

IN THE MATTER OF
CORELOGIC, INC.

Docket No. C-4458. Order, November 30, 2020

Letter approving an amendment to Respondent's Data License Agreement.

LETTER APPROVING AMENDMENT

Courtney Dyer, Esq.
O'Melveny & Myers LLP

RE: *In re CoreLogic, Inc.*, Docket No. C-4458

Dear Ms. Dyer:

This letter is in reference to an application for approval of an amendment filed by CoreLogic, Inc. ("CoreLogic") on September 25, 2020. CoreLogic requests Commission approval of its proposed amendment to the Data License Agreement, incorporated by reference into the Decision and Order entered into in this case.

Concurring Statement

After consideration of CoreLogic's application and other available information, the Commission has determined to approve the proposed change as set forth in CoreLogic's application. In according its approval, the Commission has relied upon the information submitted and the representations made in connection with CoreLogic's application and has assumed them to be accurate and complete.

By direction of the Commission.

**JOINT STATEMENT OF COMMISSIONERS CHRISTINE S. WILSON
AND NOAH JOSHUA PHILLIPS**

We support the Commission's unanimous decision to approve the amendment to the previously- approved remedial agreement. This amendment ends the remedial agreement early, because its beneficiary—Attom Data Solutions, LLC (formerly RealtyTrac)—no longer needs to rely on the agreement and no longer wishes to pay for the data license the agreement provides. Attom is competing effectively, independently of CoreLogic. We write to highlight this example of the FTC's success in monitoring compliance and ensuring that Commission-ordered merger remedies will be effective.

In 2014, the Commission voted unanimously to order a remedy to address harm resulting from the acquisition of DataQuick Information Systems, Inc. by CoreLogic, Inc., affecting the market for national assessor and recorder bulk data.¹ The remedy required CoreLogic to license bulk data to Attom pursuant to a Data License Agreement.

Attom discovered that it was missing data that DataQuick had provided to bulk data customers and licensed from third parties, and CoreLogic failed to provide Attom, Commission staff, or the Monitor with complete and accurate information regarding the manner in which DataQuick provided bulk data to customers.² CoreLogic apparently also did not provide all of the support to Attom that was required by the Order. According to the Commission's Analysis to Aid Public Comment, CoreLogic's actions violated the Order and interfered with its remedial goal of maintaining competition in the market affected by CoreLogic's acquisition of DataQuick.³

¹ Press Release, FTC Puts Conditions on CoreLogic, Inc.'s Proposed Acquisition of DataQuick Information Systems, March 24, 2014, <https://www.ftc.gov/news-events/press-releases/2014/03/ftc-puts-conditions-corelogic-incs-proposed-acquisition-dataquick>.

² CoreLogic Inc.; Analysis To Aid Public Comment, 83 FED. REG. 12,578 (Mar. 22, 2018).

³ *Id.* at 12,580.

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In 2018, the Commission voted unanimously to modify the Order to enhance three elements of the remedy: the data delivery period, the service and quality levels, and the technical transfer.¹

The modifications succeeded. According to CoreLogic's Application for Modification of Confidential Agreement, Attom has become an independent competitor and is now prepared to end its reliance on CoreLogic earlier than anticipated, suspending ongoing entanglements and strengthening Attom's competitive position.

The Commission's decision today allows Attom to shorten the term of the Data License Agreement, which Attom deems unnecessary to compete effectively. The agreement also contains a contingency plan, eliminating the risk to Attom and the public if Attom's transition entirely to another company as its bulk data supplier does not go fully as planned.

In short, due to the efforts of Attom, the Monitor, and the FTC's Compliance team – and despite the alleged initial violation by CoreLogic – the remedy is effective.

In cases involving remedies, the job of the antitrust enforcer does not conclude when a merger investigation is completed, or when an order is entered. Where remedies are appropriate, they must be effective, or the job is incomplete.

The Commission has long recognized that effective remedies play an integral role in the merger enforcement regime. To this end, the FTC has conducted two extensive merger remedy studies to analyze the efficacy of remedies and how best to restore competition that a merger would otherwise extinguish.² It has embedded that learning into practice.³ Between studies, every experience with a divestiture order provides new insights that the Compliance Division of the Bureau of Competition uses to close loopholes, speed implementation, ensure accountability and transparency during the order implementation process, and verify compliance.⁴ A quick

1 Press Release, FTC Approves Final Order Adding Requirements to 2014 Order to Remedy CoreLogic Inc.'s Compliance Deficiencies, June 15, 2018, <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-approves-final-order-adding-requirements-2014-order-remedy>.

2 Staff of the Bureau of Competition of the Federal Trade Commission, A STUDY OF THE COMMISSION'S DIVESTITURE PROCESS (1999); Staff of the Bureaus of Competition and Economics, THE FTC'S MERGER REMEDIES 2006-2012 (January 2017).

3 See, e.g., Dan Ducore & Naomi Licker, *Looking back (again) at FTC merger remedies*, COMPETITION MATTERS (Feb. 3, 2017) ("Released in 1999, the Divestiture Study led to a number of significant reforms to the FTC's remedy approach: requiring upfront buyers more often; shortening the time for post-order divestiture to 6 months; appointing an independent monitor more often; and instituting a program to follow up with buyers about their progress. There are lessons from the new study as well. The study confirmed that the Commission's practices related to designing, drafting and implementing its merger remedies are generally effective. But it also identified certain areas in which improvements can be made—so we have made them. The report includes a list of Best Practices that convey how we are already using the learning from the study to continue to improve our remedies.").

4 Some of these insights become public in guidance and other statements by the Commission and its staff. See, e.g., Bureau of Competition, A Guide for Respondents: What to Expect During the Divestiture Process (June 2019), https://www.ftc.gov/system/files/attachments/merger-review/a_guide_for_respondents.pdf; Bureau of Competition,

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review of orders involving merger remedies in the pharmaceutical industry provides an excellent example of this continual refinement.⁵

The agency's ongoing analysis and refinement does not ensure perfect outcomes, but it does demonstrate the FTC's keen commitment to delivering effective remedies for the benefit of consumers. One key aspect of that commitment is ascertaining the existence of problems and moving quickly to address them, as the Commission did here. The result is effective competition.

STATEMENT OF COMMISSIONER ROHIT CHOPRA

Today, the Federal Trade Commission is taking an action related to a 2014 merger settlement, where a Commission-approved remedy failed to work as planned. We have now voted to modify a licensing agreement between CoreLogic (NYSE: CLGX) and Renwood RealtyTrac (now known as ATTOM Data Solutions). The Commission ordered this agreement as part of a 2014 settlement to resolve charges surrounding CoreLogic's unlawful acquisition of DataQuick. The licensing agreement was intended to quickly allow Renwood RealtyTrac to emerge as a competitor to the newly merged CoreLogic and DataQuick.

Unfortunately, after the settlement was struck, the licensing process was chaotic and anything but quick, given CoreLogic's failures to comply with the FTC's order. These failures then led to a separate 2018 agreement with the FTC with additional terms. Now, six years later after the original settlement, RealtyTrac/ATTOM is finally ready to be an independent competitor, and the Commission's vote marks the conclusion of this fiasco.

The CoreLogic saga is another sign that complex settlements to address unlawful mergers are risky for the public, especially when the merged firm has an incentive to sabotage its competitor. The Commission needs to be wary of these remedies and do more to ensure compliance with its orders.

Potential Buyers; A Guide for Potential Buyers: What to Expect During the Divestiture Process (June 2019), https://www.ftc.gov/system/files/attachments/merger-review/a_guide_for_potential_buyers.pdf; Roberta Baruch and Bruce Hoffman, *Compliance reports: Reinforcing a commitment to effective orders*, COMPETITION MATTERS (Mar. 11, 2019); Maribeth Petrizzi, *Real deadlines and real consequences*, COMPETITION MATTERS (Aug. 6, 2020).

5 Staff of the Bureaus of Competition and Economics, THE FTC'S MERGER REMEDIES 2006-2012 (January 2017) at 31 ("[S]taff has been incorporating its ongoing learning with respect to divestitures in the pharmaceutical industry. For example, in more recent orders involving generic drug overlaps, when evaluating whether proposed respondents should be required to divest the assets of the acquiring firm or the target firm, the Commission has required divestiture of the easier-to-divest products where possible, particularly when the product was manufactured under a third-party agreement that could transfer to a buyer.").

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The Unlawful Transaction and the 2014 FTC Settlement

In 2010, TPG Global, one of the globe's largest private equity funds, purchased DataQuick, which compiled real estate data from various sources and licensed it to a wide range of players.¹ This data is a critical input for many products and services in the real estate and mortgage markets. DataQuick was one of very few players in the market for certain data. The Commission would later note that "DataQuick aggressively competes head-to-head against CoreLogic and Black Knight...offering lower prices and less restrictive license terms than its competitors."²

In 2013, TPG agreed to sell certain businesses including DataQuick to CoreLogic. DataQuick and CoreLogic were head-to-head competitors in a critical market. Since the transaction would shrink the number of competitors in that market from three to two, it was clear that the agreement would violate the antitrust laws. The Commission settled the case, requiring a complex remedy. CoreLogic and DataQuick would be allowed to merge, as long as the merged company licensed certain data for several years to another real estate data firm, RealtyTrac, that did not currently compile the datasets in question.³

Failure to Comply with the FTC Order

Since the Commission's remedy required the newly merged CoreLogic-DataQuick to provide data to its new competitor, RealtyTrac, the merged firm would have a strong incentive to sabotage the data that was required to be licensed. The Commission even explained that "[n]either CoreLogic or Black Knight has any incentive to offer such a license to a potential entrant that will compete against them."⁴ The Commission appointed an independent monitor to watch over the data transfer, but it didn't work. Almost immediately, RealtyTrac noticed that the data that CoreLogic was supposed to deliver was missing required data.⁵ Problems persisted over multiple years.⁶

In March 2018, the Commission outlined its charges that CoreLogic was failing to adhere to the requirements of the FTC's order. According to the Commission's show cause order, "CoreLogic's actions violated the Order and interfered with its remedial goals. CoreLogic

1 *TPG Capital to buy MDA property information subsidiaries*, HOUSINGWIRE (Nov. 5, 2010, 5:25 pm), <https://www.housingwire.com/articles/tpg-capital-buy-mda-property-information-subsidiaries/>; Analysis of Agreement Containing Consent Orders to Aid Public Comment, *In the Matter of CoreLogic, Inc.*, File No. 131-0199, <https://www.ftc.gov/system/files/documents/cases/140324corelogicanalysis.pdf>.

2 *Id.*

3 *See id.* at 3.

4 *Id.*

5 Order to Show Cause and Order Modifying Order, *In the Matter of CoreLogic, Inc.*, Docket No. C-4458, at 2 (Mar. 15, 2018), https://www.ftc.gov/system/files/documents/cases/c4458_corelogic_modifying_order.pdf.

6 *Id.*

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slowed RealtyTrac's acquisition of the full scope of DataQuick bulk data and the information necessary to provide data in the same manner as DataQuick."⁷

In these situations, the Commission can be faced with an extremely difficult decision: (1) quickly settle the matter with a modified no-money, no-fault order, or (2) pursue penalties and other relief for order violations, which may lead to further harms to competition if it requires prolonged litigation. In June 2018, the Commission finalized a resolution to the alleged compliance breakdowns. CoreLogic agreed to a modified order to extend its data-sharing agreement with RealtyTrac/ATTOM for multiple years. CoreLogic would not pay any civil penalties or remediate any of the harm to business customers that it may have caused.

Lessons Learned

The FTC's vote to wind down the licensing agreement between CoreLogic and its new competitor will finally begin the process of bringing this ordeal to an end. Hopefully, competition lost by the merger will eventually be restored. Unfortunately, the Commission's original 2014 settlement failed to achieve the goal of immediate restoration of competition lost by a merger. As with other settlements that failed to work as intended, it will be important for the Commission to take steps to avoid outcomes like this in the future.

In addition to close and careful scrutiny of proposed remedies, the Commission must be unequivocal that FTC orders are not suggestions.⁸ Based on my review of the evidence, it is clear that CoreLogic violated its obligations under the agency's 2014 order. This led to serious harms, and the Commission was forced to expend significant resources to resolve these compliance deficiencies.

We must carefully examine whether our orders sufficiently incentivize firms to comply. For example, we will need to explore whether the Commission should include so-called crown jewel provisions that trigger additional asset divestitures when a firm fails to fully adhere to a divestiture order.⁹ If firms face the prospect of being forced to give up a core business asset, there will be fewer compliance failures. We should also consider provisions that give senior executives and business decision-makers more skin in the game to ensure timely compliance. These and other steps will reduce taxpayer burdens and protect our markets from anticompetitive harms.

⁷ *Id.* at 3.

⁸ Memorandum 2018-01 from Commissioner Rohit Chopra to Commission Staff and Commissioners Regarding Repeat Offenders (May 14, 2018), <https://www.ftc.gov/public-statements/2018/05/commissioners-memorandum-2018-01-repeat-offenders>.

⁹ See Letter to Robert C. Rech from Donald S. Clark Regarding Approving Application to Divest Refludan Assets, In the Matter of Adventis, S.A. (Sept. 26, 2001) (the Commission required divestiture of the alternate crown jewel assets, and appointed a trustee to accomplish that divestiture, when the respondent failed to divest the original assets on time), <https://www.ftc.gov/sites/default/files/documents/cases/2001/09/010926aventisletter.htm>.

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This experience is another reminder that the Commission's role is not to be a proponent or a facilitator of mergers.¹⁰ Our role is to be an antitrust enforcer. We should not accept proposed remedies that are too complex, risky, or otherwise unworkable, and we should have no tolerance for violations of our orders.

¹⁰ Dissenting Statement of Commissioner Rohit Chopra Regarding Petitions for Modification, In the Matter of Linde AG and Praxair LLC, File No. 171-0068 (Nov. 13, 2020), <https://www.ftc.gov/public-statements/2020/11/dissenting-statement-commissioner-rohit-chopra-regarding-petitions>.

Interlocutory Orders, Etc.

IN THE MATTER OF

PAR PETROLEUM CORPORATION

Docket No. C-4522. Order, December 23, 2020

Letter approving a modification of the Honolulu Terminal Agreement attached to the Order in this Matter.

LETTER APPROVING MODIFICATION

Via Email:

Marc G. Schildkraut, Esq.
Baker Hostetler

Re: *In re Par Petroleum Corporation*, Docket No. C-4522

Dear Mr. Schildkraut:

This is in reference to the petition of Par Pacific Holdings, Inc. (formerly Par Petroleum Corporation, hereafter “Par”) dated December 11, 2019, requesting prior Commission approval of a proposed modification to the Amended Honolulu Terminal Agreement relating to the storage of petroleum products at the Barbers Point Terminal (“Proposed Modification”) as required by Paragraph II.B. of the Decision and Order in *In re Par Petroleum Corporation*, Docket No. C-4522 (“Order”). The Commission placed the petition on the public record for 30 days, until February 24, 2020. We received ten public comments; only three of the comments were germane to this matter. The Commission has considered Par’s petition and all supporting materials, as well as other available information, and has concluded that Par has not demonstrated that the Proposed Modification is consistent with the remedial purposes of the Order. Accordingly, the Commission has determined to deny Par’s petition to modify the Amended Honolulu Terminal Agreement.

In 2014, Par sought to acquire Koho’oha Investments, Inc.’s wholly-owned subsidiary Mid-Pac Petroleum, LLC (“Mid-Pac”) for roughly \$107 million (“Acquisition”). The Commission found that the Acquisition would likely substantially lessen competition and lead to higher prices for bulk supply of Hawaii grade gasoline blendstock (“HIBOB”).¹ Moreover, the potential for competitive harm from the Acquisition stemmed from the importance of

¹ *In re Par Petroleum Corp.*, FTC Docket No. C-4522 (Mar. 18, 2015), Complaint ¶ 5, available at <https://www.ftc.gov/system/files/documents/cases/150312parpetroleumcmpt.pdf>.