

FEDERAL TRADE COMMISSION DECISIONS
Findings, Opinions and Orders

IN THE MATTER OF

RETAIL CREDIT COMPANY

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

Docket 8920. Complaint, March 9, 1978 — Final Order, July 7, 1978

This order, among other things, requires an Atlanta, Ga. collector and seller of consumer credit information to divest itself completely, within one year, of the Credit Bureau of Salem, Oregon (CB West Coast), and The Credit Bureau of Washington, D.C., subject to Commission approval; and provide purchaser, for three years, with copies of its current files in a form that will permit acquirer to prepare and sell credit reports. The order additionally bars the firm, for ten years, from entering into management contracts with divested corporations, and from acquiring, without prior Commission sanction, any concern engaged in the business of collecting and reporting consumer credit information.

Appearances

For the Commission: *William M. Sexton, David J. Hill, Philip B. Beardsley, Harold E. Kirtz and Brian L. Dillard.*

For the respondent: *J. Wallace Adair, Francis A. O'Brien and Kenneth E. Krosin, Howrey & Simon, Washington, D.C. and Kent E. Mast, Hansel, Post, Branden & Dorsey, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission has reason to believe that Retail Credit Company has made certain acquisitions, as hereinafter described, in violation of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and in violation of Section 5 of the Federal Trade Commission Act, as amended, (15 U.S.C. 45). Accordingly, the Commission hereby issues its complaint, stating its charges with respect thereto as follows:

DEFINITIONS

PARAGRAPH 1. For the purposes of this complaint the following definitions apply:

a) "credit reporting agency" - a firm engaged in gathering, recording and disseminating information relative to the credit

worthiness, financial responsibility, and paying habits of consumers, firms, corporations, and any other legal entity being considered for credit extension.

b) "credit grantor" - a firm that extends credit to its customers in carrying on its business.

c) "credit investigative agency" - a firm primarily engaged in gathering, recording and disseminating information relative to the character, financial responsibility and/or insurability of consumers, firms, corporations, and any [2] other legal entity being considered as an applicant for life, health, casualty or other insurance, or for a loan by a lending institution.

d) "personnel reporting agency" - a firm engaged in gathering, recording, and disseminating information relative to the character and financial responsibility of consumers for use by employers in determining job applicants' employability.

RESPONDENT

PAR. 2. Respondent, Retail Credit Company (Retail Credit), is a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia.

PAR. 3. Retail Credit and its wholly-owned subsidiaries, Retailers Commercial Agency, Inc. (Retailers), the Credit Bureau, Incorporated, of Georgia, the Credit Bureau, Incorporated, of Salem, Oregon and Credit Marketing Services, Inc., are engaged in the business of securing and storing information about consumers and selling such information to business concerns to assist them in making business decisions. Within this broad service market, Retail Credit (1) is engaged in the sale to insurance companies of reports about consumers for use in determining insurability and rate classification (insurance reporting); (2) prepares and sells personnel reports; (3) prepares and sells credit reports both locally and in the non-local credit reporting market; and (4) provides credit card recovery, insurance claims reports, market research, and other miscellaneous services for business customers. The company and its subsidiaries have compiled files on 72.3 million people consisting of previous reports, newspaper clippings, and available public records. Retail Credit's offices are located nationwide and can provide information on 98 percent of the population of the United States. Information contained in the parent company's files (on 48 million people) is available to its subsidiaries upon request.

PAR. 4. Revenues of Retail Credit in 1970 totalled \$183 million, resulting in income before taxes of \$18.2 million. Assets totalled \$60

million as of the end of calendar year 1970. The company ranks first in sales of life and health insurance [3] reports, first in sales of fire and casualty reports, second in sales of credit reports in the non-local credit reporting submarket, and is a leading factor in the personnel reporting submarket. Retail Credit has three times as many credit bureaus located nationwide as any competitor. The company has a dominant position in the sale of credit reports in the following, among other, standard metropolitan statistical areas (SMSA's): Washington, D.C.; San Francisco Bay area; Portland, Oregon; Atlanta, Georgia; and Miami, Florida.

PAR. 5. In 1970, insurance reporting accounted for 62 percent of Retail Credit's total revenues. Personnel reporting accounted for 8 percent, credit and commercial reporting 18 percent, and claims services 11 percent. The company's retained earnings increased from \$17 million in January 1965, to \$31 million at the end of calendar 1970.

PAR. 6. Retail Credit has acquired 91 credit bureaus since 1960. Seventy-eight of these acquisitions have been made since 1966. The company now owns 114 credit bureaus in the United States, the total having doubled since the end of calendar 1967.

PAR. 7. At all times relevant herein, Retail Credit sold and shipped products and provided its services in interstate commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

TRADE AND COMMERCE

PAR. 8. The relevant service market for purposes of this proceeding is the gathering and reporting of information on individuals to businesses for insurance, claim, credit, employment, and marketing purposes. Within this broad market exist a number of submarkets, including the following:

a) *Local Credit Reporting* - the furnishing of credit information on local residents by consumer credit reporting agencies to local credit grantors for use in determining whether to extend credit to consumer applicants.

b) *Non-Local Credit Reporting* - the furnishing of credit information on local residents by consumer credit reporting agencies to credit grantors located outside the local metropolitan area, or on non-local residents to credit grantors located within the local metropolitan area, for use in determining whether to extend credit to consumer applicants. [4]

c) *Life and Health Insurance Reporting* - the furnishing of life and health insurance reports by credit investigative agencies for

insurance companies' use in determining insurability and rate classification.

d) *Fire and Casualty Insurance Reporting* - the furnishing of fire and casualty insurance reports by credit investigative agencies for insurance companies' use in determining insurability and rate classification.

e) *Personnel Reporting* - the furnishing of personnel reports by credit reporting agencies and credit investigative agencies to employers to determine job applicants' employability.

PAR. 9. The submarkets described in Paragraph 8, above, are the relevant markets in which to measure anticompetitive effects resulting from the challenged acquisitions. The structures of these submarkets are as follows:

a) *Local Credit Reporting Submarket* - the number of competitors and degree of concentration vary from one metropolitan area to another. Normally only a few significant credit bureaus exist in a major metropolitan area, although fringe competitors may exist on the edge of the market. Nationwide, Retail Credit and its subsidiaries in 1970 accounted for about 10 percent of the market's estimated \$80 to \$90 million volume, an increase from approximately 3.5 percent in 1965. Although local credit reporting figures on a nationwide basis presently show an unconcentrated industry, the increase in overall national concentration since 1966 is substantial. This trend has been hastened by widespread acquisitions throughout the country since 1965.

b) *Non-Local Credit Reporting Submarket* - this market is highly concentrated with the leading firm having approximately 32 percent of the 1970 industry volume of \$40 to \$45 million. This firm acts as a sales agent for a nationwide system of credit bureaus. Retail Credit ranks second in the market with approximately 15 percent. [5]

The leading four firms have approximately 58 percent of total volume. Brokerage operations, direct sales by independent bureaus and interbureau coupon sales account for the remainder of the market.

c) *Life and Health Insurance Reporting Submarket* - Retail Credit has maintained a market share of over 80 percent of this submarket for a number of years. The challenged acquisitions did not increase Retail Credit's market share. The three leading firms accounted for 90 to 95 percent of 1970 industry volume of \$55 to \$60 million, with the remaining few percent held by various small reporting agencies.

d) *Fire and Casualty Insurance Reporting Submarket* - Retail Credit's market share of approximately 50-60 percent of this highly

concentrated submarket was not increased by the challenged acquisitions. The leading three firms had an estimated 60 to 70 percent of 1970 industry volume estimated at \$120 to \$130 million. The remainder of the market was accounted for by smaller companies operating on a local or regional basis.

e) *Personnel Reporting Submarket* - Retail Credit is a leading factor among those companies offering personnel reporting service to local, regional and national customers. 1970 volume in this submarket is estimated at between \$25 and \$35 million. Most credit bureaus offer personnel reporting as part of their services. The challenged acquisitions marginally increased Retail Credit's market share.

ACQUISITIONS BEING CHALLENGED

PAR. 10. The Credit Bureau, Inc. (CB West Coast), an Oregon corporation, was acquired in January 1970. This chain included major credit bureaus located in San Francisco, San Jose and Oakland, California; Portland, Salem and Eugene, Oregon; Everett and Tacoma, Washington; Boise, Idaho; plus other credit bureaus located in California, Oregon, Washington, and Idaho, for a total of 43 bureaus. In the San Francisco Bay area, CB West Coast-owned credit bureaus accounted for [6] 50 to 60 percent of total credit reporting revenue, while 12 small bureaus, Credit Data Corporation and smaller credit reporting agencies divided the remainder of the market. In January 1971, Retail Credit acquired another credit bureau in the Bay area. In Portland, the CB West Coast bureau accounted for approximately 22 percent of total credit reporting revenue and had only one significant competitor. In the remaining above-listed metropolitan areas, CB West Coast operated credit bureaus that had a dominant or monopolistic position. CB West Coast credit reporting revenues for 1969 totalled \$4.2 million. Prior to the merger, Retail Credit operated offices or suboffices in all major metropolitan areas on the Pacific Coast. The company operated Retailers offices in Tacoma and Seattle, Washington; San Jose, San Francisco, Sacramento, and Oakland, California; and Portland, Oregon.

PAR. 11. The Credit Bureau, Inc. (CB D.C.), a District of Columbia corporation, was purchased on October 29, 1970, for \$3 million. CB D.C. had merged with its major competitor, Stone's Mercantile Agency (Stone), in December 1969. CB D.C. and Stone together accounted for at least 75 to 80 percent of total credit reporting revenue in the Washington SMSA in 1969, and were the only two significant firms primarily engaged in consumer credit reporting for local business enterprises. At the time of the acquisition Retail

Credit owned credit bureaus located in Annapolis and Hagerstown, Maryland, and operated Retail Credit offices in Alexandria, Virginia, and Silver Spring and Suitland, Maryland, and operated a Retailers office in Washington, D.C.

PAR. 12. The Retail Credit Association of Portland, Oregon, Inc. (CB Portland), an Oregon corporation, was acquired by Retail Credit on January 2, 1971. CB Portland was, at the time of the acquisition, the largest credit bureau in the State and the only significant local firm primarily engaged in consumer credit reporting in competition with Credit Bureau Metro of Portland, which was part of the CB West Coast chain acquired by Retail Credit in January 1970.

PAR. 13. CB West Coast, CB D.C., and CB Portland each were engaged in the sale of credit reports in the local and non-local markets prior to the acquisitions. Because of their location in major regional centers, the acquired companies are potential members of any competitive national system challenging Retail Credit's dominance in insurance reporting, even though the companies could provide only local competition in insurance reporting as independent factors. Each of the acquired companies engaged in personnel reporting prior to the acquisition. [7]

PAR. 14. At all times relevant herein, CB West Coast, CB D.C., and CB Portland each sold and shipped products and provided its services in interstate commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

EFFECTS OF ACQUISITION

PAR. 15. The effect of the acquisitions of CB West Coast, CB D.C., and CB Portland, and each of them, may be to substantially lessen competition or to tend to create a monopoly in the relevant market, which is the gathering and reporting of information on consumers to businesses for insurance, claim, credit, employment, and marketing purposes, or submarkets thereof, in the United States as a whole or in various sections thereof, in the following ways, among others:

a) in Portland, Oregon, Washington, D.C., the San Francisco Bay area, and in various metropolitan areas in the Pacific Northwest, the acquisitions:

(i) eliminated Retail Credit offices located in these areas as potential competitors in the local credit reporting markets;

(ii) eliminated the acquired credit bureaus as actual competitors in the non-local credit reporting market of Retail Credit offices located in these areas;

(iii) eliminated the acquired credit bureaus as actual competitors

in the local and non-local credit reporting markets of Retailers offices located in these areas.

b) in the non-local credit reporting submarket, the acquisitions have increased concentration in an already highly concentrated market; [8]

c) the substitution of Retail Credit for the previously independent bureaus may raise barriers to entry in the local and non-local credit reporting markets;

d) the potential withdrawal by Retail Credit of the acquired bureaus from existing non-local credit reporting systems would lessen effective competition in the non-local market;

e) in the personnel reporting submarket, the acquisitions have increased concentration and eliminated actual competition;

f) in the insurance reporting submarkets, the acquisitions eliminate the potential competition of the acquired bureaus as a part of competitive reporting systems and as independent factors;

g) the combination of Retail Credit, Retailers, and the acquired credit bureaus gives Retail Credit strong competitive advantages vis-a-vis its insurance reporting competitors by adding to the company's reporting resources in the acquired credit bureaus' metropolitan areas, thereby increasing the barriers to entry into insurance reporting;

h) further mergers and acquisitions in the industry may be encouraged.

VIOLATIONS

PAR. 16. The acquisition of CB West Coast, CB D.C., and CB Portland, separately and as a series, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. 18), as amended, and a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), as amended.

INITIAL DECISION BY MONTGOMERY K. HYUN, ADMINISTRATIVE
LAW JUDGE

FEBRUARY 10, 1976

PRELIMINARY STATEMENT

On March 9, 1973, the Federal Trade Commission ("Commission") issued the complaint herein, charging respondent Retail Credit Company ("Retail Credit" or "RCC") 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), by [2]

reason of respondent's January 1970 acquisition of Credit Bureaus, Inc. ("CB West Coast"), of Salem, Oregon, its October 1970 acquisition of The Credit Bureau, Inc. ("CBDC"), of Washington, D.C., and its January 1971 acquisition of The Retail Credit Association of Portland, Oregon, Inc. ("CB Portland"), of Portland, Oregon. The complaint alleged generally that the effect of these acquisitions may be to lessen competition substantially or to tend to create a monopoly in the relevant market, namely, "the gathering and reporting of information on consumers to businesses for insurance, claim, credit, employment, and marketing purposes," or submarkets thereof, in the United States as a whole or in various sections thereof.

More specifically, the complaint alleged that (Paragraph 15 of the complaint):

a) in Portland, Oregon, Washington, D.C., the San Francisco Bay area, and in various metropolitan areas in the Pacific Northwest, the acquisitions:

(i) eliminated Retail Credit offices located in these areas as potential competitors in the local credit reporting markets;

(ii) eliminated the acquired credit bureaus as actual competitors of Retail Credit offices in the non-local credit reporting market;

(iii) eliminated the acquired credit bureaus as actual competitors of Retailers' offices in the local and non-local credit reporting markets;

b) in the non-local credit reporting submarket, the acquisition increased concentration in an already highly concentrated market;

c) the substitution of Retail Credit for the previously independent credit bureaus may raise barriers to entry in the local and non-local credit reporting markets; [3]

d) the potential withdrawal by Retail Credit of the acquired credit bureaus from existing non-local credit reporting systems would lessen competition in the non-local market;

e) in the personnel reporting submarket, the acquisitions have increased concentration and eliminated actual competition;

f) in the insurance reporting submarkets, the acquisitions eliminate the potential competition of the acquired credit bureaus as a part of competitive reporting system and as independent factors;

g) the combination of Retail Credit, Retailers Commercial Agency ("R C A") and the acquired credit bureaus gives respondent strong competitive advantage over its insurance reporting competitors by adding to its reporting resources in the acquired credit bureaus' market areas, thereby increasing the barriers to entry into insurance reporting; and

h) further mergers and acquisitions in the industry may be encouraged.

On May 18, 1973, respondent duly filed its answer admitting certain allegations but denying the bulk of the complaint allegations and further asserting that CB West Coast was a failing company at the time of its acquisition by respondent.

Prehearing conferences were held in June and August 1973 and February and March 1974. The case was reassigned to me on January 7, 1974. In response to my direction to define more specifically the geographic areas in which anticompetitive effects have taken place with respect to the various product markets alleged in the complaint, complaint counsel specified the following markets:

1. Local credit reporting —

(a) Washington, D.C., consisting of Washington, D.C.; Charles, Montgomery, Prince George's Counties, Maryland, the cities of Alexandria, [4] Fairfax and Falls Church, Virginia; Arlington, Fairfax, Loudoun and Prince William Counties, Virginia.

(b) Portland, Oregon, consisting of Clackamas, Multnomah and Washington Counties, Oregon; and Clark County, Washington.

(c) Salem, Oregon, consisting of Marion and Polk Counties, Oregon.

(d) Eugene, Oregon, consisting of Lane County, Oregon.

(e) Tacoma, Washington, consisting of Pierce County, Washington.

(f) Boise, Idaho, consisting of Ada County, Idaho.

(g) San Francisco Bay area, consisting of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties, California.

2. Non-local credit reporting—the nation as a whole.

3. Life and health insurance reporting—the nation as a whole.

4. Fire and casualty insurance reporting—the nation as a whole.

5. Personnel reporting—the same as in 1 above and also the nation as a whole.

(See Response To The Administrative Law Judge's Directive To Define Geographic Areas In Which Anticompetitive Effects Have Taken Place, March 15, 1974; complaint counsel's Trial Brief, April 15, 1974)

Evidentiary hearings for complaint counsel's case-in-chief began on May 6, 1974 and continued, with interruptions for the convenience of counsel and witnesses, until October 3, 1974. Defense hearings began on October 3, 1974 [5] and continued, with interruptions for the convenience of witnesses and counsel, until May 27, 1975. Rebuttal hearings began on June 18, 1975 and

continued, with interruptions, until June 30, 1975. The record was closed on July 21, 1975 after receiving into evidence certain documents recently obtained by respondent under the Freedom of Information Act. Thirty-six witnesses were called by complaint counsel in support of the case-in-chief, and forty-seven by respondent in its defense. Complaint counsel called three witnesses in rebuttal. The transcript exceeds 15,000 pages, and some 550 exhibits were received in evidence. The parties filed proposed findings of fact and conclusions of law on September 10, 1975 and reply briefs on September 30, 1975.

This case is before me upon the complaint, answer, testimony and other documentary evidence, proposed findings of fact and conclusions of law and briefs filed by the parties. These submissions have been given careful consideration and, to the extent not adopted herein in the form proposed or in substance, are rejected as not supported by the record or as immaterial. Any motions not heretofore or herein specifically ruled upon, either directly or by the necessary effect of the conclusions in this initial decision, are denied.

Having heard and observed the witnesses and after having carefully reviewed the entire record in this proceeding, together with the proposed findings of fact and conclusions of law submitted by the parties, the administrative law judge makes the findings and conclusions set forth below.¹ [6]

¹ References to the record and other material are given in parentheses, and the following abbreviations are used:

- F - Findings of this initial decision.
- CPF - Complaint counsel's proposed findings, followed by the number of the proposed finding referred to.
- CRB - Complaint counsel's reply brief, followed by the page numbers.
- RPF - Respondent's proposed findings, followed by the number of the proposed finding referred to.
- RRB - Respondent's reply brief, followed by the page number.
- CX - Complaint counsel's exhibits.
- RX - Respondent's exhibits.
- JX - The joint exhibit, followed by the page numbers.

The following abbreviations are used throughout the findings:

Retail Credit Company	Retail Credit or RCC
The Credit Bureau, Inc. of Georgia	CBI
Retailers Commercial Agency, Inc.	RCA
Credit Marketing Services, Inc.	CMS
Credit Bureaus, Inc. of Salem, Oregon	CB West Coast
The Credit Bureau, Inc. of Washington, D.C.	CBDC
Retail Credit Association of Portland, Oregon, Inc.	CB Portland
Associated Credit Bureaus, Inc.	ACB
Credit Bureau Reports, Inc.	CBR
Credit Services International, Inc.	CSI
Credit Data Corporation	CDC
The Credit Data Division of TRW, Inc.	TRW Credit Data
Trans Union Systems Corporation	Trans Union
Associated Credit Services, Inc.	ACS

FINDINGS OF FACT

I. IDENTITY AND BUSINESS OF RESPONDENT RETAIL CREDIT COMPANY

A. Retail Credit Company

1. Retail Credit Company (hereinafter sometimes referred to as "respondent," "Retail Credit" or "RCC") is a corporation organized and existing under the laws of the State of Georgia, with its offices and principal place of business located at 1600 Peachtree St., N.W., Atlanta, Georgia. (Complaint and Answer, par. 2) [7]

2. Respondent was incorporated in the State of Georgia on December 20, 1913, after beginning operations in Atlanta, Georgia, in 1899 as a credit bureau. (CX 47a; CX 354c)

3. Respondent, directly or indirectly through its subsidiaries, provides business firms throughout the United States with information on individuals for insurance, claims, credit, employment and marketing purposes. (CX 117a; CX 622b) In 1970, insurance reporting accounted for 62 percent of respondent's business volume, credit and other commercial reporting for 18 percent, claims reporting for 11 percent, and employment reporting for 8 percent. (CX 167c, h; CX 197f)

4. As of February 1971, Retail Credit and its subsidiaries operated approximately 1,700 offices and suboffices; 15,000 employees performed over 400 report services, with approximately half of those employees comprising the corps of trained information-gatherers. In its various offices, respondent maintained files on approximately 72 million consumers throughout the country. (CX 167 1; CX 177; CX 197d; CX 354a; CX 363z37a; CX 364n)

5. Respondent's revenues, income and assets in the years 1964-1971 were (in millions of dollars):

	1964	1965	1966	1967	1968	1969	1970	1971
Total revenue:	\$108.5	117.9	126.3	134.9	148.6	161.1	183.4	190.8
Net income before taxes:	\$ 13.6	15.2	15.5	16.2	17.5	19.1	19.0	19.1
Retained earnings:	\$ 17.4	20.7	23.9	26.7	29.0	31.9	30.8	34.4
Total assets:	\$ 34.2	38.2	42.2	47.1	50.5	52.2	60.3	65.0

(CX 51, pp. 10-11; CX 117e, f; CX 363z17, z18, z25, z25a, z33, z33a, z39a, z40)

6. At all times relevant herein, Retail Credit Company and each of the companies acquired by it, Credit Bureaus, Inc. of Salem, Oregon, The Credit Bureau, Inc. of Washington, D.C. [8] and the

Retail Credit Association of Portland, Oregon, Inc., were engaged in interstate commerce, as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act. (Complaint and Answer, pars. 7, 14; Tr. 1506)

7. Retail Credit Company owns all of the stock of the following subsidiary companies:

Atwell, Vogel & Sterling, Inc.; The Credit Bureau, Inc. of Georgia; Credit Bureau of Montreal, Ltd.; Gay & Taylor, Inc.; Hunnicutt & Associates, Inc.; Physical Measurements, Inc.; Retail Credit Company of Canada Ltd.; Retailers Commercial Agency, Inc.
(CX 579m)

8. Respondent's RCC offices employ over 5000 full-time field representatives working in more than 1400 cities in the United States and Canada and maintain files on 48 million consumers. (CX 569e; CX 34a; CX 354d; CX 364n)

9. Respondent, through its RCC offices, is primarily engaged in providing a variety of services by which customers may obtain information upon consumers and others on the basis of which such customers may make business decisions for insurance and employment purposes. (Flory 10,044-045, 10,048-050, 10,112-114, 10,161-162; Burge 11,014, 11,071-072, 11,120; Rutherford 13,187-188) Many of RCC's customers are insurance companies, which utilize its services to obtain information for use in determining insurability, ratings or classifications for life, health, property, marine and automobile insurance purposes. (Nead 2875; Mitchem 3662; Bretherick 9357-58; Alley 9405; Flory 10,467-468, 10,100-101; Burge 11,069; CX 364k) RCC prepares written reports on the basis of investigation of the subject by its field representatives. (RX 249 through RX 256)

10. As part of the services provided to life and health and fire and casualty insurance companies, RCC operates a division for claims settlement and two companies called Physical Measurement, Inc. and Gay & Taylor. RCC's experienced claim investigators in nearly 300 cities investigate [9] and settle claims under life, health and fire and casualty policies. Physical Measurements is a chain of approximately 70 health history gathering centers and 73 branch offices located in major metropolitan areas which were established to speed the processing of life and health insurance applications. Gay & Taylor, an affiliate of RCC acquired in January 1970, is one of the largest multiple line insurance adjustment companies in the world. It provides services in the following areas: accident, health, life, automobile, aviation, casualty, fire, marine, fidelity, surety, mobile

homes, workmen's compensation, and catastrophes. During the two years following RCC's acquisition of Gay & Taylor, RCC purchased nine other claims adjusting companies in the States of Florida, Georgia, Virginia and Missouri and operated them as branch offices of Gay & Taylor. (CX 9, pp. 13, 30; CX 23, p. 29; CX 24, p. 18; CX 25z16-z19; CX 34; CX 44f; CX 51, pp. 6, 8; CX 79, pp. 2-3; CX 105; CX 167j, k; CX 354e; CX 363z38a; CX 569i)

11. Atwell, Vogel & Sterling performs audit inspection and loss control services, areas that are related to the insurance market. Such services are performed nationally and include inspection of building elevators for insurance purposes, safety and loss control programs, payroll audits, and inspections regarding fire, liability, burglary, and workmen's compensation, among other types of risks. (CX 25z8-z11; CX 74f; CX 354e; CX 167j)

12. RCC also provides employers with reports on prospective employees. Pre-employment investigations provide information concerning job history, employment experience, character, and skills of prospective employees so that businesses can select the best prospects for job openings. (CX 21e; CX 363z38a) The types of reports prepared and sold by RCC include the following: personnel selection reports; security personnel reports, when security or confidentiality is a factor; salesman selection reports; employment experience reports for clerical and industrial personnel; and reports concerning employees' progress. (CX 9, p. 33; CX 20; CX 21; CX 23, pp. 34-39; CX 25z-z2; CX 140; CX 354e)

13. RCC's credit reporting services fall within what it terms its "commercial" market, which consists principally of credit services and marketing information services. [10] (CX 23, p. 40) The credit services performed include the following: reports on individuals, farmers, and firms; character-financial reports; employment verification and trade reports; worth and income reports requested by mailorder houses, hospitals and medical clinics; individual, farmer and firm reports for use by petroleum product marketers; mortgage loan reports; tenant reports; prospective customer reports; skip and locate reports; slow payer reports; credit card pick-up service; and collection letters. (CX 9, pp. 34-36; CX 24, pp. 21-22; CX 25z3-z5; CX 30; CX 64; CX 75; Rutherford 13,333-336, 13,346, 13,490-493, 13,515)

14. RCC reporting volume in the United States for the years indicated is as follows:

<i>RCC (parent company only)</i>							
		<i>1965</i>		<i>1967</i>		<i>1969</i>	
		<i>(000)</i>		<i>(000)</i>		<i>(000)</i>	
	<i>No.</i>	<i>\$</i>	<i>No.</i>	<i>\$</i>	<i>No.</i>	<i>\$</i>	
<i>Total Reports(a)</i>	27,355	99,027	27,480	112,118	27,812	128,212	26,000
<i>Personnel</i>	1,434	10,195	1,658	13,165	1,644	14,611	1,393
							<i>136,041</i>
							<i>12,817</i>

	Initial Decision						92 F.T.C.	
<i>Insurance</i>	23,945	74,275	23,773	81,505	24,523	92,510	(c)	
Life & Health	6,969	31,230	6,931	34,175	7,066	39,657	7,152	42,973
Fire & Casualty	17,094	43,046	16,891	47,330	17,511	52,850	(c)	
<i>Claims</i>	677	8,657	779	11,250	830	13,704	(c)	
<i>Bond</i>	56	186	48	197	44	205	(c)	
<i>Management</i>								
Information	88	1,229	98	1,397	81	1,483	(c)	
<i>Credit(d)</i>	1,028	4,485	1,038	4,587	1,109	5,698(e)	1,056	6,202

(a) The total figures are comprised of credit, personnel, and other reports.

(b) CX 43a is the source for 1970 figures; CX 47e, f, which has no figures for 1970, is the source for the 1965, 1967, and 1969 figures because the breakdown of the property category permits a reliable indication of the fire and casualty insurance reporting market. [11]

(c) CX 43a provides no adequate breakdown for these categories.

(d) The credit category includes mortgage reports.

(e) The 1969 and 1970 credit figures include \$1,105,400 and \$1,348,000, respectively, in credit card pick-up service revenue. (CX 43b) No indication has been made in the record regarding the amount of credit card pick-up service revenue in the 1965 and 1967 credit figures.

(CX 43a, b; CX 47e, f)

B. The Credit Bureau, Inc. of Georgia (CBI)

15. The Credit Bureau, Inc. of Georgia (hereinafter referred to as "CBI") is a corporation organized in the State of Georgia, with its principal place of business at 1600 Peachtree St., N.W., Atlanta, Georgia. It was incorporated on January 27, 1937. (CX 142a,h)

16. CBI's primary business is providing credit reports on consumers to credit grantors which need to evaluate the financial reputation and payment history of individuals in order to determine whether credit can safely be granted. CBI also produces personnel reports, which concern the subject's acceptability for employment. (CX 42a; CX 180, p. 28) In addition, it provides collection services and credit card promotions for credit grantors in the United States. Its credit grantor customers are primarily department stores, retailers, banks, and credit card companies. (White 11,693, 11,777-778)

17. CBI has grown substantially through acquisitions. It owned 22 credit bureaus at the end of 1959. Ninety-four acquisitions were made from 1960 through January 1971, with 81 of them made since the end of 1965. CBI owned 115 credit bureaus in the United States as of January 1971 in addition to 5 other bureaus in Canada. (CX 74a-d; CX 167f; CX 197f; CX 363z31a; see Appendix A for a listing of acquisitions)

18. CBI's credit bureau offices are located primarily in the

southeastern United States, the New York-New Jersey metropolitan area, the Washington, D.C. area, the San Francisco Bay area, and the Pacific Northwest. (CX 135; CX 142h, i; CX 167f) [12]

19. CBI is presently organized into eight regional automated credit reporting centers, located in Albany, New York; Atlanta, Georgia; Miami, Florida; Orlando, Florida; New Shrewsbury, New Jersey; Portland, Oregon; Washington, D.C.; and San Jose, California. The remainder of its credit reporting offices are manual credit bureaus. (White 11,152-154, 11,156-157; RX 280)

20. Revenues of CBI from reporting services, not including dues and promotions, amounted to the following:

CBI of Georgia

	1965		1967		1969		1970*	
	(000)		(000)		(000)		(000)	
	No.	\$	No.	\$	No.	\$	No.	\$
Total	2,959	3,501	3,993	4,722	6,089	8,479	5,931	8,259
Credit	2,954	3,480	3,986	4,694	6,078	8,429	5,921	8,210
Personnel	5	21	7	28	10	50	10	49

* Does not include sales of the Credit Bureau, Inc. of Washington, D.C., or Credit Bureaus, Inc. of Salem, Oregon.

(CX 42a)

C. Retailers Commercial Agency (RCA)

21. Retailers Commercial Agency, Inc. (hereinafter referred to as "RCA") is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1600 Peachtree St., N.W., Atlanta, Georgia. It began business in New York City in January 1897, as a credit reporting agency. It was incorporated on July 13, 1934; in that same month, all the stock of RCA was purchased by RCC. (CX 123b; CX 142a, f)

22. RCA was acquired in order to supplant RCC in the credit reporting business and to find a less expensive way to produce better credit reports, primarily mortgage reports. (Rutherford 13,169-170, 13,487)

23. RCA operates well over 100 branch offices and sub-offices throughout the United States, including offices in Portland, Oregon; Sacramento, Oakland, San Jose, and San [13] Francisco, California; Seattle and Tacoma, Washington; and Washington, D.C. (CX 134z; CX 362e; CX 363z12; Complaint and Answer, par. 10)

24. RCA produces many types of reports, including character credit reports, mortgage reports, collection aid reports, employment and personnel reports, slow payer reports, tenant reports and income

reports. (RX 392; CX 310; Aitken 10,689-690, 10,723-724; Rutherford 12,953-956, 12,965-967, 13,005, 13,210-216, 13,632-636, 13,764-766) These reports produced by RCA are generally based on investigation of the subject, including interviews and reference checks. (Rutherford 3847-50, 13,134-135, 13,210-211)

25. RCC regards RCA as an operating unit of Retail Credit Company rather than an autonomous company. Retail Credit Company markets and sells most of the reports produced by RCA offices, but RCA does sell some credit reports to its own customers in particular local areas. (Rutherford 12,965, 13,050, 13,072-073)

26. According to officials of RCC and RCA, the primary business of RCA is the sale of investigative "character credit reported," primarily for mortgage loan purposes. (Aitken 10,692; Rutherford 13,134-135, 13,168, 13,027-028) These reports are narrative reports which emphasize the general character of the applicant (McGregor 5836, 5772; Laurens 1941, 1956), and contain more extensive information than the credit bureau report usually sold to a retail merchant. (Rutherford 13,056-057) They may contain file information secured from a credit bureau, or may have no trade information at all. (Laurens 1941; McGregor 5837, 5771-72; Griffeth 6841; Rutherford 13,027)

27. RCA will also provide special investigatory reports requested by its customers for specific purposes, at an hourly rate. (Rutherford 13,211-213)

28. RCA usually does not collect, or maintain files on, consumer pay habit information. (Devers 8356-57) Its reports are often derived from the information contained in a credit application, which is verified directly with sources, and from checks of public record information on file. (Laurens 1955; McGregor 5836-37; Rutherford 13,007, 13,414, 12,963, 13,367) The report would contain, in [14] addition to the identity and addresses of the applicant, information on residence of the applicant, type of job, length of time on the job, general character, and whether he owned his home or rented. (Rutherford 12,963)

29. RCA, however, regularly maintains files of the credit reports which it has made. The information contained in those reports can be used in the same manner as a credit bureau file, to provide prompt information without the need for a new investigation. (Aitken 10,889; Rutherford 13,151) RCA also keeps files of public record information, such as deaths, judgments and bankruptcies. (Laurens 1957; Rutherford 13,491) An RCC executive official testified that in 1969-1970 RCA would have file information on an individual

in only 5-15 percent of the cases in which information was sought. (Rutherford 13,008)

30. In general, RCA will prepare and sell a consumer credit report to a retail merchant on request, usually when a credit bureau report is unavailable or inadequate. Such a report is usually based on verification of the information contained in the credit application, checks with references and public record information, and sometimes a telephone interview with the applicant, and contains pay habit information. This type of credit report is more expensive than an in-file credit report. (Rutherford 13,007, 13,131, 13,367, 13,480-481, 13,719) In some areas RCC maintains "derogatory files" and markets them to local credit grantor customers, including retail merchants. (F. 32, 194, 208-09) And, in Los Angeles, California, RCA has regularly sold credit reports since May 1970. (F. 33)

31. In the 1960's some customers of RCA stopped using the so-called "character reports" prepared by RCA and began to rely more heavily on reports containing pay habit information of the kind produced by credit bureaus from file information. The primary reason for this development was that in-file reports are less expensive, and can be obtained much faster, than reports based on investigation. (McGregor 5770-73; Rutherford 12,965-966, 13,627-628) As a result, RCA offices in certain areas attempted, in the mid-1960's, to develop a file containing pay habit and trade information on consumers in those areas. (Rutherford 12,968) An attempt to establish a derogatory file in Portland, Oregon was eventually abandoned as a [15] failure (F. 194), while a simultaneous effort in Tacoma, Washington allowed RCA to become a substantial competitor of the local credit bureau. (F. 208-09) Merchants in Tacoma were still purchasing in-file trade information from RCA into the 1970's. (Loeb 1191-92)

32. In addition, in 1963 and 1964 the RCA office in Los Angeles, California attempted to build a credit bureau file containing essentially derogatory information. It obtained the cooperation of 15 collection agencies and copied legal information. The files from RCA offices in Long Beach, Santa Ana, Anaheim and San Bernadino, California were consolidated with those of the Los Angeles office. Credit grantors in the area were solicited for information about accounts which were being sent to collection agencies. According to an official of respondent, the RCA office did not attempt to get pay habit information from credit grantors, because it would have been unable to file all the information. The Los Angeles RCA office made sales of file information to credit grantors over a period of several years, but RCA ultimately decided that revenues were insufficient to

cover expenses, and gave up the effort to build and maintain the file in the Los Angeles area. (Rutherford 12,980-987, 13,354-355, 13,650)

33. In a second attempt to expand its file base in Los Angeles, RCA purchased the assets of the Credit Bureau of Greater Los Angeles in May 1970. That bureau was a specialized credit bureau which offered credit reports to finance companies, tire dealers, furniture stores, auto dealers, milk companies, and auto repair shops. Its files were combined with those of RCA's Los Angeles office. (Rutherford 12,996-998; CX 128) According to an official of respondent, no attempt was made to solicit credit information from other retail merchants in the Los Angeles area. (Rutherford 13,365) The same official of respondent also testified that, although the RCA office was not able to capture the share of the credit reporting market which was originally expected, the office has been consistently profitable. (Rutherford 12,998)

34. Also during the mid-1960's, RCA attempted, unsuccessfully, to induce retail merchants in Atlanta to purchase its reports. (Griffeth 6840-44) In San Francisco, however, the RCA office sold in-file and updated credit reports containing pay habit information in competition with a local credit bureau, primarily to mortgage lenders. (F. 143) [16]

35. RCA's estimated revenue from reports amounted to the following:

Retailers Commercial Agency

	1965		1967		1969		1970	
	No.	\$	No.	\$	No.	\$	No.	\$
Total*	1,703	4,725	1,292	4,195	1,412	4,315	1,311	4,290
Credit	1,645	4,528	1,257	3,720	1,210	3,542	998	3,279
Personnel	2	6	Unavailable		11	46	11	46

* The amounts for the categories listed do not provide the full amount of the total; the difference is comprised of circulation quality, firm, and other reports.

(CX 40a, b)

D. Credit Marketing Services, Inc. (CMS)

36. Credit Marketing Services, Inc. (hereinafter referred to as "CMS") was established in October 1970 as a wholly-owned subsidiary of CBI and began business about February 1971. (CX 188a; CX 197d; White 11,763-764)

37. CMS was designed as a marketing organization to provide services related to the extension and control of consumer credit for regional and national credit grantors. In so doing, CMS provided

brokered credit reports and credit card promotional services to these customers. (CX 197d; CX 370; CX 367b, c; White 11,763-764)

38. In a suit brought by Credit Bureau Reports, Inc. (CBR), CMS was prohibited for a period of three years from going forward with any new marketing plan or new expansion program whereby RCC or any of its subsidiaries would act as reseller or sales agent in the life and health and fire and casualty insurance reporting and the non-local credit reporting markets for the sale of credit reports prepared from the credit data of non-RCC-owned credit bureaus to non-local credit grantors. RCC was also prohibited from withdrawing any credit bureaus owned by it or its affiliates from membership in CBR for three years (and thus prohibiting [17] exclusive use by RCC-owned credit bureaus of the brokerage facilities of CMS). Judgment was rendered on December 30, 1971 (*Credit Bureau Reports, Inc. v. Retail Credit Co.*, 358 F. Supp. 780 (S.D. Tex. 1971), *aff'd*, 476 F.2d 989 (5th Cir. 1973)).²

39. As of January 1, 1973, CMS discontinued all efforts to complete as a broker of credit reports to regional and national accounts. It remained in business solely to sell promotional services. (Rutherford 3827, 13,038-039, 13,320-321)

II. IDENTITY AND BUSINESS OF THE ACQUIRED FIRMS

A. Credit Bureaus, Inc. of Salem, Oregon (CB West Coast)

40. Credit Bureaus, Inc. of Salem, Oregon (hereinafter referred to as "CB West Coast"), originally organized as a sole proprietorship in 1933 by Francis W. Smith, was incorporated in the State of Oregon in 1940, with Mr. Smith as its sole stockholder. (CX 261m; CX 365a)

41. CB West Coast was engaged in the business of producing and selling credit reports and supplying debt collection and other credit services to credit grantors. (F. Smith 250, 254) It sold verbal and written in-file consumer credit reports, mortgage loan reports, trade clearance reports, and personnel reports to such customers as retail firms, banks, oil companies, and credit card firms. However, CB West Coast had only limited sales of mortgage loan reports and minimal sales of personnel reports in 1969. It did not sell insurance reports. CB West Coast also provided commercial credit reports, primarily on individual entrepreneurs and small firms. (F. Smith 254, 270-72, 338-39; CX 41a; CX 171e; CX 176e; CX 307; CX 364z44a, z45a) CB West Coast maintained over 8 million credit reporting files. (CX 119h) [18]

² Official notice was taken of this decision. See Tr. 3886-87.

42. By the time of its takeover by CBI in January 1970, CB West Coast owned and operated 43 credit bureaus in the States of California, Idaho, Oregon, and Washington, including San Francisco, which was the largest of the nation's computerized bureaus in 1970. (CX 197f) Some of these bureaus engaged only in collection activities. (Smith 251; CX 365a-e; CX 366d-e) Nearly all of CB West Coast's credit bureaus were members of Associated Credit Bureaus, Inc. (ACB), a national trade association of credit reporting agencies. (CX 365f)

43. Revenues from reports produced by CB West Coast amounted to the following figures:

<i>CB West Coast</i>								
	<i>1965</i>		<i>1967</i>		<i>1969</i>		<i>1970</i>	
	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)	No.	\$ (000)
<i>Total</i>	837	1,867	2,450	2,960	3,239	4,355	2,495	4,041
<i>Credit</i>	837	1,867	2,450	2,958	3,238	4,353	2,497	4,037
<i>Personnel</i>	—	—	.2	1.7	.3	1.9	.6	4

(CX 41a, b; CX 47k, 1; CX 48c)

(1) Portland Operations

44. In 1968, CB West Coast opened an office on Halsey Street immediately outside the city limits of Portland, Oregon, after being located a short period of time within the Portland city limits. The Halsey Street office contained the credit files of the credit bureaus of Beaverton, Hillsboro, and Oregon City, Oregon, and Vancouver, Washington, which had been consolidated in 1967. Consumer credit reports from these consolidated files were sold in the four-county metropolitan Portland area, including Portland and the counties of Clackamas, Multnomah, and Washington in the State of Oregon and Clark in the State of Washington. (Smith 251, 274; Aitken 10,797-799; CX 80z35; CX 171h; CX 365b)

45. The four bureaus comprising the Halsey Street consolidated office held memberships in Associated Credit Bureaus (ACB), before and after the consolidation of files at Halsey Street. (Rutherford 13,584) [19]

46. The number of subscribers to the credit reporting services provided by the metropolitan Portland operations of CB West Coast increased from 595 in 1967 to 727 in 1969. These included banks, retail firms, finance companies, insurance companies, realtors, oil and national credit card companies, utilities, and medical organizations, among others. (CX 171e, i)

47. The Halsey Street office served as CB West Coast's test mode

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for the computerization of credit reporting. The Halsey Street office's computerization was accomplished and computerized credit reports were sold during the period of late 1968 or early 1969. (Aitken 10,846, 10,852; CX 80z34-z35)

48. Revenues from reports produced by the Halsey Street office accounted for the following figures:

	1967 (000)		1969 (000)		1970 (000)	
	No.	\$	No.	\$	No.	\$
Total	56	93	244	300	172	231
Credit	56	93	244	300	172	229
Personnel	0	0	.1	.4	.3	2

(CX 38w, x, z, z1, z2, z3; Tr. 182)

(2) San Francisco Bay Area Operations

49. During 1966 and 1967, CB West Coast acquired the Credit Bureau of San Francisco, Inc., the Credit Bureau of Santa Clara Valley, Inc. (San Jose), the Retailers Credit Association of San Francisco, and the Bureau of the Greater East Bay (Oakland). All of these corporations were merged into Credit Bureau Metro, Inc., of California during August 1967 (hereinafter referred to as "Credit Bureau Metro"). (CX 261f)

50. Prior to its acquisition by CB West Coast, the San Jose Credit Bureau (formally called the Credit Bureau of Santa Clara Valley) had begun efforts to computerize its operations. Those efforts were the forerunner of the ACROPAC system later perfected by CB West Coast and CBI. When the [20] San Jose Bureau was acquired, CB West Coast hired the man who had begun to develop a computerized credit reporting system and he continued his efforts under CB West Coast on what eventually became the ACROPAC system. (Rutherford 13,557)

51. The primary geographic area served by Credit Bureau Metro in 1969 included the five counties of San Francisco, San Mateo, Santa Clara, Alameda, and Marin. Francis Smith, former owner of CB West Coast, identified the area as extending from San Jose through Hayward, up through the town of Oakland, across the Bay, including San Francisco, and down the peninsula to San Jose, California. (Smith 264; CX 460; see also CX 176i)

52. Revenues from reports produced by Credit Bureau Metro were as follows:

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1967 (000)		1969 (000)		1970 (000)	
No.	\$	No.	\$	No.	\$
Total 1,583	1,837	1,711	2,308	1,508	2,445
Credit 1,583	1,835	1,711	2,307	1,508	2,444
Personnel .2	2	.2	1	.2	1

(CX 38a; Tr. 182)

(3) Tacoma Area Operations

53. In 1969, the Credit Bureau of Tacoma (hereinafter referred to as "CB Tacoma") was a part of CB West Coast. (Smith 251) On January 2, 1970, RCC acquired CB Tacoma as one of the bureaus within the CB West Coast chain. (T. Smith 1037)

54. CB Tacoma sold credit reports to credit grantors in Tacoma and surrounding Pierce County, Washington and engaged in debt collection. It had about 425,000 credit reporting files in 1970. (F. Smith 1037, 1073; Geyer 448-49; CX 307f) CB Tacoma was a member of Associated Credit Bureaus, Inc. (CX 307g) [21]

55. For each of the calendar years 1967, 1969 and 1970, CB Tacoma's sales and revenues from credit reporting were as follows:

1967 (000)		1969 (000)		1970 (000)	
No.	\$	No.	\$	No.	\$
Total 168	281	299	360	212	334
Credit 168	281	299	360	212	334
Personnel 0	0	0	0	0	0

(CX 38z9; CX 307g)

(4) Other Pacific Northwest Operations

56. CB West Coast also owned a number of credit bureaus located in various cities and towns in Oregon, Idaho and Washington. These bureaus generally sold credit reports, without competition, in the area surrounding the town in which they were located. (F. Smith 251-55, 262-64)

(5) Acquisition by Respondent

57. In 1967 CB West Coast was in the process of developing a computerized credit reporting system. It found itself in need of additional capital, and began to investigate the possibility of securing a loan or being acquired by another company. It approached respondent for that purpose, and negotiations began in the fall of 1967. (CX 365i)

58. Representatives of RCC visited CB West Coast in September 1967 and reported to RCC on the development of CB West Coast's ACROPAC system. (CX 274; CX 611) RCC's director of data processing, who went to Salem, Oregon to investigate the automated

credit reporting system, reported favorably on it, and suggested that RCC consider purchasing it. (CX 274) It does not appear that any attempt was made simply to purchase the system. In November 1967 RCC decided that it had doubts about the profitability of the ACROPAC system, and did not desire to invest in a loan or acquisition on the West Coast at that time. (RX 3) [22]

59. On December 12, 1967 Donald Rutherford, then the president of respondent's affiliated companies, advised Francis Smith that RCC had decided to reopen discussions which "hopefully will lead to eventual merger of our interests," probably through a substantial loan to CB West Coast followed by a merger of the two firms. (CX 412) Those negotiations were undertaken on the condition that RCC could make full evaluation of the financial, data processing and managerial aspects of CB West Coast's business before a decision was made on whether RCC would invest in the firm. (CX 365i)

60. Senior executives of RCC visited CB West Coast in January 1968. They examined the company's competitive situation, marketing position, employee morale and customer usage. Rutherford explained to RCC's Advisory Committee for Acquisitions that if the result of the visit indicated that it was desirable for RCC to make a loan to CB West Coast with provision for later acquiring all its stock, a financial audit would be made of CB West Coast. (CX 613a) Such an audit was conducted by Arthur Andersen & Co. in 1968. (CX 261)

61. In July 1968 an agreement in principle was reached between RCC and CB West Coast for the acquisition of CB West Coast by RCC. It was agreed that CB West Coast would transfer all of its outstanding stock to RCC in exchange for 100,000 shares of RCC common stock. Included in the agreement was a loan in the amount of \$3,500,000 to be made by RCC to CB West Coast for working capital, payment of debts, and completion of the automation project. (CX 413) Smith approved the terms, but indicated that he would prefer an immediate sale of CB West Coast to RCC to an option to purchase at a later date. (CX 414)

62. The formal loan agreement between RCC and CB West Coast authorized loans to CB West Coast in the amount of \$3,500,000, to be secured by the pledge of all CB West Coast stock. As further consideration for the loan, RCC received an option to acquire the stock of CB West Coast in exchange for 100,000 shares of RCC common stock, exercisable on or before January 21, 1971. (RX 237; RX 240) The agreement also provided that RCC would have access to CB West Coast's electronic data processing system. (RX 237u; RX 240z9) It was understood that CB West Coast alone retained the right to sell the automated system, but that RCC could adopt and use it

without further payment even if the option was not exercised. (RX 241a) Included [23] in the option agreement was a 5-year covenant not to compete affecting all 11 stockholders of CB West Coast and prohibiting them from participating in the business of credit reporting and collection service in any county in the States of California, Idaho, Oregon, or Washington, in which CB West Coast was engaged in credit bureau or collection service operations. (RX 240z13; CX 44e)

63. The resolution of the RCC Board of Directors which approved the agreement termed it a "Plan of Reorganization for the acquisition of all the capital stock" of CB West Coast, and made no mention of the automated reporting system. (CX 417)

64. In 1969 additional loans to CB West Coast in the amount of \$375,000 and \$500,000 were authorized. The last of these loans was made on the condition that if RCC exercised the option, any unpaid balance of the loan would reduce the number of shares of RCC stock which would be given in exchange for CB West Coast stock. (RX 322a; RX 324a) As of December 31, 1969, \$4,275,000 was due to RCC under these arrangements. (CX 51, p. 14)

65. On December 16, 1969, an agreement and plan of reorganization among RCC, CB West Coast and CB West Coast's stockholders was entered into whereby CB West Coast's stock would be exchanged for 90,000 shares of RCC stock. The exchange was consummated on January 2, 1970. (RX 248; CX 197f)

66. The record does not support respondent's contention that its agreements with CB West Coast were motivated solely by a desire to obtain an automated credit reporting system for CBI. (RPF 56) Rather, the record supports the inference that the transaction was intended from its inception by both parties to culminate in an acquisition.

67. Rutherford estimated that CB West Coast's automated reporting system was worth \$250,000 in 1968. (Rutherford 13,433). Trans Union Systems Corporation declined Francis Smith's offer to sell the system in 1969 for \$500,000 because it thought it would be less expensive to develop its own automated system. (Devers 7443, 7473) However, RCC made loans to CB West Coast in excess of \$4 million and gave its stock valued at \$3.7 million in exchange for the stock of CB West Coast. (Briloff 15,455, 15,483) [24]

B. The Credit Bureau, Inc. of Washington, D.C. (CBDC)

68. Prior to its acquisition by RCC in October 1970, the Credit Bureau, Inc., of Washington, D.C. (hereinafter referred to as "CBDC"), was owned by approximately 25 shareholders. The four

principal shareholders were Woodward & Lothrop, Kann's Department Store, Lansburgh's Department Store, and the Hecht Company. The remaining stock was scattered among about 20 different companies and individuals. CBDC's subscribers numbered about 1000. (Waterbury 8365-66)

69. In October 1969, CBDC purchased Stone's Mercantile Agency ("Stone's"), its principal competitor in the sale of credit reports in the Washington, D.C. area, for \$1,000,000. (Waterbury 8365, 8367-68; CX 7h) Stone's was a privately owned business engaged in producing and selling consumer credit reports, mortgage reports, business reports and personnel reports. (Tracey 1998-2000, 2014; Fletcher 2247-49) CBDC and Stone's continued to be operated as separate companies after the purchase. (CX 81b)

70. CBDC sold verbal and written in-file and updated consumer credit reports (including mortgage reports), business reports, employment reports, and real estate reports. (CX 527) Less than one-half of 1 percent of its reporting revenue came from the sale of personnel reports and less than 5 percent from the sale of mortgage reports. It did not produce or sell insurance reports during either 1967 or 1969. (White 11,659j; CX 73-f) The bureau also operated a Welcome Newcomer service, a loan exchange for small loan companies, a 7-store member shopping plate, and a Merchants' Mutual Protection service. (CX 81b)

71. At the time of the acquisition, CBDC and Stone's served the Washington trade area, which covered the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. There were no suburban credit bureaus. (Tracey 2003; Fletcher 2249; Holden 9128; CX 7g; CX 33z111; CX 81b) [25]

72. In 1969, both CBDC and Stone's were members of Associated Credit Bureaus. (White 12,111)

73. Revenues from reports produced by CBDC were as follows:

	1965		1967		1969		1970	
	No.	\$	No.	\$	No.	\$	No.	\$
Total	1,309	1,318	1,446	1,446	1,980	2,167	1,407	1,729
Credit	1,306	1,305	1,435	1,422	1,978	2,158	1,405	1,719
Personnel	3	13	11	24	2	8	2	10

(CX 39c)

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74. Revenues from consumer reports produced by Stone's amounted to the following:³

	1965	1967	1969	1970
Total	\$1,070,000	1,181,000	1,188,000	1,134,000

(CX 39d)

75. In the late 1960's, CBDC established a Long Range Planning Committee to study the possibility of computerizing the credit bureau. As part of its initial activities, the Committee in 1968 had signed a tentative agreement, subject to cancellation, to purchase the Credipak automated credit reporting system software package then being developed by Associated Credit Bureaus, Inc. ("ACB"), the credit reporting industry's principal trade association. (Waterbury 8371-74, 8426-27, 8464; Holden 9099-9103, 9141-42; F. 126)

76. During 1969, the Committee studied various computer equipment proposals, and determined that it would cost at least \$1 million to automate the credit bureau. This cost did not include the cost of developing a qualified [26] technical staff or of renting new office space large enough to house a major computer complex. (Waterbury 8373-77, 8381-82; Holden 9101-03, 9104-10, 9166-67) By the end of that year, the Board of Directors of CBDC decided to abandon any further efforts to computerize the credit bureau on its own, and formed a committee to explore the possibility of selling the credit bureau. The Executive Committee passed a resolution in December 1969 withholding the purchase of Credipak. (Waterbury 8446-50; Holden 9109-14; RX 304a)

77. CBDC's Executive Committee, after reviewing several offers, decided to sell the bureau to RCC. Accordingly, on October 29, 1970, CBDC was purchased by RCC for \$3 million. Although the sale agreement did not contain any clause obligating RCC to computerize CBDC within any particular time frame, there was a "very definite understanding" on the part of the CBDC Board that CBI would automate the bureau, and it did so in February 1973. (Waterbury 8436; Holden 9169-73; White 11,578-579, 11585-586) RCC's subsidiary CBI became the owner of the bureau. (CX 7b)

C. Retail Credit Association of Portland, Oregon, Inc. (CB Portland)

78. The Retail Credit Association of Portland, Oregon, Inc. ("CB Portland") was incorporated in January 1921, as a membership

³ Personnel reports could not be separately identified by Stone's.

corporation. In 1969, there were 973 member-stockholders, most of them Portland merchants, each of whom had an equal share in the ownership of the bureau. The member-stockholders represented practically all of the credit grantors in Portland and were the principal users of the credit bureau. (Huygens 5845-47; CX 170c-d)

79. CB Portland produced and sold various credit reports, including verbal and written in-file and updated reports and mortgage loan reports. It also sold personnel reports. About 3 percent of its revenues came from the sale of mortgage reports, and less than 1 percent from the sale of personnel reports. CB Portland did not produce or sell insurance reports. (CX 170b, g-h) [27]

80. CB Portland sold credit reports to banks, merchants and others operating within a four-county trade area-Washington, Multnomah and Clackamas Counties in Oregon and the southern part of Clark County in Washington. It maintained files on consumers residing in the same general area. (Laurens 1934, 1940; Winthrop 5613-18; Huygens 5862-63; CX 170i) As of the beginning of 1970, CB Portland maintained approximately one million credit files, none of which were computerized. (CX 170g) CB Portland was also a member of Associated Credit Bureaus, Inc. (Laurens 1944; CX 170b)

81. For each of the following calendar years, CB Portland's sales and revenues from credit reporting were as follows:

	1967 (000)		1969 (000)	
	No.	\$	No.	\$
Total	468	608	436	656
Credit	467	604	435	652
Personnel	1	4	1	4

(CX 170b)

82. Starting in 1966, the Board of Directors of CB Portland began to study various methods of computerizing the credit bureau, but by 1970 had concluded that it could not afford to automate the bureau, either by itself or on a cooperative basis with other independent credit bureaus, and that it lacked the managerial capability to operate an automated credit bureau. (Winthrop 5627-28; Huygens 5869-71; RX 84)

83. In the spring of 1970, James Huygens, then president of CB Portland, contacted a representative of CB West Coast in Salem, Oregon, which had been acquired by respondent, to discuss and inspect CB West Coast's computerized credit reporting system. (Huygens 5883-84; Aitken 10,727, 10,842-843) After a series of meetings with respondent's representatives, the CB Portland Board recommended that the credit reporting assets of the bureau be sold

to respondent. (Winthrop 5627-31; Huygens 5885-86; Aitken 10,727-733; Rutherford 13,281-289) On January 2, [28] 1971, the bureau's credit reporting assets, including its credit files, equipment and fixtures, were sold to respondent for \$65,000 in cash and a promissory note with principal and interest totalling \$260,000, or a total purchase price of \$325,000. The purchase agreement expressly provided that these assets cannot be sold to any other company without the consent of Retail Credit Association of Portland, which continues in existence as a merchants' trade association. (Rotenberg 5583; Winthrop 5630-31; Huygens 5852-54, 5888-89; Rutherford 13,121-122; CX 459)

III. THE CREDIT REPORTING INDUSTRY

84. The Retail Credit Company, with its subsidiaries, is engaged in the business of gathering and reporting information on individuals and on commercial organizations to businesses for credit, insurance, claim, employment and marketing purposes. (Rutherford 13,017-018; CX 117c; CX 167b-c; CX 363z20, z37a; CX 622b) Within this overall industry are a number of submarkets, which will be discussed below. Credit reporting is a separate line of service from other types of business reporting. (Rutherford 13,390-391; JX Rutherford Dep. 61)

A. Credit Reports

85. Credit reports on individuals are used by credit grantors for the purpose of making decisions regarding the extension, continuance or financial settlement of credit to those individuals. (CX 117a; CX 142h-i; Crowley 388; Brund 1102)

86. A credit grantor is a firm or individual which extends credit to its customers in the conduct of its business. Credit grantors include retail merchants, banks and other financial institutions, oil companies, travel and entertainment card companies ("T&E" companies), and professionals. (F. Smith 346-47; Kopriva 477; Spafford 8882-83)

87. Credit reports include in-file and updated consumer reports, mortgage reports, tenant reports, trade and employment reports and character reports. (Pinger 1270; Daussin 1367, 1497-98; Rutherford 13,503, 13,662, 13,669-72; CX 30; CX 64; CX 354e) [29]

88. Credit reports generally contain four basic types of information: identification of the subject (*e.g.*, name, address, and marital status), employment history, trade data and public record data (*e.g.*, judgments and bankruptcies). (Daussin 1367; 1497-98; Pinger 6920;

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Spafford 8891-92) Credit reports sold by RCC, RCA and CBI contain this information. (CX 30, pp. 9, 13, 21, 24; CX 64h; RX 22; RX 227; RX 228)

89. Credit reports prepared by credit reporting agencies (see complaint par. 1(a)) are usually in-file (based on pay habit or trade and other information already in the files of the firm making the report) or updated reports (where data in the files of the credit reporting agency is further updated or verified by phone or mail at the time the report is made). (Daussin 1409; Tamalis 2726; Rutherford 3847-49; McGregor 5839; Jensen 6427; Chilton 8669-70; Sasser 9287) Reports may also be produced through verification of information contained in a credit application. (McGregor 5836-37; Rutherford 13,719)

90. Credit reports may also be based upon information developed by a credit investigatory agency. These reports focus more on the reputation and character of the applicant than on his credit history, and may be developed through field investigation, including personal interviews. (Daussin 1486-87, 1406; Laurens 1941, 1956; King 3360-61; Rutherford 13, 131) These investigative reports are more expensive than file reports, and require more highly trained and skilled personnel. (Rutherford 13,027, 13,131, 13,080-081) Credit bureaus generally do not engage in field investigation. (Spafford 8892; Sasser 9278)

91. Most credit bureaus sell in-file and updated reports, and will develop credit information on individuals on whom they do not already possess a file. (Julien 560; Daussin 1904; Tamalis 2727; Sasser 9277-78; Rutherford 13,367)

92. Mortgage reports are used to determine whether to make a mortgage loan to an applicant, and are sold to banks, mortgage companies, savings and loan institutions and real estate companies. (Gauss 635-36; Spafford 8891-95; Aitken 10,887-894) [30]

93. Mortgage reports are a type of credit report (Daussin 1498; Jensen 6427; Sasser 9277; Rutherford 13,186), and are produced and sold by credit bureaus. (Gauss 633; T. Smith 1004; Daussin 1496, 1498; Tamalis 2727; King 3360-61; Jensen 6427; Spafford 8895; Sasser 9277; Carey 9475; CX 47c)

94. Mortgage reports prepared by credit bureaus include the same types of information contained in other credit reports, including pay habit data, but are usually more extensive and detailed and include information on income and net worth. (Gauss 634-35; Kopriva 468-69; T. Smith 1005-06, 1047; Tracey 2007; King 3360-61; Jensen 6427-29; Spafford 8885)

95. Credit bureau mortgage reports are based upon information

contained in the credit bureau's files or on the credit application. That information, especially concerning trade accounts and employment, is updated and verified by mail or telephone, including in some cases a telephone conversation with the applicant. References may be contacted as well. (Kopriva 468-69; Daussin 1406; Tamalis 2726-27; King 3360-61; Jensen 6428-29; Chilton 8669-70; Sasser 9287)

96. Mortgage reports prepared by credit reporting agencies are not investigative reports. (Daussin 1406; Spafford 8894)

97. Mortgage reports are more expensive than other credit reports (F. Smith 357-58; Kopriva 469-71; Pinger 6904), are occasionally prepared by distinct employees of the credit bureau (Gauss 634; T. Smith 1046), and may be produced on a special form. (F. Smith 357-58; Kopriva 468-69; T. Smith 1046; Pinger 6904)

98. Credit bureaus compete with RCA in the sale of mortgage reports in a number of areas of the United States. (Homeda 2060; Devers 8356-57; F. 143)

99. Mortgage reports are also prepared by credit investigative agencies. These reports often involve extensive field investigation and are much more expensive than credit bureau mortgage reports. (F. Smith 265-66; King 3360-61) [31]

B. Credit Bureaus

100. Credit bureaus are engaged primarily in the business of selling in-file and updated credit reports. Credit bureaus collect information on the history of repayment of credit by individuals who reside in the service area of the bureau, store it in files, and sell it to credit grantors who use it to evaluate the credit worthiness of consumers to whom they may extend credit. A credit bureau must have a data base containing information on the individuals who reside in the community in which it is located. Some of the information is secured from public record sources; the remainder is acquired from credit grantors, who must be induced to provide it voluntarily. Information from credit grantors must be supplied on a regular basis so that the bureau can keep its files current and up to date. Thus, credit grantors are both suppliers of, and customers for, credit information maintained by credit bureaus. (Erichson 2082; Spafford 9812; White 11,618-621)

101. In order to qualify for membership in Associated Credit Bureaus, Inc., a national trade association, a bureau must maintain files on residents of the area within which it operates, secure the support and use of its services by a number of major and representative credit grantors in all lines of business, and acquire

trade information from a representative cross-section of credit grantors. (Spafford 9812-14; CX 552)

102. In order successfully to operate its business, a credit bureau must sell reports which are complete and accurate, current, promptly available, and reasonably priced. (Laurens 1952; Holden 9156)

103. Credit bureaus are represented by a national trade association, Associated Credit Bureaus, Inc. (ACB). (Kopriva 466, 497; Pinger 1272; Spafford 1586, 8912; CX 624) There is another trade association of credit bureaus known as International Credit Bureau Managers (ICBM). A credit bureau may be a member of both organizations. (Erichson 2235)

104. The precise number of credit bureaus operating in the United States is unknown. In 1970 there were approximately 2,100 credit bureau members of ACB, some of which [32] were under common ownership. In 1973 the number was approximately 2,000. (Spafford 1565) ACB membership grew from 1,893 in 1958 to 2,053 in 1972. (CX 213c) The number of non-ACB bureaus is undetermined. However, CBI had executed service agreements with 285 non-ACB member bureaus as of November 1970, and with 404 such bureaus by January 1974. (RX 282)

105. There has traditionally been only one credit bureau operating in each community. Many credit bureaus are owned by the merchants who use its services. These merchants, preferring to deal with a single source of credit information, have sometimes refused to cooperate with competing credit bureaus, either by purchasing their reports or supplying them with trade information. (See Fs. 190, 197) In January 1975, there were only 17 cities in the United States in which ACB recognized more than one credit bureau member. (CX 624)

C. Credit Report Brokerage Firms

106. In order to expedite and simplify the purchase of credit reports by large credit grantors with regional or national operations, credit report brokerage companies have developed in the credit reporting industry. The largest of these firms in 1970 was Credit Bureau Reports, Inc. (CBR), which has more than 2,000 local credit bureaus under contract. (Erichson 2069; White 11,757-759) Other brokerage firms include Credit Services International (CSI), a division of ACB, and Credit Marketing Services (CMS), a subsidiary of CBI, which was involved in brokering credit reports until January 1973. (Erichson 2082-83; Spafford 8861; White 11,759-764; Rutherford 13,035-039, 13,158-165; CX 547) The brokering procedure is

illustrated as follows. Credit grantors who have contracted with the broker obtain order tickets which they use to request credit reports directly from individual credit bureaus. The local credit bureau then mails the report directly to the credit grantor and periodically forwards the order tickets to the broker for redemption. The broker bills the credit grantor and receives a commission for its services. (Pinger 1227-31; Daussin 1368-70; Erichson 2190-92)

107. ACB, through its coupon system, provides a means for the interchange of credit reports and information among its members. Members buy coupons from the Association, and [33] can use them to pay for credit reports ordered from another member bureau. The bureau receiving the coupon can use it to order a report from another bureau, or can redeem it for cash. (Kopriva 470-74)

D. Point Scoring

108. Point scoring is a method sometimes used by credit grantors in making credit granting decisions. (T. Smith 1034-35; Daussin 1463; Spafford 8826) Credit grantors using a point scoring system can make credit decisions based upon scores derived from varying numerical values assigned to information presented upon a credit application, as determined by the scoring system used. Usually, those applicants who score above a certain point are automatically granted credit; those who score below a certain point are automatically denied credit. Credit reports are ordered on those who fall in the middle range. (T. Smith 1054-55; Brund 1171-72; DeBoer 5366-68; Golding 7110) A few companies rely almost exclusively on point scoring. (Rejmen 7041-44) Others use it only as a screening mechanism to determine which applicants will be rejected without further investigation. (Loeb 1208; Garcia 7167-68, 7247) Still others point score the information found in the credit report. (Huygens 5899-5900) In those instances where it is used, point scoring is generally used in conjunction with, and does not eliminate the need for, credit reports. (Day 776-77; Brund 1171-72; Loeb 1208; Daussin 1464-66; Tamalis 2467-68; DeBoer 5293; Garcia 7247; White 11,728) However, to the extent that point scoring is used in lieu of reports, it reduces the number of credit reports a credit grantor will purchase. (Brund 1141-42; Daussin 1476-79; DeBoer 5370-72, 5374-75; McGregor 5779; Carlson 7001; Rejman 7051; Golding 7120; White 11,731)

E. Trends in the Credit Reporting Industry

(1) Acquisitions

109. Since 1965 there has been a trend in the credit reporting

industry toward acquisitions of credit bureaus, primarily by a few large companies. (Erichson 2111-13; Spafford 8895-96; CX 168c) As a result, a number of [34] regional credit bureau chains emerged in the late 1960's and early 1970's.

110. In 1965, CBI owned 35 credit bureaus, located mainly in the southeastern part of the United States. CB West Coast owned about 32 bureaus, located mainly in the States of Oregon, Idaho and Washington. Chilton Corporation owned 30 credit bureaus, located mainly in the Southwest. Credit Data Corporation owned three bureaus in 1965; in Detroit, Michigan, San Francisco and Los Angeles, California. (F. 17; CX 38; CX 219d; CX 363z16; Gauss 574-75, 604-05)

111. From 1965 to 1969, CBI acquired 27 credit bureaus, including the Atlanta credit bureau and others in the Southeast, Northeast and New Jersey. In 1970, RCC acquired the entire CB West Coast chain of credit bureaus, which had itself expanded from about 32 bureaus to 43 bureaus during the period 1965-1969. In 1970, RCC also acquired CBDC and 10 other credit bureaus, and in January 1971, it acquired CB Portland. (F. 17, 42, 65, 77, 83; Appendix A)

112. Chilton Corporation ("Chilton") which became a publicly-owned corporation in 1968, acquired the credit bureaus in Boston, Massachusetts, New Orleans, Louisiana, and Denver, Colorado, among others, in 1969 and 1970. At the end of 1970, Chilton owned a total of 36 credit bureaus. (CX 219b, d; Chilton 8583, 8596; RX 13, p. 17) Chilton has not entered, except by an acquisition, an area not contiguous to one of its existing markets. It has a company policy against direct entry as a method of entering new markets. (Chilton 8596-98)

113. Credit Data Corporation, which became the TRW Credit Data Division ("TRW Credit Data") in 1969, entered directly into the New York, New York, San Diego, California, Syracuse, New York, Sacramento, California, and Chicago, Illinois areas by opening offices in those cities during the period 1967 to 1970. It also leased the credit files of a credit bureau in Buffalo and the Garden State Credit Bureau in New Jersey. (Gauss 577-78; Day 688, 699-700; Holly 6184, 6194-96)

114. Trans Union Systems Corporation ("Trans Union," formerly Union Tank Car Corp.) entered the credit bureau business in October 1968 by the acquisition of the Credit [35] Bureau of Cook County, Illinois. (Devers 6666-70) Since that time, Trans Union has acquired credit bureaus in St. Louis, Missouri, Philadelphia, Pennsylvania, Louisville, Kentucky, Trenton, New Jersey, Bucks County, Pennsylvania, New York, New York, Los Angeles, Califor-

nia and San Diego, California. The bureaus in Philadelphia, Louisville, New York and San Diego were merchant-owned. (Devers 6666-70, 6685, 6725, 6728, 6736, 6740, 6751-52, 7467, 7591)

115. Since its initial entry by acquisition in October 1968, Trans Union has not considered entering any credit reporting market directly without first acquiring the credit bureau located in the principal city in that market. It is Trans Union's view that direct entry into a new credit reporting market is not economically feasible. (Devers 6765-69, 7445-55, 7475-77)

116. Computing & Software Corporation (later Cordura Corporation) acquired Computer Credit Corporation in 1967, the Retail Merchants Credit Association of Los Angeles, California in 1969, the Credit Bureau of Western Orange County in October 1969, the Credit Bureau of Northern Orange County in December 1972, and offered to purchase the Credit Bureau of Pittsburgh, Pennsylvania. (Sasser 9182-84, 9198-99, 9230-32, 9288-90) Cordura Corporation's Los Angeles operations were acquired by Trans Union in 1974. (Devers 6740)

117. During 1972, Computing & Software considered entering directly into the marketing of consumer credit reports in northern California, but rejected this approach because there was "little probability of getting a decent return" on investment, since two automated credit bureaus were already in operation. (Sasser 9227-29)

118. Associated Credit Services, Inc. ("ACS"), formerly the Credit Bureau of Greater Houston, acquired credit bureaus in Corpus Christi, Galveston, Alice, and Texas City, Texas, during the period 1971-1973, and offered to purchase other bureaus as and when they became available for purchase. ACS never entered, or attempted to enter, a credit reporting market in direct competition with the credit bureau operating there during the period 1970-1974. (Pinger 1224, 1267, 1294-98) [36]

119. There are substantial barriers to entry into credit reporting. They include the need for support and cooperation of merchants and other credit grantors, adequate file information, experience in the credit reporting industry, sufficient capital, ability to offer competitive prices and services and, in certain markets, computer technology. (Crowley 413, 431; Kopriva 490-91; Gauss 604-06; Day 683; T. Smith 1051; Loeb 1200; Pinger 1260, 1297-1298; Laurens 1951-1952; Tracey 2018-19; Davis 5457, 5459; Huygens 5892-94; Holden 9123-27)

120. Competition between or among credit bureaus located in the same communities or metropolitan areas has resulted in improved service and lower cost to credit grantors. (F. Smith 348; Crowley 425-

26; Kopriva 496-97; Gauss 625; T. Smith 1035, 1042-43, 1077; Brund 1167-68) Competition is one factor taken into account by credit bureaus in determining their prices. (F. Smith 348; T. Smith 1077; Devers 8110) The possibility of new entry into a bureau's trade area has encouraged that bureau to improve its services and prices. (T. Smith 1010, 1035, 1048-49; Chilton 8502)

(2) The Development of Computerized Credit Reporting

121. The middle and late 1960's saw the development and increasing implementation of computerized credit reporting services by a number of firms in the credit reporting industry. Automation of credit reporting has accompanied the automation of accounts receivable files by large credit grantors, such as banks, finance companies, oil companies and large retail stores. (Spafford 8818; White 11,200, 11,202; CX 180, pp. 2, 6-9) Retail Credit, TRW Credit Data, Chilton, Trans Union and ACS have some portion of their credit reporting operation computerized at the present time. (Gauss 633; Daussin 1390; White 11,152-153) Other credit bureaus have computerized their credit reporting operations by means of automation service contracts. (F. 131-132)

122. Credit reports produced from computerized or automated files are a fast growing segment of the credit reporting industry. Sales of credit reports based on automated files have increased dramatically since 1970. [37] During 1971, the dollar volume of in-file and updated credit reports based on computerized files sold by credit bureaus owned and serviced by companies offering computerized credit reporting services, in the United States, was about \$26.8 million. By the end of 1973, this dollar volume had risen to about \$61.7 million, an increase of more than 100 percent in two years. (RX 376 *in camera*)

123. Computerization has generally resulted in improved speed of service, lower cost of service, and increased accuracy and currency of information, and has enabled bureaus to expand the geographic coverage of their data base. (T. Smith 1058-59; Brund 1151-52; Pinger 1305-06; Chilton 8502-04; Spafford 8818-22)

124. Development of a computerized credit reporting system was first undertaken in 1963-1964 by Hughes Dynamics in Los Angeles, California. Hughes Dynamics had acquired Consumer Credit Corporation and partially automated the bureau before being required to sell it back to its original owner. (Rutherford 13,417-418, 13,673) This development was followed in 1965 by the inception of an automated credit reporting system operated by Credit Data Corporation (CDC)

in the Los Angeles, California area. (Gauss 603-04; Jensen 6611; CX 455p; RX 10a)

125. By the end of 1967, CDC also operated computerized credit reporting offices in San Francisco, California and New York, New York. (CX 455p; Jensen 6471) Also in 1967, CB West Coast began computerization of its credit reporting services in the San Francisco area. (Aitken 10,850-852; Rutherford 13,266-271; CX 582)

126. ACB, in a joint venture with IBM, Chilton and ACS, begun in 1965, developed a computerized credit reporting system known as CB-360 or "Credipak," which was completed in April 1967 and offered to ACB members during the period 1968-1972. In 1968 the credit bureaus in Dallas and Houston, owned by Chilton and ACS respectively, adopted the system with some modifications and improvements. ACS also used its modified version of the system when it entered into a service contract to computerize the Credit Bureau of Kansas City. The Credit Bureau of Cook County used "Credipak" to begin automation of its files, but terminated its [38] use of the system when the bureau was acquired by Trans Union, which developed its own system. (Devers 6665-67; Pinger 6859, 6985-89; Chilton 8510-13; Spafford 8796-8804; White 11,201-203)

127. By the end of 1969, TRW Credit Data (which had acquired CDC) operated several additional computerized credit bureaus. Chilton and ACS operated computerized credit bureaus in Dallas and Houston, Texas, respectively. During this period, CB West Coast added computerized services in the area surrounding Portland, Oregon. (Gauss 650; Jensen 6471-72, 6603; CX 455m-p, s, u; RX 187; RX 192; Pinger 6859; Chilton 8496, 8627; Aitken 16,851-852; Rutherford 13,272)

128. In January 1967, CBI established an Automation Study Division. Its first step was to determine the economic feasibility of computerizing its largest bureau in terms of volume, Atlanta, with the system proposed for the CB-360 project. It was decided that CBI could not economically computerize its Atlanta bureau alone and that computerization of multiple bureaus on a single system was necessary to achieve efficiency. It was also decided that the CB-360 system could not fulfill CBI's needs, and that CBI would not use the Credipak system. (White 11,199-206, 11,211-213, 11,396-398, 11,423-426, 12,272-275, 12,841-844; CX 178; CX 179; CX 180; CX 181)

129. In respondent's view, an adequate computerized credit reporting system must have the capacity for multi-bureau or remote bureau hookups, use of multiple remote customer terminals, visual display or cathode ray tube (CRT) terminals, automated customer tape input and for a communications network to link remote

bureaus and customers to the central system. (White 11,211-219, 11,389-392, 12,350-353, 12,405-407; Rutherford 13,112; CX 178; CX 179; CX 180; CX 181)

130. In mid-1968 CBI gained access to ACROPAC, the automated credit reporting system being developed by CB West Coast. (F. 61-62) The ACROPAC system, as modified for use by CBI, was completed in July 1970, and CBI commenced installation of the system in Atlanta at that time. CBI's Miami and Orlando bureaus were computerized the next year. (White 11,434-440) [39]

131. The extent of credit bureau computerization was significantly enhanced in 1970 with the development of the computerization or automation service contract. A company with a developed and operational computerized credit reporting system (the "vendor") can contractually undertake, for a fee, to computerize an independent credit bureau through utilization of its software and hardware systems. This permits the contracting credit bureau to provide computerized credit reporting services to its customers without the necessity of developing its own proprietary computerized system. The first service contract was implemented between ACS and the Credit Bureau of Kansas City in 1970. (Pinger 6893-94, 6945; Chilton 8574-77; RX 92; RX 190; RX 202; RX 203)

132. Automation service contracts do not alter the management or operational characteristics of contracting credit bureaus. Bureaus under service contract generally retain control over prices of services, types of services and reports rendered, customers to which services are provided, sources of information, geographic file coverage and expansion and all other management responsibilities. Credit reporting files of the contract bureau are stored in segregated fashion in the memory components of the vendor's computerized system at the location of that system. Generally, these files are not accessible to others than the contract bureau except by separate agreement. Files of the contract bureau, as converted and maintained, remain the property of that bureau and are returned to the contract bureau upon expiration or termination of the service contract. Service contract terms are generally for a period of five years and contract bureaus are free to use other vendors at the expiration of such terms. (Pinger 1241, 6902-03, 6933-34, 6877-81, 6893-94, 6949-52; Devers 7349-55, 8341-43; Chilton 8574-77, 8579-80, 8658-62; Sasser 9257-58, 9299-9300; Holly 5986-88, 6162-63, 6171-75; Jensen 6527-28, 6546-48; White 12,463-468 12,468-472; RX 8; RX 92; RX 170; RX 181 *in camera*; RX 199; RX 202; RX 203; RX 205; RX 206; RX 217)

133. ACS initially provided computerization services pursuant to

service contract in 1970, TRW Credit Data in 1971, Cordura in 1971, Trans Union in 1971, Chilton in 1971, and CBI in 1972. (Jensen 6552-53, 6556-57; Pinger 6945; Devers 7357, 8025-26; Sasser 8313-16, 9199-9202; Chilton [40] 8536-37; White 12,444-447) These companies have competed with each other for service contracts and continue to do so except for Cordura. This competition provides manual credit bureaus with alternative sources for computer services, both at the inception of the initial service contract and at the expiration of original contract terms. (Jensen 6649z41-z42; Devers 6670-72, 7405-11 *in camera*, 7570-72, 7670; Pinger 6880, 6926-27, 6937-43; Chilton 8564-69, 8573; Spafford 8836-40; Sasser 9258-59; White 11,472-487, 11,490; RX 193)

134. Not all credit bureaus are amenable to computerization through service contracts. The level of reporting volume of the particular bureau and data transmission costs, a function of the distance of the bureau from the vendor system, as well as other factors, constitute limitations upon the ability of bureaus economically to computerize. These factors are variable with the result that economic prerequisites for a specific bureau may vary among vendors. In order to computerize by service contract, both the vendor and the contract bureau must have sufficient credit reporting volume to support the cost of the system and service. (Pinger 6877-81; Devers 7432-39, 8358; Chilton 8542-48, 8735-38; Sasser 9321-24, 9331-33, 9338-40; White 11,492-507, 12,465-471; RX 352a-b *in camera*)

IV. THE LOCAL CREDIT REPORTING MARKET

135. The local credit reporting markets in the San Francisco Bay, Washington, D.C., Portland, Oregon, and Tacoma, Washington areas are relevant submarkets for purposes of this proceeding.

136. Local credit reporting is the furnishing of credit information on residents of the community or metropolitan area served by a credit bureau or other credit reporting agency to credit grantors also located within the agency's trade or service area. (See Complaint Pars. 1(a), 8(a); F. Smith 254-55; Daussin 1428; Overholser 2910; King 3322-23; Jensen 6492-93)

137. Credit bureaus produce credit reports for sale in both their local credit reporting market and for sale to credit grantors located in other cities. The vast majority of the credit reporting business of a credit [41] bureau involves sales in its local credit reporting market. Various witnesses estimated the amount of their total credit reporting business accounted for by local credit reporting from 70-75 percent to as high as 95-98 percent. (F. Smith 263-65; Kopriva 501;

Day 715; T. Smith 1032; Pinger 6954; Devers 7650-51; see also CX 41; CX 42; CX 219; CX 481)

A. The San Francisco Bay Area Market

(1) Definition of the market

138. The relevant geographic market for credit reporting in the San Francisco Bay area encompasses the nine counties surrounding the Bay: San Francisco, San Mateo, Santa Clara, Alameda, Marin, Solano, Napa, Sonoma and Contra Costa. Credit Bureau Metro, the local bureau owned by CB West Coast, operated within this area in 1969, primarily in the counties of San Francisco, Santa Clara and Alameda. (F. Smith 264; CX 582; CX 585) Credit Bureau Metro's competitors identified these nine counties as the local credit reporting area. (Kopriva 489; Gauss 582-83, 585) Bay area credit grantors used Credit Bureau Metro and other credit bureaus located in these nine counties to obtain credit reports on residents of those counties. When reports were needed on residents of communities located outside the nine-county area, credit grantors used the credit bureaus located in those communities. (Crowley 395-97; Brund 1112-13; Davis 5482-88)

139. TRW Credit Data (formerly Credit Data Corporation) considered its primary service area in the San Francisco region in 1971 to be the counties of Santa Cruz, Santa Clara, San Mateo, Alameda, Contra Costa, San Francisco and Marin. (CX 384a) TRW Credit Data maintained a limited amount of file information on residents outside this area, but did not consider those areas a part of the Bay area market. It did not compete with local bureaus in those areas for sales of credit reports to local credit grantors. (Holly 6105-06) Mr. Gauss, marketing executive for TRW Credit Data, testified that its San Francisco marketing area in 1969 consisted of a toll-free area encompassing nine counties surrounding the Bay. (Gauss 582-83; see CX 582f) [42]

140. Respondent relies primarily on the hearsay testimony of two Retail Credit officials to support its position that the relevant market consisted of 12 counties in the San Francisco area, including the three additional counties of Santa Cruz, San Benito and Monterey. (Aitken 10,660-662; Rutherford 13,228; see also CX 176h-i) These two witnesses testified that Francis Smith, owner of CB West Coast, told them that the San Francisco bureau maintained credit data on residents of, and sold reports in, the 12-county area. However, these statements are inconsistent with the testimony given by Smith in this proceeding. (F. Smith 264) Moreover, the

relevant market cannot be defined solely by reference to the geographic scope of operations of the acquired company.

(2) Structure of the Market

141. In 1969 and 1970 the two leading competitors in the sale of credit reports in the San Francisco Bay area were Credit Bureau Metro and Credit Data Corporation (subsequently TRW Credit Data). (F. Smith 265; Crowley 388-89; Gauss 589, 595; Brund 1112-13, 1115-16) Other competitors in the market were a number of small credit bureaus operating in various communities within the Bay area. (Crowley 389, 397; Gauss 589, 595; Brund 1112-13; Davis 5532)

142. Retail Credit Company (RCC) and Retailers Commercial Agency (RCA) had offices located in the Bay area in 1969. RCC had branch offices in Oakland, San Francisco, San Jose, San Mateo, Vallejo, Hayward and Gilroy. RCA had branch offices in Oakland, San Jose and San Francisco, and an office or suboffice in Redwood City. (CX 36; CX 37, CX 125d; CX 134b; CX 136a; CX 363z12)

143. RCA sold some credit reports in competition with credit bureaus. It was not a strong competitor of credit bureaus in the sale of credit reports to retail merchants (Gauss 635-36; Brund 1139-40; Davis 5443-49, 5473, 5520), but it did sell updated consumer credit reports and was used by retail merchants as a secondary source of consumer credit information. (McGregor 5835-39; Rutherford 13, 230-231; CX 176k, 1) RCA advertised that it had extensive files on Bay area residents, and its San Francisco office had 400,000 files in 1970. [43] (Rutherford 13,529; CX 125c) RCA also competed with Credit Bureau Metro in the sale of mortgage reports. (Rutherford 13,230-231; CX 176k, 1) Mortgage lenders in the San Francisco area testified that they bought in-file and updated mortgage reports from Credit Bureau Metro and from RCA, using the latter as a secondary or supplementary source. These witnesses indicated that reports of both companies contained comparable information. (Nott 525, 533-40, 543-44; Julien 560-62, 556-58) RCA considered itself to be in competition with credit bureaus, particularly in the sale of reports to savings and loan and other lending institutions. (CX 344; CX 346; CX 347; CX 361r; CX 372a, b; CX 373d; CX 375b)

144. Complaint counsel introduced evidence which purports to show that Credit Bureau Metro accounted for 51 percent of local credit reporting sales in the Bay area market in 1969, Credit Data for 19 percent of sales, and RCA for 2.8 percent of sales in that market. (CPF 206) According to these figures, the four leading firms in the sale of local credit reports in 1969 accounted for 79 percent of the

market, the eight largest firms for 91 percent of the market, and RCA was the seventh largest competitor in the market. (CPF 207)

145. The evidence tendered by complaint counsel is inadequate to support their proposed findings as to the precise market shares of competitors in the San Francisco Bay area in 1969. CX 324, *in camera*, on which complaint counsel place primary reliance, lists total credit reporting sales for the credit bureaus operating in the area. The smaller bureaus were unable to provide estimates of their local sales only. Local reporting figures for those companies were developed by assuming that their local credit reports constituted the same percentage (90 percent) of their total sales as did local reporting sales of Credit Bureau Metro's total sales. (Note accompanying CPF 206) There is no record support for this assumption. Moreover, RCA is not included in CX 324, because it was not a part of the Section 6(b) reports on which CX 324 is based. RCA's local credit reporting sales were derived by applying to RCA's 1969 Bay area total sales (CX 37) that percentage of RCA's national total sales accounted for by local credit reports in 1969. (CX 40) (Notes accompanying CPF 205, 206) There is no basis in the record for concluding that this procedure [44] provided a reliable estimate of RCA's sales of local credit reports in the San Francisco Bay area. The evidence taken as a whole, however, shows that Credit Bureau Metro was the leading firm and, together with CDC, controlled a large share of the San Francisco local credit reporting market in 1969, that the market was a highly concentrated one, and that RCA made relatively insubstantial sales in that market. (F. 141, 143)

146. In 1969 and 1970 there were substantial barriers to entry into credit reporting in the San Francisco Bay area. These barriers included the need for cooperation of the retail merchants, sufficient credit file information, experience in credit reporting, sufficient capital, computer technology and competitive prices and services. (Crowley 412-13, 431; Kopriva 490-91; Brund 1160-61; Davis 5457, 5459)

147. Prior to Retail Credit's acquisition of Credit Bureau Metro, in January 1970, two firms had entered into credit reporting in the Bay area. CDC began competing in the sale of credit reports in the Bay area in 1962 when it opened an office and built what it called a central file of credit information obtained mainly from banks and finance companies. In 1966 it commenced the computerization of its San Francisco files. (Gauss 603-05, 620, 642, 663; RX 10a) CB West Coast entered the market in 1966 and 1967 by acquiring credit bureaus in San Francisco, San Jose and Oakland. Francis Smith,

owner of CB West Coast, consolidated and computerized the operations of these bureaus from 1967 through 1970. (F. 49, 125, 357)

148. Competition between the two computerized bureaus, Credit Bureau Metro and CDC, improved the quality of service, including speed of service and file coverage, and resulted in lower credit reporting costs to credit grantors in the Bay area. (Brund 1132-33, 1167-68; Davis 5513)

(3) Potential Competition

149. Respondent had the capabilities and resources needed to expand its credit bureau operations into new markets. [45]

150. Retail Credit Company, including the parent company and its subsidiaries, Retailers Commercial Agency and Credit Bureau, Inc. of Georgia, was the leading company in the sale of credit reports in the country in 1969 and 1970. (F. 147-150)

151. The estimated 1969 credit reporting sales of the 10 leading firms in the United States were as follows:

[See *In Camera* Findings]

152. The estimated credit reporting sales of the four leading firms in the United States in 1970 were as follows:

[See *In Camera* Findings]

153. If credit bureaus alone are considered, Retail Credit (through CBI) ranked second in total credit reporting sales in 1969, with \$8.4 million, behind [See *In Camera* Findings]. (CX 321 *in camera*) In 1970, Retail Credit acquired CB West Coast and CBDC, which were the fourth and eighth largest firms in the industry, respectively, in 1969 (F. 151); their combined sales would make Retail Credit the largest firm in credit reporting sales by credit bureaus.

154. The 1970 credit reporting sales of the four leading credit bureau firms, including sales of CB West Coast and CBDC with those of CBI on a pro forma basis, were as follows:

[See *In Camera* Findings]

155. Retail Credit Company has been engaged in the production and sale of consumer credit reports since 1899. (F. 2) It acquired RCA in 1934 to expand its credit reporting services. By 1969, the company owned 61 credit bureaus. The firm having the second largest number of credit bureaus in 1969, CB West Coast, owned 43. (F. 17, 42; Appendix A)

156. In 1969, respondent provided nationwide credit reporting coverage through the offices of Retail Credit Company, RCA and CBI. RCC maintained 72 million files on individuals. (CX 364n-o) The company had approximately 1,700 office locations throughout the country that were capable of providing information on individuals. (F. 4) [46]

157. In January 1967 CBI established an automation study division which conducted numerous studies through 1969 regarding computerization of all or part of CBI. (White 11,119; CX 178; CX 179e; CX 180; CX 181; CX 361) CBI decided in 1967 to computerize the majority of its bureaus in the Southeast and in December 1967 it ordered a 360 Model 40 computer from IBM which was delivered in July of 1970. (White 11,403; CX 167g)

158. Respondent gained access to CB West Coast's computerized credit reporting system and the right to bring back to CBI the technical knowledge necessary to operate that system in August 1968, when the company made its initial loan to CB West Coast. (Aitken 10,926; White 11,414-415) CBI's computerization program was greatly accelerated by its working agreement with CB West Coast. (CX 167g) The computerized reporting system was installed by CBI in Atlanta, Georgia in July 1970. (White 11,442)

159. In 1967 Retail Credit began a long-range multimillion dollar investment program to maintain its leadership and increase its share of the credit reporting market. (CX 167j) The company held liquid reserves to finance major credit bureau acquisitions and used such funds for that purpose. (JX Rutherford Dep. 171-72, 197) Retail Credit had adequate capital to invest in building regional credit reporting centers. (CX 168c) The company's financial stability was recognized by credit grantors. (Waterbury 8400; Aitken 10,843)

160. The fact that San Francisco and the other markets at issue in this proceeding were distant from CBI's base of operations in the Southeast does not prevent respondent from being a potential competitor in those areas. Retail Credit is a company with nationwide operations. (F. 156) It was familiar with each of the marketing areas at issue in this proceeding for Retail Credit and RCA offices were already located there. (F. 142, 188, 205, 206, 216) Respondent had attempted through its RCA offices in the 1960's to enter into direct competition with credit bureaus in Tacoma, Washington, Portland, Oregon, and Los Angeles, California, and had acquired a credit bureau in Pomona, California in 1968. (F. 31, 32, 33; Appendix A) In addition, extension of a credit bureau firm's credit reporting operations to a point geographically distant from its [47] existing data bases is not an uncommon occurrence in the credit

reporting industry. For example, CDC made a direct entry into Los Angeles and San Francisco, California from its base of operations in Detroit, Michigan. (Gauss 575) TRW Credit Data subsequently entered a number of cities in other parts of the United States. (F. 163)

161. In some circumstances, credit reporting firms have entered local credit reporting markets directly.

162. Terry Smith, owner of the Seattle Credit Bureau, made direct entry into Everett, Washington in 1970 in competition with a Retail Credit-owned bureau. He was invited to do so by a group of credit grantors who were dissatisfied with the existing level of service and promised their cooperation to the new bureau. (T. Smith 1006-09, 1010-11, 1062-65; CX 164a)

163. Between 1962 and 1970, CDC (later TRW Credit Data) successfully entered directly into credit reporting in seven cities: San Diego, San Francisco, Los Angeles, and Sacramento, California, Chicago, Illinois and New York and Syracuse, New York. In San Diego and Syracuse, CDC competed against merchant-owned credit bureaus. (Gauss 575, 577-78; Day 688, 690, 692-93, 699-701; RX 13, p. 2) Since 1970, TRW Credit Data has made direct entry into a number of additional markets, including Las Vegas and Reno, Nevada, Baltimore, Maryland and Rochester, New York. In Rochester, TRW Credit Data competes with a merchant-owned credit bureau. (Day 689-90, 692; Jensen 6553, 6558)

164. CDC's entry into new markets was aided by its early development of a computerized credit reporting system and its ability to satisfy the needs of credit grantors. It entered the New York City market, for example, when it was invited by a Bank Interchange in 1967 to submit a bid to replace the Interchange's existing manual file with a central automated file. (Jensen 6266-69, 6649z12-z14; RX 102; RX 123b)

165. CDC's entry into San Francisco in 1962 was facilitated by a need on the part of banks in California for a central file to trace the credit history of applicants for credit. CDC was able to satisfy that need by creation of a central file containing credit information from banks and finance companies. (Gauss 603-06, 619-21) [48] In 1965 CDC expanded the central file concept to Los Angeles, using magnetic tapes of credit transactions as the basis of the file. (Gauss 576, 603-05) Entry into Los Angeles was aided by an agreement with the Bank of America for statewide information. (Gauss 603, 621) CDC also purchased a copy of the files of the Los Angeles Retail Merchants Credit Association in 1968. (Jensen 6269-71; Sasser 9181-82, 9193-97; RX 105)

166. An attempt by CDC to enter the Chicago market in the mid-1960's terminated because it did not receive the support of area credit grantors and its volume of sales was insufficient. In 1970, after the merchant-owned Credit Bureau of Cook County was bought by Trans Union, CDC again entered the Chicago market. (Jensen 6610-15) The failure of CDC's first attempt was attributed by the president of Trans Union to three factors: that CDC was at the time a relatively unknown company, its automated credit reporting system was not well developed at that point, and the merchants who owned the local bureau would not cooperate with a new entrant (Devers 7335-36)

167. CDC sustained business losses during the period in which it was entering new credit reporting markets and automating its credit reporting facilities.

168. CDC's total net investment in its operations during the years 1964-1968, in which it entered the San Francisco, Los Angeles, San Diego and New York markets, was approximately \$6.8 million. (RX 120 1-m; RX 124c)

169. CDC's San Francisco offices sustained losses during the fiscal years ending January 31, 1966 and January 31, 1967. (RX 122; RX 123c)

170. From April 1968 to November 1969, CDC incurred approximately \$11 million in losses. (RX 96z6; Jensen 6470-74) Part of that loss was due to CDC's charge card authorization program, which was unrelated to credit reporting (Jensen 6473-74); part is attributable to the cost of conversion from manual to automated credit files in a number of markets. (Jensen 6471-73) File conversion costs are not costs of direct entry, but would also be incurred by a company entering a new market through acquisition of a manual credit bureau (see White 11,384-386). [49]

171. In November 1969, TRW acquired all the stock of CDC. (RX 96; RX 135; see RX 126; Jensen 6457-58, 6466-67)

172. TRW Credit Data suffered a loss in 1969 and 1970. (RX 125a-b *in camera*) It expected its investment in CDC to become profitable in the future (RX 15, p. 30; RX 96z6) and TRW Credit Data was profitable in 1974. (RX 125a *in camera*)

173. In the mid to late 1960's, respondent considered credit reporting to be a growth industry. (CX 167e; CX 197d) It foresaw the impact of computerization on the credit reporting industry, and desired to maintain its position and to expand its share of the market in that industry. (CX 167j; CX 168a, c)

174. Respondent believed that the future of the industry lay in the creation of a regional complex of computerized credit reporting

centers, and desired to have as many regional centers as possible. Retail Credit saw itself in a "race" with its competitors to establish themselves in as many regions as possible. (White 12,363; Rutherford 13,449-450; JX Rutherford Dep. 211)

175. Respondent believed that it was one of a limited number of firms with sufficient capital to build successful regional centers, and thought it could achieve a controlling position in the Northeast and Southeast regions of the United States. (Rutherford 3773-74; CX 168c)

176. Respondent viewed the acquisition of CB West Coast as an extension of the company's credit reporting business into the Pacific Northwest. This extension of services was a consideration in determining whether to acquire CB West Coast and was recognized as an advantage of making the acquisition. (White 12,362; Rutherford 13,570-572, 13,576-577; CX 158b) The company was also aware that the acquisition of CB West Coast would be a significant step towards a regional network and a nationwide system of credit bureaus. (CX 156e; CX 158b)

177. Complaint counsel adduced no reliable evidence which indicates that respondent had special incentives to enter de novo into credit reporting markets on the West Coast, or an interest in doing so, prior to its acquisition of CB West Coast. [50]

178. A firm seeking successfully to enter the San Francisco area credit reporting market would require computer reporting facilities and the cooperation of a substantial number of area credit grantors. (Kopriva 431, 490-91, 499-500; Gauss 605-06, 623-24; Davis 5457-61, 5541)

179. It would have been extremely difficult for a third computerized credit bureau to have entered the market in the San Francisco Bay area in 1969, either de novo or by expansion of existing manual facilities. Two automated credit bureaus, Credit Bureau Metro and CDC, were already operating in the market. (Kopriva 490-93, 499-500; Brund 1161-64; Davis 5457-61, 5505-08, 5524-27, 5539-41) It is unlikely that the Bay area credit grantors would have supported a third automated file. (Brund 1162-63; Davis 5460-61, 5507-08, 5525-27, 5539-41; Sasser 9229) Credit grantors indicated that while they would consider utilizing a new firm which offered significantly lower prices than the existing firms or unique services, a firm which merely duplicated existing services would not succeed. (Gauss 625-27; Brund 1175; Davis 5507, 5512)

180. RCC did not have a fully developed computer reporting capability in 1969. In 1968 RCC gained access to CB West Coast's computerized credit reporting system, labeled ACROPAC, and the

right to bring to CBI the technical knowledge to operate the system. In the fall of that year, CBI personnel were sent to Salem, Oregon to study the system and to determine whether any changes were necessary to fit the system to the needs of CBI. In late 1968 it was thought that the system would be completed to fit CBI's specifications in a short time, and in July 1969 the company considered offering to sell the system to the Boston Credit Bureau. However, the ACROPAC system was not installed in Atlanta until July 1970, though conversion of the Atlanta files began in January 1970. (White 11,421-422, 11,491, 11,431-438, 11,440-443, 12,425, 12,456; CX 629a)

181. Respondent was a potential entrant into the San Francisco Bay area credit reporting market in 1969-1970. However, the record as a whole does not support a conclusion that respondent was a likely potential entrant into the San Francisco Bay market in 1969-1970. [51]

182. Several witnesses identified respondent as one of a number of firms which was capable of entering the San Francisco Bay area credit reporting market in 1969-1970. (Kopriva 492-93; Gauss 607, 613; Brund 1128; see CPF 210) Also identified were TRW Credit Data (Gauss 607), Cordura (Gauss 607), Chilton (Gauss 607; Kopriva 493; Brund 1128), Trans Union (Gauss 607; Davis 5496-97), ACS (Kopriva 493) and Computing & Software (Brund 1128). However, no witness testified that RCC was perceived as a potential entrant in 1969-1970.

183. Respondent was not a perceived potential entrant in the San Francisco Bay area credit reporting market in 1969-1970.

(4) Effects of the Acquisition

184. The record does not support the conclusion that RCC offices in the San Francisco Bay area engaged in significant competition in the local credit reporting market with Credit Bureau Metro, the acquired firm.

185. Competition between RCA and Credit Bureau Metro was eliminated in the San Francisco local credit reporting market as a result of the acquisition of Credit Bureau Metro by Retail Credit. (F. 143) However, the record reflects that RCA's share of the relevant market was very small. (F. 145) Moreover, the competition revealed by this record was largely restricted to the sale of mortgage reports (F. 143), and mortgage reports constituted only a small portion of Credit Bureau Metro's business. (CX 176g) In these circumstances, the acquisition is not deemed to have resulted in elimination of substantial competition in the relevant market.

186. The acquisition of Credit Bureau Metro did not substantially

lessen competition in the relevant market by eliminating respondent as a likely potential entrant. (F. 181)

B. The Portland, Oregon Market

(1) Definition of the Market

187. The relevant geographic market for local credit reporting in the Portland, Oregon area at the time of the acquisition of Credit Bureau Metro, Portland ("CB Metro, [52] Portland," the local CB West Coast bureau) and the Retail Credit Association of Portland, Oregon, Inc. ("CB Portland") included the city of Portland and Washington, Multnomah and Clackamas Counties in Oregon and Clark County in Washington. Portland area credit grantors identified those four counties as their marketing area (Loeb 1194; Laurens 1934; Winthrop 5613; see Rutherford 13,314), and they bought credit reports on residents within that area from CX Portland and from the smaller bureaus located in the four-county area. (Loeb 1194; Laurens 1940; Winthrop 5613-17; Huygens 5862-63; CB 170i) CB Metro, Portland had an office just outside the Portland city limits (the Halsey Street office) in which files from four bureaus located in the nearby towns of Oregon City, Hillsboro, Beaverton and Vancouver, had been consolidated. (Rutherford 13,114) The bulk of its files were on residents of those areas (Smith 333-34; Laurens 1991-92; Winthrop 5617), but it did have files on residents of Portland and the entire surrounding area, and it solicited credit grantors throughout the Portland area. (Laurens 1948; Winthrop 5618-19; CX 171h)

(2) Structure of the Market

188. The only firms producing and selling local credit reports in the Portland market area in 1969 were CB Portland, CB Metro, Portland and RCA. (CX 170k-m; Loeb 1194; Laurens 1940-41) RCC had a branch office in Portland (CX 136e) but there is no evidence that it sold a significant number of consumer credit reports in the local reporting market.

189. RCA did not compete in a significant manner with credit bureaus in the Portland market in 1969. It sold some mortgage reports in addition to insurance reports, but it did not sell credit reports to retail merchants. (F. Smith 338; Loeb 1203; Laurens 1940-43, 1955-58, 1982-83, 1985-87; Rotenberg 5548-49; Winthrop 5620, 5688-89; Huygens 5864-65) CB Portland and CB Metro, Portland sold only a small number of mortgage reports. (CX 170h, CX 171g)

190. Prior to its acquisition by RCC, CB Metro, Portland was the only substantial competitor of CB Portland in the Portland area

credit reporting market. (CX 170k-l) Both bureaus operated in the same geographic area (CX 170i; CX 171h) and maintained overlapping files on some consumers. [53] (Critten 10,742, 10,919-920) Major Portland credit grantors, all of whom were members of CB Portland, testified that they purchased credit reports on residents of the four-county Portland trade area only from CB Portland and not from CB Metro (Loeb 1194; Laurens 1940, 1946; Rotenberg 5548-50; Winthrop 5613; Huygens 5862-64), and that CB Metro did not compete with CB Portland. (Rotenberg 5552-58; Huygens 5860-61) However, CB Metro did sell credit reports on residents of the four-county area, particularly the suburban areas (CX 171h; F. Smith 274; Winthrop 5615, 5617) and it could be used by credit grantors as an alternative source of credit reports on residents of those areas. (Rotenberg 5551-52) CB Metro also attempted, after it failed in its efforts to purchase the Portland bureau, to expand its operations in the city of Portland. (F. Smith 273-74; Lauren 1948, 1963; Winthrop 5618-19) It did not make substantial inroads into CB Portland's business because it failed to win the cooperation of Portland's major credit grantors (F. Smith 273-74; Loeb 1212, 1216; Laurens 1964) and some considered its reports to be inadequate. (Loeb 1216-17; Laurens 1946; Winthrop 5618-19)

191. In 1969 CB Portland accounted for approximately 71.6 percent of identifiable local credit reporting sales in the Portland market; CB Metro, Portland accounted for the remaining 28.4 percent of sales. (CX 332)⁴

192. The Portland local credit reporting market was a highly concentrated one. (F. 191) [54]

193. Significant barriers to entry into the local credit reporting market existed in the Portland, Oregon market in 1969. A company attempting to enter would have needed to know the credit reporting business, to have credit grantor cooperation, to be stable financially, have substantial amount of capital, and be competitive by maintaining accurate file coverage, adequate speed of service, and reasonable prices. (Laurens 1951-52; Winthrop 5675-76; Huygens 5892)

⁴ Complaint counsel's proposed findings allotted to CB Portland 71.8 percent of sales in the relevant market; 27.4 percent to CB Metro, Portland; and 0.8 percent to RCA. (CPF 228) These figures have two serious defects. First, precise credit reporting sales figures for RCA were not available, and their sales were estimated by applying to total sales of the Portland office, the percentage of national sales of RCA accounted for by local credit reports. This procedure cannot provide a reliable estimate of sales in the Portland market. See F. 145. Second, in CPF 228, unlike CX 332, complaint counsel included in local reporting sales, interbureau sales made by the use of ACB coupons. This was done on the theory that the bulk of ACB coupon sales consist of antecedent reports, and that antecedent reports are local reports. (Note accompanying CPF 258) An antecedent report is one prepared by a bureau on a former resident of the community in which the bureau is located for use by a bureau located in the consumer's new place of residence. One witness testified that antecedent reports are not "nonlocal" reports. (Daussin 1453-54) However, antecedent reports do not conform to the definition of local reports found in Paragraph 8(a) of the complaint in this matter, and therefore may not be included in the local market.

(3) Potential Competition

194. In the early 1960's RCA attempted to enter into direct competition with the credit bureaus in Portland. It set up a derogatory file which it hoped would contain information useful to credit grantors but which was not found in the files of the Portland credit bureau. The file was built by obtaining collection accounts from the leading collection agencies in the Portland area, copying public records for the preceding 5-year period, including bankruptcies, judgments and tax liens, and securing from several merchants lists of accounts which had been discharged. Respondent's officials testified that this approach was taken because most Portland merchants refused to give RCA positive trade information. Many credit grantors in the Portland area were solicited by mail to subscribe to the RCA service; no attempt was made to solicit the major Portland merchants who owned CB Portland, because of a belief that such an undertaking would be futile. A charge of \$1 was made for each report, [55] and no charge was assessed if no file existed. (Rutherford 3754-55, 12,968-970, 13,358-360; CX 131; CX 138; CX 139) RCA advertised that it had information on 250,000 Portland residents. (CX 113b) However, an RCC official testified that the file was not profitable because it was not adequately used, and the effort was abandoned after approximately two years. (Rutherford 3757-59, 12,969) No evidence was presented which suggests that RCA continued to sell this kind of derogatory report in 1969 or 1970.

195. Respondent had the capabilities needed to enter into new credit reporting markets, and it was interested in expanding its credit bureau operations. (F. 149-160, 173-175) However, there is no evidence that in 1969 or 1970 respondent had any special incentives to enter the local credit reporting market in Portland, or that it was interested in doing so.

196. I would have been extremely difficult for a company to have entered the Portland local credit reporting market in 1969 or 1970 in competition with CB Portland. (Laurens 1976; Huygens 5894) Credit grantor witnesses, all of whom were members of CB Portland, testified that CB Portland satisfied their need for credit information, and that they would not have cooperated with another credit bureau. (Laurens 1963, 1951-55; Huygens 5894) CB Portland had credit information from all the major merchants in Portland, and the merchants testified that they would rather deal with one central source of credit information than with two competing bureaus. (Loeb 1209-10; Laurens 1968-71; Winthrop 5697, 5703-04; Huygens 5892-93)

197. In the late 1960's, Francis Smith had attempted to increase his share of the credit reporting business in the Portland market, and was largely unsuccessful in getting Portland merchants to give him credit information or to purchase his reports. (F. Smith 273-74; Loeb 1202; Laurens 1963-65) Those merchants who did purchase his reports found them unsatisfactory largely because his files were insufficient, lacking information from the major credit grantors in Portland. (Loeb 1216-17)

198. Respondent was not a likely potential entrant into the Portland local credit reporting market in 1969 or 1970. [56]

199. There is no evidence in the record that RCC was perceived to be a potential entrant in the local credit reporting market in Portland in 1969 or 1970 by credit bureaus or credit grantors operating in that market.

(4) Effects of the Acquisitions

200. As the result of its acquisitions of Credit Bureau Metro, Portland on January 2, 1970, and CB Portland on January 6, 1971, Retail Credit Company accounted for 100 percent of the identifiable sales in the local credit reporting market in Portland. (F. 188, 191)

201. There is no evidence in the record that the acquisition of CB Metro, Portland eliminated substantial actual competition in the relevant market between respondent and the acquired bureau.

202. The record does not support a conclusion that respondent's acquisitions of CB Metro, Portland and CB Portland substantially impaired competition in the relevant market by eliminating respondent as a likely potential entrant into that market.

203. The record as a whole shows that respondent's acquisition of CB Portland eliminated substantial actual competition which had existed between CB Metro, Portland and CB Portland. (F. 190)

C. The Tacoma, Washington Market

(1) Definition of the Market

204. The relevant geographic market for local credit reporting in the Tacoma, Washington area at the time of the acquisition of CB West Coast was Pierce County, Washington, which includes the city of Tacoma. Both suppliers and buyers of credit reports perceived this area to be the relevant geographic market. (Geyer 448-49; T. Smith 1037, 1073; McLeod 1322-23; CX 307h) [57]

(2) Structure of the Market

205. The firms producing and selling local credit reports in the Tacoma market in 1969 and 1970 were the Credit Bureau of Tacoma (CB Tacoma), owned by CB West Coast, and RCA. (Geyer 450; F. Smith 251, 338; McLeod 1323-24)

206. RCC had an office in Tacoma (CX 136f), but there is no evidence that RCC sold a significant number of local credit reports in the Tacoma market in 1969 or 1970.

207. In 1969 and 1970, RCA was the only substantial competitor of CB Tacoma in the sale of local credit reports. Credit grantors testified that they bought verbal in-file credit reports from both RCA and from CB Tacoma, and that both reports contained substantially the same information and served the same purposes. (Geyer 450-454, 457; Loeb 1190-92; McLeod 1324, 1326-29) One credit grantor bought approximately one-half of his credit reports from RCA in 1969 and 1970; another purchased 10 percent of his reports from RCA during those years. (Geyer 457-58; McLeod 1330)

208. RCA became a substantial competitor in the Tacoma credit reporting market in 1963 and 1964 when it set up the Tacoma Derogatory Exchange in its office in that city. The Exchange was a file of derogatory information on consumers, such as bankruptcies and judgments. RCA set up the Exchange in an attempt to acquire a larger share of the consumer credit reporting market at the expense of the local credit bureau, which was believed to have had alienated a large number of credit grantors because it had raised prices and its service was poor. (CX 619) The RCA file was compiled from information secured from the leading collection agencies in Tacoma and by copying legal information for the previous five years. RCA was also able to acquire credit information on personnel stationed at the two military bases in the Tacoma area. RCA intended to add positive trade information to the file as it was used and some credit grantors were solicited to supply trade information to the file. The RCA file was widely advertised among Tacoma credit grantors, with a claim that it contained files on 200,000 (CX 93a) to 250,000 (CX 101c) area consumers. Reports were sold at a low price and no charge was made if no file existed. (Rutherford 12,971-973, 12,975, 3758-60, 13,352-354, 13,649) [58]

209. Donald Rutherford, an executive of RCC, testified that the file was a failure, being more expensive to maintain than it brought in revenues, and that the experiment was abandoned after a few years. (Rutherford 12,974, 12,987; see RX 334) However, it is clear from the record that Tacoma credit grantors continued to use RCA

as a source of consumer credit reports in 1969 and 1970. (F. 207) One Tacoma retailer, for example, switched his business to RCA in 1969 because he felt that the price CB Tacoma was charging for credit reports was too high. (Loeb 1191) Derogatory reports appear to be essentially an abbreviated form of credit report (see CX 461), and RCA's file contained enough trade information in addition to derogatory information to make it useful to credit grantors. (Loeb 1191) RCA continued to have good contacts with the military bases in the areas around Tacoma, and some credit grantors used it to verify rank and employment of military personnel stationed at those bases. (Winthrop 5692) RCA also tended to have more current file information than did CB Tacoma, and was therefore more likely to have information on military personnel. (McLeod 1338, 1342-43) The record refutes respondent's contention that RCA was used exclusively for information on military personnel. Rather, credit grantors tended to use RCA whenever more current information was desired, and as an alternative source of credit reports when a report from CB Tacoma was incomplete. (Geyer 450-51, 454-55; McLeod 1330, 1333; Winthrop 5708-09)

210. The RCA office in Tacoma had total sales of \$66,428 in 1969. (CX 37) Applying to this figure the percentage of RCA's national total sales accounted for by local credit reports in that year (see F. 145), complaint counsel estimated RCA's 1969 sales of local credit reports in Tacoma to be \$32,683, accounting for 10.7 percent of sales in the relevant market. CB Tacoma's sales of \$273,640 would make up the remaining 89.3 percent of local credit reporting sales. (CPF 237)⁵ [59] This method of computation cannot give a reliable estimate of RCA's actual sales of local reports in Tacoma in 1969. (F. 145) However, the record as a whole does support the inference that RCA sales comprised at least 10 percent of total sales made in the relevant market. (F. 207, 209)

(3) Effects of the Acquisition

211. After the acquisition of CB Tacoma by respondent, Retail Credit Company accounted for all of identifiable sales in the Tacoma local credit reporting market. (F. 205, 210)

212. There is no evidence that the acquisition of CB Tacoma eliminated substantial actual competition between that bureau and the RCC office in Tacoma.

213. Substantial actual competition between RCA and CB Tacoma in the sale of local credit reports in the Tacoma market was

⁵ The figures proposed by complaint counsel in CPF 237 have been modified to reflect the elimination of CB Tacoma's interbureau sales from the class of local reports. (See F. 191 n.)

eliminated as a result of the acquisition of CB Tacoma by respondent. (F. 207)

D. The Washington, D.C. Metropolitan Area Market

(1) Definition of the Market

214. The relevant geographic market for local credit reporting in the Washington, D.C. area in 1970 included the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. Both suppliers and buyers of credit reports recognized this area as the relevant geographic market. (CX 7g; CX 33z111; CX 406b; Tracey 2003; Fletcher 2249; Waterbury 8408; Holden 9132-33)

(2) Structure of the Market

215. The primary firms producing and selling local credit reports in the Washington, D.C. market in 1969 were CBDC and Stone's Mercantile Agency (Stone's). Dun & Bradstreet produced and sold commercial credit reports almost exclusively and Hooper-Holmes did not sell in the [60] local credit reporting market. (Tracey 2005-06, 2012; Homeda 2049-50; Fletcher 2253-54)

216. RCC and RCA had offices in the Washington, D.C. market in 1969 and 1970; both had offices in the District of Columbia while RCC also had offices in Silver Spring and Suitland, Maryland and Alexandria, Virginia. (CX 134c; CX 136b, c, f; Complaint and Answer, Par. 11)

217. There is no evidence that the RCC offices in the Washington area sold a significant number of credit reports in competition with CBDC or Stone's.

218. The record as a whole does not support a conclusion that there was significant actual competition in the sale of local credit reports between the RCA office in Washington and either CBDC or Stone's. One former employee of Stone's testified that RCA did sell credit reports in the District of Columbia area. (Tracey 2005) However, another former employee stated his belief that RCA sold credit reports only in conjunction with mortgage loans made by insurance companies to whom RCA sold insurance reports. (Fletcher 2253) Both witnesses testified that they did not consider RCA to be in competition with Stone's. (Tracey 2253; Fletcher 2261) In addition, CBDC's 6(b) report did not list RCA as a competitor in 1967 or 1969. (CX 7i-j) Moreover, Washington area credit grantor witnesses all testified that they did not purchase credit reports from RCA on

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Washington area residents or that they were not familiar with RCA. (Homeda 2052-53, 2061; Waterbury 8406; Holden 9127)

219. CBDC was owned by a small group of local businesses but had a large number (1,000) of subscribers to its services. Four retail firms owned 85 percent of the stock while the remaining 15 percent was scattered among approximately 20 other companies and individuals. (Waterbury 8365-66; CX 7d) Stone's was a privately owned business. (F. 69)

220. Stone's had been the principal competitor of CBDC in selling consumer credit reports until it was acquired by CBDC in 1969. Those two credit bureaus had numerous common customers which bought consumer credit reports from both and had extensive overlapping files on Washington area residents. (Tracey 2012; Homeda 2049; Fletcher 2253, 2256; CX 81c) [61]

221. CBDC had estimated local credit reporting sales of \$1.55 million, or approximately 57 percent of the District of Columbia market in 1969. (CX 39c; CX 379h)⁶ Stone's had sales of \$1.18 million, or approximately 43 percent of sales in the relevant market. (CX 39d)⁷

222. The District of Columbia local credit reporting market was a highly concentrated one. After December 1, 1969, when CBDC purchased Stone's Mercantile Agency, it accounted for all of identifiable sales in the local credit reporting market. (F. 218, 221)

223. In 1969 and 1970, significant barriers to entry into the local credit reporting market existed in the Washington, D.C. area. A company would have needed the following capabilities to enter that market: substantial capital, experienced personnel, extensive credit information, the good will and cooperation of the merchants or credit grantors, and ability to offer reporting services at reasonable prices. (Tracey 2018-19; Homeda 2056; Holden 9123-25) [62]

(3) Potential Competition

224. The record as a whole shows that respondent Retail Credit

⁶ CX 379 is not contained in the official binder of exhibits of this proceeding. However, it was marked for identification, and it appears from the record, although the ruling is not explicit, that it was in fact admitted into evidence. (Tr. 91-92) It was cited by both complaint counsel and respondent in their proposed findings and reply briefs, and has been considered, insofar as is herein indicated, in the preparation of these findings.

⁷ Complaint counsel's proposed findings allotted \$1.67 million in sales and 57 percent of the market to CBDC; \$1.19 million in sales or 41 percent of the market to Stone's; and \$57,017 in sales or 2 percent of the market to RCA. (CPF 218) These findings are questionable for two reasons. First, complaint counsel's proposed finding improperly counted interbureau sales as local sales. (See F. 191 n.) In the above finding, those reports have been deleted from CBDC's and Stone's local sales figures. Second, the figure for RCA was derived by applying RCA's nationwide percentage of sales of local credit reports (CX 46) to the Washington office's actual sales of \$115,889. (CX 37) This method of estimating RCA's market share cannot be deemed reliable where other evidence in the record indicates that RCA's sales of credit reports in the local market were in fact minimal. (F. 145)

Company was one of a limited number of potential entrants into the Washington, D.C. market.

225. RCC had the capabilities and resources to enter the Washington, D.C. market de novo. (F. 149-160) In addition to its interest in expanding its credit reporting activities generally (F. 173-175), RCC also had particular incentives to enter that market.

226. From 1966 through 1969, RCC acquired eight credit bureaus in Connecticut, Massachusetts, New Jersey and New York with combined 1970 revenues of \$1.2 million. (CX 379f)* The ownership of these bureaus, particularly the Credit Bureau of Central New Jersey with 1967 credit reporting revenues in excess of \$500,000, was viewed as having placed RCC in a "key position" in the Middle Atlantic states. (CX 167f; CX 284e)

227. Respondent desired to "control" credit reporting in the Northeast region of the United States, and thought that it had the capacity to do so. (CX 168c) When the CBDC became available for acquisition, respondent recognized that CBDC was in a strategic location in relation to other operations of CBI. (CX 81c) Entry into Washington was viewed as having strengthened respondent's mid-Atlantic position in credit reporting. (CX 167f) The acquisition of the Washington data base was believed necessary to bring computerization to its manual credit bureaus then operating in the northeastern section of the country, for revenues generated from the Washington data base would support computerization of the New England-New Jersey [63] bureaus. (White 11,579-580) Although the fact of respondent's acquisition of CBDC does not in itself make respondent a potential entrant, this evidence of ready recognition of important advantages, together with other evidence in the record, establishes the fact that the Washington, D.C. market offered special incentives to respondent.

228. Credit grantors testified that it would have been difficult for a new entrant into the Washington, D.C. credit reporting market to have established a file competitive with the 2 million numbered files of CBDC without the cooperation of the merchant owners of CBDC (Homeda 2062; Waterbury 8402, 8405-06, 8459-60; Holden 9123-24, 9126-27); and that even non-member stores would be unlikely to incur the expense of providing credit information to a new bureau when it would be some time before enough information was amassed to constitute a file usable by them. (Holden 9123-24, 9127) However, the record does not support the inference that creation of a

* CX 379 is not contained in the official binder of exhibits of this proceeding. However, it was marked for identification, and it appears from the record, although the ruling is not explicit, that it was in fact admitted into evidence. (Tr. 91-92) It was cited by both complaint counsel and respondent in their proposed findings and reply briefs, and has been considered, insofar as is herein indicated, in the preparation of these findings.

competing bureau would have been unduly difficult. Only four firms in Washington had a substantial interest in CBDC (F. 68); the remaining 21 shareholders to CBDC had only a nominal interest in the bureau. (Waterbury 8420) The bulk of subscribers to CBDC had no financial interest in the bureau. (Waterbury 4819) These stores would not have been acting contrary to their own interests by supporting a new entrant, and might have cooperated with a new firm. (Waterbury 8430-31; Holden 9154) This is particularly so since at least some customers, particularly banks, were dissatisfied with the service they were receiving from the existing credit bureaus. (Homeda 2055; Holden 9141) Cooperation of the major shareholders in CBDC was not essential to creation of a competing file; those four stores constituted only 5-15 percent of the information in CBDC's files, and all bureau stockholders combined accounted for only 10 percent of the bureau's reporting volume. (Waterbury 8454, 8459; CX 81a)

229. Moreover, Stone's thrived for years as a stable competitor to CBDC, despite the fact that its files were more limited than those of CBDC (Holden 9159) and that some large District of Columbia merchants refused to give it credit information. (Tracey 2031; Fletcher 2258-62) Most large merchants, however, did give credit information to Stone's as well as to CBDC (Tracey 2011; Fletcher 2262) and many bought reports from both bureaus. (Tracey 2012) [64]

230. There is no evidence that RCC was perceived as a potential entrant into the Washington, D.C. credit reporting market in 1969 or 1970 by firms operating in that market.

(4) Effects of Acquisition

231. There is no evidence that the acquisition of CBDC by respondent eliminated significant actual competition between that firm and local RCC and RCA offices in the sale of local credit reports in the Washington, D.C. market.

232. The acquisition of CBDC by respondent eliminated respondent as a likely potential entrant into the local credit reporting market in the Washington, D.C. area. (F. 224)

E. Other Geographic Markets

233. In their "Response to the Administrative Law Judge's Directive to Define Geographic Areas in Which Anticompetitive Effects Have Taken Place," complaint counsel stated that Salem, Oregon, Eugene, Oregon and Boise, Idaho were additional relevant

local credit reporting markets. However, complaint counsel made little effort to prove the existence of such markets at trial and have abandoned them in their proposed findings. No evidence was offered to show the existence of substantial competition between the bureaus in those areas and RCA or RCC offices in the sale of local credit reports in 1969. No evidence was offered to show that respondent was an actual or perceived potential entrant into any of those markets.

234. Complaint counsel have in their proposed findings attempted to substitute for Salem, Oregon, Eugene, Oregon and Boise, Idaho, a series of local markets defined as "each community in which [CB West Coast] had an office" and "the area surrounding each such community." (CPF 238) These proposed markets (CPF 238-241) will be disregarded because they were not defined in the complaint or in complaint counsel's later delineation of relevant geographic markets. (See F. 233) Moreover, there is no evidence that either RCA or RCC was a significant actual competitor [65] of the acquired bureaus or a likely potential entrant in any of the proposed markets in the Pacific Northwest.

F. Other Effects

235. Substitution of respondent for the acquired credit reporting firms in the Portland, Oregon, Tacoma, Washington and Washington, D.C. markets significantly raised barriers to entry in those markets. Respondent is a national chain possessing far greater resources than the acquired bureaus. (F. 17, 150-156) Since the acquisitions, respondent has integrated the acquired bureaus into its system of regional computerized credit reporting centers. (F. 19) A new entrant into these areas would therefore need substantially greater resources to compete effectively than would be the case but for the acquisitions.

236. The record does not show that the acquisitions challenged here encouraged further mergers and acquisitions in the credit reporting industry. (See Chilton 8588-90, 8693-94)

V. THE NATIONAL ACCOUNT SALES MARKET

A. The "Non-Local" Market

237. The "non-local" credit reporting market, as defined in Paragraph 8 of the complaint, is not a relevant submarket for the purposes of this proceeding.

238. The use of the term "non-local" to refer to reports sold to credit grantors not located in the same geographic area as the credit

bureau producing the report appears to have originated with Credit Bureau Reports, Inc. (CBR). (Overholser 2920) The term is not generally recognized in the credit reporting industry or by credit grantors as one which denotes a separate service market. (F. Smith 360; Kopriva 503; Gauss 660-61; T. Smith 1052; Brund 1151; Pinger 1308-09, 1312, 6955-66; Laurens 1976-77; Winthrop 5642; Carlson 7005-09; Chilton 8744-46; Spafford 8831-32, 8857-61; Rutherford 13,041-042) More widespread is the use of the term "foreign reports" to refer to reports sold to or purchased from a credit reporting firm in another locality. Foreign reports would include antecedent reports. [66] (See F. 191 n.; Brund 1104; Pinger 1312; Laurens 1976-77; Overholser 2920; Holly 6168-69)

239. A credit grantor may obtain a consumer credit report upon an applicant residing in another city or locality in several ways. First, the report may be obtained directly from the credit reporting company possessing a data base encompassing the applicant, generally by means of telephone, letter, or computer teletype terminal. Second, the credit grantor may obtain the report by requesting it from a local credit bureau in its own city, which can obtain the report from the producer in another city by means of a coupon system operated by ACB, a trade association and, in turn, deliver it to the requesting credit grantor. Third, the credit grantor could utilize the services of a broker, such as CBR, Credit Services International (CSI, a subsidiary of ACB), CMS and others, which, for a fee, will take the request from the credit grantor and transmit it to a producer possessing the necessary data base, the producer transmitting the appropriate report directly to the requesting credit grantor. Under a brokerage system the credit grantor is often provided with a listing of producers by the broker indicating the geographic area for which the broker has determined the reports will be provided by the respective producers, and the credit grantor merely sends a request to the listed producer, receiving back the appropriate report. Brokers such as CBR and CSI do not possess any data base for the production of reports. (Kopriva 470-76; Daussin 1367-69, 1471, 1394-97; Erichson 2069, 2179-80, 2189-92; Holly 6168-71; Jensen 6500-03; Carlson 7005-08, 7014-22, 7024-26, 7034-35; Garcia 7170-77; Devers 7527-34; Chilton 8694-8702, 8723-26, 8601-06, 8529-30; Spafford 8857-66; White 12,576-577; RX 26, pp. 1-4)

240. Whatever the means utilized by a credit grantor to obtain a foreign credit report, the credit report must be prepared by a producer possessing a data base encompassing the location of the applicant. There are no consumer credit reporting companies which produce and sell consumer credit reports upon consumers located in

the numerous trade areas throughout the United States. Rather, each consumer credit reporting company produces and sells consumer credit reports only upon consumers located within the geographic coverage of its data base. Credit grantors, wherever [67] located, can obtain credit reports on a consumer only from the credit reporting firm possessing a data base encompassing that particular consumer. Since usually only one or two credit reporting firms possess the information for a particular geographic area, the number of competing producers for a specific area is very small, while the total number of producers is large. Producers of consumer credit reports compete with each other only to the extent that they possess common geographic coverage. (Erichson 2073-77; Pinger 6980-82; Carlson 7024-26; Garcia 7192, 7264-69, 7277-81; Devers 7439-40, 7696-97; 8303-04; Chilton 8601-06, 8723-26; Spafford 8808-09, 8933-35; Sasser 9253; White 11,674-677, 11,701-705)

241. Brokers of credit reports such as CBR and CSI are not producers of credit reports, but simply provide a means whereby credit grantors can obtain foreign reports from appropriate producers. As brokers, they operate and compete at a different functional level than credit bureaus, which produce and sell credit reports. Thus, credit bureaus do not generally compete with brokers, but use brokers to market their reports to credit grantors located outside their individual service areas. (Daussin 1428-43; Devers 7527-32; Chilton 8601-04; Spafford 8861; White 11,757-762, 12,608-612)

B. The National Account Sales Market

(1) Definition of the Market

242. The credit reporting industry recognizes the sale of credit reports to regional and national credit grantors as a distinct service market, which may be termed national account sales. (See Devers 7528) The national account sales market is a relevant service market for the purposes of this proceeding.

243. Regional and national credit grantors are firms which make credit determinations from credit granting centers responsible for areas of the country broader than the data base or service area of a single credit bureau, [68] which is typically a community or metropolitan area.⁹ Such credit grantors require credit reports on a

⁹ Some sellers of credit reports, including CBR and CSI, use the term "area" as well as "regional and national" to describe credit grantors who commonly purchase reports in more than one local market. In these findings, credit grantors referred to as regional and national shall include those which are referred to by some industry members as area credit grantors. This terminology is consistent with that generally used in the industry. Compare Erichson 2081 (area credit grantor is one with a regular need for reports on people living in an area at least as large as part of one state but not as large as substantially all of a region of the country; regional credit grantor is one with a need for reports over substantially all of a region of the country) with F. Smith 256 (regional credit grantor is one which

(Continued)

regular basis from more than one or several credit bureaus. It is impractical for them to deal with and be billed by a large number of individual bureaus. (Kopriva 474-76; Brund 1104; Erichson 2074-75; Winthrop 5662; McGregor 5795-96; Jensen 6491-92; Carlson 7018-19; Rutherford 13,383, 13,408; CX 82 o; CX 159b-c) At the same time, most individual credit bureaus cannot effectively market their credit reports to regional and national credit grantors located outside their service areas. (T. Smith 1018-19)

244. Regional and national credit grantors which purchase credit reports include oil companies, travel and entertainment card companies, financial institutions, large retail chains, and mail order houses. (Pinger 6915; Spafford 8882-83; White 12,573; CX 260; CX 339 *in camera*; RX 26, p. 2; RX 217z3)

245. Regional and national credit grantors typically purchase written rather than oral credit reports. These credit grantors generally do not require instant access. [69] to credit information on consumers. (Jensen 6503-04, 6507-08, 6649z14-z15; Pinger 6915; Devers 7526)

246. CBR identifies its market as the sale of reports to area, regional and national credit grantors. (Daussin 1363; Erichson 2080, 2209-10) For purposes of defining the scope of its operations in relation to that of the local bureaus under contract with it, CBR terms its market "nonlocal credit reporting." (Erichson 2207-09)

247. Mr. Spafford, president of ACB, identified the sale of credit reports to area, regional and national credit grantors as a separate service market. (Tr. 8865-66, 9001) ACB established a separate subsidiary, Credit Services International (CSI), to sell in competition with CBR and CMS. CSI defines its customers in terms of the number of communities in which they conduct their business, the number of credit reports purchased monthly and whether or not they have "central credit operations." (Pinger 1233; Spafford 8862, 8868-69, 8982; CX 547)

248. Other credit reporting companies also identified the sale of credit reports to regional and national customers as a separate market. One firm, Cordura Corporation, had explicit definitions for regional and national customers similar to those of CSI. (Holly 6176-77; Jensen 6497; Sasser 9326; RX 217q-r, z3)

249. Respondent also recognizes the existence of a separate market for the sale of credit reports to national and regional credit grantors. Mr. Rutherford, executive vice president of Retail Credit,

operates its business in more than one metropolitan area, and requires the services of several bureaus rather than one) and Holly 6176 (a regional credit grantor is one which crosses over local geographic data bases in granting credit). (See Kopriva 474; Pinger 1230; CX 7t; CX 71; CX 26a; CX 80f; CX 189a; CX 300; RX 217q-r, z3)

identified CBR, CSI and CMS as competitors in the sale of credit reports to regional and national credit grantors, which he defined as companies which extend credit over a large geographic area encompassing a number of states or the entire nation. (Tr. 13,373, 13,408) Respondent's corporate documents also identify a separate service market based on the sale of credit reports to regional and national credit grantors. (CX 26; CX 71; CX 169; CX 189; CX 367; CX 370)

250. Credit reports sold to regional and national credit grantors by national brokerage organizations are sold at prices set independently of the price charged by the local bureau making the report. Until recently CBR [70] sold all its reports at a uniform national price, which could be higher or lower than the price normally charged by the credit bureau originating the report. CBR would deduct its commission from the national price, and remit the remainder to the bureau. In the past few years, CBR has allowed its contract bureaus to set the prices at which their reports will be sold, but only a few bureaus have taken advantage of this provision. (Daussin 1428-36; Erichson 2227-29) CSI (as did CMS while it was functioning as a broker) also sets the price at which its reports will be sold nationwide. (T. Smith 1026-27; White 12,617-618) ACB likewise sets the price at which reports are sold through the interbureau coupon system, and this price is sometimes lower than the price a bureau would charge to its local customers. (T. Smith 1060-61) There is price competition in the sale of reports to national accounts at the brokerage level. (RX 28)

251. Individual bureaus normally charge a higher price for out-of-town or foreign reports generally, to reflect higher handling charges. Some bureaus also charge higher prices to out-of-town credit grantors to compensate for the fact that these credit grantors do not contribute to the bureau's data base. (Pinger 1236-37; Fletcher 2264-65; RX 189; RX 207; RX 287) Computerized bureaus, however, often charge their direct terminal customers the same price for reports on all persons residing in an area which is part of the data base stored on a central computer. (Holly 6169-70; Chilton 8605-06)

252. The relevant geographic market for national account sales is the nation as a whole. The customers in this market conduct their businesses regionally or nationally, and have a need for credit reports from large areas of the country. (Erichson 2080-81; Jensen 6491-92; Pinger 6916) CBR and the other brokerage organizations, such as CMS and CSI, market reports on a national basis. (CX 82k;

CX 169a; CX 547) Large direct sellers such as RCC/RCA and Hooper Holmes also market on a national basis. (King 3319; CX 82 o)

(2) Structure of the Market

253. The primary firm engaged in the sale of credit reports to regional and national credit grantors in 1969 and 1970 was CBR. Other companies selling reports to these [71] credit grantors were RCC/RCA, TRW Credit Data, Hooper Holmes, credit bureaus which sold credit reports on residents of their service areas directly to national and regional credit grantors, and a number of independent credit bureaus who acted as brokers to obtain reports from other credit bureaus for sale to regional and national credit grantors through the use of the ACB coupon system. (F. Smith 338; T. Smith 1023-24; Pinger 1240; Daussin 1377, 1387-97, 1469; Erichson 2082-85; King 3318-20; Jensen 6499; Garcia 7169-73, 7190-91; White 12,597; Rutherford 13,414; CX 82 o)

254. CBR is a nonexclusive marketing agent for its approximately 2,000 member local credit bureaus throughout the country. CBR had written contracts with each of its member bureaus committing it to market their credit reports to regional and national credit grantors, and committing the bureaus to produce reports for CBR. Each CBR customer received a directory of member credit bureaus and ordered its reports directly, using CBR order forms, from the bureau possessing a data base covering the locality where the applicant on whom the report was sought resided. The customers were billed by and paid CBR a standard price for each kind of report, and CBR in turn paid its member bureaus a uniform "net price" for the reports. CBR's revenues were based on its commission, which was the difference between the price it charged its customers and the net price it paid to the bureau producing the report. (Pinger 1230-31; Daussin 1368-76; Erichson 2069, 2190-91; RX 26, pp. 1-2)

255. Two other brokerage firms were organized in late 1970. CMS was a wholly-owned subsidiary of CBI, while CSI was a subsidiary of Associated Credit Bureaus, the trade association. These organizations conducted their business in a manner similar to that of CBR. (Erichson 2083, 2102-03; Rutherford 13,159, 13,373; CX 547; see F. 36-39)

256. Individual credit bureaus referred to by the industry as "brokers" also sold credit reports to regional and national credit grantors in 1969 and 1970. Brokering is the use of the ACB interbureau coupon system to obtain credit reports on a systematic basis for national and regional credit grantors from bureaus located outside the territory or trade area covered by the bureau engaged in

brokering. By using ACB coupons the brokers could obtain [72] credit reports from all ACB member bureaus, thereby providing nationwide reporting coverage. Brokers bought reports from other bureaus at the coupon price and then resold the reports to their customers. (F. 107; Daussin 1377; T. Smith 1024; Erichson 2083)

257. In 1969 and 1970, Hooper Holmes prepared and sold its "Credit Index," a form of credit report to regional and national credit grantors. The Index was a computerized file summary of derogatory information on consumers submitted by the credit grantors which were subscribers to the Index. The Index service was geared to large volume users and Hooper Holmes solicited only regional and national companies such as oil companies, book and record clubs and direct mail merchandisers. The Index was used primarily for prescreening of mailing lists, but was also used to evaluate credit applicants. (King 3318-23, 3349; Jensen 6498-6500)

258. Some credit bureaus sold credit reports concerning residents of their service areas directly to national and regional credit grantors. This type of direct selling is becoming more prevalent particularly among the computerized credit bureau chains. These firms often have a separate department, marketing effort or manager responsible for national accounts. (F. Smith 259; Pinger 1234, 1237-38; Holly 6100; Jensen 6497; Devers 7528-29; Chilton 8698-99; White 11,780, 12,575, 12,597-598; CX 80f, h; CX 352b)

259. RCC, in combination with RCA, sold credit reports directly to regional and national credit grantors. (Daussin 1377, 1404; Erichson 2082-85; King 3320; McGregor 5808-09) RCC solicited sales to national and regional credit grantors, but the reports which it sold to those customers were often prepared by RCA. (F. 25; Rutherford 13,783-784; CX 30; CX 64) RCA, in turn, sold to its customers reports prepared by RCC or CBI on applicants residing in areas where RCA did not have an office, and advertised that it was a company with nationwide operations which could secure a report from anywhere in North America. (CX 125; CX 131b; CX 142g) RCC and RCA also jointly published a directory of all their offices to which credit grantors could write for credit information on subjects located in the geographic area of those offices. (CX 52) [73]

260. Companies with computerized credit reporting systems, CBI, TRW Credit Data, ACS, Chilton and Trans Union, have recently begun to use terminals located in customers' offices which can directly access their credit reporting data bases. Under this system, a customer located anywhere in the United States who possesses a terminal can obtain credit reports from any location encompassed in the reporting company's data base. The report is transmitted

electronically to the customer from the company's central computer. (Jullien 565-66; Day 697, 768; Brund 1132-33, 1150; Pinger 1234-35, 1295-96, 1238-40, 6862-65; Jensen 6500-02; Garcia 7168-76; Devers 7527-34; Chilton 8604-06, 8742-44; Aitken 10,675-676, 10,814-818, 10,821-825; White 11,545-557, 11,677-683, 12,099-109)

261. CBI and other computerized credit reporting firms continue to sell credit reports to regional and national credit grantors through CBR. (F. 264; Pinger 1295; Daussin 1437-43; Jensen 6539; CX 82 o; RX 119) CBI also sells reports through CSI. (White 11,761)

262. CBR competes with the other brokerage organizations, CMS and CSI, and with independent bureaus which act as brokers using the ACB coupon system, in the sale of credit reports to regional and national credit grantors. (Daussin 1388; Erichson 2103-04, 2192-2208, 2283-84; RX 26, pp. 7-8) Although direct sellers do not compete directly with brokers, direct sales bypass the brokerage channel and tend to reduce the brokerage volume. (Daussin 1377-78, 1387-97; Erichson 2083-84; Devers 7532; White 12,609-612; CX 82 o; RX 26, pp. 7-8) However, the record shows that the bulk of local credit bureaus do not sell directly to regional and national accounts, relying instead on brokers, primarily on CBR. (F. 264, 270)

263. The record does not contain accurate figures showing the total universe of sales of credit reports to national accounts, the magnitude of direct sales, or the volume of brokered sales made through the use of ACB coupons.

264. CBR was the dominant firm in the national accounts market in 1969 and 1970. CBR's total billings in 1969 were \$17.1 million; in 1970 total billings amounted to \$15.56 million. (Daussin 1419; Erichson 2105) CBI revenues from CBR-brokered sales were \$716,616 in 1969 and \$663,363 in 1970, CBDC's \$291,988 in 1969 and \$323,792 in 1970, CB West [74] Coast's \$533,624 in 1969 and \$434,206 in 1970. CB Portland's 1969 revenues from CBR-brokered sales amounted to \$34,233; its 1970 figures are unavailable. (CX 39c; CX 41b; CX 42b; CX 170b)

265. The other brokerage organizations, CSI and CMS, were not in existence in 1969 and did not operate in 1970. (CX 188; CX 547; CX 548) It is not possible to determine precisely the dollar volume of reports brokered to national accounts through the use of the ACB coupon system. (See CX 213) Complaint counsel estimated such sales to be \$2.6 million in 1970. (CPF Appendix C *in camera*) However, this estimate reflects only the coupon price for these brokered reports, not the price at which they were resold to customers. (CX 213)

266. RCC and RCA made direct credit reporting sales to national accounts in 1969 in the amount of \$4,727,600 and \$1,416,834,

respectively, and sales in 1970 of \$4,854,000 and \$1,311,544, respectively. Neither firm made any sales through CBR or by the use of ACB coupons. (CX 40; CX 43) However, these figures may overstate RCC/RCA sales for two reasons. First, there is evidence that RCC sells to its customers reports which are in fact prepared by RCA. In such cases, RCA bills RCC for the report, and RCC in turn bills its customers. (See, *e.g.*, Rutherford 13,782, 13,784) Such sales could appear in the sales figures of both companies, and therefore be double-counted when sales figures are combined. The record does not reflect to what extent RCA sales are double-counted in the sales figures which appear on CX 40 and CX 43. Second, respondent contends (RRB 22-23) that its sales figures include many services which it sells to regional and national credit grantors which are not credit reports and which do not compete in any way with the reports sold by CBR. It is stated at CX 43b that the figures contained in that document under the heading of updated or revised credit reports encompass all the credit and collection service advertised in RCC's sales brochure entitled "Credit Services," which is found at CX 30. A comparison of CX 30 with CBR's price list (CX 461) shows that many, but not all, of the services listed in CX 30, were also provided by CBR. RCC sells reports such as chattel mortgage checks, credit card pick-up services, property check reports and oil dealer surveys which are not sold by CBR. (CX 30; CX 461) The figures supplied by respondent [75] for credit card pick-up revenues in 1969 and 1970 (CX 43b) have been subtracted from the total figures found at CX 43a to arrive at total national account sales, but the record does not reflect the extent to which other non-competitive services accounted for RCC's total revenues. Also included in sales figures for both RCC and CBR are collection aids such as slow payer and skip and locate reports. (CX 30; CX 461)

267. CBI made direct sales to national accounts in 1969 and 1970 in the amount of \$515,285 and \$521,803, respectively. CB West Coast's direct sales to national accounts in those years amounted to \$664,786 and \$312,199, respectively. CBDC's direct sales for the same years were approximately \$200,000 and \$35,000, respectively. CB Portland made direct sales of \$16,158 in 1969; its 1970 sales are unavailable. (CX 41b; CX 42b; CX 379h;¹⁰ CX 170b) Combined direct sales of RCC, RCA and CBI in 1969 were \$6.67 million, or about 39 percent of CBR total gross billings. 1970 direct sales of RCC, RCA, CBI, and CB West Coast were \$6.99 million, or about 45 percent of

¹⁰ CX379 is not contained in the official binder of exhibits of this proceeding. However, it was marked for identification, and it appears from the record, although the ruling is not explicit, that it was in fact admitted into evidence. (Tr. 91-92) It was cited by both complaint counsel and respondent in their proposed findings and reply briefs, and has been considered, insofar as is herein indicated, in the preparation of these findings.

CBR gross billings. (See F. 264, 266) Addition of CBDC's direct sales for 1970 does not significantly change respondent's sales as a percentage of CBR sales. Total direct sales of the acquired bureaus were \$1,396,229 or about 8.2 percent of CBR billings in 1969, and \$869,002 (excluding sales of CB Portland) or about 5.6 percent of CBR billings in 1970. (See F. 264)

268. Hooper Holmes made sales to national accounts through its Credit Index in the amount of [see *In Camera* Findings].

269. The record does not disclose the volume of direct sales to national accounts made by TRW in 1969 or 1970. Complaint counsel relied on testimony that TRW sells [76] 95 percent of its credit reports within the local service area of its bureaus (Day 715), and applied that percentage to TRW's total credit reporting sales (CX 385 *in camera*) to estimate that company's sales to regional and national credit grantors. However, sales made to credit grantors located outside the reporting bureau's service area counties cannot necessarily be equated with sales to national and regional credit grantors. For one thing, such sales may include sales of antecedent reports. In addition, regional and national credit grantors could purchase reports from credit granting centers located within the geographic service of a local bureau. Such sales would nonetheless be national accounts sales.

270. The president of CBR estimated that all its affiliated bureaus, excluding CBI, made direct sales to national and regional credit grantors in 1970 in the amount of \$6.9 million. (Erichson 2090, 2099, 2119) When CBI's direct sales of \$521,803 (CX 42b) are added to this figure, direct sales by credit bureaus in 1970 can be estimated at \$7,421,803 or about 48 percent of the amount of CBR gross billings. Direct sales to national accounts for RCC, RCA, and all credit bureaus in 1970 can be estimated to be about \$13,992,000 or about 90 percent of the amount of CBR gross billings. (See F. 264, 266)

(3) Effects of the Acquisitions

271. Complaint counsel have failed to prove that the acquisitions which are the subject of this proceeding may substantially lessen competition in the national accounts market by eliminating actual competition between respondent and the acquired bureaus, or between CB Portland and CB Metro Portland. RCC or RCA could compete with the acquired bureaus only insofar as they engaged in the preparation of credit reports on applicants in the acquired firms' geographic areas. (F. 240) There is no evidence that RCC competed directly with any of the acquired bureaus in the production of credit reports (see F. 184, 201, 212, 231); the record shows that RCA

competed to a significant degree only with CB Tacoma. (See F. 186, 201, 213, 231) CB Tacoma did not sell to national accounts directly, but used CBR. (CX 307g) The record does not reflect the extent to which the RCA Tacoma office sold credit reports to regional and national credit grantors. CB Portland and CB Metro, Portland competed with one another, and both made some sales, [77] either directly or through CBR, to national accounts. (CX 170b; CX 171g) However, the volume of sales by these bureaus is too insignificant to have an impact on the structure of the national accounts market, which encompasses the nation as a whole. (F. 252; see CX 170b; CX 171g; CX 307g)

272. Complaint counsel also have failed to prove that the acquisitions challenged in this proceeding may substantially lessen competition in the national accounts market by substantially increasing concentration in that market. Since the record does not contain reliable evidence establishing the universe of reports sold in the market, it is not possible to determine the market shares of the competitors in the market, or changes therein resulting from the challenged acquisitions. Moreover, individual credit bureaus, whether they sell to national accounts directly or through a brokerage system, compete with one another only to the extent to which they compete at the local level in the production of credit reports. Brokers compete directly with one another in the sale of reports in the national accounts market, and it is clear from the record that CBR is by far the dominant broker in the market. (F. 264) Brokers also compete indirectly with direct sales by credit bureaus in the sense that direct sales reduce the broker's commission. The structure of the national accounts market can be determined only by comparing the sales of the brokerage organizations to one another, and of the brokerage organizations to direct sales by credit bureaus and credit bureau chains. The development of new brokerage organizations and the increase in direct sales has pro-competitive effects to the extent that it reduces CBR's domination of the market and provides regional and national credit grantor customers with alternative methods of obtaining credit reports from producing bureaus. It is also to the advantage of the producing bureaus to have alternative methods of marketing their reports. (Erichson 2227-28)

273. In order to compete successfully in the national accounts market, a broker of credit reports must have nationwide reporting coverage, and there exist only a limited number of sources of credit reports for a nationwide reporting system. (Daussin 1416-17, 1513-14; Erichson 2077-78, 2113-15; Rutherford 13,159-161) Complaint counsel argue that the acquisitions made by [78] respondent increase

the chance that it will withdraw its bureaus from CBR, leaving that system with gaps in its reporting coverage and therefore at a substantial competitive disadvantage, or will refuse to cooperate with a new entrant. (CPF 391-393) There is no evidence that respondent intends to withdraw its bureaus from CBR or any other brokerage system; all CBI bureaus continue to sell credit reports through CBR and CSI. (Daussin 1509; White 11,761) This fact does not of course demonstrate that respondent will not withdraw its bureaus from CBR in the future. It has been prohibited by court order from doing so as a result of the litigation between CBR and respondent. *Credit Bureau Reports v. Retail Credit Company*, 385 F. Supp. 780, 797 (S.D. Tex. 1971), *aff'd* 476 F.2d 989 (5th Cir. 1973). When the injunction expires, respondent has the power to withdraw its bureaus, and its doing so would hamper CBR. (Daussin 1408-09, 1413-14; Erichson 2115) However, the record does not show that such withdrawal will effectively destroy CBR, depriving the contract bureaus of their primary means of marketing their reports to regional and national credit grantors. Furthermore, it does not appear that respondent would have any incentive to refuse to sell its reports through CBR or any other broker, for the producing bureau profits from the sale whether it is made directly or through a broker. It is likely that CBI will attempt to increase its direct sales, particularly those made by direct terminal access, but CBR, long the dominant seller in the national accounts sales market, is not entitled to the aid of the antitrust laws to maintain its market position.

VI. LIFE AND HEALTH INSURANCE REPORTING

A. Definition of the Market

274. Life and health insurance reporting is the furnishing of underwriting information to life and health insurance companies for use in determining the desirability of applicants as risks for life or health insurance and as an aid in determining the applicable rates. (Tamalis 2413; Wood 2785; King 3300; Mitchem 3657; CX 579b; CX 622b)

275. Health insurance underwriting is concerned with information regarding morbidity risks, *i.e.* the likelihood of illness or injury to the applicant. Life insurance [79] underwriting is concerned with information regarding mortality risk, *i.e.* the likelihood of early death. (Mitchem 3678-79) Thus, the purpose of a life insurance report is to assess the mortality risk of the applicant, while the purpose of a health insurance report is to assess the morbidity risk of the applicant. (Flory 10,045-048)

276. RCC and other companies produce separate life and health insurance reports, which are generally sold to different companies or to separate departments of the same company. (Tamalis 2411; Mitchem 3673, 3681; Flory 10,065-067, 10,061-062) However, both reports contain similar information. (Tamalis 2415; see Mitchem 3656-57) Life insurance reports contain information on the age, employment, past and current physical condition and family health history, general reputation, drinking and other habits, hazardous occupation or avocation and income and net worth of the applicant. A health insurance report contains the same kind of information, but since health insurance is often intended to replace income lost through illness or disability, more precise information on income and net worth are required. (Tamalis 2411; Alley 9411-13; King 3300)

277. Life insurance companies use actuarial tables and other data in addition to the insurance report in determining whether to sell life insurance to an applicant. (Flory 10,066-067)

278. Life and health insurance reports are sold only to life and health insurance companies, and are not suitable for use by fire and casualty insurance companies. A number of insurance companies sell both life and health insurance; companies do not generally sell life and health and fire and casualty insurance. (Tamalis 2417; Wood 2802; King 3299-3300; Flory 10,062, 10,464)

279. There are a number of types of life and health insurance reports. (Wood 2785; King 3300) RCC, for example, sells three basic types of life insurance reports: regular, special narrative and special service. Health insurance reports, now termed income protection reports, include disability reports, major medical reports and hospitalization reports. (Flory 10,045) Prices for RCC's reports in 1970 ranged from \$4.25 to an hourly rate of up to \$14.50 for more complex reports. (CX 574) [80]

280. Life and health insurance reports are prepared through field investigation, including personal interviews with the applicant and with other sources of information such as neighbors or employers of the applicant. (Wood 2816-19; Alley 9416; Flory 10,375)

281. There is a trend toward the use of less information in life and health insurance reports due in large part to the desire of life and health insurance companies to curtail their rising expenditures for insurance reports. RCC has introduced reports which contain less information and are less costly than regular reports, but which can be used for the same underwriting purposes. (Flory 10,108-109, 10,141-142) These lower cost Streamline and Notification or Report Service (NORS) reports for regular life insurance policies are investigative reports. (Flory 10,108, 10,431) For high volume, low

premium policies such as industrial life or student life, for which regular reports are not generally ordered, RCC has developed a procedure for spot check verification of identity, address and employment or student enrollment of the applicant. These reports are less expensive than even abbreviated regular reports, and may or may not be made through interviews or field investigation. (Flory 10,427-430) The record does not reflect the magnitude of the market for these types of reports or whether credit bureaus could produce them.

282. As the cost of insurance reports has risen, insurance companies have begun increasingly to rely on methods of evaluating the insurability of an applicant other than insurance reports, primarily using reports prepared in-house by employees of the company or information contained in the insurance application or questionnaire. In addition, a number of life and health insurance companies have raised the standard value of a policy below which they will not purchase a report. As a result, the number of reports sold by insurance reporting companies, including respondent, has decreased. (Tamalis 2518; Mitchem 3693-99, 3702, 3713-15; Holloway 9025-30, 9060-63, 9080-81; Alley 9392-9410, 9420-22, 9438; Flory 10,069-079; Burge 10,970-978, 10,987-988; RX 56; RX 341)

283. The record as a whole supports the conclusion that life insurance reports and health insurance reports constitute a single market in spite of certain differences between the two. RCC documents demonstrate that the [81] company generally groups life and health insurance reports into one service market. (CX 23i; CX 24f; CX 25i; CX 82i; CX 96c; CX 363z38; CX 547; CX 610f) In their testimony in this proceeding, officials of RCC's two principal competitors, Hooper Holmes and American Service Bureau, also treated life and health insurance reporting as one market distinct from fire and casualty insurance reporting. (Wood 2788-2800; King 3299-3307)

284. Two recognized industry publications, *Best's Review* and the *National Underwriter*, maintain the distinction between life and health insurance companies on the one hand and fire and casualty insurance companies on the other. (Flory 10,460-461)

285. The ability to provide reports on a nationwide basis is necessary to compete effectively in the life and health insurance reporting market. (Tamalis 2417-18; Wood 2797-98; King 3307)

286. The relevant geographic market with respect to life and health insurance reporting is the nation as a whole. In 1970 the three principal competitors in the market sold life and health insurance

reports on a nationwide basis. (Wood 2897; King 3307-08; CX 47m; CX 82z62)

B. Structure of the Market

287. The three principal competitors in the life and health insurance reporting market in 1970 were Retail Credit Company, Hooper Holmes, Inc. ("Hooper Holmes") and American Service Bureau ("ASB"). (Tamalis 2419; Wood 2794; King 3302; Flory 10,393; CX 82i, z62; CX 96d) Several small companies sold life and health insurance in local or regional geographic areas. (Wood 2796; King 3302, 3307-08; Holloway 9030-31)

288. The record does not contain precise figures for total sales of life and health insurance reports in the United States. Industry witnesses estimated the total universe of sales in 1970 to be \$58 to \$60 million (including in-house reports) and \$53 to \$58 million (excluding in-house reports). (Wood 2794, 2797; King 3305-06) [82]

289. The record does not reflect the precise market shares of the three largest competitors in the life and health insurance reporting market. It is clear from the record, however, that RCC was the dominant company. Individuals familiar with the industry estimated that the shares of the three principal competitors were as follows:

Retail Credit Company	75-85%
American Service Bureau	5-9%
Hooper Holmes, Inc.	5-9%

(Wood 2796; King 3303; CX 23j; CX 24f)

290. The relative market shares of the three leading companies in the market have remained stable for a number of years. (CX 23j; CX 59e; CX 96d; Wood 2796) American Service Bureau failed to significantly increase its share of the market even though its prices were lower than those charged by RCC. (Wood 2799-2800)

291. RCC was considered to be a price leader by both of its principal competitors. Mr. Wood, president of ASB testified: "I would say Retail Credit Company has been the price leader in the inspection business for many years." (Wood 2799) Mr. King, chairman and former president of Hooper Holmes, testified that the "major consideration" in establishing its life-health insurance reporting prices in 1969 and 1970 was "the dominant position of our chief competitor, Retail Credit Company." (King 3306-07)

C. Potential Competition

292. In 1966, CBR announced its intention of entering into life and health insurance reporting. In 1969, it began a detailed study of the insurance reporting industry. (Tamalis 2412, 2420-23)

293. In 1971, CBR conducted a survey of its approximately 2,000 affiliated credit bureaus to determine whether they would be interested in providing specialized reports to insurance companies. Chilton and CBI bureaus did not respond to the questionnaire. Of the 1,890 bureaus which did respond, 70 percent indicated that they would be interested in such a project. (Tamalis 2430-36; CX 308c) [83]

294. In March 1972, CBR began a pilot program using approximately 185 of the 220 CBR credit bureaus in Texas to produce insurance reports for life and health insurance companies. These reports were investigative, but the investigation was to be done by telephone, rather than face to face in the field by existing employees of the credit bureaus. (Tamalis 2449-50, 2495-96, 2506, 2732-35; CX 192; CX 249c-e) The Chilton bureaus in Texas, among others, declined to participate in the project because they felt that credit bureaus should not be involved in investigative reporting. (Tamalis 2735, 2506-07; Chilton 8529-31) Since RCC had no credit bureaus in Texas, it was not invited to participate in the project. (Tamalis 2507; White 11,662-665) With one possible exception, no bureau located in a large metropolitan area participated in the pilot project. (Tamalis 2505-09)

295. The pilot project was terminated in July of 1973, and the effort to sell investigative reports produced by credit bureaus abandoned because it was determined that meaningful sales could not be made of insurance reports prepared by credit bureaus. (Tamalis 2450; 2514-15) The project failed primarily because many insurance companies would not accept reports prepared through telephone investigation, or were satisfied with the service they were receiving from existing companies and saw no reason to change their sources of reports. (Tamalis 2450-51; 2501; 2511-12)

296. Life and health insurance companies will not purchase insurance reports prepared by credit bureaus in the manner attempted by CBR because telephone investigative methods are unacceptable to insurance underwriters who generally require that the applicant be contacted personally (Tamalis 2450-51, 2560-61, 2728-29; Alley 9415-18; Flory 10,375-376; CX 408), and because insurance companies are reluctant to switch from their present sources of reports to new sources which offer them no particular advantage. (Tamalis 2450; Mitchem 3690-92; Alley 9422-24; CX 408) In addition, many credit bureaus are unwilling to engage in

investigative reporting, including insurance reporting. (Tamalis 2495-96, 2498-99, 2509-11; Pinger 6946-47; Chilton 8529-31; see Sasser 8891-95) [84]

297. Credit reports of the kind customarily produced by credit bureaus are not used, and are not generally suitable or adequate for use by life and health insurance companies as a basis for underwriting decisions. (Wood 2816-19, 2843-46; King 3308-12, 3334-36; Mitchem 3666-67, 3690-92; Holloway 9029-23; Alley 9414-15; Flory 10,373-376)

298. A few credit bureaus have sold insurance reports to life and health insurance companies for underwriting purposes. (Tamalis 2428; Overholser 2922) In 1963 Computer Credit Company (CCC) tested selling consumer credit reports to an insurance company for use in underwriting, but the experiment was terminated after a short time when the insurance company determined that the reports were unsuitable for its purposes. CCC made no further efforts to sell its reports to insurance companies. (Sasser 9255-56, 9298-99)

299. In 1969 and 1970, Retail Credit considered CBR to be a potential competitor in the sale of insurance reports. (CX 82 l; CX 159g; CX 400; CX 402) Its bureaus refused to respond to CBR's questionnaire on insurance reporting, for the stated reason that the company did not believe that credit bureau files should be used for any purpose other than credit reporting. (Tamalis 2434, 2458; White 11,661-670, 11,652-659; CX 3; CX 31a, z7; CX 308c; CX 398; CX 399)

300. CBR remains interested in selling credit information to insurance companies for underwriting purposes. (Tamalis 2457-58, 2511, 2520) However, it has abandoned its efforts to involve credit bureaus in investigative insurance reporting and is restricting its efforts to attempts to market traditional consumer credit reports to insurance companies for the purpose of evaluating the persistency of an applicant. Persistency refers to the likelihood that a given policy will remain in force for a specific period of time. CBR believes that credit reports may be useful in predicting the possibility that an applicant will allow his policy to lapse. (Tamalis 2471-72, 2743-44) There is no evidence that credit reports sold for this purpose are competitive with insurance reports sold by credit investigative agencies for use in determining insurability and rate classification. (Compare Complaint Pars. 8c, d, 1c with Pars. 8a, b, 1a) [85]

301. Owners of two credit bureaus testified in this proceeding that they would be interested in selling reports to insurance companies if a program were developed for marketing existing products of the credit bureau to insurance companies. (Pinger 6946-47; Chilton 8679) However, the evidence shows that life and health

insurance companies will not purchase credit reports in lieu of investigative insurance reports. [See *In Camera* Findings]

302. None of the credit bureaus which were acquired by respondent and are the subject of this proceeding engaged in insurance reporting prior to its acquisition, and there is no evidence that any of them would have done so but for the acquisitions. (F. Smith 338-39; CX 7; CX 170; CX 171; CX 176; CX 307)

D. Effects of the Acquisitions

303. The acquired bureaus were not actual or potential competitors of RCC in the sale of life and health insurance reports, either as independent vendors or as parts of a competitive system. On the contrary, the record demonstrates that the acquired bureaus did not produce insurance reports prior to their acquisition (F. 302), that credit bureau reports are not generally suitable for use by insurance companies for underwriting decisions (F. 297), that a recent experiment in marketing insurance reports prepared by credit bureaus was a failure (F. 295), and that insurance companies will not purchase insurance reports prepared by credit bureaus (F. 196). There is a possibility that insurance companies will purchase credit bureau reports for the purpose of predicting persistency, but there is no evidence that such reports would be competitive with insurance reports of the type sold by RCC, Hooper Holmes, and ASB.

304. Since the acquired credit bureaus were not potential competitors in the life and health insurance market and there is no evidence that credit bureaus' files or facilities are of any use to RCC in its insurance reporting functions, it is concluded that complaint counsel have failed to prove that the acquisitions challenged in this proceeding raised or may have raised barriers to entry in the life and health insurance reporting market. [86]

VII. FIRE AND CASUALTY INSURANCE REPORTING

A. Definition of the Market

305. Fire and casualty insurance reporting is the furnishing of underwriting information to fire and casualty insurance companies for the purpose of determining the desirability of applicants as risks for fire and casualty insurance and as an aid to determining the applicable rates. (Nead 2862; CX 597b; CX 622b)

306. Property or fire insurance is written to insure property against the risk of its destruction or liability arising from its use. Automobile or casualty insurance is written to insure a vehicle, and against liability arising from its use. (Flory 10,171-173)

307. The terms "fire and casualty," "property and liability" and "property and casualty" are synonymous for insurance purposes. (Tamalis 2413; Nead 2856; Flory 10,463-464)

308. Insurance reporting is divided into two general categories, life and health insurance reporting (see F. 274-275) and fire and casualty insurance reporting. The basic distinction between the two types of reports is that the first are reports on the individuals to be insured, and the latter are reports on the property to be insured. (Tamalis 2413; Holloway 9057)

309. Both property and casualty insurance reports contain the same types of information: identity, age, occupation, and duties of the applicant, and the physical characteristics of the property being insured. (King 3313; CX 363z38; CX 579b; CX 622b) However, property or fire insurance reports focus on the condition and value of the property being insured, the extent of its fire protection, history of losses on the property, and the potential liability arising from its use. Automobile insurance reports focus on the condition and use of the automobile, the identity of the drivers and their driving habits, the physical and mental condition of the drivers, and the habits and reputation of the applicant. (Wood 2801; Holloway 9014; Bretherick 9348-50, 9369-70; Flory 10,172-173; RX 251; RX 252; RX 253; RX 254; RX 255; RX 256, pp. 4-15) [87]

310. Most fire and casualty insurance reports are investigative reports, based on personal interviews and inspection of the property to be insured. (Nead 2884; King 3336)

311. There are many types of fire and casualty insurance reports. (RX 342; RX 343) RCC's prices for such reports in 1970 ranged from \$4.50 to an hourly rate of up to \$14.50. (CX 575)

312. Fire and casualty insurance reports are sold to fire and casualty insurance companies for the purpose of writing those kinds of insurance, and are not suitable for use in underwriting other kinds of insurance. (Wood 2802-03; Nead 2864-65; King 3312) Fire and property reports are often prepared by different employees of the reporting company, are sold to different insurance companies or to companies which write both types of insurance, and are not interchangeable in terms of use. (Flory 10,174-181, 10,185-186, 10,188-189)

313. The record as a whole supports the conclusion that fire and casualty insurance reporting constitute a single market in spite of certain differences between the two. RCC documents demonstrate that the company generally groups fire and casualty insurance reports into one service market. (CX 23p; CX 24j; CX 25m; CX 96h; CX 363z38; CX 575; CX 610f) An official of RCC's principal

competitor in the fire and casualty insurance reporting market, Hooper Holmes, treated that market as one distinct from life and health insurance reporting. (King 3313-14)

314. Two recognized insurance industry publications, *Best's Review* and the *National Underwriter*, recognize a distinction between fire and casualty insurance companies on the one hand and life and health insurance companies on the other. (Flory 10,461-463, 10,477)

315. Between 1969 and 1973, RCC and other insurance reporting firms experienced a significant decline in the sale of automobile liability insurance reports. (Wood 2802; Holloway 9015-18; Burge 10,994-996; RX 343) RCC's sales of property insurance reports also declined during that period. (RX 342) [88]

316. Several automobile insurance companies have wholly eliminated or substantially reduced their purchases of insurance reports primarily because they have determined that the purchase of such reports is not economically justified and because of sensitivity regarding the notification requirements of the Fair Credit Reporting Act. (Wood 2822-30; Holloway 9014-18, 9069-71; Bretherick 9350-52, 9367-68; Flory 10,217-236, 10,449-451; Burge 11,062-069, 10,995-11,004)

317. In lieu of automobile insurance reports, automobile insurers are relying in making underwriting decisions on state motor vehicle records (MVR) which they purchase either directly from the state or from automobile insurance reporting companies. Insurance companies are also relying more heavily on information contained in the insurance application form. Neither of these methods involves the field investigation and personal interviews found in insurance reports. In addition, some insurance companies are now using their own personnel to make investigative reports. (Nead 2862-64; Holloway 9025-27, 9046, 9069-72; Bretherick 9350-56, 9365-66; Flory 10,237-242, 10,584-586; Burge 10,994-998a, 11,062-069)

318. The reporting companies have reacted to the decline in the sale of fire and casualty insurance reports by attempting to develop less expensive reports. RCC, for example, has marketed abridged reports which contain less information and are therefore less costly than regular reports, but which are still suitable for use for underwriting purposes. These reports are prepared by field investigation, even when the report consists essentially of verification of the information contained in the insurance application. (Flory 10,162-163, 10,202, 10,243-244, 10,452-453; CX 9y; CX 24 o)

319. The relevant geographic market for fire and casualty insurance reporting is the nation as a whole. In 1970, two of the

three leading competitors in the market, RCC and Hooper Holmes, sold fire and casualty insurance reports on a nationwide basis. (Tamalis 2420; Wood 2803; Nead 2876) The third major company, O'Hanlon Reports, Inc., sold fire and casualty insurance reports on less than a nationwide basis, but RCC regarded it as a national competitor in the market. (Tamalis 2420; King 3314; CX 47 o; [89] CX 96 1) General Adjustment Bureau also sold fire and casualty insurance reports on a nationwide basis. (Flory 10,212-214, 10,244; CX 47n; CX 96 1) However, national coverage is not as important in fire and casualty insurance reporting as it is in health and life insurance reporting, though it is of some competitive advantage; small companies can and do compete effectively on a local or regional level. (Tamalis 2418; Wood 2803; Nead 2893-94; King 3315, 3337; Bretherick 9358-59; RX 18; RX 361; see F. 322)

B. Structure of the Market

320. The three principal competitors in the fire and casualty insurance reporting market in 1970 were Retail Credit Company, Hooper Holmes and O'Hanlon Reports, Inc. (Tamalis 2420; King 3313-14) Other companies with national or regional reporting coverage included Commercial Services, Inc., General Adjustment Bureau, Inc., Informative Research, and Henry McCurry. In addition, hundreds of smaller companies competed with the larger companies on a regional or local level. (Tamalis 2418-20; Wood 2801-03; King 3314; 3337; Flory 10,207, 10,244-245; 10,394-395; Holloway 9030-31; RX 18)

321. The record does not reflect precise total sales volume of fire and casualty insurance reports. One industry witness estimated total 1970 sales to be \$95 to \$100 million. (King 3313) Precise market share figures for the competitors in the fire and casualty insurance reporting market are also unavailable. An official of Hooper Holmes estimated that in 1970 RCC accounted for 66-70 percent of the market; Hooper Holmes for 12-14 percent; and O'Hanlon Reports for 7-9 percent. (King 3313-14) Another industry witness estimated that RCC accounted for 55-60 percent of the market. (Holloway 9065)

322. Entry into the fire and casualty reporting business requires trained investigators and the ability to provide accurate information in a reasonably short period of time at a competitive price. A small company can be an effective competitor in local or regional areas, because many insurance companies leave the decision on purchase of reports to local field employees, inspection of the property to be insured may be virtually the only basis of the report, and insurance companies do not require [90] data on an applicant over as extended

a period of time as do health and life insurance companies. (Tamalis 2417-20; Nead 2883, 2894-95; King 3315; Bretherick 9361; Flory 10,244-246)

323. General Adjustment Bureau entered the fire and casualty reporting market with nationwide coverage in 1969. American Service Bureau, a major competitor in the life and health insurance reporting market, expanded its operations into the fire and casualty reporting market in 1971. Its fire and casualty efforts were initially successful, but its sales volume later declined because of a general decrease in the use of insurance reports after the passage of the Fair Credit Reporting Act and because the company has chosen to deemphasize its marketing efforts in this area in favor of other aspects of its business. (Wood 2801-02, 2822; King 3345-46; Flory 10,212-214, 10,244; RX 18, pp. 3-70)

C. Potential Competition

324. There is no evidence that the acquired credit bureaus were potential competitors of RCC in the fire and casualty reporting market. None of the acquired bureaus produced insurance reports at the time of its acquisition. (F. 302) Traditional credit bureau reports are not useful in making fire or casualty underwriting determinations. (Nead 2865-66; Holloway 9045; Bretherick 9356-57) CBR's Texas pilot project (see F. 294-295) did not include fire and casualty insurance reporting, and CBR never attempted to enter that market. (Tamalis 2443-48, 2652-54)

D. Effects of the Acquisitions

325. The acquisition by RCC of the credit bureaus which are the subject of this proceeding had no adverse effect on competition in the fire and casualty insurance reporting market. The acquired bureaus were neither actual nor potential competitors in that market. (F. 324) In addition, complaint counsel have failed to prove that barriers to entry are high in the fire and casualty insurance reporting market (see F. 322-323), or that [91] the acquisition of the credit bureaus raised or may have raised barriers to entry in that market. There is no evidence that the business or facilities of the acquired bureaus relate in any way to respondent's fire and casualty insurance reporting activities.

VIII. PERSONNEL REPORTING

A. Definition of the Market

326. Personnel reports are purchased by employers for the purpose of assessing the qualifications of prospective employees. (Fletcher 2255; Wood 2783; King 3316; Jensen 6446-47; Rutherford 13,339; CX 20b; CX 21e)

327. Personnel reports generally contain information on the identity, education, income, employment history, work and personal reputation, and mode of living of a job applicant. (Fletcher 2254; King 3316; Jensen 6446; CX 20; CX 21e; CX 579b; CX 622b)

328. Personnel reports are investigative reports, requiring current as well as past information on the applicant's employment record, but the extent and depth of the investigation depends on the nature of the position applied for and the company making the report. Information may be obtained by contacting former employers, neighbors, and other references. In-file information is not sufficient for a personnel report, but the investigation can be carried out by telephone. (Fletcher 2254-55; Tamalis 2530; Wood 2782-83; King 3337-39; Jensen 6446; Pinger 6977; Spafford 8892-93; Flory 10,248-250; Rutherford 11,337; CX 20)

329. Some credit bureau firms, including TRW Credit Data and ASC, do not produce personnel reports because they prefer not to engage in investigative reporting. (Kopriva 476; Holly 6098; Jensen 6447; Pinger 6977; Sasser 9288) However, credit reports sold by credit bureaus are sometimes used by customers for employment purposes. (Smith 272; Devers 8331-32)

330. Many credit bureaus sold personnel reports in 1970. (Overholser 2932; King 3316; Burge 3883; Jensen 6447; Spafford 8892-93) These reports could contain credit [92] information plus information on the subject's employment history obtained from previous employers by telephone interview. (Fletcher 2254-55; Overholser 2933) CBR's 1971 survey of its affiliated credit bureaus showed that 85 percent of the responding credit bureaus produced some personnel reports, although these reports generally made up a very small part of the bureaus' total reporting volume. (Tamalis 2531; CX 308j) The record does not reveal the content of these personnel reports, or the extent to which they competed with personnel reports sold by RCC and other national companies.

331. Personnel reports contain different information than do credit reports; they focus on the business or employment background of the job applicant rather than on his credit worthiness. (King 3317) A personnel report could be used as a basis for a credit granting decision, but it would not be the best source of information for that purpose. (Overholser 2932)

332. Prices of personnel reports are generally higher than those

of credit or insurance reports. RCC's prices for a personnel report in 1970 ranged from \$4.25 to \$325.00. Hooper Holmes' reports generally cost from \$7 to \$9. The credit bureaus acquired by Retail Credit charged substantially more for their personnel reports than for their updated credit reports. (King 3316; CX 576; F. 338)

333. Personnel reporting constitutes a separate relevant service market for the purposes of this proceeding. RCC recognizes personnel reporting as a separate service market. (Rutherford 33,390-392; CX 132f) Other witnesses from the credit and personnel reporting industries also treated personnel reporting as a separate service market. (Overholser 2932-33; King 3316; Jensen 6446)

334. In their "Response to the Administrative Law Judge's Directive to Define Geographic Areas in Which Anticompetitive Effects Have Taken Place," complaint counsel contended that the relevant geographic markets for personnel reporting were both the nation as a whole and the seven metropolitan areas which were alleged to be relevant markets for the purposes of local credit [93] reporting. Complaint counsel have failed to prove that the alleged local areas are relevant markets for personnel reporting, or that any anticompetitive effects have occurred therein. The evidence does show that the nation as a whole is an appropriate geographic market for personnel reporting for the purposes of this proceeding. RCC and most of its competitors in the personnel reporting market sell personnel reports on a nationwide basis. (CX 20b; CX 21e; CX 47q; CX 573z43) Credit bureaus, however, sell personnel reports only within local areas, and do not solicit national accounts which require reports from more than one location. (King 3317)

B. Structure of the Market

335. The record does not reflect the precise volume of personnel reports sold in 1970 or the relative market shares of the companies engaged in the sale of such reports. Complaint counsel estimated the volume in 1970 to be between \$32 and \$37 million. This estimate was derived by applying the total sales of RCC, RCA and CBI to the estimate made by the president of Retail Credit in a prior proceeding that RCC had from 35 percent to 40 percent of sales in the market. (CPF 320)

336. The major competitors in the personnel reporting industry in 1970 were RCC, CBR, Dun and Bradstreet, Edris Service Corporation, Fidelfax, Hooper Holmes, Informative Research and Wackenhut. Firms such as Pinkerton and Burns Detective Agency also conducted security investigations of prospective employees. (Overholser 2933; Flory 10,252-255; Burge 11,011) Many credit

bureaus, including those owned by CBI, produced some personnel reports for customers in their local areas. (Tamalis 2531; Overholser 2933; King 3316-17; Burge 3883; CX 42a; CX 308j)

337. In 1970, RCC was the largest company in the sale of personnel reports. (King 3316-17)

338. Francis Smith and an official of Retail Credit denied that the Smith bureaus acquired by respondent produced personnel reports, claiming that at most they sold some consumer credit reports which may have been used for employment purposes. (F. Smith 272, 332; Aitken 10,697-702, [94] 10,869-74) It is clear from the record, however, that the credit bureaus acquired by respondent which are the subject of this proceeding, including those acquired from Smith, produced personnel reports which were distinguishable from, and more expensive than, credit reports, though these reports made up only a small part of the bureaus' business. CBDC, for example, sold 1,959 personnel reports for \$10,195, or for an average price of \$5.20, in 1970. Its updated file reports in that year, on the other hand, sold for an average price of \$1.89. CB West Coast bureaus sold 623 personnel reports in 1970 for \$4,060 or an average price of \$6.52; its updated file reports in that year sold for an average price of \$3.12. CB Portland's sales for 1970 are not available, but in 1969 it sold 1,000 personnel reports at an average price of \$4.50. Its updated file reports in 1969 sold for an average price of \$1.66. (CX 39c; CX 41a; CX 170b, h) The record does not disclose the content of these reports, the customers to whom they were sold, or the extent to which they were competitive with reports sold by respondent.

339. Deriving CB Portland's 1970 sales of personnel reports by applying a weighted average percentage based on its 1967 and 1969 sales of such reports to its 1970 total revenue, complaint counsel estimated that the 1970 total personnel reporting sales of the acquired firms was \$18,400. (CPF 323) These sales amount to .05 to .06 percent of complaint counsel's estimated universe of personnel report sales in 1970. (F. 335) RCC's 1970 sales of personnel reports amounted to \$12,817,000. (CX 43a)

C. Effects of the Acquisition

340. The record does not show that the acquired credit bureaus were direct, actual competitors of RCC in the sale of personnel reports. (F. 338)

341. The record does not show that the acquisition of the credit bureaus which are the subject of this proceeding significantly increased RCC's share of the personnel reporting market or concentration in that market. (F. 339) [95]

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IX. RESPONDENT'S FAILING COMPANY DEFENSE

A. The Financial Condition of CB West Coast

342. In 1968, at the request of Donald Rutherford, then president of RCC's affiliated companies, Arthur Andersen & Company performed an audit of CB West Coast for the calendar year ending December 31, 1967. (Jones 9746-47) Similar audits were performed at the request of RCC for the calendar years ending December 31, 1968 and December 31, 1969. (Jones 9747-54)

343. The audit for the 1967 year showed the financial condition of CB West Coast to be as follows:

1. Current Assets	\$734,451
1(a) Cash	89,453
2. Current Liabilities	3,084,345
2(a) Accounts Payable	747,727
3. Working Capital*	(2,349,894)
4. Long-Term Debt	1,369,215
5. Net Worth**	(1,070,863)
6. Net Profit (Loss)	(1,482,932)
6(a) Operating Profit (Loss)	(1,195,264)

* Working capital is Current Assets less Current Liabilities. (Mintz 8010; Jones 9768)

** Net worth is Total Assets less Total Liabilities. (Jones 9769)

(CX 261c-d)

344. Further, the audit showed that as of December 31, 1967, CB West Coast was unable to pay its bills as they came due as it owed [sic] over \$747,000 in accounts payable, of which more than half were past due, but only had \$89,000 in cash. (Jones 9769; CX 261c) [96]

345. The balance sheet also showed that by the end of December 1967, CB West Coast's debts were secured by substantially all of its assets, including accounts receivables, furniture and fixtures, equipment, cash surrender value on the life insurance of Francis Smith, the unamortized cost of credit reporting for collection, and the credit reporting files for collection. (CX 261g; Jones 9774-74a)

346. Under the terms of the agreement entered into in August 1968 between respondent and CB West Coast, CB West Coast was entitled to loans of up to \$3.5 million, repayable with interest at the rate of 1 percent above the prime rate, in monthly installments until December 1979. In exchange, respondent received a pledge of all CB West Coast's common stock as security for the loan, and an option to acquire that stock in exchange for shares of RCC stock. (F. 62; RX

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237d-f; RX 240; CX 562e) The loan was to be used for debt retirement, operating expenses, trade accounts payable, to pay off loans made by the U.S. National Bank of Oregon, and for completion of the data processing system which CB West Coast was then developing. (RX 237z18; F. Smith 295-96; CX 365i-j)

347. As of December 31, 1969, CB West Coast had received \$3,300,000 under the loan agreement with RCC, and had been able to reduce its current liabilities substantially. However, according to the audit performed for that year by Arthur Andersen & Co., CB West Coast still had current liabilities in excess of its current assets, and its cash on hand was inadequate to satisfy outstanding accounts payable. The audit portrayed the financial condition of CB West Coast as follows:

1. Current Assets	\$803,964
1(a) Cash	110,328
2. Current Liabilities	920,942
2(a) Accounts Payable	349,954
3. Working Capital	(116,978)
4. Long-Term Debt	4,426,163
5. Net Worth	(2,251,009)
6. Net Profit (Loss)	(1,183,101)
6(a) Operating Profit (Loss)	(789,485)
(CX 562b-c)	

[97] 348. By December 31, 1969, CB West Coast had borrowed a total of \$4,275,000 from respondent. (RX 235; Rutherford 13,260) The audit for that year conducted by Arthur Andersen & Co. portrayed the financial condition of the company as follows:

1. Current Assets	\$750,524
1(a) Cash	51,979
2. Current Liabilities	1,113,776
2(a) Accounts Payable	589,839
3. Working Capital	(363,252)
4. Long-Term Debt	5,124,167
5. Net Worth	(3,703,623)
6. Net Profit (Loss)	(1,452,614)
6(a) Operating Profit (Loss)	(847,227)
(RX 235)	

349. Based on his review of these certified financial statements, John D. Jones, certified public accountant and a partner with Arthur

Andersen & Co., who supervised the preparation of CB West Coast's 1967 audited financial statement and reviewed the 1968 and 1969 audited statements, concluded that CB West Coast was insolvent during the years 1967, 1968, and 1969. It was also his opinion that the CB West Coast was a "losing" company during this period since it continually sustained operating losses without reversal and, in particular, had doubled its negative net worth each year. (Jones 9780-94, 9899-9900)

350. Representatives of other companies who reviewed the financial condition of CB West Coast in 1967 and early 1968 in connection with possible purchase thereof also concluded that CB West Coast was insolvent, "in serious financial trouble" and headed towards business failure unless it received a substantial infusion of cash in the magnitude of "several million dollars." (Shea 5211-14; Shalleberger 7808-12, 7874; Mintz 7930-42, 8010; Rogers 9629-32) [98]

351. For at least three years prior to its 1967 fiscal year, CB West Coast had capitalized expenses incurred in the research and development of its computerized credit reporting system. In 1967, and thereafter until its acquisition by respondent in 1970, CB West Coast accounted for such costs by expensing them against current income in the year incurred. In the 1967 financial statement, prior years' research and development expenditures which had been capitalized, were written off and charged against retained earnings. (Briloff 15,291-292, 15,299; CX 261e, h) During that period, either of these approaches was acceptable and in accordance with generally accepted accounting procedures. (Jones 9794-98, 9817, 9924-28, 9939-48; Briloff 15,304-317; RX 235; CX 155; CX 261h; CX 562d)

352. The decision to expense or capitalize research and development costs is determined by the likelihood of their recoverability through future profitable operations. The expensing of CB West Coast's computerization research and development costs was considered warranted and proper under the circumstances by Mr. Jones (see F. 349) in light of the company's considerable debt and his assessment of the improbability that CB West Coast operations would allow recovery of those costs. (Jones 9771-9808, 9975-76)

353. Since 1970, the Financial Accounting Standards Board (associated with the American Institute of Certified Public Accountants) has determined that expensing of research and development costs, rather than capitalization, is the appropriate and acceptable method of accounting treatment. (Jones 9808-10)

354. CB West Coast's losses during the years 1967, 1968 and 1969 were due in large part to the cost of developing and installing its

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computerized credit reporting system and of its acquisition in 1967 of credit bureaus in the San Francisco area. (F. 49; CX 158c; CX 261b; CX 526a; RX 235a)

355. Research and development expenditures associated with CB West Coast's automated credit reporting system were estimated by CB West Coast's management to be as follows:

1964	-	\$ 100,000
1965	-	298,000
1966	-	685,000[99]
1967	-	1,025,000
1968	-	826,000
		619,000 (January
1969	-	through August only)
Total	-	\$3,553,000

(CX 261z21; CX 301b; Briloff 15,291, 15,522-523)

356. Dr. Briloff, an accountant who testified as an expert witness on behalf of complaint counsel, stated that it would have been proper and in accordance with generally accepted accounting principles to capitalize expenditures for the computerized credit reporting system in the years 1967, 1968 and 1969 to the extent that the company could reasonably anticipate that expenditures for the system could be recovered from future revenues to accrue from the use of the system. (Briloff 15,327-330, 15,317-322)

357. Installation of the automated credit reporting system was begun in CB West Coast's San Francisco bureau in 1967 and completed in 1969. During the same period, the company's Portland area operations were computerized. (F. 47; Aitken 10,851-852; Rutherford 13,266-272) In 1968 and 1969, both RCC and CB West Coast anticipated that the company would have future profitable operations, and that RCC would be able to recover its investment in CB West Coast. (Jones 9897-99; CX 51, p. 14; CX 158d; CX 363z41a)

358. If research and development costs of the computerized reporting system had been capitalized in 1967, 1968 and 1969, CB West Coast's financial outlook would not have appeared as bleak as that portrayed in Findings 343-350. Complaint counsel estimated, using the procedures outlined by Dr. Briloff, that if this procedure had been followed, CB West Coast's financial statement would have shown the following approximate amounts:

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	1967	1968	1969*
Net Income (Loss)	(300,000)	(200,000)	(325,000)
Retained Earnings	585,000	382,000	140,000
Total Assets	5,600,000	6,150,000	6,592,000
Total Liabilities	5,000,000	5,750,000	6,434,000
Net Worth	600,000	400,000	158,000

* The full year's EDP expenditures are not stated in the record, although the first eight months' expenditures are. [100] The above amounts for 1969 reflect an estimated annual amount of EDP expenditures of \$928,000, annualized based upon the \$619,000 stated in the record for the first eight months of 1969.

(CPF 453; Briloff 15,357-368)

B. Other Prospective Purchasers

359. In 1967, CB West Coast sought to borrow funds from the United States National Bank of Oregon, which had been its principal source of financing since 1935. CB West Coast had already borrowed \$433,000 from U.S. National, secured by CB West Coast's accounts receivable, a pledge of the equity in the real estate of Beri, Inc., the personal guarantees of Francis Smith and his wife, and a pledge of the equity in the real estate of both CB West Coast and Beri owned by Francis Smith and his wife in support of the guarantees. Although the U.S. National was willing to loan CB West Coast an additional \$75,000, bringing its loan balance up to \$508,000, to meet the company's "most pressing obligations," U.S. National advised CB West Coast that it did not intend to loan it any money beyond this amount. (RX 5; F. Smith 325-31; Bostrack 5276-85, 5293-5308, 5329-32, 5344-46)

360. During 1967 and 1968, CB West Coast made several unsuccessful attempts to secure additional working capital or a merger partner in order to allow the company to continue its automation project. For example, in the latter part of 1967, CB West Coast contacted Title Insurance & Trust Company of Los Angeles, California, to explore the possibility of obtaining financial assistance from it. The trust company was told that CB West Coast had spent in the neighborhood of \$2 million to \$2 1/2 million in automating credit bureaus in the San Francisco Bay area which had drained its working capital and necessitated borrowing from banks, and wanted to obtain from \$2 million to \$2 1/2 million from Title Insurance & Trust to pay off the bank loans, in order to complete the automation of the records in the Bay area, and to provide working capital to continue operations. After reviewing financial data furnished by CB West Coast, a trust company official concluded that it was not likely that Title Insurance & Trust could loan CB West Coast a sum in the neighborhood of \$2 million [101] and get it "repaid in a reasonably

short time out of future earnings." Accordingly, he decided not to make a recommendation to the Title Insurance & Trust Company Board regarding an offer of financial assistance to CB West Coast. (Deatley 5123-34)

361. In 1967 or 1968, Francis Smith also approached the chairman of the board and chief executive officer of Dun & Bradstreet, Inc. ("D&B") to determine if D&B had any interest in acquiring CB West Coast. However, the chairman decided not to make any recommendations to the board regarding possible acquisition of CB West Coast, and Dun & Bradstreet neither offered to purchase CB West Coast nor offered it any financing. (Newman 7778-83)

362. In late 1967 or early 1968, R. Brookings Smith, the owner of the St. Louis credit bureau, requested Kuhn, Loeb and Co. to review the operations of CB West Coast in order to determine if it would be feasible to combine operations. (Shea 5200-03) Kuhn, Loeb reviewed financial statements of CB West Coast for the previous three years, and a Kuhn, Loeb partner and R. Brookings Smith visited the offices of CB West Coast in Salem, Oregon in early 1968. (Shea 5204-05) Based on this review of financial data and the visit to Salem, Kuhn, Loeb concluded that a combination between R. Brookings Smith and CB West Coast would not be prudent in view of the "poor financial condition" of both companies. (Shea 5212-14) Accordingly, the negotiations between R. Brookings Smith and CB West Coast were terminated. (F. Smith 285-86)

363. Blyth & Co.'s office in Portland, Oregon was contacted by Francis Smith in early 1967 for the purpose of determining whether Blyth could assist CB West Coast in raising the capital necessary to complete its automation program. (Cadenasso 5255-57) Later in 1967, Blyth & Co. brought CB West Coast to the attention of a representative of Metromedia, Inc. as a possible acquisition candidate. (Cadenasso 5258-59) Francis Smith met with representatives of Metromedia on at least two occasions, providing them with information regarding CB West Coast's need for capital and its present financial status. After reviewing the CB West Coast financial materials provided, Metromedia's vice president and controller concluded that the amount of money needed by CB West Coast exceeded Metromedia's capabilities and interests. [102] Accordingly, it was recommended to top management that Metromedia not pursue acquisition of CB West Coast. (F. Smith 297-98; Rogers 9625-29, 9632-34)

364. CB West Coast contacted Francis S. Levien but negotiations were dropped because CB West Coast believed that Levien and his

associates were not willing to provide the cash to pay off the creditors of CB West Coast and provide working capital. (F. Smith 299-300)

365. In January 1968, Francis Smith stated that because CB West Coast management believed that the company was eventually to be acquired by RCC, no real effort was made to refinance, and other firms interested in acquiring CB West Coast has been brushed off. (CX 360b) Nonetheless, three companies made offers to acquire CB West Coast prior to the consummation of the loan agreement and the grant of the option to RCC. (F. 366-367)

366. In late 1967 or early 1968, Computing & Software and Computer General Corporation both made offers to acquire CB West Coast through an exchange of stock. Francis Smith stated that these offers were not accepted because they would not have satisfied CB West Coast's need for cash. (F. Smith 300; CX 301d)

367. Computer Science Corporation, after conducting an investigation of CB West Coast in the summer of 1967, offered in October 1967 to purchase the company for \$3 million in Computer Science Corporation stock. The offer was predicated on the basis that the outstanding liabilities of CB West Coast did not exceed tangible assets by more than \$1,800,000. The offer further provided for a maximum payment of \$500,000 in cash in lieu of an equivalent amount of stock. (CX 660) Computer Science Corporation also agreed to assume CB West Coast's liabilities. CB West Coast never formally rejected the offer. (Tr. 15,218-219) Francis Smith stated that the offer was not acceptable to him because it did not involve enough cash to pay off the company's outstanding liabilities on which he and his wife had given their personal guarantees. (F. Smith 300-01)

368. After consummation of the loan agreement with RCC in August 1968, CB West Coast had no further serious discussions with other companies concerning a loan or the possibility of acquisition. (CX 301e) [103]

DISCUSSION

A. The Relevant Product Markets

A threshold issue in this case, as in all Section 7 cases, is the determination of the product dimensions of an effective area or areas of competition within which the legality of the challenged acquisitions must be tested. *Brown Shoe Co. v. United States*, 370 U.S. 294, 324 (1962).

The law in this regard is well established. The outer boundaries of a product market are determined by the product and its close

substitutes from the economic and functional points of view. Within this broad market, however, well-defined submarkets may exist which in themselves constitute product markets for Section 7 purposes. And, if there is a reasonable probability that the acquisition in question may substantially lessen competition in any economically significant submarket, the acquisition is proscribed by Section 7. *Brown Shoe Co. v. United States*, *supra*, at 325. There, the Court enumerated the criteria to be considered in determining submarkets:

* * *The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors* * * [Footnote omitted.]

The presence of all of the seven enumerated factors is not required. *United States v. Aluminum Co. of America*, 377 U.S. 271, 275, 276-277 (1964). I am also mindful that, in the final analysis, the relevant product market must be determined by the nature of the acquiring and acquired firms and by the nature of competition they face. Submarkets should not be contrived in disregard of a broader market which has economic significance. Nor should product markets be defined to encompass all substitute products in disregard of the congressional purpose in adopting the amended Section 7 and to obscure the true effect of a merger between sellers [104] of any one of the substitutable products. *Brown Shoe Co. v. United States*, *supra*, at 326-327; *United States v. Continental Can Co.*, 378 U.S. 441, 456-457 (1964); *United States v. Phillipsburg National Bank & Trust Co.*, 399 U.S. 350, 359-360 (1970). Furthermore, a cluster of products or services may constitute a valid product market in appropriate circumstances. *United States v. Philadelphia National Bank*, 374 U.S. 321, 356 (1963); *United States v. Grinnell Corp.*, 384 U.S. 563, 572-573 (1966). And in such cases, it is not required that there be complete functional interchangeability among the component products or services. *British Oxygen Co., Ltd.*, D. 8955, 3 Trade Reg. Rep. ¶21,063 at 20,908 (1975) [86 F.T.C. 1241]. It is also well settled that cross-elasticity of supply and interchangeability of production and distribution facilities are important considerations in defining product markets and can be determinative in appropriate circumstances. *Brown Shoe Co. v. United States*, *supra*, at 325; *The Budd Company*, D. 8848, 3 Trade Reg. Rep. ¶20,998 at 20,852-853 (1975) [86 F.T.C. 518]. With these controlling principles in mind, I now turn to the facts in this case.

It is the complaint counsel's position that each of the five

submarkets enumerated and described in Paragraphs 8 and 9 of the complaint constitutes a relevant product market in which to measure the effects of the challenged acquisitions. They are: (1) local credit reporting submarket; (2) non-local credit reporting submarket; (3) life and health insurance reporting submarket; (4) fire and casualty insurance reporting submarket; and (5) personnel reporting submarket. Respondent's position is essentially that (1) mortgage reports are separate and distinct from consumer credit reports, (2) the non-local credit reporting submarket is not a valid product market, (3) life and health insurance reporting does not constitute a single product market, (4) fire and casualty insurance reporting does not constitute a single product market, and (5) personnel reporting is not a valid product market. For the reasons explained hereinbelow, I have concluded that (1) the local credit reporting submarket is a valid product market and mortgage reports may be properly included in this market, (2) the non-local reporting submarket is not a valid product market for the purposes of this case, (3) the sale of credit reports to regional and national credit grantors constitutes a valid product market, (4) the life and health insurance reporting submarket constitutes [105] a valid product market, (5) the fire and casualty insurance reporting submarket constitutes a valid product market, and (6) the personnel reporting submarket is a valid product market.

(1) The Local Credit Reporting Submarket

Respondent does not seriously dispute the validity of the local credit reporting submarket but asserts that mortgage reports do not belong to the same market with consumer credit reports. Respondent's argument is without merit.

Credit reports are reports on the credit-worthiness of individuals and are furnished by credit bureaus to the various businesses (credit grantors) which need such information, including retail merchants, department stores, mail order houses, oil companies and credit card firms (also known as travel and entertainment or "T&E" firms), and banks and other lending institutions. (F. 85-86) Credit reports generally include four basic types of information: identification of the subject (*e.g.*, name, addresses, marital status), employment history, trade data and public record data (*e.g.*, judgments and bankruptcies). (F. 88)

A mortgage report is a special-purpose credit report and is furnished on individuals applying for mortgage loans from banks or other lending institutions. It includes generally the same types of information as in other credit reports. As a rule, a mortgage report

contains somewhat more detailed information bearing on the individual's financial responsibility, including income and net worth. (F. 92, 94) The fact that there is no valid distinction between credit reports and mortgage reports is graphically demonstrated by a comparison of respondent's own credit report forms and mortgage report forms. *Cf.* CX 30, pp. 9 and 21; RX 226; RX 227 and RX 228) However, due to the fact that a mortgage report generally contains more detailed information bearing on the subject's financial responsibility and the amount of credit transaction involved is much larger than conventional retail credit transactions, mortgage reports command a higher price than other credit reports (F. 97) [106]

Furthermore, the evidence is clear that mortgage reports are recognized as credit reports by the credit reporting industry. (F. 93) Respondent's own brochures describe mortgage reports as credit reports. (*E.g.*, CX 75a) Respondent's corporate officials conceded that reports for mortgage loan purposes are credit reports. (Rutherford 13,168; JX Burge Tr. 2298; JX Rutherford Dep. 250)

Also, the record indicates that there is no critical distinction between mortgage reports and other credit reports in the manner in which they are prepared. (F. 89, 95) Credit bureaus as well as RCA offices prepare and sell mortgage reports. Both credit bureaus and RCA serve the same or similar customers in providing mortgage reports. (F. 92, 98, 143) The critical fact in this connection is that these banks and lending institutions use mortgage reports for the purpose of making credit granting decisions. Although some firms use different employees or departments to prepare mortgage reports, this appears to be the exception rather than the rule. Typically, firms do not have a separate division or department that prepares only mortgage reports.¹¹ The record is clear that mortgage reports are not generally produced and sold by specialized vendors.

Respondent also attempts to distinguish mortgage reports from other credit reports on the ground that the former is an "investigative" report and the latter is not. (RPF 155-158) However, the record does not establish that a mortgage report as a rule requires a field investigation by an investigator. A substantial part of the task of preparing a mortgage report consists of transferring the pertinent information from a current file to the report, as is the case with all credit reports. In many cases, verification of information, to the extent necessary, is conducted by telephone or by mail. (RPF 158; [107] Daussin 1406; Tamalis 2727; Sasser 9287) The loan applicant is

¹¹ Respondent cites two such credit bureaus. (RPF 158) However, the witness from one of these bureaus testified that only some of his firm's mortgage reports are prepared by that division while other mortgage reports are prepared along with other credit reports. (T. Smith 1046)

sometimes interviewed. (Daussin 1406) The telephone verification procedure is also used in updating other credit reports. (F. 89) Although respondent emphasizes the "investigative" aspect of its mortgage reports for marketing purposes, the record is clear that mortgage reports are not "investigative" reports in the same sense that insurance reports are. With respect to the latter, field investigation comprises the heart of the reports. See p. 112, *infra*.

In view of the foregoing discussion, respondent's argument that the substantial price differential between mortgage reports and other credit reports requires the conclusion that mortgage reports and other credit reports constitute distinct and separate product markets for the purpose of this proceeding is not persuasive. See *Brown Shoe Co. v. United States*, *supra*, at 326. Credit bureaus sold mortgage reports and did so using the same data base and personnel used for the production and sale of other credit reports. Purchasers of mortgage reports turned to both credit bureaus and respondent, with the exception of those reports which required in-depth field investigation. (F. 98, 99) Thus, there was almost complete interchangeability of production and marketing facilities between mortgage reports and other credit reports. In view of the nature of the acquiring and acquired firms in this case and the nature of competition they face in the real world of commerce, I am persuaded that further fragmentation of the credit reporting market into mortgage reports and non-mortgage reports is unrealistic and unjustified. See *The Budd Company*, *supra*, at 20,852-53. In these circumstances, complete functional interchangeability is not required if both serve some important common end. In this case, mortgage reports, like other credit reports, are used for the purpose of making credit granting decisions. And both are offered by credit bureaus as a cluster of services to their customers. Accordingly, it is concluded that mortgage reports may be properly included within credit reports for the purposes of this case.

In this connection, respondent's argument that the use of "point scoring" by credit grantors is increasing to such an extent that point scoring should be included in the credit reporting market is not supported by the evidence. What is shown by the evidence is that point scoring, to [108] the extent it is used, is generally supplemental to credit reports and does not constitute a practical or functional substitute for credit reports. (F. 108) Point scoring does not compete with credit reports and is not properly includable in the product market.

(2) The Non-Local Credit Reporting Submarket

The validity of this product market is hotly contested by the parties. The ultimate issue is whether "non-local credit reporting" defined and described in Paragraph 8(b) of the complaint is an appropriate product market for the purposes of this case on the basis of the record evidence. My answer to this question is negative.

Paragraph 8(b) of the complaint defines this market as:

the furnishing of credit information on local residents by consumer credit reporting agencies to credit grantors located outside the local metropolitan area, or on non-local residents to credit grantors located within the local metropolitan area, for use in determining whether to extend credit to consumer applicants.

Complaint counsel would include within this market: (1) sales of credit reports to regional and national credit grantors by straight brokerage organizations, such as Credit Bureau Reports ("CBR"); (2) direct sales of credit reports to regional and national credit grantors by credit bureau chains (such as respondent) or by independent (non-chain) credit bureaus or other credit reporting agencies; and (3) sales of credit reports by independent credit bureaus which also function as "brokers" through the use of the ACB inter-bureau coupon system. (CPF 254-259) In my view, complaint counsel's position cannot be squared with what is alleged in Paragraph 8(b) of the complaint.

First, the definition of "non-local credit reporting" given in Paragraph 8(b) of the complaint, when read in conjunction with the definition of "credit reporting agency" given in Paragraph 1(a) of the complaint, clearly excludes sales of credit reports by a straight brokerage organization, [109] such as CBR. Complaint counsel do not contend that CBR is a "consumer credit reporting agency." The record would not support such a contention. See CPF 255. Admittedly, CBR is not "a firm engaged in gathering, recording and disseminating information relative to the credit worthiness, financial responsibility, and paying habits of consumers" (Paragraph 1(a) of the complaint). The Paragraph 1(a) definition obviously covers credit bureaus. CBR is not a credit bureau by any stretch of the imagination. The same definitional problem arises with respect to CSI, which is a wholly-owned subsidiary of ACB, a trade association. See CPF 254 n.; CPF 255 n. Therefore, sales of credit reports by such straight brokers as CBR and CSI are not encompassed in "non-local credit reporting" as defined in the complaint.

Second, a similar definitional problem exists with respect to the so-called credit bureau-brokers. Brokered sales by these credit bureaus of credit reports obtained from other ACB member bureaus are

neither "furnishing of credit information on local residents to credit grantors located outside the local metropolitan area" nor furnishing of credit information on non-local residents to credit grantors located within the local metropolitan area" when the word "local" is read, as I do, to relate to the credit bureau-broker.

Third, with respect to direct sales of credit reports by credit bureau chains, such as RCC, or by an independent (non-chain) credit bureau, to regional and national credit grantors, that portion of such sales of credit reports on residents of an area where both the credit bureau and a credit decisionmaking unit of a regional or national credit grantor are located, is "local credit reporting" within the meaning of Paragraph 8(a) of the complaint and cannot be properly included in "non-local credit reporting" within the meaning of Paragraph 8(b) of the complaint.

Fourth, there is no direct competition among credit bureaus for the sale of the so-called non-local reports, except in a small number of localities which have more than one credit bureau with overlapping data base. (F. 240) There is no direct competition between brokerage operators (including both straight brokers, such as CBR, and credit bureau-brokers) on the one hand and credit bureaus on the other. Indeed, the record is clear that, [110] with respect to the vast majority of credit bureaus, sales to brokers constitute, as a practical matter, the only way in which their credit reports can be offered to satisfy the needs of regional and national credit grantors. Even the credit bureaus or credit bureau chains which do sell directly to regional and national credit grantors continue to market their reports through CBR as well. (F. 261-270) Perhaps most important, if any direct competition exists in the sale of the so-called non-local credit reports, it is at the *brokerage* level, namely, among the rival brokerage organization, such as CBR and CSI, and credit bureau-brokers.

Finally, the record clearly shows that the term "non-local credit reporting" is alien to most of the industry witnesses who testified in this case, with the exception of those who were exposed to that term during the *Texas* litigation. See *Credit Bureau Reports, Inc. v. Retail Credit Co.*, 358 F. Supp. 780 (S.D. Tex. 1971), *aff'd* 476 F.2d 989 (5th Cir. 1973). Some witnesses, when pressed, appeared to equate "non-local reports" with "foreign reports," which includes antecedent reports,¹² which complaint counsel would exclude from their "non-local reporting submarket." See CPF 258 n. Yet, according to complaint counsel, antecedent reports account for the bulk of ACB

¹² See F. 191 n. for a description of antecedent reports.

coupon sales, the remainder (which complaint counsel now characterize as "brokerage") (CPF 258) being part of the non-local credit reporting market.¹³

For these reasons, it is determined that the non-local credit reporting market as defined in Paragraph 8(b) of the complaint does not constitute a valid product market.

My review of the record, however, convinces me that the sale of credit reports to the so-called regional and national credit grantors constitutes a valid product market for the purposes of this proceeding. For the lack of a [111] better term, I shall call this market "national account sales." The evidence is clear that regional and national credit grantors, such as national or regional retail store chains, mail order houses, oil companies and the T&E firms, constitute a distinct group of customers, separate and apart from local credit grantors. (F. 243) And the industry has generally recognized this as a separate market over the years. (F. 246-249) Clearly, this recognition has prompted independent local bureaus to support such national brokerage firms as CBR and CSI, which enables the local bureaus to reach indirectly the national and regional credit grantors. (F. 243, 254) Thus, this market is served by specialized vendors. During the last few years, a number of emerging credit bureau chains have begun to penetrate this market through direct sales. (F. 258) The evidence indicates, however, that even these bureau chains rely on CBR (F. 261) and that direct sales by all credit bureaus are dwarfed by their sales through CBR. (F. 262) There is also evidence indicating that the prices charged to a national and regional credit grantor are distinct from the prices charged to local credit grantors. (F. 250) And the sale of credit reports to national and regional credit grantors constitutes a significant economic activity. (F. 264-270) In my view, these factors are sufficient to establish the national account sales as a separate submarket in this proceeding.

I would include in the national account sales market (1) direct sales of credit reports to national and regional accounts by credit bureau chains and other independent credit bureaus, (2) sales of credit reports to national and regional accounts by brokers, such as CBR and CSI, and (3) sales of credit reports to national and regional accounts by ACB members through the use of the ACB coupon system. Although direct sales by credit bureau chains, brokered sales of credit reports produced by such chains and sales of credit reports through the use of ACB coupon system are, as noted earlier,

¹³ In 1970, of the estimated ACB coupon sales of \$10.6 million, an estimated \$10 million was accounted for by antecedent reports, the remainder (\$2.6 million) being what complaint counsel now call brokerage. (CPF 258 and n.)

complementary to each other from the standpoint of the producing credit bureaus, they nevertheless replace each other and are properly includable in the national account sales market. [112]

(3) The Life and Health Insurance Reporting Submarket

Complaint counsel include in this service market the furnishing of life and health insurance reports to insurance companies for use in determining insurability and rate classification. Life and health reports are investigative reports used for underwriting purposes by life and health insurance companies. (F. 254, 280) The primary objective of a life and health insurance report being assisting the insurance underwriter in evaluating the mortality or morbidity risk involved with respect to an individual applicant, verification of information given on the application form against in-file data is not sufficient as a rule. (F. 275, 297) Further investigation, usually through field interviews, of the state of health, medical history, occupational hazards, smoking and drinking habits, and other factors which bear on the applicant's mortality or morbidity is an essential input into a life or health report. The record indicates that this type of investigation is less important with respect to life insurance reports where the underwriter places reliance on actuarial tables as well as on the insurance report. (F. 277) In any event, credit bureaus, which as a rule do not maintain investigators and rely on telephone or letter inquiries for the preparation of updated reports, are not equipped to produce life and health insurance reports, and they do not produce or sell such reports. (F. 89, 90, 296-297, 302)

The production and sale of life and health reports is recognized as a separate service market. Respondent's internal documents and sales brochures clearly treat the sale of life insurance reports and health insurance reports as one marketing category. (F. 283) This is in accord with the testimony of witnesses from Hooper Holmes, Inc. and American Service Bureau, which are respondent's two principal competitors for the sale of life and health insurance reports. (F. 283) Two recognized insurance industry publications, *Best's Review* and the *National Underwriter*, also follow the distinction between life and health companies on the one hand and fire and casualty companies on the other. (F. 284) Life and health insurance reports are sold to distinct customers, namely, the life and health insurance companies. (F. 278) In the [113] final analysis, the life and health insurance reports are essentially reports on the individuals to be insured, while fire and casualty insurance reports are essentially reports on the property to be insured. These are valid distinctions for

Section 7 purposes. In my view, the record evidence clearly establishes that life and health reports alleged in the complaint constitute a valid product market for Section 7 purposes.

Respondent's argument is essentially that life insurance reports and health insurance reports have distinct characteristics and uses, that they are not functionally interchangeable and that, therefore, they do not belong to a single product market. However, complete interchangeability of use is not a *sine qua non* for a finding of a broader product market. *British Oxygen Co., Ltd., supra*, at 20,908. In the circumstances of this case, further fractionalization of the life and health report market is unwarranted.

Respondent further argues that the life and health companies have been increasingly relying on in-house investigation as a means of reducing their underwriting expenses, that an in-house investigation report constitutes a practical substitute for life and health insurance reports, and that, therefore, in-house reports must be included in this product market. This argument is without merit. Although the net result of in-house investigation reports, to the extent they are used exclusively, is to reduce the volume of life and health reports sold by life and health report firms, they do not "compete" with life and health reports. In-house investigation is simply another factor to be considered in evaluating the effect of the challenged acquisitions.

(4) The Fire and Casualty Insurance Reporting Submarket

The discussion related to the life and fire insurance reports hereinabove generally applies here as well. For example, respondent's internal documents and sales brochures treat the fire and casualty insurance reports as a single category, as distinguished from life and health reports. (F. 313) This is in accord with the testimony of an official of Hooper Holmes, Inc., a leading competitor in the sale of fire and casualty insurance reports. (F. 313) [114] Although fire insurance reports and casualty insurance reports are not functionally interchangeable and are sold to different customers in some instances, they are both essentially investigative reports on the property to be insured, as distinguished from credit reports which are reports on individuals who apply for credit. The record clearly establishes that the fire and casualty insurance reports constitute a valid product market for Section 7 purposes. Respondent's argument that fire and casualty reports belong to separate markets because fire insurance reports and casualty insurance reports are not functionally interchangeable is rejected for the

reasons discussed in connection with life and health insurance reports.

(5) The Personnel Reporting Submarket

Personnel reporting is defined as "the furnishing of personnel reports by credit reporting agencies and credit investigative agencies to employers to determine job applicants' employability" (Paragraph 8(e) of the complaint). The record shows that personnel reports are clearly distinguishable from credit reports and insurance reports in terms of characteristics and uses, customers and prices. (F. 326-328, 331-332) Respondent recognizes personnel reporting as a separate category. (F. 333) This is in accord with the testimony of industry witnesses. (F. 333) Respondent does not seriously dispute the validity of the personnel reporting market for Section 7 purposes,¹⁴ but contends that it is not an economically significant market for the purposes of determining the effects of the credit bureau acquisitions challenged in this proceeding. (RPF 164) I agree with respondent's latter contention. [115]

B. The Relevant Geographic Markets

The guidelines for delineation of geographic markets have been laid down by the Supreme Court. The paramount purpose of defining a geographic market is, of course, to determine the geographic dimensions of an area of effective competition in which the legality of a given merger must be tested. *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586, 593 (1957); *Brown Shoe Co. v. United States*, *supra*, at 324. In this regard, "[t]he criteria to be used in determining the appropriate geographic markets are essentially similar to those used to determine the relevant product market." *Brown Shoe Co. v. United States*, *supra*, at 336. Thus, although the geographic market may be as large as the nation as a whole or as small as a single metropolitan area, the market selected in all cases must "both 'correspond to the commercial realities' of the industry and be economically significant," and not "formal" or "legalistic." *Id.* at 336-337. On the other hand, it is well recognized that a relevant geographic market seldom is susceptible of being defined precisely in meets and bounds. *United States v. Pabst Brewing Co.*, 384 U.S. 546, 549 (1966). Some degree of artificiality and fuzziness are

¹⁴ Respondent's argument (RPF 167) that personnel reports sold by credit bureaus did not satisfy the needs of employers is not supported by the evidence. (See F. 330, 336, 338) However, complaint counsel do not dispute respondent's position that, after the Fair Credit Reporting Act became effective in 1971, credit reporting agencies can no longer lawfully sell personnel reports based solely on in-file information. See RPF 166.

inherent in any attempt to delineate relevant geographic market. *United States v. Philadelphia National Bank*, *supra*, at 360 n. 37.

(1) The San Francisco Bay Area Market

Complaint counsel argue that the San Francisco Bay area, consisting of the nine counties of San Francisco, San Mateo, Santa Clara, Alameda, Marin, Solano, Napa, Sonoma and Contra Costa, all bordering on the San Francisco Bay, is a relevant geographic market for the purposes of determining the legality of respondent's January 1970 acquisition of CB West Coast. Respondent simply rests on alleged failure of proof on the part of complaint counsel; it has not proposed any alternative geographic market of its own. (RPF 192)

It is my determination that the record as a whole clearly supports complaint counsel's position. Most important, the record indicates a substantial agreement among credit grantors and credit reporting firms that [116] the nine-county area named by complaint counsel is an area of effective competition which corresponds to the commercial realities of these industries. (F. 138) It appears that most of the smaller credit bureaus had a limited data base covering a portion of the nine-county San Francisco Bay area, while TRW Credit Data, a leading credit reporting firm, considered its primary service area to encompass most, but not all (six of the nine), of the nine-county area, plus one other county bordering on the south of that area. (F. 139) However, Mr. Gauss, the marketing executive of TRW Credit Data, testified that the San Francisco marketing operations were confined to a nine-county toll-free service area in 1969. Although Mr. Gauss did not specifically identify the nine-county area, it is clear from the context that he was referring to the nine counties bordering on the San Francisco Bay. (Gauss 582-583; see CX 582f)

The data base of Credit Bureau Metro, Inc. ("CB Metro"), a subsidiary of CB West Coast, appeared to have encompassed three more counties (Santa Cruz, San Benito and Monterey) at the time of its acquisition by respondent. (F. 140) However, Mr. F. Smith, the controlling shareholder and president of CB West Coast, said that the bulk of CB Metro's business was in three counties (within the nine-county area) where the three largest cities are located. (F. 51) There is no evidence to show that, prior to the time of its acquisition by respondent, CB Metro actually sold credit reports in the twelve-county area in competition with credit bureau firms located in the nine-county area. Needless to say, the relevant geographic market is not determined by the historic scope of CB Metro's data base but by where the competition was. And, the record as a whole clearly establishes that, at the close of 1969, the nine-county San Francisco

Bay area was an area of effective competition from the standpoint of both the credit bureaus and their customers, the credit grantors.

(2) The Washington, D.C. Market

The record does not permit any serious dispute with respect to the validity of the Washington, D.C. market, which consists of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria [117] and Falls Church in Virginia. Suffice it, that the record clearly shows that both the credit reporting firms and credit grantor customers regarded the Washington, D.C. metropolitan area as their trade area. (F. 214) Respondent's argument that, since the acquisition, the data base of CBDC, the acquired business, has been expanded into additional counties outside the Washington, D.C. metropolitan area is entirely irrelevant to the issue at hand. (RPF 188)

(3) The Portland, Oregon Market

Complaint counsel's Portland, Oregon market for local credit reporting consists of the city of Portland and Washington, Clackamas and Washington Counties, Oregon, and Clark County, Washington. (CPF 223) The record clearly shows that both credit bureaus and credit grantor customers recognized this area as their market. (F. 187) Respondent asserts that credit grantors in the Portland area purchased reports on Portland residents from Retail Credit Association of Portland ("CB Portland") and reports on residents outside of Portland either directly from Credit Bureau Metro of Portland ("CB Metro, Portland") or indirectly from CB Metro, Portland through CB Portland. (RPF 186) However, this argument strains the record. Although CB Portland's data base for residents within the city limits of Portland may have been more complete and "authoritative" than that for residents in the surrounding counties, the record shows that CB Portland's file coverage in fact encompassed the city of Portland and the surrounding counties. And, CB Metro, Portland's files encompassed a substantial portion of Multnomah County and the city of Portland, Oregon, in addition to Clackamas and Washington Counties, Oregon, and Clark County, Washington. (F. 187) Furthermore, Portland credit grantors regarded CB Metro, Portland as an alternative source of supply, and some in fact purchased credit reports on Portland residents from CB Metro, Portland for a time. (F. 197) Thus, the record as a whole supports the validity of the Portland, Oregon market.

(4) The Tacoma, Washington Market

Complaint counsel's Tacoma, Washington market for local credit reporting consists of Pierce County, Washington, which includes the city of Tacoma, while [118] respondent asserts that CB West Coast, the acquired firm, considered the marketing area of the Credit Bureau of Tacoma (owned by CB West Coast) to be the four-county area encompassing Pierce, Kitsap, Snohomish and King Counties, Washington. In my view, the record convincingly demonstrates that, at the time of the challenged acquisition, the trading area of the credit grantors in Tacoma was the city of Tacoma and the surrounding communities within Pierce County, Washington. (F. 204) Respondent's argument that Seattle and Tacoma, Washington are being merged into a single trade area is not supported by the evidence.

(5) The Pacific Northwest Market

In their proposed findings, complaint counsel took the position, for the first time in this proceeding, that the area surrounding every community in the Pacific Northwest (excluding Portland, Oregon and Tacoma, Washington) in which CB West Coast had a credit bureau, constitutes a relevant geographic market for local credit reporting. (CPF 238-241) This contention is rejected for the reason that complaint counsel effectively abandoned these communities by their pretrial submissions, with the exception of Salem, Oregon, Eugene, Oregon and Boise, Idaho. See complaint counsel's Response to Administrative Law Judge's Directive To Define Geographic Areas In Which Anti-competitive Effects Have Taken Place, March 15, 1974, pp. 2-3; Complaint Counsel's Trial Brief, April 15, 1974, p. 10. Complaint counsel cannot now be permitted, consistent with basic fairness, to resurrect them by posthearing advocacy.

With respect to Salem, Oregon, Eugene, Oregon and Boise, Idaho, the scant evidence in the record bearing on the issues is clearly inadequate to support an affirmative finding with respect to any of them. This is not a case where the record contains sufficient evidence with respect to a fair sample of all the areas in which the impact of the challenged merger is to be determined. *Cf. Brown Shoe Co. v. United States, supra*, at 339-341. On the contrary, the evidence in this case shows [119] that the structure of competition in particular markets varies substantially from one to the next so as to require a careful examination of individual markets.^{14a} [120]

^{14a} Even if each of Salem, Oregon, Eugene, Oregon and Boise, Idaho were accepted as valid geographic markets in local credit reporting, the record fails to show that respondent was a significant competitor of CB West Coast in

C. The Credit Reporting Industry and the Advent of Computerization

The credit reporting industry has been historically an atomistic one at the national level, credit bureaus in each trade area serving local credit grantors. The membership of ACB, the national trade association, grew from about 1,900 in 1958 to about 2,100 in 1970. Although the exact number of non-ACB credit bureaus is not known, it appears that their number probably approaches 400-500. (F. 104) At the local level, however, the credit reporting business has been highly concentrated in the hands of a few. This appears to have been the case especially in those areas where the credit granting merchants and financial institutions had formed their own credit bureaus on a non-profit basis. (F. 105) And, in areas where the ownership of such bureaus was held by a large number of merchants and banks, the success of competing bureaus was to a large extent limited by the merchant-owners' willingness to provide the competing bureaus with accounts receivable information and to patronize them. About the mid-60's, however, several embryonic regional credit bureau chains emerged, primarily through the merger route. (F. 109) This trend, following increasing computerization of credit operations of major local credit grantor customers, largely coincided with the increasing pressure for computerization of the credit bureaus serving them.

The response of ACB, the trade association, was to launch the CB-360 Project in 1965-1966 with a view toward devising a computer program and systems design which could be applied to credit reporting. This project was conceived and executed as a four-party joint venture involving IBM, ACB, Associated Credit Services of Houston and Chilton Corporation of Dallas. The "Credipak" system, a product of the CB-360 Project, was completed in April 1967 and was made available to all ACB members, including respondent. In the following years, ACS, Chilton and the Cook County Credit Bureau used the Credipak system, with some modifications and further refinements, to computerize the credit bureau operations in Dallas and Houston, Texas; Chicago, Illinois and Kansas City, Kansas. On the West Coast, CDC pioneered in credit bureau computerization in the Los Angeles area as early as 1965 with the encouragement and cooperation of area banks and merchants. In 1967, CB West [121]

these areas. And the record does not show that respondent was either a perceived potential entrant or a likely potential entrant into any of the three areas under discussion. Finally, the record does not offer an evidentiary basis for concluding that a mere substitution of the CB West Coast bureaus in these areas by respondent is likely to lessen competition substantially, or tend to create a monopoly, in local credit reporting in any of them.

Coast computerized its operations in the San Francisco, California area, and christened its system ACROPAC. Respondent, not having been an initial participant in the CB-360 Project, investigated the ACROPAC system of CB West Coast as a possible alternative avenue to computerization during 1968 and decided to finance further refinements of ACROPAC under a \$3.4 million loan agreement with CB West Coast in August 1968. Respondent was subsequently to acquire CB West Coast in its entirety, in early 1970. In mid-1970, respondent began computerization of its Southeastern operations using the ACROPAC system, and later began offering automated service contracts to independent local credit bureaus. The computerization of credit reporting also attracted TRW and Trans Union into the credit reporting industry in 1969. TRW took over CDC operations on the West Coast and Trans Union, the Cook County credit bureau in the Chicago area. In 1970 and thereafter, the computerized credit bureaus, including respondent, TRW, Credit Data, Trans Union, Chilton and ACS, began to offer automation service contracts to other credit bureaus, which enabled independent, local credit bureaus in large- and medium-sized urban areas to have their credit files computerized and connected to the contractor's central computer and to sell computerized credit reports to their own customers by accessing the computerized data bank. The contracting local bureaus retained the ownership to their credit files. (F. 121-134)

Thus, in the years following the challenged acquisitions, completely automated credit reporting became a reality in scattered metropolitan areas, utilizing multibureau hookups, visual display terminals (CRTs), autodata tape input, long distance transmission lines and customer terminal networks. (F. 129) As of 1975, however, computerized credit reporting networks remained essentially regional, with vast gaps in between. A few, including respondent, achieved multi-regional service capability, through a network of owned bureaus and service contract bureaus, encompassing portions of the West Coast, Pacific Northwest, Southwest and the Northeast. None, however, has yet attained a truly national capability. (F. 240)

The advent of progressive computerization has affected the credit reporting industry in several important respects. First, and most importantly, computerization made possible [122] improved service at lower costs to the credit grantor customers. It improved the quality of service in terms of speed, currency, and accuracy. The record, however, is not clear as to the prices charged credit grantors by local credit bureaus under service contracts, whereunder the local bureau sets its own prices. Second, and equally important, new competition has emerged among credit bureaus offering automated

service contracts, thus increasing the viability of medium- and small-size credit bureaus, which now can offer computerized credit reporting service to their credit grantor customers under service contracts. Finally, the ascendancy of national brokers, such as CBR, in the national account sales market is bound to decline significantly as regional and national credit grantors' ability to directly access the central data banks of computerized credit bureau chains increases with time. All of this, however, is not to say that manual bureaus will have no place in the credit reporting industry. It is fair to say that until such time as the existing computerized networks are substantially expanded and the incremental costs for automation becomes so low as to make their automation economically feasible, small manual bureaus will continue to serve their local credit grantor customers as in the past. In short, the advent of computerization has been largely beneficial to the credit reporting industry and its customers.

D. The Relevant Markets for Local Credit Reporting Were Highly Concentrated

(1) The San Francisco Bay Market

Prior to and at the time of respondent's acquisition of CB West Coast in January 1970, the local credit reporting market in the San Francisco Bay area was essentially a duopoly. In 1969, the year preceding the acquisition, CB Metro (CB West Coast's San Francisco area operation) was the dominant firm, followed by Credit Data (later TRW Credit Data). (F. 141, 144, 145) Although the record does not show respondent's precise market share, it appears that respondent's local credit reporting sales in this market in 1969 was relatively very small. (F. 144, 145) The two leading firms were both computerized. The record indicates that their computerization substantially improved the quality of service, including [123] speed of service and file coverage, and resulted in lower credit reporting costs to the credit grantors in the market. (F. 148)

(2) The Washington, D.C. Metropolitan Market

At the time of respondent's acquisition of CBDC in October 1970, the local credit reporting market in the Washington, D.C. metropolitan market was virtually a monopoly, CBDC having acquired Stone's Mercantile Agency, the other credit bureau, in late 1969. There were no independent credit bureaus in any of the suburban areas surrounding Washington, D.C. (CX 81b) Respondent had local offices located in Washington, D.C., Silver Spring and Suitland, Maryland

and Alexandria, Virginia, but its sales of credit reports could not be identified. (F. 216-218) In 1969, the year preceding respondent's acquisition of CBDC, CBDC accounted for about 57 percent of the identifiable sales in the market, and Stone's Mercantile Agency (acquired by CBDC in October 1969) accounted for about 43 percent. The record does not contain the local credit reporting volume of respondent in this market, but it was relatively small. (F. 221) All of the above three were manual bureaus.

(3) The Portland, Oregon Metropolitan Market

The local credit reporting market in this area was highly concentrated in 1969 and 1970. In 1969, the Retail Credit Association of Portland ("CB Portland"), a merchant-owned credit bureau, was the leading firm, with over 70 percent of the market. Credit Bureau Metro, Portland (CB West Coast's local operation) accounted for about 28 percent. (F. 191) RCA Portland's office had undetermined sales. Respondent acquired Credit Bureau Metro, Portland in January 1970 and CB Portland in January 1971. Thus, in 1971, respondent became a monopolist in this market.

(4) The Tacoma, Washington Market

The local credit reporting market in this area was a duopoly. In 1969 and 1970, the only two firms selling credit reports were Credit Bureau of Tacoma ("CB Tacoma") [124] (owned by CB West Coast) and respondent (RCA). Respondent's January 1970 acquisition of CB Tacoma thus turned this market into a monopoly. In 1969, CB Tacoma accounted for about 90 percent of the market, and respondent, for about 10 percent. (F. 210)

E. Elimination of Actual Competition

(1) The San Francisco Bay Area and Washington, D.C.
Metropolitan Area Markets

Complaint counsel broadly contend that respondent was a significant actual competitor in the local credit reporting market in the San Francisco Bay area and Washington, D.C. metropolitan area markets because respondent sold credit reports, including mortgage reports, in these areas. The record does not show actual sales of credit reports by respondent for individual geographic markets, but respondent estimated that, on a national basis, its sales of local credit reports would be about 49 percent of its total sales. (CX 40) Complaint counsel have assumed in their proposed findings that the

49 percent ratio applies to each and every geographic market. (CPF 205 n., 206 n.) This is a questionable procedure. See *ITT Continental Baking Co.*, D. 7880, 3 Trade Reg. Rep. ¶20,783 (1974) [84 F.T.C. 1349]. The record strongly indicates that respondent's credit report sales ratio may vary widely from one area to the next, depending largely on whether CBI had a credit bureau in a particular locality. In those areas where CBI did not have an office, the ratio would depend on local competitive conditions and on how aggressively the manager of a particular local RCA or RCC office chose to promote the sale of credit reports. The record suggests strongly that the Washington, D.C. metropolitan area at least probably was among the low-ratio areas. (F. 218) In addition, complaint counsel have failed to point to any reliable evidence to challenge seriously respondent's assertion that its credit report sales in the two markets under discussion were nominal. For these reasons, it is determined that respondent was only a nominal actual competitor in local credit reporting in the San Francisco Bay and Washington, D.C. Metropolitan area markets. Thus, the record fails to show that respondent's acquisition of CB West Coast and CBDC eliminated substantial actual competition in local reporting in the San Francisco Bay and Washington, D.C. metropolitan area markets. Evidently anticipating a negative determination [125] on this issue, complaint counsel have primarily relied on the potential competition theory with respect to the two geographic markets under discussion.

The record, however, discloses a radically different picture with respect to the Tacoma, Washington and Portland, Oregon markets.

(2) The Tacoma, Washington Market

Several points stand out in this market. First, beginning in the mid-1960's, respondent aggressively promoted and successfully sold the so-called derogatory reports (or "derogs") to credit grantors. (F. 208) Respondent's derogatory report contained the basic information which appears in a regular credit report, with the exception of detailed trade data, and emphasized derogatory information on credit applicants, such as bankruptcies and collection agency referrals. Credit grantors evidently regarded derogs as a kind of short-form credit report. (F. 209)

Secondly, the evidence clearly shows that a number of major credit grantors regarded respondent as their alternative source of credit

information for credit decisionmaking purposes and in fact purchased substantial amounts of reports from respondent.¹⁵ (F. 207) Thirdly, respondent had unique and current information on military personnel stationed at military bases in the Tacoma area. (F. 209) Finally, there was no merchant-owned credit bureau in Tacoma; the Tacoma Credit Bureau was owned by CB West Coast. In short, the local credit grantors, having found that respondent had essentially the same kind of information the local credit bureau offered and respondent often had better information on military personnel, used respondent as an alternative supply source of credit information for credit decisionmaking purposes. Thus, [126] the record convincingly demonstrates that respondent was a substantial actual competitor in local credit reporting in the Tacoma, Washington market.

The record further shows that the Tacoma, Washington market was highly concentrated. Although the record does not contain precise market share information, it is safe to conclude that respondent's credit report sales in Tacoma probably amounted to more than 49 percent of its total sales. On the basis of the 49 percent ratio, respondent's credit report sales in this market accounted for about 10 percent of the market, the remainder being the share of the acquired bureau. (F. 210) In other words, respondent's absorption of CB West Coast eliminated the only and substantial competitor, turning Tacoma into a virtual monopoly market. This is a clear violation of Section 7.

(3) The Portland, Oregon Market

Respondent's status in Portland, Oregon at the time of its acquisition of CB West Coast is not clear. The record indicates that respondent through RCA had marketed derogatory reports in this market as well, but there is no evidence that the sale of such reports continued into 1969-1970. (F. 194) However, the record shows that CB Metro, Portland was a significant actual competitor of the merchant-owned CB Portland when the latter credit bureau was acquired by respondent in January 1971. (F. 190) One gets a distinct impression from the record that, although the scope and depth of data on residents of Portland city proper in CB Metro, Portland's hands were not up to the level of CB Portland, the CB West Coast bureau constantly attempted to improve and expand its data on Portland residents. And it is clear that CB Metro, Portland (acquired by respondent) had adequate information on suburban residents. (F.

¹⁵ This fact is dramatically demonstrated by the fact that the Tacoma store of Rhodes Liberty House, a Pacific Northwest department store chain, switched to respondent when Tacoma Credit Bureau raised its prices in 1969. (F. 209)

190) In short, respondent was clearly much more than a standby source of credit reports and was realistically an alternative source of such reports to the credit grantors in the Portland, Oregon metropolitan market at the time of its acquisition of CB Portland.

The record further shows that the Portland, Oregon market was highly concentrated at the time of respondent's acquisition of CB Portland. (F. 192) As the result of its January 1970 acquisition of CB West Coast, respondent [127] obtained a substantial market position in the market, the other firm (CB Portland) accounting for about 72 percent of the market. (F. 191) Through its January 1971 acquisition of CB Portland, its only competitor, respondent obtained a virtual monopoly position in local credit reporting in the Portland, Oregon market. Therefore, respondent's 1971 acquisition of CB Portland was a clear violation of Section 7.¹⁶

F. Retail Credit Company as a Potential Entrant

In a nutshell, the basic rationale of potential competition theory in a merger context is that, in an oligopoly where the market is not sufficiently competitive to enforce competitive behavior on existing sellers, potential competition need be preserved as a means of disciplining the price and output decisions of the in-market firms while potential entrants are poised on the edge of the market (the "edge effect") and also as a source of new competition and future deconcentration when a potential entrant does enter the market (the "future competition").¹⁷ [128] Before complaint counsel can properly invoke the potential competition theory, they must establish the truth of assumptions underlying the foregoing proposition. They

¹⁶ In this connection, respondent's argument that the complaint did not specifically challenge its 1971 acquisition of CB Portland is without merit. A fair reading of Paragraphs 10, 12 and 15 of the complaint admits no other conclusion. Although Paragraph 15 does not in terms allege elimination of actual competition with respect to the acquisition of CB Portland, that acquisition was specifically challenged in complaint Paragraphs 10 and 12. Furthermore, there cannot be any dispute that the case was tried on the theory that respondent's CB Portland acquisition was a horizontal acquisition which eliminated a substantial actual competition in local reporting in the Portland, Oregon market.

¹⁷ See Wilcox, *Competition and Monopoly in American Industry*, 7-8 (TNEC Monograph No. 41, 1940); Bain, *Price Theory*, 213-215 (1952); *Barriers To New Competition*, 2-4 203-204 (1956); *Industrial Organization*, 274-275 (2d ed. 1968); *United States v. El Paso Natural Gas Co.*, 376 U.S. 651 (1964); *F.T.C. v. Procter & Gamble Co.*, 386 U.S. 568 (1967); *United States v. Penn-Olin Chemical Co.*, 378 U.S. 158 (1964); *Ford Motor Co. v. United States*, 405 U.S. 562 (1972); *United States v. Falstaff Brewing Corp.*, 410 U.S. 526 (1973); Turner, "Conglomerate Mergers and Section 7 of the Clayton Act," 78 Harv. L. Rev. 1313, 1362-1386 (1965) ("Turner"); Brodley, "Oligopoly Power Under the Sherman and Clayton Acts - From Economic Theory to Legal Policy," 19 Stanford L. Rev. 285, 354-361 (1967) ("Brodley"); Berger and Petersen, "Conglomerate Mergers and Criteria for Defining Potential Entrants," 15 Antitrust Bull. 489 (1970); Dunfee and Stern, "Potential Competition Theory as an Antimerger Tool Under Section 7 of the Clayton Act: A Decision Model," 69 Northwestern L. Rev. 821 (1975); Markovits, "Potential Competition, Limit Price Theory, and the Legality of Horizontal and Conglomerate Mergers Under the American Antitrust Laws," 1975 Wis. L. Rev. 658; Areeda, *Antitrust Analysis* 665-666 (2d ed. 1974).

must show that (1) the market is highly concentrated (or trending toward high concentration),¹⁸ (2) the firm in question was a likely potential entrant, (3) the firm was a recognized potential entrant,¹⁹ and (4) there were substantial (but not insurmountable) entry barriers.²⁰ The potentiality may be determined by objective evidence showing that (1) the firm possessed the essential capabilities and resources necessary to effect a successful entry,²¹ and (2) the market offered special incentives [129] to the firm because of proximity of the product or geographic market involved.²² The potentiality may also be shown by subjective evidence regarding the corporate intent or state of mind of the firm with respect to entry.²³ Also, in order to establish the removal of an edge effect, it must be shown that the firm was recognized as a potential entrant by the in-market firms.²⁴ Finally, the substantiality of potential competition [130] eliminated may be shown by (1) that the firm was the best placed potential entrant, (2) that the firm was one of a small number of potential

¹⁸ See n. 17, *supra*; *Kennecott Copper Corp. v. FTC*, 467 F.2d 67 (10th Cir. 1972), *cert. denied*, 416 U.S. 909 (1974).

¹⁹ *United States v. El Paso Natural Gas Co.*, *supra*, at 659, 661-662; *United States v. Phillips Petroleum Co.*, 367 F.Supp. 1226, 1256 (C.D. Cal. 1973), *aff'd*, 418 U.S. 906 (1974).

²⁰ Turner, *supra* n. 17, at 1365; *Beatrice Foods Co.*, 81 F.T.C. 481, 526-533 (1972); Markovits, "Potential Competition, Limit Price Theory, and the Legality of Horizontal and Conglomerate Mergers Under the American Antitrust Laws," *supra* n. 17, at 664-665.

²¹ *United States v. Penn-Olin Chemical Co.*, *supra* at 174-175; *Ford Motor Co. v. United States*, *supra*, at 566; *United States v. Falstaff Brewing Co.*, *supra*, at 533.

²² *United States v. El Paso Natural Gas Co.*, *supra*, at 660; *F.T.C. v. Procter & Gamble Co.*, *supra*, at 572-574; *United States v. Penn-Olin Chemical Co.*, *supra*, at 174-175.

²³ See *United States v. Penn-Olin Chemical Co.*, *supra*, at 175; *Ford Motor Co. v. United States*, *supra*, at 565-566; *F.T.C. v. Procter & Gamble Co.*, *supra*, at 574, 580-581; *United States v. Falstaff Brewing Co.*, *supra*, at 528-529.

However, subjective evidence is treacherous ground for a fact-finder because of the difficulties and uncertainties inherent in adjudicative determination of such an elusive fact. Furthermore, in a case where the charge is elimination of the edge effect and the firm was a recognized potential entrant, the subjective intent of the firm is immaterial. In a case where the charge is elimination of future competition, the corporate intent, whether affirmative or negative, is not frozen in concrete but is subject to change. Also, the record in this case contains striking examples where respondent's attempts to expand into the non-mortgage credit reporting market in the West Coast ended in failure. (F. 32, 194) In my view, subjective evidence does not provide a reliable ground on which to base a prediction as to whether the given acquisition is likely to lessen competition substantially.

See *United States v. Falstaff Brewing Corp.*, *supra*, at 533-536; Brodley, *supra* n. 17, at 357-358; *United States v. Penn-Olin Chemical Co.*, 378 U.S. 158 (1964), 246 F.Supp. 917 (D. Del. 1965), *aff'd by an equally divided court*, 389 U.S. 308 (1967).

²⁴ *United States v. El Paso Natural Gas Co.*, *supra*, at 659, 661-662. This may be established by evidence showing contemporaneous perception by the oligopolists of the firm's capabilities and resources necessary for entry and/or by evidence showing that their price or output decisions were in some manner influenced by the presence of the firm on the edge of the market.

Recently, several commentators have questioned the empirical validity of the limit price theory and suggested further normative refinements of criteria for potential competition analysis. See Dunfee and Stern, "Potential Competition Theory as an Antimerger Tool Under Section 7 of the Clayton Act: A Decision Model," *supra* n. 17, at 835-866; Markovits, "Potential Competition, Limit Price Theory, and the Legality of Horizontal and Conglomerate Mergers Under the American Antitrust Laws," *supra* n. 17, at 666-695. Although I agree in principle that the determination of a firm's potential entrant status should not be the end of legal analysis in potential competition cases and a further refinement of additional criteria may aid the trier of fact in his ultimate determination of the legality of a given merger, such refinements should be kept within practical and workable bounds in the interest of judicial efficiency and predictability. Cf. Posner, "Antitrust Policy and the Supreme Court: An Analysis of the Restricted Distribution, Horizontal Merger and Potential Competition Decisions," 75 Columbia L. Rev. 282, 323 (1975).

entrants, and (3) any other circumstances that may show the uniqueness of the firm as a potential entrant.²⁵ In this context, an unsuccessful entrant may nevertheless remain a potential entrant or cease to be one, as the case may be, depending on the circumstances which aborted the initial attempt for entry or some subsequent occurrence which significantly affects the potentiality. Generally speaking, an unsuccessful entrant remains a potential entrant in the absence of [131] evidence showing that (1) the entry barriers are, or have since become, prohibitive or insurmountable,²⁶ or (2) the unsuccessful entry conclusively demonstrated that the firm was deficient in some key capabilities or resources essential to a successful entry.

Finally, it should be noted here that, with respect to the "future competition" argument, the fact that a firm in fact entered a market by an acquisition has little bearing on the issue of whether the firm would have entered on its own, or through a toehold acquisition, but for the merger. *Ekco Products Co. v. FTC*, 347 F.2d 745, 752 (7th Cir. 1965).

Ultimately, however, the factfinder must assess the probable effect of the challenged merger and determine whether the merger is likely to lessen competition substantially in violation of Section 7. This judgment calls for a careful, overall reckoning of the kind and degree of the record evidence as a whole bearing on the key issues discussed hereinabove. I have discussed the potential competition theory at some length because complaint counsel have invoked this theory in connection with several product and geographic markets in this case.

(1) The San Francisco Bay Market

Complaint counsel contend that (a) the local credit reporting market was highly concentrated, (b) there were substantial entry barriers, (c) respondent possessed the requisite capabilities and resources, (d) respondent was one of a limited number of likely potential entrants, (e) respondent was perceived as a likely potential entrant, and (f) the elimination of potential competition by respondent's January 1970 acquisition of CB Metro of California, is likely to result in substantial lessening of competition.

There cannot be serious dispute about the fact that the record evidence as a whole shows that respondent was a potential entrant into the San Francisco Bay market. [132] (F. 181) Respondent had an office in the market, which sold appreciable amounts of credit

²⁵ Turner, *supra* n. 17, at 1362-1379; Berger & Peterson, "Conglomerate Mergers and Criteria for Defining Potential Entrants," 15 Antitrust Bull. 489, 495 (1970).

²⁶ This would of course render the potential competition theory inapplicable. See Turner, *supra* n. 17, at 1365.

reports, including mortgage reports. Respondent desired to improve its market position there. Respondent possessed the necessary capabilities and resources, to enter that market on its own.

I have carefully considered the fact that respondent was, albeit minimal, an actual competitor in this market. Ordinarily, this fact would strongly argue for the inference that respondent remained a significant potential entrant in that market. However, in the instant case, two factors relative to conditions of entry, which were rather unique to this market, raise serious doubt as to whether respondent was a *likely* potential entrant into the San Francisco market at the time of its acquisition of CB West Coast. The two factors are credit grantor cooperation and the presence of two computerized competitors in the market.

The record is clear that a successful entry is impossible without the cooperation of credit grantors in providing accounts receivable information to the proposed entrant and purchasing credit reports from it. (F. 178) The testimony on the question whether a prospective entrant could have secured sufficient credit grantor cooperation in this market in early 1970 is inconclusive. Most of the principal customers in this market had computerized their credit operations. There were two computerized credit bureaus at the end of 1969—Credit Bureau Metro (the acquired firm) and Credit Data Corporation (later TRW Credit Data Division). Complaint counsel agree that competition between the two computerized bureaus “improved the quality of service, including speed of service and file coverage, and resulted in lower credit reporting costs to credit grantors in the Bay Area.” (CPF 211) Against this background, there is credible evidence which tends to show that the credit grantors were well pleased with the service they were receiving from the existing credit bureaus and would not have been receptive to providing their accounts receivable information to a third computerized bureau, unless the latter offered substantially lower prices or some new service which would have filled a serious gap in the service to the credit grantors. (F. 179) Furthermore, the record is clear that computer capability was essential to a successful entry into this market. (F. 178) At the time of its acquisition of CB West Coast, respondent did [133] not possess computer capability, although it had access to technical information related to CB Metro’s programs and system designs. It was not until mid-1970 that respondent began to computerize its Atlanta headquarters operations, utilizing essentially what it learned from CB West Coast, albeit after significant modifications and improvements. (F. 180) These circumstances raise serious doubt as to the likelihood of respondent’s entry. In these circumstances, how attractive a

market was the San Francisco Bay area for respondent to enter de novo in 1969-1970, the time of the challenged acquisition?²⁷ In fact, the record shows that Computing & Software Corporation (later Cordura Corporation), of Los Angeles, California, considered a direct entry into northern California in 1972, but decided against it because there was little hope of getting a decent return on such investment since two computerized credit bureaus were already in operation in the San Francisco area. (Sasser 9228-9729) Moreover, there is no credible evidence of subjective intent in the record to show that respondent in fact intended nevertheless to expand its non-mortgage credit reporting in this market in the near future. For these reasons, complaint counsel's contention that respondent was a *likely* potential entrant is not persuasive. Therefore, it is determined that the evidence fails to establish that, but for the challenged acquisition, respondent would have entered de novo, or by a toehold acquisition, into this market. Thus, the record does not provide a basis for the "future competition" aspect of potential competition theory.

Secondly, complaint counsel's argument that respondent was a perceived or recognized potential entrant is not supported by the record. The evidence relied on by complaint counsel consists of opinion testimony based on hindsight, not on contemporaneous perception. (CPF 326) Elimination of the "edge effect" cannot rationally be based on hindsight for the edge effect assumes [134] contemporaneous recognition of a likely potential entrant which may serve to discipline the price and output decisions of the oligopolists prior to the acquisition-entry challenged herein.

Furthermore, complaint counsel's contention that respondent was one of a limited number of likely potential entrants into the San Francisco Bay market is not supported by the evidence. In conclusion, the record fails to establish by a preponderance of credible evidence that respondent's acquisition of CB West Coast is likely to lessen competition substantially in local credit reporting in the San Francisco Bay market.

(2) The Washington, D.C. Metropolitan Market

Complaint counsel contend that (1) the local credit reporting in the Washington, D.C. metropolitan market was highly concentrated, (2) there were substantial entry barriers, (3) respondent possessed the requisite capabilities and resources, (4) respondent was one of a limited number of potential entrants, (5) respondent was perceived

²⁷ In this connection, complaint counsel's reliance on evidence indicating that, *after* respondent acquired CB West Coast, it regarded the San Francisco Bay area (or the Los Angeles, California or Portland, Oregon, for that matter) as a suitable site for a regional computer center, is misplaced. (CPF 341-342)

as a likely potential entrant by the suppliers and purchasers of credit reports in the market, and (6) respondent's October 1970 acquisition of CBDC eliminated substantial potential competition. I agree with these propositions with the exception of (5).

The high concentration prevailing in this market in 1970 is beyond dispute. (F. 222) The parties agree that entry barriers were substantial. However, respondent argues that chances of obtaining the cooperation of the major merchants in the area, who were also owners of the credit bureau, would have been "very unlikely." (RPF 243) First, the record shows that the Stone's Mercantile Agency, an independent local credit reporting firm, successfully operated for many years until it was sold in 1969 to the merchant-owned CBDC after the death of its owner. (F. 229) Second, the bulk of CBDC's some 1,000 subscribing merchants had no ownership interest in CBDC. The ownership of CBDC was held by 25 firms. (F. 68, 228) In these circumstances, respondent's credit-grantor-cooperation argument with respect to this market boils down to a variation of its argument that a de novo entry "would have been extremely difficult, time consuming and very costly." (RPF 243) [135] However, it is well settled that that fact, even if true, does not save the acquisition if it is shown that the alleged potential entrant otherwise possessed the requisite capabilities and resources to enter the market on its own, as is the case here. See *F.T.C. v. Procter & Gamble Co.*, *supra*, at 574; *Ford Motor Co. v. United States*, *supra*, at 566. Cf. *Brown Shoe Co. v. United States*, *supra*, at 345 n. 72.

The record is clear that respondent possessed ample capabilities and resources to enter this market. Respondent was a well-established and leading credit bureau chain in the country. (F. 150-156) It had abundant financial resources to expand. By the middle of 1970 (before its CBDC acquisition), respondent began to market computerized credit reports from its regional centers in the Southeast. (F. 158)

The record is also clear that respondent was a most likely potential entrant into this market. Prior to October 1970 (the date of its CBDC acquisition), respondent had established important credit bureau locations in the Middle Atlantic and Northeastern States, including the Carolinas, New Jersey, New York, Connecticut and Massachusetts. See Appendix A. In terms of market proximity, therefore, the Washington, D.C. market was sufficiently near respondent's existing credit bureaus as well as to the Southeast, respondent's historic market. I am not aware of any potential competition case, nor has respondent pointed to any case, which would equate "proximity" or "nearness" to "contiguity." Market proximity is a matter of degree, and, with respect to the Washington,

D.C. market, I find that it was sufficiently near respondent's existing credit bureau locations. Respondent's potentiality in terms of subjective evidence is convincing. Respondent was keenly aware of the Southeast and Northeast areas as the prime area into which it is destined to expand and rightfully seize the leadership position.²⁸ (F. 226, 227) Thus, [136] the conclusion is inescapable that, but for the acquisition, respondent would have entered the Washington, D.C. market in some way. And, the record shows that, among the small number of firms which may be said to have possessed the requisite capabilities, respondent was in a unique position in terms of market proximity, historic capabilities and incentives.

From the foregoing discussions, it is concluded that respondent was a likely potential entrant and that its acquisition of CBDC eliminated substantial potential competition in local credit reporting in the Washington, D.C. metropolitan market in violation of Section 7. [137]

G. Structure of the National Account Sales Market

The record does not permit a market structure analysis of the national account sales market based on reliable market share data. For example, the record does not show a reliable universe for this

²⁸ A vivid revelation of this thinking is contained in a speech, given in October 1967, by D. Rutherford, then president of CBI (Retail Credit Company's credit bureau chain), before a group of CBI managers. Under the title "Reason For Being," Mr. Rutherford emphasized the importance of planning, and reviewed CBI's past growth and charted its future direction. An outline of Mr. Rutherford's speech reads in part:

"Historically, the explanation for CBI [Retailers] as one of the Affiliated Companies to Retail Credit Company has been -

1. Deeper penetration into Credit Reporting Market.
 - A. Specialization
 - B. Local Market
2. Broaden base for parent company.
3. Increased profits and earnings.

We have accepted this rule and pointed to our increases in revenue, acquisitions, increased profits" * * * "CHANGES IN OUR BUSINESS: Credit bureaus have clearly indicated the possibilities of much faster growth because of 'threat of automation' - acquisitions in 1967 and 1968 to accelerate. We added \$1,250,000 in 1967 in acquired business. *Control of both Southeast and Northeast are possible if we are bold enough and smart enough. Few have the money to do the job necessary in building regional computer centers - we do and can!*" [Emphasis added]

(CX 168a, c)

In February 1971, W. L. Burge, president and chief executive officer of Retail Credit Company, reported the progress of his company to the Boston Security Analysts Society, Inc. He said in part:

"While reaching these new peaks, 1970 was important also for Retail Credit Company for the several acquisitions we made and the fruition of other expansion plans which insure accelerated growth in the next few years."

* * * * *

"Our company is a pioneer in the multi-bureau operational field in that we own 120 bureaus."

"We have a range of bureaus beginning in the Southeast, where Atlanta and Miami are principal locations, up through the Middle Atlantic States, where we have a key position in New Jersey. And with the acquisition of Washington, D.C. in 1970, it adds to our strength in that Middle Atlantic area."

(CX 167d, f; also see CX 81c; White 11,579-580; Rutherford 13,092-095)

market. It does not show the true magnitude of direct sales by credit bureau chains. Nor does it show the portion of ACB coupon sales accounted for by sales to national and regional credit grantors.

However, what evidence there is in the record is sufficient to make out broad contours of this market. For example, it is beyond dispute that CBR for some years [138] has remained by far the dominant firm. (F. 264) With the emergence of a few regional credit bureau chains toward the late 1960's and early 1970's, CBR's dominant position has suffered a significant erosion as the chain bureaus began to sell directly to national and regional credit grantors. (F. 258, 260, 264) These bureau chains, however, continued to do business with CBR. It is safe to conclude that, at the time of the challenged acquisitions, CBR maintained its dominant position in this market.

The record evidence also offers some hope for further erosion of CBR's dominant market position in the years to come. First is the emergence of rival brokerage organizations, such as CSI and ACB coupon brokers. (F. 255) Secondly, there is evidence indicating that the advent of computerized credit reporting since the late 1960's has enabled regional and national credit grantors to obtain credit information directly from automated credit bureaus through the use of computer terminals, thus bypassing brokers, such as CBR. (F. 260) The direct-dialing capabilities of the national and regional credit grantors is likely to be further enhanced as more independent local bureaus subscribe to the automated service contract systems now being offered by a number of computerized credit bureau chains, including respondent. (F. 131-133) To the extent that increases in direct sales by credit bureau chains tend to erode CBR's dominant position, the effect of the challenged acquisitions will be procompetitive as far as the national sales market is concerned. In my view, protection of a market leader from the incidence of new competition is clearly repugnant to the basic purposes of Section 7. For these reasons, it is concluded that the record evidence fails to show any likelihood of substantial lessening of competition in the national account sales market as a result of the challenged acquisition.

H. The Probable Effect of the Acquisitions in the Personnel Reporting Market

The personnel reporting market is characterized by a large number of firms. Complaint counsel admit that the bulk of credit bureaus in the nation prepare and sell personnel reports. (CPF 321) It is true that respondent [139] is probably the largest firm in this national market, accounting for some 35-40 percent of that market

by its own estimate. (Burge 3878) However complaint counsel agree that the challenged acquisitions only marginally increased respondent's personnel reporting market share (adding about 0.05 percent). (CPF 422; F. 339) Thus, the effect of the challenged acquisitions in the personnel reporting market is clearly *de minimis*.

I. The Probable Effect of the Acquisitions in the Life and Health Insurance Reporting Market and the Fire and Casualty Insurance Reporting Market

The record indicates that the life and health insurance reporting market was highly concentrated. Respondent was by far the leading firm. (F. 289) Complaint counsel contend that all of the acquired firms were potential entrants into this highly concentrated market as a group and that their absorption by respondent eliminated significant potential competition. This proposition is not supported by the evidence.

The record is clear that credit bureaus do not produce or sell life or health insurance reports. If complaint counsel's argument is that the acquired firms were potential entrants by virtue of the Texas Pilot Project (F. 294), then each of the credit bureaus in the nation, numbering well over 2,000, is also a potential entrant. In these circumstances, an argument that respondent's absorption of the acquired firms is likely to lessen competition substantially in the life and health insurance reporting market is patently untenable. In any event, in my view the Texas Pilot Project convincingly demonstrated that conventional credit bureaus lacked the requisite capabilities to produce insurance reports as we know them. (F. 295-296) Therefore, complaint counsel's argument that respondent's absorption of formerly independent credit bureaus sufficiently undermined a potential base for a new national brokerage operation offering insurance reports in competition with respondent is not persuasive.

With respect to fire and casualty insurance reports, the record is clear that none of the acquired firms whose acquisition by respondent is challenged in this proceeding prepared or sold fire and casualty insurance reports. [140] Indeed, the record does not show that credit bureaus routinely prepare and sell fire and casualty reports or that they are capable of doing so.

In short, the record does not establish a Section 7 violation in either the life and health insurance report market or the fire and casualty insurance report market.

J. Evidentiary Rulings

A few remarks may be in order with respect to several evidentiary matters. First, complaint counsel placed considerable reliance on the result of a Section 6 survey of the credit bureaus in 130 cities with 1960 Census population of 100,000 or more. This survey was conducted in 1970-1972. I received into evidence responding firms' answers, or summaries thereof, to certain questions given in Section 6(b) special reports without requiring complaint counsel to produce witnesses from these firms. These answers are essentially limited to identification and classification information and other data of statistical nature involving credit reporting sales of responding firms. Other Section 6(b) report answers, such as those listing "competitors" and their estimated "market shares," were excluded. Respondent's request to require the Commission to conduct a Section 6(b) survey of the credit reporting industry during the litigation for the purpose of securing data related to computerized credit reporting sales was denied. However, I authorized an alternative survey by the use of some 90 subpoenas duces tecum, and certain statistical summaries of information based on the subpoena returns were received in evidence without requiring respondent to produce witnesses from some 80 responding firms. Complaint counsel were given an opportunity to spot check the accuracy of these subpoena responses against underlying data secured from selected firms. In my view, although both the Section 6 survey and the respondent's survey are less than perfect in their conception and execution, reception of statistical information based on these surveys is justified for the purpose for which it was used. There was a clear necessity in both cases. There were also sufficient circumstantial guarantees of trustworthiness. The statistical information thus received was used for purposes of market structure analysis. [141]

Second, complaint counsel have extensively relied on estimates in their presentation of market structure analyses. With respect to the various estimates respondent furnished the Commission during the pre-complaint investigation, it is my view that the government has a right to rely on such estimates regarding respondent's own operations. It was incumbent upon respondent to correct or improve such estimates or otherwise offer more accurate data regarding its own business at trial if such data were available. With respect to the various estimates regarding the business of other firms (including estimates given in the two surveys discussed hereinabove), due regard was given to the nature and extent of such estimates, the basis for such estimates and the methodology used in arriving at such estimates. In all instances and to the extent relied on for the purposes of formulating findings for this initial decision, I was

satisfied that the estimated data were reliable for the purpose for which they were being used. With respect to estimated market share information relied on in my findings, it is my opinion that they were sufficiently reliable for the purpose of reconstructing an overview of the relevant markets and drawing certain broad inferences for the purpose of evaluating the probable impact of the challenged acquisitions. In view of the finite resources at the Government's command and the shortness of life, technical perfection and mathematical exactitude in these matters are seldom attainable. In my view, the market share information contained in this initial decision, although far from perfect and precise, is sufficiently reliable to permit an informed and reasoned judgment with respect to the degree of concentration and approximate market shares of the leading firms in the relevant markets. With respect to certain proposed projections of estimated data, I have disregarded them, or gave them little weight, except in those instances where evidence showed that prudent businessmen in the credit reporting industry would base their day-to-day business decisions on the kind of information under consideration. See *Brown Shoe Co. v. United States*, *supra*, at 341-342 n. 69; *Avnet*, 82 F.T.C. 391, 465 (1973), *aff'd*, 511 F.2d 70 (7th Cir. 1975); *Papercraft Corp.*, 78 F.T.C. 1352, 1405-1406 (1971), *aff'd*, 472 F.2d 927 (7th Cir. 1973); *British Oxygen Co., Ltd.*, *supra*, at 20,922.

Third, certain excerpts from the deposition and trial transcripts, including statements of respondent's corporate officials, from the so-called Texas litigation (*Credit [142] Bureau Reports, Inc. v. Retail Credit Co.*, 358 F. Supp. 780 (S.D. Texas 1971)) were received in evidence as party admissions. See 5 J. Wigmore, Evidence §1416 (3d ed. 1940); Rule 801(d)(2)(A), Federal Rules of Evidence. Respondent was permitted to designate additional portions of such transcripts for the purpose of explaining or qualifying or contradicting the portions designated by complaint counsel. See 4 J. Wigmore, Evidence §1059, (Chadbourn Rev. 1972). These excerpts are contained in a joint exhibit prepared at my direction. Complaint counsel's position is that such party admissions, once received, stand on an equal footing as any other testimony given at the trial of this case. Although there appear to be some authority supporting complaint counsel's position, I have limited the use of the Joint Exhibit evidence to corroboration purposes in preparing the findings. This decision is mainly based on my strong belief that in cases where, as here, the same witnesses were called and gave extensive testimony, sole reliance on their prior testimony is unwise and should be avoided for the purpose of

formulating substantive findings. Complaint counsel were put on notice of my reservations in this regard during the hearing.

Fourth, a substantial amount of post-acquisition evidence was received into evidence. I am keenly aware of certain pitfalls accompanying post-acquisition evidence. In cases where, as here, respondent or the acquired firm had a leading market position, the danger of possible dissimulation of market power is a real one. However, I was persuaded that a proper evaluation of the advent of computerization, which began toward the late 1960's and progressed apace in the early 1970's in the credit reporting industry, was essential for a functional view of the industry and a true understanding of the industry's present and its future which Section 7 demands.

Finally, out of a desire to obviate the possible need for a remand hearing directed to the issue of relief, respondent was given every reasonable opportunity to develop a record bearing on that issue. Although the bulk of such evidence consists of self-serving opinion testimony of respondent's corporate officials, such opinion testimony was duly considered by me to the extent that I believed the underlying reasons given for certain conclusionary opinions to be cogent and reasonable and [143] appeared to comport with other evidence in the record. In those instances where such opinion testimony amounted to nothing more than self-serving speculation, I have not given it any weight.

K. Failing Company Defense

Respondent has invoked the failing company doctrine in its defense with respect to its January 1970 acquisition of CB West Coast. It is well established that Congress intended to exempt from the proscription of Section 7 an acquisition of a "failing company" within the meaning of *International Shoe Co. v. F.T.C.*, 280 U.S. 291 (1930). *Brown Shoe Co. v. United States*, *supra*, at 315-320 n. 34. In *International Shoe Co.*, *supra*, the evidence showed that the financial resources of the acquired firm were so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure and that there was no other prospective purchaser. 280 U.S. at 302. In *Citizen's Publishing Co. v. United States*, 394 U.S. 131, 138 (1969), the Court, in view of "the broad experience of the business community since 1930, the year when the *International Shoe* case was decided, that companies reorganized through receivership, or through Chapter X or Chapter XI of the Bankruptcy Act often emerged as strong competitive companies," stated that the "prospects of reorganization [of the acquired firm] would have had to

be dim or nonexistent to make the failing company doctrine applicable. . . .” *Id.*, at 138.²⁹ And the burden of proving that the [144] conditions of the failing company doctrine have been satisfied is upon the proponent. *Id.*, at 138-139. In this case, respondent has not satisfied that burden.

First, although the evidence shows that CB West Coast suffered substantial operating losses in the years since 1967 and may have approached insolvency in the commercial sense during those years, the record does not establish that CB West Coast’s resources were so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure. Clearly, the question of commercial insolvency is primarily an accounting question. However, the question whether a firm’s resources are so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure is much more than an accounting question. It calls for an overall assessment of the firm’s basic capabilities and resources and their immediate-term prospects from a business point of view. It also calls for a judgment regarding the prospect of the firm’s rehabilitation, through corporate financing, increased efficiencies or otherwise.

In the instant case, the main reason for CB West Coast’s adverse financial position was that the firm, beginning in 1964, expended large sums of money in connection with its pioneering computerization program, which did not produce an immediate return, and incurred substantial expenditures for the 1967 acquisitions of credit bureaus located in San Francisco, Oakland and San Jose, California. (F. 354) These investments, whatever their effects may have been on the company’s current [145] financial statements, clearly promised substantial financial rewards in the near future. In any event, those financial setbacks do not appear to have adversely affected CB West Coast’s leading market position in the San Francisco Bay area and other areas in the Pacific Northwest.³⁰ (F. 144-145, 210) Furthermore, the evidence shows that CB West Coast, since these acquisition

²⁹ I reject respondent’s argument that the Court, in the *Citizen’s Publishing* case, did not mean to prescribe the “dim reorganization prospect” requirement as a condition of the failing company doctrine. I also disagree, with all due respect, with the court in *United States v. MPM, Inc.*, 1975 Trade Cases ¶60,312 (D. Colo. 1975), at 66,246-66,247, to the extent that that decision may be read to reject “dim reorganization prospect” as a third requirement. In my view, the explicit language of the Court in the *Citizen’s Publishing* case, when read in context, clearly indicates that the Court intended to prescribe a further condition based on the post-*International Shoe* experience as viewed by the Court in 1969. Accord, *United States Steel Corp. v. FTC*, 426 F.2d 592, 609 (6th Cir. 1970). Moreover, it is difficult to discern any logical relationship between the “only available purchaser” requirement and the “dim reorganization” requirement which may rationally make one dependent on the other. And if the Court meant to regard the two as alternative requirements, it would have said so. In any event, in the instant case, respondent has failed to satisfy either requirement.

³⁰ There is substantial evidence which tends to show that both CB West Coast and respondent anticipated CB West Coast’s computerized credit reporting system to become profitable by the end of 1969 or soon thereafter. (F. 357)

discussions between it and respondent began in early 1968, desired to be acquired by respondent in some manner, and, consequently, "did not make a real effort to refinance" and that there may have been other firms which were interested in extending aid to CB West Coast. (CX 360b) These circumstances are clearly inconsistent with a finding that CB West Coast's resources were so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure.³¹

Second, the record shows that a number of firms other than respondent expressed a serious interest in acquiring CB West Coast and several firms in fact made acquisition offers, which CB West Coast found unacceptable for one reason or another. Respondent concedes that, at the time of its consummation of the loan agreement with CB West Coast in August 1968, three firm exchange-of-stock offers had been made to CB West Coast. (RPF 362-363; F. 366, 367) Clearly, the evidence does not permit a conclusion that there was no other prospective purchaser in this case.

Third, there is no credible evidence in the record to show that CB West Coast's reorganization prospects, through receivership or Chapters X or XI of the Bankruptcy Act, were dim or nonexistent. Indeed, there is no evidence to show that CB West Coast ever seriously considered such a prospect. [146]

For all these reasons, respondent's failing company defense with respect to its acquisition of CB West Coast is rejected.

L. Violation of Section 5 of the Federal Trade Commission Act

Complaint counsel correctly argue that an acquisition which is found to be in violation of Section 7 of the Clayton Act also constitutes a violation of Section 5 of the Federal Trade Commission Act. *Golden Grain Macaroni Co. v. F.T.C.*, 472 F.2d 882 (9th Cir. 1972), *cert. denied*, 412 U.S. 918 (1973); *Stanley Works v. F.T.C.*, 469 F.2d 498, 499 n. 2 (2d Cir. 1972), *cert. denied*, 412 U.S. 928 (1973). Therefore, respondent's acquisitions, to the extent they are found to be in violation of Section 7 of the Clayton Act, also constitute violations of Section 5 of the Federal Trade Commission Act. Complaint counsel, however, have not sought any relief specifically grounded on Section 5 violations.

M. Relief

It is now axiomatic that if the proscribed anti-competitive effect is

³¹ Also, there is some evidence that CB West Coast's true financial condition was not as desperate as respondent contends. (F. 358)

found to exist in any one of the relevant markets, the acquisition is unlawful under Section 7. *Brown Shoe Co. v. United States, supra*, at 325. It is equally well settled that the normal remedy in cases where Section 7 violation is found is the divestiture of what was unlawfully acquired. Indeed, divestiture is the remedy prescribed by Section 11(b) of the Clayton Act. And complete divestiture is "peculiarly appropriate" in cases of stock acquisitions which violate Section 7. *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 328 (1961). And, the enforcement agency's panoply of remedial sanctions includes the power to ban unauthorized acquisitions in the future as well as other ancillary measures reasonably calculated to restore competition in the relevant markets. *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 606-607 n. 5, 609 n. 9 (1966); *Luria Bros. & Co., v. F.T.C.*, 389 F.2d 847, 865 (3rd Cir. 1968), *cert. denied*, 393 U.S. 829 (1968); *Abex Corp. v. F.T.C.*, 420 F.2d 928, 933 (6th Cir. 1970), *cert. denied*, 400 U.S. 865 (1970); *Ford Motor Co. v. United States*, [147] *supra*, at 571-578; *OKC Corp. v. F.T.C.*, 455 F.2d 1159 (10th Cir. 1972); *Avnet, Inc. v. F.T.C.*, *supra*. This is not to say that divestiture is an automatic sanction, mechanically invoked in merger cases. In cases where several equally effective remedies are available short of a complete divestiture, a due regard should be given to the preservation of substantial efficiencies or important benefits to the consumer in the choice of an appropriate remedy.

Applying the above guidelines to the instant case, it is determined that respondent should be required to divest the credit reporting business acquired as the result of its acquisitions of CB West Coast, CBDC and CB Portland, with the exception of the bureau operations in northern California in and around the San Francisco Bay market.

The law is clear that my determination that respondent's acquisition of CB West Coast had the statutorily proscribed effect in local credit reporting in the Tacoma, Washington market renders that acquisition unlawful in its entirety. However, I am persuaded that, in the circumstances of this case, respondent should be permitted to retain the acquired business in northern California, including the San Francisco Bay area market. First, I have determined that respondent's CB West Coast acquisition did not have the unlawful effect in the San Francisco Bay market. Second, the record as a whole clearly shows that, in terms of credit reporting, the San Francisco Bay area is a separate trade area distinct from any of the markets in the Pacific Northwest. *Cf. Brown Shoe Co. v. United States, supra*, at 337 n. 65. Third, I have not found any persuasive evidence that divestiture of the acquired credit reporting business in northern California, including the San Francisco Bay

market, is necessary to restore competition fully in the Tacoma, Washington or Portland, Oregon markets or that the business to be divested should include the northern California operations in order to remain a viable entity after divestiture. Lastly, there is some evidence that respondent's substitution for the financially ailing CB West Coast may be producing substantial benefits to the credit granting customers in the northern California area in improved service and expanded data base. [148]

With respect to the remainder of credit reporting operations acquired from CB West Coast, I have determined that divestiture of credit reporting business acquired from CB West Coast in the entire Pacific Northwest and CB Portland as a unit is necessary in order fully to restore competition in the Tacoma, Washington and the Portland, Oregon markets and to insure the viability of the divested business. *Cf. OKC Corp. v. F.T.C., supra*. There is another important consideration. A package encompassing the entire Pacific Northwest region is likely to enhance materially the salability of the business to be divested, thus insuring a speedy implementation of the remedy and an early and full restoration of competition in the Tacoma, Washington market as well as the Portland, Oregon market. This is a legitimate consideration, reasonably calculated to bring about a full and speedy restoration of competition in the relevant markets as to which a violation is found, in view of the long delays experienced in implementing the divestiture provisions in a number of recent Section 7 proceedings before the Commission. *E.g., Kennecott Copper Corp., D. 8765 [78 F.T.C. 744]; Papercraft Corp., D. 8779 [78 F.T.C. 1353; modified, 79 F.T.C. 420]*.

Respondent's argument that divestiture of any of the acquired businesses would have significant anti-competitive effects is not only wholly self-serving but also devoid of evidentiary support and is rejected. Despite its surface plausibility, the argument essentially boils down to a contention that it needs the acquired businesses in order to maintain its leading market position in the post-acquisition markets where computerized credit reporting plays an important role. This argument is largely based on self-serving opinion testimony of respondent's corporate officials. In any event, this argument is invalid as a matter of law. *See United States v. Phillips Petroleum Co., supra*, at 1238. The situation at hand is clearly distinguishable from *Litton Industries, Inc., D. 8778, 3 Trade Reg. Rep. ¶20,854 (1975) [85 F.T.C. 333]*, where the evidence clearly showed that the relevant market (office electric typewriters) was a quasi-monopoly dominated by IBM and there was convincing evidence to show that the divestiture requirement would probably

result in a total exit of the acquiring firm under the order from the industry because of mounting, heavy losses.

I am also persuaded that a 10-year national moratorium on further credit bureau acquisitions by respondent is [149] clearly required. The record clearly demonstrates respondent's proclivity for acquisitions. (Appendix A) The record also shows that the credit reporting industry, once atomistic, has been perceptively moving toward increasing concentration at the national level, with increasing number of high concentrations at the local and regional levels. (F. 109) Furthermore, the advent of computerization has enabled small, local credit reporting firms to remain viable, independent entities offering computerized service to their customers under the automated service contract system. Preservation of small, independent local business units is an important goal of Section 7. *Brown Shoe Co. v. United States, supra*, at 315-316.

Finally, I see no reason why respondent should not be allowed to compete for automated service contracts with any of the purchasers of the divested business if that is the route they choose. However, such service contracts should be open to competitive proposals by all vendors.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent.

2. On or about January 2, 1970, respondent acquired substantially all of the stock of Credit Bureaus, Inc. of Salem, Oregon (CB West Coast). On or about October 29, 1970, respondent acquired the business and assets of the Credit Bureau, Inc. of Washington, D.C. (CBDC). On or about January 6, 1971, respondent acquired the credit reporting business and assets of the Retail Credit Association of Portland, Oregon, Inc. (CB Portland).

3. At all times relevant to this proceeding, respondent and each of the acquired businesses described in 2 above were engaged in commerce within the meaning of Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act.

4. For the purposes of assessing the legality of the acquisitions described in 2 above under Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, the appropriate lines of commerce are [150] local credit reporting, national account sales, personnel reporting, life and health insurance reporting, and fire and casualty insurance reporting.

5. The appropriate sections of the country within which to test the effect of the challenged acquisitions are the San Francisco Bay

area, the Portland, Oregon area, the Tacoma, Washington area, and the Washington, D.C. area, with respect to local credit reporting. The appropriate section of the country with respect to national account sales, personnel reporting, life and health insurance reporting is the United States as a whole.

6. Prior to and at the time of the acquisitions, respondent was a substantial actual competitor in local credit reporting of (a) CB West Coast in the Tacoma, Washington market, and (b) CB Portland in the Portland, Oregon market.

7. The acquisitions eliminated the substantial competition in local credit reporting between respondent and CB West Coast in the Tacoma, Washington market, and between respondent and CB Portland in the Portland, Oregon market, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

8. Prior to and at the time of the acquisitions, respondent was a significant potential competitor of CBDC in local credit reporting in the Washington, D.C. market.

9. The acquisition of CBDC by respondent eliminated significant potential competition in local reporting in the Washington, D.C. market, in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

10. Divestiture of the credit reporting business acquired in the Washington, D.C. market as a result of respondent's acquisition of CBDC and of the credit reporting business acquired in the States of Oregon, Washington and Idaho as the result of respondent's acquisitions of CB West Coast and CB Portland is both necessary and appropriate to restore competition in the relevant markets. A 10-year prohibition of any acquisition by respondent of any credit reporting business in the United States, except [151] with a prior approval of the Federal Trade Commission, is both necessary and appropriate in the circumstances of this case.

11. The complaint should be dismissed in all other respects.

ORDER

I

It is ordered, That respondent, Retail Credit Company (hereinafter "Retail Credit"), a corporation, and its successors and assigns, shall divest all stock, assets, properties, rights and privileges and interests of whatever nature, tangible and intangible, acquired by Retail Credit as the result of its acquisitions of stock or assets of Credit Bureaus, Inc., of Salem, Oregon ("CB West Coast"), The Credit Bureau of Washington, D.C. ("CBDC") and Retail Credit Association

of Portland, Oregon, Inc. ("CB Portland") (hereinafter sometimes designated as "the acquired firms"), together with all additions and improvements to the acquired firms which have been added since the acquisitions of such firms. Such divestiture shall include the removal from all manual and computerized records of respondent all credit information obtained as a result of the acquisitions, and all additions and improvements to the acquired firms' credit information added since [152] the acquisitions, *provided, however*, that Retail Credit shall be permitted to retain credit reporting and related assets and business it acquired from CB West Coast and located in the State of California, including all additions and improvements thereto since the acquisition. Any assets or properties of any acquired firm required to be divested that have been substantially disposed of or commingled with Retail Credit's assets or properties since acquisition, including computerized credit files, shall be restored or recreated prior to divestiture and included in the assets and properties to be divested. Such divestiture shall be absolute and shall be accomplished no later than one year from the date this order shall become final.

II

It is further ordered, That the divestitures required by Paragraph I of this order shall result in the transfer of assets and businesses to be divested to purchasers as going business and as viable concerns engaged in the gathering and reporting of credit information on individuals to business firms. The assets and business pertaining to CB West Coast and CB Portland required to be divested shall be divested as one or more units and shall not be transferred, directly or indirectly, to the purchaser of the assets and [153] business pertaining to CBDC. Each such divestiture shall be subject to prior approval by the Federal Trade Commission.

III

It is further ordered, That the divestitures required by Paragraphs I and II of this order shall not be effected, directly or indirectly, to any person who is an officer, director, employee or agent of, or otherwise under the control or influence of, Retail Credit, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding stock of Retail Credit.

IV

Pending completion of such divestitures, Retail Credit shall not

commingle any assets, properties, financing, business or operations of any acquired assets and business required to be divested with its own, and shall take no steps to impair or otherwise adversely affect the economic, competitive and financial strength of any business required to be divested.

V

It is further ordered, That Retail Credit shall make no acquisition, directly or indirectly, of any concern, or any interest in any concern which is engaged in the [154] business of gathering and reporting credit information on individuals or business firms, until the divestitures required by this order shall have been completed.

VI

It is further ordered, That for a period of ten (10) years from the date of approval of the last divestiture required by this order, Retail Credit shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, any interest in or any interest of, any concern engaged in the gathering and reporting of credit information on individuals to business firms in the United States, nor shall Retail Credit enter into any arrangement with any such concern by which Retail Credit obtains the market share, in whole or in part, of such concern.

VII

Nothing contained in this order shall be construed to prohibit Retail Credit from bidding for an automation service contract in competition with other firms offering automation service contracts, with any purchaser of any business divested pursuant to this order, *provided, however,* [155] that respondent shall not enter into a management contract with any such divested business for a period of ten (10) years from the date of its divestiture sale.

VIII

It is further ordered, That within thirty days from the effective date of this order and every thirty days thereafter until divestiture is accomplished, Retail Credit shall submit, in writing, to the Federal Trade Commission a report setting forth in detail the manner and form in which Retail Credit intends to comply, is complying, or has complied with the order. All compliance reports shall include, among other things that are from time to time required, (a) the steps taken

to accomplish the required divestiture; and (b) copies of all documents, reports, memoranda, communications and correspondence concerning or relating to the divestiture.

With respect to Paragraph VI of this order, Retail Credit shall on the first anniversary date of the effective date of Paragraph VI and each anniversary date thereafter until the ten (10) year period shall have expired, submit a report, in writing, listing all acquisitions or mergers made by it, the date of each such acquisition or merger, [156] the products involved and such additional information as may from time to time be required by the Federal Trade Commission.

IX

It is further ordered, That Retail Credit shall notify the Commission at least thirty (30) days prior to any proposed change which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor.

APPENDIX A

During the period January 1960-January 1971, RCC/CBI acquired credit bureaus located in the following cities and states (not including its CB West Coast bureaus):

Bureau Location	Approximate Date of Acquisition
Martinsburg, W. Va.	Jan. 1960
Winter Haven, Fla.	Mar. 1960
Albany, N.Y. (2 bureaus)	Apr. 1960
Tupelo, Miss.	May 1960
Greer, S.C.	July 1960
Orlando, Fla.	Oct. 1960
West Palm Beach, Fla.	Nov. 1962
Rockville Center (Huntington Station), N.Y.	May 1963
Ft. Lauderdale, Fla.	Aug. 1963
Natchez, Miss.	July 1964
Winter Haven, Fla.	Oct. 1964
Elizabeth City, N.C.	Mar. 1965
New London, Conn.	Feb. 1966
Clearwater, Fla.	Feb. 1966
Atlanta, Ga.	Apr. 1966
Lawrenceville, Ga.	Apr. 1966

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Bureau Location	Approximate Date of Acquisition
North Adams, Mass.	June 1966
Ft. Myers, Fla.	Aug. 1966
Raleigh, N.C.	Aug. 1966
Columbia, Tenn.	Sept. 1966
Oxford, Miss.	Dec. 1966
Beacon, N.Y.	Apr. 1967
Sanford, Fla.	May 1967
Delray Beach, Fla.	Aug. 1967
Goldsboro, N.C.	Sept. 1967
Savannah, Ga.	Sept. 1967
Bridgeport, Conn. (2 bureaus)	Oct. 1967
New Brunswick, N.J.	Feb. 1967
Toms River, N.J.	Feb. 1967
Plainfield, N.J.	Feb. 1967
Asbury Park, N.J.	Mar. 1967
Forrest Park, Ga.	June 1967
Lumberton, N.C.	Feb. 1968
Pomona, Calif.	May 1968
Bay St. Louis, Miss.	Jan. 1969
Florence, S.C.	Mar. 1969
Kinston, N.C.	Nov. 1969
Walnut Creek, Calif.	Jan. 1970
Muncie, Ind.	Mar. 1970
Troy, N.Y.	Mar. 1970
Muncie, Ind. (Delaware County)	June 1970
Atlantic City, N.J.	July 1970
Bridgeton, N.J.	July 1970
Wildwood, N.J.	July 1970
Sonoma, Calif.	Sept. 1970
Washington, D.C.	Oct. 1970
Bellflower, Calif.	Dec. 1970
Santa Rosa, Calif.	1970
Portland, Ore.	Jan. 1971

(CX 44a, b, d; CX 74a-d; CX 379e-g)

Credit bureaus acquired by RCC/CBI through its January 1970 acquisition of CB West Coast included the following:

Bureaus

Albany, Ore.	Medford, Ore.
Beaverton, Ore.	Mountain Home, Idaho
Bend, Ore.	Namapa, Idaho
Boise, Idaho	Newport, Ore.
Bremerton, Wash.	Oakland, Calif.

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Brookings, Ore.
 Caldwell, Idaho
 Coos Bay, Ore.
 Coquille, Ore.
 Corvallis, Ore.
 Dallas, Ore.
 Eugene, Ore.
 Everette, Wash.
 Florence, Ore.
 Fremont, Calif.
 Gilroy, Calif.
 Grants Pass, Ore.
 Hayward, Calif.
 Hillsboro, Ore.
 Hood River, Ore.
 Lebanon, Ore.
 McMinnville, Ore.

Ontario, Ore.
 Oregon City, Ore.
 Payette, Idaho
 Pendleton, Ore.
 Portland, Ore.
 Puyallup, Wash.
 Redmond, Ore.
 Renton, Wash.
 Salem, Ore.
 San Francisco, Calif.
 San Jose, Calif.
 Springfield, Ore.
 Tacoma, Wash.
 The Dalles, Ore.
 Tillamook, Ore.
 Vancouver, Wash.
 Weiser, Idaho

(CX 379f, g)

OPINION OF THE COMMISSION

BY DOLE, *Commissioner*:

The complaint in this case charged respondent Retail Credit Company, now known as Equifax, Inc., with violating Section 7 of the Clayton Act (15 U.S.C. 18) and Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) by reason of its acquisitions of Credit Bureaus, Inc., Salem, Oregon ("CB West Coast") in January 1970, of the Credit Bureau, Inc., Washington, D.C. ("CBDC") in October 1970, and of the credit reporting assets of the Retail Credit Association of Portland, Oregon, Inc. ("CB Portland") in January 1971. The complaint alleged that these acquisitions would have the probable effect of substantially lessening competition in the "credit reporting" product market and various product submarkets both in the United States as a whole and in several sections of the country, including Washington, D.C.; the San Francisco Bay area; Portland, Oregon; Tacoma, Washington; and other metropolitan areas in the Pacific Northwest.

After a lengthy hearing on the merits, Administrative Law Judge ("ALJ") Montgomery K. Hyun entered a decision finding that the acquisition of CBDC eliminated respondent as a substantial potential competitor in the Washington, D.C. local credit reporting market; the acquisition of CB Portland eliminated respondent as a substantial actual competitor in the Portland, Oregon local credit reporting market; and the acquisition of [2] CB West Coast eliminated respondent as a substantial actual competitor in the Tacoma,

Washington local credit reporting market. Rejecting the remaining complaint allegations, he ordered a partial divestiture of CB West Coast and a total divestiture of both CBDC and the acquired assets of CB Portland. The case is now before the Commission on cross appeals filed by complaint counsel and respondent.¹

I. RESPONDENT'S BUSINESS

Respondent began operations in Atlanta, Georgia, in 1899 as a credit bureau. Directly or through its subsidiaries, Equifax now furnishes financial and credit reports to various business enterprises that wish to evaluate the financial reputation and payment history of individuals who seek credit; provides personnel selection reports to industrial, commercial, financial, and insurance companies about education, job history, employment experience, character, and skills of applicants for employment; furnishes life insurance companies with information relevant to determinations of the desirability of applicants as risks for life and health insurance and for assistance in settling claims; and provides fire and casualty insurance companies with information on applicants for insurance and reports on the property insured. Respondent also supplies information to aid in marketing decisions. (ID f. 2, 3; CX 117C.)² In 1970, insurance reporting accounted for most of respondent's business volume. (CX 167 C, H.) [3]

Respondent owns all of the stock of eight subsidiary companies. Its subsidiary, The Credit Bureau, Inc. of Georgia ("CBI"), provides credit reports on consumers, personnel reports and collection services and credit card promotions for credit grantors in the United States. Its credit grantor customers are mostly department stores, retailers, banks and credit card companies. (I.D. f. 7, 16.) At the end of 1959, CBI owned 22 credit bureaus. Ninety-four acquisitions were made from 1960 through January 1971 by which time CBI owned 115

¹ Complaint counsel have not appealed from the ALJ's determinations concerning product and geographic submarkets outside of the San Francisco Bay area.

² The following abbreviations will be used in this opinion:

- I.D. f. - Initial decision finding no.
- I.D. p. - Initial decision page no.
- Tr. - Transcript page no.
- CX - Complaint counsel's exhibit no.
- RX - Respondent's exhibit no.
- RAB - Respondent's appeal brief.
- CAB - Complaint counsel's appeal brief.
- R. Ans. - Respondent's answering brief.
- C. Ans. - Complaint counsel's answering brief.
- RRB - Respondent's reply brief.
- CRB - Complaint counsel's reply brief.
- RPF - Respondent's proposed finding no.
- CPF - Complaint counsel's proposed finding no.

credit bureaus in the United States and five bureaus in Canada. CBI's credit bureau offices are located primarily in the southeastern United States, the New York-New Jersey metropolitan area, the Washington, D.C. area, the San Francisco Bay area and the Pacific Northwest. (I.D. f. 17, 18.) CBI's revenues from credit reporting services, excluding dues and promotions, amounted to \$8,429,000 in 1969. (I.D. f. 20.)

Retailers Commercial Agency, Inc., acquired by respondent in 1934, produces credit reports, primarily "character credit reports." These are frequently compiled through investigations conducted by Retailers' employees and include special-purpose mortgage reports, that is, reports on individuals applying for mortgage loans from banks or other lending institutions, and personnel reports. Retailers is regarded as an operating unit of respondent. (I.D. f. 21-26.)³

Equifax, through its own offices, referred to in the initial decision as Retail Credit Company offices, has provided information to insurance companies for use in determining insurability and ratings or classifications for life, health, property, marine, and automobile insurance purposes. Written reports are prepared on the basis of investigations conducted by field representatives. These offices also provide a variety of credit information services, including mortgage reports and reports to businesses on prospective employees. (I.D. f. 9, 12, 13.)

Equifax has described itself (and its subsidiaries) as one of the leading businesses in the United States engaged in providing information for use in underwriting insurance, investigation and adjustment of insurance claims, granting of credit, and selection of personnel. (CX 117C.) Its total revenue in 1971 was \$190 million. (I.D. f. 5.) [4]

II. THE ACQUISITIONS

Respondent, in 1968, agreed to loan CB West Coast \$3,500,000, which was secured by the pledge of all CB West Coast stock. As further consideration for the loan, respondent received an option to acquire the stock of CB West Coast in exchange for 100,000 shares of Equifax common stock. In 1969, additional loans of \$375,000 and \$500,000 were made to CB West Coast. Respondent, on January 2, 1970, acquired CB West Coast's stock from its sole shareholder in return for its own stock valued at \$3.7 million. (I.D. f. 62-67.) At the

³ As of December 31, 1973, respondent's other subsidiaries were Retail Credit Company of Canada Ltd., Atwell, Vogel & Sterling, Inc., the Credit Bureau of Montreal, Ltd., Physical Measurements, Inc., Gay & Taylor, Inc., and Hunnicut & Associates, Inc. (I.D. f. 7; CX 579.)

time of the acquisition, CB West Coast owned and operated 43 credit bureaus in the states of California, Idaho, Oregon, and Washington.

In October, 1970, respondent purchased the Credit Bureau Inc., of Washington, D.C. for \$3 million. The bureau had been owned by approximately 25 shareholders, the four largest of which were department stores in the Washington, D.C. area. (I.D. f. 68, 77.) Finally, in January 1971, Equifax acquired the credit reporting assets, including credit files, equipment and fixtures, of the Retail Credit Association of Portland, for a total purchase price of \$325,000. The association continued operations as a merchants' trade association. (I.D. f. 83.)

III. THE CREDIT REPORTING INDUSTRY

The expansion of the credit reporting industry in recent decades has accompanied the explosive growth in the use of credit to finance consumer purchases. Merchants and others in the business of extending credit ("credit grantors") depend on reliable information to avoid extending credit to customers unlikely to pay their bills.

Retail merchants typically rely on information concerning the customer's experience in paying his bills (sometimes referred to as "trade data"). The credit report is usually prepared by a credit bureau, which collects and stores information on the history of credit repayment by individuals who reside in the bureau's service area. The reports generally include identification of the subject (name, address, and marital status), employment history, public record information (for example, judgments and bankruptcies), as well as trade data. (I.D. f. 88.) Most credit bureaus sell "in-file" reports, based primarily [5] on information already in their files. Most bureaus will also attempt to develop credit information on a local credit applicant who is not already the subject of a file. (I.D. f. 89-91.)

Unlike most suppliers of goods and services, credit bureaus obtain from their customers and then compile much of the credit information contained in the reports they sell. A credit bureau must have a data base containing information on individuals who reside in the area it is attempting to serve. Apart from the public record information, such as court records, its information is generally supplied by credit grantors who must be induced to provide it voluntarily and on a regular basis so that the bureau can keep its files current. In short, credit grantors are both suppliers of, and customers for, the information maintained by credit bureaus. (I.D. f. 100.)

There have been a number of significant changes in this industry in recent years. The ALJ found that

[t]he credit reporting industry has been historically an atomistic one at the national level, credit bureaus in each trade area serving local credit grantors. . . At the local level, however, the credit reporting business has been highly concentrated in the hands of a few. This appears to have been the case especially in those areas where the credit granting merchants and financial institutions had formed their own credit bureaus on [a] non-profit basis. (I.D. p. 120.)

Since 1965, however, there has been a wave of acquisitions of local credit bureaus, primarily by a few large firms, including respondent. (I.D. f. 109; p. 3 *supra*.) As a result, several regional credit bureau chains emerged in the late 1960's and early 1970's. This was in part a product of the population movement from downtown areas into suburban areas after World War II. The major retail stores followed this movement by opening branch stores in suburban locations. In turn, new credit bureaus set up operations in these areas to service the retailers. As a result, trade information files among various credit bureaus were fragmented and a retailer might be required to contact several bureaus to obtain credit information on its regular customers.⁴ [6]

A second significant change, related to the first, has been the development of computerized credit reporting services, beginning in the middle 1960's. As respondent argues, computerization has resulted in important changes in virtually every aspect of the credit reporting business. This should not be surprising; computers perform operations involving the processing of information and credit bureaus and other credit reporting firms are in the business of obtaining, storing, and selling information. Automation of credit reporting has accompanied the automation of accounts receivable files by large credit grantors. As the ALJ found, sales of credit reports produced from automated files have increased dramatically since 1970. (I.D. f. 122.)

Depending on the characteristics of the particular system, a substantial volume of reports is required to support a computerized operation. However, since 1970, companies with operational automated credit reporting systems have undertaken to automate independent credit bureaus through use of the computerized firms' software and hardware systems. (*E.g.*, RX 282.) This permits the independent credit bureau to provide computerized credit reporting services to its customers without the necessity of developing its own system. (I.D. f. 131.) A credit bureau may, therefore, provide automated services even though its volume would be insufficient to support an independent automated system.

⁴ The record does not indicate that this was the primary cause of the wave of acquisitions or of the acquisitions challenged in this proceeding.

Another significant development has been the use by some credit grantors of new methods for determining eligibility for credit. Primary among these is "point scoring." Credit grantors using a point scoring system can make credit decisions based upon scores derived from numerical values assigned to information presented upon the credit application. Typically, applicants who score above a certain point total are automatically granted credit; those who score below a certain point total are automatically denied credit. Credit reports are ordered only on those who fall within the middle range. For credit grantors who use point scoring in this way, the system reduces but does not eliminate the need for credit reports. (I.D. f. 108.)

IV. LINE OF COMMERCE

The complaint alleged that the relevant service market for assessing the effects of the acquisition is "the gathering and reporting of information on individuals to businesses for insurance, claim, credit, employment and marketing purposes."⁵ The complaint further asserted, and the ALJ found, that local [7] credit reporting⁶ is a relevant service submarket. We do not understand respondent to challenge the validity of this submarket. Respondent does, however, object to the ALJ's inclusion of mortgage reports within the submarket.

We have only a few observations to add to the law judge's treatment of this issue, (I.D. pp. 105-08).⁷ Most striking to us is the similarity of much of the information included in mortgage and other credit reports (I.D. f. 94; CX 30, pp. 9, 21), the similar methods used to prepare them (I.D. f. 89, 95), and the fact that credit bureaus typically produce both kinds of reports (I.D. p. 106; Tr. 9277). Thus, while price differentials and the fairly distinct classes of customers for mortgage and other consumer credit reports suggest that there is little head-to-head competition between them, we believe the commonality of production techniques would itself justify including mortgage reports within this submarket. As we stated in *Warner-Lambert Co.*, "A firm may be limited in its power over price by the

⁵ The validity of this market is not an issue on these appeals.

⁶ The complaint defines "local credit reporting" as "the furnishing of credit information on local residents by consumer credit reporting agencies to local credit grantors for use in determining whether to extend credit to consumer applicants." (¶18(a).)

⁷ The factors to be considered in defining product sub-markets are set forth in *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

existence of firms which can readily switch production from non-substitutes⁸ to substitute products. Such firms may be regarded as part of the market as they have sufficient resource flexibility to compete if profit opportunities beckon. Such a market may or may not be co-extensive with common definitions of an industry." 87 F.T.C. 812, 866 n. 9 (1976); *see also Brown Shoe, supra*, 370 U.S. at 325 n. 42; *Sterling Drug, Inc.*, 80 F.T.C. 477, 583-95 (1972). A firm that specialized in mortgage reports would be positioned to expand into the production and marketing of non-mortgage credit reports and vice versa.⁹ [8]

V. GEOGRAPHIC MARKETS

The ALJ concluded that, with respect to the local credit reporting product submarket, the relevant geographic markets are: 1) the San Francisco Bay area; 2) the Washington, D.C. market; 3) the Portland, Oregon market; and 4) the Tacoma, Washington market. Respondent challenges the judge's delineations of the San Francisco Bay area and Tacoma, Washington markets. These issues are treated *infra*.

VI. SAN FRANCISCO BAY AREA

A. Geographic Market

Respondent argues that the ALJ erred in finding that the relevant geographic market in the San Francisco Bay area consists of San Francisco, San Mateo, Santa Clara, Alameda, Marin, Solano, Napa, Sonoma, and Contra Costa counties, all bordering on the San Francisco Bay. (I.D. p. 115.)

The Supreme Court has recognized that Section 7 does not require delineation of the sections of the country in which a merger may

⁸ We do not find that mortgage reports and other consumer credit reports are non-substitutes. In view of the overlap in the information they contain (I.D. f. 94), they can be substituted for each other although for many customers one or the other kind of report would be less than completely satisfactory, either because it contained too much information (and was, therefore, excessively expensive) or because it contained too little information.

⁹ Respondent asserts that point scoring and other techniques for making credit determinations in lieu of purchasing credit reports have substantially affected competition in the "credit bureau industry." Respondent suggests that the judge should have made a determination as to the effect of point scoring on industry structure. (RAB 4).

We do not understand respondent to argue on this appeal that market shares and concentration data must be adjusted to take account of point scoring. We agree that point scoring has had some effect on demand for consumer credit reports. However, its effect is not different in kind from that resulting from the ability of credit grantors to make judgments on some applications based on their assessment of the applicant himself. The record does not indicate what proportion of credit grantors in the relevant markets use point scoring, but it is clear that, for most of those who use it, point scoring cannot supply a significant portion of their requirements for credit information. *See Avnet, Inc.*, 82 F.T.C. 391, 452 (1973), *aff'd*, 511 F.2d 70 (7th Cir.), *cert. denied*, 423 U.S. 833 (1975). While the availability of point scoring may impose some constraints on the prices that may be charged for credit reports, so, too, do the options of making at least some credit determinations on the basis of information on the application itself, without the benefit of point scoring. Indeed, if the price becomes high enough, it may become economical for some consumers to perform almost any service in-house.

affect competition "by metes and bounds as a surveyor would lay off a plot of ground." *United States v. Pabst Brewing Co.*, 384 U.S. 546, 549 (1966). It is complaint counsel's burden to come forward with evidence delineating the rough approximation of the geographic market. *United States v. Connecticut National Bank*, 418 U.S. 656, 669 (1974). The relevant market, however, must "correspond to the commercial realities . . . of the industry and be economically significant." *Brown Shoe, supra*, 370 U.S. at 336-37 (footnote omitted). It is the area where "the effect of [9] the merger on competition will be direct and immediate," *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 357 (1963), and the "market area in which the seller operates and to which the purchaser can practically turn for supplies." *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961).

Respondent argues that the nine-county market is inappropriate because the acquired company, Credit Bureau Metro ("CB Metro"), owned by CB West Coast, was operating in a broader area at the time of the acquisition. Respondent also challenges the ALJ's finding that "the record indicates a substantial agreement among credit grantors and credit reporting firms that the nine-county-area . . . is an area of effective competition which corresponds to the commercial realities of these industries." (I.D. pp. 115-16).

However, even assuming that the area in which the acquired firm was a significant competitive factor might, under some circumstances, mark the outer boundaries of the relevant geographic market, a merger is proscribed if its effect may be substantially to lessen competition "in any section of the country," Clayton Act, Section 7, including sub-markets of the larger market in which the acquired firm competed.¹⁰ At any rate, the law judge correctly found that, although Credit Bureau Metro's data base included additional counties, the bulk of its business is generated in three counties (within the nine-county area) where the three largest cities are located.¹¹ (I.D. f. 51; [10] I.D. p. 116; Tr. 264.) There is no evidence of

¹⁰ We disagree with respondent that *United States v. Marine Bancorporation*, 418 U.S. 602, 620-22 (1974), holds that in a potential competition case the relevant geographic market must be "the area in which the goods or services at issue are marketed to a significant degree by the acquired firm. . . ." We have rejected similar arguments in *Jim Walter Corp.*, F.T.C. Dkt. 8986 (Dec. 20, 1977) [90 F.T.C. 671], and *RSR Corp.*, 88 F.T.C. 800, 886 n. 16 (1976), noting the Court's recognition of the unique nature of banking services which effectively seals off local markets from outside competitive factors.

¹¹ See also CX 582 and 585, which appear to tie Credit Bureau Metro's principal trade area to the telephone toll free service area surrounding the San Francisco Bay, that is, the nine counties which the ALJ included in the geographic market. (I.D. p. 116).

Complaint counsel assert that Associated Credit Bureaus, Inc., the industry trade association, recognized Credit Bureau Metro's trade area as covering four of the counties included within the geographic market defined by the ALJ. (CPF 202; CX 623A-H). However, member bureaus frequently operate in areas other than those listed in the roster. (Tr. 883). The association's listings cannot support a finding that Credit Bureau Metro did not actively compete in other areas.

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the extent to which CB Metro marketed services outside of the nine-county area.¹²

We disagree with respondent's claim that the ALJ erred in finding that the nine-county marketing area was recognized by the industry as a geographic submarket.¹³ A market executive of a major competitor testified that its San Francisco marketing area "was defined by what we know as our toll-free service area. . . I think there were a total of approximately nine counties. . . ." (Tr. 582-83.)¹⁴ An officer of the Associated Credit Bureaus, Inc., likewise included these nine counties in the Bay area credit reporting market. (Tr. 489).

Therefore, we adopt the ALJ's finding as to the relevant geographic market in the San Francisco Bay area. [11]

B. *Market Data*

The ALJ found that respondent's acquisition of CB Metro, CB West Coast's bureau in the San Francisco Bay area, did not eliminate substantial actual competition between respondent and the acquired firm and did not eliminate respondent as a perceived or likely potential entrant into the Bay area submarket. Complaint counsel appeal from each of these determinations.

The judge dismissed complaint counsel's claim that, at the time of the acquisition, respondent, through the operations of its subsidiary, Retailers, Commercial Agency, was a substantial competitor in the Bay area market. Although he found that the market was highly concentrated (I.D. f. 145), he rejected complaint counsel's proposed findings as to precise market shares of competitors in the Bay area in 1969 and concluded that Retailers made relatively insubstantial sales in the market.

The market shares complaint counsel have compiled are based upon data derived from reports submitted by respondent and local credit bureaus during the Commission staff's precomplaint investigation. In view of the fact that Retailers represented that revenue

The same finding and evidence which support the judge's conclusion that Credit Bureau Metro did not market its products to a significant degree outside of the nine-county area also indicate that the acquired firm did not market its products to a significant degree within several of the counties included in the ALJ's relevant market. However, including these counties within the market could not prejudice respondent since the effect is to lower its market share.

¹² Of course, we do not mean to suggest that the relevant geographic market would necessarily be confined to the area where the acquired firm actively competed. See p. 9 *supra*.

¹³ As to the relevancy of this factor, see *Brown Shoe, supra*.

¹⁴ While the witness did not name the counties, they appear to be the same counties the ALJ included in the San Francisco Bay area market since the witness seemed to refer to the counties surrounding the Bay. Although the ALJ found that TRW's primary service area included one county beyond the nine-county area, (I.D. f. 139), this is not inconsistent with his conclusion that the nine-county area, or an area roughly approximating it, had industry recognition as a marketing area.

totals for local offices could not be broken down by service (CX 89B), complaint counsel formulated an alternative method of determining market share based on the assumption that local credit reporting bore the same relation to Retailers' local revenues as it did to Retailers' national operations. Based on this method, complaint counsel urged the law judge to find that local consumer credit reporting accounted for 49.2 percent of Retailers' total sales in the Bay area.¹⁵ Complaint counsel likewise developed local credit reporting estimates for the smaller bureaus which were unable to estimate their local reporting sales (I.D. f. 145) by assuming that their local credit reports constituted the same percentage (90 percent) of their total sales as was the case for Credit Bureau Metro. Based on these assumptions, complaint counsel asserted that Retailers accounted for at least 2.8 percent and the acquired firm for 51 percent of total local consumer credit reporting sales in the market in 1969. The ALJ concluded that there was no record support for either of these critical underlying assumptions.

The estimate of the local consumer credit reporting sales of the smaller bureaus should have been accepted because, even under far more conservative assumptions about the portion of [12] these bureaus' sales in the relevant service market, market share and concentration data would not be significantly affected.¹⁶ We also believe that considering all the circumstances, complaint counsel's estimate of Retailers' local consumer credit sales should have been adopted. As we have noted, respondent represented that revenues of local offices could not be broken down by service. *See Luria Bros. and Co., Inc. v. FTC*, 389 F.2d 847, 858 (3d Cir.), *cert. denied*, 393 U.S. 823 (1968). We find that Retailers' precise local reporting sales are unnecessary for purposes of the market tabulation here. *See Brown Shoe, supra*, 370 U.S. at 340, where the Court upheld findings as to the effect of a merger in more than 100 cities in which the firms competed and in the nation as a whole based in part on detailed evidence of the structure of competition in one city and testimony about the state of competition in a "fair sampling" of other cities; *see also Procter & Gamble Co.*, 63 F.T.C. 1465, 1561 (1963), *rev'd*, 358 F.2d 74 (6th Cir. 1966), *rev'd*, 386 U.S. 568 (1967).¹⁷ Even if Retailers' [13]

¹⁵ Retailers' credit reporting revenues on a nationwide basis accounted for 82 percent of its total revenues in 1969 (CX 40A) and sales to local credit grantors accounted for 60 percent of credit reporting revenues. (CX 40B.) Local credit reporting revenues, therefore, accounted for 49.2 percent of total revenues.

¹⁶ In their appeal brief, complaint counsel calculated CB Metro's market share as 49.3 percent and Retailers as 2.8 percent based on the more cautious assumption that local credit reporting sales accounted for 98 percent of the credit reporting sales of the smaller bureaus. Under the most cautious of all possible assumptions, that local credit reporting sales accounted for 100 percent of the total credit reporting revenues of the smaller bureaus, CB Metro's 1969 market share would still be 49 percent and Retailers' 2.8 percent.

¹⁷ The instant case is distinguishable from *ITT Continental Baking Co.*, 84 F.T.C. 1349 (1974). There, the ALJ found that there was no national market in the sale of bread but assumed that nationwide sales figures could be

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credit sales ratios vary from one area to the next, the record does not indicate that the mix of business done by Retailers' Bay area offices was significantly different from [14] that of its national operation.

used to ascertain the state of competition in the local markets. The Commission reversed on the ground that "[t]he critical issue of competitive injury must be resolved on the basis of changes in the structure of actual rather than hypothetical markets." *Id.* at 1399. An assumption that a firm's sales nationwide are typical of that firm's sales in a local market is far less speculative than an hypothesis that the over-all state of competition is the same in a local market as it is nationally; the latter hypothesis turns on assumptions about the amount of sales registered by all other firms in the local market as well as the local sales of the respondent firm.

We note that even assuming local credit reporting accounted for only one-half as large a share of the San Francisco office's revenues as it did of Retailers' nationwide revenues, 24.6 percent as opposed to 49.2 percent, (See p. 11 *supra*), Retailers' share of the market would be reduced to a still significant 1.4 percent and the share of CB Metro, the acquired firm, would remain at approximately 50 percent. Respondent, however, has given us no reason to suppose that the San Francisco office's revenues from local credit reporting were overstated by this much.

Respondent has raised several additional objections to complaint counsel's market data. It contends that their tabulations violate the terms of a prehearing order governing the presentation of statistical data. Prehearing Order, February 22, 1974, ¶5. We see nothing in the order, however, that prohibits the making of simple market share calculations from the statistical tables which are already in the record. Nor do we regard complaint counsel's calculations to be inconsistent with the ALJ's admonition to complaint counsel that "any tabulation based on underlying data not in evidence has to be presented in tabular form. . . [and] underlying data has to be made available to counsel in advance. . . ." (Tr. 4739) (emphasis added). Complaint counsel made similar market share calculations in their proposed findings of fact. While the ALJ rejected these calculations, he did not do so on the basis that they violated his prehearing order.

Equifax also asserts that CX 324 A-B, a chart purporting to show the consumer credit reporting sales of bureaus in the Bay area, is unreliable. (R. Ans. 22). We assume that respondent does not object to the manner in which the chart has been assembled but rather to the accuracy of the underlying data. These arguments are addressed below.

Equifax argues that many of the credit bureau responses, upon which the market data estimates were based, are "incomplete, contain irrelevant or estimated data or no data at all, were changed by [Commission staff] based on unverified telephone conversations, or were improperly and irregularly notarized." (R. Ans. 24). We again note that absolute precision is not required in computing market data. *Brown Shoe, supra*, 370 U.S. at 341-42 n. 69. As for its claim that the data submitted were unreliable, respondent's record citations show no more than that estimates were used by some of the local bureaus. No showing has been made that the estimates were so unreliable that they resulted in an inflation of the market shares of the principal firms. Indeed, respondent has cited testimony of a Commission staff economist that "[i]f I erred [sic], I wanted to error [sic] on the conservative side. . . [to] make these smaller firms look larger which would make the market larger which would make the share of the major concerns smaller." (Tr. 4565.)

We agree with respondent that some of the notarizations on the special reports were irregular. However, we are not aware of any requirement that survey data must be based on sworn reports. So far as their admissibility is concerned, the question is whether "the method employed [is] one that is reasonably calculated to arrive at the truth." *United States v. National Homes Corp.*, 196 F. Supp. 370, 372 (N.D. Ind. 1961). We are satisfied that, despite the technical defects in the notarizations, the returns were sufficiently trustworthy to be considered and we cannot find that the ALJ abused his discretion in admitting them. For the same reasons, we uphold the ALJ's decision not to reject the data because some of the statistics were modified by Commission staff on the basis of telephone conversations with survey respondents.

Respondent next objects to the averaging method used to estimate the total dollar volume of credit reporting revenues of some of the smaller credit bureaus. However, since respondent's weighted average method would have resulted in a lower average price per report (\$1.83) than complaint counsel's (\$2.04), complaint counsel's method produced a higher total for the smaller bureaus, a larger universe and a smaller market share for CB Metro. Therefore, the use of a simple averaging method can hardly have prejudiced respondent.

Equifax likewise argues that incorrect assumptions underlay the estimate by complaint counsel's expert of the sales of TRW Credit Data, a major firm in the market. According to respondent, the expert should have based his estimate on the \$1.00 price charged by TRW in California in 1969-1970, instead of the 95.4¢ price, which was the average price of all TRW consumer credit reports in the United States. Complaint counsel do not attempt to justify the use of the 95.4¢ price. However, we cannot conclude that the charge adopted by complaint counsel's expert was erroneous or that its use significantly affected the market data relevant to an assessment of the acquisition. Had respondent's \$1.00 charge been used, total local sales would have only been increased by about \$38,000. (See CX 324.) CB Metro's market share would only be reduced to 48.9 percent and Retailers' share would remain at 2.8 percent.

We are satisfied that TRW Credit Data's estimate of its volume of consumer credit reports in the Bay area was sufficiently reliable to warrant its use in complaint counsel's market tabulation. Again, unless any error in the estimate was greater than respondent has given us reason to suppose, the relevant market data would not be

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To the contrary, the executive [15] vice-president of Credit Bureau, Inc. of Georgia testified that while there were disparities in the mixes of business done by various offices, they were not wide. (Tr. 10892, compare I.D. p. 124.)¹⁸ [16]

In view of the judge's uncontroverted finding that the bureaus surveyed were unable to provide estimates of their local sales, some fuzziness in the market share calculations seems inevitable. More important in these circumstances is the soundness of the assumptions upon which the share estimates are based, and we find ample support for them. The language of the Supreme Court in *Brown Shoe* is appropriate: ". . . [A]lthough [respondent] may point to technical flaws in the compilation of these statistics. . . in cases of this type precision in detail is less important than the accuracy of the broad picture presented." *Brown Shoe, supra*, 370 U.S. at 341-42 n. 69. As we said in *Avnet, supra*, 82 F.T.C. at 465-66, the question is whether the "fringe firms' aggregate market share is not so substantial as to cast doubt on what would otherwise be an illegal merger under any interpretation of Section 7. . . Thus, it is not necessary in all merger cases for complaint counsel to establish the overall size of the market as long as probative evidence exists from which the outer dimensions of that market can be determined." See also *British Oxygen, supra*, 86 F.T.C. at 1370-71. We conclude that complaint counsel's estimate of the local credit reporting sales of the smaller bureaus should have been accepted.

C. Probable Effects

Our analysis of whether the probable effect of the acquisition

significantly affected.

Finally, respondent asserts that the 1969 position of Credit Bureau Metro in the Bay area has been overstated because complaint counsel's expert excluded data for several credit bureaus operating within the respondent's proposed 12-county geographic area but included data for Credit Bureau Metro covering the entire 12-county area. In addition, according to respondent, complaint counsel excluded credit bureaus operating within the nine counties which the ALJ found to be the relevant geographic market.

As we have already indicated, there is no evidence that Credit Bureau Metro marketed its services to a significant degree outside of the nine-county area. Therefore, we cannot find that respondent was prejudiced by the inclusion of data for Credit Bureau Metro covering the entire 12-county area. Credit Bureau Metro's market share, including data from the twelve counties, is approximately 50 percent. Our assessment of the importance of Credit Bureau Metro's significance in the relevant market would not be materially altered if its market share was slightly smaller. Complaint counsel's expert testified that he excluded data from several bureaus operating in outlying portions of the nine counties because of his belief, based on discussions with credit bureau employees, that the bureaus were not affected by competition from Credit Bureau Metro. (Tr. 4664). This is a reasonable basis for excluding data from these bureaus and it is not inconsistent with a determination that the nine counties are the relevant geographic market; a geographic market need not be defined by "metes and bounds." *Pabst Brewing, supra*, 384 U.S. at 549. Nor is it necessary that data be included from each and every firm in the market so long as the tabulations reflect the "approximate size" of the relevant markets. See, e.g., *British Oxygen, Co.*, 86 F.T.C. 1241, 1371 (1975), *rev'd in part on other grounds sub nom., BOC International Ltd. v. FTC*, 557 F.2d 24 (2d Cir. 1977).

¹⁸ Respondent, in its discussion of the extent of competition between Retailers and Credit Bureau Metro in the Bay area, asserts that Retailers' "primary business is the production and sale of mortgage reports." (Emphasis added) (R. Ans. 18.)

"may be substantially to lessen competition" in consumer credit reporting in the Bay area must begin with an assessment of concentration in the industry and the market shares possessed by the leading firms and parties to the acquisition. Concentration ratios and market share data may alone suffice to establish illegality absent convincing proof to the contrary. Therefore, a merger is presumptively unlawful if it "produces a firm controlling an undue share of the relevant market, and results in a significant increase in concentration" *Philadelphia Nat'l Bank, supra*, 374 U.S. at 363. The Court went on to note that: "Where concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." *Id.* at 365 n. 42. Consequently, horizontal mergers which either contribute to a trend toward concentration or increase, even slightly, already high levels of concentration, are particularly suspect. As this Commission stated in *Golden Grain Macaroni Co.*, "generally a dominant firm's acquisition of a competitor with even a relatively small share of the market may substantially lessen competition if the market is highly concentrated. . . ." 78 F.T.C. 63, 175 (1971), *aff'd*, 472 F.2d 882 (9th Cir. 1972), *cert. denied*, 412 U.S. 918 (1973). Conversely, the acquisition of a dominant firm by a smaller competitor may also substantially lessen competition if the market [17] is highly concentrated. See *Stanley Works v. FTC*, 496 F.2d 498, 508 (2d Cir. 1972), *cert. denied*, 412 U.S. 928 (1973) (acquisition by firm with 1 percent share of firm with 22 percent share of concentrated market).

Central to the underlying philosophy of Section 7 is the principle that "competition will be most vital when there are many sellers, none of which has any significant market share." *United States v. Aluminium Co. of America*, 377 U.S. 271, 280 (1964). The greater the concentration in the market "the greater is the likelihood that parallel policies of mutual advantage, not competition, will emerge. That tendency may well be thwarted by the presence of small but significant competitors." *Id.*

The judge correctly found that in 1969, the Bay area market was highly concentrated. (I.D. f. 145). In that year the top two firms had a market share of approximately 68 percent. According to complaint counsel's calculations,¹⁹ which we find were substantially correct, the acquiring firm had approximately 2.8 percent and the acquired firm 49.3 percent of the local market. This is, therefore, clearly a

¹⁹ These calculations are based on the assumption that the local credit reporting revenues of the smaller bureaus which could not disaggregate their sales data accounted for 98 percent of their total revenues. See note 16 *supra*.

case in which the acquisition increased concentration in an industry in which concentration was already great.²⁰ The increase in concentration was all the more significant in view of the undisputed fact that barriers to new entry in this industry are high. See *RSR Corp.*, *supra*, 88 F.T.C. at 889.

Respondent argues, however, that because Retailers' offices are engaged primarily in producing "investigative" reports for mortgage loan and personnel purposes, and Credit Bureau Metro specializes in the selling of consumer pay habit information, the two firms were not in substantial competition. We have addressed this argument in our discussion of the relevant product market in this case. See p. 7 *supra*.

We would add that "it is not necessary to prove that parties to a horizontal merger sell identical services on identical terms to identical customers." *American General Insurance Co.*, 89 F.T.C. 557, 630 (1977). It bears repeating that "[w]here concentration is already great, the importance of preventing even slight increases in concentration and so [18] preserving the possibility of eventual deconcentration is correspondingly great." *Continental Can*, *supra*, 378 U.S. at 461-62. (Emphasis added). We have already found that, while there is little head-to-head competition between mortgage and other consumer credit reports, a firm that specialized in mortgage reports would be positioned to expand into the production and marketing of other types of consumer credit reports.

It should also be noted that Retailers' San Francisco office had 400,000 files and advertised that it had "thorough and extensive files to strengthen and fortify a high percentage of [its investigative] reports." (CX 125C.) Moreover, while the record does not indicate the volume, Retailers sold "updated" consumer credit reports and provided retail merchants with a secondary source of consumer credit information. (I.D. f. 143.) Likewise, Retailers competed with Credit Bureau Metro in the sale of mortgage reports. (I.D. f. 143; Tr. 13230-31; CX 176 K, L.) Indeed, respondent acknowledged, in a report submitted to the Commission prior to issuance of the complaint, that Retailers and Credit Bureau Metro competed in the marketing of both in-file and updated credit and mortgage reports. (CX 176 K, L.)²¹ [19]

²⁰ Far lower concentration ratios and combined market shares have sufficed to create a presumption of illegality. See, e.g., *Pabst Brewing*, *supra*; *United States v. Von's Grocery Co.*, 384 U.S. 270 (1966); *Aluminum Co.*, *supra*; *United States v. Continental Can Co.*, 378 U.S. 441 (1964).

²¹ The report responses amounted to an acknowledgement that Retailers and Credit Bureau Metro were significant competitors since respondent estimated that in 1969 Credit Bureau Metro accounted for between 40 and 50 percent of the local in-file and updated credit reports and between 20 and 30 percent of mortgage report sales. Respondent estimated that Retailers accounted for at least 15 percent of in-file and updated credit report and mortgage report sales. This information was furnished by the manager of the operating division of respondent's

We cannot conclude from this record whether, but for the acquisition, Retailers would likely have expanded into a major credit bureau. However, there can be no question that the local Retailers operation, by virtue of its affiliation with respondent, one of the nation's leading credit reporting firms, possessed an unusual competitive potential which was not fully reflected in its market share.²²

Finally, Equifax points to the ALJ's conclusion that "there is some evidence that respondent's substitution for the financially ailing CB West Coast may be producing substantial benefits to the credit granting customers in the northern California area in improved service and expanded data base." (I.D., p. 147.) However, as suggested by the tentative nature of this statement, the record does not demonstrate that the acquisition has benefited consumers, much less that the benefits outweigh the loss of competition. Moreover, as the Supreme Court has observed, "a merger the effect of which may be substantially to lessen competition is not saved because, on some ultimate reckoning of social or economic debits, it may be deemed beneficial. . . . [Congress]. . . proscribed anticompetitive mergers, the benign and the malignant alike. . . ." *Philadelphia Nat'l Bank, supra*, 374 U.S. at 371.

VII. TACOMA, WASHINGTON

A. Geographic Market

Respondent appeals from the ALJ's conclusion that the relevant geographic market for measuring the effects of the acquisition of CB West Coast in the Tacoma, Washington area is limited to Pierce county, Washington. It asserts that the marketing area of the Tacoma Credit Bureau ("CB Tacoma")²³ in 1968-1969 consisted of the four counties of Pierce, Kitsap, Snohomish, and King, which includes the city of Seattle.²⁴ Respondent relies chiefly on a 1968

subsidiary, CBI. (CX 457.)

This sort of admission is, of course, not conclusive. While a firm may be expected to know the identity of its significant competitors, it will not necessarily know its own market *share* (as opposed to sales volume) or the market shares of its competitors. Still, we are not persuaded by respondent's attempt to explain away the response as merely reflecting the fact "Retailers was making some updated investigatory reports and Credit Bureau Metro was making 'some' mortgage reports." (R. Ans. 16; Tr. 13229-31.) Instead, we understand the report to signify, at least, that Retailers was offering more than nominal competition to Credit Bureau Metro in the marketing of these reports. This is supported by other record evidence discussed above. That certain witnesses from the Bay area testified that they did not regard the two firms as competitors is a fact of some significance but in view of the other evidence of competition, we cannot regard it as dispositive.

²² The complaint alleged as a separate theory that the acquisition substantially lessened competition in the Bay area by eliminating respondent as one of a limited number of likely potential entrants. In view of our finding that the acquisition constituted an illegal horizontal merger, we need not reach this theory.

²³ Owned by CB West Coast.

²⁴ Indeed, complaint counsel have asserted that CB West Coast sold a "substantial" number of credit reports in Seattle. (CPF 190.)

letter by the former president of CB West Coast in response to a Justice Department inquiry which asserted that CB Tacoma served these four counties. However, neither this document nor any of respondent's record citations (RAB 59) show CB Tacoma was a [20] competitive factor outside of Pierce county or that credit grantors seeking data on residents of Pierce county could "practically turn for supplies," *Tampa Elec., supra*, 365 U.S. at 327, to bureaus based outside of the county.²⁵ Indeed, in a report submitted in January 1971, in response to compulsory process, CB Tacoma, by that time owned by respondent, did not list Seattle as among the communities for which files were maintained on more than 1,000 individuals. (CX 307 H.) In view of the testimony of the managing partner of the Seattle Credit Bureau that Tacoma was not "generally" regarded as part of the Seattle trading area and the fact that, as of the time of the acquisition, "it would be a very unusual situation" for the Seattle bureau to maintain files on Tacoma residents (Tr. 1088, 1090), we believe there was ample evidence that Tacoma and Seattle were distinct marketing areas. Nor has any record evidence been cited which suggests that Kitsap or Snohomish counties should have been included in the market.

B. Probable Effects

The ALJ found that only two firms produced and sold local credit reports in the Tacoma market in 1969 and 1970, CB Tacoma and Retailers.²⁶ He concluded that respondent's acquisition of CB West Coast eliminated substantial "actual" competition between Retailers and CB Tacoma in the sale of local credit reports. We agree.

The judge determined that Retailers registered at least 10 percent of sales in the market. (ID f. 210.) CB Tacoma accounted for the remainder. Respondent asserts that the two firms did not compete, that Retailers was simply a supplemental source of reports on Tacoma residents for a limited number of credit grantors and a "unique" source of information on military personnel stationed at bases in the Tacoma area.

While Retailers may have specialized in the reporting of information on military personnel, it is also apparent that it provided information on a much broader class of consumers. For example, a credit sales manager of Sears, Roebuck and Co. testified that, while he usually purchased reports from CB Tacoma, "if we noticed that

²⁵ Most of respondent's record citations are relevant to the plans of the Seattle Credit Bureau, which as of 1974, several years after the challenged acquisition, served only King and part of Snohomish county (Tr. 7390) but desired to serve all of Snohomish and Kitsap counties as well as Tacoma. (Tr. 7391.)

²⁶ Retail Credit Company also had an office in Tacoma but there is no evidence that it sold a significant number of local credit reports in this market. (I.D. f. 206.)

the customer had bought a home within the last couple of years or so, we probably would in that case buy a Retailers Commercial report feeling that it might have more recent information and be more complete." (Tr. 450-51.) Sears might [21] also order a report if it found that the report obtained from CB Tacoma was "incomplete or inconclusive, or for one reason or another we felt that we needed additional information." (Tr. 451.) The Sears witness also testified that the reports furnished by CB Tacoma and Retailers were "very similar."²⁷ The completeness and currency of the reports supplied by the respective firms depended on the individual report. (Tr. 454.)²⁸

The best indication of the extent of competition between the two firms—and the benefits resulting from competition—was supplied by the testimony of the credit manager of Rhodes Liberty House, a full-line department store chain which had two stores in Tacoma. Rhodes had purchased reports on Tacoma area residents exclusively from CB Tacoma. However, in 1969, the credit manager became dissatisfied with CB Tacoma's service and prices and switched its business to Retailers.²⁹ Although the trade information supplied by Retailers was not elaborate, "there was enough to make decisions on." (Tr. 1191.)

Under these circumstances, we believe the judge correctly found that the acquisition resulted in respondent's illegally obtaining a virtual monopoly of the local consumer credit reporting market.³⁰ Consequently, even if Retailers sold only [22] a small number of consumer credit reports to merchants, it was an extremely important competitive factor in the market, as evidenced by the fact that it was, prior to the acquisition, the only alternative to CB Tacoma as a source of credit reports in the area.³¹

²⁷ In 1969, Sears purchased approximately 10 percent of its credit reports in Tacoma from Retailers. (Tr. 457-58.)

²⁸ See also Tr. 1328.

²⁹ The credit manager recognized that the furnishing of in-file credit information to retail merchants was not Retailers' primary business. (Tr. 1191.) After the acquisition, Rhodes Liberty switched most of its business back to CB Tacoma. (Tr. 1192.)

³⁰ Respondent also argues that the acquisition of the Tacoma Credit Bureau "was a purely local acquisition, involving, at best *de minimis* competition, which does not come within the reach of Section 7." (RRB 27). It cites language in *Ekco Products Co.*, 65 F.T.C. 1163, 1210 (1964), that "Congress did not intend Section 7 to reach corporate acquisitions involving strictly local geographical areas—e.g. small towns." However, the Supreme Court has held that a geographic market may be as small as a single metropolitan area. *Philadelphia Nat'l Bank*, *supra*, 374 U.S. at 361. The Tacoma metropolitan area, whether or not it is limited to Pierce county, is not a "small town."

³¹ Respondent also challenges the judge's finding that Retailers' sales accounted for at least 10 percent of local credit reporting sales in Tacoma. Retailers' office in Tacoma had total sales of \$66,428 in 1969. Complaint counsel estimated that Retailers' sales of local credit reports amounted to \$32,683, or 10.7 percent of sales in the Tacoma market. This estimate was based on their assumption that local credit reports bore the same relation to total sales of the Tacoma office as they did to sales of Retailers' national operation. As with his treatment of the San Francisco Bay area, the ALJ concluded that this method of computation did not provide a reliable estimate of Retailers' sales of local reports. We disagree for the reasons indicated in our discussion of the Bay area. Pp. 11-16 *supra*. Since we believe that complaint counsel's estimated 10.7 percent market share was reasonable, we need not address respondent's suggestion that the judge's inference that Retailers accounted for at least 10 percent of total

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VIII. PORTLAND, OREGON

As a result of the acquisition of CB West Coast, respondent acquired Credit Bureau Metro, Portland ("CB Metro Portland"), the local CB West Coast bureau. In January 1971, respondent also acquired the credit reporting assets of The Retail Credit Association of Portland ("CB Portland"), a credit bureau owned by credit grantors in Portland. The ALJ found that this second acquisition eliminated substantial actual competition which had existed between CB Metro Portland and CB Portland³² in the Portland metropolitan market.³³ He rejected complaint counsel's [23] claims that the first acquisition, that of CB Metro Portland, eliminated substantial actual competition between respondent (through its local Retailers office) and the acquired bureau and that the two acquisitions eliminated respondent as a likely potential entrant into the market.³⁴

The judge found that in 1969, CB Portland accounted for 71.6 percent of "identifiable" local credit reporting sales in the Portland market, CB Metro Portland accounted for the remaining 28.4 percent of sales (I.D. f. 191)³⁵ and that, through the second acquisition, respondent obtained a virtual monopoly position in local credit reporting. (I.D. p. 127.)

Respondent argues that the two bureaus were not substantial, actual competitors, that CB Metro's files were based primarily on residents located outside of the city limits of Portland whereas CB Portland's files were based mainly on city residents, and that credit grantors did not regard the two as alternative sources of reports. It points to the judge's finding that major credit grantors in Portland, all of whom were members of CB Portland, testified that they purchased reports on residents of the four-county area only from CB Portland and that, in their judgment, CB Metro did not compete with

sales in the Tacoma market was baseless and inconsistent with his determination that complaint counsel's estimate was unreliable.

³² The ALJ correctly rejected respondent's argument that the complaint did not allege that the acquisition of CB Portland eliminated substantial actual competition in the Portland market. Read together, complaint Paragraphs 10, 12 and 15 clearly challenged the horizontal effects of the acquisition.

³³ The city of Portland and Washington, Multnomah, and Clackamas counties in Oregon and Clark county in Washington. (I.D. f. 187.) Respondent has not challenged the validity of the local geographic market on this appeal.

³⁴ Complaint counsel have not appealed from these adverse rulings.

³⁵ Equifax asserts that the judge's findings regarding market share and concentration are unreliable. It notes that the findings are based on a chart (CX 332), derived from special reports submitted by CB Metro Portland and CB Portland, which complaint counsel did not cite in their proposed findings. Complaint counsel's proposed finding did indicate slightly different market shares, 71.8 percent, 27.4 percent and 0.8 percent for CB Portland, CB Metro Portland and Retailers, respectively. (CPF 229.) The differences between these figures and those used by the ALJ are insignificant. Nor are we assisted by respondent's naked claim that the ALJ relied "on an unverified estimate which substantially overstates CB Metro's sales volume [record citations omitted]." (RAB 63 n. 56.) We would add that even if this finding were in substantial error, there would be no prejudice since the market share of CB Metro is far in excess of the level necessary for it to be of competitive significance and, of course, to the extent that the market share of CB Metro was overstated, the share of CB Portland was understated.

CB Portland. After an unsuccessful attempt to acquire CB Portland, CB Metro attempted to expand its operations in the city of Portland. According to the law judge, it did not make substantial inroads into CB Portland's business because it failed to win the cooperation of Portland's major credit grantors, some of whom considered its reports to be inadequate. (I.D. f. 190.) [24]

CB Portland, the acquired firm, has, however, stated that it competed with CB Metro in the selling of credit reports during 1967 through 1969.³⁶ (CX 170 K-L.) While various former officers of CB Portland testified that they did not regard CB Metro as a competitor, the admission is confirmed by other record evidence. While there appears to be no dispute that CB Portland's files were based primarily on city residents and CB Metro's files were based largely on residents of the surrounding area, the ALJ correctly found that the two bureaus maintained overlapping files on some consumers. (I.D. f. 190.) Also, CB Portland indicated that its files contained information on consumers residing in certain outlying communities which CB Metro included in the listing of communities it served. (CX 170 I, CX 171 H.) Several credit grantors testified that they purchased reports from CB Portland regarding residents of areas also served by CB Metro. (Tr. 1940, 5551). More important, CB Metro had, however unsuccessfully,³⁷ competed [25] for CB Portland's business. "Unsuccessful bidders are no less competitors than the successful one. The presence of two or more suppliers gives buyers a choice." *United States v. El Paso National Gas Co.*, 376 U.S. 651, 661 (1964).

While we believe that CB Metro, before it was acquired by respondent, was capable of providing some measure of meaningful competition, its potential may have been limited both because many important credit grantors were members of CB Metro's competitor, CB Portland,³⁸ and also because of CB Metro's financial difficulties, which respondent has offered as a justification for the acquisition. Of

³⁶ Although CB Portland indicated that it could not estimate CB Metro's market share, the Commission's report form had asked the company to list "competitors which in your estimation accounted for fifteen (15) percent or more of the . . . markets in which you competed in 1967 and 1969." (CX 170 K.) We are willing to assume that CB Portland did not necessarily mean to acknowledge that CB Metro was a large competitor and that, in view of its representation that it was "unable to estimate" CB Metro's share of the market, it did not intend to admit that its competitor accounted for 15 percent of the market. However, we do not read the response as merely an acknowledgement by the manager of CB Portland that "there may have been some small degree of competition between the two, but that it was so insignificant that it could not be measured in percentage terms." (RRB 29).

³⁷ For a few months during 1968 or 1969, J. C. Penney ordered reports from both CB Metro and CB Portland, but discontinued its use of the CB Metro reports because of its belief that they were "inadequate." (Tr. 5619.) This does not demonstrate that the two bureaus did not compete, but only that one of the bureaus was, at least for the time being, a more successful competitor.

³⁸ We do not, however, regard successful competition with a merchant-owned bureau to be impossible, as respondent argues. The financial interest of each owner was not great. In 1969, there were 973 member-stockholders, each of whom owned an equal share in a bureau whose revenues from credit reporting were \$608,000 in 1967 and \$656,000 in 1969 and net profits were estimated at approximately \$15,000 and \$32,000 during those

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course, its financial condition improved after respondent's acquisition and CB Metro could, therefore, be expected to offer more vigorous competition.

Indeed, what we have said about the competitive potential of respondent's Retailers offices in the Bay area and Tacoma applies with greater force to CB Metro. As part of a substantial chain of credit bureaus, supported by Equifax' massive financial resources and expertise, CB Metro might have become a far more significant competitor to CB Portland than it was prior to the second acquisition. While the market shares of CB Metro and CB Portland may overstate to some extent the amount of actual competition between them they do not, on the other hand, reflect the full competitive potential of CB Metro which was lost as a result of this acquisition.

Thus, the record does not contradict the *prima facie* case established by the statistical data, and we conclude that the acquisition of CB Portland, by combining firms controlling 72 and 28 percent of the market, eliminated all existing competition. [26]

IX. WASHINGTON, D.C.

The judge found that the acquisition of CBDC violated Section 7 and Section 5 by eliminating respondent as one of the few most likely future entrants into the Washington, D.C. metropolitan area. He rejected allegations that the acquisition removed respondent as a perceived potential entrant into the market and that it eliminated substantial actual competition between respondent and CBDC.

Counsel for Equifax asserts that respondent was neither an actual nor a perceived future entrant, that the acquisition actually lowered entry barriers and that deconcentration has occurred or has been occurring since the acquisition. Complaint counsel argue that the acquisition eliminated respondent not only as a perceived potential entrant but also as a probable future entrant into the market. Complaint counsel do not appeal the ALJ's conclusion that the record fails to show that the acquisition eliminated substantial actual competition between respondent and CBDC.

We disagree, however, with this finding for much the same reasons that we have set aside the judge's finding that the acquisition of CB West Coast did not eliminate substantial actual competition in the San Francisco Bay area.³⁹

years. (I.D. f. 78, 81, CX 170G.) The credit reporting assets were sold to respondent for \$325,000. It seems improbable that the fact of ownership would be a decisive factor in a creditor's consideration of a proposal made by a competing bureau.

³⁹ The horizontal effects of the acquisition in Washington were challenged in the complaint and litigated before the ALJ. We assume that respondent presented its best arguments to the judge why the record did not support

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A. *Market Data*

Complaint counsel asserted before the ALJ that in 1969, CBDC accounted for approximately 57 percent of local credit reporting revenue, Stone's Merchantile Agency had approximately 41 percent, Retailers had about 2 percent and the local Retail Credit Company offices had nominal sales. (CPF 373.) In that year, CBDC acquired Stone's and, as a result, according to complaint counsel's calculations, it controlled roughly 98 percent of the market. The judge rejected complaint counsel's estimate [27] of Retailers' local market share for the same reason that he rejected the estimates in other geographic areas, that it could not be assumed that Retailers' local credit reporting revenues bore the same relation to total local office sales as they did to Retailers' nationwide sales. We have already addressed this argument. *See* pp. 11-16 *supra*. In addition, according to the ALJ, "the record suggests strongly that the Washington, D.C. metropolitan area at least probably was among the low-ratio areas" that is, areas in which local credit reporting revenues were a smaller proportion of total revenues than they were nationwide. (I.D. p. 124.) The finding cited (I.D. f. 218), however, offers scant support for this proposition. One former employee of Stone's testified that Retailers sold credit reports only in conjunction with the mortgage loans made by insurance companies to whom Retailers sold insurance reports. (Tr. 2253.) However, Retailers had a substantial number of non-insurance customers to whom it apparently sold mortgage reports. (CX 340 A.) The fact that two former employees of Stone's testified that they did not consider Retailers to be in competition with Stone's (Tr. 2253, 2261) is relevant but certainly not dispositive of the issue. Nor is the fact that three credit grantor witnesses testified that they did not purchase credit reports from Retailers while one testified that he was not familiar with Retailers. (Tr. 2052-53, 2061, 8406, 9127.) This should not be surprising since there is no claim that Retailers was a major factor in the market, only that its share of the market was more than nominal. It necessarily follows from a firm's small size that many consumers in the market will not use it as a source of supply and may not even be aware of its presence in the market. However, the record indicates that a number of the

finding a violation on this theory. The parties also briefed the standards to be employed in finding a horizontal violation in connection with the appeals in the other submarkets. Moreover, with respect to the legality of the acquisition of CBDC, the parties addressed the significance of Retailers' presence in the market. While the briefing was directed to whether Retailers provided respondent with a "toehold" for future expansion, the discussion is also pertinent to whether respondent was already a significant competitor in the market. We, therefore, believe that, even without an appeal on this issue, it is appropriate for us to substitute our findings of fact and conclusions of law for those of the ALJ. *See* Rules of Practice, Section 3.54(a).

customers of Retailers and the local Retail Credit Company offices were also customers of CBDC and Stone's. (CX 340.)⁴⁰

Nor is it dispositive, or even relevant, that the special report CBDC submitted to the Commission did not identify Retailers as a competitor in 1967 or 1969 since the report form requested a list of competitors which, in the reporting firm's estimation, accounted for 15 percent or more of the market. (CX 71.) Retailers, of course, fell far short of that level.⁴¹ [28]

B. Probable Effects

In the Washington, D.C. market, the leading firm had virtually the entire market, and, as a result of the acquisition, respondent obtained a 100 percent market share.⁴² And, as we said in connection with the West Coast acquisition, the local Retailers operation, by reason of its affiliation with Equifax, one of the nation's leading credit reporting firms, possessed an unusual competitive potential which was not fully reflected in its market share at the time of the acquisition.

As with the Bay area market, we find it unnecessary to reach the question whether the acquisition eliminated Equifax as a substantial potential competitor, since respondent was already a significant, actual competitor in Washington. As the only supply alternative to complete monopoly prior to the acquisition, respondent's market share understates its competitive importance in the market. Moreover, its incentives and capacity for expansion should be considered in assessing the loss of competition that resulted from the acquisition.⁴³ [29]

As Professors Areeda and Turner have pointed out:

Suppose that a monopolist, who has long supplied 99 percent of his market, acquired the one firm supplying the remainder of that market. The acquisition should be prevented even if we assume that the small firm would continue to play only a very

⁴⁰ Respondent notes that the common customers listed on CX 340 represent less than five percent of the subscribers of CBDC. (RRB 15 n. 15.) However, that there was this much customer overlap is some evidence that there was more than a *de minimis* amount of competition between the two firms.

⁴¹ CBDC did indicate, however, that there were "numerous smaller reporting agencies" present in the market. (CX 71.)

⁴² While the complaint did not challenge the legality of CBDC's acquisition of Stone's, it is noteworthy that CBDC's size was itself a product of acquisition. This is, therefore, a market in which, as a result of two acquisitions, all competition was eliminated, at least as of the date of the acquisition.

⁴³ There is often no clear line between actual and potential competition theories. In its purest form, potential competition theory holds that an acquisition should be set aside because the acquiring firm either has had a pro-competitive effect on those already in a concentrated market or, but for the acquisition, would likely have entered the market in a manner that would contribute to competition. However, the presence of a firm that is already in the market may have the same kind of potential competitive effects as a firm outside of the market. Other, larger, firms may temper their prices to dissuade the smaller firm from expanding its presence and the smaller firm, in response to changes in the market (such as higher prices and profits) or other incentives such as its interest in expanding to take advantage of economies of scale, may in the future become a larger, pro-competitive, force in the market.

minor role. . . . Notwithstanding its minor position, such a rival offers an alternative source to buyers, an additional locus of decision-making and possible innovation, an actual or possible check on the monopolist's pricing or other laxity, and a center of production or marketing experience that might come into more aggressive hands and thus facilitate a more substantial challenge to the monopolist. 3 P. Areeda & D. Turner, *Antitrust Law* 102 (1978).⁴⁴

Although the local Retailers office had a relatively small total credit reporting volume – \$95,000 – its size must be assessed in light of the fact that it is part of the nationwide Retailers chain which operates over 100 branch offices and sub-offices throughout the United States. (I.D. f. 23.) In 1969, Retailers had revenues of almost \$4,319,000 and net profits after taxes of above \$244,000. (CX 174C.) And, of course, Retailers is owned by Equifax, by its own admission, one of the nation's leading credit reporting businesses. (P. 3 *supra*.)

Moreover, the local Retailers office had a reasonably broadbased clientele including finance companies, mortgage loan companies, banks, and savings and loan associations. During various times from 1967 through early 1973, it had 37 customers in common with CBDC or Stone's. (CX 340 A-B.) With these fairly wide contacts in the metropolitan area,⁴⁵ records it maintains on individuals on whom it has prepared reports (Tr. 3843), and other advantages such as its knowledge of the local market, respondent would have a significant head-start over other firms if market conditions made it attractive to enter into competition or, in respondent's case, more vigorous competition, with CBDC.

Indeed, respondent has argued that “‘capability’ of *de novo* entry is determined solely by the credit grantors in the subject market, not by any attempted entrant. . . . [T]his capability was non-existent in credit reporting markets dominated by merchant-owned credit bureaus in 1970.” (RAB 49–50.) We assume that [30] respondent's argument would also apply to the capability of a small firm already in the market obtaining a large share of a market dominated by a merchant-owned credit bureau such as CBDC. While respondent has exaggerated the difficulties of competing against merchant-owned credit bureaus,⁴⁶ we believe it is noteworthy that respondent has argued, and the record indicates, that CBDC was “irrevocably committed to selling its credit reporting operations to one of the credit bureau reporting companies that could provide computerized services. . . . Consequently, if respondent had not acquired the

⁴⁴ The fact that CBDC had only recently obtained its monopoly, or virtual monopoly, position, by virtue of its acquisition of Stone's, does not affect the analysis.

⁴⁵ Equifax' contacts with credit grantors in the metropolitan area might also provide useful leverage in the event the local Retailers chose to expand.

⁴⁶ See p. 32 *infra*.

Washington Credit Bureau, it would have been acquired by one of the other credit reporting companies." (RAB 52; *see also* Tr. 8396, 9146-47.) Once "a merchant-owned credit bureau, such as the Washington Credit Bureau, is acquired by a private company, entry barriers are in time diminished because the credit grantors, no longer having an economic interest in the bureau, are more willing to cooperate with an entrant by providing data and utilizing services. . . ." (RAB 53 n. 44.) Thus, according to respondent's argument, once the merchant-owned CBDC was sold either a new entrant or a small firm already in the market would be better able to provide vigorous competition. For all of these reasons, Retailers might well have become an even more significant competitor in the market had Equifax, its owner, not acquired the dominant firm.⁴⁷

The record also indicates that respondent was capable of establishing a major credit bureau in Washington and that it had a number of incentives to do so. To be sure, respondent's management testified that Equifax would not have started a new credit bureau in Washington. (*E.g.*, Tr. 11, 629.) Moreover, at least during the period from 1968 through 1972, CBI (respondent's credit bureau chain) had not created a file which was not [31] contiguous to an area in which it possessed a data base. (Tr. 11, 622.) However, this evidence cannot be conclusive of the issue since "entry by acquisition is almost always more attractive to management than independent entry. An acquisition enables a company to quickly capture the acquired company's share of the market. Risk is minimized." *United States v. Phillips Petroleum Co.*, 367 F. Supp. 1226, 1238 (C.D. Cal. 1973), *aff'd mem.*, 418 U.S. 906 (1974). As long as attractive acquisitions are available, it is not surprising that a firm will not spend its investment capital on more risky *de novo* entries.

Equifax was, and is, a leading credit bureau chain. It had the necessary financial resources. By the time of the acquisition, it had already computerized some of its offices (I.D. p. 135) and it had the technical expertise needed to run a large automated bureau. Moreover, there is some indication that respondent's management wished to "control" credit reporting in the Northeast and Southeast (I.D. p. 135 & n. 28; CX 168 A, C) and to establish itself in as many

⁴⁷ Respondent's senior vice president testified that by the early 1960's, Retailers' product "was no longer selling." (Tr. 13, 040.) While this might suggest that the prospects of Retailers' expanding, or even maintaining the scale of its presence in any local market, were dim, the witness was referring to the sale of credit reports to national and regional credit grantors. (Tr. 13, 038.) It should be noted that Retailers' growth into a major competitor in Tacoma began in 1963. (I.D. f. 208.) While Retailers' total consumer credit reporting revenues had declined during the period 1965 to 1970 (CX 40A), the decline was not dramatic. A 1970 internal marketing plan was optimistic about Retailers' prospects for expansion (CX 375 B), and a report for 1972 indicated that sales efforts would be intensified in pre-selected cities although the establishment of new "sub-offices" was doubtful. (CX 372 B-C.)

regions as possible. (I.D. f. 174, Tr. 12, 363.) While it does not necessarily follow that respondent intended to set up credit bureaus in each and every major market in the Northeast or Southeast, regardless of the barriers and the foreseeable profits that could be earned, respondent would not be able to "control" these regions unless it had a large presence in many, if not most, of the major markets. That Washington would be given serious, and, perhaps special, consideration as a candidate for major expansion if acquisition was precluded, is supported by management's view of the "strategic location of . . . [the Washington, D.C. bureau] in relation to CBI-East's present operations. . . ." (CX 81C.)⁴⁸ [32]

Finally, respondent has exaggerated the difficulties of successfully competing in a market dominated by a merchant-owned credit bureau. (RAB 50). Stone's, the credit reporting firm CBDC acquired in 1969, had thrived despite the fact that its files were more limited than those of CBDC. (I.D. f. 229.) Only four credit grantors in Washington, D.C. (each of them leading department stores) had a substantial proprietary interest in CBDC and these firms accounted for only 5 to 15 percent of the information in the bureau's files and 10 to 20 percent of its credit reporting sales. (I.D. f. 228, Tr. 8453.) A new bureau would need credit information from a substantial portion of, but not necessarily the entire, retail community. (Tr. 8402.) Therefore, while a merchant-owned bureau might have significant advantages, a challenger's prospects would be far from hopeless.⁴⁹ At any rate, the advantages of a merchant-owned bureau are largely beside the point since, as respondent has correctly argued, the merchant-owned CBDC was irrevocably committed to selling out to a credit reporting company that could provide computerized services. (P. 30 *supra*.)⁵⁰

The more difficult questions are whether an expanded operation would likely have generated large enough profits, or would have provided respondent with sufficient advantages⁵¹ that would contribute to the firm's over-all profits, to justify the substantial costs of

⁴⁸ See also CX 167 F, referring to the Washington, D.C. acquisition as adding to respondent's strength in the "Middle Atlantic area." Of course, this management statement refers to the acquisition of CBDC, and not to a *de novo* expansion. Still, the establishment of a substantial new credit bureau in Washington, assuming that it was feasible, would likewise add to respondent's strength in this area.

Also, as the ALJ found, management believed that the acquisition of the Washington, D.C. data base was necessary to bring computerization to its manual credit bureaus then operating in the northeastern section of the country. (I.D. f. 227.) The added volume enabled respondent to employ a larger computer that, in turn, supported automation of other bureaus. (Tr. 12, 486.) However, it does not necessarily follow that a presence in Washington on a much smaller scale than would result from the acquisition of CBDC would have supported computerization of the manual bureaus.

⁴⁹ Moreover, a challenger, like respondent, might have advantages of its own, such as greater access to computer technology. See also pp. 29, 31 *supra*.

⁵⁰ Respondent's argument that such a sale would lower entry barriers to a new firm is set forth at p. 30 *supra*.

⁵¹ Such as those discussed at p. 31 *supra*.

expansion on a massive scale and the foregoing of other investment opportunities, such as expansion into other geographic markets. The answers to these questions would in turn depend on future market conditions and the nature of future developments in the industry that might affect the costs of a major expansion.

In sum, this acquisition violated Section 7 and Section 5 by eliminating the only remaining competition in the market – a firm that, at the time of the acquisition, was a significant competitor and which offered at least the prospect of becoming an even more significant factor in the future.⁵² [33]

X. DEFENSES

A. *Failing Company*

Equifax asserts that CB West Coast faced a grave probability of business failure and that the acquisition was, therefore, [34] immunized by the failing company defense. The Supreme Court has held that the requirements of this defense are met only if 1) the resources of the acquired company are so depleted and the prospect of rehabilitation so remote that it faces the grave probability of a business failure; and 2) it is established that the acquiring company is the only available purchaser and the acquired firm could not otherwise keep the enterprise afloat, for example by reorganizing

⁵² Respondent argues that the market has become substantially deconcentrated by virtue of the "competitive" entry of TRW Credit Data and the fact that "TRW Credit Data's entry is a direct acquisition of the previously merchant-owned bureau." (RRB 24.) However, the record does not permit a conclusion that the market has or is likely to become significantly deconcentrated. Respondent presented evidence that, beginning in 1974, TRW was in the process of developing a data base in the Washington, D.C. metropolitan area. (Tr. 11, 184.) However the vice president and general manager of TRW's Information Services Division, in response to respondent's direct examination, testified that TRW was soliciting customers in Maryland and, asked whether TRW had any plans for expansion, responded, "We have none. I don't know." (Tr. 6029). [We note that an internal planning document, dated January 1970, listed Washington, D.C. as a target market. (RX 13.) This obviously falls far short of proving that TRW has, in fact, become a major competitor in the market. The *in camera* testimony cited by respondent (Tr. 6626-32; 11,956) is no more conclusive.]

Of course, even if TRW's presence in Washington were to become as significant as its presence in the San Francisco Bay area, the Washington market would still be highly concentrated so that the loss of the competition provided by Retailers would be significant. Nor are we persuaded by respondent's argument that the acquisition of CBDC was procompetitive by removing the barrier to entry of a creditor-owned bureau. As we have already indicated, we believe respondent has exaggerated the difficulties of competing against a merchant-owned bureau and, in any event, the bureau would have been sold to another credit reporting firm had respondent not purchased it. See p. 30 *supra*.

The judge also found that substitution of respondent for the acquired credit reporting firms in the Portland, Oregon, Tacoma, Washington and Washington, D.C. markets "significantly raised barriers to entry in those markets. Respondent is a national chain possessing far greater resources than the acquired bureaus. . . . Since the acquisitions, respondent has integrated the acquired bureaus into its system of regional computerized credit reporting centers. . . . A new entrant into these areas would therefore need substantially greater resources to compete effectively than would be the case but for the acquisitions." (I.D. f. 235, citations omitted.) We are unprepared to conclude from this record that substitution of respondent for the previous owners of these bureaus has entrenched their position by substantially raising entry barriers.

under Chapter X or Chapter XI of the Bankruptcy Act. *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969).⁵³

The ALJ rejected the defense. First, he found that the main reason for the firm's adverse financial condition was that it had made a major investment in a pioneering computerization program which did not produce an immediate return, and that it had incurred substantial expenditures for its acquisitions of several credit bureaus in 1967. According to the judge, these investments promised "substantial financial rewards in the near future." (I.D. p. 145; see also RX 2-5.) Second, he found unsupported the contention that there were no other prospective purchasers and no other firms which were interested in extending aid to CB West Coast. Third, he found that there was no credible evidence showing that the firm's reorganization prospects under Chapters X and XI of the Bankruptcy Act were "dim or nonexistent." (I.D. p. 145.)

We believe that the question whether the firm's financial condition was sufficiently adverse to meet the requirements of the first element of the defense is closer than the ALJ seemed to think. However, assuming that this element was satisfied, we agree with the judge that respondent failed to satisfy its heavy burden of proving that it was the only available purchaser, *Golden Grain Macaroni, supra*, 472 F.2d at 887, and that the acquired firm could not otherwise maintain its operations. Before entering into the loan agreement with respondent, Mr. Francis Smith, the owner of CB West Coast, did approach a number of other firms about the possibility of their acquiring the firm or extending it credit. However, from Mr. Smith's rejection of certain acquisition proposals, the judge found that the record did not support a finding that there was no other prospective purchaser. Moreover, as the judge found, CB West Coast had no "serious discussions" with other firms about either extending loans to CB West Coast or acquiring the bureaus after the loan agreement with Equifax. (I.D. f. 368.) [35]

Respondent argues that CB West Coast's rejection of the acquisition offers is consistent with a finding that respondent was the only available purchaser. It asserts that two of the offers did not meet the firm's desperate need for cash and one did not provide cash to pay off the outstanding liability on which Mr. Smith and his wife had given their personal guaranties. We agree with respondent that a company has no obligation to sell to a prospective purchaser on unreasonable terms or conditions. See, e.g., *Bok, Section 7 of the Clayton Act and*

⁵³ There can be circumstances where even the satisfaction of these requirements does not suffice to immunize an otherwise unlawful acquisition. See *United States Steel Corp.*, 74 F.T.C. 1270, 1289 (1968), remanded, 426 F.2d 592 (6th Cir. 1970).

the Merging of Law and Economics, 74 Harv. L. Rev. 226, 345-46 (1960). For example, it may be reasonable to reject a purchase offer that will have the effect of reducing competition in favor of a loan which may enable the firm to maintain its independent existence. See *United States Steel, supra*, 74 F.T.C. at 1280.

We cannot, however, rely on respondent's conclusory assertion, supported by equally conclusory testimony and Initial Decision findings, that two of the offers were not accepted because they would not have satisfied CB West Coast's need for cash. (R. Ans. 50; I.D. f. 366; Tr. 300). This is insufficient to satisfy respondent's heavy burden on this issue. *Golden Grain Macaroni, supra*. Nor are we prepared to conclude that the failure of one of the offers to provide cash to pay off the outstanding liabilities on which Mr. Smith and his wife had given their personal guaranties meant that the offeror should not be treated as an available purchaser. As indicated below, there must be a showing that the acquired firm's reorganization prospects under Chapters X and XI were "dim or nonexistent." A reorganization, of course, typically results in a less than complete satisfaction of the debtor's obligations. We, therefore, cannot see how a firm may treat an offer as other than *bona fide* simply because it does not provide for satisfaction of the owner's liabilities. In short, nothing in the record suggests that an acquisition by any of the offerors would have been as anticompetitive as the loan agreement, secured as it was by an option for respondent, a competitor, to purchase the firm.

At any rate, the law judge found that after consummation of the loan agreement, CB West Coast had no further serious discussions with other companies about a loan or the possibility of acquisition. According to respondent,

The Law Judge, in effect, found that at the time of the respondent's acquisition of CB West Coast in January, 1970 there were no other available purchasers since after consummation of the loan agreement in August 1968 CB West Coast had no further serious discussions with other companies concerning a loan or [36] the possibility of acquisition (F. 368). Assuming January, 1970 is the relevant time period for making this determination, respondent has established this aspect of the "failing company" defense. (R. Ans. 50.)

We fail to see how the ALJ's finding amounts to a determination that there were no other available purchasers at the time of the acquisition. The acquired firm was under a duty to seek out other purchasers, *Golden Grain Macaroni, supra*, and this duty was even clearer before the acquisition than it was prior to the consummation of the 1968 loan agreement.⁵⁴

⁵⁴ This would be the case unless the loan agreement effectively precluded the borrower from seeking out a purchaser other than the lender. In exchange for the loan, respondent received a pledge of all of the common stock

Finally, the judge correctly found that respondent failed to show that CB West Coast's prospects of successfully reorganizing under Chapters X or XI were dim or nonexistent. Respondent argues that it was most prudent for CB West Coast to have accepted a loan from Equifax, which enabled it both to continue its operations and to develop its computerized credit reporting system. [37] Be that as it may, no showing was made⁵⁵ that reorganization would not have been feasible as of the time of the acquisition.⁵⁶

B. Respondent's Purpose

Much of the record is devoted to respondent's contention that it lent funds to CB West Coast primarily to assist the firm in its development of a computerized reporting system, which respondent needed for its operations in the Southeast. According to Equifax, it subsequently acquired CB West Coast in order to ensure continued development of the computerized system and to protect its substantial investment. The ALJ, however, found that the loan transaction was "intended from its inception by both parties to culminate in an acquisition." (I.D. f. 66.) [38]

Evidence indicating the purpose of the merging parties may be an aid in predicting the probable future conduct of the parties and thus the probable effects of the acquisition. *Brown Shoe, supra*, 370 U.S. at 329 n. 48. However, we fail to see how respondent's purpose in exercising its option to purchase CB West Coast, whether it was

as security for the loan and an option to acquire the stock in exchange for shares of respondent's stock. (I.D. f. 346.) Equifax has contended that its "primary interest in CBS [CB West Coast] was to obtain an automated credit reporting system for CBI and not to acquire CBS or its market position in any area of the country. Further, it is clear that at the time of the loan agreement, respondent had no plans to exercise the option to acquire CBS. It was primarily and fundamentally interested in obtaining a viable computerized credit reporting system. . . ." (RPF 56.) Assuming that CB West Coast had been able to find a different acquirer, we cannot conclude that respondent would have exercised its option to purchase CB West Coast's stock, at least so long as its loans and its interest in the development of the computerized system would be protected.

We do not find from the record that CB West Coast would likely have been able to find a *bona fide* purchaser at this time, only that respondent has failed to meet its heavy burden of showing that there were no available alternative purchasers.

⁵⁵ The ALJ ordered stricken testimony that West Coast would not have survived a Chapter XI proceeding. (Tr. 7907-08.) We cannot find error, much less the clear abuse of discretion that would warrant our overturning this evidentiary ruling.

⁵⁶ This case is distinguishable from *United States Steel, supra*, where the respondent presented detailed testimony that, in view of the acquired firm's lack of a potential for profit, a reorganization would not be successful. Here, the ALJ correctly found that CB West Coast's long-term prospects were favorable.

Respondent also argues that subsequent decisions by the Supreme Court and lower federal courts have limited the "dim reorganization prospect" requirement to the particular facts of *Citizen Publishing Co., supra*. However, there is no reason to believe that the Court intended to dispense with this requirement in *United States v. Greater Buffalo Press, Inc.*, 402 U.S. 549 (1971), where there was no need to address the question since the Court held that other elements of the defense had not been satisfied, or in *United States v. General Dynamics Corp.*, 415 U.S. 486 (1974), where the Court referred to the elements of the defense (without mentioning the reorganization element) but noted that the defense was inapposite to the lower court's finding of a lack of violation. Other decisions have reaffirmed the requirement, see *U.S. Steel Corp. v. FTC*, 426 F.2d 592 (6th Cir. 1970); *Phillips Petroleum, supra*, 367 F. Supp. at 1259, and we respectfully decline to follow the contrary holding in *United States v. MPM, Inc.*, 397 F. Supp. 78 (D. Colo. 1975).

intended, as respondent argues, to protect its investment in CB West Coast, or to acquire CB West Coast's market shares, would have any bearing on the probable future effects of the acquisition.

Nor are we satisfied that respondent's interest in obtaining CB West Coast's computerized system could justify this acquisition. This is merely a variation of the familiar claim that an otherwise illegal merger should be excused because it may promote efficiency. "Possible economies cannot be used as a defense to illegality. Congress was aware that some mergers which lessen competition may also result in economies but it struck the balance in favor of protecting competition." *FTC v. Procter & Gamble Co.*, 386 U.S. 568, 580 (1967), *reversing* 358 F. 2d 74 (6th Cir. 1966), *reversing*, 63 F.T.C. 1465 (1963).

This is not to suggest that a merger which results in increased efficiencies may not in certain cases increase the vigor of competition in a relevant market. *Procter & Gamble, supra*, 63 F.T.C. at 1581. However, respondent has not shown that in any relevant market competition was increased as a result of the acquisition. Indeed, in one market, Tacoma, the acquisition of CB West Coast resulted in the elimination of virtually all competition. *See* p. 21 *supra*.

In respondent's judgment the CB West Coast system "was the best computerized credit reporting system available to CBI of Georgia at the time." (RAB 18.) However, CB West Coast was also the leading firm in at least two of the relevant markets, and the fact that it had the best computer system available does not alone legitimize its acquisition by a competitor; dominant firms often have innovative technology, know-how and other advantages not available to the competition. Nor is it clear that another available system could not have been adapted by respondent or that Equifax could not have developed its own system. [39]

XI. REMEDY

Based upon his findings and conclusions that the challenged acquisitions had substantial anticompetitive effects in three geographic markets, Tacoma, Washington, Portland, Oregon, and Washington, D.C., the judge recommended entry of an order requiring divestiture of the credit reporting business acquired as a result of the acquisitions, except for the bureau operations in and around the San Francisco Bay area, where he found that the acquisition of CB West Coast had no anticompetitive effects. He also recommended a ten year ban on respondent's entering into management contracts with any of the divested businesses, a ten year ban against acquisitions of firms engaged in the gathering and

reporting of credit information, without prior Commission approval, and an absolute ban against such acquisitions pending approval by the Commission of the required divestitures. Complaint counsel urge the Commission to require divestiture of the bureau operations acquired in the Bay area and to add several additional collateral requirements which they claim are necessary to the restoration of competition.

The purpose of relief in Section 7 cases is to undo the probable anticompetitive effects of the unlawful merger, to restore competition to the state in which it existed at the time of the merger, or to the state in which it would be existing at the time relief is ordered. See, e.g., *Fruehauf Corp.*, F.T.C. Dkt. 8972 (Feb. 22, 1978)[91 F.T.C. 132]. In order to achieve this goal, a strong presumption favors total divestiture of the unlawfully acquired entity as the surest means of achieving it. *Ford Motor Co. v. United States*, 405 U.S. 562 (1972); *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961); *Fruehauf supra*.

There can be no doubt about the appropriateness of the recommended divestiture of CBDC. Respondent cites management testimony that it would not re-enter the market if forced to divest. However, "[e]ven apart from the fact that such testimony is inherently self-serving, it would represent, at best, only the current views of present management. Circumstances change, as does management." *British Oxygen, supra*, 86 F.T.C. at 1359. Moreover, we have found that the acquisition eliminated significant existing competition between respondent (through its Retailers operation) and CBDC. Divestiture should at least restore this competition.

In view of our judgment that the acquisition of CB West Coast had substantial anticompetitive effects in the San Francisco Bay area, we conclude that the ALJ's proposed order should be modified to require divestiture of the business acquired in this market. As in Washington, D.C., this divestiture will likely at least restore competition eliminated as a result of the acquisition. [40]

Respondent argues that divestiture of credit reporting operations in the Bay area would require it to abandon its service contracts with other credit bureaus located in northern California and in the East "since without the San Francisco revenues the costs of providing computer service to these contract bureaus would exceed the revenues sustained from them." (R Ans. 55; see also RAB 71.) According to Equifax, loss of the San Francisco revenues would also significantly increase CBI of Georgia's fixed costs per dollar, reduce its profitability, and render it unable to support its present computer capability. Respondent claims that without the Bay area data base it

would be a "total financial disaster" for it to continue its expansion on the West Coast. (R. Ans. 56.)

We note, however that CB Metro's revenues from report sales in 1969 amounted to \$2,483,760 (CX 324). In that year, CBI's total revenues from reporting services amounted to \$8,479,000. (I.D. f. 20.) Respondent, of course, subsequently acquired CBDC which in 1969 registered revenues of \$3,355,000 (including the sales of Stone's Mercantile Agency).⁵⁷ CBI has subsequently entered into a number of service and management contracts with independent bureaus and respondent's total revenues from local credit bureau operations amounted to \$30,380,000 in 1973. (CX 579E.) There is simply nothing in the record to suggest that the over-all profits of either CBI or Equifax will be substantially affected by the loss of the revenues of the San Francisco bureau or, for that matter, of the entire CB West Coast chain.

Nor does the record indicate with any certainty that respondent will be forced to abandon either its current service contracts or its expansion on the West Coast, much less than this would substantially diminish competition in the markets which would be affected. At any rate, "as a general proposition, the Commission when considering the competitive consequences of divestiture will reject as irrelevant evidence relating to the effects of divestiture in markets which were not found to be relevant markets for the purpose of determining the legality of the acquisition." *Litton Industries, Inc.*, 85 F.T.C. 333, 384 (1975); see also *Philadelphia Nat'l Bank, supra*, 374 U.S. at 371. Nor is the possible effect of a divestiture upon respondent's profitability in itself a reason not to order divestiture. *United States v. Continental Can Co., Inc.*, 1964 Trade Cases, ¶71,264 at 80, 139 (S.D.N.Y. 1964); *RSR, supra*, 88 F.T.C. at 895.

More troublesome is respondent's claim that the divestiture of its acquisitions in Portland will substitute one monopoly for another. Complaint counsel's argument that divestiture would reestablish respondent as a toehold firm through its ownership of Retailers and Retail Credit Company offices in Portland and as a potential entrant is not helpful in view of the ALJ's correct determination that respondent was neither an actual nor a potential competitor in this market at the time it acquired CB West Coast. There is, accordingly, little basis for concluding that respondent would be left as either an actual or a potential competitor of the new monopoly that would be established as the result of the ALJ's recommended divestiture.

Complaint counsel urge that the CB Portland and CB West Coast

⁵⁷ Of course, respondent will also lose these revenues as the result of our divestiture order.

operations in Portland be sold to different firms but that if, after one year, this proves impossible, the operations be divested together and a copy of the files of the combined bureaus be made available to prospective purchasers. The record indicates, however, that the CB Portland and CB Metro Portland operations have become hopelessly commingled. (Tr. 11885-88.)⁵⁸ We can, therefore, see little point to requiring respondent to attempt to unscramble the assets. Nor do we believe it is necessary to require respondent to divest CB Portland and CB Metro Portland as a single unit. To do so would not restore competition unless the purchaser of the divested bureaus was in turn required to assist in the establishment of a second credit bureau.⁵⁹ [42]

We believe that, with respect to the Portland market, the presumption in favor of total divestiture of the unlawfully acquired entity has been overcome. While we cannot conclude that a divestiture order limited to a few markets would restore competition, see pp. 43-44 *infra*,⁶⁰ the contribution Portland would make to the package is outweighed by the greater efficiency of a remedy which permitted respondent to remain in this market. We are concerned about the workability of a remedy which would probably require postponement of efforts to establish a new bureau in Portland — necessary to the restoration of competition in that market — until after the divestiture was completed⁶¹ and which would depend on this burden's being assumed by the new owner of the chain.

In order to restore competition to this market, we will require respondent to assist in establishing a new credit bureau by providing a suitable purchaser with copies of its most current files for a period of three years. The record indicates the sale of a copy of a bureau's credit reporting file can enable a new firm to enter a local market. (See Tr. 6526, CX 455.) Moreover, the purchaser of the divested

⁵⁸ There was also testimony that it would not be possible to withdraw from the files of respondent's Washington Regional Center the data base obtained as a result of the acquisition of CBDC. However, the context of this remark suggests that segregation would be impossible because new information which is constantly added to the files could not be isolated, a fact we consider irrelevant, see pp. 45-46 *infra*, and because of the presence of what we assume to be a relatively small pre-existing data base respondent had in Annapolis, Maryland, prior to the acquisition of CBDC. (Tr. 11885, 11888-90.) Indeed, the president of CBI of Georgia testified that "[w]e have always had the capability to identify the files of any particular credit bureau." (Tr. 12, 736.) Therefore, as far as we can tell from the record, it is only with respect to Portland that there is a serious problem of "scrambled" assets that would preclude the restoration of competition by means of a simple divestiture.

⁵⁹ Once respondent left the market, it would not be in a position to provide the kind of meaningful assistance described *infra*.

⁶⁰ The presumption has not been overcome with respect to CB West Coast's other offices and we are, therefore, ordering divestiture of the entire chain, except for the Portland bureau.

⁶¹ It would make little sense to direct respondent simultaneously to find a purchaser of the bureaus and assist in the establishment of a new bureau. We would prefer to see respondent's attentions directed to the restoration of competition in Portland. Moreover, until divestiture of the bureaus is completed, the market would likely be so unsettled that a new firm might be deterred from entering.

properties on the West Coast might well choose to integrate a newly-established credit bureau in Portland into its chain of bureaus.⁶² [43]

The judge recommended that respondent be forced to divest the entire CB West Coast chain except for CB Metro, the San Francisco bureau. We agree, except that we will permit respondent to retain its Portland bureaus and will direct it to divest the San Francisco bureau.⁶³ The law judge premised this recommendation upon his conclusion that "a package encompassing the entire Pacific Northwest region is likely to enhance the salability of the business to be divested, thus insuring a speedy implementation of the remedy. . . ." (I.D. p. 148.) It is within our power and, indeed, it is our obligation to order divestiture of assets necessary to assure the viability and attractiveness to would-be purchasers of the divested entity. See *OKC Corp. and Oklahoma Land and Cattle Co.*, 77 F.T.C. 1342, 1427 (1970), *aff'd*, 455 F.2d 1159 (10th Cir. 1972). As we have recently noted, "the government will rarely be in a position to knowledgeably carve up a company into viable components. The most that can generally be asserted with any degree of confidence is that the acquired company was a viable competitor before its acquisitions, and is thus likelier than any of its possible parts to be a viable competitor in the future." *Fruehauf, supra*, at 35-36. [44]

Here, it is far from clear that the individual bureaus in Tacoma or San Francisco would be viable by themselves. This would turn on such factors as their individual profit levels during the years immediately preceding divestiture and the extent to which their successful operation is dependent on their linkage with other bureaus. In this connection, we note respondent's argument about the adverse effect divestiture of the San Francisco bureau and other

⁶² The files and tapes, however, need not be sold to the purchaser of the CB West Coast chain if a different, suitable purchaser can be found.

In dismissing the allegation that the acquisition of CB West Coast eliminated respondent as a potential entrant into the Portland market, the ALJ found that "[i]t would have been extremely difficult for a company to have entered the Portland local credit reporting market in 1969 or 1970 in competition with CB Portland." He cited the testimony of local credit grantors that CB Portland satisfied their need for credit information, that they would not have cooperated with another credit bureau and that they preferred to deal with one central source of information rather than with two competing bureaus. (I.D. f. 196.) However, one of the credit grantor witnesses testified that he would not cooperate with another bureau *unless* that bureau was financially strong and could provide accurate credit information promptly and at a good price. (Tr. 1952.) Other witnesses expressed concern about the extra costs of providing information to two different bureaus. We think it likely that, as in other markets which have been able to support more than one large consumer credit reporting firm, a new bureau will be able to compete successfully in this market provided that it offers customers a reasonably comprehensive service — and our order's requirement that respondent sell its computerized tapes should make this possible during the critical beginning years of the bureau — and that it offers its services at a price low enough to compensate credit grantors for whatever extra inconvenience they experience in dealing with a second bureau.

As the ALJ correctly found, CB West Coast had been a significant competitor in this market. A new entrant, with the assistance of respondent's files and computerized tapes, can be expected to be at least as significant.

⁶³ We cannot discern any justification for the ALJ's prohibition against respondent's divesting the CB West Coast chain to the purchaser of CBDC. Whether a proposed sale of CB West Coast will restore competition will depend on a variety of factors. We do not see how a prospective purchaser's ownership of CBDC (by reason of the mandated divestiture) could be a disqualifying fact.

bureaus in the Pacific Northwest would have on its over-all profitability and its ability to support its present computer capability. *See* p. 40 *supra*. The efficiencies resulting from a multiple bureau operation, including the ability to support a large computer capacity, would presumably be as relevant to a purchaser of CB West Coast as it is to the present owner.

The ALJ's order also requires divestiture of offices engaged solely in debt collection activities. Although the effect of the CB West Coast acquisition on debt collection markets was not a subject of this proceeding,⁶⁴ the record does indicate that collection records are a useful source of information for a credit bureau. (Tr. 1010-11, 1039; I.D. f. 208.) We are unable to conclude from this record that the collection offices will not contribute significantly to the viability of the divested entity. The presumption in favor of divestiture has, therefore, not been overcome.⁶⁵ [45]

With a few exceptions, the judge's other proposed ancillary relief provisions are clearly justified. Contrary to respondent's argument, we do not understand paragraph I⁶⁶ of the ALJ's order to require that old files, which, in the ordinary course of business, have been purged or updated,⁶⁷ be restored to their original condition. This would be an absurd reading of the order. Nor does paragraph II⁶⁸ require that respondent "revert to the operating system in effect at the time the complaint was issued. . . ." (R. Ans. 58). This provision only prohibits "commingling" of assets and changes that "impair or otherwise adversely affect" the strength of the businesses to be divested.

⁶⁴ We understand complaint counsel's statements that debt collections are not relevant to this case (*e.g.* Tr. 676) to be a stipulation that the anticompetitive effects of the acquisitions on the collection business were not a subject of this case. The "stipulation" cannot be read to preclude complaint counsel from asserting that total divestiture of CB West Coast, including divestiture of collection offices, was appropriate. It is respondent's burden to rebut the presumption in favor of total divestiture and respondent cannot rely on this stipulation to meet that burden.

⁶⁵ We are modifying paragraph II of the proposed order to make it clear that CB West Coast must be divested as a unit.

The marketplace is the forum in which questions of economic viability can be ultimately decided. Section 3.72 of the Commission's Rules of Practice permits a party under order to seek reopening of the order if it can demonstrate that changed circumstances so warrant. If Equifax can, contrary to what now appears likely, secure a purchaser (or, for that matter, more than one purchaser) of a less complete divested entity, and can show that the purchase (or purchases) will be able to restore competition in the markets in which violations have been found, the Commission will consider reopening the order. The filing of such a petition will not constitute grounds for delay of respondent's obligation under the order to divest all of CB West Coast, except for the Portland bureau.

⁶⁶ Paragraph I requires in part that "[a]ny assets or properties of any acquired firm required to be divested that have been substantially disposed of or commingled with Retail Credit's assets or properties since acquisition including computerized credit files, shall be restored or recreated prior to divestiture and included in the assets and properties to be divested."

⁶⁷ The Fair Credit Reporting Act, §605, 15 U.S.C.1681C, prohibits "consumer reporting agencies" from making consumer reports which include adverse information which is more than seven years old.

⁶⁸ "Pending completion of such divestitures, Retail Credit shall not commingle any assets, properties, financing, business or operations of any acquired assets and business required to be divested with its own, and shall take no steps to impair or otherwise adversely affect the economic, competitive and financial strength of any business required to be divested."

The requirement of paragraph I that respondent divest "all additions and improvements to the acquired firms which have been added since the acquisitions" is fully justified. "An industry does not remain frozen during the period of unlawful retention of the acquired company and divestiture of an outmoded firm with no chance of survival makes neither technological nor competitive sense. The Commission may properly order that the acquired firm be recreated in such form as would reflect the firm's probable growth, including improvements it may have added itself." *Reichhold Chemicals, Inc.*, FTC Dkt. 9076 (final order issued Feb. 22, 1978) at 75 (Initial Decision) [91 F.T.C. 246]. See also *United States v. Aluminum Co. of America*, 247 F. Supp. 308, 316 (E.D. Mo. 1964), *aff'd mem.*, 382 U.S. 12 (1965). This is especially true with respect to the files since, as respondent has pointed out, a [46] credit bureau cannot operate without a current and reasonably extensive data base. Moreover current files, including files covering areas adjacent to that covered by the original data base, are not really "new" but are built upon the acquired base.⁶⁹

The ALJ would also impose a ban on respondent's entering into management contracts with the divested businesses for a period of ten years. Under these contracts, the managed bureau apparently decides such vital questions as the price to be charged for the bureau's services and the location of its offices. Moreover, respondent does not obtain access to the files of the managed bureau. (Tr. 12, 858-61.) Nonetheless, the anticompetitive potential of such arrangements is obvious. While the bureau sets guidelines as to which customers may receive its services, respondent, working within these guidelines, apparently actually selects new customers. (Tr. 12, 861-62.) Moreover, under some of respondent's management contracts, the managed bureau pays Equifax a percentage of its profits. (Tr. 12, 453.) If respondent were compensated in this manner in cities in which it was competing, its fee for providing management services to a credit bureau would decline as it provided more vigorous competition and ate into the managed credit bureau's volume and profits. We simply cannot see how competition could flourish in markets where one firm helps manage the business of its principal, or only, competitor.⁷⁰ [47]

Nor do we agree with respondent that a ten-year prohibition on

⁶⁹ According to respondent, "... [E]xpansion into adjacent geographic areas is feasible. . . because an existing, income producing, data base and facilities are used with existing credit grantor customers already providing information and purchasing reports who are themselves expanding into adjacent areas and encouraging bureau expansion. . . ." (RAB 44 n. 33, citation omitted.)

⁷⁰ Of course, there may be some kinds of agreements (other than automation contracts, which are not prohibited by our order) that involve so little "management" that they could not interfere with the restoration of competition. Whether or not a particular contract would violate the order may be addressed during the compliance

acquisitions without prior Commission approval is inappropriate. The Commission has authority to impose such a requirement, *Abex Corp. v. FTC*, 420 F.2d 928 (6th Cir.), *cert. denied*, 400 U.S. 865 (1970), and, in view of the fact that we have found three acquisitions to have had anticompetitive consequences in four different geographic markets, we believe this relief is necessary to prevent future violations and that it should not be limited to the particular geographic markets in which violations were established.⁷¹

Because of the availability of civil penalties to enforce the order, we do not believe that a case has been made for the absolute prohibition in paragraph V of the ALJ's order of any acquisitions of businesses engaged in credit reporting pending completion of the mandated divestitures. See *Avnet, supra*, 82 F.T.C. at 479. This paragraph will be deleted.

An order consistent with this opinion is attached.

FINAL ORDER

This matter has been heard by the Commission upon the appeals of complaint counsel and Retail Credit Company ("respondent") from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission for the reasons stated in the accompanying opinion has denied, in larger part, the appeal of respondent and granted, in larger part, the appeal of complaint counsel.

It is ordered, That the initial decision of the administrative law judge be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent inconsistent with, and as indicated in, the accompanying Opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following order to divest and to cease and desist be, and it hereby is, entered:

ORDER

I

It is ordered, That respondent, a corporation, and its directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, shall divest all stock, assets, properties, rights and

phase. Rules of Practice, Section 3.61(d).

We are modifying the ALJ's order to limit the prohibition to the four markets in which we have found that the acquisitions had anticompetitive consequences.

⁷¹ The ten-year ban will run from the effective date of this order rather than from the date of approval of the last divestiture, as provided in paragraph VI of the judge's order.

privileges and interests of whatever nature, tangible and intangible, acquired by respondent [2] as the result of its acquisitions of stock or assets of Credit Bureau, Inc., of Salem, Oregon ("CB West Coast") and The Credit Bureau of Washington, D.C., together with all additions and improvements to the acquired firms which have been added since the acquisitions of such firms. Such divestiture shall include the removal from all manual and computerized records of respondent all credit information obtained as a result of the acquisitions, and all additions and improvements to the acquired firms' credit information added since the acquisitions, *provided, however*, that respondent shall be permitted to retain the credit reporting and related assets and business of Credit Bureau Metro, Portland, including all additions and improvements thereto since the acquisitions. Any assets or properties of any acquired firm required to be divested that have been substantially disposed of or commingled with respondent's assets or properties since acquisition, including computerized credit files, shall be restored or recreated prior to divestiture and included in the assets and properties to be divested. Such divestiture shall be absolute and shall be accomplished no later than one (1) year from the date this order shall become final and shall be subject to the prior approval of the Federal Trade Commission.

II

It is further ordered, That each divestiture required by Paragraph I of this order shall be accomplished absolutely to an acquirer approved in advance by the Federal Trade Commission so as to transfer CBDC and the portion of CB West Coast to be divested as going businesses and as viable concerns engaged in the gathering and reporting of credit information on individuals to business firms. The assets and business pertaining to CB West Coast required to be divested shall be divested as a single unit.

III

Pending completion of such divestitures, respondent shall not commingle any assets, properties, financing, business or operations of any acquired assets and business required to be divested with its own, and shall take no steps to impair or otherwise adversely affect the economic, competitive and financial strength of any business required to be divested.

IV

It is further ordered, That respondent, within one year from the effective date of this order, shall enter into an agreement with a purchaser, the purchaser and the terms of the agreement to be approved by the Commission, whereby respondent shall, in good faith supply to the purchaser, during a period of three (3) years beginning on a date to be determined by the purchaser, copies of its then current credit files in a form which will permit said purchaser to prepare and sell credit [3] reports concerning residents of the Portland, Oregon metropolitan area (the city of Portland and Washington, Multnomah and Clackamas counties in Oregon and Clark county in Washington).

V

It is further ordered, That the divestitures and sale required by Paragraphs I, II and IV of this order shall not be effected, directly or indirectly, to any person who is an officer, director, employee or agent of, or otherwise under the control or influence of, respondent or who owns or controls directly or indirectly, more than one (1) percent of the outstanding stock of respondent.

VI

It is further ordered, That for a period of ten (10) years from the effective date of this order respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, or any interest in or any interest of, any concern engaged in the gathering and reporting of credit information on individuals to business firms in the United States, nor shall respondent enter into any arrangement with any such concern by which respondent obtains the market share, in whole or in part, of such concern.

VII

It is further ordered, That respondent, for a period of ten (10) years from the effective date of this order, shall not enter into a contract to manage bureaus divested, pursuant to Paragraphs I and II, or to which credit information was sold pursuant to Paragraph IV, at least two thousand (2000), or twenty (20) percent, of whose files concern residents of either the San Francisco Bay metropolitan area (San Francisco, San Mateo, Santa Clara, Alameda, Marin, Solano,

Napa, Sonoma and Contra Costa counties in California); the Tacoma, Washington metropolitan area (Pierce County, Washington); the Portland Oregon metropolitan area (the city of Portland, Washington, Multnomah and Clackamas counties, Oregon and Clark county, Washington); or the Washington, D.C. metropolitan area (the District of Columbia, Montgomery and Prince George's counties in Maryland, Arlington and Fairfax counties in Virginia, and the cities of Alexandria and Falls Church in Virginia), *provided, however*, that nothing contained in this order shall be construed to prohibit respondent from bidding for an automation service contract in competition with other firms offering automation service contracts, with any purchaser of any business divested pursuant to this order.

VIII

It is further ordered, That within thirty (30) days from the effective date of this order and every sixty (60) days thereafter [4] until the divestitures and the sale required by Paragraphs I, II and IV, are accomplished respondent shall submit, in writing, to the Federal Trade Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with the order. All compliance reports shall include, among other things that are from time to time required, (a) the steps taken to accomplish the required divestiture and sale; and (b) copies of all documents, reports, memoranda, communications and correspondence concerning or relating to the divestiture and sale.

With respect to Paragraph VI of this order, respondent shall on the first anniversary date of the effective date of Paragraph VI and each anniversary date thereafter until the ten (10) year period shall have expired, submit a report, in writing, listing all acquisitions or mergers made by it, the date of each such acquisition or merger, the products involved, and such additional information as may from time to time be required by the Federal Trade Commission.

IX

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a corporate successor.

Commission Pitofsky did not participate.

IN THE MATTER OF
LEVI STRAUSS & CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9081. Complaint, May 5, 1976 — Decision, July 12, 1978

This consent order, among other things, requires a San Francisco, Calif. clothing manufacturer to cease establishing and enforcing resale price agreements; soliciting the identities of recalcitrant dealers; and threatening, penalizing or terminating such dealerships. Further, the firm is prohibited from unfairly restricting the use of its trademark; engaging in unlawful tie-in practices; and disseminating any materials suggesting resale prices for five years.

Appearances

For the Commission: *David M. Newman, Paul D. Hodge and Jeffrey A. Klurfeld.*

For the respondent: *Heller, Ehrman, White & McAuliffe, San Francisco, Calif. and Howrey & Simon, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C. Title 15, Section 14, *et seq.*, as amended), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Levi Strauss & Co., a corporation, hereinafter referred to as "respondent," has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

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

"Product" is defined as any item of wearing apparel and any related accessory which is manufactured, offered for sale, or sold by Levi Strauss & Co.

"Dealer" is defined as any person, partnership, corporation or firm which purchases any product from Levi Strauss & Co. for resale.

"Prospective Dealer" is defined as any person, partnership, corporation or firm which may desire to purchase any product from Levi Strauss & Co. for resale but has not been accepted by Levi Strauss & Co. as a dealer.

PARAGRAPH 1. Respondent Levi Strauss & Co. is a corporation organized, existing and doing business under and by virtue of the