

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of

DTE Energy Company,
a corporation,

and

MCN Energy Group Inc.,
a corporation.

Docket No. C-4008

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that respondents DTE Energy Company ("DTE"), a corporation, and MCN Energy Group, Inc. ("MCN"), a corporation, have entered into an agreement and plan of merger whereby MCN will merge with a subsidiary of DTE and become a wholly owned subsidiary of DTE, that such agreement and plan of merger violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such agreement and merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

A. DTE Energy Company

1. Respondent DTE is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 2000 2nd Avenue, Detroit, Michigan 48226.

2. Respondent DTE is, and at all times relevant herein has been, the parent holding company of The Detroit Edison Company (“Edison”), a public utility engaged in the generation, purchase, transmission, distribution and sale of electricity in Southeastern Michigan, including the city of Detroit, Michigan.

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

B. MCN Energy Group Inc.

4. Respondent MCN is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 500 Griswold Street, Detroit, Michigan 48226.

5. Respondent MCN is, and at all times relevant herein has been, an integrated energy company primarily involved in the production, gathering, processing, transmission, storage and distribution of natural gas. MCN is the parent of Michigan Consolidated Gas Company (“MichCon”), a natural gas utility serving communities throughout the State of Michigan, including Southeastern Michigan and the city of Detroit, Michigan.

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

II. THE PROPOSED MERGER

7. Pursuant to an agreement and plan of merger dated October 4, 1999, and amended November 12, 1999, by and among DTE, MCN and DTE Enterprises, Inc., a wholly-owned subsidiary of DTE, MCN will merge into DTE Enterprises, Inc.. Each share of MCN common stock will be converted into the right to receive either \$28.50 in cash or .775 shares of DTE common stock, subject to proration procedures. Including the assumption of debt, the transaction is valued at approximately \$4.6 billion.

III. TRADE AND COMMERCE

A. Self-Generation of Electricity

8. Edison distributes electricity to customers located in Southeastern Michigan. MichCon distributes natural gas to customers throughout various areas in Michigan, including part of the area in Southeastern Michigan served by Edison. The area in which the two firms overlap (*i.e.*, the area in which both Edison distributes electricity and MichCon distributes natural gas) consists of the City of Detroit and all (or parts) of Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties, Michigan (the “Overlap Area”).

9. Natural gas is the fuel of choice for new electricity generation in the Overlap Area. Other fuels are not likely to be used for new generation because of a variety of disadvantages relative to natural gas. Coal and fuel oil, for example, present environmental problems that do not exist with natural gas. Virtually all new electricity generation in the Overlap Area is likely to rely on natural gas as its source of fuel.

10. Customers in the Overlap Area who need electricity have limited options. They can have electricity delivered by Edison, or they can self-generate electricity using natural gas delivered by MichCon. Self-generation includes cogeneration, generation by municipalities, and emerging forms of distributed generation, such as microturbines and fuel cells, that use natural gas. MichCon has aggressively sought to encourage customers to install gas-powered cogeneration equipment that would allow them to minimize or eliminate the purchase of electricity from Edison.

B. The City of Detroit

11. The City of Detroit operates a municipal utility (the Public Lighting Department, or “PLD”) that distributes electricity to industrial, business, and public sector customers in Detroit. The PLD competes directly with Edison for new non-residential customers in Detroit.

12. The PLD has two sources of electricity. It purchases some power at wholesale, which is delivered over Edison’s power lines, and it generates the rest of its requirements using natural gas delivered by MichCon. The PLD has no viable option for natural gas delivery other than MichCon, and after the merger will have to rely on its only direct electricity competitor for delivery of natural gas.

C. Competing Applications

13. Electricity and natural gas compete directly for certain commercial and industrial applications. Some customers can choose either natural gas or electricity for specific energy

needs, such as powering air compressors, commercial cooking, and various process applications. Customers within the Overlap Area who choose natural gas for these applications must use natural gas delivered by MichCon, and customers who choose electricity must use power delivered by the local electric utility, usually Edison. MichCon has aggressively sought to convert customers using electricity for such applications to natural gas, typically by attempting to convince customers of the relative economic benefits of natural gas compared to electricity.

IV. THE RELEVANT MARKETS

14. Relevant lines of commerce in which to analyze the effects of this merger are the local distribution of electricity and the local distribution of natural gas.

15. A relevant section of the country in which to analyze the effects of this merger is the Overlap Area, *i.e.*, the City of Detroit and the areas of Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties, Michigan, where both Edison distributes electricity and MichCon distributes natural gas.

V. MARKET STRUCTURE

16. The relevant markets are highly concentrated. MichCon is the only distributor of natural gas within the Overlap Area. Except for the cities of Detroit and Wyandotte, Michigan, which operate municipal utilities, Edison is the only distributor of electricity within the Overlap Area. The municipal utilities operated by the cities of Detroit and Wyandotte must use power lines operated and controlled by Edison to receive electricity that is not self-generated by the municipalities. Following the merger, Edison would effectively control the sources of distribution for both electricity and natural gas in the Overlap Area.

VI. ENTRY CONDITIONS

17. Entry into the distribution of electricity and the distribution of natural gas within the Overlap Area is effectively blocked by regulatory constraints and sunk costs, and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from this merger.

VII. VIOLATIONS CHARGED

First Violation

18. Respondents DTE and MCN are competitors in the Overlap Area because Edison distributes electricity and MichCon distributes natural gas used for the self-generation of electricity.

19. The effect of the proposed merger, if consummated, may be substantially to lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in the Overlap Area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas used for the self-generation of electricity in the Overlap Area;
- b. By increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas used for the self-generation of electricity;

each of which increases the likelihood of anticompetitive prices and reduced competition for the distribution of electricity and the distribution of natural gas in the relevant market.

Second Violation

20. Respondent DTE competes with the PLD in the distribution of electricity in the City of Detroit.

21. The PLD has no viable option for natural gas delivery other than MichCon, and after the merger will have to rely on its only direct electricity competitor for delivery of natural gas.

22. The effect of the proposed merger, if consummated, may be substantially to lessen competition or tend to create a monopoly in the distribution of electricity in the City of Detroit in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By decreasing or eliminating competition in the distribution of electricity, and the distribution of natural gas used to produce electricity, in the City of Detroit;
- b. By facilitating DTE's ability to raise the costs of the Detroit PLD;

each of which increases the likelihood of anticompetitive prices and reduced competition for the distribution of electricity and the distribution of natural gas used to generate electricity in the City of Detroit.

Third Violation

23. Respondents DTE and MCN are competitors in the Overlap Area because Edison distributes electricity and MichCon distributes natural gas used to displace electricity in various commercial and industrial applications.

24. The effect of the proposed merger, if consummated, may be substantially to lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in the Overlap Area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas in the Overlap Area;
- b. By increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas;

each of which increases the likelihood of anticompetitive prices and reduced competition for the distribution of electricity and the distribution of natural gas in the relevant market.

VIII. STATUTES VIOLATED

25. The agreement and plan of merger between DTE and MCN constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

26. The proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fifteenth day of May, 2001, issues its complaint against said respondents.

By the Commission.

Donald S. Clark
Secretary

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