

Analysis of the Complaint and Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Computer Sciences Corporation ("CSC") and Mynd Corporation ("Mynd") (collectively "respondents"). The Consent Agreement is intended to resolve anticompetitive effects stemming from CSC's proposed acquisition of the outstanding shares of Mynd. The Consent Agreement includes a proposed Decision and Order (the "Order") that would require CSC to divest Mynd's claims assessment systems business to Insurance Services Office, Incorporated ("ISO"). Mynd develops and sells a claims assessment system known as Claims Outcome Advisor ("COA"). The Consent Agreement also includes an Order to Maintain Assets that requires respondents to preserve the assets they are required to divest as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Order, if finally issued by the Commission, would settle charges that CSC's proposed acquisition of Mynd may have substantially lessened competition in the United States market for claims assessment systems. The Commission has reason to believe that CSC's proposed acquisition of Mynd would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The proposed complaint, described below, relates the basis for this belief.

II. Description of the Parties and the Proposed Merger

CSC, headquartered in El Segundo, California, is a large computer-services provider, which also sells vertical software applications in the financial services industries. CSC's Financial Services Group ("FSG"), headquartered in Austin, Texas, provides consulting and support services along with application software to insurance companies, banking, consumer finance companies, and investment companies.

Mynd, headquartered in Columbia, South Carolina, provides consulting and services and packaged software solutions to the insurance and other financial services industries.

Pursuant to an agreement, CSC will make a \$16 per share cash tender offer for outstanding Mynd shares. Mynd will then become a wholly-owned subsidiary of CSC.

III. The Proposed Complaint

According to the Commission's proposed complaint, the relevant line of commerce in which to analyze the effects of CSC's proposed acquisition of Mynd is the provision of claims assessment systems, and the relevant geographic market is the United States. Claims assessment systems are computer software and other intellectual property used by insurance companies and others to evaluate appropriate payments for claims for bodily injury or to evaluate return-to-work plans in workers compensation claims. Claims assessment systems are designed to aid claims adjusters by providing a consistent methodology for analyzing information that an adjuster would

take into account in assessing the appropriate settlement values for claims. Mynd sells the claims assessment system known as COA, and CSC sells the claims assessment system known as Colossus. The proposed complaint alleges that the market for claims assessment systems in the United States is highly concentrated and that CSC and Mynd are the only significant competitors in the provision of claims assessment systems. The proposed complaint alleges that the proposed acquisition of Mynd by CSC would create a monopoly or near monopoly in the market for claims assessment systems.

The proposed complaint also alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or offset adverse effects of the acquisition on competition. Entry is difficult in this market because the time and expense necessary to develop software systems such as these are great. Claims assessment systems involve the use of expert-system technology, which is a set of computerized methods for exploiting information drawn from relevant knowledge domains through rules or algorithms so as to assist in the solution of real-world problems, such as claims assessment. Entry is difficult in this market because of the time and expense necessary for finding and choosing the appropriate domain information, choosing or developing the appropriate rules or algorithms, and integrating the expert-system technology into a computing platform that is sufficiently robust, scalable, and stable while incorporating a domain-appropriate user interface.

The proposed complaint alleges that CSC's proposed acquisition of Mynd would eliminate actual, direct, and substantial competition between CSC and Mynd. Elimination of this competition would likely result in increased prices for claims assessment systems and reduced innovation as a result of delayed or reduced product development.

IV. Terms of the Agreement Containing Consent Order

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the United States market for claims assessment systems, as alleged in the complaint, by requiring the divestiture to ISO of Mynd's claims assessment business. The Order would also require respondents to dismiss with prejudice all of CSC's intellectual-property litigation claims against Neuronworks, the original developers of COA, so as to enable Neuronworks to perform COA-related consulting or other work in conjunction with ISO or another acquirer. Further, the Order would require respondents to release, hold harmless, and indemnify ISO or other acquirer from liability for any past, current, or future claims arising out of Mynd's and Neuronworks's acts prior to the divestiture date related to COA. The purpose of these provisions is to allow the acquirer to compete in the market by selling COA free from claims by CSC of intellectual property infringement. The proposed Order would also require respondents to divest other assets related to Mynd's claims assessment systems business, including customer lists, contracts, intellectual property, and other intangible assets so as to put ISO or another acquirer into a position to compete as soon as possible following the divestiture.

ISO, based in New York City, is a leading vendor of statistical, actuarial, and underwriting information for and about the property and casualty insurance industry. ISO uses these statistics to develop advisory prospective loss costs – projections of average future claim payments and

loss adjustment expenses, for various lines of insurance and classifications of policy holders. Insurance companies use these loss costs to develop their own independent rates for their insurance policies. ISO also provides aggregate insurance statistics to state regulators.

If the Commission, at the time that it accepts the proposed Order for public comment, notifies respondents that it does not approve of the proposed divestiture to ISO, or the manner of the divestiture, the proposed Order provides that respondents would have three months to divest Mynd's claims assessment business to a different Commission-approved acquirer. If respondents did not complete the divestiture in that period, a trustee would be appointed who, upon Commission approval, would have the authority to divest Mynd's claims assessment business to a Commission-approved acquirer.

The proposed Order to Maintain Assets that is also included in the Consent Agreement requires that respondents preserve the Mynd assets they are required to divest as a viable and competitive operation and conduct the Mynd claims assessment business in the ordinary course of business until those Mynd assets are transferred to the Commission-approved acquirer.

The Consent Agreement requires respondents to provide the Commission with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divestiture of assets. The proposed Order further requires respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the date the Order becomes final and every thirty (30) days thereafter until they have complied with the terms of the Order.

V. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Order and the comments received and will decide whether it should withdraw from the proposed Order or make it final. By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the proposed complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order, including the proposed divestiture, to aid the Commission in its determination of whether to make the proposed Order final. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.