act diligently, a substitute Monitor Trustee may be appointed by the Commission in the same manner as provided in this Paragraph.

VI.**IT IS FURTHER ORDERED** that:

- A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter for one (1) year, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time: (a) a list of Designated POS System Providers that have applied for licenses to effect Transactions originated by Comdata Cards; (b) the state of certification (granted, denied, or pending) of the POS System of each such Designated POS System Provider; (c) a list of Fleet Card Issuers that have applied for licenses to effect Fleet Card Transactions through the Trendar System; (d) the state of certification (granted, denied, or pending) of the Fleet

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Card of each such Fleet Card Issuer; and (e) a full description of the efforts being made to comply with Paragraphs II. through V. of this Order.

- B. One (1) year from the date this Order becomes final, annually until this Order has terminated, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

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- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate upon the later of: (a) April 5, 2003; or (b) the expiration of all licenses required by this Order.

By the Commission.

APPENDIX IComdata Card License Conditions

Respondent may require each Person licensed pursuant to Paragraph II. of this order to:

- 1) Comply with the POS Standards;
- 2) Permit Respondent to audit the licensee's POS System through an independent third-party that is subject to a confidentiality agreement prohibiting disclosure of the licensee's information that is not in the public domain to Respondent or any other Person;
- 3) Make available the services to be performed by the licensee to effect all Transactions through the licensee's POS system no less than 99.8% of the time (exclusive of down-time for maintenance) during every consecutive three (3) month period;
- 4) For any third-party products supplied to licensee by Respondent, comply with the licenses between Respondent and the third-party, return any third-party products supplied by

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- Respondent in good working order upon expiration of the license or upon Respondent's written request, and hold Respondent harmless for any damages incurred in connection with the use of third-party products;
- 5) Consent to a provision under which Respondent and licensee each indemnify the other for any third-party claims resulting from any breach;
 - 6) Consent to a provision prohibiting both the licensee and Respondent from disclosing the other party's confidential information as defined in the Order;
 - 7) Consent to a provision under which Respondent and licensee shall hold each other harmless for any failure to perform due to force majeure;
 - 8) Promptly pay any amounts due to Respondent relating to the license agreement;
 - 9) Not be insolvent or in bankruptcy;
 - 10) Cease processing Comdata Cards and using Comdata Confidential Information upon expiration or suspension of the license pursuant to Paragraph II.H. of this Order;
 - 11) Consent to a provision under which Respondent and the licensee each acknowledge that the other has not obtained any right to the trademarks, trade names, service marks or logos belonging to the other through the license agreement; provided, however, that the licensee may display the Comdata Card name and/or logo in advertising and promotional information;
 - 12) Consent that assignment of the license shall be only: (a) in accordance with Paragraph II.B. of the Order; or (b) in connection with the acquisition of the licensee's truck stop POS System business;
 - 13) Consent to reasonable notice requirements pertaining to any notices required under the license agreement;
 - 14) Consent to a provision under which Respondent and the licensee agree to comply with applicable laws and regulations;

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- 15) Consent to a provision requiring that any legal action arising out of the license agreement be brought in the appropriate judicial forum located in Nashville, Davidson County, TN;
- 16) Consent to a provision requiring that the license agreement be governed by the laws of the State of Tennessee; and
- 17) Consent to a provision under which Respondent and licensee agree not to contest the license agreement on the ground of insufficiency or lack of consideration.

APPENDIX IITrendar License Conditions

Respondent may require each Person licensed pursuant to Paragraph III. of this Order to:

- 1) Promptly pay any amounts due to Respondent or the Third-Party Developer relating to the license agreement;
- 2) Consent to a provision that states that Respondent is the exclusive owner of any programming performed by the Third-Party Developer relating to the Trendar System;
- 3) Identify which Fueling Locations accept the licensee's Fleet Card;
- 4) Consent to a provision prohibiting both the licensee and Respondent from disclosing the other party's confidential information as defined in the Order;
- 5) Consent to a provision under which Respondent and licensee each indemnify the other for any third-party claims resulting from any breach;
- 6) Consent to a provision under which Respondent and licensee shall hold the other harmless for any failure to perform due to force majeure;

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- 7) Cease use of the Trendar System and any Comdata Confidential Information upon expiration or suspension of the license pursuant to Paragraph III.E. of this Order;
- 8) Consent to a provision under which Respondent and the licensee each acknowledge that the other has not obtained any right to the trademarks, trade names, service marks or logos belonging to the other through the license agreement; provided, however, that the licensee may display the Trendar name and/or logo in advertising and promotional information;
- 9) Consent to reasonable notice requirements pertaining to any notices required under the license agreement;
- 10) Not be insolvent or in bankruptcy;
- 11) Consent that assignment of the license shall be only in connection with the acquisition of the licensee's trucking Fleet Card business;
- 12) Consent to a provision under which Respondent and the licensee agree to comply with applicable laws and regulations;
- 13) Consent to a provision requiring that any legal action arising out of the license agreement be brought in the appropriate judicial forum located in Nashville, Davidson County, TN;
- 14) Consent to a provision requiring that the license agreement be governed by the laws of the State of Tennessee; and
- 15) Consent to a provision under which Respondent and licensee agree not to contest the license agreement on the ground of insufficiency or lack of consideration.

STATEMENT OF THE COMMISSION

The Commission has determined to issue, with certain modifications, a final consent order against Ceridian Corporation in connection with its acquisitions of NTS, Inc. and Trendar Corporation. We reached this decision after careful and thorough

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consideration of the public comments received and discussions with industry representatives.

Based on the evidence currently before us, we believe that this order provides the most appropriate relief available. The investigation that led to this order began after the two transactions were consummated and Ceridian had already integrated its networks and the acquired businesses. Consequently, in lieu of some alternative form of relief, we chose to accept the current order -- which requires that Ceridian provide access and licensing to its networks -- to offset the loss of competition occasioned by the acquisitions.

We remain concerned, however, about the complexity of the behavioral remedy required in this case. Thus, we will review the effectiveness of the remedy over the next few years in light of evolving industry conditions and, as we do for all of our orders, we will carefully monitor Ceridian's compliance with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to public comment, an agreement containing a proposed Consent Order from Ceridian Corporation ("Ceridian"), which is designed to remedy the anticompetitive effects resulting from Ceridian's acquisitions of NTS Corporation and Trendar Corporation. Under the terms of the agreement, Ceridian will grant licenses to providers of truck stop fuel desk automation systems to process transactions originated by Ceridian's fleet cards, and will grant licenses to fleet card issuers to have their cards processed through Ceridian's Trendar fuel desk automation system.

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The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

Pursuant to an asset exchange agreement executed in January, 1998, Ceridian, through its wholly owned subsidiary Comdata Network, Inc. ("Comdata"), acquired substantially all of the assets of NTS. In March, 1995, Comdata Holdings Corporation, a subsidiary of Ceridian, acquired Trendar Corporation. Because the price of Trendar was below \$15 million, it was not reportable under the Hart-Scott-Rodino Antitrust Improvements Act. The proposed Complaint alleges that these two acquisitions violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for the provision of fleet card services to over-the-road trucking companies and the market for truck stop fuel desk automation systems.

Fleet Card Services for Over-the-Road Trucking Companies

The services provided by fleet card issuers are of critical importance to over-the-road trucking companies. Fleet cards physically resemble traditional credit cards in that they are plastic laminated cards with embossed numbers on the front and a magnetic stripe on the back. Fleet cards are similar to traditional credit cards in that they provide a means by which cardholders can make purchases at retail locations that accept the card. Fleet cards issued on behalf of trucking companies provide additional services that go beyond the capabilities of traditional credit cards, allowing trucking companies to control the type, volume and frequency of their drivers' purchases, and capture important information relating to the transactions, such as drivers' odometer

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readings and vehicle identification numbers. Because of the specialized features of these fleet cards, traditional credit cards and other types of fleet cards are not acceptable substitutes. Comdata is the largest provider of fleet card services to over-the-road trucking companies in the United States. At the time Ceridian acquired NTS, NTS and Comdata were substantial, actual competitors in that market.

Fuel Purchase Desk Automation Systems

Fuel purchase desk automation systems are the means by which most truck stops process fleet card transactions. Fuel purchase desk automation systems used by truck stops can process multiple card issuers' fleet cards with a single device, thereby minimizing the physical space truck stops must allocate to point of sale ("POS") equipment and the training required for fuel purchase desk attendants. Such systems report transactions data and other information to the fleet card issuer, process the approval or rejections of requested transactions, and interface with fueling pumps. Comdata's fuel purchase desk automation system, Trendar, is the dominant means by which truck stops process fleet card transactions.

Fleet cards and fuel purchase desk automation systems are complementary products, and both products exhibit strong network effects. Demand for a fleet card rises with the number of truck stops that accept the card, which in turn depends on the number of fuel purchase desk automation systems that accept the card. Similarly, demand for a fuel purchase desk automation system rises with the number of fleet cards that can use the system. Effective entry into either market alleged in the complaint would be difficult, time consuming and unlikely to be successful without access to a substantial portion of the other market.

Analysis to Aid Public Comment

Effects of the Acquisitions

The acquisitions of NTS and Trendar resulted in Comdata's having a dominant position in both the fleet card services market and the fuel purchase desk automation systems market. In addition, the acquisitions raised barriers to entry in both markets, because effective entry into either market now requires Comdata's acquiescence. In the absence of the two acquisitions, Comdata would have had strong incentives to ensure that its fleet card was accepted on as many fuel purchase desk automation systems as possible, and Trendar would have maximized its value by accepting as many fleet cards as possible. With the acquisitions, however, these incentives became skewed: Comdata now must consider the impact on its Trendar system of allowing a competing fuel purchase desk automation system to process its card, and the impact on its fleet card business of allowing a rival fleet card to be processed on the Trendar system.

The market for the provision of fleet card services for over-the-road trucking companies is highly concentrated. Comdata controls the majority of that market and, with its acquisition of NTS, is more than five times larger than its nearest competitor. At the time of its acquisition, NTS was Comdata's closest competitor in the market for fleet card services for over-the-road trucking companies. The market for fuel purchase desk automation systems is also highly concentrated. At the time of its acquisition by Comdata, Trendar was the leading supplier of truck stop fuel purchase desk automation systems in the United States. Trendar remains the nation's leading supplier of truck stop fuel purchase desk automation systems.

Ceridian's acquisitions of NTS and Trendar have given Comdata the power to control new entry into, and expansion by incumbent providers in, both the market for the provision of fleet card services to over-the-road trucking companies and the market for truck stop fuel purchase desk automation systems. By

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acquiring Trendar, Comdata gained control of the predominant means by which fleet cards are processed by truck stops. Comdata therefore has the ability to preclude or delay new entry into the fleet card market, and to discipline or disadvantage new entrants or incumbent providers of fleet cards who seek to compete effectively with Comdata, by denying them access to Trendar's POS system or by granting access only on discriminatory terms. The investigation revealed evidence that Comdata has delayed or denied some fleet card competitors access to Trendar and Comdata has increased the fees to other firms for Trendar access. Similarly, by acquiring NTS, Comdata enhanced its control over the means by which over-the-road trucking companies purchase fuel.

In addition, both acquisitions increased the difficulty of entry into the fuel purchase desk automated system market. Comdata can defend Trendar's dominant position in that market by denying new entrants access to the fleet card protocols needed to process Comdata and NTS cards, or by granting access only on discriminatory terms. The investigation revealed evidence that Comdata has sought to impede entry. Given Comdata's dominance in the fleet card market, truck stop operators are unlikely to accept a POS system that cannot process Comdata's fleet cards. Because of the complementary nature of the fleet card and fuel purchase desk automation systems products, a new entrant that is unable to secure access to Comdata's products would have to enter both markets simultaneously. Such entry would be time consuming and costly, and is much less likely to be successful.

The Proposed Consent Order

While litigation with a goal of forcing the divestiture of NTS and Trendar was an alternative considered by the Commission, the proposed Consent Order effectively remedies the competitive effects of the two acquisitions without the delay and expenditure of resources that would be incurred with litigation. The proposed Consent Order requires Ceridian to grant fleet card issuers access

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to Comdata's Trendar fuel purchase desk automation system, and to grant fuel purchase desk automation systems suppliers the right to process Comdata's fleet cards. While access to the Trendar network and the NTS card could also have been accomplished through divestiture, the Commission concluded that divestiture was not necessary to resolve the competitive concerns raised by the two transactions, in part because numerous firms have indicated that they intend to take advantage of the terms of the proposed Consent Order to enter or expand their presence in the two markets.

In order to remedy the concerns in the fleet card services market, the Consent Order requires Comdata, for a period of three years, to grant a ten-year license to effect transactions on the Trendar system to any company providing, or seeking to provide, fleet card services. The order requires Comdata to refer any requests for such a license to a third-party developer approved by the Commission, that will perform all programming or other services necessary to enable the licensee to process transactions on the Trendar system. Once such programming services are completed by the third-party developer, Comdata is required to promptly disseminate the software to all truck stops on the Trendar network. Comdata is further required to provide licensees with equal access to any upgrades or modifications to the Trendar system, and is prohibited from basing any transaction fees charged to truck stops for processing the Comdata card, as well as access to the Comdata card, on whether such truck stops accept any other firm's fleet cards.

In order to remedy concerns in the fuel purchase desk automation systems market, the Consent Order requires Comdata, for a period of three years, to grant a ten-year license to all incumbent suppliers of fuel purchase desk automation systems, and to the first three new system providers that request a license. The license awarded to new system providers shall be

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transferrable, ensuring that if a better positioned entrant emerges in the future, it will be able to acquire a license.

In order to qualify for a license, new system providers must meet certain established criteria. Under the Consent Order, Comdata is required to promptly provide all licensees with all information or assistance necessary to enable the licensee to effect Comdata card transactions in a manner comparable to the way in which those transactions are processed on the Trendar system. The Order permits Comdata to certify that a licensee's system is capable of processing Comdata card transactions using criteria set forth in the Consent Order, and, if Comdata denies such certification, it must provide a complete enumeration for the reasons for such denial. The Order further requires Comdata to grant licensees complete and equal access to all Comdata card functions, upgrades and new developments. Finally, the Order provides that Comdata may not discriminate against any supplier of fuel purchase desk automation systems by charging transaction fees to truck stops that are based on which fuel purchase desk automation system the truck stop uses.

The Consent Order contains additional provisions that are designed to prevent the flow of confidential information obtained from Comdata's competitors between Comdata's fleet card and fuel purchase desk automation system businesses. Under the Order, Comdata is prohibited from providing any non-public information obtained from fuel purchase desk automation system providers to its Trendar business. Likewise, the Order prohibits Comdata from providing any non-public information obtained from fleet card issuers to its Comdata card business.

In order to ensure Comdata's compliance with the terms of the Order, the Commission is allowed to appoint a trustee to monitor any disputes, claims or controversies arising under the Order. The order specifically permits the monitor-trustee to prepare a report for the Commission relating to any failure by Comdata to certify either a fuel purchase desk automation system or a new fleet card and any failure by the third-party developer to provide

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programming and certification services to fleet card issuers in a timely manner. The trustee is also permitted, where appropriate, to report to the Commission regarding Ceridian's compliance with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify their terms in any way.